# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | | **Respondent** |
|---|---|---|
| Miss V Carradine | AND | St Monica Trust Company Limited |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD AT Bristol** ON 6 to 9 February and 22 and 23 April 2024

**EMPLOYMENT JUDGE** J Bax
**MEMBERS** Mr H Patel
Mr H Adam

**Representation**

**For the Claimant:** Miss V Carradine (in person)
**For the Respondent:** Miss J Shepherd (counsel)

## RESERVED JUDGMENT

**The unanimous judgment of the tribunal is that**:

1. The claims of detriment for making a protected disclosure are dismissed.

2. The claim of automatically constructive unfair dismissal for making a protected disclosure is dismissed

## REASONS

1. In this case the Claimant, Miss Carradine, claimed that she had been subjected to a detriment and/or automatically constructively unfairly dismissed for making protected disclosures.

## The background and issues

2. The Claimant notified ACAS of the dispute on 14 December 2022 and the certificate was issued on 16 January 2023. The claim was presented on 18 January 2023.

3. The issues were confirmed at a Telephone Case Management Preliminary Hearing on 30 August 2023. The Claimant did not have 2 years service and brought a claim of automatically unfair dismissal under s. 103A of the Employment Rights Act 1996 ("ERA"). She alleged that there was a breach of the implied term of trust and confidence and relied on the allegations of detriment as the matters which breached it. The issues were further discussed at the start of the final hearing and were agreed as follows.

4. The Claimant relied upon the following alleged protected disclosures:

    (1) On 10 August 2022 verbally to Mr Dicks, her line manager within the Respondent, concerning the alleged unsafe manual handling and neglect of a care user. An email was sent on 11 August Ms Harris-Brandi confirming the disclosure which had been made to Mr Dicks; The Claimant said this tended to show a breach of legal obligation (safeguarding) and a danger to health and safety;
    (2) To Bath and North East Somerset Council ('BANES') as follows;
        a. On 10 August, an online report similar to the one to Mr Dicks above on 10 August; The Claimant said this tended to show a breach of legal obligation (safeguarding) and a danger to health and safety;
        b. On 21 September, a verbal disclosure to a Social Worker Ms Hawtrey, that documents being used for the investigation into her concerns dated 10 August 2022 had been altered or changed. The Claimant said this tended to show a breach of legal obligation (safeguarding) and a danger to health and safety or that breach of legal obligation or danger to health and safety was being concealed;
        c. On 6 December 2022, she repeated her concerns about the care in place for resident A at that time, verbally at meeting to the Safeguarding Team; The Claimant said this tended to show a breach of legal obligation (safeguarding) and a danger to health and safety;
    (3) To the CQC as follows;
        a. On 11 August, an online report similar to the one to Mr Dicks on 10 August 2022 above; The Claimant said this tended to show a breach of legal obligation (safeguarding) and a danger to health and safety;
        b. On 21 September, an online report that documents being used for the investigation into her concerns dated 10 August

2022 had been altered or changed. The Claimant said this tended to show a breach of legal obligation (safeguarding) and a danger to health and safety or that breach of legal obligation or danger to health and safety was being concealed.

5. The Respondent did not accept information had been disclosed, that the Claimant had reasonable belief that the information tended to show the matters said or that it was in the public interest.

6. It was alleged that the disclosure to Mr Dicks was to the Claimant's employer in accordance with s. 43C ERA. The Respondent accepted that the CQC is a prescribed person listed in the schedule to the Public Interest Disclosure (Prescribed Persons) Order 1999. It also accepted that the Local Authority ("BANES") is a prescribed person, but not in relation to the matters reported to it.

7. In relation to the disclosures to a prescribed person. There was an issue whether the Claimant reasonably believed that the disclosures to BANES fell within the description of matters prescribed for a local authority.

8. For both claims under s43F and 43G it was not accepted that the Claimant had a reasonable belief that the matters alleged were substantially true.

9. The alleged disclosures to BANES under s. 43G had additional issues in dispute. The Claimant said that she fell within s. 43G(2) as follows:

    a. Disclosure 1- that she had substantially made the same disclosure to her employer
    b. Disclosure 2 that she would be subjected to a detriment if she reported it to her employer or a prescribed person

10. The allegations of detriment were discussed. The Claimant said that she no longer relied upon allegation 6 because that was an effect of allegation 5. The detriments relied upon were as follows:
    a. Ms Harris-Brandi on 26 August 2022 Misrepresented her concerns to BANES and the CQC. She alleges that the Respondent's account of her concerns to both bodies did not reflect what she had originally said about the treatment of the service user;
    b. Her manager failed to contact her from August 2022;
    c. Blocked her access to her laptop 18 November 2022;
    d. Removed her from the staff WhatsApp group on 25 November 2022;
    e. Blocked her access to emails and the Respondent's electronic systems from 25 November 2022;
    f. Declined to investigate the main part of her grievance concerning customers and care files. This was set out in the grievance outcome

11. The Claimant's case was that she resigned because of those detriments. The Respondent accepted that if the Claimant was subjected to such a detriment because she made a protected disclosure that would be a fundamental breach of contract.

12. During cross-examination, the Claimant confirmed that she was not alleging the Respondent subjected her to a detriment after the meeting with BANES on 6 December 2022 and it therefore could not have been the cause of a detriment or her resignation. She confirmed that she was not relying on this meeting as a protected disclosure, but she said the meeting explained why she was so upset. The Claimant also withdrew the allegation of detriment in relation to blocking access to her laptop.

13. Miss Hodge gave evidence by telephone. She was unable to attend in person due to her child being unwell. The video connection cut out a number of times and it was agreed by the parties that her evidence could be given on an audio only basis.

14. It was not possible to conclude the case within the original time estimate and it went part heard on 9 February 2024. It was agreed that a further day was required to hear the last witness and the parties' submissions and then a further day for the Tribunal to deliberate. It was difficult to find mutually convenient dates within a reasonable period of time. Counsel for the Respondent could attend on 22 April, but not on 23 April 2024. It was agreed that the Tribunal would hear the remaining evidence and closing submissions on 22 April and that the parties would not be required to attend on 23 April 2024. It was agreed that they would be sent a written decision and reasons following the Tribunal deliberations.

15. Both parties provided written submissions.

**The evidence**

16. We heard from the Claimant and Ms Hodge on her behalf. For the Respondent we heard from Mr Rees (former director of Charitable Impact), Mr Dicks (Registered Manager), Ms Haydon (Director of People) and Ms Harris-Brandi (Director of Quality and Compliance and Director of Care, Safeguarding Lead at the time).

17. We were provided with a bundle of 1106 pages, any reference in square brackets, in these reasons, is a reference to a page in the bundle.

18. There was a degree of conflict on the evidence.

## The facts

19. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

20. The Respondent is a company which provides a domiciliary home care service at various sites.

21. The Claimant commenced employment with the Respondent on 5 July 2021 as a domiciliary care administrator, based at the Respondent's office at the Chocolate Quarter Retirement Village, Keynsham. Prior to working for the Respondent she had experience as a carer.

22. At the Chocolate Quarter the residents own their homes and live independently. The have a choice as to who provides them with care, should they need such provision. The Respondent provided care services to some of the residents. There was no requirement for the residents to use the services of the Respondent and they could engage whoever they wanted. Residents using the Respondent's services would pay the Respondent for a certain number of visits, depending on their care needs. The care package was tailored to the requirement of the resident and generally paid for privately. The residents chose the service they required, subject to an assessment.

23. The Respondent had a whistle blowing policy [p141-153] which provided
    a. People with concerns were encouraged to raise them with their line manager in the first instance. The process should then be invoked if no resulting action is apparent and concerns remain.
    b. Stage 1 was in the first instance to raise the concern with the line manager, unless the line manager was involved in which case they should move to stage 3.
    c. Stage 2 – the line manager was to arrange an investigation into the matter or immediately pass it on to someone in a more senior position.
    d. Stage 3 – if there is concern that the line manager was involved or had failed to make a proper investigation or report the outcome to a member of the executive team, the employee should contact the executive team, who would then arrange for another manager to review the investigation, commence an investigation or make further enquiries.
    e. Stage 4 – if on conclusion of stages 1 to 3, the colleague believes that the appropriate action has not been taken they should report the matter to the relevant external body. This included the CQC and the

relevant Adult Safeguarding Unit. The local safeguarding unit in this case was Bath & North East Somerset Council ("BANES").

24. The Respondent's grievance policy set out at section 1.2 the issues covered under it and which included health and safety and other work related matters directly affecting the employee. Section 1.3 set out issues not included under the policy and included, "Reporting illegal activities, wrongdoing or malpractice -please refer to the Trust's whistleblowing policy and procedures."

25. The Claimant's line manager was Mr Dicks, the Registered Manager of the Chocolate Quarter Home Care Service.

26. There was an issue in relation to which document was the Claimant's actual role profile. The Respondent had included a profile in the bundle which it understood was the Claimant's profile. The Claimant provided a paper profile, which she had been given at the start of her employment. The profiles contained the same description of role purpose. The duties in the Respondent's version were included in the Claimant's version apart from covering the role of the Domiciliary Care Coordinator in their absence. The Claimant's version included a part titled 'Main tasks'. This included some of the duties in the Respondent's version and provided some greater detail about the role. At the time of the start of the Claimant's employment, the Respondent was reviewing the domiciliary team and role profiles were being edited. Consequently there were a number of versions. The Respondent accepted that the correct version was the paper copy that the Claimant had. We did not accept that there was anything sinister in this and noted that the versions were materially the same and the differences were not relevant to the issues in this case.

27. The Claimant's role reported to the Domiciliary Care Manager and was to provide administrative support to them and oversee the running of the registered office. She also acted as a first point of contact for enquiries into the registered office. In extenuating circumstances there could be a requirement to support the care team with care delivery. Prior to the Claimant's skiing accident in early 2022, she undertook care duties. The Claimant was not involved in the creation of care plans for residents. We accepted that the Claimant's role was predominantly administrative.

28. There were twice weekly village meetings at which the village manager and their deputy, head of concierge, security, occupational therapy, physiotherapy, domiciliary care service and the care home would attend. The purpose was to have an overview of village life, the activities and services being run and to check on the general wellbeing of residents. The Claimant regularly attended these meetings as a representative of the

Respondent, although at times Mr Dicks or the two seniors would also attend.

29. The Respondent sent a Friday update to its staff, including the Claimant. The update provided relevant information about its customers and their needs or concerns about them.

30. At the start of her employment, the Claimant was added to a work WhatsApp group, Dream Team. This was a way staff could communicate with each other.

31. The nature of the relationship between the Claimant and Mr Dicks was 'up and down'. In February 2022, Mr Dicks and the Claimant attended a mediation. Members of staff had complained to the Claimant about matters concerning contracted hours and staff contracts in relation to those on contracted hours and those on zero hours who were on bank contracts. Resolving those issues fell outside of the Claimant's remit. Mr Dicks had asked her to stop talking to them about the issues and to refer them to him. Staff had also raised issues about what should happen with residents. The Claimant was also asked to refer those matters to Mr Dicks as they were also outside of her remit and she had been getting involved.

32. Following the mediation the Claimant continued to discuss matters with staff when they raised matters, and involved herself in clinical type matters, rather than referring them to Mr Dicks. We accepted that the Claimant's role did not include being involved in care decisions, which was the role of the seniors.

33. In March 2022, the Claimant had an accident and damaged her knee and was off sick from 9 to 29 March 2022. From this time she was not asked to provide support to the carers apart from once or twice in June 2022. The Claimant was absent for a further a period of sick leave between 14 and 26 July 2022, following which she was on annual leave until 5 August 2022. The Claimant returned to work on 8 August 2022.

<u>Resident A</u>

34. On 23 May 2022, Ms Snee, a senior and Ms Bell attended a 2 hour assessment with an occupational therapist ("OT") in relation to resident A. A standing hoist was arranged to be provided. On 25 May 2022, the OT provided the hoist and A's spouse was trained to be the second person to help use it. It was explained that a more slimline hoist would be ordered, but it might take some time to arrive. On 15 July 2022, the OT conducted a further assessment and A's spouse agreed to be the second person. Ms Bell asked for the manual handling plan to be forwarded as soon as

possible. On 21 July 2022, the manual handling plan was received from the OT [p437-445].

35. On 2 August 2022, a carer hurt her back whilst caring for resident A. The manual handling plan involved a carer and A's spouse acting as a second person to help move them. A stand aid had been put in their home to help them stand, however it had not been used. On 5 August 2022, Mr Dicks and Ms Snee (a Senior) spoke to A's spouse about the use of the stand aid.

Resident B

36. On 4 May 2022, B's son was made aware that B was experiencing difficulties with confusion and reporting things going missing. He said he was trying to arrange a GP appointment. On 16 May 2022, the Respondent requested B's son to agree that 2 members of staff conducted visits for safeguarding reasons. On 1 June 2022, following a GP appointment, the Respondent was told that it was believed B had dementia and a brain scan was being arranged, as was a referral to the Rice Clinic. On 6 July 2022, the Respondent carried out an assessment on B and produced a care plan, which was quality assessed on 15 July 2022. The care plan was approved by B's son on 13 August 2022. There was a further review in October 2022, due to medication changes and it was updated on 30 October 2022.

Events in August 2022

37. On her return to work, on 8 August 2022, the Claimant attended a handover meeting with Mr Dicks, at which she was made aware of what had happened with Resident A. The Claimant was aware of the manual handling plan and that the occupational therapist had approved the spouse to be used as a second person. The Claimant's evidence, which we accepted, was that the manual handling plan had not been added to Resident's A's electronic file.

38. Later that day, resident A's spouse brought in a letter of complaint, that on 5 August, Mr Dicks and Ms Snee had said that she was refusing to use the stand aid when assisting resident A. Mr Dicks gave the seniors and the Claimant a copy of the letter to read. Mr Dicks discussed the contents with the Claimant. Mr Dicks did not believe that it included anything which required reporting to the CQC or Safeguarding at BANES

39. On 9 August 2022, the Claimant e-mailed Mr Dicks about working from home, issues with her knee and in relation to getting her a new footrest. Mr Dicks tried to contact the Claimant on several occasions, expressing concern for her and that he wanted catch up in relation to her concerns. There was a text message exchange. The Claimant's message included, "It is about [A's partner] and interview Friday. I feel [A] should have been a

double up long ago, carers have been complaining for months now and I was annoyed about contract/bank or whatever was offered…". The Claimant accepted in cross-examination that the double up had been implemented whilst she was on leave, but she thought it should have been implemented much earlier. In cross-examination she said that she was happy there was a double up but that it should not have been A's partner. We accepted that A's partner was not prepared to pay for second carer and the plan had been approved by an Occupational Therapist.

Alleged disclosure on 10 August 2022 to Mr Dicks

40. On 10 August 2022, at 9am, the Claimant spoke to Mr Dicks on the telephone about some personal matters and in relation to resident A and the contracts. Mr Dicks explained that they were doing all they could to ensure visits were conducted properly and they were liaising with occupational therapists and physiotherapists and that A's spouse had been assessed as being able to effectively use the stand aid. The Claimant did not think this was right and she felt it was a safeguarding matter and it was not right that staff were working with a family member. Mr Dicks said that he did not think it was safeguarding, but if she felt she wanted to raise it further she should and he was happy to speak to Ms Harris-Brandi and her safeguarding team if she felt it was. Following this she sent an e-mail to Mr Dicks with some documents.

41. The Claimant contacted Ms Harris-Brandi about a spreadsheet, however she did not refer to resident A.

42. At 2pm a home care services team meeting was held. The Claimant's role in the meeting was to take notes. Resident B was discussed, in terms of continuing to accuse staff of taking things and the wider village team of breaking into their home. Mr Dicks asked that all matters were logged and double up visits were in place to protect staff. Results were back with the GP, namely borderline dementia. There was some speculation by staff and Mr Dicks explained they could not self-diagnose and they needed to communicate with the next of kin.

43. The Claimant raised resident A and difficulties with visits. A carer confirmed that on a recent visit, resident A had 'walked fine'. Ms Bell, senior, said that resident A had been assessed by the occupational therapist and A's spouse only needed to be asked to help when their mobility was worse and it varied visit by visit. The Claimant raised concerns and said she would discuss it with Mr Dicks after the meeting. Mr Dicks asked staff to ensure notes were recorded accurately. None of the carers at the meeting expressed concern about Resident A or their situation or that A's partner was refusing to use the stand aid.

44. After the meeting Mr Dicks spoke to the Claimant by telephone and it was at this stage the Claimant said she made a protected disclosure. The Claimant said that she did not believe that resident A's spouse should be used as a double up because she was refusing to use the equipment. We accepted that by this time the Claimant was aware that A's spouse had complained that she had been accused of refusing to use the equipment and A's spouse had said that was not the case.

45. The Claimant's evidence was that this tended to show that there was a breach of health and safety because a carer had been injured and the equipment had been refused by the next of kin. Further she said she thought it was in the public interest because care staff and the customer were at risk of harm. The Claimant accepted that at this time she was aware that the stand aid was temporary and a new one had been ordered that day. Further she accepted that she knew the occupational therapist had approved the use of the stand aid and for A's partner to assist.

46. Mr Dicks explained he had discussed the Claimant's concerns with Ms Harris-Brandi, Director of Care and Safeguarding Lead, and invited her to speak to them both at their meeting at 5pm.

47. The Claimant sent Mr Dicks an e-mail, which he did not realise had been sent. She said she would be raising her concerns with safeguarding and was happy to go directly to them if they did not want her to attend the meeting. Shortly before 5pm Ms Harris-Brandi e-mailed the Claimant about her earlier e-mail and said she was available to speak.

48. At 5pm Mr Dicks joined the Teams meeting with Ms Harris-Brandi, the Claimant did not attend. Mr Dicks sent an e-mail to the Claimant, thanking her for sharing her concerns and answered questions she had raised by e-mail. He asked for a list of carers who had raised concerns. He said the complaint from A's spouse had been forwarded to a director. Further that the incident on 2 August 2022 had been logged and a response was awaited from the carer involved to gain more information about the incident. The Claimant did not provide Mr Dicks with a list of carers

<u>Alleged disclosure to BANES on 10 August 2022</u>

49. On 10 August 2022, the Claimant sent a whistleblowing report to BANES safeguarding team by e-mail. She said that she was concerned about resident A in relation to "unsafe manual handling practices agreed and signed off by OT's, senior staff members and the registered manager for a customer using the Domiciliary Care Department. A staff member had injured their back. The Next of Kin (NOK) for client A was the double up carer for when mobility was bad and they had been trained and signed off by an OT, however it needed a second opinion as the hoist can be

insufficiently charged (due to concerns from the NOK with the rise of electric prices) resulting in equipment not being used correctly. The NOK was reluctant to pay for another carer and there was a size difference between A and their spouse.

50. In relation to B, she said that there were concerns/reports from care staff members not being followed through/family are taking their time with medical appointments resulting in random but frequent allegations of theft, damage to property and verbal abuse to staff members. A double up visit had been put in place but the family were failing to respond to e-mails. These incidents have increased dramatically but started months ago. This was causing severe distress and anxiety to the customer as no treatment/diagnosis has been discussed with relevant health care professionals.

51. The Claimant's evidence was that she believed this tended to show there were welfare concerns about the customers. It was in the public interest in relation to B because it was in B's interest to help with their mental health. In relation to A it was in the public interest because the use of equipment was being refused. In terms of showing that there was a breach of legal obligation the Claimant said it related to health and safety and safeguarding.

52. In cross-examination the Claimant said that in relation to B she was not saying that the Respondent was doing it, but the process was taking a long time. She was not saying a there was a breach of a legal obligation by the Respondent which was putting B at risk and she was just reporting her concerns. She accepted that she had no reason to believe that anyone was doing anything that would put B at harm.

53. The Claimant's evidence was that she had previously discussed B with Mr Dicks on the way back from the village meeting on 8 August about B needing more input and her family were not able to provide enough care. The Claimant also said that B was discussed with Mr Dicks on 10 August. This was not put to Mr Dicks and we did not accept that evidence. The Claimant thought that she had seen B when doing care visits in June 2022.

54. We accepted the Claimant's evidence that, at the time, she thought BANES was a prescribed organisation after it had been specifically referred to in the whistleblowing policy.

55. The Claimant said that she believed the information was substantially true because there had been a resident update meeting that morning and she knew the customers and about their health issues. The Claimant's evidence was that using A's spouse as a double up made the plan unsafe and that she was only 'OK' to be used if she was following the plan. It was put to the Claimant that was not what she told BANES and it was not true the

Respondent signed off a plan which was unsafe, to which she responded she thought the customer was at risk if his wife was not following the plan. The information given to BANES did not say the wife was not following the plan or refusing to use the stand aid.

56. We were satisfied that there was not any personal gain.

57. The Claimant spoke to Clare Gorvett on 10 August 2022 and said that she wanted to raise a formal grievance in relation to what was happening. On 12 August 2022, the Claimant asked Ms Harris-Brandi to get a member of HR staff to contact her. Clare Gorvett then arranged to speak to her that day.

Alleged disclosure to the CQC on 11 August 2022

58. On 11 August 2022, the Claimant sent a report to the Care Quality Commission, which included: "I raised concerns with my line manager (registered care manager, colin Dicks) on Wednesday 10 August 2022 … outlining concerns for a customer. This particular customer is living with dementia with sever (sic) mobility concerns which has been documented by senior staff members since the end of 2021. This customer has been assessed as a double up with the NOK being the second carer, I have great concerns about this and the equipment is also being refused by NOK. I did not get a response." She referred to the staff meeting and being unsatisfied with the manager's response. She added that she had e-mailed staff on 10 August and "stated that all equipment must be used and health and safety concerns raised and reminded them of the importance of carrying out their own risk assessments during visits."

59. The Claimant accepted that what she wrote only related to Resident A. The Claimant said this tended to show that there were health and safety concerns and her concerns were not being taken seriously. She did not report anything about B because A was her main concern. The Claimant said that she gave a full report by telephone the following day which included B.

60. The Claimant's evidence as to why it was in the public interest was that A was showing signs of being distressed by other people living in the Chocolate Quarter. The Claimant said she believed it was substantially true due to her position in the organisation.

61. The Claimant accepted in cross-examination that the Respondent had no time to investigate her concerns before she reported them to BANES and the CQC.

Events which followed

62. On 11 August 2022, the Claimant e-mailed Mr Dicks with a fit note recommending light duties until 31 August 2022. Following this they liaised by e-mail about her work, a return to work meeting and the footrest. We accepted Mr Dicks did not know that the Claimant was in the office that day and that he was working elsewhere.

63. On 11 August 2022, the Claimant e-mailed Ms Harris-Brandi, saying that she had made a disclosure to BANES. The Claimant asked for an HR representative to support her.

64. On 11 August 2022, the carer who had hurt themselves gave a statement about what happened on 2 August 2022. The carer was asked if she had asked to use the stand aid and responded that she had not and did not know that a stand aid was in the apartment. It was pointed out it was referred to in a few Friday updates and the carer replied that she read the Friday updates but must have missed it.

65. On 12 August 2022, the CQC informed the Respondent that the Claimant had raised a safeguarding concern. The e-mail identified 3 service users. In relation to A it was said the concerns were, “assessed to need two people to provide care, one of whom is [A’s partner] consistently refuses to use the equipment assessed as necessary, which is placing A and staff at risk of injury.” In relation to the concerns about B it said, “has symptoms of dementia and is very distressed. Makes allegations of theft against staff. VC does not feel she is receiving the level of care she needs and does not think the allegations of theft have been reported/investigated.” Mr Dicks forwarded the e-mail to Ms Harris-Brandi.

66. Ms Harris-Brandi asked the Clinical Governance lead, Heather, to conduct an internal investigation. Interviews were carried out with staff. We accepted that Ms Harris-Brandi had no involvement in selecting who was spoken to. As part of the investigation, time lines of events were created for both A and B. These were based on a collation of interviews with staff, care plans, care records, e-mails and cross-checking with minutes and incident support data. The timelines were then used alongside the care documents.

67. Mr Dicks was not consulted or involved in the internal investigation into the Claimant’s concerns because what was being investigated was his action or inaction as registered manager. We accepted that Mr Dicks distanced himself from the Chocolate Quarter due to the investigation and that he had minimal contact with the Claimant and the seniors.

68. On 12 August 2022, the Claimant said in a report to the CQC, that she was concerned there had been a cover up.

69. On 13 August 2022, Resident's B's family approved the care plan and signed it. It was then uploaded on the system.

70. On 14 August 2022, the Claimant informed the Respondent that she had raised a formal grievance on 10 August 2022 with Clare Gorvett and included numbers for her reports to the CQC. On 15 August 2022, the grievance was paused, with the Claimant's agreement, whilst the concerns were investigated.

71. On 15 August 2022, the Claimant e-mailed Ms Harris-Brandi saying that her access to work site was not working. Ms Harris-Brandi suggested she contacted IT with an urgent request for assistance.

72. On 17 August, the Claimant copied in Mr Dicks to an e-mail to Ms Langford, Rota Co-ordinator, asking if her computer was switched off.

73. On 25 August 2022, the Claimant said in a report, providing further information about B, that she was looking for a new job because of what was happening to some of the customers.

74. On 26 August 2022, following the internal investigation, Ms Harris-Brandi responded to the questions asked by the CQC.

    a. In relation to A she said that the Respondent asked A's partner to liaise with the GP about an occupational therapist referral. An OT assessed A on 23 May 2022 and a revised moving and handling plan was agreed which included the use of a hospital bed and a stand aid. The stand aid was to be used when A was unable to stand with just manual support. It was agreed that A's partner would provide support if a second carer was necessary or the use of the stand aid was indicated. A's partner was trained by the OT. Since meeting with A's partner, A's mobility had improved and the OT planned to visit again with a new and smaller stand aid once funding had been approved and to review the moving and handling plan.
    b. In relation to B she said that B had been demonstrating symptoms of cognitive dysfunction since autumn 2021 and was having difficulty between vivid dreams and reality. Concerns were raised with B's son and a GP review was undertaken and medication changes were made. The medication change appeared to resolve the symptoms until earlier in 2022 when B began to exhibit paranoid delusions and making claims items were being stolen. Regular communication had been held with B's son. The various items had been found. The son had been liaising with B's GP in respect of a diagnosis.

75. The Claimant said that her concerns were misrepresented by Ms Harris-Brandi when she provided her report on 26 August 2022. The Claimant

accepted in cross-examination that she had no reason to believe that Ms Harris-Brandi had been incorrect that lead staff had reviewed and interviewed key staff. She said that the account in relation to A was factually incorrect and that it was not true A's mobility had improved. The Claimant accepted that A could transfer without the need of a stand aid. The Claimant said that some facts had been missed out of the report, in relation A's partner putting chairs around the bed and there was no reference to the double up being the next of kin. When the Respondent investigated the Claimant's concerns a chronology was put together. The Claimant said that added documents were used for the basis of the investigation and Ms Harris-Brandi's account.

76. On 10 and 11 August 2022 Ms Snee corresponded with the OT, seeking confirmation that the stand aid only needed to be used when A was struggling. The reply was that it should be used when A was unable to initiate a stand or stand with the assistance of someone putting their hand on A's lower back. Some suggestions were made as to how to help A's partner decide if the stand aid was needed [p434-435]. We accepted that this tended to show A's situation was variable. We accepted Ms Harris-Brandi's evidence that the chairs around the bed did not form part of the question from CQC. Similarly we accepted that she did not consider that the injury to the staff member fell within the structure of what the CQC asked. Ms Harris-Brandi was cross-examined in relation to an e-mail dated 1 September 2023 about A's partner lifting A, we accepted that this e-mail post-dated Ms Harris-Brandi's report and that she had written what she understood at the time.

77. In relation to B, the Claimant said it was not correct that B's symptoms improved because of a medication change and that was not happened in B's daily life and B's symptoms had not improved. Ms Harris-Brandi was not cross-examined in relation to this. B's care plan, following an assessment on 6 July 2022, referred to B going to the doctor and had a brain scan and had been referred to the Rice Clinic. Further the care plan said that B had hallucinated in the past and had a medication review and medication was stopped to help with this. The Claimant said that asthma medication was stopped and would not accept in cross-examination that a listed side effect of it was causing B anxiety. She also said that the reference to accusations of theft did not refer to items of value.

78. Ms Harris-Brandi was cross-examined about the mental health team being contacted after the disclosure on 10 August 2023. We accepted Ms Harris-Brandi's evidence that B's GP had been very involved and only the GP could make a referral to the mental health team. The care plan had been quality assurance checked on 15 July 2023. The care plan identified that at assessment for B had been arranged for 23 September 2023. We accepted that she recorded what she had interpreted from the documents.

79. Ms Harris-Brandi did not set out what the Claimant had reported to the Respondent. The report set out what Ms Harris-Brandi's understanding was following the internal investigation and how she had interpreted the information. We did not accept that there was an attempt to discredit the Claimant.

Matters in September 2022

80. On 30 August 2022, Mr Dicks received an e-mail from the CQC saying they had received further concerns in relation to the original concerns and asked for response. Mr Dicks forwarded it to Ms Harris-Brandi and Ms Naylor-Wild.

81. On 2 September 2022, the Claimant raised a formal grievance. She referred to raising concerns on 10 August 2022. That after the staff meeting on 10 August 2022 she was unhappy with the outcome and told Mr Dicks she would have to take it further. That she had reported it to BANES and CQC. She had noticed that documents and care plans had been changed, updated and documents added to site files. Further that B's care plan had been updated and the documents for the OT had been added to the file. She added that A's partner had refused to use the equipment again on 15 August 2022.

82. On 2 September 2022, Mr Dicks spoke to Ms Gorvett about the updated position in relation to the further concerns and informed her Heather had investigated and apart from some improvement needed in documentation and housekeeping she had found nothing further.

83. On about 9 September 2022, Mr Rees, was appointed as the grievance manager. The Claimant was invited to attend a grievance meeting.

84. On 16 September 2022, the Claimant attended the grievance meeting with Mr Rees. The Claimant was accompanied by a trade union representative. Discussion included that the grievance was against the department as a whole and part of it related to Mr Dicks. In relation to her concerns about A and B she said that since she made her disclosure documents had been added and changed and if that had not happened Ms Harris-Brandi would have had the same concerns she did. She said that the visit to A had not been risk assessed and it was done on 14 August after her disclosure. She queried why the spouse using chair backs to stop A falling out of bed had not been mentioned. It was agreed that the Claimant could add a sixth part to her grievance about Ms Harris-Brandi's report being founded on false documents.

85. On 20 September 2021, Mr Dicks replied to the CQC's request for a response dated 30 August 2022.

86. On 21 September 2022, the Claimant sent Mr Rees 300 pages of documents, which she said were in relation to documents being created or changed for Ms Harris-Brandi's report. These were the documents that she had knowledge of when later communicating with the CQC and BANES. We accepted that Mr Rees considered the additional documentation and investigated the concerns raised by the Claimant.

Documents the Claimant suggested were created after her disclosure

(a) Timelines of events for A and B. These were timelines created as part of the internal investigation, which collated information from e-mails, notes on desktops and messages so that they were in one place and in date order.
(b) Handwritten Communication Audit Forms for A. [p339-343]. The Claimant suggested that the notes were created for the internal investigation and that they were modified by destroying the originals and writing new ones which were then scanned on to the system. The scanned versions showed that the notes for April to May 2022, June to July 2022 and 2 to 20 August 2022 were scanned onto the system on 19, 22 and 23 August 2022 respectively. The screenshot of the properties of the scanned files was dated 11 October 2023. The Claimant accepted in cross-examination that she did not have evidence that the records were falsified but that it was her belief and that it had been done to discredit her for the purpose of the investigation. She suggested a comparison could be done with notes in 2021, however such notes were not provided to the Tribunal. We accepted the Respondent's evidence that there were delays with scanning. Mr Dicks assumed they were scanned on to the system so that all of the documents were in one place. We did not accept that the originals were destroyed and new ones created.
(c) A statement in relation to A [p399-400], in particular the note about the statement taken from the carer on 11 August 2022. The note had the date on which the conversation took place, i.e. 11 August 2022. The Claimant agreed in cross-examination that there was nothing sinister it was just the date the conversation happened. We accepted that the date on which it was written was not hidden.
(d) Care plan for A [p401-425]. The assessment date was 19 August 2022. The Claimant said that the properties for the file showed it was created on 10 August 2022, although it was last printed on 27 July 2022 and it was last modified in September 2022 [p1056]. the properties file was screenshot on 9 October 2023. When it was suggested to the Claimant that the Respondent and BANES explained to her that care plans are not static documents, she responded by saying the printed documents were not being put in the folder in the residents' homes. Mr Dicks accepted that it was

modified on 2 September 2022. This post-dated the report by Ms Harris-Brandi.

(e) Care plan for B [p489-511]. The Claimant said that the part that B had been to the doctor, had a brain scan and was referred to the Rice Clinic and that B had hallucinated in the past, had a medication review and has had medication stopped to help with this had been added after her disclosure. The Claimant said this was demonstrated by the properties of the file [p1080] which showed the word file had been modified on 13 August 2022 and a signed PDF copy was added 35 minutes later, the screenshot was dated 2 September 2022. When cross-examined the Claimant was asked whether she was saying that there was a care plan in which there was no reference to medication change, to which she said she was not, but that the symptoms did not improve. The Claimant accepted that she knew medication was stopped for B, but it was asthma medication not for dementia. The care plan was based on an assessment carried out on 6 July 2022, which was quality assurance checked on 15 July 2022. B signed the care plan on 13 August 2022. We accepted that care plans are liquid documents and that they are updated as circumstances change, the Claimant also knew that this was the case.

(f) The Claimant's supervision notes for 21 July 2021. The Claimant requested her supervision notes as part of a subject access request. She suggested that they were changed by Mr Dicks on 21 August 2021. The properties file showed that the Word document was created on 21 July 2022. It was accessed on 21 August 2022 at 11:10:46 and modified at exactly the same time. A PDF version of the document was created at 11:12:40. Mr Gilbert, an IT employee, investigated and found the documents were identical and confirmed that any minor change even a space bar could modify a document. We accepted Mr Dicks' evidence that he wanted to send a PDF document so it could not be modified or changed. He had the original open on his screen and decided to scan the paper version he had in his possession. The properties file showed that the file was accessed and modified at the same moment. It would have been impossible for any text to have been changed within that single second. The properties for these files were not discovered until November 2022, during Mr Rees' investigation.

Alleged disclosure to the CQC on 21 September 2022

87. On 21 September 2021, the Claimant sent CQC an e-mail in which she said that had made a disclosure about health and safety and her managers failure to act and she felt the bad practices were still continuing and B was still unmedicated and suffering with her mental health. She said, " I have attached documents to support that Debbie Harris-Brandi's report to you on

the 26 August 2022 is incorrect. An internal inspection was conducted following my disclosure … the internal inspector did not ask me for a statement or why I had been in contact with BANES and CQC. The information they have provided either to DHB is incorrect or she is aware that the bad practices were/are still ongoing. Either way, it is false information, please see attachments." [p628-629] The e-mail forwarded the e-mail she sent to Mr Rees the same day. That e-mail identified documents she had saved from the site files and notes she had made.

88. The Claimant said that this tended to show that B's health and safety was endangered and documents were being created in relation to those concerns. The Claimant accepted in cross-examination that what she said did not suggest what the bad practices were or how Ms Harris-Brandi's account was incorrect. The Claimant accepted that CQC undertook a targeted investigation. The CQC later found that in relation to one person a referral to safeguarding had not been made in a timely way and the mental health team advice had not been added to the care plan and the registered manager had taken immediate action.

89. The Claimant said it was in the public interest because if the original documents had been used, Ms Harris-Brandi's account would have been different. She said it was substantially true because she had knowledge of the documents, due to her role. We accepted that the Claimant would have been aware of some of the documents which had been electronically stored.

Alleged disclosure to BANES on 21 September 2022

90. On 21 September 2022, the Claimant spoke to Mr Mills at BANES and discussed the concerns she raised in her report of 10 August 2022 and the matters in relation to A and B. She was told that there was not a referral on the system. She then completed forms on 23 and 26 September which she sent to BANES.

91. On 23 September 2022, the Claimant referred to A being assessed by the OT in July and said that the seniors did not do a risk assessment and A's partner refused to use the equipment which resulted in a carer getting hurt. In August new equipment was put in place, which was risk assessed and staff trained but A's partner continued to refuse to use it. She did not believe the partner was aware of the importance of using the equipment and was putting care staff at risk of harm. She referred to physical abuse. She also referred to organisational abuse and false documents being put in place following her disclosure and that the care plan had been reviewed after the disclosure and that the account sent to CQC on 26 August 2023 was incorrect even after editing/creating documents to conduct an internal investigation.

92. The Claimant said she believed this tended to show that there was concealment and the care plans were not the ones in his property and used by care staff at the time and A was at risk of organisation abuse and there was a risk to his health and safety and there was a cover up rather than assisting A.

93. The Claimant was cross-examined about the carer's supervision notes dated 11 August 2022 and the carer, after being asked why she had not used the stand aid, saying she did not know it was there and being reminded to read e-mails. It was put to the Claimant that by the time she made the report on 23 September 2022 she knew that the carer was not saying that A's partner was refusing to use the stand aid but that she had not known it was in their home. The Claimant suggested that this was put in place because she made a disclosure and therefore it was true. The Claimant accepted that was aware of these documents and the accounts given by the carer at the time she contacted BANES. She was also aware that the OT had completed a moving and handling form and risk assessed the process on 19 July 2022 and the date of the action plan was 15 August 2022 [p439]. The Claimant said it was not true the risk assessment took place on 19 July 2022, although had no evidence to substantiate her contention that the OT did not do this. She said she knew it was the case because she had cared for him and knew the staff. The Claimant said she informed BANES because they had contacted her and she was updating them following her disclosure on 10 August 2022.

94. On 26 September 2022, the Claimant said that there was no plan in place for B. She said, "Following the disclosure to CQC and my managers knowledge of disclosure, documents for customers started to appear on site files and care plans, risk assessments and time lines were updated/created. I believe this was due to the internal and external inspection from CQC. However the contents of the documents were alarming and subsequently the CQC report from Debbie Harris-Brandi on 27 August 2022 were incorrect/false. [p642] She referred to the report saying that there had been a medication change which relieved symptoms and which was not true.

95. The Claimant said that the Respondent was deliberately neglecting B because B signed the care plan on 13 August 2022 and she was only taken to see her GP after her disclosure. The Claimant accepted in cross-examination that the Respondent was arranging a GP appointment in May 2022 (p484) and was taken to the GP by her son on 1 June 2022, who believed she had dementia and arranged a referral to the RICE Clinic. She then suggested that B had bad episodes between then and August. When questioned about her evidence that B had not been taken to the GP, the Claimant accepted B had been but that it was for a scan and not for paranoia and hallucinations. The care plan had recorded that B had been to her GP and been referred to the Rice clinic and had hallucinated in the past and

she had a medication review and medication had been stopped to help with it. Asthma medication had been stopped, of which a side effect could be paranoia and hallucination. The Claimant accepted that only the GP could make medical decisions and that the Respondent was unable to do this. She accepted at the time of the alleged disclosure this was based on suspicion only. She said that Ms Harris-Brandi's account was incorrect because of what she said about the medication change. The change in medication was referred to in the notes and care plan and that at the time the Claimant had made a note of all medication B had been taking and that the asthma medication had been stopped in 2021. She accepted that BANES subsequently investigated and did not uphold the allegation.

Events which followed

96. On 22 September 2023, the Claimant sent a scanned copy of B's care plan to Mr Rees. The same day the Claimant was signed off sick.

97. On 29 September Ms O'Brien asked Mr Gilbert, Head of IT questions about IT matters as part of the grievance investigation. Mr Gilbert said that a connection on a VPN could only be broken if a person had access the computer and had specific knowledge as to how the VPN client worked.

98. On 30 September 2022, the Claimant provided Mr Rees with further information. Mr Rees read all the documentation provided by the Claimant over the various dates, which took a long time, given the amount received. This information was not shared with Mrs Harris-Brandi.

99. On 30 September, the CQC informed the Respondent that 3 concerns had been raised by a whistle-blower.

100. On 7 October 2022, Mr Rees asked Mr Dicks to check a transcribed version of his handwritten notes of the Claimant's appraisal and if he had any further notes. Mr Dicks confirmed the transcript was correct and said all documents had been provided.

101. On 18 October 2022, Mr Dicks attended a meeting with Mr Rees about the grievance. As part of the meeting discussion took place about A in relation to the stand aid and B in relation to her mental health. Afterwards, Mr Dicks forwarded e-mails about his supervision with the Claimant to Mr Rees, in which the Claimant said she did not want to add anything and was happy for him to finalise the notes [p849-850].

102. On 18 October 2022, Mr Dicks spoke to Ms Hawtrey of BANES, who informed him she was dealing with the safeguarding concerns. Mr Dicks was informed that the investigation in relation to A had been closed. We accepted that he was not asked to keep BANES updated about A.

103. On 18 October 2022, Mr Rees updated the Claimant as to the progress of her grievance. He informed her that it was still being investigated, he was working diligently to complete it as soon as he could and she had raised 5 very different issues which required investigation.

104. On 19 October 2022, Ms Harris-Brandi attended a meeting with Mr Rees about the Claimant's grievance.

105. On 21 October 2022, Mr Rees interviewed Ms Bell. In relation to B, she said that they had been working with the family to get things addressed, but there had been long wait times for the GP and RICE clinic. [p747-749]. Ms Snee was also interviewed on 21 October 2022 and also discussed A and B.

106. On 21 October 2022, Mr Rees forwarded Ms Harris-Brandi and Ms Haydon e-mails he had with the Claimant about her accessing her Trust inbox and systems when off sick. He referred to some proposed text, but also his concern that blocking her might not help her paranoia about people changing things, but it was also not helping her to keep checking on things.

107. Mr Rees had asked the Claimant to stop accessing the systems whilst she was off sick. She responded by saying that she was liaising with a 3rd party and once they confirmed the action they would take she would refrain. She felt that she had a duty of care of the customers and the outcomes of her grievance had taken longer than expected. Mr Rees responded by saying that the CQC or Local authority would go straight to them and she should have no need to access systems now she had made her referral. He repeated his request that she did not access work systems until she returned to work. [p762] The Claimant accepted in cross-examination that this appeared to be due to concern about her health.

108. On 21 October 2022, Ms Harris-Brandi replied to Mr Rees, saying that she agreed with the sentiment that ongoing access was not helping the Claimant. She added that her continuing to do was considerably increasing the vulnerability of the service. We accepted Mrs Harris-Brandi's evidence that she had not spoken to the Claimant about her health , but she was aware of the vulnerability of the service.

109. On 21 October 2022, the Claimant replied to Mr Rees. She said she was not carrying out administrator duties, instead she was ensuring customers at TCQ were safe as she did not have confidence within the senior management team within her department as discussed with Ms Gorvett on 12 August 2022 [p764]. The Claimant, in cross-examination said she intended this to mean that she would carry on accessing the systems until CQC and BANES provided the outcomes to their investigations.

110. Mr Rees replied on 24 October 2022. He noted how the Claimant cared for the residents. He said, “However, despite your opinion of management decisions, I must be clear that it is not within the remit of your role to decide how people are cared for. We respect your concerns and indeed these have been taken seriously…” reference was made their duty of care and there should be no need for her to access the systems whilst she was away from work [p769]. The Claimant suggested this was said because she had raised concerns with BANES and CQC, this was not accepted by Mr Rees.

111. In the Claimant’s reply she said Ms Harris-Brandi had not given a factual account to CQC. Once she had heard from the third party she might feel less inclined to check in on service users A and B [p772].

112. Between 28 October and 4 November 2022, the CQC conducted an investigation, attending the site on 31 October 2022. The Claimant accepted it was a thorough investigation.

113. On 4 November 2022, Mr Rees asked HR for advice, saying that he did not feel comfortable on providing a response to the grievance about the service users when the issues were also being investigated by BANES and the CQC.

114. On 7 November 2022, Mr Rees was advised that it would make sense for him to wait for the CQC and BANES investigations to conclude before informing the Claimant of the outcome of his investigation.

115. On 8 November 2022, Mr Rees told the Claimant he was unable to complete his investigation until CQC and BANES had completed their investigations, however he was able to discuss her concerns about the matters not related to residents [p827]. Mr Rees liaised with the Claimant about a meeting and she was invited to attend a second grievance meeting on 18 November 2022 to discuss her concerns which were not related to residents.

116. On 17 November 2022, the Claimant was e-mailed by Ms Hawtrey. She was told safeguarding paperwork had been submitted and a planning meeting would be arranged. There would be two meetings, one of which she would be invited to without the Respondent being present. Ms Hawtrey referred to her allegations of deliberate neglect and forging care documents. In cross-examination, the Claimant said that was her belief as to what was happening

117. On 18 November 2022, the Claimant’s laptop stopped working, in that she was unable to get it to turn on at all. The Claimant suggested that

this had occurred because she believed the Respondent was monitoring her e-mails and it had been shut down because she had contacted Ms Hawtrey. She accepted she had no evidence that her laptop was blocked. The Respondent took steps to try and get the problem fixed. We did not accept that the Respondent did anything to stop the Claimant's laptop from working.

118. On 18 November 2022, the Claimant attended a meeting with Mr Rees, at which she was accompanied by her sister. The focus was on matters not relating to residents.

119. On 21 November 2022, Ms Hawtrey contacted Mr Dicks and told him that the Claimant was still accessing information because she was sending it to them. She said they had strongly advised her to accept the Respondent's advice to stop looking at work documents and the safeguarding case had been closed.

120. On 23 November 2022 Ms Harris-Brandi attended a case review meeting at which an update on the grievance was given. Ms Harris-Brandi and Kay Rudge expressed the view that the resident issues should not form part of the grievance on the basis that they were being dealt with externally and it was not appropriate to progress them separately.

121. On 24 November 2022, the CQC published its report [p904-910] into the Claimant's concerns. The stated purpose of the report was to check on concerns about manual handling, incidents of safeguarding not being reported and actions not being taken in response to people's needs. The report did not find any concerns about the management of A, although the Claimant said in cross-examination that it was based on later documents and if the CQC had the same information she did on 10 August, their conclusions would have been the same as hers. We accepted that the CQC had access to all systems including the properties of the files. It was found that safeguarding concerns were overall investigated and reported to safeguarding at the local authority. One referral had not been made in a timely way and the registered manager had not spoken to the safeguarding team. There was not a finding that there had been a breach of a legal obligation or endangerment of health and safety. It was found that the mental health team had provided guidance but it was not recorded on the care plan.

122. On 25 November 2022, Mr Dicks had a conversation with Ms Haydon and Ms Naylor-Wild. Ms Haydon decided that the Claimant's access to the Respondent's electronic systems should be restricted, whilst she remained off sick. Mr Dicks was advised that this should be for everything including WhatsApp and People Planner. Ms Haydon instructed Mr Dicks to remove the Claimant from the WhatsApp group and he arranged for someone to

do this. By this time, the Claimant had been told by Ms Hawtrey the safeguarding case had been closed.

123. On 25 November 2022, the IT team was instructed to block the Claimant's access to people planner and her e-mail. The IT team disabled the Claimant's main account meaning she could not access those systems.

124. We accepted Ms Haydon's evidence that she was very concerned about the Claimant's wellbeing and that accessing work related information was exacerbating her health issues. She was also acutely aware that restricting access could be viewed negatively by the Claimant and she had to carefully consider the decision. She thought restricting the Claimant's access would be best for the Claimant and that she believed that the Claimant was receiving support from her GP.

125. Ms O'Brien, HR Business Partner, e-mailed the Claimant [p934]. She said that they had previously asked the Claimant not to access work e-mails and systems because they were keen for her not to focus on work and concentrate on getting back to full health. It went on to say, "*It was brought to our attention that whilst absent from work, you may have been accessing personal information in relation to resident [A] further to raising safeguarding concerns. The advice to you from the safeguarding team was to stop looking at work documents in relation to [A] as the safeguarding case had been closed. In light of this we have taken the decision to restrict your access to work systems and data. This is to remove the temptation to get involved in work activities, to protect your well-being and to make sure that you follow the advice that you have been given. This is a well-being measure and by no means a punishment or sanction. We will of course review this when you are ready to return to work."*

126. The Claimant did not accept that the restriction was to ensure her wellbeing and maintained it was because she had raised matters with the CQC and BANES. We accepted that Mr Rees and Ms Haydon were concerned about the effect the Claimant's accessing the systems was having on her mental health. We accepted Ms Harris-Brandi's evidence that she did not have any involvement in the decision to restrict the Claimant's access

127. On 29 November 2022, Mr Rees asked Ms Harris-Brandi to review his grievance outcome in relation to why the resident matters lay outside of his remit. Ms Harris-Brandi said that to repeat the CQC and BANES investigation would be a waste of resources and would serve no purpose because external findings carry more weight [p943].

128. On 5 December 2022, the Claimant received the outcome of her grievance [p956-960]. Mr Rees addressed the points the Claimant had

raised about her supervision with Mr Dicks and the record of it, her concerns about the use of bank staff, the implementation of access to the people planner and IT issues. The allegation in relation to bank workers was partially upheld.

129. The letter said that there were two parts to her grievance, employment related issues and those affecting wellbeing of residents. The employment part had been concluded. She was told that the issues in relation to the residents would normally be investigated as part of the whistleblowing procedure, however because she had raised them with external bodies from the outset, the external bodies would investigate them without the need for internal investigation. She was told that because they were being addressed through the relevant statutory processes it was not appropriate to comment on those aspects of the grievance [p958-959].

130. We accepted that Mr Rees had investigated the Claimant's concerns about residents, as demonstrated from the questions he asked the various witnesses as part of his investigation and his draft grievance report. The Claimant considered that the Respondent's investigation and that of the CQC and BANES could be conducted concurrently. Even though the Claimant knew that CQC and BANES were investigating she considered that it was a detriment to her.

131. At the time Mr Rees provided his outcome he did not have the CQC's report and BANES had not concluded its investigation. We accepted that the CQC investigation was not the investigation of the Respondent and it would provide an independent and much more detailed report on the situation. We accepted that he considered the grievance process was to make sure the Respondent was looking after employees and that the regulators had statutory functions and had more outcomes at their disposal. He considered the residents matters were being dealt with by those bodies and they would provide their own conclusions. We accepted he considered that the CQC and BANES conclusions would outweigh his conclusions on those issues. We accepted that he was not influenced by Ms Harris-Brandi in the conclusions that he reached.

132. On 6 December 2022, the Claimant attended a meeting with BANES to discuss B. Ms Hawtrey referred to being concerned about the allegation that documents had been created after allegations had been made to CQC. Ms Hawtrey pointed out that it was to be expected that B's care plans would change, because they were meant to be dynamic documents reflecting a changing presentation. The Claimant did not accept this suggested that Ms Hawtrey did not consider the allegations were well founded. At the meeting, the Claimant maintained that the document had been changed. Ms Hawtrey continued to investigate.

Contact between the Claimant and Mr Dicks after August 2022

133. The Claimant's evidence was that after she had raised her initial disclosures Mr Dicks stopped contacting her and that she was not receiving text messages from him. The Claimant suggested that there was no direct contact from Mr Dicks, however e-mails in the bundle demonstrated that he was e-mailing her directly. When this was put to her she said that the amount of contact was not the same.

134. We accepted Mr Dicks' evidence that the Claimant had told him she was going to raise her concerns with safeguarding. Mr Dicks did not believe it was a safeguarding issue at the time. He considered that what the Claimant was saying was an issue about his, as the registered manager, actions or inactions and that they would need to be investigated by someone other than him and he needed to remain outside of the process. Mr Dicks was aware that there would be an investigation into those matters, which was why he referred to it to Ms Harris-Brandi and HR to investigate. Mr Dicks considered that he needed to remove himself from the senior team at the Chocolate Quarter, which included the Claimant and the two seniors. The Claimant's concern was safeguarding, which was Mr Dicks' duty to report and he distanced himself so that an impartial investigation could be undertaken and an independent view formed about safeguarding. Mr Dicks was later made aware that the Claimant had raised a grievance, in which she was making allegations about him and therefore he maintained the distance whilst it was ongoing to ensure that the investigation was impartial.

The Claimant's resignation and subsequent matters

135. On 7 December 2022, the Claimant resigned, giving a month's notice. The Claimant accepted in cross-examination that she had been seeking new employment since August 2022. The Claimant did not accept the Respondent's suggestion that she resigned because she knew the CQC had not upheld her complaint and it was obvious from the meeting with BANES the day before that they also would not uphold her complaint.

136. On 9 December 2022, the Claimant sent a response to the grievance outcome. In her reply she said the process had been draining and that she would never feel comfortable working for an organisation who had discredited what she had disclosed.

137. The Claimant appealed the grievance outcome on 12 December 2022. On 4 January 2023, the Claimant was sent a letter asking her if she wanted to continue her appeal and inviting her to a meeting on 12 January 2023. On 6 January 2023, the Claimant replied and said that carrying on the appeal process would be too much for her.

138. On 23 March 2023 BANES published a report into its investigation in relation to B. It recorded that the Claimant had been asked to provide 2 pieces of supporting evidence relating to each of her concerns, however it had not been forthcoming. The Claimant suggested in cross-examination that she had provided extensive information. The report said that enquiries established that care plans were in place and reviewed during the time period in question and GP provided a time line confirming B had been seen in August 2022 when she was referred to the CIT team and prior to that he had seen B on several occasions. The GP confirmed that B did not have dementia in February 2021 and he reviewed her at regular intervals. The outcome of the CQC investigation was that the service was safe and there were no concerns about practice or leadership. The concern that there was a failure to act on changes in presentation was not upheld. The information provided by the GP contradicted the concerns raised that there was no plan in place. The delay between being referred to the RICE clinic and being diagnosed was a usual timeframe. It was concluded that the GP considered the asthma medication was causing side effects which increased her anxiety and therefore that medication was stopped. The concern that documentation had been falsified was not upheld. The issues in relation to B saying things had been taken did not meet the threshold for a safeguarding enquiry because the items were found.

**The law**

139. Under section 43A of the Employment Rights Act 1996 a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

140. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure 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.

141. Section 43F (Disclosure to prescribed person) provides:

(1) A qualifying disclosure is made in accordance with this section if the worker—
(a) makes the disclosure . . . to a person prescribed by an order made by the Secretary of State for the purposes of this section, and
(b) reasonably believes—
(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and
(ii) that the information disclosed, and any allegation contained in it, are substantially true.
(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

142. Section 43G (Disclosure in other cases) provides:

(1) A qualifying disclosure is made in accordance with this section if—
(a) . . .
(b) [the worker] reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
(c) he does not make the disclosure for purposes of personal gain,
(d) any of the conditions in subsection (2) is met, and
(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.
(2) The conditions referred to in subsection (1)(d) are—
(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,
(b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or
(c) that the worker has previously made a disclosure of substantially the same information—
(i) to his employer, or
(ii) in accordance with section 43F.
(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—
(a) the identity of the person to whom the disclosure is made,
(b) the seriousness of the relevant failure,
(c) whether the relevant failure is continuing or is likely to occur in the future,

(d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,
(e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
(f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.
(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.]

143. Under Section 47B 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. This provision does not apply to employees where the alleged detriment amounts to dismissal.

144. Section 48(1) and (1A) of the Act state that an employee may present a claim that he has been subjected to detriment contrary to s. 44 and 47B of the Act. Under section 48(2) of the Act, on a complaint to an employment tribunal, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

145. s. 48(3) provides: An employment tribunal shall not consider a complaint under this section unless it is presented—
(*a*) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
(*b*) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
(4) For the purposes of subsection (3)—
(*a*) where an act extends over a period, the 'date of the act' means the last day of that period, and
(*b*) a deliberate failure to act shall be treated as done when it was decided on;
and, in the absence of evidence establishing the contrary, an employer[,a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonable have been expected to do the failed act if it was to be done.

146. Under section 103A of the Act, an employee is to be regarded 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.

Protected disclosures

147. The tests were recently re-stated by the Employment Appeal Tribunal in Martin v London Borough of Southwark UKEAT/0239/20/JOJ reaffirming that the definition for a qualifying protected disclosure breaks down into a number of elements: (1) there must be disclosure of information, (2) the worker must believe that the disclosure is made in the public interest, (3) if the worker does hold such a belief, it must be reasonably held, (4) the worker must believe that the disclosure tends to show one or more matters in sub-paragraphs a to f, and (5) if the worker holds such a belief, it must be reasonably held.

148. The Court of Appeal in Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73, also restated the tests.

149. First, we had to determine whether there had been disclosures of '*information*' or facts, which was not necessarily the same thing as a simple or bare allegation (see the cases of Geduld-v-Cavendish-Munro [2010] ICR 325 in light of the caution urged by the Court of Appeal in Kilraine-v-Wandsworth BC [2018] EWCA Civ 1346). An allegation could contain '*information*'. They were not mutually exclusive terms, but words that were too general and devoid of factual content capable of tending to show one of the factors listed in section 43B (1) would not generally be found to have amounted to '*information*' under the section. The question was whether the words used had sufficient factual content and specificity to have tended to one or more of the matters contained within s. 43B (1)(a)-(f). Words that would otherwise have fallen short, could have been boosted by context or surrounding communications. For example, the words "*you have failed to comply with health and safety requirements*" might ordinarily fall short on their own, but may constitute information if accompanied by a gesture of pointing at a specific hazard. The issue was a matter for objective analysis, subject to an evaluative judgment by the tribunal in light of all the circumstances. A bare statement such as a wholly unparticularised assertion that the employer has infringed health and safety law will plainly not suffice; by contrast, one which also explains the basis for this assertion is likely to do so. (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

150. Next, we had to consider whether the disclosure indicated which obligation was in the Claimant's mind when the disclosure was made such that the Respondent was given a broad indication of what was in issue (Western Union-v-Anastasiou UKEAT/0135/13/LA). There must be some disclosure which actually identifies, albeit not in strict legal language, the breach of legal obligation on which the employee is relying (Fincham v HM Prison Service EAT 0925/01). In Blackbay Ventures Ltd v Gahir [2014] ICR 747, that EAT said, "Save in obvious cases, if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation." In Twist DX v Armes UKEAT/0030/20/JOJ the EAT concluded that it is not necessary that a disclosure of information specifies the precise legal basis of the wrongdoing asserted.

151. We also had to consider whether the Claimant had a reasonable belief that the information that she had disclosed had tended to show that the matters within s. 43B (1) (b), (d) or (f) had been or were likely to have been covered at the time that any disclosure was made. To that extent, we had to assess the objective reasonableness of the Claimant's belief at the time that she held it (Babula-v-Waltham Forest College [2007] IRLR 3412 and Korashi-v-Abertawe University Local Health Board [2012] IRLR 4). 'Likely', in the context of its use in the sub-section, implied a higher threshold than the existence of a mere possibility or risk. The test was not met simply because a risk *could* have materialised (as in Kraus-v-Penna [2004] IRLR 260 EAT). Further, the belief in that context had to have been a *belief* about the information, not a doubt or an uncertainty. The worker does not have to show that the information did in fact disclose wrongdoing of the kind enumerated in the section; it is enough that she reasonably believes that the information tends to show this to be the case. As Underhill LJ pointed out in Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979; [2017] IRLR 837, para.8, if the worker honestly believes that the information tends to show relevant wrongdoing, and objectively viewed it has sufficient factual detail to be capable of doing so, it is very likely that the belief will be considered reasonable. (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

152. 'Breach of a legal obligation' under s. 43B (1)(b) was a broad category and has been held to include tortious and/or statutory duties (Ibrahim-v-HCA UKEAT/0105/18).

153. Next, we had to consider whether the disclosures had been '*in the public interest.*' In other words, whether the Claimant had held a reasonable belief that the disclosures had been made for that purpose. As to the

assessment of that belief, we had to consider the objective reasonableness of the Claimant's belief at the time that she possessed it (see Babula and Korashi above). That test required us to consider her personal circumstances and ask ourselves the question; was it reasonable for her to have believed that the disclosures were made in the public interest when they were made.

154. The '*public interest*' was not defined as a concept within the Act, but the case of Chesterton-v-Normohamed [2017] IRLR 837 was of assistance. The Court of Appeal determined that it was the character of the information disclosed which was key, not the number of people apparently affected by the information disclosed. There was no absolute rule. Further, there was no need for the 'public interest' to have been the sole or predominant motive for the disclosure. As to the need to tie the concept to the reasonable belief of the worker;

> "*The question for consideration under section 43B (1) of the 1996 Act is not whether the disclosure per se is in the public interest but whether the worker making the disclosure has a reasonable belief that the disclosure is made in the public interest*" (per Supperstone J in the EAT, paragraph 28).

155. The Court of Appeal [2017] IRLR 837 dismissed the appeal. At paragraph 31 Underhill LJ said that he did not think "*there is much value in adding a general gloss to the phrase 'in the public interest. … The relevant context here is the legislative history explained at paragraphs 10-13 above. That clearly establishes that the essential distinction is between disclosures which serve the private or personal interests of the worker making the disclosure and those that serve a wider interest*." It was suggested the following factors might be relevant:

a. the numbers in the group whose interests the disclosure served
b. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
c. the nature of the wrongdoing disclosed, and
d. the identity of the alleged wrongdoer.

156. In order to qualify for protection, the disclosure must be to an appropriate person. There are essentially three types of disclosure relevant to this appeal: disclosure to the employer under section 43C; disclosure to a prescribed person (typically a regulator) pursuant to section 43F; and disclosure to "other persons" under section 43G. The threshold justifying a disclosure becomes more rigorous where the worker is raising their concerns or allegations beyond the employer. For a section 43C disclosure to the employer, the only constraint on the worker is that the disclosure

satisfies the test of a qualifying disclosure in section 43B. She must at least genuinely suspect that the information is or may be true, otherwise she could not reasonably believe that it tends to show any of the matters identified in section 43B(1). By contrast, the second type of disclosure to a prescribed person (which means prescribed by an order of the Secretary of State) specifically requires that the worker must "reasonably believe that the information disclosed, and any allegation contained within it, are substantially true": section 43F(1)(b)(ii). The third type of disclosure to other parties under section 43G, also includes this requirement that there must be a reasonable belief that the information is substantially true, together with other conditions which must be met before any disclosure satisfies the terms of that section. (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

157. Under s.43F, the worker must reasonably believe that the subject matter of the disclosure 'falls within any description of matters in respect of which that person is so prescribed'. The phrase 'reasonable belief' also appears in s.43B, which defines a qualifying disclosure, and it has been established in that context that a whistle-blower can reasonably believe something that is objectively inaccurate.

158. For a disclosure to be protected under s.43F , not only must the worker reasonably believe that the disclosure falls within a description of matters prescribed in Schedule 1 to the 2014 Order, but he or she must also reasonably believe that the information disclosed, and any allegation contained in it, are substantially true. The worker must believe that the majority of the information and/or allegations contained within the disclosure is true

159. In relation to s. 43G it was held in Jesudason, that there are in essence four hurdles to satisfy in order for a worker to bring the disclosure within this section: (1) the worker must have a reasonable belief that the disclosure, and any allegations implicit in it, are substantially true; (2) the disclosure must not be made for personal gain; (3) there must be a justifiable reason falling within subsection (2) for not raising the matter with the employer or a prescribed body rather than some other body; and (4) in all the circumstances of the case, it must be reasonable to make the disclosure.

160. At paragraphs 25 and 26, Sir Patrick Elias said.

> "*25. The structure of the legislation, therefore, is that disclosure to "other bodies" should be a last resort and only justified where disclosures to the employer or a regulated body would, in the*

*circumstances, not be adequate or appropriate. The justifiable reasons for not raising the concerns with the employer or a prescribed body (where there is an appropriate one) are that the worker reasonably believes that the employer will victimise him if he takes that step; or that there is no prescribed body and he believes that evidence of the alleged wrongdoing will be destroyed. He is also relieved from the need to disclose the information to his employer if he has already disclosed it either to the employer or a regulated body. The section does not say in terms that he can only legitimately disclose to another body if the employer or the prescribed body has failed properly to deal with the original disclosure, but if the employer has dealt with it, or can reasonably be expected to do so, that will be highly relevant to the question whether the disclosure is reasonable. It is one of the factors which subsection (3) expressly requires a tribunal to take into account when considering the reasonableness question. It will often be unreasonable to make the disclosure to a third party in those circumstances.*

*26. The test whether the disclosure is reasonable is an important control mechanism in relation to disclosures falling within section 43G . In answering that question, a tribunal must have regard to all the circumstances; the specific considerations identified in subsection (3) are not exhaustive. As Auld LJ pointed out in Street v Derbyshire Unemployed Workers' Centre [2005] ICR 97 , para 52, the question of reasonableness is essentially an issue of fact for the tribunal:*

*"in my view, section 43G provides a collection of partially overlapping requirements, any one of which, if not fulfilled, will defeat a worker's right to maintain that his disclosure is 'protected' within the meaning of the Act. Whether, in the circumstances of any particular case, the claim is defeated on that account is essentially a matter for the employment tribunal to assess on a broad and common-sense basis as a matter of fact, in the light of each of the requirements in paragraphs (a) to (e) of subsection (1). Whether it approaches the question through one or more than one of those requirements and whether or not they overlap is essentially a matter for its evaluation on the evidence before it*."

161. The Claimant must believe that the information contained in the disclosure is substantially true. In other words that the Claimant believes on a rational basis that the majority of the information and/or allegations contained within the disclosure are true. In an obiter remark in *Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4, the EAT said "*On a simple reading of the words in the Statute, the information

is in reference to all the information and the allegation must be in reference to the allegations, if any, and not one out of a number."

162. It is necessary to consider the motivation for making the disclosure and whether the purpose of making it was to make personal gain.

163. The question of reasonableness must be assessed having regard to all the circumstances of the case and is so doing the Tribunal must have regard to the factors set out in s. 43G(3). The relevant time to reasonableness must be considered is the time that the complaint or concern is raised and not with the benefit of hindsight (see Jesudason para 48)

Detriment (s. 47B)

164. The next question to determine was whether or not the Claimant suffered detriment as a result of the disclosure. The test in s. 47B is whether the act was done "*on the ground that*" the disclosure had been made.

165. Section 48 (2) was also relevant, in that, "*On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*"

166. A detriment is something that is to the Claimant's disadvantage. In Ministry of Defence v Jeremiah 1980 ICR 13, CA, Lord Justice Brandon said that 'detriment' meant simply 'putting under a disadvantage', while Lord Justice Brightman stated that a detriment 'exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment'. Brightman LJ's words, and the caveat that detriment should be assessed from the viewpoint of the worker, were adopted by the House of Lords in Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL, in which Lord Hope of Craighead, after referring to the observation and describing the test as being one of "materiality", also said that an "unjustified sense of grievance cannot amount to 'detriment'". In the same case, at para 105, Lord Scott of Foscote, after quoting Brightman LJ's observation, added: "If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought, in my opinion, to suffice"

167. Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective. (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

168. The test in s. 47B is whether the act was done "*on the ground that*" the disclosure had been made. In other words, that the disclosure had been the cause or influence of the treatment complained of (see paragraphs 15 and 16 in Harrow London Borough Council-v-Knight [2002] UKEAT 80/0790/01). It will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistle blower (NHS Manchester-v-Fecitt [2012] IRLR 64 and International Petroleum Ltd v Osipov UKEAT 0229/16).

169. The test was not one amenable to the application of the approach in *Wong-v-Igen Ltd*, according to the Court of Appeal in NHS Manchester-v-Fecitt [2012] IRLR 64). It was important to remember, however, if there was a failure on the part of the Respondent to show the ground on which the act was done, the Claimant did not automatically win. The failure then created an inference that the act occurred on the prohibited ground (International Petroleum Ltd v Osipov EAT 0058/17).

170. As observed in (Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73)

" *30. As Lord Nicholls pointed out in Chief Constable of West Yorkshire v Khan [2001] UKHL 48; [2001] ICR 1065 para.28, in the similar context of discrimination on racial grounds, this is not strictly a causation test within the usual meaning of that term; it can more aptly be described as a "reason why" test:*

> *"Contrary to views sometimes stated, the third ingredient ('by reason that') does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the 'operative' cause, or the 'effective' cause. Sometimes it may apply a 'but for' approach. For the reasons I sought to explain in Nagarajan v London Regional Transport [2001] 1 AC 502, 510-512, a causation exercise of this type is not required either by section 1(1)(a) or section 2. The phrases 'on racial grounds' and 'by reason that' denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

*31. Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have*

*committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under section 47B.*"

171. This was re-affirmed in Warburton v The Chief Constable of Northamptonshire Police [2022] EAT 42 when it was held that the question is whether the protected act had a significant cause on the outcome.

Dismissal (s. 103A)

172. We considered the test in Kuzel-v-Roche [2008] IRLR 530;
(a) whether the Claimant and had showed that there was a real issue as to whether the reason put forward by the Respondent was not the true reason for dismissal;
(b) if so, had the employer showed its reason for dismissal;
(c) if not, it is open to the tribunal to find that the reason was as asserted by the employee, but that reason does not have to be accepted. It may be open to the Tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not one advanced by either side.

173. However, since the Claimant lacked the requisite service to bring an ordinary unfair dismissal claim, the burden was on her to prove the reason for her dismissal under s.103A on the balance of probabilities; it is a greater burden than the requirements to merely prove a prima facie case if she had a two-year service under Kuzel-v-Roche [2008] IRLR 530; Ross-v-Eddie Stobart [2013] UKEAT/0068/13/RN.

174. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

175. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA (endorsed in Kaur-v-Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978): The following basic propositions of law can be derived from the authorities: 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence". 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer".

176. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

177. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed

or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).

## Conclusions

### Did the Claimant make protected disclosures?

On 10 August 2022 verbally to Mr Dicks, her line manager within the Respondent, concerning the alleged unsafe manual handling and neglect of a care user?

178. The Respondent disputed that the Claimant had provided information to Mr Dicks, although it was accepted in closing submissions that what was being said could be boosted by context or surrounding communications. Effectively it was submitted that what had been said was no more than an allegation, we rejected that contention. This was a situation in which there had been a number of discussions and conversations during the day, against a background in which it was known a carer had hurt her back whilst moving A. The Claimant was concerned about the stand aid not being used and A's spouse was not a professional carer and there had been suggestions that she had refused to use it. When she spoke to Mr Dicks she said that she did not think A's spouse should be the double up because she was refusing to use the equipment. This was more than merely alleging that health and safety was endangered or there had been a breach of obligation. It was against the background of a known injury and the reason why she was raising concerns was that it appeared there had been a refusal to use the equipment. A's spouse had later denied refusing to use the equipment, however the understanding of the Claimant was that there had been a refusal and Mr Dicks had spoken to the spouse about it.

179. We accepted that the Claimant believed that the information tended to show that there was a risk to the health and safety of A and staff members and as such there was a safeguarding issue. The Claimant was aware of the Respondent's duty to safeguard its customers and that if there were safeguarding concerns to raise them with the Respondent. The boundary between health and safety and the legal obligation to safeguard customers is not a defined line and there are well known legal obligations to protect the health and safety of customers and staff. The Claimant knew that a staff member had been hurt and that the stand aid had not been used on that occasion and that A's spouse had been spoken to about not using it. She had discussed her concerns throughout the day. In the circumstances we were objectively satisfied that the Claimant reasonably believed that the information tended to show that there was a risk to health and safety of resident A and others and that there was a breach of the legal obligation to safeguard resident A.

180. The Claimant considered that it was in the public interest because the staff and resident were at risk of harm. The Respondent provides a service to paying members of the public. It is an organisation which has close links with BANES and is regulated by the CQC. The customers the Respondent has are people who have care needs which they cannot undertake themselves. If there are matters which place a customer at risk those are important matters which affect not just the individual but potentially a large number of customers, their families and also staff members. The concern was not something related to the Claimant personally. We accepted that the Claimant had a reasonable belief that the disclosure was in the public interest.

181. The disclosure was made to her employer and we were satisfied that it was a protected disclosure.

To Bath and North East Somerset Council ('BANES') on 10 August, an online report similar to the one to Mr Dicks on 10 August?

182. We accepted that BANES was not a prescribed person for the purposes of the Public Interest Disclosure (Prescribed Persons) Order 2014, in relation to matters relating to the provision of a regulated activity under the Health and Social Care Act 2008, the person prescribed for those matters is the CQC.

183. Local authorities are prescribed persons for matters which affect health and safety at work and which may affect the health and safety of any member of the public arising out of activities at work. The disclosures were made to BANES safeguarding and not to the health and safety department. We did not accept that they were a prescribed person for the purposes of the information provided by the Claimant. However the ambit of health and safety in present case extended into the work arena, i.e. that the Respondent's staff were working for the Respondent and were caring for Resident A.

184. The Claimant provided information that there had been unsafe manual handling practices and as a result a staff member had injured their back. There was also reference to equipment not being used properly and the second carer was A's spouse, who was reluctant to pay for a second carer. In relation to B she said that there was a concern about delays in arranging medical appointments and that B was alleging things had been stolen and that the incidents had increased. We accepted that the Claimant was providing information and that this went beyond making a mere allegation.

185. The Claimant said that she believed this information tended to show a risk to health and safety and a breach of the obligation to safeguard customers. The Claimant was aware that a carer had been injured and that

A's spouse had been spoken to about not using the stand aid. For the same reasons as for the disclosure to Mr Dicks, the Claimant had a reasonable belief that the information tended to show that there was a risk to health and safety and a breach of the obligation to safeguard A. Similarly in relation B the Claimant had referred to B being distressed and anxious, which would be an effect of what she was reporting. We accepted that the Claimant reasonably believed that this tended to show B's health and safety was at risk and that there had been a breach of the obligation in relation to safeguarding.

186. The Claimant believed that it was in the public interest because equipment was being refused and help was needed with mental health. The Respondent provided a service to paying members of the public and as such the concerns could impact on a wide range of people, namely customers and their family members and staff. The concerns were of wide application and for the same reasons for the disclosure to Mr Dicks, we were satisfied that the Claimant reasonably believed it was in the public interest.

187. The Claimant said that she believed that BANES was a prescribed person for the disclosure. BANES was specifically referred to as an external body to which matters should be reported in its whistleblowing policy. It was further relevant that the local authority is a prescribed person for health and safety at work and that the concerns the Claimant was raising were issues of health and safety in a workplace setting.

188. S. 43F ERA sets out that the Claimant must reasonably believe that the matters raised fall within any description of matters which BANES is prescribed in the Prescribed Persons Order. The Respondent fairly pointed out that there is no appellate authority on this issue. We were referred to Barton v London Borough of Greenwich ET2359351/12, in which the Tribunal held that because relevant matter did not fall within the prescribed person's responsibilities such a reasonable belief could not be held. We considered that the same approach to the Claimant's reasonable belief for whether information tended to show a breach of health and safety/legal obligation and that matters were in the public interest, needed to be adopted. The wording of the section is the same 'in respect of reasonable belief' in s. 43B and s. 43F.

189. In the present case it was significant that the local authority safeguarding unit was listed as a relevant external body in the whistleblowing policy. That was something which it could reasonably lead an employee to believe that they were raising the concern with the appropriate regulatory body. This is further strengthened by Local Authorities being prescribed persons for health and safety at work. The whistleblowing policy listed the CQC alongside the Local Authority Safeguarding Unit as that appropriate body. In the circumstances we accepted that the Claimant reasonably believed that she was making a

disclosure to a prescribed person and the subject matter fell within the matters for which that person is prescribed.

190. The Claimant also must reasonably believe that the majority of the allegations are substantially true. The Claimant was cross-examined in relation to an OT signing off the practices for A and those practices being unsafe. In relation to B she was cross-examined about the care plan pre-dating her disclosures and that it included that there had been a GP appointment and an assessment and scan was awaited. However we took into account that not all documents had been uploaded onto the Respondent's electronic systems and at the time the Claimant made the report she had limited information. We bore in mind that the belief must be that it is substantially true and not that everything is true. The Claimant knew that a carer had been hurt and Mr Dicks had raised concerns with A's spouse that the stand aid was not being used. The carers statement dated 11 August 2022 would not have been available to Claimant. The Claimant genuinely believed that what she was reporting was true. She had some personal knowledge of the residents and the electronic records were not complete, in that documents were missing from them. We were satisfied that the Claimant reasonably believed that what she was saying was substantially true.

191. We accepted that this was a protected disclosure.

192. We went on to consider the test under s. 43G on the basis that we were wrong in relation to our conclusion that the Claimant reasonably believed that BANES was a prescribed person.

193. We were not satisfied at this stage the Claimant demonstrated any evidence that she would be subjected to a detriment if she reported the matter to her employer and in fact she had raised her concerns about resident A. There was also a prescribed person, namely the CQC. Therefore s. 43G(2)(a) and (b) did not apply. In relation to s. 43G(2)(c), the Claimant had made a disclosure of substantially the same information to Mr Dicks in relation to Resident A, but not Resident B.

194. We then went on consider whether in all the circumstances of the case it was reasonable to make the disclosure to BANES. Taking into account s. 43G(3), BANES safeguarding unit was specifically listed as a person to report safeguarding concerns to in the Respondent's whistleblowing policy. The safeguarding unit closely worked with the Respondent generally and had its public sector duty to customers of the Respondent. The concerns related to safeguarding and the safety and welfare of vulnerable people. It is important that activities providing care to vulnerable people are regulated to ensure that the provision is of sufficient standard and quality, without endangering those people. The situations raised by the Claimant had been occurring for some time and had not fully

resolved and therefore there was continuance. There was no incidence of an unlawful breach of confidentiality. The Claimant had not followed the whistleblowing policy in that she had jumped from informing her line manager to going to CAC and BANES bypassing stages 2 and 3, however this was against a background of Mr Dicks telling her that he did not think it was a safeguarding issue, whereas the Claimant thought it was. After considering the factors we considered that it was reasonable for the Claimant to make the disclosure to BANES and that if the disclosure did not fall within s. 43F it was a protected disclosure in relation to resident A under s. 43G.

To the CQC on 11 August, an online report similar to the one to Mr Dicks on 10 August 2022?

195. The Respondent accepted that the CQC was a prescribed person, however it disputed that information had been provided tending to show breach of a legal obligation or danger to health and safety or that the Claimant believed it was substantially true.

196. The disclosure referred to resident A. The Claimant said that she had concerns that the second carer was A's spouse and that they had been refusing to use the equipment. It was identified that A had severe mobility concerns. Further she had e-mailed staff reminding them to use the equipment. We accepted that this was more than a mere allegation. It was information which tended to show that there was a resident with mobility problems and for whom specific equipment had been provided which was not being used. The Claimant said that she believed this tended to show that there was a risk to health and safety. The same reasoning applies to this alleged disclosure as for the disclosures to Mr Dicks and to BANES on 10 August 2023 as to whether the Claimant had reasonable belief that the information tended to show this and we accepted that in respect of the disclosure to the CQC that belief was reasonable.

197. In relation to whether the information tended to show that a risk to health and safety and/or a legal obligation was being concealed. The Claimant said to the CQC that she was not satisfied with her manager's response. There was no information which tended to suggest that matters were being concealed and we did not accept that the Claimant had a reasonable belief that it did in this respect.

198. In terms of the public interest, the Claimant said she believed this was because A was showing signs of being distressed by other people living in the Chocolate Quarter. It was also relevant that the Respondent provides a service to paying members of the public and the same reasoning as for the disclosures to Mr Dicks and BANES on 10 August 2023 applies. We accepted that the Claimant had a reasonable belief that the disclosure was in the public interest.

199. The Claimant said that she believed what she was saying was substantially true, due to her position in the Respondent. The Claimant had some knowledge of resident A and their mobility issues and had access to the electronic systems and records. She knew that a carer had been hurt and Mr Dicks had raised concerns with A's spouse that the stand aid was not being used. We were not satisfied that the carers statement dated 11 August 2022 had been seen by the Claimant prior to making her disclosure. The Claimant genuinely believed that what she was reporting was true. The Respondent's electronic records were not complete in that documents were missing from them. We were satisfied that the Claimant reasonably believed that what she was saying was substantially true.

200. We were satisfied that this was a protected disclosure.

<u>To the CQC on 21 September 2022, in an online report that documents being used for the investigation into her concerns dated 10 August 2022 had been altered or changed?</u>

201. On 21 September 2022, the Claimant referred to her previous disclosure to CQC and that context/background should be taken into account. She had further suggested on 12 August 2022, in an e-mail to the CQC, that she was concerned there had been a cover up. She said that the bad practices were still continuing and referred to B being unmedicated and was suffering with her mental health. She referred to Ms Harris-Brandi's account being incorrect and attached documentation that she says showed that it was incorrect. The first disclosure to the CQC related to Resident A and the Claimant said that the practices were continuing, this was more than a mere allegation that there had been a breach, taking both disclosures together the Claimant was providing information. She had also provided information in relation B that she was suffering with her mental health. The e-mail on its own tends to only make an allegation in relation to Ms Harris-Brandi's report, however it was accompanied by documents the Claimant said showed it was incorrect we were satisfied that this was also provision of information rather than merely an allegation.

202. The Claimant said that the information tended to show that there was a risk to health and safety and documents were being created in relation to those concerns, effectively that health and safety issues were being concealed. References to B suffering with her mental health is something which would tend to show that health and safety was at risk. The Claimant had already made a separate disclosure to the CQC that A was being placed at risk and linked this disclosure to the initial one. Taking the first and second disclosures to the CQC together this was something which would tend to show that health and safety was being put at risk. The same reasoning for the disclosure BANES on 10 August 2023 applies. We

accepted that the Claimant had a reasonable belief that the information provided tended to show that there was a risk to health and safety.

203. In relation to Ms Harris-Brandi's report the Claimant had previously said that she thought there might be a cover up. She specifically referred to the report being incorrect. She had attached documents which she said showed that the contents were incorrect. We accepted that the Claimant could believe that by saying the report was incorrect it could tend to show that health and safety or safeguarding issues were potentially being concealed. The Claimant had looked at the documents and thought there were inconsistencies and that documents which had not been on the electronic system at the time of her first disclosures had been added. We accepted that she reasonably believed that the information tended to show those matters were being concealed.

204. In terms of the Claimant's belief in the public interest, she said that if the original documents had been used Ms Harris-Brandi's report would have been different. We accepted that not all of the documents had been uploaded onto the Respondent's electronic system and that they had been in paper format. We were not satisfied that the Claimant had seen the paper documents before she made her initial disclosures. We repeat our reasoning for the previous disclosures as to the reasonableness of the Claimant's belief. The Respondent provides a service to vulnerable members of the public and if there is a problem it should be open to scrutiny. We accepted that the Claimant had a reasonable belief that the disclosure was in the public interest.

205. The Claimant had seen the 300 pages of documents she sent to the CQC to say that Ms Harris-Brandi's report was incorrect. She based much of her case on documents she says were created after her initial disclosures. We accepted that a large number of documents were scanned onto the system after the Claimant had made her first disclosures, although we were not satisfied that the paper versions of those documents, e.g. audit reports, were retrospectively created. Although much of the cross-examination related to the properties files of the documents, those screenshots were not taken until after the Claimant made the disclosures. Those properties files undermined that the documents had been modified or could be explained by the documents being 'living documents' and that they are updated as the care needs change or when care plans are approved. When the Claimant made her disclosure she did not have the benefit of the properties files. The Claimant knew what was on the residents electronic files before she made her first disclosures, after that documentation was added. There were some inconsistencies in accounts in relation to the carer who hurt her back. The Claimant also relied on her knowledge of residents from some months before and she did not agree with the assessment of Ms Harris-Brandi. For the purposes of assessing whether there was a protected disclosure it does not matter if it turns out

that the Claimant was incorrect in her assertion, what matters is what she believed at the time. We were careful to consider what the Claimant knew at the time and not what the situation was at the time of cross-examination. The Claimant thought that something was amiss and we accepted that she reasonably believed that what she said was substantially true.

206. We accepted that the Claimant made a protected disclosure.

To BANES on 21 September, a verbal disclosure to a Social Worker Ms Hawtrey, that documents being used for the investigation into her concerns dated 10 August 2022 had been altered or changed?

207. The Respondent submitted that that what the Claimant said was that her disclosure did not occur on 21 September, as set out in the list of issues, but on 23 and 26 September in writing and therefore they should not be considered. We rejected that contention. The Claimant made contact with BANES on 21 September 2022 with Mr Mills and discussed the previous concerns she had raised in relation to A and B and it was at that stage she discovered that the referral was not on the system. She then completed the forms on 23 and 26 September. We accepted that these forms provided greater detail of the matters discussed on 21 September. In the circumstances the documents and what was discussed on 21 September were so intertwined it was appropriate to consider them. It was also relevant that the Respondent fully cross-examined the Claimant on the documents and adduced evidence in relation to what was asserted and there was no prejudice to it. The documents were part of the factual background to the case and taking into account the guidance in Vaughan v Modality Partnership, to the extent it was necessary the Claimant was given permission to amend the list of issues.

208. The Claimant provided information about what had happened in relation to A and that a carer had been hurt. She also provided information in relation to there not being a plan for B and the effect on them. It was necessary to take into account the context and contents of the previous disclosure to BANES. The same reasoning for the first disclosure to BANES applied and we were satisfied that the Claimant reasonably believed that the information tended to show that there was a risk to health and safety and/or a breach of the obligation to safeguard the residents.

209. The Claimant also referred to false documents being created and that Ms Harris-Brandi's report was incorrect and that documents had been created or edited for the internal investigation. She also said that documents for customers had started to appear on site files. The Claimant believed that this tended to show that there was an attempt to cover up what had happened. The Claimant had a reasonable belief in that what she was saying tended to show this information.

210. The same reasoning as for the previous disclosures in relation to why the Claimant believed that the disclosure was in the public interest applied, and we were satisfied that she reasonably believed it was.

211. We repeat our reasoning as to why the Claimant reasonably believed that BANES was a prescribed person.

212. In relation to belief that what was disclosed was substantially true, we bore in mind that there is difference between what we found after hearing all of the evidence and what the Claimant believed at the time. The Tribunal had the benefit of the properties files of documents and the testimony and explanations of both parties. We were conscious that we needed to assess the Claimant's belief at the time of the disclosure. It was relevant that when she first reported her concerns, many of the documents from the internal investigation were not on the electronic system the Claimant had access to. When documents subsequently appear it something which could easily arouse suspicion. What the Claimant did not know was that there were paper documents, which she had not seen, which were subsequently scanned onto the systems. The Claimant did not accept that the documents had been in existence at the time because she had not seen them. The care plan for B had not been on the system and as far as the Claimant was aware there had not been a GP referral. We accepted that there was not documentary evidence to show that seniors did not risk assess the equipment at the time or that carers were not trained, however the question is whether the Claimant reasonably believed the majority of the information was true. The Claimant thought that documents had been falsified, however we concluded that was because she would not have seen them. We ultimately did not accept that documents had been falsified, however that was not the test. We accepted that the Claimant discovered many documents had been uploaded, including a signed care plan dated after her disclosure. We accepted that she thought her allegations were substantially true and that given how matters developed and how already existing documents, of which she was unaware, were uploaded after her initial disclosures we were satisfied that her belief was reasonable.

213. We concluded that this was a protected disclosure under s. 43F.

214. We went on to consider the test under s. 43G on the basis that we were wrong in relation to our conclusion that the Claimant reasonably believed that BANES was a prescribed person.

215. We were not satisfied at this stage the Claimant demonstrated any evidence that she would be subjected to a detriment if she reported the matter to her employer and in fact she had raised her concerns about resident A. There was also a prescribed person, namely the CQC. Therefore s. 43G(2)(a) and (b) did not apply. In relation to s. 43G(2)(c), the

Claimant had made a disclosure of substantially the same information to the CQC, albeit not in the same amount of detail.

216. We then went on consider whether in all the circumstances of the case it was reasonable to make the disclosure to BANES. Taking into account s. 43G(3), BANES safeguarding unit was specifically listed as a person to report safeguarding concerns to in the Respondent's whistleblowing policy. The safeguarding unit closely worked with the Respondent generally and had its public sector duty to customers of the Respondent. The concerns related to safeguarding and the safety and welfare of vulnerable people. It is important that activities providing care to vulnerable people are regulated to ensure that the provision is of sufficient standard and quality, without endangering those people. The situations raised by the Claimant had been occurring from some time and had not fully resolved and therefore there was continuance. There was no incident of an unlawful breach of confidentiality. The Claimant had not followed the whistleblowing policy in that she had jumped from informing her line manager to going to CAC and BANES bypassing stages 2 and 3, however this was against a background that Mr Dicks had told the Claimant that he did not think it was a safeguarding issue, whereas the Claimant thought it was. Considering the factors we considered that it was reasonable for the Claimant to make the disclosure to BANES and that if the disclosure did not fall within s. 43F it was a protected disclosure in relation to resident A under s. 43G.

**Detriment**

Was the Claimant subjected to detriment by the Respondent on the ground that she had made a protected disclosure by the following matters:

Ms Harris-Brandi on 26 August 2022 misrepresented her concerns to BANES and the CQC. She alleges that the Respondent's account of her concerns to both bodies did not reflect what she had originally said about the treatment of the service user

217. The allegation related to Ms Harris-Brandi misrepresenting the Claimant's concerns and that her report did not reflect what the Claimant had originally said. It was notable that the report made no reference to what the Claimant had said in her initial report. There was no misrepresentation as such as to what the Claimant had reported. During the course of the hearing the Claimant's concern was more that Ms Harris-Brandi was discrediting what she had said. The particular matters the Claimant said were incorrect were that A's mobility had improved and that B's symptoms had not improved and there was not a relevant medication change which would have improved symptoms. In relation to B, the Claimant was aware that asthma medication had been stopped. There was a dispute between the parties when B's care plan came into existence and what was recorded

within it. There was no suggestion in the report that the Claimant had made anything up or was unreliable. It was difficult to see what had been said which undermined her credibility. There is a difference between a report being produced which disagrees with what has been alleged and a misrepresentation of what has been said or an attempt to discredit. No criticism was levelled at the Claimant and we did not accept that a reasonable person would have considered the report to be to their disadvantage on that basis. We were not satisfied that this was a detriment.

218. In any event we were satisfied that the Respondent had proved that a full internal investigation had been undertaken, during the course of which all documents had been collated and stored in one place, which had not occurred before. Ms Harris-Brandi considered the investigation, the time lines and care documents and reported what she had interpreted from them. She answered the questions raised by the CQC. There was no evidence of animosity towards the Claimant by Ms Harris-Brandi. We were satisfied that the reason for the contents of the report was that Ms Harris-Brandi had considered the documentation and that what she wrote were her genuinely held conclusions. We were satisfied that the Respondent had proved that the fact the Claimant had made protected disclosures had no influence in what was said within the report. This allegation was therefore dismissed.

Her manager failed to contact her from August 2022

219. After the Claimant made her first disclosures there was a reduction of contact between her and Mr Dicks. It was not the case that there was no contact, however we were satisfied it was significantly reduced and Mr Dicks accepted that he had distanced himself from the Chocolate Quarter. The Claimant had been used to being able to contact and hear from her line manager on a regular basis. The withdrawal of Mr Dicks meant that she did not have that contact or someone to talk to. She considered this to be to her disadvantage and we accepted that a reasonable worker would have also considered it to their disadvantage, in that immediate supervision would have gone. We accepted that this was a detriment.

220. Mr Dicks accepted that his contact with the Claimant changed after she made her disclosures. Mr Dicks considered that the subject matter of the disclosures related to his actions or inactions as the registered manager. He had disagreed with the Claimant that what she had reported was a safeguarding matter. He was aware that the concerns would need to be investigated and he could not be involved in that investigation or have involvement with the residents. We accepted that Mr Dicks proved that he believed to enable an impartial investigation to take place he needed to remove himself from the Chocolate Quarter and in particular from the senior team, which included the two seniors and the Claimant. It was not just the Claimant with whom his contact decreased. The CQC and BANES also

investigated the concerns, which further delayed normal relationships being able to resume. The Claimant also raised a grievance, part of which related to Mr Dicks, which he considered should mean he kept his distance whilst it was being investigated. We accepted that the Respondent had proved that the reason why the level of contact decreased was so that it could not be suggested Mr Dicks was influencing the investigations into his actions in relation to how the service had been run in respect of residents A and B and to ensure that that investigation was impartial. We accepted that the reason was to ensure that the investigations were properly carried out and that the fact the Claimant had made protected disclosures had no influence on Mr Dicks' treatment of her.

221. This allegation was dismissed.

Removed her from the staff WhatsApp group on 25 November 2022; And
Blocked her access to emails and the Respondent's electronic systems from 25 November 2022;

222. We considered these allegations of detriment together. We accepted the Claimant's evidence that she wanted to know what was happening and that removing her access to the WhatsApp Group would have removed a social aspect for her. Further the blocking of her access to the electronic systems, e-mails and removal from the WhatsApp group would have meant that she did not know what was going on. The Claimant was in distressed state and found the investigation process very stressful. We accepted that she considered this was to her disadvantage and that a reasonable worker could have also considered it to be to their disadvantage. We accepted that both of these things were detriments.

223. In terms of whether the detriments were materially influenced by the Claimant having made a protected disclosure, this was a difficult issue. The Claimant had been providing information to the CQC and BANES after her disclosures, however the decision to suspend her access was not taken and implemented until 25 November 2022, which was two months after the last of the disclosures and after both organisations had said they would investigate.

224. The Claimant relied upon the publication of the CQC report as prompting the decision. She also relied upon Ms Hawtrey advising the Respondent on 21 November 2022 that the Claimant was still sending documents to BANES. The publication of the CQC report meant that the CQC investigation had ended. Ms Hawtrey of BANES had told the Claimant in November that the safeguarding element had been closed. These matters pointed away from the decision being because the Claimant had made protected disclosures. The length of time between the last disclosure

and the decision was also relevant, the more time that elapses after the disclosure was made tends to suggest that the decision was not related to it.

225. The context was also relevant. The Claimant had been off sick since 22 September 2022. Therefore there was no work related purpose for her to access electronic systems, work related groups or work related e-mail.

226. Mr Rees, in October 2022, was concerned that blocking the Claimant's access could exacerbate her symptoms, however he also considered that it would not be helping the Claimant to recover. The Claimant accepted that his requests for her not to access the systems appeared to be due to concern for her health. The Claimant was told that her concerns were being taken very seriously but there should not be a need for her to access systems whilst away from work.

227. Ms Haydon was very aware that restricting access could be viewed negatively by the Claimant, however we accepted that she was extremely concerned about the Claimant's health and the impact that checking the systems was having on it.

228. It was significant the decision to restrict access was 2 months after the last disclosure and after the CQC published its report. Ms Hawtrey had advised the Claimant that she should listen to the Respondent's advice about not accessing systems. The Claimant was very unwell and we accepted that this was at the forefront of the decision making process. It was significant the restriction would only be in place whilst she was off sick. We accepted that the reason for the decision was because the Respondent considered that her accessing the systems was further damaging her health. We were satisfied that the Respondent proved that the Claimant having made protected disclosures did not materially influence the decision.

229. This claim was dismissed.

<u>Declined to investigate the main part of her grievance concerning customers and care files. This was set out in the grievance outcome</u>

230. We accepted that the Claimant had raised the issues in relation to the customers and care files as part of her grievance and that she considered that for those issues not to be determined was to her detriment. We also accepted that a reasonable employee could consider that not dealing with an aspect of grievance could be to their disadvantage and that this was a detriment.

231. When the Claimant made her first disclosure, she made a disclosure to BANES the same day and to the CQC the day after. This did not give the

Respondent any time to investigate it. By doing this the Claimant bypassed stages 2 and 3 of the whistleblowing policy and went straight to external and independent bodies. The Respondent's grievance policy said that concerns about wrongdoing or malpractice were not covered by that policy and employees were referred to the whistleblowing policy. The grievance policy dealt with matters affecting the employee, whereas the concerns regarding the customers fell outside of that policy.

232. After the Claimant had made her disclosures to the CQC and BANES those organisations investigated them. Those organisations were independent to the Respondent and were the regulators of the Respondent's activities in relation to its customers. Full investigations were being carried out by both of those organisations and the investigation by BANES had not concluded.

233. Mr Rees had conducted investigations into the customer matters, however he concluded that any conclusions of the CQC and BANES would outweigh his conclusions. The stages of the whistleblowing policy which ended with reporting matters to the CQC and BANES supported this contention. It was notable that the Claimant had sent Mr Rees and the CQC the same documentation for their consideration.

234. The Respondent proved that the reason for not dealing with customer and care record matters, as part of the grievance, was that they were being considered and dealt with by external agencies whose conclusions would outweigh those of Mr Rees. The fact that Mr Rees had undertaken investigation into them strongly pointed away from the reason being that the Claimant had made a protected disclosure. We were satisfied that the Respondent had proved that the Claimant having made a protected disclosure had no influence in the decision. This allegation was dismissed.

**Automatically constructive unfair Dismissal**

235. The Claimant did not have two years service and therefore she needed to prove that the reason for her resignation was a fundamental breach of contract by the Respondent because she had made a protected disclosure. The breaches of contract relied upon by the Claimant were the allegations of detriment.

236. We concluded that the Claimant was not subjected to any detriment because she made a protected disclosure. Detrimental treatment on its own is insufficient for the Claimant to bring the claim because of the need for 2 years service to claim ordinary constructive dismissal. The absence of a breach of contract by the Respondent because the Claimant made a protected disclosure meant that the Claimant was unable to prove that her

resignation and therefore the sole or principal reason for any dismissal was because she made a protected disclosure. We were not satisfied that the Claimant had discharged the burden of proof that she was unfairly dismissed because she made a protected disclosure and her claim of automatically unfair dismissal was dismissed.

237. Accordingly, the claims of automatically unfair constructive dismissal and detriment because the Claimant made a protected disclosure are dismissed.

238. As such it was unnecessary to consider whether the first two allegations of detriment were presented in time.

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Employment Judge J Bax
Dated 25 April 2024

Judgment sent to Parties on
13 May 2024 By Mr J McCormick

For the Tribunal Office