



EMPLOYMENT TRIBUNALS

Claimants: Miss C Harrison

Respondent: Riann Care Limited

Heard At Southampton (In Person)

On: 31 October and 1, 2, 3 November 2023

Before: Employment Judge Self

Appearances

For the Claimant: In Person

For the Respondent: Mr Lomas – Tribunal Advocate

JUDGMENT

1. The complaint of automatically unfair dismissal pursuant to section 103A of the Employment Rights Act 1996 is not well-founded and is dismissed.
2. The complaint of Wrongful Dismissal is not well-founded and is dismissed.
3. By Consent it is declared that the Respondent made an unlawful deduction of wages from the Claimant and that complaint is well-founded.
4. The Respondent shall pay the Claimant the sum of £1,309.52 which is the gross sum deducted. The Claimant is responsible for the payment of tax and national insurance due thereon.

WRITTEN REASONS

(As requested by the Claimant)

1. By a Claim Form lodged on 22 November 2022 the Claimant asserted that she had been automatically constructively unfairly dismissed pursuant to section 103A of the Employment Rights Act 1996 and had wages unlawfully deducted from her. At this hearing I considered an application to amend which I allowed in part, so as to add a claim of Wrongful Dismissal. The application to add a contractual claim for Holiday Pay was refused. Reasons have been given orally in relation to that decision.
2. ACAS Early Conciliation was completed between 1 November and 22 November 2022 and there are no issues relating to time limits in this case.
3. I have considered such documents within the bundle and the supplementary bundle as I have been take to during the evidence and submissions. I have heard oral evidence from the Claimant and Helen Young on behalf of the Claimant's case and evidence from Mrs Ive, Mrs Clark and Mrs Wheeler for the Respondent. Although called to give evidence Mrs Wheeler was not challenged on the basis that none of her evidence went to the issues in the case and so I have taken no heed of it. For the Claimant, Ms Walker was due to give evidence and had provided a statement but did not give evidence at the tribunal on account of personal issues. I have read the statement but give it little weight as it has not been capable of being challenged in cross examination. I received helpful closing submissions from the Clamant and Mr Lomas.
4. The Respondent is a Company that is a domiciliary care agency providing personal care to people living in their own houses and flats. The Company was previously called Christie Care Services Limited. The Claimant was initially employed as a Registered Manager and her contract stated that her continuous employment commenced on 24 May 2021. The Claimant disputed that indicating that her service started earlier but was unable to take me to any specific contrary evidence. In those circumstances I find that the date on her contract is the correct start date. The Claimant has less than two years' service and so is unable to bring a claim of ordinary unfair dismissal.
5. The Claimant's employment ended when she resigned by email with immediate effect at 1123 on 17 October 2022. The ambit of her claim was discussed with EJ Livesey at a preliminary hearing on 11 July 2023 and the Issues were identified on that date as follows:

1. Protected disclosure ('whistle blowing')

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

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

1.1.1.1 On 12 October 2022, the Claimant sent Mrs Ive a WhatsApp message in which she indicated that she was to raise matters relating the inadequacy of Care Coordinators and a failure to safeguard clients and staff with the CQC;

1.1.1.2 On or around the 12 October 2022, the Claimant sent an email to the CQC raising matters relating the inadequacy of Care Coordinators and a failure to safeguard clients and staff;

1.1.1.3 On or around the 12 October 2022, the Claimant contacted Hampshire County Council Safeguarding the through its online portal, to raise matters relating the inadequacy of Care Coordinators and a failure to safeguard clients and staff, which contained client specific issues;

1.1.1.4 On or around the 12 October 2022, the Claimant contacted the Clinical Commissioning Group of the relevant NHS Trust by email and phone, to raise matters relating the inadequacy of Care Coordinators and a failure to safeguard clients and staff, which also contained client specific issues.

1.1.2 Were the disclosures of ‘information’?

1.1.3 Did she believe the disclosures of information were made in the public interest?

1.1.4 Was that belief reasonable?

1.1.5 Did she believe they tended to show that:

1.1.5.1 A person had failed, was failing or was likely to fail to comply with any legal obligation;

1.1.5.2 The health or safety of any individual had been, was being or was likely to be endangered.

1.1.6 Was that belief reasonable?

1.2 If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to;

1.2.1 To the Claimant’s employer?

1.2.2 To one or more prescribed persons.

2. Dismissal (Employment Rights Act s. 103A)

2.1 Was the making of any proven protected disclosure the principal reason for the Claimant’s dismissal? She alleges that Mrs Ive took away her ability to do her job; she removed her access to systems thereby preventing her from doing her job and also informed people that she had been dismissed immediately after 12 October. She therefore

resigned, stating in her email of resignation email that she had had to leave because could not continue with her duties.

2.2 The Claimant did have two years' service and the questions which the Tribunal will have to address are:

2.2.1 Has the Claimant produced sufficient evidence to raise the question whether the reason for the dismissal was the protected disclosures?

2.2.2 Has the Respondent proved its reason for its actions, if proved?

2.2.3 If not, does the Tribunal accept the reason put forward by the Claimant or does it decide that there was a different reason for the dismissal?

3. Unauthorised deductions (Part II of the Employment Rights Act 1996)

3.1 The Claimant alleges that her final salary of approximately £2,000 remains unpaid.

6. As can be seen from the Issues identified at the Case Management Order this is a claim which has a very narrow window of time in that all matters that contributed to the alleged repudiatory conduct and all alleged protected disclosures were undertaken in just under a week between 11/12 October and 17 October. The parties were consistently reminded of the narrowness of the claim in terms of relevant evidence. Not all of those reminders were heeded. It would have been open to the Claimant to rely upon conduct over a far longer period but she did not seek to do so.
7. As stated, the Claimant was initially employed as a Registered Manager but the parties agreed that the Claimant's role changed to focus on HR, Compliance and Finance. The Claimant is the daughter of the sole director Mrs Ive. It was clear at this hearing that they are very much estranged at the current time. That is very unfortunate from their personal perspective and there were times when their respective focus strayed from the Issues in the case to their own substantial personal differences. Whilst that was not helpful it was understandable.
8. The Claimant and Mrs Ive did not gel well whilst working together. Other witnesses described a fractious relationship which was often played out on a public stage causing other staff to be uncomfortable. It is Mrs Ive's Company and she is entitled to run it as she wishes subject to compliance with employment law. The Claimant did not believe that she was running it very well. From what I have heard the Claimant did have certain strong skill sets and Mrs Ive did accept that the Claimant had done some very good work in sorting out issues that had arisen from finances /debt. That was the only glint

of praise that either of them was prepared to offer the other over the course of two days, which is in itself instructive of the current relationship.

9. The Claimant believed that she could run the business better than Mrs Ive. The Claimant took umbrage at what she perceived was her mother not being around more and going off on lengthy holidays leaving her with all of the problems. The Claimant was also far from happy that she was not a director of the Company. In turn Mrs Ive was irritated by what she perceived as a constant barrage of messages from the Claimant when she was on holiday. Further she suggested that the Claimant was controlling and coercive in the way that finance was restricted to her and in other dealings. There was ample evidence of the Claimant being rude and disrespectful in the workplace to Mrs Ive and others. Whatever the reason, and wherever fault lay, it did not make for a happy relationship between the Claimant and Mrs Ive and I am satisfied that it did not make for a particularly happy workplace for others. There was a defined impact on colleagues caused by their corrosive relationship.
10. I am satisfied that the Claimant did not speak to her manager (and mother) in a respectful manner. We heard that from Lisa Clark and from Helen Young. I am also satisfied from some of the text messages that I have seen that that was the case. The Claimant came across as an intelligent and motivated individual who held firm views. In respect of this case the whys and wherefores of fault in the personal relationship need not be gone into in great detail and nor does blame need to be apportioned. The working relationship was on the whole dysfunctional and did not assist the Company. I have no doubt there would have been peace from time to time but there was little evidence of that as all parties dwelt upon the conflicts.
11. In October 2022, Mrs Ive had decided that there was a need for restructure and had engaged two senior care coordinators (Helen Young and Cassie Standen) who would sit above Kim Walker and Keeley Featherstone in the management structure. I am satisfied that a meeting took place on Tuesday 11 or Wednesday 12 October. On balance the meeting took place on 12 October but I do not think anything turns upon the precise date.
12. There is more than one witness account of that meeting and it seems to be agreed that the Claimant was last to arrive and was in a feisty mood. Ms Young, the Claimant's own witness, states that the Claimant challenged her in the meeting and there were voices raised. The whole meeting sounds highly embarrassing and I am satisfied that the catalyst for that was the Claimant's approach and conduct. She was unhappy about the appointments and was determined to make her point. Mrs Ive suggested that part of the problem was that the Claimant had promised her "best friend" Ms Young the senior care job. Whilst that may be the case, I do not have sufficient evidence to find that as a fact. I am satisfied that the Claimant's negativity was very high and she was able to voice it at that meeting. I am satisfied that outside of that

meeting when Mrs Ive and the Claimant broke out the Claimant made it clear that she did not want Ms Young appointed as a Senior Care Coordinator. In making these findings of the Claimant's views I am also relying on messages that were sent soon after that which demonstrate the Claimant's passionately held views on this issue and the robust / abusive means by which she was prepared to convey it.

13. The Claimant's perspective is set out in her statement. She believed that there had been a string of unsuitable appointments and she believed that Mrs Ive had downplayed the amount of work with clients that would be required of the Care coordinator, which the Claimant would then have to deal with because Mrs Ive was off doing consultancy work or on holiday. Further there would be a potential impact on client safety and would also mean lots of out of hours calls and messages and work for the Claimant. The hostility towards Mrs Young and Mrs Ive was borne of this frustration. It is not possible for me to make any form of finding as to whether the Claimant was justified in holding this view but I accept that she genuinely held that view.
14. Helen Young stated that after the meeting Mrs Ive said to her that she had been making a plan to get rid of the Claimant over the last six months and that she could now do it with the same structure. Mrs Ive denied this. Whilst I accept the Claimant was being very challenging in the workplace, exhibited no respect for Mrs Ive and was creating an unpleasant atmosphere there was a possibility that Mrs Ive was contemplating dismissing the Claimant in the future. It is important to note that this point was not known by the Claimant at the point she resigned and so could not have contributed to her decision to resign.
15. Thereafter Mrs Ive went to Croydon to do work there and Mrs Young was due to shadow Ms Walker and Ms Featherstone on their rounds. Mrs Young contacted Mrs Ive to say that she had raised concerns about the manner in which Ms Walker had conducted herself in respect of the correct uniform, interaction with the service user and in respect of manual handling techniques. Ms Walker had contacted the Claimant to ask if she could give her a lift to the next appointment. When the Claimant attended, she related that Ms Young indicated that she had spoken with Mrs Ive and had been told that the Claimant was not her manager and to take no orders from her. Mrs Ive states that she was told by Mrs Young that the Claimant had threatened her and so she had taken herself away from Ms Walker. Whatever the truth of the matter, neither the Claimant nor Mrs Ive were present and were relying upon what they had been told.
16. Although the times of messages are not clear there was a conversation between the Claimant and Mrs Ive about the issue that had arisen. Mrs Ive was still in Croydon. The Claimant's position is made clear when she texts:

“LIVID. How are you letting this happen again.... They’ve belittled Kim (Walker). They don’t want to do cover. They want to decorate and office and sit and drink fucking tea” (131)

Mrs Ive responds ***“I’m at work”*** to which the Claimant responds:

“I’M SO ANGRY I SWEAR ON LILY’S LIFE I WILL WALK IF THIS IS NOT SORTED. I COULD NOT GIVE A FLYING FUCK. I’m 5 seconds from dismissing them both (Ms Youngs and Ms Standen)”

The Claimant stated that she did not actually mean that she would resign if it was not sorted and clarified that the thing, she did not give a ***“flying fuck”*** about was the fact that Mrs Ive was at work.

17. The Claimant then said:

“If anyone in this business is instructed to ignore me so help me God, I’ll go to Beverley right now”. Beverly is at the CQC (Care Quality Commission) (133).

Mrs Ive responds, ***“Go to Beverley, Christie. You are not holding me to ransom, it is my business”*** and the Claimant responds ***“Then fucking do it properly Lorraine. I’ve spent 18 months mopping up after you.... I swear to God if you don’t open your eyes and fucking see the reality of the situation you might as well shut the business now.”***

18. This is an exchange where the Claimant threatens to go to the CQC presumably with what she considers is damaging information about the Respondent if she does not get what she wants. There are a number of such threats as matters progress. It is important to note that Mrs Ive does not seem fazed by such a threat and actively encourages her to do so. I consider that to be a direct counter indication to that which the claimant needs to prove in this case.

19. Mrs Ive then suggests that she will shut the Gosport operation to which the Claimant states that she ***will “whistleblow the whole thing”.... that’s how serious I am”***. (130) I am satisfied that in these exchanges when the Claimant refers to whistleblowing she means disclosing to an outside regulator as opposed to raising the issues internally which could also amount to a qualifying disclosure.

20. It should be noted that this is **NOT** the conversation which the Claimant relies upon as a protected disclosure at 1.1.1.1.

21. This conversation is instructive. It shows the Claimant’s belief that Mrs Ive is useless and driving the business into the ground. It also shows the Claimant’s view that she would be able to run the business far better. The

Claimant's lack of respect for Mrs Ive is palpable by what she says and the way she says it. She is clearly very angry about what has transpired and sees it as a vindication for her view that Mrs Young should not have been taken on. Mrs Ive is somewhat more circumspect. Finally, it is clear in this conversation that the Claimant is seeking to weaponize whistleblowing as that is her response to the suggestion that Gosport may close. What the Claimant does in this conversation is threaten that she will whistleblow and that is not covered under the legislation.

22. On 12 October 2022 at 1945 the Claimant wrote the following under the heading "Whistleblowing":

"This is to put down in writing that I what I have verbally and via private message expressed concerns about the new members of staff and then both not being fit and proper for the job roles. Concerns relating to Helen Young and Cathy Standen include refusal to work voted shadow shifts as it is a waste of time refusal to follow proper instruction from management refused to carry out personal care. In relation to our trainee coordinators carers: they include belittling behaviour and inappropriate professional conduct and attitude. I hope now these concerns are in writing you will act immediately to safeguard both clients and staff I've had to take urgent security measures as part of my role to ensure immediate safety. Please let me know when appropriate action has been taken." (110)

23. The Claimant has not specifically asserted that this was a protected disclosure and has not asserted that it was part of the cause of the conduct that led to Mrs Ive acting in the manner so as to cause a repudiatory breach of contract. I will return to this email in due course.
24. Later in the evening there was a further What's App conversation. In that Mrs Ive suggested that the Claimant manage finance and she would manage the care. The Claimant responded by saying that she was horrified that Mrs Young left the room and went and sat in her car that afternoon. Mrs Ive reiterated that she was not prepared to argue with the Claimant and that her wish was that the Claimant deal with finance and that she would deal with HR, Care and everything else. The Claimant responded ***"Once they are gone"*** which was a reference to Mrs Young and Ms Stadden. Mrs Ive refused and the Claimant's response was ***"I am reporting them to safeguarding tomorrow"***. The implication was that if Mrs Ive did what the Claimant wanted then there would not be a report to safeguarding the following day.
25. At 6 am on the following day Mrs Ive logged on to do some work and found the Care Planner system was down. That system had the rotas on as well as personal details for the clients, including care plans and risk assessments. I accept that not having access to these documents could possibly have

compromised the care of patients and at the very least would have made the work far more difficult to do. I accept that there were also issues with social media and the email system.

26. At 1141 on 13 October, the Claimant followed up the email from the previous evening asking where Mrs Ive had got to with the safeguarding investigation as it had a knock-on effect to other people's jobs and the clients. She stated that she had ***"hoped this would be remedied in house and not require escalation but I have heard nothing"***. I consider this to be another veiled threat that the Claimant would escalate to the CQC if what she wanted done was not done. (109).
27. At 1210 on 13 October (96) the Claimant emailed Mrs Ive to say that she was unable to access Atlas one of the work systems and she asked that the issue be remedied.
28. At 1231 on the same day Mrs Ive responded saying that the previous day had been a "lot" for many people, by which she meant it had been a tough day. She stated that she could not access Outlook and that she was seeking a time and date whereby a "facilitated meeting" could take place between the Claimant and Mrs Ive, via her employment advisors.
29. In response at 1240 the Claimant agreed that it was tough and continued to be so. The Claimant asked whether Ms Young had been suspended whilst the investigation occurred and it is apparent that her complaint is partly on account of the fact that Ms Young absented herself. Mrs Ive was, of course, aware that she had done so on her instruction. The Claimant concludes with:

"I need reassurance this is being dealt with please as part of the management team or as per my duty of care I will be forced to talk to the CCG and potentially to ensure continuity of care and person-centred care is being met as well as business continuity."

That is a further reference to the fact that if things are not undertaken to her satisfaction, then she will go outside the business with her concerns. At 1301 Mrs Ive stated that she was not going to inform the Claimant of a confidential investigation. The Claimant followed up with a further email at 1307.
30. At 1327 the Claimant informed Mrs Ive that she had received "advice" from ACAS that what Mrs Ive had done (removing her from the systems) was ***"a contractual change in my employment and constitutes a breach of contract"***. She asked to be reinstated to Atlas.
31. At 1607 on 13 October an account manager at Care Planner contacted both Mrs Ive and the Claimant to say that the Claimant's access had been blocked

and that Company Administrator status had been given to Mrs Ive. This followed on from a request Mrs Ive had made earlier in the day. Six minutes later the Claimant wrote to Mrs Ive to say that the previous email was **“hard evidence you are actively blocking me doing my job.”**

32. At 1751 Mrs Ive emailed the Claimant as follows:

“As business owner and managing director, I've had to take steps to manage vulnerable people. You took access rights off the staff from Care Planner this caused stress and upset to the staff, it could have meant missed calls. I took steps to protect the same thing happening to Atlas.

I can send you information that is in needed in order that you can do invoicing.

I am also issuing a direct management instruction that you do not contact staff any staff in Christie care until my safeguarding into the matters you have raised and I've raised by other people today.

Safeguarding investigations take time and the clients have to be prioritised.

Citation are looking into supporting a facilitated meeting so you'll need to be patient as Lisa does not work Fridays. You've asked for a copy of the grievance procedure and attached is the handbook which contains the information you need. I'm not answering any more emails this evening.

33. Mrs Ive explained her reasoning behind limiting the Claimant's access to Care Planner and Atlas, gave a direct instruction as the Claimant's manager as to what she wanted and indicates that she is still looking at organising a facilitated meeting. I accept that at this point Mrs Ive was very concerned about having the Claimant within the business. The Claimant's behaviour had been abusive towards her and she did not appear willing to accept any restrictions imposed by Mrs Ive. I do not accept however that the threats re the CQC, although not in themselves protected disclosures were a particularly big deal for Mrs Ive. Mrs Ive believed that was just the Claimant sounding off.

34. At 1816 an automated response was sent to the Claimant following an email she had sent from her work email account to Mrs Rand of the CQC which was entitled “Whistleblowing”. This is the protected disclosure set out at 1.1.1.2 of the Issues where the Claimant asserts that **“she raised matters relating to the inadequacy of Care Co-ordinators and a failure to safeguard clients and staff”**.

35. The Claimant has failed to produce her email to the CQC in which she asserts that she made a protected disclosure. She has made no enquiry of the CQC to get it and does not seem to have understood the importance of it being produced. Mr Lomas for the Respondent is quite right to flag up the problems

that presents the Claimant in demonstrating that she has made a protected disclosure in the email she sent. The Claimant acts in person and I accept that what might seem obvious to an experienced employment law litigator may not be quite as apparent to a non-legally qualified litigant in person. The evidence produced demonstrates no more than on 13 October the Claimant sent an email to the CQC which was initially responded to with an out of office automatic reply. The title of the Claimant's email was "Whistleblowing". The Claimant's witness statement does not go into any detail about what the disclosure of information was about save that she "raised the failure to safeguard clients and staff".

36. The position is perhaps even more vague in relation to the protected disclosure to Hampshire County Council Safeguarding (PD 1.1.1.3) where the Claimant indicates that she raised those issues via an online portal. Again, the Claimant has provided a very general statement that she did make a complaint via the portal but provides no detail as to what information was disclosed. For this alleged disclosure there is not even any form of acknowledgment.
37. At 8 pm the Claimant responded setting out her view that no material disruption was caused by her actions, disagreeing that she was able to do any part of her job and saying that she was "**happy to wait for a meeting**" but needed to give the Claimant back access so she could do her job. She asserted again that the Respondent's actions were a breach of contract.
38. On 14 October at 1155 the Claimant emailed Mrs Ive to say that she still did not have the required access to do her job and that she had been recently diagnosed with PTSD "**as a result of mismanagement**". (101) She indicated that leaving the Claimant without the tools to do her job was having a "**severe and profound effect on mental health**". She asked that access be reinstated immediately.
39. At 1308 Mrs Ive responded and suggested that if the Claimant was suffering from PTSD that she should see her GP and consider going on sick leave. If she did that then any urgent matters could be done by others. There was a request not to take money from the bank account as it was needed for direct debits and she was reminded that she had access to a BUPA helpline. Mrs Ive suggested that other items should be picked up when the Claimant felt better.
40. Almost by return the Claimant indicated that she was not going to be forced into sick leave and that all that was required was for her to be able to do her job and for Mrs Ive's behaviour (unspecified) to be remedied.
41. At 1324 the Claimant wrote again and indicated that Mrs Ive "**was trying to force me out after raising safeguarding concerns and taking security**

measures". She indicated that she was no risk to the business and her welfare was dependent on being treated fairly.

42. At 2109 on 14 October Mrs Ive emailed what appears to be a client that the Claimant was "**not with the business at this current time**" and any future correspondence should go via Mrs Ive. I note that at the top of that the Claimant appears to have managed to email that to herself and so that appears to confirm what the Claimant said that she was accessing and reading Mrs Ive's emails at that time. (162)
43. I do not accept the Claimant's evidence that she had permission to look at Mrs Ive's emails whenever she wanted. A consideration of the relationship between the two at that time makes that inconceivable. It may well be that there were occasions when permission was given for a specific purpose but that would not have permitted the Claimant to act in the way she did post 12 October.
44. On Sunday 16 October 2022, Mrs Ive contacted her accountant Mr Nicholas and in that email, she indicated that the police and the bank fraud team were looking into potential fraud by the Claimant. I was shown no evidence that this was the case. Further Mrs Ive indicated that the Claimant was suspended and that she should not do anything with the finances. She stated that other systems were password protected and that Ms Walker was to be suspended. Safeguarding referrals and CQC notifications would follow. She indicated that she believed that fabricated whistleblowing allegations from the Claimant would follow. (152).
45. The Claimant was not suspended as such at that time but steps had been taken to take the Claimant out of the business. Further the details in this email would seem to indicate that the Respondent was taking steps that they considered necessary to protect the business at this time. There is no indication here that as of 16 October Mrs Ive wanted the Claimant to have anything to do with even finance and indeed was specifically telling the accountant that she should not. It appears that Mrs Ive's position had moved on from 12 October and she stated that she had made enquiries which caused her to have doubt that the Claimant should even be allowed to deal with the finance. Mrs Ive at this point in my view did have in her mind that the Claimant may have to be disciplined but would await what went on at the facilitated meeting before making a final decision.
46. At 0202 on 17 October (155) there is part of an email purportedly from Mrs Ive to NHS Hampshire and Isle of Wight. I say purportedly because Mrs Ive indicated that she did not recall sending it and also indicated that it was unlikely that she would be sending an email at that time of the morning. The Claimant indicated that she was able to access Mrs Ive's emails but that she would not be able to write and send them from Mrs Ive's account. The

Claimant denied writing it. On balance it was Mrs Ive who drafted this email as it indicates that the Claimant is suspended (as she did to the accountant and she states that **“(the Claimant) did cause a very short window of disruption to our care planner management system which was rectified.”** I note that this account to the CCG down-plays the situation far more than has been put forward to me at this hearing.

47. On Monday 17 October 2022 at 0904, the Claimant wrote to Mrs Ive to say:

“You have agreed to a mediated face to face meeting – I think this wise considering the sensitivity and severity of the nature of my concerns. Also are my systems back in place to allow me to do my role?”

That shows an agreement for the situation to progress as per Mrs Ive's suggestion.

48. By return Mrs Ive responded to say that she thought that considering the **“nature of our relationship”** the meeting should be by Zoom. The Claimant responded negatively and accused Mrs Ive of backtracking (94). Her concerns were:

- a) How could she be sure of confidentiality and that nobody else would be in the vicinity?
- b) How would she be protected from having her words / action misconstrued?

49. Mrs Ive stated that the Office Manager was on holiday so would not be proximate to the Zoom call and that the call could be recorded. That did not assuage the Claimant's concerns as set out in a further email at 0916. There were further emails and Mrs Ive concluded at 0926 that all matters could be discussed at 1 pm that day (91).

50. At 1123 on 17 October the Claimant resigned with immediate effect. Her resignation letter reads as follows:

**“Due to the breach of contract that continues to impede me to do my job including not allowing me to speak to staff or any of the systems necessary to do my job despite not being involved in any way in a disciplinary process the fact you won't allow me to have a fair mediated meeting to talk through my serious concerns about staff the clients and conduct including yours and the fact you have made false representations to people that I have clear evidence of about my conduct I am forced to resign with immediate effect. (sic)
This constitutes constructive dismissal. I'm also contacting the doctors they cannot continue to deal with your behaviour and complete disregard for employment law and the effect it has on me. If you require any further contact with me it will need to be when I am not sick and**

witnessed by someone impartial to protect myself further false accusations”.

51. At 1456 (after the resignation) the Claimant emailed the Clinical Commissioning Group at the local NHS Trust (CCG). This started as follows:

“As requested, a summary of concerns raised in our call today call today and e-mail trail to show of my trying to manage in the house however Lorraine has failed to act and I believe is subsequently lined to the CCG and trying to cover this up”.

The Claimant then goes onto mention failing to appoint fit and proper persons for the coordinator roles leading to breakdowns in packages and client packages not being fulfilled and she also reiterated her perception of the events of 12 March re Mrs Youngs. She alleged that the clients’ needs were not being prioritised.”

52. Whether or not this email amounted to a protected disclosure is irrelevant in the context of this constructive dismissal claim because it cannot have influenced the Claimant’s decision to resign as it took place after the resignation. The Claimant’s evidence was that she had spoken to the CCG earlier in the day and that seems likely because she refers to a conversation earlier that day. The Claimant was unable to provide a time for the conversation but suggested that it was before she resigned. I can see that up to 0926 there was an email exchange between the Claimant and Mrs Ive so it would not have been feasible for any conversation with the CCG to take place then. The Claimant acknowledged that she would not have spoken to them before 0900 and so that leaves only between 0925 and 1126 for the alleged protected disclosure to have been made.

53. On 18 October 2022 Mrs Ive wrote to Southampton City Council indicating that they have no further dealings with the Claimant and that the Claimant had been dismissed and the police were involved. The Claimant was no longer employed and she was still accessing Mrs Ive’s e-mails. (161)

54. On 19 October 2022 Mrs Ive wrote to the Claimant stating that she was concerned that the Claimant was resigning in haste and gave the Claimant a chance to retract her resignation within 7 days. If she did then the Claimant’s grievances would be considered and she would have a right to be accompanied. The Claimant did not retract her resignation and in an undated subsequent letter the Respondent set out their position. No doubt (and perfectly reasonably) those letters were sent out on advice.

55. At 1736 on 19 October, the CQC responded to a CQC notification asking Mrs Ive for further information that she responded to. (153-154).

Did the Claimant make protected disclosures?

56. In order for a disclosure to be covered under the Employment Rights Act 1996, it has to constitute a 'protected disclosure'. This means that it must satisfy three conditions set out in Part IVA of the ERA:
- a) It must be a 'disclosure of information.'
 - b) It must be a 'qualifying' disclosure i.e., one that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of six 'relevant failures' has occurred or is likely to occur
 - c) It must be made in accordance with one of six specified methods of disclosure.
57. Section 43B (1) sets out six categories of subject matter (the 'relevant failures') about which a disclosure can be made. These are termed 'qualifying disclosures'. This means that disclosures of information concerning any of these six matters, but only these, can potentially qualify for protection. However, whether a particular disclosure is actually protected depends on whether the other conditions in s.43B(1) ERA are also met, and whether one of the six legitimate methods of disclosure, as set out in s.43C to H ERA, has been adopted.
58. The Claimant's case must be that she made protected disclosures which then principally caused, Mrs Ive to act in the way complained about i.e., preventing the Claimant from being able to do her job and informing people that she had already been dismissed. The Claimant needs to show that those actions amounted cumulatively to a breach of the implied trust and confidence or some other term of the contract which resulted in her being constructively dismissed and as the principal cause of that conduct was her protected disclosures the section 103A ERA claim would be made out.
59. Before considering the protected disclosures in detail to see whether they meet the statutory definition there are certain timing and communication issues to be considered as they are important. For the purpose of this exercise, I will take the Claimant's case at its height and assume that the statutory definition is met for each of them.
60. As earlier outlined the written disclosure to the CCG outlined at **Issue 1.1.1.4** was only made after the resignation and so cannot have had any bearing on anything pertaining to the dismissal. I am prepared to infer that any oral disclosure made would have been akin in broad terms to the written disclosure. The Claimant should have had the means to fix when the call to the CCG was made by way of phone records but has not brought that evidence. Further from the evidence she gave I am not satisfied on the balance of probabilities that she did make the call before she resigned and so the making of the protected disclosure and any reaction to it can be of no relevance to her decision to resign.

61. Further, in any event, even if it was made before the time she resigned:

- a) All of the things that she states led to her decision to resign had already been done before that time and so could not be influenced by any oral disclosure on that morning.
- b) There is no evidence that Mrs Ive was aware of that oral disclosure to the CCG before communication of the resignation and so any oral disclosure could not have had any effect on Mrs Ive's actions.

62. It follows, therefore, that whether or not the words said or written to the CCG amounts to a protected disclosure taking into account all parts of the definition at sections 43B and 43G as a matter of fact and logic it cannot on the evidence have influenced the Respondent's conduct and the Claimant's decision to resign and so is of no material use to the Claimant.

63. So far as 1.1.1.3 is concerned (the disclosure to Hampshire County Council) I consider on the balance of probabilities that the Claimant did contact Hampshire County Council Safeguarding because she was intent on raising her concerns as widely as she could, however there is no evidence before me as to when it was made and the Claimant did not offer any evidence as to when it was. In the issues she asserts that it was on or around 12 October 2022 but that is what she also dated 1.1.1.4 which we know was done on 17 October 2022 so no assistance is given to that as evidence that it was done before the resignation. It is for the Claimant to provide evidence that would allow me to consider the potential effect of such a disclosure in the context of all that was going on. She could have sought the information from Hampshire County Council but has not done so. In any event there is no evidence before me at all that Mrs Ive was notified that any allegation had been made to the County Council or whatever the communication of it was. As Mrs Ive did not know of this specific disclosure., whenever it was made it cannot possibly have been a factor in any of her decision making and thereby caused the Claimant to resign.

64. In any event I have had no information as to what information was disclosed but as there is no evidence that whatever was made had any influence on Mrs Ive it cannot have been responsible for any of the matters which led the claimant to resign on account of what she saw as a repudiatory breach and so I do not need to assess whether the rest of the statutory criteria are met.

65. It is a similar story for the Protected Disclosure set out at 1.1.1.2. There is no evidence that Mrs Ive knew that a protected disclosure had been made and what it had said. She had been warned on a number of occasion by the Claimant that if things did not go the way Claimant asked, she would make a protected disclosure but the mere threat of making a disclosure does not gain

protection. If Mrs Ive did not know that the disclosure had been made the making of the disclosure could not have influenced any of her conduct.

66. It follows that the alleged protected disclosures at 1.1.1.2, 1.1.1.3 and 1.1.1.4 cannot have been instrumental in influencing Mrs Ive's conduct and so cannot have been responsible for the treatment which is alleged to amount to a repudiatory breach of contract.
67. 1.1.1.1 is the only alleged protected disclosure that was allegedly communicated to Mrs Ive and so where she could possibly have acted in a manner towards the Claimant because of it. The Claimant in the List of issues stated that the disclosure was conveyed in a What's app message in which she indicated that she was to raise matters relating to the inadequacy of Care Coordinators and a failure to safeguard clients and staff with the CQC. That appears to be primarily a threat that the claimant is going to whistleblow to a regulator which is not covered by the ERA but at the same time it also does disclose that alleged failure to Mrs Ive herself.
68. The Claimant initially indicated that the What's app exchange at page 139 was the protected disclosure but later changed to the exchange at 194-196. I have looked at both of those exchanges and I am not satisfied that there is a disclosure of information in relation to concerns over the inadequacy of Care Coordinators and a failure to safeguard clients and staff. I do not consider that either of those amount to an adequate disclosure of information.
69. What does amount to a sufficient disclosure of information in my view is the protected disclosure set out in the email on 12 October 2022 and I accept that e-mail does raise issues relating to the health and safety of individuals. That of itself does not make it a protected disclosure, as I also need to consider whether the Claimant held a reasonable belief that what she was raising did impact on the health and safety of the individual and that she held a reasonable belief that disclosing it was in the public interest. I confess that has been a close call on the evidence provided.
70. Interwoven into this employment dispute is the dynamics between Mrs Ive and the Claimant as mother and daughter. I accept that the Claimant was interested and driven on behalf of the Company and was desperate for it to succeed and became frustrated at what she perceived was a lack of effort / care on the part of Mrs Ive. I was unable to detect any level of respect from the Claimant to Mrs Ive as either a mother or her manager. The Claimant was unable to say one positive thing about her other during the case. I make it clear that I am unable to say whether that was justified or not.
71. On the one hand, I accept that the Claimant was keen for the business to do well and that she did do a lot of hours supporting it. On the other hand, she had formed a preordained view of Mrs Youngs who she did not want to keep

employed and she took the first opportunity to suggest that Mrs Youngs was not up to the job on what seems to me to be pretty scant evidence. I accept that the Claimant was capable of extreme hostility when moved to it as can be seen in her rude and abusive What's app messages and I consider it likely on the balance of probabilities that she was hostile to Mrs Young. I also take into account that the statutory test is the "reasonable belief of the worker making the disclosure" and so I need to take into account the Claimant's personality and individual circumstances into account when judging the reasonable belief. Whilst the Claimant was looking for something to criticise Mrs Youngs for she did not know the reason why Mrs Youngs had left and so I consider that her belief was reasonable and in the circumstances that email is a protected disclosure.

72. Whilst I understand that protected disclosure does not accord with being a What's App message and it did not accord with what the Claimant indicated was her protected disclosure. at law I find that the Claimant did make a protected disclosure on the 12 October by the email identified.

73. At this point, having made this finding in my Judgment I would normally invite representations as to what we do with that finding in the context of the issues. Taking into account my conclusions set out below no representations were put forward by the Respondent on this matter.

Was the Claimant constructively dismissed?

74. The statutory basis for constructive dismissal is set out at section 95 (1) (c) of the Employment Rights Act 1996 and that section states that an employee is dismissed by his employer if 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.

75. It follows that the test for constructive dismissal is whether the employer's actions or conduct amounts to a repudiatory breach of the contract of employment (**Western Excavating (ECC) Limited v Sharp (1978) 1 QB 761**).

76. It is an implied term of any contract of employment that 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 trust and confidence between employer and employee (**Malik v BCCI SA (1998) AC 20**).

77. Any breach of the implied term of trust and confidence would amount to a repudiation of the contract of employment and the test of whether or not there has been a breach of the implied term is objective (Malik at 35C). There is no need to demonstrate intention to breach the contract. Intent is irrelevant.

78. A relatively minor act may be sufficient to entitle the employee to resign and leave the employment if it is the last straw in a series of incidents. The particular incident which finally causes the resignation may in itself be insufficient to justify that action, but that act needs to be viewed against a background of such incidents that it may be considered sufficient to warrant treating the resignation as a constructive dismissal. It is the last straw that causes the employee to terminate a deteriorating or deteriorated relationship.
79. It is clear that the repudiatory conduct may consist of a series of acts or incidents, some of which may be more trivial, which cumulatively amounts to a repudiatory breach of the implied term of trust and confidence. The question to be asked is whether the cumulative series of acts alleged, taken together, amount to a repudiatory breach of the implied term. Although the final straw may be relatively insignificant, it must not be entirely trivial. It must contribute something to the preceding acts.
80. The paragraphs prior to this one are a summary of Lord Dyson's Judgment in **London Borough of Waltham Forest v Omilaju (2005) ICR 481**.
81. In **Kaur v Leeds Teaching Hospitals NHS Trust (2018) EWCA Civ 978** it was identified that normally it will be sufficient to ask and answer the following questions to establish whether an employee has been constructively dismissed.
- a) What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?
 - b) Has he or she affirmed the contract since that date?
 - c) If not, was that act or omission in itself a repudiatory breach of contract?
 - d) If not, was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?
 - e) Did the employee respond to that breach?
82. Did Mrs Ive's actions as set out by the Claimant amount to a repudiatory breach of the contract of employment and did the employer without reasonable and proper conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
83. The Claimant does not seem to have understood that Mrs Ive was the sole director and that she was one of her staff. Mrs Ive was entitled to give the

Claimant directions and she could have a reasonable expectation that they would be obeyed / adhered to. The Claimant was not inclined to do that as she believed she knew better. She may have done – I don't know, but that is not the point. The Claimant was not entitled to act in the manner she did at the meeting on 12 March before other staff. It was embarrassing and disrespectful. It is clear from many of her abusive text messages that the Claimant was out of control and when she utilised her authority to tinker with systems which were necessary for the smooth running of the operation and she became a threat to the smooth running of the organisation. Whilst I do not accept that the interference was quite as extreme as Mrs Ive suggests In my view it was a perfectly reasonable step to take to remove the Claimant from processes, so that her capacity to damage the organisation was ameliorated. It would have been easier if she had have been officially suspended but removing her from the systems and restricting contact with employees was suspension in all but name and was in my view justified.

84. I have little doubt that Mrs Ive was at end of her tether and needed some breathing space. There had been issues in the past and there was still a possibility when the Claimant cooled down that an accommodation could be found. It may well be that Mrs Ive was contemplating dismissing the Claimant in the future because of her conduct, but I accept that both parties had agreed to have a conversation to try and resolve matters. It is hard to reflect what would have happened in that discussion but it was the Claimant who decided not to go ahead with it. I have no doubt that the Claimant resigned too early. At that point I do not accept that there had been a repudiatory breach but rather there was a temporary hiatus on the working relationship which was going to be discussed at a meeting.
85. Whilst I accept that the decisions Mrs Ive made were likely and did affect the Claimant's trust and confidence in the employer the steps she took were with reasonable and proper cause and so the Claimant was not constructively dismissed.
86. As the Claimant was not constructively dismissed there was no breach of contract and the notice pay claim must fail. As the claim was not constructively dismissed then there is no dismissal and the claim for automatically unfair dismissal must fail.
87. In any event if there was a dismissal then I do not consider that the principal reason for it was that protected disclosure. I accept the reasoning put forward by Mrs Ive in the letter at 148 and 149 and in particular ***“the action that was taken in relation to systems access was to safeguard the business and was due to concerns which would have been the subject of an internal investigation had you not resigned”***. There was no written evidence that Mrs Ive said to anybody that the Claimant was going to be / had been dismissed. I reject the suggestion that she had told Kim Walker.

88. The Unlawful deduction of wages claim succeeds by consent. For calculation purposes, I accept the submissions of the Respondent and calculate the wages as 11 days pay out of twenty-one for the October pay. That comes out at a gross sum of **£1,309.52** from which tax and national insurance will need to be deducted.
89. This an unfortunate case both from an employment and from a family perspective. I do not consider that either Ms Ive or the Claimant have been fully truthful in correspondence they have written or indeed the evidence they have given. For both, there is a tendency to manipulate facts to their own ends. I am clear however that the Claimant even if she was not constructively dismissed and even if she was the principal reason was not the single protected disclosure that I have found.

Employment Judge Self
Date: 30 November 2023

Reasons sent to the Parties:
1 December 2023

For the Tribunal Office