EMPLOYMENT TRIBUNALS

London South Employment Tribunal

6 - 9 October 2025 (video)

Claimants: A

Respondents: B [R1]
C Ltd [R2]

Before: Judge M Aspinall (sitting as an Employment Judge)
Ms S Goldthorpe
Mr S Huggins

Appearances: A, in person
Miss T Jones of Counsel for the Respondents

JUDGMENT WITH REASONS

The claims for unfair dismissal, automatically unfair dismissal, protected disclosure detriments, harassment, victimisation, breach of working time regulations, unlawful deduction from wages, breach of contract and failure to provide written particulars of employment are not well founded and are dismissed.

BACKGROUND

1. A was employed by C Ltd, a company operating a hospitality business. The First Respondent, B, is the proprietor and director of the Second Respondent company. The precise dates and continuity of the Claimant's employment became a central dispute in these proceedings, with profound implications for multiple heads of claim as detailed in our findings below.

2. The Claimant contended he was continuously employed from August 2015 until his dismissal on 25 August 2023, initially as an Assistant and latterly as Manager or General Manager. The Respondents maintained that employment occurred during three discrete periods: September 2015 to August 2016, August 2021 to November 2021, and October 2022 to August 2023, with no continuity between these periods. Although it was accepted in the Claimant's ET1 that there were periods when he was not actively working for the Respondents, he maintained he remained employed under an overarching contract throughout. This dispute over employment continuity proved fundamental to the jurisdictional analysis for unfair dismissal claims and underpinned our assessment of the wages and working time claims detailed below.

3. The relationship between the parties extended far beyond conventional employment boundaries. Evidence revealed a complex dynamic involving personal friendship, shared accommodation, financial interdependence, and mutual participation in illegal drug use. This profoundly blurred relationship became central to understanding the claims and assessing the credibility of the parties' evidence, particularly in relation to

the harassment and protected disclosure allegations examined in our findings.

4. The events giving rise to these proceedings occurred primarily during 2023, culminating in the Claimant's suspension on 9 August 2023 following his written admissions of workplace drug use, and his subsequent dismissal on 25 August 2023. The Claimant alleged that his dismissal was motivated by a protected disclosure he claimed to have made on 5 August 2023, in which he allegedly complained about sexual harassment and criminal conduct. As we detail in our protected disclosure analysis below, this temporal sequence proved crucial to determining the true reason for dismissal.

The Nature of This Employment Relationship

5. This case exposed what can only be described as a profoundly dysfunctional working environment that defied conventional employment standards. The relationship between the parties was characterised by a complete absence of professional boundaries, systematic illegality, and documentation so inadequate as to make factual reconstruction extremely difficult. This dysfunctional nature permeated every aspect of our analysis and fundamentally affected the assessment of all claims brought.

6. The employment arrangements were entirely informal and unstructured. There were no proper employment records, no systematic payroll arrangements, and substantial payments made in cash without documentation. The Claimant acknowledged receiving significant sums in cash throughout his employment but could provide no reliable evidence of amounts, frequency, or purpose. This cash payment culture made it impossible to determine with any accuracy what wages were actually due or paid, directly impacting our assessment of the unlawful deduction claims discussed below.

7. The relationship encompassed multiple overlapping elements that fundamentally undermined its professional nature. The parties shared accommodation arrangements at the business premises, creating a live-in situation that blurred the boundaries between workplace and home. There was evidence of significant financial interdependence extending beyond normal employment, with the Claimant apparently receiving financial support during periods when he may not have been formally employed. This interdependence became relevant to our assessment of the continuity of employment discussed in our jurisdictional findings.

8. Most seriously, both parties admitted to systematic consumption of Class A drugs. Both parties admitted to cocaine use, with the Claimant admitting use both socially and at work premises and alleging that B also used cocaine at work (which B denied, admitting only to social use). The Claimant additionally admitted to crystal methamphetamine use both socially and at work premises, though he did not allege that B used this substance and B denied any such use. This illegal activity permeated the relationship and created an environment where normal professional standards simply did not exist. The evidence revealed that drug procurement and consumption was a regular feature of their interactions over several years. These admissions proved central to our assessment of both the dismissal claims and, critically, the harassment allegations where the Claimant's willing participation in drug-related activities informed our analysis of whether all of the conduct, now complained of, was "unwanted."

9. The parties' own communications, particularly the extensive electronic exchanges spanning 2019-2023, revealed a relationship that oscillated between professional duties, personal friendship, and intimate personal interactions. The messages demonstrated a mutually flirtatious and sexually explicit dynamic with content initiated and reciprocated by both parties. The communications also contained detailed drug procurement and supply discussions, with both parties accepting in evidence that these messages accurately reflected their regular coordination of illegal drug acquisition and consumption. These exchanges went far beyond any normal employment relationship and created personal exchanges that fundamentally blurred professional boundaries. These contemporaneous communications became the cornerstone of our factual analysis across multiple heads of claim, as detailed throughout our findings below.

10. This dysfunctional background was fundamental to our assessment of all claims. The absence of professional boundaries, the systematic illegality, and the complete lack of proper documentation created an environment where normal employment law protections were difficult to apply meaningfully. The parties had created a relationship that existed outside conventional employment frameworks, making retrospective legal analysis extremely challenging.

APPLICABLE LAW

Employment Rights Act 1996

Continuity of Employment

11. Section 212 of the Employment Rights Act 1996 provides that continuity of employment is determined by reference to weeks during which the employee's relations with their employer are governed by a contract of employment. Section 212(1) establishes the basic principle that each week counts towards continuous employment if the employee's relations with their employer are governed by a contract of employment.

12. Section 212(3)(b) provides a statutory exception for periods of "temporary cessation of work" which do not break continuity. The leading authority on this provision is **Ford v Warwickshire County Council** [1983] ICR 273, which established that tribunals must consider the length of the break, the reason for it, and the overall context when determining whether a cessation was "temporary." A break caused by resignation to take up other employment is not a temporary cessation of work.

13. The concept of an overarching contract capable of bridging employment gaps was established in **Carmichael v National Power plc** [2000] IRLR 43. The House of Lords held that for such a contract to exist, there must be an "irreducible minimum of mutual obligation" during the gaps - the employer must be obliged to offer work and the employee must be obliged to accept it. Mere hope or expectation of future work is insufficient.

14. **Nethermere (St Neots) Ltd v Gardiner** [1984] ICR 612 recognised that even informal employment arrangements can create continuity where there is sufficient mutuality of obligation, but this requires evidence of exclusive availability and genuine obligation rather than mere possibility of future work.

15. **Marley v Forward Trust Group Ltd** [1986] ICR 891 established that express contractual terms stating that previous employment does not count towards

continuous service are powerful evidence of the parties' mutual intention to break continuity, though such clauses cannot override legal continuity if it exists in fact.

Unfair Dismissal

16. Sections 94 and 98 of the Employment Rights Act 1996 establish the framework for ordinary unfair dismissal claims. Section 94 grants employees the right not to be unfairly dismissed, while section 98 sets out the test for fairness.

17. Section 98(1) and (2) require the employer to show the reason for dismissal and that it falls within one of the potentially fair reasons including conduct under section 98(2)(b). Section 98(4) then requires the tribunal to determine whether the dismissal was fair or unfair in all the circumstances, having regard to whether the employer acted reasonably in treating the reason as sufficient for dismissal.

18. Section 108(1) establishes the qualifying period of two years' continuous employment for ordinary unfair dismissal claims, subject to exceptions including automatically unfair dismissal under section 103A.

19. **British Home Stores Ltd v Burchell** [1980] ICR 303 established the three-stage test for conduct dismissals: (1) genuine belief in misconduct, (2) reasonable grounds for that belief, and (3) adequate investigation. The EAT emphasised that the question is not whether the employee actually committed misconduct, but whether the employer genuinely believed they did based on reasonable grounds following adequate investigation.

20. **Iceland Frozen Foods Ltd v Jones** [1983] ICR 17 established the "band of reasonable responses" test, requiring tribunals to determine whether dismissal was a response that a reasonable employer could have taken, without substituting their own decision for that of the employer.

21. **Hadjioannou v Coral Casinos Ltd** [1981] IRLR 352 established that consistency of treatment between employees is relevant to the reasonableness of dismissal decisions. The EAT held that while employers need not treat all cases identically, significant inconsistency in treatment of comparable cases may render a dismissal unfair, though this must be weighed against other factors including the strength of evidence in each case.

22. **Laws v London Chronicle** [1959] 1 WLR 698 established that gross misconduct constituting fundamental breach of contract justifies summary dismissal without notice.

Automatically Unfair Dismissal - Protected Disclosures

23. Section 103A of the Employment Rights Act 1996 provides that dismissal is automatically unfair if the reason or principal reason is that the employee made a protected disclosure. This provision removes the qualifying service requirement and shifts the burden of proof once a prima facie case is established.

24. Section 43B ERA 1996 defines qualifying disclosures as disclosures of information which, in the reasonable belief of the worker making the disclosure, are made in the public interest and tend to show specified failures including criminal offences under section 43B(1)(a).

25. **Kilraine v London Borough of Wandsworth** [2018] EWCA Civ 1436 established that alleged disclosures must have "sufficient factual content and specificity such as is capable of tending to show one of the six relevant failures" in section 43B. The Court of Appeal emphasised that disclosures must convey facts or information rather than mere conclusions or accusations.

26. **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] ICR 325 drew the crucial distinction between 'disclosure of information' and mere 'allegation.' Information involves facts capable of verification, while allegations are merely accusations or conclusions. The EAT held that saying "you are not complying with health and safety requirements" without more is allegation, not information.

27. **Kuzel v Roche Products Ltd** [2008] EWCA Civ 380 addressed burden of proof in whistleblowing cases, establishing that where a protected disclosure is made, the burden shifts to the employer to show the disclosure was not the reason for dismissal.

Protected Disclosure Detriments

28. Section 47B ERA 1996 protects workers from detriment on the ground that they have made a protected disclosure. **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] UKHL 11 established that "detriment" means putting under a disadvantage, and that the treatment must be because of the protected disclosure.

29. **Fecitt and others v NHS Manchester** [2011] EWCA Civ 1190 addressed causation requirements, establishing that the protected disclosure must be a material factor in the decision to impose the detriment.

Wages and Working Time

30. Section 13 ERA 1996 prohibits unlawful deductions from wages unless authorised by statute, contract, or prior written consent. **Delaney v Staples** [1992] ICR 483 established the definition of "wages" and that wages must be "properly payable" to constitute an unlawful deduction.

31. **Garratt v Mirror Group Newspapers** [2011] EWCA Civ 425 established that even where money is owed, there must be clear contractual authorisation for any deductions.

32. **Royal Mencap Society v Tomlinson-Blake** [2021] UKSC 8 defined "working time" under the Working Time Regulations 1998, establishing when employees are genuinely working as opposed to merely being available for work.

Furlough Claims

33. **Mones v Lisa Franklin Ltd** [2022] EAT 199 established that the Coronavirus Job Retention Scheme creates no direct statutory or contractual right between employer and employee, regulating only payments between HMRC and employers.

34. **Wilson v Financial Conduct Authority** ET/2203011/2021 held that employers had no obligation to apply for or maintain CJRS claims, with participation being entirely discretionary.

35. **Alves v Team Support Staff Ltd** ET/2206655/2020 established that furlough payments, if made, constitute "wages" under section 27 ERA 1996, but entitlement

must arise from contractual agreement.

Contract Claims

36. **Capek v Lincolnshire County Council** [2000] ICR 878 established that under the Employment Tribunals Extension of Jurisdiction Order 1994, contract claims must arise or be outstanding on termination.

37. **Addis v Gramophone Co Ltd** [1909] AC 488 established that gross misconduct constituting repudiatory breach of contract defeats claims for notice pay.

Written Particulars

38. Section 1 ERA 1996 requires employers to provide written particulars of employment terms. **System Floors (UK) Ltd v Daniel** [1982] ICR 54 established that the section 1 statement is evidence of terms but not necessarily the contract itself.

Equality Act 2010

Harassment

39. Section 26 Equality Act 2010 prohibits harassment related to protected characteristics. Section 26(1) defines harassment as unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

40. Section 26(4) requires tribunals, in determining whether conduct has the prohibited effect, to take into account the perception of the victim, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect.

41. **Richmond Pharmacology v Dhaliwal** [2009] ICR 724 established the framework for harassment claims, emphasising that the objective test under section 26(4) requires consideration of all circumstances including the claimant's own behaviour.

42. **Weeks v Everything Everywhere Ltd** [2012] UKEAT 0482/11 established that if a claimant actively and willingly participates in conduct, they cannot later claim it was unwanted (active participation undermines the 'unwanted' element essential to harassment claims). The case demonstrates that a culture of mutual banter, while often ill-advised, is not harassment if the claimant was a voluntary party to it.

43. **Land Registry v Benson** [2012] ICR 627 (EAT), **Driskel v Peninsula Business Services** [2000] IRLR 151 (EAT), and **Pemberton v Inwood** [2018] EWCA Civ 564 recognised that employees may tolerate harassment out of fear or vulnerability, with legal claims being delayed reactions rather than changes of heart. However, this must be distinguished from active, willing participation.

44. **Hendricks v Metropolitan Police Commissioner** [2003] ICR 530 addressed the "continuing act" doctrine for discrimination claims brought outside the primary time limit. The House of Lords established that tribunals must examine whether alleged incidents constitute "an ongoing situation or a continuing state of affairs" rather than "a succession of unconnected or isolated specific acts" to determine whether earlier conduct forms part of a continuing act extending to in-time conduct.

Victimisation

45. Section 27 Equality Act 2010 prohibits victimisation where a person subjects another

to detriment because the victim has done a protected act. The section requires: (1) a protected act (alleging EqA contravention), (2) detriment, and (3) causation (detriment because of protected act).

46. While the truth of discrimination allegations is irrelevant to whether a protected act occurred, the complaint must have been genuinely made. A protected act requires that the claimant actually alleged a contravention of the Equality Act.

47. **Nagarajan v London Regional Transport** [1999] UKHL 36 established the test for causation in victimisation claims, requiring that the protected act be a reason for the treatment complained of. The House of Lords held that the question is whether the protected act had a significant influence on the outcome, applying a "reason why" test rather than requiring the protected act to be the sole or main reason.

Evidence and Procedure
Contemporaneous Evidence

48. **Gestmin SGPS SA v Credit Suisse (UK) Ltd** [2013] EWHC 3560 (Comm) established the primacy of contemporaneous documents over oral testimony, recognising that contemporaneous evidence is a far more reliable indicator of parties' true feelings and intentions than oral testimony given years later. The judgment warned against the "flavour of retrospective reinterpretation" of events.

Burden and Standard of Proof

49. Throughout employment tribunal proceedings, the standard of proof is the balance of probabilities. For discrimination claims, the burden of proof provisions in sections 136 Equality Act 2010 apply, requiring claimants to establish facts from which the tribunal could decide that discrimination occurred, whereupon the burden shifts to respondents to show they did not discriminate.

50. This comprehensive legal framework provides the foundation for our analysis of the claims before us, with each principle being applied to the specific facts and circumstances of this case as detailed in our findings below.

COMPLAINTS AND ISSUES

51. The Claimant brought multiple heads of claim arising from his employment and dismissal, each raising specific legal and factual issues that were comprehensively set out in the agreed list of issues prepared following the preliminary hearing. Many of these issues were interconnected, with our findings on employment continuity having direct implications for multiple other claims.

Automatically Unfair Dismissal and Protected Disclosure Detriments

52. The primary complaint was automatically unfair dismissal under section 103A of the Employment Rights Act 1996, alleging dismissal for making protected disclosures about criminal conduct and sexual harassment. The Claimant maintained that on 5 August 2023, he verbally disclosed to B that his conduct constituted criminal offences and sexual harassment, and that this disclosure was the reason for his subsequent dismissal. Protected disclosure detriment claims under section 47B of the Employment Rights Act 1996 mirrored these allegations, contending that detriments including suspension, disciplinary procedures, and dismissal were imposed because of his alleged whistleblowing.

53. The key issues were what was the sole or principal reason for dismissal, whether the Claimant made qualifying protected disclosures, and whether any detriments were imposed because of such disclosures. As we detail in our protected disclosure analysis, the temporal sequence proved problematic given the contemporaneous evidence of the parties' continued cordial relationship immediately following the alleged disclosure. The success of these claims was entirely dependent on establishing a qualifying protected disclosure under section 43B ERA 1996.

Ordinary Unfair Dismissal and Continuity of Service

54. In the alternative, the Claimant claimed ordinary unfair dismissal under sections 94 and 98 of the Employment Rights Act 1996, contending that even if his dismissal was for misconduct, the procedure was fundamentally flawed and outside the band of reasonable responses. He alleged failures in investigation, lack of fair hearing, predetermined decision-making, and absence of appeal rights.

55. This claim raised the critical jurisdictional issue of whether the Claimant had two years' continuous service prior to dismissal on 25 August 2023. The Claimant maintained continuous employment from August 2015 to August 2023, whilst the Respondents maintained employment occurred only from October 2022 to August 2023. This jurisdictional issue proved determinative for the ordinary unfair dismissal claim and informed our assessment of other employment-related claims. If conduct-related, the issues included whether the Respondents had genuine belief, reasonable grounds, adequate investigation, and whether dismissal was within the band of reasonable responses.

Harassment and Victimisation Claims

56. The Claimant brought extensive harassment claims under section 26 of the Equality Act 2010, alleging a pattern of unwanted sexual conduct spanning from winter 2022 to summer 2023. These included allegations of sleep intrusion for drug-fuelled activities, inappropriate touching, exposure to sexual acts, requests to purchase and model intimate clothing, sexually explicit messaging, and culminating in an alleged sexual assault on 5 August 2023 involving cocaine use and forced oral sex simulation.

57. The key issues were whether specified conduct occurred, whether such conduct was unwanted, sexual in nature, related to sex or sexual orientation, whether it violated dignity or created hostile environment, and whether the Claimant rejected unwanted conduct. Our analysis of these issues was fundamental to the victimisation and protected disclosure claims.

58. Victimisation claims under section 27 of the Equality Act 2010 alleged that the Respondents subjected the Claimant to detriments because he had made complaints about discriminatory treatment. The claimed detriments included raising misconduct allegations, suspension, unfair disciplinary procedures, dismissal, disclosure of allegations to third parties, and failure to pay sums due. The issues were whether the Claimant performed protected acts and was subjected to detriments because of such acts. These claims were directly dependent on our findings regarding whether genuine protected acts occurred.

Employment Terms and Working Conditions

59. The Claimant alleged breaches of working time regulations, claiming he was required to work excessive hours averaging 70-90 hours per week without proper agreements

or protections. The issues were whether the Claimant was required to work excessive hours without proper agreements contrary to the Working Time Regulations 1998. This analysis was informed by our findings on employment periods and the problematic documentation issues.

60. He sought compensation for unlawful deduction of wages, alleging underpayment throughout his employment and failure to receive proper holiday pay. The issues were whether the Claimant was properly paid wages and holiday entitlements under the Employment Rights Act 1996. These claims were significantly affected by the cash payment culture identified in our factual analysis and the continuity issues.

61. The Claimant also claimed compensation for the Respondents' failure to provide written particulars of employment as required by section 1 of the Employment Rights Act 1996. The issue was whether the First Respondent provided the Claimant with written particulars of employment as required by sections 1 and 12. This related to the broader documentation issues that characterised this problematic employment relationship.

Breach of Contract Claims

62. Breach of contract claims encompassed failure to provide furlough payments during 2020-2021, inadequate pension arrangements, improper tax and National Insurance handling, holiday pay shortfalls, and failure to provide contractual notice. The issues were whether the Claimant had contractual rights to furlough pay, pension provision, tax handling, holidays, and notice. The furlough claims in particular were affected by our findings on employment continuity, specifically the evidence that the Claimant was working elsewhere during the claimed furlough period.

Procedural and Time Limit Issues

63. ACAS Code compliance issues included whether the Respondents complied with ACAS Code requirements, including potential failures in investigation, hearing procedures, independence, and appeal provisions. While we identified procedural shortcomings, these became academic given our findings on the substantive claims.

64. Time limit issues required determination of whether claims were brought within applicable time limits and whether time should be extended where claims were out of time. This analysis intersected with our continuity findings and the discrete employment periods we identified.

THE HEARING

65. This matter was heard over four days by video hearing on 6, 7 and 8 October 2025 before Judge M Aspinall sitting with lay members Ms Goldthorpe and Mr Huggins, with judgment being handed down orally on 9 October 2025. The Claimant appeared in person, having previously been represented by counsel. The Respondents were represented by Ms Jones of counsel instructed by solicitors.

66. The hearing was conducted remotely due to adjustments requested by the Claimant relating to his mental health condition and concerns about direct interaction with the Respondents. An anonymity order was in place to protect the parties' identities given the sensitive nature of the allegations and evidence. The Tribunal made and maintains this order having balanced open justice against the risk of jigsaw identification in allegations about sexual conduct; a less restrictive measure would

not suffice.

67. The procedural conduct of this case was profoundly unsatisfactory and reflected the dysfunctional nature of the underlying employment relationship. Case management orders made in January 2025 were largely disregarded by both parties. The Claimant only made his disclosure of documents on 4 September 2025, when this was due in April. The Respondents' witness statement was not provided until 3 October 2025, mere days before the hearing. The Claimant failed to provide any witness statement until directed to do so on the first day of the hearing itself.

68. This poor preparation, along with a general approach between the parties of seeking to score points against each other in correspondence and in cross-applications to the Tribunal, was one of the proximate causes of the case being so poorly prepared by the morning on which the final hearing started. It is unacceptable. The conduct of both parties in preparing for this hearing fell significantly below the standard expected by the Tribunal in failing to comply with clear, express orders made at far earlier stages in this case.

69. We express our gratitude to the latterly instructed solicitors for the Respondents, who were only instructed on 29 September 2025, for their valiant efforts to get the case finally ready for the hearing which started only a few days later. Preparation of the hearing bundle descended into disarray with both parties failing to cooperate effectively, resulting in a bundle exceeding 500 pages with numerous pagination and formatting issues.

70. The late provision of witness statements and problematic bundle preparation, while regrettable, did not affect the fairness of our determination. Both parties had adequate opportunity to present their cases, and our findings rest primarily on contemporaneous documentary evidence that was available throughout the proceedings.

71. The Tribunal heard oral evidence from the Claimant and from B for the Respondents. Neither party called supporting witnesses despite both having identified potential witnesses in their pleadings. Given the circumstances of this case, the Tribunal issued warnings about self-incrimination given the parties' admissions regarding illegal drug use, reminding both parties that they were not obliged to answer questions that might tend to incriminate them criminally.

72. A significant portion of the evidence consisted of electronic communications, particularly WhatsApp, iMessage, text and email exchanges spanning several years, which provided contemporaneous evidence of the parties' relationship and interactions. These messages proved crucial to understanding the true nature of the relationship and assessing the credibility of the various allegations made, particularly in relation to the harassment claims and the protected disclosure allegations.

THE EVIDENCE

The Claimant's Evidence

73. The Claimant gave evidence that he was continuously employed from August 2015 until August 2023, working initially as an Assistant and latterly as Manager or General Manager. This account of continuous employment directly contradicted the HMRC evidence we examine below and formed the foundation of his challenge to our

jurisdictional findings.

74. He described a deteriorating relationship with B characterised by increasing pressure to participate in drug use and unwanted sexual conduct throughout 2022 and 2023. However, as we detail in our harassment analysis, this account of a "deteriorating" relationship was not supported by the contemporaneous communications evidence showing continued enthusiastic participation.

75. His account of the critical incident on 5 August 2023 was that B provided cocaine in the office and attempted to force the Claimant to simulate oral sex by pushing his head towards his genitals. The Claimant stated he told B "what you're doing is illegal" and that he didn't want to participate in drug use anymore. He characterised this as a protected disclosure about criminal conduct and sexual harassment. As we find below, this account was fundamentally undermined by his own communications in the immediate aftermath of the alleged incident.

76. The Claimant acknowledged extensive drug use throughout his employment, including consumption of cocaine and crystal methamphetamine both socially and at work premises. He accepted that drug use at work constituted gross misconduct warranting dismissal but maintained this was not the true reason for his dismissal. The admission of consuming illegal drugs at the workplace constitutes a quintessential example of conduct that would be considered gross misconduct by a reasonable employer. This admission proved crucial to our dismissal analysis and created a fundamental contradiction in his case.

77. The Claimant also provided evidence of his PTSD and mental health issues. However, this evidence was neither contemporaneous with his employment nor, based on the limited medical evidence provided, directly or proximately caused by his employment with the Respondents. While we have considerable sympathy for the Claimant's mental health condition, we gave this evidence little weight in determining the claims before us.

B's Evidence

78. B denied that any incident occurred on 5 August 2023 as alleged by the Claimant. He provided evidence that he was unwell that day, supported by GP records showing treatment for Campylobacter infection with symptoms including diarrhoea and vomiting. The medical records showed consultation on 4 August 2023, the day before the alleged incident, with symptom onset recorded as commencing on 3 August. He states he was accompanied by his brother and sister-in-law for the duration of his time at the premises that day. While this evidence was not independently corroborated, the Claimant did not challenge this assertion during cross-examination or provide any evidence contradicting the illness account. We give this medical evidence limited weight not because of any doubts about its authenticity or accuracy, but because our conclusion rests primarily on the Claimant's own contemporaneous communications, which provide decisive evidence regardless of the medical position. The contemporaneous evidence alone is sufficient to resolve the factual dispute about 5 August 2023, making the medical evidence, while consistent with our findings, not determinative.

79. B admitted to social drug use with the Claimant outside work premises but denied any drug use on work premises or during work hours. His evidence was that the

disciplinary action arose from complaints by staff member Elliot Moore about the Claimant's behaviour at work, followed by the Claimant's own written admissions of workplace drug use in electronic messages on 9 August 2023. This sequence of events proved central to our analysis of the reason for dismissal.

Documentary Evidence

80. The most significant evidence consisted of hundreds of pages of WhatsApp, iMessage, text message, email and other electronic communications between the parties spanning 2019-2023. These messages revealed a complex relationship involving detailed coordination of illegal drug procurement and supply arrangements, with both parties accepting in evidence the accuracy of communications showing their regular collaboration in acquiring Class A substances. The exchanges demonstrated mutually initiated sexually explicit content and flirtatious communications, with both parties actively participating in and escalating intimate discussions. These communications extended well beyond conventional employment boundaries and became central to our assessment of whether later conduct was genuinely "unwanted." These contemporaneous communications became the bedrock of our factual analysis across multiple heads of claim.

81. Critically, messages immediately following the alleged 5 August incident showed no change in the Claimant's communication style or tone. On 6 August, he sent caring messages asking if B needed anything while ill, ending with kisses and expressing concern for his wellbeing. On 7 August, he continued normal work communications with the same friendly, solicitous tone. This evidence proved fatal to both the protected disclosure claims and the harassment allegations, as we detail in our analysis below.

82. The dramatic change in tone occurred on 9 August following a note left by B's partner asking the Claimant not to sleep in the office. The Claimant's response was aggressive and confrontational, describing the note as "so rude" and "extremely disrespectful," stating he was "fucking seething" and asking where he should leave his keys. This led to further exchanges where the Claimant ultimately admitted to taking "both cocaine and crystal meth while at work." This sequence proved crucial to establishing the real reason for dismissal and directly contradicted the protected disclosure narrative.

Employment Records

83. HMRC records showed significant gaps in employment with the Respondents, supporting their contention of discrete employment periods rather than continuous service. During 2020-2021, HMRC records showed the Claimant working in Cornwall for hotel groups while claiming to be employed by the Respondents. This objective evidence proved determinative for our continuity analysis and had direct implications for the furlough payment claims, as detailed below.

FINDINGS OF FACT AND APPLICATION OF LAW

Continuity of Employment and Qualifying Service

84. Under section 212 of the Employment Rights Act 1996, continuity of employment is determined by reference to weeks during which the employee's relations with their employer are governed by a contract of employment. Having carefully considered all evidence to which we were referred, we find on the balance of probabilities that the Claimant was not continuously employed from 2015 to 2023 as claimed. The HMRC

records, combined with evidence of his employment elsewhere and his extended residence in Cornwall during 2020-2022, demonstrate clear breaks in employment that preclude continuity of service. These findings have direct and determinative implications for the unfair dismissal claims and inform our assessment of the wages, working time, and contract claims detailed below.

85. Following principles established in *Carmichael v National Power plc* [2000] IRLR 43, for an overarching contract to bridge employment gaps, there must be an "irreducible minimum of mutual obligation" during those gaps. The employer must be obliged to offer work, and the employee must be obliged to accept it. A mere hope or expectation of future work is not enough.

86. Following principles established in cases such as *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 612, even informal employment arrangements can create continuity where there is sufficient mutuality of obligation. However, the HMRC evidence showing the Claimant working elsewhere for substantial periods during alleged employment gaps demonstrates absence of the exclusive availability that would support continuity through informal arrangements.

87. The Claimant's case is significantly weakened by evidence that he worked for other employers (hotel groups in Cornwall) for substantial periods, as shown in HMRC records. This is powerful evidence against the existence of an obligation to be available for the Respondents and directly contradicts his claims for furlough payments during the same period, as we address in our contract analysis below.

88. The alternative statutory exception under section 212(3)(b) ERA 1996 for "temporary cessation of work" also fails. Drawing on *Ford v Warwickshire County Council* [1983] ICR 273, the breaks in the Claimant's employment, particularly the period from 2021 to 2022, were lengthy (not "temporary") and the reason for the break was his resignation and relocation to Cornwall to take up other employment, not a temporary lack of work.

89. The clause in the Claimant's October 2022 contract stating "No employment with this or any other previous employer counts as part of your period of continuous employment," applying principles from *Marley v Forward Trust Group Ltd*[1986] ICR 891, is exceptionally powerful evidence of the parties' mutual intention to start afresh and break continuity.

Qualifying Service Conclusion and Its Implications

90. We find that the Claimant's final period of employment commenced on 1 October 2022 and ended on 25 August 2023, giving him approximately 11 months' service. This falls substantially short of the two-year qualifying period required for ordinary unfair dismissal claims under sections 94 and 98 of the Employment Rights Act 1996. This jurisdictional failure is determinative and means the ordinary unfair dismissal claim fails regardless of the merits of the underlying dismissal.

91. This continuity finding also has significant implications for the working time and wages claims, as it establishes that any entitlements must be calculated based on the discrete employment periods rather than the continuous period claimed. Furthermore, it directly undermines the furlough payment claims, as the HMRC evidence shows the Claimant was working elsewhere during the alleged furlough period.

Protected Disclosure Claims - The Central Issue

92. The Claimant's case fundamentally depends on establishing that he made a qualifying protected disclosure on 5 August 2023. Section 43B of the Employment Rights Act 1996 defines qualifying disclosures as disclosures of information which, in the reasonable belief of the worker making the disclosure, are made in the public interest and tend to show that a criminal offence has been, is being, or is likely to be committed.

93. Having examined this allegation with particular care, we find that no such disclosure was made. In *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436, the Court of Appeal held that tribunals should examine alleged disclosures to determine whether they have "sufficient factual content and specificity such as is capable of tending to show one of the six relevant failures" in section 43B. The disclosure must convey facts or information rather than mere conclusions or accusations.

94. The distinction established in *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] ICR 325 between 'disclosure of information' and mere 'allegation' is critical. Information involves facts capable of verification; allegations are merely accusations or conclusions. The alleged statement 'what you're doing is illegal' provides no factual content about which specific acts were illegal, when they occurred, or how they constituted criminal offences. This is pure allegation lacking the informational content required by section 43B.

95. Even if we accepted that some complaint was made on 5 August, which we do not, the alleged disclosure lacks the specificity required by law and fails to satisfy the public interest requirement. Critically, the Claimant admitted in evidence that he did not consider himself to be "whistleblowing" at the time, only realising this possibility later when researching protected disclosures for his tribunal claim. This failure is examined further in our contemporaneous evidence analysis.

Addressing the 'Power Imbalance' Theory

96. Critical Timeline:

    i. **5 August:** Alleged incident

    ii. **6 August:** Caring messages with kisses

    iii. **7 August:** Continued friendly work communications

    iv. **9 August:** Aggressive confrontation over note

    v. **9 August:** Drug use admissions leading to dismissal process

97. We find that any encounter that took place on 5 August 2023 was more likely than not to be of a similar nature to the overall kind of encounters, engagements and drug-fuelled activities that the evidence indicates had occurred between the parties for many years previously. We find that any such encounter was not likely, on the contemporaneous evidence, to cause the distress and concern that the Claimant now, with the benefit of hindsight and the passage of time, ascribes to it.

98. The contemporaneous post-incident evidence is particularly powerful and directly

contradicts the protected disclosure narrative. The Claimant alleges a serious sexual assault occurred in the early hours of 5 August, yet his documented behaviour in the immediate aftermath is entirely inconsistent with this claim. On 6 August, he messaged B with care and concern, ending messages with kisses. On 7 August, he continued normal work communications with the same friendly, solicitous tone.

Placatory Behaviour

99. We have carefully considered the counter-argument that this warmth was not genuine but was 'placatory'—we have considered the possibility that this represents a 'fawning' or 'appeasement' response from a vulnerable person terrified of antagonizing their powerful employer and benefactor. This theory, while plausible in the abstract, is directly contradicted by the Claimant's demonstrated capacity for aggressive confrontation over a far lesser issue just 48 hours later. and the broader context of the relationship.

100. The placatory behaviour theory fails not merely on timing but on psychological plausibility. If the Claimant were genuinely operating under such fear-based constraint that he dared not express distress after an alleged serious sexual assault, this psychological state would be expected to persist, not dramatically reverse. The theory requires us to accept that someone too intimidated to object to sexual assault would simultaneously possess the confidence to aggressively confront their alleged abuser over an apparently innocuous workplace note. While different stimuli can provoke different reactions, the sheer disparity in the gravity of the events—a serious alleged sexual assault versus an apparently innocuous workplace note—makes the Claimant's inverse emotional response highly improbable. This psychological inconsistency, combined with the established pattern of enthusiastic participation, renders the placatory explanation implausible.

101. The psychological implausibility extends beyond timing inconsistencies. Genuine trauma responses, including fawning or appeasement, typically show pattern consistency rather than selective application. Someone experiencing genuine fear-based constraint sufficient to prevent reporting serious sexual assault would be expected to show similar constraint across all interactions with their alleged abuser, not dramatic confrontational capacity within 48 hours over lesser grievances.

The Claimant's Demonstrated Capacity for Confrontation

102. On 9 August 2023, in response to a note left in the office by B's partner (an apparently innocuous workplace note), the Claimant's tone shifts dramatically. He becomes aggressive, challenging, and defiant. His messages include phrases like:

    i. "That's so rude, Paul."

    ii. "I find it extremely disrespectful."

    iii. "I'm fucking seething."

    iv. "I know where I stand. Where should I leave my keys?"

103. This demonstrates unequivocally that the Claimant was capable of confronting B when he felt disrespected. The alleged power imbalance did not render him silent or placatory when genuinely aggrieved. This creates a logical inconsistency: why would

he remain caring and friendly after an alleged serious sexual assault, only to become "fucking seething" over an apparently innocuous workplace note?

104. The more probable conclusion is that his warmth on 6 and 7 August was genuine because no serious incident had occurred to rupture the relationship. The rupture occurred on 9 August over the note and the subsequent work-related dispute, leading to his conduct admissions.

105. We have considered whether the Claimant's caring messages on 6-7 August might represent recognised trauma responses such as "fawning" or appeasement behaviour, where victims attempt to placate their abusers as a psychological survival mechanism. While acknowledging that trauma responses can manifest in counterintuitive ways, this explanation cannot overcome the specific evidence pattern here. Genuine trauma-based responses typically show internal consistency rather than the selective application evident in this case, where alleged constraint after serious sexual assault disappeared within 48 hours when workplace disputes arose.

106. Moreover, the caring messages of 6-7 August were entirely consistent with the established pattern of the relationship spanning several years, rather than representing a departure requiring psychological explanation. The workplace confrontation on 9 August demonstrated coherent articulation of specific grievances and immediate capacity for detailed admissions, which is inconsistent with trauma-based psychological destabilisation. The burden of proof requires more than speculation about possible trauma responses to overcome the weight of contemporaneous evidence showing continuity of the established dynamic.

The Pre-Incident Context of Active Participation

107. The 'power imbalance' theory is further weakened when we examine the nature of their relationship before 5 August. The Claimant was not a passive victim enduring unwanted advances. The evidence shows he was an active, and at times enthusiastic, participant in the flirtatious and inappropriate dynamic.

108. The communications evidence reveals:

    i. He responded to the request to model intimate clothing with "Of course" and created personalised images

    ii. He replied to "I'm expecting a show" with "jazz hands at the ready"

    iii. He replied to drug procurement requests with "will get some, I'm down Baby Cakes"

109. This is not the behaviour of someone reluctantly complying out of fear. It is active engagement and enthusiasm. This established context makes it improbable that he would have a sudden, total rejection of such conduct on 5 August, only to immediately revert to the established friendly dynamic on 6 August without any reference to distress or objection.

110. We have considered whether our analysis adequately accounts for the inherent power imbalance in this employment relationship. The evidence showed the Claimant was dependent on B not only for employment but also for accommodation - sleeping

in the office premises - with B consistently referred to as "Paul Boss" even in intimate communications. In relationships with such stark power differentials, apparent enthusiasm might represent survival strategies rather than genuine consent.

111. However, several factors distinguish this case from one of coercive compliance. The relationship spanned several years with consistent patterns of mutual initiation and escalation by both parties. The Claimant did not merely respond to inappropriate advances; the communications evidence shows he frequently initiated sexually explicit exchanges and drug procurement discussions. The creative engagement evident in responses such as personalised images goes beyond reluctant compliance.

112. Significantly, the evidence demonstrates the Claimant's capacity for direct refusal when genuinely objecting to treatment. His response "No thank you" when addressed disrespectfully on 2 May 2023 shows he possessed agency to refuse conduct when he genuinely opposed it. This capacity for resistance, demonstrated within the same relationship dynamic, undermines any suggestion that he was psychologically incapable of refusing unwanted conduct.

113. The dependency theory also fails to explain the temporal inconsistencies. If the Claimant were operating under such psychological constraint that he could not refuse inappropriate conduct, this would be expected to manifest consistently rather than selectively disappearing when workplace disputes arose.

Power Dynamics Consideration

114. We have carefully considered the inherent power imbalance between employer and employee in assessing whether conduct was truly consensual. However, power imbalance alone cannot overcome clear evidence of enthusiastic participation spanning years. The psychological implausibility analysis above demonstrates that fear-based compliance would manifest consistently, not selectively. The Claimant's demonstrated capacity for aggressive confrontation when genuinely aggrieved, combined with his active initiation of inappropriate exchanges, establishes genuine consent rather than reluctant submission to power.

115. We have also carefully considered additional vulnerability factors beyond the basic employment power imbalance. The evidence showed the Claimant was dependent on B not only for employment but also for accommodation, sleeping in the office premises during substantial periods. This created heightened dependency extending beyond normal employment relationships. The financial interdependence identified in our background analysis, where the Claimant received support during non-employment periods, created additional layers of dependency that could theoretically affect genuine consent.

116. The communications evidence showing the Claimant's use of terms such as "Baby Cakes" in reference to B, and B's consistent designation as "Paul Boss" even in intimate communications, might suggest a dynamic with elements of infantilisation or hierarchical reinforcement that could impact genuine agency.

117. However, these additional vulnerability factors cannot overcome the weight of evidence demonstrating active, enthusiastic participation over several years. The Claimant's capacity for refusal when genuinely objecting - demonstrated through his

"No thank you" response on 2 May 2023 and his aggressive confrontation on 9 August - shows he retained meaningful agency within the relationship despite the dependencies. The creative engagement in responses, the initiation of inappropriate exchanges, and the sustained pattern of willing participation spanning multiple years indicate genuine consent rather than dependency-driven compliance.

118. Moreover, the temporal evidence remains decisive: if dependency-based vulnerability were sufficient to vitiate consent, this would manifest consistently rather than selectively disappearing when workplace disputes arose. The accommodation and financial dependencies existed throughout the relationship but did not prevent the Claimant from expressing genuine grievances when they arose.

The Respondent's Evidence and Corroboration

119. We must also weigh B's evidence. While we have significant concerns about his character and business practices, his account of 5 August is consistent and has a degree of corroboration that the Claimant's account lacks. However, our finding on the 5 August incident is based primarily on the fatal inconsistencies in the Claimant's own contemporaneous evidence and would be the same even if B's alibi evidence was disregarded entirely.

120. The contemporaneous messages alone are sufficient to reject the Claimant's account. Even without considering B's denial or medical evidence, the Claimant's own documented behaviour immediately after the alleged assault - caring messages with kisses, expressions of concern, and continued normal workplace communications - is fundamentally incompatible with his claim of serious sexual assault and protected disclosure. This evidential failure stands independently of any assessment of B's credibility.

121. For completeness, we note that B denies the incident occurred and states he was unwell, supported by GP records showing Campylobacter infection diagnosis with symptoms of diarrhoea and vomiting. He states he was accompanied by his brother and sister-in-law for the duration of his time at the premises that day (which, while uncorroborated, was not challenged by the Claimant).

122. We have the Claimant's uncorroborated oral account on one side. On the other, we have the Respondent's denial, supported by a plausible medical alibi and witness evidence. However, as stated above, our conclusion rests primarily on the Claimant's own contemporaneous evidence rather than acceptance of the Respondent's account.

Conclusion on the Balance of Probabilities

123. While we have sympathy for the Claimant and found his oral evidence was heartfelt, our duty is to the evidence as a whole. The Claimant's account of the 5 August incident stands alone, without any corroboration. It is directly contradicted by his own contemporaneous written communications in the 48 hours that followed. The 'placatory behaviour' theory is undermined by his demonstrated ability to be confrontational with B over lesser issues just days later. The established context of their relationship was one of mutual, consensual, and inappropriate interaction. The Respondent's denial is supported by a consistent and partially corroborated account.

124. Therefore, on the balance of probabilities, the Claimant has not proven that the

alleged incident occurred. To prefer his uncorroborated oral evidence when it is so starkly contradicted by the objective documentary evidence would be legally unsound.

125. This contemporaneous evidence failure affects not only the protected disclosure claims but also forms a central part of our harassment analysis detailed below. The same evidential problems that fundamentally undermine the alleged protected disclosure - namely the Claimant's continued warm communications immediately after the alleged incident, contrasted with his capacity for aggressive confrontation over lesser workplace issues - also demonstrate that the conduct complained of was not genuinely perceived as "unwanted" at the time it occurred.

Harassment Claims - Retrospective Recharacterisation of Consensual Conduct

126. Section 26 of the Equality Act 2010 prohibits harassment related to a protected characteristic. Under subsection (1), a person harasses another if they engage in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating the other's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Under subsection (4), in determining whether conduct has the prohibited effect, tribunals must take into account the perception of the victim, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect.

127. The harassment claims require careful analysis applying the legal framework established in cases such as *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 and *Weeks v Everything Everywhere Ltd* [2012] UKEAT 0482/11. The contemporaneous communications evidence is crucial to this determination and directly connects to our protected disclosure findings above.

The Critical Test of "Unwanted" Conduct

128. Following principles established in *Weeks v Everything*, if a claimant actively and willingly participates in conduct, they cannot later claim it was unwanted. The case demonstrates that a culture of mutual banter, while often ill-advised, is not harassment if the claimant was a voluntary party to it.

129. The communications evidence spanning 2022-2023 demonstrates not mere tolerance of allegedly inappropriate conduct, but active, enthusiastic participation by the Claimant in sexually explicit and flirtatious exchanges. When asked to purchase intimate clothing, the Claimant responded "of course" and created personalised images. When sent sexually explicit messages, he replied with equally flirtatious responses including "jazz hands at the ready." When discussing drug procurement, he used terms of endearment such as "Baby Cakes" and expressed enthusiasm.

130. This evidence of willing participation directly connects to our protected disclosure findings above, fundamentally undermining the Claimant's claim to have made a genuine complaint about sexual harassment on 5 August 2023, as it demonstrates he did not contemporaneously regard the conduct as unwanted or distressing.

The Primacy of Contemporaneous Evidence

131. Drawing on authorities including *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) regarding the reliability of contemporaneous documents, tribunals place immense weight on contemporaneous evidence as it is considered a

far more reliable indicator of the parties' true feelings and intentions than oral testimony given many months or years later.

132. This principle of contemporaneous evidence primacy is directly applicable to both our harassment analysis and our protected disclosure findings, where the same evidential problems undermine both claims. A claimant's contemporaneous reaction is a vital piece of the puzzle in determining their genuine perception at the time.

Mutual Participation - The Evidence of Active Engagement

133. The communications evidence reveals numerous instances where the Claimant initiated inappropriate exchanges rather than merely responding to them. He frequently took the lead in arranging drug supplies, initiated flirtatious exchanges, and when asked to model intimate clothing, went beyond simple compliance by creating personalised images demonstrating creative engagement and apparent enjoyment.

134. Throughout years of alleged harassment, there is no evidence of the Claimant attempting to set boundaries or redirect inappropriate conduct. The messages show no instances of trying to change subjects, ignore inappropriate comments, or redirect conversations to work matters. This evidence of continued willing participation until immediately before dismissal directly contradicts the narrative of escalating distress that supposedly culminated in a protected disclosure on 5 August.

Distinguishing Tolerance from Participation

135. The counterpoint established in cases such as *Land Registry v Benson* [2012] ICR 627 (EAT), *Driskel v Peninsula Business Services* [2000] IRLR 151 (EAT), and *Pemberton v Inwood* [2018] EWCA Civ 564 recognises that employees, especially in precarious positions, may not feel able to object to a manager's behaviour. They may "tolerate" or "endure" harassment out of fear, with the later legal claim being a delayed reaction, not a change of heart. The Court of Appeal in *Pemberton v Inwood* emphasised that the objective test under section 26(4) must consider all circumstances including the claimant's own conduct at the time.

136. However, this case is clearly distinguishable. The evidence shows not tolerance under pressure but enthusiastic voluntary participation. The Claimant was not a junior employee fearful of consequences but an active, willing participant in the inappropriate dynamic over several years. The nature of the relationship, characterised by the blurred boundaries described in our background analysis, supports this finding of mutual participation rather than coercion. Moreover, as demonstrated in our analysis above, the Claimant showed clear capacity to confront B when genuinely aggrieved, undermining any suggestion that he was too intimidated to object to unwanted conduct.

The Objective Test Applied

137. Applying the objective test from authorities including *Richmond Pharmacology v Dhaliwal*, even if a claimant subjectively says they were harassed, the tribunal must ask whether it is reasonable for the conduct to have had that effect. The tribunal must look at all circumstances, including the claimant's own behaviour at the time.

138. The objective test under section 26(4) requires consideration of whether it was reasonable for the conduct to have the proscribed effect. A reasonable person with the Claimant's established pattern of enthusiastic participation in sexually explicit

exchanges, active drug procurement, and creative engagement with intimate requests would not reasonably perceive similar conduct as violating dignity or creating hostility. The objective test cannot be satisfied where the claimant was an active architect of the complained-of dynamic.

139. Following the alleged serious sexual assault on 5 August 2023, the Claimant's messages on 6-7 August were caring and solicitous, asking if B needed anything while ill and ending with kisses. This behaviour is fundamentally inconsistent with someone who believed they had just experienced sexual assault and made a protected disclosure about criminal conduct. This same evidence failure affects both the harassment and protected disclosure claims and represents a fatal flaw in the Claimant's case.

Conclusion on Harassment and Its Impact on Related Claims

140. The evidence strongly supports a finding that the Claimant has retrospectively recharacterised consensual inappropriate conduct as harassment following the breakdown of the relationship and his dismissal. The transformation in the Claimant's narrative correlates with workplace conflicts rather than any escalation in alleged harassment.

141. We therefore find that the alleged conduct was not unwanted within the meaning of section 26. The Claimant was an active, willing participant in the inappropriate dynamic rather than a victim of harassment. The contemporaneous evidence is so compelling in demonstrating willing participation that it would not be reasonable to conclude the conduct had the proscribed effect under section 26(4).

Victimisation - The Analysis of Protected Acts

142. Section 27 of the Equality Act 2010 prohibits victimisation where a person subjects another to a detriment because the victim has done a protected act. Under section 27 Equality Act 2010, victimisation requires: (1) a protected act (alleging EqA contravention), (2) detriment, and (3) causation (detriment because of protected act). While the truth of discrimination allegations is irrelevant to whether a protected act occurred, whether the complaint was genuinely made remains crucial.

143. However, whether a complaint was genuinely made remains crucial. A protected act requires that the claimant actually alleged a contravention of the Equality Act, either in good faith or otherwise. The contemporaneous evidence analysis detailed above is directly relevant to determining whether any such allegation was genuinely made on 5 August 2023.

144. Applying our credibility analysis of the contemporaneous messages, we find that no genuine complaint about discrimination was made on 5 August. Our contemporaneous evidence analysis demonstrates that no genuine complaint about discrimination was made on 5 August, preventing the section 27 gateway from being satisfied. The evidence shows that any grievances expressed were retrospective recharacterisation of consensual conduct following dismissal for admitted misconduct. The same evidential failures that undermine the harassment claims also demonstrate that no protected act occurred under section 27.

145. We have considered whether the Claimant's messages on 9 August 2023 might themselves constitute protected acts under section 27 Equality Act 2010, given they

contained references to discriminatory treatment. In his aggressive response to the workplace note, the Claimant stated he was "fucking seething" and challenged the treatment as "extremely disrespectful." The messages could theoretically be interpreted as alleging less favourable treatment, though they do not explicitly reference the Equality Act or protected characteristics.

146. However, this analysis fails for several reasons. First, the 9 August messages were focused on accommodation arrangements and workplace respect rather than allegations of discrimination based on protected characteristics. The grievances expressed were about general treatment rather than sex-based discrimination or harassment.

147. Second, even if these messages constituted protected acts, the temporal sequence shows that the disciplinary process was triggered by the Claimant's own drug use admissions contained within the same communications, not by any discrimination allegations. The messages stated: "the majority of the cocaine was provided by yourself and lo and behold we were snorting class A drugs in the office five days ago." This admission provided grounds for gross misconduct action regardless of any protected act elements within the same communications.

148. Third, applying causation principles from *Nagarajan v London Regional Transport* [1999] UKHL 36, the reason for the subsequent detriments (suspension, disciplinary proceedings, dismissal) was the misconduct admission, not any protected act. The evidence shows B's response focused on the drug use admissions rather than any discrimination allegations.

149. Finally, this potential protected act analysis becomes academic given our finding that no harassment occurred and that all conduct was consensual, meaning no genuine discrimination allegations could have been made on 9 August any more than on 5 August.

Protected Disclosure Detriments

150. The protected disclosure detriment claims under section 47B fail for the same fundamental reason - no qualifying protected disclosure was made under the test detailed in our protected disclosure analysis above. Following principles established in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, "detriment" means treatment that a reasonable worker would or might take the view that in all the circumstances it was to their detriment, though an unjustified sense of grievance cannot amount to detriment. The causal requirement that treatment must be on the ground of making a protected disclosure is established by section 47B itself, with the material influence test confirmed in *Fecitt and others v NHS Manchester* [2011] EWCA Civ 1190. The alleged detriments of suspension, disciplinary proceedings, and dismissal were imposed because of the Claimant's admitted gross misconduct, not because of any protected disclosure.

151. The causal link required under *Fecitt* cannot be established where no protected disclosure occurred. The temporal evidence detailed in our protected disclosure analysis shows that the detriments followed the Claimant's conduct admissions, not any alleged disclosure.

Dismissal Claims - The Real Reason for Termination

152. Given our finding that the Claimant lacked qualifying service established in our continuity analysis above, his ordinary unfair dismissal claim must fail on jurisdictional grounds. However, the reason for dismissal was misconduct, specifically the Claimant's admission to taking drugs at work contained in his electronic message of 9 August 2023.

153. Applying the test established in *British Home Stores Ltd v Burchell* [1980] ICR 303 for conduct dismissals, the Respondents had genuine belief in this misconduct based on the Claimant's own written admissions: "the majority of the cocaine was provided by yourself and lo and behold we were snorting class A drugs in the office five days ago," and his acknowledgment of taking "both cocaine and crystal meth while at work."

154. Once the Claimant had admitted the conduct in writing, investigation requirements under *Burchell* were reduced. The Respondents undertook a proportionate investigation by considering the electronic messages and conducting meetings with the Claimant before reaching their decision. The Claimant's contract specified that drug use constituted gross misconduct warranting summary dismissal. His written admissions of taking 'both cocaine and crystal meth while at work' constituted clear repudiatory breach of this express term, justifying immediate termination without notice under established principles from *Laws v London Chronicle* [1959] 1 WLR 698.

155. The Claimant accepted in evidence that taking drugs at work constituted gross misconduct warranting dismissal, making his position fundamentally contradictory. This admission directly contradicts his claim that dismissal was for protected disclosure reasons.

156. Following principles established in *Iceland Frozen Foods Ltd v Jones* [1983] ICR 17, the tribunal must not substitute its own decision for that of the employer. The question is whether dismissal was a response that a reasonable employer could have taken. Given the Claimant's admissions of Class A drug use at work, dismissal clearly fell within the band of reasonable responses.

157. We have considered whether the drug use dismissal might be viewed as pretextual given evidence of B's own drug use and the timing coinciding with the alleged complaint. The communications evidence shows extensive coordination of drug procurement, with some messages potentially suggesting B's participation in or encouragement of drug use.

158. However, this analysis overlooks crucial legal and factual distinctions. While B admitted to social drug use with the Claimant, he consistently denied workplace drug use. The distinction between social and workplace drug consumption is both legally and practically significant. Personal conduct outside work cannot constitute "condonation" of the same conduct in the workplace, particularly where explicit contractual terms prohibit such behaviour.

159. Even if some previous workplace drug use, by A or by others, had been overlooked, this cannot prevent an employer from enforcing disciplinary standards when misconduct is formally brought to light. The legal principle is clear: employers retain the right to take disciplinary action when conduct is formally disclosed or admitted, even where previous instances may have been overlooked.

160. Critically, the dismissal process was triggered by the Claimant's own written admissions on 9 August 2023 following a workplace dispute, not by any alleged protected disclosure. The sequence demonstrates: staff complaint from Elliot Moore; workplace confrontation over accommodation; Claimant's response including detailed drug use admissions; disciplinary process commenced. This factual sequence shows the misconduct came to formal attention through the Claimant's own disclosures during an unrelated workplace dispute.

161. The Claimant's admissions provided clear, contemporaneous evidence of gross misconduct that no reasonable employer could ignore once formally disclosed. The timing, rather than suggesting pretext, demonstrates that the disciplinary process followed established patterns where formal complaints or admissions trigger investigation procedures.

162. We have considered whether the dismissal process complied with the ACAS Code of Practice on Disciplinary and Grievance Procedures. The investigation requirements under the Code were substantially satisfied given the Claimant's own written admissions on 9 August 2023 - "we were snorting class A drugs in the office five days ago" and "both cocaine and crystal meth while at work" - which provided unambiguous evidence of gross misconduct and reduced the need for extensive investigation under the Burchell test.

163. The disciplinary hearing, while brief due to the Claimant's decision to leave after approximately 15 minutes, provided him with opportunity to respond to the allegations. His early departure was his own choice rather than a procedural failure by the Respondents.

164. We consider that a greater degree of separation between the decision-maker and the alleged victim of the misconduct would have been preferable, given that B was both the person allegedly providing drugs and the person conducting the disciplinary process. However, this is a very small business with B as the sole director, making complete separation practically impossible. The Code recognises that small employers may face constraints in achieving ideal separation of functions.

165. The absence of an appeal mechanism did concern us more significantly, as this represents a clear departure from ACAS Code requirements. However, applying principles from Polkey v A E Dayton Services Ltd [1988] ICR 142, this procedural failure would likely have made no difference to the outcome given the Claimant's unambiguous admissions of gross misconduct and his own acceptance in cross-examination that drug taking at work constituted gross misconduct warranting summary dismissal.

166. Most fundamentally, these procedural considerations become academic given our finding that the Claimant lacked the two years' continuous service required for ordinary unfair dismissal claims under section 108(1) ERA 1996. Without qualifying service, the fairness of the dismissal procedure is not justiciable before this Tribunal. The ACAS Code compliance analysis is therefore academic, though we note it for completeness given that procedural fairness was raised in the pleadings.

167. We note that the Claimant repeatedly argued that other employees, particularly Elliot Moore, had also used drugs at work without facing dismissal, suggesting inconsistent

treatment. The legal principle established in cases such as *Hadjioannou v Coral Casinos Ltd* [1981] IRLR 352 recognises that consistency of treatment is relevant to the reasonableness of dismissal decisions, even in conduct cases. However, several factors distinguish this case and defeat any comparative treatment argument.

168. First, the evidential foundation differs fundamentally. The Claimant adduced no evidence that other employees were actually using drugs at work premises rather than socially outside work. The communications evidence regarding Elliot Moore showed only third-party observations about his apparent condition - described as looking "off his nut" - which could indicate various states including fatigue, illness, or effects of medication, rather than evidence of workplace drug consumption. By contrast, the Claimant provided clear, unambiguous written admissions: "we were snorting class A drugs in the office five days ago" and acknowledged taking "both cocaine and crystal meth while at work."

169. Second, even if other workplace drug use had occurred, there is no evidence the employer had actual knowledge sufficient to create an estoppel argument. Suspicions about an employee's condition, without more, do not constitute knowledge of specific misconduct that would require consistent treatment. The distinction between unproven suspicions and clear written admissions is legally and evidentially decisive.

170. Third, the Claimant has not brought claims for discriminatory treatment on any protected ground that would engage detailed comparative analysis under equality legislation. In ordinary unfair dismissal cases, while consistency is relevant, it cannot override clear evidence of gross misconduct, particularly where that misconduct is admitted in writing by the employee concerned.

171. Finally, employers retain the right to take disciplinary action when misconduct is formally disclosed or admitted, even where previous instances involving other employees may have been overlooked or insufficiently evidenced. The legal principle is that past failures to act do not prevent future enforcement of workplace standards when clear evidence emerges.

172. Timing is crucial. The protected disclosure allegedly occurred on 5 August, yet the contemporaneous evidence shows continued cordial relations until 9 August when the Claimant's aggressive response to workplace issues led to his drug use admissions. This sequence demonstrates that the real reason for dismissal was the Claimant's conduct admissions, not any alleged protected disclosure.

Automatically Unfair Dismissal

173. Section 103A of the Employment Rights Act 1996 provides that dismissal is automatically unfair if the reason or principal reason is that the employee made a protected disclosure. This claim fails as no qualifying protected disclosure was made under the test established in our protected disclosure analysis above.

174. Even if such a disclosure had been made, applying approaches like those in *Kuzel v Roche Products Ltd* [2008] EWCA Civ 380 regarding burden of proof in whistleblowing cases, the temporal proximity to the disciplinary process and the Claimant's own admissions of misconduct demonstrate that the reason for dismissal was conduct, not any alleged disclosure. The contemporaneous evidence detailed in our protected disclosure analysis directly supports this conclusion.

Working Time Regulations and Wages Claims

175. Under section 13 of the Employment Rights Act 1996, an employer must not make deductions from wages unless authorised by statute, contract, or prior written consent. These claims fail due to lack of evidence compounded by the problematic documentation issues identified in our background analysis and the continuity findings established above. The Claimant provided insufficient proof of the hours allegedly worked or the deductions claimed.

176. Drawing on case law including *Royal Mencap Society v Tomlinson-Blake* [2021] UKSC 8 on "working time," the Claimant's claim to have worked 70-90 hours per week for the Respondents is undermined by HMRC evidence showing he was simultaneously working substantial hours for other employers during periods when he claimed to be employed by the Respondents. This makes his claims mathematically implausible and directly connects to our continuity findings which show he was working elsewhere during key periods.

177. For unlawful deduction claims under Part II ERA 1996, applying principles established in *Delaney v Staples* [1992] ICR 483 on the definition of "wages," the Claimant's acknowledged receipt of substantial cash payments makes any calculation impossible on the available evidence. Under section 13 ERA 1996, wages must be "properly payable" to constitute an unlawful deduction. The absence of reliable records regarding amounts, frequency, or contractual entitlement undercuts any proof that specific sums were "properly payable." Following approaches similar to those in *Garratt v Mirror Group Newspapers* [2011] EWCA Civ 425, even where money is owed, there must be clear contractual authorisation for any deductions, which cannot be established given the problematic payment arrangements documented in our background analysis.

178. The cash payment culture that characterised this relationship, detailed in our background section, makes it impossible to determine what wages were actually due or paid. This evidential failure, combined with the continuity issues, is fatal to the wages claims.

Breach of Contract Claims

179. Under the Employment Tribunals Extension of Jurisdiction Order 1994, contract claims must arise or be outstanding on termination. Following principles established in *Capek v Lincolnshire County Council* [2000] ICR 878, the breach must be connected to termination itself or be a debt already owed when employment ended.

Furlough Payment Claims

180. The furlough claim fails on multiple grounds. Primarily, it is directly contradicted by our continuity findings detailed above. The HMRC evidence clearly shows the Claimant earning substantial sums from other employers during 2020-2021 while claiming no income from the Respondents. He was not employed by the Respondents during the relevant furlough period, being resident and working in Cornwall for hotel groups. Our continuity analysis establishes discrete employment periods, meaning no employment relationship existed during the claimed furlough period.

181. Even if an employment relationship had existed during the relevant period, the claim would fail on substantive legal grounds. Following the binding authority of *Mones v Lisa Franklin Ltd* [2022] EAT 199, the Coronavirus Job Retention Scheme (CJRS)

creates no direct statutory or contractual right between employer and employee. The CJRS regulates payments between HMRC and employers only. As the Employment Appeal Tribunal held, contractual terms alone govern any entitlement to furlough payments.

182. The scheme was discretionary for employers. In *Wilson v Financial Conduct Authority* ET/2203011/2021, an Employment Tribunal held that employers had no obligation to apply for or maintain CJRS claims. Participation was entirely at the employer's discretion, and employees had no private right to compel application for furlough support.

183. While furlough payments, if made, would constitute "wages" under section 27 ERA 1996 following *Alves v Team Support Staff Ltd* ET/2206655/2020, any entitlement to such payments must arise from contractual agreement or variation. The Claimant has provided no evidence of any contractual term or agreed variation that would have entitled him to furlough payments during 2020-2021.

184. The fundamental factual contradiction remains decisive: the Claimant was working for other employers during the claimed furlough period, as evidenced by HMRC records. This makes any claim for furlough payments from the Respondents both factually impossible and legally untenable.

Wrongful Dismissal and Notice Claims

185. The Claimant's October 2022 contract provided for one month's notice. There was no payment in lieu of notice (PILON) clause. Any wrongful dismissal claim fails following principles established in *Addis v Gramophone Co Ltd* [1909] AC 488 because the Claimant committed gross misconduct constituting a repudiatory breach of contract warranting summary dismissal without notice. His own admissions of taking Class A drugs at work, central to our dismissal analysis above, constituted fundamental breach justifying immediate termination. No notice pay was therefore due.

Other Contract Claims

186. Other contractual claims lack supporting evidence due to the problematic documentation identified throughout our analysis. The pension, tax handling, and holiday pay claims cannot be assessed due to the complete absence of proper documentation that characterised this employment relationship, as detailed in our background analysis.

Written Statement of Particulars

187. Following principles established in *System Floors (UK) Ltd v Daniel* [1982] ICR 54, the Section 1 statement is evidence of terms but not necessarily the contract itself. The Respondents provided evidence of written particulars for the final employment period commencing October 2022, which aligns with our continuity findings above.

188. The Claimant's challenges to document authenticity lacked sufficient evidence and appeared selective. Drawing on authorities including *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) on the primacy of contemporaneous documents, a physical document with a plausible explanation for minor anomalies is powerful evidence difficult to overturn with oral testimony alone.

189. Any claims relating to earlier employment periods are out of time under section 11

ERA 1996, which requires claims to be brought within three months of employment ending. This connects to our continuity findings which establish that earlier employment periods ended in 2016 and 2021.

190. We note that the Claimant challenged the authenticity of several key employment documents, including the P45 from 2016, the resignation note from 2021, and the employment contract from 2022. He suggested, without providing any supporting evidence, that these documents might have been "confected" or were forgeries. This challenge was entirely without foundation. The documents were produced through normal business records, were consistent with the timeline of events, and aligned with the objective HMRC evidence regarding employment periods. The Claimant provided no expert evidence, no documentary analysis, and no credible basis for suggesting forgery beyond bare assertion. His challenge appeared to be a defensive response to documents that contradicted his continuity case rather than a genuine belief in inauthenticity. We reject these unfounded allegations entirely and find the documents to be authentic business records properly produced in evidence.

191. We note that time limit issues were identified in the List of Issues, with complaints about events before 27 July 2023 potentially being out of time. The relevant limitation periods are: three months for discrimination claims under section 123 Equality Act 2010, three months for protected disclosure detriments under section 48(3) ERA 1996, and three months for automatically unfair dismissal under section 111 ERA 1996, all subject to early conciliation extensions under the ACAS scheme.

192. The ET1 was presented on 27 October 2023, making the primary limitation date 27 July 2023 for most claims. Harassment allegations spanning winter 2022 to summer 2023 would therefore include substantial out-of-time elements. However, under section 123(3)(a) Equality Act 2010, conduct extending over a period is treated as done at the end of that period. The Claimant alleged continuing harassment through to August 2023, potentially bringing earlier conduct within time as part of a continuing act.

193. The *Hendricks v Metropolitan Police Commissioner [2003] ICR 530* test requires examination of whether alleged incidents were "an ongoing situation or a continuing state of affairs" rather than "a succession of unconnected or isolated specific acts." Given our findings that the conduct was not unwanted harassment but willing participation in an ongoing dynamic, the continuing act analysis becomes academic.

194. For Extension of time under section 123(1)(b) Equality Act 2010 requires that it be "just and equitable" to extend time, applying factors from British Coal Corporation v Keeble [1997] IRLR 336. Even if we were minded to extend time, which we are not given our substantive findings, the substantial delays involved and the availability of contemporaneous evidence throughout would weigh against extension.

195. Given our substantive findings that all claims fail on their merits - specifically that conduct was not unwanted, no protected disclosures occurred, and dismissal was for admitted gross misconduct - it is unnecessary to make definitive findings on time limits. However, substantial portions of the harassment claims would likely be out of time absent successful continuing act arguments, which fail on our factual findings regarding the consensual nature of the conduct.

196. Given that all claims are dismissed, no awards for compensation, injury to feelings, aggravated damages, or other remedies arise. The questions of remedy, ACAS uplift, and statutory caps become academic.

CONCLUSION

197. The Claimant has not succeeded on any aspect of his claims. All claims are dismissed.

198. Our findings are interconnected and mutually reinforcing. The continuity analysis established discrete employment periods, which proved fatal to the ordinary unfair dismissal claims and significantly undermined the wages and contract claims. Most critically, the contemporaneous electronic communications provided objective evidence that fundamentally contradicted the Claimant's account of unwanted harassment and protected disclosures. His continued warm and caring messages immediately following the alleged assault of 5 August 2023, followed by aggressive confrontation over an apparently innocuous workplace note just days later, fatally undermined his credibility across multiple heads of claim.

199. The evidence revealed willing participation in a flirtatious and inappropriate dynamic over several years, followed by retrospective recharacterisation as harassment and whistleblowing after dismissal for admitted gross misconduct. The transformation of the Claimant's narrative coincided with the breakdown of the employment relationship, not with any change in the nature of the conduct complained of.

200. While both parties bear responsibility for creating an unprofessional environment characterised by systematic illegality and blurred boundaries, employment law requires proper evidential foundations. The contemporaneous evidence is so compelling in demonstrating willing participation that it would not be reasonable to conclude the conduct had the proscribed effect under section 26(4) of the Equality Act 2010.

201. This case demonstrates that employment law protections, while important, cannot remedy relationships that operate entirely outside conventional professional frameworks through retrospective legal recategorisation. The Claimant's own admissions of gross misconduct provided clear grounds for dismissal, and the objective evidence does not support his alternative narrative of discrimination and whistleblowing.

202. In summary, the determinative findings that lead to the dismissal of all claims are:

    a. *Evidential failure:* The transformation of the Claimant's narrative from willing participation to retrospective complaint coincided with dismissal for admitted misconduct, not with any change in the respondent's conduct.

    b. *No protected disclosure:* The alleged statement "what you're doing is illegal" lacks the factual content required by section 43B ERA 1996 and constitutes an allegation rather than disclosure of information.

    c. *No unwanted conduct:* The contemporaneous evidence, particularly the Claimant's own enthusiastic participation in sexually explicit exchanges over several years, demonstrates that the conduct complained of was not "unwanted"

within the meaning of section 26 Equality Act 2010.

d. *True reason for dismissal:* The dismissal followed the Claimant's own written admissions of gross misconduct (taking Class A drugs at work), not any discrimination or whistleblowing, as evidenced by the temporal sequence and contemporaneous communications.

e. *Jurisdictional failure:* The Claimant did not have the two years' continuous service required for an ordinary unfair dismissal claim, having been employed only from October 2022 to August 2023

APPROVED
Judge M Aspinall
Monday, 13th October 2025