



EMPLOYMENT TRIBUNALS

Claimant: Ms E Todd (formerly Ratcliffe)

Respondent: Fairways Care Limited

Heard at: Cardiff (by video) **On: 3, 4 and 5 February 2021**

Before: Employment Judge R Harfield
Members Ms S Atkinson
Ms C James

Representation:
Claimant: Ms Whiteley (legal representative)
Respondent: Mr Bailey (Director)

RESERVED JUDGMENT

It is the unanimous decision of the Tribunal that:

1. The Claimant's claim of whistleblowing detriment succeeds in that she was subjected to a detriment by the acts of the respondent in portraying the claimant in a negative light and in calling the claimant to a meeting on 25 April 2019 on the ground that the claimant made a protected disclosure on 27 March 2019;
2. The Claimant's remaining complaints of whistleblowing detriment and dismissal do not succeed and are dismissed;
3. The Claimant is awarded the sum of £4000 in respect of injury to feelings.

REASONS

Introduction

1. The claimant was employed by the respondent as an Activities Coordinator from 27 March 2019 until her dismissal on 25 April 2019. The claimant first presented a claim under case number 1600558/2019 on 30

- April 2019 as a complaint of unfair dismissal with an application for interim relief on the basis that the reason for the claimant's dismissal was the making of protected disclosures. The application for interim relief was heard on 16 May 2019 and was unsuccessful. On 21 August 2019 the claimant presented a second claim form bringing complaints for automatic unfair dismissal due to making a protected disclosure and detriment on the grounds of having made protected disclosures, brought against the respondent and against a named respondent, Ms Woodruff.
2. This second claim was listed for a case management hearing on 28 November 2019. The respondent accepted it was vicariously liable for any acts of Ms Woodruff and the claimant consented to the dismissal of Ms Woodruff as a named respondent. Employment Judge Ryan identified the issues to be decided in the case and made case management orders, including that the claimant was to provide further particulars of her protected disclosure claim.
 3. At that point in time the two files had not been administratively linked in the employment tribunal's systems. The original unfair dismissal claim was separately listed for a case management hearing on 27 January 2020. The parties explained to Employment Judge Jenkins that Employment Judge Ryan had already made directions. Employment Judge Jenkins wrote to the parties on 8 February 2020 explaining that the two files had not previously been connected and as the second claim also included an unfair dismissal claim, which had been the sole subject of the first claim, that the first claim under 1600558/2019 would be closed and all the claimant's claims could proceed under 1601479/2019.
 4. The case was then listed for hearing on 5 to 7 May 2020. Due to the Covid19 pandemic the hearing was converted into a further case management hearing which took place on 5 May 2020. Employment Judge Jenkins re-set the orders for exchange of witness statements and the hearing was due to be relisted. Due to ongoing restrictions a further case management hearing took place by video on 30 October 2020 before Employment Judge Ryan to determine the format for the final hearing. It was agreed it could take place by video. Final directions were made for the preparation of a hearing bundle/file, exchange of witness statements and for the claimant to prepare a draft joint list of issues. The case was then listed and came before us for hearing on 3, 4, and 5 February 2021.
 5. We received written witness statements and heard oral evidence from Ms Duffy (care practitioner), Ms Dimery (receptionist), Ms Round (activities coordinator), Ms Woodruff (manager) and Ms Roberts (area manager) for the respondent. We received a written witness statement and heard oral evidence from the claimant.

6. Employment Judge Ryan's case management order of 30 October 2020 stated that witness statements should contain everything relevant that a witness can tell the Tribunal and that witnesses will not be allowed to add to their statements unless the Tribunal agrees. The parties were also informed that at the hearing the Tribunal will read the witness statements and witnesses will be asked questions about their statements by the other side and the Tribunal. The respondent has been self-represented throughout the proceedings and their witness statements were prepared in a way which comments on the claimant's witness statement prepared for the earlier interim relief hearing rather than setting out each witness's own narrative of what happened.
7. Mr Bailey wanted to ask further questions of the respondent's witnesses. We directed that this be picked up in re-examination after cross examination of the witnesses as it may well have been that the anticipated topics would be covered in cross examination in any event. The Tribunal explained to Mr Bailey that questions of his own witnesses needed to be questions, and questions which did not lead the desired response. Whilst strictly speaking re-examination questions should be limited to matters arising in cross examination, appreciating the fact the respondent was not legally represented and taking into account the format of their written statements, Mr Bailey was told that if there were topics he wished to elicit more evidence about which were not covered in cross examination he could identify the theme and the Tribunal would then decide whether to allow the additional questions. It is no criticism of Mr Bailey as he is not legally qualified, however, his questions on occasion had to be stopped as they had a tendency to be statements and/or be very leading of the witness. This could be even more problematic in circumstances in which he is managing director of the respondent's business and these witnesses were his own employees.
8. That all said, there are additional documents in the bundle prepared by the respondent's witnesses which the Tribunal was aware of and took account of in our deliberations. The Tribunal also asked all of the witnesses a number of questions to clarify the evidence in the case and understand each witness' narrative of what they said occurred in relation to the issues in the case. We felt satisfied overall that witnesses had the opportunity to give us their accounts.
9. We had before us a bundle of documents extending to 165 pages. References in brackets in this Judgment are references to page numbers in that bundle. We also had the claimant's representatives written submissions, a statement of issues, a key document list, a character list and a chronology. It came to light that Mr Bailey had not received the email from Ms Whiteley attaching the statement of issues, amongst other things. It was re-sent to Mr Bailey on the first day of the hearing. In any

event, as Mr Bailey agreed, it did not fundamentally differ from the issues as earlier defined by Employment Judge Ryan read in conjunction with the claimant's particulars of claim and further particulars of claim (set out in a "Scott Schedule").

10. We heard oral closing submissions on the morning of the last day of the hearing. We have not repeated those submissions here but have taken them into account. We were ultimately unable to complete our deliberations in time to deliver an oral judgment on the last day of the hearing. Judgment was therefore reserved to be delivered in writing.

The issues to be decided

11. The issues before us to decide (as taken from the particulars of claim, Employment Judge Ryan's case management order of 28 November 2019, the further particulars in the Scott Schedule and Ms Whiteley's statement of issues) can be identified as follows:

12. Did the claimant make one or more protected disclosure as set out in paragraphs 2.3 – 2.5 and 2.6 of her particulars of claim and further particularised in the Scott Schedule [76-81] which can be summarised as follows:

- a. In March/April 2019 the claimant reported to Ms Round that she had witnessed a member of staff kissing a dementia patient on the lips (said to be a disclosure of information tending to show that a criminal offence had been committed);
- b. On the first day of her employment the claimant had reported to Ms Duffy that the required ratio for staff and service users deteriorated from 4:1 to 9:1 (said to be a disclosure of information tending to show that the health and safety of residents was being endangered or that there was a failure to comply with legal obligations in respect of staff to service user ratios);
- c. During her employment the claimant had raised with carers generally and Ms Round that a resident had spectacles so dirty he could not see out of them (said to be a disclosure of information tending to show that the health and safety of an individual was being endangered or a failure to comply with legal obligations in respect of standards of care);
- d. During her employment the claimant raised with carers and Ms Round a general lack of care from carers to service users (said to be a disclosure of information tending to show that the health and

safety of an individual was being endangered or a failure to comply with legal obligations in respect of standards of care);

- e. During her employment the claimant had witnessed residents being called derogatory names. In particular that an Irish resident was called a “fucking bitch” and a “fucking this that and the other” which was reported to Ms Round (said to be a disclosure of information tending to show that the health and safety of an individual was being endangered or a criminal offence had been committed);
- f. During her employment the claimant had made an allegation that the dietician was failing in her duty to take account of obese patients (said to be a disclosure of information tending to show that the health and safety of an individual was being endangered or a failure to comply with legal obligations in respect of standards of care);
- g. On 23 April 2019 Easter eggs were given to patients in the “Retreat” household without regard for dietary needs or physical ability to consume the gifts and included “Maltesers” which presented a choking hazard to some clients. The claimant says she reported this to Ms Duffy that day and told her that she would be making a complaint about the Easter eggs, dirty glasses and lack of care to Mr Bailey (said to be a disclosure of information tending to show that the health and safety of an individual was being endangered or a failure to comply with legal obligations in respect of standards of care). In the Scott Schedule this is set out as a subset of the allegation about the dietician. However, it more sensibly reads as being its own distinct claimed protected disclosure and is set out as such in paragraph 2.7 and 3.4 of the claimant’s particulars of claim.

13. Did the claimant make a disclosure(s) of information which she reasonably believed tended to show one of the above types of wrongdoing?

14. Did the claimant make a disclosure(s) of information which she reasonably believed was made in the public interest?

15. Was the disclosure(s) made to the claimant’s employer?

16. Was the claimant subject to detriments on the ground that she made one or more protected disclosures? The alleged detriments are:

- a. The portrayal by the respondent of the claimant as a “troublemaker” and arrogant following her initial disclosures;

- b. The decision to call the claimant to a probation review meeting on a non-working day;
- c. The respondent's treatment of the claimant in a meeting on 25th April 2019;
- d. The termination of the claimant's employment;
- e. The dishonest representations regarding the claimant's conduct at the meeting on 25th April 2019;

17. What was the principal reason the claimant was dismissed and was it that she had made a protected disclosure? Or did she fail her probation?

Relevant legal principles on liability issues

Protected Disclosures

18. Under section 43A Employment Rights Act 1996 ("ERA"), a worker makes a protected disclosure in certain circumstances. To be a protected disclosure, it must be a qualifying disclosure. A qualifying disclosure must fall within section 43B ERA and also must be made in accordance with any of sections 43C to 43H. Section 43B says:

"(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—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."

19. Section 43C provides:

"Disclosure to employer or other responsible person

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

(a) to his employer...

20. There are therefore a number of requirements before a disclosure is a qualifying disclosure.
21. First the disclosure must be of information tending to show one or more of the types of wrongdoing set out at Section 43B. In order to be such a disclosure “*It has to have sufficient factual content and specificity such that it is capable of tending to show one of the matters in subsection (1)*” (Kilraine v London Borough of Wandsworth [2018] ICR 185). Determining that is a matter for evaluative judgment by the Tribunal in light of all of the facts of the case.
22. Second, the worker must believe the disclosure tends to show one of more of the listed wrongdoings. Third, if the worker does hold such a belief it must be reasonably held. Here, the worker does not have to show that the information did in fact disclose wrongdoing of the particular kind relied upon. It is enough if the worker reasonably believes that the information tends to show this to be the case. A belief may be reasonable even if it is ultimately wrong. It was said in Kilraine that this assessment is closely aligned with the first condition and that: “*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.*”
23. Fourth the worker must believe that the disclosure is made in the public interest. Fifth, if the worker does hold such a belief, it must be reasonably held. The focus is on whether the worker believes the disclosure is in the public interest (not the reasons why the worker believes that to be so). The worker must have a reasonable belief that the disclosure is in the public interest but that does not have to be the worker’s predominant motive for making disclosures: Chesterton Global Ltd v Nuromammed [2018 ICR 731].
24. In Chesterton it was also said that there was no value in seeking to provide a general gloss on the phrase “in the public interest” but that the legislative history behind the introduction of the condition establishes that the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest. The question is to be answered by the Tribunal on a consideration of all the circumstances of the particular case but relevant factors may include:
 - (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;
 - (c) the nature of the wrongdoing disclosed;
 - (d) the identity of the alleged wrongdoer.
25. Sixth, the disclosure has to be made to an appropriate person.

Whistleblowing/ Protected Disclosure detriment

26. Under Section 47B(1) a worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. Under section 47B(2) the section does not apply where the detriment in question amounts to a dismissal within the meaning of Part X (because dismissals are governed by Section 103A within Part X ERA).
27. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment (see Jesudason v Alder Hey Children’s NHS Foundation Trust [2020] EWCA Civ 713 applying Derbyshire v St Helens MBC [2007] UKHL 16 and Shamoon v Chief Constable of Ulster Constabulary [2003] ICR 33.)
28. There must be a link between the protected disclosure or disclosures and the act (or failure to act) which results in the detriment. Section 47B requires that the act should be “on the ground that” the worker has made the protected disclosure. In Manchester NHS Trust v Fecitt [2011] EWCA 1190 it was said that “section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistle-blower.” This is a “reason why” test. The Tribunal has to look at why (consciously or unconsciously) the decision maker acted as he or she did. It was said in Jesudason that:

“Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under Section 47B.”

Protected Disclosure/ “Whistleblowing” dismissal

29. Section 103A ERA provides:

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal

reason) for the dismissal is that the employee made a protected disclosure.”

30. If that test is satisfied the claimant will have be “automatically” unfairly dismissed. The claimant otherwise did not have sufficient qualifying service to bring an “ordinary” unfair dismissal claim.

Burden of proof

31. Where a Claimant has established that there has been a protected disclosure and she has suffered a detriment, it is for the employer to show that the detriment was not because of the disclosure; that is, that the disclosure did not materially influence - in the sense of being more than a trivial influence - the employer's treatment of the Claimant (see Fecitt).
32. In respect of the automatic unfair dismissal complaint, in Ross v Eddie Stobart Limited UKEAT/0068/13/RN the Employment Appeal Tribunal held that where an employee does not have sufficient qualifying service to bring an ordinary unfair dismissal claim, the burden of proof rests with the employee to establish, on the balance of probabilities, that the reason or principal reason for dismissal was because of the disclosure(s) made. The Employment Appeal Tribunal distinguished that position from that set out in Kuzel v Roche Products Limited which applies where the employee does have sufficient qualifying service. That said, the Employment Appeal Tribunal also endorsed the proposition that in practice in many cases the Tribunal can make findings of fact about what was operating in the mind of the decision makers and therefore, in practice, only a small number of cases will turn upon a burden of proof analysis.

Findings of fact relevant to liability issues

33. To decide the issues in this case it is not necessary for us to resolve every factual issue in dispute between the parties. Where there is a dispute we applied the balance of probabilities, and our findings of fact are as follows.
34. The claimant worked as an Activities Coordinator in the respondent's Ty Cariad Dementia Care Centre. The claimant did not have prior experience in the role. When the claimant started work her DBS certificate was outstanding and she initially shadowed the existing activities coordinator, Ms Round, whilst her DBS certificate came through. The claimant only started working independently without Ms Round on 23 April 2019 and was dismissed two days later on 25 April 2019. The intention was that the claimant would work in Ty Cariad on days on which Ms Round was working elsewhere. It appeared to the Tribunal that there was a lack of clarity between the parties as to the line management structure for the activities coordinators both whilst the claimant was being trained up and

once her DBS certificate came through, as there does not appear to have been a direct conversation or instruction about it that everyone understood. But we are satisfied that Ms Round had some mentoring, training and supervision responsibilities towards the claimant in the initial period of the claimant's employment that we are concerned with. Ms Round held relevant qualifications and was experienced in the role. She had control of the activities budget and the claimant would be taking the lead from her as to the activities to be carried out.

The claimant's first day

35. The Ty Cariad home is divided into various households. Following training the claimant's first day of work in the home was 27 March 2019. Ms Round and the claimant were due to undertake some activities with a group of residents in a lounge, however, Ms Round was called away to reception to sort a problem with her clocking in. Ms Round anticipated that she would not be very long and left the claimant in the lounge with about 9 residents. There were other staff around in the household but not in the lounge. Ms Round told Ms Duffy where she was going.
36. Ms Round was gone longer than initially anticipated. The Tribunal finds that the claimant was concerned that she had been left alone on her first day with residents when her DBS certificate had not come through and without any carers being present in the room. We find that this was the core nature of the concern the claimant held rather than it being a specific concern about staff to patient ratios. It was the claimant's first day of work, and she knew she had to shadow Ms Round until her DBS certificate came through. It is also likely that at that point in time the claimant was under the misapprehension that residents could not be left alone in a room at any time and she therefore thought, in effect, that she was being used as an unqualified carer. It is more likely that her main concern was therefore about being left alone with residents (and without a DBS certificate) rather than staffing ratios per se.
37. The claimant looked around for another member of staff and could not see any. Ms Duffy walked past in a hurry. The claimant's case is that she said to Ms Duffy that she was on her own, that she was awaiting her DBS certificate, was not trained in care and a 9:1 staff to patient ratio was illegal. Ms Duffy accepts the claimant spoke to her but says it was simply to say that she had been left on her own. Ms Duffy says the claimant did not mention other staff or ratios.
38. The Tribunal finds on the balance of probabilities that the claimant stopped Ms Duffy and said words to the effect that she had been left alone with a group of residents and she was not sure she should be as she had not had her DBS check back or training. On the balance of probabilities,

- we do not find that the claimant specifically mentioned staff ratios to Ms Duffy or that a ratio of 9:1 staff was illegal. In her oral evidence the claimant was not clear on this point and we have already set out above our findings on what we consider was operating in the claimant's mind at the relevant time.
39. The claimant says that Ms Duffy told her to "shut up" and just get on with it. Ms Duffy denies this. Applying the balance of probabilities, we find it likely that Ms Duffy did say words to that effect or something that was equally dismissive. We find this was because Ms Duffy was busy, was in a hurry, knew where Ms Round had gone and that she would not be long, and knew that residents could be left alone in a room without continuous staff supervision. In short, Ms Duffy did not see it as a major problem. We do not find she shouted at the claimant.
 40. Ms Duffy said in oral evidence that she went to get the nurse in charge, Mari, and that she left Mari with the claimant. The claimant disputes this saying that Mari did not come and speak to her. We did not hear from Mari and the suggestion that Ms Duffy went to get Mari does not feature in any of the documents in the case. We do not find it established on the balance of probabilities that Ms Duffy went to speak to Mari or that Mari came to speak to the claimant.
 41. The claimant waited for a carer to return to the lounge and then went to reception. She expressed the same concerns to the receptionist, Keira, about having been left alone with residents untrained, who told her to speak to the deputy manager, Shelley. The claimant did so, and Shelley told the claimant to speak to Ms Round. The claimant then returned to the lounge where Ms Round had returned. On the balance of probabilities we find it likely that the claimant told Ms Round that she had been worried about her absence and being left alone in the lounge with residents and without a DBS check. We find it likely that Ms Round, like Ms Duffy (and indeed Shelley), did not see it as a major point of concern bearing in mind that residents could be left unattended if there were staff in the wider household and the activities coordinators did not fall in the staff to patient ratio requirements. We find it likely Ms Round reassured the claimant and said to the claimant something along the lines of not to worry about it, she wasn't in any trouble, and they should just get on with running their activities. The issue of the claimant being on her own with residents did not crop up again.
 42. On that first day there was also a slight disagreement between the claimant and Ms Round about the activities budget. The claimant said she should have control over half of the budget. Ms Round said that she would show the claimant what they already had and give her ideas as to what Ms Round was already doing with the clients and they could then

see what money was left. She pointed out that the claimant was also only working 2 day a week. The claimant said to us in evidence that she had been overenthusiastic and that this was the only falling out that she and Ms Round had. It certainly seemed to the Tribunal that on the surface the claimant and Ms Round both thought at the time they had a good working relationship although as the narrative shows there was more going on.

Cleaning glasses

43. The claimant says in her witness statement that on 4 occasions she had to clean residents' glasses as they were covered in grime and dirt. She said in her oral evidence it was that engrained she had to scrape it with her nails. She says that she considered it evidence of poor care and that she raised it with carers directly and with Ms Round. Ms Round says that concerns were not raised with her but that one of the roles of activity coordinator is to attend to residents' comfort by doing things such as cleaning glasses, fixing hearing aids and giving manicures.
44. The Tribunal considers it likely that the claimant did at least on one occasion clean residents' glasses and that she did say something about it to the carers at the time and to Ms Round. We think it likely that the claimant complained to Ms Round she did not think the carers were doing their jobs properly in that regard. We consider it likely that the residents' glasses could get messy quite quickly. We do not consider it likely that it was as severe as the claimant suggested in oral evidence because, if so, it is something that would be likely to have been raised by family members when visiting. We did not consider that it was viewed by the claimant, or reasonably could be viewed in the claimant's position, as a safeguarding issue or a health issue or that it suggested a lack of basic care for residents. But it would have been viewed, and reasonably viewed in the claimant's position, as potentially affecting a resident's level of engagement. As said by Ms Round, it is something that the activities coordinators could be expected to assist with remedying.
45. We consider it likely that whilst the claimant mentioned it to Ms Round, that Ms Round did not see it as a big deal and probably said words to the claimant to the effect that cleaning glasses was something that they could assist with in their role. We consider it likely that the claimant did not agree with Ms Round that it was something they should be assisting with as opposed to it being, in the claimant's view, the responsibility of the carers and something she felt they were not fulfilling.

Swearing about or at a resident or residents

46. The Scott Schedule refers to one particular Irish resident allegedly being called a "fucking bitch" and a "fucking this that and the other" by members

- of the care staff. The claimant's written witness statement differs and says that "members of staff at Ty Carid refer to three of the female clients as "horrible, violent bitches." The claimant's letter to Mr Bailey after her dismissal [97] similarly alleges "a few members of staff at Ty Cariad refer to three of your female clients as "horrible, violent bitch." The claimant's oral evidence differed again, and she alleged that she witnessed a specific incident where the staff were allegedly stood outside the resident's room with the door open and that the resident was called a "fucking bitch" from the hallway directed into the resident's room. The claimant said that she did not challenge the staff concerned but that she reported it to Ms Round later on when they had their lunch. She said that she did not recall Ms Round saying anything in response.
47. Ms Round denied that any such allegation had ever been reported to her. She said that what happened was a discussion in the staff area in which the carers were describing the language that the resident had used rather than the staff speaking about the resident in such terms.
48. On the balance of probabilities we do not accept that events happened as the claimant now says. The allegation the claimant now makes is a serious one. The claimant is not someone who holds back with challenging things that she thinks are wrong. We consider that if things had happened as the claimant now says that she would have raised concerns about it persistently at the time and her account/complaint would not have changed in the way that it has.
49. Applying the balance of probabilities, we consider it likely that there was a discussion in the staff room, not in front of residents, where there was some reference made by care staff to "horrible, violent bitch" at which the claimant and Ms Round were present, which has been taken out of context by the claimant. We do not consider it established on the balance of probabilities that there was an actual complaint made by the claimant to Ms Round.

Allegation that a carer kissed a resident

50. There are some fundamental disputes of fact between the claimant and Ms Round about this incident. The claimant says that she saw a carer kiss a dementia patient on the lips. She says that Ms Round was not there at the time and that she later reported it to Ms Round and that Ms Round commented "she shouldn't be doing that as he is married." The claimant says that she found Ms Round's response strange but that she carried on with her day. In oral evidence the claimant expanded her account. She described the resident as having got his dinner all down him and had been taken to get changed. She said that when he was brought back in the carer sat him down, had put her hands on his face and had

- locked lips with the resident in a passionate kiss. She said it was not a peck. She said she went to report it to Ms Round straight away and that it did not sit right with her. When challenged in cross examination about why she had not reported it further at the time if so serious, the claimant said in oral evidence that it had happened about 4 working days before her first solo shift on 23 April and that by the 23 April she was intending to raise it with Mr Bailey. Looking at the claimant's work log records that would place it at around the 15 April 2019 [139].
51. Ms Round's evidence was that she was present when the carer had pecked the resident on the lips in a caring way when he returned to the room. Ms Round said that she had not seen anything wrong with the conduct at the time. She said that it was the claimant who had muttered "that's not your husband" and that she had found the claimant's response a strange one. She said that the claimant spoke about the kiss later on in the staff room and that she had explained to the claimant that it was a spontaneous gesture of affection and that of course they all knew that the carer and the resident were married to other people. Ms Round said the conversation was a brief one, not a major one, was centred around the claimant's comment about the client not being the carer's husband, and that she did not report the incident as she did not herself see anything wrong in the carer's actions. She said the claimant did not raise it as a specific concern or say that she found it disgusting or unsafe or a sexual assault.
 52. On the balance of probabilities we consider it likely that Ms Round was present when the incident occurred. After the claimant's dismissal the incident was reported and investigated as a safeguarding incident and the carer concerned temporarily suspended. We considered it inherently unlikely that Ms Round would place herself at the scene of this incident and place herself potentially in the frame for some criticism for her own response to it if she was not actually there.
 53. We consider it likely that the resident in question had got in a mess with his dinner and when he returned having been cleaned up, the carer welcomed him back into the room, and was reassuring him that he was cleaned up and sorted, and welcoming him back by giving him a peck on the lips. We do not consider it likely that it was a sexualised or passionate kiss. Objectively, however, the Tribunal would not consider it an appropriate action for a carer to take. Subjectively, however, we accept that Ms Round did not view it, in context, as inappropriate and she saw it as part of the normal running of the home. We consider it likely that the claimant did make some comment along the lines that the resident was not the carer's husband and that the claimant did also later raise a concern with Ms Round in the staff room to the effect that she thought the kiss from a carer to a resident was inappropriate. We consider it likely that

Ms Round's response were words to the effect that the kiss was just an expression of care and that it is likely there was also a discussion about the carer and the resident being married to other people. We also do not think that Ms Round subjectively saw the claimant's concerns as raising anything serious because, as we have stated, she did not herself personally see the conduct in that way. That it was a relatively low-key discussion at the time is supported by the fact the claimant herself talked about having just got on with her day.

23 April 2019

54. The 23 April 2019 was the claimant's first solo shift as an activities coordinator after her DBS certificate arrived and she was no longer shadowing Ms Round. The claimant says that she felt the matters she was raising with Ms Round were not going addressed and that on 23 April 2019 further things happened which made her decide that she needed to raise concerns further up the chain of command. She alleges, in particular that on 23 April 2019 she found that a resident had been left naked on their bed with a curtain type material draped over them and that on visiting another resident's room the resident had a blob of almost dry mucus hanging down one side of her face which the claimant took steps to clean up. These things are not, however, said to be protected disclosures in this case. The claimant also accepted in evidence that on that day there was an exchange between her and one of the carer's, NL.
55. NL's account, albeit prepared after the event on 23 May 2019, is at [119]. She alleges that the claimant had told her to get a resident from her room so that she could do activities with her. NL says she told the claimant that she had asked the resident who had said no. NL says the resident wanted to stay in her room with her family who were visiting. NL alleges that the claimant spoke to her very abruptly saying that she had been to ask the resident and she wanted to come to do activities. NL said she felt that the claimant was trying to tell her how to do her job and was belittling her in front of other members of staff and residents. The claimant accepts that she had an exchange with NL that day about bringing a resident for an activity but disputes that NL's account is accurate. The claimant says that the resident's family were not present, that the resident had changed her mind about attending when the claimant went to speak to her, and that NL was unhappy with the claimant because the claimant had asked the resident directly herself. She said that she had also upset NL in the past picking her up on issues relating to personal care.
56. That same day, 23 April 2019, an issue as arose in relation to Easter eggs. The 21 April 2019 had been Easter Sunday. Ms Round was on holiday over the Easter break. Before she went on holiday Ms Round bought an Easter egg for each resident and gave them to staff in each

- household to handout at Easter as Ms Round was not going to be there. She said that she was aware that in previous years some residents who could not eat chocolate had been given chocolate mousses as an Easter treat instead but that she could not buy these as there would be difficulties with storage and best before dates given that she was going away. She therefore decided to buy a Maltesers Easter egg for each resident as she did not want to treat some residents differently to others and she thought in any event that if a resident could not eat an egg it could be a talking point about Easter, and their family could enjoy it instead or perhaps some residents could enjoy it stirred into their porridge. Ms Round says, and we accept, that the staff in each household were fully aware of specific dietary needs or clients at risk of choking and she agreed with the senior carer on each household that should the client not be able to eat the chocolate then family could enjoy it or it could be stirred into porridge.
57. On 23 April the claimant found that some of the Easter eggs had not been handed out and she handed them out. She was then told by some of the carers that some relatives had complained about the Easter eggs that Ms Round had bought as they did not consider they were appropriate for the residents who were unable to eat them, particularly those in the Retreat household. The claimant went to speak to Ms Duffy about it and told her about the complaints. She describes Ms Duffy as being fuming with Ms Round. She said that she and Ms Duffy had not had much to do with each other since the first day as they did not see eye to eye but that this issue of the Easter eggs was the one thing that they did agree about as the claimant herself thought they were inappropriate. The claimant says that she told Ms Duffy that was going to get Mr Bailey's email address and email him and let him know what was going on as she had other concerns. The claimant said she did not go into detail with Ms Duffy about her other concerns but that she "umbrella-ed" them. She said that she mentioned residents' glasses being dirty and a lack of personal care. She accepted that she did not mention the kissing incident or having found a resident naked under a shower curtain type material. She said this was because she considered these were safeguarding concerns that she wished to raise directly with management. She says that Ms Duffy told her that under the chain of command the claimant should raise any concerns with Ms Woodruff rather than Mr Bailey. The claimant said that she had understood from Ms Round that their chain of command lay with Mr Bailey.
58. Ms Duffy says that the claimant did come to speak to her and asked her if she knew of the complaints about the Easter eggs. She said the claimant had said there were complaints from staff and relatives about the eggs and that the residents had not been given a chocolate mousse alternative. She said the claimant had said the eggs should not have been given to the Retreat household. Ms Duffy said the claimant did not say that the

- eggs were a choking hazard or that she agreed with the claimant that they were a choking hazard or that she agreed with the claimant the eggs were unacceptable. Ms Duffy told the Tribunal she had told the claimant that she was aware of the situation as some staff had complained that the residents did not have a chocolate mousse that they had been given in previous years. Ms Duffy said that she explained to the claimant the eggs were a gift and a prompt or talking point for the time of year. Ms Duffy did not directly answer the question put to her that she had agreed with the claimant she was unhappy with complaints from relatives. Ms Duffy accepted that the claimant said she was going to raise it further but did not accept the claimant had said to her she was going to raise it with Mr Bailey. Ms Duffy accepted that she asked the claimant to speak to Ms Woodruff about it although in her oral evidence she also said that when the claimant asked about the chain of command that she told the claimant to speak to the nurse in charge. Ms Duffy said that she went to the kitchen to check that residents on the Retreat did in fact have chocolate mousses available. She said she “would have” told the nurse in charge that the claimant had been asking about it. She says that the claimant did not raise any other issues with her including any complaints about dirty glasses or a lack of care. She said that she did not speak to anyone else about what the claimant had said. Ms Duffy denied sending the claimant to reception to get the contact details for Mr Bailey.
59. Paragraph 12 of the claimant’s witness statement, which the claimant confirmed under oath was true to the best of her knowledge and belief, says that this conversation happened with Ms Round and not Ms Duffy. The Tribunal asked the claimant about this and she said it was a mistake and she did not know how it had got into her statement. She said that when she approved the witness statement she had only skimmed it briefly and that later on, when she checked it more carefully, she noticed the error and told her solicitor. She said her solicitor had said she would sort it out and that when she approved her statement to the Tribunal under oath she did not mention the error because she had already told her solicitor about it. Ms Whiteley told us on the last day of the hearing (having checked the file with the head of the department) that the file showed the claimant approving the witness statement and that there were no records on file of the claimant telling her solicitor about the error. However, the solicitor concerned no longer works there and Ms Whiteley therefore could not rule out the possibility of there having been an unrecorded exchange between the claimant and her former solicitor. All other versions of the claimant’s account of events including her particulars of claim, Scott Schedule, and witness statement for the interim relief hearing say the conversation was with Ms Duffy.
60. There are therefore a number of factual disputes between the claimant and Ms Duffy. Weighing up all the evidence and applying the balance of

- probabilities, we find that the claimant told Ms Duffy that some staff and relatives, particularly those related to the Retreat household, were complaining that the Easter eggs bought by Ms Round were inappropriate and thoughtless as some residents had been given an egg that they were unable to eat and had not been given the mousses they had been in previous years.
61. We do not find it established, on the balance of probabilities, that the claimant told Ms Duffy that she considered, or that people had complained, that the eggs were a choking hazard. We likewise do not find the claimant thought they were a choking hazard at the actual time or that she thought that they were a health and safety risk to residents. We consider it likely that the claimant's concerns were more that she was on the receiving end of complaints about something Ms Round had done in buying eggs for some residents that they could not eat, and that she herself thought the eggs for the residents concerned were thoughtless gift and therefore a waste of money and the activities budget. On the evidence we heard we did not consider it reasonable to have considered the eggs to have been a choking hazard. The residents in the Retreat were in end of life dementia care and would not have been in a position to have helped themselves unsupervised to the egg. The residents' dietary restrictions were all known and documented. This would have been known to all involved including the claimant.
62. We consider it likely that the claimant said she wished to pursue the complaint about Ms Round purchasing the Easter eggs further up the chain of command. We also consider it likely that the claimant briefly said to Ms Duffy that she also wanted to raise other concerns she had. We consider it likely the claimant said she was going to contact Mr Bailey. Our conclusion in this regard is supported by the fact Ms Dimery says the claimant later went to see her and said she was going to complain to Mr Bailey. We find that there was then a discussion between the claimant and Ms Duffy about whether the chain of command lay with Mr Bailey or Ms Woodruff. The claimant had previously got the impression from her discussions with Ms Round that they reported into Mr Bailey. Ms Duffy told the claimant that the appropriate person would be Ms Woodruff.
63. The claimant went to speak with Ms Dimery on reception. The claimant says she told Ms Dimery that she wanted Mr Bailey's email address to raise some concerns. She says she told Ms Dimery she had had a conversation with Ms Duffy about the chain of command and Ms Duffy had told her that it was Ms Woodruff and not Mr Bailey. She says Ms Dimery likewise told the claimant that Ms Woodruff was next in the chain of command. The claimant asked her if Ms Woodruff was in the building and Ms Dimery said she was not. The claimant said she would speak to Ms Woodruff when Ms Woodruff was next in. The claimant accepted she had

not told Ms Dimery the detail of what she wanted to speak to Ms Woodruff about.

64. Ms Dimery says that the claimant told her the Easter eggs had not been handed out, that when she had come in to work they were still sat in the cupboard and that the claimant had said that Ms Round was useless at her job, does nothing, and that she was going to report the Easter eggs to Mr Bailey [124]. Ms Dimery says she told the claimant that the correct route to complain would be to Ms Woodruff and then Ms Roberts and then Mr Bailey. She accepts that the claimant asked her if Ms Woodruff was in work and that the claimant had said she would raise her concerns about the Easter eggs with Ms Woodruff when she was next in. She says that the claimant did not mention to her having any other concerns she wanted to report. Ms Dimery said she did not discuss her interaction with the claimant with anyone else.
65. The Tribunal accepts that Ms Dimery only understood that the claimant wanted to complain to Mr Bailey about Ms Round, and in particular Ms Round's actions in relation to the Easter eggs. We accept the claimant asked Ms Dimery for Mr Bailey's contact details. We accept that Ms Dimery told the claimant the chain of command would lie with Ms Woodruff and that the claimant asked if Ms Woodruff was in and, when advised she was not, said she would speak with Ms Woodruff when she was next in. Ms Dimery told us that the claimant had previously complained to her about Ms Round saying she did not think Ms Round fulfilled the job to the best of her ability and that she spent too much time having tea breaks.
66. Later that day the claimant messaged Ms Round and told her that she would face complaints about the Easter Eggs when she returned to work after the Easter break. Ms Round asked the claimant who had complained but the claimant did not give her that details [155]. The claimant says she was simply trying to forewarn Ms Round, however, whatever the claimant's intent, it left Ms Round concerned and worried as to what she might be facing.

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67. Ms Round returned to work the next day and spoke with Ms Dimery. She said to Ms Dimery that the claimant had told her there had been complaints about the Easter eggs and she asked what had happened. Ms Dimery said that Ms Round would need to speak to Ms Duffy about this as she was on the floor when the claimant was saying about the complaints. Ms Round says Ms Dimery told her that the complaints had come from the claimant and not from anyone else. Ms Round became upset and hurt to be told that it was the claimant who had been complaining about her. Ms

Round found that very upsetting. Ms Dimery said that she could not remember this discussion with Ms Round. We accept Ms Round's account.

68. Ms Round then spoke with Ms Duffy and asked her what the complaints were about and said she had left instructions about the eggs. She says Ms Duffy told her that the complaints were because on a previous year one of the senior carers on the Retreat had been out and bought mousses as an extra treat. Ms Round says that Ms Duffy said the clients had in fact had the mousse and suggested that Ms Round talk with Ms Woodruff. Again, we accept Ms Round's account.
69. Ms Woodruff had also been off work for the Easter break. On her return she went round the home to speak to staff. She says that two staff members, NL and KW spoke to her and said there had been an altercation with the claimant and that NL was upset about how the claimant had spoken to her and felt belittled by her. She says that NL said that the claimant had been derogatory and rude and had interrupted a family member's time with their relative. Ms Woodruff says that NL said she did not want to make a formal complaint and just wanted it sorted out. The Tribunal accepts that this is what Ms Woodruff was told by NL and KW. As above the claimant accepts, whilst not agreeing with NL's account of events, that there had been an exchange between them on 23 April about a resident attending an activity and that she appreciated at the time that NL was unhappy with her (albeit the claimant says her own actions were justified).
70. Ms Woodruff says that a family member also complained to her about the same altercation and about the way that the claimant had spoken to staff in front of the resident and their family. The family member described the claimant as rude and expressed concern that the claimant would behave like that with his wife. Ms Woodruff asked him if he would write a statement but he declined to do so saying that he did not want to be named or be seen to be causing trouble and he did not want the claimant to take it out on his wife. Ms Woodruff told him that she would speak to the claimant in a way that could not be linked back to him. The Tribunal accepts Ms Woodruff's evidence that this is what she was told by the family member.
71. These complaints were not logged in any written form at the time. Even if they were informal concerns for Ms Woodruff to take forward as she saw fit it clearly would have been good practice to do so. Ms Woodruff said they were complaints by people who had asked her to see if she could sort it, and that is what she was seeking to do in her next steps. Whilst as we have said it would have been good practice for Ms Woodruff to make a note of what she was told, we do not accept that her failure to do so is

- because none of these things happened and have been fabricated by Ms Woodruff. Ms Woodruff told us, and we accept, that she was extremely busy on her return from leave and that she worked at 12-hour day on the 24 April and a 13-hour day on the 25 April catching up. We accept that a failure to log things was probably also not assisted by Ms Woodruff's workload at the time and she was pressing on with getting things done.
72. At some point Ms Woodruff also had a discussion with Ms Round. Their versions of events differ somewhat. Ms Round said she told Ms Woodruff what she had done in terms of organising the eggs and that the claimant had complained about her. She said that Ms Woodruff said she had not heard about this until then. Ms Round said that she talked to Ms Woodruff about other things involving the claimant. She said that this included about how the claimant had spoken to other staff members, issues about the claimant going out for cigarettes and that the claimant sometimes seemed flirtatious with family members. Ms Round says Ms Woodruff told her that there had been some complaints too from family members so it might be better to get the claimant in sooner than later and go through the issues about the Easter eggs and other things. She said she agreed that Ms Woodruff could speak to the claimant about it as she herself was feeling hurt and upset.
73. Ms Woodruff was not certain whether her discussion with Ms Round was on the 24th or the 25th but she said that Ms Round was really upset and that Ms Woodruff said she would speak to the claimant. She said her recollection was that her discussion with Ms Round was all to do with the Easter eggs and that Ms Round was upset about the way the claimant had spoken about her as she thought they had got on ok. She thought it was Ms Round who first told her about the situation with the Easter eggs. Bearing in mind Ms Round's evidence we accept that Ms Round also raised with Ms Woodruff the other matters that Ms Round said she did and also that Ms Woodruff said she would get the claimant in sooner rather than later to go through what was going on.
74. Ms Round told us that in her presence Ms Woodruff then spoke with Ms Dimery and Ms Duffy. She said that Ms Woodruff asked Ms Dimery to get the claimant to come in. Ms Dimery said she could not recall that conversation. We accept Ms Round's account.
75. Ms Round's account (at least in the first instance) was that Ms Duffy was present at least for some of the conversation. In her evidence Ms Duffy denied ever reporting to Ms Woodruff either her conversation with the claimant on the 23 April or her conversation with the claimant on her first day of working. The Tribunal asked Ms Duffy whether she had been asked for any feedback about the claimant before the claimant was

- dismissed. We found Ms Duffy's evidence on this point somewhat vague and cagey. All she would really say is that she had heard people saying the claimant was a little sharp and that she would have reported it to the nurse in charge or the deputy manager. Whilst Ms Duffy generally seemed to deny having spoken to Ms Woodruff in the run up to the claimant's dismissal or said "not really" she also did say she had been asked by someone about how the claimant was and that she had said staff had said she could be sharp at times but she was not able to identify in any significant sense who that conversation was with. As we have said Ms Round in her evidence placed Ms Duffy there during a conversation with Ms Woodruff. Ms Woodruff said that she did not speak to anyone about the claimant other than the carers identified above, the family member and Ms Round.
76. As against that background, the Tribunal considers it likely, faced with being what she was told by carers and family members, that Ms Woodruff probably did seek some feedback from other individuals about the claimant. It would be a logical step as manager of the Home to do so. We consider it likely that there was some discussion between Ms Woodruff and Ms Duffy where Ms Duffy's observations were sort. Ms Round said, initially at least, that Ms Duffy was there. The claimant and Ms Duffy both agree that they had minimal interaction during the period of the claimant's employment. Ms Duffy herself wrote in an email sent to Mr Bailey on 4 September 2019 [126] that the claimant "rarely spoke to me at all." Given the limited level of interaction between Ms Duffy and the claimant and therefore the limited topics that Ms Duffy could actually speak about, we consider it likely that Ms Duffy would have mentioned to Ms Woodruff the exchange she had with the claimant on her first day about the claimant being left on her own, and the exchange she had with the claimant on the 23rd April about the claimant wishing to complain about Ms Round purchasing the Easter eggs, and that she was going to contact Mr Bailey about that and other concerns.
77. Furthermore, in her undated statement at [153] Ms Woodruff records that the claimant "had been making derogatory comments about the other activity's lady called Tina, saying she is wasting money, she was not as good at her job, she is not as good as what she thinks she is." The Tribunal considers that this demonstrates it is likely that Ms Woodruff was told by Ms Duffy and Ms Dimery, as well as Ms Round, what the claimant had been saying and Ms Woodruff thought this was disrespectful of Ms Round and was one of the reasons why she wanted to speak to the claimant.
78. [153] also records Ms Woodruff saying that she had received feedback that the claimant had been asking care staff on the floor to do things for

her and they felt they could not do their own jobs as the claimant was quite insistent. She also wrote that the claimant had been asking staff to move residents into the lounge for activities when they were busy and this had upset some of the staff as they felt they had more pressure on them. We again accept that it is likely that this is the kind of feedback that Ms Woodruff was receiving about the claimant from staff. It accords with the claimant's own evidence that she would challenge carers if she thought there was something they should be doing, and it was clear from the claimant's evidence to the Tribunal that she thought carers should be more involved in the activities that she and Ms Round were delivering.

The decision to call the claimant in for a meeting

- 79. Ms Woodruff decided to call the claimant in for a meeting. The claimant asserts that Ms Woodruff called her to a meeting with the intention all along of dismissing her in response to her claimed protected disclosures and to stop the claimant raising further concerns with Mr Bailey. We do not, however, find that Ms Woodruff had already decided to dismiss the claimant. We find that Ms Woodruff did genuinely intend to call the claimant in for a counselling meeting primarily because she wanted to set out to the claimant the feedback she had received from some staff and family members about how the claimant's interactions with others were being perceived in the workplace, to hear what the claimant had to say, and to try to decide on the way forward. To a lesser extent it was also influenced by what Ms Round, Ms Duffy and Ms Dimery had said to Ms Woodruff. As reported by Ms Round, Ms Woodruff, said it would be better to get the claimant in sooner rather than later, and so, on 25 April, she asked Ms Dimery to ask the claimant if she was agreeable to coming in on that day, which was a non-working day, as opposed to waiting to see the claimant when she was next in work on the 26 April. We do not find, however, that this was done in some attempt to stop the claimant contacting Mr Bailey but was simply because Ms Woodruff just wanted to address what she was hearing.
- 80. Ms Dimery telephoned the claimant and asked her if she was free to come in for a chat with Ms Woodruff. The claimant agreed to come in that day. It was a request that the claimant come in for a meeting and not a demand, and the claimant was happy the time to come in. Unfortunately, the claimant and Ms Woodruff were from the outset at cross-purposes as to what the meeting was about. Ms Woodruff wanted to talk to the claimant about things such as the way she spoke to people. The claimant, not knowing what Ms Woodruff had been told by others, thought she had been invited in early to discuss the concerns she had been intending to raise with Ms Woodruff on 26 April.

The meeting on 25 April and the decision to dismiss

81. In advance of the meeting Ms Woodruff part filled in the counselling interview form at [90]. She said, and we accept, that she has dyslexia and she will partly pre-write forms before meetings as she finds it difficult to speak and write at the same time. The claimant herself said in evidence that she saw there was a form, part filled in, on the desk next to Ms Woodruff. The parts that Ms Woodruff filed in, and we accept her evidence in that regard, was:

“It has been brought to my attention that there is a clash with some of the staff and yourself and that the resident’s and their families have been affected. They are complaining of an unhappy atmosphere. I have spoken to a few staff members from all areas and Tina, they all feel the same.”

82. Ms Dimery also attended the meeting. There are no contemporaneous records of the meeting and the accounts given by the claimant, Ms Woodruff and Ms Dimery all differ and indeed some of the accounts given by the same individual differ as to the sequence of events. Taking into account all of the evidence before us and applying the balance of probabilities the Tribunal finds the following.
83. Ms Woodruff opened the meeting. The claimant said she was suffering from an ear condition and asked for there to be no raised voices. Ms Woodruff started to explain why she had asked the claimant to come in and we find that she said words along the lines as set out on the form (above) including that staff had commented that the claimant was being aggressive or rude in her attitude towards them.
84. The claimant became defensive in her response. She had thought she was coming in to discuss her own concerns so was caught out by what Ms Woodruff said and felt like she was under attack.
85. The claimant denies raising her voice or shouting and said she could not do so because of her ear condition. She does admit that the meeting became heated. Both Ms Woodruff and Ms Dimery say that the claimant did raise her voice and did shout. We find it likely that the claimant did so, and that the claimant did largely dominate the talking in the meeting.
86. The claimant told Ms Woodruff that she wanted to speak about Ms Round and that she said words to the effect that Ms Round was not as good as people thought she was. The claimant also said that Ms Round had

bought Easter eggs which were not suitable for many of the residents, that Ms Round did not let her have any budget and that Ms Round would not do activities and would sit in the staff room. She asked whether Ms Woodruff and Mr Bailey knew that Ms Round was wasting company money.

87. Ms Woodruff said that if the claimant had these concerns she should raise them with Ms Round or Ms Woodruff. The claimant said she had previously understood from Ms Round that her chain of command lay to Mr Bailey, she had been going to email Mr Bailey about Ms Round but had only recently learned from Ms Dimery the chain of command in Ty Cariad which she now understood be deputy manager, manager, area manager and then Mr Bailey unless it was felt it needed to go directly to Mr Bailey. She said that she had been going to raise her concerns with Ms Woodruff when she was in work on 26 April 2019.
88. It is likely that Ms Woodruff said something about Ms Round being the claimant's line manager and that the claimant was not respecting Ms Round. This is what she wrote on the claimant's form and she clearly personally considered Ms Round to be in some more senior or supervisory position to the claimant. The claimant responded to this more aggressively saying that Ms Round was not her boss, that was not what she had been told by Ms Round and Shelley during her interview, that she had been told that she and Ms Round were on the same level and Ms Round was only on a higher rate of pay due to her holding qualifications. The claimant said that Ms Round could not hold the budget or tell her what to do. At some point Ms Dimery unsuccessfully sought to interject and to get the claimant to calm down by reminding her about her ears.
89. Ms Woodruff increasingly felt that she could not get the claimant to listen to her and felt that the claimant was displaying the type of behaviour that others had been complaining about in terms of the way the claimant would speak to colleagues. She had additional, related, concerns as to whether the claimant would be able to interact suitably with residents and their families. She decided to terminate the meeting and to terminate the claimant's employment and told the claimant that she had failed her induction.
90. The claimant says that Ms Woodruff said to her that there were enough issues going on at Ty Cariad and she did not need the claimant to contribute to further hassle and that if the claimant sorted her head out she would be willing to rehire the claimant in a few months. Ms Woodruff denies saying these things. We consider it likely that Ms Woodruff did say something along these lines but that it reflected Ms Woodruff's frustration that she did not feel she could get the claimant to listen to her and that the

claimant was displaying the kind of conduct that had been reported to her about the way that the claimant could speak to staff and she did not want the hassle of the likelihood of the claimant continuing to cause that kind of disruption.

91. The discussion between the claimant and Ms Woodruff continued with Ms Woodruff again stating that the claimant had no respect for Ms Round. The claimant said that when she had arrived all the staff had told her that Ms Round was incompetent. Ms Dimery interjected and said the meeting was not supposed to be about Ms Round. The Claimant then told Ms Dimery to “fuck off.” She says she felt that Ms Dimery was being two faced.
92. Ms Woodruff again said something about the claimant not respecting Ms Round as a manager and said that Ms Round had a vast amount of qualifications. The claimant then raised her voice and said that Ms Woodruff should get Ms Round to use them then and that “the only problem with Tina is that she has lost heart in the role.” The claimant then left the office. Ms Woodruff completed the rest of the counselling review form. The line “*I also think that you are not respecting that Tina is your manager*” came from the meeting itself and Ms Woodruff then also wrote “*From the feedback I have received from your line manager (Tina) I am not happy to continue your probation due to unhappy staff and it is for this reason you have been called into this office today.*” Ms Woodruff told us that she could see with hindsight this was clumsily worded but that what she had meant was that the reason the claimant had been called into the meeting was “unhappy staff” as opposed to having pre-planned failing the claimant’s probation. She said that perhaps she should have elaborated or expanded on it but once she had written it she did not want to go back and change it.

After dismissal

93. There was not at the time any correspondence sent to the claimant confirming the termination of her employment. That said the claimant did not return to work and it is clear that both Ms Woodruff and the claimant understood that Ms Woodruff had summarily terminated the claimant’s employment.
94. The claimant went home and rang Acas for some advice. She says Acas told her she may have been unfairly dismissed for raising a protected disclosure.
95. The next day the claimant rang the home to ask for a copy of the employee handbook. She spoke to Mr Bailey. The claimant has Functional Neurological Disorder and dysarthria, and she suffered a flare

- up. It can, at times, impair her speech. The claimant said she felt she had been badly treated for not following the chain of command and was struggling to explain her concerns to Mr Bailey so said that she would write to him instead.
96. The claimant submitted an appeal against her dismissal on 30 April 2019 [93]. She said she considered that she was dismissed for attempting to discuss her concerns with Mr Bailey. She also wrote to Mr Bailey on 1 May 2019 [95 – 98].
97. The claimant submitted her interim relief application to the Tribunal on 2 May 2019.
98. The claimant attended an appeal hearing with Ms Roberts on 7 May 2019. Ms Dimery attended to take notes [102 – 104] and the claimant apologised to her. Ms Roberts also ran through with the claimant her concerns about conduct within the home. The allegation about a carer kissing a service user was referred to safeguarding and the carer was temporarily suspended [108].
99. The claimant's interim relief hearing took place on 16 May 2019.
100. Ms Roberts undertook some kind of dismissal appeal investigation and reported her findings in a letter dated 31 May 2019 [120 – 122]. She did not however make or keep notes of her investigation and so it is not clear who she spoke to, what she asked or what exactly they said in response. It appeared to the Tribunal from what she did say that she had largely undertaken a light touch investigation including seeking feedback from staff on the households and one of the families as to whether people seemed happier with the claimant having left. Ms Roberts spoke with Ms Woodruff and other staff she could not be definitive about. It appears likely that she spoke with Ms Round, Ms Duffy and Ms Emery and some other members of staff. She did not uphold the claimant's appeal.

Discussion and conclusions relevant to liability issues

101. Applying our findings of fact and the relevant law to the issues to be decided our conclusions are as follows.

Claimed protected disclosure – staffing ratios

102. We ran through with Ms Whiteley in closing submissions the claimant's final position on what her protected disclosures were said to be as we were mindful that the claimed protected disclosures were all oral and had the potential to be affected by the oral evidence the Tribunal had heard from witnesses. Ms Whiteley invited us to find that the claimant had made a protected disclosure to Ms Duffy on 27 March 2019 in saying words to

the effect that she had been left alone, she understood the staff ratio was 4:1, she had no DBS check and that she should not be left alone with clients.

103. We have made a finding of fact that the claimant said words to the effect that she had been left alone with a group of residents, she was not sure she should be as she had not had her DBS check back or training. We did not find that the claimant specifically mentioned staff ratios to Ms Duffy or that a staff ratio she found herself facing was illegal.
104. We are satisfied that the claimant's statement to Ms Duffy had sufficient factual content and specificity that it was capable of tending to show that a person (the respondent) was failing to comply with a legal obligation in relation to the legality of vulnerable residents being left in the care of an individual without a DBS check. Whilst the case was advanced on the basis of legal obligations relating to staff to resident ratios, it would be overly pedantic and not in the interests of justice to try to draw some bright line distinction on that point. We are also satisfied that the claimant believed her disclosure tended to show breach of such a legal obligation and it was a reasonably held belief on her part. It was her first day of employment and she had been left alone with a group of residents knowing that she did not have a DBS check back and that she was supposed to be shadowing Ms Round. It was reasonable in her position to believe there was some legal obligation or restriction that was being breached. A precise legal obligation that actually exists does not need to be identified.
105. We also find that the claimant believed her disclosure was made in the public interest and that was a reasonably held belief. It was not something that was to the claimant's personal or private benefit to raise. It was made to Ms Duffy, a care practitioner. We are satisfied overall that this was a protected disclosure.

Claimed protected disclosure – cleaning glasses

106. Ms Whiteley invited us to find that the claimant said to Ms Round that she had to clean the spectacles of patients as they were coated in a thick layer of dirt. We have ultimately made a finding of fact that the claimant said to Ms Round on at least one occasion that she had cleaned a resident's glasses and she did not think the carers were doing their jobs properly in that regard.
107. We do not find that this disclosure had sufficient factual content and specificity such that it was capable of tending to show that the health and safety of an individual was being endangered or there was a failure to comply with a legal obligation. A qualifying health and safety disclosure

has to be about the health and safety of a person being *endangered*. It connotes a degree of seriousness. On an ordinary meaning of that wording we do not find, within the factual matrix we have found, that a complaint that residents' glasses were dirty and had to be cleaned was capable of tending to show that a resident's health and safety was endangered.

108. Similarly, we do not find that this had sufficient factual content and specificity to be capable of tending to show that there was a breach of a legal obligation relating to standards of care. We have made findings of fact that the residents' glasses could get messy quite quickly, and that the situation would not have been as severe as described by the claimant. We have found that assisting cleaning glasses is something that would fall within the activity coordinator role and that unclean glasses would not be understood to be an allegation of a safeguarding issue, or a health issue, or a basic lack of care for residents. We also do not find that the claimant did actually believe that what she said to Ms Round tended to show that a legal obligation relating to care was being breached and even if she did it would not, in her position, have been a reasonably held belief. We do not find that this was a protected disclosure.

Claimed protected disclosure – general lack of care from carers to service users

109. In closing submissions we pressed Ms Whiteley, bearing in mind the evidence we had heard, as what the actual protected disclosure was said to be (what the claimant said, to whom and when) and how it was said to have sufficient factual content and specificity such that it was capable of tending to show one of the listed wrongdoings. Ms Whiteley accepted that on the evidence available she could not put forward a case on this point that met the Kilraine test and she withdrew it as a particular protected disclosure. She, however, said that the fact the claimant said she was challenging carers on issues of concern was part of the relevant factual matrix in the case. In light of that concession we have made no findings on the claimed protected disclosure as it stood withdrawn.

Claimed protected disclosure – Swearing at or about residents

110. Ms Whiteley asked us to find that the claimant had reported to Ms Round that she had witnessed a female resident being called a fucking bitch by the care staff. We have made a finding of fact that this did not occur in the manner as described by the claimant or was reported by her to Ms Round as such. It therefore cannot amount to a protected disclosure.
111. To the extent there was a discussion in the staff room as set out at paragraph 49 above this also did not amount to a protected disclosure by

the claimant. It was a general discussion in the staff room and not a concern or complaint made by the claimant to Ms Round or otherwise a disclosure of information which in the reasonable belief of the claimant tended to show one or more of the prescribed wrongdoings.

Claimed protected disclosure – dietician failing in her duty to take account of obese patients

112. No evidence was presented to us about this. The claimant said in evidence that she had not made a complaint about this and it was something that had been said by her solicitor. Ms Whiteley withdrew this as a claimed protected disclosure.

Claimed protected disclosure – kissing a resident on the lips

113. Ms Whiteley asked us to find that the claimant had disclosed to Ms Round that she had seen a member of staff kiss a client on the lips and that she felt this was an inappropriate way to treat a client. We have made a finding of fact that the claimant did say to Ms Round that she thought the carer kissing the resident on the lips was inappropriate. We have found that the kiss did happen in the presence of Ms Round but not that it had an obvious sexual connotation as opposed to having been a probably misguided and misjudged way of welcoming the resident back into the room.
114. We are satisfied that what the claimant said to Ms Round amounted to a disclosure of a safeguarding issue relating to a vulnerable resident. It had sufficient factual content and specificity such that it was capable of tending to show that the health and safety of the resident was being endangered or that there was a failure to comply with a safeguarding legal obligation. We are satisfied that the claimant believed that her disclosure to Ms Round tended to show this and it was a reasonably held belief on her part. We accept that subjectively Ms Round's assessment was that she did not see anything wrong with the carer's actions. However, viewed objectively in the factual matrix we have found, and in the industrial experience of the Tribunal panel, it is something that would potentially reasonably have been considered to be inappropriate and a reportable safeguarding issue. It was reasonable in the claimant's position (who is someone as a new starter who would have recently attended safeguarding training) to consider that what she witnessed and reported to Ms Round breached safeguarding legal obligations towards the resident. It is also a disclosure that the claimant reasonably believed was in the public interest. It was raised out of safeguarding concerns and not in the claimant's private, personal interest. The claimant made a protected disclosure.

115. We have noted that the claimant's pleaded case was that the wrongdoing was a criminal offence. We consider that it is more likely the claimant viewed this, and reasonably viewed this, as the endangerment of health and safety or a failure to comply with a legal obligation, which is not the pleaded case. However, there is a substantial overlap between the three and it would be too pernicky and not in the interests of justice to draw too much of a fine line distinction here. The respondent is not disadvantaged as the heart of the allegation has always been clear.

Easter Eggs

116. Ms Whiteley asked us to find that the claimant told Ms Duffy that she had received a number of complaints the Easter eggs were unsuitable for residents as they could pose a choking hazard and she felt they were unsuitable for patients on specific diets as to what they could and could not eat.
117. We have made a finding of fact that the claimant told Ms Duffy that some staff and relatives, particularly those related to the Retreat household, were complaining that the Easter eggs bought by Ms Round were inappropriate and thoughtless as some residents had been given an egg which they were unable to eat and had not been given the mousses they had been in previous years. We did not find that the claimant told Ms Duffy that she considered, or that people had complained, that the eggs (or Maltesers) were a choking hazard. It would not have been for the reasons we have given. At its heart this was a complaint that Ms Round's purchase (whilst she herself subjectively was seeking to be thoughtful) was seen to be a thoughtless gift for the residents concerned.
118. We do consider that this was a disclosure of information capable of showing that the health and safety of the residents was being endangered (or there was breach of a legal obligation), or that the claimant believed that her disclosure tended to show such wrongdoing. Nor do we consider that any such belief would be a reasonably held one on the claimant's part. We have found that the residents concerned would not have been capable of just taking and eating the eggs in a way that would endanger them. Their dietary restrictions and capabilities were known and catered for by the respondent. We have found that this would have been known by the claimant. We do not find that this was a protected disclosure.
119. Ms Whiteley confirmed to us that there were no other claimed protected disclosures relied upon. In summary we have found that the claimant made two protected disclosures. First, when she told Ms Duffy that she had been left alone with residents on her first day of work. Second, when she expressed her concerns to Ms Round about a carer kissing a resident.

The other matters relied upon were not qualifying protected disclosures. We now have to consider whether the claimant's claimed detriments occurred as a matter of fact. We then have to decide to what extent the claimant's protected disclosures were operating in the minds of the relevant decision makers in relation to the claimant's claimed detriments and the decision to dismiss her.

Claimed detriment – the portrayal by the respondent of the claimant as a troublemaker and arrogant following her initial disclosures

120. Ms Whiteley submitted that Ms Duffy took a dislike to the claimant on the basis that the claimant had raised the issue of being left alone on her first day and that when the claimant reported it to Keira and Shelley they also took a dislike to the claimant and decided to portray her as difficult. She submitted that when asked by Ms Woodruff and Ms Roberts in their investigations about the claimant, that these individuals told Ms Woodruff and Ms Roberts and portrayed the claimant as difficult because she had raised the concerns.
121. Ms Whiteley also submitted that because the claimant had complained to Ms Round about the carers swearing at or about the resident that Ms Round must have told the carers about the claimant's complaint and that the care staff then started treating the claimant less favourably. Alternatively, she said that Ms Round reported this to Ms Woodruff when she was raising with Ms Woodruff the issues she had with the claimant and she portrayed the claimant in a negative way.
122. Ms Whiteley further submitted that after the claimant complained to Ms Duffy about the Easter eggs that Ms Duffy portrayed the claimant in an unfavourable light to Ms Round and Ms Woodruff. She submitted that Ms Duffy had not told Ms Round the whole story and instead told her that it was specifically the claimant who had been complaining about the unsuitability of the Easter eggs which portrayed the claimant in a poor light. She said that Ms Duffy also told Ms Woodruff that the claimant had been complaining about the Easter eggs and that Ms Round had not done a good job as she had providing unsuitable eggs.
123. We have not, however, found that the claimant made protected disclosures about the alleged swearing or about the Easter Eggs. As a matter of law the claimant cannot have been subjected to a detriment on the ground that she made a protected disclosure if there was in fact no protected disclosure. It is not a matter for us as a Tribunal to assess general allegations of unfairness.
124. We did find that the claimant made a protected disclosure to Ms Round when raising the kiss with her. It is not something that Ms Whiteley

submitted led to the claimant being portrayed in a negative way. We would not in any event have found this. We have found that Ms Round did not see any significance in the incident or the claimant raising it with her. Ms Round subjectively saw no importance in it. We therefore do not find that she saw the claimant in a negative light because of it, or that she portrayed the claimant in a negative light because of it or indeed that she told Ms Woodruff about it. We have not found that she did tell Ms Woodruff about it.

125. We have, however, found that the claimant did make a protected disclosure in raising being left alone with residents on her first day in work. We have also made a finding of fact that Ms Duffy told Ms Woodruff about this in advance of Ms Woodruff calling the claimant in for the meeting at which the claimant was ultimately dismissed. We have found, applying the balance of probabilities, that Ms Duffy gave some negative feedback to Ms Woodruff about the claimant, and that the claimant could be seen as sharp. We have found that part of this included portraying, in a negative way, that the claimant had complained about being left alone with residents on her first day at work. Portraying the claimant in a negative way would be to her detriment. We therefore find that the claimant was subjected to a detriment by that act and that it was done on the ground that the claimant had made a protected disclosure in the sense that the claimant's protected disclosure was a material influence on Ms Duffy portraying the claimant in a negative light. It is likely that Ms Duffy repeated this to Ms Roberts in Ms Roberts' appeal investigation, and we would likewise find that this also amounted to subjecting the claimant to a detriment on the ground that she had made the protected disclosure.
126. For completeness, we should add that we had no evidence before us that Ms Woodruff spoke to Shelley or Keira and that was not put to Ms Woodruff. We have therefore not on the evidence before us been able to make a finding of fact that that happened in the way suggested by Ms Whiteley. The evidence we did have before us tended to suggest that Shelley had ceased working for the respondent by the time of the claimant's dismissal and Keira did not feature in the evidence before us other than being on reception on that first day of the claimant's employment.

Claimed detriment - the decision to call the claimant to a meeting on a non-working day

127. Ms Whiteley submitted that the claimant's claimed protected disclosures about the kiss, about being left with residents on her first day, about the staff swearing, and about the Easter eggs would all have been cascaded

to management but that the Easter egg disclosure was particularly material to the claimant being called in on her day off.

128. Most of these, however, we have not ultimately found to have been protected disclosures and the protected disclosure about the kiss, as we have already set out above, is not something that we have found was reported by Ms Round to Ms Woodruff or otherwise influenced Ms Round (and therefore Ms Woodruff).
129. That leaves the claimant's disclosure to Ms Duffy on her first day of employment. In our judgement what Ms Duffy told Ms Woodruff would have featured as part of Ms Woodruff's reasoning in deciding she wanted to call the claimant in for a meeting. The major reason why Ms Woodruff called the claimant in was because she was getting negative reports about the claimant and the way that the claimant was speaking to people and therefore upsetting staff. A part of this, albeit a smaller part, would have been Ms Duffy telling Ms Woodruff what had happened on the claimant's first day. We are satisfied that it contributed to a sufficient extent that was more than trivial. Being called into the meeting was to the claimant's detriment; it was a meeting at which she was going to be spoken about her own perceived negative conduct. We are therefore satisfied that the claimant, in being called to the meeting, was subjected to a detriment by an act by her employer done on the ground that had made a protected disclosure. The claimant's protected disclosure to Ms Duffy was a more than trivial influence on Ms Woodruff's decision to call the claimant in.

Claimed detriment - the respondent's treatment of the claimant in the meeting on 25th April 2019

130. Ms Whiteley submitted that Ms Woodruff and Ms Dimery were aware that the claimant wished to raise disclosures that she had previously raised. She submitted that Ms Woodruff called the claimant in to prevent her escalating her disclosures further. She also submitted that Ms Woodruff and Ms Dimery in the meeting failed to allow the claimant to raise any of the disclosures she had said she wished to raise and had previously raised.
131. We have not found as a matter of fact that Ms Woodruff called the meeting to stop the claimant making or escalating any concerns or disclosures. Ms Woodruff called the claimant to the meeting because she had complaints about her and wanted to discuss them with her. It was not a demand that the claimant come in on a non working day, but a request. The claimant's claimed detriment is therefore not made out as a matter of fact.
132. We have also not found as a matter of fact that Ms Woodruff or Ms Dimery engaged in a tactic of stopping or preventing the claimant from raising or

making disclosures or complaints at the meeting. In short form, Ms Woodruff called the claimant to the meeting to discuss the complaints made about her. The claimant thought she was attending a meeting to discuss concerns she wanted to raise. Ms Woodruff and the claimant were at cross-purposes and the meeting got out of hand. We do not find as a matter of fact that Ms Woodruff or Ms Dimery were suppressing the claimant in the meeting. The claimant did most of the speaking. She spoke largely about her complaints about Ms Round. Ms Woodruff and Ms Dimery wanted to bring the discussion back to what Ms Woodruff was wishing to speak to the claimant about. That was not, however, with a view to suppressing the claimant or stopping her making complaints but because Ms Woodruff was simply seeking to bring the meeting back to its purpose from her perspective and because she thought the claimant was being rude and disrespectful about Ms Round. The claimant continued to speak in a way Ms Woodruff considered aggressive and Ms Woodruff therefore decided to fail the claimant's probation and terminate her employment. The claimant's claimed detriment has therefore not been upheld as a matter of fact.

Claimed detriment – the termination of the claimant's employment

132. As a matter of law this cannot be pursued against the respondent as employer as a detriment claim because it falls within the dismissal claim. We address this separately below.

Claimed detriment – the dishonest representations regarding the claimant's conduct of the meeting on 25 April 2019

133. Ms Whiteley invited us to find that Ms Woodruff told the claimant that she had received complaints from residents and staff in relation to the claimant and her behaviour in the home. She said that Ms Woodruff had fabricated these.
134. We have not found as a matter of fact that this was fabricated. The claimant's complaint therefore does not succeed as her claimed detriment has not been established.

Decision to dismiss

135. For the automatic unfair dismissal claim we have to determine whether the reason or the principal reason for the claimant's dismissal was that she made a protected disclosure or disclosures. Whilst it also looks at what is in the mind of the decision maker, the threshold is different to a detriment claim.
136. Ms Whiteley invited us to find that Ms Woodruff knew about the claimant's previous disclosures, that she knew they were serious and would need

- dealing with, and she did not want to deal with them so she decided to dismiss the claimant and use the fabricated complaints against the claimant to do so. In terms of knowledge Ms Whiteley said that it was inconceivable that Ms Round would not have escalated the claimant's complaint through the management chain about the kiss or that Ms Round would have told Ms Woodruff about it in their meeting. She submitted that Ms Duffy would have escalated through the management chain the disclosure made by the claimant on her first day of work and Ms Duffy would have told Ms Woodruff about it in their discussion with Ms Round. She submitted that the claimant's complaint about dirty glasses and about carers swearing about the female resident would have been disclosed to Ms Woodruff by Ms Round. Ms Whiteley submitted that Ms Round and Ms Dimery would also have told Ms Woodruff about the claimant's disclosure relating to the Easter eggs and Ms Woodruff knew that the claimant was going to keep raising these issues and pursue them.
137. We have, however, of course found that the claimant only made two protected disclosures; her disclosure to Ms Duffy about being left on her own and her disclosure to Ms Round about the kiss.
138. In our judgement, Ms Woodruff had not prejudged a decision to dismiss the claimant. She had feedback that the claimant was disrupting the team dynamic. She wanted to speak to the claimant, hear from her, and reach a view about what to do. Things changed when the meeting deteriorated and Ms Woodruff had enough of how she thought the claimant was behaving. She thought the claimant's conduct reflected what she had been told as to how the claimant was perceived to speak to staff in the workplace. She also thought the claimant was not displaying the attributes of someone she wanted in the workplace looking after or engaging with vulnerable adults. This was the reason or principal reason why Ms Woodruff decided to dismiss the claimant.
139. It was not because the claimant had reported the kiss to Ms Round. We have found Ms Woodruff did not know about this and it did not influence what Ms Round reported to Ms Woodruff. It was also not because the claimant made a disclosure to Ms Duffy on the first day of work about being left alone with residents. Whilst we have found Ms Woodruff knew about this and it was a more than trivial influence on her decision to call the claimant to the meeting, it does not mean that it was the reason or principal reason for then dismissing the claimant. The claimant's disclosure is not something that would have been a key concern to Ms Woodruff. The claimant being left on her own with residents had occurred on the first morning of her first day and had not cropped up again since and Ms Woodruff would have known that residents being in a lounge

without a carer permanently present was not a problem. That it played its part in Ms Duffy having described the claimant as being sharp as one small part of the various feedback given to Ms Woodruff does not make it the principal reason for the claimant's dismissal. The claimant's complaint of automatic unfair dismissal is therefore not well founded and does not succeed.

Remedy

140. The claimant has succeeded in relation to the detriments of Ms Duffy's negative portrayal to Ms Woodruff and Ms Roberts and Ms Woodruff calling the claimant to the meeting in respect of the claimant's disclosure to Ms Duffy about having been left alone with residents on her first day of work. However, the Tribunal has not found that this is the reason that Ms Woodruff dismissed the claimant. Ms Woodruff would have called the claimant to the meeting anyway, and would then have dismissed the claimant because of the way that she behaved. Ms Roberts conclusion to the appeal against dismissal would also have been the same. We therefore do not consider that any financial losses flow from the detriments found. The claimant is, however, entitled to an award for injury to feelings.
141. The Tribunal reminds itself of the long-established guidance in Prison Service v Johnson [1997] ICR 275, that the general principles underlying awards for injury to feelings are as follows:
- Awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party;
 - An award should not be inflated by feelings of indignation at the guilty party's conduct;
 - Awards should not be so low as to diminish respect for the policy of discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches;
 - Awards should be broadly similar to the range of awards in personal injury cases;
 - Tribunals should bear in mind the value in everyday life of the sum they are contemplating;
 - Tribunals should bear in mind the need for public respect for the level of awards made.
142. The Tribunal also reminds itself of the relevant *Vento* guidelines as updated. The claimant's claim was presented on 21 August 2019 and falls

within the second addendum to the Presidential Guidance on updating the *Vento* bandings at:

- Lower band of £900 to £8,800 (for less serious cases such as where the act of discrimination is an isolated or one-off occurrence);
- Middle band of £8,800 to £26,400 (for serious cases which do not merit an award in the highest band);
- Upper band of £26,400 to £44,000 (for most serious cases such as where there has been a lengthy campaign of discriminatory harassment);
- Exceptional cases capable of exceeding £44,000.

143. The claimant being portrayed in a negative light to Ms Woodruff by Ms Duffy and Ms Roberts was a source of distress to the claimant. Being called to a meeting at which she was criticised was also a source of distress to the claimant. We do, however, also factor into this that the claimant was also portrayed in a negative light to Ms Woodruff and Ms Roberts in general and called to the meeting for reasons other than just the protected disclosure found, and which would have distressed the claimant in any event. It played a relatively smaller but more than trivial part overall. It is also not the reason why the claimant was dismissed. We are therefore satisfied that the appropriate award would fall within the first *Vento* band and we award the sum of £4000 for injury to feelings.

Employment Judge R Harfield
Dated: 7 April 2021

JUDGMENT SENT TO THE PARTIES ON

14 April 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS