Case Number: 1405833/2020
1406331/2020

EMPLOYMENT TRIBUNALS

Claimant: Mrs N Aabe

Respondents: Happy Care Limited (1)
Mr A Carab (2)
Mr A Ibrahim (3)

Heard at: Bristol **On:** 21 to 25 November 2022
(and in chambers on 13 December 2022)

Before: Employment Judge C H O'Rourke
Mrs D England
Dr J Miller

Representation:

Claimant: Ms N Gyane - counsel
Respondents: Ms S Chan - counsel

RESERVED JUDGMENT

1. The Claimant was an employee of the First Respondent, and the Tribunal has jurisdiction, in respect of time limits, to hear her claims.

2. The First Respondent:

    a. Automatically unfairly dismissed the Claimant and subjected her to detriment on the grounds of her having made protected disclosures;

    b. Directly discriminated against her on grounds of sex and religion;

    c. Sexually harassed her;

    d. Breached her contract of employment by failing to pay her pay in lieu of notice;

    e. Made unlawful deductions from her wages;

f. Failed to provide her with a statement of terms and conditions of employment compliant with s.1 of the Employment Rights Act 1996; and

g. Breached the ACAS Code of Practice on disciplinary and grievance procedures.

3. The Second and Third Respondents:

   a. Subjected the Claimant to detriment on the grounds of her having made a protected disclosure; and

   b. Directly discriminated against her on grounds of sex and religion.

   c. Sexually harassed her.

4. The following claims are dismissed:

   a. Indirect discrimination on grounds of religion;

   b. Victimisation;

   c. Breach of contract in relation to non-compliance with the First Respondent's complaints and disciplinary procedure (having been withdrawn by the Claimant); and

   d. Arrears of holiday pay (having been withdrawn by the Claimant).

5. The claim is listed for a Remedy hearing on **20 January 2023**, with a time estimate of one day. Any further costs application will also be heard on that day. A formal notice of hearing will follow in due course.

REASONS

Background and Issues

1. The Claimant was employed (as we have found) by the First Respondent (R1), as the Registered Manager of their care company, which provides home service care to those in need of such care, to included disabled persons. She was employed from 15 March 2019, until her summary dismissal, with effect 4 August 2020, on alleged grounds of gross misconduct.

2. The Claimant was also a director and shareholder of R1, as are the Second and Third Respondents (Mr Carab - R2 and Mr Ibrahim - R3), who, respectively, at the relevant time, held the positions of HR and IT manager (R2) and Finance Manager (R3). While there is no claim of racial discrimination, it is of relevance that the Claimant and R2 and 3 are Muslims of Somali ethnicity.

3. As a consequence, she brings claims of direct discrimination on grounds of sex and religion; indirect discrimination on grounds of religion; sexual harassment; automatic unfair dismissal and detriment on grounds of having made protected disclosures; victimisation; breach of contract in respect of notice; unlawful deduction from wages; failure to provide terms and conditions of employment compliant with s.1 Employment Rights Act 1996 ('ERA') and breach of the ACAS Code on disciplinary procedures. The Respondent disputes both her employment status and the Tribunal's jurisdiction to hear the discrimination and detriment claims, on the basis of at least some of them being out of time.

4. She withdrew claims of breach of contract in respect of non-compliance with disciplinary procedures and of arrears of holiday pay which are not, therefore, considered further.

5. The parties had agreed the issues in respect of these claims and they are set out in the joint bundle of documents at pages 81 to 92.

6. Preliminary Issues:

    a. Additional Respondent witness statement. The Tribunal having carried out reading on the first morning of the Hearing, the parties attended at about 12.30. Ms Chan applied to the Tribunal for leave to file an additional witness statement, for a new witness, a Ms Esse, R3's wife. Ms Gyane objected, on grounds of extreme lateness (when the issues Ms Esse wished to give evidence on have been well known for some considerable time now) and that there was no satisfactory explanation as to why her evidence should only now be sought, when her involvement at relevant times was known from the outset and, being married to R3, she must have discussed these matters with him at the time, or soon afterwards. Ms Gyane submitted that case management orders are there for a reason and that having only this morning been made aware of Ms Esse's statement, the Claimant will suffer prejudice if Ms Esse gives evidence, placing her on an unequal footing, contrary to the 'Overriding Objective'.

    b. Ms Chan submitted that Ms Esse's evidence was clearly relevant to at least some of the issues before the Tribunal and that due to a

change in solicitors, the importance of her evidence had not previously been grasped.

c. Following discussion, the Tribunal concluded that the Respondents should be given leave to adduce Ms Esse's evidence, because it is clearly relevant. It was accepted that this would prejudice the Claimant, but it was considered, particularly as Ms Esse's statement was relatively brief (just over two pages) that by adjourning for the rest of the first day, the Claimant's advisors would have sufficient time to take her instructions in respect of it and to draft any additional statement she may wish to provide. The costs incurred by such an adjournment could be compensated for through a costs order against the Respondents (which, in fact, transpired at the end of the Hearing, via a separate costs order dated 1 December 2022).

d. Disclosure of 'metadata' by R1. The Claimant reiterated her application for specific disclosure by the Respondents of the 'metadata' in respect of several of the documents they relied upon and which would show the date of creation of such documents. She asserted that those documents referred to in the application had been fabricated 'after the event' to bolster the Respondents' case. Ms Gyane pointed out that this information had first been requested in January 2022 but was still not forthcoming. The Respondents were therefore ordered to make such disclosure. The next day, they provided a supplementary witness statement from R3, explaining their inability to provide such data.

e. County Court proceedings. There are separate County Court proceedings in hand, taken by two service-users of R1, against R1 (the Tribunal is unsure whether also against Rs 2 & 3), alleging, we understand, discrimination on grounds of sexual orientation. R1 has joined the Claimant into these proceedings, as the alleged perpetrator of such discrimination. As will become apparent, there is clearly, potentially, an overlap between some of the issues we will consider and as are before the County Court, but the parties having confirmed to us that the Court proceedings have not reached the stage of any determination of the issues in that claim, we decided to proceed.

The Law

7. We reminded ourselves:

a. In respect of the discrimination claims, of ss.10, 11, 13, 19, 23, 26, 27 and 136 of the Equality Act 2010 ('EqA');

b. In respect of the protected disclosure claims, of Part IVA ERA, s.47B and s.103A.

8. Ms Gyane referred us (in summary) to the following authorities:

a. **Royal Mail Group Ltd v Efobi [2021] UKSC 33**, which confirmed that the burden of proof does not shift to the employer to explain the reasons for its treatment of the employee, unless the employee is able to prove, on the balance of probabilities, those matters which they wish the tribunal to find as facts, from which, in the absence of any other explanation, an unlawful act of discrimination can be inferred.

b. **Amnesty International v Ahmed [2009] UKEAT IRLR 884**, in which then President Underhill confirmed that when deciding whether a claimant has proven discriminatory conduct by the respondent, the Tribunal should consider what inferences, if any, can be drawn from the primary facts, the mental processes (conscious or unconscious), the surrounding circumstances and explanations provided by the respondent.

c. The cases of **Autoclenz v Belcher [2011] UKSC 41** and **UBER BV v Aslam [2021] UKSC ICR 657**, as to the tests for determining employment status.

d. The cases of **Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979** and **Parsons v Airplus International Ltd [2017] UKEAT/0111/17** as to considering whether or not a disclosure is in the public interest and that a range of disclosures do not have to be wholly in the public interest to be protected.

The Facts

9. We heard evidence from the Claimant and on her behalf from two former colleagues, Ms Amal Ismail and Ms Fatuma Ali. On behalf of the Respondents, we heard evidence from R2, R3 and Ms Esse.

10. Chronology. We set out the following chronology in this matter:

a. August 2018 – The Respondents nominated the Claimant to the Care Quality Commission (CQC), their regulatory body, as their prospective Registered Manager [165]. From March of that year, they had been seeking to gain a contract from Bristol City Council ('BCC') to provide care services (referred to as 'the Framework' in

correspondence and evidence) and they needed a Registered Manager, meeting certain training requirements, to do so.

b. October 2018 – the Respondent's first application to BCC was unsuccessful [166]. The Claimant was required to undergo mandatory training for her role, which she did [150].

c. January 2019 – R1 applied to the CQC for registration as a '*new service provider'* [179].

d. 15 March 2019 – Claimant started as director and registered manager. At this point and until after her dismissal, there were four directors and equal shareholders, the Claimant, R2 & 3 and a Mr Ahmed Hersi [208].

e. March 2020 (all dates hereafter 2020) – the Government reacted to the COVID pandemic, and the first lockdown commenced.

f. 27 April 2020 – BCC awarded a 'Framework' to R1. Mr Hirsi commented in R1's WhatsApp group '*well done Happy Care directors, specially to Queen Nura* (the Claimant)' [234].

g. 26 April – the day before, the Claimant said that she had, at a directors' meeting, raised concerns as to a newly-recruited care worker being sent on a visit, without having had the required training and that this resulted in R3 becoming aggressive, getting close to her and calling her '*stupid'* and a '*bitch'*. Neither R2 nor 3 made any reference to this meeting in their statements. Mr Hersi (who died in November 2020) wrote in a statement he gave to the police, on 29 July, following complaints made by the Claimant and himself, referring to that meeting that '*the two directors accused Nura of not listening to them and they became aggressive'* [369].

h. 7 May – R2 allegedly stated to R3 and Mr Hersi that the Claimant should not have sole access to her work email account, but it should be overseen by another director. This event is supported in Mr Hersi's statement [369]. Neither R2 nor 3 refer to this matter in their statements, but the Respondents accept in their joint response that R2 did have oversight of the Claimant's emails in May and on 14 May changed the settings on her emails '*to prevent the Claimant from transferring any business contact into her own personal email address'* [62]. The Claimant also generally alleges that at around this time, R2 was telling staff not to contact the Claimant, '*as she worked for him and R3 and had no authority in the Company*'.

i. 19 May – the Claimant emailed Mr Hersi and R2 & 3, apologising for being uncontactable for a few days (having received an email from Mr Hersi querying that absence), stating that she'd been unwell. She went on to express her '*disappointment with the ongoing challenges against me, the passwords with the emails being the last.* She said that she was surprised at the tone of Mr Hersi's email, as he himself had apparently previously taken much sick leave and queried why '*what I do becomes such a big deal and not with all of you. It is very frightening to feel myself against all of you. Our environment at work continues to be hostile and restricting … I have nothing against any of you but I want to feel respected such like the way you all respect each other, I wonder if this has something to do with my gender? After all you are all male and I am the only female* (in the management team) …' [477].

j. 4 June – the Claimant alleged that R2 called her at home and asked her if she '*was in her bedroom'*. On attempting to hang up, she stated that he asked her why she '*was running away from him'* and that they '*needed to meet alone'*. R2 does not refer to this matter in his statement, but generally denied any sexual interest in the Claimant, referring to them both being married to others and having known each other for a long time, including having travelled together on business. Mr Hersi does not refer specifically to the Claimant having informed him of this incident, as she has detailed it. [370]. The Claimant, however, described this incident in an email to BCC on 14 July [308].

k. 5 June – R2 attempted to call the Claimant at 21.30, which the Claimant did not answer, but sent a text saying she would call him the next day [246]. R2 said in evidence that it was perfectly normal for the directors to call each other out of office hours, even late in the evening and this was intended to be a routine call.

l. 6 June – the Claimant alleged that during a break in a directors' meeting, R2 asked to speak to her alone, closed the door behind them and stood very close to her. She states that he said that as she had not called him back the previous night, he had stayed up until 3am waiting for her to call and he asked her why she had not and also why they could not go out together. She said that when she told him that she would not be going out alone with him, he became upset and stormed out. She said that at the reconvened directors' meeting, he undermined her, dismissing her suggestions and told the other directors not to listen to her. R2 categorically denied such behaviour. Mr Hersi's police statement accords generally with the Claimant's account [370], as does the Claimant's email to BCC on 14 July [308].

m. At some point prior to 11 June – the Claimant and Mr Hersi carried out an at-home assessment for a new disabled service-user 'J'. J and her partner (also disabled) are lesbians and were living together in a relationship.

n. 11 June – the Claimant carried out another visit with J, alone, apologising for the fact that Mr Hersi had accompanied her on the previous visit as the service user had asked that only females care for her [257]. The care package commenced sometime around 14 June, with the carers being Ms Ali, Ms Ismail, and Ms Esse.

o. 19 June – Ms Esse stated that on that morning, while in Ms Ismail's house, along with Ms Ali, in between shifts, Ms Ali said to them that she had spoken to the Claimant and that '*Nura had told her she would be returning the package as the women were lesbian and the money* (earned from the care package) *was not halal'*, with which Ms Ali apparently agreed. When she and Ms Ali returned on shift, she said that the Claimant visited and asked her '*whether I have ever seen the service user and her partner having intercourse and I was shocked by the question'*, answering in the negative (WS 5 & 6). The Claimant strenuously denies these or subsequent alleged comments of this nature, pointing out that she had previously cared for gay clients [email from that client - 393] and had campaigned, as a member of the Liberal Democrat Party, with an openly gay MP, on a campaign manifesto which included equal marriage [election leaflet showing them both - 488]. Ms Ali said that she had never witnessed any homophobic behaviour by the Claimant, who had a good relationship with J and her partner. She also said that she'd been made aware that the couple were lesbians and in a relationship at an induction meeting, which took place before the care package commenced. Finally, she said that she'd never been approached by R2 or 3 as part of any subsequent investigation procedure (WS4 & 5). Ms Ismail said the same.

p. 21 June – J wrote to compliment the quality of the package, '*just a week in'* and how she had been '*treated with respect and dignity'* [260].

q. 22 June – Ms Ali messaged the Claimant to state that she'd '*been really ill'* and that she wouldn't be able to go on shift on 23 June [261].

r. 23 June – the Claimant messaged Ms Ismail, telling her not to go to work that morning, due to Ms Ali's illness, stating that '*we will have to be cautious and treat the symptoms potentially being covid-19. We must not put* (J) *at risk due to her health condition. Please self-*

isolate yourself as you have been in contact with her yesterday.' [262]. The same day, she emailed Mr Hersi to inform him of her decision and to state that she would be going to support J that morning, but that she would also contact J's social worker, to see if BCC could take over the care package [265]. She also informed J and her partner, who queried why the affected care staff were not undergoing covid tests, to establish whether or not they did in fact have the virus and suggested that they attend a drive-in centre at Bristol Airport [266], on the basis that if found negative, they could return to work. J feared that she may, in the absence of home care, have to go into residential respite care. The Claimant responded that R1's covid policy was to self-isolate '*as a first point of action'* [272]. It was undisputed evidence that the Claimant and the wider Somali community were reluctant, at the time, to be tested.

s. 23 June (continued) – R2&3 state (having corrected the original date of 24 June in their statements) that at a directors' general meeting, they were informed of the cancellation of J's care package. R2 stated that in that meeting, '*the Claimant told me that the reason for her decision to cancel the package was because they* (sic) *felt uncomfortable with the client's sexual orientation, and she also made an allegation that the couple had been having sex whilst she was present at the property.'* (WS 20). R3 states that '*the reasoning the Claimant initially provided to us for cancelling the package was because Happy Care did not have capacity to assist the client. However, we subsequently found out through the client that she had been informed by the Claimant that we had allegedly cancelled the package because of a supposed covid-19 case. We were unable to source any evidence of this alleged covid-19 case on subsequent investigation.'* (WS15 & 16). However, he went on to say that in the meeting, the Claimant told them the true reason was her feeling '*uncomfortable with the client's sexual orientation'* and that the '*money made from the client would not be 'halal' or lawful.'* (WS 19 & 20). In an email of 21 July, referring to '*we'* (as being obviously R2 & 3) and sent from R1's general email address to R3, in the form of a contemporaneous note, the Respondents refer to a conference call with the Claimant on the evening of 23 June. They state that when they asked the Claimant for the reason for the cancellation she said, '*Nura reply to as that J and her partner was having sex in front of the employees of happy while they was in duties in J's home.'* [333].

t. 25 June – the Claimant alleged that R3 had tried to persuade her '*to spend more private time with Mr Carab. This conversation*

lasted about three hours and I was told to go to Mr Carab and hug and kiss him' [WS 25].

u. 26 June – the Claimant stated that R3 called her '*stupid'* and a '*bitch'* and that she '*should learn to obey'*. He denies this.

v. 2 July – R2 completed a 'shareholder notice of dismissal as a director', in respect of both the Claimant and Mr Hersi [283], with notice of that being sent to the Claimant the next day [284], calling for a general meeting on 4 August [284]. The Claimant denies receiving this document, which R2 said was sent by post.

w. 4 July – the Claimant 'updated' her contact details with CQC [285].

x. 8 July – R3 disputed an expenses claim by the Claimant [286]. In answer to an allegation by her as to 'mistreatment', without her even specifying the nature of such mistreatment, R3 responded by stating '*as you know, 99.5% of Happy Care employees are females. We treat them fairly and equally, we value and respect them …*'. He went on to refer to a scheduled directors' meeting on 10 July, at which she could raise any concerns.

y. 10 July – R2 wrote to J, referring to a telephone call to her the previous day, on the subject of the cessation of the care package and stated that '*our registered manager, Mrs Nura Aabe inform us that she cancelled you*(r) *care due to that you and your partner have sex while Happy Care employees are at your location then she took a decision without consulting the Directors.'* [289]. He said he felt obliged to inform her of this, due to R1's '*duty of candour*' under relevant legislation.

z. 10 July (continued) – the Claimant informed BCC, by text that a pen and name plate holder on her office desk had been smashed and that she considered that R2 & 3 had done this [291] and that she was going to the police [photo 310]. She also raised more general concerns as to risks to service users.

aa. 15 July – R2 wrote to the Claimant informing her that she was suspended, pending disciplinary proceedings, due to allegations against her of homophobia [311]. The Claimant denies receiving this letter.

bb. 16 July – J lodged a complaint with R1 about the Claimant, alleging rough handling and complaining of the Claimant's failure to arrange covid testing for the staff, as well as the effect on both her and her partner of the alleged discrimination reported to them by R2 [464].

cc. 17 July – further notice was given to both the Claimant and Mr Hersi of a general meeting of directors, on 4 August, with the intention of removing them both from those offices [326].

dd. 22 July – the Claimant incorporated a new company, called 'Compassionate and Quality Care Limited', with she and Mr Hersi as directors, at the same address as she the next day provided Companies House as change of address for R1 [unnumbered Companies House record].

ee. 23 July – the Claimant wrote to Companies House, from her R1 email address, stating that '*there is an ongoing dispute with the company with regards to its directors/shareholders. I also like to confirm change of address as myself or my colleague Mr Hersi cannot operate or meet the needs of our service users in the current location due to safety reasons, for your information police has been informed of this matter and an investigation has been conducted …'* [296]. She provided an alternative registered office address, as the same address of her new company. She had also informed the CQC on the same basis, as recorded in their letter of 29 July [375].

ff. 27 July – R2 wrote to the Claimant, by email and post, referring to J's complaint and suspending her with effect that day, '*pending investigation … of allegations made against you of homophobia and discrimination of sexual orientation …'* [337].

gg. 29 July – Mr Hersi provided a statement/'*written report'* to the police [373].

hh. 31 July – R2 wrote by email to the Claimant, inviting her to a disciplinary hearing on Monday 3 August, at 10.00 pm and in 'bold' much larger text referred to '*attached documents'* [379] (although the email header shows no 'attachments'). A letter of the same date refers to the allegations of homophobia and stating that dismissal was a possibility (which the Claimant said was attached) [380].

ii. 3 August – the Claimant didn't attend the disciplinary hearing and a letter was sent to her the same day, dismissing her summarily [382]. The Claimant said that she received it on 4 August. Mr Hersi, who had also apparently been invited to a disciplinary hearing on the same day was also summarily dismissed, because he had '*provided false information to CQC, being a co-associate with the discrimination of sexual orientation of a client, failing to be*

transparent and failing to fulfil your role ..' [384]. (There is also a letter dated 15 July, to which we were not referred and the Claimant was not questioned on, inviting her to a disciplinary hearing on 27 July. The Claimant said that she had never received this letter, which the Respondent had apparently posted to her, but not emailed. We discount this letter, as no further reference was made to it at the time by the Respondents, such as querying why she had not attended, or referring to the need to re-arrange the meeting, indicating to us that this document is one of the class of documents referred to below, as being fabricated, after the date, by the Respondents.)

jj. 14 August – the Claimant appealed against her dismissal and raised allegations of sex discrimination [402].

kk. 20 August – the Claimant complained to the police of '*community mobilisation against myself and my colleague Mr Hersi …'*, but was told by the police, on 27 August that the complaints she was making were not of a criminal nature but were perhaps civil or employment law-related [416].

ll. 3 September – ACAS Early Conciliation commenced. There was ongoing correspondence from all parties, with BCC and the CQC, on the issue of R1's control and safeguarding of clients. The ET1 was presented on 2 November.

The Issues

11. Time Limits. Based on the dates of Early Conciliation and the date of presentation of the ET1, events prior to 2 July may be out of time. While this issue was pleaded by the Respondents, it was not actively pursued at this Hearing and no submissions were recorded in respect of it. In any event, we are entirely confident (as will become apparent from our findings of fact below) that, applying s123 EqA and s.48 ERA, the facts of this case indicate a course of conduct extending from 26 April to the presentation of the ET1, thus permitting the Tribunal jurisdiction to hear all the claims. Even if that were incorrect, we would nonetheless also find that it would be just and equitable to extend time, on the basis that the claims extended over a four-month period, make serious allegations and involve (as we will find) an entirely blameless third party, thus meriting the Tribunal's consideration. The events culminated in the Claimant's summary dismissal, followed by prolonged concerns and dispute over the control of R1, necessarily delaying presentation of the ET1.

12. Claimant's Employment Status. We find that the Claimant was an employee during the relevant period, for the following reasons:

a. She was clearly completely under the 'control' of R1. While she was a director and equal shareholder, she was only one of four and therefore, until belatedly Mr Hersi 'sided' with her, she had to accept the majority decision of her fellow directors. She was, undoubtedly, able to 'stand up for herself', but from the evidence we heard, it was clear that she was expected to comply with the instructions of R2 and R3, as representing R1. An example of this is Mr Hersi's email of 18 May, chasing her in respect of her absence from the office. It was also clear from R2 & 3's evidence that to their mind, she was a director 'in name only' and they certainly expected her to 'obey' them.

b. As conceded by Ms Chan, as the Registered Manager, the Claimant could not send a substitute in her place, but had to do her work personally.

c. As the Registered Manager, she was entirely integrated into R1, which could not have functioned without her (or somebody else assuming her role). The voluminous policy documents provided in the bundle name her multiple times as carrying out core functions of the business. Even if some named functions were somewhat notional and set out for the purpose of 'box-ticking' with the CQC/BCC, as is asserted, the role of Registered Manager alone, in the care context, meets this test.

d. There was no persuasive evidence, in the relevant period, to indicate a lack of mutuality of obligation. The Claimant was expected to do her job and was upbraided (rightly or wrongly) when it was perceived that she had failed in this respect. She was subjected to disciplinary proceedings. Her bank statements [497] indicate regular payments over the relevant period from R1, which, however the Respondents choose to label them, were obviously remuneration for her work.

e. It may be that she did not work exclusively for R1 (for example she ran her own charity and had directorships in other companies, albeit which she said were dormant), but no persuasive evidence (apart from the one incident in mid-May) was provided as to any particular absence by her from the workplace, as a consequence.

f. It is settled law that tax arrangements are not persuasive as to determining employment status.

13. Sexual Harassment. We consider that some of the Claimant's allegations are unfounded, or unproven, but as we have found that others did occur, as described, we focus on the latter. Those allegations found be to acts of

sexual harassment will not, subject to s.212(1) EqA, be considered further under direct discrimination. Those acts complained of which we consider more appropriate as detriments under s.13 are dealt with in that section. By the nature of acts of sexual harassment, they are both rarely witnessed by third parties, or supported by documentary evidence. Therefore, where there are two conflicting witness accounts, we need to decide, on the balance of probabilities, whose account we prefer. Accordingly, before embarking on our determination of this issue, we deal first with our considerations as to the credibility of the witnesses before us.

14. Credibility. Generally, where there is a conflict in witness evidence, unsupported by other evidence, we prefer the evidence of the Claimant and her witnesses, over that of the Respondents', for the following reasons:

    a. All three Respondent witnesses were, on occasion, evasive in answering questions, seeking on some occasions to attempt to 'see behind' the purpose of the question, rather than simply answer it. R2, in particular, frequently did not answer questions put to him, even when it was obvious that 'yes/no' answers would have sufficed, followed perhaps by some brief explanation, but instead often embarked on long-winded and sometimes completely irrelevant descriptions of other events, or of his opinions on them. It has been suggested by Ms Chan, who accepted that on occasion the Respondents' witnesses '*struggled'* that not too much should be made of such, as English is not the Respondents' witnesses first language and nor are they used to the court environment. She suggested that '*articulacy* (as was evident from the Claimant) *did not equal honesty*.' Clearly, R2, in particular, seemed to have difficulty understanding questions, often asking for them to be repeated and on almost every occasion asking for page numbers to be repeated. R3 had noticeably less difficulty, but instead talked over the questions, often not listening to them and on more than one occasion answering with his oft-repeated phrase '*disagree'* when the obvious (and only) answer was 'yes'. He gave the impression of being unwilling to make any concession in his evidence, no matter how obvious the inconsistency exposed. Both witnesses and certainly R2, if so minded, could have requested the services of an interpreter, but did not. Their English was perfectly serviceable, with some repetition, and by virtue of the voluminous documentation in the bundle, they clearly have no difficulty expressing themselves in writing. We don't, therefore, consider that whether or not English is their first language, to be significant in our assessment of credibility.

b. There were multiple and glaring inconsistencies in R2 and R3's evidence, as follows (by way of example):

   i. R2's assertion that his need to monitor the Claimant's emails was '*to prevent the Claimant from transferring any business contact into her own personal email address'*, in May, was completely unsupported by evidence of her doing so at the time, which, as he had such access, he could have provided. Instead, the more likely explanation was that he wished to subordinate her to his control, as a man.

   ii. Both witnesses' inability to explain coherently or consistently how or when they discovered the alleged homophobic remarks or be consistent about their behaviour following that discovery. At the outset of their evidence, they both changed the date in their witness statements of their stated first knowledge of these events, from 24 to 23 June. This is despite the alleged disclosure by the Claimant having happened at a directors' general meeting, the date of which was recorded by them in their email of 21 July [333]. Also, their account of when and how this information was communicated was confused and inconsistent, either revealed straightaway by the Claimant at the directors' meeting, or at some point thereafter. The account in their joint statement [365] added information not otherwise mentioned, such as the Claimant allegedly saying '*leave this to me I will sort it out and we will be fine …* (and when asked whether she'd witnessed the sex acts between J and her partner said) '*shame on you, it's disgusting what you are asking me'*, indicating an inability to maintain a consistent 'story'.

   iii. There was no evidence whatsoever of the Claimant having met with R2 & 3 to discuss her alleged misconduct, or to have the opportunity of offering alternative explanations for her decision to withdraw the care package. Instead, there is ample, unexplained evidence, despite R2 & 3 being questioned on the matter, of them doing nothing, for a lengthy period of time, about such apparently serious allegations, such as immediately suspending the Claimant, but instead engaging in routine correspondence with her as to her expenses claim on 8 July and then, without reference to the allegations, inviting her to put forward any concerns about her expenses at the scheduled board meeting on 10 July. Mr Carab said, in a message to the Claimant on 4 July, without reference to any ongoing investigation or to his

apparent issuing to the Claimant on 2 July of a notice of dismissal as a director that '*that is good Nura. I think we can have meeting on Friday* (the 10th) *as usual'* [274]. Nor is there any worthwhile evidence as to any investigation being carried out by them at the time, such as, for example, speaking to all three care workers and taking statements from them. They certainly took no statements, and we entirely accept Ms Ali's and Ms Ismail's evidence that they were not approached on the matter. It is inconceivable that Ms Esse, as R3's wife, would not have been spoken to at the time, or indeed volunteered the information herself and the fact that that apparently did not occur and her evidence was only forthcoming on the first day of this Hearing is deeply suspicious, indicating a 'last ditch' attempt by the Respondents to bolster their case. Her evidence was also inconsistent in that initially in cross-examination, she said that she hadn't, at the time, told R3 about the alleged homophobia, but later, on further questioning, said she did, on 24 June. While R2 & 3 have provided an 'investigation report' [322], its provenance is doubtful. R3 states that an investigation was started sometime after the event, with the intention of discussing its conclusions at the disciplinary hearing on 3 August. However, that document cannot have been created in July, or thereabouts, as it refers to events post-dating the planned disciplinary meeting, such '*upon the conclusion of the investigation Mrs Nura had her role terminated, as a director, shareholder and registered manager'* (which cannot have been the case) and that the '*proceedings to terminate Mrs Aabe took five months'*. Also, the report implies that at the meeting on 23/24 June they were not appraised of the real reason the Claimant terminated J's care package, when in their witness statements, they say she told them the 'real' reason at the meeting. It seems highly likely to us that the report has been created at some later date, to attempt to show due process on the Respondents' part. The first reliably-documented reference to the Respondents taking action in respect of the allegation is an email from the CQC to R2, on 20 July, acknowledging receipt of their allegations against her, which can only relate to the alleged homophobia [330].

iv. That finding then leads us to consideration of other documents provided by the Respondents and as to challenges as to their provenance. There must be serious doubt that the 'notice of dismissal as director' document, the investigation report, the first notice of suspension and the

'joint statement' of R2 & 3 (dated they say 24 July [364]) are genuine documents, in that they were not created at the time stated, but after the event, to attempt to bolster the Respondents' case. As stated, the Claimant has sought, since January 2022, to have disclosure of the metadata/properties of these documents, in order that the truth of their date of origin could be established. That requirement was specifically ordered by the Tribunal on 22 June, requiring compliance, or if not, '*a detailed explanation of why this is not possible, and a chronology of the efforts made to obtain it.'* [21 - costs application bundle]. Obtaining such data is straightforward ('right click' on the document name in the folder, click 'properties' and the creation date is shown). However, the Respondents had failed to provide this data by the commencement of the Hearing, or the required explanation, hence the order being reiterated on the first day of the Hearing. In response, R3 provided a supplementary statement, stating that he only became aware of the request in June 2022 and that by that point R2 was no longer in possession of the personal computer on which he had produced the documents, as it had misfunctioned in March 2021 and been recycled. He did not explain in his statement how the Respondents' documents in the bundle had since been produced, if the relevant computer was destroyed (disclosure of documents being ordered by 23 December 2021). When questioned on this issue, he said that they had '*been saved on a folder that I had created'*, which indicates to us that those documents' properties are obtainable, but for reasons of their own, the Respondents have failed to disclose this evidence.

v. Another example of the Respondents' lack of transparency is that when R3 was challenged as to the lack of any notes/minutes of the various directors' meetings, said, for the first time in cross-examination that in fact the meetings had been recorded and that their solicitors were arranging transcripts. This begs the question, therefore, as to why, if such recordings in fact exist, they have not been disclosed, or previously referred to? The alternative (and to our mind more likely) explanation is that there are no such recordings and R3 was simply seeking to rebut this challenge by 'thinking on his feet'.

c. In contrast, we found the Claimant's evidence to be straightforward and to the point. Where she was uncertain, or was in error, she readily admitted such. There did seem to be one minor

discrepancy in her response as to whether or not she had visited J's home, or simply phoned her to inform her of the withdrawal of care (as J's subsequent complaint implies), but we don't view this conflict as significant in damaging her credibility.

15. Sexual Harassment (continued). We consider now those allegations that we find to be factually proven:

    a. R2's phone call to the Claimant on 4 June. We find that this did take place as described, because, firstly, we prefer the Claimant's evidence and secondly the Claimant set it out in an email to BCC only four or so weeks later.

    b. R2's attempt to call the Claimant at home, at 21.30 on 5 June. Again, we find that this did take place, as there is a record of her texting back to R2, putting her response off until the next day. R2 provided no innocent explanation as to the reason he was making this call and therefore, on the balance of probabilities, we find it likely that it was for the same purpose as his call on 4 June.

    c. R2's behaviour at the time of the meeting on 6 June. We find that this behaviour did take place, as described by the Claimant, because, firstly, we prefer her evidence over that of the Respondents; secondly, it matches the pattern of behaviour we have already found against R2 and thirdly, she referred to it in her near-contemporaneous email to BCC. Further, Mr Hersi refers to witnessing at least part of the incident in his statement/report to the police. As already mentioned, Mr Hersi sadly passed away in late 2020 and therefore we can only consider his correspondence and this statement, without the benefit of him being cross-examined on those documents. Nonetheless, we gave them some weight. In doing so, we took into account the following factors:

        i. Mr Hersi's age (it was common evidence that he was plus of 20 years' older than the Respondents), thus, in their community, conferring on him greater status. Indeed, in the police officer's acknowledgment of receipt of the statement, he states '*On a separate matter, I raised with you the influence of your position with the Somali community elders and an ongoing issue concerning parking …'* [372]. Both these factors indicate that Mr Hersi was a person of standing in his community and therefore less likely than perhaps others to risk such standing, by making false allegations.

ii. His statement is to a police officer, thus, if false or misleading, putting him at risk of the criminal charge of wasting police time, with attendant reputational loss.

iii. We note the Respondents' contention that Mr Hersi would 'have had an axe to grind', as he wished, with the Claimant, to subvert their control of R1, but as will be clear from our findings below, in view of R2 and 3's behaviour, he had little option.

d. Clearly, by May 2020, as evidenced by the above actions of R2 and the contents of the Claimant's email of 19 May [477], relations were worsening between the Claimant and R2 and 3 and thus it is entirely possible that R2 would have encouraged staff to bypass the Claimant. On their own evidence, R2 and 3 considered the Claimant a director 'in name only'. Ms Gyane's submission on this point was that by late April, R2 & 3 sought to assert their dominance over the Claimant, as a woman, because, by that point, the BCC 'Framework' having been achieved, for which she was clearly largely responsible ('*Queen Nura'*), they no longer had any need to defer to her. She also submitted that the Claimant's resistance to the alleged sexual advances of R2 contributed to this reaction. This is, we consider, an entirely plausible scenario.

e. Did R2 treat the Claimant less favourably as a result of her rejecting his advances? We find that he did as, until at least the point that the Claimant began to make disclosures to third parties (10 July, to BCC), there was no other obvious motivation for his actions, perhaps combined with a general misogyny and resentment of the Claimant's status, her obvious intelligence and capability, *despite* her sex. We are clear that if she had acquiesced to his advances, it seems inherently unlikely that the following less favourable treatment would have occurred:

i. The events of 6 June;

ii. Monitoring the Claimant's emails. While R2 asserted in evidence that he needed to monitor the Claimant's emails, as she was sending emails from her R1 email address, to a personal email address of hers and he feared that she was transferring business contacts, he provided no evidence to that effect, for May (when the monitoring started), when he could have so easily done so. Nor, if that allegation had any truth in it, is there any evidence of the Respondents taking action against the Claimant at that point. There is also the possibility of jealousy/control on his part. She did forward on

some emails to a private address, but there could easily be innocent explanations for doing so, such as working from home;

iii. Undermining her status with staff;

iv. (It is difficult to distinguish incidents from 10 July onwards as purely related to either less favourable treatment following sexual harassment, or detriment on grounds of whistleblowing, but, on balance, we prefer the latter, as perhaps by this point even R2 must have realised that his approaches to the Claimant would not be reciprocated and his focus turned more to 'revenge' for her disclosures and the risk they posed to his and R3's control of R1.)

f. Did R3 engage in either 'direct' sexual harassment of the Claimant, or subject her to less favourable treatment because of her rejection of R2's sexual advances? We find that he did, in the following respects:

i. On 25 June, suggesting to the Claimant that she '*spend more time privately*' with R2, or '*hug and kiss'* him. We do so because we prefer the Claimant's evidence on this point. As evidenced by their joint behaviour throughout this matter, R2 & 3 acted entirely in concert against the Claimant and it is therefore entirely plausible that R3 would have sought to pressurise the Claimant to acquiesce to his friend's demands. She also recounts this incident in her email of 14 July to BCC [309].

ii. On 26 June calling her '*stupid'* and a '*bitch'* and telling her that she '*should learn to obey'*. This allegation chimes with the events of the previous day. Also, R3's evidence to the Tribunal was, at times, aggressive and angry, talking over or challenging the questioning of Ms Gyane, indicating an attitude of mind conducive to such comments. We prefer the Claimant's evidence on this point.

iii. On 8 July disputing payment of the Claimant's expenses, while making seemingly irrelevant assertions as to R1's '*fair and equal*' treatment of female employees.

iv. (For incidents from 10 July onwards, we reiterate our findings above in that respect, as to the claims against R2).

g. The incidents we have found to have occurred are self-evidently linked to the Claimant's sex, or to be of a sexual nature. Sexual overtures from R2, or pressure from R3 to submit to them, or calling her a '*bitch'* can be nothing else.

h. We have no doubt that such incidents will have had the purpose, or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

i. Monitoring the Claimant's emails, arbitrarily challenging her expenses claim and undermining her status with other staff is clearly less favourable treatment and as we have found was motivated by her rejection of R2's sexual overtures.

j. The Respondents contended that as the Claimant did not raise these allegations in her solicitor's letter of 12 August [356] that that challenged the veracity of her account. However, it is clear from that letter that it is intended to deal with company law matters and it refers to a forthcoming separate appeal, which was in fact sent two days later and which does raise a complaint of sex discrimination, over several months [402]. Reference is also made to the sex discrimination allegations in that appeal being only against R2 (implying some expansion of them now, to R3), but, as is clear from this Hearing, R2 was the main protagonist. Further, in any event, the Respondents did not process this appeal, or even respond to it. Finally, it is asserted that the tone of some of the Claimant's correspondence with R2 & 3 belies her allegations as to being harassed by them at the time [example 258]. The Claimant's response on this point, however (which we accept) was that she was simply being polite in written correspondence and would always seek to behave professionally in such circumstances.

16. Conclusion on Sexual Harassment. R2 and R3 sexually harassed the Claimant, for which (as is conceded by it), R1 is vicariously liable.

17. Direct Discrimination because of Sex. We find that the only act of such discrimination (as discrete from acts of harassment, or protected disclosure detriment) to have occurred was that the Respondents refused or failed to assign the Claimant as a signatory on R1's bank mandate. She states that she was the only director not permitted this facility, due, she alleges to her sex. We find this to be discriminatory for the following reasons:

a. If true, it clearly is a 'detriment' to the Claimant, giving her less control over R1's finances and less status within the Company. While the Respondents denied her exclusion from this facility, they

provided no corroborative evidence to support such denial, when, having known of this allegation since November 2021, they could have easily done so, by producing contemporaneous documentation from R1's bank. We infer from that failure, combined with our findings as to R2 & 3's credibility that no such evidence exists.

b. It was clearly less favourable treatment than afforded to the Claimant's male co-directors.

c. Bearing in mind our findings as to the Respondents' sexual harassment of the Claimant, this less favourable treatment was clearly linked to her sex and R2 & 3's attitude to her as a woman.

d. No alternative, non-discriminatory, rationale for this decision was advanced by the Respondents.

18. Conclusion on Direct Sex Discrimination. The Respondents directly sexually discriminated against the Claimant.

19. Direct Discrimination on grounds of Religion. There is, in reality, only a single allegation made in this respect by the Claimant, namely that by inviting her to a disciplinary hearing on 3 August, on the night of the last day of Eid al-Adha, the Respondents were subjecting her to religious discrimination, either because they knew she would not see the invitation, or, if she did, not attend, as she would celebrating the festival. We consider the following issues:

a. Clearly, not being able to attend a disciplinary hearing, for whatever reason, would be a detriment, as the person concerned would be unable to answer the charges against them, or put forward their case to their employer.

b. Was that less favourable treatment of the Claimant, as a Muslim, than might have been afforded to a notional comparator, that of a non-Muslim, in the same role and subject to the same disciplinary charges? The Respondents contended that Eid finished at sunset on 3 August, hence the meeting being scheduled for 10pm. R2 & 3 said in evidence that many Muslims returned to work, or dealt with business affairs, from that point onwards and that therefore it was perfectly routine to schedule such a meeting then. The Claimant said that she did not see the invite, sent by email on Friday 31 July, because Eid had commenced on 30 July and she was on leave, celebrating with her family and wasn't reading her emails. She said that R2 & 3 would also have been celebrating this '*significant religious festival'* and would therefore have fully understood its

significance for her. While, she accepted, Eid had officially ended, celebrations would continue into the night, in which, she said R2 and 3 would also be participating, indicating that they had no intention of actually conducting such a meeting. She said that it would be similar to asking a Christian, or somebody of that heritage, to attend a workplace meeting on Christmas Day or Boxing Day. In any event, we query how it could be considered reasonable to have any such meeting at such a time? We find that this was less favourable treatment, because, as a Muslim, she should not have been expected to have participated in such a meeting, on her equivalent of Christmas/Boxing Day night.

c. Was such less favourable treatment because she was a Muslim? Clearly, yes, as were she not a Muslim, it would not have had the same detrimental effect upon her.

d. We did not accept that the Respondents advanced an alternative non-discriminatory reason for their decision, for the following reasons:

    i. Despite R2 volunteering that in his mind ideally an employee should be given a week or two's notice of such a hearing, he was unable to explain why only two working days (although in the context of Eid even that is arguable) was given.

    ii. Nor, in cross-examination, was R2 able to offer any rationale at all, if the meeting was so urgent that it could not have been held the next day.

20. Conclusion on Direct Religious Discrimination. The Respondents directly discriminated against the Claimants on grounds of her religion.

21. Indirect Religious Discrimination. Having found that the same allegation was an act of direct discrimination, it cannot, logically, also be an act of indirect discrimination. In any event, the claim is clearly misconceived, as the alleged PCP of arranging a disciplinary hearing on the last day of Eid had no general application to R1's workforce. This claim is therefore dismissed.

22. Victimisation. We do not consider that there is sufficient evidence to conclude that the Claimant carried out the protected act alleged, namely her informing Mr Hersi on 4 June of the 'bedroom' call from R2. As recorded above, neither Mr Hersi's statement, nor any other communications from him, record her doing so. We query whether, if instead, the protected act had been pleaded in relation to the Claimant's

email of 19 May [477], whether that would have met the test, but it was not. We therefore dismiss this claim.

23. Protected Disclosure. We consider the following issues (as set out in greater detail than in the List of Issues, in the Claimant's subsequent further and better particulars in this respect [92A]):

    a. What did the Claimant say or write and when? It was not in dispute that she wrote the following:

        i. To the police, on 18 July, effectively stating that R2, by interfering with her Registered Manager role was placing her, other staff and service users at risk and was also sexually harassing her. Apart from the Claimant stating that she spoke to the police on 8 July, there is no evidence that she did so and even if she did, there is no evidence that the Respondents can have been aware of it at the time. She certainly gave a wide-ranging formal statement to the police on 18 July [469].

        ii. To BCC's safeguarding team on14 July, effectively making the same allegations [307].

        iii. To the CQC, on the same date, on the same basis [307].

    b. The disclosures were clearly of 'information'.

    c. Did the Claimant reasonably believe the disclosures to be made in the public interest? Case law indicates that this is not a particularly onerous test, but, additionally in this case, because the disclosures were not made to the employer, but to external bodies ('prescribed persons' (s.43F), or 'in other cases' (s.43G)) the following tests apply:

        i. In respect of the disclosure to the CQC (a 'prescribed person') did the Claimant reasonably believe that the failures alleged fell within the CGC's remit and were substantially true? The Respondents contend that there must be real doubt that the facts behind her allegations were substantially true. However, we disagree, for the following reasons (excluding those allegations which would not be within the CQC's remit):

            1. She clearly (and as we have found, rightly) believed that R2 and 3 were undermining her role as Registered Manager, thus impacting on her ability to

carry it out and at least potentially therefore adversely affecting care provided to service users.

2. R2's interference with and monitoring of her email access impacted on her role in the same manner.

ii. In respect of her disclosures to the Police and BCC (s.43G), did she reasonably believe that:

1. They were substantially true;

2. They were not made for personal gain;

3. She had made the allegations previously subject to s.43F (which she had, to the CQC);

4. It was reasonable for her to make them.

iii. In this respect, we find as follows:

1. Her allegations to the police as to (as we have found) sexual harassment were true; there was no obvious personal gain and it was reasonable to make them (even if, subsequently, the police determined that they did not merit criminal charges). Although we have made no previous finding in respect of it, we accept that she reasonably believed, also that R2 or R3, or both of them, had damaged her office furniture, which would, if true, indicate, in her mind at least, a possible risk to her of violence. Again, we see no personal gain in her doing so.

2. In respect of the disclosures to BCC's safeguarding team, they were the same, as we have found, genuine concerns as she raised with the CQC, with at least potential repercussions for service user care standards.

3. Not all in a range of disclosures need to be in the public interest to be protected (**Parsons v Airplus International Ltd**).

4. While it is asserted by the Respondents that the Claimant was attempting to poach 'their' business and that this was the true motivation for her behaviour, not any concerns as to the public interest, we consider

that the approaches she made to these third parties were motivated by concerns she and Mr Hersi had as to R2 & 3's handling of the Company and in particular the wellbeing of service-users. While it is true that she had previously registered a care company at Companies House, there was no evidence that this company was in anyway established and in any event, the mechanisms for transferring care packages to any such business would have required the lengthy and detailed involvement of the CQC and BCC and therefore was in no way imminent. The Claimant continued to be the registered manager of R1 and therefore had legal responsibilities to discharge and she also, along with Mr Hersi were equal shareholders and directors of the Company and therefore had legitimate interests to protect, in what became, in time, essentially, a shareholders' dispute.

24. Conclusion on Protected Disclosure. For those reasons, therefore, we find that the Claimant did make protected disclosures, as set out in the previous paragraph.

25. Detriment on grounds of Protected Disclosure. Did the Respondents submit the Claimant to acts of detriment (to be discussed below), on the ground that she made those protected disclosures? As a start point, however, the Respondents contend that this could not be the case, as they were unaware of such disclosures, at the relevant time. We consider, therefore, the evidence on this point, as follows:

    a. On 10 July the Claimant wrote to Companies House, from her R1 email address, as to alleged '*not valid'* changes made by R2 and his '*fabrication of accounts'* [298]. As we have found that R2 was monitoring the Claimant's emails, he, on behalf of the other Respondents will therefore have been on notice of likely such disclosures by the Claimant to other relevant bodies.

    b. On 23 July the Claimant wrote to Companies House, from her R1 email address, stating that '*there is an ongoing dispute with the company with regards to its directors/shareholders. I also like to confirm change of address as myself or my colleague Mr Hersi cannot operate or meet the needs of our service users in the current location due to safety reasons, for your information police has been informed of this matter and an investigation has been conducted …'* [296]. The Respondents will therefore have been aware of the potential for a police investigation. Bearing in mind R2 and 3's previous sexual harassment of the Claimant it is entirely

likely that they feared investigation in that respect. Also, as the Claimant was seeking to change the registered office address that clearly indicated that she, along with Mr Hersi, were challenging R2 & 3's position in R1.

c. On 24 July she emailed, again from her R1 email address to BCC and the CQC, notifying them of R1's change of office address and thus clearly indicating to the Respondents that she was in contact with those bodies [336]. While the Respondents may not have been aware of the details of her disclosures to those bodies, the mere fact that she was corresponding with them, without involving the Respondents can only have indicated unfavourable reports by her.

d. It is no coincidence, we find, that four days later, on 27 July, R2 wrote to the Claimant, suspending her, pending investigation of her alleged homophobia [337]. While the Respondents contend that they previously wrote to her on 15 July, on the same basis, we don't believe that that letter was actually created or sent at that time, based on our findings as to R2 & 3's credibility; their concealment of metadata in respect of these documents; their failure to explain why this letter (unlike their routine method of correspondence) was sent by post only and the contradiction in terms of suspending her a second time, when she was already apparently suspended.

e. Conclusion. There is ample evidence, therefore that while the Respondents may not have been aware of the precise detail of the Claimant's disclosures, they will have been aware that she was in contact with four external bodies and which can only have involved criticisms by her of their handling of R1, with potentially serious consequences for their position in the business and, they no doubt feared, allegations of sexual harassment. Any acts of detriment found to be such will therefore have been on the grounds of the Claimant's protected disclosures.

26. Acts of Detriment. We find that the Claimant suffered the following obvious acts of detriment, as a consequence of her protected disclosures:

a. Failure to pay her from 22 July.

b. Suspending her on 27 July.

c. Removing her as a director.

d. Disciplining her.

e. Dismissing her (claimed against R2 & 3 as a detriment).

f. Failing to deal with her appeal.

g. Attempting to remove her shareholding.

h. Attempting to inform the CQC that she wished to cancel her registration.

27. Automatic Unfair Dismissal. Was the making of any protected disclosure the principal reason for the Claimant's dismissal? We are in no doubt that the Claimant's protected disclosures were R1's reason for her dismissal, for the following reasons:

a. The reason the Respondents advanced, her alleged homophobia towards J and her partner, was an entirely spurious, concocted and malicious accusation against her. The evidence they have attempted to provide to support this accusation has been found to be comprehensively false. That they should do so without concern for the feelings of J and her partner is egregiously abhorrent behaviour on their part.

b. The Respondents have sought to argue the principle that why would they make such an outrageous allegation, if it was not true, as, even as made, it damaged R1's reputation? This is, we find, simply evidence of an ill-thought out 'cunning plan' on their part, with, for them, the unforeseen consequence of being sued in the County Court by J and her partner. They simply did not think the matter through.

c. We reiterate our findings, within our consideration of the claim of detriment, as to the Respondents' state of knowledge of the Claimant's protected disclosures.

d. All the evidence, to the contrary, indicates that by the point of dismissal (of both the Claimant and Mr Hersi) they were a thorn in R2 and 3's side, due to their protected disclosures to regulatory bodies and the police, which could have had dire consequences, both commercially and personally for the Respondents. Removing them from the Company was both 'revenge' for their actions and an effort to minimise the damage they could cause.

28. Breach of contract in respect of pay in lieu of notice. As an employee and in the absence of a contract of employment, the Claimant was entitled to statutory pay in lieu of notice, of one week's pay and we having concluded

that she did not commit gross misconduct, it was a breach of contract to withhold that payment.

29. Unlawful Deduction from Wages. As not denied by R1, they made deductions from her wages, for the period 22 July to 4 August. We find such deductions to have been unlawful.

30. Failure to provide s.1 ERA statement of terms and conditions of employment. No such statement was provided.

31. Compliance with the ACAS Code. R1 failed entirely to comply with the ACAS Code, by pursuing completely fabricated and notional disciplinary procedures against her.

Employment Judge O'Rourke
Dated: 14 December 2022

Reserved Judgment sent to the Parties:
23 December 2022

FOR THE TRIBUNAL OFFICE