



EMPLOYMENT TRIBUNALS

Claimant: Mr P Tchameni
Respondent: Pathway for Care Ltd
Heard at: London South Employment Tribunal
On: 22-24 February 2023
Before: Employment Judge Ferguson
Members: Ms C Oldfield
Ms A Rodney

Representation

Claimant: In person
Respondent: Mr M Sutton (consultant)

JUDGMENT having been sent to the parties on **27/2/23** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION

1. By a claim form presented on 6 September 2021, following a period of early conciliation from 28 July 2021 to 1 September 2021, the Claimant brought complaints of unfair dismissal and detriment because of protected disclosures.
2. The Claimant did not have the requisite two years' service to bring an ordinary unfair dismissal claim, so his claim was for automatic unfair dismissal only, and detriment relating to his suspension.
3. The issues were agreed to be as follows:

Protected disclosures

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

3.1.1. What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:

3.1.1.1. On 3 June 2021, in an email to HR, the claimant raised the fact that his salary was lower than that of his colleagues [PD1];

3.1.1.2. On 5 June 2021, in an email to Annette Bennett, the claimant raised the fact that he had been allocated 41.5 hours a week in the rota instead of his contracted 40 hours a week [PD2];

3.1.1.3. On 5 June 2021, in an email to Annette Bennett, Damien Ellis and Natalie Smith, the claimant raised concerns about a resident, G, having a card to move around the house which he believed was dangerous because he could access other residents' rooms or get out of the premises unnoticed [PD3].

3.1.2. Did he disclose information?

3.1.3. Did he believe the disclosure of information was made in the public interest?

3.1.4. Was that belief reasonable?

3.1.5. Did he believe it tended to show that:

3.1.5.1. a person had failed, was failing or was likely to fail to comply with any legal obligation [PD1 & PD2]; and/or

3.1.5.2. the health or safety of any individual had been, was being or was likely to be endangered [PD3].

3.1.6. Was that belief reasonable?

3.2. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

Detriment (Employment Rights Act 1996 section 48)

3.3. Did the respondent do the following things:

3.3.1. Suspend the claimant on 29 June 2021 due to alleged misconduct on 22 June 2021.

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

3.5. If so, was it done on the ground that he made a protected disclosure?

Unfair dismissal

3.6. Was the claimant dismissed?

3.6.1. Did the respondent do the following things:

- 3.6.1.1. Suspend the claimant on 29 June 2021 due to alleged misconduct on 22 June 2021;
 - 3.6.1.2. Fail to conduct a fair disciplinary procedure and investigation;
 - 3.6.1.3. Fail or refuse to allow the claimant to view CCTV of the incident on 22 June 2021.
- 3.6.2. Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
- 3.6.2.1. whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
 - 3.6.2.2. whether it had reasonable and proper cause for doing so.
- 3.6.3. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.
- 3.6.4. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 3.7. If the claimant was dismissed, was the reason or principal reason for the breach of contract the fact the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.
4. At a preliminary hearing in October 2022 the Claimant had relied on a further alleged protected disclosure relating to lack of supervision. This was not pursued at the final hearing because the Claimant accepted he had not adduced any evidence of him raising the issue prior to his resignation email.
5. It was agreed that issues relating to remedy would be addressed, if any part of the claim succeeded, after our judgment on liability.
6. We heard evidence from the Claimant. On behalf of the Respondent we heard from Natalie Smith and Warren Richards.

FACTS

7. The Respondent provides specialist supported living services to adults with learning disabilities, autism, physical disabilities and mental health issues. The Claimant commenced employment with the Respondent as a support worker on 15 February 2021. He was employed full time on a salary of £20,000 a year, based at premises in Chipstead. His contract stated as follows regarding his contracted hours:

“5.1 Your contracted hours of work shall be 40 hours between Monday to Sunday and these hours and days are variable, to be worked flexibly in line with service need across a four-week period.”

8. On 3 June 2021 the Claimant wrote an email to Natalie Smith, Service Manager, and Ruby Seera, saying that he had just realised his new night colleagues were being paid more than him. He asked for a review. Following this email the Claimant was asked for a copy of his qualification certificates. The Claimant's evidence is that he had provided these when he started employment, but he provided them again. On 17 June 2021 Ms Seera submitted a “salary change request” asking for the Claimant's salary to be increased to £22,000, backdated to the start of his employment, on the basis that he had provided evidence he had the same qualifications and experience as colleagues on the higher salary. This was actioned and confirmed in a letter to the Claimant dated 17 June 2021.
9. On 5 June 2021 the Claimant emailed Annette Bennett, acting Service Manager for Chipstead at the time, about the rota. He said he had noticed two colleagues were on 30 hours, while the Claimant and another colleague were on 41.5 hours. The Claimant's case is that he was raising the fact that this exceeded his contracted weekly hours, and that appears to be how it was interpreted by Ms Bennett. She replied saying that the additional 1.5 hours are generated due to handover. She offered to adjust the rota to give back those hours at another time, rather than the Claimant being paid for it as overtime. The Claimant did not respond to this email. His evidence in cross-examination was that it would have been risky for him to take up the offer of adjusting his hours because the Respondent might have ended his employment.
10. Also on 5 June 2021 the Claimant wrote an email to Ms Bennett, Damien Ellis (Chief Operating Officer) and Natalie Smith. The email read:

“Dear senior staff members,
hope you are doing great and keeping safe.
Just be informed by Daniel, a night colleague that [G] , who recently move to Chipstead court is having a card to move around the house. He also said [G] used the card to go out of the premises during night shift to collect some of the things he threw out of his window.
Knowing a bit of him, I belief it is dangerous for he could use this to access other residents' rooms at will or get out of the premises on noticed. It will be safer to provide him with one that will give him access to his room only. We could also provide him with a monitor to enable him call for staff when in need.
Or we might get all residents' bedroom doors fitted with locks and keys to avoid restricting them from accessing their rooms when they need to. This is the case with [X], who will pace about and murmurs when this happens.
It is my utmost desire to have safety measures in place to prevent the worse from happening.

Have a great and enjoyable weekend.”

11. Ms Bennett replied, copying in all staff at Chipstead. She wrote:

“Hi Paul, thank you for raising this. Please continue to monitor him closely when he’s here. I have been assured that individuals personal passes will be with us over the next few days so we don't need to issue the visitor passes. If you let me know the numbers of the passes issued to each person, then I will check if they can enter other flats and ring IT on Monday to ensure they limit if that is the case. The current arrangement is to avoid us inadvertently breaching individuals rights to free movement and placing an illegal restriction or deprivation of Liberty. The purpose of 1:1 staffing during the day is to ensure he has the support he needs at all times. For nights we monitor movement to ensure [G] has support to do or go safely to where he pleases when he leaves his flat. [G] is at home until Sunday but I hope to resolve this situation early next week. If you have any further concerns or need further clarification on the above, do please speak with me directly.”

12. Natalie Smith gave evidence in cross-examination that G would not have had access to any other residents’ rooms, only to his own room and communal areas, because the cards were computer-controlled as in a hotel. The Claimant did not give evidence about this, but when cross-examining Ms Smith he said he had seen G get access to another resident’s room using the card.
13. The Claimant accepted in his evidence that Ms Bennett had taken his concern seriously and provided an explanation. The Claimant said he was not satisfied because despite what she said the same situation continued with G going out of the building. He did not convey that to anyone in management or raise the matter again, by replying to the email or otherwise.
14. On 22 June 2021 there was an incident involving a resident, B, behaving in a volatile way. We have viewed CCTV from two cameras which shows some, but not all, of the staff interactions with B. The Claimant was involved for much of the time and there was physical contact, including the Claimant pushing against B’s chest to stop him from going past and at times holding both of B’s arms. B at one stage kicked out although the kick did not appear to connect with anyone. Three other support workers were present at various stages during the incident, Rosie, Richard and Albert.
15. At one stage Richard also had physical contact with B. The other two support workers were nearby for parts of the incident but do not appear to have come into physical contact with B.
16. There was no audio on the footage we saw. The footage suggested that the whole incident lasted a couple of minutes.
17. The Claimant completed a physical intervention report on the incident during his shift.
18. An investigation was conducted by the Respondent but none of the managers involved in that investigation have given evidence to us and there is limited documentation about it. David Brum, who was appointed as Service Manager for Chipstead towards the end of June, was asked to conduct the investigation. In the bundle there were statements purporting to be from Rosie and Albert.

They are unsigned, and the statement from Rosie is undated. Albert's statement is dated 29 June. The Claimant believes the statements were fabricated by Mr Brum or otherwise as part of a plot to remove him from employment.

19. The statement from Rosie describes B becoming agitated and says that the Claimant came running out of the office to intervene. She says the Claimant shouted very loudly and aggressively at B, saying "stop" and "no". She says an altercation took place, with B and the Claimant both grabbing at each other. She says it was very aggressive and not professional at all, that Claimant did not handle the situation well and in fact made the situation worse. She says that at one stage B hit her mouth with the back of his hand. She describes another altercation after B had gone into his apartment, and when he came out the Claimant and Richard were both there, physically trying to restrain B, and this made B "fight back even more". She also says the staff did not comply with using the "PROACT SCIP training".
20. It is not in dispute that the Claimant had received training in physical interventions soon after he commenced employment with the Respondent. This was referred to as "PROACT SCIP". We had very little evidence about what this training consisted of. None of the Respondent's witnesses dealt with this in their witness statements. A policy entitled "Positive Behaviour Support" was produced by the Respondent in the bundle but the Claimant said he had never seen it, and it was not clear to us that it aligned with the PROACT SCIP training. We also heard oral evidence from Warren Richards, Managing Director, in which he suggested that physical restraint by staff was effectively prohibited in all circumstances, whereas the policy refers to it being permissible as a last resort.
21. Albert's statement says "I saw Paul [the Claimant] he had grabbed [B] and I saw Richard trying to force [B's] arm behind his back trying to restrain him I said to them to stop because [B] was not showing any potential signs of harming anyone and let him go."
22. The Claimant's evidence was that Ms Bennett telephoned him on 29 June to inform him he was suspended pending an investigation into him using excessive force on 22 June. The Claimant said in his oral evidence that during this conversation he asked Ms Bennett if he could view the CCTV on site. He said no-one came back to him about that.
23. The Claimant then received a letter the same day from Damien Ellis confirming the suspension. The letter also informed the Claimant he was required to attend an investigation meeting on 30 June at 11am with Mr Brum by telephone.
24. Also on 29 June Ms Smith completed an incident report, which summarised the incident as follows:

"Following the reievew of CCTV on the 29.06.2021 we believe a physical intervention was used with a person we support on 22nd June 2021 at 21:12 which is not a recognised physical intervention, taught on our PROACT SCIP course."

25. The report mentioned that another member of staff involved had also been suspended. Ms Smith's witness statement was not wholly clear on this issue, but she said in her oral evidence that Richard was also suspended at the same time as the Claimant for similar reasons.
26. The investigation meeting took place by telephone the following day. The notes of the meeting record the following questions by Mr Brum and answers by the Claimant:

“What do remember about the evening in relation to the allegation?

I saw [B] kicking towards Richard and I called towards [B] to calm him down, I tried to direct BGB away from Richard and I grabbed [B] hand

What did Richard do during this time?

I do not remember.

Have you had SCIP intervention since you started at Pathway for care?

Yes when I started on Feb 2021

Did you use any SCIP intervention on the night of 22nd June with [B]?

[B] tried to hit my head and I used the two hand grab and I tried to reassure him, I did not use any other interventions and most of the time I asked [B] to calm down and verbal direct him.

Do you remember at any time during the behavior [B] was exhibiting that you were on the ground with [B] as a result of any intervention used?

No I do not I used the two hand grab only

Was [B] supported in the sensory room and for long.

I can't really remember

Did you complete an incident form & ABA form?

Richard completed the incident form and I completed the ABA analysis form

Do you feel the incident was serious enough to contact the on-call or do you feel you could manage this yourself as a team?

No I did not call on-call and I felt we were able to manage [B]

When did you start working for Pathway for Care

I started working for pathway care in Feb 2021.

After the two hand grab ended how was [B]

He was fine I verbally prompted [B] to calm down and then we went towards the sensory room.”

27. The Respondent produced an investigation report in the bundle, apparently completed by Mr Brum and dated 31 June 2021 (presumably intended to state 1 July 2021). There are also notes of a very short interview with Rosie on 1

July. The Claimant was not aware of or provided with copies of either of these documents until after his resignation.

28. The investigation report concludes that the matter should proceed to a disciplinary hearing.

29. The Claimant emailed Mr Brum on 8 July asking when he would hear of the outcome of the investigation. Mr Brum replied the same day saying the Claimant would be contacted shortly by Sam Sheppard, who was the Regional Director.

30. On 13 July the Claimant emailed Sam Sheppard as follows:

“Very good afternoon dear Sam,

how is work? Just to let you know that I am very anxious and depressed with what is going on with our investigation. It is my utmost wish to get back to work as soon as possible.

While truly appreciating your effort and time, I pray this matter be resolved as soon as possible to enable me to get back to work.”

31. On 16 July at 9.23am, having not received any reply to his email of 13 July, the Claimant resigned. He wrote:

“Dear Senior staff,

Hope you are doing well and keeping safe.

Please find below reasons for my resignation

Dear all,

With great disappointment, I write with regards to the manner I am being treated at present.

As was informed, I am being accused by a colleague on 22/06/21 for taking a resident to the floor in order to manage his behaviour when he was challenging. I invited the investigation panel to check the CCTV cameras in the hope to have an immediate response by now. I also wrote to the investigation manager David Brum on 08/06/21 for a feedback but was informed the matter has been referred to Sam Sheppard. However, I don't understand the investigation procedures since I am not in possession of a copy of the organisation's investigation policy.

I wrote to Sam on 13/06/21 explaining the emotional and psychological effects the duration of the investigation is having on me and was ignored. No acknowledgment of receipt of my email till date. No phone call from any of the managers to check on my wellbeing. These have seriously increased my frustration and made me feel targeted and discriminated upon.

Again, amongst other issues, I raised a concern regarding the safety of residents at night (residents being authorised to have access to the main door at all times including the back ones) which could lead to them absconding and no measures were put in place until the recent incidents that happened.

More still, since I joined the organisation on 15/02/21 and till the time of my suspension, I have not had any supervision from the managers to guide and support in my job role.

Based on the above, I feel very unsafe and less motivated to work at Chipstead Court at the present and would like to resign as per a week notice. I am also claiming for constructive dismissal with deserved rights to view the CCTV footage showing me taking the resident to the floor as this has caused me great prejudice and loss of trust.

Yours Faithfully”

32. The Claimant was sent a letter dated 15 June inviting him to a disciplinary hearing. A copy was in the bundle. There is no name at the foot of the letter and no signature. There was some discussion during the hearing about when the letter was sent. It was the Respondent’s case that it was written on 15 July and mistakenly dated 15 June. The Claimant produced the original envelope which showed the letter was posted on 16 July. It was also the Claimant’s oral evidence that he had not received the letter prior to sending his resignation email. We accept that it was posted on 16 July. Whether it was deliberately backdated to 15th, or hurriedly created by the Respondent in response to the Claimant’s resignation, as the Claimant alleges, is not relevant to the issues we have to determine. Even if the Respondent acted to protect itself against a potential future claim as the Claimant believes, that does not help us to determine whether the Respondent’s conduct prior to the Claimant’s resignation was because of the alleged protected disclosures or amounted to a breach of the implied term of trust and confidence.

33. Notwithstanding the Claimant’s resignation, the Respondent proposed to continue the disciplinary process and agreed to postpone the disciplinary hearing to 27 July. The Claimant provided a statement for the purposes of the hearing in which he apologised.

34. On 27 July 2021 Mr Sheppard wrote to the Claimant:

“Good Morning Paul,

Many thanks for your statement, taking this into further consideration and the resignation you have provided for us being acknowledged I believe that we will not need to proceed this afternoon and consider the matter closed.

Kind regards and I wish you all the best for the future.”

35. The Respondent's witnesses said that Ms Bennett, Mr Elliott, Mr Brum and Mr Sheppard are all no longer employed by the Respondent. They did not know whether consideration had been given to them being called as witnesses.

THE LAW

Protected disclosures

36. The Employment Rights Act 1996 provides, so far as relevant:

43B Disclosures qualifying for protection

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

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

...

47B Protected disclosures

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

...

103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

...

37. For the purposes of s.43B the employee must prove that he or she held a reasonable belief that the information disclosed tended to show a relevant failure. This involves a subjective assessment of what the employee believed at the time of the disclosure and an objective assessment of whether that belief could have been reasonably held, taking into account the position of the employee (Babula v Waltham Forest College [2007] ICR 1026).

38. The leading case on the "public interest" test is Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)

2018 ICR 731, CA. Disclosures relating to an alleged breach of the worker's own contract of employment are not necessarily excluded from protection, but there would need to be features of the case that make it reasonable to regard disclosure as being in the public interest, as well as in the personal interest of the worker. In this regard, the following factors might be relevant:

- 38.1. the numbers in the group whose interests the disclosure served
- 38.2. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
- 38.3. the nature of the wrongdoing disclosed, and
- 38.4. the identity of the alleged wrongdoer.

Constructive dismissal

39. Section 95(1)(c) of the ERA provides:

95 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) . . . , only if)—

...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

Dismissals pursuant to section 95(1)(c) are known as constructive dismissals.

40. Four conditions must be met in order for an employee to establish that he or she has been constructively dismissed:

- 40.1. There must be a breach of contract by the employer. This may be either an actual or anticipatory breach.
- 40.2. The breach must be repudiatory, i.e. a fundamental breach of the contract which entitles the employee to treat the contract as terminated.
- 40.3. The employee must leave in response to the breach.
- 40.4. The employee must not delay too long before resigning, otherwise he or she may be deemed to have affirmed the contract.

(Western Excavating (ECC) Ltd v Sharp [1978] ICR 221; WE Cox Toner (International) Ltd v Crook [1981] ICR 823)

41. An employer owes an implied duty of trust and confidence to its employees. The terms of the duty were set out by the House of Lords in Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606 and clarified in subsequent case-law as follows:

“The employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

42. Any breach of this term is necessarily fundamental and entitles an employee to resign in response to it (Morrow v Safeway Stores Ltd [2002] IRLR 9).
43. In a constructive dismissal case, consideration of the reason for dismissal involves the tribunal considering the reasons for their conduct which entitled the employee to terminate the contract (Berriman v Delabole Slate [1985] ICR 546).
44. Where the employee lacks the requisite two years' continuous service to claim ordinary unfair dismissal, the burden is on the claimant to prove, on the balance of probabilities, that the reason for dismissal (or, in a constructive dismissal case, the reason for the conduct which led to resignation) was the protected disclosures (Ross v Eddie Stobart Ltd EAT 0068/13).

CONCLUSIONS

Protected disclosures

45. Both PD1 and PD2 are clearly matters relating to the Claimant's own contract of employment. PD1 was a complaint about the Claimant's own level of pay. No-one else was affected and there was no public interest element. Even if the Claimant genuinely believed this was in the public interest, it was not reasonable for him to do so. It was not therefore a qualifying disclosure.
46. As for PD2, the Claimant relies on the fact that he said in the email that another colleague was also affected and was being required to work more than her contracted hours. That is not sufficient to found a reasonable belief that the disclosure was made in the public interest. The alleged breach was not of such seriousness that it had the potential to affect anyone other than the two employees directly involved. Again, applying the Chesterton factors, it was not reasonable for the Claimant to believe that this disclosure was made in the public interest.
47. Even if the other elements of the test are satisfied, therefore, the Claimant did not have a reasonable belief that the disclosures were made in the public interest so they cannot be qualifying disclosures.
48. As for PD3, this was clearly a disclosure of information. The Claimant disclosed that a resident, G, had a card to move around the house which he believed was dangerous because G could access other residents' rooms or get out of the premises unnoticed.
49. We accept that the Claimant genuinely believed the disclosure was made in the public interest. That was not contested by the Respondent. The Claimant concluded the email by saying “It is my utmost desire to have safety measures in place to prevent the worse from happening”. It is obvious that the Claimant was raising the matter out of concern for the vulnerable residents and,

potentially, the wider public. His belief that that was in the public interest was also clearly reasonable.

50. We also accept that the Claimant genuinely believed the information disclosed tended to show that the health or safety of any individual was likely to be endangered. He expressly refers to the situation being dangerous. We accept that he believed G's unrestricted access could have presented health or safety risks to other residents.
51. The Respondent disputes that that belief was reasonable and relies on Natalie Smith's evidence, given for the first time orally in response to questions from the Tribunal, that the access cards are controlled to give access only to residents' own rooms and communal areas. Ms Smith did not, however, know anything about G's individual circumstances or the card that was issued to him. Her evidence appears to conflict with Ms Bennett's response to the email in which she said "If you let me know the numbers of the passes issued to each person, then I will check if they can enter other flats and ring IT on Monday to ensure they limit if that is the case." Ms Bennett did not exclude the possibility that G did, perhaps mistakenly, have access to other residents' rooms. We do not therefore accept that the Claimant had no reasonable basis for his belief that G had access to other residents' rooms.
52. It is clear on the face of the email that the Claimant believed the situation was dangerous. We consider it is self-evident that in the context of this type of supported accommodation involving vulnerable adults, including some residents who display challenging behaviour, there would be a potential risk to health and safety if residents mistakenly had access to other residents' rooms. The Claimant's belief was reasonable.

53. PD3 was therefore a qualifying and protected disclosure.

Detriment

54. We must determine whether the Claimant's suspension was a detriment done on the ground he made disclosure PD3.
55. The Claimant accepted in his evidence that the Respondent had to investigate incidents of this nature, and specifically allegations from two other members of staff that a colleague had not complied with the physical interventions training. He also accepted that the allegations by his colleagues was what had led to his suspension. His case was that the whole thing was a plot to remove him from employment, because he had made protected disclosures.
56. The Claimant relies on the disparity between the CCTV footage and the statements to support his argument that the evidence was fabricated to support his dismissal.
57. At first glance Rosie's statement gives a more extreme version of the Claimant's conduct than what we observed on the CCTV. We also note that Albert's statement does not appear to acknowledge the challenging and potentially violent behaviour by B that we saw on the footage.

58. Both statements, however, give a subjective opinion as to the appropriateness of the Claimant's conduct and say that he was unduly aggressive, and in the case of Rosie's statement, that he did not comply with the PROACT SCIP training.
59. We are not in a position to determine whether C's conduct was or was not in accordance with that training. We also note that the CCTV footage we watched was limited in that the camera angles did not capture all of the interactions with B. The footage also did not include any audio.
60. There is no dispute that the Claimant at one stage held B on his arms with both hands, which was a form of restraint, whether it was in self-defence or otherwise.
61. The Claimant is particularly aggrieved about the suggestion, put to him by Mr Brum in the investigation interview, that he took B to the ground. It is not clear where that suggestion came from, and certainly it is not supported by the CCTV footage, but there is no mention of it in either of the witness statements. Even if the suggestion had come from one of the witnesses by some other means, the fact that they may have exaggerated the nature of the incident is not sufficient to show that there was a deliberate attempt to remove the Claimant because that particular allegation was not taken any further. It did not form part of Mr Brum's investigation report.
62. We understand the Claimant's concerns about whether the statements are genuine, and the fact that they are not signed and neither witness has given evidence to the Tribunal may have contributed to his suspicions. In all the circumstances, however, there is no basis for us to conclude that they were fabricated. Nor is there evidence to support the Claimant's wider allegation that there was a plot to remove him from his employment.
63. We had very little evidence as to the legal framework relating to the use of restraint and physical interventions in the context of this type of accommodation, but we accept that any physical restraint would be subject to strict oversight and regulation. We also accept that in this context any incident of this type would have to be investigated and reported to the relevant authorities.
64. Clearly there was an incident involving physical contact between the Claimant and a resident. The Claimant accepted using a "two hand grab". The CCTV also showed physical interaction between the Claimant and B, including the Claimant pushing against B to stop him going past. With that evidence, and the opinion of two members of staff who believed the Claimant had gone over the top, the Respondent was bound to conduct an investigation and we do not consider it unreasonable that the Claimant was suspended pending the outcome of the investigation.
65. We also accept the Respondent's evidence that Richard was also suspended. That seriously undermines the Claimant's case that his suspension was a means of targeting him personally because he had made disclosures.

66. Given that background, there is no basis on which we could conclude that the reason for the suspension was disclosure PD3. It is not entirely clear from the evidence before us who made the decision to suspend the Claimant, but it appears from Ms Smith's incident report that that decision was made after reviewing the CCTV footage, and that the Respondent had had reports from both Rosie and Albert. That evidence provided a sufficient basis to justify the Claimant's suspension.
67. The idea that there was a management plot to engineer the Claimant's dismissal because of disclosure PD3 is highly unlikely. What the Claimant raised in his email was not so serious that the Respondent was bound to have had a motive to retaliate against the Claimant. At most, the Claimant had disclosed a mistake with G's access card which was easily remedied. An explanation was given about the Respondent's legal obligations not to deprive residents of their liberty unlawfully. The Claimant did not take the matter further. It was not a disclosure that was so obviously serious, or which led to such difficulties for the Respondent, that it would be likely the Respondent would seek to engineer the Claimant's dismissal because of it.
68. For all those reasons we do not accept that the Claimant was suspended because of PD3 and the detriment claim is therefore dismissed.

Unfair dismissal

69. As for the unfair dismissal complaint, the first issue is whether the matters relied upon by the Claimant constituted a breach of the implied term of trust and confidence.
70. We have already found that the Respondent had a sufficient basis to justify the Claimant's suspension. It could only constitute a breach of the implied term if it was done on a completely false basis. We do not accept that it was.
71. As regards the alleged failure to conduct fair process, the only issue relied upon by the Claimant is the lack of contact from the Respondent after the investigation meeting. It is not clear from the evidence before us why there was a delay of more than two weeks after Mr Brum's investigation report. We understand the Claimant's frustration that he had not been informed of the outcome, but we cannot say that a delay of that length was "calculated or likely to destroy or seriously damage the relationship of confidence and trust" between the Claimant and the Respondent.
72. On the issue of access to the CCTV footage, the Claimant's evidence was that he asked to view it on one occasion, during the phone call with Ms Bennett on 29 June 2021, and no-one came back to him. He did not follow up the request before his resignation and did not raise the issue with Mr Brum. There is no mention in his resignation email of him having asked previously to review the CCTV, only that he was now asserting the right to view it. The Respondent gave evidence that it would have been contrary to their policy to allow the Claimant to view the CCTV, but we need not make any finding about that because there is no evidence that the Respondent actually refused the request prior to the Claimant's resignation. A failure to respond to his request, which is what the Claimant alleges, especially in circumstances where the Claimant did

not pursue the matter during the investigation, is not capable of constituting a breach of the implied term.

73. The constructive unfair dismissal claim therefore fails and is dismissed.
74. For completeness, we also consider there would be no basis for us to find that the Respondent's conduct was because of disclosure PD3. For the same reasons we have already given in respect of the detriment complaint, we do not accept that there was a plot to remove the Claimant from his employment or that the Respondent sought to retaliate against him because of the matters he had disclosed in PD3.

Employment Judge Ferguson

Date: 28 March 2023