RM

EMPLOYMENT TRIBUNALS

Claimant: **Ms P George**

Respondent: **BUPA Care Homes (CFH Care) Limited**

Heard at: **East London Hearing Centre**

On: **7, 8, 9, 10 & 14 November 2017**

Before: **Employment Judge Russell**
Members: **Ms M Long**
Mr M Sparham

Representation
Claimant: **In person**
Respondent: **Mr T Perry (Counsel)**

JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. **The Claimant made protected disclosures on 17 December 2015 about staffing levels; on 11 January 2016 to Mr Ncube about dropped medication; on 7 January 2016 orally to Ms Cruse about non-accidental injury; and in writing on 8 February 2016, 10 February 2016 and 22 February 2016.**

2. **The Claimant was not subjected to any detriment because of a protected disclosure. The claim pursuant to Section 47B Employment Rights Act 1996 fails and is dismissed.**

3. **The Claimant was not dismissed within the definition of Section 95 Employment Rights Act 1996. Both claims of unfair dismissal (s.103A or s.98 ERA) fail and are dismissed.**

4. **The claim for unauthorised deduction from wages fails and is dismissed.**

REASONS

1 By a claim form presented on 22 July 2016, the Claimant brought complaints of constructive unfair dismissal (either contrary to s.103A or s.98 ERA), detriment because of a protected disclosure, unlawful deduction from wages, direct race discrimination and

harassment related to race. The Respondent resisted all claims. At a Preliminary Hearing on 13 March 2017, the Claimant withdrew her claims of race discrimination and harassment related to race. Following the Preliminary Hearing the parties worked to produce a list of legal and factual issues to be determined. The Respondent produced a list of legal issues and the Claimant produced a list of factual issues. We referred to both when deciding the case. The reference to paragraph numbers are to the list of factual issues produced by the Claimant.

2 We heard evidence from the Claimant on her own behalf. For the Respondent we heard evidence from Ms Susan Cruse (Home Manager), Ms June Grant (Home Manager) and Ms Clare Bumby (former HR Adviser). We were provided with an agreed bundle of documents and we read those pages to which we were taken in the course of evidence. We declined the Claimant's application to exclude Ms Grant whilst Ms Cruse gave evidence as she could identify no good reason to depart from the ordinary practice of the Tribunal and we did not accept the Claimant's submission that Ms Grant would necessarily lie to ensure that their evidence was consistent.

3 During the course of the hearing we resolved a number of disputes about disclosure of additional documents. On the first morning, we admitted documents produced by the Claimant relating to a meeting request written on 15 January 2016, part of a reference given by a former Home Manager on 20 October 2015, a diary entry for 17 December 2015 and letters in relation to extension of probationary period in her previous role for the Respondent at Collingwood Court. The Claimant agreed to provide her personal diaries to Mr Perry for inspection. We permitted the Respondent to include the published findings of the Nursing and Midwifery Council into allegations of misconduct by the Claimant in previous employment. The allegations related to her interactions with colleagues and, as such, we considered them potentially relevant to issues of credibility given that interaction with colleagues was a central issue in this case. To ensure balance, we agreed that the parties could also adduce the judgments of the London South Employment Tribunal (the first by Employment Judge MacInnes and the second, following remission on appeal, by Employment Judge J Prichard) on the Claimant's complaints of protected disclosure, constructive dismissal and race discrimination against her former employer which arose out of the same incident.

4 The Claimant requested disclosure of the following: (i) documents relating to a fractured hip sustained by a resident between 30 December 2015 and 4 January 2016, (ii) a relative's complaint on 12 January 2016 about scratches on her mother, (iii) a letter from the Home Manager, Mr Ncube, instructing the Claimant to start a full investigation; (iv) a record of a supervision session with a Health Care Assistant carried out by the Claimant to discuss concerns about manual handling and conduct; (iv) a memo circulated to staff in or around December 2015 with regard to a pay increase. It was not in dispute that a resident had sustained a fractured hip, that there had been a complaint about scratches and that the Claimant had been instructed by Mr Ncube to investigate. As it is not the role of this Tribunal to determine whether there was in fact wrongdoing by staff in connection with each of these incidents and as they had been investigated internally already, we did not consider those documents necessary or relevant. The Claimant was able to produce a copy of the supervision record. The Respondent had looked for but could not find any memo about a pay rise in December 2015. We did not order disclosure of any of these documents.

5 As the hearing progressed, the Claimant made a further application for disclosure of entries in the unit diary and/or communication book made between 7 December 2015 and 1 May 206 when she was Unit Manager. The Respondent could not locate these documents and believed that they were or had been held in archive by another company, Restore Plc. We made an order that Restore Plc disclose the document if they could be located. Towards the end of the hearing, the Respondent provided copies of some diary entries for January to May 2016. Neither party relied upon any entry in them. On the second day of the hearing, the Claimant provided a copy of a guide for how to manage investigations and an investigation plan template which she said were provided to her by the Respondent. There was no dispute that such documents had been provided and again we admitted them in evidence.

6 The Claimant suffers from diabetes and the Tribunal invited her to indicate any adjustments that may be required to accommodate her health and enable her to present her case to her best ability. We provided the Claimant with a paper and pens to make notes during the course of her evidence and offered her the opportunity to have her partner (who was present throughout) to take notes, act as a page turner when she struggled with finding pages in the bundle whilst being cross-examined and to re-examine if he wished to do so. We took breaks as requested by the Claimant and on the second day finished early as the Claimant had been unwell the night before, had had little sleep and was suffering from the effects of the heat in the room.

7 On occasions, both the Claimant and Mr Perry had to be reminded that cross-examination must be relevant and not repetitive; we encouraged both to focus on the issues to be decided. The Tribunal was grateful for the way in which the Claimant and Mr Perry responded to such guidance, and cooperated with each other, to ensure that the evidence and submissions were concluded in sufficient time to leave half a day for the Tribunal to deliberate, rather than go part heard.

Findings of Fact

8 The Respondent provides long term residential, nursing and dementia care to more than 18,000 older residents in over 300 care homes in England, Scotland and Wales. It employs a number of nurses, health care assistants and other support staff to discharge its duties.

9 The Claimant, a registered nurse, was employed by the Respondent at Collingwood Care Centre from 20 February 2015. From 7 December 2015, she was promoted to Unit Manager at Ford House, part of Chase View Nursing Home. Chase View comprises four houses: Hart House, Rush Green, Nicolas House and Ford House. At the time, Ms Susan Cruse had overall responsibility for management of Rush Green and Ford House and was the Claimant's line manager. Ms June Grant was Clinical Service Manager, responsible for management of the nursing function at all four houses at Chase View. Both reported to Mr Munford Ncube, the overall manager for Chase View. Mr Ncube has since left the Respondent's employment. The Respondent has not been able to locate him and we have not had the benefit of his direct evidence although he gave evidence in a contemporaneous internal investigation to which we have had regard. Ms Grant and Ms Cruse have been able to give evidence within their direct knowledge.

10 In December 2015, Ford House had approximately 28 or 29 residents and approximately 20 staff. At or about this time, the Respondent offered nursing staff at

Chase View an additional £1 per hour when they worked in excess of their contractual hours. This was a trial scheme intended to incentivise overtime and reduce reliance on more expensive agency staff. The Claimant could not recollect when the scheme was to take effect. The enhanced payment applied to Unit Managers when they were working hours as a nurse but there was no separate pay rise for Unit Managers as the Claimant alleges.

11 The Claimant is a very experienced nurse and clearly committed to the care of her residents. When promoted, her aim was to make Ford House the best that it could possibly be and she pursued this aim with zeal. At times, the Claimant would make her views known to her colleagues with passion, for example in a meeting with Ms Grant by banging her fists on the table to enforce a point. The Claimant's vehemence was also evident in the forthright manner in which she gave evidence. Whilst not intending to be aggressive, the Claimant was not always mindful of the effect of her presentation objectively and upon individuals with whom she interacted. This was evident in the way in which the Claimant expressed herself at Tribunal and, we accept, at Ford House whilst employed. The Claimant termed "abuse" a broad range of matters, from staff returning from a smoking break smelling of cigarettes or discussing personal matters when residents were present to an alleged non-accidental hip fracture. In cross-examination, the Claimant repeatedly accused Ms Grant and Ms Cruse of "lying" and talked across them, forcefully and with a raised voice (albeit not shouting), when they gave evidence with which she did not agree. The Claimant's approach was a binary choice between "right" and "wrong"; there was no appreciation that a witness may be genuinely mistaken or disagree with the Claimant's interpretation, nor that poor practice (such as smelling of cigarettes) might be a performance issue rather than abuse. In the circumstances, we did not find the Claimant to be a reliable witness. Whilst we do not find that she was lying, her strong subjective convictions led her to misremember or misinterpret key matters.

12 Shortly after she started at Ford House on 7 December 2015, the Claimant held a meeting in which she introduced herself to staff and set out her statement of intent about the standard of services which she intended to deliver. From the outset of her appointment, the Claimant set out six 'ground rules', such as to respect each other and suggested improvements to residents' care. The way in which the Claimant expressed herself to her new staff is illustrated by the sixth ground rule, namely that "absolutely" staff eating in the lounge would lead to disciplinary action.

13 By 13 December 2015, the Claimant's ground rules had expanded in number to 13. The content of the rules is unobjectionable and they were evidently intended to improve resident care, such as improved punctuality and keeping residents clean and well groomed. What stands out is that the ground rules are expressed in a very peremptory manner so early in the Claimant's new job as Unit Manager.

14 Mr Ncube, all heads of departments and unit managers at Chase View would attend regular meetings to share information, discuss staffing levels and any issues affecting the home. These were referred to interchangeably as "Take 10" meetings or "10 at 10" meetings. The Claimant, Ms Grant and Ms Cruse attended these meetings. On occasion, the Claimant would stay behind to discuss matters privately with Mr Ncube. We preferred the evidence of Ms Grant to that of the Claimant and find that during the course of the meetings, the Claimant would at times talk in a manner which could be described as loud or disruptive. We accepted Ms Grant's evidence that whilst the Claimant's intentions were good, she went about things "like a bull in a china shop".

15 There were no minutes of the content of these meetings. The Claimant's evidence was that she raised a number of concerns now relied upon as protected disclosures in these meetings, for example that a member of staff referred to a resident as a "pain in the bum" and that burned food was being served to residents. Ms Grant denied that such matters were raised in these meetings. On balance, we prefer the evidence of Ms Grant that the Claimant would at times make general allegations of abuse, such as claiming that "the whole Home is abusing everybody" but none of the detail now relied upon was given. This was consistent with the evidence of Mr Ncube in the subsequent internal investigation. It was also consistent with the Claimant's evidence to this Tribunal where she repeatedly made general allegations of abuse with little or no detail.

16 On or around 14 December 2015, the Claimant met with Mr Ncube. There is no contemporaneous record of what was discussed. The Claimant's account has developed over time. In her interview with Mr Romaine on 29 February 2016 as part of the disciplinary investigation, the Claimant made no specific allegations. In her claim form, presented on 22 July 2016, the Claimant's case is that she raised concerns that residents were being called names, like "trouble", suffering unexplained injuries (hip fracture and scratches) and that staff were using bad lifting and handling techniques. It is only in the Claimant's list of factual issues, produced in April 2017, that she includes medicines being regularly dropped on the floor and then given to the residents. We considered that the Claimant's oral evidence also demonstrated a tendency to develop her allegations in the re-telling. This was evident in other parts of her evidence, for example, a later allegation that staff complaints against her were obtained through collusion. Initially, the Claimant alleged that it was Mr Ncube who had sought signatures but by the end of the case, her allegation had expanded to include Ms Grant and another member of staff in collecting signatures.

17 In his interview with Mr Romaine on 9 March 2016, Mr Ncube stated that he had asked the Claimant to state what "abuse" she was talking about and the only specifics that he recalls the Claimant disclosing were staff singing and drinking tea/coffee in front of residents. Mr Ncube made clear that the Claimant had not raised any issues at the time as a safeguarding concern, completed an incident form or used the Speak Up procedure (the Respondent's whistle-blowing policy). The Claimant accepted that she was aware of the process for raising safeguarding concerns but only used the Speak Up process after her suspension in February 2016. Some of the matters which the Claimant now claims to have raised in this period in fact occurred later, namely the scratches and hip fracture. On balance, we find that both on 14 December 2015 and during the period 7 to 17 December 2015, the Claimant made no more than general allegations of abuse and did not provide the detailed information which she now claims to have done about name calling, staff being dragged up beds, medication being dropped or poor infection control.

18 Staffing ratios at the home were set according to CQC requirements and use of a dependency tool where residents are assessed for care requirements according to need at the point of admission. On 17 December 2015, Ford Unit admitted a new female resident ("R") whom the Claimant believed required one to one care. Such care had not been approved at the point of admission, possibly as R had been incorrectly assessed. The Claimant raised the matter with Mr Ncube who agreed to complete the required application for funding. This was then passed to Ms Sue Turner, the administrator and receptionist, for submission to the appropriate funding body for approval.

19 Later on 17 December 2015, Ms Cruse was short of health care assistants on her unit and telephoned the Claimant to asked her to release a member of staff. This is standard practice before calling in agency staff or incurring the costs of overtime. At the time of the conversation, the Claimant had two nurses on duty including her with a further six healthcare assistants. The minimum required staffing for Ford House (absent any requirement for one to one care) is two nurses plus four health care assistants or one nurse plus five health care assistants. The application for funding for one to one care for R had not yet been proved. The Claimant did not wish to release one of her healthcare assistants as she considered that the full compliment of staff was required for Ford House. The Claimant's case is that she told Ms Cruse that staffing ratios were dangerously low. In a note made contemporaneously by the Claimant in the Unit diary she recorded:

> **15.30 Sue Crew [*Cruse*] called to say I should give her one carer out of six carer. I informed her that I am unable to give her carer because I have a lady that is one to one. It is not safe to leave her unattended because she runs a risk of falls. Sue then said I should allow her to fall and send her to hospital or else she would report me to Manford, our home manager.**
>
> **15.40 Sue Turner came and took one of my staff, Kieran. Sue said is instruction from Manford, manager.**
>
> **16.00 Manford called, I explained to him that it is dangerous to work with such a reduce staff, resident care will be compromised. We were on the phone for about an hour trying to explain to Manford. Manford said "if you people are unhappy leave".**

20 At the bottom of the page there appear two names, the Claimant's and that of the other nurse on duty. The other nurse appears to have signed the diary but it is not clear whether she is confirming what she had been told by the Claimant or what she had heard herself. A diary entry timed at 20.05 records that an incident form about shortage of staff was completed. This entry appears above that timed at 15.30. The incident form does not include the allegation that Ms Cruse said that the resident should be allowed to fall, but states: "**we have 29 residents including one very restless and agitated resident needing one to one care but inadequate staffing**". Later, "**inadequate staffing this evening left with four carers to care for 28 residents and one carer to do one to one**" and that staff sustained scratches from R. The other nurse on duty is named on the report. The Claimant's evidence is that the report was submitted to Mr Ncube; the Respondent's case is that it has no evidence of receipt. On balance, on this point, we prefer the evidence of the Claimant. It is not credible that she would have completed the incident form yet not submitted it given her strength of feeling on the day and that fact that she had discussed its contents with him on the telephone.

21 Later that evening, another nurse at Ford House telephoned Mr Ncube to say that one to one care was not in place for R; his response was that he would attend the following day and contact social services to relocate R (which subsequently occurred).

22 Ms Cruse denies either being told that staff ratios were dangerously low or saying the Claimant should allow the resident to fall. She accepts that the Claimant told her that R needed one to one care. In cross-examination, Ms Cruse did not recall whether R's funding for one to one care had been agreed at the time. On this relatively innocuous point, the Claimant accused Ms Cruse of lying, became upset and asked Ms Cruse more than once to admit the truth of the Claimant's assertion. The Tribunal was forced to intervene as the Claimant sought repeatedly to put the same question and Ms Cruse became upset, saying that she could not admit what was not true.

23 On balance we found that the Claimant gave honest evidence about what she genuinely recalls being said on the day. However, we accept Mr Perry's submission that she is not a reliable witness but rather has a tendency to misinterpret what has been said to accord with her point of view. On several occasions during the course of her cross-examination of the Respondent's witnesses, as she made a note of the evidence, the Claimant repeated a witness' answer in a manner which was not at all consistent with what had just been said. The version of the answer which the Claimant was purporting to note was one which accorded with what she wanted to hear, not what had in fact been said. On occasion, it was the direct opposite. The suggestion that Ms Cruse said that a resident should be allowed to fall is a very serious allegation against a registered nurse. It is not credible that, if actually said, it would not be included in the incident form nor in the Claimant's later Speak Up complaint. We found Ms Cruse to be a reliable witness with no animosity to the Claimant and prepared to volunteer evidence of general concerns raised by the Claimant on other occasions. On balance, we prefer Ms Cruse's evidence to that of the Claimant. We find that whilst the Claimant stated that she would be left short-staffed, she did not say that staffing levels would be dangerously low nor did Ms Cruse say that the resident should be allowed to fall.

24 During the course of late December into early 2016, the Claimant says that she complained that staff would give residents medication which had been dropped on the floor. There are no contemporaneous documents recording these concerns although they were included in the Speak Up report submitted by the Claimant on 22 February 2016. The Claimant's evidence was that such matters were recorded in the staff communication books which were unavailable for disclosure. Given the nature of the Respondent's business and the importance of good record keeping, the Tribunal was surprised that Unit records dating back only two years could not be produced. The Claimant's own diary entries for 25 December 2015 and 11 January 2016 record two episodes with dropped medication. Mr Ncube denied any knowledge of such concerns in his interview with Mr Romaine. On balance, and given Ms Cruse's acknowledgement that the Claimant would raise general concerns and Ms Grant's acknowledgement that the Claimant would raise "small things", we find that on or about 11 January 2016 the Claimant did tell Mr Ncube that some staff members had given dropped medication to residents.

25 Towards the end of December 2015, a number of members of staff at Ford House approached Mr Ncube to raise concerns about the Claimant's management style. Mr Ncube met with the Claimant on 21 December 2015 to discuss these concerns. The Tribunal did not have the benefit of Mr Ncube's evidence. He was, however, interviewed by Mr Romaine on 9 March 2016 as part of the subsequent disciplinary investigation. In that interview, Mr Ncube referred to his contemporaneous diary note (again not before the Tribunal) which recorded that the staff were upset about the Claimant's manner, likening it to treating them like children. Mr Ncube accepted that the Claimant meant well, but felt that her interpersonal skills and the ability to work as a team with staff, rather than by command and threat of disciplinary action, were areas where she required training. Mr Ncube advised the Claimant to try to work with the team and not manage by threat of disciplinary action. When they discussed staffing, Mr Ncube explained to the Claimant that if a resident required one to one care they would need to be moved to another home.

26 The Claimant's evidence is that on this occasion, as with many other times, Mr Ncube advised her not to have such high standards, to keep her head down or leave. The Claimant later told Mr Romaine in her investigation interview that Mr Ncube had

advised her that she needed to substantiate her allegations and that she had interpreted this as meaning that she should keep her head down. We consider that she has in fact misinterpreted the advice which was given by Mr Ncube. We find that any reference to "leaving" was about residents requiring one to one care, not the Claimant. The Claimant has misinterpreted or misremembered Mr Ncube's comment, as she did with witnesses' answers in cross-examination. On balance, we find that there was no instruction to overlook problems or wrongdoing. Such a comment would be surprising for a Home Manager and is not consistent with Ms Cruse's evidence that Mr Ncube was a manager with open communication and an open door policy.

27 The unreliability of the Claimant's evidence is also demonstrated by her allegations about race-related comments made by Mr Ncube. Initially, the Claimant stated that Mr Ncube told her not to cause trouble and to overlook wrongdoing by white members of staff because she and he were black. The Claimant's evidence was that Mr Ncube told her that they should consider themselves lucky as black members of staff to be in a management position over a white workforce. The Claimant's case developed to a point where she alleged that Mr Ncube expressly told her that he believed that the white members of staff were superior to he and the Claimant as black members of staff. At other times, the Claimant stated that Mr Ncube did not care about the residents, who are mostly white, because he was black. These are remarkable allegations, suggesting that the Home Manager regarded himself as inferior to a Healthcare Assistant because of his race and was prepared to allow ill-treatment of residents because they were white. They stand in stark contrast with the Claimant's Speak Up complaint when she said that Mr Ncube told her to not to be too tough on staff as they were poorly paid and raised no issues about race whatsoever. We also take into account the decision of the Claimant to withdraw her race discrimination claim in this Tribunal and the fact that as her evidence developed, the Claimant also alleged that a black nurse had expressed the view that white members of staff were superior to black members of staff. We have no hesitation in rejecting the Claimant's allegations in this regard as being entirely incredible and without foundation.

28 Ms Grant gave evidence about the Claimant's management style which is consistent with the points Mr Ncube said he had discussed with the Claimant at the time. Staff had also approached her to complain about the Claimant's attitude and her readiness to threaten disciplinary action. Ms Grant had advised the Claimant to "slow down" and be aware that people can be resistant to change.

29 Between Christmas and New Year, one resident of Ford House sustained a scratch and another resident sustained a fractured hip. In both cases, the Claimant was concerned that the injuries were not accidental. The list of issues refers to complaints received from the residents' relatives but Ms Cruse accepted that on or around 7 January 2016, the Claimant had told her that the two residents had sustained scratches and a hip fracture and that they were not accidental. An incident form was completed and social services were informed about a potential safeguarding issue.

30 A safeguarding meeting took place on 12 January 2016 which discussed both concerns. The Claimant is recorded as telling the staff present that Mr Ncube and Ms Cruse wanted a thorough investigation. This is not consistent with the Claimant's evidence to this Tribunal that she was told by Mr Ncube to "do something slapdash". We consider this a further example of the Claimant reinterpreting matters after the fact to accord with her view that the Respondent did not take resident safety seriously. Ms Cruse

and Ms Grant supported the Claimant's investigation. She was given a guide as to how to conduct an investigation and an interview template. The Claimant did not ask for any further assistance. If she had, we are satisfied that both Ms Cruse and Ms Grant would have been happy to help. They enjoyed a good working relationship at the time and the Claimant repeatedly stated that she felt blessed to have them as her managers. The Claimant expressed no concern to either Ms Cruse or Ms Grant that Mr Ncube did not want her properly to investigate whether there had been wrongdoing.

31 At the same meeting, the Claimant reminded staff at Ford House of the standards she expected of them. The rules had again increased in number. Many of these are uncontroversial and eminently sensible attempts to improve the quality of care for residents, however, again the manner in which the Claimant has expressed herself is abrasive, with repeated threats of disciplinary action for breach (for example "**No painted nails at any time. It is not uniform policy. If you forget you will be disciplined**"). Others are not so clearly linked to an improvement in resident care, such as a prohibition on coloured trainers and wearing leggings. Yet others read strangely, such as "**No arguing with the nurse in charge. Follow her instructions**" and "**Don't put your arm around the nurse in charge. It is unprofessional.**" Overall, and whilst no doubt part of the Claimant's genuine desire to improve standards generally, her rules do not tend to suggest concerns about a breach of legal obligations or abuse. They are, however, indicative of her management style after only a short time in the role and despite the advice given by Mr Ncube and Ms Grant.

32 On 15 January 2016, the Claimant asked Mr Ncube for a meeting to discuss budgets, resident safety in terms of nursing levels, staff discipline and any other business. No further detail was given. The Claimant received no response and sent a chasing email on 1 February 2016. Mr Ncube did meet with the Claimant. There are no notes of the discussion but an email sent by Mr Ncube the following day confirms what was discussed. Mr Ncube informed the Claimant that the Units did not have a discrete budget, that it was important that she work in line with prescribed staffing levels and that potential disciplinary matters must be referred to the management of the home, with consultation with the management advisory service. This was an entirely neutral response from which we cannot safely infer anything, positive or negative, about Mr Ncube's views of the Claimant.

33 Towards the end of January 2016, further verbal complaints were made to Mr Ncube about the behaviour of the Claimant. Mr Ncube contacted HR for advice on how best to respond. We infer that these are the complaints received from carers on 20 January 2016 identified in Ms Bumby's file note. Ms Bumby advised Mr Ncube to carry out an investigation. Between 24 January 2016 and 2 February 2016, eight members of the 20 staff at Ford House signed a written complaint addressed to Mr Ncube. The opening reference to meetings about deteriorating morale over the last few weeks is consistent with the initial verbal complaints. We infer from the chronology that Ms Bumby had advised Mr Ncube to get the complaints set out in writing. On balance, we accept the Claimant's evidence that staff were asked to sign the letter and that it is more likely than not that the request was made by Mr Ncube. We accepted Ms Grant's evidence that she was not involved in securing the signatures. Some staff signed the letter of complaint, some did not wish to sign. Those who did not wish to sign were not put under any pressure to do so.

34 The staff concerns as set out in the letter are about the Claimant's management style and are consistent with the matters referred to at paragraph 25 above. They included: bullying by use of threats of disciplinary action; lack of management skills (such

as flexibility and listening) referring to everything as "unprofessional", harassment and insulting behaviour, disregarding staff opinions, favouritism, being rude, shouting, lack of respect and confidentiality. As set out at the outset of our Findings, some of the behaviours described are consistent with behaviours which the Tribunal observed during the course of the hearing and which required us to intervene to explain that aggressive behaviour may be a matter relied upon by the Respondent as harmful to her credibility. A further concern was that that the Claimant had taken photographs and videos of residents on her phone at Christmas. Ms Grant gave evidence that she saw the pictures on the Claimant's phone. The Claimant put to Ms Grant that this, and the entirety of her witness statement, was a lie designed to keep her job. Ms Grant disagreed. We preferred the evidence of Ms Grant and find that there was primary evidence of photographs and videos on the Claimant's mobile phone, a potential act of misconduct.

35 The Claimant accepted that the staff complaints were serious allegations which needed to be investigated. Her case was that the complaints were fabricated and that this would be demonstrated by a proper investigation.

36 On 5 February 2016 Mr Romaine was appointed to investigate the staff complaints. There is no evidence that Mr Romaine was aware of any protected disclosures made by the Claimant prior to this date. There is nothing in the written complaint from the members of staff tending to show that any such disclosure had been made.

37 The Claimant's diary entry for 8 February 2016 records that a member of housekeeping staff referred to a patient as a "**pain in the bum**" and that she brought this to Mr Ncube's attention the same day. This evidence is consistent with that of Ms Cruse and Ms Grant and the concern was raised in her subsequent Speak Up report. On balance, we find that the information was shared with Mr Ncube and that the Claimant was genuinely concerned that it demonstrated ill-treatment of a vulnerable resident. Whilst the same diary entry records that burned food was served to a resident, there is no similar note to say that Mr Ncube was informed nor whether this was deliberate or inadvertent. Ms Grant denies being aware of any problem with burned food, whether on this occasion or any other, or that this was discussed at the Take 10 meetings. The extent of the information later included by the Claimant in her Speak Up complaint was "**kitchen staff has served burnt food to the residents.**"

38 On 10 February 2016 the Claimant told Mr Ncube that a named healthcare assistant:

> "**always wears chain on her neck and 2 rings on her left and right hand fingers.**
>
> **I explain to her that it is against our uniform policy and also is a breach of infection control policies. This is to prevent transmission of infection to the Residents as well."**

39 The Claimant stated that the healthcare assistant had reacted aggressively and refused to remove the jewellery. She asked Mr Ncube for his assistance and cooperation to "**ensure we meet the required standard for the sanity of Residents**." Mr Ncube replied the same day, thanking the Claimant for bringing her concerns to his attention and informing her that he had arranged a meeting with the healthcare assistant to discuss uniform policy and dress code including the incident raised by the Claimant. He assured the Claimant that management expected the uniform policy to be adhered to and that staff speak to each other with respect and uphold professionalism at all times.

40 On 10 and 11 February 2016, Mr Romaine interviewed 12 members of staff. Six of those interviewed had signed the complaint letter; six had not. Notes were taken of each interview. Each person interviewed confirmed to a greater or lesser extent the nature of the complaints set out in the letter, largely not listening to staff, talking over them, raising her voice, threatening unjustified disciplinary action and having images of residents on her mobile phone. Even those who had not signed the letter of complaint, such as Ms Saki, Ms Anglin and Ms Cernea, referred to the Claimant shouting or talking very loudly and confirmed that she made threats of disciplinary action.

41 On 12 February 2016 the Claimant was suspended as she attended a study day. We accept Ms Bumby's evidence based upon her contemporaneous note that the decision to suspend was taken by Mr Romaine, because of the nature of the allegations. The decision was approved by Ms Penny Davis (Regional Director) and implemented by Mr Ncube. The letter of suspension refers to an allegation of bullying which was more serious than had originally been thought. The Claimant was very upset when told that she was being suspended and we accept that she felt humiliated when asked to leave her study course. Ms Grant accompanied the Claimant to her car, attempting to console her and telling her not to worry. The Claimant felt that her suspension was the last straw and she began looking for another job.

42 On 22 February 2016, the Claimant contacted the Respondent's Speak Up team to raise a number of concerns. She reported that a list of 14 staff at Chase View had been abusing residents, that she had reported the abuse to Ms Cruse, Ms Grant and Mr Ncube but that it had been ignored. The Claimant reported that she had sent Mr Ncube an email asking for a meeting but Mr Ncube's response had been to tell her not to be tough on the staff who were not well paid. The Claimant reported a non-accidental injury (without detail), serving burned food, giving dropped medication which had led to infection, staff pushing a dementia patient (without detail) and verbal and emotional abuse (no further detail given). The only emails requesting a meeting were those considered above and they are not consistent with the description given in the Speak Up report. We found this to be a further example of the Claimant's lack of reliability as a witness, tending to misremember or misinterpret things in light of her disenchantment. As noted above, the Claimant refers to pay, rather than race, as the reason that Mr Ncube was reluctant to act.

43 Mr Romaine was informed that the Claimant had made a Speak Up complaint some time shortly thereafter. Ms Bumby told him about the complaint but not its contents. Contemporaneous emails from the Speak Up team show that Mr Romaine had also been asked to investigate the Speak Up complaint but declined as he was already dealing with the disciplinary investigation.

44 Between 22 and 24 February 2016, Mr Romaine carried out interviews with 7 other members of staff and re-interviewed two to whom he had already spoken.

45 On 29 February 2016, Mr Romaine interviewed the Claimant. The Claimant was not provided with a copy of the complaint letter either before or during the interview. When asked about her relationship with her colleagues, the Claimant suggested that any problems arose from changes she had introduced to improve standards and performance. The Claimant said that she had tried to speak to Mr Ncube about staff discipline, staff shortages and incorrect lifting. She stated that Mr Ncube had previously told her that staff found her too commanding and that she was too strict. The Claimant made general

allegations of abuse and alleged that it was not taken seriously. Overall, she regarded the complaints as a conspiracy because she would not let the staff get away with wrongdoing. The Claimant was not told that she was causing trouble all around.

46 During her interview with Mr Romaine, the Claimant referred to problems with colleagues in her previous employment and the fact that she had been referred to the Nursing and Midwifery Council. The Claimant's fitness to practice was found to be impaired by reason of misconduct in her relationship with colleagues. The Claimant continues to dispute that the NMC findings are valid (and the period of restriction has been reduced on review) and maintains that it was she who was bullied and harassed by colleagues. We have not found it necessary to draw any inferences from the NMC findings or the London South Tribunal Judgments as we have been able to decide the case entirely on the evidence before us.

47 Following the interview with Mr Romaine, the Claimant complained that she had not been given a copy of the complaint letter. Mr Romaine sent her a detailed summary on 3 March 2016 and said that she could provide a written response to the allegations and a statement which would be considered as part of the investigation. Whilst provided late, it set out in sufficient detail the complaints made against her.

48 On 9 March 2016, Mr Romaine interviewed Mr Ncube about the complaints. As set out above, Mr Ncube referred to entries in his diary when answering questions. Mr Ncube explained that the Claimant would make allegations of abuse but, when asked by him for examples, was not able to give any beyond singing and drinking coffee. Mr Ncube said that Ms Grant had reminded the Claimant of the correct protocols for reporting suspected abuse. Mr Romaine also met with Ms Grant and Ms Cruse to discuss the complaints and the Claimant's response. The information given to Mr Romaine was consistent with their evidence to this Tribunal.

49 Notes of the Claimant's interview were not received by her until 17 March 2016. A first copy was sent in the week of 7 March 2016 but was not received by the Claimant. The Claimant has a residential address and a separate, postal address. In the end, Mr Romaine sent a copy to each address and a copy by email. The Claimant provided amendments to her interview notes and further comments on 18 March 2016. The Claimant believed that the delay in concluding the investigation was evidence that the Respondent did not intend to afford her a fair disciplinary process.

50 On or around 21 March 2016, Mr Romaine produced his investigation report. It contains a thorough analysis of the evidence and recommended that there should be a disciplinary hearing to consider some of the allegations.

51 On 23 March 2016, the Claimant was offered the post of Deputy Manager at another nursing home subject to provision of a satisfactory reference. Whilst Ms Cruse was initially the Claimant's line manager, she had commenced a study course in early 2016 and was present at Chase View for only two days a week. Ms Grant effectively took over line management of the Claimant from early February 2016, although this was not something which was ever communicated to the Claimant, nor was there any formal handover. Although the Claimant vehemently denied during the Tribunal hearing that Ms Grant was her line manager, we think that little turns on whether there was a formal line management between the two. The Claimant regarded Ms Grant as one of her managers, able to give her assistance and advice. Ms Grant completed the reference for

the Claimant. The reference is materially inaccurate: it gives the Claimant's length of service only at Ford House and not from when she started at Collingwood Court. The reference is also misleading: in response to a section about the Claimant's qualities, for example professionalism, compassion and other such matters, Ms Grant answered "**nil**". That response would suggest to a reasonable objective reader that the Claimant did not have any of those qualities. Whilst we accept that Ms Grant did not intend to give that impression, but rather meant to say that she could not comment, it is not surprising that the job offer was withdrawn in light of the overwhelmingly negative impression created by this reference.

52 On 1 April 2016, the Claimant resigned with one month's notice. Her brief email did not refer either to constructive dismissal or to having resigned because of improper conduct by the Respondent. The Claimant was not aware of the poor reference when she resigned. It was only on 29 April 2016 that the Claimant complained that her resignation was because of bullying and harassment at the Respondent, unfounded allegations of misconduct, poor handling of her abuse complaints and the poor reference.

53 Even after her resignation, the Claimant was willing and prepared to come to a disciplinary hearing but was advised by the Respondent that it did not expect her to do so. Yet, on 16 May 2016, Mr Ncube wrote to the Claimant suggesting that the Respondent was considering a referral to the Disclosure and Barring Service and the NMC apparently because she had left without attending a disciplinary hearing. Whilst this seems to us to be unfair and poor practice, Mr Ncube's letter post-dates the Claimant's resignation and is not relied upon as a detriment because of a protected disclosure. If any referral were made to either organisation, it should be made clear that the Claimant was willing to attend a disciplinary hearing and it was the Respondent who decided not to proceed.

54 The Respondent carried out a full investigation into the Claimant's Speak Up complaint. The report produced in or around mid-April 2016, upheld in part the Claimant's concerns about staff wearing rings, communication and use of language between staff and residents having become relaxed although not inappropriate. The most serious issue raised by the Claimant, namely the fractured hip, was fully investigated as a safeguarding incident by local social services and found no wrong-doing. The hospital treating the resident agreed, finding that it was due to pathological reasons and not as a result of abuse or poor manual handling procedures.

The Law

Protected Disclosure

55 A qualifying disclosure requires a 'disclosure of information' which in the reasonable belief of the worker tends to show, amongst other things, that the health or safety of any individual has been, is being, or is likely to be endangered or that a party is not complying with its legal obligations, s.43B(1)(b) and (d) Employment Rights Act 1996.

56 The ordinary meaning of 'giving information' is conveying facts and not simply making allegations, **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38, EAT at paragraph 24. The distinction between giving information and making an allegation may be a fine one. The two concepts are often tied together and the statutory provision does not draw the distinction, **Kilraine v London Borough of Wandsworth** UKEAT/0260/15, EAT.

57 The information about the obligation breached need not be in strict legal language. It will also be met if the breach complained of is perfectly obvious and apparent to all as a matter of common sense, **Western Union Payment Services UK Ltd v Anastasiou** UKEAT/0135/13.

58 The requirement for reasonable belief, which should not be conflated with good faith which is addressed below, involves an objective standard by reference to the circumstances of the discloser, including their qualifications, knowledge of the workplace and experience, **Koreshi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4, EAT.

59 The employee must also have a reasonable belief that the disclosure was made in the public interest, section 43B(1) as amended by the Enterprise and Regulatory Reform Act 2013. A disclosure does not fail the public interest test where there was also a personal interest involved, **Chesterton Global Ltd v Nurmohamed** [2017] EWCA Civ 314. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case. Relevant factors may be the number in the group whose interests the disclosure served, the nature of the interests affected and the extent of that effect, the nature of the wrongdoing disclosed and the identity of the alleged wrongdoer.

60 There is no requirement that the protected disclosure be the sole or principal cause for the detriment in a section 47B claim. It is sufficient that it is a material influence, in the sense of being more than a trivial influence, **Fecitt v NHS Manchester** [2012] ICR 372, CA. By contrast for a s.103A unfair dismissal, the protected disclosure does have to be the reason or principal reason for dismissal. It is the mental processes of the decision maker which must be considered when determining whether the necessary causative link between the detriment/dismissal and the protected disclosure has been established.

61 The Tribunal should identify and consider the elements of each disclosure and detriment separately; it should not adopted a rolled up approach, **Blackbay Ventures Ltd v Gahir** [2014] IRLR 416, EAT.

Constructive Dismissal

62 Section 95(1)(c) ERA provides that a dismissal occurs if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to do so by reason of the employer's conduct. Whether the employee was entitled to resign by reason of the employer's conduct must be determined in accordance with the law of contract. In essence, whether the conduct of the employer amounts to a fundamental breach going to the root of the contract or which shows that the employer no longer intended to be bound by one or more of the essential terms of the contract, **Western Excavating Ltd v Sharp** [1978] IRLR 27 CA.

63 The term of the contract which is breached may be an express term or it may be an implied one. In this case, the Claimant relies upon breach of the implied term of trust and confidence. This requires that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The employee bears the burden of identifying the term and satisfying the tribunal that it has been

breached to the extent identified above. The employee may rely upon a single sufficiently serious breach or upon a series of actions which, even if not fundamental in their own right, when taken cumulatively evidences an intention not to be bound by the relevant term and therefore the contract. This is sometimes referred to as the "last straw" situation. This last straw need not itself be repudiatory, or even a breach of contract at all, but it must add something to the overall conduct, **Waltham Forest London Borough Council – v- Omilaju** [2005] IRLR 35.

64 The question of fundamental breach is not to be judged by reference to a range of reasonable responses, **Buckland v Bournemouth University Higher Education Corp** [2010] IRLR 445, CA. The tribunal must consider both the conduct of the employer and its effect upon the contract, rather than what the employer intended. In so doing, we must look at the circumstances objectively, that is from the perspective of a reasonable person in the claimant's position. The question of fundamental breach is not to be judged by a range of reasonable responses test.

65 In **Tullett Prebon Plc v BGC Brokers LLP** [2010] EWHC 484 QB, Jack J stated at paragraph 81 that the conduct must be so damaging that the employee should not be expected to continue to work for the employer and that:

> "**Conduct, which is mildly or moderately objectionable, will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough**."

Unauthorised Deduction from Wages

66 The Employment Rights Act 1996 ("ERA") s.13 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deductions are required or authorised to be made by virtue of a statutory provision, a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. A deduction occurs when an employee or worker is paid less than the amount due on any given occasion including a failure to make any payment, s.13(3) ERA.

Conclusions

Protected Disclosure

67 It is not the role of the Tribunal to decide whether or not the Claimant's allegations of abuse and/or poor practice at the Respondent are true. Rather, we must consider whether the Claimant disclosed information which she reasonably believed tended to show a relevant breach. No issue was taken by the Respondent on public interest.

68 In our findings of fact, we found that on 14 December 2015 and during the period 7 to 17 December 2015, the Claimant made no more than general allegations of abuse and did not provide the detailed information which she now claims to have done about name calling, staff being dragged up beds, medication being dropped or poor infection control. These are matters that were subsequently raised by the Claimant but were not raised at this early stage. Whilst the language of section 43(B) does not distinguish between allegation and information, it is clear that there must be some detail from which the alleged wrongdoing can be identified from the use of the words "tends to show". The Claimant has failed to persuade us that she disclosed sufficient information which tended to show any breach of legal obligation or risk to health and safety at this time.

69 On 17 December 2017, the Claimant informed Mr Ncube by telephone and in the incident report form that there was inadequate staffing and that staff had sustained scratches from a resident. We also accept that the Claimant told Ms Cruse that she could not release a member of staff as that would leave her short-staffed as R needed one to one care. We have not found that she told Ms Cruse that staffing levels would be dangerously low. We accept that this was information which tended to show that there could be a health and safety breach and that the Claimant reasonably believed that the one to one care required by R would leave her short staffed if Ms Cruse took one of her Healthcare Assistants. There can be no doubt that the Claimant reasonably believed that it was in the public interest to provide information about inadequate staffing in a Unit specialising in dementia care, where there was concern about a particular resident. For all of those reasons we accept that the information provided by the Claimant, orally and in the incident form, on 17 December 2015 amounted to a protected disclosure.

70 We have found that on or about 11 January 2016, the Claimant did tell Mr Ncube that some staff members had given dropped medication to residents. Again whether or not it is in fact a risk to health and safety, we accept that the Claimant reasonably believed there to be a risk of infection and that it was in the residents' interests that the matter be brought to Mr Ncube's attention. For those reasons, we conclude that this was a further protected disclosure.

71 As for the emails to Mr Ncube requesting a meeting and identifying agenda items, we have not been persuaded that there was any disclosure of information tending to show a relevant breach. These were simply matters to be discussed and, without more, are insufficient information.

72 Whilst the Claimant's list of factual issues refers to complaints from relatives about a scratch and a fractured pelvis (although the evidence referred to a hip), the Claimant's evidence was that she had raised her concern that these were non-accidental injuries with both Mr Ncube and Ms Cruse. Ms Cruse accepted as much in evidence and the Claimant had been asked to carry out an investigation. The Claimant is a litigant in person and the Respondent understood the nature of the case being advanced, which arose from their own witness' evidence. For all of these reasons we considered it just to allow the Claimant to amend the factual issues to rely upon the oral disclosure to Mr Ncube and Ms Cruse as a protected disclosure on or around 7 January 2016. The Claimant identified the resident, the nature of the injury, how she believed it had been sustained and that it was non-accidental. We accept that this was a protected disclosure.

73 We have found that the Claimant told Mr Ncube on 8 February 2016 that a member of housekeeping staff had spoken inappropriately to a resident. It is not necessary for us to consider whether or not this was "abuse" but whether the Claimant reasonably believed that it tended to show a failure by the Respondent (or its staff) to discharge a legal obligation. We take into account the vulnerable nature of the residents and the Claimant's experience as a nurse. Overall, we accept that she reasonably believed that such inappropriate language was a breach of the duty of care owed to the resident and that it was in the public interest to bring it to Mr Ncube's attention. This was also a protected disclosure.

74 By contrast, we have not found that the Claimant's complaint about burned food was raised at this time but that it was added to her Speak Up complaint at a later stage.

In any event, the Claimant has not produced evidence that she provided information about when this happened, how often, by whom or whether it was deliberate or negligent. Some of the general concerns described by the Claimant (such as staff drinking tea or singing) are issues that go to good practice and professional behaviour but they are not emotional or psychological abuse as the Claimant describes them. The Claimant had a tendency to exaggerate and conflate poor practice with an allegation of abuse. Put starkly, her diary note could relate as much to one piece of toast being burned as to a pattern of feeding substandard food to residents. For each reason, we do not accept that there was sufficient information to amount to a protected disclosure about burned food on 8 February 2016.

75 The Respondent accepts that the Claimant's email on 10 February 2016 about removal of jewellery and her Speak Up report on 22 February 2016 were protected disclosures.

Detriment

76 We have rejected the Claimant's case on detriment as set out in paragraphs 2 and 5 of her list of factual issues. We have not found that she was told by Mr Ncube that her standards were too high and that, as they were both black and the majority of staff were white, she should not take action. Nor have we found that Mr Ncube told her to overlook things or that if she was unhappy, she should leave. We do not accept that such comments were made as alleged or at all. Where Mr Ncube did discuss the Claimant's management style with her in late December 2015 following staff complaints, we accept Mr Perry's submission that this was not in any way a suggestion that health and safety issues (or breaches of legal obligation) should not be reported. A reasonable employee in the Claimant's position could not have had a justified sense of grievance in this regard. Further, we accept that Mr Ncube's response to the complaints raised by the Claimant on 10 February 2016 demonstrates a genuine appreciation that she has been able to raise the issues and a desire to take swift action to address her concern. It is in direct contrast to the picture of Mr Ncube painted by the Claimant.

77 When concern that a resident had suffered a non-accidental fracture was raised by the Claimant, the Claimant was appointed by Mr Ncube to carry out the investigation. This does not tend to suggest that he wanted her to stop raising concerns, rather that if there was a concern, it be substantiated so that it could be investigated. Ms Grant was asked for and offered help to the Claimant as to how she should do this; she provided information and guidance to support the Claimant. The Claimant did start an investigation but made no further request for assistance. The Claimant was an experienced nurse and there was no reason for Ms Grant to think that any further assistance was required. Given the close working relationship between the Claimant and Ms Grant, we conclude that had further assistance been requested, it would have been provided. The Claimant was not subjected to any detriment in connection with this investigation.

78 The next detriment alleged is the Claimant's suspension on her study day following the staff complaint and thereafter the disciplinary investigation into the same. It seemed to us that the Claimant was upset about the manner of her suspension as much as, if not more than, the fact of the suspension. These matters will be a detriment if the employee was justified in feeling aggrieved about them. This will involve consideration of the evidence and reasons for the treatment of the Claimant, which inevitably overlaps with the issue of causation. For convenience sake, therefore, we consider them together.

79 The Respondent was provided with verbal and later written complaints about the conduct and management style of the Claimant. Eight out of 20 members of staff at Ford House signed up to the letter of complaint. The nature of the concerns was consistent amongst the staff. They were supported by the evidence of others interviewed by Mr Romaine, including members of the administrative staff. The complaints were substantial, serious and had the ring of truth. The Claimant's tendency to make general allegations against her colleagues, without providing detail, of threatening disciplinary action, raising her voice and not listening or accepting opinions which differed with hers were all evident in her conduct in these proceedings. The Claimant's challenges in cross-examination to Ms Grant and Ms Cruse were vehement to the point where they bordered on the aggressive. We can readily understand how more junior colleagues perceived her conduct towards them in the same light.

80 We have not accepted that the staff complaint was a conspiracy, rather it was an attempt to ensure that there was sufficient evidence for an investigation which would be fair to both the Claimant and her colleagues. Nobody was pressured to sign and their evidence was tested by Mr Romaine during the investigation. The nature of the complaints, and the Claimant's counter-allegations against her colleagues, tended to show a dysfunctional Unit. The Respondent was required to ensure the safety of residents who were vulnerable and quite properly needed to investigate. The Claimant accepted as much. In all of the circumstances of the case, we conclude that the Respondent could not properly have allowed the Claimant to continue to work in that environment in those circumstances. Whilst redeployment may have been possible the Claimant had been employed for a relatively short period of time, the allegations were significant and no improvement had been obtained after informal discussion and guidance. Overall, we are not persuaded that the Claimant could have a justified sense of grievance about either the investigation or her suspension.

81 Furthermore, even if either act did amount to a detriment, it was not in any sense whatsoever because of the protected acts which we have found. Mr Ncube decided to start the investigation at about the same time that he welcomed and supported the Claimant's email about jewellery and infection risk. We infer that he was keen to ensure professionalism and high standards but concerned about the way in which the Claimant was going about it. This is consistent with Ms Grant's description of the Claimant as a bull in a china shop. As for the suspension, Mr Romaine was not aware on 12 February 2016 of any protected disclosure and cannot therefore have been motivated by it. He had evidence from 12 members of staff, half of whom had not even signed the original complaint letter, confirming that there was cause for concern in the Claimant's relationship with her colleagues. It is this conduct by the Claimant and not her protected disclosures which was the entire cause of her suspension.

82 The investigation was handled thoroughly and fairly by Mr Romaine, who did not tell the Claimant that she was causing trouble all around. The allegations were not "upheld" as the Claimant suggests in her list of issues, but rather there was a recommendation that there be a disciplinary hearing. Given the weight of the primary evidence obtained by Mr Romaine it would have been surprising were any other recommendation to have been reached. The Claimant cannot have a justified sense of grievance that she would be required to attend a disciplinary hearing in such circumstances. In the alternative, we do not consider that Mr Romaine's recommendation was motivated in any sense whatsoever by the Claimant's protected disclosure.

Mr Romaine knew that there had been a Speak Up report (although not its contents) and the Claimant had repeated some of her concerns in her investigation meeting, but not in detail. Nevertheless, his decision to recommend disciplinary action was entirely unrelated to any disclosure but solely due to the very serious allegations of what amounted to bullying and for which there appeared to be strong primary evidence. We do not reach any conclusion on whether or not the Claimant had bullied her colleagues, or behaved inappropriately as alleged, simply that these allegations merited further scrutiny.

83 Overall, and even after stepping back and looking at the alleged detriments holistically, we are not satisfied that any protected disclosure was a material influence on the decision taken by Mr Ncube to start an investigation, that of Mr Romaine to suspend the Claimant and later recommend a disciplinary hearing or the manner in which the investigation was concluded. The Claimant was not subjected to any detriment because of a protected disclosure.

Constructive Dismissal

84 The matters relied upon by the Claimant as conduct which, considered cumulatively, amounted to a breach of the implied term of trust and confidence have been considered above. For the same reason, we are satisfied that the nature and number of the allegations and those making them gave the Respondent reasonable and proper cause to act as it did.

85 During the course of the case, the Claimant raised a number of concerns about the Respondent's handling of the investigation procedure which caused her to conclude that she would not have a fair disciplinary hearing. This compounded the 'last straw' of her suspension at a study day and persuaded her to continue with her objective of securing employment elsewhere. Dealing with these additional matters, we accept the Claimant's evidence that she should have been given a copy of the letter of complaint before the investigation meeting on 29 February 2016. Even if the identities of those signing the letter had been redacted, to prevent any possible further disagreement, the detail of the allegations should have been shared so that she could understand what would be discussed with Mr Romaine. This is a relatively minor flaw in an otherwise fair procedure. It was corrected by 3 March 2016 and the Claimant was not prejudiced as she was explicitly told that she could make further representations prior to a recommendation being made. She availed herself of this opportunity.

86 We did not accept, however, that there was undue delay in the investigation. Mr Romaine was appointed on 5 February 2016 and his investigation was extensive, interviewing 23 people (including the Claimant). The final interview took place on 9 March 2016 and his report was ready to be sent within two weeks. The delay in sending the notes of her interview to the Claimant was not excessive (a little over two weeks) and did not cause any prejudice as the Claimant was advised that she could comment and provide further information which would be considered before the report was produced. Objectively considered, we do not consider that there are grounds for criticism in respect of delay.

87 We have been critical of the reference provided by Ms Grant and we can understand the Claimant's intense dismay that it caused her to lose a potential new job. On the Claimant's own case, however, it did not form part of her reasons for resignation. There is no evidence that absent the bad reference, the Claimant would have

reconsidered her position during her notice period and decided to stay after all. We would suggest, however, that the Respondent takes steps to ensure that any subsequent reference is more accurate and not misleading. For all of these reasons, we do not accept that the Claimant has shown that the Respondent acted without reasonable and proper cause in a manner calculated or likely to have the required effect when viewed by an objective employee in the Claimant's position. The Claimant was not entitled to resign and treat herself as dismissed.

Unauthorised Deduction from Wages

88 As for pay, the Claimant bears the burden of proving that she was paid less than that to which she was entitled. Her assertion of an additional entitlement of £3.00 per hour extra in respect of her duties as the Unit Manager is unsupported by any evidence. Insofar as there was a memo about pay shortly after the Claimant was promoted, we prefer the Respondent's case that it was £1.00 per hour as an overtime incentive. There is no evidence as to when the incentive scheme came into force nor whether the Claimant worked hours as a nurse which would entitle her to payment. We find that she has not proved her claim and it is dismissed.

Employment Judge Russell

21 December 2017