



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103413/2023

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**Final Hearing
In Edinburgh**

**on 5, 6, 7, 8, 9, 13, 14, 15, 16, 19,
20, 21, 22 and 23 and 29 February,**

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1, 7, 11 and 12 March,

deliberations on 14 March and 5 April 2024

**Employment Judge A Jones
Tribunal Member A Mathieson
Tribunal Member L Grime**

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Mr P Donnelly

**Claimant
Represented by:
Mr S Smith, solicitor**

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Moore House School Limited

**Respondent
Represented by:
Mr D Maguire,
solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

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1. The claimant was subjected to detriments by the respondent because he made protected disclosures;

2. The claimant was constructively and unfairly dismissed;

3. The claimant was constructively and automatically unfairly dismissed because he made protected disclosures;

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4. The claimant was subjected to direct discrimination because of his sex by the respondent;

5. The claimant was not victimised for having done a protected act;

6. The respondent did not make any unlawful deductions from the claimant's wages.

7. The respondent is ordered to pay to the claimant compensation in the sum of £63,418.94.

REASONS

5 Introduction

1. The claimant lodged an application on 15 June 2023. He sought to amend his claim on 2 February 2024 to include various further allegations that he had been subject to victimisation in terms of section 27 Equality Act 2010. The respondent
10 objected to the amendment being allowed. After considering the parties' positions and in particular in view of the acknowledgement of both parties that evidence regarding these matters would be led in any event; that no postponement of the hearing would be required and that the only additional Tribunal time taken would be in respect of submissions, the amendment was
15 allowed.
2. Mr Smith informed the Tribunal that the claimant had been diagnosed with ADHD. He did not seek any specific adjustments for the claimant, but wished the Tribunal to be aware that his condition may cause him to take time to answer questions. Subsequently a brief report was produced providing further
20 information regarding the claimant's conditions.
3. The Tribunal did not sit on the morning of 13th or afternoon of 20th February due to pre-existing commitments of the members. Although the hearing was initially listed for 11 days, it was recognised that this may not be sufficient time in which to hear the evidence. An additional 3 days were therefore added at the end of
25 the hearing. As the hearing progressed it became apparent that this would not be sufficient and additional hearing dates were added subsequently.
4. A joint bundle of documents was produced and while parties had not as requested provided an agreed list of issues and chronology, the brief chronology provided by the claimant and the draft list of issues was said to be agreed by the
30 respondent at the commencement of the final hearing. The basis on which losses

had been calculated was accepted by the respondent subject of course to the arguments made in submissions regarding what if any compensation should be awarded and any adjustments.

- 5 5. The Tribunal heard evidence from the claimant. Ms Todd who had been a colleague of the claimant was interposed during the claimant's evidence as she was due to go on holiday. The claimant's mother who accompanied him to some internal hearings gave evidence, which was also interposed. The respondent had no objection to these arrangements. The claimant was not present in the hearing during the evidence of either of these witnesses.
- 10 6. The respondent called Mrs Sheridan, the Managing Director first. While she had been present as an instructing witness for most of the hearing, she was not present for some of the claimant's evidence which directly involved matters upon which she was to give evidence. The Tribunal then heard from Mr Greenshields who is the respondent's Head of Care and was for a time the line manager of the
- 15 claimant. Mrs Carvill who is the respondent's Head of Fostering (a sister service of the respondent) and carried out investigations into child protection issues gave evidence next. Dr Drysdale, who was the Director of Children's Services and is now Chief Executive Officer and who dealt with the claimant's grievance and was involved in various other matters then gave evidence. Mrs McSeveney is the
- 20 respondent's Head of Support Services, was latterly the claimant's line manager and conducted investigations into allegations against the claimant was also called to give evidence. Ms Ford- McNicol who was an investigating officer and chaired two disciplinary hearings concerning the claimant was the last witness
- 25 called by the respondent. The Tribunal was grateful to parties for providing written submissions. The Tribunal read the submissions in advance and parties were given an opportunity to make any additional points and comment on each other's submissions orally prior to the Tribunal retiring to deliberate.

Observations on the evidence

- 30 7. The claimant gave evidence over 7 days. The Tribunal found the claimant to be a very impressive witness. He was both credible and reliable and answered questions fully and carefully. He struck the Tribunal as a conscientious witness

who was thoughtful and considered in his evidence. He did not prevaricate or avoid questions. The Tribunal also found Ms Todd to be an impressive witness. She was both credible and reliable and gave evidence in an open and direct manner. Ms Todd addressed the inappropriate inference raised by Mr Greenshields that she had been in a personal relationship with the claimant in a very balanced manner. The Tribunal found Mrs Donnelly to be an extremely impressive witness whose career and extensive qualifications were in the care sector, albeit not in relation to a residential childcare setting. Notwithstanding that she was the mother of the claimant and gave evidence about her concerns for his mental health, she was balanced and open in her evidence. She gave evidence in a professional and controlled manner.

8. Mrs Sheridan was generally credible and reliable in her evidence albeit she suggested that she was not aware of operational issues as she did not work at the 'coal face' any longer and that others were better placed to answer some of the difficult questions she was asked. The Tribunal formed the view that Mrs Sheridan as owner of the respondent and Managing Director did in fact have a good overview of operational matters. She had daily 'hangout meetings' with her senior management team which included Dr Drysdale and also shared an office with Dr Drysdale. She also appeared to be very hands on, given her evidence that she would check her emails last thing at night in case any issues had arisen during the evening. The Tribunal therefore did not accept her evidence that she was unaware of many of the events at the time they occurred. In particular, the Tribunal did not accept that Mrs Sheridan was not aware of the position which would be adopted by the respondent at the Children's Panel Hearings in November and December 2022 regarding the siblings or that she wasn't consulted on this. The Tribunal formed the view that Mrs Sheridan was also more involved in the decision-making in relation to the disciplinary action taken against the claimant that she professed in evidence.

9. The Tribunal found Mr Greenshields to be a wholly unsatisfactory witness. His evidence was inconsistent, contradictory, evasive and generally lacked credibility or reliability. He had to be reminded of the importance of giving evidence under oath on more than one occasion. An example of his contradictory evidence was

that he said that he went into Gate House on 3 March 2023 to make checks on logs which had been completed, however he then said he was on leave that day, wouldn't have dealt with emails and had taken his son to visit Aberdeen University. While the Tribunal accepts that a witness might properly seek to alter their evidence because of a recollection which comes to mind, the Tribunal did not form the opinion that this is why Mr Greenshields changed his evidence. In addition, he was extremely reluctant to admit that he had any role in the position adopted by the respondent at the Children's Hearing on 2 December 2022. He variously said he did not discuss with Ms Cushen what she was going to say at the hearing, didn't discuss what she had said, and then when notes of a meeting were put to him about the position to be adopted by the respondent at that hearing, he said he had been involved in determining what position would be put forward. The Tribunal found that Mr Greenshields, along with other senior managers, had directed what would be said at that hearing. Mr Greenshields regularly did not answer questions asked and instead gave long monologues on related matters. Most concerningly towards the end of the second day of his evidence he suggested that evidence he had just given and his evidence at a similar time the previous day in the afternoon may have been inaccurate as he had been tired by that time. The Tribunal found Mr Greenshields' evidence about the meeting of 2 March 2023 regarding the relationships at work policy wholly unconvincing. He suggested that he decided to attend the meeting at the last minute to ensure that staff represented themselves professionally as he was aware it was likely to be a difficult meeting. It was impossible to reconcile that evidence with the evidence that he also asked hypothetical questions himself at the meeting, had not discussed his attendance at the meeting with the claimant in advance and did not sit with the claimant during the meeting but with employees. In addition, his evidence of the meeting later that day, where he initially suggested the meeting had taken no more than a couple of minutes, that the claimant hadn't argued against being told not to visit the Gate House and had not appeared stressed or upset was then revised to give much more detail regarding what had been said at that meeting. The Tribunal regrettably came to the view that he was not telling the truth on a number of occasions during his

evidence but was seeking to present a picture of a person who had had limited involvement in the circumstances leading to the claimant's claims.

10. Mrs Carvill was generally a straightforward witness. She had carried out investigations into child protection matters. She did not accept that there could have been any discrimination in the way in which allegations against the claimant were treated in comparison to a female member of staff. The Tribunal formed the view that she lacked insight in that regard and was unwilling to countenance the possibility that there was a requirement to investigate comments made by the young person about seeing a woman's body in the same way as comments made about seeing a man's body. The Tribunal formed the view that Mrs Carvill was justifying decisions which had been taken rather than considering the matter with an open mind. She sought to justify that there was no discrimination on the basis of a number of assumptions she had made without investigating those matters. The Tribunal was also surprised at the very limited scope of the investigation conducted by Mrs Carvill into the allegation made by Mrs Donnelly. That said, the Tribunal was mindful that Mrs Carvill had been given direction in that regard by Mrs Sheridan and had been given limited information regarding the concern which had been raised and its context. The Tribunal do not in these respects intend to question the professionalism of Mrs Carvill in her approach to child protection matters and are conscious that all her involvement in the matters relevant to this case were directed by others more senior to her and she was not made aware of the entire context of the issues she had been asked to investigate.

11. Dr Drysdale's evidence was of limited assistance to the Tribunal. His evidence added very little to the documentary evidence which was produced. His answers to questions were often of limited relevance to the question and in particular in relation to the sibling assessments carried out by the claimant only resulted in confusing matters. Dr Drysdale often provided detailed responses to questions which had not been asked. He did not demonstrate any insight into the purpose of his role in dealing with the claimant's grievance and complaint or the basis on which he thought it appropriate to respond in the way that he did. He did not explain why he did not apply critical thinking to the information with which he was

provided by the claimant and others rather than simply set out what information he received in his responses.

12. Mrs McSeveney was generally straightforward and credible and sought to answer questions in as succinct a manner as possible. However, the Tribunal formed the view that Mrs McSeveney was attempting to say as little as possible in answer to questions rather than answer the questions asked as she was concerned that she might provide evidence contrary to the interests of the respondents.
13. Ms Ford-McNicol's evidence was somewhat unsatisfactory. It was clear that she could not remember much of the events in which she was involved. She kept repeating that she only had regard to the facts in front of her, without apparently appreciating that her dual role as investigating and disciplining officer required her to take a more active role in the proceedings. The Tribunal formed the view that Ms Ford-McNicol had simply done what was expected of her in relation to these matters, which was take the allegations made against the claimant at face value, without ensuring there was any proper investigation into them or indeed asking any questions at all about the information presented.
14. The Tribunal was surprised not to hear from Ms Cushen in evidence. All of the respondent's witnesses sought to suggest that they did not know what had been said at the Children's Hearing on 2 December 2022 as they were not there and had not discussed it either before or after the hearing. The Tribunal found that evidence wholly unconvincing and formed the view that given the difficulties in the relationship with Dundee City Council ('DCC'), Ms Cushen would have been instructed what approach to take at the hearing and in general terms what to say. Specifically, Ms Cushen was instructed by Mr Greenshields not to support the recommendations in the sibling report which had been submitted by the respondent and drafted by the claimant and indicate instead that the respondent would support the placements recommended by DCC at the hearing. Although the Tribunal did not accept the evidence of Mrs Sheridan, Mr Greenshields or Dr Drysdale that they did not know what had been said at that hearing, the Tribunal found it notable that the only person who could have given direct evidence on this matter was not called to give evidence on behalf of the respondent.

Issues to determine

15. The Tribunal was required to determine the following issues:

i. **Did the claimant make a protected disclosure?**

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The claimant's position was that he had made four protected disclosures:

- a. He lodged a grievance with the respondent on 2 December 2022;
- 10 b. He wrote to Dundee City Council on 29 December 2022;
- c. On 11 January 2023, during an appeal hearing, he raised issues about a colleague; and
- d. He made a complaint to the Care Inspectorate on 4 April 2023.

15 ii. **Was the claimant subjected to a detriment because he made a protected disclosure?**

The claimant said that he was subjected to the following detriments:

- 20 a. The breach of confidentiality identifying the claimant as being under investigation in relation to a potential child sexual abuse allegation in November 2022;
- b. The way in which GG (Mr Greenshields) behaved towards the claimant at a meeting to discuss a relationship at work policy on 2 March 2023;
- 25 c. The way in which GG and LC (Ms Cushen) treated the claimant on 2 March 2023 in refusing to allow him to have dinner at Gate House;
- d. The rejection of the claimant's appeal against the outcome of his grievance and complaint
- 30 e. Not to pay the claimant a contractual entitlement to an increase in pay

- f. The decision to investigate him for gross misconduct when he had already given notice of his resignation;
- g. The disclosure to the claimant's prospective new employer that he was being investigated in relation to misconduct on 5 June.

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- iii. **Was the claimant automatically unfairly dismissed because he made a protected disclosure?**
- iv. **Was the claimant constructively dismissed?**
- v. **Was the claimant discriminated against because of his sex and if so, does the Tribunal have jurisdiction to consider his claim?**
- vi. **Was the claimant subjected to victimisation because he did a protected act?**
- vii. **Was the claimant entitled to a pay rise which he was not paid?**
- viii. **What compensation if any should be awarded to the claimant?**

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Findings in fact

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16. Having considered the evidence, the documents to which reference was made and the submissions of the parties the Tribunal found the following relevant facts to have been established. As the evidence related to various different relevant events which took place over similar timeframes, the Tribunal has set out its findings in a thematic rather than chronological order.

Claimant's employment history with the respondent

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17. Moore House School Limited is a private company which provides residential and educational services for children and young people on behalf of local authorities. Its headquarters are in Livingston, and it operates a number of houses in which children and young people live across its campuses. It also operates schools which provide educational facilities to children and young people in its care. The company is wholly owned by Mrs Sheridan who is also the Managing Director of the company. There is a board of directors of the company with 3 additional directors. Dr Stephen Drysdale was the respondent's

Director of Children Services until January 2024 when he became the Chief Executive and is a member of the Board. The respondent has a Head of Care, Deputy Head of Care and each House has a Registered Service Manager and Assistant Service Manager. The Service Manager may at times be the Registered Service Manager for more than one house. The Jane Moore Trust is a charity which is a sister organisation which offers a fostering service and also has a campus at Dunkeld for neurodiverse children and young people. The respondent operates a Child Protection Committee which deals with any issues concerning child protection and is made up of senior staff from across both organisations.

18. The respondent is a member of the Scottish Excel Framework, which is a register of approved providers, service levels and agreed fees for the provision of care to children and young people by private companies across Scotland. The rates are set every three years and organisations have to have been graded at 3 or above by the Care Inspectorate to be eligible for children to be placed with them by local authorities at the time of every review.

19. The claimant was 29 years old at the time of the Tribunal hearing. He held a BSc and Masters in Psychology, an SVQ Level 3 and 4 in childcare and young people and is CIPD qualified. He worked in the care sector from 2011 and had for a while run his own dessert business. He initially started working with the respondent as an agency worker through Randstad Care agency.

20. The claimant was appointed by the respondent to a practitioner role in September 2019 and commenced work on 25 November 2019. He was promoted to Acting up Senior Practitioner in the following month. He was then promoted to the role of Assistant Service Manager by letter dated 17 July 2020 and became a Registered Service Manager in October 2021. He was based at the respondent's Main House although he helped out at Gate House as the Manager there was absent for a period and subsequently resigned. After the Manager at Gate House resigned, the claimant took over responsibility as the Registered Service Manager for that House. Having been unsuccessful in an application for the role of Head of Support Services, the claimant was appointed to a newly created role of Depute Head of Support Services in April 2022 and

was due to start that role in August 2022. The delay in commencing in his new role was to allow him to continue to work with the siblings who had been placed with the respondent and to support a new manager into his previous role. The claimant's commencement in that role was further delayed allowing the claimant to continue to work with the siblings.

21. On 9 October 2022, the claimant requested that he further delay his commencement in his new role. Although this request was refused, it was agreed that the claimant would continue to provide support to the newly appointed Registered Service Manager, which he did for the next few weeks by working most afternoons with her in the Gate House. During the period of the claimant being Registered Service Manager of Gate House and November 2022, the claimant also worked additional shifts as a relief worker at Gate House. Between May and November 2022, the claimant regularly worked in excess of 100 hours per week and would work sleep over shifts and weekends at Gate House having completed the hours in his contractual role. On at least one occasion, the claimant was asked by Mr Greenshields to cover a sleepover if required (on 8 November 2022 p 308) The claimant was paid at an hourly rate for this additional work. The claimant's salary in his role of Depute Head of Support Services was £40,992.

22. A benchmarking exercise was carried out in relation to the claimant's role in October 2022. The claimant was not informed of the outcome of that exercise. The claimant did not have a contractual right to have his salary increased in any year. The claimant's role was compared against other roles which did not on the face of it appear to be similar to the claimant's role.

23. The claimant's employment with the respondent ended on 29 May 2023 following his resignation from his role. The claimant had been off sick from 23 March until the end of his employment.

24. Until the claimant made clear that he would not alter his professional opinion set out in the sibling reports which were completed, he was viewed by the respondent as a rising star in their organisation. The claimant had been hugely

enthusiastic about his employment with the respondent and a dedicated member of staff who was passionate about his work.

Relevant legislative provisions and advisory policies

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25. The Tribunal was referred during evidence to various pieces of legislation and policy documents which were said to be relevant to the circumstances of this case and in particular the extent to which there was a statutory or organisational duty to ensure that children in care should remain together rather than apart. The Tribunal found the following legislation and policy to have been relevant.

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26. Between 2017 and 2020 Scotland's Independent Care review carried out investigations into young people who had experience of living in care in Scotland and those who cared for them. In 2020, the Scottish Parliament accepted the conclusions and recommendations of that report and set out a vision where care experienced children and young people could grow up loved, safe and respected. The Scottish Government undertook to implement the findings by 2030 at the latest with cross party support. The Parliament made a Promise which was based on five foundations; Voice, Family, Care, People and Scaffolding. These set out that children and young people must be listened to and involved in decision making about their care; where children are safe with their families and feel loved, they should stay with them; they should be given support to overcome any difficulties; where it isn't possible for children and young people to remain with their family, children must stay with their brothers and sisters wherever it is safe to do so. They must also belong to a loving home, where they are able to stay for as long as needed; the workforce must be supported to develop trusting, compassionate relationships with those they support. They must also be aware of the importance of listening during decision making and that children, families and the workforce must be supported by a system that is there when it is needed, the scaffolding of help, support and accountability. There are various iterations of the Promise for appropriate audiences setting out the intention and actions expected.

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27. The respondent has given a commitment to adhering to the principles of the Promise without the necessity of statutory intervention. Two of its members of senior staff are involved in its implementation. The respondent's email signature states "we will #KeepThePromise." Given the public pronouncements of the respondent, the claimant was entitled to understand that he and others would adhere to the principles of the Promise in his working environment, whether or not they were care workers caring for a particular young person.

28. The intention of the Promise was to make a wholesale challenge to the way in which children and young people experienced being in the care of the state. It was a recognition that there had been significant failures to date and that new ways of working had to be adopted. The claimant was entitled to be of the view that all colleagues would act in keeping with the Promise and that he could and perhaps was even under an obligation to challenge anything which was done which did not adhere to the principles espoused by the Promise and the respondent without fear of retribution.

29. The Promise involves encouraging and supporting staff to develop long term and loving relationships with the children and young people for whom they care, which can continue beyond the period of care itself. It recognised that the system in Scotland had not well served the interests of care experienced children and young people and required a new approach to be taken. Mrs Donnelly described part of the obligation as being 'to step in and not step back' from challenging situations.

30. Regulation 5A of Looked after Children (Scotland) Regulations 2021 provides that:

25 **5A.**—(1) Paragraph (2) applies where—

(a) the local authority are considering placing the child—

(i) with a kinship carer in accordance with regulation 11,

(ii) with a foster carer in accordance with regulation 27,

(iii) in a residential establishment, and

30 (b) any sibling of the child is looked after or about to be looked after.

(2) The local authority must, where appropriate—

(a) place the child and the sibling of the child with the same carer or in the same residential establishment, or

(b) place the child and the sibling of the child in homes which are near to each other.

(3) In determining for the purposes of paragraph (2) whether the placement is appropriate, the local authority must be satisfied that the placement safeguards and promotes the welfare of the child (which is the paramount concern).

(4) In determining for the purposes of paragraph (2) whether a placement as referred to in sub-paragraph (b) of that paragraph is appropriate, the local authority must be satisfied that such a placement would better safeguard and promote the welfare of a child than a placement as referred to in sub-paragraph (a) of that paragraph.”.

Respondent's policies and procedures

31. The respondent operates a disciplinary procedure (page 983). The procedure refers to 'employees'. There is nothing in the procedure regarding its application to those who are no longer employees of the respondent. The respondent's position was that it was its 'policy' that where disciplinary investigations were commenced prior to the termination of employment of any employees they would continue with those proceedings even where the person concerned was no longer an employee. It was also suggested that respondent raised disciplinary proceedings in relation to those who were no longer employed at the point at which the respondent became aware of any potential disciplinary matter. The respondent did not lead any evidence in support of its position on these matters.

32. The Tribunal found that there were a number of instances where disciplinary matters might have been raised against employees or former employees and were not. In particular, the Registered Service Manager at Gate House prior to the claimant had been informed by a member of agency staff that restrictive and inappropriate practices were being used by staff at Gate House. The manager did not take any action in relation to that complaint, did not inform Mr Greenshields of the complaint which was made and allowed the practices to continue. The manager subsequently resigned while there was an investigation

ongoing into the use of restrictive practices. Although Mr Greenshields was aware by the time of his resignation that the manager had failed to act on the information provided by a whistleblower, no disciplinary action was taken against him and a reference was provided for him and he moved to a role in the public sector. There was no evidence to suggest that the respondent had ever raised disciplinary proceedings against a person who was no longer an employee other than the claimant. The Tribunal concluded that the respondent did not operate a policy of commencing or continuing with disciplinary matters regarding former employees.

33. The disciplinary procedure indicates (at page 984) that following an investigation, there may be three recommendations: no further action required, Extraordinary Supervision session required or a Disciplinary Hearing required. The procedure envisages these outcomes as distinct alternatives and makes no reference to a combination of them being appropriate. The procedure goes on to state that extraordinary supervision may be recommended “where a mistake has been made which has to be marked, however there has been recognition and learning form the situation.” The procedure also states “An improvement notice may be served at the Extraordinary Supervision session. A record of the Extraordinary Supervision session will be kept on file, however will not be recorded as a disciplinary matter.”

34. The respondent has a Whistleblowing Policy, which was produced to the Tribunal (at page 978). The Tribunal was extremely surprised not to have been referred to that policy (which is only 2 pages long). The respondent did not lead any evidence on how it dealt with whistleblowing.

35. The respondent also has a complaints procedure. Again, the Tribunal was surprised not to have been referred to this procedure during the course of the hearing.

36. The respondent suggested it had a policy of filling in a Child Concern Notification Form when any concerns in relation to children in their care are raised. A form

was filled in when a concern was raised regarding the claimant. No form was filled in when the claimant raised concerns regarding Mr Greenshields' practices. No form was filled in when a concern was raised by Mrs Donnelly in her email of 2 March 2023 in relation to Mr Greenshields. No form was filled in in relation to the comment that a child had seen one of the practitioners 'boobs' when at swimming. The respondent did not consistently complete such documentation.

Placement of the siblings

10 37. Four siblings were placed by DCC with the respondent in February 2022. Initially a foster placement was sought by DCC through the Jane Moore Trust for the siblings, however no suitable foster placements were available. There were very limited facilities available in the nearby regions to place four children. The respondent's Gate House had 4 bedrooms and was available as it had recently been renovated. The respondent had never accommodated more than 3 siblings together previously. The respondent, and Mr Greenshields in particular was aware that the respondent would be under a high degree of scrutiny in relation to this placement both because of the previous difficult relations with the local authority and because of the unique nature of the placement. The registration for Gate House with the Care Inspectorate had to be amended in order to accommodate the children because of their young age. The respondent would normally only provide services for older children.

38. The intention of DCC initially was for the placement to last for a 12-week period to allow the children's needs to be assessed.

25 39. The then Registered Service Manager of Gate House was absent from work regularly over the period in which the siblings were placed with the respondent and subsequently resigned.

40. The Care Inspectorate conducted an unannounced inspection of Gate House over 3 days from 14 April 2022. A report was produced on 4 May 2022 which graded the service as 'weak' which is second bottom on a 6-point scale. The report highlighted the lack of a stable staff team, lack of consistent care, and that

staff had on occasion used restrictive practices without approval from the local authority and had not recorded them to allow opportunities for reflection and external management oversight (page 124). The report set out various requirements including in relation to the use of restrictive practices. Restrictive practices related to the use of holding doors closed to contain the young people. These practices ought not to be used without the agreement of the placing local authority and ought to be recorded in order to monitor their use. This was not done. The previous Registered Service Manager had been in post over the period to which this assessment related.

41. A follow up unannounced inspection took place over 18 and 19 July 2022, by which time the claimant had been in post as the Registered Service Manager which he had taken over around the time of the previous inspection and had set out and implemented a plan to address the concerns raised by the Care Inspectorate. The report indicated that all the recommendations which had previously been made had been met.

42. The claimant, in his role as Depute Head of Support Services communicated the outcome of the investigation conducted by the respondent into the use of restrictive practices to the placing authority in a letter of 24 October 2022. The letter confirmed that all the staff involved would receive extraordinary supervision sessions.

First sibling assessment

43. The respondent was asked to complete a sibling assessment by DCC. The purpose of this assessment was to recommend whether the siblings should remain together or be separated and comment on the care they should receive. As the registered service manager and worker who had had most ongoing contact with the siblings, the claimant compiled this report. He had never completed such a report before and was given no guidance from the respondent. It would normally be the placing authority's responsibility to complete such a report. The report drafted by the claimant was comprehensive, detailed and evidence based. The report was produced on 18 May 2022. By this time the eldest sibling had been moved to different residential service from the other

siblings with the agreement and under direction of DCC. The report recommended that the eldest sibling should remain in the current placement; that there should be further exploration to assess whether the 2 youngest siblings could remain together within a residential placement and that the elder of the three remaining siblings should be placed in a separate residential placement. The report highlighted the complex and challenging needs and behaviours of all three siblings, The report was based on information from the records of the young peoples' experiences from their arrival at the service to the end of April 2022.

44. The report was approved by the claimant's then line manager Mr Greenshields who sent an email to the claimant saying "This is an excellent report, Paddy, well done!". The report was submitted to DCC.

Second sibling assessment

45. The claimant emailed the placing social worker on 25 June 2022 raising a concern that that one of the siblings had been quite upset as the social worker had told them the previous evening that they were being split up and moved from Gate House.

46. The claimant emailed the social work team at DCC on 29 July 2022. The claimant was responding to a query regarding ongoing costs in relation to the services being provided. He went on to state "I know that X will struggle to manage living in a group setting without their [siblings]. A placement where they could remain together would be in their best interests. They have progressed significantly since being accommodated; separating them when they are doing amazingly well, will be another traumatic experience for them.' DCC were aware from this time that the respondent's position on the placing of the siblings had altered from the original report.

47. A meeting took place on 8 September 2022 between the claimant, Ms Cushen the Deputy Head of Care, the placing social worker and her line manager to discuss recommendations for the upcoming Children's Hearing. It was stated that the social work opinion was that the siblings should be separated. The claimant

indicated he did not agree with that recommendation. Ms Cushen confirmed that she was in agreement with the claimant's recommendation. It was decided at that meeting that the claimant would provide an updated sibling assessment to the social workers to evidence the change in recommendation. That request was confirmed in an email to the claimant from DCC later that day. Social work and the respondent also discussed the provision of costs should the claimant's recommendation be accepted.

48. The claimant drafted an updated sibling assessment which was 47 pages long. It made reference to relevant statutory provisions and research and analysed the position of each of the children. It analysed incidents involving the three siblings. It took into account the views of the other care workers and set out evidenced based recommendations in relation to the future care of the children and recommended that the three siblings remain together in a residential setting and that the other sibling remain in their existing placement.

First Children's Hearing

49. A hearing took place before the Children's Panel on 22 September 2022 to determine the future placements of the siblings. The respondent had submitted the second sibling report which had been prepared by the claimant. The claimant attended the panel hearing together with the key workers for the children who also gave the panel their views that the children should remain together. The respondent did not have sight of any report which might have been submitted by DCC. DCC indicated that their view was that the children should be separated. As a result of the difference in opinion, the children's panel determined that a Safe guarder would be appointed to submit an independent opinion on what orders the Children's Panel should make. The Safe guarder is a person with a legal background who is required to speak to relevant parties and make recommendations to the panel on the basis of what is considered to be in the best interests of the children. The reporter to the children's panel sent the claimant an email on 22 September indicating that a request had been made for further reports on the siblings. The email confirmed that a hearing would take

place on 17 November, and that the claimant should attend virtually. The email stated in relation to the reports “All that is needed is a note on any developments since your last report and any updated recommendation. We don’t need the full report again as it will already be on the papers for all participants.”

5 50. Following that hearing on 22 September 2022, Mr Greenshields spoke to the claimant and said that he had spoken with DCC who felt that the claimant had not presented a balanced view of the options at the first hearing. Mr Greenshields had supported the recommendations made by the claimant on behalf of the respondent to this point. Mr Greenshields became concerned from this point
10 about the impact the differing opinions of the respondent and DCC would have on the relationship between DCC and the respondent.

51. The Safe Guarder who had been appointed visited Gate House on 3 November 2022. He spoke to Mr Greenshields along with other staff and asked for Mr Greenshields professional opinion on whether the siblings should remain
15 together or be separated. Mr Greenshields did not recommend that the children be kept together and was not supportive of the opinion which had been set out in the previous sibling report.

Respondent’s relationship with DCC

20 52. DCC is one of the local authorities on the Excel Framework which uses the services provided by the respondent.

53. Around 2020 a young person had been placed with the respondent by DCC for
25 around 18 months. DCC were of the view that the young person should be moved out of residential care. The respondent voiced concerns at that proposal at the time for various reasons. In the event the young person was moved out of residential care and took their own life around 6 months later. There was subsequently a Fatal Accident Inquiry into the death of the person in which the
30 actions of DCC and the respondent were considered. This impacted the relationship between the respondent and DCC whose use of the respondent’s services reduced thereafter.

54. Prior to the second children's hearing, the placing social worker contacted the respondent's staff on their personal mobiles and email addresses for views on whether the siblings should remain together, in breach of the respondent's policies which required communications to be through work emails. The claimant
5 wrote to the social worker by letter dated 26 October 2022 raising concerns regarding this matter. DCC did not respond in writing to that letter.

55. The letter of 26 October was approved by Mrs McSeveney who at the time was
10 the claimant's line manager. Mr Greenshields voiced concerns about the letter and that sending it would further damage relationships with DCC and didn't want it to be sent. He asked the claimant and Mrs McSeveney if it had been approved by Dr Drysdale and was informed that his approval was not required and that it would be sent.

15 56. Ms Cushen, who was the respondent's Deputy Head of Care sent an email to the claimant on 18 October 2022 when she stated "Aye because Emily and Sw have been on the teams that's been full of nothing but chaos that's been having to managed by managers so they saw a hole and knew they would get folk who
20 are all involved in toxic behaviour to do what they wanted. Social need to be addressed on the unprofessionalism of what they have done here. I will be going into the panel with the pros and cons but I will also open this can of worms on Sw awful. This is not in the best interests of children this is a war because we didn't agree." Ms Cushen was referring to the placing social worker having
25 contacted members of staff on personal contact details asking for their opinions as to whether the siblings should remain together. Ms Cushen was of the view that the purpose in the placing social worker having taken this action was to seek to undermine the recommendation that the siblings remain together. Ms Cushen did not raise this issue further with DCC or at any hearing.

30 57. The claimant made a formal complaint to DCC by letter dated 29 December 2022 regarding his concerns about the social workers with whom he had engaged in relation to the care of the siblings. Although in that letter the claimant made

reference to DCC having said that he should not continue to be in contact with the siblings, this was in the context of his efforts to maintain contact with all three siblings with whom he had been working. While DCC had sent him an email to that effect, there had been no discussion with the respondent regarding the extent to which this was an instruction or in what way that instruction would be implemented by them. The claimant's complaint was not upheld in a letter dated 5 15 March 2023 to him from DCC which was inaccurate in a number of factual respects. In particular the letter suggested that the social workers were advised "just prior to there being a Children's hearing" that the view as to whether the siblings should be separated had changed. DCC are noted in a record of a 10 meeting of 8 September 2022 as being informed of the change of recommendation regarding the siblings and an updated sibling assessment report which had been requested by DCC social work (page 246) had been sent to the relevant social worker on 13 September (page 245) and the Children's 15 Hearing did not take place until 22 September. The letter also indicated when referring to the second sibling assessment report that "It was unclear if this report was only from you or if it was from the Moore House Group and endorsed by them" when the report was sent from the claimant's work email address, and it had never been suggested to the respondent that DCC believed the report to be 20 from the claimant in a personal capacity. In addition, the claimant had sent an email dated 29 July 2022 to the placing social worker indicating the change in view regarding the siblings being kept together.

58. In the notes of a meeting on 9 November 2022 between Mr Greenshields and 25 the two senior social workers at DCC who were responsible for the siblings, there was reference to a "discussion re Patrick Odonnell's (sic) role and lines of accountability.", "Discussion re Paddy's 'attendance at perm panel' and "Discussion re letter from Paddy sent directly to Emily in relation to GDPR breach". The claimant was not informed of the nature of any of these discussions 30 other than that Mr Greenshields raised with his attendance at the permanency panel. Mr Greenshields was concerned at the impact these issues would have on the relationship between DCC and the respondent.

59. The claimant was not willing to change his professional opinion regarding the future placements of the siblings, which was based on the extensive evidence he produced and his extensive interactions with them over the period of their placement. The placing social work team encouraged Mr Greenshields to ensure that the respondent advanced a balanced approach at the children's hearing and not make any specific recommendations, even though they had initially asked the respondent to make recommendations. The concerns they raised caused Mr Greenshields to alter the position of the respondent to support whatever DCC recommended irrespective of the respondent's original recommendations.

60. A report was submitted to the Children's Hearing by DCC on 3 November 2022 (page 996) which set out reasons why the siblings should not remain in the care of the respondents and was excoriating in its criticisms of the respondent. It did not set out any evidential basis for the opinion that the siblings should be separated and moved to separate placements. The report was provided to Ms Cushen and Mr Greenshields on 11 November (p313) The report was not shared with the claimant for his comment on any of the matters raised therein. The respondent did not take any action in relation to the serious criticisms of them raised by DCC or attempt to counter them because they did not wish to further damage the relationship with DCC.

61. A weekly meeting took place between social workers and respondent staff on 23 November 2022 regarding the siblings. The minutes of that meeting indicate that the Children's Hearing had been rescheduled to 2 December and that the social work recommendation remained that the children should be separated. The minutes went on to note under a heading "Allegations against staff" that in November concerns had been raised regarding "the manager" and that there was a fact-finding investigation underway. The minutes went on to note that the child concerned had increased bed wetting which was said to appear to be "uncertainty to do with hearing and also his disclosure and him processing this and the impact that has had on staff in the house." There was also reference to the child being referred for sexual education services. The minutes were

distributed by DCC to nine members of staff at the respondent by the placing social worker, most of whom had not been present at the meeting and had given apologies.

5 62. When Ms Todd received a copy of these minutes, she approached the claimant and asked him what was going on as it was clear to her from the minutes that he was being investigated and that there was a sexual element to the investigation. Ms Cushen joined the conversation and indicated that she had contacted social work and asked them to remove the identifying information from the minutes. No
10 formal correspondence or concerns were raised by the respondent in relation to what was the provision of confidential information regarding the claimant including an implication that the allegation against him related to sexual misconduct. Mr Greenshields did not take any action in relation to this breach of a member of staff's confidentiality.

15 63. Any investigations into allegations concerning staff should be confidential and it was clear from the notes that the claimant was being investigated. The respondent took no action to support the claimant in this regard other than ask that in future minutes only be disseminated to managers.

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Claimant's move to new role

64. DCC were informed that when the claimant moved to the role of Depute Head of Support Services, he would continue to work shifts with the siblings in order to
25 support the transition from his role as Service Manager and the introduction of a new Service Manager.

65. The claimant had been assured by the respondent that the new Service Manager would be capable of continuing to maintain the progress of the siblings and that staff would be recruited. Having worked with the new Manager and on the basis
30 of feedback from other staff, the claimant formed the view that the new Manager did not have the skills required to deal with the complex needs of the siblings and the management of staff working with them. The claimant was concerned that

his transfer to a new role would impact on the respondent's ability to provide the appropriate levels of care for the siblings. On this basis he asked if he could undertake a hybrid role combining both a role as Service Manager and that of his new role. While this was not formally approved, the claimant did continue to work in the afternoons at the Gate House and then worked additional shifts after his normal hours into the evening, overnight and at weekends. The respondent was content with this approach as it addressed the organisational issues being faced by it at Gate House in terms of staffing. The arrangements were not committed to writing and the respondent did not take any steps to monitor the hours being worked by the claimant over this period, which were in excess of 100 hours per week. There was no discussion as to when the arrangement would cease.

66. The new Service Manager was investigated because of an allegation that she had used restrictive practices against one of the siblings. She was moved from Gate House for the first week of the claimant being in his new post to allow the investigation to take place. DCC were informed of the allegation and a fact-finding investigation was carried out. The claimant wrote to DCC (at page 254) on behalf of the respondent to inform them of the outcome of the investigation and confirmed that the Manager had been moved back to Gate House. The way in which this outcome was communicated to DCC was very different to the way in Mr Greenshields subsequently communicated the outcome of a fact-finding investigation concerning the claimant. The respondent did not usually give a local authority who had placed children any input into its staffing arrangements and did not inform them of anything other than the outcome of the fact-finding exercise. It was not the respondent's practice, other than in relation to the claimant, to ask for a local authority's agreement or input in relation to staffing matters.

67. The new Service Manager became the registered Service manager for Gate House on 30 October 2022.

Updated Sibling Assessment

68. The claimant drafted an updated sibling assessment on 8 November 2022. The report provided additional information in relation to the number of incidents which had involved the siblings. The report recommended that the three siblings be placed together in a residential setting. The report also included the views of the staff who had been working with the siblings regarding whether they should stay together. No staff indicated that the children should be separated.

69. The claimant sent a copy of the report to Mr Greenshields who asked for an editable copy of the report. Mr Greenshields also expressed the view to the claimant that the report should set out the pros and cons of the siblings remaining together and that the report should not have made a recommendation that the siblings remain together.

70. The claimant responded by email on 8 November to Mr Greenshields where he stated that providing a report in the terms requested by Mr Greenshields “defeats the purpose of the assessments. We have not been asked to present a critical evaluation of the pros and cons of sibling relationships. The report was to be based on evidence and observations specific to the siblings; with any recommendations drawing from this.” Mr Greenshields wrote later that day thanking the claimant for his input and indicating he would consider this when reviewing the report. In the event the report was sent to the Panel unamended and with the agreement of Mr Greenshields.

17 November Children’s Hearing

71. The claimant wanted to attend the hearing on 17 November in order to be able to speak to the reports he had submitted. The claimant had spent far more time with the siblings than any other member of the respondent’s staff and had the closest relationship with them. He had in depth knowledge of them and their experiences with the respondent. The Reporter had indicated that one person should be present at the hearing from the respondent. The respondent had decided that Ms Cushen should attend and that a key worker would also attend.

There was some discussion between the claimant and Ms Cushen and Mr Greenshields regarding the claimant seeking consent from the Reporter for the claimant to attend in addition to Ms Cushen.

5 72. In the event, the hearing was rescheduled because by this stage one of the siblings had, with the help of the claimant, secured legal representation and the lawyer required more time to familiarise themselves with the facts of the case.

First Child Protection investigation

10 73. On 21 November 2022 one of the practitioners who worked with the siblings completed a 'Child Concern Notification Form' in relation to a comment one of siblings had made. They reported that one of the siblings had said that he had "saw Paddy's testes" at the swimming. The claimant had been on a holiday with one of the siblings and a female worker and had been at a swimming pool on
15 several occasions. At the same time, it was reported that the child had used explicit sexual language about his parents and others.

74. The claimant had been due to work a shift that evening at Gate House. He was approached by Mr Greenshields and Mrs Carvill and told that a child protection statement had been made by one of the siblings and that the claimant should not
20 return to work at Gate House or have contact with any of the siblings or staff until the matter was investigated.

75. The claimant was shocked and upset at this development. Mrs Carvill informed the claimant that he should take comfort that he was not being suspended from his substantive role which demonstrated that the allegation was not very serious.
25 The claimant was informed that it was not an allegation which had been made but a statement which had come up in conversation with one of the siblings. The claimant was given no further information regarding the matter at that time.

76. Mrs Carvill who is the child protection lead for the respondent conducted a fact-finding investigation. In advance of this she spoke with the placing social worker's
30 manager and Dr Drysdale and agreed that she would conduct the fact-finding

investigation. She interviewed the siblings on 21 November with Ms Cushen. The interview was as informal as possible and appropriate in the circumstances. One sibling said that he had seen the claimant's penis through his towel when they were getting dressed after swimming. He also said that he had seen a female practitioner's boobs when she was swimming. Mrs Carvill then interviewed the claimant on 22 November. No mention was made to the claimant of the sibling's reference to his female colleague's boobs. No child protection form was filled in regarding that comment and the placing social worker was not informed. Mrs Carvill then interviewed the female practitioner. She did not mention to her the comment made by the sibling about her boobs. All of the interviews were recorded in writing.

77. The placing social worker and SSSC were informed of the statement made regarding the claimant on 22 November by Ms Cushen. Mr Greenshields informed the Care Inspectorate on the same day. It was the respondent's practice to inform the statutory bodies of certain concerns regarding staff.

78. Mrs Carvill produced an investigation report dated 25 November, outlining a timeline of her investigations. She concluded that the event described by the sibling was "more likely not to have happened. If it did then I conclude that it was by accident and Paddy was not aware." She went on to recommend that no further action should be taken in relation to a disciplinary process but that Mr Greenshields and Mrs McSeveney carry out extra ordinary supervision with the claimant and that the staff team be engaged to ask if they can contribute to a safe practice discussion. This report was not provided to the claimant until he made a subject access request in January 2023 when it was provided on a redacted basis.

79. The claimant contacted Mrs Carvill by email on 25 November to ask if there was any update to the investigation as he had understood he would have been informed of the outcome by then. Mrs Carvill responded saying that she had sent the findings to Mr Greenshields that day. The claimant then asked whether his scheduled shifts for that weekend should be cancelled or reinstated. Mrs Carvill responded indicating that the report was with Mr Greenshields and any requests regarding information or access should go to him. Her email went on to say, "Until

the outcome has been signed off by Gary and Elaine there is to be no contact with staff or young people from Gate House as discussed with you previously.”

5 80. The claimant contacted Mrs McSeveney by email on 27 November to raise his concerns regarding the investigation which had been carried out and the disclosure of this in the minutes distributed by DCC. He also raised a concern that not allowing him to return to work shifts when the investigation had been concluded was punitive.

10 81. On 29 November Mr Greenshields emailed DCC social workers (at page 343) indicating that the fact finding had been completed and no disciplinary action was to be taken. The email went on to state that the siblings had been missing the claimant and “As we move towards the hearing and planned transition afterwards, I believe it is important that he be allowed to support the [siblings] in the service in a structured manner to allow a positive ending and have some involvement in key events like Christmas activities and events.” There was no
15 basis for Mr Greenshields to be inviting comment from DCC regarding the claimant’s ongoing involvement with the siblings. This approach had not been taken in the past in relation to any other member of staff. While the claimant’s circumstances were different in that he was now in a new role, there was no valid reason for Mr Greenshields to invite comment from DCC. He did so because he
20 remained concerned at the impact of the relationship with DCC as a result of the differing opinions of the claimant and DCC regarding the future placing of the siblings. Mr Greenshields did not want to allow the claimant any further scope to continue to recommend that the siblings remain together. Mr Greenshields did not inform the claimant that he was going to write to DCC in these terms. At this
25 time the claimant understood he would return to work shifts at Gate House.

82. Mrs McSeveney wrote to the claimant on 29 November indicating that the fact-finding investigation process “found there to be no basis to the young person’s statement.” The letter made no reference to the requirement of extraordinary supervision.

30 83. The claimant sent an email to Mrs McSeveney late that evening following a discussion with her. The claimant had been informed by her that Mr Greenshields

was okay with the claimant returning to work shifts in Gate House but would first need to check authorisation from DCC. This approach by Mr Greenshields was unprecedented. The claimant pointed this out and explained that the process was very different from other fact-finding procedures in which he had been involved. The claimant had also been informed that Mr Greenshields would meet with him.

84. A meeting took place on 1 December between the claimant, Mrs McSeveney and Mr Greenshields. The claimant was not informed in advance that this was to be an extraordinary supervision session. While the issue of extraordinary supervision was raised at the meeting, the respondent's practice or procedures were not followed. No note of the meeting was provided to the claimant although one was taken. No record of extraordinary supervision was placed on the claimant's personnel file.

85. At that meeting Mr Greenshields informed the claimant that the siblings had been told that the claimant was busy with his new role. Mr Greenshields did not in fact know who had said what to the siblings about the claimant. When the claimant was initially informed that he could not attend his shift on 21 November, he was replaced by a temporary member of staff who the siblings did not get on with. The practitioner informed the siblings that the claimant wouldn't be coming for his shift and wouldn't be back. In addition, the claimant had been informed by another worker that the siblings had been told he was on holiday. Mr Greenshields had not put in place any measures to ensure that there was appropriate communication with the siblings regarding the claimant's absence. He did not know and took no steps to find out what had been said to them about the claimant.

86. Mr Greenshields informed the claimant at this meeting that he wasn't permitted to return to shifts at the Gate House. When asked why he was told that the shifts were covered. At this time the respondent had to use agency staff to cover shifts as they did not have enough permanent or relief staff available. He said that DCC were happy for the claimant to be involved in the ending events to the children's placement with the respondent.

87. By this stage Mr Greenshields had decided that the recommendation made regarding the siblings being kept together would not be supported by the respondent at the Children's Hearing. He had discussed with DCC that the siblings would be separated and discussed what new placements would be recommended.
88. DCC had emailed Mr Greenshields on 30 November 2022 indicating that there should be no unsupervised contact between the claimant and the siblings, that the claimant should not be allowed to work any more shifts and should have no involvement in the transition of the siblings from the respondent. This email followed a discussion with Mr Greenshields who had agreed with DCC and supported their view that the claimant would not work anymore shifts. Mr Greenshields did not inform the claimant of the terms of the discussion he had had with DCC. He said that the claimant could arrange contact with the siblings through the Service Manager.
89. On 5 December, the claimant was at the campus where Gate House is located. Dr Drysdale contacted Mrs McSeveney to inform her that the claimant was there and that he was not permitted to have any unsupervised contact with the siblings. He forwarded the email exchange between Mr Greenshields and DCC social work to Mrs McSeveney.
90. Mrs McSeveney printed out the emails and took them to the campus and gave the claimant a copy of the emails. She informed him that he wasn't to have unsupervised contact with the siblings. The claimant was humiliated and embarrassed. The meeting took place outside in public in the campus. No minutes were taken of the meeting and no instructions given to the claimant in writing by the respondent. The claimant asked whether this meant that he couldn't go back to Gate House and Mrs McSeveney indicated that there was no issue with him being at Gate House as long as he was supervised. The claimant informed Ms Todd that he would have to be supervised if he were to visit the House in the future. The registered service manager was informed at some point by the respondent of DCC's instruction in this regard but this was not recorded and there was no formal notification or instructions given to the service manager.

The requirement for the claimant to be supervised suggested that the claimant might be a risk to the children and there was no basis for this suggestion.

91. The SSSC wrote to Ms Cushen on 9 January 2023 confirming that they had decided to take no further action against the claimant in relation to this fact-finding investigation.

Claimant's grievance and complaint

92. The claimant submitted a grievance on 2 December 2022 against Mr Greenshields. He also lodged a safeguarding complaint relating to Mr Greenshields conduct. Although the claimant did not refer to either of these complaints in terms of the whistleblowing policy of the respondent, it was clear that both complaints raised concerns over the practice of Mr Greenshields in relation to the siblings. Dr Drysdale did not inform the placing local authority, the SSSC or the Care Inspectorate that a complaint had been made in relation to the conduct of Mr Greenshields towards young people in the respondent's care. He did not complete a child concern notification form or inform the respondent's child protection committee.

93. Dr Drysdale was responsible for dealing with the claimant's grievance and complaint. He met with Mr Greenshields on 5 December and outlined the nature of the issues to him. Dr Drysdale had given Mr Greenshields some information in relation to the issues he wished to discuss with him in advance of the meeting. Dr Drysdale recorded the meeting. In the meeting he put to Mr Greenshields the issues raised by the claimant and noted Mr Greenshields' responses. He did not take any steps to interrogate those responses in any way. Mr Greenshields told Dr Drysdale that he had encouraged the benefit of maintaining a balanced view of the pros and cons of the options available in relation to the placing of the children having read the reports prepared by the claimant and DCC. Mr Greenshields did not have sight of the report of DCC until after the claimant's reports had been submitted. Mr Greenshields told Dr Drysdale that the decision that the claimant should not work anymore shifts with the siblings was a "request" which "came directly from the placing authority for the remaining time of the

children's placement". There was no "request" from the placing authority. The issue arose because Mr Greenshields raised it and the decision that the claimant should not work anymore shifts was one reached between Mr Greenshields and the placing authority after discussion between them. Mr Greenshields also informed Dr Drysdale that there was "no concern over Paddy visiting the siblings within the Gate House service on a planned basis".

94. The notes of the meetings were signed by Mr Greenshields on that day.

95. Dr Drysdale then had a fact-finding meeting with Mrs Carvill on 12 December to discuss her investigation into the child protection matter concerning the claimant.

96. The claimant attended a formal grievance complaint meeting with Dr Drysdale on 13 December. The claimant's mother attended the meeting with him. A recording was made of the meeting and notes were typed up by Dr Drysdale. The notes were not provided to the claimant until he submitted a subject access request. The meeting was relatively brief and Dr Drysdale asked few questions of the claimant. Dr Drysdale informed the claimant that he was not aware of any email stating that the claimant should have no further contact with the siblings and that he would establish whether this was the case and feedback to the claimant.

97. Dr Drysdale then had a fact-finding meeting with Ms Cushen on 14 December. Ms Cushen signed a copy of a note of the meeting on the day it took place.

98. Dr Drysdale met with a Ms Hilman who was the Psychological Services and Intervention Manager on 14 December who also signed a copy of the note of that meeting on the same day.

99. Dr Drysdale wrote to the claimant with outcomes in response to his grievance and safeguarding concerns on 16 December 2022. He did not provide to the claimant the notes of any of the meetings he had held in relation to the grievance. Dr Drysdale did not engage in the grievance or complaints process in an appropriate or reasonable manner. While he held a number of 'fact-finding' meetings with relevant individuals, he did not conduct any investigation in the sense that he did not interrogate the competing views or analyse the information

in any material way or balance the evidence. He did not engage with the specific points made by the claimant. The outcome letters simply set out the detail of the claimant's concerns and then recorded, almost verbatim, Mr Greenshields' responses. There were no findings, Dr Drysdale simply set out Mr Greenshields' position which he took at face value without any explanation as to why he had accepted everything Mr Greenshields said at face value. He did not set out in any way why he had approached the complaints in this manner. There was no fair process followed.

10 Children's Hearing on 2 December 2022

100. A weekly meeting between the respondent and DCC took place on 30 November 2022 in relation to the siblings. The placements which had been identified for the siblings by DCC were discussed. It was proposed that the children be separated and be placed at three different placements across Scotland some distance from each other. The notes did not record any discussion about how these placements were in keeping with the best interests of the children, or the statutory requirements in relation to placing siblings together or nearby. The minutes also recorded that a report had been received from the respondent and there was no recommendation regarding the placement of the children in it. Ms Cushen had confirmed that the respondent would make no definitive recommendation at the hearing and would state that there were benefits of the siblings being kept together and benefits of them being separated. It was also noted that the respondent would support the three "positive placements chosen by Dundee City Council." There was no mention of the considerable distances between the proposed placements.

101. The respondent had submitted an additional document to the Children's hearing entitled 'hearing report'. This was not an update of the siblings' assessment. It was not a report which had been requested by the Children's Panel. It was not a report at all but a document extending to over 150 pages which had no narrative attached to it or index and simply included documents from the files of the three siblings with no explanation or commentary of them.

102. At the hearing Ms Cushen did not support the recommendation which had previously been made that the siblings should remain together. It was determined that the sibling who had secured legal representation would remain in the placement with the respondent which had been the sibling's wish. One sibling
5 was moved to another residential some distance away on 8 December 2022. That residential placement had recently been downgraded by the Care Inspectorate and had there been a review of the Excel framework at that time would not have met the eligibility criteria. The placement was some distance away from the respondent's campus. The third sibling was placed with a foster
10 family who had never fostered previously. That arrangement broke down very quickly and the sibling was moved to another foster placement. All three siblings had expressed the wish to remain together.

103. Ms Cushen informed the claimant of the outcome of the Children's hearing later that day. The claimant had significant concerns that the placements were
15 not in the best interests of the children.

C's relationship with Mr Greenshields

20 104. Following the Children's hearing on 22 September 2022, the relationship between the claimant and Mr Greenshields began to deteriorate. Until that point Mr Greenshields had been very supportive of the claimant and had a very positive view of his professional ability and opinions. However, from this point Mr Greenshields became concerned that the claimant's professional opinions might
25 impact negatively on the relationship between the respondent and DCC and in particular the possibility of future placements being made with the respondent by DCC.

105. In the past Mr Greenshields had told the claimant that he bears grudges against employees when issues arise. This caused the claimant to be very
30 concerned regarding what might happen to him in the future should Mr Greenshields no longer support him professionally. Mr Greenshields bore a grudge against the claimant for having raised a grievance against him.

106. Mr Greenshields sent an email to the claimant on 20 July 2022 (page 184) which was copied to Mrs Sheridan, Dr Drysdale and Ms Callaghan. The email stated:

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"I have copied in various people to this email as I feel it needs to be recognised the amount of work you have put into the Gate House over the couple of months

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The turnaround in the environment has been marked. You have come up with some fabulous ideas to make this look an awful lot better and more child friendly and have done so cost effectively. The team are in a far better place and I can see a significant improvement in their confidence and also the general behaviour of the siblings.

15

I'm aware you have been working long hours to cover shifts at times and have out painting fences and pressure washing at all sort of odd times! We have moved from a place where the siblings were definitely being split up to a place where there is a real argument for them to stay together, this really is remarkable. You showed professional maturity in your planning for the care inspection and had the days for the siblings well panned. That you so much for your commitment to the family and your contribution to the wider management team."

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107. Mr Greenshields sent the claimant an email on 16 November 2022 indicating that Ms Cushen had not been aware that the claimant was going to request to attend the Panel hearing on 17 November, although this was not accurate. The claimant replied explaining the position on this and explained that he had sought legal advice for the siblings after discussion with the worker from Who Cares? which is an organisation that provides support to young people in care.

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108. Mr Greenshields replied raising a concern that the claimant had contacted Clan Law, which provides legal assistance to young people in care. The email stated "this is a blurring of role boundaries" and went on to state "I can understand how invested you have been in working with the siblings and I

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recognise the significant good work you have done. However, it is time for you to step back. It is my understanding the safe guarder has advised the siblings be split up. We have put our case forward differently from this, there is no underhand behaviour from Dundee, it is simply a difference of opinions.” The email went on to state “Whilst I appreciate that there are different views in this case and it is emotive the final decision now rests with the hearing at which Louise will be the representative from Moore House.” Mr Greenshields was aggrieved at the claimant’s efforts to secure legal assistance for the siblings. He was aware that he had failed to support the recommendation to keep the siblings together when discussing the matter with the Safe Guarder. He had not informed the claimant that he had been negative in his discussions with the Safe Guarder in this respect. Mr Greenshields had been involved in asking the claimant to cover for shifts with the siblings in the previous weeks and the claimant’s work with the siblings had been of considerable benefit to the respondent. The terms of this email were therefore entirely inappropriate and Mr Greenshields would have been aware that the claimant would be extremely upset at the suggestion, without discussion, that having been the principal worker involved in the care of the siblings, and having worked over 100 hours a week with them for months, he was being instructed to ‘step back’ from any involvement with them without any valid reason. Although by this stage Mr Greenshields was no longer formally the claimant’s line manager, the terms of the email amounted to a breach of mutual trust and confidence between the claimant and respondent.

109. The claimant replied later that day indicating that he felt “it is unfair to say I am blurring the lines with asking to attend [the Children’s Panel hearing] especially as I still work regular shifts in gate house following you asking if I would be open to working as relief in gate house – which I really appreciate; and also being responsible for completing all of the assessments, including the most recent 39 page report approved and submitted to the upcoming hearing. Naturally the person would represent their own report as they have the best insight”. Mr Greenshields responded to this email in an increasingly terse manner. He stated in the email “I note in the weeks ahead though you are again picking up an awful lot of hours so we need to keep an eye on this”. Mr Greenshields made this statement in the full knowledge that the claimant was

working shifts as it was him who had asked him to do so. The issue of boundaries was raised because DCC had raised this issue at the meeting with Mr Greenshields on 8 November. The email went on to state “I propose we draw a line under this by arranging a meeting involving you, Elaine and I to ensure that
5 are clear boundaries in place moving forward.”

110. Mr Greenshields did not arrange any meeting with the claimant and Mrs McSeveney and Mr Greenshields did not discuss the claimant’s shifts at Gate House again at any point in the claimant’s employment, other than in relation to his suspension from working at Gate House pending investigation.

10 111. Mr Greenshields was aware by 1 December 2022 when he met with the claimant and Mrs McSeveney and raised the issues of extra ordinary supervision that his relationship with the claimant had deteriorated. He took no steps to address matters.

15 112. On 5 December, having been involved in a fact-finding meeting relating to the claimant’s grievance and complaint about him, Mr Greenshields emailed DCC and asked what they thought about the claimant having unsupervised contact with the siblings. His email went on to state that he had agreed with them that the claimant should not work anymore shifts at Gate House, but that “the restrictive nature of not being able to be with them without a staff member is
20 unwarranted.”

113. DCC responded indicating in relation to the claimant that “it would not be appropriate to have unsupervised contact or be involved with the siblings going forward”. Mr Greenshields then asked for the specific reason why the claimant should not have unsupervised contact but was not given one and he did not press
25 the matter any further. Mr Greenshields had gone through motions of appearing to support the claimant because he was aware that a grievance and complaint had been made against him.

DCC’s instructions regarding the claimant

30 114. The claimant emailed Dr Drysdale in relation to his grievance and complaint on 5 December 2022. In that email he indicated that he understood one of the

siblings was being moved to another placement on 8 December. He indicated that he understood the sibling remained hurt and angry at the claimant's disappearance and asked that he be allowed to visit that evening. Dr Drysdale responded indicating that the claimant should contact Ms Cushen who would have more knowledge regarding the arrangements for the evening. The claimant contacted Ms Cushen who indicated it was not a good evening to visit and that he should visit the following day. The claimant then discussed the matter with Mrs McSeveney who said that the claimant could leave work at 2pm to spend as much time with the sibling as possible.

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115. During the meeting to discuss the grievance the claimant had raised against Mr Greenshields, Dr Drysdale indicated he would check whether there had been any instruction from DCC that the claimant should have no further contact with the siblings. On 16 December he emailed the claimant "During our meeting on Tuesday 13th December you were of the assumption that Dundee Council had stated you were to have no further contact with the [siblings]. I informed you that I was unaware of this and assured you I would let you know in due course if I found anything in support, or otherwise, of this assumption. I have found no evidence that Dundee has made any statement restricting any future contact between yourself and the brothers." Dr Drysdale proposed that the claimant make contact directly with the social work department about continuing contact. Dr Drysdale did not at any future time inform the claimant that he was not to have any contact with the siblings.

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116. The claimant then emailed the placing social worker on 16 December as follows:

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"I spoke with Stephen regarding maintaining contact with the [XXXX] children since leaving Moore House. He suggested I make contact with yourself to request/propose this.

Over the last 9 months I feel I have built professional, supportive and secure relationships with the children. I believe it is important to continue these meaningful and positive relationships and would like to seek your approval to do so.

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I feel this would especially benefit [child who had left the respondent's service] and remain as a consistent and secure person in [the sibling's] life.

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I look forward to hearing from you."

117. The social worker concerned passed the email to her manager who then contacted Mr Greenshields by email on 20 December and asked him if he was aware of this. She went on to state: "I was of the understanding that Paddy would have no ongoing role with any of the children and would not be in agreement to any ongoing contact. Can I just check if you want me to reply directly to Paddy?"

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118. Mr Greenshields had a discussion with the social worker and then emailed her later that day stating "One thing I would respectfully request is you make me aware when you have responded." Mr Greenshields did not at any time inform the claimant of this email exchange or the terms of the discussion.

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119. The social work manager then emailed the claimant on 21 December and copied Mr Greenshields as follows:

"Hi Paddy

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Emily has passed your email to me enquiring about maintaining contact with A, B and C. Whilst we appreciate the role that yourself and other Moore House staff have played in supporting the children and contributing to the progress they made in recent months, we do not feel that ongoing contact is required for them. Should this change Emily would contact Gary in the first instance to discuss planning.

The children's lifestory will incorporate the time they spent at Moore House and reflect the relationships and experience they had, if required Emily would contact yourself or appropriate Gate House staff for any input required when undertaking lifestory work."

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120. The email was unclear in its terms. It appeared to refer to the children who had left the respondent's care. The claimant would be required to make arrangements with the local authority if he wanted to have contact with the children who had left. The claimant had made a specific request to have contact with one child with whom he had formed a particular bond and who had made clear to the claimant and other practitioners that the claimant was trusted over all others (including the parents) as was clear from a document completed by the child (p482). It was that sibling who left the respondent on 8 December. It was originally envisaged that all three siblings would leave the Gate House. However, there was one sibling remaining at Gate House and the email did not make sense with reference to that sibling. A lifestory is material put together for young people in care to document where they have been and is necessarily retrospective and a history of their lives. The email suggested that no staff of the respondent would have contact with the child who was in their care which was patently impossible. The Tribunal did not accept the evidence of the respondent's witnesses who said that the terms of the email were a clear instruction. There was no 'instruction'. The email made reference to no further contact 'being required'. The Tribunal was of the view that none of the respondent's witnesses who said that the email was a 'clear instruction' had actually turned their minds to the meaning or significance of the email. Had they done so, they would and should have discussed the matter further with the claimant in order to clarify what was expected of him.

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121. Mr Greenshields did not contact the claimant to discuss what this email meant for him. No other member of the respondent's staff contacted the claimant to discuss the terms of this email. Although the claimant made reference to the letter from DCC in his complaint to them of 29 December 2022 that reference had to be viewed in the context of the letter which had been sent and did not

mean that the claimant believed he had been instructed by the respondent not to have contact with the remaining sibling or that he would not be able to do so with supervision.

5 Review of first CP investigation re female colleague

122. During the course of a meeting in January 2023 to discuss the claimant's appeal against the outcome of his grievance and complaint, the claimant raised with Mrs Sheridan inconsistent treatment in relation to himself and a female member of staff. Having received documents through a subject access request
10 in relation to the fact finding into the child protection issue, he discovered that a comment had been made regarding the same child having seen the body of a female member of staff.

123. When this issue was raised with Mrs Sheridan, no child concern form had
15 been completed, the placing local authority had not notified and there had been no contact with the SSSC or the Care Inspectorate in relation to the matter. Mrs Sheridan asked Dr Drysdale to investigate the issue.

124. Dr Drysdale met with Mrs Carvill on 13 January and a note was taken of that meeting which was signed by both Dr Drysdale and Mrs Carvill on that day. Mrs
20 Carvill said that her view was the risk factors in relation to the female member of staff were different as it was a public place, the child was not alone with the worker and the worker was wearing a swimsuit. These were all assumptions on the part of Mrs Carvill who did not investigate this matter and so could not know any of these facts to be accurate. The assumptions were based on the sibling
25 having mimed swimming when describing the event.

125. Dr Drysdale then met with Ms Cushen on 19 January and in common with his practice other than in relation to meetings with the claimant, a note of that meeting was signed by those present on the same day. Ms Cushen gave a similar explanation to that of Mrs Carvill. The note of the interview with the young
30 person had stated "[the sibling] said when X was swimming he saw her boobs". That note was not contemporaneous (although that is not a criticism given the

circumstances). There is nothing in the note to suggest that the young person had said that the female colleague had her costume on, was in the swimming pool or had not been alone with the young person. These were all assumptions made by both Ms Cushen and Mrs Carvill.

5 126. There was no further investigation into this matter which was in contrast to the position in relation to the investigation into the concern raised regarding the claimant.

127. Dr Drysdale completed a report on the steps he had taken to investigate this matter and recommended that no further action was required.

10 C's appeal against grievance and complaint

128. The claimant appealed to Mrs Sheridan against the response of Dr Drysdale to his grievance and complaint by letter dated 22 December 2022. The grounds of his appeal were that; there had been deviation from fair process; the claimant's perceptions and concerns had not been considered a possible reality; the
15 outcomes did not provide details on how the claimant's concerns had been considered, what they had been assessed against or evidence to provide the concerns invalid and that he had evidence which supported the concerns he had raised.

20 129. A meeting took place on 11 January 2023 between the claimant and Mrs Sheridan to consider both appeals. The claimant was accompanied at the meeting by his mother. All meetings were recorded. Minutes were subsequently prepared but these were not provided to the claimant. He did not receive the minutes until he made a subject access request at the end of March 2023. Mrs
25 Sheridan was aware that the claimant had shared details of his complaint and Dr Drysdale's outcome with his mother to allow her to support him. Mrs Sheridan did not raise any concerns at the information which had been shared with Mrs Donnelly. There was a wide-ranging discussion during the meeting regarding the siblings, although there was no reference to their names. It was clear from the
30 discussion, in which Mrs Donnelly took an active part, that she was aware of the background to the claimant's complaints and that she was familiar with the

Promise and the care sector. Mrs Sheridan did not raise any concerns about the level of knowledge Mrs Donnelly had to the background of the claimant's concerns.

5 130. The claimant provided Mrs Sheridan with documentation at the meeting in relation to his complaint including emails from DCC.

131. The claimant raised a concern that a female member of staff had not been treated in the same manner in relation to a child protection investigation as the claimant was now aware that at the same time as the child had made reference to the claimant's genitals, the sibling had made reference to a female member of staff's "boobs". Mrs Sheridan agreed that if this were the case it required to be investigated. The claimant had become aware of this information shortly before the meeting when Ms Cushen had told him that she and Mrs Carvill had known that the allegation against him was unfounded when the young person had made reference to seeing the other person's boobs. The claimant had received the notes of the investigation into this allegation in response to a Subject Access Request made by him. Mrs Sheridan instructed Dr Drysdale to investigate this matter.

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132. A further meeting to discuss the claimant's appeals took place on 22 February. The claimant was again accompanied by Mrs Donnelly. The meeting was recorded and a note prepared which was not provided to the claimant at the time. By this time the claimant had provided additional documentation which had had obtained through a Subject Access Request to Mrs Sheridan. Mrs Donnelly again took an active part in the meeting and indicated that the claimant now felt unsafe and targeted by Mr Greenshields.

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25 133. The claimant left the second meeting early as he had planned to attend Gate House for dinner with the remaining sibling and he informed Mrs Sheridan of this as he had to pick up a prescription prior to attending Gate House. Mrs Sheridan was aware at the point that the claimant was attending Gate House and having contact with the remaining sibling and did not raise any concerns in this regard.

30 134. A further meeting took place on 1 March. The claimant was unaccompanied at that meeting. The purpose of the meeting was to discuss what outcomes the

claimant would like from his grievance. The claimant raised the suggestion that the respondent could contact DCC to inform them that they disagreed with the approach taken by them to the claimant's contact with the siblings. Mrs Sheridan said that the respondent would not be willing to take this action. Mrs Sheridan indicated that she would give the claimant her decision as soon as possible.

135. Mrs Sheridan discussed the claimant's concerns with Mr Greenshields and Dr Drysdale prior to issuing her decisions. She did not keep any notes of those discussions and did not tell the claimant that she had discussed the matter with either Mr Greenshields or Dr Drysdale.

136. Mrs Sheridan wrote to the claimant on 3 March 2023 with two outcome letters which were in very similar terms. In those letters she indicated that she agreed with the original outcomes to the claimant's complaints. Mrs Sheridan indicated that she "found it difficult to see beyond each of the perspectives that I have been presented with. I have found both your perspective, and that of others, has made sense in the context of how and when conversations and situations have arisen". She suggested that a meeting be arranged between the claimant and Mr Greenshields by Dr Drysdale. No meeting was ever arranged by Dr Drysdale.

137. Mrs Sheridan was aware that the claimant had been instructed not to visit Gate House on 2 March by Mr Greenshields and had sight of the email sent by Mrs Donnelly raising concerns regarding this issue by the time she issued her decision letters.

138. Mrs Sheridan was of the view that it should have been sufficient for the claimant to have had the opportunity to raise his concerns with her and have them discussed. The claimant's unwillingness to accept the outcome of his grievance and complaint caused Mrs Sheridan and Dr Drysdale to view the claimant as a troublemaker who was likely to cause damage to the respondent's reputation and business interests by continuing to pursue the subject matter of his protected disclosures.

Events on 2 March 2023Q and A session

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139. In 2022, when he took up his new role, the claimant had been asked by Mr Greenshields to draft a policy on relationships at work. Issues had arisen in relation to family members and others in close relationships working together and it was thought that a policy should be introduced to clarify the respondent's position on these matters.

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140. The claimant emailed Mr Greenshields a draft "Relatives and Close Relationships Policy" on 15 January 2023. Mr Greenshields responded on 20 January stating it was "an excellent document, the range of relationships it covers is well covered. It is clear and gives us a good foundation for guiding staff and managers around this, it also allows flexibility in common sense response in times of crisis. I am happy for this to be submitted with no amendments."

141. The policy was then submitted to the respondent's Board where it was approved.

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142. After discussion with Mrs McSeveney, it was decided that staff would be invited to a session to discuss the new policy. The purpose of the meeting was not to review the policy but to answer questions on it. The senior management of the respondent were aware that some staff would be hostile to the introduction of such a policy as family members had in the past worked together and some employees had recommended family members as employees.

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143. The claimant arranged a meeting and sent out an invite to all staff electronically. Mrs McSeveney had originally intended to attend the meeting but was on leave on the day. The claimant chaired the meeting and was accompanied by an HR Officer who had to leave the meeting mid-way through it. Mr Greenshields initially declined the meeting invitation. On the day of the meeting around 30 minutes before it was due to commence, he decided to attend it. He had no intention of supporting the claimant at the meeting or assisting him

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in dealing with any difficult questions. He did not contact the claimant to discuss how to manage the meeting or suggest that he was coming to support the claimant.

5 144. During the course of the meeting various staff asked questions and voiced concerns regarding the new policy and how it might affect them. The meeting became heated. Mr Greenshields asked challenging questions of the claimant. He sat with the employees and not with the claimant. The claimant felt humiliated and undermined by Mr Greenshields' conduct at the meeting. Mr Greenshields conduct had the intention and likely effect of undermining the claimant in the eyes
10 of more junior employees. Mr Greenshields was the most senior member of staff present at the meeting. He gave staff the impression that the policy was the claimant's idea and did not explain that he had asked for it to be drafted, reviewed it and approved it for submission to the Board. He did not give any support to the claimant at the meeting and asked hypothetical questions which he knew the
15 claimant would have difficulty in answering. He said that the policy was confusing.

145. After the meeting, Mr Greenshields sent the claimant and the HR Officer an email thanking them for coming to the meeting which he said "was always going to be a contentious meeting." Mr Greenshields made no effort to contact the
20 claimant in person after the meeting to discuss it.

Visit to Gate House

146. The claimant had intended to visit Gate House that evening to have dinner with the remaining sibling. He had arranged this with Ms Todd who was on duty
25 that evening. The claimant had been at Gate House on a number of occasions for dinner during January and February 2023, when Ms Todd had been present, other practitioner and when the Service Manager had been present. He had never sought to conceal his visits. The claimant's understanding was that he could attend Gate House as long as he was supervised and another practitioner
30 was present.

147. In the late afternoon, shortly before he was due to attend the dinner the claimant was aware that he had a number of missed calls from Mr Greenshields. As he was on the campus where Mr Greenshields was based, he went to his office to find out what Mr Greenshields wanted to speak to him about. When he arrived in the office, Mr Greenshields phoned Ms Cushen and told her that the claimant had just come back. Ms Cushen then came into the office. Mr Greenshields said he understood that the claimant had intended to go to Gate House for dinner that evening. He was aware of this as the registered service manager had told him earlier that day. The registered service manager had also told Mr Greenshields that the claimant had previously been at Gate House for dinner with the remaining sibling but that she hadn't raised this as a concern with anyone previously as she thought she could deal with it.

148. Mr Greenshields asked the claimant on what authority he was intending to go for dinner. The claimant explained that he would normally arrange this with staff on shift. Mr Greenshields stated that DCC had explicitly told the claimant that he should have no contact with any of the children. The claimant said he thought that was about the children who had left the respondent's care. The claimant said that his understanding from Dr Drysdale was that he was allowed to have contact with supervision. The claimant also said that Mrs Sheridan was aware that the claimant had seen the young person for dinner. Mr Greenshields said he would check the position but that the claimant was not to go for dinner that evening. Mr Greenshields made no effort to contact either Dr Drysdale or Mrs Sheridan in order to clarify the issue at the time. He had not taken any steps to ensure that the young person was told in advance that the claimant would not be coming for dinner. Mr Greenshields knew that the instruction he gave would upset the claimant and approached the matter in a cavalier fashion both in relation to the impact on the claimant and the sibling.

149. The claimant left the campus in his car. As he drove out, he had to pass the kitchen window of Gate House. He could see that the sibling was watching him and was extremely upset that he was driving away.

150. Ms Todd tried to contact the claimant by telephone to understand what was happening as the sibling was extremely upset and was showing his frustration

by taking it out on her. The sibling trusted the claimant and was very vulnerable given his background. The claimant spoke to Ms Todd at some point that evening and explained that he wasn't coming for dinner and that it wasn't a decision he had made.

5 151. When the claimant arrived home, where he lived with his parents, his mother was aware that he was very upset. Mrs Donnelly had understood that the claimant was going for dinner with the sibling and was surprised at him being home so early. The claimant told her that Mr Greenshields had stopped the claimant visiting, that he'd been denied access to the service and that he was
10 distressed as he had witnessed through a window the young person's distress at him leaving.

152. Later that evening Mrs Donnelly decided that she would contact Mrs Sheridan to express her concern at what had happened that evening and the impact on the young person. Mrs Sheridan was aware at the time that Mrs Donnelly was
15 familiar with the issues which had arisen between the claimant and Mr Greenshields in relation to the siblings. The email stated "As you know from the appeal meetings with Patrick, and on the authority of Dr Drysdale who confirmed that there was no justifiable reason for Patrick to be denied access to the child in Gate House, Patrick has been visiting Gate House once weekly." Mrs Donnelly
20 explained in her email that she was a CEO of a social care organisation and a health care professional. Mrs Donnelly indicated that she would await Mrs Sheridan's response before deciding whether to escalate her concerns.

153. Mrs Sheridan responded the following day asking for information which she would have been able to find out internally if she had commenced an
25 investigation. Mrs Donnelly responded later that day by expressing surprise that Mrs Sheridan's first response was to ask for the source of the information rather than scope an investigation. Mrs Donnelly also referred Mrs Sheridan to documents which had been produced to her at the grievance appeal regarding the basis on which the claimant had been visiting Gate House.

30 154. Mrs Sheridan's response to Mrs Donnelly email was to reply stating "I find the tone of your communication with me both disrespectful and offensive." Mrs

Sheridan was annoyed that someone should raise any question regarding how she had decided to respond to the issues raised by Mrs Donnelly. Mrs Sheridan also stated “I find the degree of your involvement in the professional relationship with Paddy has with the Moore House Group concerning, as well as a breach of confidentiality on Paddy’s part.” Mrs Sheridan did not set out any basis for this intemperate and unnecessary assertion, particularly given she was aware that Mrs Donnelly had accompanied the claimant at the grievance and complaint meetings and appeals hearings. In addition, Mrs Donnelly had pointed out that she was a CEO of a care organisation. Mrs Sheridan did not ask for details of this and assumed unreasonably that Mrs Donnelly could not be as well qualified as she herself was and was not entitled to raise any concerns with her regarding her approach to child protection issues.

155. Mrs Donnelly responded by indicating that she was surprised by the defensive comments and that she felt there was a latent threat in Mrs Sheridan’s email. Mrs Donnelly also asked for a copy of the audio recordings of the meetings she had attended which was refused, although Mrs Sheridan indicated that they would be provided to the claimant if he asked for them.

156. Mrs Sheridan did not treat any of the issues raised in Mrs Donnelly’s correspondence as a disciplinary matter on the part of the claimant at that time. She did not take any steps to notify any statutory organisations that the claimant had breached confidentiality. She did not complete a childcare notification form or inform any of the statutory organisations at that time that a child protection issue had been raised either in relation to Mr Greenshields’ conduct or that of the claimant.

25 Claimant’s resignation

157. Having received the outcome of his appeals and following on from the events of 2 March 2023, the claimant submitted his resignation to Mrs Sheridan and copied it to Mrs McSeveney. He set out the reasons for that resignation in his letter of 3 March 2023 in that he had resigned in response to the respondent’s failure to support him in relation to the conduct of DCC, the conduct of Mr Greenshields towards him and the manner in which his attempts to raise these

issues had been addressed. His resignation was as a result of the actions taken by the respondent because the claimant had made protected disclosures.

5 158. Ms Todd resigned on the same day as she had become frustrated with the way in which the claimant was treated and other conduct on the part of the respondent. She did not discuss that resignation in advance with the claimant (nor did she know that he had resigned).

10 159. Mrs McSeveney wrote to the claimant by letter dated 6 March accepting his resignation.

160. The claimant was on annual leave between his resignation and 13 March. Mrs McSeveney met with the claimant on his return from leave and said that she would conduct an investigation into the reasons for the claimant's resignation, in particular the two events on 2 March which he had raised in his resignation letter. Mrs McSeveney also said that she would support the claimant over his notice period by accompanying him to meetings so that he did not feel he was being targeted. The claimant was initially of the view that Mrs McSeveney genuinely wanted to support him.

20 161. Mrs McSeveney then met the claimant later that day to discuss events of 2 March. A note was taken of that meeting which was signed by both Mrs McSeveney and the claimant on that day. The claimant told Mrs McSeveney that Mr Greenshields had been aware that the claimant had been going for dinner at Gate House the previous week, that Dr Drysdale had sent an email December regarding him visiting the siblings and that he had made reference to visiting Gate House at his meeting with Mrs Sheridan and there had been no objection from her.

30 162. Mrs McSeveney then had a meeting with Mrs Sheridan regarding the matter on 15 March. Mrs Sheridan stated that she had no recollection of a discussion with the claimant regarding him attending dinner at Gate House. The note also

recorded that Mrs Sheridan “recalled Louise Cushen being in Alba to speak to Elaine who was not around at the time. Mrs Sheridan added that Louise spoke to herself and Stephen Drysdale, advising that Patrick was going in and out of the Gate House service on a regular basis, however the planned arrangement was that Patrick would support the service for a short period of time in the afternoons as he had moved to his Depute Head of Support Services role, and Louise had become concerned and wanted to stop the arrangement as the new Service Manager [name removed] was feeling undermined by Patrick.”

10 163. Mrs McSeveney then met with Dr Drysdale on the same day and a note of that meeting was produced.

15 164. Mrs McSeveney subsequently met with a number of people who had been at the meeting on 2 March regarding relationships at work. She did not ask them any questions specifically regarding Mr Greenshields. All of the staff involved were junior to Mr Greenshields. The HR officer who had been present stated that Mr Greenshields had been asking questions at the meeting and on reflection she couldn't understand why he was asking the questions he was and found it confusing although “Gary's questions were no worse than anyone else's”.

20 165. Mrs McSeveney then met with Ms Cushen and a note of the meeting was recorded. The question and answer session and the events of later on 2 March were discussed.

25 166. Mrs McSeveney met with the Service Manager of Gate House on 21 March. The service manager indicated that she was aware that the claimant had attended dinner at Gate House prior to 2 March as she had been present at the time. She stated when asked about instructions from DCC regarding the claimant that “she knew very little and originally she was told to arrange a leaving, an ending for when the children were to be moving on and then afterwards Paddy would be fine to see X at events such as prize-givings but not in the house, that was all the knowledge she had.” She said she had phoned Mr Greenshields

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shortly before the claimant was due to arrive on 2 March as she had been made aware that “Paddy was not to have one-to-one time or anything like that, and she hadn’t wanted to cause issues with X’s placement as the local authority had been on their case for a number of things.” There was no effort by Mrs McSeveney to address this apparent conflict in the service manager’s understanding.

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167. Mrs McSeveney then met with Mr Greenshields on 21 March. Mr Greenshields was asked if his thoughts had changed on the policy since reviewing it. He said that they had and he had not really ‘reviewed’ the policy, even though that is what he said to the claimant in writing. He sought to play down his approval of the policy. He then said he hadn’t really changed his view which was inconsistent with what he had stated before. The note of the meeting also recorded contradictory positions taken by Mr Greenshields when he was asked if he had heard the young person talk to the claimant in front of him the week before 2 March about the claimant going to dinner at the Gate House. The note recorded Mr Greenshields initially stating that he hadn’t heard the claimant say he was going to dinner with the young person. The note then went on to say “Gary didn’t expressly forbid the visit at that particular time as he hadn’t wished to have that kind of discussion in front of [the young person] and Gary had presumed wrongly that Paddy would have taken heed of the instruction as provided from the placing authority.” There was no effort to reconcile these two positions. The note of the inconsistent positions taken by Mr Greenshields was in keeping with the way in which he gave evidence to the Tribunal. The note then recorded Mr Greenshields making a wholly unfounded allegation that the claimant and Ms Todd had been in a personal relationship which might have accounted for the claimant visiting Gate House when Ms Todd was on duty. Mrs McSeveney did not think there was anything wrong with a senior member of staff making unfounded allegations about more junior staff during the course of this meeting and did not challenge him on this or seek to explore it further. Mr Greenshields displayed clear animosity towards the claimant during the meeting, referring to the claimant’s grievance and complaint as “spurious allegations” and indicated that he felt that he was being “targeted by Paddy”.

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168. Finally, Mrs McSeveney interviewed another member of staff who had been at the meeting on 2 March who said that she had told the claimant after the meeting that “he had a target on his back” and that this was because of the way in which questions were being asked of him and that she felt he was “under fire” at the meeting.

Second child protection investigation

169. On 8 March 2023, Mrs Sheridan instructed Mrs Carvill to conduct an investigation into the issue raised in Mrs Donnelly’s email of 2 March raising a child protection issue. Mrs Carvill was not provided with a copy of the email. She was told an issue had been raised by the claimant’s mother. She was not told of the background to the issue in relation to the claimant having raised prior concerns. She was not told that the claimant’s mother was a CEO of a care organisation. Mrs Carvill wrote to Mrs Sheridan sometime later in response to this instruction. The letter is very brief and undated. Although the letter indicated that Mrs Carvill had spoken to staff on duty that night, Mrs Carvill had not spoken to Ms Todd who had been working that night and who had to deal with the young person’s reaction to the claimant not coming for dinner as planned. Ms Todd had been required to ask the service manager to intervene to assist with dealing with the issue. This was not recorded in the letter. She did not speak to the young person concerned to find out how the young person felt. She did not speak to Mr Greenshields or determine whether any measures had been put in place to address what would inevitably be a negative reaction of the young person to the claimant not attending for dinner. She did not speak to anyone regarding the matter until she had been instructed to do so which was almost a week after the event. She concluded that the test for a child protection concern was not met or nearly met. She did not produce an investigation report or keep notes of any meetings she had. The approach was entirely in contrast to that adopted in relation to the investigation into the issue related to the claimant. The reason for this was the way in which the issue had been framed by Mrs Sheridan to Mrs Carvill.

First Disciplinary proceedings

5 170. Mrs McSeveney then prepared a “fact-finding investigation report”. That report made two recommendations, firstly that Mrs McSeveney accompany the claimant to all meetings and that the relationships policy should be re-written. Secondly, she recommended that the claimant should be required to attend a disciplinary hearing as he had visited Gate House in the last few months and
10 said that he had been given permission to do so by Mrs Sheridan and Dr Drysdale.

171. A meeting was arranged with the claimant on 29 March. The claimant was not told in advance of the purpose of the meeting. He was informed that he would be required to attend a disciplinary hearing arising out of the issues raised in his
15 letter of resignation.

172. The claimant was extremely upset and shocked by this turn of events. He had until that time understood Mrs McSeveney was supportive of him. He informed Mrs McSeveney that he would be off sick for the remainder of that week. On 29 March, the claimant also requested the audio recordings and minutes of the
20 meetings with Dr Drysdale and Mrs Sheridan in relation to the grievance and appeal meetings.

173. The claimant then emailed Mrs McSeveney again on 30 March making reference to the ‘grievance and public interest disclosure complaint within my resignation letter.’ He stated that he took from what Mrs McSeveney had stated
25 that she had not upheld his grievance but believed there to be grounds for disciplinary action in relation to the public interest disclosure. He went on to say that if this were the case, there should be a fact-finding investigation including an opportunity for him to respond to allegations prior to disciplinary action being taken. He indicated that the grievance procedure should be completed first and
30 that he wished to appeal against the outcome into Mrs McSeveney’s investigation.

174. Mrs McSeveney responded on 31 March indicating that while “there may be some overlap in the subject matter, the processes are clearly separate and distinct. The organisation’s fact-finding procedure has already been invoked. You will have the right to reply and respond fully during the disciplinary process. The email noted that the claimant would be invited to a disciplinary hearing.
175. The claimant responded highlighting why he viewed the process to be unfair, that he had a right to appeal the grievance outcome and that he would not be attending the hearing on the basis of the organisation’s failure to follow due and fair process. He also pointed out that he was unwell and stressed by the prolonged targeted behaviours and unfit to attend work or any meetings.
176. A letter was then sent to the claimant dated 31 March from Ms Ford-McNicol requiring the claimant to attend a disciplinary hearing on 10 April.
177. The claimant sent a further email indicating that he would be unable to attend or engage in the disciplinary investigation because he was too unwell.
178. A further invitation to a disciplinary hearing for the 16 May was sent on 5 May to the claimant.
179. The claimant replied by email of 8 May indicating he been feeling really unwell the last few days and that he was too unwell to attend work or any meetings. He said that he would not be able to attend the scheduled hearing on 16 May. The claimant also asked whether his salary had been increased following the benchmarking exercise.
180. Mrs McSeveney responded indicating that the salary had not changed. The claimant asked for further information in this regard and Mrs McSeveney said that she would discuss this with him when he felt better.
181. At no stage did the respondent refer the claimant to Occupational Health or ask for a report from his GP or consultants regarding his health in relation to providing support for him or to determine whether or when the claimant might be able to attend a disciplinary hearing.

182. A letter was sent on 8 August to the claimant inviting him to attend a rescheduled disciplinary hearing on 23 August. By this time the claimant had commenced proceedings against the respondent. This letter was sent the same day as the claimant was asked to attend another fact-finding meeting regarding “three matters of concern”. The letter repeated that the claimant might be dismissed from post, although he had not been employed for some months by that time. There was no valid reason for the delay in pursuing the disciplinary matter, had the respondent thought it was under an obligation to do so.
183. A letter was then sent on 23 August scheduling a further disciplinary hearing for 31 August and indicating that if the claimant did not attend that hearing, it may go ahead in his absence. The letter did not offer the claimant any opportunity to provide written submissions which could be considered at the hearing.
184. Mrs McSeveney and Ms Ford-McNicol met on 31 August in the absence of the claimant. Mrs McSeveney set out the details of her fact-finding investigation. There was no discussion regarding how the hearing should proceed or how to make it fair in the absence of the claimant. There was no discussion at all about how the claimant had not been an employee for some months by this stage. Ms Ford-Nicol was the investigating officer and the disciplining officer in the matter. She did not ask any questions of Mrs McSeveney or ask her to conduct any further investigations. A note was prepared of the meeting by Mrs McSeveney. The note recorded that “staff in attendance at the [question and answer] session did not consider Gary Greenshields to be confrontational in his questioning of the policy.” That was a misrepresentation of Mrs McSeveney’s fact-finding as she had not asked any staff whether they were of the view that Mr Greenshields had been confrontational, and the HR officer who had been present had raised a concern regarding Mr Greenshields conduct at the meeting. The meeting lasted 40 minutes. Ms Ford McNichol indicated that she would consider the information and provide an outcome within the next 7 days.
185. Ms Ford McNichol then wrote to the claimant on 6 September. The letter found that both allegations against the claimant had been upheld and if the claimant was still in the employment of the respondent, he would have been dismissed from his post. The claimant was given a right to appeal, although the

letter did not indicate who would deal with the appeal and simply invited the claimant to write to an HR and Recruitment Supervisor.

Second disciplinary proceedings

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186. On 5 April Ms Cushen asked to speak with Mrs McSeveney and informed her that someone she had been speaking to had said that the claimant had been dismissed from a previous role. Ms Cushen indicated that she had spoken to another current manager in the respondent's organisation who had previously worked at the same establishment as the claimant. She did not specify when she had either conversation or where. She said that the other manager had been told by the claimant himself that he had been sacked by this previous employer. Ms Cushen was aware by this time that the claimant had resigned from his position with the respondent.

15 187. The following day Mrs McSeveney spoke to the other manager whose name had been mentioned. The other manager said that she had a conversation with the claimant possibly in late summer 2021 where the claimant informed her that he had been sacked from a previous role, that he had appealed against the decision and that he had been proud of the fact. There was no discussion with the manager (who is a Lead Service Manager and therefore in a senior regulated position) as to why if this conversation had taken place it hadn't been brought to the respondent's attention previously. The information was entirely untrue as the claimant had not been dismissed from that role but had resigned as was confirmed subsequently by the organisation itself. The organisation indicated that the claimant had been involved in a fact-finding some months prior to the claimant's resignation but made no reference to what or whom that investigation related.

188. Mrs McSeveney wrote to the claimant by letter dated 12 April indicating that it had been brought to her attention that "a significant number of documentation had been downloaded by yourself to your devices". The letter did not provide any details about the documents being referred to. The letter went on to state that Mrs McSeveney requested "a clear explanation as to the reasoning of you

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downloading such a diverse range of confidential company information, given your present circumstances.” The letter also stated that the laptop was to be collected from the claimant’s home the following morning by a member of the IT staff. The letter stated that until the claimant returned from sick leave all access to the respondent’s systems would be suspended.

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189. The claimant replied that evening asking who had brought this matter to the respondent’s attention and that the monitoring felt punitive. He gave some explanation as to why he might have viewed documents and how they could appear to have been downloaded when they had not been. He was not willing for someone to attend his house the following day. Mrs McSeveney did not respond to the claimant’s request as to who had raised this issue and did not provide him with any further detail regarding the documents or in what way this was said to amount to a disciplinary matter.

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190. There was no further contact with the claimant regarding these matters until Mrs McSeveney sent the claimant a letter dated 6 August asking him to meet her as part of a fact-finding investigatory process on 22 August to investigate “3 matters of concern”. There was no detail given of the issues to be discussed. The claimant had not been an employee of the respondent since the end of May. He had already raised proceedings against the respondent. Mrs McSeveney had been aware that the claimant had been applying for jobs since May. By this time the Care Inspectorate had written to the respondent (on 25 July) indicating that a review of their previous investigations into a complaint raised by the claimant had been conducted and its findings would not be altered.

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191. On 29 August, Mrs McSeveney met with Ms Duncan, the respondent’s training and development manager to check on the claimant’s portfolio for his SVQ4 qualification. She asked Ms Duncan whether the claimant required access to a list of documents which were provided to her in relation to that portfolio. Ms Duncan identified only one document which she said was relevant. That list of documents had never been provided to the claimant. The note did not record why the matter was being raised four months after the relevant time or go into any detail regarding what sort of documents the claimant might have properly looked at for this qualification.

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192. Mrs McSeveney drafted a fact-finding investigation report which was dated 31 August. The report related to three concerns which had been identified: alleged breach of confidentiality which related to the email exchanges between Mrs Donnelly and Mrs Sheridan between 2-8 March and suggested that the information given to Mrs Donnelly by the claimant on his return home on 2 March was a breach of confidentiality. The report made no reference to Mrs Donnelly having been present at the meetings involving the claimant's grievance and complaint at which the situation regarding the siblings had been discussed. The report did not explain why the matter was not raised as a disciplinary issue at the time. The matter had not been referred to the SSSC at the time and was not referred until the outcome of the disciplinary proceedings when Mrs McSeveney was aware that the claimant was seeking work in the care sector. Mrs McSeveney recommended that the matter proceed to a disciplinary hearing. The second issue of concern was called "Alleged Dismissal from Care Visions". By this time, the respondent had been informed by Care Visions that the claimant had resigned from his employment there. The report indicated that there were discrepancies by the claimant in relation to the dates of his employment with Care Visions in the applications for internal promotion with the respondent. The report did not state that the original application form to the respondent provided accurate details. The third issue related to the claimant's alleged misuse of confidential information. The report did not explain that the claimant was a 'superuser' and had access to all documents on the respondent's system, it did not give any information as to how it was said that confidential information was misused and it did not explain that the claimant had never been given a list of the documents which caused the concern. The report was one-sided, inaccurate and misleading and sought to paint the claimant in the worst possible light. The respondent was looking for matters to allow it to pursue disciplinary action against the claimant and to make the allegations appear as serious as possible.
193. Ms Ford-McNicol wrote to the claimant on 6 September inviting him to a disciplinary hearing on 13 September to address these matters. The letter suggested that the claimant could be dismissed from post should he still be in employment with the respondent. The claimant did not attend the hearing. The respondent was aware that the claimant was unlikely to attend the hearing.

194. Ms Ford-McNicol then sent a letter dated 13 September to the claimant inviting him to a rescheduled disciplinary hearing on 20 September. The letter indicated that if the claimant did not attend the hearing may go ahead in his absence.

5 195. A meeting took place between Ms Ford-McNicol and Mrs McSeveney on 20 September in the claimant's absence. There was no discussion regarding how the hearing would proceed in the claimant's absence or any consideration given to how the respondent could ensure that there was a fair hearing in these circumstances. The respondent had no concern as to whether or not the
10 proceedings were fair to the claimant. Mrs McSeveney set out the content of her fact-finding report. The note of the meeting records the only question asked by Ms Ford-Nicol as being whether "the information from Care Visions stated that Patrick had been dismissed"? Ms Ford-Nicol had clearly not read all the material which had been provided to her as it had included the email from Care Visions
15 which stated that the claimant had resigned from his employment. Notwithstanding this, Mrs McSeveney responded by stating "it did not specifically state that he had been dismissed." Mrs McSeveney stated that the claimant had a responsibility to use confidential data appropriately but did not put forward details of any inappropriate use by the claimant.

20 196. Ms Ford-McNicol then wrote to the claimant by letter dated 20 September. She upheld the allegation that the claimant had shared confidential information. She partially upheld the allegation that the claimant had been dismissed from Care Visions, stating "Care Visions state that you were involved in a fact-finding investigation process, however they do not specifically state that you were
25 dismissed." This statement was a wilful or negligent misrepresentation of the terms of the email from Care Visions. The allegation that the claimant had misused confidential information was also upheld although Ms Ford-McNicol did not indicate in what way that the information had been misused. She concluded that in relation to the first and third allegations the claimant would have been
30 dismissed had he still been employed and that he would have been issued with a final written warning in relation to the second allegation. The claimant was

offered a right of appeal although there was no indication as to who would deal with any appeal.

5 Other post-employment events

197. Mrs McSeveney provided a reference in relation to the claimant by letter dated 23 May 2023 to the agency Randstad indicating that he was subject to an ongoing disciplinary process which had not concluded because of the claimant's sick leave.

198. By this stage, Mrs McSeveney in common with other senior managers of the respondent were looking for information which could be used against the claimant. The claimant had raised his concerns with various organisations by this time and had made a number of subject access requests. He was viewed as a troublemaker from the point of his resignation by the organisation.

199. The Care Inspectorate wrote to the respondent on 28 June with an outcome into a complaint the claimant had made regarding the respondent, following a visit by them on 13 June to the respondent. That report recorded that the Care Inspectorate had been told in relation to the sibling reports completed by the claimant that "The care service acknowledged there was disagreement which led to a difficult hearing taking place. The care service considered it was too late to change the actual report as it had already been submitted but sent another team manager to the panel to explain." It went on to state "It was clear from our findings that within the care service, the role undertaken by the complainant that had either not been explained, or understood, properly by all parties." While this aspect of the complaint was not upheld and the Care Inspectorate made clear that they had not had access to any of the reports concerned due to confidentiality, they went on to "ask the care service to look seriously at how this situation arose, and what an individual member of staff's responsibility is when undertaking these tasks in future." The respondent has not taken any steps to implement this action.

200. Around the same time as the claimant was invited to a fact-finding meeting in relation to the second disciplinary proceedings and a reconvened disciplinary hearing in relation to the first proceedings, the respondent contacted the Student Awards Agency to inform them that they had a concern that the claimant had behaved fraudulently in relation to funding for his SVQ4 studies. The SAAS did not take any action against the claimant in that regard. In raising this issue, the respondent was attempting to identify any other possible disciplinary action which could be taken against the claimant.
201. The claimant had been offered a post with Harmeny Education Trust in August 2023. He had informed them of the circumstances of his departure from the respondent's employment. Harmeny wrote to the respondent for a reference. The reference dated 23 August stated that "Patrick has been subject to disciplinary/investigation processes. There is an ongoing disciplinary process as well as ongoing fact-finding investigation processes." Harmeny had not asked the respondent for an update on any processes being followed.
202. On 6 September Mrs McSeveney reported the claimant to the SSSC in relation to the first disciplinary proceedings and indicated that the outcome of the disciplinary proceedings was dismissal. The SSSC had not previously been notified of these matters which was contrary to the respondent's normal practice had the respondent been genuinely of the view that this was a serious issue. Mrs McSeveney was aware that the claimant had been seeking work in the care sector during this period.
203. On 6 September, Mrs McSeveney also wrote to Randstad and Harmeny indicating that had the claimant still been employed by the respondent he would have been dismissed by them following a disciplinary procedure." Harmeny withdrew the offer of employment to the claimant by letter dated 8 September.
204. On 8 September Mrs Donnelly sent an email to Mrs Sheridan asking her to confirm whether the issues raised in her email of 2 March had been investigated as she was concerned that these had been dealt with as a breach of confidentiality rather than a child protection issue. Mrs Sheridan responded by email dated 12 September indicating that a "thorough investigation" had taken

place and had been concluded with all relevant parties involved and informed of the outcome.

205. On 20 September, Mrs McSeveney notified the SSSC of the outcome of the second disciplinary proceedings against the claimant and the nature of the allegations against him. The SSSC had not previously been notified of these matters which was contrary to the respondent's normal practice had the respondent genuinely believed these matters to be serious.

206. The SSSC is continuing to investigate the issues brought to its attention regarding the claimant by the respondent. No restrictions have been placed on the claimant's ability to practice while these investigations are ongoing. The claimant will be obliged to tell any potential employer of the investigations which will impact on his ability to obtain alternative employment either in the care or HR sectors.

The claimant's future employment prospects

207. The Tribunal accepted the claimant's evidence that he wanted to return to work in care, but that this would be very difficult for him to do at least while the SSSC investigations were ongoing. The Tribunal found that it would also be very difficult for him to obtain employment in HR while there were investigations ongoing into his employment while in a regulated role. His reputation will have been significantly damaged in the job market as a result of the ongoing SSSC investigations into his actions.

208. The claimant had prior to October 2023 been a sociable individual with many friends, who took great care of his appearance and went out regularly. From the time of his difficulties with Mr Greenshields and others he became more withdrawn and no longer goes out or socialises. He started having difficulty sleeping and can only sleep for 3 or 4 hours a night. He had to take additional medication to assist with his mental health. The claimant's mother had become increasingly concerned regarding the claimant's mental health from October 2023 onward and had to check on him regularly because of her concerns. The

way in which he has been treated by the respondent has had a significant impact on his confidence, his career and his mental health.

209. The claimant had worked in HR for a very short period of time at the time of his resignation. He would be unlikely to be able to secure a role at a similar salary to the role he had before the termination of his employment for some time. His net weekly pay at the time of the termination of his employment was £562.62.

Relevant law

Protected disclosures

210. Section 43B Employment Rights Act ('ERA') defines a protected disclosure as:

any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following':

that a criminal offence has been committed, is being committed or is likely to be committed — S.43B(1)(a)

that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject — S.43B(1)(b)

that a miscarriage of justice has occurred, is occurring or is likely to occur — S.43B(1)(c)

that the health or safety of any individual has been, is being or is likely to be endangered — S.43B(1)(d)

that the environment has been, is being or is likely to be damaged — S.43B(1)(e)

that information tending to show any matter falling within any one of the above has been, is being or is likely to be deliberately concealed — S.43B(1)(f).

211. HHJ Auerbach summarised at paragraph 9 in **Williams v Michelle Brown AM UKEAT/0044/19/009** the requirements of section 43B. "It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."

Detriment

212. Section 47B ERA provides that a worker has the right not to be subjected to any detriment by his or her employer, a colleague acting in the course of employment or an agent acting within the employer's authority on the ground that the worker made a protected disclosure.

213. In considering whether a person has been subjected to a detriment for having made a protected disclosure, a causal nexus is required between the fact of making a protected disclosure and the decision of the worker to subject a claimant to the detriment (**Aspinall v MSI Mech Forge Ltd EAT891/01**). The Court of Appeal in **Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372** found that the test of causation requires consideration as to whether the protected disclosure materially (in the sense of more than trivially) influenced the treatment of the complaint. As was reflected in these cases, a Tribunal is required to draw inferences from the established facts as to the reason for the treatment of a claimant.

214. Section 48(2) ERA provides that it is for the employer to show the grounds on which any act was done in relation. Therefore, once a claimant has established that they made a protected disclosure and that they had been subjected to a detriment, the burden of proof will shift to the employer to prove that the claimant was not subjected to the detriment on the ground that they had made a protected disclosure. It will often be necessary for Tribunals to draw inferences from as to the reason for the detrimental treatment, having regard to the findings in fact which have been made.

Constructive dismissal

215. Section 95(1)(c) ERA provides that there is a dismissal when an employee terminated the contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employment's conduct. In order to succeed in a claim of constructive dismissal an employee must establish that the employer has fundamentally breached the contract, the employee

resigned in response to that breach and the employee did not delay too long before resigning.

216. A constructive dismissal is not necessarily an unfair dismissal (see **Savoia v Chiltern Herb Farms Ltd 1982 IRLR 166**).

5 Dismissal for making a protected disclosure

217. A dismissal will be automatically unfair in terms of section 103A ERA if the sole or principal reason for the dismissal was that the employee had made a protected disclosure.

10 218. Where an employee claims that he has been constructively dismissed for having made a protected disclosure and the employee resigns in relation to a last straw, it is necessary to establish that the protected disclosure motivated enough of the minor breaches relied upon by an employee to demonstrate that the making of the protected disclosure or disclosures was the reason or principal
15 reason for dismissal.

Discrimination and victimisation

219. Section 11 of the Equality Act 2010 ('EqA') provides that sex is a protected characteristic for the purposes of the EqA.

20 220. Section 13 EqA prohibits direct discrimination because of a protected characteristic. Direct discrimination will occur when a person treats another person less favourably than he treats or would treat others because of a protected characteristic.

221. In order to establish direct discrimination a claimant must point to an actual
25 or hypothetical comparator who does not have that protected characteristic and there must be no material difference between the circumstances relating to each case (**Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337**).

222. Section 19 EqA sets out the definition of indirect discrimination. It states that
30 indirect discrimination will occur when a person (A) applies to another (B) a

provision, criterion or practice (PCP) that is discriminatory in relation to a relevant protected characteristic of B's. A PCP has this effect if the following four criteria are met: A applies, or would apply, the PCP to persons with whom B does not share the relevant protected characteristic (S.19(2)(a)); the PCP puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share the characteristic (S.19(2)(b)); the PCP puts, or would put, B at that disadvantage (S.19(2)(c)), and A cannot show that the PCP is a proportionate means of achieving a legitimate aim (S.19(2)(d)).

223. Section 27 EqA provides that a person will be subjected to victimisation if they are subjected to a detriment for having done a protected act. Protected acts include bringing proceedings under the EqA and making an allegation that there has been a contravention of the EqA.

Unlawful deduction from wages

Section 13 ERA provides that an employer shall not make a deduction from wages of a worker other than in limited circumstances.

Discussion and decision

224. The Tribunal was mindful that although much of the claimant's case was about what he said were inappropriate decisions taken by DCC and the respondent in relation to the siblings, it was not for the Tribunal to determine that matter. The Tribunal was required to take a dispassionate approach to the difficult and complicated facts of this case and focus its mind on the extent to which the facts impacted on the employment relationship and the specific claims brought by the claimant. That said, the respondent sought to portray the claimant as someone unreasonably obsessed by the decision to separate the siblings. The Tribunal did not accept that characterisation and rather viewed the claimant

as someone who had a deep and genuine obligation to take appropriate action to ensure that the best interests of the children were pursued.

Did the claimant make a protected disclosure?

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225. The claimant's position was that he had made four protected disclosures:

- i. He lodged a grievance with the respondent on 2 December 2022
- ii. He wrote to Dundee City Council on 29 December 2022
- iii. His letter of 11 January 2023 to the respondent, raising issues about a
10 colleague
- iv. He made a complaint to the Care Inspectorate on 4 April 2023.

226. The respondent's position is that the claimant did not make any protected disclosures. In particular, it was said that none of the disclosures involved a
15 disclosure of information, in that there was no 'new information' disclosed. It was said that there was insufficient factual content and specificity provided to meet the test of a protected disclosure.

227. It was also said that none of these disclosures were in the public interest.
20 Rather it was suggested that the disclosures might have been in the best interests of the children concerned but could not be said to be in the wider public interest. It was also said that while the claimant may have had a reasonable belief that DCC had failed to comply with their legal obligations, there was no evidence of a reasonable belief that the respondent had failed to comply with a legal
25 obligation. The respondent made reference to the case of **Ms E A Gibson v Moore House School Ltd 4101893/2020** in this regard.

228. In order to determine whether the claimant made a protected disclosure it is necessary to consider the following questions:

- 30
- Was there a disclosure of information?
 - Did the claimant reasonably believe that he made the disclosure in the public interest?

- Did the claimant believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f), and if so, was that belief reasonably held?

229. The Tribunal found that all four matters amounted to protected disclosures.

5 The respondent's position was that none of the information being disclosed was 'new' and therefore there were no protected disclosures. That argument is misconceived. The EAT confirmed in **Parsons v Airplus International Ltd EAT 0111/17** that information which is communicated which already known to the recipient can still amount to a protected disclosure. Section 43L(3) ERA already
10 made this clear.

230. It was also suggested that disclosures were too vague to amount to a protected disclosure. A disclosure is required to convey facts. In the present case the facts conveyed were in relation the conduct of Mr Greenshields and raised
15 safeguarding concerns regarding the siblings by for instance indicating that he had disregarded the factual analysis in the sibling reports, failed to ensure adequate staffing levels, disregarded the importance of safe and consistent relationships and appeased Dundee City Council to the detriment of the best interests of the siblings.

20 231. The disclosure to Dundee City Council also set out facts which related to the conduct of the social workers involved. The respondent's position was that this disclosure was to Dundee City Council and therefore could not be a protected disclosure. However, section 43C states that a disclosure will be made if the
25 worker reasonably believes that the failure relates to the conduct of a person other than his employer the disclosure is made to that person. The letter of complaint to DCC therefore comes within the scope of section 43C.

30 232. The claimant raised issues with Mrs Sheridan on 11 January regarding a colleague (although this was not raised in writing). However, the issue was that a female colleague had not been investigated where a child protection issue had been raised in circumstances similar to a situation where he had been investigated. The claimant was alleging that there was a failure to investigate a

potential child protection issue. He made the disclosure to his employer. That amounts to a protected disclosure.

233. The Care Inspectorate is a prescribed person in terms of section 43F ERA.

5 The complaint raised by the claimant with them set out the respects in which he said the respondent had failed to comply with its legal obligations. It therefore amounted to a protected disclosure.

234. The respondent sought to argue that as the disclosures related only to the

10 siblings, there were not in the public interest. The Tribunal rejected that argument. It is difficult to imagine an issue being more in the public interest than how children in the care of the state or their surrogates are treated. The claimant was not raising these matters for his own personal interest but in the interests of the siblings. His motivation was both to encourage those involved to reconsider
15 the decisions which had been taken and to ensure that young people in the future were not treated in the same way as the siblings.

235. The respondent and DCC were under a legal obligation to act in the best

interests of the children in their care. The claimant made reference to both
20 Children and Young People (Scotland) Act 2014 and Children (Scotland) Act 1995 as amended by 2020 Act in this regard.

236. The Tribunal was therefore satisfied that all four disclosures were disclosures

of information, were made to an appropriate person, were made in the public
25 interest and demonstrated a reasonable belief of the claimant that the respondent and DCC had breached legal obligations.

Was the claimant subjected to a detriment because he made a protected disclosure?

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237. The claimant said that he was subjected to the following detriments:

- i. The breach of confidentiality identifying the claimant as being under investigation in relation to a potential child sexual abuse allegation in November 2022;
- ii. The way in which GG (Mr Greenshields) behaved towards the claimant at a meeting to discuss a relationship at work policy on 2 March 2023;
- iii. The way in which GG and LC (Ms Cushen) treated the claimant on 2 March 2023 in refusing to allow him to have dinner at Gate House;
- iv. The rejection of the claimant's appeal against the outcome of his grievance and complaint
- v. Not to pay the claimant a contractual entitlement to an increase in pay
- vi. The decision to investigate him for gross misconduct when he had already given notice of his resignation;
- vii. The disclosure to the claimant's prospective new employer that he was being investigated in relation to misconduct on 5 June.

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238. The respondent's position was that even if the claimant had made any protected disclosures, there was no causal connection between the detriments and the protected disclosures.

239. While the breach of confidentiality was a detriment for the claimant, the Tribunal accepted that there was no causal connection between that and the protected disclosures which had been made by the claimant. The minute was prepared and distributed by DCC in November 2022 (not January 2023 as suggested by the claimant). The claimant had not made any of the protected disclosures by that time. There was therefore no causal connection between the two.

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240. There was no evidence led to suggest that the decision not to award the claimant a pay rise was related to the protected disclosures made by him.

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241. The Tribunal was satisfied that Mr Greenshields conduct towards the claimant both at the Q&A session on 2 March 2023 and in refusing to allow him to visit the Gate House that evening were detriments for the claimant. The Tribunal was also

satisfied that these actions were either caused by or materially related to the claimant's protected disclosure in his complaints against Mr Greenshields in December 2022. While the relationship between the claimant and Mr Greenshields had already been deteriorating since October 2022 at least, the Tribunal took into account the fact that Mr Greenshields had previously told the claimant that he bore grudges against people. The Tribunal was of the view that Mr Greenshields was upset and annoyed at the claimant raising a complaint and grievance against him and that this motivated his actions towards the claimant on 2 March. Mr Greenshields had called the claimant's concerns "spurious". Mr Greenshields saw opportunities to effectively 'get back' at the claimant because of the claimant's actions in raising concerns regarding Mr Greenshields' conduct. The behaviour of Mr Greenshields at the Q&A session was entirely inappropriate for a senior manager. As noted above the Tribunal rejected Mr Greenshields suggestion that he had attended the Q&A session in order to ensure that staff for whom he was responsible conducted themselves appropriately. The Tribunal concluded that had that been his intention, he would have let the claimant know he was attending and discussed how best to manage matters. He would have sat with the claimant to show some kind of solidarity towards and support of him. He would have assisted the claimant in answering questions rather than directing hypothetical questions at him which he knew the claimant would find difficult to answer. He would have made clear, as the most senior person present that the policy had been approved by the Board and that he himself was in support of it. Mr Greenshields did none of these things and the Tribunal concluded that his conduct towards the claimant was retribution for having raised concerns regarding his own conduct towards the siblings. His subsequent email to the claimant was an attempt at covering his tracks, should the claimant raise any concerns regarding this.

242. Mr Greenshields indicated that he wanted a witness present when he told the claimant that he could not visit the Gate House on 2 March 2023. He was well aware that his relationship with the claimant was difficult and no doubt was conscious of his conduct earlier that day. The Tribunal was mindful that Mr Greenshields had been present previously when the young person had

discussed with the claimant in front of him the claimant coming to Gate House to have dinner with him. He knew that the claimant had attended Gate House in 2023 for dinner. He was aware from the registered service manager that the claimant had been present at dinner at Gate House in the previous week and that she had not raised it at that time because she believed she could deal with matters. The claimant told him that Mrs Sheridan had been aware that he had visited the Gate House and that Dr Drysdale was also aware. Had Mr Greenshields genuinely thought that the claimant should not attend Gate House, he would have put in place arrangements to inform the young person, he would have checked with Dr Drysdale and/or Mrs Sheridan what their understanding of events was before reaching a decision. Again, the Tribunal concluded that Mr Greenshields' actions were a vindictive attempt to get back at the claimant because the claimant had raised a grievance and complaint regarding his conduct.

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243. The Tribunal concluded that once the claimant intimated his resignation that the view of the entire organisation towards him was further altered. While he had been viewed as a troublemaker by Mr Greenshields in particular until that point, from then on he was also viewed in this manner by Mrs Sheridan and Dr Drysdale. Mrs McSeveney began to view the claimant as a troublemaker after she started to investigate the issues raised in the claimant's letter of resignation. As suggested in evidence by Mrs Donnelly, the respondent was willing to listen to the claimant in that Mrs Sheridan listened to his appeals against his grievance and complaint, but having been listened to, he was expected to 'get back into his box'. The respondent did not intend to tolerate a member of staff who had by this time made a number of subject access requests in addition to the complaints made by him. The Tribunal was of the view that the actions by the respondent after the claimant's resignation were entirely related to the protected disclosures he had made and an attempt to discredit the claimant should he continue to pursue matters.

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244. It was accepted that the respondent had obligations to report certain matters to the SSSC and/or the Care Inspectorate. However, the Tribunal formed the

view that the disciplinary issues raised against the claimant after he had submitted his resignation were entirely exaggerated and to some extent fabricated. These were then used as weapons in order to attempt to silence the claimant and damage his reputation in order to protect the interests of the respondent. As suggested on behalf the claimant, it became a war of attrition. The Tribunal reached this conclusion in the following circumstances:

- i. The previous manager at Gate House had failed to act on information provided by a whistleblower and had failed to inform Mr Greenshields that restrictive practices were ongoing at Gate House. No action was taken against him after his resignation from his employment.
- ii. The respondent did not lead any evidence about disciplinary action being raised or continued after an employee had left their employment. There was nothing in any written policy to deal with these issues.
- iii. The respondent did not contact the former employee Ms Todd to obtain any statements from her in relation to any of their investigations, despite indicating that all staff were required to co-operate with any investigations.
- iv. The respondent did not make any attempt to ensure that fair process was followed in relation to the disciplinary proceedings against the claimant after his resignation.
- v. The respondent founded upon an email from DCC of 21 December without ever having discussed that with the claimant, given him any instructions in that regard or having provided the claimant with the email exchange with DCC which led to that 'instruction'. There was never any change in instruction from the respondent to the claimant since he was instructed that he was to be supervised when he had any contact with the siblings. While the claimant made reference to that email in his complaint against DCC, that did not alter the view of the Tribunal that the claimant was of the view that he was entitled to visit the sibling if supervised and that the respondent had never suggested anything to the contrary to him.
- vi. Mr Greenshields, Gate House registered service manager, Mrs McSeveney, Mrs Sheridan and Dr Drysdale were all aware that the claimant had been at the Gate House for dinner prior to 2 March and did

not raise any concerns with the claimant regarding this or tell him he had not to do so again.

- vii. The claimant did not allege that Mrs Sheridan had given him permission to visit Gate House, but that she had been aware of that.
- 5 viii. Dr Drysdale had told the claimant he should contact Ms Cushen to arrange a visit in December and had said that he was satisfied that there was no instruction for the claimant not to visit the House and that he would get back to him if he found out that was wrong, but did not ever raise it with the claimant again.
- 10 ix. If the respondent had genuinely thought that disciplinary matters ought to be dealt with in relation to the claimant it would have dealt with such matters expeditiously. It made no attempt to obtain medical information regarding the claimant's ability to attend any meetings.
- x. The claimant was accused of downloading documents and asked for his
15 reason without providing him with the list of documents, explaining how this had come to the respondent's attention or explain what was inappropriate about the claimant's use of such documents. This issue was raised with the claimant on 13 April yet was not raised as a formal disciplinary matter until August.
- 20 xi. Mrs Donnelly sent the email which included content which was said to be a breach of confidentiality by the claimant on 2 March. This was not raised as a disciplinary matter until August. The matter was not reported to the SSSC or the Care Inspectorate until the outcome of the disciplinary hearing.
- 25 xii. Disciplinary proceedings were continued against the claimant suggesting that he had been dismissed from a previous employment despite the respondent having been informed by the previous employer that the claimant had resigned. While reference was made to a fact finding in which the claimant had been involved prior to his resignation, the
30 respondent had been informed that this had been some months before his resignation and did not suggest the two were related.
- xiii. While the respondent was obliged to provide an accurate reference when asked, there was no requirement to update that reference with the

outcome of disciplinary proceedings, and the respondent had not been asked for any update.

- xiv. There was no basis for the respondent to state what it would have done in relation to disciplinary proceedings had the claimant remained in employment. The respondent did not explain that the claimant had not taken part in the proceedings and so that he had not put forward his position in relation to the allegations. The claimant had no recourse in relation to the unfair procedures being followed by the respondent in relation to the disciplinary proceedings against him. He was no longer employed and could not claim that he was unfairly dismissed.

245. Therefore the Tribunal found that the way in which the respondent treated the claimant on 2 March both in relation to the Q&A session and his visit to Gate House, the rejection of the claimant's appeal against his grievance and complaint, the decisions to investigate him for gross misconduct when he had given notice of his resignation and the updating of potential employers as to the outcome of disciplinary proceedings were all detriments which were related to the claimant's protected disclosures.

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Was the claimant constructively dismissed?

246. The claimant relied on the following matters which it was said amounted to breaches of mutual trust and confidence which either individually or cumulatively amounted to a fundamental breach of the claimant's contract of employment.

- (a) Mr Greenshields' not supporting the Claimant's recommendation his report to third party DCC.
- (b) The Respondents' decision on 29 November 2022 to place restrictions on the Claimant following their investigation, which has found no case to answer.
- (c) The manner in which the Claimant was investigated compared to his female colleague in November 2022.

- 5 (d) The Respondents' disclosures of information to the Claimant's colleagues at meeting in November 2022 which breached the Claimant's confidentiality and damaged his reputation
- (e) The conduct of GG at meeting on 2 March 2023 in criticising the Claimant in front of other employees
- 10 (f) The Respondents' decisions on 2 March 2023 to refuse entry to the Claimant to their premises to attend a meeting.
- 15 (g) The Respondents' decision to refuse the outcome of the Claimant's appeal against the outcome of his grievance/safeguarding report, and the manner in which this appeal was conducted.

20 247. The Tribunal did not find that the disclosure of information in relation to minutes of November 2022 amounted to a breach of contract on the part of the respondent. The minutes were drafted and circulated by DCC and not the respondent. That said, the failure of the respondent to take any formal action to address the matter with DCC might have been said to have amounted to a breach of contract. That was not argued by the claimant and so the Tribunal did not
25 consider that matter further.

248. However, the Tribunal was satisfied that the other matters cumulatively amounted to a breach of the duty of mutual trust and confidence which is
30 fundamental to an employment relationship.

249. In addition, there were some of those matters which individually amounted to a fundamental breach of contract, in particular the conduct of Mr Greenshields toward the claimant on 2 March, both in relation to the Q & A session and the refusal to allow the claimant to visit the Gate House that evening.
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250. The respondent sought to argue that at the point of some of these matters the claimant was no longer reporting to Mr Greenshields and his contract of employment did not require him to have any obligations towards the siblings. The

Tribunal found that argument to be misplaced. While a breach of mutual trust and confidence may relate to the specific duties of an employee, what amounts to a breach of mutual trust and confidence will depend upon the facts and circumstances of each individual case. The claimant was not contractually required to visit or have an obligation towards the remaining sibling at Gate House. However, the respondent advocated the Promise which the claimant sought to advance in all he did. The respondent and Mr Greenshields in particular was aware that the claimant had created a positive and trusting bond with the siblings and wished to continue to maintain that all of which was in keeping with the Promise. The respondent had a duty to facilitate this and support it. It failed to meet that obligation in many respects and indeed acted in such a way as to undermine the obligation.

251. While Mr Greenshields was no longer the claimant's line manager, he was senior to the claimant. As such his conduct at the meeting on 2 March in the Q & A had the effect of undermining trust and confidence between the claimant and respondent. A senior manager undermined the claimant at a meeting with junior staff and another colleague at the same level of the claimant. He did so deliberately and in bad faith. That is a breach of mutual trust and confidence whether or not the senior manager is the claimant's line manager.

252. In addition to these two stand-alone breaches, the Tribunal was of the view that the other matters amounted to breaches of mutual trust and confidence albeit on their own not fundamental breaches. The way in which the claimant was investigated as compared to his female colleague was an act of direct sex discrimination. Placing restrictions on the claimant's access to the siblings without any proper basis to do so, having failed to make efforts to clarify whether DCC had any proper basis for their instruction or be under any obligation to implement that instruction in any event, was a breach of mutual trust and confidence.

253. The way in which the claimant's grievance and complaint were handled amounted to breaches of mutual trust and confidence. The respondent did not follow a fair procedure. Dr Drysdale did not give any critical thought to the

claimant's allegations and accepted at face value, without explaining why, the position of Mr Greenshields. Although Mrs Sheridan made efforts to ensure that the claimant was able to set out his concerns and be listened to, she did not make any genuine effort to deal with his grievance or complaint in that she did not give consideration as to whether it should be upheld or not, and simply wanted to allow the claimant to 'vent'. The claimant was never given notes or minutes of meetings or told what steps had been taken by the respondent. The whole manner in which the claimant's grievance and complaint were dealt with amounted a breach of mutual trust and confidence.

254. In all these circumstances, the Tribunal was satisfied that the respondent had fundamentally breached the claimant's contract of employment, that the claimant had resigned in response to those breaches and that he did not delay in so doing. He was therefore constructively and unfairly dismissed. There was no lawful basis for the conduct of the respondent in this regard.

Was the claimant automatically unfairly dismissed because he made a protected disclosure?

255. In these circumstances, the Tribunal concluded that the conduct of the respondent relied upon by the claimant in relation to his resignation was all connected to the protected disclosures he had made and in particular the disclosures set out in his grievance and complaint against Mr Greenshields. The conduct in response to which the claimant resigned was caused by the claimant having made protected disclosures. The claimant was therefore automatically unfairly dismissed for having made a protected disclosure.

Was the claimant discriminated against because of his sex and if so, does the Tribunal have jurisdiction to consider his claim?

256. The claimant said that the way in which he was treated in comparison to his female colleague in relation to investigations into possible child protection issues amounted to sex discrimination. The claimant was subject to an investigation

because one of the siblings made reference to seeing some part of his genitals when at the swimming pool.

257. When the sibling was interviewed he also said that he had seen the claimant's
5 female colleague's 'boobs' at the swimming. She was not investigated. When the
claimant raised the issue with Mrs Sheridan in January at the appeal meeting for
his complaints, there was a review of the matter, but there was no further
investigation. The matter concerning the claimant was reported to DCC, SSSC
and the Care Inspectorate. No such reporting happened in relation to the female
10 colleague. The respondent's position was that the circumstances were materially
different as there was less risk regarding the female colleague as she was in a
swimming pool in a public area, had been wearing a swimsuit at the time and
had not been alone with the sibling at the relevant time. However, all these
matters were assumed by the respondent because they did not ever investigate
15 the issue and were based on the sibling having mimed a swimming action. They
didn't ask the sibling anything further about the matter at all.

258. The Tribunal formed the view that the assumptions made regarding the
female colleague were discriminatory. It appeared to the Tribunal that the
20 respondent's immediate reaction to the comment made about the claimant by
the sibling was that it had to be investigated. The comment made regarding the
female colleague was not materially different. The circumstances were not
materially different at all. The comment was that the sibling had seen the
claimant's genitals and the female colleague's 'boobs'. There was no difference
25 other than the sex of the individual, yet the two individuals were treated very
differently.

259. While the Tribunal accepted the evidence of Mrs Carvill that she recognised
that women can and do abuse children, the way in which the matter was framed
30 to her impacted on her view of the matter. She made assumptions, which were
inextricably linked to the sex of the individuals.

260. The Tribunal was satisfied that the claimant was discriminated against
because of his sex in terms of section 13 Equality Act.

261. The claimant raised this issue with Mrs Sheridan on 11 January 2023. He did not lodge his claim form until 15 June. The issue of whether the Tribunal had jurisdiction to consider this claim was raised by the Tribunal during the submissions of the parties. The respondent had not raised the issue but argued once it was raised with them that the Tribunal did not have jurisdiction to consider the claim in the circumstances.

262. The claimant indicated it would still be just and equitable to consider the claim.

263. The Tribunal agreed that it would be just and equitable to determine the matter. The Tribunal took into account that there was no material prejudice to the respondent caused by the delay. The respondent had not recognised any issue and had no difficulty in leading evidence in relation to the matter. The Tribunal was conscious that the claimant had been raising various issues with the respondent until his resignation and had pursued issues with the Care Inspectorate and DCC. In all the circumstances of the case, the Tribunal decided that it was just and equitable to determine the matter.

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Was the claimant subjected to victimisation because he did a protected act?

264. The Tribunal then went on to consider whether the claimant had been victimised for having either alleging discriminatory treatment or having lodged a claim alleged discrimination.

265. The Tribunal formed the view that the detriments the claimant was subjected to were not related to his allegations of sex discrimination. They were caused by his protected disclosures. While it may in some circumstances be the case that detriments could have two causes, the Tribunal did not find that to be present in the instant case. While no doubt the respondent was unhappy at the allegation of discriminatory treatment which was alleged, it was the protected disclosures

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made by the claimant which caused it to determine that he was a troublemaker and take the detrimental action which it did.

Was the claimant entitled to a pay rise which he was not paid?

5 266. The claimant said that he had been entitled to a pay rise and that the failure to increase his pay was an unlawful deduction from his wages.

267. The claimant had no contractual right to a pay rise. The Tribunal was somewhat sceptical as to the benchmarking process which was said to have
10 been carried out in relation to the claimant's role. However, the claimant had no contractual right to that benchmarking exercise either.

268. The Tribunal was mindful that the claimant's role was a new one in the organisation. He had only commenced in the role in October 2022 so would only
15 have been in post for 6 months prior to the increase he said he should have received. It was speculation on his part that he would have received a pay rise. While that speculation may have been grounded in experience of the respondent's previous practice, and the claimant said that other staff at a similar level received a pay rise, the Tribunal formed the view that the evidence fell short
20 of establishing that the claimant had a contractual right to a pay rise.

269. In all these circumstances, the Tribunal was satisfied that there was no unlawful deduction from the claimant's wages.

25 **What compensation if any should be awarded to the claimant?**

270. The Tribunal then went on to consider what compensation should be awarded to the claimant. Parties had agreed the figures which were put forward on behalf
30 of the claimant in the schedule of loss and subsequent income information provided by the claimant.

271. The respondent's position was that the claimant's conduct was such that any compensation awarded to him should be reduced in terms section 122. It was also suggested albeit very briefly that dismissal for failure to follow a third-party

instruction could render a dismissal of the claimant fair. The suggestion appeared to be (although it was not expanded upon in submissions) that the claimant could have been fairly dismissed for failing to follow an instruction from DCC not to visit the siblings. The difficulty with that argument for the respondent was that the issue was never discussed with him at all by the respondent. Moreover, given that the Tribunal has already found that various senior members of the respondent's management were aware that the claimant had visited the sibling after this 'instruction' had been issued and had not taken any action regarding this, made it difficult for the Tribunal to understand how the claimant could subsequently have been fairly dismissed. In addition, given the findings made by the Tribunal regarding the unfair procedures adopted by the respondent in relation to the claimant, the Tribunal found it impossible to accept that the claimant would have been fairly dismissed in relation to his visit to the young person (or indeed any of the other matters raised by the respondent). The claimant did not contribute to the circumstances of his dismissal in any way.

272. The claimant is entitled to a basic award of £1929 (on the basis of 3 years' service at the statutory cap of £643). The claimant had been working for a time since the termination of his employment although this was on a lower hourly rate of pay and he worked more hours than he would have when employed with the respondent. He is currently signed off work and is unable to work due to poor mental health. The claimant had no income for a period of two weeks to 10 June 2023, which was a loss of £1125.24. He then had losses between 10 June and 8 December 2023 of £1143.65, albeit he had to work a considerably higher number of hours in order to obtain this level of income. He then had 25 weeks' losses to 29 May 2024, which would be 12 months after the termination of his employment and on the basis of a net weekly pay of £562.62 which would amount to £14,055.75. His total loss of earnings in the year after his dismissal amounts to £16,324.64.

273. The Tribunal considered what award of injury to feelings should be made to the claimant in respect of both the claim of sex discrimination and detriments for having made protected disclosures.

274. In terms of the claimant's claim of sex discrimination, the Tribunal took into account that this was a one-off act, albeit the respondent failed to take the opportunity to remedy the issue when reviewing the investigation into the claimant which had taken place. The claimant accepted allegations could be investigated and his position was really that the same should have applied to his comparator rather than not have applied to him. In these circumstances, the Tribunal concluded that an award of injury to feelings in the lower band of Vento was appropriate and awards £1500 in that regard.

275. In terms of having been subjected to detriments for having made protected disclosures, the Tribunal was mindful that an award in respect of the termination of the claimant's employment was not appropriate. That said, the Tribunal took into account that the claimant had been subjected to various detriments over a number of months. The claimant had been a rising star in the respondent's organisation. He had just taken up a senior post. He had been sociable and outgoing. The Tribunal accepted that the claimant sought to underplay the impact the situation had on him although it noted that he was now taking additional medication to manage his mental health. He now has difficulty sleeping and sleeps no more than 3 or 4 hours a night, which has been going on for some time. The Tribunal accepted the evidence of his mother that he now rarely went out, no longer socialised and that as she said, while she did not have him on 'suicide watch' as such she felt she had to continue to keep a close eye on him. The Tribunal also accepted that the claimant had 'fire in his belly' in relation to his role and over the period from around October, became more and more withdrawn and disillusioned.

276. The claimant's career prospects has been significantly damaged by the actions of the respondent.

277. In all of these circumstances, the Tribunal was of the view that an award at the top of the middle band of Vento was appropriate and awards the sum of £30,000 in injury to feelings to the claimant. The Tribunal takes into account the principles the EAT in **Prison Service v Johnson [1997] IRLR 162** in making this award.

278. The Tribunal takes the view that it will take some time for the claimant to gain employment at a similar level of salary as his previous role. While it is always difficult to determine these matters in advance, the Tribunal is of the view that the claimant is likely to be able to return to work in the months after this Tribunal judgment. However, it estimates that his income will be 70% of what he had previously earned for at least 18 months. In those circumstances the Tribunal concludes that it would be just and equitable to make an award of £13,165.30 on the basis that the claimant will only be able to earn 70% of his previous salary for a period of 18 months. This is calculated on the basis of net weekly pay of £562.62 x 78 weeks minus 30%.

279. Finally, the Tribunal makes an award of loss of statutory rights of £500.

280. Therefore, the compensation payable to the claimant is as follows:

	Basic award	1929
	ItF (sex discrimination)	1500
15	ItF (detriments)	30,000
	Loss of statutory rights	500
	Loss of wages to 29/5/24	16,324.64
	Future loss of wages	<u>13,165.30</u>
20	Grand total	£63,418.94

25

**Employment Judge
A Jones**

22 April 2024

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Date of Judgment

Date sent to parties

23/04/2024