EMPLOYMENT TRIBUNALS

Claimant: Alexander Richardson

Respondent: HMO NE Limited t/a Forevercare

RESERVED JUDGMENT

Heard: Remotely by Cloud Video Platform ('CVP') **On: 6th – 9th, 12th 13th April 2021 (deliberations 14th April, 28th May 2021)**

Before: Employment Judge Sweeney
Members: C Hunter
G Gallagher

Representation:

For the claimant: In person
For the respondent: Jane Callan, counsel

The Judgment of the Tribunal is as follows:

1. **The claim of unfair dismissal is not well founded and is dismissed.**

2. **The claim of detriment contrary to section 47B Employment Rights Act 1996 is partially well founded and succeeds insofar only as it relates to the Respondent's attempt to provide a negative reference after the Claimant's dismissal.**

3. **The complaint in respect of unpaid holiday pay is not well founded and is dismissed.**

4. **The parties must inform the Tribunal whether a remedy hearing is required within 21 days of receipt of the reserved judgment.**

   Covid-19 statement:
   This was a remote hearing. The parties did not object to the case being heard remotely. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

REASONS

The Claimant's claims

1. By a Claim Form presented on 02 February 2019 the Claimant brought the following complaints:

   1.1.1. a complaint under section 111 Employment Rights Act 1996 of unfair dismissal,

   1.1.2. a complaint under section 48 ERA that he had been subjected to a detriment contrary to section 47B of that Act.

   1.1.3. A complaint under regulation 30 Working Time Regulations 1998 that the Respondent failed to pay him the whole or part of any amount due to him under regulation 14(2) (outstanding holiday pay on termination of employment)

2. As to the unfair dismissal complaint, the Claimant complained that he was automatically unfairly dismissed in that the reason or principal reason for his dismissal was that he made a protected disclosure (section 103A ERA) ('automatic unfair dismissal') un

3. The Claimant's case in relation to detriment was that, during the course of his employment, he had been subjected to a number of detriments including a reduction in salary and a demotion to the role of senior support worker. There was also an allegation of 'post-employment' detriment relating to the attempted provision of a negative reference. The disclosures and detriments complained of were originally set out in a 'scott schedule' [**pages 44-73**] and subsequently refined into 4 public interest disclosures or 'PIDS' and associated detriments [**pages 23-25**].

4. The Respondent did not admit that the Claimant had made protected disclosures and, in any event, denied that he had been dismissed at all or that he had been subjected to any detriment because he had made any disclosure. The Respondent maintained that it terminated his contract of employment for reasonunder s related to his conduct.

The Hearing

5. The Claimant represented himself and the Respondent was represented by counsel, Ms Callan.

6. The Claimant gave evidence on his own behalf. In addition, he called the following witnesses:

(1) Ross Mendham, who worked as a senior support worker for the Respondent;
(2) Nikki Jefferson, who also worked as a support worker for the Respondent;

7. The Respondent called the following witnesses:

(1) Karen Hudson, Manager with the Respondent,
(2) Deborah McGinlay, Strategic Manager of the Respondent, formerly General Manager
(3) Neville Rodgers, Consultant Strategic Manager of the Respondent and the person who ran the business

8. A number of issues regarding documents and witness statements were raised at the outset of the hearing and during the course of the hearing. The smooth running of the hearing was interrupted by the addition of documents on both sides. Additional documents were added to the bundle. It transpired that there were earlier iterations of witness statements all of which were subsequently added to the tribunal bundle. The Respondent had originally represented itself, which partly accounted for the confusion regarding statements. On the morning of day 4 (Friday 9th April 2021) the Claimant applied to add documents which had been the subject of discussion the previous afternoon, at which point we gave Mrs Callan time to take instructions. On the morning of 9th April 2018 the Respondent agreed to the Claimant's request to add some of the documents but objected to others. We heard the objection and the Claimant's response and adjourned to consider the application.

9. We decided to admit the following documents:

9.1.1. a code of conduct – by agreement;
9.1.2. a database in excel spreadsheet format;
9.1.3. emails between the Claimant and his trade union representative between 08 October and 10 October 2018;

10. Other documents were admitted by agreement at various points during the hearing, such as fire safety, emergency lighting, door maintenance records, a record of a supervision meeting between the Claimant and Karen Hudson on 05 October 2018 and text/WhatsApp messages. We were grateful to Mrs Callan for organising the newly admitted documents into a paginated 'additional bundle'. Where relevant in our findings any page reference will be to the main bundle (which in its original format ran to 231 pages) and the additional bundle, which ran to 46 pages.

The issues

11. The issues were discussed and confirmed at the commencement of the hearing. The Respondent had drawn up a list which was agreed and which is attached at the end of these reasons by way of an Appendix.

12. The Tribunal asked whether the holiday pay claim was being pursued. The Claimant said that it was but that he did not know what he was owed. He said that he had not been provided with time-sheets to work out the amount and to answer the directions that had previously been made.

Findings of fact

13. Having considered all the evidence (written and oral) and the submissions made by the representatives on behalf of the parties, the Tribunal finds the following facts.

The nature of the Respondent business and the Claimant's role

14. The Respondent is a company which provides supported living accommodation for young persons ('YPs') in the North East of England, either in a group setting or in what is known as 'solo' accommodation. At the time relevant to these proceedings, the main office and accommodation block was at 17 Mowbray Road, Sunderland. In about December 2018 the Respondent employed in the region of 45-50 people, including agency workers, employees and management. By the time of this hearing, it had grown to something in the region of 150 workers and employees. In the period during which these proceedings are concerned it turned over approximately £2 million a year and did not have any dedicated HR function.

15. The Claimant was employed by the Respondent from 17 October 2017 until his dismissal on 03 December 2018. He was recruited as a 'Business Development Manager' but by the date of termination was employed as a 'Senior Support Worker'.

16. In about October 2017 the Claimant approached Deborah McGinlay (the Respondent's then General Manager) to see if there was any work available with the Respondent as a support worker, on an agency basis. The Claimant and Ms McGinlay had previously worked with each other in a recruitment company. They were on friendly terms. She told him that in fact the business was looking to recruit a Business Development Manager to develop links with local authorities and that he may be interested in that.

17. The Claimant expressed an interest in this role, even though he had never before been employed in business development and had no background in that area. Despite this, Ms McGinlay was prepared to and did provide a reference for the Claimant. He was subsequently interviewed by Mr Neville Rodgers. Mr Rodgers is the Respondent's 'Consultant Strategic Manager'. In brief, he runs the business. He lives in Northern Ireland and spends only part of the week in Sunderland, usually Wednesday to Friday. Following an interview of a sort, Mr Rodgers offered the Claimant the position of Business Development Manager. Rather unusually – given the Claimant's lack of experience in such a role – there was a negotiation as to the Claimant's remuneration. Mr Rodgers said that the

role was to be paid at £30,000 a year. However, the Claimant wanted £36,000. He told Mr Rodgers that he had another job offer, which had the potential for significant growth in remuneration. The Claimant sold himself well. He talked up his own abilities and persuaded Mr Rodgers that he could add considerable value to the business by growing it. Mr Rodgers was persuaded by the Claimant, based on Ms McGinlay's positive view of him and of the Claimant's own positive sales pitch of his abilities. This was so, as we state above, despite any relevant background in the role to which he was being recruited.

18. The two of them reached an agreement that the Claimant would be paid £30,000 a year but that his salary would increase by £500 a month each month depending on his performance. This was never followed up in writing by Mr Rodgers. No written contract was provided. It was, we find, an unusual agreement, arrived at with little thought given by Mr Rodgers as to how the Claimant's 'performance' was to be monitored, beyond looking at the increase in numbers of YPs and financial turnover of the business. Consistent with what we find to be a rather (and concerning) lackadaisical approach to employment matters, neither Mr Rodgers nor Ms McGinlay, for that matter, followed matters up with a written contract or a job description.

19. Mr Rodgers gave little in the way of instruction to the Claimant as to what it was he was to do on a day to day basis. The Claimant was, however, expected to grow the numbers of YPs, to recruit more staff and put 'bums on seats' as Mr Rodgers described it. In addition, he was expected to do whatever it was that came up on a day to day basis within the business. They discussed that he might want to undertake a level 5 Health & Social Care course as a pre-requisite to becoming a registered manager.

20. There was a dispute as to whether the Respondent drew up a contract and/or a job description for the Claimant. We resolve this dispute here in favour of the Claimant. The Claimant drew up his own job description. He did some research on the internet and came up with the document at **page 93** of the bundle. We reject the evidence given by Mr Rodgers in paragraph 6 of his witness statement that Ms McGinlay sent a job description (or anything resembling a job description) to the Claimant. Bar recommending him, she had no involvement in the actual recruitment of the Claimant into that role and had no involvement in any discussions as to what the job entailed. That fell to Mr Rodgers, who did very little and showed no interest in drawing up any written agreement.

21. The Claimant amended the job description resulting in the document at **page 94**. Although it refers to 'report on sales' and 'writing reports', the Claimant did not in fact ever produce any such reports and nor was he asked to. Both the Respondent and the Claimant approached the role in what the Tribunal finds to be an ill-thought out and casual way.

22. The Respondent also contended that a contract of employment had been given to the Claimant in November 2017 but that he did not return it. We reject this. The

Respondent did not email or send the Claimant a written contract of employment. Mr Rodgers, in his evidence, said – for the first time - that a contract had been created but that it was lost when they made some changes to domain names and servers. He had not mentioned this in his witness statement and professed ignorance about computers. He said that they had kept no backup. We do not accept this and reject it as untruthful. He was, we find, trying to make it appear to the Tribunal that the respondent business was not as apparently incompetent in this area as it appeared to be. The Tribunal would have preferred, as always, the truth - which was that little consideration had been to the content of the role and that Mr Rodgers was uninterested in drawing up job descriptions and contracts, and was only interested in the 'numbers'. We accept the Claimant's evidence in paragraph 8, page 1 of his statement that Mr Rodgers told him that he did not believe in contracts and that he had nothing to worry about.

23. The Respondent produced a template document for the bundle [**pages 84 – 91**]. However, nothing like this was presented to the Claimant. Even taking the document as something which the Respondent hoped would represent the terms of the relationship, we noted that it contained a reference to a six-month period of probation which could be extended to 9 and then 12 months and that performance would be kept under review during the probationary period.

24. It will be seen in our findings that we are critical in various respects of the evidence of the Claimant, Mr Rodgers and Ms McGinlay. We conclude that they were all at some parts in their evidence misleading the Tribunal on certain events. For his part the Claimant wished to give the tribunal the impression that he was knowledgeable and experienced in the work that he did and that he grew the Respondent's business and added value to it but was frustrated every step of the way. The Respondent sought to give us the impression that it was a well-managed and well-run operation. We did not see these traits in either the Claimant or the Respondent. The Claimant was also vague and unspecific in his allegations. He undoubtedly has a sense of injustice which is largely misplaced and in other respects rightly held (we shall come to that in our later findings). Mr Rodgers was trying to conceal the unprofessional way in which the organisation is run – not to hide the fact that he had subjected the Claimant to detriments because he had made protected disclosures, but because, we find, his business was under the spotlight in these proceedings and the image which it conveyed to the Tribunal was by no means a good one. All three of them at various junctures and for their own reasons were, we find, untruthful in their accounts to the tribunal.

The Claimant's role

25. The Claimant was, as part of his role, asked to recruit staff as the Respondent was heavily reliant on agency staff and to grow the numbers, by 'putting bums on seats'. He was to achieve this by obtaining work (Young Persons or 'YPs') via local authorities. In real terms, he did a mix of tasks and helping out within the

business in whichever way he could. He also took on extra shifts as a support worker in order to earn more money.

26. At the heart of the Respondent's business is the accommodation of YP in independent but supported premises. Most, if not all, of the Respondent's business comes from local authorities placing YPs with the Respondent – and it was this source of work which Mr Rodgers envisaged the Claimant would grow. A local authority may place a YP in registered setting or in an unregulated placement as 'other arrangements' under the 1989 Children Act. The latter are not subject to the inspection regime under the Care Standards Act 2000. However, if the setting meets the definition of a children's home under the 2000 Act it falls to be inspected by Ofsted. In about March 2018, Ofsted carried out monitoring visits to the Respondent's properties because it suspected that the Respondent might be managing unregistered children's homes. If a property falls within the definition of a children's home under the Care Standards Act 2000 then it must be registered as such, otherwise an offence may be committed. This was the matter which confronted the Respondent in about March 2018. As a result of Ofsted's investigation, some YPs were removed by local authorities such as Durham and Newcastle.

Julia Hall: disclosure number 1

27. This concerns the events regarding a support worker, Julia Hall ('JH') and what is referred to as 'disclosure number 1, **page 23** paragraph 1)Over the bank holiday weekend of 26-28 May 2018, a care worker, JH, had been supporting a YP and they went out for the afternoon. At the time, the property at which the YP resided was managed by a deputy manager, Rebecca Robertson ('RR') with whom the Claimant was on friendly terms. When out for the afternoon, JH had purchased with her own money, some fish and chips for her and the YP. There is a policy against this. That JH had done this subsequently came to the attention of others, including the Claimant. There is a dispute between the parties as to whether the Claimant set out a complaint in writing. We turn now to determine that dispute in the next few paragraphs.

28. Karen Hudson (another deputy manager) learned about this issue from RR. She explained to Ms Hudson that staff had raised concerns about it but that RR had confirmed with JH in advance that if she spent any money over the bank holiday weekend she would be reimbursed for it.

29. Another support worker, Nikki Jefferson ('NJ') had also heard about what happened. Shortly after this, and at some time on or around 11 June 2018, NJ and a colleague (DT) went to Mowbray Road to speak to RR about matters, including their concerns regarding JH. This was the first opportunity they had to go together, owing to their working patterns. They were concerned that JH had on other occasions bought the YP other things, such as sweets. However, when they got to Mowbray, only the Claimant was present.

30. NJ and DT spoke to the Claimant who told them that he would mention it to the rest of management. We do not accept that the Claimant wrote anything down in their presence. In NJ's first iteration of her witness statement she makes no reference to this. The Claimant said in evidence that he wrote what they said in a formal 'safeguarding report' and placed it in a sealed envelope. We reject his evidence as untruthful and unreliable. He was extremely inconsistent and changed his position a number of times. We find that he simply said to NJ and DT that he would mention it. The Claimant told the tribunal that at the very time he left the only copy of his safeguarding report on the desk he believed that it would be covered up by the Respondent and destroyed. Why then, did he not keep a copy, we asked ourselves? Why did he not send an email? Why did he not raise it again, asking what had happened with his safeguarding report? The Claimant's evidence was vague and changed. He was, we conclude, not telling the Tribunal the truth about this. Yes, he raised the matter verbally with Deborah McGinlay in passing, but we find that he has embellished his evidence that he actually prepared a safeguarding report.

31. The Claimant did raise it with Deborah McGinlay. It was raised in the course of general discussions in the office. In raising it, he disclosed information to her, namely that JH had used her own money to buy fish and chips for the YP. He did not say anything about 'grooming'. It was implied in the fact that he was raising it that he was complaining to Ms McGinlay that JH was in breach of policy and should not be purchasing food using her own money. Ms McGinlay did not see the matter as being a safeguarding issue in that, as far as she understood it, JH had cleared the matter in advance. We accept Ms McGinlay's evidence that she could not recollect the Claimant complaining to her about this incident. However, Mr Rodgers does recall her mentioning it to him. We have considered but rejected as unlikely that Ms McGinlay was lying about her recollection, especially when Mr Rodgers has said that he did recall it. We consider it more likely that her inability to recall it is consistent with her view that it was not something of significance – as opposed to it being of significance but 'conveniently forgotten'. It was not something that only the Claimant had been aware of and raised. There were a number of people involved: the Claimant, Karen Hudson and Rebecca Robertson.

Fire safety issues:- disclosure number 2

32. It was part of the Claimant's case that he had been subjected to a detriment in June 2018 because he had made qualifying disclosures with respect to fire safety at properties managed by the Respondent. This is referred to as 'disclosure number 2 (**page 23** paras 1-2).

33. Tyne & Wear Fire and Rescue Service of 12 October 2017 wrote to the Respondent following a fire safety inspection [**page 127**].

34. Prior to and during the first few months of the Claimant's employment, the Respondent had relied on a Mr Riddell (a senior support worker) to check on or

raise any fire-related issues that came to his attention. He would then simply identify anything that needed to be attended to (for example missing fire extinguishers, damaged fire doors) and report this to be actioned by an external company, 'FIDA'. He was not held out as being a 'responsible person' for fire safety by the Respondent.

35. During the first few months of his employment, it became apparent to the Claimant that they could improve on the fire checks which were being carried out within the Respondent organisation and that there was an opportunity to engage his step father', Roland Wills, a fire safety consultant, to carry out the work. Mr Wills ran a business called 'Supreme Safety'. It is consistent with the rather chaotic approach to the Claimant's role (and the failure to spell out precisely his remit) that he was even involved in engaging an external fire safety consultant, but in our judgment, that is symptomatic of the way in which the Respondent company operates. The Claimant willingly involved himself in this and the Respondent had no systems in place to ensure that he kept focussed on 'business development;'. There were no review meetings, no regular supervision sessions, no reports or reviews of any kind. Due to the unclear remit which the Claimant had, he got involved in matters such as fire checks. He identified routine issues regarding fire extinguishers, doors and lighting. The Claimant pushed for his step father, to do the work. He did not have to push hard, as the Respondent readily welcomed the offer and agreed for him to do the work.

36. The Claimant maintains that in June 2018 he was 'disciplined' for completing tasks that he was not asked to do, namely fire safety responsibilities which were not his own.

37. The reference to 'being disciplined' (**page 6** of the bundle, 'disclosure number 1, para 6) is to the events of the meeting on 15 June 2018 when his additional monthly payment of £500 was stopped.

Meeting of 15 June 2018 – the Claimant's salary

38. When he commenced employment as BDM in October 2017 there had been no more than 10 YPs in total residing in the Respondent properties (including Mowbray Road and the 'solo' properties). There were 4 from Durham and 2 from Gateshead Councils. By about June 2018 the numbers had decreased to 6. This was due to the fact that they lost 2 YPs in March and another 2 in about May 2018 as a result of an Ofsted investigation. At that time the Respondent had capacity for up to 18 YPs. As of October 2018, the numbers had increased to 8.

39. The Claimant did not grow the number of YPs during the time of his employment with the Respondent. We recognise and accept that there were issues within the respondent organisation which were outside the control of the Claimant. For example, as mentioned above, some YPs were removed from the Respondent organisation following an investigation into the issue of registration of properties as children's homes. It was difficult for the Tribunal to be precise about numbers

because neither the Claimant nor the Respondent could give any clear analysis. Consistent with our overall assessment of the Claimant, we find that the Claimant was unable to give us any coherent account of what he did by way of business development because he was inexperienced in the role and really had very little understanding of what business development entailed. He showed no appreciation of the need to analyse and report on where the business had been, where it was currently at and what it could be expected to grow and how it would go about this. Equally, the Respondent showed no appreciation of these things beyond looking at the bottom line. Mr Rodgers was, we find, interested only in the numbers, namely, whether the Claimant was increasing the numbers of YPs and thus the financial revenues. He applied no more sophisticated analysis than this. For example, he said in paragraph 16 that the Claimant was not meeting the requirements of the role of BDA – yet he never drew up a contract or a job description for that role. Although the Claimant did not provide any reports or reviews, neither did Mr Rodgers ask for any. He simply bought into the 'sales pitch' that the Claimant gave him at interview, that the Claimant could grow the business. That was what he wanted to hear and he simply left the Claimant to do that, without any clear guidance, or even an appreciation, of how that would happen. Mr Rodgers is, we find, a 'numbers man' – interested primarily in the financial return.

40. As far as he could see, Mr Rodgers was seeing no increase in the numbers, yet he had agreed to pay the Claimant £500 a month on top of his £30,000 a year salary. The bottom line was, Mr Rodgers did not feel that the Claimant was performing in the role.

41. This resulted in a meeting with the Claimant on 15 June 2018. The catalyst for the meeting was that Mr Rodgers had been told by Ms McGinlay that the Claimant had been 'complaining' about JH buying fish and chips for the YP. Mr Rodgers had been intending to have what he felt would be an awkward conversation with the Claimant for some time. When he heard that the Claimant had been 'complaining' about JH this focussed his attention to have a conversation about the role going forward. The Claimant had been given no advance warning as to what was to be discussed.

42. It was at this meeting that the Claimant was told his salary supplement of £500 would no longer be paid.

43. At the meeting, Mr Rodgers told the Claimant that things were not working out with the Business Development Manager role. He said that he had not seen the numbers of YPs increase, that the Claimant was getting distracted on other matters, and referred to his involvement with Supreme Safety as an example of this. He said that he would not be paying him the agreed £500 going forward, as that had been based on performance. He told him that the role would be paid at a fixed £30,000 a year.

44. Mr Rodgers told the Claimant that if things did not change there would be no job for him; that he wanted the Claimant to think about whether he was willing to accept the role going forward on this basis and that if so, to let him know after the weekend. He said that if he was to continue in the role he would like him to draw up a business plan. The Claimant was keen to explain to Mr Rodgers what he could do for the business but Mr Rodgers suggested that the Claimant speak with Deborah McGinlay who would give him some ideas in this respect. He asked Ms McGinlay to take him out to lunch, which she did. At this stage, the Claimant and Ms McGinlay still got on well. They were still friends.

45. The Claimant was in substance given an ultimatum by Mr Rodgers. The Claimant understood this and, he decided to accept that ultimatum.

46. After his lunch with Ms McGinlay at the Harvester restaurant the Claimant came up with a so-called business case which Mr Rodgers was pleased with. As we have stated above, Mr Rodgers could have terminated the Claimant's employment at this point but he did not. He asked whether the Claimant wanted to continue in the role at the rate of £30,000 a year. While the Claimant may well have been unhappy with that, nevertheless he too had the option of rejecting it and leaving the business to look for alternative employment. However, he begrudgingly accepted it. The Claimant believed that he would be able to grow the work and that Mr Rodgers would at some point in the future reward him accordingly. Thus, the parties agreed to vary the Claimant's remuneration. The Claimant agreed to work for a flat rate of £30,000. Mr Rodgers was content to keep him as a BDM on that basis. He had not at that point given up on the idea that the Claimant could grow the business

47. As stated above, the Claimant and Ms McGinlay enjoyed a good relationship. This remained the case into August 2018. In his evidence the Claimant said he classed her as a friend. That relationship changed. There came a point where he described it as no longer friendship but as a 'professional relationship'. Although the Claimant said he felt things begin to change after the Julia Hall matter, we conclude that it was later than this. We find that the Claimant, on reflecting back on events, regarded Ms McGinlay's handling of the JH issue as her protecting her 'friend'. However, we find that the change came about from about September 2018, by which time business had not grown, others such as Rebecca Robertson and Ross Mendham were becoming disillusioned with working for the Respondent and the Claimant came to believe that Ms McGinlay was taking credit for his work, namely 'sales' (the term used to describe the securing of placement of YPs from local authorities).

48. The Claimant also enjoyed a very good relationship with Karen Hudson, not just at work but socially. They had always had a 'good laugh' as he put it. This continued right up to the termination of his employment. He also enjoyed a friendly relationship with Rebecca Robertson and had a good relationship with Mr Rodgers.

Julie Curran: disclosure number 3, para 1, b [page 24]

49. Sometime in late July or early August 2018 it had been reported to Ms McGinlay by Ashley Hutchinson that a support worker, Julie Curran, was in a restaurant with a YP and that she (JC) had been seen with an alcoholic drink. That is the best we can do as regards to timing of this incident. The inability to give specific (often even approximate dates or details) was symptomatic of the Claimant's case – and we would add fairly typical of the Respondent as well. In his 'Scott Schedule' at **page 58**, the Claimant gives the date as 07 November 2018. He did not give a date in his witness statement nor did he give a date during his oral evidence. None of the other witnesses in the proceedings put a date on this in their evidence. In cross examination, it was put to the Claimant by the Respondent's counsel that the date of the incident was 30 July 2018. The Claimant did not disagree with that; he said only that he did not know when it had taken place. We find that the incident occurred on or about 30 July 2018. When asked in cross examination who he reported it to he said that he heard about the incident at the time and reported it the following day but he could not remember who to or what he said. He said he raised it again on 05 October 2018 in a supervision meeting with Karen Hudson. We reject his evidence that he raised it with Karen Hudson on 05 October 2018 (see below). However, we accept and find that he did raise the issue with Ms McGinlay shortly after the incident occurred and after she had dealt with it. This was most likely sometime in early August 2018.

50. When asked in cross examination, the Claimant said that it was not that he disclosed information about JC that was the issue but rather, he disagreed with the way the matter had been dealt with. He understood that she had been given a verbal warning. He felt that she should have had a written warning at least. In cross examination he accepted that he did not know what JH had said to Deborah McGinlay about the matter and that at the end of the day it was a question of a difference in 'professional opinion' as to the appropriate sanction.

51. On 26 September 2018 Mr Rodgers asked the Claimant whether he was interested in becoming an Ofsted registered manager. The Claimant said that he was not interested because he felt that he would be a 'plastic manager'. What he meant by this was that the felt that he would not be able to make his own decisions but would be 'micro-managed' by Deborah McGinlay. This was the first evidence of an expression by the Claimant signifying a change in his relationship with Ms McGinlay. It is likely that his view of her had been changing slowly over August and into September. Even up to the end of August they were both exchanging text messages, signing them off with (on the face of things) an affectionate kiss or 'x'. However, by the time we get into September the 'x' was no longer a feature in the exchanges. It is more likely than not that the aftermath of the Ofsted investigation in August 2018 and the decision of the Respondent to seek registration had an effect on the Claimant's outlook. After the conclusion of the Ofsted investigation, Mr Rodgers decided that they were 'going for

registration' with Ofsted for which they needed registered managers. Rebecca Robertson had been identified as just such a manager. As far as the Claimant understood it, she would have to be interviewed and approved by Ofsted. However, we infer from the evidence that she found the situation stressful and had a low opinion of the professionalism of the Respondent as managed by Mr Rodgers and Ms McGinlay. That view was shared by Mr Mendham and ultimately by the Claimant.

52. On 26 September 2018, the Claimant began to circulate his CV to other businesses. He had decided that he was going to leave the Respondent in the near future.

53. On 27 September 2018 RR resigned her employment. She texted the Claimant to tell him that she had quit [**page 207**]. She told him that '*they have different views to what I have so unfortunately it was time to move on*.' In another text she told the Claimant that she felt as if her name was just being used for Ofsted purposes. The Claimant agreed with her sentiment. He told her that others were going to leave and that he had started circulating his CV. On that date the Claimant also exchanged a series of texts with Karen Hudson. He repeated to her that Mr Rodgers had asked him to be a manager and that he had refused it as he would not be his own man, so to speak. This was a sentiment with which Ms Hudson expressed agreement, at least at the time [**pages 212-213]**.

PID 3, para 1 d: Deborah McGinlay cancelling agency staff to save money [page 24]

54. On the night of 30 September 2018, Karen Hudson was on call. She received a call to say that an agency worker who was on shift in the main building (Mowbray Road) had gone home sick, leaving the building short-staffed. Ms Hudson took the decision to move another worker who was covering the home of a YP (a 'solo') to the main building. The YP in question, 'JR', was not expected to be at his property that night because he had a pre-arranged overnight stay at his girlfriend's home. However, even though JR's property was going to be empty, there is still a requirement for a member of staff to reside on be close by the property to ensure that everything is in order in the event that he might return.

55. Ms Hudson instructed that the agency staff member who was to have stayed at JR's home should work at the main building until the YPs there were settled and to check up on JR's property regularly. As it happened, JR did return unexpectedly to the property to find that the support worker was not present. He contacted the main building to ask where the support worker was. Ms Hudson ensured that a member of staff went to JR once Mowbray Road was settled. It appears that JR had caused some damage to the property in the absence of a support worker.

56. The Claimant refers to this incident once in his witness statement, at paragraph 38. He simply recites his understanding of what happened. However, he says

nothing about having discussed it with anyone in management. In cross examination, he said only that he had mentioned it to Mr Rodgers before he was demoted – that being a reference to the meeting of 11 October 2018 (which we address below). However, we reject this evidence. We find that he never mentioned this matter with Ms McGinlay or with Mr Rodgers or Ms Hudson. He had simply heard about it after the event and he assumed that Ms McGinlay had cancelled the agency worker in order to save money. He would inevitably assume the worst of Ms McGinlay at this stage. In cross examination, he said that he did not know when the agency worker had been cancelled but surmised that it was earlier before the shift began. The Claimant had no first-hand knowledge of any of this and had only heard of matters after the event from a third party, Mr Mendham. When it was put to him that he was making this allegation on rumour and second-hand knowledge, the Claimant agreed but added that it was from a trustworthy source. Mr Mendham's statement says nothing specific about anything. What he had to say was framed in the most general of terms.

Julie Curran: disclosure number 3, para 1, c [page 24]

57. On 02 October 2018 an incident occurred whereby a looked after YP was threatening to leave her accommodation if her boyfriend was not allowed to sleep at the premises. However, the boyfriend (who, according to the Claimant, had criminal convictions) was not permitted to do so. To avoid the YP leaving and spending the night on the street, JC agreed to allow her boyfriend to sleep outside in her (JC's) car.

58. Ms McGinlay, as had others, was made aware of what had happened. The following day, the Claimant came to work and was also told about it. As Ms McGinlay passed him in the office, he asked whether she had heard what had happened. She said that she had but that she was not concerned about it. In his evidence to the tribunal, the Claimant said that at the time he disagreed and believed that it was unacceptable. He said the boyfriend had convictions for theft, that he was a 'spice user' and that the 'possibilities' were 'endless'. He thought that JC's car could have been stolen. His views on the matter are not unreasonable. However, neither was the alternative view that JC acted in the best interests of the YP, by acting to prevent her wandering the streets at night and that she would have been in a better position to assess the situation than the Claimant had been when he was not present. This is undoubtedly one of those difficult scenarios which arises from time to time when dealing with troubled young people and where people may have different but reasonably held views as to the best course of action to adopt.

59. Whatever the views of the Claimant, he did not in fact express those views at the time to Ms McGinlay as he expressed them in the Tribunal. All that he said was 'have you heard what happened?' The issue he has with her response is that Ms McGinlay seemed unperturbed by the matter. When asked by the Tribunal whether there was any subsequent discussion about the matter between him and Ms McGinlay he said he could not remember. This was a not untypical answer

and general trait of the Claimant throughout his evidence. He would raise concepts which on their face raised potentially serious issues but in respect of which he gave vague accounts of what it was he was supposed to have said, to whom and when. Ms McGinlay, in her evidence, said she had no memory of the Claimant raising this particular matter with her. We were satisfied that there was in fact no discussion about the event and conclude that the Claimant disclosed no information to Ms McGinlay that in his belief tended to show any of the matters identified in section 43B ERA.

60. At no stage did the Claimant put any of his concerns in writing – we have rejected his evidence that he completed a safeguarding report and sealed it in an envelope placing it on the shared desk of Deborah McGinley/Karen Hudson.

61. We also find that he did not raise this matter with Karen Hudson at the meeting on 05 October 2018, which we address below.

Kieran Patel: disclosure number 3, para 1 a [page 24]

62. On about 01 October 2018, Kieran Patel was engaged by a related company called Forevercare Recruitment. This is a company, run and set up by Mr Rodgers as a recruitment business, specialising in the provision of support workers to care homes and residential homes. Mr Patel had been a well-known local recruitment consultant in that sector and was known to Mr Rodgers and to the Claimant. The Claimant acknowledged that Mr Patel had done a good job at Pinpoint Recruitment. He accepted that he was very good at recruiting and that he had links with clients in the public sector and that he knew the names of agency staff he had used while at Pinpoint. However, there was an issue with regards to Mr Patel. He had a criminal conviction for fraud, for which he served a prison sentence. He had also been barred from teaching for reasons associated with the fraud and a vulgar outburst in front of students.

63. When he was in prison, and in anticipation of his release, Mr Patel contacted Mr Rodgers asking if there was any prospect of employment. Mr Rodgers asked the Claimant for his view as to whether it was a good or bad idea to recruit Mr Patel. The Claimant was unequivocal in his view. Although he was very good at recruitment, he told Mr Rodgers that in his view it was a bad idea because it would be bad for business, for the reputation of the business of Forevercare and Forevercare Recruitment.

64. Mr Rodgers proceeded to recruit Mr Patel regardless. He did so because his role was to recruit and he would not be handling funds or money. He was, he believed, a very good recruiter. This is consistent with our overall assessment of Mr Rodgers. He was willing to recruit a convicted fraudster on the basis that he believed Mr Patel would bring in the work and thus financial gain. For the first two weeks of his employment Mr Patel was based at 17 Mowbray Road. He then moved to 42 Chatsworth Road on or about 14th or 15th October 2018. We are satisfied that the Claimant genuinely regarded his recruitment as a bad move.

However, we are equally satisfied that he has overstated his concerns in these proceedings. He needn't have done so. We find that the Claimant sought to embellish concerns about Mr Patel working unsupervised, in the vicinity of a YP.

65. It is right that a YP lived in a property above the office where Mr Patel worked. However, he had his own means of access and his own key to the property. The only place where he and Mr Patel would be likely, if at all, to come into contact was at the main entrance, much as anyone might pass another on their way in or out of the main entrance. However, the implication of what the Claimant was saying was that Mr Patel was a risk to the YP. He never articulated what that risk might be, neither to the Tribunal nor to the Respondent.

66. He did raise his concerns about Mr Patel in another respect, which we shall address below. However, he did not raise any concern about Mr Patel being 'unsupervised' with the implication that he was putting any YP at risk. This was, we find, deliberately over-blown by the Claimant in his desire to get back at the Respondent for the way which he was treated by it in the end and to make the Respondent look bad in the Tribunal's eyes. He was not genuinely of the belief that Mr Patel, working in the role he did, was a safeguarding risk. He simply believed it was bad for business to recruit him.

67. Up until 05 October 2018 the Claimant had been based at 17 Mowbray Road. Mowbray Road consisted of an office as well as living accommodation for YPs. However, from that day he was instructed by Deborah McGinlay to work at one of the solo properties. This came about after the Claimant met with Karen Hudson during a 'supervision session'.

68. We must at this juncture say something about 'supervision sessions'. We have already commented on what we have found to be a haphazard and unprofessional approach to employment procedures by the Respondent. For example, the Claimant was said to have been subject to a probationary period. However, nothing was ever agreed with him as regards a probationary period. He did not have any probation review. There was precious little in the form of actual supervision of him. The first supervision meeting with Deborah McGinlay took place on 05 July 2018, almost 9 months into his employment [**pages 102 – 108**]. This was after the Claimant had accepted a reduced remuneration package to continue in the role of Business Development Manager following the meeting with Mr Rodgers on 15 June 2018. At that first supervision, the Claimant explained what it was that he did, most of which was as far removed as it possibly could be from what the Tribunal would consider to be within the remit of a Business Development Manager. The only action point which came out of this meeting was to prepare a monthly 'meet the staff' post for the website. Nevertheless, at that first meeting the Claimant told Ms McGinlay that he felt that he could come to management (meaning her and Mr Rodgers) for support. It was also noted that the Claimant was doing his 'level 5' training – which may have been necessary for the purposes of becoming a manager, but, we find, of no relevance to his role of a Business Development Manager. There is no hint in the

meeting notes that the Claimant was unhappy with Ms McGinlay or that he had concerns about any particular issue.

69. The second supervision meeting was on 02 August 2018 [**109-113**]. For some reason this was undertaken by Connor Price, a senior support worker. Nevertheless, the Claimant again said that he felt supported and could come to management for support. Again, there is no suggestion of any concern with Ms McGinlay or any other matter of concern by the Claimant. This is consistent with our assessment and finding that it was not until later into August that the relationship began to change.

70. The meeting with Karen Hudson on 05 October 2018 was the third, and as it turned out, final supervision meeting. Karen Hudson made some notes of this meeting [**pages 113a to 113c**]. We are unclear why she should be undertaking a supervision meeting with the Claimant. Once again, it reflects the overly casual and disorganised approach to management in the respondent company. Whatever the reason, at this meeting the Claimant did raise concerns regarding Ms McGinlay – albeit not so-called 'whistle-blowing' concerns.

71. This meeting was brought to a premature end by Ms Hudson. One significant issue for the Tribunal to determine is why it was brought to a premature end. The Claimant says it was because he made protected disclosures at that meeting. Ms Hudson says that the Claimant raised concerns about the nature of his role, that he was expressing that he did not know what his role was. Her position was that she could not resolve that issue and that she would have to speak to Ms McGinlay. She did not accept that the Claimant raised the matters which he says, in these proceedings, that he raised with her, namely the alleged protected disclosures as set out on **pages 23-24** of the bundle.

72. She recorded the essence of what was discussed at the supervision session with the Claimant. The note, at **page 113b** states:

'Alex feels that work is quite stressful as things that were agreed when he initially took the post is not there. Alex feels he cannot get a straight answer around prices and feels belittled at times. When given information which he uses in a sale to find that that data/info has been changed or updated without him being informed. Alex feels this could be done on purpose.'

73. That note is consistent with the Claimant's text message to RR at **page 218**. We find that the source of the Claimant's concern, as he articulated to Ms Hudson, was Deborah McGinlay. He felt belittled by what he regarded as her deliberate, behind the scenes stealing of credit for his 'sales' and that she had eroded his role. He now saw her as being a person intent on benefitting only her friends and family, that she indulged in cronyism. The Claimant himself was initially a beneficiary of the thing for which he later came to criticise Ms McGinlay. We find that the Respondent was not overly concerned with whether a person was suitably trained or experienced to fulfil a particular role and that this applied as

much to the Claimant himself when it came to appointing him as Business Development Manager, a role which we doubt he was equipped to undertake and in which he was given little guidance of any real value by either Mr Rodgers or Ms McGinlay, neither of them having any real understanding of what such a role might entail.

74. Had the Claimant raised the matters which he says he raised during his employment, we would have expected to have seen a reference to them in either an email or a text. There is, however, nothing.

75. We accept Ms Hudson's evidence that the Claimant did not mention to her concerns about Julie Curren (disclosure 3, paragraph 1 b and c, d and e [**page 24**]. Nor did the Claimant mention concerns about Mr Patel working unsupervised. In arriving at this finding we have considered some of the contemporaneous emails and text messages.

76. In the evening of 05 October 2018 very shortly after the supervision meeting with Karen Hudson, there was an exchange of texts between Deborah McGinlay and the Claimant as follows:

McGinlay: '*I know you have some issues with work atm and need to talk to Neville. That will be on Thursday. So if you just do your shifts in the solos until then. No need to come into fc the times you are not on shift. Neville will see you on thurs afternoon. Thanks'*

Claimant: '*Should I be worried?*'

McGinlay: '*I just think it's better to wait to come to fc until Neville is there as it's him you need to talk to about your concerns'*

Claimant: '*So I'll take that as a yes'*

McGinlay: '*I have no idea'*

77. The Claimant then took a screenshot of this exchange and sent it to RR (who had by now left the Respondent). The screen shot appears in the bundle as a blurred section of text [**page 217**]. He included the message to RR: '*I must be the next one out now then ha'. RR replied: 'wtf is that just out of the blue??'*

78. At 20.16, the Claimant replied that he had '*just had a supervision with karen n just said how I don't even know my role and nev has gone back on every single thing he has said…'.*

79. RR asked: '*but y don't they want you in FC? [Forevercare]'* to which the Claimant replied at 20.20: '*Ha I have no idea. Will be deb twisting shit in the background. I'll txt and ask actually*.'

80. The Claimant did just that, saying that he would forward RR the update. At 20.20 he texted Deborah McGinlay as follows [**page 216**]:

    Claimant: '*Why shouldn't I go to FC now once I've finished shifts in solos?*

    McGinlay*: 'just until you've seen Neville. As you are obviously not happy with me and I would rather you stayed away until Neville was back to sort things out'*

    Claimant*: 'Why am I not happy with you? I just want to know what my job is, my responsibilities and to know if theres any job security. I think I deserve that. It seems to me that I am being hired out of the job I was hired to do.'*

    McGinlay*: 'I can't answer your questions that's why I want Neville to speak to you'*

81. In answer to questions from the Tribunal the Claimant explained what he meant by being '*hired out of the job I was hired to do'*. What he meant was that he believed Deborah McGinlay had been taking credit for 'sales' that he had done and that she had passed some of his responsibilities over to Nathan Bell, her son and that Kieran Patel was going to be doing recruitment in the future.

82. The reference to '*not coming into fc'* meant not going to 17 Mowbray Road – Forevercare's main office at the time.

83. The Claimant then forwarded that exchange to RR as a screenshot [**page 218**]. In answer to her question whether he would get paid, the Claimant replied: '*of course otherwise they will end up being taken to an employment tribunal. Legally have to pay hours worked whether it's a shit work or good work ha'*. In a further text, the Claimant said: '…*happy to get out of FC if im honest. Fucking nightmare n deb found out yesterday that ross is leaving so lashing out everywhere now I think'*[**page 220**].

84. The Claimant, having informed RR that Ross Mendham was also leaving, the exchange of texts continued [**pages 221-222**]:

    RR*: 'Ross is the most trustworthy and reliable person I know!!! You both can do better than FC. It's such a shame it has come to this you know coz it did have some good bones and as a business it cud have went far'*

    Claimant*: 'I know. It could have made a fucking firtune. N I know he is. He is also one of the most highly trained and experienced member of staff we have ha. I think its not guna last anyways. Too many corners have been cut and too many safeguarding issues as come up. Theres still loads which go on all the time man'*

    RR*: 'doesn't surprise me Alex. But yeah it is a god dam shame. I miss it but at the same time I'm like bloody hell im so glad I'm out of there'*

85. Then, when discussing Karen Hudson, they exchanged the following texts:

RR*: 'I worry about Karen you know….she will get burnt out nd probz get ill again…she what's your plan are you just going to ride it out until you find summit else??'*

Claimant*: 'Think im guna get sacked on Thurs so it wont matter already been applying for jobs. I think everyone gets like that with deb. Fucking dangerous.*

RR*: 'I don't think they will sack you if I'm honest…and why thur when nev is back on Wednesday?'*

Claimant*: 'so deb can fill his head full of shit I can only assume'*

86. We have referred to the above text exchanges in some details because they shed a light on the contemporaneous thinking of the Claimant and help to put events in context when determining the significant factual dispute between the parties as to what was said on 05 October 2018. From the above text exchanges, the written and oral evidence of the Claimant and Karen Hudson, we find as follows:

86.1. The Claimant's primary and over-riding concern was his belief that Deborah McGinlay was taking credit for his sales and pushing him out of his role and that she was misleading Neville Rodgers about the Claimant's work;

86.2. He also believed that there were safeguarding issues generally within the company which were not being managed properly;

86.3. RR was not aware of the safeguarding matters the Claimant alluded to in his texts to her but would not have been surprised if there had been some as she too regarded the management of the Respondent as being slack and unprofessional;

86.4. The Claimant did not raise those safeguarding concerns with Karen Hudson on 05 October 2018 but raised only his concern about his role and responsibilities, which, alongside money, was his main motivation;

86.5. The Claimant was in the process of leaving the Respondent and while he believed he was going to be sacked, he was not concerned about this, sensing that it was inevitable given the way his relationship with Ms McGinlay had deteriorated;

87. On 09 October 2018, the Claimant emailed his trade union [**pages 5-7 of the Additional Bundle**]. This and the subsequent emails were only disclosed during the course of the hearing and were included in an 'additional bundle'. What the Claimant says to his trade union in the email about the supervision meeting of 05 October 2018 is consistent with what Karen Hudson says about the meeting. On **page 6** of the additional bundle he refers to his supervision session with Karen

Hudson on 05 October 2018. He told the union representative that (emphasis added):

*'…I received my supervision which **I voiced my concerns about why we are half completing jobs, what my actual responsibilities are because Deb was taking all my sales and my recruitment responsibility had been removed from me and given to Kieran Patel** (feel free to google all of the crimes committed by this person). Kieran Patel has been employed under a new company set up by the owner Neville Rodgers, and stationed in the home as a recruitment consultant a month after being released from prison. He has been removed from teaching and banned from children's homes, schools and anything with kids permanently due to using sexualised language in front of young people in a secondary school.'*

88. On 10 October 2018, in response to a request from the trade union representative, the Claimant emailed again [**pages 2-3 of the additional bundle**]. In that email he refers to a meeting with Neville '*tomorrow'*. He also refers to being *'**banned from the main office because the manager, Deb, feels I have an issue with her but this all came about following my colleague receiving a reference request and my supervision which I mentioned in my previous email**. I have been carrying out support work rather than the role in my job description'*. He refers to the 'whistleblowing' as being the incident with JH (purchasing fish and chips) back in June 2018.

89. Having determined the dispute as to what was said on 05 October 2018, we now continue with our findings on events thereafter.

90. Karen Hudson, who remained on good terms with the Claimant, reported what he had said to Deborah McGinlay. Ms McGinlay considered the best thing to do was for Neville Rodgers to sort matters out when he came to the office from Northern Ireland. As far as she was concerned, the Business Development Manager idea had been Mr Rodgers and it was his responsibility as to what to do with it. In the meantime, conscious that the Claimant had issues with her, she instructed him to work at one of the solo properties and not to go to Mowbray Road. Suspecting that he may be dismissed, the Claimant for the first time contacted his trade union for support.

Meeting between Claimant and Neville Rodgers- redundancy of the Business Development Manager role and employment as senior support worker

91. On 11 October 2018, Mr Rodgers met with the Claimant. Once again, the parties were very unclear about dates. Mr Rodgers gave the date of the meeting as 8th October in paragraph 20 of his witness statement whereas in response to the Claimant's 'scott schedule' at **page 62**, the Respondent said it took place on 9th October 2018. The Claimant never put a precise date on it, simply saying it was in October 2018 – although during the hearing appeared to proceed on the basis

that it was on 8th or 9th October. However, we are satisfied that it was on Thursday 11th October 2018, given it is referred to in the Claimant's email to his union representative on 10 October 2018 as being 'tomorrow' [**page 3 of the additional bundle**]. That also coincides with one of the three days on which Mr Rodgers worked in Sunderland.

92. At this meeting Mr Rodgers told the Claimant that the position of Business Development Manager ('BDM,) was being made redundant. He gave him 4 weeks' notice of termination of employment as a BDM, terminating on 07 November 2018. He offered to continue to employ him thereafter on the same salary of £30,000 in the role of registered manager, as they were still seeking Ofsted registration. This is the role the Claimant had been asked to consider on 26 September 2018, but which he had rejected. The Claimant said again to Mr Rodgers that he did not want to take it. Mr Rodgers then offered work as a Senior Support Worker commencing after expiry of the notice period, so that the Claimant would have a job until he found work elsewhere, in another organisation. The Claimant, we find, accepted employment in the role of senior support worker on the premise that it would keep him in some income until he left the company which he had intended to do as soon as he could. Although we were not impressed by how Mr Rodgers went about this meeting, with no advance warning to the Claimant, no note-taking and no follow up confirmation in writing, we accept that he had simply decided that the role of BDM was simply not working out and that Mr Rodgers had decided that he no longer needed such a role. Whether that was because of the failings of the Claimant to grow the business or the failings of Mr Rodgers in not having any clear understanding of how such a role would work is not the point. We are satisfied that his decision had nothing whatsoever to do with any disclosures that the Claimant made to anyone.

93. The Claimant maintained in these proceedings that at this meeting he told Mr Rodgers that he understood him (Mr Rodgers) to have been considering paying off the drug debts of a YP. He also maintained that he told Mr Rodgers about JC, how she had been drinking when with a YP and that on another occasion she had allowed the boyfriend of a YP to sleep in her (JC's) car outside the property. He also maintained that he told him about the cancellation of an agency worker by Deborah McGinlay to boost profits and that he raised concerns regarding Kieran Patel. This was denied by Mr Rodgers. We conclude that none of these things was mentioned to Mr Rodgers by the Claimant. It may well be that the Claimant had heard from Mr Mendham something about a YP's drug debts and he may well have shared his views privately with the Claimant. However, we are entirely satisfied that the Claimant did not mention this or any of the other matters at the meeting with Mr Rodgers on 11 October 2018 or at all.

94. We find that Mr Rodgers was not intent on the Claimant leaving the business. He would have been happy for him to remain – which is why he offered him a different role (manager) on the same pay. However, he had come to realise that the Claimant was not delivering as a 'Business Development Manager'. The reality,

we find, is that the Claimant was not a business development manager. He had no background in that work and the work that he had been doing from the beginning of his employment was a hotch-potch of tasks ranging from recruitment to 'sales' to marketing. He turned his hand to many things. We accept that Mr Rodgers was of the genuine view that the Claimant was not focussed on the role of Business Development Manager. However, the Claimant is not all to blame for that. As much blame for the role not working out rests with the Respondent and Mr Rodgers in particular. The Respondent, through Mr Rodgers and Ms McGinlay had no concept of what the role of BDM should entail. Their casual and chaotic approach to management, their indifference to job descriptions and contracts, their interest in only growing the numbers leads the Tribunal to conclude, rather concerningly, given the nature of the work the Respondent does, that the driving motivation of all the protagonists, Mr Rodgers, Ms McGinlay and the Claimant, was financial gain.

Kieran Patel and DBS checks: - Disclosure number 4 [page 25]

95. Following this meeting with Mr Rodgers, the Claimant worked as a senior support worker on an hourly rate of £10 an hour. This involved him working at one of the solo properties and supporting a YP. During the period from 11 October onwards, the Claimant was particularly unhappy in his employment. He was annoyed with Ms McGinlay and Mr Rodgers, was disillusioned by the Respondent and was in the process of finding other employment.

96. It was while in this senior support worker role that he came to hear that Kieran Patel had allegedly been saying to newly recruited agency workers that he had friends in the DBS office and that they could 'fast-track' their DBS certificates. He believed that agency staff were being assigned to support YPs without the necessary checks being done. This forms the basis of Disclosure Number 4 (incorrectly labelled 'disclosure number 3') on **page 25**, paragraph 1. The Claimant says that he made a qualifying disclosure to Deborah McGinlay at some point after 05 November and before 03 December 2018. He was vague about what he said and when. In paragraph 17 of her witness statement, Ms McGinlay says that she does not know anything about this allegation. We must determine this dispute, which we now address in the following paragraphs.

97. The Claimant knew that DBS certificates could not be fast-tracked and that any suggestion that they could be was, as he said in evidence, nonsense. It was not so much that which concerned him but that he believed Mr Patel had been saying this to agency workers who (unlike him) might not know that it was nonsense. The Claimant believed that Mr Patel was telling them this for the purposes of assuring them that it was fine for them to start work without a DBS certificate because he, Mr Patel, would arrange for them to be fast-tracked. In light of what he had been told, he became concerned that agency staff might be attending work without DBS checks. Therefore, he confronted some of those workers who came to replace him at the end of his shift, asking to see their photo I.D before

handing the property over to them. If they did not have I.D. then the Claimant asked to see their DBS.

98. Ms Hudson gave evidence that the Clamant came into the office and told her and Deborah McGinlay that Mr Patel had been saying to agency staff that he could fast-track DBS checks. This was sometime in November 2018. She said that the Claimant was somewhat hostile and was stand-offish with Deborah. We accept her evidence and it is consistent with our findings that the Claimant thought little of Deborah McGinlay by this stage. We find that he was by now manifesting a palpable attitude of mild hostility towards her.

99. The Claimant told Ms McGinlay and Ms Hudson what he had understood Mr Patel to be saying to agency staff and he added that it was impossible to fast-track DBS certificates. They agreed with him. Ms McGinlay said that it was absurd to say that you could fast-track. All three of them were in agreement that it is absurd to believe that a person can fast-track a DBS certificate through contacts in the DBS office. It is such an absurd suggestion that it is highly likely Ms McGinlay would remember it – as Karen Hudson did (paragraph 26 of her witness statement). In paragraph 18 of her witness statement, Ms McGinlay said that she remembered that the Claimant had been confronting agency staff members, asking to see their DBS checks. In cross examination, she said that the Claimant had come to her to say that staff were working without DBS checks. Moments later she said that she had no recollection of the Claimant saying that staff were being sent to properties without safer recruitment checks and without DBS checks. She was, we find, inconsistent in her evidence on this issue.

100. We find that the Claimant did tell Ms McGinlay that Mr Patel was sending staff to properties without safer recruitment and DBS checks and that he, the Claimant, had asked staff who turned up at the property on handover to show their I.D. She told him that he was acting inappropriately in confronting staff and told him that this was not his role.

The Claimant's dismissal

101. On 02 December 2018, the Claimant posted a message on the WhatsApp group regarding a handover for 'TB', a YP. The message was visible to other workers. The message was critical of the state of the paperwork and other things. A senior support worker, Amy Rogerson, told Ms McGinlay that she was upset by the message as she believed it to be directed at her and she felt it was deliberately undermining of her. Ms McGinlay then contacted the Claimant and asked him to remove it, which he did. Ms McGinlay asked Ms Rogerson if she wanted to make a complaint. Ms Rogerson did and she was asked by Ms McGinlay to put the complaint in writing. She did so [**page 144]**.

102. On 03 December 2018, the Claimant had been carrying out a property shutdown, helping to pack up the belongings of the YP for whom he was the senior support worker, 'TB'. He was doing this with Catherine Steel ('Cat'). They received a message that they were to come back to the office, which they did.

He went to Deborah McGinlay's office. Karen Hudson was present. Prior to this meeting, Ms McGinlay had spoken to Mr Rodgers by phone. She told him that she was thinking of dismissing the Claimant. He did not in any way seek to dissuade her from this course of action. He said to her that she should speak to the Claimant and decide whether or not to end his probationary period.

103. It is symptomatic of the careless and unprofessional approach to employment matters within the Respondent company that Mr Rodgers and Ms McGinlay spoke of the Claimant as being in a probationary period. We find that he had never been told that he was in a period of probation as a senior support worker. That role had been offered to him with no other terms other than the hourly rate of pay and it was accepted by the Claimant on that basis. It was offered and accepted knowing that the Claimant was looking for other work elsewhere.

104. When the Claimant went to Ms McGinlay's office, a number of allegations were put to him and after a meeting lasting about 10-15 minutes he was dismissed. We need to set out our findings as to the reason for that dismissal. The allegations which were put to the Claimant at this meeting were that:

104.1.1. he had been looking at the tinder website with a YP and had made puerile remarks about the women on his app;

104.1.2. he had attended a GUM clinic with a YP and that he had undertaken an STI test at the same time as the YP;

104.1.3. on 02 December 2018, he had posted a racist remark on WhatsApp;

104.1.4. on 02 December 2018, he had posted a WhatsApp message on the group WhatsApp which was aimed at a fellow senior support worker, Amy Rogerson;

105. As regards Amy Rogerson, the Claimant denied that he had directed his criticism at her and that his message was not directed at anyone in particular. He said he was talking of the situation since 'Friday' and that many different staff had been working on Saturday and Sunday. However, we accept that he did direct his criticisms at Amy Rogerson. Although he did not name her, as the senior support worker on Saturday and Sunday day shifts it would be reasonably obvious to those who worked in the organisation that it was directed at her. In reaching this conclusion we have reviewed the WhatsApp messages in additional bundle **pages 36-46**. In parts the Claimant was, we find, patronising towards her. Certainly, Ms McGinlay acted reasonably in so regarding his message as personally directed at her.

106. The Claimant accepted that he had attended the GUM clinic with a YP and that he had personally undertaken a STD test. However, he gave an explanation

for his actions. The Claimant explained that the YP had been reluctant to go to the clinic for a test and that, having assessed the best way of dealing with the situation and so as to persuade him to attend and have a test, he agreed to have a test as well. In essence, the Claimant was explaining that he used his judgment to do something which on its face may appear surprising but which in context was done for the best of intentions.

107. The Claimant sent a message to Conor Price which, on its face, was a racial slur. However, he gave an explanation for his actions. The explanation was that he sent Mr Price a personal message. He had been in the habit of signing off messages to Mr Price as 'cheers biggan' – an affectionate salutation. However, he mis-typed an 'n' for a 'b' and the message went out as 'cheers niggas'. He explained that he noticed this immediately and that he deleted it right away; that Conor Price had not even seen the message and that it was he, the Claimant, who told Conor about it. The timing and deletion of the message could be seen at **page 35** of the additional bundle. It is clear that the original message was deleted immediately and that the salutation 'Cheers bud' was then sent to Mr Price.

108. When asked by Ms McGinlay, the Claimant denied that he had shown his tinder account to a YP.

109. Ms McGinlay decided to terminate the Claimant's employment. In answer to tribunal questions, she said that she dismissed the Claimant because he had undertaken a STD test at the GUM clinic at the same time as the YP, the 'bullying' of Amy Rogerson and the refusal to accept reasonable work instructions. When asked what she meant by the latter, she explained that back in October she had asked the Claimant not to come to Forevercare until she had spoken to Mr Rodgers; that he had queried why she was making that decision; that he queried her about shift allocation.

110. The Claimant had already found a new job before this meeting and had agreed a start date. It is unfortunate that matters ended as they did as the Claimant was about to leave in any event. He started his new employment on 10 December 2018.

111. The Claimant contends that following his dismissal he was threatened with a bad reference and that Deborah McGinlay called his new employer to tell them about the allegations against him and to ruin his chances of employment in the field. This is denied by the Respondent and it is dispute which we must now determine.

112. The Tribunal was unimpressed by the Respondent's evidence on this matter. We reject the evidence of Ms McGinlay that she contacted the Claimant's new employer purely to cover Forevercare and not in a malicious way. She had received no reference request. She learned that the Claimant had started work for Pinpoint Recruitment, for whom Mr Patel had previously worked. Although she

said that she contacted Pinpoint to find out if he was working with children and because she had not received a reference request, we found Ms McGinlay's evidence on this to be disingenuous. She had no reason whatsoever to believe that the Claimant was working with children (in as much as Mr Patel was not working with children in his recruitment role) – and we would add, she had no reasonable basis for believing that the Claimant was not a fit person to do so in any event. She had not seen fit to write to LADO about any concerns regarding the Claimant. She did not prepare any safeguarding report for the attention of anyone. If she had anything to say about the Claimant to his current employer she could easily have sent it in writing. However, she was not prepared to. What she was intending to do, we find, was to verbally 'bad mouth' the Claimant. It was vindictive. We address the reason she did this in our conclusions.

113. We accept the Claimant's evidence that Ms McGinlay tried a number of times to contact the Claimant's new line manager, Mr Rudd. When Mr Rudd eventually spoke to Ms McGinlay she informed him of a number of allegations against the Claimant. When asked whether she would put anything in writing she refused. Mr Rudd dismissed Ms McGinlay's attempts and fortunately for the Claimant they had no effect on his employment.

The Claimant's holiday entitlement

114. When the Claimant commenced his employment it had been agreed with Mr Rodgers that he would be entitled to 30 days' holiday a calendar year. Although the Claimant brought a claim for holiday pay under regulation 30 Working Time Regulations 1998, he said nothing in his witness statement (paragraph 4) beyond saying how much holiday he was entitled to in the holiday year. In paragraph 34 of Deborah McGinlay's statement she said that the Claimant agreed that he had 8 days' outstanding holiday in respect of his time as a Business Development Manager for which he was paid.

115. We were unable to make any findings as to the Claimant's entitlement on termination due to the lack of evidence.

The parties' submissions

116. Mrs Callan, on behalf of the Respondent, presented written submissions and supplemented them orally. The Claimant made short oral submissions. Mrs Callan invited the Tribunal to dismiss all complaints. She directed the tribunal to the relevant legal principles and then addressed each alleged PID and the alleged detriments said to have been caused to the Claimant.

117. As to the dismissal, she submitted that the reason for dismissal was plainly one related to conduct. In respect of the post-employment detriment complaint – the contacting of the Claimant's new employer – Mrs Callan accepted that, depending on the Tribunal's findings, this would amount to a detriment. However,

she submitted that, on the fact, there was no detriment because the Respondent was acting responsibly in contacting the Claimant's current employer in respect of the GUM clinic issue in particular and his conduct.

118. The Claimant addressed us primarily on the issue of his holiday pay, referring to **page 173** of the bundle. The Claimant said that the figure of £1,228.08 was not right. He said that the Respondent had swapped hours worked for holiday, that the accountant's letter at page 141 and the reference to 10 days is incorrect.

119. As regards the new salary from June 2018 the Claimant said that he accepted the new salary but he had to accept it; that he thought it best to show Mr Rodgers that he was working hard and bringing in lots of money. The Claimant made some brief points in relation to the section 103A and detriment complaints but being unfamiliar with legal proceedings, understandably added little to what he had said in evidence throughout the course of the hearing.

Relevant law

Public interest disclosures

Section 43B ERA 1996 provides:

(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, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part *"the relevant failure"*, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

120. The Act provides a broad definition of disclosure. The worker must disclose information: **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38, EAT. In **Kilraine v Wandsworth Borough Council** UKEAT/0260/15/JOJ Langstaff J observed that tribunals should observe the principle in **Cavendish Munro** with caution to the extent that it must not be 'seduced' into thinking that it must decide whether something is either 'information' or an 'allegation'. Information may be provided in the course of making an allegation. However, the requirement is still for information to be disclosed.

121. If there is a disclosure, it is necessary to consider whether that disclosure is a qualifying disclosure. This will depend on the nature of the information disclosed.

122. As can be see from the exercise undertaken by Langstaff J (in paragraphs 31-35 of the **Kilraine** case) it is a question of carefully assessing what was said or written so as to determine whether information was provided (which meets the qualifying criteria in the Statute) whether or not an allegation was made as well, or whether what was said does not amount to information, for example because of the vagueness or lack of specificity or clarity.

123. Each of the six categories involves some form of malpractice or wrongdoing and are often referred as the 'relevant failures'.

124. The worker is not required to establish that the information is true. He must establish that at the time he made the disclosure, he/she held a reasonable belief that the information disclosed tended to show. It is not a question of whether a hypothetical reasonable employee held a reasonable belief, but whether the particular worker's belief was reasonable.

125. There is a subtle but vital distinction, in that it is not a case of asking whether the worker reasonably believed that a breach of a legal obligation had occurred, is occurring or is likely to occur. Rather, it is a case of asking whether he held a reasonable belief that the information he was disclosing tended to show that such a breach had occurred, is occurring or is likely to occur. He must also reasonably believe that he is making the disclosure in the public interest. That aspect is to be determined in accordance with the guidance of the Court of Appeal in **Chesterton Global Ltd (t/a Chestertons)v Nurmohamed** [2018] I.C.R 731.

126. Further, when assessing the worker's belief, the test is not a wholly subjective one. It is the reasonableness of the belief of the particular worker which is being assessed.

127. In cases where a claimant relies on breach of a legal obligation, the source of the legal obligation must be identified before going on to assess the reasonableness of the belief of the employee.

128. If a disclosure is a qualifying disclosure then it becomes 'protected' if (among other things) it is made to the employer (s43(c)(1)(a)).

Section 47B provides:

(1) 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.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

129. When considering a case of detriment due to making one or more protected disclosures, a tribunal should be precise as to the detriments and disclosures and should not just roll them up together: **Blackbay Ventures Ltd v Gahir** [2014] IRLR416, EAT (see paragraph 98 of the judgment). The word 'detriment' is to be construed broadly. As observed by Lord Hope of Craighead in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] I.C.R. 337, this is a test of materiality, taking all the circumstances into account. The question to be asked is whether the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. An unjustified sense of grievance cannot amount to a detriment. It is not necessary to demonstrate any physical or economic consequence.

Section 48: Burden of proof

130. Section 48(2) provides that:

'On a complaint under subsection...(1A) [a complaint of detriment in contravention of section 47B] it is for the employer to show the ground on which any act, or deliberate failure to act, was done.'

131. Thus, if an employee has established on the balance of probabilities that he made a protected disclosure, that there was a detriment and that the employer subjected him to that detriment, then the burden falls to the employer to show that he was not subjected to the detriment on the ground that he made the protected disclosure.

132. The employer must show that, in subjecting the employee to the detriment (if indeed it did) that the protected disclosure did not materially influence its decision to do so: **Fecitt v NHS Manchester** [2012] I.C.R. 372.

Former workers and employees

133. The definition of 'worker' and 'employee' is found in section 230 ERA. It covers current and former employees/workers. Therefore, it is no answer to a complaint of a contravention of section 47B that the detriment complained of occurred after termination of the contract or relationship: **Woodward v Abbey National plc** (No.1) [2006] I.C.R 1436, CA. Therefore, 'post-employment' detriments are justiciable.

S103A 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."

134. A reason for dismissal 'is the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee: **Abernethy v Mott, Hay and Anderson** [1974] ICR 323, CA. In a more recent analysis in **Croydon Health Services NHS Trust v Beatt** [2017] ICR 1240, CA, Underhill LJ said that the 'reason' for dismissal connotes the factor or factors operating on the mind of the decision maker which causes them to take the decision. It is a case of considering the decision-maker's motivation.

135. If an employee has been dismissed on the ground that he made a protected disclosure, the dismissal is regarded as being automatically unfair. The protection against dismissal by reason of making a protected disclosure is available to all employees regardless of their length of continuous employment. The continuous employment qualification of two years, applicable in claims of 'ordinary' unfair dismissal does not apply. However, if the employee was employed for less than two continuous years the onus is on him to show, on the balance of probabilities that the reason or principal reason for his dismissal was that he made a protected disclosure: **Ross v Eddie Stobart Ltd** [2013] UKEAT/0068/13.

136. Therefore, an employee with less than two years' continuous employment will only succeed in a claim of s103A unfair dismissal if he satisfies the Tribunal that the 'principal' reason was that he made a protected disclosure. A 'principal' reason is the reason that operated in the employer's mind at the time of the dismissal. The identification of the reason or principal reason is an issue of fact for the tribunal, turning on the direct evidence and permissible inferences drawn from primary facts found upon that evidence.

137. It is open to a tribunal to conclude from a consideration of all the evidence in a case that the true reason for dismissal was not one advanced by either the employee or the employer: **Kuzel v Roche Products Ltd** [2008] I.C.R. 799, CA @ para 60, Mummery LJ.

138. When faced with a case in which a claimant alleges that he or she has made multiple protected disclosures, a tribunal should ask itself whether, taken as a whole, the disclosures were the principal reason for the dismissal: **El-Megrisi v Azad University (IR) in Oxford EAT** 0448/08.

139. Finally, the law protects the worker only against the act of disclosure. If the principal reason for dismissal is not the act or fact of disclosure then there can be no unfair dismissal contrary to s103A ERA. If the fact that an employee made a protected disclosure was merely a subsidiary reason to the main or principal reason for dismissal, then the employee's claim under s103A will fail.

Holiday pay upon termination of employment: regulation 30 Working Time Regulations 1998

140. Under regulation 30 Working Time Regulations 1998 an employee or worker may present a complaint that the employer failed to pay the whole or any part of any amount due to him under regulation 14 (1) of those Regulations.

141. Where regulation 14(1(a) and (b) apply and the proportion of leave taken by the worker is less than the proportion of the leave year that has expired, the employer shall make him a payment in lieu of leave in accordance with regulation 14(3). A formula of (A x B) – C applies to the calculation, the values of A, B and C are described in regulation 14(3).

142. Having set out our findings of fact, we turn now to our conclusions on the complaints and issues. We have applied to our findings the legal principles summarised above.

Discussion and conclusions

143. We set out our conclusions by reference to the list of issues. We have abbreviated 'Public Interest Disclosure' to 'PID'. Our conclusions under four sections:

[A] Disclosures and detriments during employment;
[B] Unfair dismissal;
[C] Post-termination detriment;
[D] Holiday pay complaint

[A] Detriments during employment.

PID 1: on or about 11 June 2018 and alleged detriment

144. It is right to say that JH had been the subject of discussions among the managers. It had become known that she had used her own money to buy a YP fish and chips. This was against company policy unless authorised by a manager. The reason for this policy is to safeguard against the risk of grooming. However, not every act in breach of a policy will give rise to a reasonable belief of 'grooming'. The Claimant may well have believed that the policy had been breached but he had no reasonable grounds for believing that by telling Deborah McGinlay what JH had done that this information tended to show that JH or anyone else had failed, was failing or was likely to fail to comply with a legal obligation or that the health or safety of an individual had been, was being or was likely to be endangered; or that information tending to show any of those matters was being or was likely to be deliberately concealed. What JH did, could be seen as well-meaning by her, in as much as the Claimant's own behaviour in taking the YP to the GUM clinic and having a STD test could be seen as an exercise in good judgment by him. Each event could, alternatively, reasonably be seen as being unwise and in breach of policy or good judgement. It is important to have context to such matters. The Claimant did not know the context; he had simply 'heard' about JH purchasing fish and chips from a third party – just as others had. He was not in a position to assess the situation. Nor was he aware that JH had permission to use her own money. In our judgement, any belief he held that by telling Deborah McGinlay that JH had used her own money to purchase food for the YP tended to show one or more of the relevant failures in section 43B ERA was not a reasonable one. Therefore, we conclude that he did not make a qualifying disclosure.

145. In any event, we conclude that the Claimant did not raise this in the manner he alleges. He was just one of a number of people who happened to be in the office at the time it was discussed. There was, no discussion of JH or potential safeguarding concerns with Mr Rodgers at the meeting on 15 June 2018 or at all.

146. The Claimant's account of when and how he raised the matter was vague and inconsistent. We accept the submission of Mrs Callan in paragraph 9 of her written submissions that the Claimant has given a number of different versions of

what he did following his discussion with NJ and DT. His account changed a number of times. His evidence was unreliable and inconsistent. We conclude that his desire to get back at the Respondent led him to embellish matters. The Claimant made much to the tribunal of his experience, knowledge of and past responsibility for safeguarding issues. We do not accept that the Claimant completed any report and left it on a desk. We found it very difficult to accept that, for someone professing to be so concerned about safeguarding and who told the tribunal that at the very time he completed his safeguarding approach and left his only copy of it in a sealed envelope that he believed the complaint would be destroyed, that he would not keep a copy or follow the matter up in an email or raise it in a meeting. It was simply not credible.

147. In any event (even if the Claimant did make a PID in relation to this matter), we are satisfied that he was not subjected to any detriment for doing so. The Claimant maintained that Mr Rodgers had fabricated allegations against him in order to discipline him on 15 June 2018.

148. The Claimant was not disciplined at the meeting of 15 June. Nor, from our findings of fact, do we conclude that Mr Rodgers fabricated anything against the Claimant. While the Tribunal was unimpressed by Mr Rodger's failure to follow things up in writing and by his failure to put things in writing in advance – and in respect of the Claimant's contract of employment – concluded that he was being untruthful (thus giving us cause to be suspicious about his evidence more widely), nevertheless we concluded that he genuinely made his position clear to the Claimant which was, in substance, that he was not getting the return he had expected from the Claimant. To that extent, while the Claimant may have regarded Mr Rodger's decision to cease paying the £500 going forward as being 'disciplinary' in nature, it had nothing to do with any disclosures made by the Claimant, whether that be to do with JH's purchasing of food or fire safety. It was entirely to do with the 'numbers'.

149. We are satisfied that Mr Rodgers was not in any way influenced by the content of the information given by the Claimant to Ms McMginlay or by the fact that the information the Claimant conveyed to her was about JH buying fish and chips or sweets for the YP. Mr Rodgers was, we conclude, interested only in whether the Claimant was growing the numbers of YPs. He was not seeing what the Claimant said he would provide in return for the extra £500 a month. Had he seen a return, we conclude that he would not have had the discussion. There is a difference between something being the trigger for a meeting and it being the reason for the subsequent decision made in the meeting. Mr Rodgers could have terminated the Claimant's employment in June 2018 but he did not. It was clear to the Tribunal from the evidence it heard that the Claimant had little appreciation of business development and it was no surprise (despite the Ofsted inspection issue) to the Tribunal that the business had not grown. Nevertheless, Mr Rodgers wanted to retain the Claimant but not at the additional cost of £500 each month without an increase in numbers.

PID 2: health and safety fire checks

150. We have found that the Claimant was discussing routine matters regarding fire checks. He knew someone – his step father - who could do a better job at a better price. We conclude that reference to fire safety was general management talk and that the message he was conveying was that he could get it done better and at a better rate.

151. In arriving at our conclusion, we looked at the door maintenance records, the fire extinguisher records, the emergency lighting records and other documents put before us. However, these tell us nothing about the Claimant's beliefs or of the beliefs of Mr Rodgers or Ms McGinlay at the time. They are routine documents and, in the Tribunal's experience and findings, record and reflect routine issues. There was nothing in the email from the Tyne & Wear Fire and Rescue Service [**page 127**] that reflected anything other than run-of-the-mill issues that might arise on a fire safety inspection. There were issues to address but the Fire Safety Officer recorded that the audit was satisfactory.

152. We could see no information that tended to show any of the relevant failures. More importantly, we concluded that the Claimant did not actually believe that the things he discussed tended to show a relevant failure. By discussing fire safety matters during his employment, his motivation was twofold: to ensure that a good job was done and to ensure that his step father secured the work. At no point when he mentioned anything to do with fire safety checks did he believe that he was conveying information which tended to show that the Respondent or any person was in breach of a legal obligation or that the health or safety of any individual was likely to be endangered. Nor, to the extent that he said anything about fire safety, such as Mr Riddell not being in possession of a fish key, or that there were defective or missing emergency lights, did he believe that he was doing so in the public interest. He did so only in the belief that by identifying the matters he would be able to secure work for his step-father and at the same time in the belief that his step father would do a good job and improve on what was in place.

153. We, therefore, reject the Claimant's case that he disclosed information to Mr Rodgers or to Ms McGinlay or to anyone else that in his actual belief tended to show any relevant failure in section 43B ERA 1996. It was only in the course of these proceedings that the Claimant felt – long after the event - that he might be able to advance this topic as a 'PID' because it was about the broad subject matter of 'fire safety'. Even if he did believe it at the time, his belief was not a reasonable one. The fire and rescue inspector concluded that the audit was in general fine. We also conclude that the Respondent was not in any way whatsoever concerned about anything the Claimant mentioned about fire safety. The Claimant relied on a comment in June 2018 by Mr Rodgers that he was being distracted by things like fire safety and not concentrating on business development in order to advance a complaint that he had been subjected to a

detriment because he raised a concern about fire safety. However, the point being made by Mr Rodgers in June 2018 was that the Claimant was not focussing on business development. He was not concerned about the content of anything the Claimant had ever said about fire safety.

154. Therefore, even if what the Claimant said did qualify for protection under the legislation, we are satisfied that the Claimant was not subjected to any detriment because he raised fire safety issues.. Mr Rodgers has satisfied us that he was not materially influenced by anything other than that the numbers of YPs were not increasing and he did not want to continue paying £500 which was payable 'subject to performance'. Fire safety was only mentioned in the context of explaining to the Claimant that, from Mr Rodgers viewpoint, he did not appear to be focussing on the role of BDM.

PID 3, para 1 a: Kieran Patel working unsupervised

155. The Claimant was extremely vague about this. He gave no approximate date or time as to any discussion regarding Mr Patel working alone or unsupervised. There was no reference in his statement to him speaking to Mr Rodgers or Ms McGinlay about Mr Patel working unsupervised. We conclude that he simply never raised it as a concern.

156. The Claimant genuinely believed that it was bad for the reputation of the Respondent to recruit Mr Patel. However, in his keenness to hold the respondent liable for his dismissal he has, looking back, tried to advance this as a PID when in fact (though holding the belief that he should not be working there) he did not give Mr Rodgers and Ms McGinlay information about Mr Patel working unsupervised and coming into contact with any YP. We conclude that he did not make a qualifying disclosure in this respect.

157. We have rejected the Claimant's oral evidence that he told Karen Hudson on 05 October 2018 anything about Mr Patel working unsupervised and coming into contact with YPs. We say more about the meeting of 05 October below.

PID 3, para 1 b: JC drinking on shift and driving a looked after child in a company car

158. We have found that this was reported by others, not by the Claimant. That of itself does not mean that the Claimant could nor or did not make any disclosure of course. It matters not that an employee may be telling an employer something they already know. However, it remains the case that the Claimant was getting this information second hand and that others had reported it. It was clear from the evidence that the matter that concerned the Claimant was the sanction administered to JC. He believed she had been given a verbal warning. He accepted that it was a matter of opinion. We conclude that there was nothing which concerned the Claimant beyond the appropriate sanction, on which managers might reasonably disagree. He did not have in mind or believe at the

time he questioned the sanction that what he was saying tended to show the breach of a legal obligation or any of the other matters which fall under section 43B ERA 1996. We conclude that he did not make a qualifying disclosure.

159. In any event, we are entirely satisfied that he was not subjected to any detriment in connection with anything that was said about this matter, nor was it a factor in his subsequent dismissal. The Claimant maintains that the detriment he suffered was that he was told not to go into the office but to go to one of the solo placements where he was made to do the work of a senior support worker. We have rejected this. He was instructed by Ms McGinlay, on 05 October 2018, to work in the solo property until he had a discussion with Mr Rodgers and the reason for instructing him was because the Claimant had raised a number of issues about his role and responsibilities.

PID 3, para 1 c: JC allowing a looked after child, young offender to sleep in her car outside the home

160. We have found that the Claimant mentioned this incident to Deborah McGinlay but only in passing in the morning, in the sense of '*did you hear what happened?*' He did not raise it again and he did not raise it with Mr Rodgers or Ms Hudson.

161. He did not actually disclose any information to Ms McGinlay. There was no reasonable belief that by saying 'have you heard of this' ('this' being the event in question) that that information alone would tend to show one of the relevant failures under section 43B. We conclude that he did not make a qualifying disclosure.

162. In any event we are satisfied that he was not subjected to any detriment for asking Ms McGinlay whether she had heard of what had happened when it was common knowledge. This had nothing to do with the decision to instruct him to work at the solo property on 05 October 2018, which was all to do with what the Claimant had raised with Ms Hudson in the supervision meeting that day, none of which related to JC.

PID 3, para 1 d: Deborah McGinlay cancelling agency staff to save money

163. The Claimant maintained that he raised this and by doing so the information he disclosed tended to show that a legal obligation had been breached and that the legal obligation was the obligation to ensure the health and safety of YP in the accommodation.

164. We accepted Ms McGinlay's evidence that this was not mentioned to her. The Claimant disclosed no information which tended to show any of the matters in section 43B. We would add that we accept the evidence of Ms McGinlay as to

the events of that night and conclude that the matter was handled well in the circumstances.

165. The issue for us is not whether Claimant is right about what he says happened with regard to the agency worker (as is the case with other alleged disclosures) but whether he disclosed any information and if so what and whether his disclosure qualifies for protection. He never said what it was that he told Mr Rodgers. He does not give us any date. Everything was very vague. We think more was said at the meeting on 11 October than we were told by both Mr Rodgers and the Claimant. We believe that general gripes and concerns were mentioned but we conclude that this particular issue regarding agency staff being cancelled was not mentioned at that meeting or at any other as far as we can see. The only occasion we can identify where the Claimant might have said something to Mr Rodgers about agency workers before 11 October was 26 September when he was first offered the registered manager role [**page 208**] However, that predated the actual incident regarding this particular agency worker issue so it cannot have been then. There was simply no evidence of any other discussion with Mr Rodgers. The next date was 11 October 2018. However, that meeting was for purpose of telling the Claimant that his BDM role was redundant. We conclude that he did not make a qualifying disclosure in this respect either.

166. Even if the Claimant mentioned the agency worker issue on that date (and we conclude that he did not) it played no part in Mr Rodger's thinking that the BDM role was to be made redundant, as he had come to that decision before sitting down with the Claimant on 11 October.

PID 3, para 1 e: paying off a young person's drugs

167. We are entirely satisfied that the Claimant did not mention anything like this to Mr Rodgers, Ms McGinlay or Ms Hudson. He may well have been told something along these lines by Mr Mendham, but even he makes no reference to it in his witness statement. The only reference to this is on **page 60** of the 'scott schedule'. The Claimant was cross examined and said that he mentioned it in his supervision – but did not say which supervision. We took that to be a reference to the meeting with Karen Hudson on 05 October. However, we rejected the suggestion that he had done so.

168. We conclude that this allegation has been added by the Claimant to make Mr Rodgers look bad in the eyes of the Tribunal. The Claimant did not make a qualifying disclosure.

PID 4 (incorrectly numbered PID 3): Kieran Patel was not carrying out safer recruitment checks on staff

169. We refer to our findings in paragraphs 98-100. We have found that in November 2018 the Claimant did tell Ms McGinlay that he was confronting staff

asking for I.D and that if they did not have any he had asked them to produce their DBS certificates. He told her this because of what he had heard regarding Mr Patel telling agency workers that he could fast-track their certificates, which he also explained to her.

170. In her written submissions, Mrs Callan submitted that at best the Claimant was simply making an allegation and not conveying any information. She submitted that there was no clear statement by the Claimant about what he alleged he said. We respectfully disagree.

171. The Claimant conveyed information (that Mr Patel was telling agency staff about fast-tracking, that he had sent staff to the property without checks and that he, the Claimant, was concerned that they did not have DBS clearance, which is why he was confronting staff asking them for I.D and if they did not have it, to produce their DBS certificates). That was the information which he conveyed to Ms McGinlay. If correct, that information would tend to show that the Respondent was deploying staff without first having done appropriate checks and that this was in breach of its obligation to carry out such safeguarding checks. We agree with the Claimant that the information tended to show a breach of a legal obligation on the part of Mr Patel (under his own contract with Forevercare) and on the Respondent given the nature of its work) to carry out DBS checks. This belief – whether correct or not - was based on what the Claimant had been told by a support worker and on his knowledge of Mr Patel's character, following his imprisonment for dishonesty/fraud. It may be that the Claimant was wrong about all of this. However, we concluded that he reasonably believed that what he told Ms McGinlay tended to show a breach of a legal obligation on the part of Mr Patel (under his own contract with Forevercare) and on the Respondent given the nature of its work) to carry out DBS checks. We also conclude that in giving her this information, he reasonably believed that he was acting in the public interest given the importance attached to DBS clearance in a business which has at its core the support of vulnerable young people and that people who had not been DBS cleared would be working with them. That is, in our judgement, very much a matter of public interest and certainly reasonable of the Clamant to so regard it. We have considered the guidance in **Chesterton Global Ltd (t/a Chestertons v Nurmohamed** [2018] I.C.R 731. The disclosure was made to his employer and is protected.

172. In this respect, we conclude that the Claimant did make a protected disclosure. We concluded that Ms McGinlay was evasive about this and her evidence as to what she maintained the Claimant said to her was inconsistent. The disclosure was made after the other detriments of which he complains (the reduction of his salary, the fabrication of allegations, the decision to move him to a solo placement, the decision to make the BDM role redundant. Insofar as PID 4 is concerned, the Claimant relies on this as the reason for his dismissal, which we address below. However, we should set out our conclusions on the contentious issue of the meeting of 05 October 2018 and on the state of things leading up to the Claimant's dismissal.

173. Nowhere in the texts or emails referred to in our findings of fact does the Claimant say that on 05 October 2018 (or indeed at any other time) he disclosed information or concerns about Mr Patel being unsupervised in the vicinity of YPs, or about fire safety concerns, or about JC's drinking (other than by reference to Rebecca Robertson) or about agency workers being cancelled. In the email of 10th October 2018 to his trade union, the Claimant referred to 'the whistleblowing' as being JH purchasing fish and chips and sweets for the YP. Having listened to and observed the Claimant carefully in evidence and having considered the documentary evidence as a whole, we conclude that it is inconceivable that he would not have mentioned in his email to his trade union representative that only a few days earlier he had raised concerns in a supervision meeting about paying off a YP's drug debts or about JC and that suddenly he is being invited to a meeting with the owner of the business – had he in fact done so. Indeed, we note that on **page 24** (under 'disclosure number 3(e)) he does not say that he disclosed this information at all, only that he had been told it by Mr Mendham.

174. having regard to our findings of fact and the vague and unspecific way in which the Claimant advanced his complaints, we are satisfied that what he said to Karen Hudson was as she said in her oral evidence, namely that the Claimant's concern, as he expressed to her, was about his role and responsibilities and was as broadly set out in her note of the supervision meeting. To the extent that the Claimant says he referred to Kieran Patel we concluded that he did not. It is notable that in his email to his union representative he mentioned Mr Patel only in the context of him taking over his recruitment responsibilities – again, consistent with Ms Hudson's evidence. In cross examination when asked whether he believed Mr Patel's arrival impacted on his role, the Claimant told the tribunal that he did not believe that it did, that Mr Patel worked in a different company and they had different jobs. We rejected that evidence. It is clear from his contemporaneous account that he did see Mr Patel's arrival as directly impacting on his role as he refers to his responsibility being 'removed' and given to him. That, and not any unsupervised access to YPs, was his only concern.

175. From the beginning of his employment with the Respondent, the Claimant's main driver had been financial. In this respect, he was very much like Mr Rodgers, which is probably why Mr Rodgers was impressed with him at interview. The Claimant sold himself – without the relevant experience to back it up – as someone who could achieve great things as a business development manager. He negotiated a higher salary. He took on extra shifts as a support worker to make more money. He referred to the introduction of YPs as 'sales'. He ultimately considered it a shame that things had turned out as they had because he believed the business could have 'made a fortune'. We are not and would not ordinarily be critical of such a motivation in life as many are driven by financial considerations and there is plenty to admire in such motivation. However, in these proceedings the Claimant has sought to portray that he was someone who, throughout his employment, raised concerns about safeguarding and fire safety and that in turn he was subjected to detriments for which he was

eventually dismissed. However, we infer from our findings that in reality, he was content to work in an organisation which he believed cut corners in certain respects and which he believed to have been poorly managed provided his role was one which he was happy with and which paid him accordingly.

176. What soured the relationship between the Claimant and Deborah McGinlay was, we conclude, the Claimant's belief that she had been taking the credit for his 'sales'. Where a previously friendly relationship turns cold, human beings are usually good at picking up the signs of change and so it was in this case. It was clear to Ms McGinlay that the Claimant was coming to resent her opinions and her role. He questioned her decisions and he manifested a poor attitude towards her. He had, in fact, decided to leave the Respondent before the meeting with Karen Hudson on 05 October 2018 and by that time he was willing to make clear in a supervision meeting that he regarded Ms McGinlay as being responsible for the erosion of his role. We conclude that the note recorded by Karen Hudson on **page 113b** was an accurate depiction of the concerns the Claimant raised with her on 05 October 2018.

177. Mr Rodgers had concluded that the Claimant was not getting enough 'bums on seats' and developing the business. The Claimant attributed Mr Rodgers' lack of acknowledgement of his efforts to be down to Ms McGinlay taking credit for his work. He was already resentful that he was being paid £30,000 since June 2018. He had hoped to recover ground on this by showing Mr Rodgers that he could grow the numbers. However, the numbers did not go up and the Claimant believed he was being frustrated by Ms McGinlay. He had come to believe that she was responsible for the role not working out and that she was eroding his responsibilities. For her part, she sensed that the Claimant no longer liked her.

178. Insofar as the Claimant complains that he was subjected to detriments (short of dismissal) because he made PIDS 1 to 3, those complaints fail. We turn now to consider the complaint of automatically unfair dismissal.

[B] Section 103A ERA- unfair dismissal

179. We turn now to our conclusions on the reason for dismissal before considering the complaint of post-termination detriment relating to the attempt to provide a bad reference.

180. We conclude that the reason for the Claimant's dismissal was a combination of: the Claimant and Ms McGinlay having fallen out, the Claimant's conduct towards Amy Rogerson and his decision to undertake a STD test when attending the GUM clinic with a YP. However, the principal reason was the falling out between the Claimant and Deborah McGinlay. A subsidiary reason was that the Claimant had raised concerns about Kieran Patel not carrying out DBS checks in light of him telling agency workers that he could have them fast-tracked.

181. The questioning of Kieran Patel's actions regarding DBS (whether the Claimant was right or wrong about it) was, in our judgement, a subsidiary reason in the sense that it was at a factor in Ms McGinlay's thinking that she did not want the Claimant around any longer. We infer this from our findings in paragraphs 98-100 above, and the inconsistent and unreliable evidence of Ms McGinlay when asked about what it was that the Claimant said to her about DBS checks. However, this was a far cry from being the main or principal reason for the Claimant's dismissal.

182. The Claimant did put a message on the WhatsApp aimed at a colleague. We agree it was probably inappropriate and that Amy Rogerson would know that she was the one he was referring to. We accept Ms McGinlay's evidence that Ms Rogerson was upset by this. The senior support worker would be the one identified as being responsible for the matters criticised by the Claimant.

183. Ms McGinly had lost respect for the Claimant and he had lost respect for her. He had come to regard her as manipulating, micro-managing and stealing the credit for his work and that she was covering her own inadequacies by misleading Neville Rodgers about the Claimant. For her part, she regarded the Claimant's attitude towards her as having deteriorated significantly by the date of the supervision meeting with Karen Hudson on 05 October and then following the meeting with Mr Rodgers on 11 October 2018. She believed that he blamed her for his role not working out as he had expected it to. In her evidence to the tribunal she said that it was obvious to her that the Claimant was blaming her for bringing him into a role that did not work out. She saw him as resistant to her instructions and to an extent hostile to her particularly where, in the case of Kieran Patel's role in DBS checking, he confronted her in a mildly hostile, or to use Ms Hudson's description, 'stand-offish' manner. Their relationship had broken down. They simply did not like each other by the end.

184. Consequently, the writing was on the wall for the Claimant, so to speak. It was not going to take much by way of any misdemeanour to cause his dismissal. Albeit, she genuinely believed the Claimant's conduct in posting the WhatsApp message was aimed at Amy Rogerson and was unacceptable and that the Claimant was wrong to undertake a STD test, in our judgement she seized on these matters as justification for a dismissal that she wanted.

185. Had the Claimant been employed for two years or more, we would have had no hesitation in upholding a complaint of unfair dismissal. Ms McGinlay did not carry out anything like a reasonable investigation before concluding that the Claimant had committed misconduct. She gave him no advance warning and no time to prepare for the meeting. Her attempt to mark him as a person who broadcast a racist remark was, we find, disingenuous, as was the reference to the Claimant 'admitting' this. He admitted to the fact that he put the message but that this was a genuine mistake, something we accept entirely. Ms McGinlay did not give any reasonable consideration to the point which the Claimant made about taking the YP to the GUM clinic and his reasons for undertaking a STD

test. The Claimant was right to consider that he had been treated unfairly on 03 December 2018. However, it is not our function to determine the reasonableness of a dismissal in a case where the employee has insufficient continuity of employment. Unreasonable treatment is a relevant factor when considering the true reason for dismissal and we have factored into our deliberations as to motivation the fact that the hearing on 03 December 2018 was inherently unfair to the Claimant. Nevertheless, we conclude that the principal reason for the dismissal was not that he had made any protected disclosure.

186. In the circumstances the complaint of unfair dismissal fails.

[C] Post-employment detriment

187. The Claimant complains that Deborah McGinlay repeatedly called his new employer following his dismissal with the purpose of providing him with a negative verbal reference and end his employment. This is the substance of the allegation under Disclosure number 4 (incorrectly numbered 3) paragraph 6, **page 25**. Ms McGinlay does not dispute that she made an unsolicited call to the Claimant's new employer once she found out who he was working for. This new employer was Pinpoint recruitment, which had previously engaged Mr Patel. The Claimant was engaged in a recruitment role. We have concluded that this was a malicious act.

188. Mrs Callan, in her written submissions, paragraph 29 submitted that there was an expectation that a reference would be sought from a previous employer due to safer recruitment considerations and that this stemmed from Ofsted guidelines and local councils, according to Ms McGinlay. However, nothing to this effect was put before the tribunal by the Respondent.

189. We refer to our findings of fact in paragraph 112-113 and to our conclusions in paragraphs 171-172 on the making of a protected disclosure. Turning to the issue of detriment, we conclude that Ms McGinlay was attempting was to 'bad mouth' the Claimant to his new employer. In this respect, the Respondent has not satisfied us of the ground on which Ms McGinlay did this. It has not satisfied the burden on it under section 48(2). We conclude that Ms McGinlay was materially influenced by the fact that the Claimant had made allegations regarding Mr Patel's failure to carry out DBS checks (that allegation also containing the information set out in our findings above) and that he, the Claimant, was now working for the competitor organisation where Mr Patel had been successful as a recruitment consultant. We do not accept that they were calling Pinpoint as upstanding employers to find out what kind of role he was in and to ensure that he was not working with children. That was a bizarre assertion, given that they have Mr Patel working in a recruitment company in circumstances where he had been barred from teaching.

190. Mrs Callan, rightly in our view, accepted that where a former employer makes an unsolicited call to a former employee's current employer with a view to

giving an unsolicited negative reference, any reasonable worker would regard this as being a 'detriment' within the meaning ascribed to that word by the House of Lords in the case of **Shamoon**. The act of Ms McGinlay in contacting the Claimant's new employer is closely connected with the previous relationship of employment between the Respondent and the Claimant. Indeed, that relationship was given as the purported justification for making contact.

191. In light of that, we conclude that the Respondent subjected the Claimant to a detriment because he made a protected disclosure, namely PID 4 (see number (4) on page 7 of the list of issues).

192. Therefore, the Claimant's complaint under section 48 ERA 1996 to this limited extent succeeds.

[D] Holiday pay – complaint under Regulation 30 Working Time Regulations 1998

193. In its Response, the Respondent contended that the Claimant was paid £1,228.08 holiday pay, representing 8 days in respect of the Business Development Manager role and 30.5 hours in respect of the Senior Support Worker role.

194. The Claimant had been ordered to set out the details of how many holidays he was claiming for and in what amount (paragraph 1.2 of the case management orders of 01 May 2019, **page 36**). The Claimant did not set out those details. In a further case management order of 17 August 2020, the Claimant was again asked to provide the information (paragraphs 3.1.7 – 3.1.10, **page 75-76**).

195. This complaint fails. It fails because the Claimant gave no evidence on the matter. It does not get off the ground. There were no findings that we could make. We considered the document which the Claimant prepared for these proceedings, 'Particulars of Employment – verbal agreement of salary' but in the absence of evidence could make little sense of it. We also looked at the letter from the Respondent's accountant on **page 141**. We would add only that, having looked at the payslips, it appeared to the Tribunal at face value at least that the Claimant had been paid what he was entitled to.

Remedy

196. In light of our conclusion on the post-employment detriment complaint there will have to be a remedy hearing. The remedy will be limited to an award of compensation in respect of injury to feelings only. There is no financial loss which flows from the attempts by Ms McGinlay to provide a negative reference to the Claimant's new employer.

197. In an effort to assist the parties resolve the issue of remedy without having to resort to another hearing, we would provisionally assess the appropriate award

as being within the lower end of the lower Band of Vento, in the bracket of between £1,000 and £3,000. We would encourage the parties to put their differences behind them and make every effort to resolve the proceedings. They must write to the Tribunal within 21 days of the date on which these reasons are sent out, informing the Tribunal whether a remedy hearing is required.

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Employment Judge Sweeney

28 May 2021

APPENDIX

LIST OF ISSUES

Protected disclosures

I Did the claimant disclose information on the following occasions, viz:

(1) when he allegedly informed Karen Hudson and Deborah McGinlay in writing in the week commencing 11/06/2018 that Nikki Jefferson and Debra Tucker had disclosed to him that Julia Hall, a care worker in the employment of the respondent, had been buying “gifts” for a child in her care which could be deemed as grooming and were changing the behaviour of the child in a negative way.

(i) did the claimant believe that the information tended to show that the health and safety of a young girl in the care of the care worker was being endangered in that she was possibly being groomed?

(ii) did he believe that Deborah McGinlay was likely to fail to comply with a legal obligation to which she was subject by incorrectly dealing with a safeguarding allegation (that being that a criminal offence had been committed, was being committed or was likely to be committed; or that a miscarriage of justice has occurred, is occurring or is likely to occur; or that the health or safety of any individual has been, is being or is likely to be endangered; or that information tending to show any of the foregoing has been or is likely to be deliberately concealed)?

(iii) did he reasonably believe that any of the above alleged disclosures of information was made in the public interest?

(iv) did he reasonably believe that any of the above alleged disclosures of information tended to show the failures/breaches relied upon?

(v) if the claimant made a qualifying disclosure, was it a protected disclosure because it was made to his employer or other qualifying person as defined in ERA 1996 section 43C-H?

(vi) did Neville Rodgers fabricate allegations in order to discipline the claimant on 15/06/18?

(vii) were the said allegations brought against the claimant because of the alleged protected disclosure made on or about 11/06/18?

(viii) was the deduction of pay for the month of June 2018 done on the ground that he had made a protected disclosure?

(ix) was the complaint of detriment on the ground of having made a protected disclosure presented in time?

(x) if not, was it reasonably practicable for the claimant to have presented the complaint in time?

(xi) if it was not reasonably practicable to have presented the claim in time, what further period of time was it reasonable to have done so and was the claim presented within that time?

(2) Did the claimant disclose information about the health and safety fire checks allegedly not being completed correctly in multiple properties and issues with fire safety, such as not having the correct keys, defective fire doors and emergency lights being defective/missing to Neville Rodgers and Deborah McGinlay at or about the end of January or beginning of February 2018? Were there other alleged disclosures of the said information to Neville

Rodgers and Deborah McGinlay during meetings held to discuss costings and requirements, the dates of which are unidentified?

(i) did the claimant believe that the information tended to show that Neville Rodgers and Deborah McGinlay were both failing to comply with a legal obligation to which they were subject by breaching the health or safety of any individual which has been, is being or is likely to be endangered?

(ii) did he reasonably believe that any of the above alleged disclosures of information was made in the public interest because it was a place of work and also housed vulnerable children?

(iii) did he reasonably believe that any of the above alleged disclosures of information tended to show the failure/breach relied upon?

(iv) if the claimant made a qualifying disclosure, was it a protected disclosure because it was made to his employer or other qualifying person as defined in ERA 1996 section 43C-H?

(v) did Neville Rodgers accuse the claimant of getting involved in fire safety when it had nothing to do with him during the disciplinary meeting on 15/06/18?

(vi) were the said allegations brought against the claimant because of the alleged protected disclosures set out above?

(vii) was the complaint of detriment on the ground of having made a protected disclosure presented in time?

(viii) if not, was it reasonably practicable for the claimant to have presented the complaint in time?

(ix) if it was not reasonably practicable to have presented the claim in time, what further period of time was it reasonable to have done so and was the claim presented within that time?

(3) Were there disclosures of information when the claimant allegedly stated there were safeguarding concerns which were not being addressed correctly (a) on 30/09/18 when Deborah McGinlay allegedly cancelled agency staff to save money which it is alleged resulted in a young person not being supported in his home and his damaging the property. Did Ms McGinlay subsequently send a bill to Gateshead Council for the damage caused and try to get Ross Mendham to telephone Gateshead Council and inform them that the agency let the respondent down and failed to send staff? (b) on 01/10/18 when Kieran Patel allegedly worked unsupervised in a home around children; (c) on an unidentified date when Julie Curran allegedly drank on shift and drove a looked after child in a company car; (d) on 02/10/18 when Julie Curran allegedly allowed a looked after child, a young offender, not in the care of the respondent to sleep in her car outside the home; and (e) on an unidentified date when Neville Rodgers allegedly suggested to Ross Mendham in a meeting that a young person's drug debts could be paid off to ensure "longevity" in a spot placement contract with a Council using Forever Care's services as the young person owed another young person in the service.

(i) did the claimant disclose information in respect of the allegations (3)(a) to (e) to Neville Rodgers on undisclosed dates?

(ii) did the claimant disclose information in respect of the allegations at (3)(b) to (d) to Deborah McGinlay in meetings on undisclosed dates?

(iii) did the claimant disclose information in respect of the allegations at (3)(a) to (e) formally with Karen Hudson on 05/10/18?

(iv) did the claimant believe that the information tended to show that there had been a failure, was a failure, or was likely to be a failure to comply with a legal obligation to which Neville Rodgers and/or Deborah McGinlay were subject, and/or that the health or safety of any individual had been, was being or was likely to be endangered, and that information tending to show any matter falling within the said matters had been or was being or was likely to be concealed?

(v) did the claimant reasonably believe that any of the above alleged disclosures of information was made in the public interest because looked after children were allegedly being put at preventable risk due to greed and unprofessional conduct due to friends of management placing young people at risk?

(i) did he reasonably believe that any of the above alleged disclosures of information tended to show the failure/breach relied upon?

(ii) if the claimant made a qualifying disclosure, was it a protected disclosure because it was made to his employer or other qualifying person as defined in ERA 1996 section 43C-H?

(iii) was the claimant sent by Karen Hudson temporarily to a solo placement property to undertake the role of a Senior Support Worker because of the alleged protected disclosures made above at (3)(a)-(e)?

(iv) In or about October 2018, was the alleged request by Neville Rodgers for the claimant to choose by 07/11/18 between being a

registered manager of a children's home or being demoted to Senior Support Worker done because of the alleged protected disclosures at (3)(a) to (e)? Was the alleged demotion to Senior Support Worker done on the ground of the said disclosures?

(v) were the complaints of detriment on the ground of having made a protected disclosure presented in time?

(vi) if not, was it reasonably practicable for the claimant to have presented the complaints in time?

(vii) if it was not reasonably practicable to have presented the claims in time, what further period of time was it reasonable to have done so and was the claim presented within that time?

(4) Did the claimant verbally disclose information about Kieran Patel (Forever Care Recruitment) that he was allegedly not carrying out safer recruitment checks (work references and enhanced DBS checks) on staff being sent to the home in which the claimant was Senior Support Worker to Deborah McGinlay on a date between 05/11/18 and 03/12/18?

(i) did the claimant believe that the information tended to show that Kieran Patel was failing to comply with an unidentified legal obligation to which he was subject? Did he believe that Kieran Patel and Deborah McGinlay had failed, were failing or were likely to fail to comply with an unidentified legal obligation to which they were subject? Did he believe that the health or safety of any individual had been, was being or was likely to be endangered or that information tending to show any matter falling within the above paragraph (4) had been, was being or was likely to be deliberately concealed?

(ii) did the claimant reasonably believe that the alleged disclosures of information in (4) above was made in the public interest because unknown adults who had allegedly not been subject to safer recruitment checks were working alone and untrained with vulnerable looked after children?

(iii) did the claimant reasonably believe that any of the above alleged disclosures at (4) tended to show the failure/breach relied upon?

(iv) if the claimant made qualifying disclosure, was it a protected disclosure because it was made to his employer or other qualifying person as defined in ERA 1996 43C-H?

(v) was the claimant accused of getting involved in matters which had nothing to do with him in the meeting on 03/12/18 at which his employment was terminated? Was he threatened with a bad reference if he reported the respondent? Did Deborah McGinlay telephone the claimant's new employer to tell them about allegedly false allegations against the claimant?

(vi) were any of the matters done on the ground that he had made a protected disclosure?

<u>Automatically unfair dismissal</u>

1. Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

<u>Holiday Pay</u>

2. What was the claimant's holiday entitlement for the period 01/01/18 to the date of dismissal on 03/12/18?
3. How many holidays/hours of holiday were outstanding at the time of the claimant's dismissal?

4. Was all outstanding holiday entitlement paid to him on termination of his employment?