EMPLOYMENT TRIBUNALS

Claimant: Mr A Moleta

Respondent: Littlefair Care Home Limited

Heard at: London South Employment Tribunal, Croydon (by video)

On: 6-10 October 2025, plus submissions from the parties in writing, and panel deliberations on 21 November 2025 and 9 February 2026

Before: Employment Judge Abbott, Mr C Rogers & Mr C Mardner

Representation
Claimant: representing himself
Respondent: Mr F McCombie, counsel

RESERVED JUDGMENT

1. The complaint of automatic unfair dismissal is not well-founded and is dismissed.

2. The complaint of being subjected to detriment for making a protected disclosure is not well-founded and is dismissed.

3. The complaint in respect of holiday pay is well-founded. The Respondent failed to pay the Claimant in accordance with regulation 14(2) of the Working Time Regulations 1998. The Claimant is entitled to be paid in respect of leave entitlement accrued but unpaid in the period 1 November 2019 to 16 April 2020.

4. The complaint of unauthorised deductions from wages is well-founded in part. The Respondent made unauthorised deductions from the Claimant's wages in the period 1 November 2019 to 16 April 2020 in respect of both salary and the lump sum payment contractually due to him, but not in respect of any entitlement to shares.

5. The complaint of breach of contract in relation to notice pay is well-founded. The Claimant is entitled to be paid one week’s notice pay.

6. The complaint of breach of contract in relation to failure to provide an

income protection policy is not well-founded and is dismissed.

7. When the proceedings were begun the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars. The Claimant is entitled to an award under section 38 of the Employment Act 2002.

8. The payments to which the Claimant will be entitled in respect of his successful complaints shall be quantified separately.

REASONS

Introduction

1. This is the unanimous judgment of the Tribunal on the claim brought by Mr Andrew Moleta ("***the Claimant***") against his former employer, Littlefair Care Home Limited ("***the Respondent***") following a final hearing on 6-10 October 2025. The Claimant represented himself at the final hearing; the Respondent was represented by counsel, Mr McCombie.

2. Due to time constraints and the need to deal with various applications made by the Claimant at the beginning of, and during, the final hearing[1], it was only possible to complete the evidence in the allotted listing. The parties agreed to provide their closing submissions in writing – these were provided on 31 October 2025 with reply submissions on 7 November 2025.[2] The panel met to deliberate on 21 November 2025 and 9 February 2026. We apologise that limited panel availability, combined with the volume of materials it was necessary to consider, has delayed the production of this judgment.

History of the claim

3. This claim was presented on 15 May 2020, early conciliation having taken place between 20 March 2020 and 16 April 2020.

4. At a preliminary hearing on 21 January 2022, Employment Judge ("***EJ***") Dyal, as he then was, identified the live complaints as follows:

    a. Automatic unfair dismissal (s.103A Employment Rights Act 1996 ("***ERA***"));

    b. Wrongful dismissal (breach of contract in respect of notice pay);

    c. Detriment on the ground of having made a protected disclosure (s.47B

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1 These matters are addressed in the Judgment and Case Management Orders of the Tribunal sent to the parties on 22 October 2025.

2 The Claimant was refused permission to rely on further submissions filed on 16 November 2025 for the reasons set out in the Tribunal's letter of 10 December 2025. As set out in the same letter, the Claimant's application dated 17 November 2025 to inspect and forensically examine one of the documents in the case was also refused.

ERA);

d. Failure to pay holiday pay (Working Time Regulations 1998 ("***WTR***"));

e. Unauthorised deductions from wages (s.13 ERA);

f. Breach of contract in respect of not arranging an income protection insurance policy; and

g. Failure to provide a written statement of particulars of employment (s.1 ERA; s.38 Employment Act 2002 ("***EA***")).

5. EJ Dyal also directed that questions of employment status and time limits be heard as preliminary issues at a further preliminary hearing. That hearing took place before EJ Powell on 14-15 July 2022. By a reserved judgment sent to the parties on 10 October 2022, EJ Powell held that:

a. The Claimant was an employee of the Respondent from 1 November 2019.

b. The Claimant was a worker for the purposes of s.43K ERA from 1 November 2019.

c. The Claimant's dismissal occurred after 26 December 2019.

d. The claims of detriments on the ground of asserted protected public interest disclosures and unfair dismissal principally because of such disclosures are within the jurisdiction of the Employment Tribunal.

6. It is clear from EJ Powell's reasons that, in respect of the last of these points (*i.e.*, time limits), he was solely concerned with the dismissal and not any earlier alleged detriments. Accordingly, time limit issues remain live for determination in respect of complaints not related to dismissal.

<u>The issues for determination</u>

7. EJ Dyal produced a list of issues subject to the Claimant needing to further particularise the alleged protected disclosures. That list of issues (excluding purely remedy issues, issues determined by EJ Powell, and issue 5 which is duplicative of sub-issue 10.2.2) is set out below. The further particulars referred to in the list are an 11-page document provided by the Claimant following the hearing before EJ Dyal and found at pages 84-95[3] of the Claimant's bundle for the hearing before EJ Powell **[C84-94]** (***the FPs***).

2. **Time limits**

2.1 Was each of the following claims, PID detriment (other than dismissal) / unauthorised deductions / breach of contract, made within time?

2.2 If it was not reasonably practicable for the claim to be made to the Tribunal within the

[3] This is a reference to the page numbers physically marked on the pages, which differ from the PDF numbering in the Claimant's bundle and supplementary bundle. That approach has been adapted throughout these Reasons, across the various different bundles, for consistency.

time limit, was it made within a reasonable period?

3. **Automatic unfair dismissal (s.103A ERA)**

3.1 Was the claimant dismissed?

3.2 What was the reason or principal reason for dismissal? Was it that the Claimant made a protected disclosure?

6. **Protected disclosure**

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

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

6.1.1.1 [see further particulars]

6.1.2 Did s/he disclose information?

6.1.3 Did s/he believe the disclosure of information was made in the public interest?

6.1.4 Was that belief reasonable?

6.1.5 Did s/he believe it tended to show that:

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

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

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

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

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

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

6.1.6 Was that belief reasonable?

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

6.3 Did the respondent do the following things:

6.3.1 Failing to provide written particulars of employment;

6.3.2 Not allocating the Claimant any shares;

6.3.3 Not paying the Claimant (he says he was not paid anything at all at any time);

6.3.4 On 19 December 2019 asking the Claimant to stand down from day to day work as COO;

6.3.5 Dismissal

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

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

8. **Holiday Pay (Working Time Regulations 1998)**

8.1 Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

8.2 What was the claimant's leave year?

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

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

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

8.6 Were any days carried over from previous holiday years?

8.7 How many days remain unpaid?

8.8 What is the relevant daily rate of pay?

9. **Unauthorised deductions**

9.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

> 9.1.1 The Claimant says he should have been paid £1,000 gross per week from mid-June 2019 to 31 October 2019 but was paid nil;
>
> 9.1.2 The Claimant says he should have been paid a salary of £50,000 p/a, to be paid monthly, from 1 November 2019 but was paid nil;
>
> 9.1.3 The Claimant says he should been awarded shares but was not awarded any.

10. **Breach of Contract**

10.1 Did this claim arise or was it outstanding when the claimant's employment ended?

10.2 Did the respondent do the following:

> 10.2.1 Fail to arrange an income protection insurance policy;
>
> 10.2.2 Fail to pay the claimant three months' notice?

10.3 Was that a breach of contract?

10.4 How much should the claimant be awarded as damages?

11. **Written particulars of employment**

11.1 When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

11.2 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

11.3 Would it be just and equitable to award four weeks' pay?

8. By way of a brief summary of the Claimant's further particulars in respect of his alleged protected disclosures, he identifies six different alleged 'disclosures' (perhaps better described as disclosure themes). These are:

   a. Concerns relating to the 'Mini-Bus Fund' (***PD1***);

   b. Concerns relating to Mr Sherard allegedly asking his PA ("***KM***") to witness his mother's signature on a share transfer instruction relating to shares in the Respondent, dated on its face 12 June 2019 **[C666]**, after his mother's death on 26 June 2019 (***PD2***);

   c. Concerns relating to failures to pay the proper amount of wages to workers, to make the associated contributory payments to HMRC and to give workers sufficient breaks between shifts (***PD3***);

   d. Concerns relating to fire safety issues (***PD4***);

   e. Concerns relating to failure to put in place written contracts of employment and DBS checks of workers, to comply with Deprivation of Liberty Safeguards (DoLS), to log and deal with complaints, to log and deal with accidents and otherwise to ensure the health and safety of residents (***PD5***); and

   f. Concerns as to the lack of an effective complaints system for service users (***PD6***).

9. These disclosures are alleged to have been made on multiple occasions over several months:

   a. In an email on 1 August 2019 to Mr Sherard and the Respondent's Operations Manager ("***NP***") and beyond (PD6);

   b. In an email on 9 August 2019 to Mr Sherard, KM and NP and orally around the same time and also during November and December 2019 (PD5);

   c. Orally to KM in mid-late August 2019 after a management meeting at the care home (PD1);

   d. Orally to NP in late August / early September at the time of addressing the Care Quality Council (***CQC***) Provider Information Return (***PIR***) (PD1, PD3);

   e. Orally to Mr Sherard and KM at a meeting on 17 September 2019 (PD1, PD5);

   f. Orally to Mr Sherard around the end of October 2019 at Mr Sherard's home (PD2);

g. Orally to the Respondent's Quality Assurance Manager, Michelle Knox, in late November 2019 (PD2);

h. Orally in around late November 2019 in preparation for staff appraisals (PD3);

i. Orally to NP in the last week of November 2019 (PD4);

j. Orally to KM and Mr Sherard on 2 December 2019 (PD4);

k. Orally to NP on 2 December 2019 (PD4);

l. Orally to Mr Sherard on 2 December 2019 at Mr Sherard's home and again at the care home (PD1);

m. Orally by telephone to Mr Sherard and/or Ms Knox on 3 December 2019, with a reminder via email (PD1, PD3, PD4);

n. By email to Mr Sherard on 12 December 2019, copied to KM on 21 December 2019 (PD2);

o. Orally to Mr Sherard at his home on 16 December 2019 (PD2, PD3, PD4);

p. Orally to Ms Knox on Christmas Day 2019 (PD2, PD3); and

q. To NP in and around March 2020 (PD2, PD3).

10. The detriments to which the Claimant says he was put on the ground of having made protected disclosures are:

    a. Salary from 1 November 2019 and wages up to 1 November 2019 not paid;

    b. Expenses not paid in a timely manner;

    c. Mr Sherard refusing to transfer 5% shares to the Claimant;

    d. Being instructed not to attend the care home when CQC were present and not to communicate with CQC;

    e. Being placed on "gardening leave" from December 2019;

    f. Dismissal without notice; and

    g. The Respondent asserting he was not an employee.

<u>Relevant law</u>

PROTECTED DISCLOSURES (SECTION 43B ERA)

11. Section 43A ERA defines a 'protected disclosure' as a qualifying disclosure made to a number of identified classes of person, including employers (section 43C ERA).

12. Section 43B ERA defines a ‘qualifying disclosure’, insofar as relevant, as follows:

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

13. The EAT summarised the correct approach to the application of section 43B ERA in *Williams v Brown* UKEAT/0044/19, at [9-10]:

> “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 sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.
>
> 10. Unless all five conditions are satisfied there will be not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five. …”

14. As set out by the Court of Appeal in *Kilraine v London Borough of Wandsworth* [2018] ICR 1850, CA, an allegation will not necessarily “disclose information” as required by the statutory test. To qualify, the disclosure must have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in section 43B(1).

15. The worker must also reasonably believe that the disclosure did show one or more of those matters. The EAT in *Phoenix House Ltd v Stockman* [2017] ICR 84, EAT, stated that, on the facts believed to exist by an employee, a judgement must be made, first, as to whether the belief was reasonable and, secondly, as to whether objectively, on the basis of those perceived facts, there was a reasonable belief in the truth of the complaints. Thus, there is both a subjective element, in that the worker must believe that the information disclosed tends to show one of the relevant failures, and an objective element, in that that belief must be reasonable. That the belief may subsequently turn out to be wrong does not remove protection (*Babula v Waltham Forest College* [2007] EWCA Civ 174). The tribunal is required to identify the source of any legal obligation relied upon; it is not enough to take a generalised approach to allegations (*Blackbay Ventures Ltd t/a Chemistree v. Gahir* [2014] ICR 747 (EAT) at [98]).

16. The worker must also reasonably believe that the disclosure was in the public interest. In *Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)* [2018] ICR 731, CA, the Court of Appeal rejected the suggestion that a tribunal should consider for itself whether a disclosure was in the public interest. The tribunal has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable. The tribunal has to recognise that there could be more than one reasonable view as to whether a particular disclosure was in the public interest. The necessary belief was simply that the disclosure was in the public interest; the particular reasons why the worker believed that to be so were not of the essence. While the worker had to have a genuine and reasonable belief that the disclosure was in the public interest, that did not have to be the predominant motive in making it.

AUTOMATIC UNFAIR DISMISSAL (SECTION 103A ERA)

17. Section 94(1) ERA provides that an employee has the right not to be unfairly dismissed by their employer.

18. Section 103A ERA provides that if an employee is dismissed and the reason or principal reason for the dismissal is that the employee made a protected disclosure, the dismissal is automatically unfair.

19. The 'principal reason' is the reason that operated on the employer's mind at the time of the dismissal — Lord Denning MR in *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, CA. In other words, it is the main or dominant reason. This is a question of fact for the Tribunal to determine (*Kuzel v Roche Products Ltd* [2008] ICR 799, CA). It necessarily requires the employer to have knowledge of the substance behind the protected disclosure, as explained by Sheldon J. in *Nicol v. World Travel and Tourism Council* [2024] ICR 893 (EAT) at [82]:

> "…The premise of [counsel for the appellant's] arguments would be that the content of the disclosure is entirely irrelevant to the decision-maker; the only question is whether a disclosure has been made. It does not matter to the decision-maker if the disclosure was a qualifying or protected disclosure or not. It seems to me that this interpretation involves a purely mechanistic application of the statutory wording, without properly appreciating that whistleblowers are intended to be protected because they have raised something of substance which Parliament has decided merits protection. For employers to be fixed with liability, therefore, they ought to know at least something about the substance of what has been made: that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about."

20. The burden of showing the automatically unfair reason in this case, where the Claimant has less than 2 years' service, falls on the Claimant (*Maund v Penwith DC* [1984] ICR 143, CA; *Ross v. Eddie Stobart Ltd* EAT 0068/13).

21. As regards the effective date of a dismissal, dismissal takes effect when the employee is informed of it or had had a reasonable opportunity to find out about it (*Gisda Cyf v Barrett* [2010] ICR 1475, SC). The intention to dismiss with immediate effect must be expressed in unambiguous terms (*Stapp v Shaftesbury Society* [1982] IRLR 326, CA). Any ambiguity in this regard will be construed in favour of the employee (*Chapman v Letheby and Christopher Ltd* [1981] IRLR 440, EAT).

DETRIMENT (SECTION 47B ERA)

22. Section 47B(1) ERA provides that *"[a] worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."*

23. "*On the ground that the worker has made a protected disclosure*" means that the protected disclosure materially, *i.e.* more than trivially, influenced the decision maker who subjected the worker to the detriment (*Fecitt v NHS Manchester* [2012] ICR 372, CA).

24. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, their Lordships emphasised that it is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that, compared with other workers (hypothetical or real), the complainant is shown to have suffered a disadvantage of some kind.

25. Under s.48(2) ERA, once the worker proves that they made a protected disclosure and suffered a detriment, the burden shifts to the employer to show that the act or omission was not done on the ground that the worker made the disclosure.

WRONGFUL DISMISSAL / BREACH OF CONTRACT

26. The contractual jurisdiction of the Tribunal is governed by section 3 of the Employment Tribunals Act 1996, together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623. A contractual claim can only be heard by a Tribunal under these provisions where the claim arises or is outstanding on the termination of the employee's employment and relates to any of the following: (i) a claim for damages for breach of the contract of employment or other contract connected with employment; (ii) a claim for a sum due under such a contract; or (iii) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract.

27. An employee has an entitlement under section 86(1) ERA to a minimum period of notice of termination depending on their length of service. For an employee with more than one month but less than two years' service, this minimum period is one week. The contract may provide for a longer period.

28. An employee is not entitled to notice of termination if they have fundamentally breached the employment contract, *e.g.* if the contract is terminated because the employee is guilty of gross misconduct. It is not enough for the employer to show (as for unfair dismissal) that it reasonably believed that the employee committed gross misconduct, but that the misconduct was actually committed (*British Heart Foundation v Roy* UKEAT/0049/15).

FAILURE TO PAY HOLIDAY PAY

29. A worker has an entitlement under the WTR to a minimum of 5.6 weeks annual leave per year (pro-rated). The worker's contract may supplement

this. A payment in lieu may be made in respect of unused holiday when the employment relationship is terminated.

UNLAWFUL DEDUCTIONS FROM WAGES

30. Section 13(1) ERA provides that:

> "(1) An employer shall not make a deduction from wages of a worker employed by him unless—
>
> (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
>
> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

31. A deduction is a complete or partial failure to pay what was properly payable on a particular occasion (section 13(3) ERA).

32. "Wages" is defined in s.27(1) ERA as "*any sums payable to the worker in connection with his employment*" including "*any fee, bonus, commission, holiday pay or other emolument referable to the employment*" subject to certain exclusions in that section. By virtue of s.27(5) ERA, payments or benefits in kind are not to be treated as wages except in the case of any voucher, stamp or similar document which is of a fixed value expressed in monetary terms and capable of being exchanged for money, goods or services. Pension contributions paid by the employer to a pension provider on the worker's behalf do not fall within the definition of wages (*Somerset County Council v Chambers* EAT 0417/12).

33. There is a three-month time limit for presenting a complaint of unlawful deductions (s.23 ERA). The operative date from which time starts to run is "*the date of payment of the wages from which the deduction was made*". If the complaint is about a series of deductions or payments, the three-month time limit starts to run from the date of the last deduction or payment in the series. If the tribunal is satisfied that it was not reasonably practicable to present a complaint within three months, it may be presented within such further time as the tribunal considers reasonable. This is a test of whether it was reasonably feasible to present the claim in time (*Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490).

FAILURE TO PROVIDE STATEMENT OF PARTICULARS OF EMPLOYMENT

34. Section 1(1) ERA provides that:

> "Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment."

35. The particulars that are required are set out in sections 1(3) and 1(4) ERA and include, among other things, the rate of remuneration and terms relating to normal hours of work.

36. Under section 38(3) EA, where the employer is in breach of the section 1(1) ERA duty at the time a Tribunal claim is commenced and the claimant is made an award in respect of a substantive complaint in the proceedings, the award must be increased by a minimum amount equal to two weeks'

pay and the Tribunal may, if it considers it just and equitable in all the circumstances, increase the award by an amount equal to four weeks' pay.

The facts

37. The facts already found by EJ Powell as set out in his Reasons, found at pages 387-412 of the Claimant's supplementary bundle **[CS387-412]**, are binding upon us. Those findings are incorporated into this judgment by reference. The remainder of this section is focused on areas of factual dispute not already addressed by EJ Powell.

38. The role of the Tribunal is to consider all of the evidence, and the documentary materials we were referred to, and form a view as to what is most likely to be the true position on the balance of probabilities. It is important to say that, simply because we may disbelieve the evidence of a witness on a particular point, does not mean that we consider they are deliberately seeking to mislead – nor does it mean we must automatically disbelieve them on other points. Ultimately, we have to weigh up all the evidence on all different points and assess it on its merits.

39. The Tribunal heard live evidence from the Claimant (who provided two witness statements dated 14 June 2022 and 7 October 2025 respectively) and one additional witness on his behalf, Mr Daren Deamer (whose witness statement was dated 7 July 2022). On behalf of the Respondent, we heard live evidence from Ms Michelle Knox (whose witness statement was dated 3 October 2025) and Mr Nicholas Sherard (who provided three witness statements, one that had been relied upon at the hearing before EJ Powell and the others were dated 3 and 5 October 2025 respectively).

40. As regards the evidence of both the Claimant and Mr Sherard, the Tribunal formed a very similar view to that set out by EJ Powell in paragraphs 10 and 11 of his Reasons. The Claimant's answers were evasive and demonstrated a tendency to advocate and/or tell his version of events irrespective of the question that had been asked. Mr Sherard's evidence was heavily tinged with frustration and irritation about how matters with the Claimant had unfolded. Both men clearly had strong views about the rights and wrongs of how the other had behaved, and this affected their ability to give objective and reliable evidence as to the facts. In the circumstances, the Tribunal approached both witnesses' evidence with caution and, in general, gave more weight to contemporaneous documentary evidence in making its findings of fact.

41. Where it was necessary for us to resolve any conflict of evidence, we indicate how we have done so at the relevant point. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in these reasons. We have not referred to every document read by the Tribunal in the findings below, but that does not mean such documents were not considered if referred to in the evidence and/or in the course of the hearing.

42. The relevant facts (additional to those already found by EJ Powell) are, we find, as follows.

Alleged protected disclosures

43. Before moving to consider the alleged protected disclosures, we first note that (as found by EJ Powell) the Claimant had begun having some degree of involvement in the running of the Respondent's care home from around the beginning of July 2019. From the very outset, he had not been shy in identifying what, in his view, were failings that he observed. For example, his email of 19 July 2019 at **[C420]** describes as "*shambolic*" the state of the Respondent's care plans. This email was specifically addressed by EJ Powell in his Judgment at paragraph 25(d). In cross-examination the Claimant confirmed he did not assert this email to be a protected disclosure. Other examples are the Claimant's questioning of the abilities and honesty of the Registered Care Home Manager ("***OV***") in his email of 24 July 2019 **[R508]** and very direct feedback to OV in his email of 27 July 2019 **[R345]**.

44. We were not shown any email dated 1 August 2019 relating to concerns with the inadequacy of the Respondent's service user complaints system and find that no such email was sent.

45. We were however shown an email of 2 August 2019 from the Claimant to Mr Sherard and NP **[R530]** that was concerned with an incident that had been reported by an elderly female resident ("***BB***"). BB had reported to a member of the care home staff that she had been treated roughly by two male agency carers on 26 July 2019 which made BB feel intimidated. The member of care home staff had escalated this *inter alia* to the Claimant **[C812]**.

46. The Claimant's email to Mr Sherard and NP raises concerns with the care home management not informing Mr Sherard immediately upon an incident being raised and described this as "*only coming to light as a result of what is tantamount to whistle-blowing*". The Claimant strongly advised that OV not be tasked investigating the incident because, in his view "*it could strongly be argued [she] is the subject of the whistle-blowing*".

47. Pausing there, there is nothing in the account from BB communicated by the member of care home staff to indicate a complaint against OV, nor that OV had already been made aware of the incident with BB earlier and had not escalated the matter. In cross-examination, the Claimant gave inconsistent evidence on this issue. Initially, when questioned about his email exchanges with the member of care home staff, he denied he was responsible for dealing with this issue at all – stating that was a matter for OV. Then, when confronted with his email of 2 August 2019, he pivoted to assert that the context for the email was that he had been told the incident had been reported to OV contemporaneously, but she had done nothing about it. We reject that evidence. In the view of the Tribunal, had it actually been the case, it is very likely that the Claimant would have made that point in the email – there was ample evidence in the papers that demonstrated the Claimant's openly negative view of OV (see the Claimant's July emails referred to above, and OV's comments in her resignation email of 7 August 2019 **[R175]**). However, he did not.

48. In any event, there is nothing in this email that would provide evidence that the Respondent had no effective complaints system in place for service

users. In fact, quite the opposite – a concern had been raised by a service user (BB) and had been escalated for investigation by management, with the Claimant himself asserting that he should take responsibility.

49. Outside of the 2 August 2019 email, there was no reliable evidence presented to us as to other instances of the Claimant raising a substantiated allegation (orally or in writing) that the Respondent had no effective complaints system in place for service users. We find that no such disclosures were made.

50. On 9 August 2019, the Claimant sent an email to Mr Sherard, NP and KM **[C422]**. The email was ahead of a meeting scheduled for the following week and indicated the Claimant's desire to address three issues:

> "1. Fundamental failures relating to Care Plans and those responsible and tasked with the same.
>
> 2. Other CQC compliance reporting failures.
>
> 3. Holistic risk management of residents and/or stakeholders, whether stemming from new resident risks, lack of staff/staffing levels, inadequate staff training/induction or lack thereof of processes, general food hygiene issues […], other health and safety matters relating to inadequate or non-functioning equipment or otherwise."

51. The Claimant further noted his view that:

> "These are not insurmountable issues, however they must be collectively dealt with as a matter of urgency, since anything else in my mind is simply not the actions of a diligent and conscientious management and could be inferred as mis-management and/or gross negligence/recklessness."

52. The email does not itself go on to substantiate the headline issues that the Claimant had identified. The Claimant accepted in oral evidence that he was <u>not</u> relying on this email, in isolation, as a protected disclosure.

53. The scheduled management meeting took place on 13 August 2019. Minutes are at **[C426]** and, absent any criticism of them, we accept they are a broadly accurate summary of what was discussed. Present were the Claimant, Mr Sherard, NP and KM. Of relevance to the matters we must decide:

    a. There was a discussion around problems with agency workers including reference to the incident with BB. The solutions discussed were to use agency workers on a temp-to-perm basis and to investigate the use of other agencies.

    b. It was resolved that the Claimant was to review staff contracts and to arrange a meeting to discuss and sign-off these. We infer, therefore, that there was a discussion about the Claimant's concerns about staff contracts not being in place, and a way forward was agreed that involved the Claimant taking the lead on sorting out the situation.

    c. Under a heading of "Areas of concern (AM)", two issues are recorded. The first concerns an electrical certificate – from this we infer that the

Claimant questioned whether an appropriate electrical safety certificate was in place and KM was tasked with checking this. (In fact, KM did later find the certificate, which was dated 12 December 2016, and needed to be renewed after five years **[CS612]**). The second concerns progress with the review of care plans. This had been ongoing since July 2019 following the concerns raised by the Claimant at that time, and the discussion was focused on putting in place a process of updating the care plans periodically.

54. We find that no other issues of concern were discussed or substantiated by the Claimant at the 13 August 2019 meeting – had they been, they would have featured in the minutes.

55. In respect of the alleged oral disclosure to KM of concerns regarding the 'Mini-Bus fund' in mid-late August 2019, there is no reliable evidence before us as to whether such a conversation took place and, if so, what was the information content of that conversation. We have only the Claimant's word, which we approach with caution and which, in any event, was entirely vague as to what he says he disclosed. On the balance of probabilities, it is likely that around this time the Claimant made enquiries of KM in order to better understand how those funds were used (he says this in terms in paragraph 6 of the FPs). In other words, he asked questions of KM to gather information.

56. In early August 2019, the Respondent was notified by the CQC that it needed to complete a PIR – the deadline set was 6 September 2019 **[C818]**. The contemporaneous emails make clear that, in the absence of OV (who had handed in her resignation on 7 August 2019 and was absent from work), the Claimant took on the responsibility for completing the PIR – see, e.g. **[C817]** (an email from the Claimant saying "*I will focus on this for the next two Fridays*").

57. The PIR was filed very shortly before midnight on 6 September 2019 **[R202]**. In cross-examination the Claimant sought to downplay his role in the production of the PIR, stating he only prepared the "wordy" sections but others fed in the data sections, and he did not himself submit the form. We reject this evidence. It is plain from the contemporaneous documents that the Claimant did complete and submit the form, though some of the data entered was provided to him by others. For example, the email at **[C845]** from the Claimant to NP in the early hours of 7 September 2019 is indicative of the Claimant having completed and submitted the form himself, as is his email to KM and NP on 9 September 2019 referring to him having "*pasted the wrong content in the last section*" **[R202]**.

58. What is notable about the material contents of the PIR is that it reports no DoLS authorisations in the last 12 months, no safety concerns about premises or equipment in the last 12 months, no notifiable safety incidents, no medicine recording errors, no complaints in respect of health and safety, and no disclosure of the BB incident. Whether or not the Claimant honestly believed that the contents of the PIR were correct (on his own case, he cannot have done), it was he that confirmed on behalf of the Respondent that the contents of the PIR were complete and accurate **[R212]**.

59. In respect of the alleged oral disclosure to NP of concerns regarding the 'Mini-Bus fund' and wage / tax issues at around this time, there is no reliable evidence before us as to whether such conversations took place and, if so, what was the information content of those conversations. We have only the Claimant's word, which we approach with caution and which, in any event, was entirely vague as to what he says he disclosed. On the balance of probabilities, we find that the Claimant is likely to have asked NP questions about the 'Mini-Bus fund' (as he did with KM earlier) and about payroll issues (in the context of the ongoing staff contract review exercise he was tasked with), but that he did not make any substantiated disclosures in respect of any concerns he had.

60. It is common ground that there was a meeting between the Claimant, Mr Sherard and KM on 17 September 2019. KM took notes in her notebook (pages 72-73 of the full PDF scan). The meeting was considered by EJ Powell in his Judgment in relation to the Claimant's terms of employment; the relevant section for our present purposes is the 'Management Meeting' part. There is no record of any discussion of the 'Mini-Bus fund', and we find that it was not discussed at this meeting. There is mention of employment contracts – KM's records state "*contracts + financial signed off by Nick*". This is consistent with the ongoing review exercise the Claimant was undertaking and to which Mr Sherard was, evidently, bought in. There is no record of the Claimant raising or substantiating other concerns in this meeting, and we find he did not.

61. Regarding the alleged oral disclosure to Mr Sherard around the end of October 2019 at Mr Sherard's home regarding alleged fraud in the production of the share transfer letter, there is no reliable evidence before us as to whether such a conversation took place and, if so, what was the information content of that conversation. We have only the Claimant's word, which we approach with caution and which, in any event, was entirely vague as to what he says he disclosed. We find it inherently unlikely that the Claimant made any kind of substantiated allegation of fraud on the part of Mr Sherard to Mr Sherard himself at around this time, in circumstances where the fact of that allegation allegedly having been made is not recorded in any contemporaneous document. Moreover, even on the Claimant's case, he did not have evidence (*i.e.* access to the document metadata) to fully substantiate his concerns until November 2019. We find this alleged oral disclosure was not made.

62. At some point in November 2019, we find that the Claimant did manage to get access to Mr Sherard's computer to view the metadata of the share transfer letter. On the balance of probabilities, we find he did so without Mr Sherard's knowledge – that is consistent with Mr Sherard's own oral evidence, and the Claimant's account that he, KM and Mr Sherard all looked at the metadata together (which was denied by Mr Sherard) is inherently improbable in circumstances where the fact this allegedly happened is not recorded in any contemporaneous document. In making this finding we have regard to the Claimant's subsequent email to Mr Sherard's probate solicitors dated 11 December 2019 **[CS737]** but consider it is entirely plausible that the Claimant would write that email notwithstanding that he had doubts as to the veracity of the share transfer document he mentions (in a similar way to how he signed off on the CQC

PIR, as discussed at paragraph 58 above).

63. We accept the Claimant's evidence that he did mention his concerns about the share transfer letter to Ms Knox in around late November 2019. That he did so is corroborated by Ms Knox's evidence that she recalled the Claimant mentioning something about this, but that she could not remember the specifics. On the balance of probabilities, we find that the Claimant said little more to Ms Knox than that he had concerns. He did not substantiate those concerns to Ms Knox – had he done so, we consider that Ms Knox would have recalled that.

64. In mid-November 2019 there were exchanges of emails regarding expenses claims made by the Claimant **[R801]**. It is unnecessary to dive into the detail save to record that Mr Sherard raised some queries with the validity of some of the expenses claimed and that there was legitimacy to those queries (see e.g. **[C1151]**, **[C1161]**, **[C1197]**).

65. In respect of the alleged oral disclosures in late November 2019 relating to wage / tax issues and in November / December 2019 relating to contracts of employment and health & safety matters, there is no reliable evidence before us as to whether such conversations took place and, if so, what was the information content of those conversations. We have only the Claimant's word, which we approach with caution and which, in any event, was entirely vague as to what he says he disclosed. On the balance of probabilities, we find that the Claimant did not make any substantiated disclosures in respect of any concerns that he had in this respect in this period.

66. Chronologically, the next alleged disclosures are concerned with fire safety – specifically problems with the care home fire doors. We accept the evidence of Ms Knox that there were fire door and power supply issues dating back to June 2019 (see, e.g., the service report from the maintenance company, SCC, at **[C765]**). SCC were called out again on 18 November 2019 and identified power supply issues **[C766]**. A representative of SCC attended again on 22 November 2019 and followed up with a quotation on 26 November 2019 **[R262, C770]**.

67. In this instance, we accept the Claimant's evidence that there was reluctance on the part of Mr Sherard to invest the sums necessary to properly address this ongoing, long-term, problem, and that the Claimant did raise a concern that there was an issue with the fire doors, what that issue was (as identified by SCC), and that failing to remedy the issue was a serious safety risk. He did so, we find, by communicating these points to NP to pass on to Mr Sherard in late November 2019. The seriousness of this issue in the Claimant's mind is supported by the fact he spoke to SCC again on 28 November 2019 and scheduled a further meeting with the representative of SCC for Mr Sherard to attend on 2 December 2019 **[C775-776]**.

68. Mr Sherard had a negative reaction to this having been done. He responded to the Claimant in the following terms **[C775]**:

"Hi Andrew,

Please don't make appointments without my knowledge or say-so. Nicki came to me yesterday saying this has to be done urgently despite me asking you to look into this so I have already spoken to Suzi and I am dealing with it so will now handle this.

Re: Monday - I will be here because Karen is not going to be fully informed as we haven't touched this for nearly two months

Nick"

69. We find that this negative reaction was not because the Claimant had raised his concerns around fire safety, but because Mr Sherard was not happy with the Claimant scheduling a meeting on his behalf at a time that was not convenient for him – which is the impression given by Mr Sherard's email. (In fact, as shown at **[R262]**, the meeting with SCC instead took place on 4 December 2019 and the required remedial action in relation to the doors was undertaken on 12 December 2019.)

70. There is no reliable evidence before us as to whether further conversations took place on this topic after the email exchanges outlined above and, if so, what was the information content of those conversations. On the balance of probabilities, we find that they were not – since a meeting had been scheduled to resolve the issue, there would have been no object to the Claimant merely repeating his concerns. We also do not accept that the topic of fire extinguishers was raised by the Claimant as he alleges – there is nothing in the correspondence with SCC to suggest this was something the Claimant had raised with them, and we consider it unlikely that the Claimant would have said anything in that regard internally but not also to SCC.

71. On 2 December 2019, the Claimant, Mr Sherard and KM were at Mr Sherard's home discussing non-Littlefair matters. That is consistent with the emails at **[C775-776]**. We do not accept the Claimant's assertion that there was any discussion of the 'Mini-Bus fund' or fire safety issues, still less that the Claimant set out substantiated concerns in respect of either on this occasion. On that day, an inspector from the CQC ("**DH**") arrived at the Respondent's care home for an unannounced inspection. We accept the Claimant's evidence that he then travelled with Mr Sherard to the care home to assist with answering questions from DH. We reject Mr Sherard's evidence that this unannounced inspection took place on 4 December 2019 – that account is not consistent with the contemporaneous emails (e.g. NP's email to Mr Sherard and the Claimant on 2 December 2019 regarding gathering information for DH and saying he would "*be back over*" on Wednesday and "*seemed fine when he left*" **[C886]** and the Claimant's email to DH on 3 December 2019 referring to "*meeting you yesterday*" **[C896]**). We find the true position, reflected in the CQC letter at **[CS329]**, is that DH attended the care home on 2, 4 and 5 December 2019, and then again on 13 December 2019 as reported in NP's email of that date at **[C560]**. The reason the Claimant was not present at any of the subsequent visits from DH was because he was working in the background on other matters, both in relation to the Respondent and on Mr Sherard's probate and property matters (see e.g. **[C899]**). There is no contemporaneous evidence that indicates the Claimant was dissatisfied with or resistant to this approach, or that Mr Sherard or anyone else was actively trying to keep the Claimant away from DH. We find this was not the case.

72. It was Mr Sherard's evidence that DH advised him, in private, that he should not allow the Claimant to be involved in the care home business, that he was dangerous, and that he was troubled by the Claimant's answer to him and his recent correspondence to the CQC. We reject that evidence. It is flatly contradicted by the letter from the CQC at **[CS329]** which denies DH made any such remarks. It would also be grossly unprofessional of DH to make such comments yet not make any mention of concerns about the COO in his report. The timing also does not work, because we have seen no evidence of correspondence from the Claimant to DH before the unannounced inspection – only after.

73. In respect of the alleged oral disclosures to Mr Sherard and/or Ms Knox of concerns regarding the 'Mini-Bus fund', wage / tax issues and fire safety issues on 3 December 2019, there is no reliable evidence before us as to whether such conversations took place and, if so, what was the information content of those conversations. We have only the Claimant's word, which we approach with caution and which, in any event, was entirely vague as to what he says he disclosed. On the balance of probabilities, we find that these alleged oral disclosures did not take place. Moreover, the Claimant submitted that he provided a "*reminder*" about these matters by email on the same date, but the email we understand the Claimant to be referring to **[C890]** does nothing more than state, in relation to documentary and information requests from DH, that "*we cannot be anything other than honest and open and transparent in our responses*". That is in no way a disclosure of information, nor is it supportive of a disclosure of information having been made orally in parallel.

74. We were not shown any emails dated 12 (or 21) December 2019 relating to concerns with the share transfer document and find that no such emails were sent.

75. It is common ground that the Claimant and Mr Sherard had a meeting on 16 December 2019. Each of them gave a different account in their evidence. In our judgement, their contemporaneous emails are much more likely to provide an accurate account than their evidence to the Tribunal. In any event, it is not necessary to resolve every disputed aspect of that conversation. For present purposes, we make the following findings:

    a. This meeting was the first occasion on which Mr Sherard indicated to the Claimant that he did not wish to retain him as COO of the Respondent, but instead to be retained on a consultancy basis. (We address the follow-up emails in this respect in the 'Circumstances of the Claimant's dismissal' section below.)

    b. The contemporaneous emails do not support the Claimant's assertion that he made an oral disclosure about his concerns regarding the share transfer document. Rather, as he stated in his email of 20 December 2019, the Claimant asked to "*have sight of that share transfer document*" as he said it would be relevant to any restructuring work **[C573]**. That is a highly unlikely request to make if the Claimant had made a substantiated allegation during the meeting on 16 December 2019 that the share transfer document in question was fraudulent. We find that no such disclosure was made in that meeting.

c. The contemporaneous emails do not support the Claimant's assertion that he made oral disclosures about his concerns regarding wage / tax issues or fire safety issues either. Rather, consistent with what is said in the Claimant's email of 20 December 2019 **[C572]**, the Claimant took the opportunity to remind Mr Sherard that he had heavily contributed to resolving wholesale failures in compliance and that "*more has been achieved in the last four months than in the last 2 years*". We do not accept that the Claimant used this meeting to raise or substantiate concerns about any ongoing wage / tax issues or fire safety issues.

76. On 19 December 2019, 2 minutes after the 'stand down' email referred to in the 'Circumstances of the Claimant's dismissal' section below, the Claimant emailed DH following up on his email of 3 December 2019 **[C565]**. There is no disclosure of information in that email (nor does the Claimant allege that email is a protected disclosure).

77. Regarding disclosures alleged to have been made on Christmas Day 2019, we accept Ms Knox's evidence that she had no recollection of seeing the Claimant that day. Whilst it is possible that she did see the Claimant that day, we have no doubt that if the Claimant had made substantiated allegations in relation to the share transfer document or wage / tax issues to Ms Knox that day, she would have remembered that. We find that the Claimant did not make such disclosures.

78. The CQC inspection report was issued on 17 January 2020 **[C621]**. It gave an overall rating of "*Requires Improvement*", with that rating being assigned in two of the five assessment areas: "*Is the service safe?*" and "*Is the service well-led?*".

79. Regarding disclosures alleged to have been made to NP in March 2020 in relation to the share transfer document or wage / tax issues, there is no reliable evidence before us as to whether such conversations took place and, if so, what was the information content of those conversations. We have only the Claimant's word, which we approach with caution and which, in any event, was entirely vague as to what he says he disclosed. We were shown no documentary disclosures from this period. On the balance of probabilities, we find that the Claimant did not make any substantiated disclosures in respect of any concerns that he had in this respect in this period.

Terms of the Claimant's contract of employment

80. EJ Powell made findings as to the terms on which the Respondent offered work to the Claimant: his Judgment at paragraphs 58-90, in particular paragraph 74.

81. There was no recorded agreement between the Claimant and Respondent as to annual leave allowance, nor was there any evidence advanced that anything was agreed (but not recorded) in this regard. We find there was no agreement between the parties, express or implied, as to annual leave allowance.

82. There was no recorded agreement between the Claimant and Respondent

as to notice period, nor was there any evidence advanced that anything was agreed (but not recorded) in this regard. In closing submissions, the Claimant drew our attention to a document from his own notebook setting out his aspirations **[C690]**, which includes "*notice period 3-months either way and 6-months thereafter*". However, this was not put to Mr Sherard in cross-examination and, in any event, we have been shown no evidence that these points were even discussed, let alone agreed. We find there was no agreement between the parties, express or implied, as to the period of notice required.

83. There was no recorded agreement between the Claimant and Respondent as to entitlement to the benefit of an income protection policy. It was put to Mr Sherard in cross-examination that he had agreed that income protection would be put in place for the whole management team, by reference to correspondence about Ms Morgan's terms and to a page of Ms Morgan's notebook (page 64 of the scanned PDF) which mentions "*Income Prot. Towergate*". Mr Sherard denied there was any agreement in this respect and we accept that evidence. The notebook entry goes no further than indicating it may have been considered (but does not indicate who instigated that). In closing submissions, the Claimant drew our attention to his aspirations document **[C690]**, which includes reference to income protection. However, this was not put to Mr Sherard in cross-examination and, in any event, we have been shown no evidence that this was even discussed in respect of the Claimant, let alone agreed. We find there was no agreement between the parties, express or implied, as to entitlement to the benefit of an income protection policy.

Circumstances of the Claimant's dismissal

84. EJ Powell has addressed in his Judgment the communications between 16 and 20 December 2019, in particular the 'stand down' email sent by Mr Sherard on 19 December 2019 **[C573]** and the Claimant's lengthy response in the early hours of 20 December 2019 **[C571]**. EJ Powell has also made factual findings as to what was in the mind of Mr Sherard at that time: see in particular Judgment paras 115 and 120. There were also further exchanges between the Claimant and Mr Sherard on 20 December 2019 **[R864-866]** which focus primarily on matters unrelated to the Respondent.

85. What can be drawn from the exchanges mentioned above is that, contrary to the Claimant's evidence to us, he never expressed (at least in writing and, we find, not orally either) that the 'ringfencing' plan that was (in the Claimant's own words in evidence) Mr Sherard's "*obsession*" was not deliverable. The Claimant's email of 20 December 2019 suggests the opposite by indicating what the Claimant would need "*for me to implement a sustainable restructuring process*" **[C572]**.

86. In the last of the 20 December 2019 messages, Mr Sherard reiterates his instruction from the 19 December 2019 email to "*please step down from any duties regarding littlefair, until further notice*" **[R865]**.

87. On 22 December 2019, the Claimant repeated his previous request to Mr Sherard for a proposal in relation to a future role **[R869]**. Mr Sherard did not respond to this email. The next communication between the Claimant and

Mr Sherard was the Claimant's email of 1 January 2020 **[C571]**, in which the Claimant again invites Mr Sherard's "*proposal which centres around my transitioning from C.O.O. to something akin to a non-executive director role*".

88. Accordingly, by 22 December 2019, we find that the Claimant had recognised Mr Sherard's intention to dismiss him. In his own submissions, the Claimant describes this as having been put on "*garden leave*" **[C88]**.

89. On 3 January 2020, Mr Sherard wrote to the Claimant primarily regarding other matters, but also stated "*I have been reflecting on everything over Christmas and I will reply to you shortly*" **[R871]**.

90. On 10 January 2020, Mr Sherard wrote a detailed email to the Claimant. The email covered various matters, including setting out the reasons why various of the Claimant's expenses claims in June-November 2019 had been disputed. In terms of the ongoing relationship, Mr Sherard said this:

> "With regards to the potential transitioning to an advisory role, I remain to hold judgement on that until you can demonstrate to me that we can work together going forward…. But as it stands, you did not provide me with a written proposal of how you intended to assist me in protecting my business, further re-structuring, ring fencing Littlefair back in October 2019 and subsequent requests. This is imperative for us to move forward, but you resisted to do this, therefore I cannot see how we can move forward…
>
> […]
>
> If you want to explore to make this work, then I will suggest a meeting to discuss all of these matter's further."

91. Accordingly, still in this email, even though Mr Sherard is expressing doubts as to whether there is a way forward, this email is not consistent with there being a termination of the relationship.

92. The Claimant responded, at great length, on 28 January 2020 **[C1200]**. What is important for present purposes is the conclusion to that email:

> "If you have legitimate reasons for now deciding to terminate my employment and/or make the role of C.O.O. redundant then you need to outline those to me and/or the grounds for any transitioning… I remain in limbo until such time as you can provide me with proper details of this new role and the package."

93. We accept that "*in limbo*" is a fair and accurate depiction of the position the Claimant was in at that time. His employment had not been expressly terminated, even though he had been asked to "*stand down*" from day-to-day tasks "*for the time being*". There has been allusion to a transition into a different role, but no concrete proposal in that regard.

94. Mr Sherard did not respond to this email.

95. On 20 March 2020, the Claimant commenced ACAS Early Conciliation. It was only within that process, on 16 April 2020 (the day that the Early Conciliation Certificate was issued) that the Claimant was expressly told that his engagement with the Respondent had been terminated.

96. This claim was presented on 15 May 2020.

Application of the law to the facts

97. So far as is necessary, we will deal with time limits under each individual complaint. Logically it makes sense to address the alleged protected disclosures first.

ISSUE 6.1: PROTECTED DISCLOSURES

98. We address the six alleged protected disclosures / disclosure themes in turn.

PD1: 'Mini-Bus Fund'

99. Our factual findings in relation to PD1 are at paragraphs 55, 59, 60, 71 and 73 above.

100. We have found that the Claimant made enquiries of KM and NP regarding how the 'Mini-Bus fund' worked. However, there is no basis on which we could find that the Claimant made any disclosure of information in the *Kilraine* sense relating to concerns about the 'Mini-Bus fund' in those conversations.

101. We have otherwise found on the facts that the Claimant did not make any substantiated disclosures in this regard.

102. Even if we were to be wrong on that, there is another difficulty for the Claimant. He asserts that the disclosures he made tended to show a breach of a legal obligation; that obligation being concerned with "*the charitable purposes for which the money was collected*". However, he also accepted in evidence that the Respondent is not a registered charity and that he knew that at the time he was working for the Respondent. Accordingly, he cannot reasonably have believed that any disclosure he made tended to show a breach of a legal obligation – because in fact he knew that the legal obligation he relied upon did not exist.

103. Accordingly, PD1 is not made out.

PD2: Share transfer document

104. Our factual findings in relation to PD2 are at paragraphs 61 to 63, 74, 75, 77 and 79 above.

105. We have found that the Claimant voiced some concerns to Ms Knox about the veracity of the share transfer document in around November 2019, but that he did not substantiate those concerns. Accordingly, there is no basis on which we could find that the Claimant made any disclosure of information in the *Kilraine* sense in those discussions.

106. We have otherwise found on the facts that the Claimant did not make any substantiated disclosures in this regard.

107. Even if we were to be wrong on that, we cannot see any basis upon which

the Claimant could have a reasonable belief that any disclosure relating to the transfer of shares in the Respondent could be in the public interest. The Respondent is a private limited company. Who owns its shares is an essentially private matter. The fact that the Respondent receives public funding through the NHS (para 19 of the FPs) cannot, in our judgement, reasonably be believed sufficient to turn this into a matter of public interest.

108. Accordingly, PD2 is not made out.

PD3: Wage / tax issues

109. Our factual findings in relation to PD3 are at paragraphs 59, 65, 73, 75, 77 and 79 above.

110. We have found that the Claimant made enquiries of NP regarding payroll issues. However, there is no basis on which we could find that the Claimant made any disclosure of information in the *Kilraine* sense relating to concerns about wage / tax issues in those conversations.

111. We have otherwise found on the facts that the Claimant did not make any substantiated disclosures in this regard.

112. Accordingly, PD3 is not made out.

PD4: Fire safety

113. Our factual findings in relation to PD5 are at paragraphs 66 to 71, 73 and 75 above.

114. We have found that in late November 2019, the Claimant did communicate concerns about the safety of the care home's fire doors to NS, via NP, and that he substantiated those concerns by reference to service reports from SCC. We accept this amounted to a disclosure of information in the *Kilraine* sense. We also accept the Claimant did so in the reasonable belief that failing to address the known (and persistent) problems with the fire doors could put the Respondent in breach of its legal obligations under fire safety regulations and/or there was a danger to the health & safety of residents and staff in the care home, and that his disclosure tended to show that. We further accept that the Claimant reasonably believed his disclosure was in the public interest – we accept the Claimant believed there is a public interest in a residential care home complying with fire safety regulations in order to protect the health and safety of residents and staff, and we find that was a reasonable belief.

115. We therefore find that the Claimant's disclosure in late November 2019 regarding his concerns with the fire doors was a qualifying disclosure for the purposes of section 43B ERA and, thereby, a protected disclosure because it was made to the Claimant's employer.

116. We have otherwise found on the facts that the Claimant did not make any additional substantiated disclosures in this regard, or for example in respect of issues with fire extinguishers.

PD5: Employment contracts, health & safety etc

117. Our factual findings in relation to PD5 are at paragraphs 50 to 54, 60 and 65 above.

118. The Claimant accepts that his email of 9 August 2019 does not in itself amount to a protected disclosure.

119. As regards the meeting on 13 August 2019:

   a. We have found that there was a discussion of the BB incident in the context of reviewing the Respondent's arrangements with agencies. There is no basis on which we could find that the Claimant made any disclosure of information in the *Kilraine* sense as part of this discussion.

   b. We have found that there was a discussion about the Claimant's concerns about staff contracts not being in place, and a way forward was agreed that involved the Claimant taking the lead on sorting out the situation. It is impossible for us to form any kind of informed view as to what exactly the Claimant disclosed because of the vagueness of his evidence, but the fact an action plan was put in place indicates he must have substantiated his concerns to some degree. We can accept that the Claimant reasonably believed that the failure to have contracts in place for employees would involve a breach of a legal duty (s.1 ERA). However, we do not accept that the Claimant believed raising this concern was in the public interest. The FPs say nothing on this point. Further, we find any such belief could not have been reasonably held – problems with the staff contracts are fundamentally a private matter between the Respondent and its employees and cannot reasonably be understood to have any wider public interest. Accordingly, we find that whatever the Claimant said in the meeting on 13 August 2019 about the staff contract situation, it did not amount to a protected disclosure.

   c. We have found that the Claimant asked a question about whether an electrical safety certificate is in place. That is not a disclosure of information in the *Kilraine* sense.

   d. We have found that there was a progress discussion about the ongoing review of care plans. There is no basis on which we could find that the Claimant made any disclosure of information in the *Kilraine* sense as part of this discussion.

   e. We have found that the Claimant raised no other substantiated concerns in this meeting.

120. As regards the meeting on 17 September 2019:

   a. We have found that there was a discussion about the Claimant's ongoing review of the staff contract situation and Mr Sherard signed off on the Claimant's approach. There is no basis on which we could find that the Claimant made any disclosure of information in the *Kilraine* sense as part of this discussion.

b. We have found that the Claimant raised no other substantiated concerns in this meeting.

121. We have also found on the facts that the Claimant made no other subsequent disclosures in relation to the matters described in PD5.

122. Accordingly, PD5 is not made out.

PD6: Effective complaints system

123. Our factual findings in relation to PD6 are at paragraphs 44 to 49 above.

124. We have found that the Claimant's email of 2 August 2019 said nothing that would indicate the Respondent had no effective complaints system in place for service users. It was not a disclosure of information in the sense described in *Kilraine*.

125. We have also found on the facts that the Claimant made no other subsequent disclosures to the effect that the Respondent had no effective complaints system in place for service users.

126. Accordingly, PD6 is not made out.

ISSUE 3: AUTOMATIC UNFAIR DISMISSAL

Effective date of dismissal

127. It is common ground that the Claimant was dismissed, though there is a dispute over when that dismissal became effective. EJ Powell found that the Claimant was dismissed after 20 December 2019 (Judgment para 121) but did not determine an effective date of dismissal.

128. Our focus in determining this point must be on the Respondent's communications with the Claimant. EJ Powell has already found that none of the communications between 16 and 20 December 2019 expressly informed the Claimant that he had been dismissed but rather indicated a future intention to dismiss (Judgment para 119).

129. We have found that by 22 December 2019 the Claimant had recognised Mr Sherard's intention to dismiss him. However, this does not assist on pinpointing an effective date for the dismissal, because Mr Sherard did not unambiguously communicate (i) that the Claimant was dismissed nor (ii) when that would take effect. Dismissal was not mentioned at all in Mr Sherard's emails of 3 and 10 January 2020, the latter of which instead makes references to concerns as to whether "*we can work together going forward*" – certainly not an unequivocal statement that the employment relationship was at an end.

130. As the Claimant noted in his email of 28 January 2020 he was left "*in limbo*". We accept that was the position, and do not accept the Respondent's submission that 28 January 2020 was the last possible termination date – "*in limbo*" indicates the Claimant still remained unclear as to his position and Mr Sherard had still not directly communicated to the Claimant that he had been dismissed (and never subsequently did so).

131. Having considered all of the evidence, the first time the Claimant was unequivocally told of his dismissal was by ACAS on 16 April 2020. We find that this was the effective date of dismissal.

Reason or principal reason for dismissal

132. EJ Powell made several findings that are of relevance to this complaint. Most critically, EJ Powell made express findings as to what was in Mr Sherard's mind when he decided to dismiss the Claimant: he found at Judgment para 115 that Mr Sherard intended to dismiss the Claimant if his direction to him to provide a clear plan for ringfencing the Respondent was not fulfilled by 20 December 2019, and at Judgment para 120 that Mr Sherard decided to dismiss the Claimant on 20 December 2019 when that plan was not forthcoming (though did not then communicate that decision to the Claimant).

133. These factual findings are important and are binding upon us. But in any event, they are wholly consistent with the evidence we heard. It was accepted by the Claimant in his own oral evidence that the ringfencing work was (in the Claimant's words) Mr Sherard's "*obsession*". The Claimant's evidence was to the effect that what Mr Sherard wanted was impossible, but we have found that the Claimant never clearly stated that to Mr Sherard (his email of 20 December 2019 suggests the opposite). It is also clear (and we find) that Mr Sherard never accepted that it was not deliverable.

134. What is important for us to consider is the thought process of the decision maker (*i.e.* Mr Sherard), however flawed and unreasonable that thought process was. We find that the principal reason for the dismissal was that the Claimant had failed to deliver the ringfencing plan that Mr Sherard wanted him to deliver. That was the reason that operated on the employer's mind in the sense described in *Abernethy*. The principal reason was not that the Claimant had made any protected disclosures (as alleged or at all).

135. The automatic unfair dismissal complaint therefore fails.

ISSUE 6.3: PROTECTED DISCLOSURE DETRIMENTS

136. As we have found that the Claimant made only a single protected disclosure (under PD4), we only need to consider whether the Claimant was subjected to any detriments on the ground of having made that protected disclosure.

137. We will deal with the alleged detriments in turn.

Wages up to 1 November 2019 not paid; 5% shares not transferred

138. These detriments cannot be on the ground of the protected disclosure, as the failure to pay wages and the breached contractual obligation to transfer the shares predates the protected disclosure we have found.

139. Moreover, even if we had found there were other, earlier, protected disclosures, we accept the Respondent's submission that any complaint in relation to wages up to 1 November 2019 not having been paid and the 5% shares not being transferred would be out of time having regard to when the claim was presented. The Claimant has not advanced any evidence that it

was not reasonably practicable to present such a complaint in time.

Salary from 1 November 2019 not paid

140. It is not disputed that the Claimant was not paid his agreed salary from 1 November 2019 and that this is a detriment. The burden is therefore on the Respondent to show this was not on the ground of the protected disclosure.

141. We find that the reason the Claimant was not paid his salary was essentially the same reasons he was ultimately dismissed: Mr Sherard's "*obsession*" was wanting the Claimant to provide a ringfencing proposal. Regardless of what he had agreed with the Claimant, he was not going to pay the Claimant anything until he had that proposal. Indeed, that was how the Claimant put it to Mr Sherard in cross-examination: he asked Mr Sherard if, in his mind, everything was no-win-no fee, to which Mr Sherard answered that it was conditional on achieving a target. Whilst this was unreasonable and reprehensible behaviour on the part of Mr Sherard in view of the agreements he had previously made with the Claimant, it was not materially influenced by any protected disclosure.

Expenses not paid in a timely manner

142. It is not disputed that the Claimant's expenses were not paid (at least initially) in full and that this is a detriment.

143. In respect of expenses prior to November 2019, this cannot be on the ground of the protected disclosure because the non-payment predates the protected disclosure. Moreover, complaints in respect of those expenses would be out of time having regard to when the claim was presented, and the Claimant has not advanced any evidence that it was not reasonably practicable to present such a complaint in time.

144. In any event, the evidence is clear, and we find, that the reason for the expenses not being paid in full in a timely manner was because Mr Sherard raised legitimate queries about them. See our factual findings at paragraph 64 above. This was not materially influenced by any protected disclosure.

Being instructed not to attend the care home when CQC were present and not to communicate with CQC

145. This alleged detriment is disputed on the facts. Our factual findings in this regard are at paragraph 71 above.

146. The unannounced CQC inspection on 2 December 2019 was only a matter of days after the protected disclosure that we have found was made. We have found that the Claimant was brought to the care home by Mr Sherard to assist with answering questions from the inspector, DH. That runs entirely counter to the allegation that Mr Sherard was actively seeking to keep the Claimant away from the CQC inspector on the ground that he had made a protected disclosure.

147. In respect of the later visits from DH, we have found that the Claimant was not asked to be present because he was working in the background on other matters, both in relation to the Respondent and on Mr Sherard's

probate and property matters. There is no contemporaneous evidence that indicates the Claimant was dissatisfied with or resistant to this approach. It was not a detriment and, in any event, not materially influenced by the Claimant having made a protected disclosure. Rather it chimes with the consistent theme in this case, which is that Mr Sherard wanted the Claimant to devote his efforts to probate and property matters and, in particular, the ringfencing proposal that Mr Sherard was expecting the Claimant to deliver.

148. In any event, complaints in respect of these matters would be out of time having regard to when the claim was presented, and the Claimant has not advanced any evidence that it was not reasonably practicable to present such a complaint in time.

“Gardening leave” / dismissal

149. By “gardening leave” we understand the Claimant to mean being asked to “stand down” from his COO role. This is, in effect, no different an allegation to the dismissal – the only difference being that the “stand down” instruction had immediate effect, whereas though Mr Sherard had made the decision to dismiss at the same time, it was not given effect until later. The burden is on the Respondent to show this was not on the ground of the protected disclosure.

150. We find that the reasoning for these treatments was the same. It was because the Claimant had failed to deliver the ringfencing plan that Mr Sherard wanted him to deliver. That was plain from the balance of the evidence we heard and have read in the contemporaneous documents. It may have been an unreasonable expectation on the part of Mr Sherard, but that was the rationale operating in his mind at the time. It was a decision that was not materially influenced by any protected disclosure made by the Claimant.

Denial that the Claimant was an employee

151. The denial that the Claimant was an employee is, we find, capable of being a detriment – it necessitated the Claimant having to prove his employee status at a preliminary hearing in these proceedings and has, no doubt, delayed the Claimant being paid various sums he is entitled to (see the complaints addressed below). The burden is therefore on the Respondent to show this was not on the ground of the protected disclosure.

152. Mr Sherard’s evidence to the effect that he did not subjectively believe that the Claimant had become an employee of the Respondent was not challenged in cross-examination. We accept that evidence. It is very clear from all of the evidence we have heard and read that Mr Sherard was (at least during the period of time that he was involved with the Claimant) inattentive to matters going on within the care home, and more focused on probate / property matters and family disputes. We therefore find that, though a reasonable person in his position would have done, Mr Sherard did not in fact understand the Claimant to have become an employee. That, combined with a level of aggrievement at the Claimant not having delivered what Mr Sherard wanted him to deliver (i.e. the ringfencing proposal), led to the Respondent disputing the Claimant’s employee status in Early

Conciliation and in these proceedings. That was not materially influenced by any protected disclosure made by the Claimant.

Conclusion on detriment complaint

153. Accordingly, for the reasons set out above, we find that the Claimant has not been subjected to any detriment by the Respondent done on the ground that he has made a protected disclosure. The detriment complaint is not well-founded and is dismissed.

ISSUE 8: HOLIDAY PAY

ISSUE 9: UNAUTHORISED DEDUCTIONS

ISSUE 10: BREACH OF CONTRACT

154. We will deal with these complaints together.

155. EJ Powell made findings as to the terms on which the Respondent offered work to the Claimant: his Judgment at paragraphs 58-90, in particular paragraph 74. We have made additional factual findings above. Relevantly for present purposes:

    a. The Claimant was entitled to a salary of £50,000 per year from 1 November 2019;

    b. The Claimant was entitled to a lump sum payment of £15,500 (in respect of work done in the period mid-June to end October 2019), deferred until further notice;

    c. The Claimant was entitled to 5% shares upfront from 1 November 2019 (with further shares possible on contingent terms); and

    d. There was no recorded agreement as to (1) annual leave allowance; (2) notice period; or (3) provision of an income protection policy.

Unlawful deductions

156. It is common ground that the Claimant was not paid his salary during his period of employment nor was he paid the lump sum due. No time points arise on these points – the deductions from salary were a series running up to the effective date of dismissal (16 April 2020, as found above), and the lump sum was "*deferred until further notice*" so the Claimant's entitlement to payment of it crystallised upon his dismissal. For completeness, since it is alluded to in the Claimant's submissions, employer pension contributions are not "wages" so no claim can be pursued in respect of those.

157. As regards the 5% shares, this is also pleaded as an unlawful deduction from wages. The Respondent submits that shares do not fall within the definition of "wages" in s.27(1) ERA. We accept that submission. S.27(5) ERA excludes from the definition of wages "*any monetary value attaching to any payment or benefit in kind furnished to a worker by his employer … except in the case of any voucher, stamp or similar document which is (a) of a fixed value expressed in monetary terms, and (b) capable of being*

exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things)." Shares in the Respondent (a private listed company) fall within this exclusion.

158. There is another difficulty with the Claimant's complaint in respect of the shares, which is that it was not brought within three months of the date of the deduction, *i.e.* the date upon which the Claimant was entitled to the shares (that being 1 November 2019). The Claimant presented the claim on 15 May 2020, and had not approached ACAS until 20 March 2020 so could gain no benefit from an extension of time for this complaint. The Claimant has advanced no case that it was not reasonably practicable for him to bring his claim in respect of the share issue earlier, and we find that it was reasonably practicable for him to have brought this claim in time. Accordingly, the deductions complaint in respect of the shares is time-barred.

159. We therefore find the complaint of unauthorised deductions from wages is well-founded in part. The Respondent made unauthorised deductions from the Claimant's wages in the period 1 November 2019 to 16 April 2020 in respect of both salary and the lump sum payment contractually due to him, but not in respect of any entitlement to shares.

160. We will invite the parties' submissions on the sum that is payable by the Respondent to the Claimant.

Holiday pay

161. As regards holiday pay, the Claimant has not advanced any argument that he should be entitled to anything in excess of the statutory minimum entitlement in respect of annual leave. The Respondent accepts that the Claimant was not paid anything in respect of holiday pay. The entitlement to holiday pay accrued up to the date of dismissal, so no time points arise.

162. We therefore find that the complaint in respect of holiday pay is well-founded. The Respondent failed to pay the Claimant in accordance with regulation 14(2) of the Working Time Regulations 1998. The Claimant is entitled to be paid in respect of leave entitlement accrued but unpaid in the period 1 November 2019 to 16 April 2020.

163. We will invite the parties' submissions on the sum that is payable by the Respondent to the Claimant.

Notice pay

164. As regards his notice period, the Claimant's case is that he should be entitled to a notice period of at least 3 months as would be expected for someone holding a COO role. The Respondent submits that there is no evidence of any notice period being agreed beyond the statutory minimum, but accepts the Claimant was not paid any notice pay and does not submit that the Claimant fundamentally breached his employment contract such that he would have no entitlement to notice of termination.

165. We accept the Respondent's submission on this point – there is no

evidence of any agreement as to an extended notice period, nor is there any reasonable basis to infer a 3-month notice period into the contract. The high point of the Claimant's case appears to a document from his own notebook setting out his aspirations but, as set out in our factual findings, this does not assist on determining what terms were agreed.

166. We therefore find that the complaint of breach of contract in relation to notice pay is well-founded. The Claimant is entitled to be paid one weeks' notice pay, that being the applicable statutory minimum having regard to his length of service (per s.86(1) ERA).

167. We will invite the parties' submissions on the sum that is payable by the Respondent to the Claimant.

Income protection policy

168. As regards income protection, the Claimant's case is that, though this was not expressed in the terms identified in paragraph 74 of EJ Powell's Judgment, it is to be inferred from other materials that this was a term of his contract. He points in particular to extracts from Ms Morgan's notebook which, he says, demonstrate that sorting out income protection for the management team was on the list of things to do. The Respondent submits there is no evidence of an agreement to provide an income protection policy.

169. We accept the Respondent's submission on this point – there is no evidence of any agreement as to the provision of income protection, nor is there any reasonable basis to infer this into the contract. It was repeatedly put to Mr Sherard in cross-examination that he had agreed to income protection for the whole management team, and Mr Sherard did not accept that premise – we have accepted that evidence. The Claimant again relies upon a document from his own notebook setting out his aspirations, but this does not assist on determining what terms were in fact agreed. In terms of Ms Morgan's notebook, the extracts do no more than indicate this was something under consideration, but do not evidence any agreement with the Claimant in that regard.

170. We therefore find that the complaint of breach of contract in relation to failure to provide an income protection policy is not well-founded and is dismissed.

ISSUE 11: WRITTEN PARTICULARS OF EMPLOYMENT

171. It is common ground that the Claimant was not provided with written particulars of employment. Accordingly, the Respondent was in breach of its duty to the Claimant under section 1(1) ERA to provide a written statement of particulars of employment at the time this claim was commenced. The Claimant is entitled to an award under s.38 EA.

172. We will invite the parties' submissions as to the quantification of that award.

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Approved by:

Employment Judge Abbott

Date: 11 February 2026