EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms Paula Young	AND	United Response Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter ON 28 and 29 May 2024

EMPLOYMENT JUDGE N J Roper **MEMBERS** Mrs R Barrett
Ms R Clarke

Representation
For the Claimant: In Person
For the Respondent: Mr S McHugh of Counsel

JUDGMENT

The unanimous judgment of the tribunal is that the claimant's claims that she has suffered detriment and been unfairly dismissed because she made protected public interest disclosures are not well founded, and they are hereby dismissed.

RESERVED REASONS

1. In this case the claimant Ms Paula Young claims that she has been unfairly dismissed, and that the principal reason for this was because she had made protected disclosures. She also brings claims for detriment said to have been caused by the same disclosures. The respondent contends that the reason for the dismissal was gross misconduct, and it denies the claims.
2. We have heard from the claimant. For the respondent we have heard from Mrs Kay Robinson, Ms Elena Rapanoaia, Miss Natasha Irvine, Ms Eva Benvenuto, and Mr Marc Boyden. With the agreement of the parties Mr Boyden attended remotely to give his evidence by CVP video platform.
3. There was a degree of conflict on the evidence. 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.
4. The respondent company United Response Ltd is a registered care provider and it provides in-home tailored care services for its service users (referred to as People We Support or

PWSs). The claimant Ms Paula Young was employed as a Support Worker from 24 October 2022 until 21 September 2023 when her employment was terminated for gross misconduct. The claimant had signed a written contract of employment which required her to adhere to a number of policies and procedures and to meet expected standards of performance. The respondent's policies and procedures included its First Aid Policy, the Support Plan Policy, the Health Nutrition Policy, and a policy relating to the Risk of Choking. The claimant had received training in the application of these policies. The role of a Support Worker such as the claimant is to ensure that the service users or PWSs are cared for in line with Support Plans which are tailored to their individual needs and any Speech and Language Therapy Guidance (referred to as "SALT").

5. One of the respondent's PWSs for whom the claimant cared is referred to in this judgment as Service User X. Service User X had serious health issues which put her at risk of choking, and this meant that she could not be left unsupervised while eating. This was clearly documented in Service User X's Support and SALT guidance, which the claimant was required to have understood and implemented. Service User X's brother was her Deputy appointed by the Court of Protection, and he managed her financial affairs.
6. On 17 March 2023 the claimant attended a normal work meeting with two of her managers present, namely Mrs Kay Robinson and Ms Eva Benvenuto, from whom we have heard. Service User X lived in her own home, where she was supported, and the claimant noticed that a letter had arrived addressed to a Mr Sam Noble and she felt that: "this could be a sign of stolen identity at the address". Mrs Robinson explained that Mr Noble was the previous occupant of the house, and that the letter should be returned to him. The claimant for some reason appeared to refuse to accept that the letter was addressed to a previous owner of the house, but offered no further information as to why she did not believe this.
7. Ms Elena Rapanoaia, from whom we have heard, is a Service Manager with the respondent. In about April 2023 the claimant raised a concern with Ms Rapanoaia as to why Service User X needed a new lease car, and whether this was the best use of her finances. Ms Rapanoaia explained that the three-year lease for her current car under the mobility scheme was coming to an end and needed to be renewed, and the proposed new car was better suited to Service User X's needs. The necessary payments were authorised by her brother, as her Deputy. Despite this reassurance the claimant subsequently challenged the Deputy as to whether this was appropriate. The respondent asserts that this is one of a number of examples of the claimant interposing her own opinion on what was suitable, rather than following the agreed care plan and agreed procedures.
8. On 23 May 2023 the claimant raised a concern by leaving a handwritten note addressed to the "Senior Managers at United Response". This stated: "I'm not involved in or agree with any financial exploitation of [Service User X] - the misuse and/or theft of property at both the Service, [her home], or in the community accessing facilities. This is to fulfil my responsibilities with regard to safeguarding …"
9. Ms Rapanoaia made contact with the claimant to discuss these concerns. Initially the claimant refused to give any further information beyond her handwritten note. Ms Rapanoaia nonetheless arranged a meeting between them which took place on 30 May 2023. The claimant alleged that Service User X could not possibly eat the large amounts of food which had been bought for her, including eating two burgers in one meal. Ms Rapanoaia reminded the claimant that they already had in place a menu planner and shopping list for Service User X, who liked to eat well, and that any food which was to be disposed of had to be signed off by two members of staff. The claimant did not elaborate as to why she remained concerned. The claimant also suggested that some property had gone missing, including two pillows. The claimant was reminded that there was a disposal sheet under which any items disposed of had to be signed off by two members of staff, which with regard to the pillows, had been disposed of correctly as no longer being suitable. The claimant then raised a concern about what she called financial exploitation. The only explanation that she gave was that Service User X's wardrobe had included dresses of different sizes. Ms Rapanoaia reminded the claimant that the respondent had a practice whereby they rotated Service User X's summer and winter wardrobe by keeping clothing for the opposite season in a different room so that she could pick out her clothes for the

relevant season. The claimant also raised an allegation that money had been taken from Service User X, but she refused or was unable to provide any further or specific information in this respect. This was obviously a serious allegation, and the claimant was reminded that all expenses were recorded on the expenses sheet which had to be authorised by Service User's brother, her Deputy.

10. Shortly after this meeting on 2 June 2023 it became clear to Ms Rapanoaia that the claimant had failed to follow clear instructions in relation to Service User X. Despite instructions given to the claimant to take Service User X out to go shopping for new sandals, the claimant decided that she already had enough shoes and that she refused to take her shopping. This was despite the fact that this process had been agreed with Service User X and all the other support workers who cared for her.
11. There was then a normal work meeting between the claimant and a supervisor Mr Hancock on 16 June 2023 at which the claimant raised concerns about Service User X's property going missing. She was asked to provide details but was unable to do so. The claimant was reminded that if she was alleging that there been any financial misconduct then she had to provide clear evidence or information as to the same. The claimant was unable to do so.
12. Another Support Worker who assisted with Service User X was Mr David Telesford. He was sufficiently concerned about the claimant's practices that he raised a formal grievance on 27 June 2023. In a statement in support on 3 July 2023 he reported that the claimant was "difficult to work with, not listening, and has been rude to others. She is also not following the care plan for [Service User X]." The respondent investigated this grievance in accordance with its normal procedures, and the claimant was invited to a formal grievance hearing to give her version of events. This meeting took place on 18 July 2023.
13. During this grievance hearing on 18 July 2023 the claimant again raised her concern about the identity of one or more of her colleagues. She stated: "at times I would like to question the real identity of my colleagues". When she was asked to explain what she meant she merely replied: "remarks - comments made at the service". The claimant was unable to identify any person whom she alleged was using a false identity.
14. Miss Irvine, from whom we have heard, is the respondent's Strategic Improvement Lead. She investigated the grievance, and she prepared a report and recommendations. She suggested mediation between Mr Telesford and the claimant, which the claimant declined. She recommended that the claimant should be subjected to a Performance Improvement Plan (PIP) and her recommendations were confirmed to other managers within the respondent.
15. We accept Miss Irvine's evidence, which was not challenged by the claimant, to the effect that she instituted the PIP as a result of the claimant's admissions during the grievance investigation. These included that she failed to include concerns or important information when making up her daily notes. She also admitted to not following agreed processes. One example was that she refused to take Service User X to Sainsbury's because the claimant felt that "it is a scam". Miss Irvine decided that the PIP was a better option than commencing the formal capability process because she thought it more likely to enable the claimant's managers to support her in a more constructive way.
16. Another Support worker, namely Miss Coulson, raised a formal complaint against the claimant following a shift which she worked on 11 August 2023. She reported that the claimant was using the Hoover in a different room to Service User X who was eating breakfast unsupervised. This was despite the SALT care plan to the effect that it was dangerous to leave Service User X to eat unsupervised.
17. Ms Rapanoaia investigated this complaint and met with the claimant on 15 August 2023**.** The claimant was vague in her responses to whether she was in a different room when she had commenced hoovering and whether or not Service User X had finished her breakfast. Thereafter Miss Irvine interviewed Ms Coulson and others, and she compiled an investigation report, which recommended formal disciplinary action against the claimant. The claimant attended a disciplinary hearing on 20 September 2023. This was chaired by Mr Mark Boyden, from whom we have heard, who at that stage was employed by the

respondent as its Cornwall Area Manager. Mr Boyden decided to dismiss the claimant summarily by reason of gross misconduct.

18. Mr Boyden the dismissing officer was clear in his evidence, which we accept. He effectively dismissed the claimant for two reasons. The first was that the claimant had left Service User X unsupervised whilst eating when because of her health issues she was at risk of choking and should not have been left unsupervised. This was clearly set out in the relevant SALT care plan. In addition, he concluded that the claimant had not been honest in her explanation which she had given to him during the disciplinary process. She was inconsistent as to where she was at the relevant time, and whether she was properly supervising Service User X, and whether she had reviewed the relevant SALT care plan at all. A further concern was that the claimant gave Mr Boyden no reassurance to the effect that she accepted that she had done anything wrong, nor did she understand the gravity of not having followed the relevant guidance and policies. Mr Boyden was aware that the claimant had raised other complaints, but he understood that these had been investigated under a separate process, and they had formed no part of his decision within the disciplinary process with which he was involved. We accept his clear evidence that the reason he dismissed the claimant was that he concluded on the evidence before him that she had committed gross misconduct. We accept his evidence that the claimant's complaints or disclosures upon which she relies played no part in, and did not materially influence, his decision to dismiss the claimant.
19. Mr Boyden wrote to the claimant by letter dated 22 September 2023 to confirm his decision to terminate her employment summarily. For some reason the claimant did not receive this letter until 4 October 2023. She complained that she appeared to be outside of the suggested time limit of seven days within which to enter an appeal. Mr Boyden agreed to extend time for the claimant to pursue an appeal by a further seven days from 4 October 2023, but in the event the claimant did not submit an appeal.
20. On 27 September 2023 the claimant presented these proceedings, and she claimed interim relief. This application was heard by Employment Judge Matthews on 26 October 2023, and the application was dismissed. The claimant had not obtained an ACAS Early Conciliation Certificate because this was not required to support her proceedings in circumstances where she had applied for interim relief. There was then a case management preliminary hearing before Employment Judge Rayner on 30 November 2023, which is referred to in more detail below.
21. Having established the above facts, we now apply the law.
22. <u>The Law:</u>
23. The relevant legislation is in the Employment Rights Act 1996 ("the Act").
24. The right to pursue a claim for unfair dismissal is provided for in section 94 of the Act, but this general right is excluded by reason of section 108(1) of the Act where an employee has not been continuously employed for a period of not less than two years. There are certain exceptions to this exclusion, including a claim for "automatically" unfair dismissal if the reason for the dismissal is having made one or more protected public interest disclosures.
25. Under section 43A of the Act 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.
26. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

27. 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.
28. Under section 47B of the Act, 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. However, under section 47B(2)(b) these provisions do not apply where the detriment in question amounts to dismissal.
29. Under section 48(2) of the Act, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
30. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").
31. We have considered the cases of Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT; Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436; Fecitt and Ors v NHS Manchester [2012] ICR 372 CA; Kuzel v Roche Products Ltd [2008] ICR 799 CA; Blackbay Ventures Limited t/a Chemistree v Gahir UK/EAT/0449/12/JOJ, Parsons v Airplus International Limited UKEAT/0111/17; and Wicked Vision Ltd v Rice [2024] EAT 22. The tribunal directs itself in the light of these cases as follows.
32. The statutory framework and case law concerning protected disclosures was helpfully summarised by HHJ Eady QC in Parsons v Airplus International Limited UKEAT/0111/17 from paragraph 23: "[23] As to whether or not a disclosure is a protected disclosure, the following points can be made - This is a matter to be determined objectively; see paragraph 80 of Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT.
33. [24] "As for the words "in the public interest", inserted into section 43B(1) of the ERA by the 2013 Act, this phrase was intended to reverse the effect of Parkins v Sodexho Ltd [2002] IRLR 109 EAT, in which it was held that a breach of legal obligation owed by an employer to an employee under their own contract could constitute a protected disclosure. The public interest requirement does not mean, however, that a disclosure ceases to qualify for protection simply because it may also be made in the worker's own self-interest; see Chesterton Global Ltd (t/a Chestertons) and Anor v Nurmohamed [2017] IRLR 837 CA (in which the earlier guidance to this effect by the EAT ([2015] ICR 920) was upheld).
34. In whistleblowing claims the test of whether a disclosure was made "in the public interest" is a two-stage test which must not be elided. The claimant must (a) believe at the time that he was making it that the disclosure was in the public interest, and (b) that belief must be reasonable. See Ibrahim v HCA International Limited [2019] EWCA Civ 2007.
35. The statutory framework and case law concerning protected disclosures was also summarised by HHJ Tayler in Martin v London Borough of Southwark (1) and the Governing Body of Evelina School UKEAT/0239/20/JOJ. He referred to the dicta of HHJ Auerbach in Williams v Michelle Brown AM UKEAT/0044/19/00 at para 9: "it is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the

disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."

36. Under section 47B(2)(b) of the Act, dismissal is excluded as a possible detriment. In Wicked Vision Ltd v Rice the EAT held that the decision in Timis v Osipov (to the effect that dismissal could be an actionable detriment) was only binding in relation to claims brought against the individual, not claims against the employer – otherwise s47B(2) would be rendered "dead letter".
37. The Issues to be Determined in this Case:
38. There was a case management preliminary hearing on 13 November 2023 and Employment Judge Rayner made a subsequent case management order on that day ("the Order"). A list of the issues to be determined at this hearing were agreed and set out in that Order. The claimant relies on a series of protected public interest disclosures which she asserts gave rise to four claims of detriment, and her automatically unfair dismissal. These are now set out in more detail below. In addition, it was noted that the claimant commenced these proceedings by way of an application for interim relief and accordingly did not need to have in place an ACAS Early Conciliation Certificate. In these circumstances (and in the absence of any extension of time under the Early Conciliation provisions), given that these proceedings were presented on 27 September 2023, it was noted that any detriment claim arising before 28 June 2023 was potentially out of time.
39. The Disclosures Relied Upon:
40. The disclosures relied upon by the claimant, and our findings, are as follows.
41. In the first place the disclosures relied upon by the claimant have been firstly a movable feast, and secondly very vague. They have varied between (i) the claimant's originating application; (ii) her reply to directions given when the Interim Relief hearing was listed; (iii) when that answer was deemed to be inadequate, her reply to an order to provide further and better particulars before the hearing of the Interim Relief application; (iv) the disclosures relied upon in the Order: and (v) the claimant's witness statement. Nonetheless it was agreed at the case management hearing, and confirmed in the Order, what alleged protected public interest disclosures the claimant relies upon, as follows.
42. As confirmed in the Order, the claimant asserts that during January and February 2023 she raised concerns with her new line manager Ms Rapanoaia, and again in July 2023 to Kay Robinson and Natasha Irvine, to the effect that: (i) Service User X's money was going missing and large amounts of food would being bought for her which she could not possibly eat, and her property was being taken; and (ii) that other people working with Service User X were not who they said they were, or put in other words they were using false names for the purposes of their employment.
43. The statutory provisions relied upon are in s43B(1)(a) and (b) to the effect that the disclosures tended to give information that a criminal offence had been committed, or that a person was failing to comply with a legal obligation. If these disclosures were qualified disclosures, then they will become protected under section 43C(1)(a) because they were made to the claimant's employer. In circumstances where the complaints related to the financial abuse of a vulnerable adult in care we would have had no difficulty in finding that any such complaint was in the public interest.
44. The first disclosure relied upon is a mixture of disclosures relating to Service User X's money, food, and missing property. These are general allegations that too much money was being spent, there was no need to renew a lease car, too much food was being purchased or that the food was too expensive, items such as pillows had gone missing, and items of clothing had changed or were missing. If the claimant had concentrated on the relevant care plan and procedures in place, and if she had checked such processes as the disposal forms and/or had discussed the matter with her various managers, the following conclusions would have become clear. In the first place all expenditure was within the limits set and agreed for Service User X, and subject to approval and authority from her brother, her Deputy. Secondly, no items or possessions had been removed or disposed of save in accordance with appropriate and recorded procedures. Thirdly, the quality and amount of the food purchased for Service User X was known to all and within her agreed care plan. It was a constant theme that the claimant interposed her own opinion on what

was suitable for Service User X when it was inappropriate for her to do so. For these reasons we find that it cannot be said to have been reasonable for the claimant to have believed that any complaint or disclosure made tended to show that there had been a criminal offence or a breach of a legal obligation. Even if the allegations made by the claimant gave specific information, which is by no means clear, we reject the assertion that the claimant made protected public interest disclosures in this respect, simply because we find it was not reasonable for the claimant to have believed that either a criminal offence had been committed and/or there had been a breach of any legal obligation.

45. As for the second disclosure relied upon, namely that other employees were using false names, we find that the claimant gave no information to that effect beyond a very vague assertion made at the meetings on 17 March 2023, and possibly repeated on 18 July 2023. This seemed to follow from the letter being delivered to Service User X's address to its former owner. Beyond a vague and general allegation, we do not accept that the claimant ever provided information which tended to show either that a criminal offence had been committed, or that any person was in breach of a legal obligation. We find that the claimant did not make a protected public interest disclosure in this respect.
46. Having determined that the claimant did not make any protected public interest disclosures, that is sufficient to dispose of her claims that she suffered detriment and/or dismissal as a result of these disclosures. Her claims are not well-founded and we dismiss them for this reason.
47. Nonetheless, given that we have heard all the evidence, we go on to consider the claims of detriment and dismissal, and explain why we would have dismissed them in any event even if the claimant's complaints above did amount to protected public interest disclosures.
48. Detriment:
49. Detriment is to be interpreted widely: see Warburton v the Chief Constable of Northamptonshire Police [2022] EAT - it is not necessary to establish any physical or economic consequence. Although the test is framed by reference to a reasonable worker, it is not a wholly objective test. It is enough that a reasonable worker might take such a view. This means that the answer to the question cannot be found only in the view taken by the ET itself. The ET might be of one view, and be perfectly reasonable in that view, but if a reasonable worker (although not all reasonable workers) might take the view that, in all the circumstances, it was to his detriment, the test is satisfied. It should not, therefore, be particularly difficult to establish a detriment for these purposes.
50. The claimant relies on four detriments: (i) subjecting her to a series of meetings and investigations in respect of fabricated allegations; (ii) placing her on a performance improvement plan; (iii) requiring her to attend a disciplinary hearing on 20 September 2023; and (iv) dismissing her without notice. We deal with each of these in turn.
51. We reject the first alleged detriment to the effect that the claimant was subjected "to a series of meetings and investigations in respect of fabricated allegations". The meetings which the claimant relies upon in this respect relate to Miss Coulson's complaint and the disciplinary process, and Mr Telesford's grievance. In the first place there is simply no evidence that the first allegation of which the claimant complains, namely the safeguarding complaint raised by Miss Coulson and which ultimately led to her dismissal, was in any way fabricated. Similarly, the second allegation relates to the grievance raised against the claimant by Mr Telesford, and there is simply no evidence that he fabricated his concerns which he wished to be resolved through the formal grievance process. Having made that finding, there was no such detriment as alleged.
52. In any event the claimant was not subjected "to a series of meetings and investigations" because of any complaints or disclosures that she had made. There were effectively four meetings. The first meeting on 13 May 2023 was arranged to discuss the claimant's own letter of concern dated 23 May 2023, and the claimant agreed in her evidence that she was not subjected to any detriment in having to attend this meeting because she was invited to attend it in order to clarify her concerns. The second meeting was a grievance meeting held on 18 July 2023 by way of investigation into the grievance raised against the claimant by Mr Telesford. The claimant agreed in her evidence that it was appropriate to call her to

this meeting in order that the respondent could establish her version of events, and that this meeting was part of the process initiated by Mr Telesford's grievance.

53. The third and fourth meetings which the claimant attended were in connection with the complaint raised by Miss Coulson. The third meeting was an investigation meeting on 15 August 2023 in order to ascertain the claimant's version of events in connection with the complaint. The fourth meeting was the disciplinary meeting on 1 September 2023 which led to the claimant's dismissal. However, we find that these two meetings were part of the normal process which the respondent followed when notified of the safeguarding complaint. Whereas we accept that an employee would perceive her involvement in a disciplinary process to be a detriment, in this case this was not on the basis of of any complaint against her which had been fabricated, and not because the claimant had earlier raised her own complaints or disclosures.
54. The respondent was bound to investigate and, if appropriate, act upon such a serious safeguarding complaint. We reject the assertion that the investigation and disciplinary meetings were held on the ground that the claimant had raised any complaint or made any disclosure. We reject this allegation of detriment.
55. The second detriment relied upon by the claimant is that Miss Irvine put the claimant on a performance Improvement Plan (PIP) on 25 July 2023. However, we accept Miss Irvine's evidence, which was not challenged by the claimant, to the effect that this followed the claimant's own admissions during the grievance investigation. The claimant stated that she would fail to include concerns or important information in her daily notes, and admitted not following processes in refusing to take Service User X to Sainsbury's because she felt that it was "a scam". We accept Miss Irvine's evidence to the effect that she thought a PIP was preferable to taking disciplinary action because she felt that the respondent's management would be able support the claimant better in this way, and encourage her to improve her conduct, and monitor it where required. It is arguable that this was not a detriment because it was to assist the claimant in improving her performance, and the "lesser of two evils" when compared with the disciplinary process. On balance we find that putting an employee on a PIP can be perceived to be a detriment, because it might well be considered to be the first stage of a formal performance process, and that the claimant suffered detriment in this respect. However, it is clear from Miss Irvine's evidence, as stated above, that the reason for putting the claimant on the PIP were the claimant's own performance deficiencies, and not the complaints or disclosures upon which she relies. For this reason, we also dismiss this second claim for detriment said to have arisen from protected public interest disclosures.
56. The third detriment is that of requiring the claimant to attend a disciplinary hearing on 20 September 2023. We have no hesitation in agreeing that being called to a disciplinary hearing at which one might face dismissal amounts to a detriment. However, the reason why the claimant was subjected to this detriment is clear. There was a very serious complaint raised to the effect that the claimant failed to follow the SALT Care Plan for Service User X and failed to supervise her when she was eating when she was at serious risk of choking. The claimant's explanation was effectively that she considered that there was no risk, or alternatively that her colleague should have discussed the matter with her before raising the matter as a formal complaint. It is clear to us that the disciplinary process was invoked because of Miss Coulson's complaint to the effect that the claimant had put Service User X at risk by failing to follow the care plan and to supervise her properly when in her care. In other words, this detriment had nothing to do with any complaint or disclosures which may be relied upon by the claimant. Accordingly, we also reject the allegation that this third detriment was suffered by the claimant on the ground that she had made protected public interest disclosures.
57. We also reject the fourth alleged detriment which is the claimant's dismissal. It is not disputed that the claimant was dismissed, but under section 47B(2)(b) of the Act, dismissal is excluded as a possible detriment. In Wicked Vision Ltd v Rice the EAT held that the decision in Timis v Osipov (to the effect that dismissal could be an actionable detriment) was only binding in relation to claims brought against the individual, not claims against the

employer. We deal with the claimant's dismissal in more detail below, but for this reason we also dismiss this allegation of detriment.

58. In conclusion therefore we accept that the claimant suffered the second and third detriments relied upon, namely being put on a PIP and being subjected to a disciplinary hearing, but the complaints or disclosures relied upon by the claimant had no material influence on these decisions, and these detriments cannot therefore be said to have been suffered on the ground that the claimant had made protected public interest disclosures. For these reasons we dismiss the claimant's claim of detriment under section 47B of the Act.
59. Unfair Dismissal - s103A of the Act:
60. Mr Boyden the dismissing officer was clear in his evidence, which we accept. He effectively dismissed the claimant for two reasons. The first was that the claimant had left Service User X unsupervised whilst eating when because of her health issues she was at risk of choking and should not have been left unsupervised. This was clearly set out in the relevant SALT care plan. In addition, he concluded that the claimant had not been honest in her explanation which she had given to him during the disciplinary process. She was inconsistent as to where she was at the relevant time, and whether she was properly supervising Service User X, and whether she had reviewed the relevant SALT care plan at all. A further concern was that the claimant gave Mr Boyden no reassurance to the effect that she accepted that she had done anything wrong, nor did she understand the gravity of not having followed the relevant guidance and policies. Mr Boyden was aware that the claimant had raised other complaints, but he understood that these had been investigated under a separate process, and they had formed no part of his decision within the disciplinary process with which he was involved. We accept his clear evidence that the reason he dismissed the claimant was that he concluded on the evidence before him that she had committed gross misconduct. We accept his evidence that the claimant's complaints or disclosures upon which she relies played no part in, and did not materially influence, his decision to dismiss the claimant.
61. For these reasons we also reject the claimant's assertion that the reason, or if more than one the principal reason, for her dismissal was because she had made protected public interest disclosures. The claim that she was unfairly dismissed in this respect under section 103A of the Act is not well-founded and it is hereby dismissed.
62. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1 and 38; the findings of fact made in relation to those issues are at paragraphs 4 to 20; a concise identification of the relevant law is at paragraphs 23 to 36; how that law has been applied to those findings in order to decide the issues is at paragraphs 40 to 61.

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Employment Judge N J Roper
Dated 29 May 2024

Judgment sent to Parties on
15 June 2024 By Mr J McCormick