



EMPLOYMENT TRIBUNALS

Claimants: Mrs K McGuire
Miss T Skitt

Respondent 1: ADL Plc

Respondent 2: Mrs P Jackson

Respondent 3: Charlton Court Care Home Ltd

Heard at: Leeds **On:** 9, 10, 11, 14, 16, 17 and
18 October 2019
Deliberations: 18 October 2019

Before: Employment Judge Rogerson
Miss J Lancaster
Mr M Taj

Representation

Claimants: Miss F Almzedi (solicitor)
Respondents: Mrs Jackson (second respondent and director)

RESERVED JUDGMENT

1. Mrs McGuire's complaints of protected disclosure detriment, made pursuant to section 47B Employment Rights Act 1996, against the first and third respondent, that succeed are:
 - 1.1 Carer B: refusing to work with her and accusing her of telling tales in later December 2018: Carer B "squaring up to her" in December 2018: Carer B telling Miss Hopkinson that the claimant had bullied her.
 - 1.2 Carer P refusing to work with her and giving her dirty looks in January 2019.
 - 1.3 Carers refusing to work with her, not talking to her and accusing her of telling tales in December 2018.

- 1.4 Miss Hopkinson moving her to work downstairs after Christmas 2018: Miss Hopkinson providing a negative reference for her after she left her employment.
2. Mrs McGuire's complaints of protected disclosure detriment, made pursuant to section 47B Employment Rights Act 1996, against the first second and third respondent, that succeed are:
 - 2.1 Mrs Jackson writing to the claimant on 10 January 2019 in an intimidating and threatening manner: Mr Taylor's intimidating and threatening telephone call on 10 January 2019 made on the instruction of Mrs Jackson.
3. Mrs McGuire was automatically unfairly dismissed, by reason of her protected disclosures, her complaint made against the first and third respondent, pursuant to section 103A Employment Rights Act 1996, succeeds.
4. Miss Skitt's complaints of protected disclosure detriment made pursuant to section 47B Employment Rights Act 1996, against the first and third respondent that succeed are:
 - 4.1 Other carers making her feel uncomfortable, isolating her and refusing to work with her.
 - 4.2 Miss Hopkinson not investigating her concerns from December 2018 onwards.
 - 4.3 Miss Hopkinson providing her with a negative reference after she left her employment.
5. Miss Skitt was automatically unfairly dismissed, by reason of her protected disclosures, her complaint made against the first and third respondent pursuant to section 103A Employment Rights Act 1996, succeeds.
6. All other complaints fail and are dismissed.
7. A remedy hearing will be listed to determine remedy in relation to successful complaints. Separate case management orders will be made in relation to that hearing.

REASONS

Background

1. Mrs Jackson represents 'ADL Plc' and 'Charlton Court Care Home Ltd', both companies identified as the claimants' employer in these proceedings. She also represents herself to defend the detriment complaints made against her by Mrs McGuire. The 2 claimants were carers who had been employed by either ADL Plc or Charlton Court Care Home Limited. They allege they made protected disclosures raising concerns about alleged neglect of residents at the home. As a result, they say they were victimised by the other carers and managers, which resulted in them both leaving their

employment. They bring complaints of protected disclosure detriment and constructive dismissal.

2. Unfortunately, the Tribunal were unable at this hearing, based on the information provided by Mrs Jackson, to 'identity' which respondent was the correct 'employer'. Both companies appear to be identified as the 'employer' in some of the documents produced or in witness evidence. Mrs Jackson was unable to clarify the position, to our satisfaction, at this hearing so we have not removed either company as respondent at this stage. In our findings of fact, we will refer to 'the home' as the 'employer' in that context. If further evidence is provided, to identify the correct employer at the relevant time, those parts of the judgment affected can be reconsidered.
3. Mrs Jackson was asked at the beginning of the hearing to explain why none of the respondents had arranged for legal representation given the serious nature of the claims made. She said it was agreed she would represent all 3 respondents because of the cost of legal representation. She confirmed that whilst the respondents could afford to pay for legal representation they had elected not to do so.
4. Prior to cross examination, whenever an issue arose about the respondent's failure to comply with any order made or to address issues raised (disclosure/witness statements), Mrs Jackson would attribute that failure to her lack of knowledge, understanding or experience of the Tribunal process. She gave the Tribunal the clear impression in her answers that she had never been involved in the process before. However, during her cross examination, Mrs Jackson admitted she had represented the company in a previous Tribunal claim at a hearing. She could not explain why she had not simply told us of her involvement (whatever it was) instead she deliberately mislead the Tribunal, in our view, to avoid any censure for her failures.
5. Another concern was the position adopted by Mrs Jackson in defending these claims on behalf of all the respondents. Her first approach was that no disclosures had been made by the claimants and there were no detriments. The claimants were telling lies because the home had been 'exonerated' in subsequent external inspections. It was explained to Mrs Jackson that the question was not one of truth or accuracy of the disclosures made but whether the claimants had disclosed information which they reasonably believed tended to show a relevant failure and was made in the public interest. It followed that where a worker is subjected to a detriment for having made a false allegation, but that allegation is held to amount to a protected disclosure, (because the necessary reasonable belief in its accuracy/public interest was present) then the detriment will fall foul of section 47B Employment Rights Act 1996.
6. The list of issues (see paragraph 12 below) very clearly identifies the requirements for a disclosure of information to qualify as a 'protected disclosure'. The parties knew in advance of this hearing what the focus of the Tribunal's enquiry would be. The list identifies each detriment relied upon and the decision makers so that those witnesses could be called by the respondent to answer the complaints made and their witness

statements could be prepared accordingly. The claim forms were very detailed and the relevant paragraphs of the claim form were highlighted in the list of issues so the respondent could prepare for, and be ready to answer the claims made.

7. Mrs Jackson's second approach was to allege that the claimants were the 'wrongdoers' in relation to any allegations made. They were disclosing information about their own failures as carers and not the failures of others. Logically this would mean they had brought these complaints to expose and complain about their own wrongdoing. The position adopted by Mrs Jackson made no sense whatsoever, but she still insisted on maintaining it.
8. The approaches adopted by Mrs Jackson at this hearing and her lack of preparation in circumstances when a conscious decision was made not to have any legal representation, were the choices made by the respondents in defending these claims. Although the choices made were surprising, when 'funding' was not an issue, it is the function of the Tribunal to decide the claimant's claims based on the issues identified the evidence presented, the arguments advanced by the parties and the applicable law.

Issues

9. The issues in this case were clarified and agreed at a preliminary hearing before Employment Judge Davies on 4 June 2019. The same representatives appeared and confirmed those were the issues to be determined.
10. Both complainants bring complaints of protected disclosure detriment and constructive automatic unfair dismissal for making a protected disclosure.

Mrs K McGuire

11. Mrs McGuire alleges that she made seven protected disclosures. Six disclosures were made internally and one disclosure was made externally to the Care Quality Commission (CQC) on 9 January 2019.
12. The issues identify the questions for the Tribunal to decide if a qualifying protected disclosure had been made:
 1. Did the claimants make the report?
 2. Did they disclose information?
 3. In their reasonable belief was it in the public interest?
 4. In their reasonable belief did it tend to show commission of a criminal offence/danger to health and safety/breach of a legal obligation or that one of these things was likely to be concealed within the meaning of section 43(b)(1) Employment Rights Act 1996?
 5. In the case of the reports to the CQC was the CQC a prescribed person, did the claimants believe that the failures fell within the CQC's area and did they believe that the information or allegations were substantially true?

13. We will deal with the 6 internal disclosures first in our findings as those disclosures are relied upon for all the alleged detriments complaints. Mrs McGuire alleges the following disclosures were made to her employer:
 1. Telling Miss Lewis that a resident had been left unattended and that carers were not around in November 2018 (claim form paragraph 10).
 2. Telling Miss Metcalfe that Carer B was taking photos in resident's rooms on 27 December 2018 (claim form paragraph 12).
 3. Telling Miss Lewis that a Carer P, had thrown porridge on a resident in late November/early December 2018.
 4. Telling Miss Metcalfe that a resident had been left with soiled pads and only changed when he went to bed in late November/early 2018 (claim form paragraph 14).
 5. Telling Miss Metcalfe that a resident had been taken outside wearing very little and raising more general concerns about neglect on 5 December 2018 (claim form paragraph 16).
 6. Repeating those matters to Miss Metcalfe later in December 2018 (claim form paragraph 17).
14. Mrs McGuire alleges she was subjected to 10 detriments on the grounds of her protected disclosures:
 1. Carer B refusing to work with her and accusing her of telling tales in late December 2018.
 2. Other Carers refusing to work with her, not talking to her and accusing her of telling tales in December 2018.
 3. Carer B "squaring up to her" as described at paragraph 22 with the particulars of claim just before Christmas 2018.
 4. Carer B telling Miss Hopkinson that the claimant had bullied her just before Christmas 2018.
 5. Miss Hopkinson moving her to work downstairs after Christmas 2018.
 6. Carer P refusing to work with her and giving her dirty looks in January 2019.
 7. Mrs Jackson writing to her on or about 15 January 2019 making spurious allegations, threats and generally using an intimidating tone.
 8. Mrs Jackson instructing Mr Taylor to approach her and question her, purporting to be from the CQC, accusing her of theft, insisting she had to attend a meeting with him and texting her (the events described in paragraphs 44 to 47 of the claim form).
 9. Mrs Jackson and/or Miss Hopkinson not paying her wages on time in January/February 2019.
 10. Mrs Jackson and/or Miss Hopkinson providing a negative reference for her after she left.

15. The claimant also alleges that she was constructively dismissed because the employer fundamentally breached the implied term of mutual trust and confidence, by virtue of the matters set out above and that she resigned in response to and without affirming the contract. She asserts that the reason for her dismissal (or the principal reason for her dismissal) was that she made a protected disclosure.

Evidence

16. We heard evidence from the 2 claimants and for the respondent from Mrs Val Lewis (registered nurse) Ms Yasmeen Akhtar (registered nurse), Bob Taylor (investigator) Ms Sophie Goulding(carer), Ms Brandy Rumsey (carer B) Ms Kelly Hopkinson (Home Manager) Mrs Pearl Jackson (Director). We also saw documents from a bundle of documents containing some disputed documents.
17. Dealing firstly with the documents. Mrs Jackson, selectively and deliberately chose to disclose only the parts of documents that supported the respondents case that subsequent inspections had 'completely exonerated' the home. She only disclosed parts of a Leeds City Council Inspection Report following a visit to the home on 14 February 2019 and part of an Infection Prevention and Control Report, following an audit on 18 April 2019.
18. In an email of 2 October 2019, Ms Almzedi had raised with Mrs Jackson her request for full disclosure of documents, when it became clear to her that some pages were missing. She also requested that the original reports rotas and time sheets were produced at the hearing because she queried their authenticity. She had good grounds to believe the duty rota had been altered between exchange and the version produced in the bundle, because Mrs Jackson accepted that is what had happened. Despite being forewarned of this issue the original documents were only produced very late on in the hearing.
19. Mrs Jackson said she did not understand/was unfamiliar with the process. However, the email request did not require any explaining. It clearly set out what was required and why. Mrs Jackson could easily have addressed the issues, properly raised with her, in advance of the hearing, if she had wanted to. She was not being open and transparent with the claimant's representative or with the Tribunal and her conduct of these proceedings, does not go to her credit. There were other examples in our findings of fact that informed our view that Mrs Jackson was not a reliable witness. She was evasive and was not presenting evidence openly and honestly to the Tribunal.
20. This was a difficult hearing because of the open hostility felt between the parties that spilled into the hearing, unnecessarily. It was clear that the claimants' view of the respondent based on their perceived experience was a very negative one and on occasion those views were evident when evidence given by the respondent's witnesses was disputed (shaking of heads/facial gestures). Some witnesses for the respondent clearly felt anger and hostility towards the claimants not only when they had worked

together but also at this hearing. While that anger from more junior members of staff in non-management roles might be expected given the views they held about the claimants, we did not expect that Miss Hopkinson (Registered Home Manager) or the Director, Mrs Jackson would present in the way they did during these proceedings.

21. Although they disagreed with the claimant's case, Mrs Jackson and Ms Hopkinson were attending the hearing to give evidence and answer the complaints made about alleged whistleblowing, as the most senior representatives of the home. In the home care setting these types of complaints are expected to be taken seriously because of the vulnerability of the residents the home cares for. They should have expected, questions about their whistle blowing policies and procedures, and to be challenged about the events relied upon in cross examination. In answering questions, they did not try to hold back from demonstrating the anger and hostility, they clearly felt towards these 2 claimants for bringing these claims. Miss Hopkinson's blamed the claimants for "wasting two weeks of her life". Mrs Jackson's angry response to a question about the alleged threatening letter sent to Mrs McGuire, to try to prevent her from bringing this claim was "well it did not work did it". These were only 2 of the many occasions the Tribunal observed open anger directed at the claimants during this hearing.

Findings of Fact

22. Mrs McGuire worked at Charlton Court, a care home for the elderly in Pudsey, Leeds, from 16 September 2018 until her resignation on 9 January 2019.
23. Mrs McGuire had not worked for 17 years while she had a career break to care for her children. This was her first job back to work in a care home setting. She had set herself high standards for the care she expected of the residents at the home. She was confirmed in 'post'. No complaints were made about her work. She was considered, to be a good carer and received an award as "Carer of the Month" in December 2018.
24. In late September 2018, Mrs McGuire became concerned about the care of some service users not being changed/left in soiled clothing/bedding and the lack of support she felt from fellow carers to assist with work which required 2 carers. She said she had not been provided with the relevant procedures for raising concerns which the home says were in place at the time, so she just reported her concerns to her managers.

Relevant procedures/codes of conduct

Code of Conduct

25. The respondent has an undated 'Code of Conduct for Carers', an undated "Adult Protection, Abuse and Safeguarding Policy", and a Whistleblowing Policy, drafted by Mrs Jackson in June 2017.
26. The 'code of conduct' provides that care workers "*must safeguard and promote the interests of service users and carers*", and "*protect them as far as possible from danger or harm*". They must "respect and maintain

the dignity and privacy of service users and carers". They must be "honest and trustworthy" and they "*must challenge dangerous abusive discriminatory or exploitative behaviour using established processes and procedures to report it*". The home must "*take complaints seriously and respond to them or pass them to the appropriate person to respond*".

Adult Protection Abuse and Safeguarding Policy

27. This policy is intended "*to prevent, reduce and identify the risk of possible abuse to any vulnerable adult within our care as well as to ensure that protective measures are in place to prevent reoccurrence, learning from the experience in order to improve*".
28. The policy provides that it is the **responsibility of all staff to alert others to any potential or suspected abuse**. It is the responsibility of the management "*to ensure that **effective robust systems** are in place to ensure the maximum protection exists for the clients who live in the home. **It is the responsibility of the manager and senior staff to ensure that systems are adhered to and monitored to ensure their effectiveness***". (all highlighted text our emphasis)
29. It provides that '**on suspecting abuse**' employees should:
 - (a) Raise the alarm through the manager or senior person on duty as soon as practicably possible;
 - (b) The manager will complete the referral to the local adult safeguarding team either by telephone or follow up with a written alert. It may well be necessary to refer to the police dependent on the nature of the allegation;
 - (c) The home will complete a detailed alert form and record all the evidence and keep to a minimum in order to protect the client saving a copy to the home's relevant file;
 - (d) Dependant on the nature of the alert immediate steps will be taken to protect the client and avoid reoccurrence. This may include suspension of staff, restricting visitors etc. It may also be necessary to share information with others to include other staff;
 - (e) The client will need to be informed of the action taken subject to capacity. The next of kin will be notified of the alert and steps taken in order to protect;
 - (f) If an investigation is required by the home a nominated external home company representative will be involved. This is usually to avoid any claims of bias or discrimination. The investigation will be undertaken as soon as possible and sensitivity will be acknowledged. A comprehensive report will follow and detail the methodology adopted, statements from interviews and a conclusion. The lessons learnt will also be added to the report **regardless of the outcome or indeed if proven or not**. Confidentiality will be maintained and a reference used to identify the client.
30. The policy highlights the **importance of encouraging the disclosure of information of suspected abuse regardless of the outcome whether**

it is proven or not it will be treated seriously to encourage staff to report any suspected abuse.

31. Neglect is identified in the policy as a type of abuse which includes “**failing to take the right steps and care appropriately for any individual**” which includes: “*not changing someone after incontinence knowing they are wet and need help, ignoring the person or failure to ensure privacy and dignity, inappropriate or inadequate clothing*”.

Whistleblowing Policy

32. The policy produced by the respondent in the bundle is headed “*ADL/Woodlands Whistleblowing*” The objective of the policy is “*to give clear guidance to all members of staff regarding the **correct procedure for bringing to attention any wrong doing or suspected wrong doing which they feel could affect the representation of the home, other members of staff, visitors, residents or any other organisation or persons, in connection with the home***”.
33. The policy states that it has been written “*with the Public Interest Disclosure Act 1998 in mind which was introduced to protect employees who blow the whistle about any wrong doings*”. It states: “*we wish to **encourage staff at all levels to keep their eyes open and to raise such concerns in a sound way to demonstrate and ensure good practice in all our activities***”. Examples of potential malpractice in the workplace include “*stealing, corruption, breach of contract, negligence, **danger to health and safety, abuse of those in care, breach of food safety/hygiene regulations, discrimination, pollution, unethical conduct and the cover up of any of these***”.
34. The section headed “raising concerns with the workplace” provides that “***an employee who has a concern should raise it whoever they feel comfortable with. This may be external of the home and not their own line manager. Employees should be assured that management will support all those who have an honest and reasonable suspicion that malpractice or wrong doing has occurred, is occurring or is likely to occur. They will be promised confidentiality if they so request and protected from reprisals. They are entitled to protection under employment legislation***”.
35. It also deals with malicious allegations and says the home will “be firm with those employees who make false or spurious allegations of a malicious nature. It warns that those staff could be open to disciplinary action and even dismissal depending on the circumstances. It assures staff that **those making allegations genuinely and who act reasonably and responsibly should have no fear or arbitrary decisions by the home management.**
36. The policy ends with the following statement:
“*We therefore need to know your concerns and we promise to:*
(1) **Respect confidentiality.**
(2) **Investigate thoroughly.**

- (3) Provide **support and protection** if necessary through alternative management.
- (4) Agree to **report back** on the outcome of investigations.
- (5) **Take the action proposed**".
37. Contact details are provided in the policy for Head Office, for Pearl Jackson (Operations Director), Jeremy Davies (Managing Director) and the CQC.
38. The claimants were not made aware of or referred to the policy during their employment. Ms Jackson was familiar with it (having drafted it) and Ms Hopkinson was familiar with it and understood its importance. As the 'Registered Care Home Manager' she had overall responsibility for running the home and was accountable to the CQC. It was clear that on paper the home, were encouraging and promoting the reporting of concerns promising those who did so, confidentiality and protection from any reprisals.
39. Miss Hopkinson said she or Ms Metcalf (her deputy) would induct all staff on the policy which was kept in the office. The other carers and registered nurses that gave evidence to the Tribunal said they were all aware of the policy and understood that it applied. It was the respondents position therefore that the policy was in place and applicable irrespective of the claimants' position in these proceedings.

First alleged protected disclosure

40. Mrs McGuire alleges she made her first 'protected disclosure' in November 2018, to Mrs Lewis. She told Mrs Lewis (senior registered nurse) that a resident (J) had been left unattended and that carers were not around to help residents. She *"was concerned that residents were being left to wait to be changed and washed as a matter of course due to the fact that carers were often not around to help as they had gone for cigarettes or had gone to the shops. The claimant expressed her shock at the lack of pads and the length of time that many residents were having to wait to be changed and she said that she felt that this was neglect and she thought that something should be done about it. The claimant thought that Val Lewis would take her concerns further and felt better for speaking up. The claimant considers that what she reported is a relevant disclosure under section 43B of the Employment Rights Act 1996"*.
41. Mrs Lewis denies any such report was made to her and that during the period the claimants were employed she was never approached with any "whistleblowing or allegations of neglect".
42. Although Mrs Lewis denies any report at all was made, for the reasons we consider in more detail for the third alleged disclosure, we preferred and accepted the claimant's account of the disclosure of information made to Mrs Lewis as set out above. Mrs McGuire's account was also consistent with the evidence of other carers who perceived her at the time as someone who was complaining to the seniors that carers were not doing their jobs and was making allegations of neglect. This was why the other carers viewed the claimants as trouble makers. Contrary to Mrs Lewis's position of having no knowledge of 'any allegations of neglect' something

must have been said to the seniors by other carers, for this view to be held by them.

43. Mrs Lewis was a 'senior' a part of the management and someone the claimant identified as a person she should report her concerns to. Mrs Lewis's did not demonstrate any understanding of or familiarity with the respondent's policies about raising 'suspected concerns of neglect' as part of the whistleblowing policy. The claimant was alerting the claimant to her concern of suspected neglect because she believed based on what she saw and experienced at work that there was a lack of pads/residents waiting too long to be changed/carers not doing their jobs.
44. The issues for the Tribunal to decide if a qualifying protected disclosure was made were: Did the claimants make the report?
 - 38.1. Did they disclose information?
 - 38.2. In their reasonable belief was it in the public interest?
 - 38.3. In their reasonable belief did it tend to show danger to health and safety/breach of a legal obligation or that one of these things was likely to be concealed within the meaning of section 43(b)(1) Employment Rights Act 1996?
45. We found a verbal report was made by the claimant telling Mrs Lewis her concerns of the neglect of residents waiting to be changed for too long/lack of pads/carers not doing their jobs. This falls within the definition of neglect used by the home of "***failing to take the right steps and care appropriately for any individual***" The claimant reasonably believed her disclosure was made in the public interest because she was concerned as a carer about the residents' care. She wanted to protect them from harm and to respect their dignity and privacy. She disclosed information which tends to show a relevant failure in relation to health and safety and a breach of the legal obligation she believed she had as a 'carer' to the residents.

2nd Alleged Protected Disclosure

46. Mrs McGuire alleges she told Miss Metcalfe that carer B was taking photos in the resident's room on 27 December 2018. Miss Metcalfe did not attend to give evidence but in her witness statement says that other than disclosure 5, she was unaware of any suspected abuse or neglect.
47. In cross-examination the claimant was asked about the photograph and she confirmed that at the time there was no resident in the room and she thought that carer B was taking photographs of 'broken things'. She felt that was inappropriate because it invaded the resident's privacy. She could not explain how she believed that was information tending to show a relevant failure and she accepted the photo might be taken to report the broken thing in the room.
48. The claimant might have thought that it was 'inappropriate' but the information she disclosed did not in our view tend to show she had a reasonable belief of a relevant failure of either a legal obligation/health and safety or that it was made in the public interest. It was not a protected disclosure.

3rd Alleged Protected Disclosure

49. The third protected disclosure Mrs McGuire relies on is telling Mrs Lewis that Carer P had thrown porridge on a resident(M) in late November/early December.
50. The claimant reported concerns about an incident where a vulnerable resident had reported to her that Carer P had thrown porridge over the resident and caused a mark to her chest. The claimant had been told by the resident that Carer P had thrown the porridge at her 'in a mood'. The claimant reported this incident and advised Mrs Lewis that she was worried about this carer's suitability to look after vulnerable residents.
51. We saw an incident/accident form in relation to this incident at page 110 in the bundle. Mrs Lewis very briefly deals with this incident at paragraph 3 of her statement and says:

"On 20 November 2018, an incident occurred involving a client named M. MG was found by myself and the visiting GP and Practice Matron Isabel Vickers during the ward round to have spilt porridge on herself by accident..... there was no other person involved or any abuse other than the fact that the porridge was hotter than usual and M lacked the capacity to recognise this".
52. In the incident form it records that M 'complained' hot porridge had fallen on her chest causing a red mark on her chest. At the bottom of the sheet, sometime after it had been completed by Mrs Lewis and Ms Metcalfe, Ms Hopkinson added the comment *"Supervision with Staff, in regards to, sitting resident up/serving at appropriate temperatures"*.
53. Mrs Lewis explained that breakfast would be served to residents anytime from 8am and a ward round would have taken place about 9.30am. She knew carer P had served M breakfast on that day but did not question her about the incident. She did not undertake any investigation to try to understand how it might have happened. It was put to her in cross examination that her account did not appear to treat this incident as a cause for concern. She appeared to blame the resident for lacking the capacity to recognise the porridge was too hot, rather than focusing on how the porridge had been served and who the carer was that had been involved in serving the porridge, to see if any issues of concern arose.
54. Mrs Lewis denies any report was made by to her by the claimant. She says there was no issue of concern that required investigation. She cannot explain the comment made of the resident 'complaining' to her, or why Miss Hopkinson would make the comment suggesting supervision was required as a 'corrective' action, if no other person was involved and there was no cause for concern for her at the time. She says Miss Hopkinson's comment was not on the report when she completed it and she was unaware of it.
55. The claimant says she reported what the resident had reported to her. Regardless of whether that report (based on what the resident had told the claimant) was right or wrong it had resulted in an injury to the resident. After that injury, no investigation was undertaken to establish the cause, leaving questions unanswered.

56. Another aspect of the evidence given by Mrs Lewis that caused us to doubt her evidence was in the inspection report carried out by Leeds City Council in February 2018. This same resident was observed eating lunch lying down, and it was noted as a 'concern'. This was a part of the report that had not been disclosed by Mrs Jackson until this hearing.
57. It was a 'noted' concern because it identified the danger to this resident observed as being unable to eat safely or properly in a lying down position. When Mrs Lewis was cross-examined about this, she said that the resident had a 'tendency to play with the controls of the bed' which is why she might have been found eating lying down on the date of the visit.
58. We agreed with Miss Almzedi's assessment that Mrs Lewis was trying to deflect any responsibility onto the resident to support her own failure to respond to what had happened in the way that she was required to under the respondent's policy. She did not recognise any need to investigate it further or to treat this incident seriously because she thought there was no cause for concern.
59. We found the claimant's account was more credible and were satisfied that she had made a verbal disclosure to Mrs Lewis reporting the resident 'complaining' about Carer P who had served her with porridge at breakfast that morning. If the incident was not of any concern why was it necessary for a subsequent note to be added to the accident record by Ms Hopkinson after it had been completed by Ms Lewis and Ms Metcalfe on 20.11.2018.
60. We accepted a report was made by the claimant to Mrs Lewis based on what the resident had reported to her involving Carer P. The resident suffered an injury. The claimant reasonably believed what she reported was information of suspected abuse or neglect and she was concerned about this carer's suitability to look after vulnerable residents. She was making an allegation of neglect against another carer. She made that report in the public interest. The information she disclosed to Mrs Lewis tends to show a relevant failure of the legal obligations of a carer and of an injury to a resident that had occurred in circumstances that required further investigation. It was reported as such by the claimant and was a protected disclosure.

4th Alleged Protected Disclosure

61. The next disclosure that the claimant relies upon is in late November/early December 2018 when she told Miss Metcalfe that a resident had been left with soiled pads and only changed when he went to bed.
62. At paragraph 14 of the claim form the claimant states that she reported issues concerning resident A who the claimant found in a very poor state sitting in soiled pants and garments. The claimant asked why he had not been changed and was advised that he was not being changed because he was going to bed after tea. The claimant raised this incident with Miss Metcalfe and advised her she was concerned at the state the resident was in effectively left with one pad on for hours and only changed when he went to bed. The claimant noted that Miss Metcalfe did not seem to be particularly interested and she felt uneasy at the lack of interest in what she felt was neglect of vulnerable elderly people. She considers that what

she reported was a relevant disclosure under section 43B of the ERA 1996.

63. We did not hear any evidence from Emma Metcalfe. She makes a general denial of “any reporting of any concerns by either of the claimants”. She does however refer to this particular resident at paragraph 8 of her witness statement and she states “*I’m familiar with a client named A and have never been approached by anyone regarding continence issues. The pads that we use are intended to hold up to 2 litres of urine and more frequent changing of pads may place the client at risk of skin damage due to the moisture extraction that occurs when changing pads. We were advised with this by the expert advisor during training completed at the end of October 2018*”.
64. Her statement therefore appears to defend a practice of not changing clients for a longer period based on the capacity of the pads to hold urine. We found it odd that she makes any reference at all to this client and the frequency of changing pads to try to justify the length of time that residents might wear the incontinence pads. That aspect of her evidence could have been explored further with her and her understanding of a ‘concern’ if she had attended the hearing to give evidence but she did not attend.
65. We accepted and preferred the claimant’s evidence. The claimant raised the matter with Miss Metcalfe because she was concerned this resident was being neglected in his personal hygiene care and she believed he was being left in that condition for an unreasonably long time. The claimant reasonably believed what she reported was information of suspected neglect. She made that report in the public interest and it did tend to show a relevant failure with regards to her legal obligations as a carer/ health and safety in relation to the neglect in this resident’s personal hygiene care.

5th Alleged Protected Disclosure

66. The claimant alleges that she told Miss Metcalfe on or around 1 December 2018, that when she passed carer B taking one resident D out to the front of the building for a cigarette, he was inappropriately dressed to go outside. The claimant was ‘astonished’ to see that resident D was just wearing a robe that was flapping loose and had no pants on. Instead his pad was visible and he had socks on and a little T shirt that was not covering his belly. The claimant could not believe that resident D was heading outside so the claimant stopped carer B and asked why resident D was going outside dressed as he was. She said: “don’t take him out like that please get him dressed”. The claimant then took resident D back to his room and dressed him properly with the assistance of another carer Meghan. When she was dressing D, she asked him why he did not ask to be dressed properly. He told her he did ask Carer B to get him dressed but she had ignored him. The claimant told Ms Metcalfe this had all been witnessed by Meghan.
67. In relation to this incident we know that the claimant sent a text to Miss Metcalfe on the 4 December 2018 and reported this verbally to her on 5 December 2018. Miss Metcalfe in her witness statement states: “*KM approached me on just one occasion. I was sent a text (4/12/18) to raise an issue that had allegedly occurred on 1 December 2018. I did see her*

later at work near the end of the shift on 5 December and **logged her grievance against another member of staff**. This issue was about B another carer. It was alleged by KM that Carer B was noted by her to be taking a client outside for a cigarette. She told me he had very little clothing on. She told me that he only had clothing thrown across the bottom half over his legs. KM went to tell me that she had **intercepted** this incident by stopping Carer B from taking him outside and then made sure that he was properly dressed. I documented this and referred the matter to Kelly on her return from holiday as there was **no evidence of abuse and it was an alleged near miss and not actually an occurrence so the manager would deal with it on her return**. In addition, I didn't believe that anyone had been placed at risk. I was pleased to hear that the safeguarding team also **upheld the decision that the concerns were unfounded and closed the case.**"

68. In relation to the final comment there is no reference to this incident in the safeguarding team report or of upholding any decision. What is clear from Miss Metcalfe's evidence is that she appears to corroborate the claimant's account that a 'near-miss' was reported because resident D was prevented from going outside by the claimant's interception.
69. Although there was a discrepancy in the claimant's witness account about where the 'interception' took place and much was made of that at the hearing, it was clear the claimant had reported this accurately at the time to Ms Metcalfe. It was described as a near miss because of the claimant's interception.
70. Miss Hopkinson's record of the interview with the claimant on 28 December 2018 (page 74 in the bundle) also corroborates the claimant's account.
71. The open question Miss Hopkinson asked the claimant is "*can you tell me what happened on 2 December 2018, in regards to resident D*". The claimant replies: "*B was walking towards the lift with resident D and I asked where he was going. D said he was going for a cigarette. I said he could not go outside dressed like that*".
72. Miss Hopkinson asks: "*Why? How was he dressed?*". The claimant replies: "*He had only a T shirt on his upper body and a pad on his lower half with his dressing gown thrown over his legs. It was freezing outside and I did not feel he was appropriately dressed. I asked B to change him and she completely ignored me so I took DH and got him ready myself. I asked D why he had not said anything to B. He said he had said something and she had ignored him and said no*".
Miss Hopkinson: "Can you tell me why this upset you?"
Claimant: "I would not be happy if that was my family. It was freezing outside. D is very thin anyway".
73. It is clear therefore that although the witness statement is inaccurate in part, the contemporaneous account provided by the claimant to Miss Metcalfe and to Miss Hopkinson supports the account the claimant relies upon.

74. The respondent's position on this alleged disclosure of information is that there was no protected disclosure because 'nothing happened'. In closing submissions, Mrs Jackson's advanced a different position she said there was no protected disclosure because it was the claimant who was going to take resident D outside inappropriately dressed, not Carer B. Neither position assists the respondent to answer the relevant questions as to whether a protected disclosure of information was made by the claimant to Ms Metcalfe on 5 December 2018.
75. There was a disclosure of information made by the claimant to Ms Metcalfe on 5 December 2018 and to Ms Hopkinson on 28 December 2018. Ms Metcalfe at the time records it as a 'near-miss' because of the claimant's intervention. Contrary to the respondent's procedures she treated that 'near miss' as a 'grievance against Carer B'. Ms Metcalfe was treating concerns properly raised of alleged neglect as a personal grievance about the carer. Her approach was shared by other carers who viewed allegations in the same way creating division and bad feeling towards the claimants for making these allegations. Ms Hopkinson elected to 'investigate' it and deemed that "no abuse had occurred". Ms Metcalfe did not interview Meghan (the carer the claimant identified as having witnessed the event) and said that by the time she investigated this that carer had been sacked and she made no attempt to interview her.
76. Neither- managers' responses to reports of a suspected concern of neglect were consistent with the homes whistleblowing policy. Whether they agreed or not with the claimant's account of events, the information the claimant was disclosing to them did tend to show that resident D was being neglected at the time of interception. The respondent's own definition of 'neglect' would include resident D's state of alleged inappropriate dress at the time the claimant became involved.
77. Miss Metcalfe's identification of report of a 'near miss' was accurate and as the Home Manager in the absence of Ms Hopkinson she should have investigated it promptly when it was reported rather than leaving it and labelling it as a grievance against Carer B. Miss Hopkinson also failed to follow the whistleblowing policy. When giving her evidence she showed no concern about her failure which was surprising given her role as the Registered Home Manager.
78. The promises made to whistle blowers are contained in that policy and when Ms Hopkinson was taken to the policies she accepted neither the Whistleblowing/Safeguarding policy had been followed in the way required and she could not explain that failure.
79. There was a delay from 5 December to 28 December 2018 when the claimant was interviewed about this allegation of neglect. Miss Hopkinson's explanation for this was that she only returned to work on 17 December 2018 and the first opportunity she had to speak to the claimant about it was on the 28 December and Carer B on 29 December 2018. She accepts however that when she is away Miss Metcalfe steps in as her deputy and is the person that could have dealt with the investigation in her absence to avoid any delay. The safeguarding policy requires "A comprehensive report will follow and detail the methodology adopted, statements from interviews and a conclusion. The lessons learnt will also

be added to the report **regardless of the outcome or indeed if proven or not**".

80. The claimant was cross-examined by Mrs Jackson about why it had been such an issue for her at the time in relation to this particular resident. She said it was because of her close relationship with resident D and because she cared about him and it was his interests that prompted her to raise this disclosure.
81. It was clear to the Tribunal that the claimant had a very close relationship to the residents at the home. Examples are her attachment to resident D and another resident that she took home with her on Christmas Day so that she could spend the day with the claimant and her family. She was making these disclosures because she was unhappy at the standard of care she saw the residents receiving at the Home based on the standards of care she believed they were entitled to receive and she was obliged to give them as a carer.
82. Even if the claimant was more sensitive to issues in the care home than others were, she reasonably believed that residents were being neglected or were potentially put at risk of harm. The claimant reasonably believed what she had reported was information about suspected neglect of resident D. She reasonably believed it was made in the public interest and it did tend to show a relevant failure with regards to her legal obligations as a carer, and for resident D's health and safety. The disclosure was protected.

6th Alleged Protected Disclosure

83. The sixth disclosure was not a new disclosure of information it was relied upon as the repeating to Miss Hopkinson of earlier disclosures and was not a separate disclosure of any new information.
84. Our conclusions are that five of the disclosures made by the claimant to her employer are protected disclosures and one was not.

Detriments alleged by Mrs McGuire:

Detriments involving Carer B

85. Dealing with the 3 detriments involving Carer B together: which are that she refused to work with the claimant and accused her of telling tales in late December 2018: she squared up to her: and she told Miss Hopkinson that the claimant had bullied her just before Christmas 2018.
86. This alleged treatment can be categorised more generally as alleged reprisals from a colleague against a whistle-blower. The respondent's policy envisages this type of treatment may occur and assures whistle blowers that they "**will be promised confidentiality if they so request and protected from reprisals. They are entitled to protection under employment legislation**". It also provides protection from **those making allegations genuinely and who act reasonably and responsibly should have no fear or arbitrary decisions by the home management.**
87. Val Lewis and Yasmin Akhtar (another registered nurse) part of the home management team refer to decisions they made because Carer B had made complaints to them about the claimant. Carer B told them she did

not want to work with the claimant and when she was asked to work with the claimant she complained to them so they moved her away. The claimant knew they had done that.

88. Ms Lewis understood that the reason why Carer B was unhappy was because of an altercation that had taken place between Carer B and the claimant on 21 December regarding an allegation the claimant had made about Carer B's care of resident D. She made her decision to move Carer B solely based on what Carer B had told her about the altercation without investigating the issue or checking if this had been reported to Ms Metcalfe and investigated.
89. Ms Akhtar provided evidence of another occasion when a decision was made by her to move the claimant based on what Carer B had told her about the claimant. She considered she needed to split the parties up to avoid any reoccurrence and to protect all parties given the previous allegations made by Carer B. She was aware of the allegations made against Carer B by the claimant involving resident D. She says she was unaware of any kind of work cliques that existed between staff, the only staff problem she was aware of was between Carer B and the claimant.
90. From both those accounts it was clear that it was Carer B's reporting of matters to the nurses that had influenced the decision they made and both nurses were aware of the disclosure the claimant had made relating to resident D at the time they moved her away. They were in effect taking Carer B's side against the claimant without investigating the matter further, making the sort of arbitrary decisions by managers the policy was designed to prevent.
91. The claimant and Carer B refer to the incident on 21 December 2018 in their witness statements. Both were interviewed. Carer B was interviewed by Miss Hopkinson on 29 December 2018. The claimant was interviewed by Miss Hopkinson on 28 December 2018.
92. In the notes of the interview with the claimant, Ms Hopkinson asked the claimant to tell her what happened on 21 December 2018. The claimant's response was: *"I was stood in the kitchen preparing a resident's meal when Carer B came straight up to me in my face and asked me if we're ok. I said we're not ok you upset me the other day. I tried to walk away but Carer B came after me. I felt she was goading me like she wanted an argument. She asked me why aren't we good and I said because of resident D and the incident you really upset me. Carer B then put her hand up really close to my face. She was smirking and then turned to walk away". Ms Hopkinson asked the claimant if there any further incidents that day. The claimant replied: "no, but the next day 22 December 2018 I was aware that B was allocated to work upstairs and didn't, a new starter TM came upstairs and told me that the girl downstairs is refusing to work up here because of you."*
- The claimant ended the interview saying: *"I just want to come to work to do my job and care for the residents"*.
93. The claimant was never shown the notes of her interview with Miss Hopkinson until these proceedings. She confirmed the record above was

accurate except for the reference to the word 'ok' which should have said 'good'.

94. The interview Miss Hopkinson had with Carer B on 29 December 2019 was at page 70 in the bundle. Miss Hopkinson asked Carer B to tell her about what happened on 22 December 2018 when she was allocated to work upstairs. Carer B replied: *"Yes. YA nurse changed the allocation as she was aware of the upset from the day before. I did not refuse to work upstairs. It was the nurse's decision"*.
95. In that interview Miss Hopkinson also asked Carer B if she recalled an incident on 2/12/19 involving resident D identifying the claimant as the staff member that had complained about her. Carer B's initial response was that she did not recall any incident. She did however then go on to recall the claimant putting trousers on resident D saying *"D if your daughter was here she would be kicking off"*. Carer B gives no context in her interview to explain why the claimant would have made such a comment or what it was that would have made the resident D's daughter 'kick off'.
96. It was clear therefore that on 29/12/2018, Carer B was made aware by Miss Hopkinson that an allegation of neglect had been made against her by the claimant, and in response she complained to Ms Hopkinson that the claimant was 'bullying her'. Carer B told Miss Hopkinson she could not work with the claimant.
97. Oddly, despite Carer B's complete inability to recall what had happened at the time, she was able to provide a very detailed account of that incident in her witness statement. When Miss Almzedi questioned Carer B she was unable to explain how her recollection had improved so much with the passage of time. She now recalls *"resident D was sat in a wheelchair on her arrival wearing an incontinence wrap (like a nappy pad) and an open dressing gown. As I left the bedroom I noted Meghan followed me and pushed DH just outside the bedroom door. I returned to find KM(claimant) in the bedroom as well as Meghan with the client. I dropped off the sheets thinking that there was a crowd and the bedroom is not particularly big which would have hampered efforts to offer personal care. I went on to complete my own allocated work. I did take note that KM was stating that D's family would not appreciate him going out as he was"*.
98. Carer B's did 'take note' the claimant was raising a concern about resident D 'not going out' which was consistent with the claimant account. The difference is that, at this hearing, for the first time, the respondent is suggesting it was the claimant who was going to take resident D out inappropriately dressed. She was the one neglecting resident D, not Carer B.
99. After 2 December 2018, Carer B was absent from work until 21 December 2018. The claimant having reported this matter to Ms Metcalf on 5 December, had not expected to see Carer B at work. Carer B in her statement refers to the claimant being angry. She recalls 'smirking' at the claimant. She recalls the claimant saying to her: *"you took D out naked"* and her response was *"are you joking, no I can't recall"*. Carer B recalls putting her hands up in 'surrender' and that she then reported this incident to Emma Metcalf and Val Lewis. Ms Lewis allowed her to remain

downstairs for the rest of the shift, so she did not have to work with the claimant.

100. Another Carer, Carer R witnessed this exchange between the claimant and Carer B and told Ms Hopkinson in her interview on 29/12/2018, that the claimant had said to Carer B "*No. No. No. I know what you did you neglected a resident*". Carer R specifically identifies the claimant's issue was 'neglect' by Carer B.
101. The claimant had raised 'neglect' concerns on 5 December 2018, to Ms Metcalf and on 29 December 2018 she tells Miss Hopkinson why she was concerned about resident D. Carer R and Carer B when interviewed at the time refer to it as an allegation of neglect made against Carer B by the claimant. Until these proceedings no-one has identified it as an allegation that the claimant was the one neglecting resident D by taking him out inappropriately dressed. This makes the respondent's case as put at this hearing completely implausible.
102. The claimant's subsequent actions were also consistent with her reporting her concerns and continuing to express concerns about resident D thereafter. She was clearly upset and angry about his treatment because she cared about him. We preferred the claimant's account of the events, to that of Carer B. We did not find Carer B to be a credible witness. Her account simply did not make any sense. Her recollection of events was self-serving, intended to deflect blame onto the claimant to support the case advanced by the respondent at this hearing.
103. The detriments against Carer B were made out. The claimant was aware Carer B had refused to work with her on 21 December 2019 that she had been moved by the nurses because of that refusal. Carer B did view the claimant as telling tales and had complained about the claimant to the nurses to Miss Metcalfe and to Ms Hopkinson. Carer B had squared up to the claimant on 21 December, using her hands and smirking when the claimant confronted her, about what she believed carer B had done to resident D. Carer B also told Ms Hopkinson she could not work with the claimant on 29 December 2018 and had accused the claimant of bullying her. The claimant reasonably believed she was being disadvantaged by the behaviour not only of Carer B towards her but by management siding with Carer B against her.

Detriment of Miss Hopkinson moving the claimant.

104. Dealing next with the alleged detriment that Miss Hopkinson moved the claimant to work downstairs after Christmas 2018. What was clear from the evidence that the management team Mrs Lewis and Ms Akhtar and Miss Metcalfe had all taken Carer B's side at a very early stage. The claimant did not return to work upstairs after 29 December 2018. Miss Hopkinson's explanation is that carers were due to be moved around so that they could get experience in different areas of the home and that was the reason why the claimant was moved. The claimant says no one else was moved and no evidence was provided of any other carers moved at the same time as the claimant. We did not accept Miss Hopkinson's explanation that the claimant was moved downstairs as part of a general move of staff to other locations. The claimant was subjected to this detriment by Ms Hopkinson.

Detriment of treatment by other carers and carer P

105. Dealing then with the other named carers (Sophie Goulding, Jazz Acktar, Michelle Webb and Sandeep Kaur) and Carer P and the allegations they subjected her to detriments by giving her the 'cold shoulder'. The other carers refused to work with her, did not talk to her and accusing her of telling tales in December 2018. Carer P refused to work with her and gave the claimant dirty looks in January 2019.
106. Of those carers named we heard evidence from Sophie Goulding only. She refers to both claimants 'belittling' her by making allegations that she wasn't doing her job properly. They were alleging neglect when it is a job that she had done for many years. She felt this was especially bad coming from the new starters who were telling tales about her and other carers to seniors alleging "we were not doing our job as carers". She described how at work the new starters (the claimants) were separated from the rest of the carers. A 'them and us' culture existed which rings true with the staff surveys completed, after the claimants left in January 2019. The surveys convey a culture of gossiping and bitching where effectively there were two camps. The claimants viewed as trouble makers telling tales to the seniors about the other carers in one camp and the rest of the carers in the other camp.
107. Ms Skitt refers to one carer calling her a 'grass' and refusing to work with her. Ms McGuire refers to being described as someone who 'tells tales' because she was reporting concerns to management/senior nurses. Carers were refusing to work with them because they perceived the claimants making complaints against them, this bad feeling was spread by gossip, not helped by management. The response by the management gave the other carers permission to treat the claimants badly. This would have been divisive and allowed a workplace culture of isolation and cold shouldering of the claimants to continue.
108. In that context the claimant allegations against Carer P refusing to work with the claimant and giving her dirty looks whenever she saw her, also ring true. The claimant was earmarked as a trouble maker for making allegations of neglect against the other carers. Although we did not hear evidence from Carer P, the other evidence we heard from Sophie Goulding and Brandy Rumsey supports this allegation also. It fits in with that picture of isolation and division allowed to continue by management action.
109. We accepted the claimant's account. The claimant had been identified by the other carers as 'telling tales' and making allegations of neglect. It was for the respondent as the employer to fulfil the promise made in the whistleblowing policy to protect the claimant from any reprisals for reporting such concerns. We were satisfied that the detriment alleged against the other carers and Carer P, is made out.

Circumstances leading to Mrs McGuire's resignation

110. After Christmas, the claimant was called into the office and told she would be working downstairs until further notice. She was unhappy and felt this was deliberately done because of the concerns she had raised about the residents' care. She had been voted employee of the month on or around

16 December 2018 because of the work she was doing and her interaction with residents, and there was no good reason given for moving her.

111. The claimant felt that the decision not to address her concerns and to move her was done to make her workplace uncomfortable and ultimately to force her to leave her job.
112. In January 2019, she went to see Miss Hopkinson and told her that she felt the residents were vulnerable and at risk of neglect and nothing was being done. The claimant pointed to the fact that there was a witness Meghan who could corroborate her account. At this point Miss Hopkinson told the claimant that Meghan had been sacked for poor attendance.
113. Miss Hopkinson confirmed at this hearing that Meghan had been dismissed on 12 December 2018, but could not explain why she had not been interviewed straight away on or after 5 December 2018 when the allegation of neglect had first been reported to Ms Metcalfe. The claimant had not been shown any notes of any interviews and had not been provided with an investigation outcome. The claimant says that Miss Hopkinson told her that there wasn't anything she could do about it now, that she had told Mrs Jackson and that she would sort things out. The claimant felt that she was being fobbed off and her concerns were being brushed under the carpet. She was also unhappy at being cold shouldered by her colleagues and was apprehensive about her future.
114. On 9 January 2019, the claimant spoke to Ms Metcalfe and told her she felt nothing was being done, nothing had changed. She informed Miss Metcalfe that she was going to report this matter to the CQC because nothing she had reported internally had been dealt with. She then resigned from her employment.
115. The claimant reported her concerns directly to the CQC on 9 January 2019. In a telephone call to Pearl Jackson on that day she describes telling Miss Jackson about the concerns she had about the home. After her resignation she says that she was subject to what she can only describe as "horrible and intimidating" treatment by the respondent. That treatment includes Mrs Jackson sending a letter that was intimidating and threatening, making spurious allegations against her and Mr Taylors telephone call.

Post- Employment Detriments against Mrs Jackson

116. Mrs Jackson explained the letter she sent was drafted after her telephone call with the claimant on 9 January 2019. The call took place while she was in her car. She asked her secretary to type the letter that she dictated to her over the phone after the call. The next day (10/1/2019) her secretary read the letter out to her and asked her if she still wanted to send it. Mrs Jackson confirmed that she did, the secretary signed it and sent it on her behalf.
117. Mrs Jackson had the opportunity to reflect upon the letter before it was sent to the claimant. The letter dated 10 January states as follows:

"Dear Karen,

Further to our telephone conversation this week I note your allegations and will of course look into matters and the points that you have raised but I have to state for the record you appear to be aggrieved on your departure

from Charlton Court and **evidently vindictive towards senior management.**

*So far, my initial investigation reveals that you have indeed **inflated many of the issues using every day occurrences to fuel what I believe to be malicious activity** and the first situation that you raised with me was simply untrue. Irrespective of my thoughts the matter will be subject to an **independent investigation**. I also note that **your continued attempts through social media and text messages to other staff are intended to lobby others to join what would appear to be vindictive and malicious activity.***

***Our board of directors have empowered me to take whatever steps are necessary in order to protect the home as well as its management. This includes, if needs be, to seek an injunction against you which is not merely a threat.** This sort of behaviour is not fitting of a care worker and I draw your attention to the code of conduct. Of course, you did abandon duty which is equally unacceptable behaviour of a care worker.*

Given your activity and text to our staff I have taken the liberty of informing CQC of your intended action.

Yours sincerely”

Mrs Jackson.

118. Mrs Jackson’s deals with the letter at paragraph 6 of her witness statement.

“I was also made aware by the home manager Kelly Hopkinson that there was a raft of negative social media comments made about the home staff and the workers colluding to ensure the maximum damage to the home in complete contradiction to the carer’s code of conduct, this appeared to be fuelled by Karen McGuire some of which included upsetting relatives and breaching GDPR.

*I therefore wrote the letter that Mrs McGuire now suggests is bullying. I was made aware by Kelly Hopkinson who is the manager of Charlton Court that both CQC and safeguarding authorities were also investigating a number of allegations which had been made anonymously but **some of the issues were clearly the same ones raised by Karen McGuire to me.** A number of officers descended upon the home unannounced in order to complete their own investigations. A report followed the conclusion. Emails were sent between the parties also. **Naturally we were delighted that none of the allegations were found to be substantiated by all the external investigations, further reinforcing our belief that Karen McGuire’s activity was indeed malicious and there was a campaign to discredit the home”***

119. Mrs Jackson accepts she had carried out no investigation at all before sending the letter. She relied solely on information provided to her by Miss Hopkinson. She had been told about resident D and asserts at this hearing that the claimant was responsible for that wrongdoing. Mrs Jackson refers to social media and texts and the claimant colluding with other staff, and the message we were taken to was at page 219 in the bundle from the claimant to a former colleague which says:

“Can you call Emma Hatfield from CQC about all the things you witness. Her number is X. I’ve just called her. She can’t call you. You can say it all in confidence as you still work there. I need these residents to be safe and cared for”.

120. That was the only text message that the respondent disclosed which it relied upon to support the case it presents at this Tribunal. There is nothing in that text message that would support Mrs Jackson’s assertion that the claimant was colluding to ensure the maximum damage to the home. The recipient of the text was free to either contact the CQC or not. They were being invited to tell the CQC what they had witnessed and nothing more. The issue for the claimant is clear from her message she was concerned about the safety/care of the residents because she no longer worked there.
121. It is unfortunate that Mrs Jackson did not take the time to pause and consider her response before sending it. That was a theme that we saw throughout her evidence and presentation of the case. She did not listen to the question before answering and she did not heed guidance given to her, by the Tribunal to pause and think before answering questions. She continued to make very serious personal accusations against the claimants. Even when it was clear to her from the evidence given, particularly by Miss Hopkinson, that the respondent had not in fact followed the whistle blowing policies and procedures that she had drafted, she did not defer from her approach.
122. Reading the letter, it was clear the tone was intimidating and threatening. In cross-examination when it was put to Mrs Jackson that the purpose of the letter was to intimidate and threaten the claimant so that she would not take any further action. Her angry response was *“well it didn’t stop her did it”*. Her answer discloses her motive was retaliatory because of the allegations the claimant made. Mrs Jackson intended the letter to frighten the claimant ‘off’ by telling the claimant she would ‘take whatever steps were necessary’ backed by the board of directors threatening legal action. She had also taken against the claimant based on only one side of the story. Her mind was made up before any investigation. We found the detriment as alleged is made out against Mrs Jackson and the home as the employer.
123. Miss Almzedi suggested to Mrs Jackson that she could have sent a much more neutral letter telling the claimant that there would be an investigation, when it would happen, how it would happen, who would conduct it and what the ex-employer was trying to achieve from that investigation. This could have assured the claimant her complaints were being taken seriously without the need to make any threats. She would then be fully informed before any further contact was made of the next steps in an open and transparent way to avoid any further complaints. Mrs Jackson does not accept, even upon reflection that she should have done that.
124. Mrs Jackson then instructed Mr Taylor to carry out an ‘investigation’. She describes him as “the independent and impartial investigator”. He is not an employee of the respondent. He is used as an agent whenever required to undertake specific projects like fire evacuation prevention training. She says in her statement: *“I suggested to him that he should commence the*

*work by calling Karen to identify in detail the issues as I was driving and could not record them all. I believe this is what he attempted to do but he was **ignored** and sent me a copy of the text message”.*

Detriment involving Mr Taylor

125. This then leads to the detriment alleged against Mrs Jackson involving Mr Taylor. The claimant alleges that Mrs Jackson instructed Mr Taylor to approach her and question her purporting to be from the CQC, accusing her of theft, insisting she had to attend a meeting with him and texting her (the events described in paragraphs 44 to 47 of the claim form). Those paragraphs are repeated in the witness statement in which the claimant gives a very detailed account of her telephone call with Mr Taylor. The respondents were fully aware of the allegations from the claim form and knew the telephone call was pleaded as a detriment.
126. In those circumstances you would expect that Mrs Jackson would ensure that Mr Taylor’s witness statement provided some detail about the instructions he received from Mrs Jackson, the ambit of his authority and the call he made to the claimant following those instructions. His witness statement makes no reference at all to the call made by him to the claimant and was in our view deliberately misleading. He says at paragraph 8: *“I was informed that she would not talk to me but nevertheless I sent her a text on the number I had been provided. I was asked to carry out a safeguarding investigation in January 2019. I was made aware that the allegations were being made by Karen McGuire a carer who had walked out of work on 9 January 2019”.*
127. Mr Taylor made a correction to his statement at the beginning of his evidence by adding a sentence to his paragraph 6 to say: *“I contacted her by telephone on 10 January 2019”.* In his witness statement he did not offer any details of that conversation. We found Mr Taylor was being deliberately evasive about the telephone call, firstly by not referring to it at all in his witness statement, implying he was ‘informed’ that the claimant would not talk to him, when he had spoken to her directly and knew exactly what had happened. Secondly by only including the fact of the call at all as a ‘correction’ to his statement when he knew it was the reason he was called to give evidence.
128. Mr Taylor has 31 years of experience as a police officer rising to the rank of Detective Chief Superintendent before retiring. He tells the tribunal he has a law degree. He has worked for ‘ADL Care Plc’ for the last 5 years when ‘they’ commission work from him ‘usually through Pearl Jackson the Operations Director of ADL Plc’. He was fully aware of the importance of that telephone call prior to this hearing because it was the only alleged detriment that involved him, yet he chose not to deal with it at all in his statement. The statement prepared for these proceedings ends with a ‘statement of truth’ signed on 18 September 2019.
129. We were surprised given Mr Taylor’s long experience in the police force, which would have included taking statements, that he was unable to provide a statement dealing truthfully with the matters he was required to address, to assist the Tribunal.

130. Given the conversation that had taken place between Mrs Jackson and the claimant prior to her call with Mr Taylor and the tone of the letter that followed, it is likely that Mr Taylor would have understood that Mrs Jackson was angry with the claimant and wanted to protect the home at any cost. She had taken against the claimant and wanted his help given the allegations made and CQC's involvement. His instructions would have included Mrs Jacksons expressing her views about the claimant in the same tone as her letter.
131. The claimant's witness statement accurately reflects what was said to her by Mr Taylor in that call and we set it out in full because we accept it in its entirety.

"I received a phone call from a man who called and introduced himself as the head of the whistle blowing team at CQC. However, when he was talking to me I felt that something was not quite right. I was taken aback by the tone that the caller adopted and became more suspicious of him as the call carried on.

He was very forceful in the way that he spoke to me not professional or calm. He was telling me that I needed to tell him everything about what I'd reported and leave nothing out and that if I didn't tell him everything that there would be consequences. This made me smell a rat to be honest, I'd not encountered this kind of attitude from CQC before. I just felt that the caller was acting in a manner that no professional organisation representative would. As the male voice carried on speaking I thought that I recognised it, and then realised that this was the voice of the man who worked for Charlton Court and who had in the past carried out the fire training. As soon as I realised this I said to him I know who you are, you aren't from CQC you work for Charlton Court. You carry on the fire training for Pearl and his name came to me and I said your Bob Taylor. Mr Taylor stopped talking and seemed shocked to be challenged and I again said to him you don't work for the CQC. Mr Taylor then admitted he didn't work for the CQC but then proceeded to tell me it was the same thing in that he was a private investigator and he was conducting an investigation into matters. Mr Taylor told me that I had to tell him what I'd reported to the CQC. I was also told by Mr Taylor that I had to attend at Charlton Court to be interviewed. I said to Mr Taylor I didn't have to attend Charlton Court to be interviewed. It was wrong for him to suggest that I had to do this and make out it was compulsory. I was very unhappy about how he was speaking to me and thought that it was utterly outrageous that he'd pretended to be from the CQC in the first place. I didn't want to carry on the conversation with him and I told him that I didn't care for how I was being spoken to and advised that I'd reported my concerns to the home and to the CQC already and the CQC would deal with the matter now. Mr Taylor shocked me he would not take no for an answer. I found the call to be extremely intimidating and threatening when Mr Taylor saying a number of times that the home was going to take steps needed to protect the home and directors and that I must tell him everything that I'd reported. Mr Taylor seemed very annoyed when I advised him that I would not coming in to be interviewed and then he proceeded to accuse me of stealing confidential documents to which I said don't be ridiculous I've done no such thing. You're just trying to intimidate me don't call me again".

132. The claimant reasonably perceived the call as 'extremely intimidating and threatening'. We found the detriment is made out against Mr Taylor acting as the agent of Mrs Jackson on behalf of the home. This detriment is therefore made out against all 3 respondents.

Detriment of late payment of wages

133. This detriment complaint is made against Mrs Jackson and/or Miss Hopkinson for not paying the claimant's wages on time in January or February 2019. Both claimants expected to be paid on or around 7 February 2019 and they were in fact paid a week later. The cheque they received after 7 February had cleared on or about 12 February 2019. Mrs Jackson's explanation for this is that for 'leavers' a cheque is issued a week after the normal BACS pay date which would have been 7 February 2019. The cheque was signed by the appropriate persons and then posted to the claimant. We accepted that was the administration process involved in the payment of final salary to leavers. By posting the cheque some delay was expected. Mrs Jackson made the point that the delay was in fact minimal taking into account the process involved. She said that if the respondents had wanted to delay payment as a detriment they would have delayed for a longer period of time.
134. We accepted Mrs Jackson's evidence that the payment of the cheque and timing was dictated by the administrative process and the process followed was the same for any leaver and would reasonably take the time it did. The claimants were not subjected to a detriment in the late payment of wages.

Detriment of negative verbal reference

135. The final alleged detriment is that Miss Hopkinson provided a negative reference for Mrs McGuire to her new employer. After resigning, she did manage to find employment at another care home. Mrs McGuire attended the induction, everything went well, she was due to start that employment and then was told that because of a negative reference from Miss Hopkinson that she was 'not suitable'. The offer of employment was withdrawn. She then contacted Miss Hopkinson to ask her about the bad reference that had been provided. Miss Hopkinson recalls being contacted by the claimant about a 'bad reference' but she was unable to speak to the claimant at the time. She says she had no further contact and denies she provided a bad reference.
136. We did not accept that evidence and preferred the evidence of the claimant. She had a prospective employer keen to employ her who only withdrew the offer after an induction process. In those circumstances some contact was likely between the old and new employer and the claimant immediately relayed what she had been told to Ms Hopkinson. The claimant's call referring to a bad reference and the offer being withdrawn are indicators that something must have happened to change the new employers mind. Although Ms Hopkinson denies this happened we did not find her evidence credible. We were satisfied that it was likely on the balance of probabilities that Miss Hopkinson gave the claimant's prospective employer a negative verbal reference telling them she was not suitable resulting in the claimant losing that employment. The detriment is made out.

Miss T Skitt complaints

137. Miss Skitt alleges 4 protected disclosures were made internally to her employer and that she made an external disclosure reporting her concerns to the CQC in January 2019. Again, we will deal with the internal disclosures first, in our findings of fact because these internal disclosures are relied upon by the claimant for all the detriments alleged against the employer during her employment. She does not make any allegations against Mrs Jackson as a separate respondent.
138. Miss Skitt alleges the following disclosures were made by her to her employer:
- 1 Telling Nicky Kent (a senior carer) that a resident with soiled pads had been taken to a social event unchanged, that carers had been taking cigarette breaks and were unwilling to help and that this had happened in December 2018 (claim form paragraph 8).
 - 2 Telling Nicky Kent that a resident was being left in an unsuitable chair in December 2018.
 - 3 Telling Nicky Kent that a resident was being left in bed most of the day because carers did not want to change her in December 2018 (claim form paragraph 11).
 - 4 Telling the same things to Miss Hopkinson and/or Miss Metcalfe in December 2018 (claim form paragraph 12).
139. Miss Skitt alleges she was subjected to the following 4 detriments on the grounds of her protected disclosures of:
1. Her colleagues making her feel uncomfortable, isolating her and refusing to work with her.
 2. Miss Metcalfe, commenting to on 9 January 2019 “you’re going too”.
 3. Miss Hopkinson not investigating her concerns from December 2018 onwards.
 4. Miss Hopkinson and/or Mrs Jackson not making her final payments on time in January/February 2019.
 5. Miss Hopkinson and/or Mrs Jackson providing her with a negative reference after she left.

Alleged Protected Disclosures 1 and 2

140. For the first alleged the claimant gives a detailed account of the information she alleges was disclosed to Nicky Kent. Resident P had soiled himself and his pad and trousers were ‘sodden’. The resident was upset and the claimant felt dreadful that this had happened. She was shocked that rather than change P, carers had wheeled him in his chair into the resident’s hall where a band was playing. This left resident P in a dreadful state in the middle of a social event. The claimant had been unable to change him on her own because she needed 2 carers to change him. She asked other carers, Andrea and Linda, who would not assist. The claimant felt that this

situation violated P's dignity and it upset and frustrated her. In the end the claimant shouted out for help loudly and only then, did she manage to get someone to help her change P.

141. The claimant reported this incident to Nicky Kent that day. She advised that she felt this was neglect and this was not the first time that she had noted that residents were not being changed when they needed to be and they were being left for too long due to the wilful refusal of some staff to assist with two-person changes. The claimant in the end was assisted by a carer called Ruth who helped her to change resident P. The claimant was very upset at what happened and the fact that when she was changing him, he was crying and felt humiliated at what had happened.
142. The claimant also raised a concern with Nicky Kent that resident P was being left on an unsuitable chair by carers who could not be bothered to use the hoist to position P in a special chair. Instead P was regularly being sat on an ordinary chair. The claimant had come on duty and found this to be the case on a number of occasions (alleged disclosure 2).
143. Miss Skitt was asked if she had ever previously 'whistle blown'. She told us she had worked as a carer going to service user's homes before working for the home. She suspected a family member was stealing money from one of the service users she attended. She reported this to the police, the family member was prosecuted. Her employer had supported her in the reporting of her concerns. She reported it because she believed that if there is 'wrong doing' and you suspect it is occurring you cannot ignore it. Miss Skitt did not benefit from making the disclosure to the police she acted out of concern for the service user.
144. For these alleged disclosures the respondents knew it was important to have Nicky Kent, the senior carer named, to give evidence if they wanted to challenge the claimant's account. We did not have a witness statement for Ms Kent.
145. Miss Skitt's maintained her account under cross-examination. Although there was some confusion on her part as to the date of the social event (Christmas Eve or Christmas Day) that confusion did not change the substance of the complaint she made about resident P's treatment.
146. Miss Hopkinson tells us that no investigation was carried out at the time because she says no report was made to Nicky Kent about this resident. She does however, include in the bundle notes of interviews she carried out in April 2019, after this claim was presented. The individuals interviewed were Ruth Hay, Linda Debenham and Andrea Ogden. Ms Ogden confirms that she was working on Christmas Eve when an entertainer was on, in the downstairs lounge. She recalls Tracy Skitt had asked her if she could assist her to take resident P to the toilet. She told Miss Skitt she could not help and as soon as another member of staff arrived he would be taken to the toilet. She says resident P was fine with this and not long after that Ruth Hay came in and helped Tracy take him to the toilet. She says the resident was not upset or distressed and confirmed resident P required two staff members to assist him with elimination. Ms Hay recalls being asked by

Tracy Skitt on entering the lounge to assist her with taking resident P to the toilet which she did immediately. She said the resident was fine and was not distressed.

147. Although we didn't hear from any of those individuals they do corroborate the claimant raising concerns involving resident P. We accepted and preferred the claimant's account a report was made to Nicky Kent expressing concerns that resident P had soiled himself and she was trying to seek assistance to take this resident to the toilet. She had requested help from other carers who refused to help. She had to wait until Ms Hay eventually helped her take him to the toilet. We accept the claimant's account of the incident and of the report she made to Nicky Kent. The claimant reasonably believed the information she was disclosing to Nicky was about suspected neglect of resident P, who she believed was unreasonably left sitting in soiled wet clothing. She made that disclosure in the public interest and was disclosing information which tends to show a relevant failure in relation to the alleged neglect of the resident which she believed was a breach of the legal obligation she had as a 'carer' to the resident. It was a protected disclosure.

Alleged Protected Disclosure 3

148. Miss Skitt alleges that in December 2018, she complained to Nicky Kent that resident B was being left in bed most of the day because carers did not want to change her.
149. We had no evidence from Ms Kent on this disclosure. We accepted the claimant's account of the report she made. She reasonably believed that the resident was being neglected by being left in bed in those circumstances. She reasonably believed the information she was disclosing to Ms Kent was in the public interest. She reasonably believed it tends to show a relevant failure in the possible neglect of the resident which was she believed a breach of her legal obligation as a 'carer' to the resident.

Alleged Protected Disclosure 4

150. Miss Skitt alleges that in December 2018, she told Miss Hopkinson that residents were not being washed and were being left in bed against their wishes and/or being left soiled.
151. The claimant was repeating information she had already reported to Nicky Senior and this was not a new disclosure of information. She told Miss Hopkinson that she felt some of the staff were neglecting the residents and it needed sorted out straightaway. Miss Hopkinson told her that she would sort it out and the claimant trusted her to sort things out but soon began to lose faith that anything would change in terms of sorting this out. The claimant also believed that Miss Hopkinson had told her colleagues that she had complained about them alleging neglect. One carer calling her a 'grass' and refused to work with her.
152. We had already found that Miss Hopkinson had disclosed the allegation of neglect made by Mrs McGuire to Carer B. She would have done the same in relation to Miss Skitt's allegations of neglect. It was common knowledge

amongst the other carers the seniors and management that the 2 claimants were making allegations of neglect against the other carers.

153. Miss Hopkinson denies that Miss Skitt raised any concerns with her and in paragraph 6 of her witness statement asserts she is “*fully aware of the complaints and the whistle blowing process and always follow these and act professionally*”. Her assertion is not supported by our findings of fact in relation to Mrs McGuire and her own acceptance that she had not followed the process.

Detriment 1: Other carers isolated her and refused to work with her.

154. The first detriment that Miss Skitt relies upon is that her colleagues “*made her feel uncomfortable, isolated her and refused to work with her*”. She describes how in January 2019 she was feeling awful for the residents and finding it hard to go to work and was on occasion absent from work. She was experiencing animosity at work and was being given the cold shoulder by colleagues who now viewed her as a grass. She got dirty looks and was ignored, she would say good morning and hello and there was nothing coming back not even an acknowledgement. If she asked a question or requested assistance she was ignored. Some of the staff refused to work with her.
155. The staff surveys support this view as did the evidence of Brandy Rumsey and Sophie Goulding and Mrs McGuire. There was a lot of bad feeling towards the new carers who were perceived to be telling tales to management/making allegations against the other carers of neglect/not doing their job properly. Based on our findings of fact of the atmosphere generally at work towards the two claimants, and Miss Skitt’s evidence, which we accepted we found that this detriment was made out. Miss Skitt was made to feel uncomfortable she was ignored and isolated by the other carers who refused to work with her.

Detriment 2: comment by Miss Metcalfe.

156. The second detriment Miss Skitt alleges is that on 9 January 2019, Miss Metcalfe made a comment to her of ‘you’re going too’ before she left her employment that day.
157. Mrs McGuire confirmed that when she resigned she told Ms Metcalfe that others might follow referring to Miss Skitt/Ms Hodgson (the other claimants). It was that conversation that would have prompted Ms Metcalfe to make the enquiry. Miss Skitt accepted that the comment made in that context was understandable. This was not a detriment but an enquiry made of Miss Skitt to see if she was leaving because of what Mrs McGuire had said before she left. Miss Skitt did not return to work after the 9 January 2019. We did not find that Miss Skitt was subjected to a detriment in those circumstances.

Detriment 3: Miss Hopkinson’s failure to investigate her concerns.

158. The third alleged detriment Miss Skitt complains about is that Miss Hopkinson did not investigate the concerns she raised with her from December 2018 onwards. Miss Hopkinson denies any report was made to her. We have not found Miss Hopkinson to be a reliable witness generally, and on this dispute, we prefer and accept Miss Skitt’s account. We found that the concerns had been reported to Miss Kent initially and then to Miss

Hopkinson. Those concerns were not investigated, as they should have been under the homes policies and procedures leaving the claimant unprotected and unsupported when other carers knew she had complained about them and had referred to her as a 'grass'. The detriment is made out.

Detriment 4: delay in paying final wages

159. The fourth alleged detriment is that Miss Hopkinson and/or Mrs Jackson delayed paying Miss Skitt her final wages. We refer to our findings on this in relation to Mrs McGuire, which also apply to Miss Skitt. The payments for leavers are by cheque not BACS payment and were delayed by a week. This delay was the time it took for the cheque to be issued cashed and cleared because of the administrative process that applies. That process is independent of Miss Hopkinson or Mrs Jackson. As Mrs Jackson said in her submissions if 'they' wanted to delay it deliberately it would have been a much longer delay. The detriment is not made out

Detriment 5: negative reference provided by Miss Hopkinson

160. The final detriment Miss Skitt relies upon is that Miss Hopkinson provided a negative reference to her new employer on 12 February 2019. Miss Skitt describes this reference as 'petty' and an attempt to cause her trouble because she had blown the whistle. She also suggests that the termination letter has been created for the purposes of this Tribunal.

161. Miss Hopkinson's evidence was that on 11 January 2019 before she supplied that reference she had dismissed the claimant. She relies upon a letter of dismissal (page 64). Miss Skitt never received that letter and was unaware of any 'dismissal'. The letter in the bundle is signed by Miss Hopkinson. It states that Miss Skitt's employment had been terminated during her trial/probationary period for not returning to work after the 9 January 2019.

162. The reference provided by Miss Hopkinson is completed on behalf of the company "ADL Care Ltd". She confirms the start date of employment was 4 December 2008. The leaving date is 9 January 2019 and the reason for leaving is "unknown". When it was put to Miss Hopkinson's that if she had in fact dismissed Miss Skitt, she should have stated that reason known to her. Miss Hopkinson could not explain why she did not refer to the dismissal in the reference, if the letter existed at the time the reference was provided.

163. In answer to the question "*did you find the applicant to be honest and trustworthy*". Miss Hopkinson replied 'no'. To the question "*Did you find the applicant to be reliable and carrying out his or her duties*" she answered 'yes' but she also says she would not re-employ the applicant.

164. In her witness evidence Miss Hopkinson describes that reference as 'generally positive' but does not offer any explanation for why she found the claimant was not honest and trustworthy. Miss Almzedi highlighted how damaging that reference was to the claimant's prospects of employment in the care sector and sought an explanation for the assessment made. Miss Hopkinson could not explain how she had assessed the claimant not being honest and trustworthy. She knew how damaging such a statement would be. She would not expect any employer to employ a carer who was not honest/trustworthy. We found the detriment was made out. The claimant

reasonably saw this as a negative and damaging reference unjustifiably given by Miss Hopkinson.

The constructive dismissals.

165. Both claimants allege they resigned because their employer fundamentally breached the implied term of mutual trust and confidence by subjecting them to the detriments they rely upon in this claim. The respondent has not challenged the reason they have given for leaving their employment.
166. Mrs McGuire had secured her first job after 17 years absence from work. She enjoyed the job formed close relationships with the residents and would not have just left a job she had only just secured.
167. In Miss Skitt's case this was the first time that she had worked in a residential home environment, but she has worked in the care sector previously providing care to services users in their homes.
168. We found they resigned because of the detrimental treatment they were subjected to by their colleagues and management after making protected disclosures. Having raised concerns about neglect they were left unsupported by management and were subjected to reprisals by management and colleagues.
169. Additionally, after Mrs McGuire left the home, Miss Skitt would have been left alone and more exposed to the risk of further retaliatory treatment if she had remained.

External reporting to the CQC

170. Although it was not necessary to make any findings of fact about whether a protected disclosure was made to the CQC the evidence we saw produced by the respondent in the bundle (relied upon to support the 'exoneration defence') gave the Tribunal, some cause for concern.
171. On 10 January 2019, after Mrs McGuire had resigned informing Miss Hopkinson she would be reporting the home to the CQC, Miss Hopkinson sent an email to Ms Hatfield. The email states: "*Hi Emma I just wanted to make you aware that a staff member walked out of shift yesterday **due to gossiping**. She has since taken to social media with immature comments. She has telephoned Pearl Jackson, the director and made some accusations about the home which Pearl is investigating and I am telephoning safeguarding to make them aware.*"
172. On the same day Emma Hatfield replies by email: "*No problem at all. As if you haven't got enough to do*".
173. Miss Hopkinson immediately labels the claimant as the trouble maker in this email exchange and Miss Hatfield sympathises without question. In another email on 14 January 2019, Miss Hatfield is given an update of the situation by Miss Hopkinson. Her response on the same date is "*That is appalling. What is wrong with her?*". Another update follows and Miss Hopkinson apologises for '*going on*' about it. Miss Hatfield responds "*No you are not going on. It is upsetting I just don't know what she thinks she will achieve*". In another email sent by Miss Hopkinson dated 16 January 2019, Miss Hopkinson states "*I appreciate you have a process you have to follow but I really feel this is all just malicious and vindictive*". Miss Hatfield in her

response of the same date states: *"I'm sorry that you had to deal with all of this"*.

174. Mrs McGuire having seen these emails says in her statement *"I am alarmed at the inappropriate degree of empathy between the CQC inspector and the care home manager and I feel this is worrying given the nature of what was being reported. I would have expected more impartiality"*.
175. Unfortunately, from the email exchange we saw (disclosed and relied upon by the respondent), we can see why the claimant has those views of the relationship between Miss Hopkinson and Miss Hatfield. From the claimant's perspective she expected the CQC interaction to demonstrate the impartiality she had received in her dealings with the home.

Applicable law

176. Section 43B of the Employment Rights Act 1996 ("ERA 1996") sets out the provisions about disclosures qualifying for protection. Subsection (1) provides *"that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more"* relevant failure.
177. The claimants rely on the following relevant failures:
- a. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject and;
 - b. That the health or safety of any individual has been, is being or is likely to be endangered. "
178. In this case because the internal disclosures have been made to the employer the disclosures (if protected) are qualifying in accordance with section 43C (disclosure to the employer or other responsible person).
179. The claimants allege that they have been subjected to detriments, on the ground that they have made protected disclosures in accordance with section 47B of the ERA 1996. This provides *"that a worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure"*.
180. In Fecitt and ors-v- NHS Manchester(public Concern at Work the Court of Appeal confirmed the approach to causation in section 47B that it will be infringed if the protected disclosure 'materially influences' the employers detrimental treatment of the worker.
181. It is in 2 different situations that section 47B confers the right. Subsection (1) confers the right of the worker not to be subjected to detriment by an act done 'by his employer' on the specified ground. Subsections (1A) to (1E) cater for the second situation: the right not to be subject to detriment by any act done by "another worker" on the specified ground. The other worker's act or the agent's act is to be treated as the employer's act, so as to render the employer vicariously liable for it.
182. This vicariously liability would apply for the alleged detriment by the other carers/seniors/managers/Mrs Jackson named by the claimant as 'another worker' and to Mr Taylor as the 'agent' instructed by Mrs Jackson, as a director on behalf of the employer.

183. Section 47B(1A) ERA 1996 applies which provides that:
“a worker (“W”) has the right not to be subjected to any detriment by any act or any deliberate failure to act done –
(a) by another worker of W’s employer in the course of that worker’s employment or
(b) by an agent of W’s employer with the employer’s authority
on the grounds that W had made a protected disclosure”.
184. Whether an act takes place ‘in the course of employment’ is a question of fact for the tribunal and in this case no dispute arose. All the detriments relied upon, although denied, were in the course of the claimant’s employment. Post-employment detriments are also covered because of the wider definition under section 230(3) which includes those who used to be to be in a contractual relationship with the employer (Woodward-v- Abbey National and Onyango-v- Berkley Solicitors 2013 ICR D17).
185. Section 47(1B) provides that *“where a worker is subjected to a detriment by anything done as mentioned in subsection(1A) that thing, is treated as also done by the worker’s employer”*
186. Section 47(1C) provides that *“for the purposes of subsection (1B) it is immaterial whether the thing is done with the knowledge or approval of the worker’s employer”.*
187. Section 47(1D) provides a defence to the employer:*“in proceedings against the worker’s employer in respect of anything alleged to have been done as mentioned in subsection(1A) (a) it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker-*
(a) From doing that thing, or
(b) From doing anything of that description”
188. Section 48(2) provides that *“on a complaint made it is for the employer to show the ground on which any act or deliberate failure to act was done”.*
189. For the dismissal complaints section 103A applies and provides that an employer who is dismissed *“shall be regarded for the purposes for this part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure”.*
190. In Kuzel-v- Roche Products Ltd (2008) EWCA CIV 380 the Court of Appeal addressed the burden of proof under section 103A and held that a burden lay on an employee claiming unfair dismissal under the section, to produce some evidence, that the reason for the dismissal was that the employee had made a protected disclosure, but that once she had discharged that evidential burden, the legal burden lay on the employer to establish the contrary.
191. Where a claim is brought against a fellow worker or agent of the employer, Section 47B(1A) provides that the fellow worker or agent is treated as the employer for the enforcement provisions and accordingly, bears the same burden of proof as the employer (Section 48(5)(b)).

Conclusions

192. For Mrs McGuire we found that 4 protected disclosures had been by the claimant to her employer through either Mrs Lewis or to Miss Metcalfe. For disclosure 1, see paragraph 45: disclosure 3, see paragraph 60, disclosure 4, see paragraph 65, disclosure 5, see paragraph 82. We set out how on each disclosure we found Mrs McGuire raised concerns of neglect, reasonably believing she was raising those concerns in the public interest and reasonably believing her disclosures of information tended to show a relevant failure (breach of the legal obligations of a carer/health and safety). Whether she was telling her managers about a resident, being left unattended, left too long without being changed, an injury, or being taken outside inappropriately dressed, those were concerns she believed she was expected as a carer to raise. Using the employer's broad definition of 'neglect' these were reports made by the claimant alleging failures "**to take the right steps and care appropriately**" for the residents. The sort of concerns, carers were encouraged, under the whistleblowing policy, to report.
193. Although the home had the right policies on 'paper' those policies were not put into practice. Senior nurses and managers had responsibility to protect the residents and to protect those who raised concerns of neglect (whistle-blowers). The promises made in the policy to those carers who blew the whistle was to "*respect confidentiality, investigate thoroughly and support and protect them*".
194. We found Mrs McGuire had been subjected to detriments by the other carers, carer B and carer P (see paragraphs 85-103 and 105-109), by Miss Hopkinson arbitrarily moving the claimant and providing her with an unjustified negative reference (see paragraphs 104 and 136), by Mrs Jackson sending the claimant a threatening and intimidating letter (see paragraphs 122) and by Mr Taylor making a threatening and intimidating phone call (see paragraphs 132).
195. For each of those detriments we found Mrs McGuire reasonably perceived that she was subjected to a detriment by the actions/failure of other workers and by Mr Taylor acting as the agent of the employer. Section 47B(1A) provides the worker/agent's acts/failures are to be treated as the acts/failures of the employer, rendered vicariously liable.
196. On the question of causation and the reason for that detrimental treatment we applied the guidance given by the Court of Appeal in the Fecitt case. Section 47B will be infringed if the protected disclosure 'materially influences' the employer's detrimental treatment of the worker. Section 48(2) provides that "*on a complaint made it is for the employer to show the ground on which any act or deliberate failure to act was done*".
197. The difficulty for Mrs Jackson in addressing causation is her defence to the claims is based upon her assertion the claimants were lying, there were no protected disclosures and no detriments. We found Mrs McGuire had made 4 protected disclosures and was subjected to 9 detriments, during the course, of her employment. Mrs Jackson advances no grounds on behalf of the employer for the detriments to offer any other reason for

the treatment which we found had occurred. Only in relation to one detriment (Miss Hopkinson moving Mrs McGuire after Christmas 2018) was a reason advanced, but the asserted reason (moving the claimant as part of a general move around) was not accepted (see paragraph 104).

198. Mrs Jacksons second defence was that Mrs McGuire was the 'wrongdoer' not carer B in relation to resident D being taken outside inappropriately dressed. While she does appear to accept what happened with resident D was wrong, to then suggest the claimant was now responsible was implausible. We found the evidence of Carer B in so far as it is relied upon to support Mrs Jackson's assertion, was unreliable and self-serving.
199. The claimants were working in a home where they were both identified as the carers responsible for making disclosures to seniors/managers alleging neglect and complaining that the other carers were not doing their jobs properly. This was a home where gossip, division blame and bad feeling towards the claimants was openly expressed and condoned by management. Instead of following the whistleblowing procedures in place to protect those who alert the employer to suspected neglect/abuse they sided with the other carers. We contrasted Mrs McGuire's treatment by management (Miss Lewis, Miss Metcalfe and Miss Hopkinson) for alleging neglect, with carer B's treatment by management, as the person accused of neglect in the near miss with resident D (protected disclosure 5).
200. Management (Miss Lewis/ Miss Metcalfe) immediately and openly sided with carer B, before any investigation was carried out. Ms Metcalfe did not investigate it, but treated it as a grievance, made by the claimant, against carer B. She did not follow the whistleblowing policy, or treat it in the way the claimant expected it would be treated which would have protected and supported her in the process. The other carers, knew that Mrs McGuire had reported carer B to management. When carer B confronted the claimant on the 21st December 2019 that was because she already knew the claimant had made an allegation of neglect against her. When after that confrontation she complained about the claimant to her managers, they sided with her, and moved the claimant. The claimant and the other carers, knew that had happened. This gave the other carers a green light to continue the unpleasant treatment instead of protecting Mrs McGuire from any further reprisals for reporting her concerns.
201. If the home as the employer had followed the procedures the respondent might have been able to argue that it took all reasonable steps to prevent other carers managers or agents from behaving detrimentally towards the whistle-blower. If the policy genuinely intends to encourage the reporting of concerns to managers, those managers must then be seen to act impartially to protect and support the whistle-blower, while the concerns raised are investigated.
202. We were satisfied that carer B and other carers who subjected Mrs McGuire to the detriments were materially influenced by the protected disclosures made by Mrs McGuire. Both claimants were known to have made allegations of neglect, found to be protected disclosures. They were blamed by other carers for telling tales to management. Management then sided with the other carers against Mrs McGuire allowing the cold-shouldering treatment (not talking/dirty looks/allowing carers to refuse to

work with her) to continue. Miss Hopkinson's decision to move the claimant was materially influenced by the protected disclosures made by Mrs McGuire. Mrs Jacksons intimidating and threatening letter to the claimant expressly refers to the disclosures made which she describes in her letter as 'everyday occurrences' inflated by the claimant. Her letter was a deliberate angry retaliatory response to the disclosures made. Mrs Jackson had decided at the outset before any investigation was carried out by Mr Taylor, that the claimant in making these allegations was "evidently vindictive towards senior management". She tells her so in the first paragraph of her letter. Mrs Jackson was materially influenced in her treatment of the claimant by the protected disclosures she had made. Her instruction to Mr Taylor to contact the claimant was given in that context of protecting the home and taking 'whatever steps were necessary'. Mr Taylor's call to Mrs McGuire was made with that purpose in mind. It was extremely intimidating and threatening. Finally, the bad reference given by Miss Hopkinson, was given because Miss Hopkinson was materially influenced by the protected disclosures made by the claimant and her motive in doing so was retaliatory. There were no concerns about Mrs McGuire performing her role as a 'carer' that would have justified a bad reference. In Miss Hopkinson's communications with the CQC on the day the claimant left her employment, she paints a picture of the claimant, as a troublemaker, to defend the home and gain support from the CQC inspector.

203. We concluded that Mrs McGuire was subjected to 9 detriments by other carers, Miss Hopkinson, Mrs Jackson and Mr Taylor as the agent of the employer on the grounds of her protected disclosures. As well as individual liability the employer is vicariously liable for the acts of the workers/agent responsible for the detrimental treatment. In this case as a named respondent Mrs Jackson is also individually liable for the threatening letter sent to the claimant on 10 January 2019.
204. For Miss Skitt we found that she had made 3 protected disclosures. For disclosures 1 and 2 see paragraphs 140-147, for disclosure 3 see paragraph 148-149. We found Miss Skitt was subjected to 3 detriments. Firstly, by the other carers making her feel uncomfortable, ignoring her, isolating her and refusing to work with her (see paragraph 154-155). Notably that evidence of the unpleasant working environment was corroborated by Mrs McGuire and Sophie Goulding. Secondly, Miss Hopkinson's failure to investigate her concerns (paragraph 158). Thirdly, Miss Hopkinson providing her with a negative unjustified reference (paragraph 160-164).
205. No other reason for the detrimental treatment is advanced by Mrs Jackson her position has been to simply deny that it occurred. We found the other carers were materially influenced in their detrimental treatment of the claimant by the protected disclosures she had made. She was labelled as a 'grass' for making allegations of neglect against the other carers who then refused to work with her and subjected her to unpleasant treatment. The reason for this treatment was the protected disclosures she had made.
206. Miss Hopkinson sided with the other carers against both claimants and did not investigate the concerns raised. Miss Hopkinson was unable to explain

the unjustified negative reference she had provided and how it fit in with her purported letter of dismissal. She knew that reference would be very damaging to the claimant's prospects of obtaining employment. Miss Hopkinson was materially influenced in her detrimental treatment of Miss Skitt by the protected disclosures she had made. The acts of the other carers and Miss Hopkinson are attributable to the employer, rendered vicariously liable for those acts/failures to act. We concluded that Miss Skitt was subjected to 3 detriments by her employer on the grounds of her protected disclosures.

207. For the unfair dismissal complaint, we found both claimants resigned because of the detrimental treatment they were subjected to by their colleagues and by management for making protected disclosures. Having raised concerns about neglect of residents against other carers, the claimants were left unsupported and unprotected by management. They were subjected to reprisals by management and the other carers for making protected disclosures during the course of their employment. That conduct breached the implied term of mutual trust and confidence and it entitled the claimants to resign and treat themselves as constructively dismissed. They did not delay and affirm the breaches by the employer they resigned in response to them.
208. Mrs Jackson on behalf of the employer has not advanced or produced any evidence to try to establish any other reason for the constructive dismissals. We concluded the only reason for the claimants' constructive dismissals were the protected disclosures they had made. That reason for dismissal is automatically unfair in accordance with section 103A of the Employment Rights Act 1996.
209. A remedy hearing will be listed to determine remedy for the successful complaints. Separate directions will be issued in relation to that hearing.

Employment Judge Rogerson

Date 11 December 2019