



EMPLOYMENT TRIBUNALS

Claimant: Ms Amber Stoter

Respondent: Gain Healthcare Ltd

Heard at: Reading

On: 12 – 14 May
2025

Before: Employment Judge Baran
Mrs F Tankard
Mr A Scott

Appearances:

Claimant: In person

Respondent: Mr R Magara (Solicitor)

JUDGMENT having been given orally at the conclusion of the hearing on 14 May 2025 and sent to the parties on 16 June 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

A. INTRODUCTION

1. By ET1 dated 30th July 2023 following ACAS Early Conciliation between 24th and 27th July 2023, the Claimant Ms Amber Stoter brought complaints alleging unfair dismissal and discrimination arising out of the termination of her employment with the Respondent Gain Healthcare Limited on 28th June 2023. In brief, the complaints allege that the Claimant's employment was terminated

because she made complaints of sexually inappropriate conduct by the husband of a director of the Respondent.

2. By ET3 dated 5th December 2023 the Respondent resisted the claim.
3. The claim came before this Tribunal for final hearing over 3 days between 12th and 14th May 2025. At the outset of the hearing the parties agreed that the list of issues identified by Employment Judge Tynan at a preliminary hearing attended by video on 7th March 2024 was accurate. The parties further clarified their position on some of the issues listed. The Tribunal decided to deal with the issue of liability first. The Respondent agreed to this approach and the Claimant expressed no preference on this aspect of how the hearing was to be managed.

B. THE EVIDENCE, THE DOCUMENTATION AND THE HEARING

4. For this hearing the Tribunal was presented with a bundle of relevant documents consisting of 513 pages. Numbers in square brackets in these reasons refer to bundle page numbers.
5. Further, the Tribunal was presented with witness statements from the Claimant (5 pages), Mrs Jessica Cannon (4 pages) and Mrs Olinda Chapel-Nkomo (4 pages). The Tribunal read and considered the statements and the documents referred to within them prior to the commencement of the hearing.
6. The Tribunal heard oral evidence from the 3 witnesses. Mrs Cannon and Mrs Chapel-Nkomo gave evidence via CVP video link pursuant to permission applied for and granted at the hearing. The Claimant gave evidence in person to the Tribunal. The witnesses confirmed their witness statements as their evidence-in-chief, along with other relevant documents. They were cross-examined by the opposing parties. The Tribunal asked further questions pursuant to r41 ET Rules to clarify the evidence and to assist in the process of addressing the issues for determination. In the case of the Claimant this

involved seeking clarification of points in her ET1 Claim Form [2] and a document headed 'Discrimination and Harassment: Narrative' [43] that was submitted in response to directions requesting further information given by REJ Foxwell on 30th January 2024 [38]. The Respondent's representative had time to consider the clarification evidence before concluding cross-examination.

7. Additionally, during evidence the Respondent produced a single page extract from a WhatsApp group chat dated 27th June 2023. The Claimant did not object to its inclusion as documentary evidence although she complained about the late provision. The Tribunal decided to admit the document noting the Claimant's submissions and taking them into account in relation to the assessment of the Respondent's evidence as a whole.
8. Following evidence, the Tribunal heard submissions from the parties. The Respondent also provided a 7-page written submission. The Tribunal has taken the submissions fully into account but will not repeat them here.

C. CREDIBILITY

9. The Tribunal acknowledges that all witnesses gave their evidence to provide their recollection of events after the passage of time under stressful circumstances, with unfamiliar processes and surroundings. We have accounted for this when assessing the evidence given under questioning. We have also taken into account Mrs Chapel-Nkomo's medical condition which she gave brief details of in evidence. We permitted adjustments by way of remote evidence and regular breaks to accommodate for this condition. We record however that the Tribunal was not presented with any medical evidence. We have had no independent confirmation of Mrs Chapel-Nkomo's condition or assistance on the nature of it, or the effect that it has on the evidence that she was able to give.
10. When assessing the credibility of the witnesses we have taken into account:
 - a. the internal consistency of their evidence;

- b. the consistency of their evidence with other evidence from other sources that were available to the parties to put before the Tribunal, including contemporaneous documents and messages;
- c. previous accounts given by the witnesses, including those under questioning from the Tribunal.

11. The Tribunal found the Claimant to be a generally credible witness and relied upon her evidence. She made appropriate concessions under questioning in relation to, for example, dates. She accepted that she could not be exact in relation to such matters. The evidence she gave to the Tribunal under questioning was largely consistent with her account as given in her narrative document [43]. We do however accept the Respondent's representative's point that the Claimant appeared to have added to her evidence in response to questions from this Tribunal when explaining in particular the specifics of matters of sexually inappropriate conduct that she had complained about. The Tribunal will consider this below when making findings in relation to relevant facts.

12. Similarly, the Tribunal found Mrs Cannon to be a generally credible witness. She accepted in terms some matters put to her in cross-examination, including matters that were not elsewhere supported by documentation. For example, on the public interest disclosure issue, she fairly accepted that matters reported to her by the Claimant about the conduct of Mr Tytan Nkomo (whose name is spelt here in accordance with his identifier in a WhatsApp chat that he was part of) were matters of public interest.

13. The Tribunal did not find Mrs Chapel-Nkomo to be a credible witness, however. In the Tribunal's judgment, her evidence was shown to be unreliable in several major respects. In particular, these related to the important issues of the timing of her decision to meet with and dismiss the Claimant, and also the justification or reason for the dismissal of the Claimant.

14. The Tribunal noted that when responding to clarification questions, Mrs Chapel-Nkomo changed her evidence within the space of a handful of questions in relation to the date at which she contacted the Claimant to arrange a 1:1 meeting with her to discuss her performance and conduct. This was the important meeting which led to the Claimant's dismissal. The date that the meeting was arranged was important in relation to whether it was arranged before or after the Claimant had discussed the conduct of Mr Nkomo with Mrs Cannon.

15. At first, Mrs Chapel-Nkomo maintained that she had not told the Claimant that she wanted a meeting with her until a group WhatsApp message was sent to all management staff on Tuesday 27th June 2023 at 10:35, notifying them that she would be holding performance review meetings. It was then brought to her attention that this would post-date the time at which Mrs Cannon had said the Claimant had shared concerns about Mr Nkomo with her – Monday 26th June 2023. This caused Mrs Chapel-Nkomo to backtrack. She said that she had already arranged a meeting with the Claimant 1 ½ weeks prior to sending the group WhatsApp message. She made reference to her PA making such arrangements by telephone. The Tribunal was presented with no documentation to support this, such as diary or calendar entry details. We did not find Mrs Chapel-Nkomo's evidence credible at all on this point. It seemed to be given as a response to a timeline which did not 'fit'.

16. In addition, under questioning Mrs Chapel-Nkomo attempted to distance herself from the company's ET3 Response to the claim at para 15 [28]. This set out the following position:

'On or around 27 June 2023, the Claimant had organised to meet Mrs Cannon. Mrs Cannon had purposed to formally speak with the Claimant about her concerns about the Claimant's performance and conduct (including that related to the above). It was already determined by Mrs Chapel-Nkomo to meet with the Claimant to have a probationary review with the Claimant and terminate her employment with the Respondent after this conversation'.

(bold emphasis added).

17. This paragraph seemed on the face of it to be inconsistent with Mrs Chapel-Nkomo's witness statement (paragraph 16) and oral evidence to the Tribunal that her decision to dismiss the Claimant was made during the meeting at which the Claimant's employment was terminated, on Wednesday 28th June 2023, as a response to the Claimant's behaviour in the meeting. The Tribunal did not find her explanation that the ET3 was 'phrased in the wrong way' to be credible.
18. Under questioning as to the precise role of the Claimant at the Respondent, Mrs Chapel-Nkomo asserted that the Claimant's email signature would not bear the title 'registered manager', because she was employed as a deputy manager with a view to undertaking training to become a registered manager. When put to her that in actual fact the Claimant's email signature referred to her as a registered manager [199], from an email dated a week prior to termination of the Claimant's employment, Mrs Chapel-Nkomo resorted to making allegations of misrepresentation against the Claimant and was not prepared to accept or explain her error.
19. The Tribunal noted that the explanation for the reasons for the Claimant's dismissal, as set out in the dismissal letter [95] at bullet points a) to d) in relation to performance and conduct, consists of allegations which are unsupported by documentary or corroborative evidence. In particular, the Tribunal noted that:
 - a. a central part of Mrs Chapel-Nkomo's justification for the meeting that resulted in the dismissal of Claimant was that complaints had been raised by other members of staff about her making excessive use of the manager's WhatsApp group ([96] letter of dismissal d) and para 5 d) Jessica Cannon witness statement). This WhatsApp chat was not disclosed. On day 2 of the hearing, one page from the chat was provided. The chat therefore seems to be available to be considered, in order to review whether the complaint of excessive use by the

Claimant was substantiated or not. The absence of disclosure of a document setting out this chat in entirety in the Tribunal bundle could not be explained by Mrs Chapel-Nkomo;

- b. neither Mrs Chapel-Nkomo in her statement nor the Respondent's representative in closing submissions referenced any documentary material in the bundle which supported the existence of the conduct concerns that were said to form the justification for the meeting with the Claimant at which she was dismissed.

20. The Tribunal further noted that no policies or procedures in relation to whistleblowing, performance management, safeguarding, disciplinary or grievance matters were disclosed or provided for the Tribunal to consider. This was particularly surprising given that Mrs Chapel-Nkomo's explanation for not acting on the report of sexually inappropriate conduct by Mr Tytan Nkomo, made by the Claimant and forwarded to her by Mrs Cannon, was that there was no 'formal' complaint by Mrs Chapel-Nkomo. The Tribunal would expect any employer operating in the same sector as the Respondent to have robust procedures in respect of allegations of sexually inappropriate conduct, given the involvement of staff with vulnerable service users and the need to comply with safeguarding processes. Mrs Chapel-Nkomo said in evidence that the Respondent had such policies, but there was no explanation for why the Tribunal was not shown them or taken to them.

21. Finally, the Tribunal had significant concerns around Mrs Chapel-Nkomo's attempts to distance the Respondent from the conduct of her then husband Mr Nkomo in the course of his work with the Claimant and for the Respondent by reference to his strict employment status. In the Tribunal's view she wholly failed to grasp the seriousness of the matters as reported by the Claimant to Mrs Cannon when Mr Nkomo was discharging senior management responsibilities on behalf of the Respondent whilst working with a lone female employee. In the context of a registered care provider organisation with strict safeguarding responsibilities, the Tribunal did not find Mrs Chapel-Nkomo's explanations, as director of the Respondent, for not recording or acting upon

the report made by the Claimant of sexually inappropriate conduct, to be credible at all.

22. For all of these reasons, and in particular her changing position on the timing of her decision to meet with and to dismiss the Claimant, and the absence of documentary support for allegations of conduct and performance concerns against the Claimant, the Tribunal approached Mrs Chapel-Nkomo's evidence on the reason why she dismissed the Claimant with caution. She was not a witness on whom the Tribunal could rely.

D. THE TRIBUNAL'S FINDINGS OF FACT

23. The Tribunal makes the following findings of fact based on the documentary and witness evidence, assessed by reference to our findings on credibility. We have applied the civil standard of proof, namely on the balance of probabilities, considering in relation to matters in dispute what is likely to have happened. The Tribunal has confined its findings as far as possible to matters that are relevant to the legal issues that must be determined to decide the claim.

24. It is not disputed that on or around 5th June 2023 the Respondent employed the Claimant to work as a manager in its health and social care business providing personal care and assistance to clients in a variety of settings. Less than 1 month later, on 28th June 2023, a meeting took place between the Claimant and Mrs Chapel-Nkomo, a director of the Respondent. During that meeting, the Claimant's employment was terminated. What happened during the final week prior to the meeting, along with the reasons for the termination of the Claimant's employment, are the main matters which the Tribunal must consider in this claim.

25. At some point in the week prior to the dismissal, that the Claimant had a discussion with her line manager, Mrs Cannon. During that discussion, the Claimant shared concerns that she had about the conduct of Mr Tytan Nkomo. At that time Mr Nkomo was the husband of Mrs Chapel-Nkomo. He worked

for the Respondent as an IT specialist. He occupied a management position and had responsibilities within the Respondent organisation, although the Respondent's position was that he was not an employee.

26. In the discussion the Claimant shared with Mrs Cannon assertions that Mr Nkomo had been 'sexually inappropriate' with her (Jessica Cannon witness statement para 8). Specifically, it was stated by the Claimant and agreed by Mrs Cannon in oral evidence that the Claimant alleged in the discussion that:

- a. Mr Nkomo had told the Claimant that she was 'like his girlfriend';
- b. whilst Mr Nkomo was in a car with the Claimant accompanying her on a visit to make an assessment of a potential client at a secure facility (Littlemore Hospital), he told her, after she had half-smiled at another man in a different car at a roundabout, 'don't allow men to look at you like that, you are part of my property'. The relevant WhatsApp chats [140] suggest that this visit took place on Friday June 23rd 2023;
- c. Mr Nkomo had commented on a picture that the Claimant had posted online with a sexually inappropriate response. The Claimant had posted a picture of herself with the caption 'working hard in the sun'. Tytan Nkomo had responded 'that's not the only thing you make go hard'. Mrs Cannon stated that she had been told that Mr Nkomo had said something about how the Claimant looked.

27. During the discussion the Claimant was asked to show the messages that she had been sent by Mr Nkomo. She was unable to do so. Mr Nkomo's WhatsApp chat with the Claimant had disappearing messages. Mrs Cannon said that the Claimant told her that she had deleted messages previously received.

28. It was however disputed as to whether during the discussion the Claimant also shared with Mrs Cannon that Mr Nkomo had touched her leg during the car journey where the comment 'you are part of my property' was made. The

Claimant maintained in evidence and under cross-examination that she told Mrs Cannon this. Mrs Cannon maintained under cross-examination that at no time at all did the Claimant allege to her that Mr Nkomo had touched her leg.

29. In the absence of documentary evidence to show when or if this alleged comment was reported, or other support in witness evidence for the Claimant's assertion as to what was said, the Tribunal prefers Mrs Cannon's evidence that this was not said during the discussion. Leg touching was not referred to elsewhere in any documents provided to the Tribunal. No finding is made as to whether the alleged leg touching happened, but the Tribunal finds that even if it did, it was not reported to Mrs Cannon at the material time.
30. It was also in dispute as to when this discussion took place. Mrs Cannon's evidence to the Tribunal was that it took place on Monday 26th June. The Claimant's evidence was that it took place on Friday, prior to the weekend. She conceded however that she was not sure when she made the report about Mr Nkomo to Mrs Cannon in terms of dates, simply that it was 'very close between it happening and getting sacked'.
31. Overall, the Tribunal again prefers Mrs Cannon's evidence in this regard, and finds as a fact that the discussion involving the disclosure of reports about Mr Nkomo took place on Monday 26th June. It is likely to have taken place after Friday 23rd June, as it referred to the visit to Littlemore Hospital that took place on the morning of that date.
32. In any event, the Tribunal finds as a fact that the Claimant's discussion with Mrs Cannon took place before Mrs Chapel-Nkomo invited to the Claimant to attend a meeting for performance review to take place on Wednesday 28th June. Based on the WhatsApp group message disclosed, the Tribunal finds as a fact that the Claimant was first notified of such a meeting on Tuesday 27th June. The discussion between Mrs Cannon and the Claimant that involved the reports about Mr Nkomo's conduct took place the day before this.

33. It follows that the Claimant did not know that Mrs Chapel-Nkomo was looking to arrange a performance review meeting with her until after she had shared her concerns about Mr Nkomo with Mrs Cannon.
34. Following the discussion with the Claimant, and as a result of the allegations made, Mrs Cannon required Mr Nkomo to stop working in the office. She did not seek to take the concerns about Mr Nkomo's behaviour any further as a safeguarding matter because she didn't have any evidence, either at that point or thereafter.
35. The Claimant also asked Mrs Cannon not to share her reports about Mr Nkomo any further. Despite this, however, Mrs Cannon went on to tell Mrs Chapel-Nkomo that the Claimant had 'stated that her husband had apparently sent inappropriate texts to the Claimant. She (Mrs Chapel-Nkomo) did not probe or ask for further 'intel' on this at the time' (Jessica Cannon witness statement para 11). Mrs Cannon confirmed in evidence that this conversation with Mrs Chapel-Nkomo took place on the morning of Tuesday 27th June.
36. Surprisingly, Mrs Cannon did not document the concerns raised by the Claimant about Mr Nkomo anywhere. There was no documentation in respect of the concerns about Mr Nkomo or how the Respondent investigated or addressed them at all. Mrs Cannon told the Tribunal that she did not have enough information to make a report. She agreed when put in cross-examination that the Claimant's report was a safeguarding concern that could cause harm. She agreed that the allegation made amounted to something in the public interest for the purposes of whistleblowing. The Tribunal considers that the fact that she took the action of requiring Mr Nkomo to work from home once the Claimant raised her concerns was an acknowledgement in terms that the complaints made about Mr Nkomo required him to be separated from working with the Claimant and were important, despite the fact that neither Mrs Cannon nor anyone else at the Respondent did anything further in relation to investigating the report at all, either prior to Claimant's dismissal or afterwards.

37. As noted previously, by a message to the Manager Group WhatsApp, timed at 10:35 on Tuesday 27th June 2023, Mrs Chapel-Nkomo proposed to all managers that she was going to hold performance review meetings. No formal performance concerns were put to the Claimant in writing before this message or indeed at all prior to the performance review meeting taking place, on Wednesday 28th June between the Claimant and Mrs Chapel-Nkomo. Significantly, no documentary evidence has been provided to demonstrate the existence of such concerns about conduct or performance. The Claimant did however accept that Mrs Cannon took up with her a complaint of vaping at work made against her by a service user. This was resolved informally. No formal disciplinary action was taken against the Claimant based on this complaint.
38. Despite the provision of copious WhatsApp conversations in documentation, and in the absence of the full Manager Group WhatsApp for the Tribunal to consider, neither of the Respondent's witnesses, nor its representative, have pointed the Tribunal to any documented performance review, supervision, training record, email or text exchange where the Claimant's conduct was called into question at all, whether prior to convening the performance meeting or otherwise. Mrs Cannon confirmed in evidence that she usually worked remotely and was reliant on reports from other managers in relation to the performance and conduct issues said to exist in relation to the Claimant. She could not give first hand evidence in relation to performance or conduct concerns. The Tribunal was not taken to any no documented reports from other managers to Mrs Cannon or anyone else.
39. Overall, in the absence of any corroborative documentary evidence identifying performance concerns or showing that such concerns were raised or put to the Claimant prior to Tuesday 27th June, the Tribunal finds as a fact that when raising her concerns about Mr Nkomo to Mrs Cannon the Claimant did not know of any concerns relating to her own conduct or performance at work that

the Respondent had, save for the vaping concern which had been raised with her informally but not pursued further.

40. For the avoidance of doubt, on the totality of the evidence and the findings above, the Tribunal finds the following as the sequence of events over the course of Monday 26th – Wednesday 28th June:

- a. Monday 26th June – the Claimant raised reports about Mr Nkomo to Mrs Cannon in a discussion. The Claimant did not know at that point that there were any performance or conduct concerns about her, save for the vaping concern, or that Mrs Chapel-Nkomo was proposing to meet with her to discuss such matters;
- b. Tuesday 27th June – Mrs Cannon raised the Claimant's reports about Mr Nkomo to Mrs Chapel-Nkomo. Mrs Chapel-Nkomo communicated the need to carry out performance reviews for management to managers including the Claimant on the management group WhatsApp chat;
- c. Wednesday 28th June – Mrs Chapel-Nkomo convened the meeting at which the Claimant's employment was terminated. At no point prior to this meeting were performance or conduct concerns put to the Claimant by Mrs Chapel-Nkomo or others, save for the vaping concern.

41. On this basis, the Tribunal rejects Mrs Chapel-Nkomo's suggestion (witness statement para 8) that the Claimant's allegation of inappropriate messages against Mr Nkomo was '...re-meditative and as a way to prevent me from questioning her work/work ethic'. The Claimant did not know about performance and conduct issues that were to be levelled against her prior to making the complaints about Mr Nkomo to Mrs Cannon.

42. In the Tribunal's judgment, it is unlikely in any event that the Claimant would have asked Mrs Cannon not to tell anyone about the allegations if she had

wanted to use them as a defence to allegations of poor performance or conduct that she suspected might be raised against her. She would more likely have taken open formal action and raised formal written complaints if she wished to use them as a pre-emptive strike to make Mrs Chapel-Nkomo think twice about complaining about her performance. This is particularly so when the concerns she was raising about Mrs Chapel-Nkomo's then husband could have serious safeguarding implications for the Respondent and its continued work with vulnerable service users.

43. In relation to the meeting of Wednesday 28th June, despite the lack of any minute of the meeting or notes there is little of relevance in dispute as to what happened. It was broadly agreed that from the outset of the meeting Mrs Chapel-Nkomo outlined a series of performance and conduct concerns about the Claimant, without any pre-warning. At some point thereafter in the meeting Mrs Chapel-Nkomo dismissed the Claimant, prior to the Claimant offering her resignation. At some point in the meeting the Claimant became distressed and the meeting became heated. The Claimant felt that she was not being given the chance to respond to Mrs Chapel-Nkomo's concerns. The Claimant then alleged that Mrs Chapel-Nkomo had '...done this because of what your husband did' (witness statement of Olina Chapel-Nkomo paragraph 12).

44. In her Discrimination and Harassment Narrative [43] the Claimant alleged that during the meeting Mrs Chapel-Nkomo 'mentioned her legal training and stated that she had planned to terminate me beforehand' before asking her to leave the premises and yelling at her. The Claimant repeated this point under questioning. She was not challenged on it. This comment is consistent with the ET3 paragraph 18 (see paragraph 21 above), which suggested that the decision to dismiss the Claimant had been made before the meeting had commenced.

45. The Tribunal finds as a fact that this comment was made by Mrs Chapel-Nkomo, perhaps in an attempt to distance herself from the Claimant's suggestion to her in the meeting that Mr Nkomo's alleged conduct had played

any part in the dismissal. It is notable that in the letter confirming dismissal sent later that day [95], reference is made to the allegations against Mr Nkomo in the following terms:

Notwithstanding our strong opposition to your assertions, Olinda confirmed she had no understanding of the inferences you were making about her husband.

Furthermore, and in any event, any such allegations had and have nothing to do with the termination of your employment contract’.

This suggests in the Tribunal’s view that Mr Nkomo’s conduct was raised by the Claimant during the meeting with Mrs Chapel-Nkomo. Mrs Chapel-Nkomo would have known what the Claimant was referring to, based on what Mrs Cannon had told her the previous day about what the Claimant had shared with her.

46. The Claimant left the dismissal meeting in a state of distress. She returned to Respondent’s premises shortly afterwards and left a handwritten note [74]. This set out her views on Mr Nkomo and asserted that she had been ambushed at the meeting. This was followed by emails in which she purported to resign. The letter confirming dismissal sent that day [95] confirmed the Respondent’s position that the Claimant was informed of the termination of her employment before she sent resignation email at 12.04 on that day [105] purporting to resign.

47. The dismissal letter, prepared by the Respondent’s representative on Mrs Chapel-Nkomo’s instructions following the dismissal meeting, set out 4 principal reasons for dismissal, and addressed the events in the meeting in the following terms:

The reasons for your dismissal include the fact that during your probation:

a) It has come to our attention that you have two other roles of employment outside Gain Healthcare. It is understood that one of which is a night shift and the other is one we have reasonable grounds to believe you carry out during contractual working hours with us. Notwithstanding the potential breach of

contract in not dedicating your full time and attention to your contracted hours with us, there are safeguarding and wellbeing concerns related to the amount of hours you are working in the context of our vulnerable service users.

b) You have been witnessed leaving our premises to frequent the neighbouring tanning studio during contractual working hours.

c) You have been witnessed leaving work premises earlier than contractually obliged (i.e. your working hours are 9 – 17:30, but you have been witnessed leaving between 16:00 and 16:30 several times).

d) Complaints have been raised by other members of staff about the excessive nature of calls and text messages you make/send.

Of pertinent importance is that this morning, in the context of the meeting between you and Olinda Chapel-Nkomo, your behaviour and attitude fell well below that expected of any member of staff (but especially that of a Deputy Manager). It is noted that, amongst other things, you:

a) Raised your voice and shouted at Olinda.

b) Used foul language and swore at Olinda.

c) Did not conduct yourself appropriately in that you were aggressive and interrupted Olinda when she sought to raise performance and conduct related issues with you.

48. As set out previously the Tribunal finds that prior to the meeting none of the matters referred to as the reasons for dismissal had been raised with the Claimant as concerns, whether formally or at all.

49. In her witness statement at paragraph 16, Mrs Chapel-Nkomo asserted that 'I dismissed her because of her exceptionally concerning and escalatory behaviour during my one to one with her, and he (sic) conduct thereafter gave me no confidence that she was an appropriate fit for the company'. The Tribunal took this as Mrs Chapel-Nkomo's evidence being that she decided during the meeting to effect the dismissal. Indeed, under cross-examination Mrs Chapel-Nkomo maintained this position, asserting that the decision to dismiss was taken in the meeting because of the Claimant's behaviour during the meeting in the office in front of other colleagues.

50. As noted above, however, this was contrary to the position in the ET3 paragraph 18 and the comments that the Tribunal has found were made during the meeting at paragraph 44-45 above, namely that the decision to dismiss was made the previous week, before the meeting had taken place or indeed before it had been arranged.

51. The Tribunal finds in the absence of supporting evidence for concerns being raised prior to the meeting that the decision to dismiss the Claimant was made at the meeting or shortly before. In any event it was made after the Claimant had raised her complaints about Mr Nkomo to Mrs Cannon, and after Mrs Cannon had passed those on to Mrs Chapel-Nkomo.

E. THE LAW

52. The 2 complaints pursued by the Claimant in her claim, as clarified at the preliminary hearing and in the order of Employment Judge Tynan, are:

- a. a claim of unfair dismissal on ground of protected disclosures – ‘whistleblowing’ dismissal;
- b. a claim of unlawful dismissal based on victimisation – ‘discriminatory’ dismissal’.

53. In relation to the whistleblowing dismissal claim, the Tribunal has had reference to s103A ERA 1996. This provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is that the employee has made a protected disclosure.

54. We have also borne in mind the following case law to assist in explaining how we should approach this statutory provision:

- a. Abernethy v Mott, Hay and Anderson [1974] ICR 323, CA: the principal reason for dismissal is the main or dominant reason that operated on the employer's mind at the time of the dismissal;
- b. Kuzel v Roche Products Ltd [2008] ICR 799: the reason or principal reason for the dismissal is a question of fact of the Tribunal. As such it is a matter of either direct evidence or of inference from primary facts established by evidence. The Tribunal, when assessing the reason for dismissal, can draw reasonable inferences from primary facts established by the evidence or not contested by the evidence;
- c. Fecitt v NHS Manchester [2012] ICR 372, CA: the disclosure must be the primary reason for the dismissal;
- d. Trustees of Mama East African Women's Group v Dobson EAT 0220/05: the Tribunal must consider why the dismissing officer act as they did. What, consciously or unconsciously, was the reason?

55. The Tribunal has also had reference to s43B ERA 1996 which gives the statutory definition of what a claimant is required to do in order to make a protected disclosure. In relation to those requirements we note the following relevant cases:

- a. Chesterton Global v Nurmohamed [2018] ICR 731, CA:
 - i. In relation to the question of the public interest: even where a disclosure relates to a breach of the worker's own contract of employment (or some other matter where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest, as well as in the personal interest of the worker. The following factors may be relevant:
 - 1. the numbers in the group whose interests the disclosure served
 - 2. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
 - 3. the nature of the wrongdoing disclosed
 - 4. the identity of the alleged wrongdoer.

ii. In relation to the question of the worker's reasonable belief that the disclosure is made in the public interest: the public interest requirement can be satisfied even where the basis for the public interest disclosure is wrong, and/or there was no public interest in the disclosure being made, provided that the worker's belief that the disclosure was made in the public interest was objectively reasonable (applying Babula v Waltham Forest College [2007] ICR 1026, CA).

b. Kilraine v Wandsworth LBC [2018] ICR 1850, CA: for a statement to be a qualifying disclosure for the purposes of s43B it has to have sufficient factual content and specificity so as to be capable of tending to show one of the matters set out in s43B(1) (a)-(f). Whether a particular statement meets that standard is a matter for evaluative judgment by a tribunal in light of all of the facts and the particular context in which it was made.

56. In relation to the discriminatory dismissal claim, and specifically a claim of victimisation, the Tribunal has had reference s27 EqA 2010. This provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done or may do a protected act.

57. The list of protected acts, set out in s27(2) includes making an allegation (whether or not express) that A or another person has contravened the EqA. We have also had regard to the following relevant case law in relation to this section:

- a. Nagarajan v London Regional Transport [1999] ICR 877, HL: if protected acts have a 'significant influence' on the employer's decision making, discrimination will be made out;
- b. Igen v Wong [2005] ICR 931, CA: for an influence to be 'significant', it does not have to be of great importance. A significant influence is an influence which is more than trivial'.

58. The Tribunal also notes that under s136 EqA 2010 victimisation claims are subject to the 'shifting burden of proof'. This provides that there is an initial burden on a claimant to prove facts from which the tribunal could decide, in the absence of any other explanation, that the respondent has contravened a provision of the EqA – a 'prima facie' case. The burden then passes or shifts to the respondent to prove that discrimination did not occur. If the respondent is unable to do so, the Tribunal is obliged to uphold the discrimination claim.

F. THE TRIBUNAL'S CONCLUSIONS ON THE ISSUES

59. Based on the findings of fact above, and the relevant law, the Tribunal has arrived at the following conclusions in relation to the issues set out in the agreed list of issues as regards liability.

a. The Whistleblowing Dismissal Claim

1. Did the Claimant make a qualifying disclosure as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

a. What did the Claimant say or write? When? To whom?

The Claimant states that she reported to her line manager that the husband of one of the Respondent's directors had sexually harassed her.

b. Did she disclose information?

c. Did she believe the disclosure of that information was made in the public interest?

d. Was that belief reasonable?

e. Did she believe it tended to show one of the matters referred to in section 43B(1)(a) to (f) of the Employment Rights Act 1996?

f. Was that belief reasonable?

2. If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to her employer.

60. In relation to these issues in the round the Tribunal concludes that the Claimant made a qualifying protected disclosure to Mrs Cannon on Monday 26th June 2023.

61. We find that on that occasion the Claimant made a disclosure to Mrs Cannon in relation to Mr Nkomo's conduct. It is agreed as a matter of fact that she raised the matters referred to in paragraph 26 above. The conduct described was information about what Mr Nkomo had said or done that tended to show in the Claimant's reasonable belief that Mr Nkomo and/or the Respondent who he was discharging management responsibilities for had failed to comply with legal obligations under the EgA 2010 in relation to sexual harassment at work. In the light of the factual circumstances the Claimant disclosed information of sufficient specificity about Mr Nkomo's conduct that she was subjected to in the course of her employment with the Respondent so that her disclosure amounted to a qualifying protected disclosure.
62. We accept the Claimant's evidence that anyone in social care, if abuse concerns in a position of trust and responsibility were raised, would understand that the matters she raised went 'further than the person directly talking', although she only talked about herself. Mrs Cannon, the recipient of the Claimant's report about Mr Nkomo, accepted herself under questioning that the matters covered by the Claimant's disclosure were matters of public interest.
63. Bearing in mind the factors in Chesterton, whilst the Tribunal accepts that there was a mixed public/private element to the disclosure, the matters that Mrs Cannon admitted the Claimant reported to her involved a specific report of sexual misconduct, directed at a junior female employee by a male with senior status at work regardless of his precise employment status. The Respondent is a registered healthcare provider dealing with vulnerable clients with significant safeguarding responsibilities. The Tribunal struggles to see how a report of sexually inappropriate behaviour in such a context is not a matter of public interest.
64. The Tribunal also concludes that the Claimant's belief that this was a matter of public interest was a reasonable one. In the Tribunal's judgment, Mrs

Cannon's concession under cross-examination that these were matters of public interest was a sensible one. There was an obvious public interest element to the matters that the Claimant raised with her.

3. The Claimant was dismissed with immediate effect on 28 June 2023. Was the sole or principal reason that she was dismissed because she made a protected disclosure?

65. Overall, the Tribunal concludes that the principal reason for the Claimant's dismissal by Mrs Chapel-Nkomo was the making of the protected disclosure about Mr Nkomo by the Claimant to Mrs Cannon, as passed on to Mrs Chapel-Nkomo by Mrs Cannon.
66. In reaching this conclusion, the Tribunal has considered the direct evidence in relation to the reason given by Mrs Chapel-Nkomo for dismissing the Claimant during the meeting of Wednesday 28th June along with inferences that can be drawn from other primary facts.
67. The Tribunal concludes that despite the absence of a formal written complaint by the Claimant, Mrs Chapel-Nkomo was told of the Claimant's public interest disclosure about her husband Mr Nkomo's conduct to Mrs Cannon the day before dismissing the Claimant and prior to taking steps to convene the meeting at which the termination of employment was carried out.
68. Further, the Tribunal concludes that at the time of dismissal Mrs Chapel-Nkomo knew of the fact and nature of the disclosure – reports of sexually inappropriate conduct by her husband Mr Nkomo towards the Claimant, a new member of staff. Such a disclosure, if properly acted upon, would have been problematic not just for the Respondent but also for Mr Chapel-Nkomo personally.
69. The Tribunal draws an inference from the timing of the dismissal, being the day following the reporting of the disclosure to Mrs Chapel-Nkomo by Mrs

Cannon, the absence of supportive documentary evidence for performance concerns said to be relied on as the reason for dismissal of the Claimant and the lack of documentary evidence in relation to the adherence to procedures where reports concerning safeguarding issues were made to the Respondent, a registered care provider.

70. The Tribunal finds that the reason given for dismissal was unsupported by other evidence, and that serious matters reported in the disclosure were not looked into or addressed by the Respondent once the Claimant was dismissed. From the timing of the dismissal and the approach taken by Mrs Chapel-Nkomo to the allegations in the disclosure made (i.e. to do nothing about them), the Tribunal infers that there was a link between the making of the disclosure by the Claimant and her dismissal.
71. To set against that inference, the Tribunal has assessed Mrs Chapel-Nkomo's evidence on the reason for dismissal. Based on the Tribunal's findings on credibility as set out above in this judgment, the Tribunal rejects Mrs Chapel-Nkomo's evidence that the dismissal had nothing to do with the Claimant's protected disclosure. Her inconsistency on matters of timing of her decision to convene the performance meeting and the decision to dismiss, along with the absence of corroborating documentary evidence supporting the alleged performance and conduct concerns, has led to Tribunal to reject her evidence on the reason for the dismissal generally.
72. Upon rejecting Mrs Chapel-Nkomo's evidence on this point, and on the basis of the inference drawn from other primary facts, the Tribunal concludes that Mrs Chapel-Nkomo's conscious or subconscious reason for dismissing the Claimant was principally because the Claimant had made the protected disclosures about Mr Nkomo. In the Tribunal's judgment, the performance meeting was convened following the disclosure because of the disclosure with a view to dismissing the Claimant as a response to the disclosure.

73. The Tribunal finds support for these conclusions in the finding that when challenged by the Claimant in the meeting that led to the dismissal – ‘I know why you have done this, it is because of what your husband did’ – Mrs Chapel-Nkomo denied this by asserting that the decision to dismiss the Claimant for conduct had been made the previous week. That assertion was wholly at odds with Mrs Chapel-Nkomo’s evidence to this Tribunal that the decision to dismiss was made during the meeting in response to the Claimant’s conduct at the meeting. These inconsistent explanations were both in the Tribunal’s view attempts by Mrs Chapel-Nkomo to divert from the reality that the Claimant’s protected disclosure was at play when the dismissal meeting was convened, when the dismissal took place and when the Respondent sought to justify the dismissal afterwards.

74. Overall, the Tribunal concludes that Mrs Chapel-Nkomo’s explanations of the reason for C’s dismissal cannot be relied on, and that the proper inference that can be drawn from the timing of the dismissal, the absence of supporting evidence for the reason for dismissal, the failure to follow up on the allegations in the protected disclosure and Mrs Chapel-Nkomo’s changing position on when the decision to dismiss was made is that it was the prohibited reason – the protected disclosure about Mr Nkomo – that was the principal reason for the Claimant’s dismissal.

b. The Discriminatory Dismissal Claim - Victimisation

4. Did the Claimant do a protected act by reporting to her line manager that the husband of one of the Respondent’s directors had sexually harassed her?

5. The Claimant was dismissed with immediate effect on 28 June 2023. By doing so, did it subject the claimant to detriment?

75. At the outset of the hearing, the Respondent’s representative indicated that there was no dispute that the Claimant’s report to Mrs Cannon in relation to Mr Nkomo’s sexually inappropriate conduct towards her was a protected act. Further, the Respondent’s representative did not dispute that the dismissal of the Claimant amounted to a detriment. These concessions were repeated in

the Respondent's written closing submissions. The sole disputed issue in the victimisation claim is, therefore, whether the Claimant was subjected to the dismissal detriment because she did that protected act.

6. If so, was it because the Claimant did a protected act?

76. Overall, the Tribunal concludes that the protected act done by the Claimant when reporting on Mr Nkomo's conduct to Mrs Cannon had a significant (meaning more than trivial) influence on Mrs Chapel-Nkomo's decision to dismiss the Claimant. The dismissal of the Claimant was as a result because she had done a protected act.

77. In relation to the victimisation claim, the Tribunal considers and applies the shifting burden of proof provisions. The findings in relation to the timing of the dismissal, the nature of the report that the Claimant made about Mr Nkomo, Mr Nkomo's senior role with the company and his personal relationship with Mrs Chapel-Nkomo the dismissing officer give rise to facts from which it could be inferred that the reason why the Claimant was dismissed was because of the protected act, being the complaint to Mrs Cannon about Mr Nkomo's conduct which Mrs Cannon relayed on to Mrs Chapel-Nkomo.

78. In such circumstances, the burden shifts to the Respondent to prove that discrimination did not occur. For the reasons given previously, and in particular the Tribunal's findings on credibility, the Tribunal rejects Mrs Chapel-Nkomo's account of the reason for the Claimant's dismissal. Again, the Tribunal concludes that Mrs Chapel-Nkomo knew of the disclosure prior to dismissing the Claimant and when convening the meeting with her which ultimately led to the dismissal. The Tribunal draws inferences from the timing of the dismissal, the non-disclosure of supportive evidence for performance and conduct concerns said to lie behind the dismissal and the lack of documentary evidence in relation to the adherence to procedures where reports concerning safeguarding issues were made to the Respondent, a registered care provider. The Tribunal also takes into account Mrs Chapel-

Nkomo's changing evidence as to the timing of her decision to convene the meeting that resulted in dismissal and the timing of her decision to dismiss the Claimant.

79. Upon the rejection of Mrs Chapel-Nkomo's evidence as to the reason for the Claimant's dismissal, the Respondent fails to discharge the shifting burden to prove that discrimination did not occur. The complaint of victimisation is made out.

G. OVERALL CONCLUSIONS

80. For the above reasons, the Claimant's claim of unfair dismissal on ground of protected disclosures succeeds, as does her claim of victimisation. A further hearing will now be listed to consider appropriate remedy.

Approved by:

Employment Judge Baran

Date: 23 June 2025

Reasons sent to the parties on:

27/06/2025

For the Tribunal Office:

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/