



EMPLOYMENT TRIBUNALS

Claimant: Mr P Burgess

Respondent: Age UK Tameside

Heard at: Manchester (by CVP)

On: 3-6 August 2021

Before: Employment Judge Ainscough
Mr J Ostrowski
Mr T A Walker

REPRESENTATION:

Claimant: In person

Respondent: Mrs Fernandez-Mahoney, Solicitor

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim for protection from suffering detriments on the ground of making a protected disclosure contrary to section 47B of the Employment Rights Act 1996 is unsuccessful and is dismissed.
2. The claim for unfair dismissal on the grounds of making a protected disclosure contrary to section 103A of the Employment Rights Act 1996 is unsuccessful and is dismissed.

REASONS

Introduction

1. The claimant worked as a Wellbeing Assistant for the Tameside branch of Age UK, a charity which provides services for older people, including rehabilitation and social events.
2. The respondent is not a care provider. Service users must be mobile and able to tend to their own personal care.

3. The claimant was dismissed from his role on 15 March 2019. The claimant began ACAS early conciliation on 16 March 2019 and received the certificate on 18 March 2019. The claimant submitted his ET1 form on 18 March 2019 stating he had been unfairly dismissed.

4. In January 2020 the claimant provided additional details of his claims stating that he had been subject to detriments and unfairly dismissed because he had made a protected disclosure.

5. On 15 April 2020 the respondent submitted a response in which it was denied that the claimant had made a protected disclosure and therefore any dismissal or detriments were not as a result of the making of a protected disclosure.

The Evidence

6. The parties agreed a joint bundle of documents of 341 pages.

7. The Tribunal heard evidence from the claimant, his colleague Stuart Crowther and the claimant's husband Jason Bromley. The claimant also provided character statements from Dawn Steen, Sarah Steen and Emma Longshaw.

8. The Tribunal also heard evidence from the respondent's Chief Executive Officer, Marcia Thorpe; the claimant's supervisor, Dawn Linnie; the claimant's colleagues, Becky Skorupa and Linda Bunting; the investigating manager, Stephen Moss; the Chair of Trustees and dismissing manager, Robert Needham; the grievance manager, Alex Boyd; and finally the evidence of a consultant, Faith Joanne Thorpe.

The Issues

9. Following a preliminary hearing before Employment Judge Tom Ryan on 15 January 2020 the following issues were identified:

Public interest disclosure claims

(1) What information did the claimant disclose? The claimant's case is that the following disclosures were made.

(a) At a team meeting on 6 February 2020, which the claimant says was attended by Ms Faith Thorpe and Ms Dawn Linnie, Mr Stuart Crowther (and 2 other members of staff), the claimant stated that the health and safety of service users was likely to be endangered by the decision of the respondent to require that during sessions of client activity one of the two carers on duty was required to leave the session in order to conduct a one-to-one meeting with a service user. It is the claimant's case that the effect of this would be to leave the remainder of the service users with only the other carer on duty and if that person was attending to a service user (for example in the toilet) the remainder would be at risk.

- (b) At a one-to-one meeting with Dawn Linnie on the same day in the afternoon the claimant stated substantially the same information to her.
- (2) In either of these, was information disclosed which in the claimant's reasonable belief tended to show that:
 - (a) The health or safety of an individual was likely to be put at risk in the manner described above.
- (3) Did the claimant reasonably believe that the disclosure was made in the public interest? The claimant relies on the following:
 - (a) that the respondent is providing services to service users who are either referred to it via the NHS and/or family or self-referral;
 - (b) that those service users were members of the public who would be affected by the consequences of the respondent's decision in respect of the staffing of activity sessions.
- (4) If the claimant establishes that this information was disclosed and that it was a qualifying disclosure it is not in dispute that it would be a protected disclosure by reason of having been made to the employer.

Detriment complaints

- (5) Was the claimant subjected to a detriment by the employer or another worker? The claimant's case is that the following detriments occurred:
 - (a) on 6 February 2019 he was bullied by Dawn Linnie, categorically told that he must never speak out again and that he could not speak up for service users;
 - (b) on 12 February 2019 he was accused of common assault by Faith Thorpe;
 - (c) on 13 February 2019 he was "belittled, besmirched and scowled at" by Faith Thorpe and accused of aggression by Dawn Linnie and accused of being aggressive with a service user;
 - (d) on 13 February 2019 he was accused of assault and aggression by Marcia Thorpe and shouted out as if he were a small child;
 - (e) on 14 February 2019 he was suspended and escorted from the premises;
 - (f) on 15 March 2019 as a disciplinary hearing he was subjected to further accusations and he was ignored;
 - (g) in a letter received by him on 8 April 2019 he was accused of having made inappropriate contact with a service user and of having made "threats of action";

- (h) on 23 April 2019 he received the outcome of the grievance that he had raised which had not been properly considered.
- (6) Can the respondent show that the reason for the detriment was not because of a protected disclosure?
- (7) If the act of detriment was done by another worker,
 - (a) can the employer show that it took all reasonable steps to prevent that other worker from doing that thing or acts of that description; or
 - (b) can that worker show that s/he had relied on a statement by the employer that the doing of the act did not contravene the Act, and that it was reasonable to rely on that statement?

Unfair dismissal complaints

- (8) Was the making of any proven protected disclosure the principal reason for the dismissal?
 - (a) Can the claimant on the evidence raise the question whether the reason for the dismissal was the protected disclosure(s)?
 - (b) Can the respondent prove another reason for the dismissal, namely misconduct on the part of the claimant?
 - (c) If not, does the tribunal accept the reason put forward by the claimant or does it decide that there was a different reason for the dismissal?
 - (d) If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct?

Relevant Findings of Fact

Claimant's employment

10. The respondent is a non-profit charity that provides advice, information, social and rehabilitative services to those aged 55 and over in the Tameside area. Staff are either employees or volunteers.

11. Services include rehabilitation services for those recovering from mental health issues which are subsidised by the local Clinical Commissioning Group. Social activities are also provided via the 131 Club which is made up of those attending for rehabilitation services and also those who self-fund their attendance at the branch.

12. The claimant was employed as a Wellbeing Assistant from April 2018 until 15 March 2019. Within that role the claimant provided taster sessions to new service users and collected cash. The claimant was also assigned to the role of Activities Coordinator.

13. Prior to January 2019, Dawn Linnie was the claimant's peer. In January 2019 Dawn Linnie took the role of Centre Coordinator and became the claimant's line manager. The claimant had applied for the Coordinator job but had been unsuccessful.

14. The Chief Executive Officer was Marcia Thorpe. In January 2019 Faith Joanne Thorpe, Marcia Thorpe's sister, was recruited as a consultant to deliver on the Clinical Commissioning Group contract.

15. The Clinical Commissioning Group had raised concerns with the respondent about the service offered to their service users, and the respondent was given three months to get things back on track or funding would cease. In particular, the Clinical Commissioning Group was concerned that those who they referred to the charity were not receiving activities tailored to their rehabilitative needs. The Clinical Commissioning Group also asked the charity to provide one-to-one support to their service users.

16. Each morning the service users join the staff for tea and toast and then take part in a number of activities until lunch is served. More activities follow in the afternoon before the service users go home. Throughout the week new service users are offered taster sessions before joining. The staff attend a planning meeting every morning to make sure they have sufficient staff for each activity.

17. The respondent operates disciplinary and grievance policies that are contained within an employee handbook. The disciplinary policy applicable to the claimant's dismissal was that from 2016. Gross misconduct included:

- Participation in or failure to support safeguarding issues or concerns;
- Serious breach of trust and confidence; and
- Any action which could seriously endanger the health and safety of any person.

18. The respondent also operates a professional boundaries policy. Staff are advised not to initiate physical contact with service users. In January 2019, in line with this policy, the claimant received supervision from Dawn Linnie about crossing professional boundaries.

6 February 2019 – 13 February 2019

19. On 6 February 2019 the well being assistants attended a morning meeting chaired by Faith Joanne Thorpe. The meeting was attended by the claimant, Faith Joanne Thorpe, Dawn Linnie, Rebecca Skorupa, Stuart Crowther and Shirley Walton. The volunteers and remaining staff greeted the service users arriving for the day.

20. The purpose of the meeting was to discuss changes to the activities. There was a discussion about providing some of the activities that were provided to all service users, to only those funded by the Clinical Commissioning Group. The claimant expressed his concerns over the proposed changes.

21. During the course of that morning, a couple attended the centre for a taster session. During a break from the meeting, the claimant told a volunteer, Linda Bunting, that he could not assist the couple.

22. In the afternoon the claimant met with Dawn Linnie to discuss his contribution to the earlier meeting. Dawn Linnie advised the claimant that his conduct had been inappropriate. The claimant left the meeting and Dawn Linnie had to ask him to return to the meeting to finish their discussion.

23. Dawn Linnie also asked the claimant why he had refused to assist the couple who had attended earlier that day. The claimant denied he had been told they were attending for a taster session; the claimant then indicated he would resign. Dawn Linnie asked the claimant not to do anything rash until the claimant had spoken to his husband. Dawn Linnie made a note of the meeting after the claimant left.

24. The claimant was due to finish work that day at 4.30pm after he and Shirley Walton had ensured the safe departure of the service users. However, due to the claimant's distress, he left the site at 4.00pm before the service users had left the site and without signing a cash sheet to record the cash taken that day.

25. On the same day, Faith Joanne Thorpe reported to Marcia Thorpe that the claimant had walked out and that Dawn Linnie was upset.

26. On 7 February 2019 the claimant submitted a complaint about Dawn Linnie. In the complaint email, the claimant raised concerns that the self-funding service users would not have access to the same activities as those service users who received funding from the Clinical Commissioning Group. The claimant complained that Dawn Linnie had told him that he was not to share these opinions and that he was a negative influence. The claimant complained that Dawn Linnie was a bully.

27. As a result of the claimant's complaint, Marcia Thorpe arranged for Faith Joanne Thorpe to line manage the claimant.

28. On 11 February 2019 Marcia Thorpe emailed the claimant to seek clarity on his complaint. On the same day, Faith Joanne Thorpe witnessed the claimant placing his hands on the shoulders of a service user with dementia.

29. On 12 February 2019, the claimant retracted the complaint of bullying. On the same day Faith Joanne Thorpe and the claimant met for a training session. During that meeting Faith Joanne Thorpe raised her concern about the incident she had witnessed the previous day. Faith Joanne Thorpe was of the view that the claimant had given a massage to the service user. The claimant denied he was massaging the service user. Later that day the claimant signed the updated employee handbook.

30. On 13 February 2019 Faith Joanne Thorpe and Dawn Linnie overheard the claimant shout to a client with dementia. Subsequently Dawn Linnie spoke to the claimant about this interaction. Following this conversation, Dawn Linnie told Faith Joanne Thorpe that the claimant was impossible to manage. As a result, Faith Joanne Thorpe raised her concerns about the claimant with Marcia Thorpe.

31. The claimant met with Marcia Thorpe to provide clarity over his remaining complaint and in regard to the concerns raised by Faith Joanne Thorpe about his interaction with the service users.

32. Following this meeting, Marcia Thorpe raised her concerns with Human Resources. Marcia Thorpe was advised to suspend the claimant and start disciplinary proceedings. Marcia Thorpe was also advised to deal with the claimant's complaint separately. Marcia Thorpe relayed this advice to the Chair, Robert Needham.

Suspension and dismissal of claimant

33. On 14 February 2019 the claimant was suspended by Marcia Thorpe because of his alleged conduct on 6 February 2019:

- leaving the shift early;
- his attitude;
- walking out;
- failure to manage money;
- failure to deal with a taster session.

34. On 18 February 2019 the claimant attended an investigation meeting with Stephen Moss. The claimant provided a report he had been preparing in which he set out complaints of bullying, goading and breaches of confidentiality, policy and procedure.

35. In this report the claimant described the events that had been taken place between 6-14 February 2019. Stephen Moss also had access to the note made by Dawn Linnie on 6 February 2019, a statement made by Linda Bunting about the taster session and a near miss report prepared by Shirley Walton about managing service users departure from the site. Stephen Moss spoke to all three and another colleague, Stuart Crowther.

36. On 25 February 2019 the claimant and Stephen Moss had a second discussion. By 1 March 2019 Stephen Moss had provided his investigation report in which he concluded that the claimant had a case to answer.

37. Stephen Moss was of the opinion that on 6 February 2019 the claimant had left his shift early without permission which had created a safeguarding issue and meant he did not account for the days cash takings. Stephen Moss also formed the view that the claimant had failed to assist with a taster session.

38. On 4 March 2019 the claimant was invited to a disciplinary hearing and was provided with the documentation considered by Stephen Moss and a copy of the disciplinary procedure.

39. On 15 March 2019 the claimant attended a disciplinary hearing which was chaired by Robert Needham. The claimant was supported by his husband, Jason Bromley. Marcia Thorpe was also in attendance. During the meeting Marcia Thorpe

raised an additional issue of concern about the claimant contacting a service user during his suspension. The claimant was told that this additional issue would not have any bearing on the disciplinary outcome.

40. The issues outlined in the suspension notice were discussed and the issue of the claimant's personal contact with the service user with dementia on 11 February 2019 was specifically raised.

41. The claimant contended that he did have permission from Dawn Linnie to leave his shift early. The claimant stated he was often left alone with service users and this did not cause a safeguarding issue. The claimant contended he had left the cash secure and had signed the cash sheet. It was the claimant's recollection that Linda Bunting did not tell him the couple had attended for a taster session and had she done so he would have assisted.

42. Following an adjournment, the claimant was dismissed for gross misconduct. Robert Needham was of the view that the claimant did not have permission to leave his shift early and as a result created a safeguarding issue. It was also determined that the claimant had not signed the cash sheet. Finally, Robert Needham accepted the evidence of Linda Bunting that she had told the claimant the couple were in attendance for a taster session.

43. On 18 March 2019 the claimant received a letter confirming his dismissal for:

- Leaving a shift early without permission and putting service users at risk;
- Failing to sign the cash sheet
- Failing to assist with a taster session.

The letter informed the claimant of his right to appeal.

Claimant's grievance

44. On 25 March 2019 the claimant was invited to a grievance meeting to discuss his complaint. The meeting took place on 27 March 2019 and was chaired by Alex Boyd. The claimant provided Alex Boyd with names of two witnesses – Stuart Crowther and Barbara Eason.

45. On 1 April 2019 Alex Boyd contacted the claimant to confirm his understanding of the grievances. On 3 April 2019 Alex Boyd spoke with Marcia Thorpe, Faith Joanne Thorpe, Dawn Linnie and Shirley Walton.

46. On 4 April 2019 the claimant provided additional points for the grievance. On 8 April 2019 Marcia Thorpe sent the claimant a letter about the claimant's contact with service users. On the same day Stuart Crowther was interviewed by Alex Boyd. Barbra Easton did not want to be interviewed.

47. On 23 April 2019 the claimant was provided with an outcome to his grievance. Alex Boyd did not uphold the claimant's grievance.

48. On 22 May 2019, the claimant sought to appeal that outcome but was advised on 29 May 2019 by Robert Needham that his appeal was out of time.

Relevant Legal Principles

Protected Disclosures

49. A protected disclosure is governed by Part IVA of the Employment Rights Act 1996 (“the Act”) of which the relevant sections are as follows:-

“s43A: in this Act a “protected disclosure” means a qualifying disclosure (as defined by Section 43B which is made by a worker in accordance with any of Sections 43C to 43H.

s43B(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) ...
- (b) ...
- (c) ...
- (d) **that the health or safety of any individual has been, is being or is likely to be endangered...”**

50. The Employment Appeal Tribunal (“EAT”) (HHJ Eady QC) summarised the case law on section 43B(1) as follows in **Parsons v Airplus International Ltd UKEAT/0111/17**, a decision of 13 October 2017:

“23. As to whether or not a disclosure is a protected disclosure, the following points can be made:

- 23.1. This is a matter to be determined objectively; see paragraph 80, Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA.**
- 23.2. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.**
- 23.3. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information?; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT.”**

51. The decision of the EAT in **Kilraine** was subsequently upheld by the Court of Appeal at **[2018] EWCA Civ 1436**. The concept of “information” used in section 43B(1) is capable of covering statements which might also be characterised as allegations.

52. The worker need only have a reasonable belief that the information tends to show the matter required by Section 43B(1) and that the disclosure is made in the public interest. A subjective belief may be objectively reasonable even if it is wrong,

or formed for the wrong reasons. In **Chesterton Global Ltd and anor v Nurmohamed [2017] IRLR 837** the Court of Appeal approved a suggestion from counsel as to the factors normally relevant to the question of whether there was a reasonable belief that the disclosure was made in the public interest.

53. In **Chesterton Underhill LJ** addressed the question of the motivation for the disclosure in paragraph 30, saying that:

“... while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at paragraph 17 above, the new ss.49(6A) and 103(6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation - the phrase 'in the belief' is not the same as 'motivated by the belief'; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.”

54. Sections 43C – 43G address the identity of the person to whom the disclosure was made. Section 43C provides that a disclosure will qualify if it is made to an employer.

Detriment in Employment

55. If a protected disclosure has been made the right not to be subjected to a detriment appears in Section 47B(1) which reads as follows:

“A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure.”

56. The question of what will amount to a detriment was considered in the discrimination context by the House of Lords in **Shamoon v The Royal Ulster Constabulary [2003] ICR 337**: the test is whether a reasonable employee would or might take the view that he had been disadvantaged in circumstances in which he had to work. An unjustified sense of grievance cannot amount to a detriment.

57. The right to go to a Tribunal appears in Section 48 and is subject to Section 48(2), which says this:

“On such a complaint it is for the employer to show the ground on which any act or deliberate failure to act was done”.

58. In **International Petroleum Ltd and ors v Osipov and ors UKEAT/0058/17/DA** the EAT (Simler P) summarised the causation test as follows:

“...I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:

- (a) The burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.
- (b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so

inferences may be drawn against them: see London Borough of Harrow v. Knight [[2003] IRLR 140]at paragraph 20.

- (c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.”

Unfair Dismissal

59. Section 103A of the Act deals with protected disclosures and reads as follows:-

“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”.

60. In **Abernethy v Mott, Hay and Anderson [1974] ICR 323**, Cairns LJ said, at p. 330 B-C:

"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

61. In **Beatt** the Court of Appeal described the reason for dismissal as:

“the factor or factors operating on the mind of the decision-maker which cause them to take the decision – or, as it is sometimes put, what 'motivates' them to do so...”

62. In **Royal Mail Ltd v Jhuti [2018] ICR 982** the Court of Appeal considered situations where others are said to have influenced the decision maker. Only the mental processes of the decision-maker are relevant under section 103A (paragraphs 57 and 58), even where that person has been manipulated by a line manager of the claimant due to a protected disclosure (paragraph 61). Where the person motivated by protected disclosures undertakes the investigation (such as a disciplinary investigation) which causes the decision-maker to dismiss, that investigator’s mental processes may be part of the “reason” for dismissal (paragraph 62). The Court left open whether that would be the position where the manipulator was not an investigator but the person at the head of the organisation (paragraph 63)

63. In a case within section 103A the Tribunal has jurisdiction over the claim even though the employee has not been employed continuously for two years: section 108(3). However, in such cases it is for the claimant to establish that the Tribunal has jurisdiction, so the claimant bears the burden of showing that the sole or principal reason for dismissal was the protected disclosure: **Jackson v ICS Group Ltd UKEAT/499/97**.

Submissions

Respondent’s Submissions

64. The respondent’s primary position is that the claimant did not make a protected disclosure and the claims must fail. The respondent submitted that the claimant has admitted in evidence that the first reference to the breach of health and safety was only after this issue was identified at the case management hearing on 15 January 2020.

65. It is the respondent's case that there is no reference to health and safety concerns in the claimant's grievance nor in the statements made by the claimant on Facebook or YouTube following his dismissal or in his correspondence with the respondent's solicitors. Instead, the respondent submitted, the claimant was concerned about self-funding service users having access to the Clinical Commissioning Group activities.

66. The respondent asked the Tribunal to note the evidence of Stuart Crowther in which he said he recalls reference being made to health and wellbeing which was inconsistent with the claimant's evidence that he specifically raised the issue of health and safety. The Tribunal was also asked to note that the remaining parts of Stuart Crowther's statement was consistent with the other respondent witnesses.

67. The respondent also pointed to the fact that if such a disclosure was made, it was inconsistent with the practices of the respondent. The service users did not need care, they were independent, and therefore any concern about leaving service users alone was misconceived.

68. The respondent stated that Dawn Linnie denied there was a second disclosure at the subsequent meeting on 6 February 2019. The Tribunal was asked to note that the claimant's explanation in cross examination as to why he did not specifically mention health and safety was because he thought it was obvious.

69. The respondent contended that Dawn Linnie's actions were not detrimental in light of the claimant's conduct during the earlier meeting and this is supported by the claimant's retraction of the bullying complaint.

70. The respondent submitted it was appropriate for Faith Joanne Thorpe to speak to the claimant about his contact with a service user. It is contended that whilst Faith Joanne Thorpe and Marcia Thorpe might have used the word "assault", it was not an accusation but rather an example of what might be deemed assault if seen by others.

71. The Tribunal were asked to accept the evidence of Dawn Linnie and Faith Joanne Thorpe that the claimant did speak inappropriately to a service user and supervision was required.

72. The respondent maintained that the claimant was suspended as a result of a number of conduct issues. The respondent contended it was right to highlight further issues at the disciplinary hearing as this was the first time it had an opportunity to do so. The respondent denied that the claimant was ignored and submitted that it was entitled to write to the claimant asking him to cease contact with service users. The respondent believes that the grievance was properly considered.

73. The respondent conceded that the claimant could have been suspended sooner, but maintained this did not impact on the fairness of the dismissal. The respondent asked the Tribunal to note that the claimant did not appeal his dismissal.

74. Finally, the respondent repeated the primary position that the claimant did not make a protected disclosure and as a result of his lack of service the unfair dismissal claim must fail.

Claimant's Submissions

75. The claimant asked the Tribunal to note that he is a litigant in person and a very emotional person, and that people are important to him.

76. The claimant maintained that during the meeting on 6 February 2019 he did mention health and safety and from that moment things changed dramatically for him.

77. The claimant believes there were collusions and attempts to get him out of the job. The claimant maintained that Faith Joanne Thorpe discussed the staffing issues because he raised the issue at that meeting. The claimant is concerned that there are no minutes of that particular meeting. The Tribunal was asked to note that Dawn Linnie and Faith Joanne Thorpe say different things about that meeting.

78. The Tribunal was asked to consider that the majority of evidence is one person's word against another. The Tribunal was also asked to consider that there was a management culture in which the Chief Executive Officer was allowed to appoint her own sister.

79. The claimant submitted that his disclosure at the meeting on 6 February 2019 was the direct reason for the subsequent treatment of his at work.

80. The claimant wants the Tribunal to note that the service users mattered to him and that their wellbeing was a huge concern, as was their health and safety. The claimant asked the Tribunal to note that he will not back down and will say things that need to be said.

Discussion and Conclusions

Did the claimant make a protected disclosure?

81. At paragraph 10 of her witness statement, Faith Joanne Thorpe states there was a need to assure staff at the 6 February 2019 meeting that there would not be lone staff who could not cope with service users when the changes were implemented. Faith Joanne Thorpe was clear that she was referencing that time would be taken each morning to ensure that there were appropriate levels of staff for each activity. Faith Joanne Thorpe gave evidence that this was not in response to the claimant or anybody else at the meeting, but rather a general assurance that this would not be a problem.

82. Rebecca Skorupa's evidence under cross examination was that she was not sure if something was mentioned about staffing in the meeting but was clear it was not mentioned by the claimant. Rebecca Skorupa's evidence corroborates that given by Faith Joanne Thorpe. When the claimant was asked under cross examination what response he got to his health and safety comment, he said "negativity" but was unable to give specifics.

83. Dawn Linnie denies that there was a subsequent disclosure by the claimant at the subsequent meeting and the contemporaneous note of that meeting does not record any protected disclosure.

84. Stuart Crowther was interviewed by Alex Boyd on 8 April 2019 and gave his statement for this hearing at the end of February 2020. During the grievance interview with Alex Boyd no mention was made by Stuart Crowther of any health and safety disclosure by the claimant.

85. The case management hearing took place on 15 January 2020 and the Order was sent out on 4 February 2020. Stuart Crowther's statement for this hearing, in which he recalled the claimant mentioning the health and safety issue, came after the Case Management Order was sent out to the parties. The Tribunal prefers the contemporaneous evidence given by Stuart Crowther to Alex Boyd on 8 April 2019 that the "health and wellbeing" of service users was raised at the meeting on 6 February 2019.

86. Under cross examination the claimant was clear that he did not need to specifically mention health and safety in order for the attendees of that meeting to understand what he was saying, because it was an internal issue. The claimant also says he did not specifically raise it with Alex Boyd because he was within the Age UK family.

87. However, the claimant is unable to explain why, in correspondence with the respondent's solicitor, he did not specifically set out that the health and safety disclosure was made. He admitted that he clicked on the link provided by the solicitors that defined protected disclosures but cannot explain why he did not set out his understanding in subsequent correspondence. It was the claimant's evidence that he reflected on the matter and he was not prompted by the Employment Judge. The claimant contends that he only raised it once he was in attendance at the Tribunal because it had become an external process.

88. However, the Tribunal notes that in all other areas the claimant and the respondent witnesses are in agreement as to what was said at meetings. The Tribunal concludes that the claimant has conflated the wellbeing of the self-funding service users with health and safety. The Tribunal concludes that wellbeing was raised in the context of the self-funding service users not accessing all activities, rather than the claimant being concerned that he would be left alone with too many service users.

89. The Tribunal determines that the crux of the claimant's complaint was that those self-funding service users would not have access to the same facilities as the Clinical Commissioning Group service users. At the case management hearing the Employment Judge was attempting to assist the claimant with identifying his claim. After hearing all the evidence, the Tribunal concludes that the elements of this claim do not exist.

90. The Tribunal notes the claimant's email of 4 April 2019 sent to Alex Boyd as further points of grievance. The content of this email reveals the claimant's thoughts on staffing ratios in his defence of leaving early. In his defence the claimant suggests that there is no risk to service users if one person is left with a number of service users. The Tribunal concludes that it is therefore unlikely that health and safety concerns were raised by the claimant at the meeting on 6 February 2019.

91. The Tribunal finds that the claimant did not make a protected disclosure in accordance with section 43B of the Employment Rights Act 1996.

92. In light of the finding both the complaint of detriment and unfair dismissal must fail. The Tribunal did however consider that it would be helpful to provide their findings on the evidence they heard in regard to both complaints.

Detriment Claim

93. The Tribunal determines that Dawn Linnie was entitled to speak to the claimant in the way that she did on 6 February 2019. Dawn Linnie was of the view that the claimant had bullied Faith Joanne Thorpe in the earlier meeting. The claimant admitted that he spoke out and Dawn Linnie wanted to challenge him about how he had done that.

94. At paragraph 27 of her witness statement, Faith Joanne Thorpe did not deny that she used the word "assault" on 12 February 2019. However, in cross examination she confirmed that the context of how that was used was that it was an example of what could be said about the claimant's behaviour rather than an accusation.

95. Faith Joanne Thorpe gave evidence that she only had one interaction with the claimant on 13 February 2019 and this was when she asked him to go and see Marcia Thorpe. In the further and better particulars provided by the claimant, he states that Faith Joanne Thorpe subjected him to detrimental treatment throughout the day. Yet in the report the claimant provided to Stephen Moss on 18 February 2019, the claimant records Faith Joanne Thorpe leaving the team meeting partway through. The Tribunal can find no evidence that there were multiple interactions between the claimant and Faith Joanne Thorpe at which she could have acted in the way described by the claimant.

96. The claimant admitted in evidence that on 13 February 2019, he shouted across to the service user and this was heard by Faith Joanne Thorpe and Dawn Linnie. Marcia Thorpe was clear that she needed to speak to the claimant about his conduct on this occasion and about his conduct on 11 February 2019 because it was not appropriate behaviour.

97. The claimant admitted that he used a different tone with that particular service user on 13 February 2019 because it prompted that person to engage. The Tribunal understands that such a tone could be observed as aggression and therefore, if taken in that way by witnesses, it was appropriate that the claimant was spoken to.

98. The Tribunal concludes it was unfortunate that it took over a week to suspend the claimant, but accepts that following the complaints, suspension was an appropriate response in accordance with the respondent's disciplinary policy.

99. The disciplinary hearing on 15 March 2019 was the first opportunity Marcia Thorpe had to mention the further concerns the respondent had about the claimant contacting service users. This was followed up by a letter on 8 April 2019. The respondent was entitled to raise a safeguarding issue in this way. The claimant was not dismissed for this reason.

100. The Tribunal also finds that the claimant was not ignored during the disciplinary hearing. The note records that there was interaction between the claimant and Robert Needham and the claimant was given an opportunity to respond to the report of Stephen Moss. During the investigation and during the hearing, the

claimant admitted leaving his shift early. Robert Needham was entitled to prefer the evidence of Dawn Linnie and Shirley Walton.

101. The Tribunal concludes that the claimant's grievance was properly considered. The Tribunal determines that Alex Boyd went beyond what was required of him by making sure he fully understood the claimant's grievance and particularly made sure he understood the witness evidence before reaching his conclusion.

Unfair Dismissal Claim

102. The claimant did not have two years continuous service and therefore was unable to pursue an ordinary unfair dismissal claim.

103. However, the Tribunal accepts the reasons given by the respondent for the claimant's dismissal.

104. The Tribunal accepts that the issues raised on 6 February 2019 amounted to gross misconduct in accordance with the disciplinary policy.

105. The Tribunal determines that the dismissal was within the range of reasonable responses.

Employment Judge Ainscough
Date: 5 November 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
8 November 2021

FOR THE TRIBUNAL OFFICE

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