EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No S/4100932/2016

Held at Dumfries on 30 and 31 January 2017 and 1 February 2017

Employment Judge: Mr C Lucas (Sitting Alone)

Mrs Tracey Taylor	**Claimant** **Present – (but not represented at the Final Hearing)**
Gilmourbanks Limited	**Respondent** **Represented by:** **Mr S Healy – Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is in four parts, namely:-

(1) That at no time during the course of her employment with the Respondent – (a period which began on 16 March 2015 and ended on 30 November 2015) - had the Claimant made a protected disclosure as referred to in Section 43A of the Employment Rights Act 1996 which was a qualifying disclosure – (as defined by Section 43B of that Act) - made by her in accordance with any of Sections 43C to 43H of that Act.

That the Claimant's claim that, in terms of Section 43A of the Employment Rights Act 1996, she had made a protected disclosure as defined by Section The Judgment of the Employment Tribunal is in four parts, namely:-

(2) That at no time during the course of her employment with the Respondent – (a period which began on 16 March 2015 and ended on 30 November 2015) - had the Claimant made a protected disclosure as referred to in Section 43A of the Employment Rights Act 1996 which was a qualifying disclosure –

(as defined by Section 43B of that Act) - made by her in accordance with any of Sections 43C to 43H of that Act.

(3) That the Claimant's claim that, in terms of Section 43A of the Employment Rights Act 1996, she had made a protected disclosure as defined by Section 43B of that Act, and that she did so in accordance with Section 43C of that Act, is not well-founded.

(4) That the Claimant's claim that she had been unfairly dismissed by the Respondent because the reason - (or, if more than one, the principal reason) - for her dismissal was that she had made a protected disclosure – (a claim based on Section 103A of the Employment Rights Act 1996) - is dismissed.

And, -

(5) That because the sole basis of the Claimant's claim that she was unfairly dismissed by the Respondent is that the reason - (or, if more than one, the principal reason) - for her dismissal was that she had made a protected disclosure and because the Claimant had not been continuously employed by the Respondent for a period of not less than two years ending with the effective date of termination of that employment an Employment Tribunal does not have jurisdiction to hear any complaint which may be implicit within or inferred from the Claimant's claim as made to the Employment Tribunal in a form ET1 as presented to the Central Office of the Employment Tribunal in Scotland on 12 April 2016 and which may be based on an allegation that she was unfairly dismissed, i.e. any complaint other than her complaint that she had been unfairly dismissed contrary to Section 103A of the Employment Rights Act 1996.

REASONS

Background

Pre-Final-Hearing History of the Claimant's Claim

1. In her ET1 claim form as presented to the Central Office of Employment Tribunals in Scotland on 12 April 2016 the Claimant claimed that she had been unfairly dismissed by the Respondent. In a paper apart attached to – (and deemed by the Tribunal to be part of) – her ET1 claim form she alleged that she had been dismissed "as a result of making a protected disclosure" and that "… therefore, this is a claim for unfair dismissal."

2. It was alleged in the ET1 claim form that the Claimant's employment with the Respondent had begun on 18 March 2015 and had ended on 30 November 2015.

3. The remedies sought by the Claimant within the ET1 claim form were compensation and "… to have her record of employment altered to demonstrate that she was unfairly dismissed, rather than dismissed as a result of Gross Misconduct".

4. The Claimant's ET1 claim form and its attached paper apart are hereinafter collectively referred to as "the ET1".

5. The ET1 alleged that in March 2015 the Claimant had "raised concerns" with two of the Respondent's Directors, that in April 2015 she had raised an "issue" with one of those Directors, that later in April 2015 she had "reported" an "incident" to two of the Respondent's Directors, that in July 2015 she had "witnessed" two of the Respondent's Directors "disregard procedure" and "was uneasy at this" and that in October 2015 she had "advised" another member of staff, "a new member of staff", to "put her concerns in writing" to one of the Respondent's Directors but had become "concerned" that her, the Claimant's, views "over this behaviour" – (behaviour which had caused concern to the other member of staff referred to) – "was not being taken into account" by the Respondent.

6. It was apparent from the allegations made within the ET1 that the Claimant contended that the concerns alleged to have been expressed by her on the

dates specified by her and by the other member of staff referred to were each a "protected disclosure" as referred to in Section 43A of the Employment Rights Act 1996 – (hereinafter, "ERA 1996") – being a qualifying disclosure as defined by Section 43B of that Act made "by a worker" in accordance with any of Sections 43C to 43H of that Act.

7. In a form ET3 as received by the Tribunal Office on 18 May 2016 – (hereinafter "the ET3") – the Respondent resisted the Claimant's claim in its entirety, contended that the reason, or principal reason, for the Claimant's dismissal was not because she had made a protected disclosure, as alleged or at all, contended that she had been dismissed "for reasons relating to her conduct which the Respondent considered to be so serious as to amount to gross misconduct", contended that the Claimant had made no protected disclosure as alleged (or at all), contended that none of "the allegations made by the Claimant" in the ET1 were qualifying disclosures and submitted that even if it was proven that any of the allegations made by the Claimant was a qualifying disclosure for that purpose such disclosure was not a protected disclosure for the purposes of s.43A of the ERA 1996.

8. It was contended within the ET3 that the Claimant's period of employment with the Respondent was the period which had begun on 16 March 2015 – (not 18 March 2015) - and had ended on 30 November 2015.

9. On 10 June 2016 a routine, case-management, (closed) preliminary hearing took place. A note of that preliminary hearing was issued on 13 June 2016 and is referred to, generally, for its terms. Notwithstanding that generality, however, it is noted that it was recorded in that note that at that preliminary hearing on 10 June 2016 – ("the June Preliminary Hearing") – the Claimant's position was "that she had been dismissed due to having made a protected disclosure" and that "….the sole detriment said to have occurred was dismissal.

10. It was accepted by the Claimant's representative at the June Preliminary Hearing that "if it existed" a letter referred to by the Claimant in her claim as

having been sent by a, then new, member of the Respondent's staff – (in fact, a Ms Rogerson) – did not constitute a protected disclosure by the Claimant and was of "doubtful" relevance.

11. At the June Preliminary Hearing the Claimant's then representative undertook to voluntarily provide further specification in relation to what the Claimant alleged were protected disclosures, including specification of "the paragraphs in Section 43B(1) of the Employment Rights Act 1996 which the Claimant says are of relevance in relation to her disclosure."

12. On or about 23 June 2016 the Claimant provided the Tribunal and the Respondent with the specification which her representative at the June Preliminary Hearing had said she would provide voluntarily. In that specification – (hereinafter "the Further and Better Particulars") – reference was made to the Claimant having made a disclosure to two of the Respondent's Directors, Directors – (Ms Kirsty Penny and Mr Steven Whalen) - in March 2015 but it was conceded that "there were no specific e-mails sent from the Claimant to her superiors at this time", explanation being given that "she dealt with matters by way of a face to face communications."

13. It was alleged within the Further and Better Particulars that "disclosure was in the public interest", that "with reference to Section 43(B), Sub-Paragraph 1 of the Employment Rights Act 1996, the Claimant reasonably believed" that "a criminal offence had been committed", that "a person had failed to comply with any legal obligation to which he was subject" and that "the health or safety of an individual has been, is being, or is likely to be endangered."

14. The Further and Better Particulars contained specification that in April 2015 the Claimant had "raised her concerns" about Critical Incident Reports "detailing the situations whereby young persons had been restrained" … "were not being completed until several months after the incident", the allegation being that the Claimant had "raised her concerns about this practice" with Ms Penny. It was stated that "the Claimant dealt with her

concerns by making a verbal disclosure to Kirsty Penny" but that "the Claimant also firmly believes that there are e-mails between her and Kirsty Penny and her and Steve Whalen disclosing this information."

15. It was alleged that the "disclosure" made by the Claimant in April 2015 was "in the public interest" because "the organisation was breaching the code of practice for social service workers" and "the main principals stated in the National Care Standards…" and specified that the relevant sub sections of Section 43(B)(1) of ERA 1996 were sub paragraphs (b), (d) and (f).

16. The Further and Better Particulars contained a request that the Tribunal issue an Order "ordaining the Respondents to provide all e-mails between 16 March 2015 and 30 November 2015" and referred to a covering letter in that regard.

17. In the contexts of "large discrepancies with the petty cash" and "monies belonging to the children and young people" having "not been accounted for", of there having been "several" such "incidences" and of there having been "hundreds of pounds of children's' money unaccounted for" the Further and Better Particulars referred to the Claimant having "disclosed her concerns about the way the petty cash and monies were being dealt with to Steven Whalen and Kirsty Penny" and alleged that such "disclosure" was made "towards the end of April 2015". The Further and Better Particulars conceded that such "disclosure" was "made verbally by the Claimant to Mr Whalen and Ms Penny". It was alleged that that "disclosure", as referred to, was made in the public interest, that it was made "to her superiors", that the "paragraphs" in "Section 43(B)(i)" that were relevant were "(a); (b) and (f)" and that by "not keeping proper records" the Respondent was "in breach of 2.7 of the code of practice for social service workers as well as the right to privacy under the National Care Standards."

18. The Further and Better Particulars alleged that the Claimant had made a disclosure to the Respondent "in October 2015 and that she had made such a disclosure verbally to Steve Whalen and Kirsty Penny" and that she had

"followed up by e-mail correspondence". But it was apparent from the Further and Better Particulars that the Claimant was referring in this context to concerns which had allegedly been expressed "in writing to the Director of Operations, Steven Whalen" by a Ms Rogerson. The Further and Better Particulars referred to such disclosure – (by Ms Rogerson) - as being "most definitely in the public interest" and alleged that "the Respondents have breached the main principals stated in National Care Standards", the Claimant specifying the relevant sub-sections of Section 43B(1) of ERA 1996 as being (a); (b); (d); and (f).

19. The Further and Better Particulars stated that "this is a very serious case and it is utmost importance to the Claimant that her concerns are made known".

20. A further (closed) preliminary hearing was held on 26 August 2016. Notes issued on 31 August 2016 are referred to, generally, for their terms but it is noted that within that Note of the 26 August 2016 Preliminary Hearing – (hereinafter, "the August Preliminary Hearing") – the Further and Better Particulars and the Respondent's response to the Further and Better Particulars were both accepted by the Tribunal as being "Additional Information to the claim and response."

21. Following the August Preliminary Hearing, and in accordance with what had been discussed and agreed at it, an Employment Judge ordered the Respondent to provide the Claimant's then representative and the Tribunal with copies of "all e-mail correspondence between the Claimant, and Kirsty Penny or Steven Whalen of the Respondents during the period from 1 April 2015 to 30 November 2015, relating to any of the alleged disclosures made by the Claimant as at paragraphs A, B, C and D of the Additional Information provided by the Claimant on 23 June 2016.

22. The Tribunal office scheduled the Final Hearing of the Claimant's claim to take place at Dumfries on 30 and 31 January 2017 and on 1, 2 and 3 February 2017.

23. At the stage of the ET1 being presented to the Employment Tribunal, and until a few days prior to commencement of the Final Hearing of her claim, the Claimant was represented by a firm of solicitors, various representatives of which firm had taken part in preliminary hearings which had taken place between the date of presentation of the ET3 and commencement of the Final Hearing of the Claimant's claim. Prior to the date of commencement of the scheduled Final Hearing of the Claimant's claim, but only within a few days prior to that date, the Claimant intimated to the Tribunal that the firm of solicitors who had been representing her until that stage had withdrawn from acting and asked for a postponement of the Final Hearing. Having considered that request – [and taken account of the context in which it was made and what was thought to be in the interests of justice and in accordance with Rule 2 as set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013] - an Employment Judge ordered that the scheduled Final Hearing should proceed on the dates identified.

24. When the case called for Final Hearing on 30 January 2017 the Claimant was present but was not represented. The Respondent was represented by counsel.

The Final Hearing of the Claimant's claim that she had been unfairly dismissed by the Respondent because the reason (or if more than one, the principal reason) for her dismissal was that she had made a protected disclosure.

25. By the time the Final hearing began at Dumfries on 30 January 2017 there had been no significant alteration to or elaboration of the Claimant's claim that she had been dismissed by the Respondent because she had made a protected disclosure – (a claim based on Section 103A of the Employment Rights Act 1996).

26. By the time the Final hearing began at Dumfries on 30 January 2017 there had been no significant alteration to or elaboration of the Respondent's

denial that it had dismissed the Claimant because she had made a protected disclosure.

27. On 30 January 2017, at a stage prior to any evidence being heard at the Final Hearing and when preliminary issues were routinely being discussed among the Claimant, the Respondent's representative and the Employment Judge, the Claimant sought to introduce new documents into a previously-agreed joint bundle of productions. After discussion and having heard representations from both the Claimant and from the Respondent's representative the Employment Judge determined that because its content, albeit in a different form, was already contained within the agreed joint bundle one of those productions, a "chat conversation" would be permitted but that documents respectively entitled "witness statement", "meeting with Steven Whalen" and "timeline" would not be permitted, it being the Employment Judge's determination that these were patently written witness statements on which the Claimant sought to rely even although the Tribunal had not ordered witness statements. The Employment Judge also determined that because of the opportunity which the Claimant had previously had to lodge such a document, and because he considered that the Claimant was belatedly attempting, without acceptable explanation, to lodge it without having any intention of calling Dr Harkness as a witness to give evidence in support of what was alleged to be contained within it, a document purporting to reproduce copies of an e-mail chain between the Claimant and a Dr Harkness would not be permitted.

28. The Final Hearing of the Claimant's claim, a Hearing scheduled to take place over a period of five days beginning on 30 January 2017, was completed on its third scheduled day.

29. When making her closing submissions – (and having been guided by the Employment Judge to do so at that stage rather than at any earlier stage in the Final Hearing) – the Claimant made it clear that if her claim was successful she sought an additional remedy, namely an award of expenses against the Respondent, such expenses to be calculated to recognise the

overall costs incurred by the Claimant in pursuing her claim including, amongst other things, fees paid by her and any witness expenses which she would otherwise be personally liable for in respect of witnesses called by her. The Employment Judge noted the Claimant's position on this and reserved her right to make an application for expenses in terms of the Rules as set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 – (hereinafter, "the Regulations") - once a Judgment had been issued.

30. For his part, the Respondent's representative requested in his closing submissions that the possibility of expenses being awarded in favour of the Respondent and against the Claimant be reserved and the Employment Judge confirmed that that request was noted and that the possibility of an application for an award of expenses being made in favour of the Respondent and against the Claimant would be reserved in order to allow the Respondent to make an application in terms of the Rules as set out in Schedule 1 to the Regulations at the appropriate stage after the Judgment had been issued.

31. In his closing submissions the Respondent's representative invited the Tribunal to consider and to take into account the decision in the case of **Cavendish Munro Professional Risks Management Limited v Geduld** as well as the provisions of Sections 43A – G, 47B, 103A and 108 of the Employment Rights Act 1996. The Tribunal did so, and where appropriate, has referred to that case and that relevant legislation in the "Discussion" section of this Judgment.

Findings in Fact

32. The Tribunal found the undernoted facts – (whether they be admitted or whether they be proved) – to be relevant to its determination of the Claimant's claim that, contrary to the provisions of Section 103A of ERA 1996 as it relates to Section 43A – G and Section 47B of ERA 1996, she had been unfairly dismissed by the Respondent. The Tribunal records that

in setting out such Findings in Fact it has chosen to identify only those findings which it considers to be relevant to the Claimant's claim and, as a corollary, to omit findings which it was patent the Claimant wished the Tribunal to record but which, in the view of the Tribunal, were not relevant to the Claimant's claim.

33. The Findings in Fact so identified as being relevant to its determination of the Claimant's claim that, contrary to the provisions of Section 103A of ERA 1996 as it relates to Section 43A – G and Section 47B of ERA 1996, she had been unfairly dismissed by the Respondent are:-

34. The Respondent is a limited liability company which operates a partly residential and partly day-care-placement care and education service at Maben House at Parkfoot, Lochmaben, Lockerbie. That premise – (hereinafter, "Maben House") – and the business carried on by the Respondent at and from it is otherwise described by the Respondent in the ET3 as being "a Residential Children's Care Home with Education" and, as its ethos, aims to provide support to young people aged between 8 and 19 years of age who have social or behavioural difficulties and/or learning difficulties.

35. The capacity for young persons in care at Maben House is ten but at any given time there are usually about seven young people resident there. All such young people have special needs. Some of them may be registered as having social, emotional and behavioural difficulties. Some of them may be registered as having Autism Spectrum Disorder.

36. There is a linkage between the business operated by the Respondent at Maben House and the business operated by a limited liability company known as High Trees House Limited at Closeburn House, Thornhill, but the businesses – (and the companies which operate them) - are distinct from each other.

37. The Respondent operates from more than one site in Great Britain and employs some 45 people in Great Britain, approximately 20 of these at Maben House.

38. The Directors of the Respondent company, Gilmourbanks Limited, are Mrs Deborah Whalen, her step-son Mr Steven Whalen and Ms Kirsty Penny.

39. As well as being a Director of the Respondent company for the purposes of the Companies Acts Mr Whalen holds the job designation of "Operations Director" and fulfils that designation on a day to day basis.

40. As well as being a Director of the Respondent company for the purposes of the Companies Acts Ms Penny is the Respondent's Director of Care who is responsible for Maben House. Her background in the care sector is long term. She is fully registered with the Scottish Social Services Council as a Manager and holds all appropriate certification to entitle her to act as a Manager.

41. The Claimant had been employed by the Respondent throughout the period which began on 16 March 2015 and ended on 30 November 2015 – (hereinafter, "the effective date of termination").

42. The Claimant was employed by the Respondent as Manager of Maben House. Her main responsibilities were the day-to-day planning and management of the residential home and school there, ensuring that the team of staff employed by the Respondent to work there provided primary care and support to the young people living and/or being educated there and implementing, reviewing and developing of the Respondent's Policies and procedures in so far as they related to the business conducted by it there.

43. The Claimant was interviewed for the post of Manager at Maben House by Mr Whalen and Ms Penny.

44. During the course of the interview which led to her appointment as the Manager at Maben House the Claimant disclosed to Ms Penny and Mr

Whalen – (and noted on the relevant job application form which she completed and returned to the Respondent) - that her then current employer was Dumfries and Galloway Council but that prior to taking up that position she had, for a period of some nine years, worked for a business known as "Care Visions".

45. At the interview and in the relevant job application form the Claimant told Ms Penny and Mr Whalen that she had been dismissed by Care Visions because she had failed to obtain the Level 4 PDA certification in Leadership and Management for Care Services – (hereinafter, "the required PDA") – that Care Visions had required her, as a Residential Service Manager, to obtain and hold.

46. The only reason disclosed by the Claimant at her interview with Mr Whalen and Ms Penny for her having been dismissed by Care Visions was that failure to obtain and hold the required PDA.

47. The Claimant's employment with the Respondent was subject to the Respondent's Disciplinary Procedure, Code of Conduct and Company Rules. The Claimant had been referred to that Procedure, that Code of Conduct and those Rules at her induction into her employment. All of these Policies, Codes and Rules were set out in an Employee Handbook which was made available to the Claimant on line and a hard copy of which was kept in her, the Manager's office at Maben House.

48. The Claimant admits to never having fully or properly read any of such documents.

49. Prior to or shortly after taking up employment with the Respondent the Claimant was provided with a job description – (hereinafter, where the context permits, "the Claimant's job description") - which included the statement that she was responsible to the Respondent's Head of Care – (who was Ms Penny) – and its Operations Director – (who was Mr Whalen).

50. The Claimant's job description made it clear that as the holder of the position of Manager at Maben House she was required "to lead and support the staff team in the provision of a professional and effective service that strives to develop and maintain a high standard of care for all residents", that she was required "to demonstrate good organisational and time management skills…", that she was "to be responsible for own professional development and practice" and that she was required "to take responsibility for the monitoring, controlling and effective use of the budget", that she was required "to liaise as required with the Directors on any financial matters pertaining to the home", that she was required "to be responsible for disciplinary issues involving staff" and for ensuring that all required records and reports were completed and that she was required "to be responsible for gaining a professional social work qualification as agreed with" the Respondent's Directors.

51. The Claimant does not deny that she was issued with that job description.

52. It was a condition of the Claimant's employment with the Respondent that as an employee who had access to confidential information she would not at any time during her employment directly or indirectly disclose such confidential information to any third party except in the proper course of carrying out her duties. In that context, "confidential information" was defined within the Company's documentation – (including the Claimant's contract of employment) - as including information relating to the children/young people in the care of the Respondent at Maben House, information relating to the Respondent's business methods and other information in respect of which the Respondent owed an obligation of confidentiality to any third party.

53. On or about 31 March 2015 the Claimant had a meeting with Ms Penny and Mr Whalen at which she considered and signed her contract of employment and a confidentiality agreement. The latter included statements that "due to the highly confidential nature of this business and the work therein, it is understood that those professionals and ancillary staff, whether in full or

part time employment, will not divulge any information relating to any child's situation or any matter relating to the businesses High Trees Limited and Gilmourbanks Limited to any unauthorised persons" and that "I hereby agree to being bound by the code of confidentiality as outlined above and fully understand and accept that any breach of confidence will lead to disciplinary action being taken and may lead to legal action."

54. The Respondent required the Claimant to enter the times that she arrived at and left work into a log-book on a daily basis but she admits that she had done so only once during the entire period of her employment with the Respondent.

55. The Respondent provided and made available to its employees, including the Claimant, a Policy which defined "Gross Misconduct". That Policy set out, as a non-exhaustive list, examples of behaviour which the Respondent would view as being gross misconduct and as being likely to result in dismissal without notice. That list included "inappropriate use of petty cash, "unauthorised absence", "serious insubordination", "bringing the Company into disrepute", "refusal to carry out reasonable management instructions", "breach of confidentiality, including the unauthorised disclosure of Company information to the media or any other party" and "serious breach of the terms set out in the Company's 'Centre Policies and Procedures' manuals."

56. The Respondent provided and made available to its employees, including the Claimant, a Disciplinary Procedure Policy which included the statement that "the Company reserves the right to discipline or dismiss you without following the Disciplinary Procedure if you have less than 24 months' continuous service".

57. The Respondent issued and made available to the Claimant its "Public Interest Disclosure ('Whistleblowing')" Policy which stated that the Respondent constantly strove to safeguard and act in the interest of the public and its employees and emphasised both that it was important to the Respondent "that any fraud, misconduct or wrongdoing, by employees or

other agents, is reported and properly addressed" and that "this policy applies to all employees and all other agents of the Company, who are encouraged to raise concerns in a responsible manner." Specifically, that Policy encouraged the Respondent's employees, including the Claimant, to draw the Respondent's attention to:-

> "… any practice or action of the Company, its employees or other agents that you reasonably believe is against the public interest, in that the practice or action is:-
>
> - a criminal offence.
> - a failure to comply within the legal obligation.
> - a miscarriage of justice.
> - a danger to the health and safety of any individual.
> - that the environment is being, or is likely to be, damaged.
> - an attempt to conceal information on any of the above."

58. That Public Interest Disclosure ("Whistleblowing") Policy also contained both an assurance to the Respondent's employees, including the Claimant, that "any individual raising legitimate concerns under this policy will not be subject to any detriment, either during or after employment" and guidance that any employee who had concerns should, in the first instance, raise any such concerns with her or his manager.

59. That Public Interest Disclosure ("Whistleblowing") Policy, when dealing with the raising of legitimate concerns, stated that "if you believe your manager to be involved, or if, for any reason, you do not wish to approach your manager, then you should raise it with a more senior person in the Company" and, under the sub heading "Escalating your "Concern", that "if you are dissatisfied with this response, you should raise your concerns in

writing directly with a more senior person in the Company" and that "if, after escalating your concerns, you believe that the appropriate remedial action has not been taken, you should then report the matter to the proper authority", guidance being given that "these authorities include… the Care Quality Commission and The Care Inspectorate."

60. The Claimant acknowledges that the Respondent made such Public Interest Disclosure ("Whistleblowing") – Policy available to its employees, including to her. But she admits that she had never fully read it.

61. The Claimant admits that she was aware that it was her responsibility – (and, indeed, the responsibility of all staff employed by the Respondent) – to bring to the attention of the Respondent any practice or action of the Respondent, its employees or other agents that she reasonably believed was against the public interest in that the practice or action was, for example, a criminal offence or a danger to the health and safety of any individual. She admits that she knew that if she had initially raised such concerns with her manager or with a more senior person within the Respondent business but still did not consider that her concerns had been satisfactorily addressed she should have reported the matter which was concerning her to the proper authority, "proper authority" including, by definition, the Care Quality Commission or The Care Inspectorate.

62. The person holding the role of "Manager" at Maben House – (for the purposes of this claim, the Claimant) - has authority from the Respondent to suspend any member of staff who is seen to mistreat a young person or who is suspected of mistreating a young person, the required process after such suspension being that, post-such-suspension, the Manager would inform the Respondent's Directors who would then initiate an investigation.

63. As Operations Director Mr Whalen expects the Manager at Maben House to take immediate action in respect of any member of staff at Maben House who is seen to mistreat a young person or who is suspected of mistreating a young person.

64. Mr Whalen considers that as Manager at Maben House it was the Claimant's responsibility, indeed duty, to suspend any member of staff who she suspected of acting inappropriately towards any young person there and to do so without first consulting either him or Ms Penny. He believes that it would be in accordance with the Claimant's job description for her to do so.

65. Mr Whalen has no recollection of the Claimant ever having suspended a member of staff or of her having informed him, as a Director, of any such witnessed or suspected mistreatment of a young person in the care of the Respondent at Maben House.

66. Notwithstanding that it was within her job description as the Manager at Maben House to ensure the staff for whom she had line manager responsibility correctly provided primary care and support on a day-to-day basis to all the young people at Maben House and that all aspects of their physical, emotional, social and educational needs were being met and "to manage all staff in an effective and positive manner" and "to be responsible for disciplinary issues involving staff" the Claimant did not fulfil these requirements of the position that she held at Maben House, not even when she personally witnessed incidents and instances of physical restraint being used which, in her opinion, were unnecessarily violent, unwarranted and considered by her to amount to acts of assault being perpetrated against young persons. She did not consider on any such occasion that it was within her remit, or part of her job specification, to discipline or even suspend staff members who she suspected of perpetrating such actions.

67. Both The Care Quality Commission and The Care Inspectorate were regulatory authorities of which, as Manager at Maben House, the Claimant was fully aware, but at no time during the course of her employment with the Respondent did she report any concerns or any matter which worried her to either of those regulatory authorities or to any other regulatory authority. She deliberately chose not to do so. She chose not to do so because she preferred to take no risk of suffer any sanction at the hands of the

Respondent ahead of any wish or obligation to do anything to proactively ensure that what she felt were criminal offences or acts which endangered the health and safety of young people at Maben House were investigated by the appropriate regulatory authority. Such choice is admitted by the Claimant.

68. Whilst employed by the Respondent during the period which began on 16 March 2015 and ended on the effective date of termination the Claimant held a Scottish Vocational Qualification – ("SVQ") – Level 3 Certificate in Health and Social Care, an SVQ Level 4 Certificate in Health and Social Care and a Higher National Certificate – ("HNC") Certificate in Health and Social Care.

69. It was a requirement that a person holding the role of Manager at Maben House must hold – (or, within a specified period, obtain) - the Scottish Qualifications Authority's professional development award in Leadership and Management for Care Services- ("the required PDA") - but the Claimant did not hold the required PDA when she began her employment with the Respondent.

70. The Claimant did not obtain the required PDA at any time during the course of her employment with the Respondent. She failed to do so notwithstanding that the Respondent had told her that it was a requirement of her job that she did so and that at the interview which led to her being appointed as Manager at Maben House she had undertaken to do so.

71. On two – (if not three) - occasions prior to beginning employment with the Respondent the Claimant had failed in her attempts to obtain the required PDA.

72. During her period of employment with the Respondent the Claimant had not just failed to obtain the required PDA but had, in fact, failed to complete the work required by the SQA assessor to be completed as a prerequisite of obtaining it.

73. The Claimant admits that she had not completed the work that she was required to complete as part of her attempts to obtain the required PDA.

74. Prior to being appointed by the Respondent to the role of Manager at Maben House the Claimant had had very little – (if any) - recent training or experience in dealing with the restraint of young people who lived in, or were being educated in, an environment such as that provided by the Respondent for their benefit at Maben House. It had been a condition of the Claimant's employment with the Respondent that she successfully complete accredited Therapeutic Crisis Intervention – ("TCI") – training within six months of commencement of employment with the Respondent. It had been made clear to the Claimant that failure to successfully complete that training or to pass regular refresher TCI courses might result in the termination of her employment.

75. As Operations Director, Mr Whalen is responsible for HR staffing and finance issues at Maben House but he is also a qualified TCI trainer and trains all of the Respondent's staff in TCI. During the course of her employment the Claimant was given training in child restraint procedures but she did not successfully complete TCI training within the first six months of her employment with the Respondent; indeed, she did not successfully complete it at any time during the course of her employment with the Respondent. Mr Whalen was responsible for training the Claimant in TCI but he found that after five days TCI training she, the Claimant, had "no grasp of it" and she failed the written test. The Claimant admits that although she passed the physical intervention part of her TCI training she failed the written examination and therefore failed to obtain TCI certification.

76. The Respondent provided and made available to its employees, including the Claimant, a Policy on "Financial Arrangements", which dealt, specifically, with "security of children's money and personal effects" and with "levels of authorisation and responsibilities." That Policy set out that it was the responsibility of the manager at Maben House to "ensure the weekly unit budget is processed and recorded in agreement with allocations set by

Senior Management for young people's allowances for Clothing, Toiletries, Activities, and Pocket Money as well as unit Petty Cash and Food", to "seek signed authorisation from Senior Management for any expenditure outside the agreed allocations for the above areas" and to "ensure appropriate records are maintained and receipts retained for all expenditure."

77. The Claimant acknowledges that she was aware that there was such a Policy but admits to not having read it, not at all.

78. The Tribunal heard evidence about a Mr Drew Mackay being afforded access to a safe and its contents notwithstanding the fact that on more than one occasion Mr Whalen had instructed the Claimant not to allow Mr Mackay access to the safe and the money kept there.

79. Mr Mackay was employed as an admin-assistant but was not clear as to whether he was employed by the Respondent or by High Trees House Limited. During the overall period of his employment – (by whichever company) – , a period beginning in March 2015 and ending in October 2015, he had worked at both Closeburn House and at Maben House.

80. The Claimant acknowledges that the Respondent required that the only people within Maben House who should have access, by key, to the locked safe within the Manager's office were herself and one senior shift manager, Ms Blyth, but she admits that, "on occasion", she entrusted the key to Mr Mackay and allowed him to access the safe and its contents.

81. The Claimant acknowledges that Mr Whalen "did have an issue" about her disregarding the Respondent's requirements as to who had access, by key, to the safe in the Maben House Manager's office and that by giving Mr Mackay such access to that safe she was disobeying the Respondent's instructions, instructions which Mr Whalen had reminded her of but which she continued to disregard.

82. Mr Mackay acknowledges that he should not have had access to the safe at Maben House but confirms that he had been allowed by the Claimant to

have that access. He professes not to have been told by the Claimant that Mr Whalen had expressed unhappiness to the Claimant about him having access to the safe and its contents.

83. Ms Penny recalls seeing money bags sitting on the floor in the Manager's office at Maben House "in full view of the door" and expressed a view that the incidence of her seeing the money bags on the floor was so frequent that she perceived that the money bags had been left on the floor in full view of the door "for a number of days" – (and constituted "a temptation to young people") – when it was the Respondent's requirement that the money should always have been kept in the locked safe in the Manager's office unless the Claimant, as Manager of Maben House, was actually working with it.

84. The Claimant acknowledges that petty cash and young person's funds should be kept in the safe, a locked safe, within the Manager's office at Maben House but admits that she "often left it on the floor, in open view, during the course of a working day."

85. Mr Mackay recalls seeing cash on the floor in the Manager's office at Maben House but does not accept that it was there overnight.

86. Responsibility for implementing the Respondent's Policy re security of children's money and personal effects and re levels of authorisation and responsibilities in respect of such funds rested with the Claimant as Manager at Maben House but during the course of her, the Claimant's, employment with the Respondent Ms Penny and Mr Whalen actively sought to help her to better maintain the records which the Respondent required her to maintain and to handle the cash in the way that it required her to handle it.

87. On 30 April 2015 the Claimant sent an e-mail to Mr Whalen attaching copies of 20 and 22 April 2015 e-mail correspondence on 20 and 22 April between herself and a senior shift manager at Maben House, Ms Blyth. It is clear from that e-mail correspondence that Ms Blyth had been tasked by the Claimant to find the reason for an error in petty cash reconciliation and that

Ms Blyth had found that it was the Claimant who had made the error. But what the Claimant said to Mr Whalen n that 30 April email to him was, -

> "Hi Steve. Please see above e-mail I sent to Gillian and her response. I am waiting for Gillian to get back from Lochmaben as need to go through P.cash with her. Crazy system here which could do with being simplified. Will give you a call when Gillian gets back. I am going through P cash staff as we speak. Speak to you shortly."

88. That 30 April email from the Claimant to Mr Whalen is an email which the Claimant contends was a protected disclosure.

89. In July 2015 Ms Penny procured the reorganisation of the cash reconciliation systems at Maben House "to make it easier for everyone involved".

90. Mr Mackay agrees that when he was working at Maben House it was apparent to him that both Ms Penny and Mr Whalen were actively involved at Maben House trying to assist the Claimant with cash handling and reconciliation. His recollection is that they encouraged the Claimant to use the Closeburn House system of cash handling and reconciliation and that after she started to use that system things became temporarily better so far as cash handling and reconciliation at Maben House was concerned.

91. The simplification of the cash reconciliation systems resulted in improvements in cash reconciliation – (for which, as Manager of Maben House, the Claimant had responsibility) - for only a few weeks. In the perception of Ms Penny, after those few weeks the handling of petty cash and young person's funds, cash and funds for which the Claimant, as Manager at Maben House, had responsibility, "reverted to failures in systems and in the arithmetic".

92. Ms Penny's perception of the Claimant's handling of petty cash and young person's funds was that the Claimant was not complying with the Respondent's "Financial Arrangements" Policy re security of children's

money and personal effects and re levels of authorisation and responsibilities.

93. Mr Whalen recalls being contacted by Scottish Social Services Council – (hereinafter, "SSSC") – on 2 October 2015.

94. SSSC is the regulatory authority responsible for regulating care workers and other social services workers in Scotland. SSSC's remit includes both registering care staff and investigating and taking action in respect of care staff whose standards of practice and conduct is alleged to fall below SSSC's required standard.

95. At that 2 October call SSSC enquired about the Claimant's employment by the Respondent and specifically asked whether the Respondent was aware of the reasons why she, the Claimant, had been dismissed by Care Visions in 2014. At that telephone conversation SSSC had asked Mr Whalen whether the Respondent was aware that the Claimant was the subject of an SSSC investigation into financial irregularities at Care Visions and had requested copies of all documentation that the Respondent had been given by the Claimant at the stage of her obtaining employment with it.

96. At that 2 October telephone conversation SSSC had also disclosed to Mr Whalen that the Claimant had failed on several occasions to obtain the required PDA, i.e. the Scottish Qualifications Authority's professional development award in Leadership and Management for Care Services.

97. What SSSC disclosed at that 2 October telephone call about the Claimant having been the subject of an investigation into financial irregularities at Care Visions had caused Mr Whalen to be greatly concerned. He was aware that the Respondent had had concerns about cash handling and cash reconciliation for which, as the Manager at Maben House, the Claimant had responsibility in terms of the Respondent's "Financial Arrangements" Policy. He was aware that the Claimant appeared to the Respondent to have been overspending and using petty cash or young person's funds for purposes that were not authorised. And he was aware that reconciliation and record

keeping that should have been happening as a matter of routine were not happening as expected by the Respondent. He was aware, too, that the Claimant had routinely entrusted an unauthorised member of the Respondent's staff, Mr Mackay, to have access to the safe and its contents. Indeed, he had personally witnessed Mr Mackay with the safe key and obtaining access to the safe in April 2015 and in July 2015 and on those occasions he had spoken to the Claimant, had told her that that practice was not acceptable and had reminded her that only she, as the Manager at Maben House, and Ms Blyth, as a Senior Shift Leader, were authorised to have access to the safe. Yet despite being spoken to in these terms, the Claimant had continued to entrust the key to Mr Mackay and to allow him to have access to the safe.

98. On 14 October 2015, at a time when they were officially both on leave, Mr Whalen and Ms Penny were called into Maben House to intervene in an incident which was taking place – (or had minutes previously taken place) - there. A request for help had been made because a staff member involved in a confrontation with a young person, had felt that she was at risk and in danger. The request for help had not come from the Maben House Manager, the Claimant, although she was on duty there. After being contacted by or on behalf of the staff member concerned, but before attending at Maben House, Mr Whalen had spoken to the Claimant only to be told by her that "it was all okay".

99. On arrival at Maben House Mr Whalen found that the situation was far from being "all okay". He found the staff member concerned still being left to deal with the young person who had assaulted her and that the Claimant was in her office taking no apparent involvement in defusing the situation. After intervention by Mr Whalen and Ms Penny to assist the at-risk staff member the situation became calmer and Mr Whalen and Ms Penny left Maben House. They later found out that within half an hour or so after their leaving the young person involved, someone who had not only assaulted a staff member but within the previous few hours had caused considerable damage

both inside and outside the building at Maben House, had been provided by the Claimant with a television for his personal use.

100. Other members of the care staff at Maben House felt that the Claimant's rewarding of the young person concerned by giving him a television was inappropriate and a complaint was made to the Respondent.

101. That complaint having reached his attention, and although he was still technically on leave, Mr Whalen took responsibility by speaking with the Claimant again and this time directly instructed her to remove the television from the young person's room. She agreed to do so.

102. The following morning, 15 October, Mr Whalen learned that rather than taking the television from the young person's room as she had been instructed by him to do the Claimant had told care staff both that she was refusing to remove the television and that if they felt that her action was inappropriate they should tell Mr Whalen.

103. Mr Whalen regarded the Claimant's conduct on that occasion, conduct relating to "the TV incident" as being a refusal to carry out his instruction and as amounting to serious insubordination.

104. The Claimant admits in the context of "the TV incident" that Mr Whalen had given her a direct instruction with regard to the removal of a TV from the young person's room and that she disobeyed Mr Whalen's direct instruction.

105. On 18 October 2015 Ms Penny received an e-mail from a Mr Colin Welding who had previously been the Manager at Maben House. He referred to his having been contacted by the Claimant on the "Facebook" social media site, to her having sent him "a strange message" – (which he copied into his 18 October e-mail to Ms Penny) and to the Claimant having sent him three further messages when he did not respond to the first one.

106. It was apparent from the wording of the first Facebook contact with Mr Welding that at the time of her making that contact the Claimant did not

know whether he was, or was not, the Colin Welding who had previously been Manager at Maben House.

107. That first communication had stated, "hello, colin, you don't me. I took over the Manager post at maben house in april this year. do I have the correct colin?" The second Facebook enquiry had stated, "hi colin. i hope you don't mind me contacting you, however i wondered if you could confirm if you experienced some difficulties in doing your job?" The third enquiry from the Claimant to Mr Welding had stated, "i suppose i mean having the autonomy to do your job" and "are you comfortable with this conversation remaining confidential" and "could I give you a call?" The only response from Mr Welding had stated, "what I would suggest is to speak to ste, he is very supportive and he enabled me to do my job when I was there because he was so supportive." The final communication from the Claimant to Mr Welding had simply thanked him for what he had said.

108. Mr Whalen had been made aware by Ms Penny of the Claimant's Facebook approach to Mr Welding. Mr Whalen had not been happy about that contact. It appeared to him that the Claimant had breached confidentiality by contacting Mr Welding as she had done and that the timing of that contact had been significant in that the timing of that Facebook contact with Mr Welding linked in with the TV incident on 14 October 2015. Moreover, the contact had been made at a time when both he and Ms Penny were on leave. Mr Whalen had felt that the content of what the Claimant had said to Mr Welding in her Facebook contact with him was inappropriate, especially so as Facebook is not a private means of communicating and because it was apparent from the content of the Facebook exchange that initially the Claimant was not even sure who it was that she was sending the Facebook communication to. In short, the Respondent regarded that Facebook communication, as initiated by the Claimant, as being something which was not private and as constituting a breach of the confidentiality owed by the Claimant to it.

109. In mid to late October 2015 Ms Penny became aware of an incident involving a young person's funds and the Respondent's petty cash being used by the Claimant or at the Claimant's instigation for purposes which were not permitted so far as expenditure from petty cash or from the young person's funds were concerned.

110. On 28 October 2015 Ms Penny received a request from a Ms Wilma Moffat for a meeting to discuss concerns that she, Ms Moffat, had in relation to the Claimant and which she wished to express to Ms Penny as one of the Respondent's Directors. Ms Moffat is an SVQ Assessor who worked with – (but not for) – the Respondent and was in fact the Assessor with whom the Claimant had been supposed to be working for several months previously with regard to the obtaining of the required PDA.

111. The meeting requested by Ms Moffat took place on 28 October and notes prepared by Ms Penny after that meeting record that at that meeting Ms Moffat reported to Ms Penny, -

- That "due to the access" that the Claimant had in her role as Manager at Maben House Ms Moffat felt it essential that the Respondent's Directors should know what she, the Claimant, was saying about the Respondent's business there.

- That she, Ms Moffat, perceived that the Claimant could damage the Respondent's reputation if she said certain things to the wrong people.

- That the Claimant had not completed any course work for the required PDA.

- That every time that she, Ms Moffat, as the Assessor involved, attended at Maben House and asked the Claimant about the course work which was a prerequisite of obtaining the required PDA the Claimant gave a different reason or explanation as to why, even after many months of being registered for the course

work, she had still not handed in or evidenced any work to Ms Moffat as her Assessor even she, the Claimant, had acknowledged to Ms Moffat that she understood that obtaining the required PDA certification was a precondition of her maintaining her employment as Manager at Maben House.

- That the Claimant had expressed disagreement to Ms Moffat, her Assessor, about the SSSC requirement – (and therefore the Respondent's requirement) - that the Manager at Maben House hold the required PDA, her, the Claimant's, view as expressed to Ms Moffat being that obtaining the required PDA was a waste of her, the Claimant's, time.

- That the Claimant's by then still ongoing attempt obtain the required PDA was her fourth attempt.

- That "despite all supports nothing worked previously in her other workplaces" so far as the Claimant's obtaining of the required PDA was concerned.

- That she, Ms Moffat, was finding the Claimant "non-compliant" so far as completion of any course work or any attempt to obtain the required PDA was concerned.

- That the Claimant had made "negative comments" relating to the work undertaken "at operational level" by the Respondent at Maben House.

- That the Claimant had referred to the Respondent breaching "children's rights".

- That at an observed team meeting at which she, Ms Moffat, was present as an SVQ Assessor the Claimant had made what appeared to her, Ms Moffat, to be very personal remarks directed against a particular member of the Respondent's staff,

so much so even as a non-employee Ms Moffat had felt the need to defend the Respondent's service against the comments being made by the Claimant.

- That it was her, Ms Moffat's, view that the Claimant did not understand the differences between working in the environment at Maben House and the environment of any of her previous places of work, places where she had had to support fewer young people and where those young people had had less complex behaviour problems.

- That she, Ms Moffat, was aware of several instances of the Claimant breaching the confidentiality owed by her to the Respondent, Ms Moffat referring in this context to specific examples of what she considered to be such breaches.

- That on more than one occasion the Claimant had expressed views to her, Ms Moffat, about the Respondent which she, the Claimant, asked Ms Moffat to "keep secret".

112. The Claimant admits that she did talk to Ms Moffat about the concerns that she, the Claimant, had about the Respondent's running of the business at Maben House, this notwithstanding that Ms Moffat was not employed by the Respondent.

113. The Claimant admits that during her discussions with Ms Moffat she not only expressed concerns about the way in which the Respondent was running the business at Maben House but in fact openly criticised the Respondent.

114. Ms Penny had been so concerned about what Ms Moffat had told her on 28 October 2015 that she had recorded the substance of those discussions in a signed note on 28 October 2015. Ms Penny had provided Ms Moffat with a copy of the 28 October 2015 note of their discussions and had invited Ms Moffat to make any alterations if she felt that any alterations were needed, but no alterations were requested by Ms Moffat.

115. Ms Penny provided a copy of her 28 October 2015 note to Mr Whalen, probably later on 28 October but perhaps on 29 October.

116. Sometime after 28 October Ms Penny and Mr Whalen jointly decided that an investigation/discussion/catch up meeting should be held with the Claimant.

117. Ms Penny's concerns about the Claimant's handling of petty cash and young person's funds and the disregard by her of the Respondent's "Financial Arrangements" Policy re security of children's money and personal effects and re levels of authorisation and responsibilities policy were such that on 20 November 2015 she prepared a note headed "Concerns relating to Finances" in which she recorded that "on checking finances again today I found the management of this area unorganised and confusing" and that "as it stood there was money different in total to Monday in Sanction/Home Contact envelope and no receipts to explain what or why" that "three weeks of monies (deductions) in Home Contact/Sanctions envelope not credited back into red book (Petty cash)" that "money not deducted from this current week from young people's envelopes", that "travel costs not rectified", that "pocket money not rectified", that "petty cash envelope saying balance £28.10 but actually only has £9.00 with no receipts etc… detailed" that "desk had receipts and change from Monday… shopping for cleaning products, even this didn't balance properly", that "receipt sitting on desk for postage though not taken from anywhere at that point" and that "within Home Contact/Sanctions there were receipts, one for toiletries/beauty products, one for bingo night" and "loose receipts, no petty cash slip to link why bought or tracking".

118. Following on from those discussions with Ms Penny, Mr Whalen decided that he, as the Respondent's Operations Director, should have a meeting with the Claimant. That meeting took place on 30 November 2015.

119. The Claimant had received only a telephone request to attend that meeting and had not been told that it was even to be an investigation meeting.

120. None of the normally-accepted, good-practice, formalities with regard to even an investigation meeting were followed by the Respondent in advance of or at that 30 November meeting, Mr Whalen consciously taking the view that because the Claimant had less than two years' continuous service with the Respondent and the employment protection rights implicit within ERA 1996 therefore did not apply it was not even bound to follow its own Disciplinary Procedure Policy when investigating complaints against the Claimant.

121. The Respondent's position on the purpose of the 30 November meeting is that it called the Claimant to that meeting specifically in order to discuss irregularities in her dealing with petty cash, her failure to disclose that she had been the subject of an investigation by Scottish Social Services Council – (hereinafter, "SSSC") – into financial irregularities in her previous employment with Care Visions and the possibility that on more than one occasion, and to different people, she had breached the confidentiality that she owed to the Respondent.

122. As the regulatory authority responsible for regulating care workers and other social services workers in Scotland SSSC's remit includes both registering care staff and investigating and taking action in respect of care staff whose standards of practice and conduct is alleged to fall below SSSC's required standard.

123. It is apparent from Minutes prepared by a Ms McAleese who was present throughout the 30 November meeting that Mr Whalen had intended it to be an informal investigation meeting but that as the meeting progressed it effectively became a disciplinary hearing which culminated in the Claimant being summarily dismissed on the basis that Mr Whalen had determined that the Claimant had been guilty of several instances of gross misconduct.

124. The Minutes of the 30 November meeting, as prepared by Ms McAleese, are lengthy and detailed. Mr Whalen is satisfied that the Minutes of the Dismissal Meeting are an accurate record of what took place at it. They bear

to be – (and are insisted by Mr Whalen as being) - an accurate reflection of what happened at that meeting, a meeting which, for the sake of brevity, is hereinafter referred to as "the Dismissal Meeting".

125. The Claimant does not now accept that the minutes prepared by Ms McAleese after the Dismissal Meeting are accurate. But at no stage of the Tribunal proceedings prior to the Final Hearing on the merits of her claim had she suggested that those Minutes were in any way inaccurate.

126. The Claimant had had no prior reason to believe that Ms McAleese's accuracy as a note taker or integrity was to be doubted and even now acknowledges that Ms McAleese was regarded by her, the Claimant, as being a normally good and accurate note-taker.

127. During the course of the Dismissal Meeting Mr Whalen raised "a number of issues and concerns" that the Respondent had about various aspects of the Claimant's work and conduct, that the points so raised included the Claimant's usage of petty cash entrusted to her as the Manager at Maben House and for which, as Manager there, she had responsibility in terms of her job description, that Mr Whalen also asked the Claimant about her Facebook communications on 18 October 2015 with Mr Welding and that Mr Whalen discussed the concerns disclosed by Ms Moffat to Ms Penny.

128. The Minutes of the Dismissal Meeting record that at it Mr Whalen referred to concerns previously expressed by Ms Penny to him about the way in which the Claimant, as Manager at Maben House, was dealing with petty cash entrusted to her and with young persons' funds and, more generally, about the record-keeping maintained by the Claimant in respect of that petty cash and those funds.

129. During the course of the Dismissal Meeting Mr Whalen specifically referred the Claimant to the Respondent's Code of Conduct Policy, its Financial Arrangements Policy, its Confidentiality Policy, its Conduct and Standards Policy, its Gross Misconduct Policy, its Disciplinary Procedure Policy, its Whistleblowing Policy and, generally, its Employee Handbook, all

documents which the Respondent had provided and made available to its employees, including to the Claimant, and which the Claimant admits were provided or made available to her but which she had never, or never properly, read.

130. During the course of the Dismissal Meeting Mr Whalen warned the Claimant that the allegations referred to, if proven, were so serious that dismissal without notice would be warranted.

131. During the Dismissal Meeting the Claimant was asked specific questions by Mr Whalen about why, in early summer 2014, she had left her employment with Care Visions and that she was reminded that both in her application form for employment as Manager at Maben House and at her interview with Mr Whalen and Ms Penny for that job she had said that she had been dismissed by Care Visions because she had failed to complete a course which would have, if was successfully completed, resulted in her obtaining the required PDA, i.e. the Scottish Qualifications Authority's professional development award in Leadership and Management for Care Services

132. Mr Whalen had put it to the Claimant at the Dismissal Meeting that there was another reason for her dismissal from her employment with Care Visions but the Claimant denied that that was the case. Faced with such denial, Mr Whalen had referred to his having been contacted by SSSC on 2 October 2015 at which conversation SSSC had asked Mr Whalen whether the Respondent was aware that the dismissal from Care Visions had been because of not only non-completion of qualification/certification but also because of investigation into financial matters arising within that previous Care Visions employment.

133. During the course of the Dismissal Meeting the Claimant eventually admitted that she had been suspended by Care Visions pending investigation into alleged financial irregularities but that she insisted that "I went to work after that" and it is apparent from the notes of the Dismissal Meeting that the Claimant did not even then, i.e. at the Dismissal Meeting, accept either that

one of the reasons for her dismissal by Care Visions had been financial irregularities involving her as that business' then Residential Services Manager or that SSSC still had "an ongoing investigation" into that financial irregularity allegation.

134. During the Dismissal Meeting Mr Whalen put it to the Claimant that when she was interviewed by Ms Penny and him for the job as the Manager at Maben House she was specifically asked whether she had been involved or was then subject to **any** disciplinary action, that her response had been that she had been given a verbal warning two years previously but had been dismissed for not getting the required qualifications and that she had never told him or Ms Penny anything about there being any allegation or investigation into alleged financial irregularities. It is apparent from the Minutes of the Dismissal Meeting the Claimant's response to these propositions being put to her by Mr Whalen was, "Okay".

135. During the course of the Dismissal Meeting Mr Whalen discussed alleged breaches of confidentiality owed by the Claimant to the Respondent with the Claimant.

136. During the course of the Dismissal Meeting Mr Whalen discussed the Claimant's conduct in respect of "the TV incident", an incident which the Respondent viewed as being not only a direct refusal by the Claimant to carry out reasonable management instructions given to directly to her by Mr Whalen as Operations Director but, in fact, as being an instance of serious insubordination likely to result in dismissal without notice.

137. During the course of the Dismissal Meeting Mr Whalen suggested to the Claimant that her failure to inform the Respondent of one of the reasons for her dismissal from a previous employment itself amounted to "dishonesty" as contemplated by the Respondent's Gross Misconduct Policy – (and, as such, likely to result in dismissal without notice).

138. During the course of the Dismissal Meeting Mr Whalen asked the Claimant questions about her having been seen by him on more than one occasion

driving a car quite some distance away from Maben House, always at times when she was supposed to be working for the Respondent at Maben House but in respect of each such incident the Claimant had been evasive in her answers. During the course of that discussion Mr Whalen had reminded the Claimant that he had asked her from the commencement of her employment to complete timesheets but that she had completed only one timesheet during the whole period of her employment with the Respondent, the Claimant's response being to admit that she had not completed timesheets.

139. Throughout the Dismissal Meeting Mr Whalen gave the Claimant ample opportunity of responding to his questions and of presenting her point of view in respect of the matters discussed but at no time did the Claimant suggest that the accusations being made against her were a pretext for seeking to dismiss her because she had made a protected disclosure and at no time did the Claimant suggest that any intent by the Respondent to dismiss her was based on its belief that she had made a protected disclosure.

140. The outcome of the Dismissal Meeting was that the Claimant was dismissed, Mr Whalen telling her before he Dismissal Meeting ended that he had taken the decision to dismiss her, without notice, on the grounds of Gross Misconduct. The Minutes of the Dismissal Meeting record that before the Dismissal Meeting ended Mr Whalen told the Claimant that the reasons for that decision to summarily dismiss her were that:-

> "You have failed to declare the SSSC investigation and didn't disclose at interview the reasons for your previous dismissal, i.e. financial irregularities; there is a breach of use of petty cash and recording. Dishonesty in relation to purchasing items i.e. Scarf, sweets and chocolates.
>
> A breach of confidentiality in your discussion with Wilma Moffat SVQ Assessor and contacting Colin Welding on Facebook, someone you

have never met or spoken to previously, therefore you didn't have a clue who you were contacting on a social media site. You never informed or had any discussions with senior management about any concerns relating to any difficulties or practise issues within Maben House.

You have failed to complete any of your SVQ units to meet the requirement to be a registered Manager.

Refusal to carry out reasonable management instructions – the removal of TV from a YP's room given to them by you after causing serious amount of damage to Company vehicles and property."

141. Before drawing the Dismissal Meeting to a close Mr Whalen told the Claimant that, "We'll put this in writing to you" and that "Any outstanding salary and holiday pay will be paid to you following your last date of employment."

142. The Claimant admits that she did not make any attempt at the Dismissal Meeting to express a view that she was being treated as she was because she had made protected disclosures. She acknowledges that "I didn't say it was to do with disclosures".

143. The Claimant insists that she received no letter from the Respondent at any stage after the Dismissal Meeting ended.

144. On 2 December 2015 the Claimant wrote to Mr Whalen. In that letter – (hereinafter, "the Appeal Letter") - the Claimant stated that:-

"I would like to appeal against this decision on the following grounds:-

1. Your failure to follow any form of disciplinary procedure. I was asked to attend a meeting and given no notice that the meeting was a disciplinary meeting at which I might be disciplined. There was accordingly no notice given to me. I

have not been written to with reasons for the termination of my employment. Please provide me with the reasons within 7 days.

2. I do not accept your decision to terminate my employment and the reason therefore was flawed. There was no evidence provided that I have breached any confidentiality.

3. I would be grateful if you would convene an Appeal Hearing to deal with my Appeal. Please reply to me within 7 days.

Finally, your actions in terminating my employment on the grounds of gross misconduct amount to unfair dismissal and potentially could have wide reaching consequences in the event of applying for future employment and therefore I would be grateful if you would reconsider your decision."

145. The Appeal Letter did not suggest that the accusations made against the Claimant, accusation which had resulted in her being summarily dismissed, were a pretext for seeking to dismiss her because she had made a protected disclosure. Nor did it suggest that any intent by the Respondent to dismiss her had been based on its belief that she had made a protected disclosure.

146. The Claimant admits that when she wrote the Appeal Letter she chose not to make any reference to having made protected disclosures or to express an opinion that she was treated as she was by Mr Whalen - (and therefore by the Respondent, as such) - because she had made protected disclosures.

147. The Respondent received the Appeal Letter but it decided that it had the right not to follow its disciplinary procedure for employees with less than 2 years' service. As stated in the ET3, "… consequently" it "declined to hear the Claimant's appeal."

148. On 7 December 2015 Mr Whalen wrote to the Claimant. That letter – (hereinafter, the "Confirmation of Dismissal letter") – comprised some three and a half, closely typed, A4 pages.

149. Mr Whalen had read the Confirmation of Dismissal letter before asking a member of the Respondent's administration staff to post it to the Claimant. He was, and still is, satisfied that its content was an accurate record of what he had decided at the Dismissal Meeting.

150. The Claimant denies ever having received the Confirmation of Dismissal letter.

151. Mr Whalen admits that the Respondent cannot prove that the Confirmation of Dismissal letter was actually posted to the Claimant. His intention had been to send it to her by normal Royal Mail post rather than by Recorded Delivery or Registered Post. Whilst acknowledging that he cannot comment on the Claimant's assertion that she never received it Mr Whalen has expressed himself as being as certain as he reasonably can be that it was sent to the Claimant by ordinary Royal Mail post.

152. Whether the Claimant received the Confirmation of Dismissal letter or whether she did not is a determination which, from the evidence before it, the Tribunal is unable to make. But it was clear from evidence that the explanations set out in that letter by its author, Mr Whalen, were explanations which endorsed what the Minutes of the Dismissal Meeting stated were provided to the Claimant at the Dismissal Meeting itself as the explanations for her summary dismissal. As drafted by Mr Whalen when preparing the Confirmation of Dismissal letter those explanations, the reasons for the Claimant's dismissal, were a combination of:-

- <u>Breach of confidentiality, including the unauthorised disclosure of Company information to another party.</u> In this context, the Confirmation of Dismissal letter referred specifically to what Ms Moffat had said to Ms Penny at the

meeting on 28 October 2015 and to what Mr Welding had said in his e-mail to Ms Penny on 18 October 2015.

- Dishonesty In this context the Confirmation of Dismissal letter recorded Mr Whalen's determination that the Claimant had been dishonest when she had failed to provide the Respondent with the full reasons for her having been dismissed by Care Visions, Mr Whalen expressing the view that from what he had heard from SSSC and from the Claimant's own reaction at the Dismissal Meeting he had concluded that the Claimant was "fully aware of the reasons for your previous dismissal" and that she "deliberately withheld this information".

- Unauthorised absence. In this context the Confirmation of Dismissal letter referred, in detail, to instances where the Claimant was observed far away from Maben House without any advance notice having been given to the Respondent and without any retrospective satisfactory explanation being provided to the Respondent, i.e. even at the Dismissal Meeting.

- Inappropriate use of petty cash. In this context the Confirmation of Dismissal letter referred to the matters discussed at the Dismissal Meeting and recorded Mr Whalen's decision as having been that the Claimant had "failed to give any reasonable response to why you would be purchasing items for personal use or failure to meet the protocols for use of petty cash and recording of petty cash" this determination also noting that this was in the context of these failings occurring "after senior management had raised issues previously" and after senior management and team leaders had spent time previously "on numerous occasions teaching you the correct protocols to follow".

- Refusal to carry out reasonable management instructions. In this context the Confirmation of Dismissal letter referred, in detail, to the TV incident on 14 October 2015 and to the Claimant's subsequent discussion of that incident with Ms Moffat. The Confirmation of Dismissal letter explained that:-

  "On 14 October senior management attended Maben House after calls from staff concerned about a serious incident at the Home. The young person was damaging vehicles, unit windows and threatening staff, causing hundreds of pounds of damage. After a few hours of support from senior management to help de-escalate the situation we left the Unit about 4.45pm. At 5.30pm staff contacted senior management concerned that you had just given the YP who caused all the damage a unit TV to put into his room, staff raised their concerns with you about the appropriateness of rewarding a yp after just causing all this damage and also concerned that he had previously smashed numerous TV's. The staff raised concerns of giving mixed messages to the yp and other young people, but you refused to discuss it or to take on board their concerns. I then contacted you at Maben House reiterating the same concerns as the staff team and insisted for good practise that you remove the TV you have given the yp. You then left the unit stating to staff you were not removing the TV and would contact me when you got home. Staff then had to remove the TV after having a conversation with yp who stated he never asked for the TV you just gave it to him. You at a later date discussed this conversation with Wilma Moffat SVQ Assessor stating you were not happy about the TV situation. At the informal meeting when you asked about your discussions with Wilma Moffat you stated you used this as an example of overcoming disagreements. Wilma

Moffat stated she would have to bring this discussion up with management to which you asked her to keep this to herself."

- Failure to complete any SVQ units after numerous request to meet the requirements to be a Registered Manager from SSSC and Care Inspectorate. In this context the Confirmation of Dismissal letter referred, in detail, to the fact that "since starting your required qualification in April 2015, to date you have not completed or submitted any work to the Assessor after numerous request from the Assessor and giving senior management your assurance you would do so" and to the fact that "at your interview it was made clear you would need to complete the relevant qualification after your previous failure to complete these in your previous employment and especially as you had disclosed at the interview these were the reasons for your previous dismissal."

153. When drafting the Confirmation of Dismissal letter Mr Whalen had sought to confirmed what had been said at the Dismissal Meeting about the Claimant being summarily dismissed, i.e. that "your actions amounted to gross misconduct and the decision has been made to dismiss you from the company immediately, without notice or pay in lieu of notice".

154. So far as the Appeal Letter was concerned, the Confirmation of Dismissal letter as drafted by Mr Whalen sought to record the Respondent's attitude towards the hearing of such an appeal, i.e. its denial of such a request on the ground that "the Company reserves the right to discipline or dismiss you without following the Disciplinary Procedure if you have less than 24 months' continuous service". It recorded Mr Whalen's view as being that "there is nothing you have written in your letter that would change my decision to dismiss you".

155. Mrs Heidi Watson, who was employed as a Child Care Worker at Maben House on 12 October 2015, recalls attending a meeting with the Claimant and Mr Whalen on 10 November 2015. That meeting had been arranged by the Claimant at a stage after she, Mrs Watson, had tendered her resignation from her employment with the Respondent. Mrs Watson recalls that at that meeting on 10 November, in the context of an invitation being extended to her by Mr Whalen to expand on her reasons for resigning, the Claimant had intervened and had herself explained concerns that Mrs Watson had about Maben House. But Mrs Watson has not suggested that the Claimant had made anything resembling a protected disclosure to Mr Whalen at that meeting, or ever.

156. Mrs Watson confirms that she was not present at any time when the Claimant made any specific disclosure to either Mr Whalen or Ms Penny with regard to any possible breach by the Respondent of its legal obligations.

157. Ms Sarah Rogerson, who began working for the Respondent at Maben House at the end of September 2015 and continued to work for the Respondent until 18 December 2015, does not suggest that she ever witnessed the Claimant making anything resembling a protected disclosure to either Mr Whalen or Ms Penny.

158. The Claimant alleges that she raised concerns with Ms Penny about the conduct of a Shift Leader, Ms Becky Gardner, but was not specific about what concerns were expressed or when they were expressed and Ms Penny recalls being told by the Claimant that, given a choice of staff at Maben House, the one member of the staff there that she, the Claimant, would wish to retain would be Ms Gardner.

159. Mr Mackay recalls witnessing the Claimant “raising issues” both in her office and by telephone and that the issues raised concerned Maben House but he was not able to provide further specification with regard to what issues were being raised in that way, as to the manner in which issues were being

raised in that way, as to when the Claimant had so raised such issues or even as to whether she had raised them with Ms Penny or with Mr Whalen. Generally, he was extremely vague so far as such specification was concerned.

160. The Claimant admits that she may never have told either Ms Penny or Mr Whalen "in those words" that the Respondent was not complying with its legal obligations towards the young people at Maben House.

161. The Claimant accepts that having "issues" at work is different from "whistleblowing".

162. The Care Inspectorate inspected Maben House in July 2015. The Claimant admits both that she could have expressed her concerns to The Care Inspectorate Inspector then but that she chose not to do so even when it had become apparent to the Claimant that her (alleged) disclosures were not being treated seriously or - (so far as she was concerned) - satisfactorily by her employer and that throughout her employment with the Respondent she had preferred not to make any reference to a regulatory body even although in July 2015 she was in the company, at Maben House, of an Inspector from The Care Inspectorate.

163. The Claimant accepts that although she allegedly expressed concerns to Mr Whalen and/or Ms Penny in March 2015, concerns which she contends were expressed by her as a protected disclosure, some eight months elapsed between the date on which she alleges she made such protected disclosure and the effective date of termination without the Respondent dismissing her during that eight months period.

164. Neither Mr Whalen nor Ms Penny has any recollection of the Claimant ever having raised concerns with him or her in any way which might reasonably be considered to amount to whistleblowing or a protected disclosure.

165. As at the effective date of termination the Claimant's normal take home pay, after deduction of PAYE tax and employee NI contributions, was £2,099.17 per month.

166. On 15 March 2016 the Claimant began work with a Mr Christopher Dennison. She initially told the Tribunal that that work was as a Personal Assistant in respect of which she was paid £8.15 per hour. She normally works 40 hours per week.

167. The evidence given by the Claimant in respect of that work with Mr Dennison, and the lack of any documentation in respect of it, was such that the Tribunal is unable to find as fact either that the Claimant has been employed by Mr Dennison personally since 15 March 2016 or that she has been employed by some employment agency to provide services to Mr Dennison. All that the Tribunal feels able to find, as fact, is that since 15 March 2016 the Claimant has been working for Mr Dennison or has been working for an organisation providing services to Mr Dennison and is paid £8.15 per hour for hours worked, normally 40 hours per week.

168. During the period which began on the day after the effective date of termination and ended on 14 March 2016 the Claimant had no income from employment or from any self-employed business. She had applied for only two jobs during that intervening period.

169. At no time during the period which began on the day after the effective date of termination and ended on 14 March 2016 did the Claimant register with Jobcentre Plus as a Jobseeker.

170. At no time during the period which began on the day after the effective date of termination and ended on 14 March 2016 did the Claimant receive any Jobseeker's Allowance.

171. Mr Mackay admits that during the course of the Final Hearing of the Claimant's claim, at a stage when he was waiting in the waiting room to be called to give evidence, the Claimant had spoken to him there. He admits,

too, that the Claimant had had text communication with him during the week before commencement of the Final Hearing. When asked whether such discussion or communication had involved discussion of "the type of evidence" that he would give his response was. "Not really…". But in itself that response did not amount to a denial that such discussion or communication had encompassed discussion about the type of evidence that he would give.

The Issues

172. The Tribunal identified the issues relevant to the Claimant's sole head of complaint – [her claim that in terms of Section 103A of ERA 1996, she had been unfairly dismissed because the reason (or, if more than one, the principal reason) for her dismissal was that she had made a protected disclosure] - as being,-

- Whether, at any time during her period of employment with the Respondent, a period which began on 16 March 2015 and ended on 30 November 2015, the Claimant had made a protected disclosure as envisaged by Section 43A of ERA 1996 and as defined by Section 43B of that Act.

- Whether the Claimant had been subjected to any detriment by any act, or any deliberate failure to act, by the Respondent, done on the ground that she had made a protected disclosure- (all as envisaged by Section 47B of ERA 1996) - at any time during the period of her employment with the Respondent.

- Whether, if the Claimant had made a protected disclosure and suffered detriment and that detriment was dismissal, the reason for that dismissal - (or, if more than one, the principal reason for that dismissal) - had been that she, the Claimant, had made a protected disclosure thereby, in terms of Section 103A of ERA 1996, rendering that dismissal automatically unfair and, given the provisions of

Section 108(1) and (3) (ff) of ERA 1996, a dismissal which an Employment Tribunal has jurisdiction to consider.

- If the finding of the Tribunal is that the Claimant was unfairly dismissed, what the Claimant is entitled to by way of a basic award.

- If the Tribunal finds that the Claimant was unfairly dismissed, what the Claimant is entitled to by way of compensation, this being the only remedy sought by the Claimant other than her desire to have her record of employment altered to demonstrate that she was unfairly dismissed rather than dismissed as a result of gross misconduct.

173. **The Relevant Law**

Legislation

- The Employment Rights Act 1996, particularly sections 43A – G, 47B, 103A and 108.

Case Law

- Cavendish Munro Professional Risks Management Limited v Geduld, 2010 ICR 325, EAT.

- Goode v Marks and Spencer Plc, EAT 0442/09.

Discussion

174 Throughout the Final Hearing of the Claimant's claim the Tribunal allowed the Claimant, an unrepresented party, latitude in the nature and extent of the evidence which she patently sought to elicit and present to it. And the Respondent's representative, Mr Healy, - (who was clearly aware of the Tribunal's wish to allow, within reason, the Claimant unfettered opportunity to bring salient matters to the attention of the Tribunal) - only rarely expressed concern about the nature and, generally, breadth of the evidence

that the Claimant sought to present or elicit. But as it transpired a great deal of the evidence given by the Claimant, or which the Claimant apparently sought to obtain from her examination-in-chief of the witnesses called by her or from her cross-examination of the Respondent's witnesses was not, in the view of the Tribunal relevant to the determination by it of the issues of whether the Claimant, at any time during her period of employment with the Respondent, had made a protected disclosure as envisaged Section 43A of the ERA 1996 which was a qualifying disclosure – (as defined by Section 43B of that Act) - made by her in accordance with any of Sections 43C to 43H of that Act or of whether, if she had made such a protected disclosure, she was, in terms of Section 103A of ERA 1996, an employee who is to be regarded as having been unfairly dismissed because the reason - (or, if more than one, the principal reason) - for her dismissal had been that she had made a protected disclosure.

175. Evidence which was not relevant included attempts to introduce into the Final Hearing several allegations which had never been made by the Claimant or on her behalf at any stage of the Tribunal proceedings. It also encompassed lengthy questioning of Mr Mackay, Mrs Watson and Ms Rogerson and advisement about their – (and the Claimant's own) - subjective opinions of what they – (or the Claimant) - had respectively seen taking place – (or, sometimes, had heard at second hand had been seen by third parties to have taken place) - at Maben House.

176. Considerable time was spent, too, in obtaining evidence from Ms Rogerson about why she had written a letter – (which was never, even a s a file copy, made available to the Tribunal as part of the Joint Bundle provided to it) – to the Claimant, about what the Claimant had told Ms Rogerson she, the Claimant, had done with such letter and about what had or had not resulted from that letter, all of this despite the fact that at the June Preliminary Hearing the Claimant's then representative had conceded that even if it existed such letter did not constitute a protected disclosure by the Claimant and was of "doubtful" relevance.

177. In essence, it had been clear at the June Preliminary Hearing and was very clear at the Final Hearing that, taken in the context of the Claimant's claim, the fact of that letter and its content did not amount to anything which was, in itself, be a protected disclosure made by the Claimant.

178. It was simply not relevant.

179. That is why, within the Findings in Fact section of this Judgment, the Tribunal has placed it on record that in setting out Findings in Fact it has chosen to identify only those findings which it considers to be relevant to the Claimant's claim and, as a corollary, to omit findings which it was patent the Claimant wished the Tribunal to make and record in its Judgment but which, in the view of the Tribunal, were not relevant to the Claimant's claim.

180. In his closing submissions the Respondent's representative suggested that the Claimant has abused the Tribunal process by making use of it as a device enabling her "to throw muck at her employer".

181. Although the Employment Judge did have occasion during the course of the Final Hearing to remind the Claimant that the Final Hearing in itself should not be regarded by her as a means of grandstanding or as an opportunity to paint the Respondent as being, in general terms, a very bad employer running a residential care establishment very badly, the Tribunal prefers to stop short of agreeing with the Respondent's representatives closing-submission suggestion that there had been an abuse of Tribunal process and even to stop short of recording a finding that the Claimant had deliberated chosen to present or elicit evidence in respect of non-relevant matters simply as an attempt to obfuscate the issues which were relevant, but it repeats its concern that a great deal of the evidence given by the Claimant, or which the Claimant apparently sought to obtain from her examination-in-chief of the witnesses called by her or from her cross-examination of the Respondent's witnesses was not relevant to the determination by the Tribunal of the issues before it.

182. The Findings in Fact which the Tribunal considers relevant to its determination of the sole head of claim made by or on behalf of the Claimant in the ET1 are those set out in detail earlier in this Judgment.

183. Evidence was heard during the course of the Final Hearing from and on behalf of the Claimant and on behalf of the Respondent.

184. The Tribunal has no criticism to make of the way in which evidence was presented by either Ms Penny or Mr Whalen, but it does have concerns about – (and does wish to make observations about its perception of) - some of the evidence given by the Claimant or on her behalf.

185. The Tribunal noted that when, as it were, taken down a route that she was unwilling to follow the Claimant frequently reverted to either silence or to giving an answer which did not appear to relate to the question asked. There were times, too, when the Tribunal found the Claimant to be argumentative and there were occasions when the evidence offered by the Claimant was perceived by the Tribunal to be evasive. As was pointed out by the Respondent's representative in his closing submissions there were occasions when the Claimant even gave self-contradictory evidence about what had happened, particularly about what had happened at the Dismissal Meeting.

186. During the course of the Final Hearing – (but ever at any stage in the Tribunal process which had led to the Final Hearing of her claim) - the Claimant asserted that she had never received the Confirmation of Dismissal letter, that the Minutes of the Dismissal Meeting were not accurate and that e-mail chains which had been reproduced in the joint bundle of productions were not complete. She also referred for the first time to "carpet burns being inflicted on a young person at Maben House and – (until effectively "warned off" by the Tribunal) - was patently intent on describing the Respondent or its Directors as "corrupt". These were allegations which neither she nor her former representative had ever brought to the attention of the Tribunal – (or the Respondent) - at any previous time.

187. When answering questions from the Respondent's representative and from the Tribunal about what steps she had taken to mitigate her loss, particularly what work she had obtained since the effective date of termination, the Claimant was both evasive and self-contradictory, even to the extent that the Tribunal has found it impossible to make a finding in fact as to who the Claimant's present employer actually is and as to what work she is presently carrying out for the person for whom she is doing work or to whom she is presently providing a service.

188. Put simply, although the Tribunal does not wish to go as far as stating that the Claimant was not being truthful at any particular stage during the course of her giving evidence it is prepared to express its opinion that at times her evidence appeared to be evasive and inconsistent. Indeed, that it appeared to the Tribunal that she, the Claimant, was giving answers to questions put to her which were answers that she thought would best present the Respondent badly rather than answers that were either pertinent to the questions asked or of such relevancy as might assist the Tribunal to determine whether there was merit in the claim that had been made by her or on her behalf.

189. The Tribunal acknowledges that it is difficult for an unrepresented party to present her own evidence and that in this case that difficulty may have been heightened by the fact that until her long-term solicitors had withdrawn from acting a few days prior to the Final Hearing beginning the Claimant did not know that she was to be unrepresented at the Final Hearing.

190. So far as the other Claimant-called witnesses were concerned, the Respondent's representative suggested in his closing submissions that "most" of that evidence was "not pertinent". But the Tribunal's objective view is less extreme, namely that – (as it recorded earlier in his Judgment) - it found that much of the evidence obtained from those other, Claimant-called, witnesses was simply not relevant to the Claimant's claim.

191. The Employment Judge had real concerns about the way in which Mr Mackay – (who the Respondent's representative described as being "a witness eager to stick to a script and who had some agenda") - presented his evidence.

192. Mr Mackay admitted to having been spoken to by the Claimant when waiting in the witness room prior to his giving evidence and to having being involved in text exchanges with the Claimant the week before the commencement of the Final Hearing. That said, even "rehearsed" evidence – (or evidence given in support of "some agenda" held by a witness) - is not inevitably untruthful and in general terms the Tribunal considered Mr Mackay's evidence to be an honest account of his subjective opinion of what he had seen at and heard about Maben House.

193. But none of that subjective opinion expressed by Mr Mackay was directly pertinent to the issues identified by the Tribunal as being relevant to the Claimant's sole head of claim. Mr Mackay did not give any evidence which endorsed the Claimant's claims that she had, on several occasions, made protected disclosures to her employer.

194. Mr Mackay gave no evidence which even hinted at the reason for her dismissal being that she had made a protected disclosure.

195. Likewise, Mrs Watson's evidence was not pertinent in that it, too, failed to add any endorsement to the Claimant's claims that she had on several occasions made protected disclosures to either or both of Mr Whalen and Ms Penny. Indeed, in response to a direct question put to her in cross-examination, a question of whether she herself had ever been present at any time when the Claimant had made any specific disclosure to her employer about her employer's legal obligations, her answer was short and to the point, i.e. "No".

196. Nor did Mrs Watson give any evidence which would even hint at the likelihood that the reason for the Claimant being dismissed by the

Respondent was that she, the Claimant, had made a protected disclosure either to it or to any regulatory authority.

197. The final witness called by the Claimant was Ms Rogerson.

198. It was quickly clear that what Ms Rogerson had to say about how she felt – (subjectively felt) - about the Respondent and the way it ran its business at Maben House, although candidly expressing those subjective opinions, did not amount to a protected disclosure made by the Claimant.

199. Ms Rogerson gave no evidence which added weight to the Claimant's argument that she, the Claimant, had made any such protected disclosure.

200. But worse than that - (so far as the Claimant's case is concerned) - , the evidence that Ms Rogerson did give about how she had been encouraged to put her concerns in writing, how she had delivered her letter expressing those concerns to the Claimant and what had happened to that letter were very much at variance with what the Claimant had herself said. The Claimant had said that it had been Ms Rogerson's choice to put her concerns in writing whereas Ms Rogerson told the Tribunal that the Claimant had asked her to put those concerns in a formal letter. The Claimant had said that Ms Rogerson had handed her the letter whereas Ms Rogerson said that she had posted it in an envelope addressed to the Claimant. The Claimant had said that she had shown the letter to Mr Whalen and had then given it to Ms Penny but both Mr Whalen and Ms Penny had told the Tribunal that they had never seen the letter and Ms Rogerson's evidence was that on the day that she left the Respondent's employment she found it in her pigeon hole or drawer, that she immediately contacted Ms Penny and that she, too, had been assured by Ms Penny that she, Ms Penny, had never seen the letter.

201. Ms Rogerson has conceded both that she cannot be sure that either Ms Penny or Mr Whalen ever saw the letter and that, having first of all done what the Claimant instructed her to do so far as the preparation of such a

"formal letter" was concerned, she thereafter relied solely on what the Claimant had told her.

202. In the view of the Tribunal Ms Rogerson's evidence, given candidly and apparently in a way which surprised even the Claimant, added no weight to the Claimant's allegations that she had made a protected disclosure or protected disclosures and that it had been the making of that disclosure or those disclosures which had been the reason or principal reason for her dismissal.

203. Overall, where there was any conflict between evidence given by the Claimant and evidence given by other witnesses the Tribunal preferred the evidence given by the Respondent's witnesses or by the Claimant-called witnesses to the evidence given by the Claimant herself.

204. In reaching its decision in respect of the Claimant's claim that she had been unfairly dismissed, automatically unfairly dismissed, by the Respondent because the reason - (or, if more than one, the principal reason) - for her dismissal was that she had made a protected disclosure the Tribunal began by considering whether the Claimant had demonstrated to its satisfaction that she had ever made a protected disclosure - [as referred to in Section 43A of the Employment Rights Act 1996, which was a qualifying disclosure – (as defined by Section 43B of that Act) - made by her in accordance with any of Sections 43C to 43H of that Act] - at any time during the course of her brief period of employment with the Respondent.

205. The Tribunal bore it in mind that unless the Claimant could demonstrate that she had made a protected disclosure – (or protected disclosures) - and that it was reasonable for the Tribunal to infer from the evidence that it heard that the reason - (or, if more than one, the principal reason) - for her dismissal had been that she had made such a protected disclosure or protected disclosures then the saving-provisions of Section 108(3)(ff) of ERA 1996 do not apply to the Claimant's claim and, effectively, the Tribunal has no

jurisdiction to consider any "normal" claim of unfair dismissal based on Section 94 of ERA 1996.

206. The Claimant's claim is a Protected Interest Disclosure – ("PID") – or "Whistleblowing" claim.

207. The Claimant accepts that because she had not been continuously employed for a period of not less than two years ending with the effective date of termination she would not, other than in a situation where she was dismissed for an automatically unfair reason, enjoy the protection of Section 94 of ERA 1996. But she insists that the reason why the Respondent dismissed her was an automatically unfair reason, that reason being that she had made a protected disclosure.

208. The Claimant accepts that the sole bases of her claim that she was unfairly dismissed by the Respondent are that she was dismissed because she had made a protected disclosure and that in terms of Section 103A of ERA 1996 that dismissal was unfair.

209. Underlying the provisions of the ERA 1996 are the provisions of the Public Interest Disclosure Act 1988 – ("PIDA 1988") – but PIDA 1988 is not a free-standing piece of legislation; it is legislation which supplements and amends other legislation, principally ERA 1996.

210. A "whistleblower" is a worker who reports certain types of wrongdoing, wrongdoing which in the context of employment is usually something about what has been seen at work. The wrongdoing that is disclosed must be in the public interest, i.e. must affect the general public, and a whistleblower is protected by law if she or he reports, for example, that someone's health and safety is in danger or that an employer is breaking the law.

211. Personal grievances are not covered by the whistleblower-protection legislation.

212. There is a difference, a distinction in law to be made, between making a protected disclosure in accordance with the relevant legislation and airing a disagreement with, or about, acts or omissions on the part of an employer or fellow worker.

213. As was pointed out by the Respondent's representative in his closing submissions, for Section 43B(1) of ERA 1996 to apply, for a disclosure to be a "qualifying disclosure" and a "protected disclosure" as referred to in respectively Sections 43B and 43A of ERA 1996, there must be a disclosure of information. It is not enough for there to have been an expression of concern or the making of an allegation which fell short of a disclosure of information.

214. In this context, the case of **Cavendish Munro Professional Risks Management Limited v Geduld** is relevant to the Tribunal's determination of whether or not the Claimant had ever made a protected disclosure.

215. In that case of **Cavendish Munro Professional Risks Management Limited v Geduld** the Employment Appeal Tribunal gave guidance that there is a distinction to be drawn between "information" and the making of an "allegation" and that the ordinary meaning of giving "information" is "conveying facts", as distinct from expressing dissatisfaction or making an allegation.

216. As was pointed out by the Respondent's representative in his closing submissions it is the disclosure of information that is important for the purposes of Section 43B of ERA 1996 and that a worker's disclosure, whether in the form of a letter, an expressed grievance, a memorandum, a recording or a verbal communication must convey facts, not simply express dissatisfaction or make allegations.

217. In the case of **Goode v Marks and Spencer Plc** the Employment Appeal Tribunal upheld a first-instance Employment Tribunal's determination that to expressing an opinion is not the same thing as making a disclosure of information as required by Section 43B of ERA 1996, the Employment

Appeal Tribunal in that case holding that the only "information" that a letter referred to in that case disclosed was the employee's "state of mind" and that that information could not possibly tend to show a relevant failure on the part of the employer.

218. The Tribunal has recorded earlier in this Judgment that it considered that much of the evidence given by witnesses called by the Claimant, and indeed much of the evidence given by the Claimant herself, was not relevant to the sole basis of the Claimant's claim. They were subjective opinions, at worst. At best, that evidence was evidence which did no more than provide the Tribunal with background to the conduct of day to day life within Maben House. The Tribunal wishes to emphasise that its comments about that evidence not being relevant to the Claimant's claim or about such evidence being no more than an expression of opinions subjectively held should not be interpreted as expressing, or even inferring, disbelief on the part of the Tribunal as to the veracity of what the witnesses felt about what they had seen happening or had heard had happened at Maben House. An Employment Tribunal is not a regulatory authority and no matter how concerning phraseology such as "more like a prison than a home", "no respect for young persons", "concerns about what I was seeing", "shocked at staff members' attitude to young people", "very little regard being given to the care of residents" and, even more emotive, "I felt something bad was going to happen and I wanted to get away" and "I thought a child would be abused or harmed because of the nature of the care there", as used by witnesses when giving evidence under Oath or Affirmation, is an Employment Tribunal has no jurisdiction to determine whether acts or omissions on the part of the Respondent or its staff at Maben House were, in the sense of the criminal law or the laws relating to the care and protection of young persons, in any way culpable.

219. It is not enough for the Claimant to satisfy the Tribunal that she, let alone other witnesses called by her, had "concerns" about what was happening at Maben House or even that she or they had raised those concerns with the Respondent's Directors.

220. If an employee considers that a disclosure should be made in the public interest her or his first point of call should be her or his employer. But if that is not possible, or if the employer does not satisfactorily deal with such disclosure, then there is a list of regulatory bodies to whom a disclosure can be made by the employee. In the context of what the Claimant has sought to allege was happening at Maben House, of the picture of a culture of violence at Maben House which the Claimant sought to paint for the Tribunal, the most appropriate regulatory authorities would have been The Care Quality Commission and The Care Inspectorate, or even Police Scotland.

221. The Claimant knew that.

222. But even when it had become apparent to the Claimant that her (alleged) disclosures were not being treated seriously or - (so far as she was concerned) - satisfactorily by her employer she chose not to make any reference to a regulatory body even although in July 2015 she was in the company, at Maben House, of an Inspector from The Care Inspectorate.

223. In order for the Claimant to obtain the protection of the legislation which deals with the public interest disclosures and, in the circumstances of her employment, in order to bring her claim within the jurisdiction of an Employment Tribunal notwithstanding that she had less than two years' continuous service with the Respondent, she has to demonstrate to the Tribunal's satisfaction that she made a disclosure or disclosures and that she followed the correct disclosure procedure ***and*** provide the Tribunal with evidence which will enable it to conclude – (even by inference) – that, in the absence of convincing evidence to the contrary from her employer, the reason – (or, if more than one, the principal reason) – for her dismissal was that she had made a protected disclosure or protected disclosures.

224. If there had been evidence from which the Tribunal might have inferred that the Claimant was subjected to the detriment of dismissal "on the ground that" she "had made a protected disclosure" the Respondent would have

had to prove, on the balance of probabilities, the ground on which it dismissed her but the burden of proving that a protected disclosure or protected disclosures was or were made rests on the Claimant.

225. If the Tribunal had been persuaded that the Claimant had made any protected disclosure to the Respondent as her employer during the course of her employment with it the Tribunal would have been required to consider the question of causation. In the context of Section 47B(1) of ERA 1996 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. "Causation" under that Section 47B of that Act has two elements:- Firstly, was the worker subjected to the detriment by her or his employer - (or other worker or agent): Secondly, was the worker subjected to that detriment because she or he had made a protected disclosure.

226. It would have been necessary for the Claimant to establish that the only detriment that she alleged was suffered by her, dismissal, arose from the Respondent's act or deliberate failure to act and only if that was established could she go on to establish that she had been "subjected to" the detriment, to her dismissal.

227. Protection is given to the Claimant by PIDA 1988 and by ERA 1996 only if she herself has made a protected disclosure, as defined, and has made it in the way prescribed by the legislation. These are significant prerequisites.

228. As the Respondent's representative reminded the Tribunal in his closing submissions, in this case the Respondent has never conceded – (and still does not concede) - that at any time during the course of her employment with it the Claimant ever made any disclosure which qualifies as a protected disclosure, the Respondent's representative distinguishing in that submission between the question of whether or not the Claimant ever made a disclosure and the question of whether it was a disclosure which qualified as a protected disclosure.

229. When giving their respective evidence, each of Mr Whalen and Ms Penny denied ever having been contacted, in any way, by the Claimant with information which might reasonably be considered to be a protected disclosure of information.

230. Notwithstanding her several attempts to bring new evidence – (evidence of previously un-made allegations) - into play during the course of the Final Hearing on the merits of her claim, the Claimant is entitled at the final Hearing of her claim to rely only on the disclosures which she had pled during the course of the Tribunal process which led up to the commencement of the Final Hearing.

231. During the course of the Tribunal process leading up to commencement of the Final Hearing on the merits of her claim the Claimant specified the instances which, she has argued, were the instances of her making protected disclosures. Those specific instances are narrated in detail within the "Background" section of this Judgment, but for ease of reference – (and taking what was said in the Further and Better Particulars as being the refined version of the Claimant's allegations) - they can be summarised as being that the Claimant had made a disclosure to Ms Penny and Mr Whalen in March 2015 – (albeit with a concession on behalf of the Claimant that "there were no specific e-mails sent from the Claimant to her superiors at this time") - , that in April 2015 the Claimant had "raised her concerns" about Critical Incident Reports "detailing the situations whereby young persons had been restrained" … "were not being completed until several months after the incident" – (the allegation being that the Claimant had "raised her concerns about this practice" with Ms Penny) -, that "towards the end of April 2015" the Claimant had, "verbally", disclosed to Ms Penny and Mr Whalen "concerns" that she had about the way the petty cash and monies were being dealt with and that "in October 2015 … she had made … a disclosure verbally to Steve Whalen and Kirsty Penny" which she had "followed up by e-mail correspondence", it being apparent that that last alleged disclosure was one relied upon by the Claimant as relating to concerns which had

allegedly been expressed "in writing to the Director of Operations, Steven Whalen" by Ms Rogerson.

232. The Tribunal will consider these alleged disclosures in turn, -

233. The Tribunal heard no evidence which would either demonstrate that the Claimant had witnessed an incident at Maben House in March 2015 which had involved unnecessary restraint, violent assault, being inflicted on a young person, or that the Claimant had made any disclosure of information made in the terms envisaged in, or following the procedure required by, the legislation previously referred to.

234. The Claimant has alleged that she made her protected disclosure in respect of that alleged incident to Mr Whalen and/or Ms Penny following the incident which, allegedly, she observed at Maben House during the first week, or so, of her employment with the Respondent.

235. There are aspects of that alleged, March 2015, incident which the Claimant has sought to expand upon during the course of the Final Hearing of her claim even although she had never referred to them at any earlier stage in the Tribunal process. If true, those new allegations might have been of significance to any protected disclosure made by the Claimant to her employer. These new allegations included the Claimant's contention that the young person in question had suffered face burns by being dragged by members of the Respondent's staff along a carpet after he was placed in a prone restraint position.

236. There was no evidence, no proof, that information in respect of a March 2015 incident involving a young person had ever been disclosed. All that there was was an allegation by the Claimant.

237. Both Mr Whalen and Ms Penny deny ever having been contacted, in any way, by the Claimant with information which might reasonably be considered to be a protected disclosure of information in respect of such alleged incident.

238. And it is clear from the Claimant's own evidence that at a stage when she believed that the Respondent was not paying any attention to the representations made by her, representations which she now argues amounted to a protected disclosure, about that March 2015 incident she never took any steps to inform any regulatory authority, this despite the fact that she was working with a Care Inspectorate Inspector at Maben House in July 2015.

239. As was suggested by the Respondent's representative in his closing submissions, the Claimant is "not a young inexperienced social worker". She has worked in the care sector for some twenty years. The Claimant's own demeanour within the forum of the Tribunal Hearing and from her evidence convinced the Tribunal that when she thinks she is right – (as in the case of the TV incident referred to) – she can stand up for herself even in the face of direct orders being given to her by her employer's Director. The Tribunal was satisfied that the Claimant's character and her ability to stand up for herself were such that she could easily have raised her concerns with regulatory authorities, particularly with the Care Inspector with whom she was working in July 2015, but that for reasons best known to herself she decided not to do so.

240. In the finding of the Tribunal the Claimant never made a protected disclosure to her employer about the alleged March incident.

241. The Claimant has alleged that she made a protected disclosure in respect of late completion, or non-completion, of Incident Reports. There is no evidence to back up the Claimant's allegation with regard to the making of such a protected disclosure. There was no evidence, no proof that information had ever been disclosed. All that there was an allegation by the Claimant. Both Mr Whalen and Ms Penny deny that she ever made such a disclosure. They have also reminded the Tribunal that it was the Claimant's responsibility as Manager at Maben House to ensure that such Reports were completed and were completed timeously and even Mr Mackay, a witness called by the Claimant, confirmed that the responsibility for ensuring

completion of such reports, whether completion at all or timeous completion, rested with the Claimant as Manager at Maben House.

242. Evidence – (more precisely, an email chain which the Claimant sought to rely upon as evidence) - was provided to the Tribunal in support of the Claimant's contention that she had made a protected disclosure to the Respondent "towards the end of April 2015" about "concerns" that she had about the way the petty cash and monies were being dealt with.

243. The Tribunal has had the benefit of noting what Ms Penny put in her note once she had become so concerned about the Claimant's involvement in the cash handling and recording system that she was prompted by her own conscience to put something in writing and to pass it to her own immediate superior, Mr Whalen.

244. As said earlier in this Judgment, the Tribunal agrees with the Respondent's representative's contention that in the context of the Claimant's allegation that she had made a protected disclosure about the Respondent's failure to handle cash and to keep cash records appropriately "it can't be the case that a qualifying disclosure is being made in every business where a cash discrepancy is identified and investigated" and has determined that what the Claimant discussed in the e-mail chain between herself and Ms Blyth on 20 and 22 April 2015, as copied to Mr Whalen on 30 April 2015 was not a disclosure of information which was a protected disclosure.

245. The Tribunal was satisfied that when giving evidence each of Mr Whalen and Ms Penny did so truthfully and in a way which countered any attempt by the Claimant to persuade the Tribunal that in respect of alleged cash-handling and cash-reconciliation matters she had made a protected disclosure to her employer.

246. With regard to the allegation made by or on behalf of the Claimant that in October 2015 "… she had made … a disclosure verbally to Steve Whalen and Kirsty Penny" which she had "followed up by e-mail correspondence", the allegation relied upon by the Claimant as relating to concerns which had

allegedly been expressed "in writing to the Director of Operations, Steven Whalen" by Ms Rogerson, the Tribunal agrees with the Respondent's representative's closing-submissions contention that the easiest of the alleged protected disclosures to deal with is the one which involves Ms Rogerson and the letter that Ms Rogerson was encouraged to write, and did write, before posting it to the Claimant.

247. In the finding of the Tribunal that letter, even if passed on by the Claimant to either Mr Whalen or Ms Penny, did not amount to a disclosure being made by the Claimant. The legislation is clear that to be a protected disclosure a disclosure must be a qualifying disclosure (as defined by Section 43B of ERA 1996) which is made by the worker relying on that protected disclosure in accordance with any of subsections C to H of Section 43 of that Act. Similarly, Section 43B of ERA 1996 refers to a disclosure of *information* – (the Tribunal's emphasis) - 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 various things described in sub sections (a) to (f) of sub section 1 of Section 43B of that Act.

248. Quite apart from there being real doubt as to whether the Respondent's Directors, or any of them, ever saw Ms Rogerson's letter, that letter was not a disclosure made by the Claimant and cannot therefore be deemed to be a protected disclosure, a qualifying disclosure made by the Claimant to the Respondent as her, the Claimant's, employer.

249. The Tribunal was not satisfied that the Claimant had ever, at any stage during her period of employment with the Respondent, made a disclosure which in terms of Section 43A of ERA 1996 was a qualifying disclosure as defined by Section 43B of that Act.

250. That being the case, there is no need for the Tribunal to consider whether it had been the making of any such protected disclosure or the making of any such protected disclosures which – (to refer back to Section 103A of ERA

1996) - had been the reason - (or, if more than one, the principal reason) - for the Respondent, as her employer, dismissing her.

251. Nevertheless, the Tribunal believes that it is appropriate for it to record that it was clear from the evidence that it heard that there were many reasons not related to the making of a protected disclosure or protected disclosures which led the Respondent to dismiss the Claimant and to dismiss her summarily. Those reasons were set out in the Minutes of the Dismissal Meeting, were implicit within Mr Whalen's drafting of the Confirmation of Dismissal letter that he intended should be posted to the Claimant as confirmation of what she had been told at the Dismissal Meeting and were spoken to by Mr Whalen in his evidence to the Tribunal, evidence in which reference was made to, -

- the Respondent's finding that the Claimant had failed to disclose to it that she had been the subject of an investigation into alleged petty cash irregularities when working with her previous employer and that how alleged involvement in such petty cash irregularities had been one of the reasons for her being dismissed by that employer.

- the Claimant's alleged breaches – (in plural) – of confidentiality and to the Claimant having admitted, at least so far as her discussions with Ms Moffat were concerned, that she had disclosed details of what was happening at Maben House to Ms Moffat.

- the Claimant having failed to obtain the required PDA or even to complete the course work which was a prerequisite of the granting of the required PDA leading up to it, such failures being a repetition of similar failures on her part when, on at least two – (but possibly three) - occasions she had failed to obtain that same qualification when working for another employer.

- the Claimant's refusal to carry out Mr Whalen's instructions so far as the TV incident on were concerned, a refusal which Mr Whalen

regarded as being insubordination which in itself justified summary dismissal.

- Mr Whalen's concerns about the Claimant's timekeeping and unauthorised absences.

252. The Tribunal was persuaded that there was ample evidence to justify the Respondent's contention that there were reasons relating to the Claimant's conduct which justified her dismissal. In this case there was the added factor that the Respondent's Policies specifically entitled it, contractually entitled it, to dismiss an employee in the Claimant's position, an employee with far less than 2 years continuous service, without "proper procedure" having been followed in the process of dismissing her and it was clear that the Respondent, knowing what its Policies said in that regard, took advantage of that contractual entitlement when dismissing the Claimant.

253. Although expressed as an *obiter* comment, the Tribunal feels that it is appropriate to record that even if it had been satisfied that the Claimant had made a protected disclosure or protected disclosures to the Respondent as her employer it, the Tribunal, would have been satisfied from the evidence that it heard that the reason why the Respondent dismissed her was a reason relating to the Claimant's conduct – (and therefore, in any non-automatically-unfair dismissal claim which an Employment Tribunal had jurisdiction to consider, a "fair" reason for dismissal) – and that it appears to the Tribunal from the evidence that it heard in this case that that conduct – (or gross misconduct) – reason was the sole reason why the Respondent dismissed the Claimant.

254. The Tribunal has determined that the Claimant's allegation that she made a protected disclosure, or a series of protected disclosures, to the Respondent as her employer during the course of her employment with it is unfounded. It follows that the Tribunal has found, too, both that the Claimant was not dismissed by the Respondent in a circumstance where the reason - (or, if more than one, the principal reason) - for her dismissal was that she had

made a protected disclosure and therefore that given the terms of Section 108(1) of ERA 1996 an Employment Tribunal does not have jurisdiction to consider any claim which might be inferred in the ET1 that the Claimant was otherwise unfairly dismissed in terms of Section 94 of ERA 1996.

255. The Claimant's claim is dismissed in its entirety.

256. The Tribunal reserves the question of expenses being awarded to either party in this case and invites the respective parties, if they be so minded after reading this Judgment, to make application to the Tribunal in terms of Rules as contained in Schedule 1 to the Regulations for an Order for payment of expenses at a level to be identified by the Tribunal at a Hearing convened for that specific purpose.

Employment Judge: Mr Chris Lucas
Date of Judgment: 21/02/2017
Entered in register:23/02/2017