



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110121/2021

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**Final Hearing held in person in Glasgow on 11, 12, 13, 14, 19, 20, 21, 22
(partly hybrid by CVP) and 26 April 2022 (partly hybrid by CVP); and
Members' Meeting held remotely on Microsoft Teams on 21 June 2022**

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**Employment Judge Ian McPherson
Tribunal Member Fiona Paton
Tribunal Member Drew McFarlane**

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Mrs Yvonne Walker

**Claimant
In Person**

Minster Care Group Limited

**Respondents
Represented by:
Mr Sunit Joshi.
Solicitor Advocate -
Citation Ltd.**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous, reserved Judgment of the Employment Tribunal is that: -

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(1) The claimant made no protected disclosures to the respondents in terms of **Section 43B of the Employment Rights Act 1996**, and the disclosures relied upon by her in her claim are not found to have been made by her, as alleged, or at all.

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(2) The claimant's complaint, in terms of **Section 47B of the Employment Rights Act 1996**, that she had been subjected to a number of detriments by the respondents for having made protected disclosures is not well-founded, and that part of her claim is accordingly dismissed by the Tribunal.

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(3) The claimant's further complaints of unlawful disability discrimination and harassment against her by the respondents, contrary to **Sections 15 and 26**

of the **Equality Act 2010**, are not well-founded, and those parts of her claim are also accordingly dismissed by the Tribunal.

- (4) In all the circumstances, the claim in its entirety is dismissed by the Tribunal.

REASONS

5 Introduction

1. This case first called before us as a full Employment Tribunal on the morning of Monday, 11 April 2022, for what was then a 6-day Final Hearing in person, for full disposal, including remedy if appropriate, further to a Notice of Final Hearing in Person, previously intimated to both parties by the Tribunal, on 5
10 January 2022. In the event, the 6-day listing was insufficient, but by co-operation between parties, and assistance from the Tribunal administration, on 14 April 2022, we were able to add 3 further days, so as to avoid going part-heard and re-listing at a much later date some months later.
2. That original 6-day listing followed upon an earlier Preliminary Hearing held
15 in person at the Glasgow ET on 1, and by CVP on 2, December 2021, by Employment Judge Alan Strain. The claimant then appeared on her own behalf, and the respondents were represented by Mr Tom Muirhead, Tribunal advocate with Citation Ltd. On 2 December 2021, Judge Strain issued a written Judgment (with oral reasons) finding that the claimant was a disabled
20 person as defined within **Section 6 of the Equality Act 2010**, and that the respondents had knowledge of her disabilities over the relevant period.
3. Oral reasons were given at the time by Judge Strain, but neither party requested written Reasons, so none were available to this Tribunal. That Judgment was not the subject of any reconsideration application by either
25 party, nor was it appealed by the respondents to the Employment Appeal Tribunal.
4. Judge Strain also issued a separate written Case Management PH Note & Orders, dated 2 December 2021, and it was sent, along with his Judgment, to both parties by the Tribunal on 7 December 2021. He set the case down

for an In Person Final Hearing over 6 days to determine all matters including remedy, and he also made various case management orders for compliance by both parties, including an order for the claimant to provide further and better particulars of her whistleblowing claim detriments, and orders for exchanging documents, and production of a Joint Bundle for use at the Final Hearing.

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5. Regrettably, both parties failed to fully comply with those case management orders, and so further case management was required from the Tribunal in the lead up to, and during, this Final Hearing. Further, and in the course of this Final Hearing, the Tribunal had to deal with several email applications, from both parties, often submitted outwith Tribunal sitting hours, and seeking to add additional documents into the Bundle.
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Claim and Response

6. The claimant, acting on her own behalf, presented her ET1 claim form in this case to the Tribunal, on 21 June 2021, following ACAS early conciliation between 5 May and 16 June 2021. Her claim was accepted by the Tribunal administration and served on the respondents by Notice of Claim issued by the Tribunal on 25 June 2021.
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7. As a care assistant employed by the respondents at Carnbroe Care Centre, Coatbridge, and in a continuing employment relationship stated to be since 16 June 2020, the claimant alleged unlawful discrimination against her on the grounds of disability, and she set forth the nature of her complaint at section 8.1 of her ET1 claim form, as follows:
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"I have bad anxiety and stress and have attended my gp and have managed to use alternate therapies rather than prescription medication. In work I had addressed a few bad practice situations and told management as the care home is home to 74 vulnerable adults. From before Christmas I was isolated from colleagues and was left on my own every shift. In January I was made aware that two senior staff members has made serious drug allegations about myself.on hearing this I went to the care home Manager Lynsey Dick who told

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me she dismissed the claims. I'm s nightshift worker and I?m the nxt few months staff were spying on me and still segregating away from me.my Anxiety levels were at an all new high and my alternative therapies (reiki and meditation)were not working and my name was being slandered not only in
5 the workplace but all the way to my daughters high school ! My daughter is deaf in one ear and this year has been a struggle with face masks cutting off her ability to lip read. Although I know anyone that knows me knows that the drug accusations are lies! Again I continued to beg and cry out for support from all management and through the proper procedures until I had to involve
10 my union. I was being treated differently from other care assistants. In my employment here I have never been late, left early or been absent. There was a situation outside and the care staffs behaviour towards this brought on an anxiety attack, although I took myself away and tried to shake out it my bowels opened without knowledge and I had diorrea [sic] running down my leg. Now
15 my anxiety levels had turned into more that I knew I couldn?t perform the job I was here to do it was 6am and I finished at 8am I explained to the male mental health nurse(Reg Morrison) I had to see the female nurse as I was humiliated and embarrassed by what was happening I did tell the male nurse who seen for himself it was an anxiety attack my body was shaking,I was
20 sweating and felt costriphobic.[sic] I had to get out but couldn?t face the make so I approached the female nurse (Joan Carrol)who read the signs straight away and was worried about me driving home as I was shaking, and muscles wee all tense and I was fearful. Joan told me she would fill in the relevant paperwork and to tell Reg. Reg was not happy that I wouldn?t tell him why I
25 went to the female and I told him I was embarrassed, to which he responded that I needed a doctor because of my anxiety and he had to know what to write I told him it was dealt with to which he kept pushing and pushing and was getting annoyed until I had to tell him which led to myself breaking down in tears.”

30 8. In the event that her claim was to be successful before the Tribunal, the claimant sought an award of compensation against the respondents, which

she quantified at **£20,000**, at section 9.2 of her ET1 claim form, where she stated as follows:

5 *“I have always wanted the management to do their job and manage the staff and use the proper disciplinary action. They have no duty of care to staff for trying to go the right code of practice. I want to be able to get myself back to 100% mentally and not be the shadow of myself that I am. I want to be able to confide in management and feel £20000 would help with the loss of earnings and find a job that can make me happy and able to trust again.”*

9. While the claimant ticked section 8.1 of the ET1 claim form to indicate that she was making a claim that she was discriminated against on the grounds of disability, she also ticked the last box in that section 8.1 to state that she was making another type of claim which the Tribunal can deal with – her details in section 8.2 refer to:

10 *“I feel I have been treated differently to other staff member due to my anxiety and the deformation [sic] of character for raising care concerns. Anything I have went to management with seems to not be confidential and not supported. I feel my dignity was violated and I was harassed by staff members and management.”*

10. She did not tick section 10.1 of the ET1 claim form to indicate that her claim consisted of, or included, a claim that she was making a protected disclosure (otherwise known as a whistleblowing claim). However, in section 8.1, the claimant did refer to : *“In work I had addressed a few bad practice situations and told management as the care home is home to 74 vulnerable adults.”*

11. On 6 July 2021, the claimant emailed the Glasgow ET, further to an earlier email on 3 July 2021, seeking to amend her ET1 claim form, as she had ticked that she did not have a disability, when she had medical evidence that she did, and she had not highlighted some information, which she then detailed. That application was not copied by her to the respondents but, on instructions from Employment Judge Shona MacLean, the Tribunal copied it to them, on 12 July 2021, when they were asked for their comments.

12. In her amendment, the claimant stated as follows:

"I'm looking to amend my E1 as I have ticked the wrong box and not highlighted some information- Claimant Mrs Y Walker 4110121/2021

5 ** I ticked I don't have a disability and I do . I have evidence from my doctor that I do*

10 ** I have not highlighted that because I reported bad practice (whistleblowing) and management failed to keep confidentiality this has been the reason why the allegations (management dismissed as apparently the allegation wasn't from a trusted source) in any workplace (especially social care with vulnerable residents) are serious allegations verbally or not when it's about drugs! Management should have investigated this matter at the time especially when it was two senior members of staff who claimed this.*

15 *During grievance meeting management (Lynsey and annmarie) said they carried out an investigation. I still am yet to know the allegations and the rumours have not only effected my health, they have affected my trust in everyone and if the senior members of staff are not trusted sources it really concerns me about their practice.*

20 ** During the covid outbreak in the care home I was messaged directly to isolate from NHS test and protect but Was told I had to ignore it and go in as there was a shortage Of staff.*

**Minutes of the meeting are missing in parts, Management failed to discuss this matter.*

**Area manager laughing and joking about My mental health and another colleague."*

25 13. Thereafter, on 16 July 2021, an ET3 response, defending the claim, was lodged, on the respondents' behalf, by Mr Tom Muirhead, consultant, and Tribunal advocate with Citation Ltd, Cheshire. Further, on 20 July 2021, Mr Muirhead advised the Tribunal, with copy email sent to the claimant, that the

claimant's amendment should be discussed at the Preliminary Hearing on 27 August 2021.

14. While the claimant's ET1 claim form, presented on 21 June 2021, indicated a continuing employment relationship, the ET3 response lodged by the respondents indicated (at section 4.2) that there was a continuing employment relationship, yet the reply to section 4.1 stated that the claimant's employment had ended on 16 July 2021. Mr Muirhead stated that the ET3 response format did not allow him to disagree the claimant's dates, but only saying her start date was 17 June 2020, and not 16 June 2020, as stated by the claimant at section 5.1 of her ET1 claim form. Paragraph 15 of his attached grounds of resistance, however, stated that the claimant's employment continued.
15. The grounds of resistance attached to the ET3 response stated that the claims were "**poorly pleaded**", and the respondents requested the right to amend their response following proper specification from the claimant. Disability status and knowledge, and disability discrimination were all denied by the respondents. Time bar was raised as a possible issue, and all and any liability was denied.
16. That ET3 response was accepted by the Tribunal administration on 21 July 2021, copied to the claimant and ACAS, and, at Initial Consideration by Employment Judge Lucy Wiseman, on 21 July 2021, it was ordered that the case proceed to the listed telephone conference call Case Management Preliminary Hearing scheduled to be held on 27 August 2021.

Earlier Preliminary Hearings and Case Management

17. This case has had a long and complicated procedural history, so it is necessary to set that out in this Judgment to give some context to how the case has progressed through the Tribunal to this final stage.
18. When the case called before Employment Judge Robert Gall, on 27 August 2021, for the listed telephone conference call Case Management Preliminary

Hearing, the claimant was in attendance, but there was no appearance or representation for the respondents, although they had completed and returned their PH Agenda on 17 August 2021, and one of Mr Muirhead's colleagues (a Ms Michele Peckham) was expected to appear on their behalf.

5 19. The claimant had intimated her completed PH Agenda (Equality Act) on 6 August 2021, which the Tribunal had then copied to the respondents' representative on 10 August 2021, the claimant having failed to comply with **Rule 92** and sent them a copy direct at the same time as sending to the Glasgow ET.

10 20. Judge Gall, as per his written Note & Orders dated 27 August 2021, instructed the case be listed for a fresh 1-hour telephone conference call Case Management Preliminary Hearing as soon as possible. His PH Note was issued to parties on 31 August 2021, and by fresh Notice of Preliminary Hearing issued on 2 September 2021, the case was relisted for a one-hour
15 Hearing on 17 September 2021.

21. It called before Employment Judge Susan Walker, the Vice-President, on that date. The claimant appeared on her own behalf, and the respondents were represented by Mr Muirhead, Tribunal advocate with Citation Ltd. Judge Walker drafted a detailed written Case Management PH Note & Orders, dated
20 17 September 2021, and it was issued to both parties by the Tribunal on 23 September 2021.

22. Judge Walker noted further details of the claimant's complaints under **Section 47B of the Employment Rights Act 1996**, and **Sections 15 and 26 of the Equality Act 2010**, and she also directed further case management
25 to be done, and to list the case for a Final Hearing.

23. As Judge Walker's PH Note was produced to the Tribunal, as pages 32 to 37 of the Joint Bundle, and often referred to in the course of evidence led before this Final Hearing, it is appropriate to note and record here what was stated there, at paragraphs 2 to 5 inclusive, as well as paragraphs 8 and 9 (noting

paragraphs 6 and 7, relating to disability status, being not material for present purposes, and thus not reproduced here) as follows:

A summary of the complaints

2. *At the end of the discussion, I understand Mrs Walker wishes to make the following complaints:*

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S47B of the Employment Rights Act 1996(Whistleblowing)

That the claimant had been subjected to a number of detriments by R (or workers of R in the course of their employment) because she had made protected disclosures.

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Equality Act 2010

S15 - *That the respondent (or a person for whom the respondent is liable under s109) had treated the claimant unfavourably because of something arising in consequence of the claimant's disability.*

S26 - *That the respondent (or a person for whom the respondent is liable under s109) had harassed the claimant.*

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3. *Although Mrs Walker had included a claim of "victimisation" under the Equality Act , I explained that this was a very specific type of claim which involved a person making a complaint of discrimination and then being treated less favourably as a result. I understand that by "victimisation" Mrs Walker is actually meaning whistleblowing and this is already captured by the s47B complaint.*

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Further details of the complaints

4. *In relation to the s47B claim, the claimant alleges that she made protected disclosures to Margaret McGivern, Lynsey Dick and Annemarie Bond, between September 2020 and February 2021. These were made verbally and in writing and related to the following which the claimant says tended to show that the health and safety of*

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residents was being endangered. The matters she says she raised are:

- ***That during the nightshift, 20 residents on a unit were being left unaided and there had been a pattern of falling during the nightshift.***
- 5 • ***That dementia patients were being got up too quickly in the morning and being rushed.***
- ***That the claimant was being asked to deal with a patient who had been risk assessed as requiring two members of staff, indicated by a red dot on the door.***

10 5. *The alleged detriments, which are said to have occurred because the claimant had made these disclosures (and again in summary terms), are:*

- ***The claimant was isolated by colleagues.***
- ***The claimant was left on her own when on shift.***
- 15 • ***Allegations were made that the claimant was taking drugs , dealing drugs and stealing drugs from the resident's trolley.***
- ***The claimant was gossiped about.***
- ***The claimant's tyres were slashed by co-workers on 19 and 27 February 2021.***
- 20 • ***The claimant was subjected to abusive facebook messages from Mags Conn.***
- ***Co-workers told the claimant she had mental health problems and should go to the doctor.***

Discrimination arising from disability (s15)

25 8. *The unfavourable treatment is said to be:*

- *The claimant was isolated because of these symptoms.*
- *Co-workers believed she was on drugs.*
- *Following an incident on 13 March, when she had a panic attack, the unsympathetic response of “Reg” who told her to go to the doctor and voicemails from co-workers asking when she would be back at work.*

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Harassment (s26)

9. *The unwanted conduct is said to be:*

- *The 13 March incident.*
- *Being isolated by colleagues.*
- *Being left on her own when on shift.*
- *Allegations about drugs.*
- *Being gossiped about.*
- *Car tyres being slashed.*
- *Abusive facebook messages from Mags Conn.*
- *Co-workers saying that claimant should go to the doctors as she had mental health problems.*
- *Being “ghosted” by colleagues such as Ashley Doherty.*
- *24 April 2021, Elaine Hamilton laughed about the claimant’s mental health on the phone and called her a “crackpot” and a “nutter”.*

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24. On 28 September 2021, the case was relisted, for a further 1-hour telephone conference call Case Management Preliminary Hearing to be held on 18 October 2021. When the case first called before Employment Judge Ian McPherson, on that date, the claimant again appeared on her own behalf, and the respondents were again represented by Mr Muirhead.

25. On that date, 18 October 2021, Judge McPherson made further case management orders, and the case was listed, of consent of both parties, for a 2-day Preliminary Hearing on disability status, and the 4-day Final Hearing (that had already been listed for 1, 2, 3 and 6, December 2021) was converted for that purpose.
26. Judge McPherson's written Note & Orders, dated 19 October 2021, was issued to both parties under cover of a letter from the Tribunal dated 22 October 2021. In that Note, the Judge gave the claimant guidance, and signposting, and he encouraged her to seek out independent and objective advice, specifically signposting her to the CAB Scotland website, and the Strathclyde University Law Clinic.
27. At that Preliminary Hearing on 18 October 2021, there was a lack of certainty as to the effective date of termination of the claimant's employment, and whether it was in June or July 2021, so the respondents were called upon to clarify matters. We pause to note and record here that it was only on 26 October 2021 that Mr Muirhead, the respondents' representative, emailed to the Tribunal, with copy to the claimant, a copy of her P45 (issued 25 October 2021) showing her leaving date as 26 June 2021.
28. As per Judge Strain's Judgment, dated 2 December 2021, and issued to parties by the Tribunal on 7 December 2021, it was held that : ***"The Judgment of the Employment Tribunal is that: 1) the Claimant's impairments of stress and anxiety and Trigeminal Neuralgia are disabilities as defined within section 6 of the Equality Act 2010; and 2) the Respondent had knowledge of the Claimant's disabilities over the relevant period (in the case of stress and anxiety from February 2021 and Trigeminal Neuralgia from June 2020)."***

Claimant's Further and Better Particulars, and Respondents' Reply

29. On 29 December 2021, the claimant emailed the Glasgow ET, with copy to the respondents' representative, Mr Muirhead at Citation Limited, with her further and better particulars, as ordered by Judge Strain, as follows:

“FURTHER AND BETTER PARTICLARS**Detriment 1**

- a. **Who it is alleged isolated her and when? What she means by isolating her?**

5 The colleagues who treated the claimant different are senior carer
Mags Conn, senior carer Sibohan Mendal, nurse Reg, senior carer
Martin, carer Lorraine Peacock, carer Katrina Williams, carer Julie,
carer Ashley Docherty and Annmarie Bond. The claimant was isolated
from colleagues and no one wanted to work her. Colleagues spoke
10 about her and gossiped behind her back this happened since October
2020 .and became more apparent in January 2021. The claimant
continued to ask management for help or support and cried out for
rumours to be investigation [sic] since January 2021 as these are
serious allegations and the claimant had not worked there long.

15 **Detriment 2**

- b. **When and what were the circumstances of the claimant being left alone?**

 The claimant was often left alone in the leven unit since October 2020
when she started working upstairs and was often asked to assist
20 residents who had be risk assessed for 2 people. This continued to
happen up until the claimants last shift in employment. At no point was
there any staffing issues it was merely out of laziness so colleagues
could sleep or eat. Every night At the start of shift residents where [sic]
rushed to bed so staff could phone a pizza.

25 **Detriment 3**

- c. **When and by whom were the drug allegations made?**

 The alleged drug allegations were made by Sibohan Mendal and Mags
Conn in October 2020 to Managers Margaret Mcgivern, and Lynsey

Dick. It was no secret as dayshift staff were told to watch the residents drug trolley too so it's residents drugs as well as recreational drugs. Serious allegations that were dismissed by management and covered up.

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Detriment 4**d. When, what was said and by whom?**

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Sibohan Mendal made the allegations with Mags Conn to management and told managers that Sibohans sister sold the drugs to The claimant in Tesco car park and broadcast to other staff members that i the claimant was on drugs to shield the residents drug trolley.

Detriment 5**e. Who slashed her tyres?**

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Don't know who done it but both tyres were sabotaged within 8 days of each other and both times a colleague made the claimant aware even though it was pitch black middle of a dark February night (early hours of morning) it is then the claimant realised there as no security or cameras.

Detriment 6

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f. When were the abusive Facebook messages sent?

The abusive message was sent 27th February 2021 the night after the second tyre got vandalised. Mags was asking why she was getting all the blame.

Detriment 7

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g. When and by whom was it suggested that she had mental health problems?

It was suggested by Nurse Reg from around February 2021, Assistant Manager Annmarie Bond around March 2021, my union rep Liz Martin from Gmb around March 2021 and the area manager for Minster Care Elaine around April 2021.”

- 5 30. Thereafter, on 1 February 2022, Mr Muirhead, the respondents' representative, emailed the Glasgow ET, with copy to the claimant, with his reply on behalf of the respondents to the claimant's further and better particulars of 29 December 2021, his reply, as ordered by Judge Strain, stating as follows:

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Protected Disclosures

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1. *The Claimant relies on 3 alleged protected disclosures, as set out in paragraph 4 of the Preliminary Hearing Note of 17/9/21. The Claimant maintains these disclosures were made to 3 named individuals, verbally and in writing over a period of 6 months. She does not specify which of the 3 disclosures were made to which named individual and when the disclosures were said to have been made. She does not identify the date of the alleged written disclosure and the substance matter of that disclosure, nor to whom the written disclosure was made. Of*

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the 3 named individuals, Lyndsey Dick and Anne-Marie Bond, dispute that there were any such disclosures made by the Claimant. In respect of the specific disclosures alleged to have been made:

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2. *The Respondent denies that during nightshift, 20 residents were being left unaided.*

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3. *The Respondent denies that residents were being rushed out of bed in the morning. The Respondent accepts, that on occasions, for example where a resident may have wet or soiled themselves, then it would be appropriate to rouse the resident before they felt ready to get out of bed.*

4. *The Respondent denies that the Claimant was asked to deal with a resident who had been risk assessed as requiring 2 members of staff (subject to what is stated below).*

Detriments

5. *The Claimant relies on 7 alleged Detriments as set out in paragraph 5 of Employment Judge Walker's Preliminary Hearing Note of 17/9/21, and as supplemented by the Claimant's Further and Better Particulars dated 29/12/21.*

Detriment 1

6. *The Claimant maintains that the staff named in her Further and Better Particulars (Katie Higgins, Reg Morrison, Martin McHugh, Lorraine Peacock, Katrina Williams, Julie Skinner, Ashley Docherty and Annmarie Bond) isolated her. In that respect, the Claimant alleges that the foregoing staff spoke about her, gossiped behind her back and did not want to work with her. The allegations are denied. The staff do however note that the Claimant tended to keep to herself and did not appear to wish to spend much time with the rest of the staff team, for example taking breaks on her own. The Respondent disputes in any event that there was any connection between how staff interacted with the Claimant and the making of any alleged protected disclosures.*

Detriment 2

7. *The Claimant maintains that she was often left alone in the Leven Unit since October 2020. The Respondent recollects that there was only one occasion when the Claimant was left on shift by herself. The Respondent recollects that this was during the 1st half of January 2021. There were exceptional circumstances which resulted in the Claimant being on shift by*

5 *herself. At the time, the Respondent was significantly affected by an outbreak of Covid-19 and many of its 90 staff were ill or were required to self-isolate. The Respondent relied heavily on agency staff as a result. On the single occasion referred to, the Respondent arranged for another member of staff to attend the unit in which she worked to assist her with incontinence care. The Respondent put in place reasonable steps to ensure the wellbeing of the Claimant. It is denied that residents were 'rushed to get out of bed', as alleged. The Respondent disputes that there was any connection between the occasion described above and the making of any alleged protected disclosures.*

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Detriment 3

8. *The Respondent accepts that a concern was raised by Margaret Conn that the Claimant was alleged to have been seen buying drugs outside a local Tesco store. Margaret Conn appropriately reported the matter to the Respondent's Home Manager, Lyndsey Dick. Mrs Dick in turn spoke with the Night Supervisor Margaret McGivern, who expressed the view that there would be no truth in the allegations. Mrs Dick accepted Mrs McGivern's assessment and in turn expressed that view to the Claimant. Mrs Dick appropriately decided to monitor the situation for a short while, but was satisfied in view of Mrs McGivern's assessment, and in view of her short period of monitoring, that there was no risk to residents. The Respondent disputes that there was any connection between the drug allegations and the making of any alleged protected disclosures.*

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Detriment 4

9. *As indicated above, the Respondent accepts that a concern was raised by Margaret Conn about allegations that the*

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5 *Claimant had been seen purchasing drugs outside a Tesco store. It was appropriate for Mrs Conn to report what she had heard to the Respondent's Home Manager. The Respondent disputes that there was any connection between the drug allegations and the making of any alleged protected disclosures.*

Detriment 5

10 *10. The Respondent is unable to comment on whether the Claimant's tyres were slashed by co-workers on 19 and 27 February 2021. The Respondent has no evidence to say whether or not such an incident occurred and if so, who might have been responsible. This is a serious allegation, and the Respondent would be very surprised if any of its staff had been involved in deliberately damaging the Claimant's vehicle in the manner described by her. The Respondent disputes that there was any connection between any damage the Claimant may have sustained to her car tyres and the making of any alleged protected disclosures.*

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Detriment 6

20 *11. The Respondent accepts that Margaret Conn sent a message to the Claimant on 27/2/21 by Facebook Messenger. The Respondent disputes that there was any connection between the Facebook message sent by Mags Conn, and the making of any alleged protected disclosures.*

25 **Detriment 7**

12. The Respondent accepts that the Claimant had a conversation with Reg Morrison in the early part of 2021. The conversation occurred following an incident during which the Claimant had experienced a panic attack and had soiled herself at work. The

Respondent understands that the Claimant sought assistance at the time from a female member of staff. Reg Morrison, thereafter, discussed the incident with her. Mr Morrison got on well with the Claimant and was generally supportive of her. Mr Morrison recalls that the Claimant often confided in him. The Claimant explained to Mr Morrison what had happened. It is denied that Mr Morrison was unsympathetic as the Claimant has alleged. Mr Morrison was supportive of the Claimant. The Respondent disputes that there was any connection between how Mr Morrison reacted to the information provided by the Claimant, and the making of any alleged protected disclosures.

13. The Respondent accepts that Annemarie Bond had a conversation with the Claimant in which the topic of mental health was mentioned. Mrs Bond recalls that this occurred during the meeting with the Claimant held on 24/3/21 at which the Claimant's Union representative was present. During the meeting, the Claimant advised those present that her mother thought that she had bipolar disorder and that her mother had wanted the Claimant to be sectioned. Mrs Bond asked the Claimant whether she had bipolar disorder. The Claimant replied that she did not. Mrs Bond asked whether the Claimant had been to her GP about this and whether she had been diagnosed with bipolar disorder. The Claimant replied that she had not. These were reasonable questions in the circumstances for Mrs Bond to ask. The Respondent disputes that there was any connection between the conversation referred to above and to the making of any alleged protected disclosures.

14. The Respondent is unable to comment on whether the Claimant's own Union Rep may have commented on the Claimant's mental health. The Respondent cannot in any event

be liable for any comments which the Claimant's own Union Rep may or may not have made.

5 15. *The Respondent accepts that at the end of a telephone call made by Elaine Hamilton around April 2021, Mrs Hamilton made a comment in which she raised questions about the Claimant's mental health. Mrs Hamilton however denies laughing and joking about the Claimant's mental health, as alleged. It is denied in any event that there was any connection between what Mrs Hamilton said at the end of that call and the*
10 *making of any alleged protected disclosures.*

The Respondent asks that this document be accepted as additional information to the Respondent's ET3."

Final Hearing before this Tribunal

15 31. When the case first called before the full Tribunal, on day 1, Monday, 11 April 2022, the claimant appeared on her own behalf, unrepresented, while the respondents were represented by Mr Sunit Joshi, Tribunal advocate with Citation Ltd, accompanied by Miss Lyndsey Dick, the respondents' Carnbroe Care Home Manager, instructing.

20 32. Mr Joshi indicated that he wished Miss Dick to be present throughout the claimant's evidence, so that he could take instructions from her, but it would not be unsurmountable for her to be absent from the Hearing (until it came her own turn to give evidence), and for him to take instructions at a distance.

25 33. We note and record here that Mr Joshi advised us that he is a representative who for the last 2 years has been doing CVP Hearings in England & Wales, and he is not familiar with Scottish ET practice or procedure, nor had he done an in person Hearing for more than 2 years. The Judge explained to him, as and when required, the differences in practice and procedure used by the ET in Scotland.

34. While the claimant initially stated that she was happy for Miss Dick to be in attendance, while she gave her evidence, the claimant then apologised, and indicated that she would prefer it that Miss Dick was not present to instruct Mr Joshi in the Hearing room, as she had a concern that she might be giving out information to others about what was being said in evidence here at the Tribunal.
35. Later, having dealt with other preliminary matters, Mr Joshi advised the Tribunal that he was no longer asking for Miss Dick to be present during the hearing of evidence, and he would seek an adjournment, if and when required, to take instructions from her. Miss Dick did not thereafter attend, except to give her own evidence. She did not accompany him to the hearing on submissions on the last day, 26 April 2022, when he attended by CVP from London, all others being present within the Glasgow ET.
36. In preliminary discussion with both parties, the claimant indicated that she would be giving evidence to the Tribunal, and she had 2 other witnesses, Margaret McGivern, and Lynda Ferguson. Mr Joshi stated that there were 11 witnesses for the respondents, and he apologised that the draft timetable provided by the respondents' previous representative, Mr Tom Muirhead from Citation, did not give a breakdown of the overall time slots shown, despite the Tribunal's clear and unequivocal order made by way of case management, but emphasised that these were maximum figures, and the evidence might well be extracted within the overall estimated parameters, as there are many imponderables at play, since time estimates is a very imprecise science, with written closing submissions from the respondents, as per the Tribunal's previous directions.
37. The Tribunal was in receipt of a Joint Bundle of 27 indexed documents, extending to some 362 pages. At the start of the Final Hearing, 6 additional documents were added to that Joint Bundle, at the request of the respondents, after an application by Mr Muirhead dated 29 March 2022, repeated in Mr Joshi's email of 8 April 2022, and after permission to add to the Bundle was granted by the full Tribunal, increasing the indexed Bundle to

381 pages. Notwithstanding the lateness of the application, the Tribunal allowed it as it was in the interests of justice to do so.

38. Further, additional documents were thereafter also added, during the course of later days in the Final Hearing, on application of one, or other, of the parties, and as allowed by the Tribunal, but they were not given individual Bundle page numbers. Where required, we refer to those further documents by description.
39. The Final Hearing started late, on account of the Judge being involved in hearing another case, which overran. Scheduled to start at 11:00am, it was 11:50am before proceedings got underway that first morning. When this case started, there was general discussion with both parties, about the issues before the Tribunal, and the proposed running order of, and timetable for, hearing evidence over the allocated 6 days, 5 days for evidence, with closing submissions then envisaged as being on day 6, Wednesday, 20 April 2022.
40. The Judge noted that the Joint Bundle did not include any Schedule of Loss for the claimant, nor any Counter Schedule for the respondents. The Tribunal's casefile showed that the claimant's PH Agenda, intimated on 1 November 2021, had sought compensation of **£24,130**, while Mr Muirhead had provided a Counter Schedule for the respondents on 4 November 2021, accepting that if there was any liability by the respondents, injury to feelings at a maximum total of **£4,000** was all that would be appropriate.
41. The claimant agreed that the effective date of termination of her employment with the respondents was 26 June 2021, as shown on the Counter Schedule, and that she was seeking **£24,130** compensation from the respondents, in the event of success with her claim before the Tribunal, and that she had been unemployed since June 2021, not in receipt of Jobseekers' Allowance, and she had received Universal Credit from December 2021. She further advised that her GP had signed her off sick and medically unfit to work from April 2021, and she agreed to provide hard copy documents, including mitigation of loss evidence, for use at the Final Hearing.

42. The following day, 12 April 2022, the claimant provided the Tribunal, and Mr Joshi, with a copy of her P45 issued by the respondents to her, by email on 14 October 2021, showing her leaving date as 26 June 2021. The extract from her PH Agenda, and the respondents' Counter Schedule, were copied and used by parties and the Tribunal, as further additions to the Joint Bundle, as also her other email of 12 April 2022 with Universal Credit payments confirmation of payments between 29 December 2021 and 29 March 2022, and proof of her seeking other employment via Indeed.Com between 11 February and 14 March 2022.
43. No agreed List of Issues had been prepared by the parties. By case management order sent to them, on 30 March 2022, the Judge had ordered that the respondents' representative prepare a draft, and sent it to the claimant for comment, by 4 April 2022, and for her to reply by 6 April 2022. Mr Muirhead, from Citation, prepared a draft, and sent it to the claimant on 4 April. She did not respond, by 6 April, so the matter was discussed with both parties at the start of this Final Hearing.
44. The claimant stated that she did not seem to have the draft in her emails, so the Tribunal clerk provided her with a hard copy to read. Mr Joshi stated that there were jurisdictional issues identified by Judge Walker, in her PH Note, but these had not been taken into account in Mr Muirhead's draft, so he agreed to revisit matters in a revised draft over the lunchtime adjournment. When proceedings resumed, for the afternoon session, the Tribunal had received his email of 11 April 2022 sent at 13:54, with track changed revisals.
45. While the claimant objected to the revisals proposed, to take account of the jurisdictional issues of whether parts of the claim were out of time, having heard both parties, the Tribunal allowed the revised List of Issues to be received, and for them to be the list of issues for judicial determination by this Tribunal at this Final Hearing. The Judge observed, in passing, that it was *pars judicis* for the Tribunal to take account of jurisdictional issues, whether or not invited to do so by parties. We detail the List of Issues later in these Reasons.

46. A timetable for the hearing of evidence had been proposed in Mr Muirhead's draft and the parties worked together throughout the course of the Final Hearing to assist the Tribunal in achieving the overriding objective, in dealing with matters justly and fairly taking account of the issues, cost and proportionality. Each witness gave their evidence orally with appropriate questions being asked.
47. Witness scheduling was regularly revisited as regards date and time to ensure best use of the available judicial resource, and that we had no wasted time, with no witnesses available to be heard. On the claimant's application, on 13 April 2022, we granted a Witness Order to compel the attendance of her witness, Mrs Lynda Ferguson, whose evidence we heard on 14 April 2022. We also agreed to hear 2 witnesses for the respondents (Mrs Diane McLaren and Mr Reginald Morrison) by CVP video-conferencing, on 22 April 2022, on application by the respondents, as they were unable to attend in person, and it was appropriate to hear their evidence remotely.
48. The claimant was advised as to how evidence is taken, the rules of evidence and the importance of ensuring that her case was put to the relevant witnesses from the respondents (and that any points with which she disagreed were specifically raised with those witnesses). Assistance was given to her to ensure that she had enough time to ask relevant questions, and the Judge clarified matters, throughout the Hearing, to ensure that she understood the process which was to be followed.
49. In this case, as in many others, the Tribunal heard evidence about a range of issues, some of it in detail. Where we make no finding about a point of which we heard; or where we make findings, but do not discuss a point to the depth to which the parties went, that should not be taken as oversight or omission, rather as a true reflection of the extent to which the point assisted us.
50. That observation is made in many cases, but was of particular importance in this one, where the claimant appeared unrepresented, presenting a case which was relatively paper heavy and had legal complexities, in which she

5 faced two problems in doing herself justice. The first was that her understanding of the law, procedure and technique of the Tribunal was that of a wholly inexperienced litigant in person; and secondly that at times her emotions about the events which the Tribunal had to consider appeared still raw.

51. A frequent difficulty faced by litigants in person is that of distinguishing between the points which they feel strongly about, and the points which are truly material to the Tribunal's adjudication. This was a recurrent, major problem for the claimant throughout this case.

10 52. In these circumstances, the Tribunal, as the independent and objective judicial decision-making body, has had to tread carefully between clarifying the claimant's case, and not entering the arena and running her case for her. That is not the Tribunal's role in our adversarial system of justice. It is for the claimant to present such evidence as she thinks necessary to prove her case,
15 and for the Tribunal to adjudicate and come to a final decision based on the evidence led by both parties and available to it at the Final Hearing.

53. Before proceeding, late on the afternoon of day 1, Monday, 11 April 2022, to take the claimant's evidence in chief, elicited (by joint agreement of both parties) by the Judge asking her a series of structured and focussed
20 questions, the claimant asked why the respondents had not called Siobhan Mendal as a witness.

54. It was noted by the Tribunal that, on 30 March 2022, the claimant had requested the Tribunal to issue a Witness Order for Ms Mendal, but when her application was referred to the Judge, on 1 April 2022, an email reply had
25 been sent by the Tribunal clerk to the claimant advising her that her request for a Witness Order was noted, but any application for a Witness Order would require a detailed written application.

55. No such application had thereafter been made by the claimant. Mr Joshi advised the Tribunal that the respondents were not calling Ms Mendal. He
30 then asked the Tribunal if evidence could start the following morning. As it

was only 2:51pm, his application was refused by the Tribunal, as the Judge indicated it was important to make best use of the full 6 allocated days assigned to this Final Hearing.

List of Issues for the Tribunal

- 5 56. At this Final Hearing, the issues before the Tribunal were agreed between the parties, and the Tribunal, as per the following:

LEGAL ISSUES

Protected Disclosure (sections 43B and 47B of ERA 1996)

1. *What disclosures did the Claimant make?*
- 10 2. *To whom were the disclosures made?*
3. *In what form were the disclosures made?*
4. *What was the date or approximate date of the disclosures?*
5. *Do any of the disclosures qualify for protection in terms of section 43B of the Employment Rights Act 1996, specifically:*
 - 15 a. *Did the Claimant have a reasonable belief that the information given, tended to show any of the matters in section 43B (a-f)?*
 - b. *Were the disclosures made in the public interest?*
6. *Did the Respondent and/or any of its workers subject the Claimant to detriments on the grounds that the Claimant had made protected disclosures in terms of section 47B of the Employment Rights Act 1996?*
- 20 7. *Which of the disclosures relied upon by the Claimant were carried out by the Respondent's workers?*
8. *Does the Respondent have a valid defence in terms of section 47B (1D) to show that it took all reasonable steps to prevent its workers from*
- 25 *subjecting the Claimant to detriments?*

Disability Discrimination (section 15 of EQA 2010)

9. Did the Respondent treat the Claimant unfavourably because of something arising from the Claimant's disability, the 'something arising' being the Claimant experiencing pain in the side of her face, which makes her appear to make faces and jump with pain, and experience panic attacks?
- 5
10. If the Tribunal find that the Claimant was treated unfavourably because of something arising from the Claimant's disability, can the Respondent show that its treatment of the Claimant was a proportionate means of achieving a legitimate aim?
- 10

Disability Discrimination (section 26 EQA 2010)

11. What acts of harassment does the Claimant rely upon?
12. Did any of those acts/omissions amount to the Respondent engaging in unwanted conduct relevant to her disability which had the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 15

Remedy

13. If any of the claims succeed, what compensation is the Claimant entitled to?
- 20
14. If the Claimant's discrimination claims succeed, what award (if any) should be given in respect of any injury to feelings?
15. Should any compensation awarded, be reduced on a just and equitable basis?

FACTUAL ISSUES**Protected Disclosures**

- 5 16. *Between September 2020 and February 2021, did the Claimant make disclosures verbally and in writing to Margaret McGivern, Annemarie Bond and Lyndsey Dick that:*
- a. *On a nightshift, 20 residents were being left unaided and there had been a pattern of falling?*
 - b. *Dementia patients were being got up too quickly in the morning and were being rushed?*
 - 10 c. *She was being asked to deal with a patient who had been risk assessed as requiring two staff, indicated with a red dot on the door?*

Detriments

- 15 17. *Did the Respondent and/or its workers subject the Claimant to the following detriments:*
- a. *Colleagues isolated the Claimant?*
 - b. *From October 2020, the Claimant was left on her own when on shift?*
 - c. *In October 2020, allegations were made that the Claimant was taking drugs, dealing drugs and stealing drugs from the residents' trolley?*
 - d. *The Claimant was gossiped about?*
 - e. *The Claimant's car tyres were slashed by co-workers on 19 and 27 February 2021?*
 - 20 f. *The Claimant was subjected to abusive Facebook messages from Mags Conn?*
 - 25

g. RM from February 2021 and AWB from March 2021 told the Claimant she had mental health problems and should go to the Doctor?

18. Are the detriments in paragraph 17 b and c out-of-time?

5 19. If so, was it reasonably practicable to present them in time?

20. If not, were the claims presented in such further period as the Tribunal deem reasonable?

Discrimination Arising from Disability (section 15 EQA 2010)

10 21. Did the Respondent treat the Claimant unfavourably because of something arising from the Claimant's disability in respect of the following allegations:

a. Isolating the Claimant because of her symptoms?

b. Co-workers believing she was on drugs?

15 c. Following an incident at work on 13 March 2021 where she had a panic attack, her colleague Reg responding to her unsympathetically by telling her to go to the Doctor and voicemails from co-workers asking her when she would be back at work?

22. Is the alleged act under paragraph 21 (b) out of time?

23. If so, does it form part of a continuing act?

20 24. If not, is it just (and) equitable to extend time?

Harassment (section 26 EQA 2010)

25. In respect of the Claimant's harassment claims:

a. Did Reg treat the Claimant unsympathetically following the March 2021 incident during which the Claimant had a panic attack?

- b. *Was the Claimant isolated by colleagues Mags Conn, Siobhan Mendal, Reg Morrison, Martin McHugh, Lorraine Peacock, Katrina Williams, Julie Skinner, Ashley Docherty and Annmarie Bond?*
- c. *Was the Claimant left on her own when on shift from October 2020 onwards?*
- d. *Did staff make allegations that the Claimant was taking drugs, dealing drugs and stealing drugs from the residents' trolley?*
- e. *Was the Claimant gossiped about?*
- f. *Did co-workers slash the Claimant's tyres on 19 and 27 February 2021?*
- g. *Did Mags Conn send the Claimant abusive text messages on 27 February 2021?*
- h. *Did co-workers say that the Claimant should go to the Doctors as she had mental health problems, specifically Reg Morrison, Annmarie Bond and Elaine Hamilton?*
- i. *Was the Claimant 'ghosted' by colleagues, including Ashley Docherty?*
- j. *On 21 April 2021 did the Respondent's Elaine Hamilton laugh about the Claimant's mental health on the phone, and call her a 'crackpot' and a 'nutter'?*
26. *Is the act of alleged harassment under paragraph 25 (c) and (d) out of time?*
27. *If so, do they form part of a continuing act?*
28. *If not, is it just (and) equitable to extend time?*
57. We pause here to note and record that in paragraph 17 (g) of the List of Issues, "**RM**" refers to Reg Morrison, and "**AWB**" should be "AMB" and refers to Anne-Marie Bond.

Findings in Fact

58. We have not sought to set out every detail of evidence which we heard nor to resolve every difference between the parties, but only those which appear to us to be material. Our material findings, relevant to the issues before us for judicial determination, based on the balance of probability, are as set out below, in a way that it is proportionate to the complexity and importance of the relevant issues before the Tribunal.
59. The Tribunal has found the following essential facts established:
- (1) The claimant, aged 38 as at the date of this Final Hearing, was formerly employed by the respondents as a Care Assistant at their Carnbroe Care Home, Coatbridge. Her date of birth is 25 November 1983, notwithstanding her ET1 claim form (at section 1.4, at page 3 of the Joint Bundle used at this Final Hearing) stated it is 28 November 1983.
 - (2) Her employment with the respondents commenced on 17 June 2020, and ended on 26 June 2021, according to the P45 issued to her by the respondents on 14 October 2021, a copy of which was produced to the Tribunal by the claimant, on 12 April 2022, and added as a further document to the Joint Bundle.
 - (3) 26 June 2021 is agreed between the parties as being the effective date of termination of the claimant's employment with the respondents. She was not dismissed by the respondents, but she resigned from their employment.
 - (4) As found by another Employment Tribunal, Judge Strain, at an earlier stage of this claim, by judgment issued on 7 December 2021, the claimant is a disabled person as defined within **Section 6 of the Equality Act 2010**, she having impairments of stress and anxiety, and Trigeminal Neuralgia, and the respondents having had knowledge of the claimant's disabilities over the relevant period, in the case of stress

and anxiety, from February 2021, and Trigeminal Neuralgia from June 2020.

- 5 (5) The respondents, Minster Care Group Ltd, operate a number of care homes for the elderly, one of which is Carnbroe Care Home, where the claimant was employed by them until her resignation took effect as at 26 June 2021.
- 10 (6) According to the respondents' ET3 response, defending the claim, at section 2.8 to 2.10, a copy of which was produced to the Tribunal at page 18 of the Joint Bundle, the respondents have more than one site in Great Britain, employing about 3,400 people in Great Britain, and 96 people employed at Carnbroe Care Home.
- 15 (7) The care homes now operated by the respondents, including Carnbroe, were previously operated and managed by Alpha Care, a name which appears on some of the respondent employer's policy documents produced to this Tribunal.
- 20 (8) Within Carnbroe Care Home, at the time when the claimant was employed there, there was an onsite Manager and Deputy Manager, Miss Lyndsey Dick and Mrs Anne-Marie Bond respectively, and there was an Area Manager, Mrs Elaine Hamilton, who was not based at Carnbroe, but who visited it from time to time.
- 25 (9) On the information provided to the Tribunal, from the various witness heard at this Final Hearing, Carnbroe Care Home has 4 specific units, caring for 74 residents, across 69 bedrooms. On the upper floor, dealing with the care of the elderly, were the Rannoch and Leven units, with 21 and 18 rooms respectively, total 39, while downstairs, caring for dementia residents, there were the Katrine and Lomond units, with 14 and 16 rooms respectively, total 30.
- (10) There was produced to the Tribunal, as document 8 in the Joint Bundle, at pages 52 to 54, a copy of the claimant's interview assessment form,

recording her interview for the Care Assistant post at Carnbroe Care Home, held on 3 June 2020, where she was interviewed by Miss Lyndsey Dick, the respondents' Manager. The claimant's assessment was recorded (at page 54 of the Bundle) as "**great candidate, answered all questions well, showed maturity + knowledge, comes highly recommended.**" She was offered a post on nightshift, for 38.5 hours per week, at £9.30 per hour.

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(11) The claimant's application for employment, dated 4 June 2020, was produced to the Tribunal, as document 9 in the Joint Bundle, at pages 55 to 59, along with her health check form (document 11, at pages 68/69), and her contract of employment, dated 17 June 2020, as document 10, at pages 60 to 67 of the Joint Bundle.

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(12) In terms of her contract of employment with the respondents, it was stated that she was subject to a six-month probationary period, and her terms and conditions of employment were stated to be as set out in the respondents' Staff Handbook. Her hours of work were stated to be 42 hours per week, and her rate of pay was specified as being £9.30 per hour.

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(13) In her ET1 claim form, at section 6, produced to us as page 7 of the Joint Bundle, the claimant stated that she worked 38.5 hours per week for the respondents, for which she was paid £1,483 monthly pay before tax.

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(14) In her evidence to the Tribunal, she stated that she was paid 4 weekly by the respondents, a fact verified by the copy payslips produced to the Tribunal. She also gave evidence that she worked 42 hours per week, with 3 x 12 hour shifts one week, and 4 x 12 hour shifts the next week, from 8pm one day to 8am the next.

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(15) The respondents' ET3 response, at section 5, copy produced at page 20 of the Bundle, neither confirmed nor denied the claimant's information in her ET1 claim form.

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- 5 (16) Her contract of employment continued after the expiry of the six-month probationary period, and throughout her time employed by the respondents, the claimant generally worked on the nightshift, and allocated to the Rannoch unit, and the night shift manager was a Mrs Margaret McGivern. A senior carer was generally in charge of each unit.
- 10 (17) The claimant's contract of employment, issued to her by the respondents, advised her that there was a Grievance & Whistleblowing Policy to provide an opportunity to raise grievances relating to her employment in a formal and confidential way, and that full details were provided in the Staff Handbook, and the Home's Policies & Procedures Manual. If any clarification was required on any aspect of those policies, employees were advised (as per page 65 of the Bundle) to contact their Manager or Area Manager, and to raise any grievance with their line manager in writing.
- 15 (18) As per the claimant's signature, she accepted the respondents' employment offer, on 18 June 2020, as per the copy produced at page 67 of the Bundle, and she agreed that the letter dated 17 June 2020, the contractual sections of the Staff Handbook, plus her job description, application form and health questionnaire (where applicable) constituted the terms and conditions of her employment with Minster Care Group. No copy job description for the claimant's post as a Care Assistant was provided to the Tribunal by either party.
- 20 (19) By way of an additional document lodged by the respondents, and added to the Joint Bundle at page 377, a "**Receipts Agreement**", dated 17 June 2020 was produced to the Tribunal, to vouch the claimant's receipt of her contract of employment, and respondents' policy documents, issued by Isobel (Clelland), the respondents' office administrator.
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- 5 (20) It showed the claimant's signature on 17 June 2020 for issue to her by Isobel of her fob, and uniform, but simply recorded issue of her contract, job description, hardcopy policies and procedures, receipt for password for staff resources, and receipt for password for "Caredocs", but with no claimant's signature for receipt as employee.
- 10 (21) There was also produced to the Tribunal, as document 12 in the Joint Bundle, at pages 70 to 110, a copy of the Employee Handbook for Minster Care Group (prepared by Citation Ltd and dated 20 April 2020), including, at chapter 6, details of company procedures, including Discipline & Grievance Procedure.
- (22) In that chapter 6, copy produced at page 98 of the Joint Bundle, there was detail provided about "***grievance procedure***", and "***public interest disclosures***".
- 15 (23) Under "***grievance procedure***", it was provided that an informal discussion can often resolve matters, but if an employee wished to raise the grievance formally, about any problems, or to air their views on dissatisfaction that relates to their work, then they should submit a formal written grievance to the HR department by email, or contact the appropriate line manager, who will make every effort to hear the grievance within 5 working days. There is also provision for a formal written appeal to the HR department if dissatisfied with the outcome of the grievance meeting.
- 20 (24) Under "***public interest disclosures***", the Employee Handbook refers to employees who make public disclosures, generally about wrong doings in the workplace, being commonly referred to as "***whistleblowers***", and briefly detailing the circumstances under which whistleblowers are protected by legislation for disclosing certain qualifying information. Any employee wishing to make a disclosure is strongly recommended to raise the issue with a company Director in
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- 30 the first instance so that, where appropriate, there is an opportunity to

address the area of concern. Where an employee wishes to make a disclosure that concerns a matter that cannot be dealt with through that procedure, the Handbook states that it should be raised with **Protect**, an independent whistleblowing charity.

- 5 (25) There were also produced to the Tribunal, as documents 13, 124 and 15 of the Joint Bundle, an undated Equal Opportunities Policy by Minster Care Group (at pages 111-112 of the Bundle), an undated Bullying & Harassment at Work Policy by Alpha Care (at pages 113-118), and an undated Disciplinary & Grievance Procedure by Alpha
10 Care (at pages 119-1230.
- (26) By way of additional documents lodged by the respondents, there was added to the Joint Bundle, a copy of the respondents' Whistleblowing Policy, at pages 373 to 376 of the Bundle, but badged as "**Alpha Care**", rather than "**Minster Care Group**".
- 15 (27) There were produced to the Tribunal, as document 25 in the Joint Bundle, at pages 148 – 154, a copy of the claimant's wage slips and pension information. She was auto-enrolled into the "**People Pension**" scheme used by the respondents, with employee and employer contributions to her pension.
- 20 (28) While wage details were not agreed between the parties in ET1 claim form and ET3 response, the respondents' Counter Schedule, produced by Mr Muirhead from Citation, in his email of 4 November 2021 to Glasgow ERT, copied to the claimant, and available within the Tribunal file, and referred to in the course of this Final Hearing, stated that the
25 claimant's gross pay was **£352.61** per week, and net weekly pay of **£288.53**, based on an average of her wages in February / April 2021.
- (29) From the payslips produced to the Tribunal, at pages 148 to 153 of the Joint Bundle, the claimant received the following wages from the respondents :

Tax Period	Date	Gross Pay	Items	Net Pay	Joint Bundle page
44	5/02/21	£1739.10	Basic 121 hours; 66 isolation hours	£1387.45	148
48	5/03/21	£1434.53	Basic 154.25 hours	£1189.98	149
52	1/4/21	£1411.28	Basic hours 129.75; 22 Holiday hours	£1175.06	150
4	30/4/21	£643.96	Basic Hours 37 ; Bank Holiday 7 hours; 7 days SSP	£643.96	151
8	28/5/21	£481.75	15 days SSP	£481.75	152
12	25/6/61	£885.40	12 days SSP & £500 bonus from Scottish Government for care workers	£867.47	153

(30) Employee pension deductions are shown for February / April 2021, as also employer pension deduction, but no pension deductions are shown thereafter. Other deductions were for tax and NI.

5 (31) On account of being absent from work, on Med 3 certificated sick leave, the claimant's wages were latterly SSP, and not ordinary basic pay. Her

hourly rate, previously £9.30 per hour, increased to £9.50 per hour from 30 April 2021.

5 (32) From paragraph 25 of the respondents' ET3 response, grounds of resistance, the Tribunal was advised that the claimant was on sick leave from 2 to 22 April 2021. However, there was no agreed statement provided to the Tribunal showing the claimant's total days off work on account of sick leave.

10 (33) There was also produced to the Tribunal, as document 23 in the Joint Bundle, at pages 141 – 146, documents relating to the claimant, showing that she had had to self-isolate after a Covid test & trace notification between 13 and 23 January 2021, and various Med 3 certificates from her GP, at Coatbank Medical Practice, showing that:

15 (a) the GP had assessed the claimant, on 2 April 2021, as not fit for work, because of stress at work, for 21 days (issued 9 April 2021, copy produced at page 142 of the Bundle);

(b) the GP had assessed the claimant, on 23 April 2021, as not fit for work, because of stress at work, for 21 days (issued 27 April 2021, copy produced at page 143 of the Bundle);

20 (c) the GP had assessed the claimant, on 10 May 2021, as not fit for work, because of stress at work, for 21 days (issued 10 May 2021, copy produced at page 144 of the Bundle);

(d) the GP had assessed the claimant, on 28 May 2021, as not fit for work, because of stress at work, for 21 days (issued 28 May 2021, copy produced at page 145 of the Bundle); and

25 (e) the GP had assessed the claimant, on 18 June 2021, as not fit for work, because of stress at work, for 28 days (issued 12 July 2021, copy produced at page 146 of the Bundle).

- 5 (34) In her evidence to the Tribunal, the claimant stated that her last shift at work was 25 April 2021, and that she finished work at 8am the next morning, 26 April 2021. She advised the Tribunal that she had made a self-referral to her GP, in April 2021, as she had learned, in January 2021, that she had been accused of taking drugs, and she was put on medication for anxiety.
- 10 (35) On 12 April 2022, at this Final Hearing, the claimant emailed in, and there was produced to the Tribunal by her, as additional documents for the Joint Bundle, further duplicate copies of the five Med 3 certificates (already in the Bundle at pages 142 to 146, as detailed above), plus 2 further duplicate Med 3 certificates for social security or SSP from her GP, showing as follows:
- 15 (a) the GP had assessed the claimant, on 23 November 2021, as not fit for work, because of stress at work, for 56 days (issued 1 December 2021); and
- (b) the GP had assessed the claimant, on 18 January 2022, as not fit for work, because of stress at work, for 56 days (issued 28 January 2022).
- 20 (36) The claimant provided no other, or more up to date medical certificates, to speak to her fitness, or otherwise, at any later date.
- 25 (37) There was also produced to the Tribunal by the claimant, on 12 April 2022, as an additional document for the Joint Bundle, copy letter dated 28 July 2021 "**to whom it may concern**" from her GP, Dr P Johnston, unsigned, and not on GP practice letter heading, stating that, at that time, the claimant had been experiencing a great deal of stress related to a work matter (not further specified), and she had not been sleeping properly, as well as feelings of anxiety and rumination, and a flare up of her physical symptoms including her trigeminal neuralgia, and intermittent paraesthesia in her hands which might also be related to
- 30 anxiety and stress.

- 5 (38) There was produced to the Tribunal by the respondents, as an additional document for the Joint Bundle, at pages 378 -379, 124-126, a copy of a claimant's supervision record dated March 2021, prepared by Margaret McGivern, with no recorded comments made by the claimant, as supervisee, other than in relation to the question "**What do you feel is not working in your role?**", where the record states "**team work.**"
- 10 (39) The record is signed by both Mrs McGivern and the claimant, and states that the date of next supervision is June 2021. No other supervision record was produced to the Tribunal for the claimant. No whistleblowing or safeguarding concerns by the claimant are noted on this supervision record. The claimant's evidence was that she had no recollection of this, although it looked like her signature, and she queried whether it had been fabricated by the respondents.
- 15 (40) There was no evidence produced to the Tribunal by the respondents that the claimant had ever been the subject of any disciplinary action, formal or informal. There was some vague evidence about an incident, around October 2020, when the claimant had cut a service user's hair, and she had been "**slagged off**" about it by a Cathy Wilson, the dayshift unit manager, but that incident had not resulted in any disciplinary action against the claimant.
- 20 (41) Further, there was also produced to the Tribunal by the respondents, as an additional document for the Joint Bundle, at pages 380 – 381, a copy of a supervision record for Margaret McGivern, dated 19 February 2021, prepared by Anne Marie Bond, recording : "**Margaret is an excellent night shift manager and comes at her duties to a high standard which she expects from her junior staff.**" The record is signed by both Mrs McGivern and Mrs Bond, and states that the date of next supervision is 19 April 2021. No other supervision record was produced to the Tribunal for Mrs McGivern.
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- 5 (42) At this Final Hearing, the claimant's description of Mrs McGivern, whom she had intended to call as a witness on her behalf, but did not do so, withdrawing her as a witness for the claimant, did not correspond to Mrs Bond's supervision comment, but the Tribunal did not hear directly from Mrs McGivern, and so it makes no finding as regards her fitness, or not, to be nightshift manager.
- 10 (43) There was also produced to the Tribunal, as document 16 in the Joint Bundle, at pages 124-126, a copy note of the night staff meeting held on 4 March 2021. That copy, produced to the Tribunal, was signed by Margaret McGivern, on 6 May 2021, as "**agreed**". Lyndsey Dick and Anne Marie Bond were present as management, and 15 staff attended, including the claimant, Margaret McGivern, Mags Conn, Siobhan Mendell, and others. Isobel Clelland took notes of the meeting.
- 15 (44) The claimant recalled the meeting, that Lynne Ferguson was not there to discuss what had been said about the drugs trolley, and she further stated that, towards the end of the meeting, Mags Conn got up, raised her voice, and ran right out of the room, leaving just her and Siobhan Mendell. After the meeting, the claimant stated that she was moved out of Rannoch unit, upstairs, and put downstairs, as if she was being moved because she was seen as the problem. She went to her doctor, and she was signed off work with stress.
- 20 (45) Further, the claimant stated that she was not asked to sign, or agree, the note of that meeting and, according to her evidence at this Final Hearing, she had to ask for the notes, and the notes were placed on a noticeboard in the Care Home for staff to read, and / or put in a folder accessible to staff.
- 25 (46) The claimant did not accept the notes as a full and fair reflection of all that was discussed at the meeting. In her evidence to the Tribunal, she advised that she did not get these minutes of that meeting until 26 April 30 2021, and she described them as mostly untrue, with bits missing.

- 5 (47) The claimant had requested a copy of the 4 March 2021 meeting notes by email to Isobel Clelland, the administrator, on 17 March 2021 (copy produced at page 322 of the Joint Bundle), having previously been advised by Lyndsey Dick, the manager, on 10 March 2021, by email, copy produced at page 331, that “***the minutes for the meeting have not been typed up as yet as Isobel and I have been caught up with the care inspectorate preparation and then their actual visit yesterday. Once they are typed I can send you a copy.***”
- 10 (48) On 18 March 2021, the claimant was advised, by email from Isobel, copy produced to the Tribunal at page 326 of the Bundle, that : “***Sorry, I was not aware that you had a meeting with your union rep on Wednesday. The meeting notes have not, as yet, been checked over and approved by Lyndsey. Lyndsey is not back in work until Monday 22nd. I will get her to check the notes and forward to you on her return to work.***”
- 15 (49) On 12 March 2021, at 14:21, the claimant emailed a written grievance to the respondents’ administrator, Isobel Clelland, a copy of which was produced to the Tribunal as document 17 in the Joint Bundle, at page 127, and reproduced again at page 319. It was addressed to “***Lyndsey and Carnbroe Management.***”
- 20 (50) The grievance stated as follows: “ ***I wish to raise a formal grievance regarding initially an allegation that was made about myself which was untrue (allegedly buying drugs outside workplace), this has never been addressed therefore there have been remarks made between some of my colleagues regarding this, these remarks are occurring within my workplace as well as outside the workplace. I have tried to ignore remarks made hoping things would die down but this situation has got to the stage where it is affecting both my physical and mental health. I feel I am being bullied and would like an investigation into this matter.***”
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- 5 (51) The grievance intimated by the claimant was in the terms suggested to her by her trade union representative, Elizabeth Martin from the GMB, as per the copy of her email on 12 March 2021, copy produced to the Tribunal at page 361 of the Joint Bundle, and copy email at page 346. Ms Martin from the GMB attended the claimant's grievance meeting with the respondents held on 24 March 2021.
- 10 (52) When on nightshift, that same date, 12 March 2021, the claimant was given a staff performance appraisal by Diane McLaren, a senior carer, a copy of the first page of which was produced to the Tribunal at page 179, and again at page 242 of the Joint Bundle, part of the claimant's unindexed document 37 in the Bundle. A full copy of the appraisal, extending to 3 pages, was added to the Joint Bundle as an additional document produced by the respondents on 19 April 2022. These pages were labelled as page 179A, B & C.
- 15 (53) Although only in post from January 2021, Mrs McLaren was tasked by Anne Marie Bond, the deputy manager, to do 2 or 3 appraisals over that night shift, including the claimant. In her part of the appraisal, the claimant stated that she felt she had "**given and give 100% at all times**", but commented "**no direction or support from management, or seniors**", since she started, and she also commented that she felt staff morale was low, and stated that "**there should be a duty of care to staff too, especially after the trauma and stress Covid has done.**"
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- 25 (54) The claimant completed that part 1 of the form, and gave it to Mrs McLaren, as supervisor, to complete part 2, with comments on performance in key areas of the job, and grading. On a graded scale 1-5, where 5 represents outstanding performance, the claimant was graded 4 throughout, for each of job knowledge, quality / quality of work, initiative and enthusiasm, team work, timekeeping / attendance, and attitude / appearance.
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- 5 (55) Mrs McLaren signed off the appraisal with an action plan for online and manual training ongoing by the claimant, dated the form 13 March 2021, but she did not give any date to review the plan. Although the form requires the Manager's signature, if different from the appraiser, the form produced to the Tribunal was not signed by Miss Dick, or Mrs Bond.
- 10 (56) There was produced to the Tribunal, as document 22 in the Joint Bundle, at pages 135-136, notes taken by Reg Morrison, on events as he recalled them with the claimant on 12 and 13 March 2021, and 12 May 2021.
- 15 (57) On 21 April 2022, following receipt of an email from Mr Joshi, the respondents' representative the previous evening at 21:17, the Tribunal allowed "RM diary note- manuscript and typed up" to be received and added to the Bundle, relating to proving the genuineness of the typed-up document already included in the Bundle at pages 135 and 136 by Reg Morrison.
- 20 (58) Also, on 21 April 2022, following an email from the claimant at 23:13 the previous evening, the Tribunal allowed additional documents produced by the claimant to be added to the Joint Bundle, being copy Facebook messenger and text conversations between the claimant and Mr Morrison.
- 25 (59) It is established that the claimant and Mr Morrison had interaction on 12 and 13 March 2021, but the evidence available to the Tribunal does not show that Mr Morrison behaved inappropriately, but that he acted out of concern, as an experienced mental health nurse, suggesting to the claimant that she should consult her GP, and his comments to her were designed to promote the claimant's well-being, rather than being a detriment to her.
- 30 (60) There was also produced to the Tribunal, as documents 18, 19, 20 and 21 in the Joint Bundle, a handwritten note taken by Anne Marie Bond

on 17 March 2021 of a telephone conversation with the claimant that day (page 128 of the Bundle); a handwritten note of the grievance meeting with the claimant on 24 March 2021 (pages 129-132) ; a handwritten note of discussion with the claimant on 29 March 2021 (page 133); and a handwritten note taken by Anne Marie Bond on 26 April 2021 to record the claimant did not turn up for a meeting that morning at 8:30am (page 134).

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(61) On 24 March 2021, the claimant and her trade union rep, Liz Martin from the GMB, met with Lyndsey Dick and Anne Marie Bond to discuss the claimants written grievance of 12 March 2021. The meeting was held at Carnbroe, at 2pm, with Liz Martin joining the others remotely via a WhatsApp call.

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(62) In her evidence to this Tribunal, the claimant stated that she had only seen these notes of the 24 March 2021 meeting when she received the Joint Bundle from the respondents on 30 March 2022. She recalled that her union rep, Ms Martin, did not take any notes of that grievance meeting.

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(63) According to the notes of that grievance meeting, management had called the 4 March 2021 night staff meeting to draw a line under things, move forward and stop gossiping and rumours. Moving forward, the plan was to support the claimant, as it was obvious that mental health issues had started in the workplace.

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(64) The claimant stated that Reg Morrison had been out of line to suggest she was unfit to work because of anxiety, and as regards the cliques in the workplace, management stated that staff had been given a copy of the anti-bullying protocol. It was suggested that the claimant consult her GP, for professional help, and for a plan to be put in place at work. It was proposed that the claimant meet with the manager on a weekly basis to catch up on how the claimant was feeling.

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- (65) The claimant met with Anne Marie Bond, the deputy manager, on 29 March 2021, and they were to meet again in the following week but, in the event, that did not happen, as the claimant went on 3 weeks' sickness absence.
- 5 (66) The respondents did not issue the claimant with any formal letter confirming the outcome of her grievance meeting on 24 March 2021, nor advising her of any right of appeal if she was dissatisfied with the outcome.
- 10 (67) There was produced to the Tribunal, as document 26 in the Joint Bundle, at pages 155-162, various screenshots of calls and text messages from the claimant to Elaine Hamilton, including a photograph at page 161, and a message at page 162, stating "**Probably jealous... what ever happened to be kind... x**"
- 15 (68) The call log shows that Elaine Hamilton received 14 calls from the claimant's mobile phone , on 26 April 2021, as well as being sent the bikini clad picture of the claimant herself, accusing Ms Hamilton being jealous.
- 20 (69) In her evidence to the Tribunal, the claimant accepted that it was her in the photograph, and that if it was sent to Ms Hamilton, it was probably sent in error, as she described her mental health as being not at its best at that time, and that it was "**a mad thing to do**".
- 25 (70) By way of additional documents lodged by the respondents, there was added to the Joint Bundle, at pages 365 to 372, a phone call log and messages from the claimant to Elaine Hamilton dated April 2021. It is not clear to the Tribunal why these call logs and messages were lodged again, as they were already included in the original Bundle at pages 155 to 162.

- (71) At the end of the call with Elaine Hamilton, Ms Hamilton failed to hang up the call, and she could be overheard by the claimant, making disparaging and unprofessional remarks about the claimant.
- (72) In giving her evidence to the Tribunal, on 14 April 2022, Elaine Hamilton held her hands up, explained that she was stressed, and that she had phoned the claimant to apologise and say she was sorry. While she did not know if she had used the words "**crackpot**" and "**nutter**", as alleged by the claimant, Ms Hamilton stated to the Tribunal that the words used were derogatory terms, and she accepted that she had behaved unprofessionally.
- (73) Elaine Hamilton also stated to the Tribunal that she had apologised on 27 April 2021 when she and Anne Marie Bond had visited the claimant at home for a welfare visit, which she described as being informal, and so no notes were taken of what was discussed.
- (74) Although not spoken to in evidence by the claimant, or any of the respondents' witnesses at this Final Hearing, the Tribunal notes and records that there was produced in the Joint Bundle, at pages 317 and 338, an email of 4 May 2021 from Isobel Clelland, the respondents' administrator to the claimant, entitled "**Settlement Agreement**".
- (75) It refers to a "**recent meeting**" (but date unspecified), and says she had been asked (by not identified by whom) to send the claimant information, and for her to consider accepting an offer from the respondents to be paid **79.5 hours in total** for holiday entitlement 2021/21 and 2021/22, and to end her employment at Carnbroe on 23 May 2021.
- (76) The claimant was asked to accept that offer by email, and Ms Clelland could arrange to the sum concerned to be paid to the claimant and for her P45 to be sent to her at the end of May 2021.

- 5 (77) Further, by email from the claimant to Ms Clelland, on 5 May 2021, copy produced to the Tribunal at page 337 of the Joint Bundle, the claimant replied stating : “ ***I would like to decline the offer and see if u can get a copy of my contract ? As I feel I have to take matters further and seek legal advice.***”
- (78) Following ACAS early conciliation between 5 May and 16 June 2021, the claimant presented her ET1 claim form to the Employment Tribunal on 21 June 2021.
- 10 (79) That followed upon an exchange of emails between the claimant and Colin Farebrother, the respondents’ Operations Director at their Harrow head office, on 17 and 18 June 2021.
- 15 (80) There was produced to the Tribunal, as document 24 in the Joint Bundle, at page 147, a copy of an email on 17 June 2021 from the claimant to Colin Farebrother, described by the respondents as the claimant’s resignation. Parts of this email trail were produced as part of the claimant’s pages 342 and 354 in the Bundle.
- 20 (81) What was produced at that page 147 was an incomplete copy of that full email exchange with Mr Farebrother, and a full copy was subsequently provided to the Tribunal, and added as another additional document to the Joint Bundle, produced to the Tribunal during the course of this Final Hearing, on 13 April 2022. Parts of this email trail were produced as part of the claimant’s pages 341, 342, 349, 351, 352, 354, 357 and 360 in the Bundle.
- 25 (82) By email to Mr Farebrother, sent at 10:42 on 17 June 2021, the claimant provided him with a long-detailed email detailing her position , including the opening preamble: “***Hi Colin not sure if Elaine Hamilton explained to you that I called her in good faith as I was being victimised and treated unfairly as a result of whistleblowing, mental health discrimination, victimisation, violation of dignity and the Acas code of conduct brreched [sic]. In October last year***
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5 ***2 senior carers (night shift) MAGS CONN (full time) and SIBOHAN MENDAL (bank worker) went to lynsey dick with false allegations about myself involving drugs !!!! Since around that time I was isolated from staff but didn't know anything about these allegations until jan 4th when a senior day shift work was covering nights as covid was present in the building. The claim was I allegedly bought £300 of drugs from the seniors sister and it was cocaine !!! I went straight to Lynsey who said it was an untrustworthy source!! Do u know that rumour got up and left."***

10 (83) After further narrative, the claimant ended her email to Mr Farebrother stating : ***" I called Elaine to get help to sort this mess out and she was lovely on the phone until she forgot to hand [sic] up and proceeded to say I was a nutter and was off my head ! She was laughing about me saying I would go to the care commission. Elaine then continued to slag off my mental health and then moved on to the mental nurse Reg saying he was like me only he is calling her several times a day that he is taking a break down over his neighbour again Elaine continues to mock and laugh at both mine and Reg misfortune and mental stability.... Elaine was relaying all this to Sam Jamieson at the Craigend home were [sic] they were both working ! I have all the evidence of Elaine's call and when she realised she aid sorry ! She was mocking us and it's of public interest that not one of them are capable of any compassion or empathy and are not suitable for the social care industry ! My life has been turned upside down and I know this could be very damaging to the company !! All I have ever wanted is truth, managers to manage and support and if a drug allegation is ever made don't sweep it under the carpet ! Use the proper disciplinary action and follow the cores of conduct !!! It's took me all my time not to go public as I'm disgusted in everyone especially Elaine Hamilton !"***

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- 5 (84) In her evidence to this Tribunal, the claimant described her email of 17 June 2021 to Mr Farebrother as “***crying out for an investigation***”, but there was no investigation that she was aware of. At this Final Hearing, the respondents led no evidence of there having been any investigation into the claimant’s email and her concerns / complaints.
- 10 (85) In her follow-on email, sent at 11:38 on 17 June 2021, the claimant had stated as follows to Mr Farebrother: “***I want to be able to terminate my employment and move on from this out of the social services care once I get my health back as I’m currently on anti-depressants and sleeping tablets and her [sic] back to being the person I was before call [sic] this happened but I would be wanting compensation but have had no response. My lawyer agrees the case has enough evidence in my favour but I would rather use my energy to getting better than going to the tribunal. I will give till tommoz [sic] and if no reply I will continue to get justice and SSSC will not be long in taking away registrations as fast as they gave them out.***”
- 15 (86) In her evidence to the Tribunal, the claimant stated that she did not have a legal representative, but she had joined the GMB trade union in January 2021, and their Liz Martin, a union rep, had assisted in drafting her grievance submitted to the respondents on 12 March 2021.
- 20 (87) In his reply to her, at 11:33 the next day, 18 June 2021, Mr Farebrother stated that: “***I’m sorry you feel aggrieved regarding your perception of events, but I feel the only course of action available to you know [sic] is to further consult your legal representative and follow their advice or perhaps identify to me what resolution you want to take place, then we could consider this.***”
- 25 (88) Thereafter, in the claimant’s reply to him, at 11:49 on 18 June 2021, she advised Mr Farebrother: “***Hi Colin I always wanted disciplinary action from management and some sort of compensation as I’ve***
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lost wages and myself along the way if u could come up with a settlement figure I would be happy to consider?"

5 (89) On the evidence available to the Tribunal, there appears to have been no further email exchange between Mr Farebrother and the claimant. In her oral evidence to the Tribunal, the claimant advised that after her email of 17 June 2021 she received no correspondence from anybody at the respondents saying that they had accepted her resignation or clarifying the end date of her employment. It was only months later than she received a P45 showing 26 June 2021 as her leaving date.

10 (90) For the purposes of this Final Hearing, there was produced to the Tribunal, as document 27 in the Joint Bundle, at pages 163 to 362, various (unindexed) documents from the claimant. Those documents were not specifically indexed, nor dated and paginated chronologically, or sequentially.

15 (91) The claimant had to explain them in her oral evidence to the Tribunal as many documents were screen shots taken by the camera on her mobile phone of texts / WhatsApp messages exchanged by her and work colleagues at Carnbroe, but not necessarily showing the actual date or time of the text / message concerned. Many of these pages in the Bundle were put to the claimant, and witnesses, when giving their evidence at the Final Hearing, but it is not necessary nor proportionate to quote from them in these findings.

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(92) In her evidence to the Tribunal, at this Final Hearing, the claimant stated that, in the event of success with her claim against the respondents, she sought an award of compensation to be made against them. She also stated that she would never go back and work for the respondents ever again.

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(93) Initially, she adopted the terms of her previous Schedule of Loss, intimated earlier in these Tribunal proceedings, in her PH Agenda,

submitted on 1 November 2021, by email sent at 07:49, seeking **£24,130**, as follows:

Lost previous wages due to being unfit to work:

- 5 • $33 \times 9.30 = £306.9$; $44 \times 9.30 = £409.20$; $33 \times 9.30 = £306.9$; $44 \times 9.30 = £409.20$
- *Total = £1432.20*
- *Tax = £122*
- *NI = £93*
- *Total = £12020.20 [sic] for 4 weeks - £360 sick pay*
- 10 • *= £860.20 March*
- *=£860.20 April*
- *=£860.20 May*
- *=£860.20 June*
- *=£1020 July*
- 15 • *=£1220 August*
- *=£1220 Sept*
- *=£1220 October*
- *Total lost £7100.80*

Future loss of earning

- 20 • *November = £1220.80*
- *December = £1220.80*
- *January = £1220.80*

- *February = £1220.80*
- *March = £1220.80*
- *Total = £6104 loss of future earnings*
- *Total wages = £13,204*
- 5 • *2 x tyres = £160*
- *Injury to feeling = £6000*
- *= £19,304*
- *Acas 25% = £4826*
- ***Total £24,130***

10 (94) At this Final Hearing, in giving evidence to the Tribunal, on 12 April 2022, the claimant stated that her wages were increased to £9.50 per hour, so she would need to revisit her figures, and check what she had received and when for SSP. She stated that her tyres had been sabotaged at work, and that is why she was claiming £160, but she had
15 lost the receipt to vouch that sum, but she might go to the garage to get a copy receipt. No further vouching was produced by her to the Tribunal. In any event, there was doubt whether the Tribunal would have any jurisdiction to have included this sum in any award.

20 (95) On the evidence available to the Tribunal, at this Final Hearing, the Tribunal cannot make a finding that the claimant's tyres were slashed at work by her co-workers, but there is sufficient evidence to show that on two separate dates, namely 19 and 27 February 2021, her tyres were deflated while her car was parked at work when she was on nightshift, and her written grievance to the respondents, submitted on
25 12 March 2021, makes no mention of any allegation that her car tyres being slashed by co-workers, and the matter was not reported by her to the Police.

- 5 (96) In her evidence, on 12 April 2022, the claimant stated that she had looked online about injury to feelings and found £6,000 was the average award for discrimination. She stated that she “**took a nervous breakdown**”, and “**my wee girl lost her mum**”, referring to her 13-year-old daughter, as there was lots going on at work with Covid, and that it played a big input into her marriage breakdown, and it changed her as a person, constantly on edge, and with feelings that she is being “**spied upon**” by anybody at Carnbroe Care Home.
- 10 (97) The claimant further stated in her evidence that, when she found out in January 2021, from Lynda Ferguson, about the drugs allegation, she kept approaching Lyndsey Dick, the manager, and she was “**crying out for an investigation**”, as they were looking after vulnerable people, and the claimant felt Lyndsey Dick and Anne Marie Bond were “**sweeping it under the carpet**”.
- 15 (98) Further, after the grievance meeting on 24 March 2021, the claimant understood that the respondents were going to investigate, but she did not know if they had done so. She spoke of her anxiety levels getting higher, and that “**I wanted a voice to defend myself**”, as the hearsay rumours about her and drugs were never put to her, in writing, nor in
- 20 person, by the respondents’ management.
- (99) On the matter of an ACAS uplift, the claimant’s evidence was that she believed the respondents unreasonably failed to investigate the serious allegation about drugs, and that led to their detrimental treatment of her.
- 25 (100) On 12 April 2022, by email sent at 09:00, the claimant intimated, and the Tribunal allowed as additional documents for the Joint Bundle, her proof of the claimant’s Universal Credit payments, and proof of her seeking employment, being a one-page screen shot of applications to Indeed.Com between 11 February and 14 March 2022, for jobs at
- 30 barbers / hair stylist / counter assistant – fish & chip shop.

- 5 (101) The claimant provided no other evidence of having looked for alternative work post termination of her employment with the respondents in June 2021. The Tribunal is not satisfied, on the information provided to it by the claimant, that she took all reasonable steps to mitigate her losses and seek alternative work.
- 10 (102) During the course of this Final Hearing, the claimant was successful after interview on 12 April 2022 in obtaining a job at a fish shop in Coatbridge. She produced to the Tribunal a payslip processed on 21 April 2022 showing net pay of £175.75 for 18.5 hours @ £9.50 per hour at that chip shop.
- 15 (103) In her oral evidence to the Tribunal, on 22 April 2022, the claimant stated that she had an oral contract for that new employer, with no written particulars of employment, although she had requested them, and she had received about **£550** in total for working in that chip shop, including trial shifts before employment.
- (104) Further, added the claimant, she has no other payslips, she gets a cash pay packet, and not paid into her bank, and she had received no other earnings from other employment, however casual or temporary, since her employment with the respondents ended in June 2021.
- 20 (105) When cross-examined by the respondents' representative, who suggested to her that she had been doing hairdressing work, when off sick and still employed by the respondents, the claimant stated that that was completely untrue. She stated that she has a snapped tendon in her thumb, and arthritis, and she cannot cut hair anymore, although she
- 25 had been a self-employed hairdresser between June 2003 and March 2019.
- (106) On 20 April 2022, by email sent at 13:53, the claimant forwarded "**Julie FB**" correspondence relating to Julie Skinner. This was put to Ms Skinner when she was cross-examined by the claimant. Next day, on
- 30 21 April 2022, by email sent at 08:59, Mr Joshi, the respondents'

representative, forewarned "**FB post – barber**" relating to the exchange of messages between the claimant and Julie Skinner, in respect of her evidence heard the previous day. This evidence was not put to Ms Skinner when she was a witness, and the claimant disputed that it related to her anyway. The document produced was of no assistance to the Tribunal.

(107) By email sent to the Tribunal on 26 April 2022, at 10:31, and copied to Mr Joshi for the respondents, the claimant stated as regards remedy, that "**Not including sick pay from benefits or paid to from employer, total loss of income is £18,890.14, and not including the amount to pay back to the government. This is calculated at £9.50 an hour at 152 hours per every 4 weeks.**" No explanation was provided of the claimant's calculations.

(108) Later that same morning, by further email sent to the Tribunal on 26 April 2022, at 11:33, and copied to Mr Joshi for the respondents, the claimant stated as regards remedy, that "**Not including sick pay from benefits or paid to from employer: Total loss of income is £18,890.14. And the amount to payed [sic] in total as statutory [sic] sick pay is £1381.03. And the amount paid in benefits is £2328.16. The benefits total £3709.19 owed to government. Benefits have been took off the loss of income.**" Again, no further explanation was provided of the claimant's calculations.

Tribunal's Assessment of the Evidence led at the Final Hearing

60. In considering the evidence led before the Tribunal, we have had to carefully assess the whole evidence heard from the various witnesses led before us, and to consider the many documents produced to the Tribunal in the agreed joint Bundle lodged and used at this Final Hearing, insofar as spoken to in evidence, which evidence and our assessment we now set out in the following pre-paragraphs:

(1) **Mrs Yvonne Walker: Claimant**

- 5 (a) The claimant was the first witness to be heard by the Tribunal, and we heard her evidence over the first 3 days, as well as further evidence on Friday, 22 April 2022, when she was examined and cross-examined that afternoon on her new job in a Coatbridge fish and chop shop, and her attempts to mitigate her losses.
- 10 (b) As agreed by the Judge with both parties, on day 1, her evidence in chief was elicited by a series of structured and focussed questions by the Employment Judge, designed to clarify matters relevant and necessary for the Tribunal to adjudicate upon the agreed List of Issues.
- (c) In giving her evidence to the Tribunal, the claimant did so under reference to the various documents contained within the Joint Bundle, and, later, additional documents added to it, by both parties.
- 15 (d) While the Joint Bundle had been prepared by the respondents, and included claimant's documents, the preparation of the Bundle did not follow best practice, and in particular it was unstructured, not properly or fully indexed, and not in any sequential or chronological order, with some documents duplicated. As became clear, from the need to add additional documents, the Bundle did not initially include
20 all relevant and necessary documents for a fair hearing of the case.
- (e) The claimant's use of screen shots from her mobile phone to prepare her documents for the Bundle was a particular and regularly occurring difficulty, as it did not assist the Tribunal, or any witnesses led, in easy navigation through the Bundle. The claimant had to often
25 explain when she had taken screen shots, and what was the actual date and / or time of the text message, etc, she had copied.
- (f) Generally speaking, in giving her evidence in chief, the claimant did so in a relatively calm and relaxed manner, albeit it was clear to the Tribunal, and the respondents' representative, that she was not at

ease with the Tribunal evidence giving process, sometimes crying and upset, until re-assured by the Tribunal, and asked to continue.

- 5 (g) When the claimant came to be cross-examined by Mr Joshi, the respondents' representative, her answers to his questions in cross-examination were more difficult to comprehend, and it appeared to the Tribunal that, from time to time, the claimant was evasive, sometimes ambiguous, and, at other times, seeking to embellish her
pled case before the Tribunal.
- 10 (h) By way of example of the latter point, in her evidence in chief, on 12 April 2022, the claimant stated that she had put all of her disclosures to Elaine Hamilton on the phone call that she had with her, on 26 April 2021, but then added that that had really upset her, and ***“my head was all over the place.”*** She accepted that she had not told this to Judge Walker.
- 15 (i) When the claimant also stated that she had reported matters to the Care Inspectorate, and she thought that she might have emails to the Care Inspectorate, and / or the SSSC (Scottish Social Services Council), when she was going through ACAS early conciliation (between 5 May and 16 June 2021), she simply asserted that, which
20 had not been foreshadowed before in her written pled case, and she never sought to lodge any such email correspondence thereafter.
- 25 (j) Further, she spoke in evidence of having given Lyndsey Dick a written bullet point note of her concerns, yet this was not produced as a document in the Bundle, and it had never been referred to before throughout this case's case management and exchange of claim and response, further and better particulars, and reply, and several PHs before several Judges. In particular, it was not
30 mentioned to Judge Walker when she recorded and noted the claimant's case against the respondents to go forward to this Final Hearing.

- 5 (k) In advance of her cross-examination of the respondents' witnesses, the claimant, as an unrepresented party litigant, was given some standard guidance by the Employment Judge (consistent with his duty to further the Tribunal's overriding objective under **Rule 2**, and ensure parties are on an equal footing) as to how to cross-examine witnesses being led on behalf of the respondents, putting her case to them, and of the importance of not making statements, while asking questions, but asking bite sized questions of witnesses to allow the witness time to answer that question, before going on to the next question.
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- 15 (l) While not previously experienced in asking cross-examination questions of witnesses in a formal, legal setting, such as this Final Hearing, it was clear to the Tribunal that, with practice, over several days, the claimant's confidence in doing so increased, and the claimant's ability to cross-examine witnesses improved, and she was asking them questions pre-prepared, and noted in her notebook that she referred to when questioning witnesses led by the respondents. However, she did not always put to them points from her own case.
- 20 (m) Further, despite the Judge's clear, and often repeated, guidance to the claimant, as an unrepresented party litigant, that she needed to cross-examine the respondents' witnesses on the terms of their evidence in chief, and raise with them matters that she disputed, and put to them points in her pled case, the claimant frequently disregarded the judicial guidance offered to her, as an aid to trying to put her on an equal footing with the respondents' representative.
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- 30 (n) We also note and record here that the claimant often overlooked the oft repeated guidance from the Judge for her to ask bite size questions of the respondents' witnesses, not give her own evidence, or make statements, and to refer the witness to the relevant document, and the relevant page number, in the Bundle, if she was asking them a specific question, and to clarify with the witness

whether they had, in fact, seen the document in question before giving evidence to the Tribunal. She also had a tendency to ask the witness a question, and then herself answer it, until reminded by the Judge that it was for the witness to answer, not her.

5 (o) Where her questions of witnesses were irrelevant to the issues before the Tribunal, the Employment Judge had occasion, from time to time, to advise her to ask relevant questions only, and to recall the guidance about cross-examination previously given to her for her assistance.

10 (p) Further, we also note and record that when Anne Marie Bond was being cross-examined by the claimant, on 21 April 2022, the Judge had to adjourn proceedings because of their respective behaviours as witness and cross-examiner were impacting on the good and orderly conduct of the Final Hearing.

15 (q) Indeed, the Judge had to give both the claimant and Mrs Bond a formal warning about how to behave in the Tribunal, and the need to avoid being disruptive and abusive, and that this was a public hearing in a court of law, and not the school playground. Having heard the Judge, both claimant and Mrs Bond in turn apologised to
20 the Tribunal.

(r) Generally, as regards the claimant`s evidence, we had an issue with the credibility and reliability of her evidence. Her evidence was an unrealistic view of what she believed had happened to her, and she did not understand why others could not see matters as she saw them. In our considered view, the claimant had a skewed perception
25 of events, and she felt so wronged by the respondents` actions that she did not seem to understand why the respondents were resisting her claim to this Tribunal.

(s) Overall, we found the claimant to be a confused, and confusing
30 witness, who despite having a deep passion for her case, and an

absolute and resolute self-belief that she has been the victim of unlawful disability discrimination and harassment by the respondents, lacked objectivity, and this impacted on the credibility and reliability of her evidence given to the Tribunal.

5 (t) The claimant's evidence was sometimes given in circumstances where she was upset and crying. The Tribunal made reasonable allowances to allow her the opportunity to have comfort breaks, and/or to proceed, and Mr Joshi's conduct as the respondents' representative was fair and reasonable in all the circumstances. 10 Neither the claimant, nor the Tribunal, indicated that they had any cause for concern that the cross-examination was unfair, or not appropriate.

15 (u) Having listened to the claimant's own evidence over several days, and her cross-examination of the respondents' witnesses, over several more days before the Tribunal, we were satisfied that the claimant genuinely believed what she was saying, and that her evidence reflected her perception of events as they had occurred in the course of her employment with the respondents.

20 (v) However, it was equally clear to us that, when the claimant's perception of events was challenged by Mr Joshi, as the respondents' representative, in his cross-examination of the claimant, her evidence then became more confused and confusing, she did not always answer the question as asked, and she often went off on tangents, and this cast a real and substantial doubt in 25 our minds over her overall credibility and reliability as a witness.

(w) In short, her evidence was all over the place, and she was haphazard and scattergun in her approach to giving and testing evidence. It was often difficult for us to follow her train of thought, and generally she lacked focus, despite the Tribunal's earlier case management and

signposting her to where she might get advice, if not representation, such as the Law Clinic at Strathclyde University.

5 (x) She gave the impression of trying to construct her case, as the evidence emerged, as best she thought would assist her prospects of success before this Tribunal. That said, she was generally consistent on the facts of her case as she had pled them, and on the basis of her complaints against the respondents, as she had detailed them to Judge Walker.

10 (y) Further, the claimant was very emotional as a witness, and reactive, and she gave us the clear impression that her case was emerging and being crafted as the evidence emerged, and that she was overly focused on the drugs allegation. Her presentation of her own case lacked focus and cogency, and appeared very much as a case she was building on the hoof.

15 **(2) Mrs Lynda Ferguson: formerly Senior Care Assistant**

20 (a) Mrs Ferguson (a former employee with 2 years' employment with the respondents) was the only witness led on behalf of the claimant, and she gave her evidence to the Tribunal on the morning of Thursday, 14 April 2022. Aged 53, she has been working as a warehouse operative, outwith the social care sector, since November 2021, having left her former job as Senior Care Assistant at Carnbroe Care Home. She was attending in response to a Witness Order granted by the Tribunal, on the claimant's application.

25 (b) In giving her evidence to the Tribunal, it was fairly limited in scope, and about what had been said to her about the drugs allegation implicating the claimant. She had been told by Margaret Conn to watch the drugs trolley when working on shift with the claimant. In her evidence to the Tribunal, Mrs Conn did
30 not deny telling that to Mrs Ferguson.

- 5 (c) As such, we found Mrs Ferguson to be a somewhat peripheral witness, in the grand scheme of things, although she did confirm what we heard from the claimant, and respondents' witnesses generally, about the Carnbroe Care Home being a place rife with gossip and rumour mongering.
- 10 (d) Overall, Mrs Ferguson was a witness who satisfied us that she was recounting events as best she could recall, and she came across to the Tribunal as a credible and reliable witness speaking clearly, and confidently, to her recollection that she had been asked to look out for the claimant when using the drugs trolley at Carnbroe Care Home.
- 15 (e) She advised us that she has her son still working at Carnbroe, and that she stays in contact with Miss Dick, the manager there, and in giving her evidence to the Tribunal, she came across as a neutral witness, showing no overt bias or partisanship towards the claimant, and no animosity, and no favour, towards the respondents.

(3) Mrs Elaine Hamilton: Respondents' Area Manager

- 20 (a) Mrs Hamilton was the first witness led on behalf of the respondents. We heard her evidence on the late morning, into early afternoon, of 14 April 2022. Aged 55, she is the respondents' Area Manager in Scotland, with responsibility for oversight of 4 care homes, including Carnbroe Care Home.
- 25 (b) In giving her evidence to the Tribunal, she came across as a senior manager with the respondents overloaded, at the material time in 2021, with work, and managing service delivery during a difficult and challenging time for the care sector looking after vulnerable elderly and dementia residents during a Covid pandemic.

- 5 (c) However, Mrs Hamilton did not come across to us as particularly confident, competent or knowledgeable about what was going on at Carnbroe Care Home, and with the claimant in particular, during the material time of January / June 2021. While we appreciate that there must have been competing demands on her at that time, across a number of the respondents' residential care establishments, she did not appear to have the full picture in giving evidence to us, and to know what had been happening on the ground at Carnbroe, e.g., she stated that she was
10 unaware of the claimant's written grievance in March 2021.
- (d) Further, Mrs Hamilton apologised at the Final Hearing to the claimant for what she had said during her conversation with another manager at Craigend Care Home on 26 April 2021, overheard when she had not hung up the phone after her call
15 with the claimant, and she accepted that it was unprofessional of her to speak in such disparaging terms about the claimant.
- (e) Also, in giving her evidence to this Tribunal, Mrs Hamilton did not come across confidently as knowing the respondent's various policies and procedures, and equally she did not seem
20 to realise the importance of an employer, though its line management, following internal procedures and practices.
- (f) Overall, we found her reliability as a witness difficult to assess, as she appeared not to have been particularly engaged by the Carnbroe local management with issues relating to the claimant.
25 She was not an impressive witness, and it is regrettable that, for whatever reason, she did not appear to have taken any hands-on approach to supporting the local manager in dealing with the claimant.
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(4) Mrs Lorraine Peacock: Care Assistant

- 5 (a) Mrs Peacock was the first of many care staff from Carnbroe Care Home from whom we heard evidence. She gave her evidence to the Tribunal on the afternoon of 14 April 2022. Aged 53, she is a Care Assistant with the respondents, with 3 years' service.
- 10 (b) She, like the 2 following witnesses, Mr McHugh, and Mrs McWilliams, spoke in evidence about their recollection of the nightshift meeting of 4 March 2021, and about the claimant isolating herself from others, and about the two tyre incidents with the claimant's car parked overnight at work. Collectively, they spoke of the claimant not being popular, and about gossip and rumour mongering by staff within Carnbroe Care Home.
- 15 (c) Generally, in giving their evidence, we found them to be vague and evasive, with lots of "probably", and "maybe", and they seemed to speak with one voice, suggestive to us of some collusion, or preparation on their parts, in advance of giving their evidence to the Tribunal.
- 20 (d) While led as witnesses for the respondents, and without any Witness Order, they came across as reluctant witnesses, who really did not want to be there. We did not find them to be credible or reliable witnesses.

(5) Mr Martin McHugh: Senior Care Assistant

- 25 (a) Mr McHugh was the next member of care staff from Carnbroe Care Home from whom we heard evidence. He too gave his evidence to the Tribunal on the afternoon of 14 April 2022. Aged 26, he is a Senior Care Assistant with the respondents, with 4 years' service.
- (b) We refer to our comments above re Mrs Peacock. They apply equally to this witness.

(6) **Mrs Katrina McWilliams: Health Care Worker**

5 (a) Mrs McWilliams was the next witness for the respondents. She too gave her evidence to the Tribunal on the afternoon of 14 April 2022. Aged 60, she is a Health Care Worker with the respondents, with 5+ years' service.

(b) Again, we refer to our comments above re Mrs Peacock. They apply equally to this witness.

(7) **Miss Lyndsey Dick: Respondents' Manager**

10 (a) After the Easter holiday weekend, we heard from Miss Dick, as the next witness for the respondents. She gave her evidence to the Tribunal on Tuesday, 19 April 2022. Aged 43, she is the respondents' local Manager at Carnbroe Care Home, and she has 3 years' service in that role, and she has been with the respondents for 9 years' service.

15 (b) In giving her evidence to the Tribunal, it was clear to us that Miss Dick had struggled to run the Care Home in what we appreciate were difficult and challenging circumstances at that time. She came across, in giving her evidence to the Tribunal, as caring and approachable, but appeared lacking in proper grasp and understanding of the respondents' various policies and procedures.

20 (c) She made it clear to us that, as regards the drugs allegation implicating the claimant, she did not believe it, and that she saw it as a malicious rumour to try and do down the claimant, but in dealing with the rife rumours and gossip mongering within the Care Home, and how that was impacting on the claimant and her mental health, it seems to us that she was trying to put sticking plasters on gaping wounds.

- 5 (d) While Miss Dick referred to her “open door “policy for all staff, we were not convinced that it was as open as she would have had us believe. There was limited overlap between her regular daytime working pattern, and the 12-hours shift pattern adopted by night-staff in the Care Home. There was also evidence given that Miss Dick adjusted her working hours at one stage in order to avoid staff enquiries.
- 10 (e) Further, while we appreciate that her focus as Manager was rightly on the care of the vulnerable residents, we did not glean the impression, having heard from her, and later from Mrs Bond, the Deputy Manager, that this was a dynamic senior leadership team, who shared information, and provided mutual support and assistance, to overseeing the needs of staff, as well as residents. It was not clear what support, if any, Miss Dick received from Elaine Hamilton, the Area Manager, when she was absent from the manager role at Carnbroe.
- 15 (f) From her evidence to us at this Final Hearing, it appears to us that Miss Dick found it difficult to focus on both residents and staff, and their differing needs, challenges and demands, and to do all that at the same time as managing a Care Home, looking after residents during a Covid pandemic, and addressing the associated staffing problems and issues.
- 20 (g) We were satisfied, having heard from Miss Dick, in her evidence to the Tribunal, that there was no malicious intent on her part towards the claimant, and nothing to suggest that she treated the claimant detrimentally when she raised issues about staff in Mags Conn’s team behaving inappropriately, watching Tv / Netflix and getting in pizzas, etc, while on night shift.
- 25 (h) It is a matter of regret for us to note and record it, but from the evidence we heard over 8 days in this Final Hearing, it seems
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clear to us that Miss Dick had lost control of management of Carnbroe Care Home, and she appeared ill-equipped to deal with the various factions / cliques operating within the Care Home. We appreciate that she had some periods of absence, during the relevant period, and that no doubt impacted on her ability to deal with issues manifesting within the nightshift workforce.

- (i) In closing, we did not find her to be an impressive witness. We had difficulty with her credibility, and reliability. Also, she referred in her own evidence to us to evidence led earlier in the course of this Final Hearing, where either Mr Joshi had reported to her, as the human face of the corporate client, or else other witnesses from the respondents, already heard by the Tribunal, had, despite clear and unequivocal warning from the Judge at the close of each witness's evidence, not to discuss their evidence with others at the Care Home yet to give evidence, breached that judicial warning.

(8) Mrs Margaret Conn: Senior Carer

- (a) On Wednesday, 20 April 2022, Mrs Conn was the first of two witnesses for the respondents heard by the Tribunal on that date. Aged 54, she is a Senior Carer with the respondents, at Carnbroe Care Home, with 6 years' service, of which 5 years as a Senior.
- (b) In giving her evidence to the Tribunal, Mrs Conn came across as clearly the nightshift workforce leader, with de facto overall command and control of the night shift, albeit that was supposed to be, in terms of line management hierarchy, the role of Margaret McGivern. Mrs Conn clearly saw herself above her senior carer status, and with a self-belief that she knew best how to run the nightshift, by aggressive tactics in operation if you

didn't see things her way. You were either one of her gang, or you were an outsider.

5 (c) We found Mrs Conn to be a wholly incredible and unreliable witness. In giving her evidence to this Tribunal, she came across as there to give evidence on her own part, and we took most of what she had to say with a pinch of salt. From the whole evidence that we heard, over 8 days, it was clear to us that there was real antipathy by many of the respondents' witnesses towards the claimant, and it was straight-forward for us to see that Mrs Conn was the ringleader of her faction in the workplace, and the genesis of that general antipathy towards the claimant.

10 (d) It is clear, from the totality of the evidence that we heard at this Final Hearing, that she was the person who clearly influenced others in the gossip, and rumour mongering, that went on within Carnbroe. She was the person who took the drugs allegation implicating the claimant to Lyndsey Dick, the manager, and her motivation in doing so seems questionable, and designed to cause difficulty for the claimant.

15 (e) Equally, from the evidence we heard, it is clear that Mrs Conn was assertive and domineering in the workplace, and her behaviour clearly influenced the situation that the claimant found herself in at work with other co-workers. Very much, in our view, Mrs Conn's evidence was skewed through her own lens, and she was a witness for the respondents who had spoken about the claimant working in a local fish and chip shop, after the claimant's evidence on day 1 that she had been unemployed since leaving the respondents' employment in June 2021.

20 (f) While the claimant saw this as stalking and harassment of her, during the course of this Final Hearing, where the respondents had sent to the Tribunal photographs of the claimant working in

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a Coatbridge fish and chip shop, seen by Mrs Conn, and photographed by Steve Bond, Mrs Bond's husband, this demonstrated to the Tribunal that, after day 1 of the Final Hearing, witnesses from the respondents were talking about her evidence already heard at the Tribunal.

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(9) Miss Julie Skinner: Care Assistant

(a) Miss Skinner was the next witness for the respondents, also heard on 20 April 2022. Aged 36, she is a Care Assistant with the respondents, at Carnbroe Care Home, with 9 years' service.

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(b) In giving her evidence, like earlier witnesses from the respondents, she spoke in general and vague terms, about the claimant isolating herself, and about what she believed to be the claimant doing some hairdressing, based on a Facebook post, which the claimant disputed related to her.

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(c) Generally, Miss Skinner's evidence did nothing to add to the Tribunal's understanding of the case from earlier witnesses and appeared more like a character assassination of the claimant designed to suggest that she had been working as a hairdresser.

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(d) She was vague and evasive about the outcome of the nightshift meeting on 4 March 2021. Indeed, overall, we would describe her as a reluctant witness, who expressed surprise as to why she was giving evidence as a witness for her employer.

(10) Mrs Anne-Marie Bond : formerly Deputy Manager

(a) Mrs Bond was the respondents' Deputy Manager at Carnbroe Care Home at the time of the claimant's employment there. She had 3 years' service in that role between 2018 and 2021. Aged 59, she is now the Clinical Lead Nurse at Carnbroe Care Home, having returned there after a short placement as Manager at

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Craigend Care Home in 2021. We heard her evidence on Thursday, 21 April 2022, and continued the following morning.

- 5 (b) In giving her evidence for the respondents, Mrs Bond was the most robust and dynamic in her cross-examination interaction with the claimant. As detailed earlier in these Reasons, when discussing the claimant's evidence, it will be recalled that both required to be given a judicial warning about their conduct at this Final Hearing.
- 10 (c) From her evidence to the Tribunal, it appeared that Mrs Bond, despite her then role as Deputy Manager, did not have a complete understanding of the respondents' policies and procedures, and how staff were made aware of them, and that for a while, she had been covering for Miss Dick, the manager, when she was absent from her work. It was not clear what support, if any, she received from Elaine Hamilton, the Area Manager, when Miss Dick was off.
- 15 (d) Like Miss Dick before her, Mrs Bond advised us that she did not believe the drugs allegation implicating the claimant. There was no evidence of any malicious intent on her part towards the claimant, and Mrs Bond did accept, with the benefit of hindsight, that maybe she should have done things differently.
- 20 (e) Overall, we did not find her to be an impressive witness for the respondent, and we had some doubts about her credibility and reliability as a witness.

25 **(11) Mrs Diane McLaren : Senior Carer**

- (a) Mrs McLaren gave her evidence to the Tribunal on the afternoon of Friday, 22 April 2022. She is aged 32, and a Senior Carer at Carnbroe Care Home since January 2021.

- 5 (b) She gave her evidence remotely, joining the in person Final Hearing through use of CVP. She had available to her, at her home, a copy of the Bundle, as she would have had had she been in attendance personally and giving her evidence from the witness table in the Glasgow Tribunal Centre.
- (c) Her evidence was fairly limited in scope, and focussed on the staff appraisal report that she had completed on the claimant, as instructed by Mrs Bond, the Deputy Manager, on the nightshift over 12 / 13 March 2021.
- 10 (d) If anything, her evidence suggested to the Tribunal that the respondents' approach to staff appraisal was haphazard, rather than structured, and she having only been in post for some 3 months, she was perhaps wrong-footed in being tasked with the role of appraiser, but she came across to the Tribunal as a
- 15 credible and reliable witness from the respondents.
- (e) The fact of the appraisal was not in dispute between the parties, and the 4 out of 5 scoring of the claimant by Mrs McLaren was not the subject of any criticism or complaint by the claimant as being detrimental treatment of her.

20 **(12) Mr Reginald Morrison : Staff Nurse**

- (a) The respondents' final witness was Mr Morrison. He too gave his evidence on the afternoon of 22 April 2022. He is aged 62, and he is a Staff Nurse at Carnbroe Care Home, with 2+ years with the respondents.
- 25 (b) He too gave his evidence remotely, joining the in person Final Hearing through use of CVP. He had available to him, at his home, a copy of the Bundle, as he would have had had he been in attendance personally and giving his evidence from the witness table in the Glasgow Tribunal Centre.

5 (c) Mr Morrison was open and candid that his memory was poor due to him suffering from long Covid. Due to technical difficulties taking his evidence by CVP, where he appeared on the screen in the public hearing room, but he was muted, after several attempts to disconnect, and reconnect, we continued with his live video link, but no audio through CVP, and, with assistance from the CVP clerk, the witness called into the Tribunal phone on the Judge's bench, so that all in the hearing room could hear him on loudspeaker through that medium, whilst seeing him on the video screen.

10 (d) In giving his evidence to the Tribunal, Mr Morrison came across as embittered, due to the fact that while previously a friend of the claimant at work, he had found her demanding of his time and attention outside work, where he had become fed up with her regularly contacting him, and she had then complained in these Tribunal proceedings that his treatment of her on 12 / 13 March 2021 had been unsympathetic.

15 (e) Mr Morrison gave his insight to the running of the Carnbroe Care Home, during the time of the claimant's employment there, and he came across as even-handed, and not showing any overt malice or ill-will to the claimant, or the respondents. That said, we felt he used his attendance at this Tribunal as a witness to have a right of reply to the claimant's allegations that he was unsympathetic to her on the dates in question, and her specific allegation that he is not a good mental health nurse.

20 (f) While he insisted that the claimant apologised to him for her behaviour to him on 13 March 2021, she equally firmly denied that she had apologised, on the basis that she had nothing to apologise for. In those circumstances, it was difficult for the Tribunal to decide who to believe on that point.

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- 5 (g) Overall, we would describe Mr Morris in as a poor witness, but we are satisfied that he was doing his best, in circumstances of ongoing poor health, to remember as best he could what had happened in his encounters with the claimant on 12 / 13 March 2021. He was assisted in that by reference to his own contemporary diary notes, copies produced to the Tribunal, along with the typed-up transcript of those manuscript diary entries.

(13) **Witnesses not heard by the Tribunal**

- 10 (a) On day 1 of the Final Hearing, in discussing matters of witness scheduling and timetabling, the Tribunal was advised that the claimant intended to lead evidence from herself, and 2 other witnesses on her behalf, namely Margaret McGivern, and Lynda Ferguson, estimated by the claimant as around 2 hours for each, while the respondents intimated that they would be leading 11 witnesses.
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- (b) Mrs Ferguson was cited by Witness Order to attend as a witness for the claimant, and she did attend on 14 April 2022. On 12 April 2022, the claimant had emailed the Tribunal to advise that Mrs McGivern was unable to access software electronically to do a CVP video link the next day, but she could attend in person on Thursday, 14 April 2022.
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- (c) In the event, the claimant did not lead evidence from Margaret McGivern, and the respondents did not lead evidence from Katie Higgins. It was not explained to the Tribunal why Katie Higgins was not being led, but by email on 14 April 2022, the claimant advised the Tribunal that Margaret McGivern had tested positive for Covid-19, so she could not attend, and ***“to take her off the witness list”***.
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- 5 (d) At an earlier stage of these Tribunal proceedings, the claimant had indicated that, in addition to Margaret McGivern, and Lynda Ferguson, she intended to lead evidence from Anne Bannan, but while so indicating, on 4 April 2022, as she had done in her PH Agenda intimated on 1 November 2021, the claimant advised the Tribunal, on 5 April 2022, by email, that Anne Bannan was “***not comfortable to be a witness which is understandable so can u take her name out.***”

Parties’ Closing Submissions

- 10 61. The Tribunal heard closing submissions from both parties’ representatives on the last day, Tuesday, 26 April 2022.
- 15 62. On 30 March 2022, in the lead up to the start of the Final Hearing, Judge McPherson made various case management orders. In particular, he made an order that the respondents’ representative should prepare and intimate to the claimant, by no later than 9.30am on day 6, which should have been the final day, a written skeleton argument setting out the factual and legal basis of the respondents’ resistance to the claim, to cite all and any statutory provisions being relied upon, and all and any relevant case law authority from the higher tribunals and courts, by proper citation, and paragraph/Judge reference to the applicable legal principle being relied upon, and to provide the claimant and Tribunal with hyperlinks to the free access Bailli website for any case law to be relied upon by the respondents.
- 20 63. The Judge made that order, in terms of **Rule 2 of the Employment Tribunal Rules of Procedure 2013**, to put the claimant, as a non-legally qualified, unrepresented, party litigant, on an equal footing with the respondents’ representative, a professional representative from an employment consultancy firm.
- 25 64. Further, in terms of **Rule 45**, the Judge also ordered that each party would have no more than 45 minutes to address the Tribunal on behalf of their party with their closing submissions. He ordered that the respondents’
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representative would be heard first, then the claimant in reply. After the Tribunal's questions, if any, he further ordered that each party would be provided with a right of reply, not exceeding 15 minutes. He also directed that the claimant might make her closing submissions orally, or in writing, speaking to a written note, as she might prefer.

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65. On the basis that evidence had concluded on day 8, we ordered that the hearing on submissions would start on day 9 at 11:00am and that was to allow the claimant an opportunity to read, and digest, the respondents' representative's written closing submissions, prior to hearing them being spoken to by Mr Joshi, and then being asked to make a reply on her own behalf as the claimant.

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66. At the request of Mr Joshi, who is based in London, and who had travelled to Glasgow for the 8 in person days of the Final Hearing, we allowed him to participate remotely on day 9 to deal with closing submissions, by him using the Tribunal's video conferencing facility, the Cloud Video Platform ("CVP"). On that basis, the Final Hearing that last day, 26 April 2022, proceeded as a hybrid Hearing, with Mr Joshi on CVP, and the full Tribunal, and the claimant, in person, at Glasgow Tribunal Centre. The claimant was accompanied by her sister, Victoria Cunningham, for moral support.

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67. There were a few occasions on which there were connectivity issues affecting the ability of one or more of the participants to see and / or hear each other on CVP, and at a later stage, there was an irritating background noise coming from the CVP screen in the hearing room, where the clerk had to be summoned, investigate and remedy. However, these matters notwithstanding, we persevered, and we were able to overcome these difficulties and conduct a fair hearing on both parties' submissions.

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68. By email from Mr Joshi, on Monday, 25 April 2022, at 16:07, he submitted to the Glasgow Tribunal office, with copy to the claimant, the respondents' written submissions comprising a 10-page, typewritten document, with his closing submissions, and a list of hyperlinked case law authorities. One

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authority, which he was unable to hyperlink to the Bailli website, was provided by a full print out attachment.

69. He did not do so using the agreed List of Issues as the basis of his submissions, but instead provided a note of the legal principles for public interest disclosure, detriment, causation, discrimination arising from disability, and harassment (at his paragraphs 1 to 19), followed by a note on the application of those legal principles to the facts of this case (at his paragraphs 20 to 45). Very graciously, Mr Joshi accepted that his written submissions did not follow the flow of the List of Issues, and he apologised for the oversight on his part.

70. His written closing submissions dated 25 April 2022 are held on the Tribunal's casefile, so it is not necessary to repeat their full terms *verbatim* here, but for present purposes, it will be sufficient to note that, within those written submissions, Mr Joshi made reference to the following case law authorities, being relied upon by the respondents, as follows:

Cavendish Munro Professional Risks Management Ltd v. Geduld [2009] UKEAT 0195_09_0608 ; [2010] ICR 325

Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436

Darnton v. University of Surrey [2002] UKEAT 882_01_1112 ; [2003] ICR 615

Chesterton Global Ltd & Anor v Nurmohamed & Anor [2017] EWCA Civ 979 ; [2018] ICR 73

Underwood v Wincanton plc [2015] UKEAT/0163/15/RN

Derbyshire v St Helens MBC [2007] UKHL 16 ; [2007] ICR 841

Fecitt & Ors v NHS Manchester(Public Concern at Work intervening) [2011] EWCA Civ 1190 ; [2012] ICR 372

Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2015] UKEAT 0397_14_2907.

Williams v Swansea University Pension & Assurance Scheme [2015]
UKEAT 0415_14_2107 ; [2015] ICR 1197

General Dynamics Information Technology Ltd v Carranza [2014]
UKEAT 0107_14_1010 ; [2015] IRLR 43

5 **Hardys & Hansons Plc v Lax** [2005] EWCA Civ 846 ; [2015] ICR 1565

71. By email from the claimant, sent at 16:40 on Monday, 25 April 2022, she provided her closing submissions, in a short email reading as follows:

“My apologies as this is a few minutes late due to technical issues.

10 *The claimant feels and evidence strongly show that the witnesses for the respondents have been very inconsistent and fabricated .*

All the detriments have Been carried out by both colleagues and management as a they failed their duty of care and caused unwanted distress and upset to the claimant.

15 *Serious drug allegations should be investigated to give an equal footing and if this was done at the start these events would not occur. The claimant was victimised, harassed and treated differently.*

20 *The claimant was gossiped about and lies were made up because of the claimants complaints to management about the bad practice and shows that due to her disability (TN, anxiety and stress). The side effects of her condition, such cause facial effects and the prescription medication of a controlled drug was the reason people thought she was.*

The claimant done here [sic] work to the best of her ability even though under enormous pressure and anxiety that left the claimant in distress at times.

25 *Every detriment that the claimant has listed is a true event of what happened and I hope the judge and company can understand the failings from this large co operation. [sic]*

Reg Morrison was in fact the nurse on charge on March 2021 and did not need to know as to why the claimant went home as he clearly visibly seen as noted in his evidence as the claimant didn't feel comfortable discussing with him."

5 72. At the hearing on submissions, the Tribunal had the benefit of written closing submissions made by Mr Joshi, the respondents' representative, which he augmented orally, after we had ordered him to submit, after an adjournment for the purpose, his proposed answers to each of the 28 points in the List of Issues.

10 73. We considered that was appropriate as (a) it is what we had asked him to do anyway, and (b) it would be of assistance to the claimant, as an unrepresented party litigant, to see the respondents' position set out that way, rather than read and digest the narrative in his written closing submissions.

15 74. He did so by returning the List of Issues, annotated with comments SJ1 to SJ38, often simply referring back to relevant paragraph numbers in his own written submissions. His email of 26 April 2022 at 11:29, enclosing the marked-up List of Issues, with annotations, attached, is held on the Tribunal's casefile, so it is not necessary to repeat its full terms *verbatim* here, and a hard copy was printed for use of the 3 members of the full Tribunal, and the
20 claimant.

75. We also had oral submissions from the claimant, Mrs Walker, who, at the Judge's suggestion, addressed us, as best she could, as an unrepresented, party litigant, point by point in reply to the respondents' written submissions. As such, we allowed her the opportunity to augment what she had stated in
25 her emailed closing submissions intimated the previous afternoon, and to mark up her own comments on a clean copy of the List of Issues.

76. The claimant did that, after an adjournment allowed to her for that purpose by marking up her responses to the List of Issues, and her handing them, and a separate handwritten note to us, on 2 notebook sized pages, with her
30 handwritten answers to points 1 to 8, all of which we had copied for the use

of all concerned, including having our clerk send an email with a scanned copy direct to Mr Joshi who was not attending in person, but participating remotely by CVP.

5 77. Again, as her annotated notes are held on the Tribunal's casefile, so it is not necessary to repeat their full terms verbatim here, but in our Discussion and Deliberation, later in these Reasons, we take account of all that was written, and said to us, by each of Mr Joshi for the respondents, and the claimant on her own behalf.

10 78. As the claimant, in her handwritten note, did not answer all 28 points, we gave her the opportunity to do so orally, when she replied to Mr Joshi's closing submissions for the respondents, when she provided answers to those she had not answered, and, on better understanding of the questions, she changed her answers to some others.

15 79. In that regard, we note and record here that the claimant confirmed her answer to issue 18 as "no", she advised that her stated answer "yes" to issue 19 should be changed to "no", and she stated that her answer to issue 20, which she had not answered, should be shown as a "yes."

20 80. Further, we also note and record here that she confirmed her answer to issue 22 as "no", she confirmed her answer "yes" to issue 23, and she stated that her answer to issue 24, which she had not answered, should be shown as a "yes".

25 81. On the matter of a continuing act, at issue 23, she submitted that discrimination continued throughout her employment, and it was the same people, in the same circle, namely Reg, Mags, Lorraine, Katrina, Siobhan, and Ashley, but not Diane.

82. Finally, we also note and record here that the claimant confirmed her answer to issue 26 as "no", she advised that her answer to issue 27, which she had left blank, should be "yes", and likewise, she stated that her answer to issue 28, which she had also not answered, should be shown as a "yes."

83. In closing, the claimant invited us to also take into account her email of 25 April 2022 at 16:40 with her written submissions, as we have recorded above earlier in these Reasons.
84. Having heard from the claimant in reply, we then invited Mr Joshi to respond with anything further that he wished to say to us. On the matter of the 3 cases cited by the Judge, relating to harassment, Mr Joshi stated that it was important to bear in mind the context of the claimant's calls to the Area Manager, Elaine Hamilton, and the bikini photo sent to her from the claimant, and that the Tribunal should analyse matters objectively.
85. He then referred us to paragraph 75 of the Court of Appeal's judgment, by Lord Justice Underhill, in **Unite the Union v Nalliard [2018] EWCA Civ. 1203**, and that what had prompted Ms Hamilton's response, overheard by the claimant, was the combination of phone calls from the claimant, and the phot imagery sent to her.
86. Mr Joshi submitted that from that the Tribunal can glean what Ms Hamilton's mental processes were at the time, as he submitted that there needs to be consideration given to the mental processes of Ms Hamilton as the alleged harasser, and whether her unwanted conduct was motivated by the claimant's protected characteristic of disability.
87. On the matter of the claimant's request for an ACAS uplift, Mr Joshi stated that any failure by the respondents' to comply with the ACAS Code about the grievance meeting was not unreasonable, as Mrs Bond had stated that the 24 March 2021 meeting with the claimant and her GMB representative had resolved the grievance through setting up informal welfare meetings.
88. While the respondents' grievance procedure had not been concluded formally, in writing, the grievance had, in Mr Joshi's submission, been "**abandoned consensually**", and so it would not be just and equitable for the Tribunal to award any uplift. He further stated that, against that background, while the grievance process was not concluded, one should not be mechanistic, and say that every stage of the procedure must be carried out.

89. On the matter of injury to feelings, Mr Joshi noted the claimant's position, and stated that he adhered to the respondents' position, as per their Counter Schedule, and he referred us to the **Vento** bands, and **ET Presidential Guidance**, without any specific citation. If the claimant had been harassed or discriminated against, which he denied, Mr Joshi submitted that there was not any long campaign of highly offensive, disgraceful conduct against her, and any award should be in the **Vento** low band, and the Tribunal should take into account aspects of the claimant's behaviour which had caused the respondents some concern, such as the outlandish behaviours attributed to her by witnesses from the respondents, which would have caused individuals to speak about the claimant.
90. Further, on the matter of the claimant's attempts to mitigate her losses, he invited the Tribunal to treat the claimant's evidence with caution, given it was scant, and only from February 2022, and that there was no evidence produced of her actively seeking alternative employment in the previous year.
91. Given the EAT authority of **Cooper Contracting Limited v Lindsey [2015] UKEAT/0184/15**, cited by the Judge, on mitigation of loss, Mr Joshi accepted that, on the respondents' behalf, no evidence had been led of other jobs that the claimant could have applied for.
92. However, he commented that, but for feelers put out by the respondents' witnesses, and put to the claimant in cross-examination on day 8, her job at the fish and chip shop may not have been revealed by the claimant. Further, he stated (albeit it the claimant had denied it in cross-examination) that the claimant may well have mitigated her losses through a stint of various work, including hairdressing, where she received payments in cash.
93. Finally, Mr Joshi submitted that the Tribunal should recall that the claimant was not dismissed, that she resigned, and she had not complained that she had been dismissed by the respondents, actual or constructive.

94. In closing, the claimant stated, shortly, and simply, that she did not bring this on herself, nor had she criticised anybody, and she invited the Tribunal to find in her favours, and award her compensation.

Reserved Judgment

5 95. When proceedings concluded, on the afternoon of Tuesday, 26 April 2022, at 3:13pm, parties and their representatives were advised that judgment was being reserved, and it would be issued in writing, with reasons, in due course after private deliberation by the Tribunal.

10 96. The Judge apologises to both parties that finalising this Judgment has taken longer than the Tribunal administration's target of 28 days from the close of the Final Hearing. This delay has been occasioned by a combination of factors, including other judicial business, and absence of the Judge from the office on annual leave.

15 97. With limited opportunity that afternoon, further private deliberation has only taken place recently, by remote discussion with lay members of the Tribunal on Teams on Tuesday, 21 June 2022.

98. This unanimous judgment represents the final product from our private deliberations, and reflects our unanimous views as the specialist judicial panel brought together as an industrial jury from our disparate experiences.

Issues before the Tribunal

20 99. The case called before the full Tribunal for full disposal, including remedy if appropriate. The issues for determination was, as per the agreed List of Issues, as reproduced earlier in these Reasons at paragraph 56 above, and, in our discussion and deliberation, we have had regard to the paragraphs of that agreed list, which we discuss later, taking account of the written and oral
25 submissions from Mr Joshi, and from Mrs Walker as the claimant.

Relevant Law

100. While the Tribunal received written submissions from Mr Joshi, with some statutory provisions recited, and with some case law references, the Judge has required to give the Tribunal a self-direction on the relevant law to cover all aspects of the case before this Tribunal.
- 5
101. While Mr Joshi quoted the terms of Section **43B of the Employment Rights Act 1996** (disclosures qualifying for protection), he did not cite the terms of **Section 43A** (meaning of “protected disclosure”), nor **Section 47B** (protected disclosure), the terms of which we have noted. **Section 43C** provides for disclosure to the employer, and we note that the disclosures relied upon by the claimant are all said to have been made to other employees of the respondents. We further note that the respondents ran no “*reasonable steps*” defence in this case under **Section 47B(1D)**.
- 10
102. Further, and again not addressed in Mr Joshi’s closing submissions, albeit time bar is a matter for our determination, we note that, in terms of **Section 48(1A) of the Employment Rights Act 1996**, a worker may present a complaint to an Employment Tribunal that they may have been subject to a detriment in contravention of **Section 47B**. There is a 3-month time limit for bringing such a complaint, under **Section 48(3)**, subject to the “*not reasonably practicable*” escape clause. In the event of success with a whistleblowing detriment complaint, remedies available from the Tribunal are set forth at **Section 49**.
- 15
- 20
103. Mr Joshi has cited from many of the familiar case law authorities from the EAT and Court of Appeal on protected disclosures. The necessary components of a “*qualifying disclosure*” under **Section 43B of the Employment Rights Act 1996** were helpfully summarised by the EAT Circuit Judge, His Honour Judge Auerbach, in **Williams v Michelle Brown AM [2019] UKEAT/0044/19/OO**, to which we have referred, and paragraphs 9 and 10 of his Judgment which we gratefully adopt :
- 25

5 “9. *It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.*

10 10. *Unless all five conditions are satisfied there will be not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five. That is for two reasons. First, it will identify to the reader unambiguously which, if any, of the*
15 *five conditions are accepted as having been fulfilled in the given case, and which of them are in dispute. Secondly, it may assist the Tribunal to ensure, and to demonstrate, that it has not confused or elided any of the elements, by addressing each in turn, setting out in turn out its reasoning and conclusions in*
20 *relation to those which are in dispute.*

104. On the alleged unlawful disability discrimination, and harassment, parts of the case before us, Mr Joshi’s written submissions did not address all aspects of the relevant law. He quoted from **Section 15 of the Equality Act 2010** (discrimination arising from disability), and he gave an excerpted part, relating
25 to “**unwanted conduct**”, from the statutory definition of “**harassment**” under **Section 26**.

105. In considering this case, we have noted and taken account of the full statutory definition of “**harassment**”, in terms of **Section 26 of the Equality Act 2010**, reproduced here, so far as relevant and material for the facts of the present
30 case, as follows:

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

5 **(b) the conduct has the purpose or effect of—**

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)...

10 **(3)...**

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

15 **(b) the other circumstances of the case;**

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

...

20 **disability;...**

106. While Mr Joshi dealt with the definition of “*harassment*”, in terms of **Section 26 of the Equality Act 2010**, he did not address us on any relevant case law, but the Judge provided him, and the claimant, the opportunity to offer comment on 3 cited cases, well-known and familiar authorities often cited to
25 Tribunals, being **Richmond Pharmacology v Dhaliwal [2009] ICR 724** per

Underhill P; **Land Registry v Grant [2011] EWCA Civ.769** per Elias LJ; **[2011] ICR 1390** ; and **Pemberton v Inwood [2018] ICR 1291** per Underhill LJ.

107. In considering this part of the case, the Tribunal has also taken account of
5 other relevant law, not cited by Mr Joshi, but part of the statutory framework
against which we must consider this case. As such, we have noted that
“**disability**”, as defined in **Section 6 of the Equality Act 2010**, is a
“**protected characteristic**” (“PC”), as listed in **Section 4**, and disability is the
PC relied upon by the claimant in this case. Judge Strain found that she is a
10 disabled person, and that the respondents had knowledge of her disabilities,
as per his written Judgment issued on 7 December 2021, the terms of which
we quoted earlier in these Reasons, at paragraph 28 above.
108. Further, “**discrimination arising from disability**”, as per **Section 15**, is one
of the specified types of “**prohibited conduct**” set forth in the legislation, and,
15 in this case, the claimant also makes a complaint of “**harassment**” contrary
to **Section 26**.
109. **Section 15 (1)** provides that a person (A) discriminates against a disabled
person (B) if (a) A treats B unfavourably because of something arising in
consequence of B’s disability, and (b) A cannot show that the treatment is a
20 proportionate means of achieving a legitimate aim. The exclusion under
Section 15(2) does not apply in the present case as the Strain Tribunal found
that the claimant was a disabled person, and that the respondents did have
knowledge of the claimant’s disability.
110. Not cited by Mr Joshi, but relevant for our consideration of the case before
25 this Tribunal, we have noted the terms of **Section 39 of the Equality Act
2010**, which deals with discrimination against employees, and **Section 40**
which deals with harassment against employees. **Section 39(2)(c) and (d)**
provide that an employer (A) must not discriminate against an employee of
A’s (B) by dismissing B, or subjecting B to any other detriment. Further,

Section 40(1)(a) provides that an employer (A) must not, in relation to employment by A, harass a person (B) who is an employee of A's.

111. **Part 5 of the Equality Act 2010** deals with work, and **Section 120** provides that an Employment Tribunal has jurisdiction to determine a complaint relating to a contravention of **Part 5**, and time limits for such complaints are set forth in **Section 123**. There is a 3-month time limit for bringing such a complaint, subject to the "**just and equitable**" extension of time. In the event of success with a discrimination complaint, remedies available from the Tribunal are set forth at **Section 124**.
112. **Section 136 of the Equality Act 2010** deals with the burden of proof. So far as material for present purposes, it provides as follows:

Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- ...
- (6) A reference to the court includes a reference to—
- (a) an employment tribunal;...

Discussion and Deliberation

113. In coming to our final decision in this case, the Tribunal has carefully reviewed and analysed the whole evidence led before it, both orally in sworn evidence,

and within the various documents spoken to in evidence at the Final Hearing, and produced to us in the Joint Bundle, and additional documents.

114. We note and record that, at the start of his oral closing submissions to the Tribunal, on 26 April 2022, Mr Joshi made a general observation on the evidence heard by the Tribunal over the previous 8 days. When it came to factual matters, where the Tribunal would have to decide whose evidence it preferred, he invited us to prefer the respondents' evidence, purely, for the simple reason of credibility.
115. He specifically flagged the claimant's assertion on day 1 that she had been unemployed from the effective date of termination, and had it not been for observations by the respondents, that she had been seen working in a fish and chip shop, she would have maintained her position that she had no income from employment between her resignation and the date of this Tribunal, which he stated was quite remarkable, and goes to her credibility.
116. Mr Joshi then added that it was quite astonishing that the claimant did not lead Margaret McGivern, nor apply for a Witness Order to compel her attendance as a witness for the claimant. Further, he stated, the claimant had stated that she took notes of the grievance meeting on 24 March 2021, but they had not been lodged, even at the 11th hour, and the claimant had not referred to them when the Joint Bundle was being prepared. Overall, he invited us to consider these matters when confronted with conflicting evidence.
117. Thereafter, Mr Joshi spoke to the terms of his written submissions, so there is no need to rehearse his written points again here again. We have taken full note of them in our deliberations. He did refer to **Section 111 of the Employment Rights Act 1996**, on the matter of time-bar (not foreshadowed in his written submissions), and stated that the claimant is not entirely alien to Tribunal procedure, and that Tribunal proceedings are generally accessible to lay persons, and there was nothing complicated about Tribunal procedures.

118. In describing the claimant as a “*sophisticated individual*”, Mr Joshi stated that it was surprising that the claimant had not called Margaret McGivern. He also commented on how the claimant had stated in evidence that she made bullet points on paper, and gave them to Lyndsey Dick, between 24 and 29
5 March 2021, but that was never put to Miss Dick, and he further stated that it was never put to Mr Muirhead at Citation when the Bundle was being prepared.
119. Mr Joshi referred to the staff meeting on 4 March 2021 as, tangentially, to deal with gossip, rumours and tittle tattle, and it being about *esprit de corps*,
10 and it was to address staff concerns generally, rather than expressly concerns from the claimant. Any disclosure of information at that meeting by the claimant was, he submitted, not sufficiently attributable to the claimant for the statutory framework about public interest disclosures to engage, as he submitted that disclosures need to be accusatory to some degree.
120. Further, submitted Mr Joshi, the claimant’s whole case is encapsulated in the
15 one word “*drugs*”, but sight should not be lost of the fact that the allegation derives from a party unconnected with the respondents, namely Siobhan Mendall’s sister. Mr Joshi later commented that drugs had dominated the evidence in this case, and the allegation had “*lit the blue touch paper for*
20 *the claimant.*”
121. We note and record here, for it is a convenient place to do so, that while there was frequent reference to this individual, who is alleged to have sold a quantity of cocaine to the claimant outside in a supermarket car park, nobody from whom we heard was actually able to identify by name who this person
25 is. Neither she (whoever she is) nor Ms Mendall were led as witnesses before this Tribunal.
122. As regards Ms Mendall, we pause here to note and record that, on 19 April 2022, the Tribunal refused an application made by the claimant for the Tribunal to grant a Witness Order for the attendance of Ms Mendall.

123. We gave our reasons orally on that date, stating that, notwithstanding the respondents' representative not objecting to a Witness Order being granted, the Tribunal did not consider it to be in the interests of justice, nor consistent with the Tribunal's overriding objective, to grant a Witness Order at that stage, when the claimant's previous application of 30 March 2022 was refused by the Judge on 1 April 2022, per the letter sent to both the claimant and the respondents' representative, and despite the passage of a further 18 days, the claimant had not advised the Tribunal of any of the further detail requested by the Tribunal on 1 April 2022.
124. Further, and in any event, the claimant had not satisfied the Tribunal that Ms Mendall is a relevant and necessary witness for a fair hearing of the case. At best, the Tribunal stated that Ms Mendall is a witness tangential to the main issues in the case, and here is no need for her to be heard as a witness, when the Tribunal had already heard from the claimant, and is hearing evidence from other witnesses called by the respondents.
125. We were not invited by either party, at or before this Final Hearing, to consider making any Order under **Rule 50 of the Employment Tribunals Rules of Procedure**, about privacy and restriction on disclosure, e.g., an anonymity order, and we did not consider it appropriate, on our own initiative, to make any such anonymity order. We have made no findings about Ms Mendall, or her sister, but we consider it appropriate to refer to her as this name was very much part of the evidence led before us, in open, public hearing, at this Final Hearing.
126. Mr Joshi referred to the timing of the incidents founded upon by the claimant. He reminded us that the impact of Covid in the care sector at that time was overwhelming, and what was the worst public health crisis in a generation. He was critical of the claimant failing to put things to witnesses, and described that as an omission on her part, and stated, frankly, that the claimant is quite fortunate that the respondents decided not to convene a full-scale investigation into the drugs allegation, as there may have been a basis and

index of suspicion sufficiently raised to have had a case for the claimant to answer.

127. We would simply observe that, like very many who appear regularly before this Tribunal, the claimant is an unrepresented, party litigant, and despite
5 judicial guidance to her, regularly given and repeated by the Judge, it is unrealistic of Mr Joshi to expect the same standards of the claimant as might reasonably be expected of a professional representative.
128. Further, Mr Joshi spoke of the evidence given by Anne Marie Bond, and other
10 witnesses for the respondents, about eccentric features of the claimant's behaviour at work, and that the outcome could have been different and unfavourable to the claimant. Later, he spoke of certain "**quirky**" aspects of the claimant's behaviour at work, as spoken of by witnesses from the respondents, and of the claimant providing a somewhat remarkable picture of herself to Ms Hamilton, but with no linkage to their telephone conversation.
129. We observe that no such matters of eccentric features of the claimant's
15 behaviour at work were foreshadowed by the respondents, even as late as their reply to the claimant's further and better particulars, on 1 February 2022, and such evidence as was given by various witnesses for the respondents was extremely vague in its terms, and of little real assistance to the Tribunal,
20 other than demonstrating to us that, even after she has left the respondents' employment, there are still some staff there who seemed to wish to present her as a bizarre and unorthodox individual.
130. On another matter, regrettably not included in his written submissions, Mr
25 Joshi stated that on the face of it, the claimant's alleged disclosures, as recorded by Judge Walker in her PH Note, are in the public interest, but the respondents' position is that these alleged disclosures were not made, and the claimant had not put to the respondents' witnesses that she had made allegations due to her concerns about the welfare of service users.
131. Mr Joshi stated that we are dealing with "**shifting sands**" in this case. He
30 pointed to the case in the ET1 claim form, to Judge Walker, to her further and

better particulars, and in the precincts of this Tribunal. He added that the claimant was still developing her case here, and despite her very long, and prolix correspondence with Colin Farebrother, this case is just “*opportunism*” by the claimant.

5 132. Then, on the assumption that the Tribunal were to find that protected disclosures had been made, Mr Joshi stated that the statutory defence about “*reasonable steps*” should have been raised, although he recognised that respondents do not generally succeed with that line of argument, as while he submitted bullying and other policies are accessible in the Care Home, it’s
10 not just about having policies, but the respondents have to enforce them.

133. While, initially, Mr Joshi identified this line of defence as being **Section 109(4) of the Equality Act 2010**, after checking his *Butterworths Employment Law Handbook*, he clarified, and the Judge agreed, that the relevant defence in this case, involving alleged whistleblowing detriment, is **Section 47B(1D) of the Employment Rights Act 1996**, as indeed identified at point (8) in the
15 List of Issues.

134. Applying the applicable legal principles (as identified in the first 19 paragraphs of his written submissions), Mr Joshi then sought to apply them to the facts of this case, and he invited the Tribunal, on the balance of probabilities, to
20 find that the alleged disclosures were not made. He then addressed each of the alleged 7 detriments founded upon by the claimant, before turning his attention to the alleged discrimination arising from disability, and alleged disability harassment.

135. Rather than seek to summarise his main points, the Tribunal considers it
25 helpful to refer to his specific submissions at paragraphs 20 to 45 inclusive, and we have reproduced them as an **Appendix to this Judgment**, for ease of reference. While his submissions had five footnotes in the footer line, we have incorporated them straight in to the relevant paragraph, again for ease of reference, and understanding, using the prefix “FN”.

136. During Mr Joshi's oral submissions to us, the claimant commented that she did not even know half the stuff he was saying. When it came to her turn to make her own oral submissions, she did so in a haphazard sort of way. We make that as an observation, and not as a criticism of the claimant, as she is an unrepresented, party litigant, and we are well used to similar, unstructured, submissions from unrepresented claimants, who often , like the claimant, find it difficult to articulate their position.
137. In her oral submissions, the claimant's approach was scattergun., She was surrounded, at the claimant's table, by various bits of paper from the Bundle, the List of Issues, her own response, etc, and advised the Judge that she did not understand what Mr Joshi had been saying, which she referred to as lots of prose, and lots of big words, and that she really didn't get it. The Judge gave her guidance on how best to present her own closing submissions, in reply to those delivered for the respondents.
138. The claimant described the respondents 's witnesses as inconsistent, and from the gang / clique, and in the event of a conflict, we should prefer her evidence, as she insisted she was telling the truth. While Diane McLaren thought it was the claimant who had brought her to the Tribunal, the claimant stated that at no point was it her, and Mrs McLaren had been called by the respondents.
139. On the legal matters raised by Mr Joshi, the claimant stated that it appeared to be a big legal test, and she did not have a clue about the law, and she would rather leave that to the Tribunal, and she denied that she was "**sophisticated**", or "**a clever cookie**", as stated by Mr Joshi, saying that she had never brought a Tribunal claim before, and never been in a court of law before. She stated that she kept wondering why the drugs allegation was made, and not investigated, and confirmed, as regards remedy, in the event of success with her claim, she was still seeking an ACAS 25% uplift, and injury to feelings.

140. The claimant added that, at no point, had anybody complained about her, she was doing a good job, and what happened to her “**hit me like a ton of bricks.**” She stated that she has nothing to hide, she does not tell lies, and that her experience has been like being on an “**emotional rollercoaster**”.
- 5 She added that she still does not know what the “**vendetta**” against her was, as she was new to social care, having had a change of career from hairdressing.
141. Further, the claimant commented that “**the more people thought I was mad, the madder I was getting.**” She observed that if the respondents gave staff
- 10 dignity and respect, as they do for care home residents, then things would be better. She disputed Mr Joshi’s assertion that she was in a favourable position by the respondents not doing an investigation, and stated that that had placed her in an unfair position. She added that the whole work knew about the drugs allegation, before she learned of it, and that was not favourable treatment.
- 15 142. The claimant stated that she sought the ACAS 25% uplift because the respondents did not follow the ACAS Code, and while she did not know it all just now, she stated that they had failed to investigate, left her open to detrimental treatment, and the handling of her grievance with no written outcome was not correct. In closing, she stated no amount of money can
- 20 compensate her for what has happened to her.
143. Having reflected on the whole evidence, and both parties’ closing submissions, during our private deliberations, we have come to the view that the claimant’s complaints are not well-founded, and we have made appropriate declarations to that effect at paragraphs (1), (2) and (3) our
- 25 Judgment above. The result is that we have dismissed her claim against the respondents in its entirety, as per paragraph (4) of our Judgment.
144. We give our reasons for doing so here: Generally, we regard Mr Joshi’s closing submission arguments to be well-founded, based on the evidence led before us, and we accordingly adopt his paragraphs 20 to 45 inclusive (as

reproduced in the Appendix). We agree with the respondents' submission that the whole claim should be dismissed by us as not well-founded.

145. In doing so, we wish to make one comment, and that relates to what Mr Joshi has stated in his paragraph 39, where he refers to **“an investigation by C’s co-workers”**. Having heard the whole evidence led before us, it seems to us that it is a gloss to suggest that there has been any proper or adequate investigation by the respondents into the drugs allegation implicating the claimant.
146. At best, there appears to have been a very informal view, taken, after Margaret Conn reported the allegation, by Lyndsey Dick and Anne Marie Bond, and after speaking with Margaret McGivern, that there was no truth in the allegation about the claimant.
147. Indeed, the Tribunal observes that, in the ET3 response lodged by the respondents, paragraph 16 referred to Lyndsey Dick having heard information by word of mouth that the claimant had been seen outside a local Tesco store buying drugs, and paragraph 17 referred to her speaking to the claimant about it, and advising her that she did not believe the allegation.
148. Those grounds of resistance made no reference to any investigation by the respondents, and certainly, at this Final Hearing, no investigation report, or any form of contemporary recording of the allegation, and how it was addressed by management locally, or the respondents' senior management, was produced to the Tribunal, or spoken of by any witness from the respondents.
149. Further, as stated by the claimant in her email of 3 July 2021, produced at page 16 of the Joint Bundle, when she sought to amend her ET1 claim form, she stated there that during the grievance meeting, management said they had carried out an investigation.
150. We also note and record how, when the respondents lodged their reply to the claimant's further and better particulars, on 1 February 2022, their reply

to detriment 3, accepts that there was a concern raised by Margaret Conn that the claimant was alleged to have been seen buying drugs outside a local Tesco store, she reported that to Lyndsey Dick, who spoke in turn with Margaret McGivern, who expressed the view that there would be no truth in the allegation, and Ms Dick accepted Mrs McGivern's assessment and in turn expressed that view to the claimant. That document, from Mr Muirhead of Citation Ltd, makes no reference to any investigation by the respondents.

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151. Having made that point, we agree with the respondents' submissions that the claimant has failed to prove, on balance of probabilities, that any of the alleged disclosures she relies upon were made to the respondents. Even if she had done so, she has not established that the reason for the termination of her employment with them was because she had made any protected disclosure.

15
152. We are satisfied that she resigned voluntarily from the respondents' employment, having failed to secure a mutually agreed termination with payment of some compensation to her, and that she was not dismissed by the respondents, either actually, or constructively.

20
153. Further, we are also satisfied that the claimant has failed to establish, on balance of probabilities, any causal link or connection between her allegations of discrimination arising from disability, and harassment, and her protected characteristic as a disabled person, as per Judge Strain's judgment in her favour finding disability status established.

25
154. In the presentation of her case, she appears to be attributing certain alleged detriments to her alleged protected disclosures, rather than her allegations of discrimination and / or harassment. She has not persuaded us that any part of her claim should be upheld by this Tribunal.

30
155. As we have dismissed the claim in its entirety, we have not required to address the time-bar points raised in the List of Issues. That said, we accept as well-founded, Mr Joshi's comments, in his annotated List of Issues, with comments, that, as per his [SJ19] the claimant led no evidence about why, if

her whistleblowing detriment claim was out of time, it was not reasonably practicable to present it in time; at [SJ25] that, if her discrimination arising from disability claim was out of time, nothing was adduced from her that bespeaks a favourable exercise of discretion that it is just and equitable to extend time; and at [SJ38] the claimant did not lead evidence to enable the Tribunal to be able to exercise any discretion in her favour to grant an extension of time for the disability harassment claim, if it was out of time.

Closing Remarks

156. The Tribunal has not found the claimant's complaint, under **Section 48(1A) of the Employment Rights Act 1996**, of being subjected to a detriment in contravention of **Section 47B**, well-founded, so we did not go on and consider remedy under **Section 49**.
157. Further, as the Tribunal has not found the claimant's complaints under **Section 120 of the Equality Act 2010** well-founded, dismissing the complaints of alleged discrimination arising from disability under **Section 15**, and dismissing the alleged harassment under **Section 26**, so similarly we did not go on and consider remedy under **Section 124**.
158. As we did receive closing submissions on remedy, in particular from Mr Joshi for the respondents, we consider it appropriate that we say something by way of explaining our view on the quantum of compensation for injury to feelings had we found in favour of the claimant.
159. Suffice it to say here, we have considered the relevant case law (from the well-known and oft quoted judgment in **Vento v Chief Constable of West Yorkshire Police (No. 2) [2002] EWCA Civ 1871 / [2003] IRLR 102**, and the **ET Presidential Guidance** by Judge Shona Simon, the Scottish ET President, when formulating Guidance published jointly with Judge Brian Doyle, then President of ET(England & Wales), originally first issued on 5 September 2017, and updated by annual addenda, most recently, for the purposes of the present case, by the fourth addendum issued on 26 March 2021.

160. In respect of claims presented on or after 6 April 2021, the **Vento** bands are 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),
5 with the most exceptional cases capable of exceeding £45,600.
161. As per the EAT judgment in **Base Childrenswear Ltd v Miss N Lomana Otshudi**, a judgment by Her Honour Judge Eady QC, as she then was (now Mrs Justice Eady, a High Court judge, and the new President of the EAT), as
10 reported at **[2019] UKEAT/0267/18**, we readily accept that our focus must be on the impact of the discriminatory acts on the claimant. Equally, as the EAT observed, it is not uncommon for a victim of unlawful discrimination to suffer stress and anxiety.
162. At this Final Hearing, we heard in oral evidence from the claimant, but we have reminded ourselves of the unreported EAT judgment of His Honour
15 Judge David Richardson, in **Esporta Health Clubs & Anor v Roget [2013] UKEAT 0591/12**, which makes it clear that a Tribunal has to have some material evidence on the question of injury to feelings.
163. Here, we had the claimant's own oral evidence, but no GP's medical report, nor any evidence from any other person with knowledge of the precise nature
20 and extent of the claimant's injured feelings. As such, it has been difficult for us to differentiate between any stressors caused by the respondents, any other stressors, such as the stress that exists within the claimant's family, on account of her split from her husband, the move back to her mother's address, the situation with her daughter, and / or any additional stressors
25 caused by the claimant's decision to prosecute her claim before the Tribunal, a feature common to all litigants.
164. In all these circumstances, had we found for the claimant, the Tribunal was likely to have assessed the claimant's injury to feelings in the lower **Vento**
30 band, and at the bottom end of that range, probably somewhere around £3,000, inclusive of interest, and not anything like as high as the sum the

claimant had previously suggested in her PH Agenda of 1 November 2021 as being £6,000.

165. Finally, we close by stating that we recognise that our Judgment will not be well received by the claimant, because, even during the course of the Final Hearing, it was clear to us that she still bears a deep sense of grievance and injustice at the way she perceives that she was treated by the respondents.
166. We appreciate that that is her perception, and so her reality, but, as the independent and objective fact finding Tribunal, applying the relevant law to the facts of this case as we have found them to be, based on the evidence led before us from both parties, we hope that in reading our Judgment, and these Reasons, the claimant will come to understand our reasons for dismissing her claim against the respondents.
167. Further, we also hope that the claimant will now turn her efforts towards seeking new employment, with another employer, and try to rebuild her employment experience for the benefit of a prospective new employer, and her own self-confidence and personal esteem, as well as her own financial security.
168. As regards the respondents, we have a few closing remarks for them too.
169. Firstly, the Tribunal notes and records that it is troubled by the fact that when the drugs allegation was brought to local management's attention, the Manager did not take formal steps to address the matter, but instead proceeded informally, without any paperwork recording of the concern, and how it was handled, and without any apparent, or transparent, due process, or proper and adequate investigation.
170. Secondly, the respondents' administration of paperwork, and correspondence with the claimant, was shown to be lacking on several occasions, and it is to be hoped that, arising from this case, lessons have been learned already by the respondents, about the importance of contemporary correspondence, and record / note taking by managers,

properly dated, and preferably signed as agreed by both employee and manager / supervisor.

- 5 171. Thirdly, we note that Carnbroe Care Home provides care for vulnerable people, and it is regulated by the appropriate public agencies. It is not a matter for this Tribunal to look into its running, but arising from the circumstances of this case, we trust that the respondents' Directors, and senior management, will conduct a full and comprehensive review, as it seems to us that there are many issues for attention.
- 10 172. By way of example, we highlight that, from the evidence we heard at this Final Hearing, there were issues as regards version control and dating of employment policy documents and procedures; issue of and signing for policy document; issues around staff supervision sessions, and appraisal ; a general lack of understanding of whistleblowing procedures, and a need for proper training of management, supervisors and staff about bullying at work, and
15 dealing with colleagues who may have mental health issues.
173. As a caring environment, the irony was not lost on the Tribunal that the Carnbroe Care Home local management appeared ill equipped to deal with what were clearly factions, or cliques, operating within the nightshift workforce.
- 20 174. After the nightshift meeting, on 4 March 2021, it seems to this Tribunal, particularly its industrial jury members, with their extensive practical experience and knowledge of the workplace, that local management on site, with input from the Area Manager, could, and in hindsight should, have taken pro-active steps to train staff and raise awareness about the need to work
25 cooperatively, and with mutual trust, confidence and respect for each other.
175. There was in our collective view a missed opportunity to have set down clearly defined ground rules about what management expected of staff working in the Home, and their behaviour at work. Instead, by simply handing out copies of the Bullying and Harassment policy, and their failure to be

proactive, the factions / cliques were allowed to continue to operate and act as before.

176. In his closing submissions marked up copy, comment [SJ3], replying to issue (8), and the reasonable steps defence, Mr Joshi stated: “***R’s case is that staff had access to its policies and procedures.***” We do not accept that, as at the start of the nightshift meeting, on 4 March 2021, the anti-bullying protocol was issued hard copy to staff attending.
177. Finally, we also refer to Elaine Hamilton’s remarks about the claimant. In his closing submissions, Mr Joshi, in his annotated comment [SJ35], responding to issue 25 (j), stated that the “***evidence does not confirm the utterance the exact words as attributed to EH.***” Those words were “***crackpot***” and “***nutter.***”
178. While identified in the List of Issues as 21 April 2021, it was clear from the evidence before us that this happened on 26 April 2021, and not 24 April 2021 as the claimant had advised Judge Walker, and she so recorded in her PH Note. What Mr Joshi has not taken into account is that Ms Hamilton, the Area Manager, agreed in the course of her evidence to us at this Final Hearing that, whatever the words uttered, she had acted unprofessionally, and for that she apologised.
179. In writing up this Judgment, the Tribunal takes this opportunity to draw to the attention of the respondents that guidance is available from ACAS. The **ACAS framework for positive mental health at work** outlines how employers, managers and employees should share responsibility for positive mental health and wellbeing in the workplace.

180. It can be accessed online at <https://www.acas.org.uk/acas-framework-for-positive-mental-health-at-work>. It may be that the respondents, in ongoing, continuous professional development for staff, supervisors and managers, may wish to take account of this guidance.

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Employment Judge: Ian McPherson
Date of Judgment: 01 July 2022
Entered in register: 01 July 2022
and copied to parties

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This is the Appendix referred to in paragraph 113 of the foregoing Reasons for this Judgment

[Note: In footnote (2), at paragraph 28 (detriment 3), we have added the word “**key**” omitted from Mr Joshi’s written submission, and his narration of evidence from LF =
5 Lynda Ferguson.]

Application of legal principles to facts

Public Interest Disclosure

20. *The tribunal during a case management PH held on 17/09/2021 recorded the matters that C says amount to public interest disclosures – see the 3 bullet points in paragraph 4 beginning on the top of page 34. R do not accept that they were apprised of the “information” as set out in the 3 bullet points on page 34. There is no evidence of C having expressed her alleged disclosures in writing, which is surprising as she maintains that the information (20 residents left unaided, pattern of falls during nightshift, dementia patients being got up too early and being rushed and being asked to deal with a “red dot” patient alone without the assistance of another staff member) was made in writing. She said in evidence she “wrote down about residents being dragged out of bed – this was in March 2021”. It is very surprising that C would not have afforded this detail before Employment Judge Walker (Sept 2021) or alert the Respondent’s legal representatives that that the letter was missing from its own disclosure.*
21. *C has the capacity to commit what she perceives as serious issues to writing - see her formal grievance on page 127. The alleged matters that lie at the very heart of a service user’s welfare are conspicuous by their very absence in writing.*
22. *The night staff meeting (4/3/2021 -page 124) is insufficient as a basis for the ET to infer that there were the alleged disclosures of information from the Claimant. Firstly, the precise detail of the alleged disclosure was not reciprocated in the minutes. Secondly, the evidence was that observations*

concerning units being left unattended was observed by the staff in general against the backdrop of a workforce riven by perpetual gossip and rumour. Any disclosure of information is not sufficiently attributable to the Claimant for the statutory framework to engage.

- 5 23. On the balance of probabilities, the Tribunal is invited to find that the alleged disclosures were not made.

Detriments

- 10 24. The tribunal recorded the alleged detriments during a case management PH – see page 34. As they lacked particularisation for them to be sensibly responded to, the Tribunal on 2/12/2021 ordered specific particulars from C – see page 39. C’s FBPs were provided on 29/12/2021 (pages 44 to 45) , with R replying to each alleged detriment on 1/2/2022 – see pages 47 to 51)

Detriment 1 – isolation

- 15 25. The thrust of the evidence points to an individual who isolated herself from her colleagues. C preferred her own company. C socially distanced herself from her colleagues and that staff were wary of interacting with her due to what was perceived as her irrational behaviour. RM confirmed in evidence that he did not see C being isolated and that she isolated herself. JS got on well socially with Julie Skinner and gave her a lift to Airdrie train station after work with C discussing her daughter’s welfare. In any event, there is nothing from the evidence to demonstrate a causal link between the alleged PID and any “isolation,” the details of which remain disquietingly scant in detail.

Detriment 2 – left on shift alone

- 25 26. There is no evidential basis to the allegation that C was left alone to work in the Leven unit in October 2020. In the 1st half of January 2021, R was ravaged by staff absences caused by the COVID 19 pandemic. [FN (1) C did not dispute this.] The evidence suggests that to the extent C was left alone to work, it was entirely a consequence of staff shortages. Should the Tribunal

uphold this detriment, R submits it was not materially influenced by the making of any alleged PIDs. Taking C's case at its highest, the alleged PIDs would have been made in the run-up to the night shift meeting on 4/3/2021, which would be 5 months after the alleged detriment.

- 5 27. *We have heard no positive evidence from C as to why it was not reasonably practicable for her to lodge her complaint in time. C commenced Early Conciliation 7 months after this alleged detriment – see page 15.*

Detriment 3 – Drug allegation

- 10 28. *The genesis of the allegation (page 34) arises from a staff member's sister who claimed to have sold a quantity of cocaine to C outside supermarket car park. Following an inevitable investigation into alleged misconduct that could reputationally damage the home, C was exonerated by R. The allegation was dismissed following the input of her coworkers, LD, ANB and MC. MC was clear in her evidence that she did not intimate to LF that C was stealing drugs from the drugs trolley. [FN (2) : LF said in evidence: " I was asked to keep my drugs trolley [key] on my person as there were drugs going missing"] In so far as the detriment is upheld, there is nothing gleanable from the evidence to suggest a nexus between any allegation made by a carer's sister who is not employed by R and the alleged PIDs. A common thread that runs throughout the evidence is that – generally - gossip, rumour and tittle tattle would percolate throughout the home. There has been evidence of C doing handstands and cartwheels in the early hours of the morning coupled with observations of her dilated pupils. These remarkable features of her behaviour would undoubtedly feed an already fully functioning rumour mill.*
- 15
- 20
- 25 *There is no evidence that any drug related gossip was materially influenced by any alleged PIDs.*

Detriment 4 – gossiping about C

29. *C's FBP (page 44) relates the gossip to drug allegations. An allegation of this seriousness will inevitably entail an investigation involving senior management. It was appropriate for Mrs Conn to report the allegation,*
- 30

originating from a carer's sister, to management. This is not gossip, but sharing information to prevent a potential safeguarding issue affecting the care home. The sharing of this information was materially influenced by a heightened duty to investigate the allegation, rather than the making of any PIDs. R conceded that it could have delved more rigorously into the allegation by putting it to C and then deciding whether disciplinary proceedings should be commenced (AMB's evidence). If anything, C was favourably treated.

Detriment 5 – C's tyres being slashed by co-workers

30. C claims that this took place on 19th and 27th February 2021 – page 34. 13 days later she makes a formal grievance (page 127) that bears no mention of the alleged incident. It defies any semblance of logic why such a brazen and sinister act would not feature in her grievance. There is no evidence of this being reported to the police or to management. KW's evidence was that her husband had inflated C's tyres on noticing that they were flat. It is remarkable how C's own March 2021 supervision notes (pages 379 and 179 A,B,C) bear no reference to any of the detriments she developed during these proceedings.

Detriment 6 –abusive Facebook message from MC

31. There is no evidence that the contents of the message on 27 February 2021 (Page 221) were materially influenced by any alleged disclosure. MC's evidence is that the message on 27th Feb @ 20:52 (page 22. had been doctored by C – see page 234. [FN (3) : "you have been caught out by adding the bottom bit on we found that out".] MC's evidence is entirely consistent with her contemporaneously formulated position. [FN (4) : MC said in evidence: "she is a clever cookie, she knows what she is doing]

Detriment 7 – C told by Rej [sic] around Feb 2021 and AB in March 2021 she should go to Dr b/c she had mental health problems (p45)

RM's note of a conversation he had with C strikes an avuncular tone in keeping with his role as a mental health nurse. RM's note states:

“I gave advice that she really needed to stop all the ruminating and move on, take her mother’s and GP’s advice (who had prescribed her Diazepam 5mg which she was refusing to take) “– 4th line on page 135.

A review of the notes of C’s grievance meeting that took place on 24/03/2021 shows that C’s own representative, Liz Martin stated that C needed “to consult” a GP and needed “professional help” – see 7th entry on page 131. The contributions by those were present were intended to promote, rather than hinder, C’s well-being. It was entirely innocuous and within the spirit of the meeting for ANB (see page 130, penultimate entry from the bottom) to ask C whether she saw her GP. The allegation does not reach the evidential threshold for a detriment.

Discrimination arising from Disability – sec 15

32. The overwhelming thrust of the evidence is that C was not isolated as she alleges. Isolation in this context of this claim is a very subjective notion and presents the Tribunal a difficult assessment. C tended to distance herself from her colleagues. In this respect, any isolation was not a consequence of the Respondent’s actions. R did not the [sic] engender the unfavourable treatment as alleged.

33. The other instance of unfavorable treatment, C relies upon is the allegation that “co-workers believed she was on drugs” – see page 35 of the Tribunal’s written note. The allegation is something that arose in consequence of an accusation made by a staff member’s sister who allegedly sold C cocaine. Following an inevitable investigation into alleged misconduct that could reputationally damage the home, C was exonerated by R – see LD and MC’s evidence. The allegation was resolved in C’s favour following the input of her coworkers, LD, ANB and MC. There is nothing that casually connects the allegation with C’s disability.

34. The last instance of C’s alleged unfavorable treatment [FN(5): “Following an incident on 13 March, when she had a panic attack, the unsympathetic response of “Reg” who told her to go the doctors and voicemails from co-workers asking when she would be back at work.] is recorded on the 3rd

bullet point contained within the Tribunal's note on page 35. As the allegation stands it is insufficient if proven or admitted to amount to unfavourable treatment. RM's note of his exchange with C that had been typed from his contemporaneous diary note (page 135) bespeaks to someone who was being avuncular towards to C.

Disability Harassment

35. There are 10 instances of unwanted conduct recorded by the ET in its note at paragraph 9 on page 35.
36. The first bullet point cannot equate to unwanted conduct from R as the "13 March incident" has been presented by C as her own panic attack.
37. The 2nd bullet point (isolation) for reasons set out in paragraph 32 is not something that is been borne out from the evidence. It is a subjective notion, a state of mind rather than R's infliction upon C.
38. There is simply no evidence that C was left alone – other than in January 2021 - on a shift other than her bare assertion that was surprisingly absent from her own written grievance – page 127.
39. The 4th bullet point, "allegation about drugs" cannot amount to unwanted conduct as the allegation derives its origins from a staff member's sister, investigated by C's co-workers and resolved in C's favour. In any event, C has failed to establish any nexus between the allegation and her PC and appears to attributing the act to her PIDs (see paragraph 5 of ET's note – page 34)
40. The 5th allegation is too vague and unspecific and does not convey the substance of the gossiping. In any event, C has failed to establish any nexus between the allegation and her PC and appears to attributing the act to her PIDs (see paragraph 5 of ET's note – page 34)
41. The 6th allegation (tyres being slashed) has no basis in evidence and is more in keeping with C's fevered imagination. In any event, C has failed to establish

any nexus between the allegation and her PC and appears to be attributing the act to her PIDs (see paragraph 5 of ET's note – page 34)

42. *The 7th allegation (abusive Facebook message – page 36) has been denied by its alleged author who takes the position that the offending portion (see entry on 27 Feb 20:52 on page 221 and page 234) was a mischievously generated by C. In any event, there no evidence that the message related to C's PC and appears to be attributing the act to her PIDs (see paragraph 5 of ET's note – see page 34)*
43. *The 8th allegation (recorded by ET on page 36) about RM saying to C that she should see her doctor because she had mental health problems has been attributed by C to her PIDs – see top of page 35. The allegation alone is evidentially tenuous to constitute a detriment, unfavourable treatment or conduct that has effect of violating C's dignity or creating an offensive, humiliating, degrading, hostile or intimidating environment for C.*
44. *The 9th allegation as recorded by the ET (page 36) is incomprehensible. It is insufficiently particularised for it to be justiciable by the ET.*
45. *The last allegation ("crackpot" / "nutter") has been cited by C to support an allegation of unwanted conduct relating to her PC. As per EH's evidence, she had received 14 calls the day in question and C had sent a bikini clad picture of herself (page 371) accusing EH of being jealous (page 372). It was not her PC that motivated any comments, but the subjection of treatment meted out by C on the day.*