EMPLOYMENT TRIBUNALS

Claimant: Miss N Ibrahim

Respondent: Miss Irene Nakamatte (1**)**
Person Centred Care Company Ltd (2)

Heard at: Sheffield **On:** 6 and 7 June 2022 and 8 June in chambers

Before: Employment Judge Miller
Ms H Brown
Mr M Brewer

Representation
Claimant: In person
Respondents: No attendance

RESERVED JUDGMENT

1. The claimant's claim against the second respondent that she was automatically unfairly dismissed pursuant to section 103A Employment Rights Act 1996 for making a protected disclosure is well founded and succeeds. The second respondent shall pay the claimant the sum of **£5,668** by way of a compensatory award under section 123 Employment Rights Act 1996.

2. The claimant's claim against the first and second respondents that she was subject to a detriment under section 47B Employment Rights Act 1996 for making a protected disclosure is successful and the respondents shall pay the claimant the sum of **£2000** for injury to feelings.

3. The claimant's claim that she was subjected to unauthorised deductions from wages by the second respondent is well founded and succeeds. The second respondent shall pay the claimant the gross sum of **£2862.60.**

4. The second respondent failed to provide the claimant with a written statement of her main terms of employment in accordance with s 1 Employment Rights Act 1996. The second respondent shall pay the claimant the sum of **£2176** pursuant to s 38 Employment Act 2002.

REASONS

Introduction

1. On 5 August 2021, the claimant made a claim to the employment tribunal following a period of early conciliation from 30 July 2021 to 3 August 2021.

2. The claimant's claims were not clear but included unfair dismissal, although on the claimant's account she had been working for the second respondent only since 16 June 2021 until 27 July 2021. The claimant also said that she had never been paid. On 19 August 2021 in response to correspondence from the tribunal the claimant stated that she was dismissed because of whistleblowing

3. The respondents' responses were both produced by a Dr Nelson Kaggwa and the first respondent's response included an affidavit produced by the first respondent. In summary, they denied that the claimant had ever been employed by the second respondent.

4. The respondents did not take any further part in proceedings. They in fact made a number of incoherent and misplaced allegations against the tribunal and threatened the tribunal administration with legal action.

5. There were two case management hearings. The first was on 8 November 2021 before EJ Knowles at which the second respondent's name was amended to Person Centred Care Company Ltd and orders were made for the claimant to produce further information about her claim. It appears that the claimant mentioned whistleblowing at that hearing as it was treated as an amendment application to be determined at the next preliminary hearing. The claimant provided some additional information about her claim on 22 November 2021

6. There was a further preliminary hearing on 21 March 2022 before EJ Rogerson where the issues were clarified. They are set out in the appendix to this judgment. The claim was identified as being for :

    a. Automatically unfair dismissal because of a protected disclosure

    b. Detriment because of a protected disclosure

    c. Unauthorised deductions from wages

    d. Failure to provide a written statement of main terms of employment

7. EJ Rogerson determined the amendment application and included the claim of automatically unfair dismissal. The reasons for that were that there had been a mislabelling of asserted facts. In light of that decision and the email of 19 August 2021 setting out the basis of the claimant's claim, we conclude that that application to amend was made on 19 August 2021 and all other claims were included in the claimant's claim form.

8. The claimant relies on three alleged protected disclosures:

    a. 14 July 2021 to Claire Snowden at the Care Quality Commission (CQC)

    b. 26 July 2021 to the first respondent in a discussion

    c. 27 July 2021 to the CQC including to Claire Snowden

9. The claimant says she was dismissed by text by Dr Kaggwa on 27 July 2021 and that included a reference to her discussions with the CQC. She says that the detriment she was subject to for the alleged protected disclosures was not being paid.

10. The respondents do not dispute in their responses that the claimant was not paid but they say that she was never employed by them.

The hearing

11. On the first day of this hearing, there was a delay in producing the claimant's documents. We therefore sent copies of the documents to the respondents on the first day and reminded them of their right to attend the hearing which would commence on the second day. We warned them that if they did not attend, a decision may be taken in their absence. They did not attend.

12. The claimant produced a small number of relevant documents which we read and refer to where relevant. The claimant had not produced a witness statement, although there was a detailed email setting out matters relating to her alleged protected disclosures that the claimant had sent to the tribunal on 22 November 2021. We decided that it was in accordance with the overriding objective to hear oral evidence from the claimant and we did so by asking her questions.

13. The claimant requested a reserved judgment and we agree that it is proportionate to produce one.

Facts

14. The claimant is a nurse and had been previously working in Sweden. She moved to the UK and had been working in nursing homes in South Yorkshire. The claimant's evidence about her recent employment was not perfectly clear, but we conclude that she had been working as a registered manager for another care provider and left their employment because she was unhappy with the way they conducted their business. The claimant was put into contact with Mr Waseem Althulaya about starting a job as a manager.

15. At some point after Ramadan in 2021, (which ended on 12 May 2021) the claimant met Mr Althulaya with Mr Nelson Kaggwa. There was a discussion at which, we find, it was agreed that the claimant would work for the second

respondent as a manager. The claimant was told, or at least understood, at that meeting, that she would be working for the second respondent which was run or owned by Mr Kaggwa. She would be dealing, however, with Mr Althulaya who, she was told by Mr Kaggwa worked for Mr Kaggwa. It was agreed at that meeting that the claimant would become registered with the CQC as a registered manager. Thereafter the claimant dealt with Mr Althulaya. We find that the claimant genuinely and reasonably believed that Mr Althulaya worked for Mr Kaggwa and that Mr Althulaya was representing himself as working for and on behalf of the second respondent in his dealings with the claimant.

16. The second respondent provided care services for people in their own homes. The first respondent is the sole controlling member of the second respondent which is a company limited by guarantee.

17. It is not disputed that the claimant became registered with the CQC. The email from Ms Claire Snowden (of the CQC) dated 19 April 2022 confirms that the claimant was registered as manager of the second respondent from 6 July 2021 following an application made on 12 June 2021. She says “On the same date [12 June 2021] CQC received a notification from the provider, Person Centred Care Company Ltd. confirming they were appointing you as registered manager of Person Centred Care company”.

18. The first respondent’s affidavit seems to say that employment was dependant on the claimant becoming registered with the CQC and the second respondent obtaining adequate references and employment history for the claimant. The first respondent says that the claimant did not fill in an application form (we assume for a job) until 15 July 2021 and soon after that indicated that she intended to set up her own company. The first respondent says that the claimant was not contracted and nor did she carry out any work for the second respondent. Confusingly, the first respondent says “she suggested that the directors should take money out of their own pockets to maintain and pay her salary” and “… it was explained to Nuria [the claimant] that “pcccl has to sell its services of care in order to pay her”… “I can confirm that Nuria was never in any way employed; as she would not actualise the process or complete a probation period”.

19. The claimant says that she was employed by the second respondent from 16 June 2021. This was the date that she says she was first registered as a manager with the CQC.

20. The documentary evidence from Claire Snowden is that the claimant’s registration with the CQC as Registered Manager was completed on 6 July 2021 and we prefer that evidence. However, the claimant appeared to say that she was accepted as a manager (rather than a registered manager) from 16 June 2021. We conclude that the claimant was accepted as a fit and proper person to work in care services generally by the CQC from this date on the basis of her recent work history in the same care sector.

21. In any event, we find that by 16 June 2021, there was a clear agreement between the claimant and Mr Althulaya that the claimant would work as a manager for the second respondent. Regardless of when the CQC approvals were completed, it seems inherently unlikely to the tribunal that the second respondent would have supported the claimant's application to be registered as a manager with them had she not been employed by them and this is consistent with the claimant's evidence of the first meeting.

22. There was also an agreement on pay at that first meeting. The claimant said she would be paid the normal rate for a registered manager which she understood to be between £2500 and £3000 per month. In the absence of any evidence to the contrary, and as this does not appear in the Tribunal's experience to be an unreasonable sum, we find that there was an agreement that the claimant would be paid at least £2500 per month and we think it more likely than not that this was the agreed starting salary.

23. Some time after that meeting, the claimant started some work. The claimant's evidence was a little confusing at this point. We understand that the claimant believes she was taken to the offices of what turned out to be a different company – Hallam Homecare – although the claimant did not realise this at the time. She was given work to do by Mr Althulaya. The claimant said that she was told by Mr Althulaya (who she still believed to be working for the second respondent and Mr Kaggwa) that she needed to visit and check on a client.

24. The claimant went to visit that client. A number of issues arose from this.

25. Firstly, the claimant was very unhappy with the other carers who were caring for the client. She said that they did not use the handling equipment but lifted the client manually, they had clearly had no training, they had no uniforms or badges, had not had DBS checks and at least one of the carers could not write.

26. Secondly, the claimant filled in Daily Recording Sheets (and we have seen copies) that identified the care company as Hallam Home Care. Hallam Home Care was Mr Althulaya's business. The claimant said, and again we accept, that she was told by a manager for Hallam Home Care that the second respondent was not Mr Althulaya's company but Mr Kaggwa's.

27. The claimant questioned these issues and, she said, this was when Mr Althulaya told her that the second respondent would be taking over the care of this client. The claimant said that she tried to raise these issues with Mr Althulaya but he was evasive. The claimant asked for access to the computer and emails so that she could see correspondence from the relevant Local Authority about the client so that she could be satisfied about the transfer of provider.

28. The claimant said she was not given the password to access the emails and she did not see any client files.

29. The claimant also said that Mr Althulaya would arrange to see her to discuss these matters and then not turn up, or he would keep her waiting a very long time so that she never got to speak about them. He would then, she said, send a text or message afterwards asking why she did not meet him. Eventually, the claimant said she would not do this work any more. The claimant provided care to this client until about 1 July 2021 – she said she felt compelled to continue to care for the client until arrangements were made to take over because of her duty of care to them. She was eventually paid as a carer for that short period of work by Hallam Home Care. We do not know how much she received.

30. We accept the claimant's evidence about this. It sounds surprising, or alarming, that a care company should conduct itself in such a way but we found the claimant to be a consistent and plausible witness. We have also had regard to the bizarre and inappropriate responses the respondents have submitted to the claimant's claims. The respondents' conduct in submitting those responses simply adds weight to the claimant's version of events.

31. It is, again, unclear what happened next except that the claimant said, and we accept, that she was then trying to do her job. At some point, the claimant met with the first respondent and her husband, Abdulnoor. The claimant said that the first respondent told her that Mr Althulaya had lied to her – although it us unclear what about – and that they were not on talking terms.

32. We conclude that from the beginning of July to 14 July the claimant was attempting to do her job. The claimant's evidence, which we accept, was that she was prevented from doing so by the first respondent in the following ways:

    a. She was denied access to the office unless the first respondent was there, but the first respondent also worked nights and slept in the day so was frequently not available

    b. The claimant was denied access to the computer and emails because the password was withheld from her

    c. The claimant did not see the client files.

33. Eventually, the claimant said, she felt she had no choice but to contact the CQC about the issues she was facing. The claimant mentioned some other issues that caused her concern at the time including that she observed another carer keeping a client files at her house.

34. The first alleged protected disclosure was on 14 July 2021. The claimant's email to the tribunal dated 22 November 2021 setting out further information says:

"The disclosure I first made was on 14/7/2021 to Claire Snowden (CQC inspector). This call was to inform Claire I did not have access to the office and did not have access to work email (did not have the password) needed for me to fulfil my duties and commitment so that I get to observe cqc requirement. Failure to report this change will lead to neglect/safeguarding".

35. In oral evidence the claimant said that she tried to raise the various problems she had witnessed with Mr Kaggwa who, effectively, just put her off. He said have patience with the first respondent – he would message her – but it appears that nothing changed. At this point, the claimant said that she was still being denied access to the office, the client files and the email, she was witnessing carers who were not DBS checked, had not had manual handling training and were generally working in a way she perceived was wrong.

36. Consequently, the claimant contacted Claire Snowden by telephone on 14 July 2021. The claimant told Ms Snowden that she was being denied access to the office and files and email. The claimant confirmed in oral evidence that she had concerns about the risk to the people receiving care from these breaches – she would not know what their care plans were or anything about them to be able to provide appropriate care or comply with the local authority arrangements.

37. The claimant had a second reason for wanting to tell Ms Snowden about this, and that was that she believed that the first respondent had told Ms Snowden that the claimant was managing the second respondent and that Ms Snowden should contact the claimant about the upcoming CQC inspection. The claimant said that the first respondent had sent an email from the claimant's account (to which the claimant did not have the password) to Ms Snowden about this.

38. We find that the reasons the claimant contacted Ms Snowden about her concerns were to comply with her obligations to the CQC to report such matters; to clarify that she was not in a position to properly manage the company because of her restricted access; and to protect the welfare of the second respondent's clients.

39. There was then an inspection visit by Ms Snowden on 16 July 2021. At that inspection visit, the claimant said that the first respondent agreed with Ms Snowden that she would work with the claimant to fix the identified problems The issues are set out in the CQC inspection report referred to in an email of 19 April 2022 from Ms Snowden to the claimant and which is publicly available.

40. That report records a number of findings.

"The service had two managers registered with CQC. This means that they and the provider are legally responsible for how the service is run and for the quality and safety of the care provided. One of the registered managers

had only recently been employed by the provider at the time of this inspection".

41. We find that this refers to the claimant being recently employed by the second respondent.

42. The second respondent was found to be deficient in a number of aspects of its record keeping.

43. The second respondent did not use safe recruitment procedures or consistently undertake DBS checks.

44. The second respondent was graded as inadequate in respect of leadership. This related to the acts of the claimant as registered manager and the first respondent.

45. Overall, we find that the CQC report is broadly consistent with the evidence the claimant gave to the tribunal at the hearing. We also find that the first respondent and the claimant must have told Ms Snowden, or acted in a way from which Ms Snowden could reasonably have inferred, that the claimant was employed by the second respondent as a registered manager.

46. Despite the first respondent's assurances, the claimant said that matters did not change. The claimant tried to engage with the first respondent and Mr Kaggwa to address the problems identified by the CQC and the claimant but she was unsuccessful. Throughout this period from 14 July 2021 to 27 July 2021, the claimant was still unable to access her emails, client files or the office without the first respondent in attendance. The first respondent was still, as we understand it, working nights and therefore not often available during the day. The claimant's working hours were normal office hours Monday to Friday.

47. The next alleged protected disclosure was on 26 July 2021. The claimant's email to the tribunal dated 22 November 2021 setting out further information says:

"I had a meeting with Irene on 26/07/2021 Where i demanded politely for way forward. I have told her she promised to work with me when Claire was in the Office What is your plan now? I was friendly with her all the time. She finally told me the reason is They cant pay me and i should look for a job and work with her for some hours. I have asked her to email cqc of the changes and she was not ready to do that. I have asked irene nakamatte for the password to access the email and she said her husband has changed the password and she does not know herself. I asked irene nakamatte Send me the password when she meets the husband later. Irene nakamatte said there is someone else who has access to tre work email, i asked Irene who that person was! I asked is it Nelson kaagwa? She said no! I asked again is it your husband? She said someone else. I called cqc Claire snowden on the following day 27/07/2021, told her What i Irene told me and added Irene is not letting me do my duty when Irene is working nightshift somewhere else. To me This is negligence of duty. Cqc Claire

snowden told me if anything goes wrong i Will be equality help (sic) accountable". (Typos are copied from the original).

48. In oral evidence, the claimant said that in this conversation she told the first respondent that she had still not been given email access despite the first respondent telling Ms Snowden that they would work together. We find that in the course of this conversation, the claimant did tell the first respondent that she did not have access to her emails. The claimant was clear that the reason she needed access was to do her job properly for the reasons set out above – to protect herself and to ensure that proper care was given to the second respondent's clients.

49. We also find that the first respondent said that the second respondent could not pay the claimant but that she should carry on working for them. The claimant's account is consistent with that set out in the first respondent's affidavit – the first respondent refers to the directors paying the claimant out of their own pockets. In oral evidence, the claimant said that the reason she was not paid was because she believed the respondents were testing her to see if she would break the law – by which we understand whether she had a strict approach to compliance with registration requirements or was prepared to go along with how they wanted to run the business. The claimant said that because she challenged the respondent's actions, they did not pay her and dismissed her.

50. We have not heard any evidence from the respondents about this assertion – as they did not attend – but as set out above such an approach would not be inconsistent with the way in which the respondents responded to these proceedings. This approach is also consistent with the significant failings set out in the CQC report. We think, therefore, in the absence of any evidence to the contrary and on the balance of probabilities that the respondents did have no intention of paying the claimant until they were satisfied that she would be prepared to work in the same way they did.

51. We also find that it was the decision of the first respondent that the second respondent would not pay the claimant.

52. The final alleged protected disclosure was on 27 July 2021. The claimant's email to the tribunal dated 22 November 2021 setting out further information refers to the claimant calling Claire Snowden on 27 July 2021 as above. It also says:

"i called Claire on her phone on all the occasion but i did emailed her the very last time to summarise the contact i had with her and thanked her for feedback. i said i did not have access to the Office and email. I told Claire Irene nakamatte is working another job busy and not letting me do my job. I told Claire there is negligence. I told Claire irene nakamatte told me They cant pay me and i should fine another job and still work for them some hours when They told cqc i Am managing person centered now. There were a number of safeguarding issues in the inspection of which i dont wanna get into as Claire has already seen. I have stated DBS and lack of training.

I always contacted Claire because she was the one WHO was cqc Inspector. Claire snowden.

I first had contact with Claire on 14:07:2021 and later on 27/07/2021. I had contact with the main cqc head Office on phone after 27/07/2021".

53. In oral evidence, the claimant said that on or around 27 July 2021 she approached Mr Kaggwa and gave him a final opportunity to resolve the issues she had raised with the first respondent on 26 July – about access to the office, files and emails – or she felt she would have no choice but to raise the issues again with the CQC. Mr Kaggwa again asked the claimant to be patient. Mr Kaggwa was not pleased that the claimant threatened to contact the CQC.

54. We find that the claimant did contact the CQC on 27 July 2021 – both Ms Snowden and the head office – and we find that she told Ms Snowden and the CQC that she still did not have access to the office and emails and that the first respondent was working nights in a different role so was not able to fulfil her role at the second respondent properly or safely.

55. We find that the reason the claimant did this was because she wanted matters to improve for the second respondent and their clients so that they could provide and receive safe and appropriate care.

56. On 27 July 2021, the claimant received a text from Mr Kaggwa. We set it out in full:

"Nuria I m shocked It is unusual and extraordinary that you v taken the steps to discuss the company negatively with CQC before you are contracted!!!

You are telling me in your message you are interested in starting your own company.

I see no problem in you starting your own company

The sad thing is you led us on to inform CQC that you were willing to work for PCCCL

You have made choices: It is clear you are not interested in PCCCL. But there is no problem I will accept your chosen position and inform the other directors by copying them this message so they are aware of what you say you v told CQC as they now have to find a new registered manager.

It is disappointing you left before you started. But it is understood you v to put yourself first".

57. It is obvious, in our view, that the reason that Mr Kaggwa no longer wished to employ the claimant is because of her discussions with the CQC. We have not seen the previous message, and had the respondents attended they might have had a different case to put. However, in our view, it is

apparent that in the previous message the claimant has referred to her contact with the CQC (she had told Mr Kaggwa in person in any event) and in light of the evidence we heard and our findings above we conclude that the claimant must have been saying that she could no longer work for the second respondent in light of its failure to address the issues that she and the CQC had undoubtedly been raising.

58. The fact that the claimant intended to set up her own company (if she did) is not material.

59. We also do not accept the characterisation in this text that the claimant had not started working for the second respondent by this time. This is inconsistent with the information given to the CQC and our findings above. It may have been a misunderstanding of the legal position by Mr Kaggwa or it might have been a deliberate attempt to mis-portray the position in anticipation of these or similar proceedings (as the claimant said Mr Althulaya frequently did). Either way, it does not change our findings above.

60. The claimant did not receive any payments at all after the termination of her employment.

61. The claimant obtained further work after 6 weeks earning £1500 per month gross, which she said was £1000 per month net. This does not, on the face of it, seem quite right, but we do not know what the claimant's tax or other status is, so we accept her evidence on this. The claimant said that she could earn extra money with her new job if she decided to work extra hours at the weekend. Her new job is care co-ordinator, rather than registered manager.

62. The claimant also described how she had been left feeling by the respondent's actions. She said that she had been forced to take medication to help her sleep which she had never done before and had been left feeling anxious. In her email to the tribunal, the claimant said

"I made number of claims from the beginning i checked the form i sent to tribunal, personal injury on my feelings was included as i was subject to anxiety and insomnia This is very important for me as i can not take back how irene nakamatte made me feel for a whole month and plus. I Will send the prescription of need arise.

It was never my intention to cause stress to anybody i was willing to just walk away without pay and job if Irene nakamatte would have agreed to inform cqc the reason for my leaving was lack of salary payment from their end and nothing to do with me. I even asked irene nakamatte to email me about lack of Payment so that i put that in the cqc cancellation form. Its a requirement for managers who are leaving company or post to state in the form the reason for your leaving. I was left No choice but to contact Acas and the tribunal to resolve this Matter once and for all".

63. The claimant was clear at the hearing that money was not the most important issue for her. Her primary concern was to be able to clear her

name with the CQC and be able to obtain further work and not jeopardise her professional status. The lack of payment of wages was not a significant feature of the claimant's issues at the preliminary hearing as far as we can tell from the case management order and nor was it the focus of her evidence at the hearing. The claimant's main frustrations appear we think, to have been the respondents' failures to address her concerns and provide what she would consider an acceptable service to their clients.

64. The claimant was also, understandably, frustrated and concerned about her reputation before the CQC. We find therefore, that the claimant did experience anxiety and sleeplessness but that this was only caused to a small extent by the failure of the respondents to pay her wages.

Law

Employment status

65. Section 230 of the Employment Rights Act 1996 as far as relevant says:

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act "employment"—

(a) in relation to an employee, means (except for the purposes of section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and "employed" shall be construed accordingly.

[(6) This section has effect subject to sections 43K[, 47B(3) and 49B(10)] [, 49B(10) and 49C(12)]; and for the purposes of Part XIII so far as relating to Part IVA or section 47B, "worker", "worker's contract" and, in relation to a worker, "employer", "employment" and "employed" have the extended meaning given by section 43K.]

[(7) This section has effect subject to section 75K(3) and (5).]

66. In respect of employment:

67. In *Ready Mixed Concrete v Minister of pensions* [1968] 2 QB 497 MacKenna J set out the following well known principles:

"A contract of service exists if these three conditions are fulfilled. (i) the servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.(ii) he agrees, expressly or impliedly, that in the performance of that service he will be subject to the others control in a sufficient degree to make that other master. (iii) the other provisions of the contract are consistent with its being a contract of service".

68. In this case, there are no written terms – the respondent denies that there was any contract at all. It is trite law that a contract of employment is not required to be in writing to exist. There must simply be agreement, intention to form a legal relationship, consideration and sufficient clarity of terms.

69. In respect of limb (b) – worker status – the questions are whether there is a requirement for personal service and whether the respondent is a client of the claimant's business.

70. In our view, the respondent argument is that the claimant never got beyond the status of potential employee – there is no argument that C did work for R under some other arrangement. Either there was a contractual agreement for the claimant to work for the respondent or there was not.

Protected disclosures

71. The law relating to protected disclosures is set out in Part IVA of the Employment Rights Act 1996.

72. Section 43A (Meaning of "protected disclosure") provides:

> In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

73. Section 43B (Disclosures qualifying for protection) says, as far as is relevant:

> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

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

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

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

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

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

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

74. Section 43C (Disclosure to employer or other responsible person) provides:

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

(a) to his employer..

75. Section 43F - Disclosure to prescribed person provides

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

(a) makes the disclosure . . . to a person prescribed by an order made by the Secretary of State for the purposes of this section, and

(b) reasonably believes—

(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

76. (2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

77. The CQC are such a prescribed person by virtue of the Public Interest Disclosure (Prescribed Persons) Order 2014

78. This means that in order to be protected, the relevant disclosure must satisfy all of the following requirements:

a. It must be the disclosure of information

b. The worker disclosing the information must reasonably believe both:

   i. That the information tends to show one of the listed matters; and

   ii. That the disclosure is in the public interest.

c. The disclosure must also be made to an appropriate person – namely the worker's employer or a prescribed person. It is not disputed that the alleged disclosures were made or the claimant's employer and the CQC.

79. The tribunal considered *Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)* 2018 ICR 731, CA in respect of the question of what it means to say that the worker has a reasonable belief that the disclosure is made in the public interest. There is, in effect, a two-stage test for the tribunal in determining this question:

d. At the time of making the disclosure, did the worker actually believe that the disclosure was in the public interest; and

e. If so, was that belief reasonable.

80. It was also explained in *Chesterton* that "while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it".

81. Finally, in respect of protected disclosures, it was held in *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436 at paragraphs 35 and 36 that

> *"35. The question in each case in relation to s 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]'. Grammatically, the word 'information' has to be read with the qualifying phrase, 'which tends to show [etc]' (as, for example, in the present case, information which tends to show 'that a person has failed or is likely to fail to comply with any legal obligation to which he is subject'). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in sub-s (1). The statements in the solicitors' letter in Cavendish Munro did not meet that standard.*
>
> *36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in s 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global at [8], this has both a subjective*

and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief".

82. In respect of each of the disclosures, therefore, the claimant must have actually disclosed sufficient factual information to be capable of showing that that one of the listed matters in s 43B(1) was occurring.

Unfair dismissal

83. The claim that the claimant is bringing is that she was unfairly dismissed under section 103A of the Employment Rights Act 1996. This says

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 protected disclosure.

39. In respect of the causal link between any disclosures that claimant makes and the reason for his dismissal, in a case where the claimant has less than 2 years' service, the burden of proving that the reason she was dismissed was the making of protected disclosures falls to the claimant. (*Parsons v Airplus Ltd* UKEAT/0111/17/JOJ)

40. In *Abernethy v Mott, Hay and Anderson* [1974] ICR 323,330,Cairns LJ set out the well-known explanation of what the employer's reasons for dismissal means:

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

41. In this case, the sole question (in respect of this claim) for the Tribunal is, if the claimant was an employee, whether the reason for the claimant's dismissal was because she made protected disclosures.

42. The remedies for unfair dismissal are set out in sections 112 to 124A Employment Rights Act 1996. In this case, the claimant is claiming compensation. Section 119 provides that a successful claimant shall be entitled to a basic award calculated by reference to any employment of at least one year. The claimant was employed for less than a year so that those provisions do not apply.

43. Section 123 provides for a compensatory award. The compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the losses sustained by the claimant. Compensation is not payable for unfair dismissal for injury to feelings. The tribunal can reduce the award if the claimant has contributed by her conduct to the dismissal.

44. The claimant has a duty to mitigate her losses.

Detriments

45. The law relating to detriments is set out in Part V of the Employment Rights Act 1996.

46. Section 47B (Protected disclosures) 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.

47. Detriment is not defined in the statute. However, it has a wide meaning and includes being put at a disadvantage. It does not necessarily have to be an economic disadvantage and should be considered from the worker's perspective.

48. In respect of bringing a claim of detriment on the grounds of making a protected disclosure, section 48 (Complaints to employment tribunals) provides

> (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
>
> (2) On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

49. This means that it is for the employer to show the ground on which any act or deliberate failure to act was done. This is explained in Volume 14 of the IDS handbook as follows:

> "it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure".

50. However, in *Ibekwe v Sussex Partnership NHS Foundation Trust* UKEAT/0072/14/MC, HHJ Clarke held

> "I do not accept that a failure by the Respondent to show positively why no action was taken on the letter of 5 April before the form ET1 was lodged on 12 June means that the section 47B complaint succeeds by default (cf. the position under the ordinary discrimination legislation, considered by Elias LJ in Fecitt). Ultimately it was a question of fact for the Employment Tribunal

as to whether or not the 'managerial failure' to deal with the Claimant's letter of 5 April was on the ground that she there made a protected disclosure".

51. In *Abernethy v Mott Hay and Anderson* [1974] IRLR 213, it was held that 'A reason for [an act or omission] is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to [act or refrain from acting]'

52. In *Fecitt v NHS Manchester* [2012] IRLR 64 Lord Justice Elias held "In my judgment, the better view is that s.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. If Parliament had wanted the test for the standard of proof in s.47B to be the same as for unfair dismissal, it could have used precisely the same language, but it did not do so".

53. This means that if the claimant is able to show that she made protected disclosures, and that she was subject to a detriment the burden moves to the respondent to show the reason that caused the respondent to subject the claimant to the detriment and that the reason for the detriment was not materially influenced by any protected disclosures made by the claimant. However, a failure to show the reason for the detrimental act does not automatically mean that the clamant succeeds by default. There must still be some evidence from which the Tribunal could conclude that the detrimental act was materially influenced by a protected disclosure.

54. Section 49 Employment Rights Act 1996 provides that where a claim of detriment is successful, the tribunal shall make a declaration to that effect and may award such compensation as is just and equitable, in all the circumstances. The tribunal can award compensation for injury to feelings arising from the detriment.

55. We have had regard to the presidential guidance on "Employment Tribunal awards for injury to feelings and psychiatric injury following De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879". That says, at paragraph 10, as far as is relevant

"…in respect of claims presented on or after 11 September 2017, and taking account of Simmons v Castle and De Souza v Vinci Construction (UK) Ltd, the Vento bands shall be as follows: a lower band of £800 to £8,400 (less serious cases); a middle band of £8,400 to £25,200 (cases that do not merit an award in the upper band); and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000".

56. That guidance has been regularly amended and the relevant amendment dated 26 March 2021 says:

"In respect of claims presented on or after 6 April 2021, the Vento bands shall be as follows: a lower band of £900 to £9,100 (less serious cases); a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600".

57. In *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871 the Court of appeal gave guidance on damages for injury to feelings. They said:

"Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.

iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case".

58. They also said:

"Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury".

Unauthorised deduction

84. Section 13 of the Employment Rights Act 1996 provides, as far as relevant:

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

85. The tribunal is entitled to determine the terms of the claimant's contract to the extent necessary to identify what the claimant should have been paid. However, if there was no amount contractually payable, the tribunal cannot determent what should have been agreed, or what would have been a fair or reasonable rate of pay. The tribunal cannot make an award for loss of opportunity under these provisions – only determine what ought to have been paid.

86. A claim for unauthorised deductions must be brought within three months of the deduction or the last in a series of deductions. In this case, however, the period between the claimant ostensibly starting work and bringing the claim is less than three months so no such issues arise.

87. Section 24 Employment Rights Act 1996 provides that where the tribunal finds that there has been an unauthorised deduction, they shall make a declaration to that effect and order the employer to pay the amount of any deduction and compensation for any financial losses arising in consequence of the deduction,

Failure to provide a written statement

88. Sections 1 and 4 of the Employment Rights Act 196 provide that an employer must provide a worker with a written statement of the main terms of their employment and any changes to them. They set out the information that must be provided in there. As the respondent denies that the claimant was ever employed, it is not disputed that no such statement was provided so it is not necessary to set out the prescribed information.

89. Section 38 Employment Act 2002 says

(2) If in the case of proceedings to which this section applies—

(a) the employment tribunal finds in favour of the [worker], but makes no award to him in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the [worker] under section 1(1) or 4(1) of the Employment Rights Act

1996 (c 18) (duty to give a written statement of initial employment particulars or of particulars of change) [or [(in the case of a claim by an employee)] under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday)],

the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the [worker] and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the [worker] in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the [worker] under section 1(1) or 4(1) of the Employment Rights Act 1996 [or [(in the case of a claim by an employee)] under section 41B or 41C of that Act],

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and

(b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

(6) The amount of a week's pay of [a worker] shall—

(a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c 18), and

(b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

90. It is for the respondent to show that there are exceptional circumstances under subsection (5). This section applies to the proceedings in this case.

Conclusions

91. We address our conclusions by reference to the list of issues.

Employment status

1.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

1.2 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

92. In our judgement, the claimant was an employee of the respondent from 16 June 2021. The claimant entered into an agreement with the respondent to work for them as a registered manager and she was held out as such by the respondents to the CQC. There is no other explanation for the claimant's involvement with the respondents. The fact that she did some work – albeit inadvertently – for Hallam Home Care during her employment and was remunerated separately for that is not relevant.

93. The fact that the agreement was, or may have been, reached with Mr Althulaya does not affect this. Mr Althulaya had ostensible authority to enter into the contract with the claimant on behalf of the second respondent. She was told by Mr Kaggwa and Mr Althulaya that that was the case and there was no reason for her to question this.

94. The relationship between the claimant and the respondents was such that she was under their control. She was given a computer by them and was directed what to do. The claimant had also been provided with a uniform by the second respondent which she brought to the hearing on the second day. The fact of their control is ironically demonstrated by the fact that they restricted her access to their office, files and email systems.

95. There was also mutuality of obligation – the respondents clearly expected the claimant to work for them as they told the CQC that the claimant was the registered manger and would attend and conduct the inspection on their behalf, albeit that the claimant in the end told the CQC that she would attend with the first respondent because of the difficulties she was having.

96. In our judgment it was a term of the claimant's employment contract that she would work Monday to Friday normal office hours and be remunerated at the gross sum of £2500 per month for the reasons set out above.

Protected disclosure

97. Did the claimant make one or more qualifying protected disclosures as defined in section 43B – 43F of the Employment Rights Act 1996?

98. 2.1.1.1 On 14/7/2021 by a telephone call in which she informed the CQC Inspector, Claire Snowden that she was being denied access to the office the emails and the password and could not perform her duties. She was falsely being represented as the registered care home manager by the respondent. Irene had sent Claire Snowden an email with the claimant's name on it which was false and had not been sent by the claimant. Irene gave a false impression of the claimant working at the home. The claimant had not been working she was waiting for Irene to get back to her from 16/7/2021 to 27/7/21.

99. 2.1.1.2 On 26/7/21 in a discussion with Irene the claimant asking Irene to inform the CQC of the true position that she was being denied access to the office and that she was not responsible if anything wrong happenedbecause of the lack of access. She asked Irene for a copy of the email sent to CQC Inspector with her name on it. Irene made excuses to the claimant about

why she could not provide the email or why she could not inform the CQC of the correct position (her husband had the password to the computer)

100. 2.1.1.3 On 27/7/21 the claimant informed the CQC Inspector that Irene was not letting her do her duty and was working nightshifts elsewhere which the claimant believed was negligence of duty. The claimant says she was told by the Inspector she would be held equally accountable if 'anything goes wrong'.

101. In our judgment, each of these alleged disclosures does amount to a qualifying protected disclosure.

102. We have set out our findings of fact about each disclosure above. The claimant disclosed information on each occasion. On each occasion we have found that the claimant made the disclosures at least in part because she was concerned about the impact of the respondents' failings on the welfare of its clients. In our view, this information does actually tend to show that the heath and safety of individuals (namely the second respondent's actual or potential clients) was at risk. It was very clear that the claimant believed this to be the case – the claimant was concerned about and understanding of her obligations to act professionally and in the interests of the clients. The fact that the claimant was also concerned about her own professional registration does not detract form the fact that the claimant believed that the information tended to show the health and safety of individuals was at risk and that it was in the public interest (namely the interests of those who use the respondents' care services and the integrity of care services generally) to disclose that information.

103. The disclosures were made to the CQC – a prescribed organisation and the claimant's employer. For these reasons, all three disclosures were qualifying, protected disclosures.

104. We do not consider the other bases under s 43B under which the information might tend to show one of the prescribed matters. It is sufficient that the claimant believed that it tends to show that the health or safety of any individual was at risk.

Detriment (Employment Rights Act 1996 section 47)

2.1 Did the respondent do the following things:

2.1.1 Fail to pay wages due to the claimant.

2.2 By doing so, did it subject the claimant to detriment?

2.3 If so, was it done on the ground that she made protected disclosures

105. The respondent did fail to pay the claimant her wages for the reasons set out above. The claimant's wages were outstanding at the end of her employment. This is in our view obviously a detriment.

106. Applying the process set out above, the claimant made protected disclosures and she was subject to a detriment in that her wages were not paid. The decision not to pay wages was that of the first respondent.

Although the legal obligation to pay wages rests with the second respondent, the actual decision not to do so was taken by the first respondent. It is for the respondents to show why the claimant was not paid – they say it was because she was not an employee. We have found that this is not correct. We agree with the claimant that the respondents were vague about the relationship and we can infer that this was because they wanted to see how the claimant responded to their practices before formally recognising her employment. When the claimant proved to be conscientious, the respondents decided that they did not want to employ her after all and this included withholding wages.

107. In our judgment, therefore, the claimant's various protected disclosures – and particularly the final one, had a material affect on the respondents' decisions not to pay the claimant the wages she was owed and for that reason the claim of detriment succeeds.

Remedy for detriment

108. The direct losses arising from the detriment are the non-payment of wages owed and the claimant is compensated for those losses under section 23 and 24 Employment Rights Act 1996 (see below). It is not appropriate to compensate the claimant twice for that.

109. In our judgment, the injury to feelings the claimant suffered as a result only of the non payment of wages was limited. As set out above, the claimant's distress arose predominantly, we think, from the respondents' unwillingness to allow her to do her job properly. This was not the detriment relied on by the claimant. The failure to pay wages did, however, on the balance of probabilities, have some impact on the claimant.

110. In our view, therefore, and doing the best we can on the evidence we have, we think an award in the lower *Vento* band is appropriate and we award £2000 for injury to feelings.

Automatically Unfair Dismissal

Has the claimant proved her dismissal was on the grounds that she had made protected disclosures?

111. The burden of proving that the reason for dismissal was protected disclosures is on the claimant. It should be clear from our findings above that in our view the decision to dismiss the claimant communicated by Mr Kaggwa was because the claimant contacted the CQC on 27 July 2021 and that contact amounted to the making of protected disclosures. For these reasons the claimant's claim of automatically unfair dismissal succeeds.

Remedy for unfair dismissal

112. The claimant was employed by the second respondent for 5 weeks only. She is not therefore entitled to the basic award.

113. The claimant obtained lower paid work at a net pay of £1000 per month after six weeks. This was not an unreasonable period of time.

114. We therefore award the claimant compensation equivalent to her net pay with the second respondent for 6 weeks for the period from 28 July 2021 to 8 September 2021.

115. The period from then until the date of the tribunal is a further 38 weeks. During this period the claimant's losses were the difference between her net salary at the second respondent and her new net salary. The claimant said that she could have increased her hours to earn more in this period but did not do so. We therefore consider that it is just and equitable to reduce the compensation for this period by 50% to reflect this.

116. We calculate the claimant's net salary at the respondent as follows. The difference between the claimant's net and gross salary at her new job was 30%. This suggests that the claimant is paying tax and national insurance on the full amount, suggesting that the claimant's tax allowance is used up on other income. We therefore apply the same deduction of 30% to the gross weekly salary of £572.52 (see below) to give a net weekly wage of £400.76.

117. The net weekly wage at the claimant's new employment is £229. This gives a difference of £171.76 per week. 50% of that is £85.88.

118. We therefore award the following amounts:

    a. For the 6 weeks when the claimant was without work, £2404.56 (that is 6 x £400.76).

    b. For the 38 weeks from the claimant getting her new job to the tribunal, £3263.44 (that is 38 x £85.88).

119. We do not make any award for loss of statutory rights as the claimant only worked for the second respondent for a very short time and had accrued no statutory rights not to be unfairly dismissed or for redundancy payments.

120. The total compensatory award is therefore £5668.

121. We note that we have done our best to calculate the claimant's losses on the basis of the evidence we had. However, overall in our view this sum represents a just and equitable amount of compensation under s 123 Employment Rights Act 1996.

122. We have not addressed a potential uplift in the award for failure to comply with the ACAS code as there was no suggestion of any grievance or any disciplinary procedures to which the code might have applied.

Unauthorised deductions

Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

123. The second respondent did not pay the claimant at all. She was employed from 16 June 2021 to 27 July 2021 (exactly 5 weeks) on a salary of £2500 per month. The second respondent has provided no good explanation why

the claimant was not paid and the claimant did not agree in any way to not be paid. The claimant's claim therefore succeeds.

124. The claimant's gross weekly wage is £572.52. The second respondent must pay the claimant the gross sum of £2862.60.

Schedule 5 Employment Act 2002 cases

5.2 When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

5.3 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

5.4 Would it be just and equitable to award four weeks' pay?

125. It is not disputed that the claimant was not provided with a statement of her main terms of employment. In our judgment, the conduct of the second respondent as set out above is such that it would be just and equitable to increase the award to 4 weeks payment and the claimant is awarded 4 times the statutory maximum pay which was at the relevant time £544 per week. The second respondent is therefore ordered to pay the additional sum of £2176.

Employment Judge **Miller**

8 June 2022

Appendix

List of issues

1. Employment status

1.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

1.2 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

2. Protected disclosure

2.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 What did the claimant say or write? When? To whom? The claimant says she made disclosures on these occasions:

2.1.1.1 On 14/7/2021 by a telephone call in which she informed the CQC Inspector, Claire Snowden that she was being denied access to the office the emails and the password and could not perform her duties. She was falsely being represented as the registered care home manager by the respondent. Irene had sent Claire Snowden an email with the claimant's name on it which was false and had not been sent by the claimant. Irene gave a false impression of the claimant working at the home. The claimant had not been working she was waiting for Irene to get back to her from 16/7/2021 to 27/7/21.

2.1.1.2 On 26/7/21 in a discussion with Irene the claimant asking Irene to inform the CQC of the true position that she was being denied access to the office and that she was not responsible if anything wrong happened because of the lack of access. She asked Irene for a copy of the email sent to CQC Inspector with her name on it. Irene made excuses to the claimant about why she could not provide the email or why she could not inform the CQC of the correct position (her husband had the password to the computer)

2.1.1.3 On 27/7/21 the claimant informed the CQC Inspector that Irene was not letting her do her duty and was working nightshifts elsewhere which the claimant believed was negligence of duty. The claimant says she was told by the Inspector she would be held equally accountable if 'anything goes wrong'.

1.1.1 Did she disclose information?
1.1.2 Did she believe the disclosure of information was made in the public interest?
1.1.3 Was that belief reasonable?
1.1.4 Did she believe it tended to show that:

1.1.4.1 a criminal offence had been, was being or was likely to be committed;
1.1.4.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;
1.1.4.3 a miscarriage of justice had occurred, was occurring or was likely to occur;

1.1.4.4 the health or safety of any individual had been, was being or was likely to be endangered;
1.1.4.5 the environment had been, was being or was likely to be damaged;
1.1.4.6 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

1.1.5 Was that belief reasonable?

1.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer on 26/7/21.

And

1.3 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made:

1.3.1 To the CQC on 14/7/21 and 27/7/21 in accordance with 43 F (disclosure to a prescribed person (CQC) and the claimant reasonably believed that the relevant failure falls within any description of matters in respect of which that person is so prescribed (matters relating to the registration and provision of a regulated activity as defined by section 8 of the Health and Social Care Act 2008 and the carrying out of reviews and investigations under Part 1 of the Act, and that the information disclosed, and any allegation contained in it are substantially true (

If so, it was a protected disclosure.

2. Detriment (Employment Rights Act 1996 section 47)

2.1 Did the respondent do the following things:

2.1.1 Fail to pay wages due to the claimant.

2.2 By doing so, did it subject the claimant to detriment?

2.3 If so, was it done on the ground that she made protected disclosures

3. Automatically Unfair Dismissal

3.1 Has the claimant proved her dismissal was on the grounds that she had made protected disclosures?

4. Remedy for Protected Disclosure Detriment/Dismissal

4.1 What financial losses has the detrimental treatment/dismissal caused the claimant?

4.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.3 If not, for what period of loss should the claimant be compensated?

4.4 What injury to feelings has the detrimental treatment/dismissal caused the claimant and how much compensation should be awarded for that?

4.5 Has the detrimental treatment/dismissal caused the claimant personal injury and how much compensation should be awarded for that?

4.6 Is it just and equitable to award the claimant other compensation?

4.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.8 Did the respondent or the claimant unreasonably fail to comply with it?

4.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.10 Did the claimant cause or contribute to the detrimental treatment/dismissal by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

4.11 Was the protected disclosure made in good faith?

4.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

5. Unauthorised deductions

5.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

[Schedule 5 Employment Act 2002 cases]

5.2 When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

5.3 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

5.4 Would it be just and equitable to award four weeks' pay?