Case No: 3312523/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr P Hart

Respondent: (1) Porthaven Management Ltd
(2) Porthaven Care Homes No2 Ltd

Heard at: Reading **On:** 6, 7, 8, 9, 10, 13, 14, 20, 21, 22 November 2023

Before: Employment Judge Shastri-Hurst, Mr F Wright and Mrs A Brown

Representation
Claimant: in person
Respondent: Mr I McGlashan (solicitor)

RESERVED JUDGMENT

1. The claim against the first respondent is dismissed upon withdrawal;
2. The claimant's claim for detriments fails and is not well founded;
3. The claimants automatic unfair dismissal claim fails and is not well founded;
4. The claimant's claim of direct age discrimination fails and is not well founded;
5. The claimant's claim of harassment in relation to age fails and is not well founded;
6. The claimants claim of holiday pay fails and is not well founded.

REASONS

Introduction

1. The claimant commenced work for the respondent, an independent care home provider, on 12 October 2022. He was employed as Home Manager ("HM") of Bourne Wood Manor Care Home, Farnham ("the home"), and was line managed by Sue Astill ("SA"), Regional Director.

2. The home provides care for vulnerable adults, both those with dementia and those without. The home is constructed of two floors; the first floor ("Cedar") is for resident's without dementia, whereas the second floor ("Willow") houses those with dementia.

3. The claimant's contract of employment was terminated on 25 May 2021; the respondent dismissed him for gross misconduct. Prior to this, the claimant had entered his resignation on 3 March 2021; his notice period was due to expire in any event on 25 May 2021.

4. The ACAS early conciliation process started on 17 June 2021 and concluded on 21 June 2021. The claimant presented his claim to the tribunal on 28 June 2021.

5. This case has been the subject of three preliminary hearings:

   5.1. 1 April 2022, at which hearing the issues for the final hearing were set out by the Judge;
   5.2. 21 July 2022, at which hearing amendments were allowed to be made to the claims and list of issues;
   5.3. 25 July 2023, at which hearing further amendment applications were rejected.

6. Initially during this litigation there was a dispute about the identity of the claimant's employer. The claim was initially brought against Porthaven Management Ltd (the first respondent). The response submitted however identified that the correct name for the claimant's employer was Porthaven Care Homes No2 Ltd.

7. The claimant did not agree to this change initially, hence why there were two respondents to proceedings. When identifying the issues at the commencement of the final hearing, however, the claimant confirmed that he was content to accept that Porthaven Care Homes No2 Ltd was his employer.

8. For ease, we will refer to Porthaven Care Homes No2 Ltd as "the respondent" throughout this judgment.

9. The Tribunal heard evidence from the claimant in support of his claim, and from the following witnesses for the respondent:

   9.1. Mrs Sue Astill ("SA") – Regional Director;
   9.2. Ms Tania Clover ("TC") – Head of Dementia Care and Personalisation;
   9.3. Mrs Sarah Wollaston Spratt ("SWS") – Group Clinical Auditor;
   9.4. Ms Cheryl Williams ("CW") – Deputy Manager ("DM");

9.5. Ms Katarina Parr ("KP") – Director of Nursing and Quality;
9.6. Mr Lance Herbert ("LH") – Operations Director.

10. We had the benefit of a supplementary witness statement from SA part way through the hearing, when the Tribunal had ordered her to be recalled. Further detail is set out about this in our findings of fact below. Related to SA being recalled, we were also provided with a witness statement from John Storey ("JS"), Chief Executive.

11. We started this hearing with a bundle of 681 pages. During the hearing a few pages were added:

    11.1. At [530a] – email from SA to LH and JS, copied to Katie De Bruin ("KDB"), JS's on 13 May 2021; and,
    11.2. A screen shot of KDB's inbox, showing receipt of the email at [530a].

12. Mr McGlashan provided us with a chronology and cast list at the commencement of the hearing. At the conclusion of the hearing, he handed up written submissions and a timeline. The claimant provided us with written submissions, both for closing, and also in response to the two new statements filed and served from SA and JS. The Tribunal was assisted by all these documents, and places on record its thanks to the claimant and the respondent's representative for the professional and courteous manner in which they conducted this hearing.

Issues

13. The issues were set out and expanded upon at the preliminary hearings as set out above. They are reproduced below for ease of reference. It was explained to the parties at the commencement of the hearing that we would only be dealing with liability at this hearing (Issues 1, 3, 4, 6, 7, 9 below).

1. Unfair dismissal

1.1 Was the reason or principal reason for dismissal that the claimant made protected disclosures? If so, the claimant will be regarded as unfairly dismissed.

2. Remedy for unfair dismissal

2.1 Does the claimant wish to be reinstated to their previous employment?

2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

2.5 What should the terms of the re-engagement order be?

2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.6.1 What financial losses has the dismissal caused the claimant?

2.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

2.6.3 If not, for what period of loss should the claimant be compensated?

2.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.6.5 If so, should the claimant's compensation be reduced? By how much?

2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

2.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?

2.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

2.6.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?

2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

2.7 What basic award is payable to the claimant, if any?

2.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

3. Protected disclosure

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

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

3.1.1.1 Oral disclosure to Sue Astill on 2 November 2020 disclosing the poor quality of care in the home, the fact that residents were at risk and the fact that there was a lack of training for staff (s43B(1)(b)(d)(f);

3.1.1.2 Oral disclosure to Sue Astill on 16 November 2020 disclosing that staff files were incomplete and that mandatory information was missing (s43B(1)(b);

3.1.1.3 Oral disclosure to Sue Astill in early December 2020 disclosing that the result of a compliance audit had been falsified, that risk assessments had not been updated, that care was inadequate and that there was a lack of clinical leadership (s43B(1)(a)(d)(f);

3.1.1.4 Oral disclosure to Sue Astill during her visit to the home in December 2020 disclosing that incident reports were incomplete and that there was a lack of staff supervisions or appraisals (s43B(1)(b)(d);

3.1.1.5 11 January 2021 by written progress report and orally during a meeting with Sue Astill, disclosing information about the falsification of audit documents, inadequate standards of care, concerns about the Deputy Home Manager being complicit in care failings(s43B(1)(b)(d)(f);

3.1.1.6 Oral disclosure to Sue Astill in late January 2021 disclosing fraudulent activity by employee claiming pay for hours with no evidence that those hours had in fact been worked(s43B(1)(a)(f);

3.1.1.7 2 February 2021 during a meeting with Sue Astill disclosing concerns about inadequate care at the home, inadequate training and insufficient staff leadership, requesting a detailed review by the Director of Nursing and Group Clinical Auditor. (s43B(1)(b)(d)(e)(f)

3.1.1.8 On 5 February 2021 to Sue Astill during a meeting sharing concerns about inaccurate fluid, behaviour and weight charts together with assertions that the records were being fraudulently completed in advance and thereby falsified. Disclosing inadequate communication with the kitchen about dietary requirements, allergies etc(s43B(1)(b)(d)(f);

3.1.1.9 Orally on 25 February 2021 during a meeting with Sue Astill restating the disclosures already made and emphasising the fact that care plans had not been updated for 3 years and that this was therefore serious(s43B(1)(a)(b)(d)(f);

3.1.1.10 In written letter to Lance Herbert on 3 March 2021 reiterating disclosures already made and tendering his resignation(s43B(1)(b)(c)(d)(f);

3.1.1.11 On 15 March 2021by email to Sue Astill and Lance Herbert raising concerns about falsified audit scores(s43B(1)(a)(b)(d)(f)

3.1.1.12 (Added by order dated 21 July 2022) That the claimant on various dates including on 12, 17, and 22 March 2021 informed the respondent that there had been a failure to update and a failure to review the care plans of residents, a matter which could have serious and fundamental consequences to the care provided to residents. The claimant will say that these were allegations amounting to a breach of legal obligations arising from the Care Quality Commission Act 2010 (?) and Health and Social Care Act 2008.

3.1.1.13 (Added by order dated 21 July 2022) On 23 April 2021 the claimant informed the respondent by email that the claimant had been excluded from the attending meetings where he as registered manager of the home with the CQC should have been present. The claimant will say that this was an allegation

amounting to a breach of legal obligations arising from the Care Quality Commission Act 2010 (?) and Health and Social Care Act 2008.

3.1.2 Did he disclose information?

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

3.1.4 Was that belief reasonable?

3.1.5 Did she believe it tended to show that:

3.1.5.1 a criminal offence had been, was being or was likely to be committed;

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

3.1.5.3 a miscarriage of justice had occurred, was occurring or was likely to occur;

3.1.5.4 the health or safety of any individual had been, was being or was likely to be endangered;

3.1.5.5 the environment had been, was being or was likely to be damaged;

3.1.5.6 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

3.1.6 Was that belief reasonable?

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

4. Detriment (Employment Rights Act 1996 section 48)

4.1 Did the respondent do the following things:

4.1.1 Reinstating an RGN without consulting the claimant undermining the claimant's position and humiliating him;

4.1.2 Reinstating the Activity Assistant thereby undermining the claimant and doing so without consulting the claimant. This staff member had been a ringleader in the group of staff who had resisted the claimant's management actions;

4.1.3 Throwing chocolates at the claimant during a meeting on or about 21st December 2020;

4.1.4 On or about 11 January 2021 at a probationary review meeting Sue Astill became angry and intimidating in her behaviour. She excluded the claimant from relevant conversations with the Deputy Home Manager;

4.1.5 On a visit to the home on 5 February 2021 Sue Astill became aggressive and chose to support a disruptive member of staff;

4.1.6 On 25 February 2021 Sue Astill attempted to extend the claimant's probationary period when it had already concluded and tried to get the claimant to

sign a document during the meeting. The document contained unwarranted allegations against the claimant which were all subsequently dropped. The making of the allegations was detrimental treatment;

4.1.7 On 4 March Lance Herbert agreed to act on the claimant's concerns and investigate them and his allegations that he had been bullied and intimidated. Lance subsequently failed to act and carry out those investigations.

4.1.8 On 15 April 2021 the claimant was deliberately excluded from a meeting with the Area Quality Assurance Team so that he could not communicate with them and raise relevant concerns. As the registered manager the claimant should have been able to raise such concerns as he had regulatory responsibility;

4.1.9 The claimant was deliberately excluded from talking to the CQC inspector and attending a meeting with them. Again this undermined his position given the role he had as registered manager.

4.1.10 Following the claimant's email of 23 April Lance Herbert failed to act upon the claimant's email or look into the issues the claimant raised;

4.1.11 On 13 May 2021 the claimant was suspended and escorted from the premises;

4.1.12 The claimant was denied the opportunity to question witnesses;

4.1.13 The respondent failed to follow its own grievance and disciplinary procedures in relation to the claimant;

4.1.14 On 19 May 2021 the claimant was invited to a disciplinary meeting but was not provided with the relevant documents in a format which he could open and read;

4.1.15 The claimant was given insufficient time to prepare for the disciplinary hearing;

4.1.16 The respondent carried out the disciplinary hearing in the claimant's absence despite his request for a postponement due to ill health.

4.1.17 The respondent took the decision to dismiss the claimant during the meeting in the claimant's absence.

4.1.18 (Added by order dated 21 July 2022) The claimant was excluded from meetings which as the registered manager he should have been in attendance. (This is in fact the same allegation as 4.1.8 and 4.1.9 above)

4.1.19 (Added by order dated 21 July 2022) The claimant was excluded from an audit of the home, thereby leaving the claimant as the registered manager compromised by not being kept fully informed of matters relating to the home. (This is in fact the same allegation as 4.1.8 and 4.1.9 above)

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

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

5. Remedy for Protected Disclosure Detriment

5.1 What financial losses has the detrimental treatment caused the claimant?

5.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

5.3 If not, for what period of loss should the claimant be compensated?

5.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

5.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

5.6 Is it just and equitable to award the claimant other compensation?

5.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.8 Did the respondent or the claimant unreasonably fail to comply with it?

5.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

5.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

5.11 Was the protected disclosure made in good faith?

5.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

6. Direct age, discrimination (Equality Act 2010 section 13)

6.1 Did the respondent do the following things:

6.1.1 Sue Astill said to the claimant on 25 February 2021 "Perhaps at your age it would be better if you retired because you are not coping with the job."

6.2 Was that less favourable treatment?
The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The claimant says he was treated worse than a hypothetical younger comparator.

6.3 If so, was it because of age?

7. Harassment related to age (Equality Act 2010 section 26)

7.1 Did the respondent do the following things:

7.1.1 Sue Astill said to the claimant on 25 February 2021 "Perhaps at your age it would be better if you retired because you are not coping with the job."

7.2 If so, was that unwanted conduct?

7.3 Did it relate to age?

7.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

7.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

8. Remedy for discrimination or victimisation

8.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

8.2 What financial losses has the discrimination caused the claimant?

8.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

8.4 If not, for what period of loss should the claimant be compensated?

8.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

8.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

8.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

8.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.9 Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?

8.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

8.11 By what proportion, up to 25%? 8.12 Should interest be awarded? How much?

9. Holiday Pay (Working Time Regulations 1998)

9.1 What was the claimant's leave year?

9.2 How much of the leave year had passed when the claimant's employment ended?

9.3 How much leave had accrued for the year by that date?

9.4 How much paid leave had the claimant taken in the year?

9.5 Were any days carried over from previous holiday years?

9.6 How many days remain unpaid? 9.7 What is the relevant daily rate of pay?

Law

Automatic unfair dismissal

14. S103A ERA provides that:

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

15. A claim under s103A ERA will only succeed when a tribunal is satisfied that the principal reason for dismissal was a protected disclosure. "Principal" reason has been held to be the reason operating on the decision maker's mind at the time of dismissal, in other words, the primary reason – Abernethy v Mott, Hay and Anderson [1974] ICR 323. This is a question of fact, which requires the Tribunal to answer the question "*what consciously or unconsciously was the decision-maker's reason for dismissing?*". It is not enough for the protected disclosure to be a secondary, or indirect, reason for dismissal.

16. When a claimant relies upon several disclosures, the question for the Tribunal is whether, taken as a whole, the disclosures were the principal reason for dismissal – El-Megrisi v Azad University (IR) in Oxford EAT 0448/08.

17. In Kong v Gulf International Bank (UK) Ltd [2022] IRLR 854, it was held that where a dismissal is due to the manner of the disclosure, or some other fact about the disclosure, as opposed to the disclosure itself, then a claimant will not have been automatically unfairly dismissed. This has been referred to as "*the separability principle*". Simler LJ held that:

> "56...there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employer's computer system to demonstrate its validity."

Burden of proof

18. In the index case, the claimant does not have the requisite qualifying service of 2 years under s108 ERA to be able to bring an "ordinary" unfair dismissal claim under s98 ERA.

19. The legal burden of proof therefore rests with the claimant in this case to prove, on the balance of probabilities, that the reason for dismissal was protected disclosures – Smith v Hayle Town Council 1978 ICR 996 CA and Ross v Eddie Stobart Ltd EAT 0068/13.

20. In practice, this requires the employee to present some *prima facie* evidence (on first impressions) that he was dismissed for the prohibited reason (here whistleblowing). Once that is done, it is then for the employer to present to the Tribunal evidence to the contrary – Smith.

Inferences

21. In a case where there is no or limited direct evidence as to an employer's rationale for dismissal, the Tribunal may determine to draw inferences as to the real reason for dismissal.

22. In Kuzel v Roche Products Ltd [2008] EWCA Civ 380, Mummery LJ held that tribunals can draw "*reasonable inferences from primary facts established by the evidence or not contested in the evidence*". The Tribunal must be able to evidence that it has reached a conclusion as to the reason for dismissal on the balance of probabilities, and having considered all the evidence. It is not sufficient for the Tribunal simply to accept the alleged reason given by the employee just because there is no satisfactory explanation given by the employer.

23. A Tribunal may draw inferences in situations in which it is appropriate to do so, but there is no obligation to do so, unlike in discrimination cases, in which inference is specifically referred to within the legislation – s136 of the Equality Act 2010 ("EqA").

Reason for dismissal

24. The reason for dismissal is the *"set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee*" – Abernethy v mott, Hay and Anderson 1974 ICR 323 CA.

25. It is possible for the real reason for dismissal to be hidden from the decision-maker. The Supreme Court in Royal Mail Group Ltd v Jhuti 2020 ICR 731, SC held that:

> "if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."

26. In such a case, the Tribunal must look behind any invention, to see whether the hidden reason can be attributed to the employer.

Detriment

27. S47B(1) ERA provides that:

> 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.

28. A detriment has been held to exist "*if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment*" – Ministry of Defence v Jeremiah [1980] ICR 13. In other words, if the claimant has suffered a disadvantage compared to other employees (whether real or hypothetical), they will have suffered a detriment. Despite this, there is no strict need for a comparator in cases of detriment.

29. The causative test under a detriment claim is less strict than that for automatic unfair dismissal, in that a protected disclosure need only materially influence the decision-maker. This means that the protected disclosure must be more than a trivial influence – Fecitt and ors v NHS Manchester (Public Concern at Work intervening) [2012] ICR 372.

Burden of proof

30. The burden of proof is on the respondent to demonstrate the reason for its conduct – s48(2) ERA. The claimant must prove (on the balance of probabilities) that he made a protected disclosure, that he suffered a detriment, and that the detriment was inflicted by the respondent. At that point, the burden of proof moves to the respondent to demonstrate the reason for its behaviour, and must satisfy the Tribunal that the protected disclosure was "in no sense whatsoever" on the grounds of the protected disclosure – Fecitt. If the employer fails to discharge this burden of proof, the Tribunal may draw adverse inferences - Kuzel.

Protected disclosure

31. S43B ERA provides:

> (1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

32. There are therefore six "gateways" that can be used in making a qualifying disclosure.

33. The EAT recently held in Kealy v Westfield Community Development Association [2023] EAT 96 that:

> "There are two essential terms to consider in deciding whether there has been a protected disclosure. There must first be a "qualifying disclosure"

34. The term qualifying disclosure concerns the nature of the disclosure that is made. The qualifying disclosure must then become a "protected disclosure".

35. As to whether there has been a "qualifying disclosure", HHJ Auerbach provided guidance in Williams v Michelle Brown Am UKEAT/0044/19. There are five steps that need to be satisfied in order to find that a qualifying disclosure exists:

    35.1. Disclosure of information;
    35.2. The worker must have a belief in that the disclosure is in the public interest;
    35.3. If the worker has that belief, the belief must be reasonable;
    35.4. The worker must believe that the disclosure tends to show one of the matters in s43B(1)(a)-(f) ERA;
    35.5. If the worker has that belief, the belief must be reasonable.

Disclosure of information

36. A practical example of the difference between a disclosure of information, and an allegation, was set out in Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325. Placed in the context of a hospital ward, a disclosure of information would be "yesterday, sharps were left lying around", whereas an allegation would be "you are not complying with health and safety requirements". However, the disclosure should not simply be categorised into "disclosure of information" or "allegation". The key point is that a bare allegation, such as the example above, cannot amount to a disclosure of information. It is however possible for an allegation to contain sufficient information to be capable of tending to show a failure (or likely failure) to comply with a legal obligation (for example) – Kilraine v London Borough of Wandsworth 2018 ICR 1850 CA. There must be sufficient facts within a disclosure to be capable, in the reasonable belief of the employee, of tending to show one of the factors in s43B(1)(a)-(f) ERA.

37. The Employment Appeal Tribunal ("EAT") has now also clarified that communication of an expression of opinion is capable of constituting a disclosure of information – McDermott v Sellafield Ltd and ors 2023 EAT 60.

38. An enquiry, or request for information, as opposed to the supply of information, will not amount to a disclosure of information – Blitz v Vectone Group Holdings Ltd EAT 0253/10, Parsons v Airplus International Ltd EAT 0111/17.

Reasonable belief

39. The requirement that a disclosure tended to show, in the reasonable belief of an employee, one of the matters in s43B(1)(a)-(f) is both an objective and subjective test. It requires a tribunal to determine whether the claimant held the requisite belief and whether, if so, that belief was reasonable – Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) 2018 ICR 731 CA.

40. This test will require the Tribunal to look at all the circumstances of the case: someone with professional or insider knowledge will be held to a different standard than lay persons – Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4. For example, the CEO of a supermarket will be held to a different standard than an employee who stacks shelves in that supermarket. The reasonable belief test in relation to "tending to show" is a fairly low threshold but does require a claimant to have some evidential basis for her/his belief, as opposed to, say, unfounded suspicion. It is also not necessary for the belief to be correct, as long as it is reasonable in the circumstances in which the claimant finds themselves.

41. As put in Soh v Imperial College of Science, Technology and Medicine EAT 0350/14, there is a difference between "I believe X is true" and "I believe that this information tends to show that X is true". It is the latter, not the former, that is required here.

42. Regarding the requirement that the claimant had a reasonable belief that the disclosure was made in the public interest, it is important to bear in mind the purpose of making this addition to the legislation. Government added the need for reasonable belief that a disclosure is made in the public interest to avoid protection being received by employees raising private employment disputes (the effect of Parkins v Sodexho Ltd [2002] IRLR 109).

43. This again is a relatively low threshold. A list of factors for consideration as to whether it is reasonable to regard a disclosure as being in the public interest was provided by the Court of Appeal in Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731:

    43.1. The numbers in the group whose interests the disclosure serves;
    43.2. The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
    43.3. The nature of the wrongdoing disclosed; and,
    43.4. The identity of the alleged wrongdoer.

Breach of legal obligation – s43B(1)(b) ERA

44. The term "breach of legal obligation" has a fairly wide remit. It covers legal obligations set out in statute, secondary legislation and those deriving from common law. However, it will not encompass breach of internal policies, guidance or best practice, or breach of any moral codes – Eiger Securities LLP v Korshunova [2017] IRLR 115. There is no need for a claimant to give precise detail about the legal obligation in question, however there must be more than just a belief that something is wrong – Eiger Securities LLP v Korshunova [2017] ICR 561.

45. If on the facts the identity of the legal obligation in the original disclosure is obvious, then a claimant need do little to specify the obligation further – Bolton School v Evans [2006] IRLR 500. It will suffice that the employer understood from the disclosures that the claimant was suggesting that there was potential legal liability.

46. If, however, the legal obligation at play is not obvious, it will be necessary for a claimant to provide some detail so that the Tribunal is satisfied that the concern is not simply about guidelines or morals, but is in fact a legal concern.

47. Furthermore, more detail may be required at the stage of the Tribunal proceedings. The claimant, by that stage, will be expected to be able to set out what the infringed legal obligation was – Arjomand-Sissan v East Sussex Healthcare NHS Trust UKEAT/0122/17

Endangering of health and safety – s43B(1)(d) ERA

48. Under this gateway of s43B ERA, there is no obligation to identify a breach of health and safety requirements. It is sufficient that someone's health and safety is in fact, or is likely to be, endangered. This gateway is therefore wider than that at s43B(1)(b) ERA.

Method of disclosure

49. Ss43C-43H ERA set out how a disclosure must be made in order to be protected. In the circumstances of this case, the relevant section is s43C, which provides as follows:

> (1)A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —
>
> (a) to his employer, or
>
> (b) where the worker reasonably believes that the relevant failure relates solely or mainly to—
>
> (i) the conduct of a person other than his employer, or
>
> (ii) any other matter for which a person other than his employer has legal responsibility,
>
> to that other person.
>
> (2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

50. Although "employer" is not defined by this section, it is sensible to take the term to mean that the disclosure is made to someone senior to the employee, who has authority over that employee. It would be illogical for a disclosure to a junior employee (or someone of equal authority to the claimant) to class as a disclosure to an employer. The exception to this will be where that junior person is a designated person under the employer's whistleblowing policy. (IDS Employment Law Handbooks 4.13).

Direct age discrimination

51. Employees are protected from discrimination by s39 EqA:

> (2) An employer (A) must not discriminate against an employee of A's (B) -
> …
> (d) by subjecting B to any other detriment.

52. Direct discrimination is set out in s13 EqA:

> (1) a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

53. There are two parts of direct discrimination: (a) the less favourable treatment and (b) the reason for that treatment. Sometimes however it is difficult to separate these two issues so neatly. The Tribunal can decide what the reason for any treatment was first: if the reason is the protected characteristic, then it is likely that the claim will succeed – Shamoon v Constable of the Royal Ulster Constabulary [2003] UKHL 11.

"Because of": reason for less favourable treatment

54. In terms of the required link between the claimant's age and the less favourable treatment he alleges, the two must be " inextricably linked" - Jyske Finands A/S v Ligebehandlingsnaevnet acting on behalf of Huskic: ECLI:EU:C:2017:278.

55. The test is not the "but for" test, in other words it is not sufficient that, but for the protected characteristic, the treatment would not have occurred – James v Eastleigh Borough Council [1990] IRLR 288.

56. The correct approach is to determine whether the protected characteristic, here age, had a "significant influence" on the treatment – Nagarajan v London Regional Transport [1999] IRLR 572. The ultimate question to ask is "*what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?*" - Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48. This is a question of fact for the Tribunal to determine, and is a different question to the question of motivation, which is irrelevant.

57. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.

58. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic (in this case, age) was an effective cause of the treatment – O'Neill v Governors of ST Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372.

59. Although direct age discrimination is capable of justification, the respondent in this case did not raise justification as a defence. We therefore do not deal with that part of the law here.

Harassment in relation to age

60. The definition of harassment is set out at s26 EqA:

> (1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of –
> (i) Violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, mediating or offensive environment for B.
>
> …

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

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable to have had the effect.

Unwanted conduct

61. It is for the individual to set the parameters as to what they find acceptable, and what is unwanted: "it is for each person to define their own levels of acceptable" – Reed v Stedman [1999] IRLR 299, and more recently Smith v Ideal Shopping Direct Ltd UKEAT/0590/12.

Purpose or effect

62. S26 makes it clear that it is sufficient for the unwanted conduct to have the effect set out in s26(1)(b): it is not necessary for that to be the purpose of the alleged perpetrator. Harassment may still be made out where there is teasing, also called banter, without any malicious intent.

63. In terms of effect, the alleged perpetrator's motive is again irrelevant. The test is both subjective and objective. First, it is necessary to consider what the effect of the conduct was from the claimant's perspective (subjective element). If it is found that the claimant did suffer the necessary effect set out in s26(1)(b), the next stage is to consider whether it was reasonable for the claimant to feel that way.

64. Furthermore, it is not necessary for the conduct to be aimed directly at the claimant. A claim can succeed if it was reasonable for the claimant to feel that their environment had been made intimidating, hostile, degrading, humiliating or offensive, whether or not any language or conduct is specifically aimed at them.

Related to the protected characteristic

65. The causal link required for harassment is much broader than that for direct discrimination. The requirement is that the conduct must be related to the protected characteristic, in this case age. There is no protection from general bullying within the EqA; harassment will not be proven where someone is picked on or singled out, unless that treatment is related to a protected characteristic.

66. There is limited guidance from the appellate courts as to what is meant by "related to". Some guidance has been given by the Court of Appeal in the case of UNITE the Union v Nailard [2018] EWCA Civ 1203. The facts of this case were that the respondent had failed to deal with the claimant's sexual harassment complaint. The Employment Tribunal found that, because the failure related to a grievance regarding harassment, that was sufficient to find that the failure was itself an act of sexual harassment. The Court of Appeal found the Tribunal had got it wrong. The Tribunal had not made findings as to the thought processes of the individuals who failed to deal with the grievance; therefore, it could not be found that the failure itself was an act of sexual harassment. A finding would have to be made that those who failed to deal with

the grievance were guilty of sexual harassment. The Tribunal had, in effect, used the "but for" test; in other words, they found liability on the basis that, but for the grievance, there would have been no failure. This is not the correct legal test under section 26.

67. In Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, HHJ Auerbach reminded tribunals that the claimant's perception that conduct is related to a protected characteristic is relevant, albeit not determinative, of the issue. The Tribunal must:

> "articulate distinctly, and with sufficient clarity, what feature or features of the evidence or facts found have led it to the conclusion that the conduct is related to the characteristic as alleged".

68. It therefore follows that a claimant's understanding and a respondent's intention are not strictly relevant to the issue of causation. The context in which the alleged harassment occurs is a key factor in determining whether the conduct was related to the relevant protected characteristic – Warby v Wunda Group plc EAT 0434/11.

Burden of proof under the Equality Act 2010

69. The burden of proof for discrimination claims is set out in s136 EqA:

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

Holiday pay

70. Regulation 13 of the **Working Time Regulations 1998** ("WTR") provides that a worker is entitled to 4 weeks' leave ("basic leave").

71. Regulation 13A provides that a worker is entitled to an additional 1.6 weeks' leave ("additional leave").

72. Regulation 14 provides that a worker is entitled to be paid for holiday leave accrued but untaken at the time of termination of their employment.

Findings of fact

Commencement of employment

73. The claimant commenced work as HM of the home on 12 October 2020. He had, prior to this employment, 20 years' experience in managing care homes. Prior to that he had 25 years' experience of management generally.

74. The claimant was invited to interview for the role of HM, following being headhunted by James Rumfitt ("JR"), an external recruiter used by the respondent - [156]. He was informally interviewed by LH (Operations Manager) and JS (Chief Executive). SA, as regional director, would usually be at such an interview, but was on leave at the time.

75. Upon commencement of his role, the claimant was informed that he was to report to SA as his direct line manager. He was taken aback by this reporting line, given that he had not been interviewed by SA. He was only informed of her line management of him during his first week at work (this was not included in his letter of appointment). He informed us it was most unusual for a line manager not to be involved at the interview stage. He further told us that *"if I had met SA during that process, it is very likely that I wouldn't have taken the job - I found her very quickly autocratic and overbearing".*

76. The claimant was supported by CW as DM: she also held the role of Registered General Nurse ("RGN").

77. In the initial days of the claimant's employment, various members of the senior management support team visited to introduce themselves and their functions, including SA and TC. TC attended in order to introduce the claimant to the systems he needed to be able to access and navigate in order to perform his role. There was a factual dispute between the parties as to how much time TC spent with the claimant on this occasion. We find that TC spent 2 hours or so with the claimant, as TC told us. Although the claimant told us that it was more like 20 minutes, we accepted TC's evidence on this point. TC does such inductions routinely, and is familiar with the material, the content and the length of her inductions. We contrast this with the claimant, who was new to the home's particular systems, and did not absorb all the information TC gave to him (understandably so). We find that TC would have a more accurate recollection of the time she took with the claimant than the claimant's memory of this event.

78. The induction process was informal: we have seen no documentary evidence of what a standard HM induction includes. More to the point, we find that there was no meeting of minds as to what the expectations of the HM role were. We expand upon this further on in our judgment.

The claimant's role

79. There is a job description in the bundle for the role of HM, however we accept the claimant's evidence that he never received this. No-one from the

respondent positively asserted that the claimant had seen it, and we have no contemporaneous evidence to show it was sent to him.

80. The respondent's witnesses' understanding of the claimant's role was very much that he was ultimately responsible for the clinical care of the home's residents, as well as the regulatory requirements on the home. The claimant's lack of clinical knowledge was irrelevant, as the majority of the HM role could be done without the need for any specific clinical knowledge.

81. The claimant's view was that his role did not require him to have clinical knowledge, and therefore the clinical side of management he considered appropriate to delegate to CW, who had a much deeper level of clinical knowledge than him. It was the claimant's evidence that CW's role of DM was a supernumerary role, which attracted 16 hours of work a week. The remaining 24 hours of her working week was designated to her clinical role. However, the claimant allowed CW to do her full 40 hours supernumerary, following a request from CW, given her workload.

82. CW told us that her workload was so large as she was doing the role of DM as well as much of the role of HM. Here, we take note of the recent history of the home's management. In Spring 2020, the then HM left, and the then DM, Ileana Stan, stepped into the HM role. CW in turn was promoted to DM on 1 April 2020. Ms Stan left the home 3 months later, as the Covid-19 pandemic proved very stressful for her. SA joined the home in June 2020. From that time on, CW and SA ran the home together, until the claimant's appointment.

83. We find that the state of the home at the time of the claimant's appointment had suffered from the rapid turnover at management level, leading to a certain level of disruption. This led to a situation in which not all care plans were up to date, and not all accident/incident forms had been closed at the point of the claimant's arrival.

84. The fundamental problem, which was one of the main catalysts to the unrest between the claimant and the rest of the home's staff, was that the claimant and respondent never sat down to discuss the remit of the HM role. It seems to us that both sides had different expectations of the role, but that there was never any communication about this. Instead, criticism arose on each side, as each side considered that the other was not doing their job properly.

Regulatory reporting requirements

85. This is a highly regulated environment, in which the relationship with the Care Quality Commission ("CQC") was extremely important to the respondent. The respondent therefore had greater communication with the CQC than was strictly required under the applicable regulations: it is the respondent's policy to keep the CQC abreast of any important happenings within the home, regardless of the strict need to do so.

86. When an accident or incident occurs at the home, there are two reporting requirements to be made. First, the CQC need to be notified; there is an online form that needs to be completed and submitted to the CQC. Second, the local authority's safeguarding team need to be emailed.

87. If an accident or incident occurs between two or more residents, it is necessary for these reporting requirements to be completed in relation to each resident individually.

Care plans

88. We spent some time with SA understanding the mechanisms of the production and maintenance of care plans for residents.

89. When a prospective resident visits the home, a pre-admission assessment is done to ascertain the care needs of that individual, and whether the home can meet those needs. If the home is deemed suitable, then the pre-admission assessment is placed on the electronic system before the resident moves in. It is that assessment that allows the appropriate fee to be assessed.

90. This pre-admission assessment forms the first part of that resident's care plan. A care plan is not one document: it is broken down into sections and risk assessments depending on the individual needs of that resident. For example, there may be a section on personal care needs, mobility needs, nutritional needs, dementia needs and so on.

91. The respondent's policy is that care plans are reviewed monthly. There should be a "Resident of the Day" ("ROTD"), identified by the team on duty that day at the morning "Stand Up" meeting as the person whose care plan is to be reviewed that day. This did not in fact occur routinely at the home during the claimant's employment.

92. The resident's family can be as involved as they wish to be in the care of their relative. It is a matter for them as to how involved they are in the monthly reviews: this may also be dictated by whether the family have Legal Power of Attorney for the resident, for example.

93. As well as the routine monthly reviews, should a resident have an accident/incident that affects their care needs, their care plans will be reviewed at that time, to assess any changes to their care needs following the incident.

94. The review of care plans is done by the clinical team, whether that be a nurse, Team Leader or the DM. Ultimately, the HM has ownership of the reviews: in other words, the HM is expected to check whether care plans have been reviewed by the clinical team. The claimant accepted that the HM did have oversight of the care plans, but did not accept responsibility for inaccurate care plans that were in existence as at the commencement of his employment.

95. The fee for each resident is reviewed annually, around March/April each year. There is an annual increase across the board, but there may also be individual increases if there is or has been a change to the resident's care plan. For example, if the resident has become less mobile, it may be necessary for care, and therefore associated fees, to be increased. A further example would be if a resident goes from the non-dementia ground floor ("Cedar") to the dementia first floor ("Willow").

96. Fee increase letters are sent out to family members in March each year. If a family has any concerns about the fee increase, they will have a meeting with the Home Manager, Regional Director or Operations Director.

97. If a resident's care needs significantly change mid-way through the fee year, then it does not necessarily mean that there will be a fee increase at that point. There would be a discussion with the family and ultimately any fee increase is a decision for the Operations Director.

98. SA accepted that, during the claimant's employment, not all care plans had been reviewed monthly by the clinical team. For his part, the claimant accepted that checking whether the ROTD had been reviewed was technically a part of his role, however he told us (and we accept) that ROTD was only enforced towards the end of the claimant's employment.

End of 2020

Protected disclosure 3.1.1.1 – oral disclosure to SA on 2 November 2020 disclosing the poor quality of care in the home, the fact that residents were at risk and the fact that there was a lack of training for staff – s43B(1)(b)(d)(f) ERA

99. The claimant's evidence as to what he said on 2 November 2021 was that he discussed the following matters with SA:

    99.1. He talked about care plans not reflecting the care that residents needed;

99.2. He would have spoken about the lack of understanding of staff about delivering care;
99.3. He spoke of complaints about staff in meetings;
99.4. He discussed the paucity of staff training.

100. We have no written documentation to support the claimant's oral evidence, which included the claimant's frequent use of "I would have done x, y, z". Although the claimant told us he had made notes in his diary, we have not seen these, as the claimant told us (and we have no reason to doubt) that he was not permitted to take his diary with him at the point of his suspension.

101. We are not satisfied of the precise wording used by the claimant on 2 November. We accept that high level or headline concerns were raised with SA. However, given that we are not in a position to make specific findings about the precise words used in light of the claimant's vague evidence on this point, we are not satisfied that there was a disclosure of information on this occasion. The claimant told us that, at this stage in November 2020, he did not want to rock the boat. This adds to our finding that there was no disclosure of information on this occasion.

Protected disclosure 3.1.1.2 – oral disclosure to SA on 16 November 2020 disclosing that staff files were incomplete and that mandatory information was missing – s43B(1)(b) ERA

102. The claimant's evidence when asked what he said to SA on this occasion was that it was what was written in the list of issues: he was unable to be more specific. He was not able to inform us of the precise words he used on 16 November 2020.

103. The claimant was unable to remember SA's reply to his alleged disclosures, which casts some doubt on his recollection of this exchange as a whole.

104. Although the claimant told the Tribunal about concerns he held regarding staff and resident files, we are not satisfied that these were matters that were conveyed to SA with sufficient detail on this date to be disclosures of information. Again, at best these were high level concerns being raised. We have no corroborating contemporaneous evidence to support that any disclosure of information was made.

November 2020

105. On 26 November 2020, the claimant had cause to have a word with Monika Patel ("MP") (client services manager). This related to the amount of time she spent in the Head Chef (Will's) office, as opposed to at her own desk. On the day in question, MP was late in providing the claimant with information that he needed to complete a report for Head Office. The claimant said to her words to the effect of "you know the report has to be in by 1030, you need to go back to

the office and give me the information now". We find that the claimant was sharp in his language to MP, and that MP was upset by the manner in which the claimant talked to her. Her upset is recorded in her email of 1543hrs to the claimant at [182]:

> "Finally I would like to add that I was extremely disappointed in the way that you spoke to me this morning. I feel that you were impolite, and didn't show me respect as an individual and member of your staff team."

106. It was the claimant's evidence that the issue between him and MP was amicably resolved between the two of them. We note however the content of the email to MP from the claimant on 26 November 2020 at 1129hrs: "If you ever raise your voice to me as you did earlier I will consider it a disciplinary matter". Given the tone of this email, and MP's response cited above, we find that there was still some friction between the claimant and MP on 26 November 2020.

107. This finding that there was friction is compounded by the fact that MP reported this incident to Natasha Pocock ("NP"), Head of Sales and Marketing.

108. On 27 November, SA attended the home in order to discuss the matter with both protagonists - [184]. SA recorded that she was told by MP that the claimant had bullied her and acted disrespectfully towards her. Although the claimant disputed that this was the case, we accept that this is what MP told SA on 27 November, and that SA's summary at [184] is genuine and not exaggerated. We have no evidence to counter the content of [184]: the claimant was not party to the conversation between SA and MP and therefore cannot assist with the content of this conversation.

109. We find that SA's actions, as recorded in [184], were appropriate to the role of Regional Director. She, in short, went to the home to clear the air between the two individuals. There is no evidence to suggest that SA had any ulterior motive in attending the home.

Protected disclosure 3.1.1.3 – oral disclosure to SA in early December 2020 disclosing that the result of a compliance audit had been falsified, that risk assessments had not been updated, that care was inadequate and that there was a lack of clinical leadership – s43B(1)(a)(d)(f) ERA

110. The claimant's evidence on this disclosure was that he could not remember the words he had spoken to SA. We cannot therefore be satisfied as to the words that the claimant used: it therefore follows that we are not satisfied that there was a disclosure of information by the claimant on this day.

Protected disclosure 3.1.1.4 – oral disclosure to SA in early December 2020 disclosing that incident reports were incomplete and that there was a lack of staff supervisions and appraisals – s43B(1)(b)(d) ERA

111. The claimant told us that, in early December, he told SA that 140 accident and incident reports were incomplete going back to July 2020 and were so historical that members of staff were no longer working at the home and residents had passed away, so it was impossible to sign them off. Some reports were illegible as no-one had been monitoring them. The claimant also told us that he raised with SA that there was a lack of appraisals/supervision.

112. SA did not give evidence on this disclosure. We therefore accept that the claimant said these things as he told us.

113. We find that there was just about sufficient detail in the claimant's words to SA so as to show a disclosure of information. This is particularly given the fact that a specific number of reports were mentioned by the claimant; thus providing information and quantification of the problem.

Detriment 4.1.3 – throwing chocolates at the claimant during a meeting on or about 21 December 2020

114. It is the claimant's case that, on 21 December 2021, SA threw a chocolate at him and that this was because he had made protected disclosures.

115. We find that a chocolate was thrown by SA onto the claimant's desk, with her saying something along the lines of "shut up and have a sweetie". This was SA's account of the incident, which was corroborated by CW and by SWS's statement – [SWS/WS/11]. The claimant's evidence on this point we find was exaggerated: the claimant's allegation is that SA threw chocolates (plural); this allegation of chocolates being thrown is repeated in the bundle at [271] on 25 February 2021.

116. We find that the reason for SA's action in throwing a chocolate was simply in response to the conversation at the time, and in a mood of joviality.

117. On 24 December 2020, SA highlighted to the claimant but there were still approximately 70 unfinished accident/incident forms on the system dating back to 6 October 2020 – [190].

118. On 29 December 2020, the claimant sent an email to SA, in which he communicated that he found CW's leadership somewhat lacking - [194].

Detriment 4.1.1 – reinstating an RGN without consulting the claimant, undermining the claimant's position and humiliating him in December 2020

119. On or around 29 December 2020, Gwen Smith ("GS"), a nurse with the home, resigned in consequence of how the claimant had given her feedback at an interview for a promotion (GS's comments to SA are at [201]). Two days later, on 31 December 2020, SA met with GS and GS was persuaded to retract her resignation - [200].

120. The claimant alleges that, in persuading GS to retract her resignation without discussing the matter with him first, SA acted to undermine and humiliate him, because he had made protected disclosures.

121. We find that SA in fact did speak to the claimant prior to discussing the retraction with GS. We had SA's evidence on this point, which is corroborated by SA's email of 2 February 2021, in which she stated that she had done so – [557].

122. On 30 December 2020, the majority of the residents received their first covid jab - [196].

January 2021

123. Unfortunately, in January 2021, there was a Covid outbreak in the home.

124. At the beginning of the month, the claimant brought on board two new members of staff to assist the Administrator with resident and staff files.

125. On 4 January 2021, the CQC raised an anonymous whistleblowing complaint with the claimant – [211]. The claimant responded on the same day, copying in CW. CW forwarded the email to SA, who in turn forwarded it to LH:

125.1. In email conversation with LH, SA said at [214] "why on earth would he [the claimant] say they were unable to provide a safe level of care, why would he not say they utilise other departments, L&W, bus diver etc...";

125.2. LH responded "I hear your concerns on Paul and his style its clear the massage [sic] is not getting through to him. Please can I have all your notes of conversation's [sic] and your supervisions with Paul over the last few months"- [214].

126. it is therefore clear to us that as early as January 2021, LH was aware of, and held his own, concerns regarding the claimant's management of the home.

Protected disclosure 3.1.1.5 - 11 January 2021 by written progress report and orally during a meeting with SA, disclosing information about the falsification of audit documents, inadequate standards of care, concerns about the Deputy Home Manager being complicit in care failings – s43B(1)(b)(d)(f)

Detriment 4.1.4 – on or about 11 January 2021 at a probationary review meeting SA became angry and intimidating in her behaviour. She excluded the claimant from relevant conversations with the Deputy Home Manager.

127. On 10 January 2021, the claimant sent himself an email, as a reflection of his performance to date, in advance of a meeting with SA. He refers to this email as his written progress report – [216]. Within this email, the only statements that could potentially be disclosures of information are the following:

> "I was not prepared for just how far behind the home had fell [sic] in many basic requirements most noticeably in evidencing. The major issues I have not successfully addressed are in care mostly due to failings in leadership at all levels and a failure or reluctance to confront staff who are disruptive and unwilling to accept change".

128. On balance, we find that the wording of the claimant's written progress report is insufficient to equate to a disclosure of information. The concerns within the written progress report do not disclose sufficient detail for the respondent to be clear as to the factual issues the claimant was raising. The concerns raised are sweeping and too vague to amount to a disclosure of information.

129. As for the alleged oral disclosure on 11 January 2021, the claimant attended the supervision meeting with SA on this date. The notes of that meeting are at [550].

130. The claimant told us that he expanded on his written progress report in the meeting, saying that care plans were not reflective and audit results could not be true. We are not satisfied that the claimant did in fact say such things, for the following reasons:

130.1. The contemporaneous notes of the meeting at [550-551] do not reflect these concerns. We accept that these notes were made on or around the 11 January, shortly after the meeting and so are near-contemporaneous.
130.2. The context of the meeting is a progress meeting on the claimant's settling into work, and how he was getting on in his role. The alleged concerns do not easily fit within the context of such a meeting;
130.3. SA does not mention in WS that these comments were made by the claimant.

131. We therefore find, on balance, that no disclosure of information was made on 11 January, whether in writing or orally.

132. In terms of the alleged detriment on 11 January 2021, we are not satisfied that there was any anger or intimidation on the part of SA at this meeting.

133. We accept that this was not an easy meeting, and that there was disagreement and a difference of views. However, we are not satisfied that SA acted in the way described within Issue 4.1.4. There is no good contemporaneous evidence to demonstrate that SA became angry and intimidatory. We also take into account that, as a general observation, we find that SA and the claimant were able to have a disagreement as equals, as opposed to there being any obvious power imbalance, other than the hierarchy inflicted by their respective roles. We are not satisfied that the claimant was (or indeed could be) intimidated by SA.

134. On 25 January 2021, Kim Demianow ("KD"), a Team Leader, sent an email to SA [233] raising concerns she had about the claimant's management of staff. She stated that a letter was sent to Head Office with 18 signatories, expressing concerns ("the petition"), but that nothing had been done.

Protected disclosure 3.1.1.6 – oral disclosure to SA in late January 2021 disclosing fraudulent activity by employee claiming pay for hours with no evidence that those hours had in fact been worked – s43B(1)(a)(f)

135. The employee in question here was CW's fiancé, Steve Edwards, ("SE"). The relevant documentation within the bundle is the email chain at [185-187]. The way in which the timeline appears on the papers, the oral conversation between the claimant and SA around this issue must have taken place between 23 and 29 December 2020, not January 2021 as it appears in the List of Issues.

136. By way of background, employees had a fob to allow them to gain access to the home. The fob, as well as permitting access, also recorded staff hours, by acting as a "clocking in and out" mechanism. Should an employee forget their fob for any specific shift, there was a company policy in place as to how the employee would then be able to verify that they had performed the shift in question. The employee's line manager was required to complete a company form, verifying that the employee had worked the relevant shift. That form was then provided to payroll, who would manually input that shift in order to ensure the employee received the appropriate pay. Evidently, the sooner the line manager is requested to complete the form, the easier it is for the line manager to remember and verify the shift in question.

137. SE was under a temporary contract with the respondent at the relevant time, but did ad hoc work for it, particularly during the pandemic. He was in possession of a fob, but did not use it routinely.

138. In December, SE sought to claim back-pay for hours worked for around a 3 month period, as set out at [187]. The claimant told us that he was suspicious of SE, as to whether he had in fact worked the hours he retrospectively sought to charge for.

139. To the extent the claimant raised this with SA, we find that he said words to the effect that he was not sure whether SE had worked the days in question, that he could not prove it either way, and so the claimant authorized the payments. On his own evidence to us, the claimant did not say anything that indicated that SE had acted fraudulently, or even possibility fraudulently. The claimant himself stated that he was less than consistent with the fobbing process during his notice. He also did very little to look into the matter at the time: he told us that he did not ask CW or SE about this matter.

140. The words used by the claimant were equivocal at best, in that he conveyed that he was not sure whether SE had worked the relevant shifts. We are not satisfied that this is sufficient to amount to a disclosure of information.

February 2021

Detriment 4.1.2 – reinstating the Activity Assistant thereby undermining the claimant and doing so without consulting the claimant. This staff member had been a ring-leader in the group of staff who had resisted the claimant's management actions – around 1 February 2021

141. Around 1 February 2021, Tina Hill ("TH"), the Activity Assistant, tendered her resignation, due to feedback that the claimant had given her. This related to some "home truths" (in the words of the claimant), namely that the activity plan should be inclusive, including those of all abilities and cognitive levels, including those residents who were bed-bound. The claimant's view was that TH simply spent her time in the café with the handful of residents who were "cognitively aware".

142. This was the second time TH had tendered her resignation. On the first occasion, the claimant agreed that she could retract it. On this second occasion, it was SA who spoke to TH about retracting her resignation. The claimant told us that he too would have permitted TH to retract her resignation, but "it would have been on [his] terms".

143. We are satisfied that SA met with the claimant first before speaking to TH about retracting her resignation. SA then spoke to TH, then the three of them met together. This is the order of events as recounted in SA's email at [557], which is a near contemporaneous document, and therefore on balance is more likely than not to be accurate. There was no reason at that point in time for SA to give a false version of events.

144. We find that SA's motivation for seeking TH's retraction was in order to ensure that good employees remained within the home's staff team.

Protected disclosure 3.1.1.7 - 2 February 2021 during a meeting with SA disclosing concerns about inadequate care at the home, inadequate training and insufficient staff leadership, requesting a detailed review by the Director of Nursing and Group Clinical Auditor – s43B(1)(b)(d)(e)(f)

145. On 2 February 2021, SA held a meeting with the claimant. Her recollection of the meeting is at [557], although the claimant disputes that it represents an accurate reflection of the meeting. There is nothing in these meeting notes taken by the respondent that would amount to a disclosure of information by him – [557/558]. We turn then to consider the claimant's evidence to us. He told us that he told SA that staff left vulnerable dementia patients in the dining hall, and staff were gathered round the nursing station, which caused falls.

146. This is a conversation that focused on problems in the home, and problems he wished to raise. We find that his raising of issues with dementia care is corroborated by the notes on [558] "dementia floor poorly run" and further we note that SA commented on [556] that "you have shared your concerns around the care on the dementia suite." We accept that the claimant made the statements immediately above to SA on 2 February 2023, which we accept are disclosures of information.

Protected disclosure 3.1.1.8 – on 5 February 2021 to SA during a meeting sharing concerns about inaccurate fluid, behaviour and weight charts together with assertions that the records were being fraudulently completed in advance and thereby falsified. Disclosing inadequate communication with the kitchen about dietary requirements, allergies etc – s43B(1)(b)(d)(f)

Detriment 4.1.5 – on a visit to the home on 5 February 2021 SA became aggressive and chose to support a disruptive member of staff

147. In February 2021, SA asked CW to put into writing the concerns she had about the claimant. CW had raised concerns about the claimant to SA verbally, leading SA to making this request. CW's response, sent on the morning of 5 February 2021, is at [560].

148. On 5 February 2021, the claimant had a meeting with SA. SA covertly recorded this meeting because, by this stage, she felt that she and the claimant had a difficult working relationship. Her view was that the claimant was rude, hostile and disrespectful to her, so she felt the need to record the meeting.

149. We have the transcript of the recording at [251]: unfortunately, it is not complete. The meeting was one of two halves, there being a break in the middle. The recording of the second half has been lost by the respondent.

150. The bundle also contains SA's notes of the meeting that she made following the hearing - [562]. The claimant alleges that these notes are not representative of the meeting, and differ from the transcript, accusing SA of lying in her notes at [562]. We find that SA did not lie in her notes, nor did she deliberately mislead as to their contents. The supposed differences mainly stem from two facts:

150.1. The notes are more of a summary that reflected the meeting, as opposed to a full verbatim note; and,
150.2. The transcript is incomplete.

151. The two documents (transcript and notes) are complimentary, and can be read together. There is nothing in them that jars, or obviously stands out as inconsistent between them.

152. Following this meeting, the claimant sent to SA the email at [239], in which he said "I was very reassured following our frank discussion today".

153. In terms of the protected disclosure, we find that there was no disclosure of information as alleged in this meeting. The transcript of half the meeting does not match the claimant's allegation, and there is nothing in SA's notes that supports the making of a disclosure. The claimant, when asked what he said about this alleged disclosure to SA, could not recall. Other than to say, regarding dietary requirements, that he would have given SA the headlines. The use of "would have", and the fact that the claimant only mentions headlines does not satisfy us that he in fact disclosed any information to SA. Furthermore, we note that the claimant's purpose in talking to SA, he told us, was just to keep SA informed, and he was not requiring her to do anything. Again, this weakens the suggestion that the claimant made a protected disclosure in this meeting.

154. In terms of a detriment, the claimant's evidence to us was that he could not remember in what way SA was aggressive, or how she had chosen to support a disruptive member of staff. Furthermore, we note that there is nothing in the transcript of the recording of this meeting to demonstrate that SA was aggressive towards the claimant.

155. Following on from the petition, Katarina Parr ("KP"), Director of Nursing and Quality, had investigated the concerns raised in that document, and produced a report at [243]-[249]. She sent this report to SA on 12 February 2021 - [242].

156. KP interviewed numerous employees of the respondent, some of whom had signed the petition, some of whom had not. A clear picture emerged from that report, that there was a small group of staff, led by TH and KD who were attempting to mount a coup against senior management in the home.

157. Furthermore, KP recorded in this investigation that she had witnessed incidents giving rise to concern as to the lack of dementia care knowledge held by some staff. She also reported concerns about Team Leaders' attitude.

158. KP also recorded criticisms of the claimant within this investigation. For example, there is a common thread that the claimant was not visible, and staff did not really understand the remit of his role – [248]. KP made recommendations at [249] to improve matters in the home.

159. On 11 February 2021, an incident occurred between two residents of the home, GA and DM. GA was a resident who the claimant had assessed as being unsuitable to stay at the home due to his aggressive behaviour and his needs. However, despite these concerns, GA was given residency in the home.

160. The claimant reported the incident between the two residents to the local authority, as required, on 18 February 2021 – [574].

161. On 23 February 2021, SA held a meeting with the claimant to discuss the aftermath of the GA/DM incident. TC attended as note taker, and CW attended mid-way through the meeting. TC prepared the questions for this meeting in advance. She was asked to attend by SA.

162. TC's notes are at [575]: these were not shared with the claimant at the time, or at any time prior to disclosure in these proceedings. The claimant did not challenge TC on the content of these notes, other than in relation to the postscript on [579]. We found TC to be a credible, earnest witness, and accept that she will have taken her role as a neutral participant seriously: we accept that her notes are an accurate recollection of this meeting.

163. In this meeting, it became apparent that the claimant had not done the requisite CQC notification following the GA/DM incident – [576]. Initially, the claimant had said that he had investigated the GA/DM incident; this then changed to be that CW had done the investigation. Once CW joined the meeting, she stated that she had not done the investigation (we understand that she had been on annual leave at the time). When this was put to the claimant by SA, the claimant stated that there had not been an investigation "in that sense" - [576].

164. The lack of meeting of minds as to the claimant's remit came into sharp focus in this meeting. At one point, TC enquired of the claimant why concerns and changes in behaviour had not been picked up locally, clearly understanding this responsibility to ultimately rest with the claimant. The claimant's response was to say that his staff were "not doing the job" that there was "poor care" and a "poor culture". TC's notes state:

> "Paul stated that it was "hard to do" [to effect change] and also that his expertise was not clinical but in improving the financial position of the home".

165. At a latter point in this meeting there was a "heated exchange" between SA and the claimant, according to TC - [577].

166. The impression we get from the notes of this meeting is that:

166.1. The claimant had concerns about his team at the home. However, he was reluctant to start any disciplinary proceedings, or come down too strictly on the staff: he was still trying to win them over to his plan for the home, and he was still in the relatively early days of his management;

166.2. The relationship between the claimant and SA was a difficult one. The claimant did not wish to be line managed by SA, and saw any intervention or direction from her as a criticism or personal attack;

166.3. SA was attempting to manage the claimant and give him some managerial advice, but was meeting with resistance from him.

167. At the end of this meeting, various outcomes were recorded – [578]. One was that SA required the claimant to complete all necessary investigations and notifications to the safeguarding team (at the local authority) and the CQC by the end of the day.

168. The following day, SA chased the claimant to see whether he had completed these steps. He explained that he had contacted safeguarding, and CW "is working on the case and the detail now but has been interrupted to undertake an assessment for a possible admission" - [279]. In response, SA reiterated her requirement from the previous day's meeting.

169. At 1622hrs on 24 February 2021, CW emailed the local authority safeguarding team with the reports for both GA and DM. She states "as a follow up from the email that was sent by [the claimant] on 18.02.2021...", therefore

demonstrating that the two email communications were linked to the same case - [273].

Protected disclosure 3.1.1.9 – orally on 25 February 2021 during a meeting with SA restating the disclosures already made and emphasizing the fact that care plans had not been updated for 3 years and that this was therefore serious – s43B(1)(a)(b)(d)(f)

Detriment 4.1.6 – on 25 February 2021 SA attempted to extend the claimant's probationary period when it had already concluded and tried to get the claimant to sign a document during the meeting. The document contained unwarranted allegations against the claimant which were all subsequently dropped. The making of the allegations was detrimental treatment

170. On 25 February 2021, SA held a "meeting of concern" with the claimant. SA was initially confused as to the length of the claimant's probationary period. She understood that it was 6 months, whereas in fact it had been reduced in light of his experience to 3 months. SA opened the meeting of concern by informing the claimant that she was going to extend his probationary period from 6 months to 8 months. In the event this did not happen, as the claimant had passed his probation at the 3-month stage. The claimant now accepts that this was a genuine misunderstanding of his probationary period on SA's part.

171. The claimant was presented with the document at [585], which set out 10 points of concern identified "collectively [by] the management".

172. The reason for the meeting was that SA held genuine concerns about the claimant's conduct and performance. We accept (as did the claimant) that SA genuinely misunderstood the situation with his probationary period. Furthermore, we are satisfied that her reasoning for wishing to extend that period was related to his conduct and performance. We found SA to be a credible and straight-forward witness. We accept that she had genuine concerns around the claimant from what she had seen, and also from what she had been told by others, including CW and KP's report.

173. SA took it upon herself to covertly record this meeting as well, given her ongoing concerns about the claimant's conduct towards her, that he was rude, hostile and disrespectful. The transcript is at [270]-[272].

174. This meeting descended into the claimant refusing to engage with SA as his line manager, making accusations against her as follows - [270/271]:

174.1. "clearly over a prolonged period of time you have this campaign to discredit me";
174.2. "you don't like me at all, whenever I challenge you";
174.3. "I don't think you are a very good manager";
174.4. "I think your [sic] highly aggressive".

175. In terms of the alleged disclosure, we have the transcript of this meeting, and have listened to the recording. There is nothing that was said within this meeting that matches the allegation made at issue 3.1.1.9. In evidence, the claimant could not remember what he had said to SA about this alleged disclosure. We are therefore not satisfied that any disclosure of information was made.

176. Following this meeting, SA sent an email to the claimant, copying in LH as her line manager, putting on record the (in her opinion, unprofessional) manner in which she said the claimant conducted himself at their meeting – [282].

177. At this stage, we consider the nature of SA and the claimant's relationship, in light of the evidence we have seen and heard, culminating in the transcript of this meeting at [270]. We find that the relationship by this point was breaking down between the two: it was at this stage that the claimant became directly vocal to SA as to his views of her management and her treatment of him. The claimant at this stage refused to engage with SA, not recognizing her as his line manager. He told SA that he would stand down if that was what LH thought best: this is the first indication that the claimant was contemplating (or would contemplate) resignation.

178. We find that the catalyst in the issues in SA and the claimant's relationship was that he was not initially told that SA would be his line manager. Her appointment as his line manager took the claimant aback and, from that moment on, he was uncomfortable with his reporting line, preferring if possible to deal with LH. Another issue that caused tension between SA and the claimant was the mismatch in understanding as to the amount of responsibility the claimant was expected to take for the clinical side of the home: there was never a meeting of minds on this point.

179. In terms of SA's management of the claimant, we find that SA was not a bad manager (or not a "not very good manager"), but that she did find it difficult to manage the claimant. This was because he would not accept SA's authority over him: his view was that he knew the job, and could do it without interference, having done so for 20 years. He made it clear during his evidence to us that he considered he was more than capable of the HM job, stating repeatedly that it was a job he had done for 20 years.

180. From the evidence we have heard, it is clear that SA had the support, respect and loyalty of the home team. Although we accept that, at the beginning of the claimant's employment, there was an element of the "old" team not

wishing to adopt any changes from the new manager, this situation was exacerbated by the claimant's somewhat autocratic management style and evident dysfunctional relationship with SA. The staff perception was that the claimant was not as committed to the home, its residents and staff as was expected of a HM: whether or not this perception was accurate, we make no finding on. What we do find is that this perception was genuinely held by some staff members. This perception did not allow loyalty and respect to flourish between the staff and the claimant. The claimant was aware of the struggle to get the staff onboard with his vision.

Allegation of age discrimination/harassment 6.1.1 & 7.1.1 – SA said to the claimant on 25 February 2021 "perhaps at your age it would be better if you retired because you are not coping with the job"

181. It is the claimant's case that, at this meeting, SA said to him words to the effect of "perhaps at your age it would be better if you retired because you are not coping with the job". This is denied by SA. Due to this dispute of fact, we asked to hear the recording of the 25 February 2021 meeting. Whilst we accept that recordings are capable of being edited, we considered that it may be informative and relevant to our findings.

182. We note from the recording the following points:

182.1. The comment, or anything akin to it, does not appear in the recording of the meeting. The meeting ends with the claimant saying "...I'm going to leave it there, thank you" and SA saying "I will call Lance", at which point she swiftly turns off the recording - [271];
182.2. In the meeting, the claimant indicated that he would be willing to resign, saying "if [LH] feels that I'm not suited to this position then I'm quite happy to say to him that I will stand down" - [271].
182.3. There is nothing in the recording that alludes to the claimant's age;
182.4. The claimant was unable to remember exactly when in the meeting this comment was made. He thought it was towards the end of the meeting, and could have been after the recording was turned off.

183. We find that SA did not make this comment, for the following reasons:

183.1. It seems implausible that this comment would be made when it appears to be wholly unconnected to the content of the meeting;
183.2. SA would have no reason to suggest that the claimant leave, given he had already indicated that he may do so in any event;
183.3. Although it is possible that such a comment was made after the recording was turned off, it is clear from the last words of both parties that the claimant was in the act of leaving when the recording was

turned off. We find it unlikely that SA would say such a sentence in the wake of the claimant leaving;

183.4. It would not make sense for SA to have said this at any other point of this conversation: it would have been incongruous and entirely out of context;

183.5. As we have said, we recognize that recordings can be edited, however there is no evidence to support this contention by the claimant in this particular case. Listening to the recording, there is no obvious break for example, which could lead to a suspicion that the recording had been tampered with;

183.6. The claimant was not clear on his own evidence as to when in the conversation SA is said to have made this comment.

184. On 26 February 2021, a systems audit was run remotely by Sarah Wollaston-Spratt ("SWS"), Group Clinical Auditor - [299].

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March 2021

Protected disclosure 3.1.1.10 – in a written letter to LH on 3 March 2021 reiterating disclosures already made and tendering his resignation – s34B(1)(b)(c)(d)(f)

185. On 3 March 2021, the claimant sent to LH a long email, setting out his concerns and complaints. This email culminated in the claimant's resignation, with notice – [306]-[311].

186. There are three possible disclosures of information in this email:

186.1. [307] – "Most recently this was the [*sic*] evident where a hoist had been left in a corridor during an emergency and a resident fell ad sustained an injury…";

186.2. [308] – "As Christmas approached [KP] telephoned me and told me that there were 140 or so Accident/incident forms on the system…When I started to review the forms it became evident that a significant number were incorrectly completed in terms of the detail or often lack of it….care staff had no training nor were the forms reviewed";

186.3. [310] – "…there were over 140 accident/incident reports outstanding; … risk assessments out of date; staff members without an appraisal for over 2 years…".

187. In terms of the words at [307], we find that this is a disclosure of information: a clear example was given of a factual situation that had arisen in the home.

188. In relation to the words on [308], we are satisfied that there is a disclosure of information: the errors on the accident and incident form are clear from the claimant's words.

189. Regarding [310], this is a repeat of the allegations on [308], and is a disclosure of information in relation to the statement that 140 accident/incident forms were outstanding.

Detriment 4.1.7 – on 4 March 2023 LH agreed to act on the claimant's concerns and investigate them and his allegations that he had been bullied and intimidated. LH subsequently failed to act and carry out those investigations

190. The following day, on 4 March 2021, LH attended the home to speak to the claimant in light of his resignation. The claimant alleges that, despite agreeing to act on the claimant's concerns set out in his letter, LH instead did nothing to investigate those matters.

191. LH's note of the meeting is at [325]. LH told us that, during meetings, he scribbles notes in his notebook, then types them up either later that same day, or in the days following. We accept that this is what he did on this occasion, to produce the note at [325].

192. LH sent the claimant's resignation letter to SA in order for her to respond. She did so by writing her comments on a copy of the letter and emailing them to LH – [313] and [315]-[318]. SA later sent to LH further comments she wished to make in response to the claimant's letter – [319-320].

193. LH told us that, as well as sharing the claimant's concerns with SA and getting her feedback, he also spoke to other members of staff at the home. LH told us that he concluded from his various discussions that, first, SA was not a bully, and second, the staff had concerns about the claimant's management. Despite this, LH failed to report back to the claimant or give him any indication as to the steps he had taken or the conclusions he had drawn.

194. On 4 March 2021, SA also held a meeting with the claimant; again, she recorded this meeting – [322]. SA told the claimant that this was to be a follow up meeting to the 25 February 2021 meeting, however, due to the claimant resigning, he did not wish to discuss anything with SA. The claimant was adamant that he would only discuss matters with LH, and that he had been made to feel isolated, with a total lack of support.

195. On 8 March 2021, LH formally acknowledged the claimant's resignation, emailing him to say "[t]he notice period is 12 weeks taking you to the 25th May as your last working day" - [328].

196. Week commencing 15 March 2023, CW was off work for the week. As a result of this, SA emailed the claimant at 1004hrs on 15 March stating "[h]ope you had a good weekend, please let me know if you need anything as I know [CW] is off this week"- [362].

197. Later that day, SA sent the claimant an email, asking him to review an accident/incident report for resident BH, who had had an incident with another resident, JN – [373]. The claimant's position was that "[CW] has inadvertently missed this as the person I have delegated responsibility to for notifications" - [372]. There was a lengthy exchange between SA and the claimant on this matter: ultimately, SA told the claimant (copying in LH) that "[y]ou are the Registered Manager so it is your responsibility to ensure Regulatory compliance" - [370]. LH confirmed that accident/incident reporting and sign off is the responsibility of the HM – [370]. The claimant replied to LH, copying in SA and KP, to state that he had delegated responsibility to CW due to his work load - [369].

Protected disclosure 3.1.1.11 – on 15 March 2021 by email to SA and LH raising concerns about falsified audit scores – s43B(1)(a)(b)(d)(f)

198. It is the email at [369] that the claimant relies upon as being a protected disclosure. We find that there is a disclosure of information here, in the example the claimant gave of the resident who scored 15 on admission, "that remained the case until I reviewed the assessment against RFAT to discover the current score is 32". This statement is a clear factual example of a care plan not being updated since the arrival of a resident, and that care plan being presently inaccurate.

Protected disclosure 3.1.1.12 – that the claimant on various dates on 12, 17 and 22 March 2021 informed the respondent that there had been a failure to update and a failure to review the care plans of residents, a matter which could have serious and fundamental consequences to the care provided to residents – s43B(1)(b)

199. Regarding the alleged disclosure on 12 March 2021, the claimant confirmed that he had been referring to the document at [346]. However, on giving his evidence to the Tribunal, he confirmed that he did not in fact seek to rely on this as a protected disclosure.

200. In relation to 17 March 2021, this is the email at [380]. We are satisfied that this email contains a disclosure of information, namely:

> "it does endorse my concerns around just how poor and out of date our care plans are… and how we can possibly be providing quality care with the working documentation".

201. There is a factual allegation that care plans are out of date: this is sufficient in our findings to amount to a disclosure of information.

202. In terms of the alleged disclosure made on 22 March 2021, this is at [391]. We are not satisfied that this is a disclosure of information. This email provided an update to SA, which commenced with "no, not really Sue" in response to her enquiry as to whether there was anything of which she needed to be aware before she went on annual leave – [591]. Furthermore, this email contains only allegations, for example:

> "The meetings I have had with family all highlight a systemic failure in our care particularly in respect to communication so there is a lot for the team to reflect on".

203. These allegations do not disclose in what way there are failures, or what the problems are deemed to be with communication. We therefore find that there is no disclosure of information here.

204. On 31 March 2021, SA sent the claimant an email, querying why she had not been informed that there had been a police visit to the home on 21 March 2021, and a follow up on 23 March 2021 – [592]. We do not have a reply from the claimant to this email in the bundle.

205. The claimant's evidence on this, which was unchallenged, was as follows:

205.1. He had never seen the email from SA of 31 March 2021. He did not deny that it was sent, but could not recall it at all;
205.2. Having looked retrospectively at the safeguarding report for the incident on 21 March, it occurred in the evening of 21 March 2021, after the claimant had finished work and left the home;
205.3. Looking at the safeguarding report, the claimant said that there was no record of the police actually attending. There was also no reference number, which the police usually give to the home if there is a need for them to attend;
205.4. On 22 March 2021, no-one reported a police incident or visit to him, and therefore he was unaware of any such matter;
205.5. From 23 March 2021, the claimant was on holiday, and so would not have been aware of any return visit from the police on that day.

206. In light of these facts, we find that the claimant was not at fault for failing to inform SA of a police visit: he was not aware of those events himself.

Detriment 4.1.9 (and 4.1.18/4.1.19) – the claimant was deliberately excluded from talking to the CQC inspector and attending a meeting with them. Again this undermined his position given the role he had as registered manager – 13 April 2021

207. A CQC inspection took place on 13 April 2021. Although we have not been taken to it, we note that the CQC report following this visit is at [451]; this confirms the date of the CQC visit.

208. The claimant had unfortunately been ill with suspected norovirus on 12 April 2021, but had planned to return to work on 13 April. He was instructed by LH to take 48 hours "to assess" before coming back to work, in line with guidance – [439].

209. It is the claimant's case that he was deliberately kept away from work for the CQC inspection, because he had made protected disclosures.

210. Factually, we accept that the claimant was told not to attend the home on 13 April. However, given that the claimant had suspected norovirus, and he worked in a home of vulnerable residents, we find that the instruction from LH was reasonable. Further, we are satisfied that LH's instruction was given in order to protect the residents and staff at the home, and to follow accepted guidance.

Detriment 4.1.8 (and 4.1.18/4.1.19) – on 15 April 2021 [in fact 20 April 2021] the claimant was deliberately excluded from a meeting with the Area Quality Assurance Team so that he could not communicate with them and raise relevant concerns. As the registered manager the claimant should have been able to raised such concerns as he had regulatory responsibility

211. The claimant had arranged with Sunita Loi-Solanki ("SLS"), Area Quality Assurance Manager from Surrey County Council, that SLS would attend for a Quality Assurance visit. This visit took place on 20 April 2021, and SLS provided her summary notes of her visit on 4 May 2021 – [513].

212. The claimant alleges that he was deliberately excluded from SLS's visit, and that the reason for this exclusion was his protected disclosures.

213. We find as a fact that he was not excluded from the meeting. On his own evidence, he went to the meeting room and saw through the window that the meeting had started. There was nothing to stop him going into that meeting; he was not prevented or prohibited from going in. All that had in fact happened is that the meeting had commenced without him: that in itself cannot be said to be a detriment, when it was perfectly possible for him to join the meeting late, and catch up.

214. The claimant's evidence on this was that he was excluded from the meeting as SA and CW were concerned that he would raise issues with AQAT. This does not make sense to us, given that there was nothing stopping him from walking into the room and raising any issues. Therefore, we find the claimant's reasoning to be implausible. We are satisfied that CW and SA did not exclude the claimant.

215. The claimant further complains about being left off the email from SLS containing her notes of her AQAT visit on 20 April 2021 – [513]. It is the claimant's suggestion that SLS would not have done this unless she was told to leave him off by one of the staff team. However, he accepted that there was no evidence of this. We find that this is a baseless assertion. We note that, by the time this email was sent on 4 May 2021, the claimant was nearing the end of his notice period, and CW was getting ready to take over the role of HM. Although factually the claimant was excluded from this email, there is no evidence that this exclusion was caused by SA or CW. We find, on the evidence before us, that SLS decided who the recipients of the email would be, and chose SA and CW as these were the two individuals she had met with during her visit, and CW was soon to be the HM.

Protected disclosure 3.1.1.13 – on 23 April 2021 the claimant informed the respondent by email that the claimant had been excluded from attending meetings where he as registered manager of the home with the CQC should have been present – s43B(1)(b)

Detriment 4.1.10 – following the claimant's email of 23 April 2021 LH failed to act upon the claimant's email or look into the issues the claimant raised

216. On 23 April 2021, the claimant emailed LH to inform him that he felt "bullied and intimidated" - [488]. A clearer copy of that email is attached to the claimant's witness statement at Appendix B.

217. This email was followed by the email on [486] in which further information was given. There is a disclosure of information here in that the claimant was excluded from a CQC meeting and was registered manager at the time.

218. The claimant alleges that LH took no action on the back of this email, and that the lack of action was because the claimant had made protected disclosures.

219. In the bundle, there is an email reply from LH three minutes after the claimant's initial email, stating "your concerns have been noted. I intend to visit on Monday afternoon to discuss" - [487]. The claimant responded to say that he considered any visit by LH to be "pointless...it is just going through the motions as you have no intention of righting the injustices" - [486].

220. Despite this, LH did attend the home and met with the claimant. The claimant's evidence was that LH listened to him, then disappeared. LH's evidence on this was that he "would have" reported back to the Senior Management Team ("SMT") about this meeting with the claimant and the claimant's concerns about SA. LH also told us that there was no evidence that SA was a bully. LH's evidence to us was that his view at this stage was that the claimant was not in control of the home and that staff felt unsupported and intimidated by him.

221. We find that LH formed a view of the current situation between staff at the home, which was informed by his own view of SA. He may have spoken anecdotally to other members of staff and the SMT, but no formal investigation was done into whether SA was bullying the claimant.

222. We find that LH did not go back to the claimant to inform him of any investigation he had done into his complaint that he was being bullied.

223. On 29 April 2021, the claimant sent an email notification to Jane Mills, CQC inspector ("JM") at the CQC in relation to three residents, KD, PB and RJ – [495].

224. SA responded to this email, copying in LH querying "why have you sent a misleading email to the CQC Inspector" - [495]. The email conversation descended into allegation and counter-allegation, during which LH also became involved, again making allegations which the claimant countered. We make no findings on this chain of emails, other than to find that the working relationships between the claimant, and SA and LH had clearly broken down, or were in the process of breaking down.

Detriment 4.1.11 – on 13 May 2021 the claimant was suspended and escorted from the premises

225. LH took the decision to suspend the claimant on 13 May 2021. The suspension letter is at [531], and reports that the suspension is "pending further investigation into an allegation of a grievance against" the claimant.

226. The claimant alleges that the decision to suspend was because of his protected disclosures.

227. The grievance cited in the suspension letter did not appear in the bundle (initially), and no grievance was mentioned in any of the respondent's witness statements. When LH gave evidence, the Tribunal asked him if he could remember any facts about the grievance: the answer was "no". In fact, LH was not even able to tell us who had made the grievance. All he could remember was that it had been sent to Head Office.

228. Given the complete gap in the evidence on this point, and the fact that the grievance is not referenced in any of the documentation that flows from this suspension, we asked Mr McGlashan whether the grievance may be unearthed. He informed us that he had asked for it, but the respondent had been unable to locate it. This occurred on the afternoon of Day 6. On the morning of Day 7, Mr McGlashan was able to produce to us the grievance, which we added into the bundle at [530a].

229. The grievance was sent by SA to LH and JS, copying in LH's office manager, KDB. We have seen a screenshot of KDB's inbox that demonstrates that this email was received on 13 May 2021.

230. We found it wholly unsatisfactory that (a) this document had not been disclosed in line with the respondent's duty of disclosure as being clearly relevant to proceedings, and (b) there is no mention of it in anyone's statement, not least SA's. We considered it only fair that SA had the opportunity to explain to us why there was this glaring omission from her statement, and decided to recall her via CVP on the morning of Day 8.

231. On the morning of Day 8, we were presented with a supplementary statement from SA and a statement from JS, along with a few accompanying emails that in fact already appear in the bundle. The claimant did not object to the inclusion of these documents, provided we accepted the two documents he had provided in response. These documents were more like submissions and were admitted.

232. In terms of JS's evidence, we cannot give it as much weight as we would do if he was to attend to give evidence. However, his evidence does plug the gap as to why the claimant was suspended on 13 May 2023. The Tribunal had been struggling to understand what triggered the suspension. On either parties' case the trigger was not clear. Taking the claimant's case, given that the only two protected disclosures we have found were in December 2020 and February 2021, it is not plausible that these would lead to suspension several months later: if, as the claimant says, this was a sham process, the respondent could have made up the sham earlier. However, from the respondent's side, we had no good explanation as to what the trigger was for this suspension either.

233. JS's evidence of a conversation between him and SA towards the beginning of May 2021, in which she complained about the claimant's conduct towards her is supported by SA's supplementary statement. We accept the evidence that JS spoke to SA towards the beginning of May 2021, and was surprised to discover the extent of her upset regarding the claimant's treatment of her. JS asked to think about what she had told him, and to call her back. We accept this evidence (there is nothing to contradict it). JS called back SA having taken time to consider the situation, and felt that it was important that staff of the home understood that conduct such as was alleged was not acceptable. On that basis, JS told SA to put in a grievance about the claimant so that the situation could be investigated. SA then raised the grievance at [530a] on the back of this guidance from JS, following which the claimant was suspended.

234. We accept the evidence from JS as to the series of events leading to the claimant's suspension. JS's evidence is the missing link that had been absent, and fills in the factual void that had been before the Tribunal regarding the timing of the claimant's suspension. We find that this evidence provides support for the argument that LH's decision to suspend was genuinely in response to SA's grievance. Had JS or SA been looking for a reason to get rid of the claimant, then there would have been no need for JS to take time to mull over the situation.

235. We therefore find that the reason why the claimant was suspended was because SA had raised a grievance.

236. We note that there is a factual dispute as to whether JS had a telephone conversation with the claimant at the beginning of May 2021. JS was not here to be cross-examined on this and we make no finding as to whether a telephone call took place or not. We find that the email exchange between JS and the claimant on 5 May 2021 was sufficiently heated that this exchange alone could have led to JS ringing SA as he describes in his witness statement.

Investigation process

237. Returning to the grievance at [530a], there is no detail within that grievance. KP, as investigating officer, did not follow the expected standard process of interviewing SA to understand the facts behind her allegations. Nor did KP in fact interview anyone, not even the claimant.

238. KP's sole role in the investigation process appears to have been to request and collate written evidence from staff members as follows:

238.1. 18 May 2021 – email from CW in response to a request from KP - [540];

238.2. 18 May 2021 – email from CW in response to a request from KP - [541];

238.3. 19 May 2021 – email from SA attaching various emails in which she alleges she provided the claimant with support, and was checking whether certain actions had been taken – [542];

238.4. 19 May 2021 – email from SA with a statement attached - [543/544];

238.5. 19 May 2021 – "statement relating to behaviour of Manager Paul Hart" by TC – [545].

239. We find that KP approached key members of staff to ask them to record their concerns about the claimant. This was a fishing exercise, not a focused investigation, with the aim of finding evidence to support SA's broad allegations.

240. There is no grievance report from the investigating officer as we would expect to see; no communication between KP and LH demonstrating what her findings were following any investigation.

241. We find that there has been a wholly unsatisfactory conflation of the grievance process and the disciplinary process. We consider that the respondent started a grievance investigation in suspending the claimant on 13 May 2021. That process should have been fully concluded, resulting in recommendations of any further action. Such recommendations could have included disciplinary action against the claimant, which would then trigger the commencement of the entirely separate disciplinary process.

242. On 18 May 2021, KP received a memorandum from Sean Kime ("SK"), Commercial Director – [536]. This memo explained that, as the claimant had resigned, SK instructed the IT department to place a "litigation hold" on the claimant's email. This means that the claimant would be unable to permanently delete emails from his work inbox. Following the claimant's suspension, LH requested access to his (the claimant's) email inbox, which is standard procedure to ensure that no work is missed during an employee's suspension. The mailbox was empty. The finding of an investigation that followed this discovery was that the claimant had deleted 5764 emails.

243. The claimant told us that he had not deleted anything of import; he was simply undertaking a housekeeping exercise for the incoming HM. Indeed, this was confirmed by LH; however LH's view was that the emails had to be retrieved in order for the respondent to be satisfied that nothing important had been deleted. LH accepted that, on retrieval of the email, nothing of importance had in fact been deleted.

244. On 19 May 2021 at 2011 hrs, the claimant was invited to a disciplinary meeting scheduled for 21 May 2021, therefore giving the claimant only one full

working day's notice of this meeting, which he was informed could lead to his dismissal.

245. That email said that it attached the invitation letter and 12 pieces of evidence. However, when we look at the invitation letter, only ten documents are mentioned:

245.1. Statement dated 19 May 2021 by SA – [544];
245.2. Notes of meeting of 23 February 2021 between the claimant, SA, CW and TC – [757];
245.3. Email of 3 May 2021 from Ian Loader, a relative of a resident, raising concerns about the claimant – [593];
245.4. Emailed statement from CW dated 18 May 2021 – [540];
245.5. Emailed statement from TC dated 19 May 2021 – [545];
245.6. Email of 31 March 2021 from SA, in which she accuses the claimant of not informing her of a police attendance – [592];
245.7. Email of 15 March 2021 from SA regarding the claimant's alleged lack of regulatory response – [587];
245.8. Emails dated 10 and 11 March 2021 from SA regarding a scabies outbreak in the home – [336/339] – (counting these are two documents);
245.9. Email from SK of 3 May 2021 – [536].

246. It is therefore unclear to the Tribunal exactly what documents were sent to the claimant, and what documents were part of the investigation process. We can see in the bundle that there are documents with manuscript numbers written on them: for example, [550] is numbered "1, 1-2", which we understand to mean the first document of a pack, that document having two pages. From [550] to [593], there are documents numbered 1 to 13: we find that these documents were collated and numbered by the respondent, for what purpose it is not clear to us.

247. In response to the invitation, the claimant replied at 2158 hrs on 19 May, stating that he would attend a meeting once his grievance against SA (in the email dated 3 March 2021 to LH) had been resolved. KP told him in response that that grievance had been investigated, discussed with the claimant and concluded – [596]. We have set out our findings in relation to LH's approach to this complaint above, and concluded that LH did not report back to the claimant. The claimant replied to KP, setting out his dissatisfaction with both her response, and the very short notice of the disciplinary hearing – [595]. The email conversation between KP and the claimant went on into 20 May 2021, we do not seek to repeat it here. A point of note arising from this exchange is that the disciplinary hearing was postponed until 25 May 2021, in order to give the claimant more time to prepare – [605].

248. The claimant was unable to open all of the attachments sent with the invitation email. As such, he requested that a hard copy be posted to him. His evidence was that he never received anything through the post, and so did not have a complete copy of the documentation sent by the respondent in advance of the disciplinary meeting.

249. We find that the respondent did not post the documents to the claimant as he requested. KP told us that the documentation "would have" been sent by recorded delivery. Despite knowing that there was a dispute between the parties as to whether the claimant received the documents via post, we have no evidence in the bundle to support KP's evidence. We therefore find that the claimant was not sent the documents by post. In that respect he did suffer a detriment. We find that, by this stage in the chronology, the respondent knew the claimant was leaving in any event, had formed the view that he was no good at his job and was a disruptive force, and therefore the respondent was not particularly concerned about following due process. Further, we find that the respondent was not being careful in the manner in which they conducted this disciplinary process, given that it was aware that the claimant did not have two years' service.

Complaints raised in relation to the claimant

250. We consider it of relevance to note that, during the course of his employment with the respondent, and prior to the disciplinary process in May 2021, the claimant was the subject of numerous complaints/concerns from his colleagues. A non-exhaustive list follows:

250.1. 26 November 2020 – SA reported that MP had raised concerns with NP – [184];
250.2. 4 January 2021 – GS raised concerns to SA - [201];
250.3. 4 January 2021 – LH acknowledged SA's concerns - [214];
250.4. 25 January 2021 – KD raised concerns to SA – [233];
250.5. 5 February 2021 – CW recorded in writing concerns she had previously raised verbally to SA – [560];
250.6. 24 February 2021 – CW raised concerns with SA, copying in TC – [269];
250.7. 25 February 2021 – SA addressed concerns with the claimant – [585];
250.8. Sometime after 1 April 2021, SA sent a memo to LH with a chronology of issues she had had with the claimant - [406]. The provenance of this document is unclear to us: SA told us that LH asked her for her notes on the claimant;
250.9. 7 April 2021 – CW raised concerns with LH – [419];
250.10. 3 May 2021 – Ian Loader (family of resident) raised concerns with SA – [593].

Disciplinary hearing

251. On the morning of 25 May 2021, at 0717 hrs, the claimant sent KP a text message saying "I am not well enough to attend today" – [613]. We note that the text is timed at 0817 hrs, however KP and the claimant refer to it being sent at 0717 hrs and 0715 hrs respectively – [614], [616].

252. Despite this, LH determined to go ahead with the disciplinary hearing on 25 May 2021. The notes of the meeting are at [614]. In the meeting, it was

determined that the claimant should be dismissed for gross misconduct with immediate effect. The claimant was informed of the outcome by letter of 25 May 2021 – [615].

253. In terms of the claimant's failure to attend, we find that he did not attend due to ill health. LH in the outcome letter stated "you failed to attend" – [615]. The reason (or the respondent's belief as to the reason) for this absence is not recorded.

254. On 26 May 2021, the claimant wrote to JS to complain about the disciplinary hearing going ahead in his absence. The claimant did not appeal the decision to dismiss: his understanding was that, because his notice period following his resignation had expired on 25 May 2021, "any contractual processes do not apply" – [616]. JS replied to inform the claimant that he was able to appeal still – [617]. On 2 June 2021, the claimant responded, again reiterating that he did not believe that the disciplinary policy applied post-notice period. As such the claimant simply said that "I am prepared to meet with you informally to review the case, however if I do not hear from you within 5 working days from the date of this letter I will assume that you do not wish to consider this offer to broker a solution and that your position remains unchanged and the matter is not up for further discussion" – [618]. No meeting in fact then took place between the parties.

Detriment 4.1.12 – the claimant was denied the opportunity to question witnesses

Detriment 4.1.13 – the respondent failed to follow its own grievance and disciplinary procedures in relation to the claimant

Detriment 4.1.14 – On 19 May 2021 the claimant was invited to a disciplinary meeting but was not provided with the relevant documents in a format which he could open and read

Detriment 4.1.15 – the claimant as given insufficient time to prepare for the disciplinary hearing

Detriment 4.1.16 – the respondent carried out the disciplinary hearing in the claimant's absence despite his request for a postponement due to ill health.

Detriment 4.1.17 – the respondent took the decision to dismiss the claimant during the meeting in the claimant's absence

255. As we have held above, the disciplinary process was wholly unfair, and had the respondent been facing a claim of ordinary unfair dismissal, the respondent would have been in severe difficulties in satisfying us as to the fairness of the claimant's dismissal, at least procedurally. Specifically, but not exhaustively, we note the following:

255.1. The claimant was suspended in order that the respondent could investigate a grievance. However, what followed was a merger of an incomplete grievance process and poorly investigated disciplinary process;

255.1.1. No grievance report was produced by KP;
255.1.2. The claimant was not invited to a grievance meeting;
255.1.3. Even if this was, as KP suggests, in fact wholly to be dealt with under the disciplinary procedure, still the claimant was not invited to an investigation meeting of any description;
255.1.4. KP's approach was not impartial. She told us that her already acquired knowledge of the claimant and other staff informed her findings. As such, she was not independent.
255.1.5. KP's investigation was a fishing exercise;
255.1.6. LH told us that, in reaching his decision on disciplinary action, also took account of his own acquired knowledge of the claimant, and so he could not be independent;
255.1.7. A fifth allegation was added to the disciplinary invitation letter at [548], namely "deliberate and willful attempted destruction of Porthaven records". The claimant was given no opportunity to respond to that allegation prior to the disciplinary hearing;
255.1.8. The disciplinary meeting was not postponed upon the claimant informing LH that he was ill on the morning of the hearing, despite it being the first scheduled date for the meeting;
255.1.9. The claimant was not given sufficient time to respond to the allegations, given that he could not access the electronic version of the papers, and did not receive the posted version;
255.1.10. The investigation and disciplinary process are perfunctory, and do not make clear the rationale behind the respondent's decision to dismiss the claimant.

256. With that general analysis set out, we return to the detriments at 4.1.12 to 4.1.17.

257. **Detriment 4.1.12.** Although the claimant was not given the opportunity to ask anyone questions about SA's grievance, this is not a right that appears in either the respondent's policy, or the ACAS Code of Practice. There is no right for an accused to question witnesses during a grievance process.

258. **Detriment 4.1.13.** KP did fail to follow the grievance and disciplinary processes, as she in effect combined them together, saying that the disciplinary invitation was the outcome following the investigation referred to in the suspension letter. We find that KP's action in conflating the two processes was out of a genuine lack of understanding as to the remit of her work.

259. **Detriment 4.1.14.** We have found that the claimant did not have access to all the documentation used in the disciplinary hearing.

260. **Detriment 4.1.15.** The claimant was initially given 1 working day to prepare. This was extended 3 working days. This was insufficient time to prepare, particularly in light of the fact that he did not have access to the disciplinary documents prior to the hearing taking place. It appears that the timeframe for the disciplinary hearing was set by KP. We find that the reasoning behind this timing was a lack of thought, and a desire to get the process concluded as quickly as possible: the claimant's notice was due to expire on 25 May 2021, and therefore the respondent considered it had a limited time frame within which to be able to hold the claimant to its policies.

261. **Detriment 4.1.16.** Factually, the disciplinary hearing did ago ahead in the claimant's absence, which was caused by ill-health. We find that this was due to a desire to get the process completed by the end of 25 May 2021, as this was the claimant's last day of employment with the respondent in any event.

262. **Detriment 4.1.17.** Factually, it is common ground that the decision to dismiss was taken in the claimant's absence.

Reason for dismissal

263. The Tribunal finds itself somwhat dissatisfied as to why the respondent decided to go ahead and dismiss the claimant on 25 May 2021 for gross misconduct, given that this was his last day of employment under his notice period stemming from his resignation in any event. An alternative open to the respondent would have been simply to let the claimant's notice period expire, factually determine whether or not the allegations against him were upheld, and leave matters at that.

264. This dissatisfaction is answered in part by JS's witness statement, at paragraph 16. He explained that, despite the claimant being near the end of his notice period, he (JS) considered it important for staff to know that such conduct as was alleged to have been committed by the claimant would be "properly addressed" and that members of staff "should not have to tolerate the alleged bad behaviour". As we have mentioned above, JS did not attend to give evidence, and so we cannot give this statement as much weight as we would if he had been subject to cross-examination. However, we do give it some weight; we also note that this is a question of JS's state of mind, and as such he is the only person who can give evidence on his thought processes.

265. However, the decision to dismiss was ultimately LH's, not JS's. When LH was asked why he had opted to proceed to dismiss, in light of the claimant's notice expiring on 25 May in any event, he told us that this was a decision he discussed with JS and in the best interests of the business. When asked about what interests of the business he had in mind, he was unable to be specific. When questioned further, LH said that continuing with the disciplinary in the claimant's absence was an informed decision that JS made. We therefore come back to JS's evidence referenced above.

266. Turning to the reason for dismissal, we are satisfied that LH's reason for dismissing the claimant was that he considered that the claimant was guilty of the allegation of which he was accused. However unfair the process may have been, LH's evidence as to his belief in the claimant's guilt was credible and consistent with the evidence he provided in his witness statement and in the (sparce) disciplinary outcome letter.

267. He told us that he had "a very trusting relationship" with SA, that he had "no doubt that the information brought to [him] by [his] direct reports was fair" and that "I have no reason to think that SA would deliberately misinform me. In ten years, I have had no reason to believe anyone has misinformed me of a situation". Whether or not that was a reasonable approach to take, in simply accepting SA's account, we find that it was genuine on LH's part.

268. As such, the Tribunal finds that the reason for dismissal was that LH genuinely believed the claimant was guilty of the conduct alleged against him.

Conclusions

Protected disclosures – s43B ERA

Protected disclosure 3.1.1.1 – oral disclosure to SA on 2 November 2020 disclosing the poor quality of care in the home, the fact that residents were at risk and the fact that there was a lack of training for staff – s43B(1)(b)(d)(f) ERA

269. Given that we have found that no disclosure of information was made on this day, it follows that there was no protected disclosure made on 2 November 2020.

Protected disclosure 3.1.1.2 – oral disclosure to SA on 16 November 2020 disclosing that staff files were incomplete and that mandatory information was missing – s43B(1)(b) ERA

270. We have set out in our findings that we are not satisfied that there was a disclosure of information here. As such, we conclude that there was no protected disclosure made on 16 November 2020.

Protected disclosure 3.1.1.3 – oral disclosure to SA in early December 2020 disclosing that the result of a compliance audit had been falsified, that risk

assessments had not been updated, that care was inadequate and that there was a lack of clinical leadership – s43B(1)(a)(d)(f) ERA

271. Given our finding that no disclosure of information was made as set out in Issue 3.1.1.3, it follows that no protected disclosure was made on this day.

Protected disclosure 3.1.1.4 – oral disclosure to SA in early December 2020 disclosing that incident reports were incomplete and that there was a lack of staff supervisions and appraisals – s43B(1)(b)(d) ERA

272. We have found that the claimant did make a disclosure of information on this occasion.

273. In the circumstances where it is accepted by the respondent that not all accident and incident forms were up to date, we are satisfied that the claimant believed that his words tended to show a risk to residents' health and safety. Given that these reports can inform care plans which directly impact the care provided to residents, we accept that this belief was reasonable. The connection between care plans and health and safety of residents is clear and self-explanatory. The claimant did not need to be any more specific as to the risk posed to resident's health and safety.

274. We next consider whether the claimant believed that what he said was in the public interest. We bear in mind that we are dealing with a care home, which has residents' care as its core function, and is highly regulated. We also note that the claimant believed that there were 140 outstanding forms, and that KP accepted in evidence that this was what she had told him. In light of those circumstances, we are satisfied that the claimant believed, and reasonably so, that his words were in the public interest.

275. We therefore find that the claimant made a protected disclosure in December 2020, under s43B(1)(d) ERA. We do not consider it necessary to consider whether the disclosure also falls within the scope of s43B(1)(b) as well.

Protected disclosure 3.1.1.5 - 11 January 2021 by written progress report and orally during a meeting with SA, disclosing information about the falsification of audit documents, inadequate standards of care, concerns about the Deputy Home Manager being complicit in care failings – s43B(1)(b)(d)(f)

276. Given our findings that there was no disclosure of information within the written progress report, or orally in the meeting of 11 January 2021, we conclude that no protected disclosure was made on this day.

Protected disclosure 3.1.1.6 – oral disclosure to SA in late January 2021 disclosing fraudulent activity by employee claiming pay for hours with no evidence that those hours had in fact been worked – s43B(1)(a)(f)

277. We have found that there was no disclosure of information as alleged here. In any event, we are not satisfied that the claimant believed that his words tended to show that a criminal offence had been committed, or that such an offence was likely to be deliberately concealed. In his evidence to us, he shied away from the term "fraudulent", stating that this word was a "little strong". Even if he did hold that belief, it was not a reasonable one, in light of the lack of investigation the claimant had undertaken at the time of talking to SA into SE's right to be paid for the dates and times SE claimed at [187].

278. We therefore conclude that the allegation at issue 3.1.1.6 is not a protected disclosure.

Protected disclosure 3.1.1.7 - 2 February 2021 during a meeting with SA disclosing concerns about inadequate care at the home, inadequate training and insufficient staff leadership, requesting a detailed review by the Director of Nursing and Group Clinical Auditor – s43B(1)(b)(d)(e)(f)

279. We have found that a disclosure of information was made on this day. We accept that, in saying these things, the claimant believed that his words tended to show that someone's health and safety was, or was likely to be, or could be endangered. This is self-evident, given the reference made to falls being caused. That belief was reasonable: it is evident that, if the care on the dementia floor is said to be poor, then the health and safety of residents on that floor has been, is, and/or is likely to be endangered.

280. Turning to the question of public interest, we again take note of the nature of the respondent's work, and the potential consequences to its residents with dementia. We are satisfied that the claimant believed that his disclosure was in the public interest, and that this belief was reasonable. Clearly, a disclosure relating to the level of care in a care home is made in the public interest and is not self-serving.

281. We find that the claimant did make a protected disclosure on 2 February 2021, under s43B(1)(d) ERA. On that basis, we do not consider it necessary to consider whether the disclosure also falls within the scope of s43B(1)(b), (e), and/or (f).

Protected disclosure 3.1.1.8 – on 5 February 2021 to SA during a meeting sharing concerns about inaccurate fluid, behaviour and weight charts together with assertions that the records were being fraudulently completed

in advance and thereby falsified. Disclosing inadequate communication with the kitchen about dietary requirements, allergies etc – s43B(1)(b)(d)(f)

282. We have found that there was no disclosure of information on this date. As such, we conclude that there was no protected disclosure made.

Protected disclosure 3.1.1.9 – orally on 25 February 2021 during a meeting with SA restating the disclosures already made and emphasizing the fact that care plans had not been updated for 3 years and that this was therefore serious – s43B(1)(a)(b)(d)(f)

283. We have found that no disclosure of information was made at this meeting between the claimant and SA. As such, there was no protected disclosure made on this day.

Protected disclosure 3.1.1.10 – in a written letter to LH on 3 March 2021 reiterating disclosures already made and tendering his resignation – s34B(1)(b)(c)(d)(f)

284. In relation to the words on [307], we have found that there was a disclosure of information. We are satisfied that the claimant believed that his words tended to show that someone's health and safety had been endangered, given his words in the email that followed the disclosure of information: "I needed reassurance that staff were aware of the risks of such an unacceptable practice". We find that this belief was reasonable, again given the general point we have already made about the nature of the work done in the care home, and the resident's health and safety being the main focus of the home.

285. However, we are not satisfied that the claimant believed his words were said in the public interest. Looking at the context of this paragraph, it is used as a defence to an allegation made by SA. The claimant was saying that, in fact, he was on top of safeguarding, contrary to SA's concerns. We therefore find that it was not reasonable for the claimant to believe that he was saying this in the public interest. This is particularly given that the hoist incident was historic. As such, we find that the words on [307] do not amount to a protected disclosure.

286. In relation to the words at [308], we find that the claimant believed that his words tended to show that someone's health and safety had been, was or was likely to be endangered and that that belief was reasonable. The words he used made it clear that accident/incident forms were not up to date: we are satisfied that there is a clear and obvious link between a failure to keep these forms up to date, and the risk to residents' care plans not reflecting the true nature of their needs.

287. However, once again we are not satisfied that the claimant believed that is disclosure was in the public interest. Here, the claimant was saying that,

although there was a problem with the forms, this had been fixed by him and, going forward, he had implemented a plan that would fix the issue. He was again using these words in defence to an allegation raised by SA. We find that the disclosure was made as a line of defence, and therefore was self-serving rather than in the public interest. Thus we find that there is not protected disclosure on [308].

288. Regarding the words at [310], this paragraph is prefaced by "There are fundamental shortfalls in the home; they are not of a serious nature…". This disclosure is also said as a criticism of SA, for example the claimant uses the phrase "[o]n her watch …." and ends with "there is an attempt to shift the blame". This was said to apportion blame to SA and move the blame away from his door. The claimant here was identifying historical problems that he then placed at the door of SA.

289. We find that the claimant did not have belief at this stage that these disclosures tended to show:

289.1. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
289.2. That a miscarriage of justice has occurred, is occurring or is likely to occur;
289.3. That the health or safety of any individual has been, is being or is likely to be endangered; or,
289.4. That information tending to show any matter falling within any one of the preceding paragraphs has been or is likely to be deliberately concealed.

290. Further, we do not accept that, at this stage, the claimant believed his words were in the public interest. He was once more defending himself against SA's allegations in the Record of meeting of concern, and turning the focus onto her conduct.

291. In light of these findings, the alleged disclosures at issue 3.1.1.10 are not protected disclosures.

Protected disclosure 3.1.1.11 – on 15 March 2021 by email to SA and LH raising concerns about falsified audit scores – s43B(1)(a)(b)(d)(f)

292. We have found that there was a disclosure of information in this email. However, looking at the context of this disclosure, it is focused around residents' families' surprise at fee increases. The claimant said "this has made my position untenable". We find that the claimant's belief was that his words related to his inability to perform his financial function, rather than tending to show that there had been a failure in care, which would fall within s43B(1)(a)(b)(d) or (f).

293. This is more a concern about what the paperwork reflects. We have considered whether the failure to perform monthly reviews could be a failure in

legal obligation, however we have not seen anything that demonstrates that monthly reviews were a regulatory requirement.

294. We therefore find that this email is not a protected disclosure.

Protected disclosure 3.1.1.12 – that the claimant on various dates on 12, 17 and 22 March 2021 informed the respondent that there had been a failure to update and a failure to review the care plans of residents, a matter which could have serious and fundamental consequences to the care provided to residents – s43B(1)(b)

295. As set out in our findings, the claimant stated that he did not which to rely upon the communication of 12 March 2021.

296. Regarding the email of 17 March 2021 at [380], we have found that there is a disclosure of information within it.

297. We are satisfied that the claimant held the belief that his words tended to show that there had been, was, or was likely to be a breach in legal obligation, and that this belief was reasonable. This is because of the context of the disclosure, and reference to the quality of care provided:

> "it does endorse my concerns around just how poor and out of date our care plans are… and how we can possibly be providing quality care with working documentation that is just not representative in any way".

298. Furthermore, we are satisfied that the claimant believed that his words were said in the public interest. The claimant's words set out immediately above demonstrate to us that the claimant linked the poor paperwork directly with the care provided to the home's residents. We find that this belief was reasonable, given the context of the home's focus on care, and the need for paperwork to reflect the reality of care needs.

299. We therefore find that the communication of 17 March 2021 is a qualifying disclosure, however it does not become a protected disclosure. This is because it was made to a subordinate member of staff, CW, and therefore was not made to the claimant's "employer" as required under s43C ERA.

300. Although "employer" is not defined, we find that a disclosure to an employer should be to someone senior to the employee, with authority over the employee, or to a named person within a whistleblowing policy. CW is none of these, but is junior in status to the claimant. As such we are not satisfied that the claimant made this disclosure to his "employer".

301. Finally, in relation to the email of 22 March 2021, we have found that there is no disclosure of information within that email. As such, there can be no protected disclosure.

Protected disclosure 3.1.1.13 – on 23 April 2021 the claimant informed the respondent by email that the claimant had been excluded from attending meetings where he as registered manager of the home with the CQC should have been present – s43B(1)(b)

302. We have found that the email in question contained a disclosure of information. However, we are not satisfied that the claimant believed his words tended to show that the respondent had failed in a legal obligation.

303. The legal obligation relied on by the claimant is the Care Quality Commission Act 2010 and Health and Social Care Act 2008. We have not been taken to any specific part of that legislation, and we are not satisfied on the evidence we have heard and seen that it is a statutory requirement that the registered manager attend such a meeting.

304. We take note that the CQC inspector was happy to continue the meeting in the claimant's absence: we would expect the CQC inspector to insist on the claimant's attendance if it was indeed a regulatory/legal requirement. We note that JM had a good working relationship with the claimant, which adds to our conclusion that she would have asked for his attendance if necessary under any legislation. Even if the claimant did consider his words to tend to show a breach in legal obligation, for the reasons give directly above, we do not find that that belief was reasonable.

305. As such, we find that there was no protected disclosure in the email of 23 April 2021.

Conclusion on protected disclosures

306. The Tribunal has upheld two protected disclosures, at 3.1.1.4 and 3.1.1.7, occurring in December 2020 and February 2021 respectively. Both disclosures were made to SA.

Detriment claim – s47B ERA

Detriment 4.1.1 – reinstating an RGN without consulting the claimant, undermining the claimant's position and humiliating him in December 2020

307. We have already found that SA did in fact speak to the claimant before reinstating GS. As such, the factual allegation at Issue 4.1.1 is not proven.

308. In any event, we do not accept that the claimant suffered a detriment here (whether or not he was spoken to by SA first). It was not objectively reasonable for him to feel humiliated and undermined in the circumstances: those being that he agreed that GS was a good nurse, and he told us that he would have

allowed GS to retract the resignation had he been asked. Therefore we are not satisfied that the claimant suffered a detriment.

309. Further and in any event, we accept the respondent's case, that the reason for SA meeting with GS to retract her resignation was to ensure that the respondent retained GS's skills as an employee. SA was not significantly influenced by the claimant's protected disclosure at 3.1.1.4: there is no good evidence of any such significant influence.

310. This allegation therefore fails.

Detriment 4.1.2 – reinstating the Activity Assistant thereby undermining the claimant and doing so without consulting the claimant. This staff member had been a ring-leader in the group of staff who had resisted the claimant's management actions – around 1 February 2021

311. Given that we have found that the claimant was consulted before TH was spoken to by SA, factually the detriment is not proven here.

312. In any event, even if SA had not spoken to the claimant, given the chain of command, it was not inappropriate or undermining for SA to seek the retraction of TH's resignation. If we are wrong and there is a detriment, we are satisfied that this was due to SA wanting to retain people she considered to be good workers.

313. There is no good evidence to support a connection between the claimant's protected disclosure at 3.1.1.4 and the manner in which SA sought to re-engage TH; we are satisfied that the protected disclosure did not materially influence SA's actions.

314. This allegation therefore fails.

Detriment 4.1.3 – throwing chocolates at the claimant during a meeting on or about 21 December 2020

315. We have found that one chocolate was thrown by SA onto the claimant's desk. This does not amount to a detriment. This chocolate was not thrown directly at the claimant in a malicious manner, but was thrown so as to land on his desk.

316. In any event, we are satisfied that the reason for throwing the chocolate related to the conversation that was taking place between the parties at the time, and was done in an attempt to bring some levity. SA's throwing of a chocolate was not materially influenced by protected disclosure 3.1.1.4 (the only protected disclosure to have occurred at the time of this incident): there is no good evidence to support the claimant's assertion on this causative link.

317. This allegation therefore fails.

Detriment 4.1.4 – on or about 11 January 2021 at a probationary review meeting SA became angry and intimidating in her behaviour. She excluded the claimant from relevant conversations with the Deputy Home Manager.

318. On the facts as we have found them, we conclude that nothing occurred on 11 January 2021 that objectively constituted a detriment to the claimant.

319. In any event, it is the claimant's case, as appears in [C/WS/27] that SA's treatment of him in the 11 January meeting arose from his written progress report at [216] and his words in the meeting itself. We have found that no protected disclosures were made in either the email or at this meeting.

320. Looking at the only protected disclosure we have upheld at this stage in the chronology, it occurred in December 2020. We find that this disclosure did not materially influence SA's treatment of the claimant at the 11 January meeting. This is on the basis of the time that had passed (over one month), and the lack of evidence pointing to a causal link.

321. This allegation therefore fails.

Detriment 4.1.5 – on a visit to the home on 5 February 2021 SA became aggressive and chose to support a disruptive member of staff

322. Factually, we are not satisfied that SA was in fact aggressive and/or chose to support a disruptive staff member. Therefore, this allegation is not proven on its facts, and fails.

Detriment 4.1.6 – on 25 February 2021 SA attempted to extend the claimant's probationary period when it had already concluded and tried to get the claimant to sign a document during the meeting. The document contained unwarranted allegations against the claimant which were all subsequently dropped. The making of the allegations was detrimental treatment

323. We accept that it was a detriment for the claimant to be informed that his probationary period was to be extended when in fact he had already passed it. Further, we accept that being called into a meeting of concern is a detriment.

324. The respondent has however satisfied us that SA's conduct towards the claimant on that day was for a reason that was in no way materially influenced by his two protected disclosures. As such, this detriment claim fails.

Detriment 4.1.7 – on 4 March 2023 LH agreed to act on the claimant's concerns and investigate them and his allegations that he had been bullied and intimidated. LH subsequently failed to act and carry out those investigations

325. We find that LH's failure to report back to the claimant was a detriment. To make a complaint, then not get any form of response, but instead face "radio-silence" is a disadvantage.

326. However, we have no good evidence before us to suggest that LH was aware of the two protected disclosures that we have upheld, both having been made to SA (although we accept that he would have been generally aware of concerns regarding the home's operation and management). We find that LH was not aware of the protected disclosures, and as such could not have been materially influenced by them.

327. This allegation therefore fails.

Detriment 4.1.8 (and 4.1.18/4.1.19) – on 15 April 2021 (in fact 20 April 2021) the claimant was deliberately excluded from a meeting with the Area Quality Assurance Team so that he could not communicate with them and raise relevant concerns. As the registered manager the claimant should have been able to raised such concerns as he had regulatory responsibility

328. First, in terms of the claimant being excluded from a meeting, we have found that he was not excluded, and did so he did not suffer a detriment on those grounds.

329. In any event, we find that CW and SA's actions in allowing the meeting to commence without the claimant present were not because of protected disclosures made in December 2020 and February 2021. There is no good evidence to support such a causal link, and the claimant in evidence said that he did not consider that he had been deliberately excluded from this meeting. We also note that several months had passed since those disclosures were made.

330. In relation to being excluded from SLS's email, although factually the claimant was not included on the email in question, we do not conclude that this amounts to a detriment. Objectively, we conclude that a reasonable worker would not consider that not being copied into this email was a detriment. In any event, we have found that the decision as to whom to send the email was SLS's and she was not aware of the protected disclosures. As such, she could not have been materially influenced by them.

331. This allegation therefore fails.

Detriment 4.1.9 (and 4.1.18/4.1.19) – the claimant was deliberately excluded from talking to the CQC inspector and attending a meeting with them. Again this undermined his position given the role he had as registered manager – 13 April 2021

332. We are not satisfied that the instruction from LH to stay away from work for 48 hours represented a detriment in the circumstances in which the claimant had norovirus and worked in a home with vulnerable people.

333. In any event, if we are wrong on that and the claimant did suffer a detriment, we have found that LH, the alleged perpetrator, was unaware of the protected disclosures. As such, we find that LH's actions in relation to this allegation were not materially influenced by those protected disclosures.

334. This claim therefore fails.

Detriment 4.1.10 – following the claimant's email of 23 April 2021 LH failed to act upon the claimant's email or look into the issues the claimant raised

335. We have found that LH did not go back to the claimant to inform him of any investigation he had done in relation to his complaint. We find that the claimant did suffer a detriment in that respect.

336. However, as previously stated, we have no evidence to suggest that LH was aware of the two protected disclosures that the claimant made to SA. We find that his conduct in not going back to the claimant was typical of LH's light touch in terms of his level of involvement with the management amongst staff at the home, including SA as regional director.

337. This allegation therefore fails.

Detriment 4.1.11 – on 13 May 2021 the claimant was suspended and escorted from the premises

338. We are satisfied that being suspended and being escorted from the building is a detriment. However, we are satisfied that LH was not materially influenced by the protected disclosures, given that he was unaware of those disclosures. We have found that the decision to suspend was genuinely due to the grievance received from SA.

339. This allegation therefore fails.

Detriment 4.1.12 – the claimant was denied the opportunity to question witnesses

340. Given that there is no legal entitlement, or entitlement under any of the respondent's policies or ACAS Codes of Practice, we conclude that this was not a detriment.

341. This allegation therefore fails.

Detriment 4.1.13 – the respondent failed to follow its own grievance and disciplinary procedures in relation to the claimant

342. Factually, there was a failure to follow the respondent's own procedures, and we find that this does amount to a detriment.

343. However, we have no evidence to suggest that KP knew of the claimant's protected disclosures in December 2020 and February 2021: she therefore could not have been materially influenced by them. We find that KP's action in conflating the two processes was out of a genuine lack of understanding as to the remit of her work, and was no caused by any protected disclosure.

344. This allegation therefore fails.

Detriment 4.1.14 – On 19 May 2021 the claimant was invited to a disciplinary meeting but was not provided with the relevant documents in a format which he could open and read

345. We have found that the claimant did not have access to all the documentation used in the disciplinary hearing. We find that this is a detriment: it is only fair that an accused has sight of the documents that are being considered during a disciplinary process.

346. However, we conclude that this failure was not because of the claimant's protected disclosures. It was KP who was responsible for the administration of the disciplinary process. She told us that the documents "would have been posted" to the claimant, although we have found that they were not.

347. Whether it is KP who was responsible for that failure, or someone else in the administrative team, there is no evidence to show that they were aware of the protected disclosures made by the claimant, and as such cannot have been materially influenced by them.

348. This allegation therefore fails.

Detriment 4.1.15 – the claimant as given insufficient time to prepare for the disciplinary hearing

349. We have found that the claimant was not given sufficient time to prepare for his hearing: this was evidently a detriment to the claimant as he was not given sufficient opportunity to prepare his defence.

350. However, KP was not aware of the protected disclosures, and therefore cannot have been materially influenced by them in her conduct of the disciplinary process.

351. This allegation therefore fails.

Detriment 4.1.16 – the respondent carried out the disciplinary hearing in the claimant's absence despite his request for a postponement due to ill health.

352. The respondent proceeding in the claimant's absence is self-evidently a detriment as the claimant was unable to defend himself against the charges he faced.

353. This decision was taken by LH. He was unaware of the protected disclosures and so cannot have been materially influenced by them.

354. This allegation therefore fails.

Detriment 4.1.17 – the respondent took the decision to dismiss the claimant during the meeting in the claimant's absence

355. This detriment is in fact the dismissal itself. A dismissal cannot amount to a detriment (unless a claim is brought against an individual, which is not the case here – International Petroleum Ltd & Ors v Osipov & Ors [2017] UKEAT 0058_17_1907*).*

356. This complaint must therefore fall to be dealt with under the s103A automatic unfair dismissal claim. That dismissal claim is dealt with below.

Automatic unfair dismissal – s103A ERA

357. We have found that the reason for the claimant's dismissal was that LH genuinely believed he was guilty of the allegations he faced during the disciplinary process.

358. We remind ourselves that the burden of proof is borne by the claimant in his automatic unfair dismissal claim, given that he had less than 2 years' service

with the respondent at the time of his dismissal. Therefore, the burden of raising his protected disclosures as a cause of his dismissal is on him.

359. There are no direct facts that would obviously point to the protected disclosures being connected to the decision to dismiss. This is not unusual. The Tribunal is able, in theory, to draw inferences to support the claimant's alleged reasoning for his dismissal. However, we are not satisfied that we have sufficient evidence from which we can draw inferences in this case, however unreasonable and flawed the disciplinary process was. We return to the fundamental point that LH did not know about the protected disclosures, and therefore those cannot have acted on his mind when making his decision. Furthermore, the disclosures occurred over 3 and 5 months prior to his dismissal respectively: the relatively lengthy period between the disclosures and dismissal weighs against any inferences being draw. As does the fact that several members of staff raised concerns about the claimant during his employment. This supports LH's genuine belief that the claimant was guilty of the conduct with which he was charged.

360. We have considered whether this is a case in which we need to look at SA's motivations in raising the grievance that led to the dismissal, in the context of the case of Jhuti and hidden reasons for dismissal. We have found that, in her dealings with the claimant, SA did not subject him to any detriment as a result of his protected disclosures. This again points us away from drawing any inferences that those disclosures led her to raise a grievance. We have accepted as fact that she raised the grievance having been instructed to do so by JS.

361. Therefore, the dismissal was not because of the protected disclosures, and so the claimant's automatic unfair dismissal claim fails.

Direct age discrimination and harassment

362. On the facts as we have found them to be, the alleged act of discrimination/harassment did not occur.

363. As such, these two claims fail.

Holiday pay

364. We are unclear as to the claimant's case on this. We have seen his Schedule of Loss at [642-644], which states "10 days holiday pay outstanding from 2021/2022 - £1991". There is however no explanation of the basis for which the claimant says he is due that pay.

365. We have heard and seen no evidence about this claim. There is nothing in the claimant's witness statement on this issue of holiday pay, and the respondent's witnesses were not asked anything about holiday pay.

366. As such, we cannot be satisfied that the claimant was owed any money for holiday pay. This claim therefore fails.

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Employment Judge Shastri-Hurst

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Date 20 December 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

17 January 2024

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FOR EMPLOYMENT TRIBUNALS