

**Attention is drawn to the order  
in paragraph 4 of this  
determination prohibiting the  
publication of certain  
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2017] NZERA Wellington 3  
5585612

BETWEEN	MARY CLAYTON First Applicant
	ANGELA MINTON Second Applicant
	KERRY HEFFEREN Third Applicant
AND	BOARD OF PROPRIETORS OF SOLWAY COLLEGE Respondent

Member of Authority:	Trish MacKinnon
Representatives:	Jills Angus Burney, Counsel for Applicant Richard Harrison and Emily McWatt, Counsel for Respondent
Investigation Meeting:	9, 10 and 11 August 2016 at Masterton
Submissions Received:	18 July, 20 September and 11 October 2016 from the Applicant 15 July and 28 September 2016 from the Respondent
Determination:	31 January 2017

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Mary Clayton, Angela Minton, and Kerry Hefferen claim they were disadvantaged in their employment by unjustifiable actions taken by their employer. They also claim their employer breached good faith in its investigation of complaints

they made. Mrs Clayton and Mrs Hefferen further claim their employer repudiated each of their employment relationships and they were constructively dismissed. Mrs Minton withdrew her claim of constructive dismissal during the course of the investigation meeting.

[2] All three applicants seek compensation for humiliation, loss of dignity and injury to feelings and, Mrs Clayton additionally seeks lost wages.

[3] The Board of Proprietors of Solway College (the Board) denies the claims of the three applicants. The Board says it investigated the complaints they made and reached reasonable findings that it then took appropriate actions to address. It denies constructively or otherwise dismissing any of the applicants and says each resigned of her own volition. The Board also rejects the claim it breached its good faith obligations to the Matrons under s.4 of the Employment Relations Act 2000 (the Act).

### **The Authority's investigation**

[4] In the course of the investigation meeting evidence was heard and sighted concerning the medical records and medical conditions of individual students of Solway College. I have placed an order prohibiting publication of all such evidence, including photographic evidence put before the Authority, and the names of any students referred to during the investigation. I have also placed an order prohibiting the publication of the name of the former Head Matron who is referred to in this determination.

[5] I have not referred to all the witnesses who attended the investigation meeting or provided evidence by affidavit. Nor have I set out all the evidence brought to the Authority but have set out the material facts and made findings on issues relevant to the determination of the applicants' claims in accordance with s. 174E of the Act.

[6] This determination has been issued outside the statutory period of three months after receiving the last communication from one of the parties. When I advised the Chief of the Authority this would occur he decided, as he is permitted by s174D(3) of the Act to do, that exceptional circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in s174D(2) of the Act.

## **Background**

[7] Mrs Clayton, Mrs Minton and Mrs Hefferen were employed by the Board as Matrons in the boarding hostel at Solway College. They had varying lengths of service, ranging from ten months to over five and a half years, when the employment of each of them terminated.

[8] As a result of an incident on 17 August 2014, Mrs Clayton expressed concerns to fellow Matrons, including the other two applicants, about the then Head Matron. Some weeks later the Matrons agreed they would raise that, and other concerns they had about the Head Matron, in the course of a scheduled meeting with their employer in late September 2014.

[9] The meeting was for the purpose of discussing overnight rosters, sleepovers, and other current matters concerning the Matrons' employment at Solway College. Once that part of the meeting was completed, the Matrons asked to speak privately with the Chair of the Board and the Hostel Committee Convenor. They then raised their issues regarding the Head Matron, with Mrs Hefferen acting as spokesperson for a group complaint five of the Matrons had compiled.

[10] Their concerns began with the account Mrs Clayton had given to her colleagues of the Sunday 17 August 2014 incident. While Mrs Clayton was on duty the Head Matron arrived to undertake driving duties, which involved picking up some students and bringing them back to the school. Mrs Clayton said the Head Matron had been drinking alcohol and she had offered to do the driving for her but had been refused. Other concerns raised by the Matrons were the management of student medication; student transport in the school van; and matters relating to the Head Matron's management style, temperament and approachability.

[11] The Chair of the Board, Noel McKay, informed the Matrons it was important the Board address their concerns as soon as possible. He and Board member Kathryn Leever, the Hostel Convenor, told them the Board would use the Hostel Complaints procedure as outlined in the Hostel Matrons' Handbook. If more time were required than allowed for in that procedure, the Board would inform the Matrons of this.

[12] Mr McKay informed some other Board members. Not all were contactable as it was the school holidays. He also telephoned the Principal, Beth Rogerson, who was overseas at the time. Following those discussions Mr McKay convened a

subcommittee of Board members to investigate the allegations. The subcommittee comprised himself, Ms Leever, and the College Bursar, James Sprowson, who is also a Board member.

[13] Ms Leever and Mr McKay decided to ask each Matron to present her complaint individually. Ms Leever spoke with Mrs Hefferen on 27 September for that purpose, asking that each complaint be factual and specific as to dates, names of people present, and actions taken, if any. The three applicant Matrons (and two others) sent their respective complaints to the Board.

[14] The subcommittee interviewed each of the Matrons and the Head Matron between 6 and 8 October 2014. Mr McKay compiled notes taken during the interviews into a summary document.

[15] The Board wrote individually to the Matrons on 29 October 2014 relaying its findings in relation to each of the complaints and concerns raised. The letter to Mrs Clayton also specifically addressed the concern she had raised over the Head Matron's conduct on 17 August 2014. It had concluded that "(c)ontradictory information received by the Board and the long lapse of time since the alleged incident mean that this allegation cannot now be proven."

[16] With regard to the concerns about medication, the Board had received inconsistent information that "could not be corroborated with evidence from the medical records." The Board had reviewed procedures and amended them to ensure no such concerns would arise in the future. It reiterated procedures that were to apply in relation to some of the other areas of concern the Matrons had raised. In relation to the Head Matron's management, the Board said it had discussed leadership and management skills with her and she was eager to undertake professional development to develop her management and communication skills and to create a positive team approach in the hostel.

[17] The Board expressed its expectation that all members of the hostel staff would work together to create that positive hostel environment and make ongoing efforts to unify the hostel team. It made particular reference to tools that could be used to improve the communication between hostel staff and it noted that weekly meetings of the Matrons with the Principal of the College would continue at which, in addition to training, queries and issues could be raised.

[18] On 6 November 2014 the Chair of the Board wrote to Mrs Hefferen under the heading of "Employment Relationship Problem". The letter noted that recent events with Mrs Hefferen's employment with the College had created "some serious problems regarding the employment relationship." Those problems were:

- "lack of active, responsive, constructive communication between you and senior staff;
- lack of good will to resolve this;
- consequent undermining of the employment relationship".

[19] The letter asked Mrs Hefferen to attend mediation under the auspices of the Ministry of Business Innovation and Employment and stated that the Chair would contact the mediation service for that purpose. It said further details and information relating to the employment problems noted in the letter would be discussed at the mediation.

[20] Mrs Hefferen, through her representative, objected to being singled out and she asked for mediation to discuss a number of concerns she and other Matrons had. One of those concerns was the Matrons' dissatisfaction with the outcome of the Board's investigation into their complaints about the Head Matron. In an email from their representative, Ms Angus Burney, to the Board on 14 November 2014 the Matrons raised various employment issues including:

- a. A dispute over changes to their rosters;
- b. A wage arrears claim;
- c. Complaints regarding the Head Matron's conduct;
- d. Conflict of interest issues relating to the recent investigation into the Head Matron;
- e. Alleged breach of contract matters; and
- f. The Board's failure to provide a safe workplace.

[21] Some of these concerns were referred to further in a letter dated 24 November 2014 from Ms Angus Burney to the Board in which she also alerted the Board to a possible future personal grievance for unjustified disadvantage if the Board chose to pursue its approach of "isolation" in relation to Mrs Hefferen.

[22] On 9 December 2014 the Board wrote to all the Matrons, including the three applicants, concerning a restructure proposal. The letter noted that the current staffing structure was considered inefficient and no longer met the needs of the College. The reasons for this were itemised and included structural assessment and remedial work that had to be carried out, and new shifts for Matrons who were now required around the clock. The Board set out and explained its proposed new structure.

[23] The letter to the Matrons informed them that if, the proposal were to go ahead, it would mean their current positions would be disestablished. They would be offered redeployment into new part-time Matron positions and would be offered the opportunity to apply for a proposed new Deputy Matron position. If they were not redeployed into one of the proposed new roles, their employment would be terminated by reason of redundancy.

[24] The letter outlined the consultation process that would follow before the Board would make any decision on the restructuring proposal. Counselling services were made available to the Matrons should they wish to access it.

[25] The parties attended mediation on 10 December 2014 but were unable to resolve all matters at issue between them. It is common ground they had agreed matters relating to the restructure would not be included in the discussion.

[26] Following mediation, the Board responded through its then representative, Scott Doolan, to the concerns notified by the Matrons on 24 November about the Board's investigation into the Head Matron's conduct. Mr Doolan noted in his letter of 17 December 2014, that the Board had reviewed the process for its investigation into the concerns expressed by the Matrons and its findings and was satisfied that its actions were those of a fair and reasonable employer. The Board would not be reopening any investigation into allegations that had already been investigated.

[27] On 13 January 2015 the Matrons (through their representative) notified personal grievances, a breach of the Board's statutory good faith obligations, and a wage arrears claim that was subsequently resolved. A personal grievance was raised on behalf of each of the three applicant Matrons "for actions by the employer causing each of the applicants unjustified disadvantages. The action by the employer causing unjustified disadvantages arises from the correspondence the employer communicated on 29 October 2014". That correspondence comprised the letters the Board Chair had

sent to each of the three applicant Matrons informing them of the outcome of the Board's investigation into their complaints about the Head Matron.

[28] On 26 January 2015 Mr Doolan responded on behalf of the Board to Ms Angus Burney's letter of 13 January raising personal grievances and other employment issues on behalf of the applicants. Mr Doolan notified the Board's rejection of the issues they had raised. Consultation over the restructuring proposal also took place during that month.

[29] On 5 February 2015 Mrs Minton advised the Principal by letter of her resignation stating she had recently been approached by a past employer and intended to accept an offer of employment from that employer.

[30] On 3 March 2015 Mrs Clayton had a meeting with the Principal to discuss a number of issues. Mrs Clayton went on sick leave the following day, providing a medical certificate stating that she was unfit to resume work for a period of 28 days due to "work related stress issues".

[31] The Board notified the outcome of its restructure proposal by letter dated 13 March 2015. It noted it had decided to proceed with the new staffing structure and confirmed that each of the applicants' current positions of Matron was to be disestablished. Each Matron was advised of the redeployment options available to her, as I have noted earlier.

[32] Mrs Clayton and Mrs Hefferen notified their respective resignations to the Board by letters dated 17 March 2015. Each also notified her claim to have been unjustifiably constructively dismissed.

### **Issues**

[33] The issues for determination are:

- (a) Whether Mrs Clayton was unjustifiably disadvantaged by actions of her employer; and
- (b) Whether she was constructively dismissed.
- (c) Whether Mrs Minton was unjustifiably disadvantaged by actions of her employer.

- (d) Whether Mrs Hefferen was unjustifiably disadvantaged by actions of her employer; and
- (e) Whether she was constructively dismissed.
- (f) In relation to all three applicants, whether the Board
  - a. failed to investigate their complaints independently, objectively and impartially; and, if it did not, whether it thereby
  - b. breached its obligation of good faith under s. 4 of the Act.
  - c. breached its obligation of good faith under s. 4 of the Act by raising a proposal on 9 December 2014 to restructure the hostel staff and specifically their roles.

### **Relevant considerations**

[34] Section 103A of the Act sets out the test to be applied in considering the question of whether a dismissal or an action was justifiable. The question is to be determined on an objective basis by considering whether employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred. The Act provides a number of factors which must be taken into account in applying the test.

[35] The types of cases that could be treated as constructive dismissals were extensively considered by the Court of Appeal in *Auckland Shop Employees Union v Woolworths (NZ) Ltd.*<sup>1</sup> The Court held they included, but were not limited to, cases where:

- a. an employer gives an employee the option of resigning or being dismissed;
- b. an employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign; and
- c. cases where a breach of duty by the employer leads an employee to resign.<sup>2</sup>

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<sup>1</sup> [1985] 2NZLR 372

<sup>2</sup> n2 at 374 & 375

[36] Counsel for the applicants submits the second and third categories are relevant to Mrs Clayton and Mrs Hefferen's situations.

[37] Section 4 of the Act places obligations on parties to an employment relationship to deal with each other in good faith. This includes an obligation not to do anything to mislead or deceive each other or that is likely to mislead or deceive each other. The section provides specific requirements on the parties with regard to establishing and maintaining a productive employment relationship.

### **The Board's investigation**

[38] The investigation into the Matrons' complaints is central to a number of their personal grievances. It is also the source of one of the two claims by the Matrons that the Board breached good faith in its dealing with them. Accordingly, I will consider that investigation before addressing the applicants' respective claims.

[39] The group complaint presented by Mrs Hefferen on behalf of five Matrons, including the three applicants, at the end of the 26 September 2014 meeting was light on detail. While the complaint covered a number of areas of concern, the incident that occurred on 17 August 2014 was the only one that was specific as to date and time. Other concerns were expressed in terms so general it would have been unreasonable for the Board to present them to the Head Matron for her comments and explanation.

[40] The group complaint also stated the intent of the Matrons in bringing the matters to the attention of the Board was not to cause trouble for the Head Matron. It said their observation was that she was "not managing and her reluctance to delegate means our hands are tied and we appeal to the Board for some resolve". The Matrons' complaint said "this is not a letter and we do not require a formal response". They expressed their willingness to "continue this conversation as a collective group and or in an independent mediated environment...".

[41] Ms Leever and Mr McKay were clearly of the view the matters the Matrons had complained about were sufficiently serious to warrant investigation. Mrs Rogerson, whom Mr McKay telephoned to discuss the matter, agreed. I find their decision to investigate the complaints as entirely fitting and am surprised the Matrons proposed mediation as an appropriate mechanism to manage their complaints of matters they have subsequently referred to as serious misconduct.

[42] I also find it was reasonable to base the investigation on Solway College's Complaint Procedure, a copy of which was provided in the parties' Agreed Bundle of documents. The procedure is required under the Education (Hostels) Regulations 2005 to consider complaints made to a (school) hostel owner by a boarder, a boarder's parents or the Board about non-compliance with the regulations. While not specifically applicable to complaints made by employees against another employee, I consider the Complaint Procedure provided a reasonable framework and timeframes for the Board to use for the purpose of investigating the Matrons' complaints about the Head Matron.

[43] The three Matron applicants raised objections about the subcommittee in their statement of problem, although there is no evidence of their questioning the establishment or composition of the subcommittee at the time it was formed. I have considered their objections and find it was reasonable and sensible for the Chairperson to convene what was essentially a subcommittee of the Board's already-established Industrial Committee to investigate their concerns.

[44] Mr McKay and Mr Sprowson were members of the Industrial Committee and it was Mr McKay's evidence that he telephoned the other two members, neither of whom was available to participate in the investigation process. Ms Leever, as Convenor of the Hostel Committee, seems a relevant and logical choice to co-opt on to the subcommittee, given that the complainants and the person whose conduct they were complaining about were employed to work in the boarding hostel. I find there is no validity to the Matrons' objection to the establishment or composition of the subcommittee. No credible evidence was provided to support the belated allegation that Mr McKay was conflicted and should not have been on the subcommittee.

[45] The Matrons submitted their written complaints on 2 October 2014. Mrs Clayton's written concerns expanded on the information presented in the group complaint about the incident of Saturday 17 August. She recorded that the Head Matron, who was on driving duties that night, had arrived at the hostel at 8.20 p.m.. She had been upset and was tearful, explaining to Mrs Clayton that it was the anniversary of the death of a dear friend that day.

[46] Mrs Clayton said that, when she comforted the Head Matron, she realised she had been drinking alcohol and offered to do the driving duty for her. The Head Matron refused and took the school's van to collect students who were returning that

evening. The following morning Mrs Clayton said she spoke briefly to the Head Matron who apologised to her for her tears and for being foolish.

[47] Other concerns Mrs Clayton expressed in her individual complaint were that the Head Matron was very hard to please and was moody. She was unable to provide any specific detail about the Matrons' concerns relating to medication but said the Head Matron was known to have given medication to students for whom it had not been prescribed. She said the fire dormitory evacuation lists were out of date and referred to her concerns over rostering.

[48] Mrs Minton's concerns were expressed in a document she said had been compiled by a friend "who drafted his thoughts after listening to me express my thoughts and worries". The five-page document referred to many incidents Mrs Minton had noted in a diary throughout her employment. Most of the incidents had occurred in 2013 and involved Mrs Minton's interactions with, and generally unflattering observations about, the Head Matron. They were not matters that had been raised as complaints at the time they occurred.

[49] Mrs Minton also referred to medication concerns but provided no detail or specific instances that could be investigated. Similarly, the concerns she expressed regarding the use of the school's van for transporting students were general rather than specific.

[50] Mrs Hefferen's individual complaint contained more detail about medication including one instance, undated, when she had given a student a particular medication on the Head Matron's instruction before realising that medication had been prescribed for another student. She was also concerned that students' medication was retained at the hostel after their departure from the school.

[51] Mrs Hefferen also raised concerns over Fire Evacuation Boards in the hostel, and "overloading" of the school van. She referred to a particular incident, undated, in which she had carried eleven students in a van with ten seat belts. Mrs Hefferen said the Head Matron had provided the list of girls to be transported although she did not say she had been instructed to convey all the girls in one trip only. She also referred to her concerns about the Head Matron's demeanour and management skills.

[52] The Board subcommittee arranged times to interview each Matron and the Head Matron individually. Mr McKay's evidence was that he, Ms Leever and Ms

Sprowson met on 3 October 2014 to discuss the process they would follow. He said the purpose of the meetings was to discuss the issues in sufficient detail to enable the subcommittee to decide whether further steps would be required, including the potential for disciplinary action against the Head Matron. Notes were taken during the meetings which, Mr McKay said, he compiled into a summary document without retaining the original notes.

[53] Mr McKay said the subcommittee asked tough questions of each of the complainant Matrons. He said this was not for the purpose of attacking them personally, as they later alleged, but to test the allegations they had made. He noted this was necessary because of the potential for disciplinary action against the Head Matron. Mr McKay recorded in his written evidence that the meetings he attended were tense at times and that the Matrons regarded the questioning of them as an indication the subcommittee was 'siding' with the Head Matron.

[54] Mr McKay noted that Mrs Hefferen and her husband in particular adopted a hostile demeanour that was not conducive to a productive interview although Mrs Hefferen denied this. Ms Leever gave evidence of a "high level of hostility" from the applicants and their partners while Mr Sprowson identified most of the hostility as coming from the Matrons' partners who accused the subcommittee of conducting an investigation that was a "waste of time" and of "siding with" the Head Matron.

[55] It was Mr McKay's evidence that the subcommittee was equally robust in its questioning of the Head Matron and in its requirement that she explain her recent actions. Ms Leever and Mr Sprowson reiterated this and I accept their evidence in this matter.

[56] Mrs Clayton attended her meeting with the subcommittee supported by her husband. She said in her evidence to the Authority she felt the Board's investigation was a 'sham'. She did not believe the subcommittee took her concerns seriously and said she lost trust and confidence in her employer. The matter that most incensed her was being asked why she had not taken the vehicle keys off the Head Matron on 17 August if she had such serious concerns. Mrs Clayton viewed this as the Board blaming her for the Head Matron's actions.

[57] Mrs Minton, who attended her interview with a friend, said in her written evidence she felt disappointed and dismissed by the subcommittee's response to her

complaints. She said the members indicated their view that her complaints were historic and not relevant to the matters being pursued. While her evidence records the matters she and her support person spoke about with the subcommittee, Mrs Minton said she left feeling 'unheard'.

[58] Mrs Hefferen, who was interviewed with her husband as her support person, expressed similar disappointment in her written evidence about her interview with the subcommittee. She referred to Mr McKay's attitude towards her over the evidence concerning medication and said that Mr McKay justified the Head Matron's actions. She said he also focussed on the delay in the Matrons' reporting of the problems they had now raised as complaints. Mrs Hefferen said she lost all trust and confidence in Ms Leever and Mr Sprowson after the investigation interviews on the basis of feedback she heard from other Matrons about their interviews.

[59] In relation to the 17 August incident, Ms Leever said the Head Matron had acknowledged consuming two glasses of wine over lunch earlier that day in commemoration of her friend's passing. This was well before she reported for duty in the evening and she had denied being intoxicated when she arrived at the hostel. She had acknowledged that it was an emotional day for her and that she had been "teary eyed" when she arrived at the hostel at 8.20 p.m.

[60] Mr McKay said the Board found there was insufficient evidence to substantiate the allegation of driving under the influence but the Matrons' concerns were not dismissed. He said Mrs Clayton was aware of this from his letter to her of 29 October 2014 in which he stated the Board "absolutely does not condone or accept the consumption of alcohol or other intoxicating substances immediately prior to coming on duty ...".

[61] Mrs Clayton made clear in her evidence her outrage that the Board subcommittee did not simply accept her word in this matter. She was critical of the subcommittee for not informing her of the amount of wine the Head Matron said she had consumed. She said that, if the subcommittee had told her, she would have informed it what alcohol the Head Matron had told her she had consumed before coming on duty. Mrs Clayton had not included information about this in either the general complaint made to the Board in September 2014 or the individual written complaint she made following the request from Ms Leever for specific details.

[62] I accept it may have been helpful for the subcommittee to inform Mrs Clayton of the Head Matron's account of what alcohol she had consumed on the day and when she said she had consumed it. However, in my view it would not have changed the outcome of the investigation into the 17 August incident because the delay in reporting the allegation meant the subcommittee had no independent means of verifying the complaint. It had Mrs Clayton's account of events on 17 August and it had the account of the Head Matron. While Mrs Clayton had told her husband of the incident, his evidence could only be hearsay based on her perception.

[63] The subcommittee would still have been faced with conflicting evidence from two valued employees about an event that had occurred seven and a half weeks earlier which had not been reported to the employer until five weeks after the event.

[64] With regard to the complaints over prescription medicine, Mr McKay advised the Matrons in his letters of 29 October 2014 that the information the Board had received about the administration of medicine had been inconsistent and could not be corroborated with evidence from the medical register. However, the Board had reviewed and amended the procedures around the administration and storage of medicine.

[65] Members of the subcommittee asked each Matron in the course of her individual meeting to find entries in the medical register to support the complaints. The register was not available to the Matrons from the 26 September meeting until their individual interviews with the subcommittee as Mr Sprowson had removed it from the Matrons' office and placed it in the safe in his office.

[66] I am not convinced the subcommittee acted wisely in requiring the Matrons to find entries in the register to support their assertions. The Matrons were in the unfamiliar situation of being questioned by a panel of Board members. They had not had access to the medical register since making their group complaint and were unsure of the dates that particular events they recalled had taken place. It would have been preferable for the subcommittee to have taken a more proactive approach to the investigation by undertaking some inquiries itself into the allegations over medicine administration instead of adopting the approach that it did.

[67] While the subcommittee's investigation into the Matrons' complaints was not flawless, ultimately I do not believe its outcome would have differed if conducted

differently. The Matrons acknowledged during the Authority's investigation that the Board actions were appropriate in the amending of procedures regarding the administration and storage of medicines.

[68] The Matrons also acknowledged the actions the Board took concerning the transporting of students in the College van, fire evacuations and the requirement for the Head Matron to undertake professional development were appropriate and reasonable. All, however, expressed reservations about the translation of the Board decisions into practice.

[69] It was Mr McKay's evidence that this was the first such complaint the Board had received in 20 years. In the circumstances, while the investigation was not above criticism, I find it was a genuine and reasonable attempt by the Board to deal fairly with the complaints and concerns of the Matrons while also observing its obligations of fairness to the Head Matron. I accept the evidence of Mr McKay, Ms Leever and Mr Sprowson that their questioning of the Matrons needed to be robust in view of the serious nature of the allegations and the potential for disciplinary action against the Head Matron.

### **Was Mrs Clayton unjustifiably disadvantaged?**

[70] Mrs Clayton claims to have been disadvantaged in her employment by the Board's failure to uphold her complaint against the Head Matron, particularly in relation to the 17 August 2014 incident. She claims the Board's investigation was flawed and this undermined the trust and confidence in the employment relationship.

[71] I have already found the Board subcommittee's investigation, while not without flaws, reached a reasonable conclusion in the circumstances. Seven weeks after the event it had no means of verifying Mrs Clayton's allegation when faced with a different perspective from the Head Matron.

[72] I did not find Mrs Clayton's evidence about the reasons for the delay in reporting her concern convincing. If she had serious concerns about students' welfare being compromised, she could have raised the matter with the Principal or the Hostel Convenor, Ms Leever. Mrs Clayton said she had wanted to talk with the Head Matron first. She had already briefly spoken with her the morning after the incident, and said she tried again to talk with her on 21 August. The Head Matron had another Matron with her at the time and Mrs Clayton retreated.

[73] Later in the day the Head Matron telephoned her and invited her to her office if she still wished to talk. Mrs Clayton said she went to the Head Matron's office but, instead of broaching the 17 August incident, she raised another matter. Her evidence is that she was upset at the Head Matron's response to that matter and did not raise the subject she had gone to her office to discuss.

[74] Mrs Clayton said she tried again to meet the Head Matron at the conclusion of a monthly Matrons' meeting on 26 August. However, the Head Matron had asked the College Principal to be at the meeting and Mrs Clayton said she did not feel she could raise the issue in Mrs Rogerson's presence without first discussing it privately with the Head Matron. Mrs Clayton said the week after the meeting of 26 August she told Mrs Rogerson she needed to speak with her about concerns she had regarding the Head Matron. She said Mrs Rogerson was too busy to make an appointment at the time. After that Mrs Clayton went on annual leave and, during the same school holidays, Mrs Rogerson went to France.

[75] Mrs Rogerson's evidence is that Mrs Clayton at no time told her she needed to talk to her about the Head Matron. Mrs Rogerson's understanding was that Mrs Clayton was having ongoing issues regarding a particular student's behaviour and that was the issue they discussed at the conclusion of the 26 August meeting. Following that meeting Mrs Rogerson said she twice asked Mrs Clayton if she needed to speak with her but Mrs Clayton declined the opportunity on both occasions.

[76] I prefer Mrs Rogerson's evidence on this matter and find Mrs Clayton's delay in reporting an incident she claimed caused her serious concern over student safety to lack credibility. She impressed me as being a forthright person who would not easily be prevented from speaking out on a matter she considered important. When Mrs Clayton finally informed her employer of her concern on 26 September, the Board acted quickly to investigate that, and the other concerns brought by the applicants and two other Matrons.

[77] In oral evidence Mrs Clayton said she was appalled the Board did not find the allegation she made had been had been proven and she was upset that it did not take her word as she expected it to do. For the reasons I have already given I have found the Board came to a reasonable and justifiable conclusion in the circumstances. Mrs Clayton's claim to have been disadvantaged by an unjustifiable action of her employer

in respect of its investigation and conclusion regarding the incident of 17 August 2014 therefore fails.

[78] Mrs Clayton, in common with the other two applicants, also claims to have been disadvantaged by a Communication Sheet of 2 December 2014. As this is also part of her claim to have been constructively dismissed I will refer to it more fully in that context.

### **Was Mrs Clayton constructively dismissed?**

[79] Mrs Clayton resigned on two weeks' notice by letter dated 17 March 2015. She cited the "continual unpleasant and unprofessional behaviour towards me by the senior Head Matron and lack of support from the Principal, Beth Rogerson and the Board of Proprietors". She said those factors had made it "mentally unhealthy and stressful" for her to continue working.

[80] Mrs Clayton's resignation came during a period of sick leave that began on 3 March after she had been called to the Principal's office where she said Mrs Rogerson had accused her of a number of concerns. These were parking in the wrong place, being grumpy, culturally insensitive to a student, and using an unwelcome tone in a Matron's diary entry. Mrs Clayton's letter of resignation also said she had been admonished over not putting the school alarm on the previous evening.

[81] Her letter records she was upset at being "called out" on these matters and she referred to her awareness of "unequal treatment in similar circumstances towards other Matrons". For this reason Mrs Clayton said she would amend the claims she had made on 13 January 2015 to include an additional claim of unjustified constructive dismissal.

[82] Mrs Clayton also expressed in her resignation letter her disappointment at the Board's response to the serious allegations she had raised in September 2014. She was offended by, and took issue with, the content of the Board's letter of 29 October 2014<sup>3</sup> and its 26 January 2015 letters in response to the personal grievances raised earlier that month on her behalf, and that of her colleagues Mrs Hefferen and Mrs Minton.

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<sup>3</sup> In which the Board informed Mrs Clayton of the outcome of its investigation into the concerns raised by five matrons

[83] She also referred to the wage arrears that had been "finally" paid on 2 March 2015 in relation to the Matrons' sleepover wage arrears claim, saying the Board had delayed paying out the Matrons for several months. Mrs Clayton said she knew she "could never face working with hostel management with that level of deceit and personal disrespect shown to (her) again" and she was appalled at what had been said and done.

[84] Scant evidence was provided regarding the payment of wage arrears and none regarding the "personal disrespect" alleged by Mrs Clayton in respect of them. I do not understand Mrs Clayton to be taking issue over the amount of her payment, which was made two weeks before she resigned her employment. I do not accept that the payment of the wage arrears at a later date than Mrs Clayton may have wished forms grounds for a constructive dismissal claim.

[85] The Board's response to Mrs Clayton's letter of resignation and notification of her additional claim was that Mrs Rogerson had asked to speak with Mrs Clayton about a number of work-related matters on 3 March, in a meeting that was not disciplinary in nature. The Principal had politely asked Mrs Clayton not to park in a particular car park and gave the reason for the request. She had raised with Mrs Clayton a concern expressed by two students over a comment they said she had made, which Mrs Clayton did not recall but did not deny making. The Board's letter said there had been no accusation of cultural insensitivity, or reprimand, and that Mrs Clayton had offered to apologise to the students in the course of the 3 March meeting.

[86] The letter noted Mrs Rogerson had also raised with Mrs Clayton a concern expressed by some students over her being "moody" and "grumpy". It said Mrs Rogerson had not accused her of being grumpy but had asked Mrs Clayton if there was a reason or a problem for the concerns. Mrs Clayton's response had been that she was stressed because the Head Matron had been picking on her over little things. This had not been brought to Mrs Rogerson's attention before and, according to the Board's letter, she had said if that was happening it needed to be addressed. Mrs Rogerson had asked Mrs Clayton to let her know if she needed a break or wished to see her doctor or if she wanted counselling for support.

[87] They had also discussed a diary entry in the context of how to deal with a mistake someone had made, and Mrs Clayton had been reminded of the responsibility of the 3 p.m. to 10 p.m. Matron for locking up and putting on alarms. The letter said

Mrs Clayton had not been "called out" or reprimanded over any of these matters. The Board denied Mrs Clayton had been constructively dismissed.

[88] In her written evidence Mrs Clayton claimed her employment relationship broke down significantly after 29 October 2014 when she received Mr McKay's letter informing her of the outcome of its investigation into complaints the Matrons had made against the Head Matron. She regarded the Board investigation as a sham and said she lost trust in her employer as a result.

[89] When I questioned Mrs Clayton about the Board's response to each of the matters the Matrons had complained about in September 2014, other than the 17 August 2014 incident, she acknowledged the Board's intentions had been good and its responses had dealt with those issues appropriately. This included the professional development the Board referred to in relation to the Head Matron's leadership and management skills, although Mrs Clayton expressed doubt that there would be enough professional development provided.

[90] With regard to the 17 August 2014 incident, I have already noted in determining Mrs Clayton's claim of unjustifiable disadvantage that she had expressed disappointment over her word not being accepted by the Board as proof of the Head Matron's serious misconduct. I do not find she was justified in her claim to have lost trust and confidence in the Board over this as I have found the Board came to a reasonable conclusion in the circumstances.

[91] I have considered Mrs Clayton's claim that she was treated poorly by the Head Matron following the Board's investigation and was fearful of the Board. The Head Matron is no longer employed by the Board and Mrs Clayton did not seek to summons her to give evidence. Much of the evidence Mrs Clayton presented about the treatment she received was general and non-specific. However, one of the matters she did specify concerned a request she made verbally to the Head Matron for two days' unpaid leave to allow her to attend a family event in late February/early March 2015.

[92] Mrs Clayton said the Head Matron told her to write to the Board, which she did. The Board granted the leave. In its response to Mrs Clayton it noted that, while it sought to support its staff with all reasonable requests for leave, such requests placed additional burdens on other staff who were required to cover it and that future

requests for leave may not be granted. Mrs Clayton described having to apply in writing for the unpaid leave as "quite unfair", "over the top" and something she had not previously had to do.

[93] She provided no evidence of previous occasions on which she had sought unpaid leave, although she referred to a practice of informal roster swaps between the Matrons. There is no specific provision in Mrs Clayton's employment agreement for unpaid leave and I do not infer any intention by the Head Matron to single Mrs Clayton out for different treatment by asking her to request the Board for the leave. Nor do I infer any unfairness in the Board's advice to Mrs Clayton that she could not rely on its approval of her request in this instance for the success of any future application she might make, which essentially was the message the Board conveyed to her.

[94] Another specific incident Mrs Clayton referred to was a Hostel Daily Communication Sheet (the Communication Sheet) from 2 December 2014 which she described as a classic example of the Head Matron trying to undermine the Matrons by misrepresenting what actually happened. This also formed one basis of Mrs Clayton's claim to have been unjustifiably disadvantaged by an action of her employer. The Communication Sheet is used to record and convey messages about the students and the hostel. I understand from the evidence given at the investigation meeting that the Communication Sheets go to the Principal who discusses any issues of concern with the Head Matron.

[95] On 2 December 2014, which was the final day of the hostel students being in residence, the Head Matron noted on the Communications Sheet there were seven Matrons on duty that evening. She recorded her disappointment at the "lack of enthusiasm and care to attention" they displayed. She also referred to a lack of teamwork amongst the Matrons and to her belief the Matrons were "passing the time so they could go home". Mrs Clayton was referred to by name only once on the Communication Sheet in reference to having left the lights on in Solway House.

[96] In her evidence Mrs Rogerson referred to a few instances of the misuse of Communications Sheets before 10 December 2014. She said this had led to a general discussion with all Matrons about the appropriate use of sheets and a reminder they were not to be used to write messages to, or about, each other. Mrs Rogerson said the

Head Matron was included in this and had been spoken to about what she had written on the Communication Sheet on 2 December.

[97] Mrs Clayton may have been irritated by the reference to her having left lights on, and by being included in a rather critical account of Matrons' actions that evening. However, I do not find it was an event of sufficient significance for her to claim a breakdown of trust and confidence in her employer. Nor do I find it grounds for her claim to have been disadvantaged by an unjustifiable action by her employer.

[98] I have considered the Board's response of 26 January 2015, through Mr Doolan, to the raising of personal grievances on behalf of Mrs Clayton and the other two applicants on 13 January. Mrs Clayton said in her letter of resignation that she took offence at, and issue with, this letter. I have reviewed the letter in which Mr Doolan robustly, but not intemperately, responded to the assertions made in Ms Angus Burney's letter on Mrs Clayton's behalf and that of the other two applicants. Mrs Clayton may have been disappointed in the Board's response to the notification of her personal grievance and those of her two colleagues. That disappointment does not, however, give rise to valid grounds for a claim of constructive dismissal.

[99] I am not satisfied from my examination of the evidence that Mrs Clayton was constructively dismissed from her employment.

### **Was Mrs Minton unjustifiably disadvantaged by actions of the employer?**

[100] Mrs Minton also claims to have been unjustifiably disadvantaged by the Communications sheet of 2 December 2014. Specific comments about Mrs Minton, were that “fridges (had) not been cleaned, microwave not wiped out, laundry all over the floor of hallway, her colleagues had to go there and start to finish her supervision”.

[101] The Head Matron had signed the Communication Sheet and then added the following sentence, after which she again signed the document:

“On speaking to Mrs Minton she tells me the jobs were done.”

[102] Mrs Minton had then added her own comments to the Communication Sheet, which she also signed. Her comments explained that the dormitory referred to in the Head Matron's comments had been under control before she left the premises. Mrs

Minton also provided an explanation for the laundry in the hallway which was due to the students packing up.

[103] The inclusion of uncomplimentary comments in a Communication Sheet, which was not a disciplinary document, and was not intended for the purpose of conveying comments about other employees, may well have been a source of irritation for Mrs Minton. However, she had the opportunity to correct the comments about her, and did, and had them acknowledged by the Head Matron.

[104] I have already noted the Principal's evidence that she spoke with the Head Matron about the inappropriate use of the Communication Sheet for making personal comments about employees. While Mrs Minton's supervisor made the negative comments, they were clearly not welcomed or endorsed by her employer. I find Mrs Minton suffered no disadvantage in her employment from the 2 December 2014 Communication sheet.

[105] Mrs Minton also claims to have been disadvantaged by the Board rejecting the claims raised by the group of Matrons, as set out in their individual complaints. The complaint document she submitted to the Board subcommittee on 2 October 2014 was produced in the bundle of documents provided to the Authority.

[106] In that document Mrs Minton referred to incidents that had occurred in 2013 that were never raised as personal grievances or internal complaints. She explained at the beginning of the document that she had taken these incidents from a written journal she kept. Mrs Minton also referred to an incident in July 2014 about which she had not complained or raised a personal grievance. She made general comments about the Head Matron and her demeanour over the five years of Mrs Minton's employment, and about matters relating to prescriptions and the transport of students in school vans. However, Mrs Minton's document of concerns to the Board contained no information of specific instances of mismanagement or wrongdoing by the Head Matron.

[107] I find the Board investigated Mrs Minton's general and vaguely worded concerns to the extent that it was able. I have already made findings with regard to the Board's conclusions over concerns relating to medication and other matters raised in the complaint document compiled by five Matrons, for which Mrs Hefferen had been the spokesperson at the September meeting.

[108] I have concluded its investigation was reasonable and its responses in relation to the issues raised by the Matrons were reasonable and appropriate. I note that, in the course of the investigation meeting Mrs Minton acknowledged the appropriateness of the Board's actions concerning medication, fire evacuation, the College vehicle and the steps it took over professional development for the Head Matron.

[109] I find Mrs Minton was not disadvantaged in her employment by her employer's response to the concerns she brought to the Board in the undated complaint document that was submitted to the Board on 2 October 2014, or by the Board's response to her fellow Matrons' concerns.

**Was Mrs Hefferen unjustifiably disadvantaged by actions of the employer?**

[110] Mrs Hefferen's claims for disadvantage include the 29 October 2014 response of the Board to the complaints and concerns raised by the Matrons and investigated by the Board in October 2014. She also alleges she was disadvantaged by inaccurate note taking by the Board in her interview on 6 October 2014 as part of that investigation.

[111] For the reasons I have already given in relation to the other two applicants, I find Mrs Hefferen was not disadvantaged by the Board's response to the complaints and concerns she raised. Nor do I find any credible evidence to support her view that she was misrepresented in the notes of her interview with the Board.

[112] Mrs Hefferen makes a further claim to have been disadvantaged by the failure of Mrs Rogerson to take notes in meetings held in her office on 6 and 17 November 2014. She made no reference to the meetings in her main brief of evidence and, when I questioned her about the 6 November meeting she talked about a meeting she had requested with Mrs Rogerson to discuss an incident with the Head Matron. Mrs Hefferen said the outcome of that meeting was that she had agreed with Mrs Rogerson that was the end of the matter. I believe Mrs Hefferen may have been conflating that meeting, which was on or about 20 October 2014, with the meeting of 6 November 2014. In answer to questions Mrs Hefferen was clear that the disadvantage she claimed was Mrs Rogerson's failure to take notes of, or make a file note about, their discussion of the incident with the Head Matron. That incident, in which Mrs Hefferen said she had been wrongly accused of being aggressive, had taken place on 16 or 17 October 2014.

[113] I prefer Mrs Rogerson's evidence of the 6 November meeting with Mrs Hefferen. She said she had called the meeting to discuss a number of work-related issues with Mrs Hefferen. It was her evidence such meetings are not unusual and take place with all staff whenever there is something to discuss. Mrs Rogerson said the meeting did not go well. Despite her attempts to focus on the matters she wished to discuss relating to a recent Matrons' meeting and some policy issues, she said Mrs Hefferen had "again expressed her contempt" for the Head Matron.

[114] Mrs Rogerson said it had not been possible to continue the meeting because of the level of contempt being demonstrated and she called it to an end. She said Mrs Hefferen's departing words were that she did not want to attend any more meetings without having a support person present.

[115] Mrs Rogerson said the situation needed to be addressed and she had a discussion with Mr McKay that day in the course of which they agreed it would be constructive to arrange mediation with Mrs Hefferen. Mr McKay sent his letter of 6 November 2014 which I have described in an earlier paragraph and to which I shall return shortly. I do not find Mrs Rogerson's failure to take notes in the meeting of 6 November 2014 to have been an unjustifiable action and nor do I find any disadvantage ensued to Mrs Hefferen. For clarity's sake, I make the same finding in relation to the meeting that occurred on or around 20 October 2014. No evidence was given about the meeting of 17 November 2014 to which Ms Angus Burney had alluded when raising Mrs Hefferen's personal grievance and I conclude no such meeting occurred.

[116] Another part of Mrs Hefferen's disadvantage claim is that she became the recipient of "an unfair and targeted campaign by the Board (and the Head Matron) ..." from October 2014. I have already noted that the former Head Matron was not called to give evidence by any of the parties and has therefore had no opportunity to give her version of events. I am unwilling to accept Mrs Hefferen's evidence about the campaign allegedly mounted against her by the Head Matron. However, I have considered her claim in relation to the Board's actions.

[117] The subcommittee that had investigated the Matrons' complaints reported to the Board at its 30 October 2014 meeting. As well as reporting the outcome of its investigation the minutes record that formal responses to the complaints had been posted to the Matrons but that resolution with Mrs Hefferen in particular was

problematic and “looks like it may go to mediation”. Mr McKay referred to this in his evidence attributing “the hostility demonstrated by Mrs Hefferen throughout the investigation” as the reason for making the Board aware of this possibility.

[118] The reporting to the Board occurred before the 6 November meeting between Mrs Rogerson and Mrs Hefferen but after Mrs Hefferen had made a number of complaints to Ms Leever about the Head Matron. Ms Leever said she had encouraged Mrs Hefferen to take those issues up directly with the Head Matron in an effort to discourage an emerging trend of complaint over matters that would normally be dealt with by staff without Board involvement. She said the proper procedure was for a Matron to raise issues with the Head Matron first and, if the concern was not dealt with satisfactorily, the Matron should speak with Mrs Rogerson.

[119] Ms Leever and Mrs Rogerson both referred to the events in early November reaching “somewhat of a pinnacle”, when Mrs Hefferen refused to meet Mrs Rogerson without a support person present, and both said that led to the decision to invite Mrs Hefferen to mediation. Their explanations for requesting mediation with Mrs Hefferen did not completely accord with the reason given by Mr McKay. In any event, I am not satisfied from the evidence obtained in the course of the investigation meeting that Mrs Hefferen was treated entirely fairly in this regard.

[120] Mr McKay’s letter of 6 November 2014, parts of which I have reproduced earlier in this determination, referred to “some serious problems regarding the employment relationship”. Mrs Hefferen interpreted this as an allegation of serious misconduct against her. While the letter did not explicitly make such an allegation, it was a reasonable inference for her to take. Mrs Hefferen had been the spokesperson for the Matrons who made the complaints that led to the subcommittee’s investigation and she saw herself as being targeted by the Board because of that role.

[121] I do not accept her view that the Board had that motivation and I accept the evidence of the Board’s witnesses that Mrs Hefferen did demonstrate hostility during the October 2014 investigation. I also find it likely that her complaints over relatively minor matters after the investigation made it difficult to achieve the good working relationships the Board had urged all hostel staff members to develop.

[122] That would have been frustrating and difficult for the Board. Nonetheless, it was an unsettling time for the Matrons, not only because of the recent investigation

into their complaints, but also because of their on-going, and at that time unresolved, issues over sleepovers and wage arrears. It was not helpful to an already difficult situation for the Board to isolate the Matrons' spokesperson as having created a serious employment relationship problem. Mrs Rogerson acknowledged during the Authority's investigation that the 6 November letter was heavy handed and not helpful.

[123] I do not accept Mrs Hefferen's claim that she was the subject of an unfair and targeted campaign from the after the subcommittee's investigation into the Matrons' complaints. However, I find its notification to her in Mr McKay's letter of 6 November 2014 that her actions had created a serious employment relationship problem which she was required to attend mediation to resolve was not the action a fair and reasonable employer could take in the circumstances. It fuelled Mrs Hefferen's mistaken belief that she was being unfairly targeted by the Board because she had been the Matrons' spokesperson and caused her unnecessary distress. I find this disadvantaged her in her employment.

[124] In common with the other two applicant Matrons, Mrs Hefferen also claims to have been disadvantaged by the Communications sheet of 2 December 2014. She was referred to in the document as trying to hurry a student along in her packing. I do not find the Head Matron's comment caused Mrs Hefferen disadvantage in her employment and I dismiss that claim.

### **Was Mrs Hefferen constructively dismissed?**

[125] Mrs Hefferen notified her resignation and her claim for unjustified constructive dismissal by letter dated 17 March 2015. She cited having been singled out and received unwelcome behaviour from the Head Matron and from the Principal. She also referred to a recent complaint she had made against another Matron, which she accused her employer of dismissing and effectively "sweeping the complaint under the carpet". Mrs Hefferen did not refer to this incident in her written evidence and I do not accept her view of the way her complaint was treated.

[126] I prefer the evidence of Mrs Rogerson that she and Ms Leever investigated Mrs Hefferen's complaint, including interviewing the other Matron, and came to the conclusion the complaint could not be substantiated. Mrs Rogerson wrote to Mrs Hefferen to inform her of the actions that had been taken and the outcome, which

included reinforcing to the other Matron the standards of conduct she was required to maintain.

[127] Mrs Hefferen said she no longer felt safe working in the hostel environment and did not believe the disestablishment of the Matron's role as part of the recent hostel staffing restructuring was either necessary or genuine. She also referred to issues with the current roster and the proposed roster. Mrs Hefferen's evidence regarding the lack of a safe working environment seemed in the main to refer to the Head Matron, although she did not appear to have raised any particular concerns or specific allegations about her between the 10 December 2014 mediation and her resignation letter of 17 March 2015.

[128] I have already found Mrs Hefferen was disadvantaged in her employment by the Board's letter of 6 November 2014. However, I do not accept that warrants a claim four months later that her trust and confidence in her employer had been destroyed. I find it far more likely Mrs Hefferen was unhappy with the restructuring and with what she perceived to be an unwarranted delay in the Board paying wage arrears relating to her claim to have been underpaid for sleepovers. She offered no evidence to support her views of the restructure and I do not accept the validity of her claim. The wage arrears were paid out in the days preceding Mrs Hefferen's resignation.

[129] I find no evidence to support Mrs Hefferen's claim that her employer embarked on a course of action designed to elicit her resignation or that a breach of duty caused her to resign. Her claim for constructive dismissal fails.

### **Did the Board breach its obligation of good faith?**

[130] This first of two breaches of good faith the Matrons allege was that the Board did not *independently, objectively and impartially investigate the complaints from all five hostel staff*. I have focussed on the complaints of the three Matrons who were parties to the proceedings. I have earlier in this determination considered the Board subcommittee's investigation and found that, while not flawless, it was a reasonable investigation into the concerns and complaints they had raised.

[131] The applicant Matrons submitted the Board should have engaged an independent investigator rather than carry out the investigation itself. I do not accept it was necessary for the Board to do so. I find it reasonable for the Board to use those

members of its Industrial committee who were available and to co-opt Ms Leever, the convenor of the Hostel Committee. I find the Board did not breach good faith in conducting the investigation in the manner that it did.

[132] The second alleged breach of good faith the Matrons made was "the proximity of the attempt by the employer...to propose redundancies within the week of the mediation..." although the Matrons acknowledged they and the Board had agreed the redundancy proposal was not an issue for discussion at mediation.

[133] The wording of this claim is misleading as the tenor of the letter sent to all Matrons on 9 December 2014 was not to propose redundancies as the Matrons contend. The purpose was to inform them of the restructuring proposal and to advise them of the process to be followed. The letters do not propose any redundancies: the emphasis is redeployment to new roles and the chance of applying for a newly created Deputy Matron position. Redundancy is referred to only as a third option if the applicants were not redeployed (first option) to one of the new part time Matron positions or appointed to the Deputy HM position (2<sup>nd</sup> option).

[134] As the Board and the Matrons had agreed the proposed restructuring was not to form part of the 10 December mediation, I find there was no breach of good faith in the timing of the letters informing them of it.

### **Determination**

[135] Mrs Clayton and Mrs Minton's claims are dismissed as are the claims that the Board breached its duty of good faith in relation to the three applicant Matrons. Mrs Hefferen's claim of constructive dismissal is dismissed but her claim to have been disadvantaged by an unjustifiable action of her employer partially succeeds in that I have found she was disadvantaged in her employment by the letter of 6 November 2014 from the Board Chair. I accept Mrs Hefferen was distressed by the letter and became more disenchanted with her employment than she would otherwise have been.

[136] I am obliged to consider whether Mrs Hefferen contributed to the situation that led to her personal grievance. I have accepted the evidence of the Board that she did demonstrate hostility to the Board throughout its October 2014 investigation. I also accept its evidence of the difficulty caused by Mrs Hefferen's resistance to developing a good working relationship with the Head Matron. These factors contributed to the Board adopting a heavy handed approach in its letter to her of 6 November 2014.

That contribution will result in a 20 percent reduction to the remedy I would otherwise have awarded.

[137] Taking that reduction into account I order the Board to pay Mrs Hefferen as compensation for her personal grievance the sum of \$2,400 under section 123(1)(c)(i) of the Act.

**Costs**

[138] The issue of costs is reserved.

**Trish MacKinnon**  
**Member of the Employment Relations Authority**