Neutral Citation Number: [2023] EAT 80

Case No: EA-2020-000199-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 27 June 2023

Before :

JUDGE SUSAN WALKER

- -

Between :

A **Appellant**

- and -

CARERS TRUST SOUTH EAST WALES

Respondent

- -
- -

Mr Stephenson (instructed by Advocate) for the **Appellant**

Ms Duane (instructed by DLP (UK) Limited) for the **Respondent**.

Hearing date: 13 April 2023

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JUDGMENT

SUMMARY

Protected disclosures, direct disability discrimination, harassment and victimisation.

Appeal against a decision by the Employment Tribunal ("ET") dismissing claims of detriment and dismissal for making a protected disclosure, direct disability discrimination, harassment and victimisation.

Grounds of appeal that:

1 **The ET erred in law when considering whether the claimant made a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996 ("ERA") and/or failed to consider whether the same constituted a protected act within the meaning of section 27 of the Equality Act 2010 ("the EqA") and/or failed to give reasons.**

2 **The ET erred in law in dealing with the claims for direct disability discrimination under section 13 of the EqA and/or victimisation under section 27 EqA and/or failed to give adequate reasons.**

3 **The ET erred in law in dealing with the claims for unfair dismissal under section 103A of the ERA and/or failed to give adequate reasons.**

4 **The ET erred in law in dealing with the claims for disability related harassment under section 26 EqA and/or failed to give adequate reasons.**

Held:

The ET had not erred in law and had given adequate reasons for their conclusions on each complaint. The ET had permissibly identified the issues to be determined at the final hearing taking account of the ET1, the Order issued after 4 preliminary hearings and various Scott Schedules produced by the claimant.

JUDGE SUSAN WALKER

1. This is an appeal against a judgment of the employment tribunal in Cardiff (Employment Judge S Moore, members Mrs C Mangles and Mrs L Bishop) ("the ET") following a hearing that took place over 6 days from 28 October to 4 November 2019. I shall refer to the parties as the claimant and respondent as they were before the ET.

2. The claimant claimed she had suffered detriment for making protected disclosures in terms of section 43A of the Employment Rights Act 1996 ("the ERA"), unfair dismissal contrary to section 100 and 103A of the ERA and claims relating to her disability (direct and indirect discrimination, failure to make reasonable adjustments, harassment and victimisation) under the Equality Act 2010 ("the EqA"). She also claimed she had not been paid for accrued annual leave.

The case before the ET

3. The following summary is drawn from the ET's findings.

4. The claimant had been employed by the respondent from 7 July 2016 until she was dismissed with one month's pay in lieu of notice on 22 August 2017. She was employed first as an Executive Assistant. It was conceded that the claimant has a mental health condition of depression and that the respondent was aware of this when she was appointed. It was accepted that she performed her role to a high standard and took over the payroll function from November 2016. She was promoted to Corporate Services Manager in May 2017.

5. The respondent was undergoing a period of change and a new Finance Manager, Ms Milton, was brought in to restructure and set up new procedure in the Finance Department. From June 2017, there were some disagreements between the claimant and Ms Milton. The claimant emailed the CEO, Mr Howells, on 13 August 2017 requesting a meeting as she said that there were serious issues that needed to be discussed. These included the immediate need to bring additional finance support into the organisation which she described as reaching crisis point. A meeting was arranged the next day, on 14 August 2017. At that meeting, the claimant alleged that she was being bullied by Ms Milton, that others were too, that Ms Milton was lazy and incompetent and was taking the claimant's staff due to the finance department needing more help. The claimant was upset at this meeting. Mr Howells asked the respondent's HR advisers to carry out an independent investigation. Ms Murphy was appointed to undertake that task.

6. Mr Howells emailed the claimant and Ms Milton a workplan on 15 August 2017. He wanted to understand the areas of work being done by each department. The claimant was concerned and asked for an immediate discussion. At that meeting, she mentioned that a co-worker, Mr Davies, "was in a right state" but the main focus of the discussion was the claimant's concerns about the workplan.

7. On 17 August 2017, the claimant sent a further email to Mr Howells. She expressed concern about Mr Davies. She said his confidence was low, he was suffering from high stress levels and under "so much pressure". The rest of the email contained a narrative of work being undertaken by other staff to support the finance team.

8. The claimant met with Ms Murphy on 21 August 2017. There were limited findings about what happened at this meeting. There was a discussion about the allegations against Ms

Milton. These included allegations of a week long campaign of bullying by Ms Milton and an allegation that the claimant had explained personal issues relating to her family's mental health to Ms Milton. Ms Milton was alleged to have said to the claimant "I bet Father's Day is hard for you too" which the claimant felt was a nasty comment regarding the claimant's mental health. This was referred to as "the Father's Day comment". The claimant also said that she had spoken to others and they felt that Ms Milton did no work and Mr Davies was under lots of pressure because Ms Milton was giving him lots of work to do.

9. After the meeting Ms Murphy interviewed members of staff referred to by the claimant including Ms Milton and Mr Davies. The claimant's allegations were not supported. However, Mr Davies informed Ms Murphy that the claimant made inappropriate comments to him that made him feel uncomfortable. Another member of staff, Ms Prosser, said that rather than Ms Milton bullying the claimant it was the other way around. She also referred to inappropriate comments being made to Mr Howells. She described the claimant as a "ticking timebomb" and not good for staff or the organisation.

10. On 22 August 2017, Ms Murphy reported back to Mr Howells. He concluded that the claimant should be dismissed for gross misconduct. He was particularly upset that staff felt they could not come to him with their complaints as they believed he had too close a relationship with the claimant and the complaints would be swept under the carpet. He instructed Ms Murphy to call the claimant to a meeting and tell her she was being dismissed.

11. The claimant was told that day, without any prior warning, that she was being dismissed and she was instructed to pack her things and leave the building. She was paid one month in lieu of notice and provided with a letter that stated that her employment was terminated following a large number of complaints rendering her unsuitable for the role.

12. The claimant tried to call Mr Howells on many occasions. The volume was such that he reported it to the police. The claimant sent a series of emails to the respondent's board. She was advised that the complainers wished to remain anonymous. There was a formal meeting on 12 September 2017. The appeal was rejected.

13. Before the ET the claimant gave evidence and Mr Hussain, who had accompanied her to the dismissal meeting, attended under witness order. For the respondent, the witnesses were Mr Howells and Mr Bevan. There was a witness statement from Mr Davies, but he did not attend the hearing to give oral evidence or be cross-examined.

14. A witness order was issued for Ms Murphy, however she applied to set aside that order and the respondent applied to adjourn the hearing until Ms Murphy could attend. This was opposed by the claimant and the ET decided to set aside the witness order and proceed with the hearing without Ms Murphy's evidence. There was a bundle of 591 pages.

15. By their reserved judgment sent to the parties on 2 February 2020, the ET dismissed all the complaints with the exception of the claim in respect of holiday pay.

Grounds of appeal

16. This appeal is against that decision. Following a preliminary hearing before HHJ Taylor, and with the assistance of Mr Stephenson, of counsel, under the ELAAS scheme, the appeal was permitted to proceed on amended grounds as follows:

i. The ET erred in law when considering whether the claimant made a protected disclosure within the meaning of section 43A ERA

and/or failed to consider whether the same constituted a protected act within the meaning of section 27 of the EqA and/or failed to give reasons.

ii. The ET erred in law in dealing with the claims for direct disability discrimination under section 13 of the EqA and/or victimisation under section 27 EqA and/or failed to give adequate reasons.

iii. The ET erred in law in dealing with the claims for unfair dismissal under section 103A of the ERA and/or failed to give adequate reasons

iv. The ET erred in law in dealing with the claims for disability related harassment under section 26 EqA and/or failed to give adequate reasons.

17. The claimant represented herself at the employment tribunal and has been represented before this tribunal by Mr Stephenson, appearing via Advocate. The respondent was represented below by Mr Searle of counsel and before this tribunal by Ms Duane of counsel.

18. Both parties provided detailed skeleton arguments in advance of the hearing and spoke to these orally. They each referred to a number of relevant authorities. I am grateful to counsel for their assistance.

Procedure at the employment tribunal before the final hearing

19. In order to deal with the appeal, it is necessary to consider the procedure that took place at the employment tribunal before the final hearing. The claim form was lengthy. The particulars of complaint ran to 23 pages. There were 215 number paragraphs setting out the

factual background of the complaints. This was followed by paragraphs that identified the legal complaints being made.

20. There were 4 preliminary hearings before the final hearing to try and identify the issues and clarify the claims. The claimant had been ordered to produce Scott Schedules and this resulted in 4 schedules including 92 allegations many of which had not been advanced in the ET1 and which the ET described as being "repetitious and difficult to understand". At a preliminary hearing on 23 May 2019, they remained, according to the ET as "incomprehensible and unmanageable" although the clamant had done her best.

21. Employment Judge Moore, at that final preliminary hearing on 23 May 2019, discussed the claims and issues with the claimant. In a document issued after that hearing ("The Order"), Employment Judge Moore set out her record of the discussion and various orders to prepare the case for a final hearing. These included a list of the issues to be determined at that final hearing. Mr Stephenson in his submissions before me, has relied on that list of issues in support of various grounds of appeal. It is important, therefore, at this stage to consider carefully the list itself and the context in which it was prepared.

22. In the Order, Employment Judge Moore narrated the unsuccessful efforts up to that date to identify the complaints (and, to be fair, some of the details of the response). In paragraph 9, she commented that

> ***"it was simply not possible due to time and practicability to have gone through all of the claimant's allegations and determine whether they were out of time, had no prospect or required a deposit order. I see little to be gained by ordering the parties to revisit the schedules***

> ***again, Instead… I am setting out my understanding of the issues in the case. This order can be used by the Tribunal hearing the claim, in conjunction with the schedules to determine the allegations .."***

23. Judge Moore then set out the issues, as she understood them to be in paragraphs 18 to 29 of the Order in respect of complaints of:

- **unfair dismissal (section 100(1) (c) and (d) of the ERA)**
- **public interest disclosure (whistleblowing) (detriment under section 43B(d) of the ERA and unfair dismissal)**
- **disability (direct discrimination, indirect discrimination, failure to make reasonable adjustments, harassment and victimisation)**
- **unpaid annual leave**

24. The list refers in a number of instances to the various Scott schedules ("the Disability Schedule"; "the Protected Disclosure Schedule"; "the Harassment Schedule" and "the Victimisation Schedule").

25. It is important to note that the first section, in paragraph 19, is headed "*Time limit/limitation issues"*. It reads as follows:

> ***"Were the claimant's complaints presented within the time limits set out in sections 123 (1)(a) & (b) of the Equality Act 2010 ("EqA")? The respondent asserts that a number of the allegations set out in the Schedules have not been previously pleaded and are out of time.***

> ***Dealing with this issue may involve consideration of subsidiary issues including: whether the schedules contain new claims or further information of existing claims, was there an act and/or conduct extending over a period and/or a series of similar acts or failures; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred."***

26. The list of issues in the Order therefore has some important qualifications. Judge Moore identifies that there may be allegations in the schedules that were not in the ET1 and that the ET at the final hearing may have to consider whether these are further particulars of the complaints already made or new claims. Although not stated in terms, the clear import of this section is that new claims would not be allowed to proceed without the permission of the tribunal to amend the claim. Issues of time bar are clearly reserved to the final hearing.

27. The claimant was given an opportunity to inform the tribunal if she did not agree. She did not do so.

The ET's consideration of the issues to be determined

28. The ET confirmed in paragraph 20 of the judgment that they had considered the claim based on the ET1, the list of issues in the Order and, where the Order referenced the Scott Schedules, the relevant entries in those Scott Schedules. This is also confirmed when the ET gives its reasons for refusing to postpone the hearing to allow Ms Murphy to attend. At paragraph 12 of the judgment, the ET say,

> ***"We reminded both parties that we would be considering this claim on the basis of the claim as set out in the ET1 and we observed that***

> ***the majority of the claimant's allegations against Ms Murphy are not contained in the ET1 in any event".***

So, it is clear that parties were aware that the list of issues in the Order was not conclusive.

29. The ET then went through each complaint and set out the issues they considered remained to be determined. They set out in detail under each complaint, where they considered the issues differed from those set out in the Order.

Protected disclosures

30. The ET considered the 16 detriments in the Protected Disclosure Schedule to be entirely new matters that had not been referenced in the ET1. They concluded that the only detriment advanced in the ET1 was that the claimant had been dismissed.

Direct discrimination – less favourable treatment

31. The allegations of less favourable treatment were limited to those in the ET1. The ET identified five matters that were to be considered:

> - **The respondent's reaction to the claimant's complaint of harassment (the "father's day comment") at the meeting with Ms Murphy on 21 August 2017 where Ms Murphy was said to have received the complaint by "making an ugly face over her raised shoulder and a "ppff" comment"**

- **The failure to investigate the claimant's complaint. This was described as raising concerns and complaints about Ms Milton's conduct and ineffective management of the finance department**
- **The refusal to release details of the complaints against the claimant.**
- **The conduct of Ms Murphy.**
- **The claimant's dismissal.**

Victimisation

32. The ET identified 27 detriments in the relevant schedule that they considered were entirely new matters which had not been advanced in the ET1. They stated that the only detriment in the ET1 was dismissal and the protected act was the claimant's complaint about Ms Milton that contained allegations of harassment. That was the extent of the victimisation complaint that would be determined.

Consideration of the grounds of appeal

33. I will now consider the grounds of appeal in order.

Ground 1

The ET erred in law when considering whether the claimant made a protected disclosure within the meaning of section 43A ERA and/or failed to consider whether the same constituted a protected act within the meaning of section 28 of the Equality Act 2010 and/or failed to give reasons.

34. In the Order, Judge Moore identified 4 protected disclosures relied on by the claimant as follows;

i. on 14 August a verbal disclosure was made as set out in allegation 1 of the Schedule (in summary that the claimant had informed the CEO that Mr Davies had an excessive workload and was suffering high levels of stress)

ii. on 15 August 2017, a verbal disclosure as set out in allegation 2 of the Schedule (in summary a further statement by the claimant to the CEO that Mr Davies had an excessive workload and was suffering high levels of stress)

iii. on 17 August, a written disclosure (an email from the claimant to the CEO that the claimant and others were concerned that Mr Davies had an excessive workload and was suffering high levels of stress)

iv. on 21 August 217, a verbal disclosure (allegation 7 in the schedule) (in summary that the claimant informed Ms Murphy that she had reported concerns that Mr Davies had an excessive workload and was suffering high levels of stress)

35. Judge Moore then noted that "the claimant relies on section 43B(d) of the ERA that the health and safety of any individual (Mr Davies) had been put at risk due to high workload and stress"

36. Having explored with the claimant why she reasonably believed the disclosure to be in the public interest, Judge Moore notes *"she relies on the disclosure not being related to her own contract and that other members of staff were concerned about Mr Davies "going over the edge" as being sufficient to make the disclosure in the public interest".*

Relevant law

37. It is appropriate at this point to set out the correct approach when considering whether a disclosure is protected under section 43A of the ERA. There is no dispute that in the circumstances of this case, if the alleged disclosure was a qualifying disclosure it would be

protected in terms of section 43A.The question for the ET was whether any of the alleged disclosures was a "qualifying disclosure " in terms of section 43B of the ERA. That section provides as follows:

> ***A qualifying disclosure means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following:***
>
> ***(a)……..***
>
> ***(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject***
>
> ***(c)…***
>
> ***(d) That the health or safety of any individual has been , os being, or is likely to be endangered***
>
> ***(e)……***
>
> ***(f) That information tending to show any matter falling within any one of the preceding paragraphs has been or is likely to be deliberately concealed.***

38. The correct structured approach that the ET should take when considering whether a worker has made a qualifying disclosure is set out by the Court of Appeal in **Kilraine v London Borough of Wandsworth 2018 ICR 1850** and recently confirmed by the EAT in **Williams v Michelle Brown AM UKEAT/0044/19/00**. In summary:

- **there must be a disclosure of information**

- **The worker must believe that the disclosure is made in the public interest**
- **If the worker does hold such a belief it must be reasonably held**
- **The worker must believe that this disclosure tends to show one or more of the matters listed in subparagraphs (a) – (f)**
- **If the worker does hold such a belief it must be reasonably held**

39. In **Kilraine**, the Court of Appeal stated that the concept of "information" was capable of covering statements that might also be allegations. However, they make it clear that to qualify, the disclosure must have "sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subparagraphs (a) – (f).

Disclosure 1

40. There was a factual dispute about what happened at this first meeting. The ET accepted Mr Howell's account which was that all the issues raised by the claimant at that meeting related to Ms Milton. Mr Howells accepted that the claimant said she was being bullied by Ms Milton and that others were too, that Ms Milton was lazy and incompetent, and she was taking the claimant's staff to the finance department. However, Mr Howell denied that the claimant mentioned anything about Mr Davies at that meeting.

41. The ET therefore concluded that the first disclosure relied on by the claimant (which was based on providing information about Mr Davies) was not made.

42. Mr Stephenson points to the way that this disclosure is set out in the ET1 at paragraphs 124-129 and 132 which he says sets out the context in which the utterances were made. The

claimant said that she explained to Mr Howells that she was in a poor mental state, that she had concerns about how the finance department were being managed, that she had concerns about herself and other staff members and about Ms Milton's conduct. She expressed concerns about Mr Davies' stress levels. She said that Ms Milton' conduct was making her ill. She also said that she had said that Ms Milton's behaviour and harassment towards her was discriminatory.

43. Mr Stephenson submitted that it must have been obvious the claimant was complaining about disability discrimination. In paragraph 131-132 of the ET1, he submitted that Mr Howell's response makes it clear that he understood that the claimant was raising serious concerns about Ms Milton's behaviour and how staff members, including Mr Davies, were being affected. Mr Stephenson submitted that when you look at the ET's finding, they don't take this into account. The ET found that in paragraph 53 of the judgment, the claimant told him she was being bullied by Ms Milton and others were too and she became upset. That is the context in which the ET had to assess whether this was a protected disclosure.

44. Mr Stephenson submitted that the ET did not adopt the structured approach in accordance with **Kilraine.** The ET did not adequately apply its mind to what information was disclosed, whether that information was capable of being reasonably believed and whether it disclosed any of the relevant matters.

45. Mr Stephenson submitted that the ET should have made specific findings about specific utterances. The disclosures were not just about Mr Davies. The mistake by the ET at this stage, he submitted, affects everything that follows. He submitted that the ET findings are very brief and do not set out the words used. Para 117 is the totality of their reasoning on the first disclosure.

46. He submitted that in order to assess if the disclosure has sufficient factual content, the ET needed to identify the words. The claimant was informing her employer that the conditions in which she and colleagues had to work was having an impact on how she and others were working, including Mr Davies.

47. Mr Howells accepted that claimant was upset. Had the ET correctly identified the utterance, they would have concluded the words were sufficiently precise and that they identified that the behaviour was having a detrimental effect on claimant's health and others. This was clearly capable of being a disclosure of information that the health and safety of any individual was being or was likely to be endangered.

48. The disclosure need not specify the legal basis of the wrong doing asserted and need not be factually correct nor amount to a breach of a legal obligation provided that the claimant reasonably believed this to be the case (**Twixt DX v Armes UKEAT/0030/30/JOJ** and **Babula v Waltham Forrest College [2007] IRLR 3546 CA**).

49. For the respondent, Ms Duane, submitted that there was a dispute between the claimant's version of her conversation with Mr Howells on 14 August 2017 and that of Mr Howells. The ET's judgment is clear that having weighed the competing versions of events, they preferred the evidence of Mr Howells. They were therefore entitled to find that the claimant did not make the disclosure relied on.

Discussion and conclusion

50. Before addressing the grounds of appeal, it is necessary to reflect how this particular aspect of the complaint has developed. It is true that in the ET1, the claimant states in paragraph 128 that she had told Mr Howells at the meeting on 14 August 2017 that Ms Milton's conduct

was making her unwell. In paragraph 129, she states that she alleged that Ms Milton's behaviour and harassment of her was discriminatory. However, as noted above, there was then a lengthy process of trying to get clarification about the complaints.

51. As formulated in the Protected Disclosure Schedule, Disclosure 1 is said to be that the claimant told Mr Howells on 14 August 2017:

> - **that Mr Davies had an excessive workload and that Ms Milton was "piling more and more on him";**
> - **that the claimant was worried about Mr Davies as he was obviously suffering from very high levels of stress;**
> - **that "everyone was being affected by the poor management of the finance department"**
> - **that Lauren Williams was complaining every day and had told the claimant incidents were being reported to the union.**
> - **Ms Milton "remained determined to unreasonably make the staff in the Corporate Services Team her full time finance workers and was refusing to contribute to the workload."**
> - **The situation could not go on, Ms Milton had to be brought under control and the problems resolved because "Everyone was being affected by the finance department but I was very worried about Mr Davies levels of stress which were obviously too high".**

52. The ET was clearly aware of the context in which the alleged disclosure was made. In paragraph 52 of their judgment, they set out the claimant's version of the meeting from her ET1. However, in paragraph 53, they refer back to the Order where it was clarified that this

disclosure was about Mr Davies having an excessive workload and that he was suffering very high levels of stress. (The judgment refers to "Mr Milton" but this is clearly meant to be "Mr Davies").

53. Specifically, the disclosure is formulated in the Order as *"in summary that the claimant informed the CEO that Mr Davies had an excessive workload and was suffering high levels of stress".* It is also relevant that in paragraph 21b of the Order it is confirmed that the relevant matter that the information is said to show is section 43B(d) "*that the health and safety of any individual (Mr Davies) had been put at risk due to high workload and stress".*

54. That formulation is not inconsistent with the longer version as set out in the Schedule. While there is reference in the Schedule to the claimant and others being "affected", there is no suggestion that her or their health was being impacted. It is only Mr Davies' health that is flagged as a concern.

55. The claimant had an opportunity to object to the terms of the Order but did not do so. That was the basis on which the ET proceeded at the final hearing and it was entitled to do so.

56. It is correct that the ET did not attempt to identify the words that were used. This is not surprising when two witnesses are trying to recall a verbal conversation sometime after the event. However, the ET accepted Mr Howell's evidence about what was conveyed by the claimant. This was that

> ***"she was being bullied by Ms Milton, others were too and that Ms Milton was lazy and incompetent and that she was taking the claimant's staff due to the finance department needing more help".***

57. The ET, having heard evidence about this conversation, made a factual finding that all the issues raised by the claimant at that meeting related to Ms Milton and that the claimant did not mention anything about Mr Davies being stressed. That was a finding the ET was entitled to make having heard the evidence.

58. The ET was entitled to understand the alleged disclosure as relating to the effect on Mr Davies' health as the Order clearly identified this as the information said to have been disclosed. They were therefore entitled to conclude, on the basis of their factual findings, that that the alleged disclosure was simply not made. No further analysis was required.

Disclosure 2

59. The ET noted that the claimant's witness statement contained very little evidence about what words she used. It said

> *"I informed the CEO that (Mr Davies) was in a right state up there and I attempted to explain".*

60. The ET accepted that the claimant may have mentioned at that meeting that Mr Davies was stressed but they found that it was "not the predominant driving area of the claimant's concern". They found that the focus of the meeting was about the workplan and not about Mr Davies' stress levels. They concluded that, having regard to the guidance in **Kilraine,** these statements did not have sufficient factual content and specificity to show any of the matters relied on by the claimant, namely:

- **that there was a failure to comply with a legal obligation;**

- **that the health and safety of Mr Davies was endangered; or**
- **that there was concealment of either.**

61. I pause there to note that the ET appears to have lost sight of the restricted nature of the disclosures as set out in the Order. Paragraph 21b records that the only matter that **any** of the disclosures was said to show was that the health and safety of Mr Davies was being endangered.

62. The ET continued,

> ***"We do not even think that they amounted to allegations. The most accurate description for the information is that they were an opinion or belief held by the claimant and not even one that was corroborated by Mr Davies {or anyone else) that Mr Davies was very stressed."***

63. Mr Stephenson submitted that the ET fell into the same error again in failing to identify the specific words used. The claimant's pleaded case referred to her having reiterated her concerns about Mr Davies and brought her elevated levels of concern to his attention. Mr Stephenson submitted that the ET again failed to have regard to the context. In the Protected Disclosure schedule, under allegation 2, the claimant narrates that she told Mr Howells that Mr Davies had just come out of a meeting with Ms Milton. She said that

> ***"I don't know what on earth has been said to him but he is in a right state up there, Like an absolutely desperate state"*** and further down**,** ***"someone needs to let Martyn know everything is going to be alright. The state he is in is terrible".***

64. Mr Stephenson submitted that there was potentially a breach of the legal obligation to protect Mr Davies' wellbeing, but it was also relevant to the public interest requirement. This was not a private workplace dispute as envisaged by **Chesterton.** The ET's conclusion that the utterances only referred to Mr Davies, mischaracterised the claimant's disclosures.

65. Mr Stephenson also submitted that the ET does not identify the evidential basis for the conclusion at paragraph 126b that Mr Davies was not affected as described by the claimant. There was a witness statement, but this had not been signed and Mr Davies did not give evidence. In those circumstances, it is incumbent on the ET to explain why it accepted an unsigned statement when the witness did not attend, and the claimant could not challenge the statement.

66. In paragraph 126c, the ET find that the claimant did hold the belief that the disclosure was in the public interest as other members of staff were also concerned. However, the ET concluded that this belief was not a reasonable belief based on the facts and circumstances at the time. "The belief was not supported by anyone even Mr Davies".

67. Mr Stephenson again challenged this finding as the ET didn't hear from Mr Davies, Ms Milton, Lauren Williams, Ms Prozar or Ms Murphy. The ET relied on Ms Murphy's notes when the claimant only saw unredacted version of notes during the hearing and she could not challenge the author of the notes. The ET did not explain why they accepted the notes. Mr Stephenson questioned how the claimant could make good her case when these individuals did not attend but the ET accepted notes and statements. ET needed to explain why they accepted that evidence.

68. Mr Stephenson also challenged the conclusion, as part of the public interest test, that the respondent's identity as a charity that provides case and support for carers was outweighed by two other factors, specifically that there was only one employee affected (Mr Davies) and while the ET accepted the claimant did believe his health was affected, it was not a reasonable belief.

69. Mr Stephenson submitted that the ET erred in finding that the predominant concern of claimant (para 58) was not Mr Davies' health. That was irrelevant for consideration of a protected disclosure. The point is she did mention it. That was the content of the disclosures. That was found by ET and set out in the schedules. Adopting that approach, it was clear that the claimant was drawing attention to Ms Milton's conduct that was affecting her and others.

70. Mr Stephenson submitted that this was indicative of the muddled thinking of the ET. They should have adopted a structured approach as set out in **Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979** and **Dobbie v Paula Felton t/a Feltons Solicitors UKEAT/ 0130/20/00**

71. For the respondent, Ms Duane submitted that it was clear that the ET had reached findings of fact which concluded that the claimant had not made a disclosure of information as asserted.

72. She referred to **Kilraine,** where the Court of Appeal clarified that "information" in the context of a qualifying disclosure was capable of covering statements that might also be characterised as "allegations" (although not every statement involving an allegation would constitute "information" and amount to a "qualifying disclosure". However, in order to be a qualifying disclosure for the purposes of section 43B (1) it had to have "sufficient factual

content and specificity capable of tending to show one of the matters listed in paragraph (a) to (f). That was a matter for evaluative judgment by the tribunal the light of all the facts and the particular context in which it was made."

Discussion and conclusion

73. The ET correctly identified that the first question for the ET is whether there has been a disclosure of information. They must make an evaluative assessment, as described in **Kilraine**. The first task is to assess what, if anything, has been disclosed. Mr Stephenson criticises the ET for not making a finding about the exact words that were used for each disclosure. Such clarity is helpful in many cases, but it is not fatal if it is not achieved. Where the disclosure is verbal, it may be difficult to identify specific words sometime after the event without a contemporaneous note. It is also relevant that the burden is on the claimant to prove, on the balance of probabilities, that she made a qualifying disclosure that meets the statutory requirements. That includes the requirement to prove she disclosed "information".

74. In respect of Disclosure 2, the ET found that the claimant conveyed that Mr Davies was stressed but their finding is that this was not the focus of the claimant's concern at the meeting. I agree with Mr Stephenson that motivation is not relevant when assessing whether a qualifying disclosure has been made. That is made clear in **Chesterton.**

75. However, a finding that the reference to Mr Davies's health was incidental to the issue the claimant was concerned about (the new workplan) can be relevant context to whether the claimant has provided sufficient specificity to amount to a disclosure of information. The ET refers to **Kilraine** and finds that the statements in Disclosures 2, 3 and 4 did not have sufficient factual content and specificity. In particular they do not consider that the statement was specific

that there was a failure to comply with a legal obligation, that the health and safety of Mr Davies was being endangered or that there was concealment of either.

76. They go on further to conclude that the statement was not even an allegation and was simply a statement of opinion that Mr Davies was stressed. Although the ET comment that it was an opinion that was "not even one that was corroborated by Mr Davies or anyone else", that is not critical to their conclusion on the point. The ET concluded that the claimant had not disclosed relevant information and had only provided her opinion about Mr Davies' health. This was a conclusion the ET was entitled to come to, having assessed the evidence and applied the correct law.

77. Such a conclusion on the first stage of the **Kilraine** test is sufficient to dispose of the all the whistleblowing claims. Without the provision of "information" there can be no qualifying disclosure.

78. However, the ET did go on to consider other aspects of the **Kilraine** test. They consider that a disclosure that an employee is in a "desperate state" due to stress "could have a tendency to show that his employer is breaching his obligation of duty of care to protect his well-being" but that what was fatal to the claim was the public interest element. The ET concluded that, the claimant did believe that Mr Davies was "going over the edge" and that she believed that, because other members of staff believed the same, this made it a public interest disclosure. The ET concluded this was not a reasonable belief. They further concluded that this was a "workplace dispute" in terms of **Chesterton** and was not protected as there was only one employee affected (Mr Davies) and Mr Davies was not affected as the claimant believed he was. These two factors overrode the potential for public interest that arose because of the nature of the respondent's business.

79. This part of the judgment at 123 – 126 is a little confused. It would have been helpful to separate the different limbs of the **Kilraine** test more clearly. However, the initial assessment that the statement in each of the potential disclosures 2, 3 and 4 did not have sufficient specificity to amount to a disclosure of information is sufficient to dispose of the point, regardless of those paragraphs.

Disclosure 3

80. Mr Stephenson again submitted that the ET failed to consider the specific wording in the email and that this was an error of law. (**Twist DX v Armer UKEAT/0030/30/JOJ)**

81. He submitted that had the ET had regard to the specific context it would have concluded that the disclosures did have specific factual content and specificity. Ms Milton's actions were detrimental to the mental well-being of staff, which is relevant to the respondent's legal obligation to provide a safe working environment. Further the ET can have regard to the fact that several communications can cumulatively amount to a qualifying disclosure. The ET failed to consider the claimant's disclosures together.

82. Ms Duane submitted that the ET was entitled to find that there was no relevant disclosure in relation to the finance department and notes that they also went on to consider that there was no public interest element to this disclosure.

Discussion and conclusion

83. I have considered the terms of the email that was before the ET. The ET concluded there were two aspects to the email. The first repeated concerns about Mr Davies in respect of

his welfare, that his confidence was low, and he was suffering stress levels behaving in a way never seen before and under so much pressure. Again, in paragraphs 120 to 122, considered above, the ET concluded that there was no disclosure of information in terms of section 43B. Having applied the right law, this was a conclusion they were entitled to come to. There was no error of law.

84. Mr Stephenson criticises the ET for not considering the alleged disclosures cumulatively but, in relation to Mr Davies, the disclosure relied on was in the same or similar terms in each occasion so it is unclear how this would have affected the ET's conclusion.

85. I note, again, that in the Order, it is clear that the disclosure is ultimately pled as relating only to the health and safety of Mr Davies being endangered.

86. The second element of this disclosure was that the Finance Department as a whole was under huge pressure and was being poorly managed and lacked coordination and change was desperately needed to meet the demand so the department.

87. I pause here to note that in terms of the Order, this email is only relied on in relation to concerns raised about Mr Davies health and not about the organisation of the finance department. Therefore, there was no need for the ET to consider this aspect at all. Nonetheless they did consider whether this amounted to a qualifying disclosure.

88. The ET concluded that there was no basis on which the information could have tended to show that the health and safety of an individual was being endangered. It was an opinion about the shortcomings in the finance department. It did not allege fraud or wrongdoing and focussed on system issues and being understaffed. It was unclear what the legal obligation was

that was being relied on in the alternative, despite considerable efforts at case management stage to understand the claim.

89. The ET concluded that, although the claimant genuinely believed what she was relaying to Mr Howells, the information was not in the public interest. The shortcomings of the finance system were not matters that should or would attract public concern.

90. While dealt with quite briefly, the ET clearly had regard to the relevant law and reached a conclusion they were entitled to reach. In any event, as noted above, this was not part of the case that was before the ET.

Disclosure 4

91. There was some confusion about this disclosure at the hearing before me. I do not see that Mr Stephenson's skeleton argument attacks this specifically. It seems only to be in the same terms as his challenges to the claimant's other alleged disclosures about Mr Davies.

92. The ET similarly do not address this disclosure specifically in respect of the meeting. Insofar as there was any concern raised about Mr Davies' health this is dealt with globally at paragraphs 120 to 122 of the ET judgment. For disclosures 2, 3 and 4, the ET consider that there was no disclosure of "information" and simply an expression of an opinion or belief.

93. That is a conclusion the ET were entitled to come to having applied the correct law.

Detriment claims

94. It may be helpful to note at this point that the claims under s47 failed as the claimant had not made protected disclosures. However, in any event, the ET had noted that the only detriment that was to be determined was dismissal. All other detriments in the Protected Disclosure Schedule were discounted by the ET in paragraph 16 of their judgment as they had not been included in the ET1.

95. It is not possible for an employee to bring a claim relating to dismissal for making a protected disclosure under section 47. Such a complaint must be brought as unfair dismissal under section 103A.

96. So, regardless of the conclusion about protected disclosures, the detriment claim would fail in any event as there was no relevant detriment before the ET.

Victimisation

97. Under this ground of appeal, Mr Stephenson further submits that the ET failed to deal with a protected act set out in the Victimisation schedule, specifically that the claimant complained of discrimination at her first discussion with Mr Howells on 14 August 2017. Mr Stephenson says that this is significant because that conversation was what led to the investigation that ultimately led to her dismissal. If she had not made that complaint, there would have been no investigation and she would not have been dismissed.

Discussion and conclusion

98. The ET explain their approach in paragraphs 163 and 164. They say that the protected act was set out in the claimant's bundle at page 35. I did not have that before me but the ET

explain that the protected act was the complaint about the claimant's treatment by Ms Milton that amounted to allegation of harassment under section 26 of the EqA. They conclude that that was the Father's Day comment. The ET accept that this was raised with Ms Murphy and conclude at para 164 that this would constitute a protected act.

99. With respect to the earlier meeting with Mr Howells, there is a finding that the claimant complained of being bullied at that meeting but there is no finding that she made any allegation that this was connected to her disability. There is no need to identify a specific complaint under the EqA to amount to a protected act. However, there must be something that indicates the nature of such an allegation.

100. Although the ET does not explain in terms why they considered there was only one protected act relied on, it is tolerably clear that this is because they consider that it was at the meeting with Ms Murphy that the Father's Day comment was raised for the first time.

101. Even if the ET was in error in not making a finding about whether there was a protected act at the initial discussion with Mr Howells, they then make very clear findings that the reason for the claimant's dismissal was the allegations that were made by her co-workers about the claimant's conduct and not the protected act.

102. Mr Stephenson's argument is, in essence, to impose a "but for" test for victimisation that is not correct in law. The ET must consider the real reason for the treatment (dismissal) and whether the protected act contributed to that reason, Therefore, even if it was correct that the ET failed to make a finding about an additional alleged protected act on 14 August 2017, that would not affect the ultimate dismissal of the victimisation claim on the ET's findings.

103. For all the above reasons, ground 1 is dismissed.

Ground 2

The ET erred in law in dealing with the claims for direct disability discrimination under section 13 of the EqA and/or victimisation under section 27 EqA and/or failed to give adequate reasons.

104. Mr Stephenson submitted that when considering the claimant's complaints under section 13 and 27 of the EqA, the ET failed to consider the totality of her evidence to decide whether her disability and/or protected acts could have been a factor in her dismissal, including whether there was evidence that could have resulted in the burden of proof shifting, including the finding at para 61 of the reasons and the swift dismissal of the claimant after raising her concerns with the respondent

105. Further, and alternatively, the ET erroneously adopted a fragmented approach to her claims and failed to look beyond the purported reason for dismissal to see whether the decision maker was motivated by the claimant's disability and/or her protected acts and/or did not adequately explain its reasons for adopting the respondent's explanation.

106. Ms Duane submitted that the ET correctly considered all the evidence and made findings of fact accordingly, They were entitled to find that the reason for dismissal was following the investigation of Ms Murphy based on the evidence (paras 139e – 142) There is nothing to suggest a fragmented approach

Discussion and conclusion

107. The ET refers to the burden of proof correctly in paragraph 111 of their judgment. The burden does not shift unless the claimant proves facts from which the ET could conclude, in the absence of any other explanation, that there has been discrimination or victimisation.

108. The ET set out their conclusion on direct discrimination at paragraph 139. They make clear findings in respect of the first two allegations that these did not occur. The burden of proof is not engaged here.

109. With respect to the third allegation, it was established that the respondent refused to release details of the complaints against the claimant. However, the ET found that there was no evidence that this was because of the claimant's disability. It is tolerably clear from that statement that they consider that the burden of proof had not shifted to the respondent. In addition, they made a positive finding as to the real reason for the treatment which was that the respondent had assured the individuals that their statement would remain confidential. Even if the ET were wrong not to find that the burden of proof had shifted, they would clearly have found that the respondent has discharged that burden as the ET accepted their explanation for the treatment.

110. With respect to the fourth allegation, the comments of Ms Murphy, the ET concluded that they were not related to or because of the claimant's disability. This was a finding of fact they were entitled to make on the evidence. In such circumstances, again there is no question of the burden shifting.

111. With respect to the fifth allegation, the dismissal, the ET concluded that the reason for the claimant's dismissal was the information gathered by Ms Murphy when she was investigating the claimant's allegations about Ms Milton. Although the ET did not hear from those who had made the allegations, and they did not hear from Ms Murphy for the reasons explained above, they did hear from Mr Howells. They accepted that Mr Howells was the decision maker in respect of the dismissal. They accepted his evidence about why he decided to dismiss the claimant. They were entitled to make such a factual finding.

112. As far as the process was concerned, it is arguable that the burden should have shifted and the ET did not address this in terms. However, the ET made a clear and positive finding that they accepted the explanation provided by the respondent. This was that the claimant had less than two years' service and did not have the right to claim unfair dismissal. The ET accepted the respondent's explanation that that was the reason why she had been treated the way she was.

113. The ET did not consider that the comparators identified by the claimant were in materially the same circumstances as the claimant and explained why in paragraphs 141 and 142.

114. With respect to the victimisation complaint, the ET made a factual finding they were entitled to make as to the reason for the treatment (dismissal). Again, even if the onus had shifted, the ET has considered and accepted the respondent's explanation as to the reason for the treatment and state in paragraph 140 and again in paragraph 166 that her dismissal was not because of her protected act.

115. The reasoning of the ET in relation to the complaints of direct discrimination and victimisation is relatively sparse. However, taken together with the detailed findings in fact, they adequately and clearly explain their decisions on these complaints.

116. Ground 2 is dismissed.

Ground 3

The ET erred in law in dealing with the claims for unfair dismissal under section 103A ERA and/or failed to give adequate reasons

117. Mr Stephenson submitted that, when considering the claims under section 103A ERA, the ET erred in holding that there was no evidence from which it could have inferred that the reason, or principal reason for dismissal was the making of the protected disclosure. Mr Stephenson submits that the ET did not apply the authorities of **Martin v Devonshire Solicitors [2011] ICR 352** or **Panayiotou v Kernagahan [2014] IRLR 500**. These authorities demonstrate that in certain circumstances it will be possible to separate out the factors or consequences from the making of the protected disclosure itself. The permissible distinction is usually drawn between the subject matter of the disclosure and the manner in which the employee went about making the disclosure. Mr Stephenson submitted that the ET merely conclude in paragraph 139 (e) that *"we have concluded that the reason for the claimant's dismissal was the information gathered by Ms Murphy from her investigation into the claimant's allegations".* Mr Stephenson submitted that the ET erroneously concluded that the information gathered due to the complaint caused the dismissal, not the complaint itself. There is no evidence that the ET considered the necessary factors and relevant authorities and/or gave Meek compliant reasons.

118. Ms Duane submitted that the ET were correct to conclude that the claimant had not made any protected disclosures for the purposes of section 103A and, as such they were correct to find that the automatic unfair dismissal claim must fail. They were entitled to find that the reasons for dismissal pertained to Ms Murphy's investigation rather than dismissal for any other reason.

Discussion and conclusion

119. I can deal with this ground of appeal in brief terms. As the ET permissibly found that the claimant had not made a protected disclosure and as she did not have two years continuous service, this complaint simply fails. There is no need for any further reasons.

120. However, I do not consider that the other criticism of the ET's reasoning is well founded. The circumstances of this cases are not the same as those in **Martin** and **Panayopitou** where there was a clear connection between the making of the complaint and the resulting detriment that required to be separated. In the present case, the ET made a clear conclusion about the reason for dismissal in paragraph 139 (e). Further, in the concluding paragraph 166 (albeit in the context of the victimisation complaint) they say

> ***"the decision to terminate was due to the complaints that the respondent had received about the claimant from Ms Milton and Mr Davies in particular corroborated to some extent by Ms Howden and Ms Reddy and Ms Prosser and that the claimant did not have sufficient continuous service to claim unfair dismissal."***

That would be sufficient to dispose of the s103A complaint even if the ET had found that the claimant had made protected disclosures. However, as the ET permissibly found that the

claimant had not made any protected disclosures, that is sufficient to dispose of this ground of appeal.

121. Ground 3 is dismissed.

Ground 4

The ET erred in law in dealing with the claims of disability related harassment under section 26 EA and/or failed to give adequate reasons.

122. Mr Stephenson submitted that when considering the claims under section 26 of the EqA, the ET failed to consider the context in which the comment about the claimant's father was made by Ms Milton, particularly as Ms Milton was not called to give evidence. The ET wrongly focused on whether the comment was "malicious" which is not the test.

123. Having found as a fact that Ms Milton had made the Father's Day comment, the question was whether that was unwanted and, if so did it have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. In the absence of Ms Murphy, the ET was not in a position to make findings about Ms Murphy's reasons for making the comment. The ET did not explain the evidential basis for its findings.

124. The ET erroneously concluded that the comment was not made with the purpose or effect of violating the claimant's dignity or creating the prescribed circumstances. Again, they did not explain the evidential basis for their findings.

125. The ET failed to have regard to the perception of the claimant and whether that was reasonable in light of her unchallenged evidence for the conduct to have that effect. The claimant gave evidence which was accepted by the ET that Ms Milton was aware of the link between the claimant's mental health and her father. The claimant believed it may have been targeted.

126. Mr Stephenson further submitted that the ET was in error when it concluded that this was a "one off act" and failed to apply the relevant principles and associated case law under section 123(3) of the EqA when determining whether an act extending over a period was present.

127. He submitted that the claimant's complaints about Ms Milton's conduct and harassment to Mr Howell and Ms Murphy on 14 and 21 August 2017 formed part of the factual matrix that led to her dismissal. The ET failed to explain why this the harassment claim did not extend over a period of time, culminating in her dismissal and so amount to a continuous course of conduct as described in **Hendricks v Metropolitan Police Commissioner [2003] IRLR 96.**

128. Ms Duane submitted that the ET, while finding the comment had been made, concluded on the totality of evidence that it was more likely that there had been a conversation about the claimant's father that led Ms Milton to conclude that Father's Day might be an issue for the claimant. The ET expanded on these conclusions explaining that, had they accepted the comment was calculated or malicious, this would have been disability harassment. However, they conclude that the evidence did not support that the claimant had found the meaning in the comment in the way she now alleges. The ET then went on to provide a multi-faceted explanation as to why the evidence did not support that this was a disability -related comment and that it could not reasonably have had the effect the claimant complained of. Ms Duane

submitted that it cannot be right that because Ms Murphy was not there to give evidence this gives rise to a foregone conclusion that the party who claims the incident occurred must be taken as a fact.

Discussion and conclusion

129. It is important when considering this ground of appeal to return again to the issues that were before the ET.

130. In the ET1, under the heading of "harassment", the claimant identifies the conduct of Ms Milton and the Father's Day comment. There is no suggestion in the ET1 or later that the acts of harassment were intended to include the reporting of such acts to either Mr Howells or Ms Murphy. The ET state at paragraph 155 that the Father's Day comment was not said to be connected to conduct extending over a period of time.

131. Of course, the ET did not find that there was an allegation of conduct connected to disability at the first meeting and that it was only the Father's Day comment that was identified as being alleged to have some relation to the claimant's disability at the meeting with Ms Murphy.

132. With regard to the other allegations, the ET did not accept that there was a "week long campaign" by Ms Milton to bully and harass the claimant (paragraph 46). They considered these were "*no more than day to day issues arising between work colleagues"*. That was a conclusion they were entitled to come to on the facts. There was therefore only one act of harassment left for the ET to consider. That was the Father's Day comment.

133. That took place on 14 June 2017 and the claim should have been presented, allowing for early conciliation, by 2 November 2017. It was not presented until 11 November 2017.

134. The potential issue of time bar had been identified by Judge Moore in the Order. The ET state at paragraph 155 that there was no evidence, and it was not put by the claimant, that it would be just and equitable to extend time. Time bar having been clearly identified as an issue, it was for the claimant to make the case that it was just and equitable to extend time. She did not do so, that is sufficient to dispose of this point.

135. That is the ET's primary conclusion on the claim of harassment and is unimpeachable. While Mr Stephenson now valiantly offers reasons why the claim should be extended with reliance on **Hendricks** and the claimant's complaints, these were simply not before the ET as part of the harassment complaint despite extensive case management.

136. The findings of fact in respect of the Father's Day comment were based on the evidence before the ET that included the context before and after the comment was made (paras 154 – 162). The ET found that the comment was **not** inherently a comment that would be understood to be harassment on the ground of disability. They conclude that the evidence did not support that it was made by Ms Milton as a disability related comment. That would be sufficient to dispose of the harassment complaint. If it was not conduct related to disability, then there was no need to go on to consider the purpose or effect of the conduct.

137. However, the ET do go on and conclude that the comment was not made with the purpose or effect of violating the claimant's dignity or creating and intimidating, hostile, degrading, humiliating or offensive environment. They further conclude it would not be reasonable for it to have had that effect

138. Mr Stephenson makes valid criticisms of the ET's reasoning on these points. The reasoning is brief. However, there is just enough to show that they took into account the wider factual findings at paragraphs 36. 37 and 38 about the interaction between the claimant and Ms Milton at that time.

139. There is no error of law in the way that they dealt with the complaint of harassment. They were entitled to reach the conclusions they did on the findings of fact that they made.

140. Even if there had been an error in the way the ET dealt with the complaint of harassment, there was no error of law in the finding that the complaint was out of time and that there was no basis on which to extend time.

141. This ground of appeal is dismissed.

Conclusion

142. Mr Stephenson has presented a very detailed critique of the judgment. However I have borne in mind that the role of the EAT is to respect the factual findings of the ET and it should not subject the reasons of the employment tribunal to *"unrealistically detailed scrutiny to find artificial defects"* (**ASLEF v Brady [2006] IRLR 576**). Further, I am conscious of the direction from Mummery LJ in **Fuller v London Borough of Brent [2011] ICR 806** that *"the reading of an employment tribunal decision must not... be so fussy that it produces pernickety critiques"*. The ET decision must be read in the round.

143. This is all the more important in a case like this where a claimant, representing herself, brings a claim that includes complaints under multiple jurisdictions. The employment tribunal

will attempt to bring clarity through case management and will endeavour to produce a definitive agreed list of issues for the final hearing. However, there can come a point, as in this case, where an Employment Judge quite properly concludes that attempting further particularisation will not be helpful and the case should proceed to a final hearing. That can present particular challenges for the employment tribunal charged with determining the case. It is all the more important, in such circumstances, that the EAT reads the whole judgment with that context in mind. Mr Stephenson has identified a number of areas where it may be that the claimant's case could have been put or argued in a different way. However, the ET was entitled to determine the case as it was identified before it.

144. It is also worth stressing that nearly all of the complaints related to the claimant's dismissal. While that dismissal was summary in the extreme, and no doubt very upsetting for the claimant, the ET concluded that the reason for that dismissal was that serious allegations had been made about the claimant's conduct by colleagues and for no other reason. The ET also accepted the respondent's explanation that they were aware that the claimant did not have sufficient length of service to claim unfair dismissal and that was why they did not adopt the procedure that might normally be expected. With these clear findings, even if I had accepted Mr Stephenson's arguments that the ET had erred in its approach to protected disclosures, protected acts or the onus of proof, the outcome of the claims that related to dismissal would have been the same.

145. All grounds of appeal are dismissed.