



EMPLOYMENT TRIBUNALS

Claimant: Ms C Parnell

Respondents: (1) Diamon Blaque Agency
(2) London Borough of Camden

Heard at: London Central (in person)

On: 26 June to 3 July 2023

Before: Employment Judge E Burns
Ms J Cameron
Mr D Clay

Representation

For the Claimant: Represented herself.
For R1: Emmanuel Mcken, Owner
For R2: Shyam Thakerar, Counsel

JUDGMENT

The unanimous judgment of the Employment Tribunal is that all of the Claimant's complaints under section 47B of the Employment Rights Act 1996 fail and are dismissed.

REASONS

THE ISSUES

1. The Claimant was an agency worker. She had a contract with R1. Her claim arose from as assignment she undertook for R2 between 21 September 2021 and 13 January 2022.
2. The issues had been agreed at a case management hearing held on 21 October 2022. A copy is attached as an appendix. We confirmed at the start of the hearing that there were no changes to the list of issues.
3. It was not in dispute that section 43K(1) of the Employment Rights Act 1996 applied such that although the Claimant was not employed by the Second Respondent, the terms on which she was engaged were in practice

substantially determined by the Second Respondent. Therefore, when considering the application of section 43C we read the reference to employer as including the Second Respondent.

THE HEARING

4. The Claimant gave evidence. No-one gave evidence for the First Respondent. For the Second Respondent, we heard evidence from:
 - Sheena Anyanwu, former head of Temporary Accommodation, Housing Support Services Division
 - Joesph Sawyers, Service Manager in Housing Solutions
 - Lea Christodoulou, Team manager of Family Support and Complex Families
 - Chinedu Alukwu, Team Manager, Single Pathways Service
5. There was a hearing bundle, initially of 444 pages which grew to 452 pages. The Claimant had, prior to the hearing made an application for specific disclosure which had been considered and refused. She did not wish to revisit this. During the course of the hearing, while giving evidence, she produced nine additional pages of documents. The Respondents did not object to these being added to the bundle.
6. We read the evidence in the bundle to which we were referred and refer to the page numbers of key documents that we relied upon when reaching our decision below.
7. At the start of the hearing, we explained our commitment to ensure that the Claimant was not legally disadvantaged because she was a litigant in person. We explained the process to her and the reasons for various case management decisions carefully as we went along.
8. In order to ensure that the evidence of all the witnesses could be heard during the allotted hearing time, the tribunal managed the timetable proactively. This included determining (following discussion) the length of time for questioning of certain witnesses for all parties. No objections were raised regarding this approach.
9. We assisted the Claimant with framing questions for the Second Respondent's witnesses and reminded her of the necessity to focus on the issues, while giving her a higher degree of latitude than we would normally give to a professional representative in asking about matters that appeared not to be obviously relevant.
10. We also tolerated conduct from the Claimant that we would not have tolerated from a professional representative in light of her inexperience, objectivity and inability to emotionally distance herself from her case. We intervened, however, when appropriate and thank the Second Respondent's witnesses and Counsel for their assistance with this. In recording this note, we make no criticism of the Claimant. She was at all times extremely courteous and polite when engaging with the Tribunal Panel and others

when not in the flow of questioning and was clearly trying her best to present her case professionally. She took no notes of the evidence.

11. The Second Respondent's Counsel prepared a written closing submission which he supplemented orally. The closing submission was circulated to the other parties and tribunal in advance to allow time to read and digest it. The Claimant and First Respondent's owner made oral closing submissions.

FINDINGS OF FACT

12. Having considered all the evidence, we find the following facts on a balance of probabilities.
13. In reaching such findings, we have considered each disputed fact separately and reviewed the evidence available to us. As such we avoided making generalised findings based on the demeanour of the witnesses wherever possible. However, for some facts there was an absence of contemporaneous documentation and we had to choose between the differing accounts of the witnesses before us.
14. When considering the reliability of such evidence, we took into account the way the Claimant gave her evidence. She repeatedly gave confused and contradictory responses that were difficult to follow and that did not address the questions that had been asked of her. In addition, on several occasions she veered off into what became quite lengthy rants. She also showed very little self-awareness and was not prepared to reassess her answers in light of contradictory documents, at one point alleging that the documents had been fabricated. In contrast, the First Respondent's witnesses answered questions in a straightforward manner, and readily admitted any lapses in their recollections. We therefore found their evidence more reliable.
15. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

Background

16. The 2nd respondent is a local authority. From August 2021, in response to the withdrawal of the US and UK from Afghanistan, the UK had a large influx of Afghan refugees. The 2nd respondent was commissioned by the Home Office to provide temporary accommodation for around 60% of the refugees from September 2021 onwards.
17. The temporary accommodation was provided in three hotels, known as Bridging Hotels in Camden in London. They were the Raddison, the Imperial and the Royal National. In addition, the Home Office commissioned the 2nd Respondent to provide a "Wrap Around Support Service" for the refugees. Overall, around 700 refugee families were assisted by the 2nd respondent across the three hotels. This was in the region of 1,850 adults and children.
18. The aim of the Wrap Around Support Service was to provide induction and cultural orientation, in order to facilitate a smooth transition to living in the

UK for the refugees. It was delivered by the teams, primarily based in the hotels from 9.00 am to 5:30 pm Monday to Sunday.

19. The overall lead for the service for the 2nd respondent was Sheena Anyanwu, Head of Temporary Accommodation in the Housing Support Services Division of the 2nd respondent. From an operational perspective, the service was overseen by Joseph Sawyers. His substantive role at the time was Floating Support Service Manager (FSS) in the Temporary Accommodation Group (TAG). Mr Sawyers reported to Ms Anyanwu.
20. The people engaged to deliver the Wrap Around Support service were recruited via agencies. This was because the nature of the evacuation of the refugees, meant the service had to be developed rapidly rapid development of the service. Mr Sawyers recruited three Team Managers (one for each hotel) and 25 support workers with the job title Assessment and Support Officer working to a written job description (206).
21. The new teams were initially supported by three very experienced long standing members of council staff, each of whom were assigned a hotel. They were required to split their time between their substantive roles and providing on-site support at the hotels.
22. The 1st Respondent had previously supplied the Claimant to work on an initial temporary contract with the 2nd Respondent between 27 August and 14 September 2021. She was then engaged, as an agency worker, to work in the Afghan Refugee Wrap Around Support service from 21 September 2021 (175).
23. The Claimant's contract was short term, initially up until 28 November 2021. However, as the situation with the Afghan Refugees was an evolving one, she was aware that it was possible that her contract would be extended as support would need to be provided while the refugees remained in the hotels. In fact, it was extended, but was terminated on 13 January 2022, although the Claimant was paid in lieu of notice up to and including 31 January 2021. It is relevant to note that no assessment of the Claimant's performance was undertaken in order to inform the decision to extend her contract.
24. As a member of agency staff, however, the Claimant's engagement could be terminated at short notice, at any time, without the 2nd respondent having to give a reason.
25. For the first couple of weeks, the Claimant worked in the other two hotels. This meant that she worked with Chinedu Alukwu, Team Manager in the 2nd Respondent's Single Pathways Service who was supporting the work being at the Imperial. Following this however she was assigned to the Raddison Hotel, under the line management of agency worker Claudia Wayland
26. There were around 350 refugees at the Raddison. This was approximately 80/90 families. The Raddison contained the smallest population of the three hotels.

27. Initially a manager from the 2nd Respondent, Steve Sincock, Team Manager, Camden Floating Support Service was also there, but he had returned to his substantive role by late October 2021. A second support worker was also allocated to the Raddison, Susan Alozie.
28. A room of the hotel was designated as an office for the Wrap Around Support Team. It is relevant to note that Covid was still an issue at the relevant times of the purpose of the Claimant's claim, with compulsory 10 day isolation still being a legal requirement. As a result, the 2nd Respondent was operating flexible working arrangements with many people working remotely at this time.
29. Each family had at least one private room in the hotel. The hotel staff were available 24/7 to the refugees and were responsible for ensuring all residents had three meals a day. Security were also in place 24/7.
30. In her role, the Claimant was required to assist the refugees with basic tasks such as getting registered with a GP and accessing other medical services, claiming universal credit and registering children with local schools.
31. The Support Workers were not expected to provide services to the refugees, but to assist them with accessing existing services, including those offered by the 2nd Respondent. This meant that the Claimant was required to liaise with people from other parts of the Council, including Early Years and Social Services where appropriate. In addition, the NHS had a presence on site at the hotels, as did the Home Office (later) and the DWP. Translators were not available on site. Some of refugees spoke English and assisted the others. Some had British relatives who could also assist.
32. Prior to arriving at the hotels, the refugees had stayed in holding accommodation and had various health checks undertaken on them. This was because of the Covid situation. When they arrived at the bridging Hotels any urgent medical issues should therefore have been picked up already.
33. Each refugee family was allocated to a particular Assessment and Support Officers. However, the Assessment and Support Officers worked on a rota and so were expected to cover for each other. Most of the refugees did not need any additional support, but where they did a professional social worker become involved.
34. In order to keep track of the support needs of the refugee families, the Respondent asked the Support workers to conduct welfare visits and assessment interviews with the refugee families. It used its existing HNG system to keep case notes of all interactions. Support workers were expected to keep these updated and to enter new details promptly, but the levels of compliance were variable.
35. The new staff received training from the second Respondent. The Claimant was informed on 14 October 2021 that any concerns about children should be discussed with her line manager and a referral made to the Children and

Families Contact Service via the Multi-agency Safeguarding hub (MASH) team (227). She personally received safeguarding training on 19 October 2021 (233).

Pregnant Women and Mrs K

36. Within the refugee population, a number of potentially vulnerable groups were identified as likely to have higher support needs. This included women that were pregnant and families with young children.
37. Very sadly one of the pregnant refugees based in the Raddison had a miscarriage on 12 October 2021. The second respondent ensured that she was supported, including referring her for counselling (226). Ms Wayland ensured that the team of support workers she managed were made aware of the services available in such circumstances.
38. At this time, the 2nd respondent was in the process of adapting its IT systems for the new client group. A lot of data was having to be manually entered into its database. Manual audits were also being carried out to ensure that cases were allocated to named support workers and the necessary interventions were in place.
39. As a result of such an audit, undertaken by Ms Anyanwu in the course of the weekend of 16/17 October 2021, she identified the case of Ms K, a pregnant woman with three young children under five, who spoke no English and was being accommodated in the Raddison. Although Mrs K was married to an English speaking British national, he was living elsewhere in London and not staying with her at the hotel.
40. The case notes on the HNG system stated that Mrs K was 9 months pregnant and so Ms Anyanwu wanted to ensure that a plan was in place for what would happen to her young family when she went into labour. She therefore contacted the team at the Raddison by telephone on 16 October 2021 and spoke to Ms Alozie about the case as she answered the phone.
41. Ms Alozie confirmed that the team had already made contact with Mrs K and had arranged to meet her with her husband the following day. SA discussed some actions that Ms Alozie should take and then summarised the discussions in a follow-up email to her which was copied to Ms Wayland and Mr Sawyers (237). One such action was to arrange for Mr K to be able to visit his family at any time which was immediately put in place.
42. In fact, as it transpired, Mrs K was not 9 months pregnant in mid-October 2021. Following Ms Anyanwu's actions on the weekend of 16/17 October 2021, it was confirmed that Mrs K was between 7 and 8 months pregnant and so sorting out the arrangements for when she would go into labour was not as urgent as had been at first thought. Ms Wayland updated Ms Anyanwu on this at some point after that weekend. This information was not updated on the HNG system, however. The update included the steps that had been taken to support Mrs K at that stage.

43. The steps included ensuring that Mrs K's husband could visit his wife and family whenever he liked and that they were able to be in contact with him. He had explained that he had some family members in one of the other hotels and they were in the process of trying to trace these. Ms Wayland had spoken to the Home Office about transferring Mrs K to be in the same hotel, but this request had not been approved. Ms Wayland had also had some contact with Early Help.

Claimant's First Purported Disclosure

44. When the Claimant became aware of Mrs K's case, she became very concerned about what might happen to her if she went into labour at night when she was alone. Her concern included Mrs K's personal welfare and also what might happen to her children. In addition, the Claimant wanted to ensure that Mrs K had all the things that she would need to care for a new baby.
45. The Claimant had also been approached by the hotel manager who was concerned to understand what arrangements were in place if Mrs K went into labour and who they should contact if it occurred at night.
46. The Claimant had several conversations with Ms Wayland about Mrs K. Although Ms Wayland was not present at the hearing to give evidence, Ms Anyanwu confirmed in her evidence to us that Ms Wayland had mentioned this to her when she spoke to Ms Wayland about the case on 12 November 2021.
47. The Claimant says Ms Wayland refused to discuss Mrs K's case with her and repeatedly told her either that helping Mrs K was not their job or that she should not interfere with the case because it had been allocated to Ms Alozie. The Claimant told us that she believed that nothing was being done for Mrs K and this caused her a great deal of concern.
48. In fact, based on what the Claimant knew about the case when she raised it with Ms Anyanwu shortly before 12 November 2021, we find that although she did not know the full details of the case, she was aware of some of the subsequent developments. For example, when she raised the case with Ms Anyanwu shortly before 12 November, she knew that the HNG records were incorrect and the Claimant had not been 9 months pregnant. The Claimant described her as being heavily pregnant at that time. She also knew that Mrs K's husband was a British national who spoke English and that Mrs K was in regular contact with him. She also knew that Mr K had relatives staying in one of the bridging hotels who had offered to look after Mrs K's young children, but was aware that they had not been identified. She was not aware however, that Ms Wayland had asked the Home Office if Mrs K could be moved to the other hotel and that his request had been refused.
49. We find that the Claimant told Ms Wayland that she was concerned about Mrs K's welfare and that of her children. She did not say anything to Ms Wayland to the effect that she was concerned that they were failing to meet any legal obligation to Mrs K. She did, however, believe that the team should be doing more to help the pregnant women in the hotel and that she and Ms

Wayland had been allocated to the Raddison as Mr Sinnock had trusted them to do this. This point is made in her subsequent letter of complaint of 6 January 2022 (374) and she repeated it when giving her evidence to the tribunal.

50. The Claimant told us, using somewhat dramatic language, that she believed that Mrs K could deliver her baby at any time and very quickly and this could put her and her young children at risk as the hotel manager had said her staff were not trained to deal with such emergencies. We find that the Claimant genuinely believed that this risk existed.
51. In fact, this was not an objectively reasonable belief to hold as it assumes that a woman who is heavily pregnant in Mrs K's position is far more vulnerable than she actually was. Although Mrs K was a refugee in an unfamiliar environment, she was resident in a nice hotel with 24/7 support. She was also in constant contact with her English speaking by mobile phone. Having had three children previously, Mrs K would be expected to recognise the signs of labour and be very well placed to be able to summon help if required, even if her labour was quick.
52. At one point, when giving her evidence, the Claimant compared the Afghan refugees to being like "new babies" but the reality was that the refugee cohort was made of strong, resilient people, many of whom were highly qualified professionals. This view held by the Claimant appears to have influenced her thinking around Mrs K.

Claimant's Second Purported Disclosure

53. Because the Claimant continued to have ongoing concerns about Mrs K, she decided to ring Mr Alukwu. The Claimant told us that rather than speak to Ms Wayland or rely on what she was told by her, she would regularly seek advice from other sources. The Claimant did not consider this to be undermining of her line-manager, although it clearly was.
54. The Claimant says she told Mr Alukwu all about Mrs K's case and mentioned that she was concerned and in response he advised her to speak to her manager and to make a social services referral and to copy in the Home Office.
55. Although Mr Alukwu told us he recalled the Claimant telephoning him, he did not remember her saying anything about a pregnant woman. He formed the impression she was her speaking about a woman that was sick and may need to go in hospital and that she was asking for advice about what could be done about this person's young children because her husband was not living in the hotel with her. He said she do not mention any specific names.
56. We find, on the balance of probabilities, that the Claimant did not mention Mrs K's name to Mr Alukwu, but did mention that the individual she wanted advice about was pregnant. The details he recalls are very close to the details of Mrs K's case, such that the most likely explanation of the discrepancy in the evidence is that he has not fully remembered the call when being asked about it a good deal after it occurred.

57. Mr Alukwu confirmed that he told the Claimant to speak to her manager and that the appropriate course of action would be to do a referral to social services. He denied that he told the Claimant to copy in the Home Office. He told us that in relation to his work with Afghan refugees he had had not dealings with the Home Office. We therefore find that it would not have been in his mind to recommend this to the Claimant and we accept his evidence on this point.
58. Mr Alukwu also told us that the Claimant did not raise any concerns that Mrs K was being failed or was in danger. He told us that if she had told him anything of that nature and said that she had already spoken to her own manager to no avail, he would have advised her to escalate the matter to her manager's manager, Mr Sawyer.
59. Our finding is that the Claimant did not say anything to Mr Alukwu that suggested that there was a breach of any legal obligation to Mrs K or pregnant refugees generally. She also did not say anything that led Mr Alukwu to believe that she felt Mrs K's or her children's health and safety was likely to be endangered. Instead, she simply asked for general advice on how to provide support to a woman in Mrs K's position.
60. The Claimant told us that following the call with Mr Alukwu, she told Ms Wayland about the advice he had provided and that Ms Wayland had told her to leave it with her.

3 November 2021: Claimant's Third, Fourth and Fifth Purported Disclosure and Alleged Detriment that Day

61. The Claimant next told us that on 3 November 2021, Ms Wayland and Ms Alozie wanted to leave work early and were planning on lying to Mr Sawyers to say they had to have PCR tests. According to her they asked her to join them in the lie, but she refused and took against her as a result.
62. We did not hear evidence from Ms Wayland or Ms Alozie and so we did not have a chance to ask them if this was accepted or disputed. It has not proven necessary for us to make a finding on this point.
63. On 3 November 2021, a meeting was held at the hotel between the Support workers and the Early Years team. The meeting was conducted by Lea Christodoulou (Team Leader, Family Support & Complex Families Team Manager) who was responsible for coordinating the Early Help provision of the Second Respondent. Present at the meeting were Ms Wayland, Ms Alozie, the Claimant, Ms Christodoulou and two members of her team. The purpose was to facilitate an introduction for the support workers to the members of Ms Christodoulou's team.
64. Prior to this, the Early Help team had facilitated safeguarding training for the Afghan refugee Wrap Around Support teams and Ms Christodoulou had been regularly visiting the bridging hotels and meeting with different members of the Wrap Around Support teams. From November 2021 onwards, however, it had been agreed that there would be a physical;

presence on site from the Early Help Teams so the meeting was in part to discuss this new development.

65. It is not in dispute that towards the end of the meeting, the Claimant said that she was concerned about pregnant women in the hotel. What is in dispute is the level of detail she raised.
66. The Claimant's evidence at the tribunal hearing was that she specifically raised the case of Mrs K and told Ms Christodoulou that she was very worried about it and why, including explaining that she had spoken to Mr Alukwu about the case who had advised them to do a referral to social services, but that when she had told Ms Wayland about this, she had not actioned it despite telling her to leave it with her.
67. According to the Claimant, Ms Christodoulou was very concerned about the case. The Claimant described her state as one of "shock". She then reassured the Claimant that she had fulfilled her duty towards Mrs K by telling her manager about the case.
68. In addition, the Claimant told us that in response to what the Claimant was saying, Ms Wayland and Ms Alozie walked out of the meeting while Ms Christodoulou was still there, albeit according to her they came back later after she had left.
69. The Claimant's account of the events at the meeting are contained in her complaint letter of 6 January 2023 as follows;

"Lea from Early Help and her team came in the same afternoon and because I was not updated, I did not know exactly who they were. Claudia was just saying that the Lea lady will come back when I ask who she was she did say from Early Help, but she was mostly talking to Suzanne. During the meeting I waited for Claudia to raise the issue with pregnant mums which I have previously passed onto Claudia just after I rang Chinedu for advice in her absence. She didn't so I raise the concern with Lea and team as safeguarding. She was upset and said why didn't I do the Safeguarding so I explained that as soon as I hang up the phone from Chinedu, Claudia called, and I told her all we discussed, and she promise me that she will action it. Lea then said that I have passed it to my manager so that's fine."
(375)

70. Ms Christodoulou's evidence was that although the Claimant may well have mentioned Mrs K by name, she did not give any context or details of any specific concerns. She told us there was not a discussion about the specific case and she was not shocked or concerned about anything that the Claimant raised. Her recollection is that Ms Wayland said that the case of Mrs K should be discussed with Early Help at another time with the relevant case worker, Ms Alozie. She added that she would not have discussed the specific details of the case at that time in any event, as the purpose of the meeting was introductory and general and not intended to discuss specific cases. She told us she would have wanted to have access to the case notes before entering into discussion on individuals and also not necessarily have

everyone present as it would not have been relevant to everyone present. In addition, she said that Ms Wayland and Ms Alozie did not leave the meeting, but at the time she and her team left, the Support team were engaged in conversation.

71. We prefer the evidence of Ms Christodoulou with regard to what was said and occurred on 3 November 2023. We consider it highly unlikely that she would have wanted to get into a detailed discussion on a specific case without the relevant information in front of her and in light of the purpose of the meeting. In addition, if Ms Wayland and Ms Alozie had walked out of the meeting, this would have been memorable for her and we cannot see that she has any motivation to lie about such a detail. Our conclusion is that although the Claimant genuinely believes her version of events, her recollection is inaccurate and the most likely explanation is that she is muddling up what was said on this occasion with other conversations she may have had.
72. The Claimant told us that following the meeting, Ms Wayland and Ms Alozie subjected her to abuse. This included swearing in her presence and telling her to go and work at one of the other bridging hotels. Ms Wayland and Ms Alozie did not give evidence at the tribunal to dispute this account.
73. The Claimant also told us that because she was upset by this behaviour, she rang Mr Sawyers to complain to him.
74. It is not in dispute that the Claimant rang Mr Sawyers. He agrees that she left him a message for him to call her back on the afternoon of 3 November 2021. According to the Claimant, because she was not able to get hold of Mr Sawyers, she called Mr McKen from her agency, but he said that she needed to speak to Mr Sawyers. This was also undisputed evidence.
75. Mr Sawyers subsequently rang the Claimant back and they spoke at around 6 pm that evening while she was walking home. She told us that she chose not to get the underground home in order to be able to take his call which we find is an accurate account. She also told us that after speaking to Mr Sawyers, she then contacted Mr McKen again and relayed the conversation. We also find this to be accurate.
76. The dispute between the parties is what the Claimant said to Mr Sawyers and then repeated to Mr Mcken.
77. Mr McKen did not give evidence at the hearing, but Mr Sawyers did. As the Claimant says she said the same thing to both men, we have reached our findings based on our assessment of the evidence given by her and by Mr Sawyers.
78. The Claimant says that she relayed the full situation regarding Mrs K to Mr Sawyers and then went on to speak about the abuse that she had been subjected to by Ms Wayland and Ms Alozie. Mr Sawyers says that she did not mention Mrs K, but did complain about that afternoon's interactions between her and Ms Wayland and Ms Alozie. His evidence was that the

Claimant was *“talking at [him] in a rather ranting way.”* He told us that, *“It came across as a breakdown in personal relationships between her and her line manager and ...Suzanne Alozie”* and that she was *“venting her personal frustration that she seemed to have with Ms Wayland [and] suggested that Ms Wayland was friends with Suzanne Alozie.”*

79. Having observed the Claimant's conduct when questioning the Respondent's witnesses about matters that were emotional for her and based on our views on the reliability of her evidence, our finding is that the account of Mr Sawyers is accurate.
80. During the call, although the Claimant likely provided some background about Mrs K's case, her focus in speaking to Mr Sawyers was to complain about the behaviour of her colleagues towards her. We therefore consider it unlikely that she was reporting the case of Mrs K to him in a coherent manner such that it included the type of information required when telling someone about a breach of a legal obligation or that Mrs K or her young children were in danger.
81. We also find that the Claimant did not say anything to Mr Sawyers to lead him to believe that she believed that she was in danger. He gave evidence that she did not describe the behaviour as bullying. He recalls thinking that the issue most likely arose because working in a hotel rather than a proper office meant that the environment was more challenging than usual and says he reminded the Claimant of the importance of acting professionally at all times and recommended that she talk to her manager directly about her concerns about their relationship.
82. We find his account to be accurate. The Claimant did refer to bullying in her complaint written on 6 January 2022 (373) This was written after Ms Wayland complained about her (318), which we consider to be significant. However, in the Claimant's earlier email to Mr Sawyers dated 16 December 2021, all that she complains about is Ms Wayland and Ms Alozie not engaging with her and treating her unfairly through silencing her. We consider that if the Claimant she had spoken to Mr Sawyers about bullying previously, she would have referenced this in the 16 December 2021 email.

Sixth Purported Disclosure

83. The Claimant rang Sheena Anyanwu on or around 10/11 November 2021 to talk to her about the case of Mrs K. This was a much more detailed conversation about Mrs K.
84. The Claimant told Ms Anyanwu that she was concerned about pregnant women in the Raddison. She said that her colleagues were not supporting them and her repeated attempts to provide the necessary interventions were being rebuffed by Ms Wayland. When Ms Anyanwu asked her to provide specific examples, the only example she gave was that of Mrs K.
85. The Claimant described Mrs K's position as being heavily pregnant and due to give birth in the next few weeks. She said that she was concerned as no arrangements were in place to care for her young children when she went

into hospital and also that she needed support with baby items. She told Ms Anyanwu that the Mrs K was allocated to Ms Alozie and Ms Wayland had told her to leave the case alone as she was dealing with it. She also told Ms Anyanwu that she had ring Mr Alukwu to get some advice.

86. At this point, Ms Anyanwu recognised the case as one she had previously dealt with. She pulled up the case notes. The case notes showed some activity, but were not as detailed as she would have liked, but she informed the Claimant what was happening and said she would speak to Ms Wayland and copy the Claimant in on next steps. Ms Anyanwu was not at all annoyed that the Claimant had contacted her about the case. She also agreed with her that if the original plan had been for Mrs K's relatives in the Royal National to help her, they would need to adapt this plan because it had been announced that that Bridging Hotel was closing down.
87. Following the conversation, on 12 November 2021, Ms Anyanwu spoke to Ms Wayland and got a full update. She asked her to update the case notes. Ms Wayland confirmed that Mrs K's due date had been confirmed as 2 December 2021 (237). Ms Anyanwu chased up a response from the Early Help team and copied the Claimant in on her emails.
88. The Claimant had no further conversations with Ms Anyanwu about Mrs K. She had her baby on 3 December 2021. By this date, her relatives had been located. Her niece moved into the hotel to assist her and look after her young children when she was in hospital.

9 – 16 December 2021- Safeguarding – the A Family

89. On 9 December 2021, when the Claimant was not at work, two of her colleagues, Emma Shaw and Ms Wayland discovered that four young children, including a baby, had been left in a hotel room on their own. They made a safeguarding report as a result. They did not copy the Claimant into the email sending the safeguarding report, but this was not a requirement as they uploaded it onto HNG.
90. The family involved were allocated to the Claimant as the case worker. She was not informed about the referral on her first day back at work, 11 December 2021, but was updated by Ms Wayland the following day, 12 December 2021. The delay made no difference. The referral had been assessed on 10 December 2021 and although there were some follow up actions to be taken, it had been deemed not to reach the relevant threshold because the children had on fact been left in the care of a 17 year old. He had just been temporarily absent at the time of the check as he was filling in a form elsewhere in the hotel.
91. Ms Wayland and Ms Shaw were concerned that the baby appeared to be small for its age as recorded on HNG. Ms Wayland asked the Claimant for some information regarding what she knew about the baby. The Claimant felt that Ms Wayland was accusing her of not having done her job properly when this was not the case.

92. The Claimant, as the allocated case worker, was asked to arrange and attend a meeting between the resident and Ms Christodoulou. The father in the family was upset about the referral and was suggesting that he might leave the hotel. The Claimant did not record her interactions with him on the HNG system straight away.
93. On 16 December 2021, the Claimant contracted Ms Anyanwu to speak to her about the case. Ms Anyanwu called her back on Teams. The Claimant took the call with her on Teams with Ms Anyanwu on speaker phone from the room being used as an office. Ms Wayland and Ms Alozie were in the room and could overhear the conversation. The Claimant did not tell Ms Anyanwu she was on speaker phone.
94. The Claimant proceeded to complain to Ms Anyanwu in an emotional, manner about the case and the behaviour of her colleagues in the room. She said that she had not been informed about the referral and was being left out of the case, even though this was not the case. She also suggested that the referral contained things that were not true and needed to be changed.
95. During the call, before she realised, she was on speaker phone, Ms Anyanwu confirmed that what the Claimant had told her was not correct including that she had been made aware of the referral and was involved in the follow up work.
96. During the call Ms Anyanwu asked the Claimant to ensure that her notes regarding this case were updated on the system as she had not done this. The Claimant had had interactions on 13 and 14 December involving the case, but had not recorded them. She did this later that same day following the call (295-297).
97. Ms Anyanwu then worked out that the Claimant had been speaking to her on speaker phone in the presence of Ms Wayland and Ms Alozie. She did this based on what the Claimant said to her. She was shocked by this and told the Claimant that she was shocked by this and would need to consider what action to take.
98. Following the call, the Claimant sent an email containing a complaint to Mr Sawyers (301). The complaint was about Ms Wayland.

20 December 2021

99. On 20 December 2021, the Claimant overheard a private conversation between Ms Wayland and another support worker with Afghan heritage. She overheard Ms Wayland tell the other support worker that she, Ms Wayland had had to report one of the residents allocated to the Claimant, to the police.

29 December 2021

100. On 29 December, the Claimant was responsible for organising some of the refugees to leave the hotel in taxis for Covid testing. Neither Ms Alozie nor Ms Wayward were present.
101. In the course of sorting the taxis out, two taxis arrived to take another resident (whose case was allocated to Ms Alozie) to a hospital appointment. That resident was pregnant but had also tested positive for Covid and was being required to isolate. The Claimant was told that she must speak to the resident and tell her not to leave her hotel room. She did not do this straight away, however, and in the meantime, the resident left in one of the taxis.
102. The Claimant later told Ms Anyanwu that she had been too busy with the other residents to interrupt her work to go and speak to the woman with covid. She also admitted, however, that what motivated her was in part that she was annoyed that she was having to deal with Ms Alozie's case work when she was not present.
103. Later that day both Ms Wayland and Ms Alozie sent complaints to Ms Anyanwu about the Claimant (318-319). Ms Wayland had copied the Claimant into her complaint.
104. Ms Anyanwu was absent on leave on 29 December 2021 and did not see them until 6 January 2022 when she was checking her emails just before her return to work. By that date, she had been sent two further emails. One was a detailed complaint from the Claimant. Mr Sawyer had also emailed her to say that action needed to be taken in connection with the Claimant's behaviour and the breakdown in the relationship between the Claimant and Ms Wayland.
105. It is relevant to note that the Claimant's complaint did not include a complaint that she had been subjected to any bad treatment by anyone as a result of raising concerns about Mrs K or other pregnant women.

30 December 2021

106. In the meantime, on 30 December 2021, the Claimant added a note to the case file of the resident that had been reported to the police. Specifically, she noted:

"On 20/12/21 An Announcement was made by my Line Manager Claudia to the team that has been reported to the Police and a crime reference number is in her position. However, there is no notes on this case regarding the concern for me to follow up or look into." (444)

107. The Claimant did not speak to Ms Wayland before adding the note. The effect of adding the note was that anyone reading it who had interaction with the resident would have assumed that he was aware of the situation and might mention it.

108. In fact, the resident was not aware of the police report and was not meant to be as it was a highly confidential matter. That was why Ms Wayland had not informed the Claimant about the police report. This was in accordance with instructions from Ms Anyanwu. She told us that she considered that there was no need for the Claimant to be made aware of the police report as she was not at any personal risk.

Early Jan

109. As a result of the various complaints, Mr Sawyers emailed the Claimant to ask her to work her next couple of shifts at home. He discussed the case with Ms Anyanwu who took the lead in making a decision about the Claimant's future.

11 – 13 January 2022

110. The Claimant was asked to attend her workplace on 11 January in order to meet with Ms Anyanwu. Unfortunately, Ms Anyanwu was delayed and the meeting did not take place until the afternoon. While the Claimant was waiting an incident occurred involving her and Ms Alozie.
111. When Ms Anyanwu arrived later, the Claimant told her about the interaction. Ms Anyanwu subsequently she later investigated it by speaking to Ms Alozie. Ms Alozie told Ms Anyanwu that she had tried to stay out of the Claimant's way and avoid interaction with her that day. This was because she felt that their relationship had deteriorated after the incident on 29 December 2021. The Claimant, however, went to the room where she was working and spoke several times to an education colleague who was also based there. Ms Alozie believed that the Claimant was deliberately trying to provoke her. Ms Alozie admitted to Ms Anyanwu that she snapped and rudely shouted at the Claimant to leave the office. Ms Anyanwu asked Mr Sawyers to address this behaviour with her.
112. Turning to the main substance of the meeting, Ms Anyanwu explained to the Claimant that she was minded to terminate her contract because of the incidents that had occurred on 16 December when she had had her on speaker phone, and on 29 December involving the Covid positive resident. She explored these issues in some detail with the Claimant. In addition to defending herself in connection with these issues, the Claimant asked Ms Anyanwu to investigate her complaint and raised some additional matters of concern.
113. The additional matters the Claimant raised were that Ms Wayland and Ms Alozie often left her to work at the hotel alone, either because they were working from home or otherwise absent.
114. The Claimant also told Ms Anyanwu that Ms Wayland had "announced" to the whole team that one of the residents had been reported to the police. The resident was one of the Claimant's clients. The Claimant's concern was twofold, namely that she should have been told that her client had been reported to the police and that Ms Wayland was breaching data protection rules by sharing the information. As the conversation transpired, the

Claimant admitted that there had not been an announcement, but that she had overheard Ms Wayland speaking privately with one of the translators about her client.

115. Ms Anyanwu decided not to terminate the Claimant's contract that day, but to undertake some investigations and to meet the Claimant again on 13 January 2022. At that later meeting, she gave the Claimant an opportunity to present evidence to support her assertion that she was often left working alone. The Claimant brought her notebook with her which she said continued this evidence, but Ms Anyanwu found it to be incoherent. The Claimant was unable to explain what the various entries meant.
116. Ms Anyanwu also spoke to Ms Wayland about the client that had been reported to the police. She was satisfied, based on her conversation with her, that Ms Wayland had a valid reason to discuss the matter with the translator and had not breached data protection rules. In the course of investigation this Ms Anyanwu found the note that the Claimant had added to his case file. She viewed this as a very serious matter and before making a final decision raised this with the Claimant. Having undertaken her investigations, she decided to terminate the Claimant's contract based on (a) her behaviour on 16 December (namely, the fact that that the Claimant had Ms Anyanwu on speaker phone and was complaining about her colleagues in their presence); (b) her failure to prioritise stopping the woman with covid from leaving the hotel, primarily because she was not her client, but assigned to Ms Alozie and (c) the note she had added to the case file of the client that had been reported to the police. Ms Alozie formed the view, based on the timings involved, that the Claimant's note was added in retribution for the complaint Ms Wayland had made about her in order to try and get Ms Wayland into trouble.
117. The Claimant's engagement with the First Respondent was duly terminated with immediate effect on that date. She was paid up to 31 January 2021.
118. The rotas showing the Support Teams working and rest days were produced a month in advance and circulated to the Team. The rotas for period from Monday 6 December 2021 to Sunday 2 January 2022 were included in the bundle at pages 290 – 293. The Claimant appears in all of them. We were not provided with copies of the rotas for the weeks commencing Monday 3 January or Monday 10 January 2022. We were, however, provided with the rota for the week commencing 17 January 2022 in which the Claimant's name is blocked out.
119. The Claimant presented no evidence to the tribunal to lead us to conclude that this was done before her contract was terminated and occurred for any reason other than it was an administrative step arising from the termination of the Claimant's contract.
120. Her witness statement did not cover this allegation. Her further and better particulars said:

“My name was also blocked out of the rota a few weeks before I was sacked and when I query why I got no response. Joseph was copied into these emails Emmanuel (Diamond Blaquee) was informed by me and was fully updated every step of my journey via phone call and eventually emails.”

121. The only email evidence in the bundle concerning the January rota were an email dated 4 January 2022 from the Claimant to Ms Wayland asking for the weekend off (330) and then an email from her asking for her rota for week commencing 17 January 2002 in response to Ms Wayland sending the rotas to the team for the first two weeks of January (369). None of the emails supported the Claimant’s case.

THE LAW

Protected Disclosures

122. Section 47B(1) of the Employment Rights Act 1996 says:

“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.”

123. According to section 43A a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. In this case, section 43(C) was relevant when interpreted in accordance with the provisions of section 43K(2)(a).

124. Section 43B(1) says a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—

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

Disclosure of Information

125. There must be a disclosure of information. In *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38, the EAT held that to be protected a disclosure must involve information, and not simply voice a concern or raise an allegation.

126. The Court of Appeal has subsequently cautioned tribunals against treating the categories of "information" and "allegation" as mutually exclusive in the case of *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436. At paragraphs 30 -31, Sales LJ says:

"I agree with the fundamental point that the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations.Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other.

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision."

127. He goes on to say at paragraph 35:

"In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection [43B](1)."

128. A disclosure may concern new information, in the sense that it involves telling a person something of which they were previously unaware, or it can involve drawing a person's attention to a matter of which they are already aware (section 43L(3), ERA 1996).
129. It is important that the tribunal take into account what was said as a whole, rather than take a fragmented view of individual communications (*Norbrook Laboratories (GB) Ltd v Shaw* 2014 ICR 540, EAT).

Reasonable Belief

130. It is irrelevant whether or not it is true that a relevant failure has occurred, is occurring or is likely to occur (*Darnton v University of Surrey* 2003 [ICR] 615, EAT; *Babula v Waltham Forest College* [2007] ICR 1026, CA).
131. The test is whether the Claimant reasonably believes the information shows this. The requirement for reasonable belief requires the tribunal to identify what the Claimant believed and to consider whether it was objectively reasonable for the Claimant to hold that belief, in light of the particular circumstances including the Claimant's level of knowledge. (*Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, EAT).

Public Interest Test

132. The leading case dealing with when the public interest test is met is *Chesterton Global Ltd & Anor v Nurmohamed & Anor* [2017] EWCA Civ 979. The Court of Appeal confirmed that where a disclosure relates to a breach of the worker's own contract of employment, or some other matter under section 43B(1) where the interest in question is personal in character, there may be features of the case that make it reasonable to regard the disclosure as being in the public interest as well as in the personal interest of the worker.

Detriment

133. Section 47B ERA 1996 gives an employee the right not to be subjected to a detriment on the ground that he has made a protected disclosure. The term "detriment" is not defined in ERA 1996 and tribunals have therefore looked to the meaning of detriment established by discrimination case law. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 it was held that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work.
134. Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower.

Time Limits

135. The normal time limit for a claim based on section 47B is found in subsection 48(3) of the Employment Rights Act 1996 as adjusted for the early conciliation process.
136. That section provides that a claim must be brought before the end of the period of three months. The date from which time begins to run is the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them.
137. Subsection 48(3)(b) goes on to say that a tribunal may still consider a claim presented outside the normal time limit if it is satisfied that:
- it was not reasonably practicable for the claim to be presented within the normal time limited and
 - the claimant has presented it within such further period as the tribunal considers reasonable.
138. This is a strict two stage test. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the claimant.

ANALYSIS AND CONCLUSIONS

Protected Disclosures

5(a) To Claudia Wayland (Team Manager) in mid-October 2021, that Mrs K can deliver a baby at any time and needs support and no one was there to

assist her if she falls into labour at night that there are many other pregnant women.

139. We first considered whether the purported disclosure to Ms Wayland met the test for disclosing information with sufficient factual content and specificity.
140. We consider that the Claimant did meet this sufficiency test, so far as section 43(1)(d) of the Employment Rights Act 1996 was concerned. We found that there was not a single time when she disclosed specific information. Instead over the course of several discussions, the Claimant told Ms Wayland that she was concerned that Mrs K might go into labour and this was worrying her including, how Mrs K would access medical support, who would look after her children and how she would cope with a newborn child. While some of these concerns were focussed on the general care needs of Mrs K and her family, we find that the Claimant did say words that amounted to her saying that she was worried because of a possible risk to the health and safety of Mrs K, her unborn child and her other children.
141. It does not matter that the information was provided in Ms Wayland may have already been aware of this herself. A qualifying disclosure need not contain new information.
142. We do not, however, consider that the Claimant raised this concern in terms whereby she suggested that the First Respondent was acting in breach of any legal obligation to Mrs K or her family. We find this is an embellishment that has been added during the course of the litigation process. The Claimant knew very little about the First Respondent's processes and even less about its legal obligations. This was why she later approached Mr Alukwu, Mr Sawyers, Ms Christodoulou and Ms Anyanwu to ask questions of them as she saw them as managers who knew information when she, and Ms Wayland, did not.
143. We next considered whether the Claimant genuinely believed that Mrs K and her children were in danger and if so, whether such belief was reasonably held in the circumstances, based on her knowledge and experience.
144. Our finding is that Claimant did genuinely believe that Mrs K and her children were at risk. This was why she kept pursuing the matter. However, her beliefs were not reasonable based on what she knew about the actual circumstances. Instead, in our judgment, they represented an extreme view of the potential danger that Mrs K and her children were in.
145. At the time the Claimant first raised her concerns with Ms Wayland, it did appear that Mrs K was nine months pregnant. However, the Claimant knew that this was not Mrs K's first pregnancy and that Mrs K was in a safe place. As noted in our findings of fact, Mrs K was in a secure hotel with 24/7 cover in central London. She was also in regular contact with her English speaking husband who was a UK national. This meant that although she was alone

with young children and did not speak English herself, she was surrounded by people who could assist her, even if she went into a rapid labour.

146. Having decided that the Claimant's view was not reasonably held, we have rejected her claim that she made a protected disclosure to Ms Wayland in mid-October 2021.
147. For the sake of completeness however, we considered the public interest test as well. We would have found it was reasonable for the Claimant to believe that she was raising the matter in the public interest. The Claimant raised the concern as part of her job, but we do not think this prevents us reaching such a finding. In our judgment, it would be rare for a tribunal to find that a care worker engaged by a public authority and raising a concern about a client to their manager, would not be reasonable in believing that they were raising the concern as a matter of public interest. It is inherent in the context and the nature of the work being done. We do not think there is anything peculiar about this case which leads us to find otherwise here.

5(b) To Chinedu Alukwu (Team Manager) on late October 2021, repeated the information disclosed to Ms Wayland

148. As before, we first considered whether what the Claimant said to Mr Alukwu the Claimant was a disclosure of information with sufficient factual content and specificity. Our conclusion, based on our findings of fact, was that it was not, whether under section 43B(1)(b) or (d) of the Employment Rights Act 1996. We have therefore rejected the Claimant's assertion that she made a protected disclosure to him.

5(c) To Lea Christodoulou (Family Support & Complex Families Team Manager) on 3 November 2021, repeated the information disclosed to Ms Wayland

149. With regard to the question as to whether the Claimant made a protected disclosure to Ms Christodoulou, we also find that what she said did not meet the requirement of being a disclosure of information with sufficient factual content and specificity whether under section 43B(1)(b) or (d) of the Employment Rights Act 1996. Although the Claimant began to raise the case of Mrs K with Ms Christodoulou at the end of the meeting held on 3 November 2021, this was closed down by Ms Wayland and so there was no opportunity for her to go into the level of detail required for a protected disclosure.

5 (d) To Emmauel McKen (Diamond Blaque Agency) on 3 November 2021, repeated the information disclosed to Ms Wayland

5(e) To Joseph Sawyers (Service Manager) on 3 November 2021, repeated the information disclosed to Ms Wayland and subject to verbal abuse C allegedly suffered from CW and Susan Alozie);

150. We considered these two disclosures together because the Claimant told us that she repeated the same information to Mr McKen and Mr Sawyers. Our conclusion was that the Claimant did not make any protected disclosures.

151. We have made findings about what she said in the section dealing with our findings of fact. Based on those findings, we consider that the Claimant disclosed insufficient information about Mrs K to have made a protected disclosure about her whether under section 43B(1)(b) or (d) of the Employment Rights Act 1996.
152. The Claimant also said that she had been subjected to verbal abuse by Ms Wayland and Ms Alozie that afternoon. Mr Sawyers understood her to be complaining about the behaviour of her colleagues, but not in such a way that led him to believe that she was alleging that her health or safety was in danger or that the two women had behaved unlawfully. Instead, he considered she was venting her frustration about a breakdown in their personal relationships that day.
153. We add that even if we are wrong about this latter interpretation of what the Claimant said to Mr Mcken and Mr Sawyers, we would not find that the public interest test was met. In our judgment, the Claimant was acting solely in her own interest when she rang the men about the altercation between her and about her colleagues that afternoon. It was not a matter that she reasonably believed she was raising in the public interest.

5 (f) To Sheena Anyanwu (Head of Temporary Accommodation Supporting Communities) on mid November 2021, repeated the information disclosed to Ms Wayland (and to report the alleged abuse (CW and Susan Alozie).

154. In relation to the final purported disclosure, on Ms Anyanwu's own evidence, the Claimant met the test for disclosing information with sufficient factual content and specificity under section 43B(1)(b) of the Employment Rights Act 1996, although not section 43B(1)(d). The Claimant spoke about concerns for Mrs K's health and safety and that of her children, but did not say that anything about the Second Respondent failing to meet its legal concerns.
155. The Claimant was by this time aware that Mrs K was not nine months pregnant and knew some of the plan that was in place to ensure that her children would be looked after when she went into labour. The Claimant discussed with Ms Anyanwu what was happening about the unsuccessful attempts to locate Mrs K's relatives to assist her and the fact that they appeared to be living in the hotel that was going to be closed down.
156. We find that the Claimant continued to genuinely believe that the health and safety of Mrs K and her children continued to be at risk. This was why she was escalating the matter to Ms Anyanwu. Some of the Claimant's views with regard to the degree of risk to which Mrs K and her family were exposed continued to be extreme, but on this occasion, we find that it was reasonable for her to believe that she needed to escalate the issue. This was because Mrs K's family had not been located and the Claimant was aware of this. In addition, Mrs K's case file notes had not been updated to say what action was being taken and made no mention of the early years referral that had already been made.

157. In reaching this finding, we have taken into account that, so far as the First Respondent's processes were concerned, the Claimant ought to have sought clarity by speaking to her colleagues before escalating the matter to Ms Anyanwu. This does not prevent the disclosure of information being a protected disclosure, however. We further note that Ms Anyanwu welcomed the Claimant's intervention and took various steps to follow up the matter as a result.
158. For these reasons we find that the Claimant's belief that the safety of Mrs K's children was likely to be endangered unless further action was taken was reasonably held, albeit that Mrs K remained in an extremely secure and safe location generally.
159. Applying the public interest test, we find that it was reasonable for the Claimant to believe that she was making the protected disclosure in the public interest for the same reasons as set out at paragraph 147 above.
160. The disclosure made by the Claimant to Ms Anwanyu was a qualifying disclosure pursuant to section 43B(1)(d). As Ms Anwanyu was employed by the Second Respondent, this was effectively a disclosure to her employer applying section 43C, as required by section 43K(2)(a), we find that the Claimant made a protected disclosure for the purposes of section 43B a little before mid-November 2021.

Detriments

9(a) Decision by Sheena Anwanyu to end the assignment with the Second Respondent on 13 January 2022;

161. Although the detriments are not advanced in the list of issues in chronological order, we have dealt with them in the order used in the list of issues in this section as we consider this is less confusing. The first one, is actually the most significant as it concerns the reason for the Second Respondent's decision to terminate the Claimant's engagement. This was a detriment.
162. Ms Anwanyu was responsible for the decision to terminate the Claimant's engagement. She made her final decision on 13 January 2022, although on her own admission, she had pretty much made up her mind on 11 January 2022.
163. At the time of the decision, Claimant had made a single protected disclosure. Ms Anwanyu was aware of what the Claimant had said to her as she had been the person to whom the disclosure had been made. She was not aware, however, that the Claimant considered herself to be a whistleblowing as the Claimant had not described herself as such at any time during her engagement.
164. The disclosure was made some two months earlier. Purely considering the matter on the timeline, we find it unlikely that the protected disclosure influenced Ms Anwanyu's thinking in relation to the Claimant's termination. The Claimant was an agency employee with minimal employment rights.

Had Ms Anwanyu wanted to terminate the Claimant's engagement because of the protected disclosure, it is far more likely she would have found a way to do so at an earlier date.

165. Instead, our conclusion, supported by the evidence, was that Ms Anwanyu welcomed the Claimant's intervention in relation to Mrs K and thanked her for it.
166. We find that the genuine reasons why Ms Anwanyu terminated the Claimant's engagement was the ones that she explained to the Claimant at the time. Her decision was triggered by the Claimant's conduct during their telephone call on 16 December 2021, reinforced by the Claimant's behaviour on 29 December 2021 and finally decided as a result of the note the Claimant made on 30 December 2021. Each of these matters were matters of concern and when considered together justified the decision to terminate the Claimant's engagement. We conclude that the Claimant's public interest disclosure did not materially influence Ms Anwanyu's decision making.
167. The Claimant's complaint that she was subjected to a detriment on the ground that she had made a protected disclosure therefore fails.

9(b) Falsely accusing the Claimant of not recording to the system on 16 December 2021;

168. This second detriment fails on the facts. Ms Anwanyu did not falsely accuse the Claimant of not recording to the system during their call on 16 December 2021.
169. Ms Anwanyu did pick the Claimant up for not fully recording her activities on the system during the call, but this was accurate as admitted by the Claimant when giving her evidence. The reason Ms Anwanyu raised the matter was because the Claimant was telling her about things that she had done on a client's file, but these matters were not recorded on the client's case notes. Ms Anwanyu did not admonish the Claimant, but merely reminded her of the need to record all actions on the system.
170. This complaint also fails.

9(c) Not engaging the Claimant in jobs and treating differently from other staff;

171. The Claimant presented no evidence that this occurred. When asked to provide specific examples when giving evidence, the only example the Claimant gave concerned her client Mr A and the safeguarding incident. It is correct that the Claimant was not copied into the safeguarding referral email while she was on leave and was not informed that it had taken place immediately on her return to work. However, she was informed very soon after returning to work and was then involved in the follow up steps taken in

connection with the case. This does not amount to not engaging her in jobs or treating her differently. This complaint therefore fails.

9 (d) Blocking out the Claimant's name on the rota a few weeks before she was sacked; and

172. This complaint also fails on the facts. Our finding was that the Claimant was blocked out on the rota, but this was from the week commencing 17 January 2022 onwards and occurred after her contract was terminated.

9 (e) Subjecting [the Claimant] to abuse her in front of staff and service users.

173. The Claimant clarified that she was referring to two separate incidents by way of specification for this allegation. The first was her allegation that Ms Wayland and Ms Alozie subjected her to verbal abuse on 3 November 2021, and the second was the incident on 11 January 2022 involving Ms Alozie.

174. We have not found it necessary to make a finding in relation to whether the claimant was subjected to verbal abuse on 3 November 202 by Ms Wayland and Ms Alozie. We consider that there must have been an altercation between them of some kind as something prompted the Claimant to all Mr McKen and Mr Sawyers that evening. However, the Claimant had not made a protected disclosure by this date and therefore her complaint that the behaviour was done on the ground of a protected disclosure must fail.

175. Ms Alozie admitted verbally abusing the Claimant on 11 January 2022, when asked about the incident that occurred between them by Ms Anyanwu. She also told Ms Anyanwu why she had reacted as she did, telling her that she had snapped because of the particular behaviour of the Claimant that day. We find that this explanation is offers a far more plausible explanation for Ms Alozie's behaviour than the one the Claimant wishes us to adopt. The incident occurred against the backdrop of a breakdown in the relationship between Ms Alozie and the Claimant that had become crystallised since they had submitted complaints about each other at the end of December / early January. 11 January 2022 was one of the first dates they were required to be in the vicinity of each other since then.

176. We do not find that Ms Alozie snapped at the Claimant on 11 January 2022 because of the Claimant's protected disclosure made to Ms Anyanwu in early to mid-November 2021. The timeline makes it highly unlikely and we therefore do not uphold the Claimant's complaint.

Time Limits

177. Given that we have not found the alleged detriments were unlawful pursuant to section 47B of the Employment Rights Act 1996 1996, the time issue falls away. However, for the sake of completeness, in case any of our decisions are incorrect, we set out our decision as to whether the claims were in time or not.

178. The Claimant contacted Acas in connection with a claim against the Second Respondent on 11 April 2022 and the Acas certificate was issued on 22 May

2022. The Claimant did not name the Second Respondent in the claim form she submitted on 18 May 2022. According to the correspondence on file, the Claimant applied to amend her claim to add the Second Respondent on 30 May 2022 and we have based our calculations on that date.

179. The claim concerning the termination of the Claimant's contract would be in time, applying the normal time limit provisions in section 48(3) of the Employment Rights Act 1996 with the benefit of the extensions available to take account of Acas conciliation. This is because the decision was made on 13 January 2022 and that was the date of termination, albeit the Claimant was paid to 31 January 2022.
180. In addition, the claim relating to the blocking out of the Claimant from the rota (i.e. 9d in the list of issues), would be in time. This is because we found that it occurred after her contract had been terminated.
181. Detriment 9b occurred during the telephone call between Ms Anyanwu and the Claimant on 16 December 2021, which call contributed to the decision to terminate the Claimant's contract. Had we not rejected both complaints, we would have held this to be part a series of similar acts. They both involved the same person.
182. All of other claims are out of time, however. This includes the incident that occurred on 11 January 2022 when Ms Alozie spoke to the Claimant inappropriately. The Claimant's complaint about this incident was presented a day out of time. To be in time the Claimant would have needed to begin the Acas process on 10 January 2022.
183. We consider there was a lack of evidence that there was any collusion between Ms Anyanwu and Ms Wayland and Ms Alozie. Ms Anyanwu was much more senior than both of them and was not in any way influenced by them in her decision making.
184. The acts of Ms Wayland and Ms Alozie at 9c and 9e may have been linked to each other, but they were not linked to the acts of Ms Anyanwu or the deleting of the Claimant from the rota. The deletion was a purely administrative act that occurred post termination.
185. With regard to an extension of time, the Claimant provided no evidence that led us to conclude that it was not reasonably practicable to contact Acas or present her claim earlier had she wanted to and we therefore conclude that no extension of time should be granted for the complaints that are out of time.

Employment Judge E Burns
11 September 2023

Sent to the parties on:

11/09/2023

Appendix

List of Issues

Time Limits

1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
2. If not, was there conduct extending over a period?
3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
4. If not, were the claims made within a further period that the Tribunal considers reasonable?

Purported Protected Disclosures

5. Did the claimant make disclosures as alleged in her Further Information:
 - a. To Claudia Wayland (Team Manager) on mid-October 2021, that Mrs K can deliver a baby at any time and needs support and no one was there to assist her if she falls into labour at night that there are many other pregnant women;
 - b. To Chinedu Alukwu (Team Manager) on late October 2021, repeated the information disclosed to Ms Wayland (see(5(a)));
 - c. To Lea Christodoulou (Family Support & Complex Families Team Manager) on 3 November 2021, repeated the information disclosed to Ms Wayland (see(5(a)));
 - d. To Emmauel McKen (Diamond Blaque Agency) on 3 November 2021, repeated the information disclosed to Ms Wayland (see(5(a)));
 - e. To Joseph Sawyers (Service Manager) on 3 November 2021, repeated the information disclosed to Ms Wayland (see(5(a))) and subject to verbal abuse (C allegedly suffered from CW and Susan Alozie);
 - f. To Sheena Anyanwu (Head of Temporary Accommodation Supporting Communities) on mid November 2021, repeated the information disclosed to Ms Wayland (see(5(a))) and to report the alleged abuse (CW and Susan Alozie).
6. If so, in respect of each disclosure relied upon;
 - a. Was it a disclosure of information?
 - b. Did the claimant subjectively believe that the information disclosed tended to show one of the six relevant failures under s. 43B(1) ERA? The Claimant believes that it shows:

- i. a person had failed, was failing or was likely to fail to comply with any legal obligation (namely safeguarding Afghan Refugee in accordance with Camden Safeguarding responsibilities) (43B(1)(b)); and
 - ii. the health or safety of any individual had been, was being or was likely to be endangered (namely the Health and Safety of Mrs K and other pregnant women was in danger because there would be no one to assist with her small children which is a Safeguarding concern) (43B(1)(d)).
 - c. If so, was that belief objectively reasonable?
 - d. Did the claimant subjectively believe the disclosure was in the public interest?
 - i. If so, was that belief objectively reasonable?
7. If so, in respect of each disclosure relied upon, does it meet the test for a “protected disclosure” pursuant to section 43C ERA i.e. was it made to the claimant’s employer or some other responsible person?
8. In respect of each disclosure not made to the claimant’s employer, was it a protected disclosure?

Detriments

9. Did the respondent engage in the conduct complained? In particular, has the claimant shown that:
 - a. Decision by Sheena Anwanyu to end the assignment with the Second Respondent on 13 January 2022;
 - b. Falsely accusing the Claimant of not recording to the system on 16 December 2021;
 - c. not engaging the Claimant in jobs and treating differently from other staff;
 - d. blocking out the Claimant’s name on the rota a few weeks before she was sacked; and
 - e. subject to abuse her in front of staff and service users.
10. If so, in respect of each allegation set out above as the Tribunal finds:
 - a. Does it amount to a “detriment” within the meaning of section 47B(1) ERA?
 - b. Was the claimant subjected to the detriment on the ground that she had made the protected disclosures relied upon or any of them (as set out above)?