



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs W Donnelly  
**Respondent:** The Guildhall Poole Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Southampton Employment Tribunal  
**On:** 24 – 28 November 2025  
**Before:** Employment Judge Self

### Appearances

For the Claimants: Mr M Faure - Solicitor  
For the Respondent: Mr O Foy - Counsel

## JUDGMENT

1. The Claimant's claims of sexual harassment are not well founded and are dismissed.
2. The Claimant's claim of automatically unfair dismissal pursuant to section 103A of the Employment Rights Act 1996 is not well-founded and is dismissed.
3. The Claimant's protected disclosure detriment claims are not well-founded and are dismissed.

## WRITTEN REASONS

1. By a Claim Form issued on 3 July 2024, the Claimant seeks compensation for what she contends was detriment and dismissal, on account of protected disclosures that she made, and claims of sexual harassment. The ACAS Early Conciliation process was active between 21 May 2024 and 2 July 2024. Any act

or omission before 22 February 2024 is potentially out of time, The claims and the issues in respect of liability are set out below based on an initial List of Issues, as supplemented by further information provided by the Claimant, and as confirmed at a hearing before EJ Gray. Those Issues are:

## **1. Time limits**

1.1 ....

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the detriment complaint made within the time limit in section 48 the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?

1.3.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

## **2. Protected disclosures**

2.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 What did the Claimant say or write? When? To whom? The Claimant says she made disclosures on these occasions:

2.1.1.1 The Claimant made the protected disclosure on 1 February 2024 and during a formal meeting on the 7 February with Rachel Taylor and Allen Saunders. During this meeting, the Claimant raised concerns that the owner, Geoff Thompson, was unlawfully taking 20% of the service charge tips. She stated that this conduct was believed to be in breach of the Employment (Allocation of Tips) Act 2023, and that the staff were distressed about it. She made clear her belief that the deduction was unlawful and requested that it cease.

2.1.2 Were these disclosures of 'information'?

2.1.3 Did she believe the disclosure of information was made in the public interest? She says it was in the public interest the deductions were the tips of employees provided by paying customers.

2.1.4 Was that belief reasonable?

2.1.5 Did she believe it tended to show that:

2.1.5.1 A criminal offence had been, was being or was likely to be committed, namely contravening the Employment (Allocation of Tips) Act 2023.;

2.1.5.2 A person had failed, was failing or was likely to fail to comply with any legal obligation, namely a breach of the Employment (Allocation of Tips) Act 2023.

2.1.6 Was that belief reasonable?

2.2 If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the Claimant's employer?

### **3. Detriment (Employment Rights Act 1996 section 47B)**

3.1 Did the Respondent do the following things:

3.1.1 About a week after the disclosure Ms Taylor falsely alleged that three senior staff members had complained about the Claimant in relation to her management style;

3.1.2 About a week after the disclosure Ms Taylor falsely alleged that there was a negative review on TripAdvisor about the Claimant, (the Claimant says she heard from the customer that the management paid them to make it and then take down).

3.2 By doing so, did it subject the Claimant to detriment?

3.3 If so, was it done on the ground that he had made the protected disclosure(s) set out above?

#### **4. Dismissal (Employment Rights Act s. 103A)**

4.1 Was the making of any proven protected disclosure the principal reason for the Claimant's dismissal?

4.2 The Claimant did not have at least two years' continuous employment, and the burden is therefore on her to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was the protected disclosure.

#### **5. Harassment related to sex (Equality Act 2010 s. 26)**

5.1 Did the Respondent do the following things:

5.1.1 Throughout her employment the Head Chef (Mr Sam Coltman), the Floor supervisor (Mr Dominik Zoremb) and the Bar Manager (Mr Virag Kiss) belittled and spoke to the Claimant in a rude and undignified manner and undermine her in front of colleagues, namely by:

5.1.1.1 Constantly calling her an idiot in front of colleagues, who would also adopt this attitude towards her. It is asserted this was done by Sam Coltman and Virag Kiss from the 17 October 2023;

5.1.1.2 Shout at her in aggressive and intimidating manner, including that 'I'm getting to fuck tired of you. This is asserted as happening on the 12 December 2023 – During a discussion about a spreadsheet, Allen Saunders shouted 'I'm getting fucking tired of you' at the Claimant in front of colleagues. His tone and words were threatening and intimidating;

5.1.1.3 Not treating her as a general manager when she was promoted, by Mr Coltman overriding her decisions in front of staff. It is asserted this happened between of 27 October 2023 and 11 November 2023;

5.1.1.4 14 November 2023 – During a managers' meeting, Virag Kiss falsely accused the Claimant of enabling underage drinking by a 17-year-old colleague. Sam Coltman supported the allegation. The accusation was humiliating, baseless, and visibly upset the Claimant. It was made in front of the restaurant owner and senior staff.

5.1.1.5 16 December 2023 – Allen again confronted the Claimant, yelled at her in front of a customer, and made further threatening remarks ('Don't ever hang up on me again', 'I'm getting sick of your attitude') in a physically intimidating manner.

5.1.1.6 29 January 2024 – Sam Coltman and the entire kitchen staff refused to attend the staff party organised by the Claimant as a snub of her

authority. When asked about the exclusion, Sam responded aggressively via text and accused her of having 'an issue'.

5.1.1.7 31 January 2024 – Sam openly undermined and spoke to the Claimant in a hostile manner during a managers' meeting, witnessed by Rachel Taylor, bringing the Claimant to tears. No action was taken.

5.1.2 The Head Chef (Mr Sam Coltman), the Floor supervisor (Mr Dominik Zoremb) and the Bar Manager (Mr Virag Kiss) lied and made false allegations about the Claimant in meetings with the owner, namely:

5.1.2.1 In an informal meeting on 12 December 2023, the Claimant is accused of misspending money.

5.1.3 The Claimant reported the bullying and harassment to Rachel Taylor, however action was not taken. The Claimant relies on the following complaints:

5.1.3.1 27 October – 11 November 2023: Informally raised concerns about Virag's hostile behaviour and Sam's cold attitude.

5.1.3.2 16 November 2023: Requested a formal investigation into the false allegations made at the 14 Nov 2023 meeting. Provided contact details for all staff witnesses.

5.1.3.3 21 November 2023: Raised concerns about Sam's hostility during a discussion witnessed by Allen Saunders.

5.1.3.4 22 November 2023: Discussed the investigation outcome with Rachel and again raised concern about Sam's continued behaviour.

5.1.3.5 Weekly from December 2023 to January 2024: Repeatedly raised issues about Sam and Virag's conduct during managers' meetings.

5.1.3.6 1 February 2024: Raised concerns again in the meeting with Rachel and Allen, where she was also told to take on a greater leadership role despite her concerns.

5.1.4 Dismissed the Claimant. On the 6 March 2024 – The Claimant was dismissed, allegedly following complaints made by the same individuals (Sam, Virag, and Dominik) she had complained about, which the Claimant contends was the culmination of the harassment.

5.1.5 After the Claimant's dismissal made untoward and derogatory statements about her to customers namely:

5.1.5.1 Talking about her dismissal and why she was dismissed and she was rude to employees and guests.

5.2 If so, was that unwanted conduct?

- 5.3 Did it relate to the Claimant's protected characteristic, namely sex?
- 5.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 5.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
2. This hearing was completed within the five days allocated for it with evidence and submissions being completed by the end of Day 3 and Judgment being given orally on Day 5. Written Reasons were requested by the Claimant the following week.
3. The Claimant gave evidence and Mr Harling, Ms Goillon, Ms Hodges, Ms Welsh, and Ms Marinelli provided evidence in support. Mr Harling is the spouse of the Claimant and Ms Goillon, Ms Hodges, Ms Welsh and Ms Marinelli were employees who were part of the Claimant's Front of House team. Ms Marinelli gave her evidence remotely. All were cross examined save for Mr Harling for whom the Respondent's counsel had no questions.
4. The following witnesses gave evidence for the Respondent:
- a) Mr Saunders – Consultant (now owner of the Respondent)
  - b) Ms Taylor – Licensee of the Respondent's restaurant
  - c) Mr Pielesz – General Manager until late October 2023
  - d) Mr Palmer – Building Contractor
  - e) Ms Kiss – Bar Manager
  - f) Mr Coltman – Head Chef

All but Ms Kiss attended to give evidence and was cross examined. Ms Kiss was out of the jurisdiction and accordingly unable to give evidence by CVP and so, although I have read her statement, I have given it appropriate weight taking into account that she was not available to be cross examined.

5. Both parties produced written closing submissions for which I am very grateful and then supplemented the same orally in a proportionate fashion. There were forty-five pages of witness statements, and the bundle ran to 170 pages. I had told the parties that they could only guarantee that I would read documents or parts of documents that I was specifically taken to.
6. At the start of the hearing the Claimant wished to adduce the evidence of a witness whose statement had not been served at the date of exchange and the Respondent applied to amend their Response in quite a substantial way by withdrawing their concession that the Claimant had been dismissed on 6 March 2025. Initially both applications were opposed by the respective other side, but in the period when I was finishing my pre-reading the parties both agreed each other's application. Had the applications come before me I would almost inevitably

have granted both, and I thank the advocates for their pragmatic approach which saved the Tribunal time.

### The Facts

7. The Respondent describes itself on its website as:  
  
***“A beautiful award-winning seafood & grill restaurant in the heart of Old Town, Poole where locally sourced, seasonal ingredients are selected and prepared with utmost care to produce the finest cuisine in an elegant, but relaxed setting with outstanding customer service.”***
8. The Claimant was employed as the Assistant Manager from 22 May 2023 until 6 March 2024. The Claimant is a Canadian citizen and asserted that she had over fifteen years’ experience of hospitality management experience. Her contract of employment was contained within the bundle, and the Claimant was subject to a three-month probationary period which was said to an end when confirmed in writing with the General Manager. No such confirmation is contained within the bundle and the absence of the same would appear to be in keeping with what can only be described as the Respondent’s ad hoc and chaotic approach to HR matters. The Claimant said that she had passed her probation, and the Respondent did not seek to say otherwise, so I find that she had.
9. The contract states that after probation the contract may be ended by way of written notice, but the length of that notice has not been filled in. One might surmise that the notice would have been a month, considering the nature of the Claimant’s position. The Respondent was entitled to summarily dismiss if they had grounds and, also, to pay in lieu of notice.
10. Under remuneration the Claimant was paid £28,000 per annum. She was not entitled to any overtime and the Company’s policy on tips and gratuities could also be obtained from the General Manager. No written policy has been produced by the Respondent. In the ten months of pay slips I have seen the Claimant received £5935.01 in gratuities / tips.
11. Also in the contract is reference to a formal grievance policy which has not been disclosed in the course of this Tribunal. It appears that there may have been some form of staff handbook in which the various policies were contained according to Mr Pielesz but neither Mr Saunders nor Ms Taylor seemed to have much idea about it, despite their roles, and my conclusion was that there was not a written grievance procedure, as the Respondent has failed to produce it.
12. The disciplinary rules were said to be attached to the contract but again have not been disclosed. From evidence that was heard it did not appear that there the Respondent was in any way process driven. The approach the Respondent took was that, as Mr Saunders said, ***“We just dealt with things as they cropped up”*** or as Ms Taylor said, ***“We muddled through”***. Even taking into account the relatively small size of the Respondent business such an approach to Human Resources matters is highly risky and prone to mishap.

13. The Claimant's case has not been presented in a consistent manner with numerous differences between her claim form, further particulars, witness statement and oral evidence. Some of these differences were in fundamental areas of the Claim i.e., the protected disclosures and they will be set out in more detail below.
14. What is consistent from the Claimant is that it was not until October, five months into her employment, that she started to suffer sexual harassment, and that she had **"a cordial relationship with Coltman, Zoremb and Kiss and they would socialise together outside of work"** up until mid-October. Coltman was the Head Chef and had joined from July 2023, Kiss was the Bar Manager and so was at a similar level to the Claimant and Zoremb was the Floor Supervisor.
15. Coltman told me, and it was not challenged, that he was appointed **"to improve the food offering at the restaurant as it had been in decline and (Pielesz) was keen to try and improve the reputation of what was a local institution and landmark"**. I find this to be an important background context in that I accept that at all material times the upper management were driving towards this aim of restoring past glories and trying to move back to being a higher end dining venue with service and attitudes to match.
16. The Claimant states that in her probation she discovered her tips were not being calculated properly. At paragraph 7 of her statement, she asserts that was because she was described on her pay slip in a lower role than she actually was. Pielesz explained that tips at that time were calculated as follows. There would be a total service charge accrued for the restaurant. 20% was taken from that figure and went back to the owners of the restaurant, purportedly to cover shortages of cash, breakages etc and the remainder was distributed according to a fixed percentage depending on the role each member of staff had, and the hours worked for hourly staff. The Claimant suggested in her witness statement that she told Pielesz this was illegal, and Pielesz indicated she should take it up with Thompson, the owner.
17. The Claimant indicated that she also found out that Pielesz was fraudulently inflating his hours to claim a larger service charge proportion and the Claimant said she confronted him with this and indicated that he would need to confess to senior management or she would report him. Pielesz did resign shortly thereafter on 23 October 2023, and the Claimant seeks to say that resignation was because of the risk of the Claimant's allegations coming to light.
18. Despite not working for the Respondent any more Pielesz did come and give evidence. He confirmed that he had recruited the Claimant but soon had concerns about the Claimant which he summarised by saying that she was **"slightly unhinged and unstable"**. He indicated that he had a concern that she showed inappropriate sexualised behaviour to workmen by offering to **"get her boobs out"** and offering workmen the **"best blow job ever"**. Pielesz was of the view that in the context of what they were trying to achieve i.e., a high-end restaurant, she was not suitable but due to intervention from the owners she did pass her probation despite his profound reservations

19. In this context and when assessing the Claimant's conduct and behaviour Mr. Palmer gave evidence. He is a builder and developer who has undertaken building work as a contractor at the restaurant. He described the Claimant as **"one of the lads"** and engaged in non-stop foul-mouthed and vulgar banter with the **"lads on the site"** and also used sexual hand gestures often and would **"often push her finger up Mr Palmer's bum over work trousers"**. I believe the technical term is "goosing".
20. Pielesz accepts that the Claimant did raise the issue of **her** share of the tips with him (my emphasis) and it was explained to her that it would increase post-probation and she was informed of the 20% which was retained by the restaurant. On his recollection this would have been some time before October. Pielesz denied that he was confronted about making fraudulent service charge claims and indicated both in writing and orally that he left after a discussion with the owner who was struggling to pay his wages and that he had alternative employment / family commitments which meant that a change from such a busy job suited him as well. There is an email from Ms Taylor wishing the Claimant well and hoping he enjoys his time off with his family. There are also some What's App messages from around that time between the Claimant and Lisa, the manager of the pub owed by the Respondent (The Crown). Interestingly, in the context of language relied upon by others against the Claimant later in the case the Claimant is content to call Ms Taylor **"a bitch"** during the conversation (120).
21. A further oddity / concern about the Claimant's case is that she is contradictory in her statement as to what triggered the poor treatment of her by others. At paragraphs 10-14 she describes an incident when she felt that an incident over a wine tasting led Coltman to treat her differently and from that point on he would be condescending and rude towards her and then when the Claimant was asked to take on joint management with Kiss this **"triggered an immediate alliance against me who blamed me for Pielesz's dismissal"**. Neither of these reasons, on their face, have anything to do with the Claimant's gender at all.
22. The licensee for the premises was Taylor. Whilst Pielesz's departure may have made sense from a financial perspective, it is clear that his departure also left a substantial hole to fill in terms of day-to-day management. Taylor indicated in evidence that she was only actually present for the weekly meeting and a total of 1-2 hours a week, and that she had several other responsibilities at the pub next door and managing waste contracts in Oxfordshire. Clearly, she did not have the capacity to be a major influence with that level of input. That is not meant as a criticism of Taylor, it is just a matter of fact. It is not surprising that the Team acted in a dysfunctional way once the direction and management of Pielesz fell away.
23. It was almost certainly why the Respondent decided to bring Saunders in November 2023 as a Consultant to try and fill the void. He explained and I accept that:

***"I was brought in by the owners .... to try and improve the running and efficiency of the Respondent's restaurant....I had a longstanding***

***association over many years and understood the local hospitality economy in the Poole area. I was brought in specifically to advise how to improve the restaurant's reputation as a high dining experience in the area".***

Again, I note, and consider important, the focus on providing ***"high dining"***.

24. The Claimant's assertion in the List of issues is that she was then subjected to treatment that she described as ***"belittling"***, ***"rude"***, and undignified behaviour that she indicates was undertaken so as to undermine her. In addition, there were falsehoods raised about her and when she made complaints of the behaviour to Taylor and Saunders, they did nothing in stark contrast to the way in which complaints about her were dealt with. The specific incidents will, in the main, be dealt with when I consider each of the harassment allegations individually, but I will deal with some of the more serious ones at this point.
25. The Claimant indicated that she was accused of facilitating alcohol for a member of staff at a wedding reception held at the Respondent's venue, to such an extent that the individual was seriously affected by the same. The Claimant denied the allegation. Her position was that at the manager's meeting on 14 November, after the Claimant indicated that the wedding the previous weekend had been a success, Kiss interjected to accuse the Claimant of getting a staff member so drunk she could not walk and Coltman supported that proposition. This led to Thompson the owner being visibly angry. The Claimant explained that she asked for a full investigation from Taylor and asserted that when Taylor looked at it and spoke to individuals, she indicated that the allegation was not corroborated, but that the Claimant needed to ***"step up her game"*** or risk losing her job. On the Claimant's own case, therefore, her job was at risk by Taylor as early as November. The Claimant herself cited in her statement that Lisa from the Crown's view was that the reason Kiss and Coltman made the allegation and lied was because they ***"wanted to climb the ladder"*** and were prepared to stab the Claimant in the back to achieve that. Again, ostensibly even that rationale does not link into the Claimant's position re tips or her gender.
26. The Claimant accepted that she did give the employee a drink as asked to do by the wedding party but denied that she was responsible for anything else or that the employee was in any way intoxicated. Her position was broadly supported by the member of staff involved and by other employees who were working that night.
27. It was the Claimant who relied upon these What's App messages with Lisa from the Crown. Reading through them I note that the claimant states at 0954 on 14 November:

***"I think what's pissing me off most is someone that I respected questions my ability to do a job I have been doing for 18 years and doing:***

1. ***incredibly amazing at.***
2. ***My character.***
3. ***My position in his business to which if they stop fucking around with an old cunt who is a sexist pig I could do well.***

***It beyond pisses me off that all this crap (Saunders) is coming out with as I've already said."***

The Claimant's view of Saunders as of November just after he arrived is very clear and far from complimentary.

28. Taylor explained that at this time ***"all the staff seemed to complain about each other rather than just getting on with it"*** and she did think that they were jockeying for position to see who was going to take charge. She described the Claimant as the most toxic person she had ever worked with and that there was conflict every day. Saunders described the Claimant as resentful that he had been appointed and inefficient and disruptive with inappropriate language. He did not consider that the Claimant was a right "fit" for the business moving forward.
29. On 6 December 2023 the Claimant had a meeting with Taylor who raised a number of points of concern re the Claimant's performance. The headings were (94):
- a) The Claimant's conduct at a wedding where the Claimant was accused of ***"erotic dancing behind the bar in front of customers"***. The Claimant was told that such behaviour ***"contradicted the establishment's reputation"***.
  - b) Failure to control spending
  - c) An issue with wine ordering that the Claimant rebutted by indicating it was Kiss' ultimate responsibility;
  - d) A customer complaint involving hot water
  - e) Ineffective control of Front of House staffing.

The note indicates that the Claimant was told that despite these matters warranting dismissal she would be given a chance to improve so as to ***"uphold the standards and reputation of the Guildhall Tavern."*** The Claimant did not make any representations about this meeting in her statement, nor does she suggest that it was a discriminatory act, nor that it was linked to any alleged protected disclosure. In cross examination she accepted that the meeting took place and did not take issue with the matters discussed. I accept that a meeting took place and the note is an accurate summary of the matters brought up, in the absence of any cogent evidence to the contrary.

30. There are two allegations ***(5.1.1.2) and (5.1.1.5)*** which relate to interactions where Saunders is said to have interacted with the Claimant in a threatening and intimidating way. I am quite satisfied that early on Saunders had made a decision that the Claimant was not the right type of person to be assisting in the management of his perception of what the Guildhall was or wanted to be. The principal reason he came to this conclusion was that he considered the Claimant to be too "common" and not of the right personality and demeanour for what he wanted to be a "posh" restaurant. I was struck by the somewhat snobbish attitude of the Respondent's witnesses.
31. On 12 December 2023 Saunders sent an email to the Claimant about a spreadsheet which started, ***"As you will have gathered, I was not best***

***pleased that you claim to have not seen the excel spread sheet for Christmas Party Bookings....***”. That is on the same day that the Claimant asserts that Saunders told her in front of others, ***“I’m getting fucking tired of you...”***

32. Matters continued over the Christmas period without much improvement in the staff dynamics. The Claimant asserts that on 1 February she was offered a four-week trial as Front of House manager. That meeting is not mentioned by either Taylor or Saunders although in oral evidence Saunders did indicate that there probably was a meeting. The temporary promotion makes no logical sense at all taking into account what had passed already and the entrenched attitudes on display about the Claimant as I am quite satisfied that by this time the Claimant had been written off as a viable long-term recruit for the Respondent for all the reasons set out in this Judgment from Taylor and Saunders.
33. The Claimant asserted in her Further Information that it was at this meeting on 1 February that she made her protected disclosure as follows (37):

***“The Claimant raised concerns that the owner Jeff Thompson was unlawfully taking 20% of the service charge tips. She stated that this conduct was believed to be in breach of the Employment (Allocation of Tips) Act 2023 and that the staff were distressed about it. She made clear her belief that the deduction was unlawful and requested that it cease”.***

At the second Case Management Discussion the Claimant and her solicitor confirmed that this was the protected disclosure she wished to rely upon, and the List of Issues was duly amended from what had been previously set down as the protected disclosure in April that:

***“In about November 2023 to Taylor and Saunders that Mr Thompson was taking 20% of the service charge which was illegal.”***

The Claim Form simply speaks of a management meeting with Taylor and Saunders which as it is linked in short order to the 20% being reinstated into the service pot would seem to indicate the February date as being when this was contemplated.

34. In her witness statement the Claimant described the protected disclosure as follows:

***“In early January 2024 following staff complaints about small tip shares I raised with Rachel and Geoff that taking 20% of tips was illegal under the Allocation of Tips Act.***

In oral evidence the Claimant said that the protected disclosure was made in November 2023 to Ms Taylor and a further protected disclosure was made on 1 February 2024 to Ms Taylor and Mr Saunders. She said that she brought up an article she had read about the 2023 Tipping Act and that taking staff tips was illegal. She said that there was no disclosure made on 7 February 2024.

35. It is apparent that the Claimant has been represented throughout these proceedings when each of these statements, which do not appear to agree have been recorded.
36. On 7 February the Claimant met with Saunders, and she was told that an announcement would be made at the Team Meeting later that day, but she was reminded of matters that had recently arisen which the Respondent considered she was culpable for and they were:
- a) Revenue loss of £1,171 re a till error
  - b) Restaurant being left unlocked after a Sunday service
  - c) A thirty-four-guest wedding being lost due to an issue about erroneous service charges on a guest menu.
37. The note concluded with the following:
- “Whitney has been granted the opportunity to demonstrate her managerial capabilities over the course of a four-week trial. It was emphasised that feedback will be actively sought from all team members and management regarding her performance and leadership skills.***
- At the conclusion of the trial period, a decision will be made regarding Whitney's continuation in the managerial role, termination of her employment contract, or explanation or exploration of alternative non managerial positions within the restaurant.”***
38. Following this meeting there was then the Manager's meeting at which the Claimant was announced as being temporary Front of House Manager. The Claimant asserts that Coltman rolled his eyes when the matter was announced and indicated that she believed that Coltman had already handed in his notice on 2 February and believed he had given an ultimatum that either the Claimant went or he did. In Coltman's statement he states that in Feb /March he got to ***“the point that he was giving two months' notice”*** and actually did so before being persuaded by Saunders that the Respondent was trying to sort out the Front of House team, and he knew that the Claimant had had performance reviews.
39. Also, at the Team Meeting on 7 February it was announced that all of the service charge would be paid to staff using the tronc model and cash tips would be allocated daily. That ended the practice of 20% being scooped off the top by the owners.
40. Around the end of February Goillon, who gave evidence for the Claimant, sent Saunders a message to say that she wanted to meet with him when he returned from annual leave as she had ***“a few things she wanted to talk about.”*** She does not mention the fact that she instigated the meeting in her witness statement, and in actual fact, she does not mention the subsequent meeting in the Crown at all. She told the Tribunal in evidence that she wanted to discuss issues about shifts with him.

41. On 3 March Goillon followed up her message and asked whether she and Kiss could meet him in the Guildhall on Tuesday 5 March (166). On 4 March Kiss sent an email to Saunders in which she complained of:
- a) The state of the bar when she returned from holiday;
  - b) She described the Claimant as **“Obnoxious unprofessional toxic with zero communication skills and propensity for making false accusations.”**;
  - c) The Claimant’s alleged inappropriate language was cited, and it was suggested that many were thinking of leaving because of the Claimant, including Kiss.

She indicated that she was aware that Goillon had a meeting with Saunders the next morning and she was going to join. That possibility had already been flagged up by Goillon in her What’s App.

42. The meeting took place. Saunders’ evidence about the meeting was very unclear. He did not mention it within his statement and neither did Kiss. Goillon’s evidence was to the effect that she was told to corroborate allegations against the Claimant and the others at the meeting were pressuring her to make false statements. There is a document in the bundle which is undated that purports to be from Kiss and Goillon in which a number of allegations are made against the Claimant. Goillon’s view is that she did not agree with the contents and she did not bring up any of the complaints.
43. On 10 March there is a text message which starts “Hi Allen its India”. Ms Goillon accepts that the text was from her phone but asserts that it was dictated to her by Kiss. It reads:

***First of all, I'd like to thank you I never went into the meeting and (Kiss) and expect this outcome it was abrupt however I do believe it was so worth it***

***The team worth and resilience from every member of staff is so relaxed and since she went it's honestly been a better ambience and good atmosphere. I was so worried about it and I'm also grateful to (Kiss) she's took a lot on her chest this week at handled it... Honestly thank you so very much for looking out for us all”.***

44. On 6 March the Claimant was called in for a chat. There was no indication that she was in any sort of trouble when Taylor asked the Claimant to come in that morning. The Claimant states that she was dismissed and that she was told that three staff members had made a formal complaint (Coltman, Kiss and Saunders) but interestingly does not assert that she was told that Goillon had made a complaint. She was told there was also a negative Trip Advisor review. The Claimant states (para 57) they chose the Head Chef over their female manager who had exposed illegal practices and complained about harassment.
45. Saunders’ account of the meeting is that:

***“We discussed with the claimant our view that things were not working out in a positive way re performance and conduct between (the Claimant) and ourselves that the best way forwards was a parting of the ways. The claimant was amenable to this and agreed a possibly the best way forward”.***

46. There are no notes of this meeting and Taylor’s account is slightly different. She indicated that the trigger for the meeting was complaints from staff and Coltman’s resignation and she formed the view that ***“the situation was not going to improve”*** and at the meeting ***“We advised her that her performance was still not up to standard and that the breakdown in working relationships between her and other staff, along with her poor performance and conduct, meant that we could no longer continue with her employment. The meeting was amicable, and the claimant agreed it was not working and that finding a more suitable role was the best way forward.***

The Respondent say that they paid 4 weeks’ notice as opposed to one as a gesture of good will but did not sign any form of Settlement Agreement which would have prevented the Claimant bringing these proceedings had all the necessary requirements for such agreements been met.

47. Consistently, through this case the Respondent has conceded the fact that the Claimant was dismissed and only at this hearing was there an application to amend the Response to say that there was a mutual agreement to terminate. For the avoidance of doubt dismissal was conceded on many occasions in the original Response, at the Case Management Hearings and also in the Amended Response prior to this material change at the last minute.

### **The Evidence**

48. Much of the evidence was deeply unimpressive. Before considering my general findings though there is one collateral matter that I find does impact upon the credibility of the Claimant and one of her witnesses. The witness Marinelli left the Respondent’s employ and went to work for another restaurant which the witness Kiss also moved to. Marinelli became disappointed that she was not paid wages due and owing to her and brought a claim as was her right. In order to ***“assist”*** in her Claim Marinelli and other friends including the Claimant wrote reviews of the alleged defaulting restaurant with the specific intention of seeking to pressurise the restaurant into resolving matters. The Claimant had never been to the restaurant and so had no first-hand knowledge of it at all. The lowest rating is given, and the following are “highlights” of the review entitled ***“Not only dirty but they don’t (at) pay their staff”***:
- a) ***“Don’t waste your time or money. This place is a rat hole, and the lack of cleanliness makes you feel like you need to take a shower immediately”.***
  - b) ***“The female manager (Kiss) Is rude with attitude and extremely unwelcoming... she clearly hates the customers”.***
  - c) ***“They don’t pay staff; Kiss verbally abuses them and treats them with gross disrespect”.***

49. Both witnesses were cross-examined on this document and the fact that it was written by the Claimant who had no first-hand idea of its truth seemed to be a matter of no consequence for both. The very clear attitude was that the ends (Marinelli getting paid) justified the means of writing a report which the Claimant could not verify as the truth. The inescapable conclusion was that both Marinelli and the Claimant would both be prepared to say whatever was required to be successful, if they considered that the ends justified it and had no consideration for any innocents that might get caught in the crossfire e.g. staff laid off because of lower footfall because of the reviews. That has caused me to be careful about the Claimant and Marinelli's evidence. At the very least it shows a capacity to lie.
50. The Claimant's evidence was often chaotic and inconsistent. I do take into account, all be it without any formal medical evidence, that part of that may be ascribable to the Claimant's asserted ADHD, but even taking that into account there were areas where the Claimant's evidence was inaccurate and inconsistent. So far as her witnesses were concerned, they were a mixed bag. I considered that Ms Hodges and Ms Welsh were honest in their evidence and told me a true reflection of their perception. They were part-time employees to whom the Claimant was a good manager and they liked her.
51. I have no doubt that Ms Marinelli liked the Claimant and was her friend, but I consider that much of her evidence would have been heavily influenced by that connection. I am not satisfied that Ms Marinelli would say anything contrary to the Claimant even if she knew it to be true.
52. Ms Goillon's evidence was troubling, and I did not accept much of the evidence she gave. I will deal with that in more detail below.
53. The Respondent's evidence was also unsatisfactory in many ways. Saunders evidence was confused and at times contradictory. It was clear despite his professed long time in business he did not appear to have even the most rudimentary understanding about acceptable HR practices. He blustered his way through his evidence providing new evidence and he refused to accept even the mildest failings.
54. Taylor's evidence was considerably more considered and accurate. I believe she was able to reflect that things could have been done better, and I believe that she would have had the ability to run things far more efficiently had she not had so many balls in the air. Coltman was very guarded in his evidence, I find that he is a man who just accepts that the highest standards need to be applied at all times, and had little time for those who he considered fell short. That is not meant as a criticism, but I find that once Coltman has made his view as to an individual's capacity then he retains a fixed view of that individual thereafter.
55. The evidence of Pielesz and Palmer was solid and pretty much undisturbed in cross examination.

## General Findings

56. As with many cases that comes before this Tribunal this is an unfortunate and sad one. My finding in this case that all witnesses have explained what their individual experience was with the Claimant. The only conclusion that I can come to is that she is what might be colloquially described as a “Marmite character”, you either love her, or you hate her, and the witnesses lined up loyally on each side of the fence.
57. On the evidence before me and having observed the Claimant in Tribunal (and that is all I can go on) the Claimant would seem to have the capacity to be high energy, sociable and fun. I don't doubt the evidence that describes that side of her. Palmer described her as “*one of the lads*” and clearly liked her. I consider that to be a fair description and to make it clear on a personal level I do not consider that to be a slur or something that is necessarily negative. There is clear evidence that the Claimant was able to use industrial foul language in text messages and indeed, despite no doubt trying to be on her best behaviour here, she was unable to stop cursing from time to time unnecessarily using the word “shit” when she was giving evidence when she made a mistake. Again, from a personal perspective the fact that she used bad language does not in my eyes mark her out as a bad person.
58. What is abundantly clear to me is that the Claimant was a round peg in a square hole. The Respondent had a perception of what they wanted the restaurant to be and that was high end. They had an idea of what was required within that environment and ultimately the reason why this disaster, and it was a disaster, unfolded was because of what I find was the incompatibility or the perceived incompatibility of the opposing sides.
59. I can fully understand why the Claimant was engaged and why she was retained for as long as she was. She was experienced and I am sure she presented herself as smart and professional. The reality was however that she was just not a good fit ultimately for what the Respondent wanted and that became more entrenched as time went on leading to substantial genuine unhappiness on all sides as alliances formed and particularly when Saunders joined the Team. I consider it highly likely that there is truth in many of the criticisms each party make against each other – that is an inevitable consequence of fundamental incompatibility.
60. That basic problem was picked up by Pielesz early on who, as an experienced manager, realised that it was not going to work. I understand why the owners who were more detached from the business and so did not see the daily dynamics may have considered that there was hope in the situation and overrode Pielesz's view and so the probation was passed. I should say here that fundamentally there is nothing wrong with being a round peg and nor is there an issue with being a square hole and it is only when they are brought together that the issues become apparent.
61. The Claimant raised issues about her tips with Pielesz in or around October. I am quite satisfied that at that stage she was raising any issues in a personal capacity. I do not know whether at the time of this case it was an industry

standard to scoop 20% off for the business before distributing the service among the staff. Many who provide tips would be disappointed if that was the case I suspect.

62. On the evidence before me I am not prepared to make any finding of misdeeds on the part of Pielesz. The suggestion that he was inflating his hours to get more from the service charge does not seem to work as he was salaried and so would simply get them as a full-time employee. The Claimant and Lisa at the Crown clearly had their suspicions whether based on solid evidence or not but I quite simply do not have any evidence to challenge the clear and cogent evidence Pielesz gave me which was untouched in cross examination that he left because he was too expensive and that he was happy to go. Whilst I cannot categorically say there was not more to it, I reject the Claimant's contention that there were misdeeds on which is insufficiently founded.
63. The Claimant's case is that around this time attitudes did turn against her. I consider that did happen. Coltman had only just arrived, and I find that it did not take him long to form an adverse view about the Claimant's character and work. I also find that Kiss also decided that this was the time where she might be able to gain some advancement and so she also turned to be anti-Claimant from this point onwards. Having said that I am unable to discern that any of the conduct was related to the Claimant's gender it was down to an assessment by Coltman of what he perceived was the Claimant's character in the context of the establishment that senior management wanted it to be (fine dining).
64. The under-age drink incident is a case in point. Was there a basis for the whole thing? The answer is yes as the server was underage and whilst I do not profess to know the law there must be some form of duty of care with an underage employee and alcohol. My view is that Kiss brought it up and embellished it so as to be mischievous and Coltman also brought it to the attention of management. Further to cause issues some alleged erotic dancing by the Claimant was also brought up because he was genuinely concerned about standards. I am not satisfied that Coltman actually embellished the incident in the same way Kiss did.
65. Taylor did investigate it and found that it was not as serious as it might have been. The investigation should have been properly investigated, and notes should have been taken etc, but the conclusion must have found that there was not that much to the incident as otherwise disciplinary action would have followed. It seems to me that Taylor's alleged response at para 32 of the Claimant's statement to the effect that the situation was not as serious as had been alleged but it still did not look good and that the Claimant needed to step up her game otherwise her job might be at risk was within a band of reasonable and proportionate responses to the situation.
66. I am quite satisfied that Saunders had no time for the Claimant from first till last. He says as much in his witness statement and that is hardly surprising if he came in and spoke with Taylor and Coltman when he arrived. I am quite satisfied that he did not believe that she was of the appropriate class and calibre to be working at what he perceived was a fine dining restaurant or what he

wanted to be a fine dining restaurant. I am quite satisfied that there was nothing that the Claimant could do to change that perception.

67. The Respondent clearly had issues with the Claimant's performance. This hearing has not been a deep dive into the Claimant's capability but at this point there was no General Manager, staff were jockeying for position, there was great disharmony within the group, and I suspect it was an unhappy place to work. That is clear from the Claimant's messages at the time as demonstrated via What's App. Management was lacking, the whole place was dysfunctional which leads to a spiral of behaviours, conduct and performance downwards. Unhappy staff rarely work to their optimum capability. All must take some responsibility for their actions or inactions.
68. I am satisfied that in early December certain performance issues were raised. It would have been better if there had been a formal performance improvement plan implemented as that may have helped both, but sadly such formality would not seem to be the norm in the Respondent organisation. It states that directives were given but it would help if all of those had been formally recorded. I accept the note as accurate and it is clear that there was acceptance that there had been dips below what was required and some mistakes had been made. Again, I am unable to find any link with the Claimant's gender, the meeting was borne of the Claimant not coming up to the standards the Respondent wished to set.
69. As I have said various individuals in the Respondent had taken against the Claimant. Kiss in relation to her own ambitions and Coltman, Taylor and Saunders because of their concerns over the Claimant's competence, but more particularly because she did not fit what they perceived was required in a fine dining restaurant. The decision to place the Claimant on a month's trial makes no sense whatsoever as there were fixed views that the Claimant would not be able to be the right fit ever, let alone in a month.
70. I find that the trial period was not one made with any real hope or expectation that the Claimant would succeed but was rather a means to set up the Claimant's termination at the end of that period. The Claimant had been informally orally warned about her conduct after the underage incident, more matters had come up in early December, and then further problems were highlighted on 7 February.
71. There had been a discussion on 1 February and during that I am satisfied that the Claimant had raised the fact that she considered that the way that tips was being distributed was "illegal" that was confirmed by Saunders. I do not accept that she was any more specific than that and she certainly did not cite the legislation.
72. We then come to the endgame. I find that there continued to be the opposition to the Claimant from staff, and in particular Kiss. Whilst Coltman did not consider the Claimant to be competent or appropriate for the Respondent I find that it was more likely than not that he primarily stayed out of it at this late stage, understanding that the Claimant was not long for the business. The Claimant had had an argument at work with Goillon. It is not clear when that was,

although it was after Christmas. There is a lot of misinformation around the endgame but doing the best I can I make the following findings on what I have heard.

73. Goillon generally got on with the Claimant but there had been this argument. I find that Goillon did contact Saunders with a view to making a complaint about the Claimant and had confided the same with Kiss. I reject Goillon's evidence that she only intended to speak with Saunders about her shifts. Sometime between 29 February and 3 March Kiss and Goillon liaised, and that is why Goillon asked if Kiss and she could come to see Saunders on 5 March. I am satisfied that was the intention because on 4 March (99) Kiss wrote a letter of complaint to Saunders and indicated that she would be joining Goillon at that meeting. On the evidence that can only be that both were intending to make a complaint about the Claimant.
74. That meeting took place with Saunders but not one of the three witnesses deals with that meeting in terms. I find that there were a number of complaints raised by both (but mainly Kiss). I find that this was received favourably by Saunders and he sought to set down the complaints which he heard on that day in writing as if it was a letter of complaint from Kiss and Goillon and that was the document within the bundle. Why he did that is lost in the mists of time, but he should have simply recorded the meeting in writing and asked them both to sign it off as a true record of the meeting.
75. I accept Goillon's evidence that she was presented with the document and asked to sign it, but I find the reason she did not do so was because she suddenly realised the way that things were going and got cold feet. She did so at this stage or perhaps later. The text message sent by Goillon on 10 March does express some truth in that Goillon had not thought things through necessarily and may have been surprised that the Claimant left soon after her complaints. I accept that Kiss may well have been involved in the drafting of the text. I accept Goillon's evidence that she did not know what ambience meant and that word came from Kiss, but I do not accept Goillon's evidence that she sent this against her will. I find as a fact that the sentiments she expressed here were those of both her and Kiss. I reject her evidence that she did not call the Claimant a "**Canadian bitch of a manager**" in a text to Coltman.
76. After Goillon left she sent a What's App message to the Claimant wherein she apologised for any part she had had in the Claimant's dismissal, and she claimed not to have any idea what was going to happen and asserted that she was pressured by Kiss and Saunders. I am satisfied that that was just an attempt from Goillon to avoid responsibility and I am satisfied that Goillon did play a full part in the Claimant's dismissal, although accept that she may have got cold feet at some point during the process.
77. So far as Dom is concerned his "resignation statement" is also an odd document. It is possible that it was written by him, but I consider it is more likely to be a document created by Saunders following discussions with Dom. I do not doubt that Dom had resigned from his management role, and also that he

decided to do so because of an interaction with the Claimant. I make no finding as to whether anybody was culpable in relation to that.

78. The meeting took place on 6 March with Taylor, Saunders and the Claimant. I am wholly satisfied that the Claimant was to be dismissed at this meeting and indeed Taylor's account that the Claimant was **"advised that her performance was still not up to standard and that the breakdown in working relationships between her and others along with that meant that we could no longer continue with her employment"**. The fact that the Claimant was said to agree that she could no longer work for the Respondent does not convert matters into a mutually agreed termination. The Respondent's own words amount to a dismissal. The Claimant's agreement was simply her bowing to the inevitable disconnect that had been present throughout.

## The Law

### Protected Disclosures

79. In order for a whistleblowing disclosure to be considered as a protected disclosure three requirements need to be satisfied (**ERA 1996 s 43A**).
- a) There needs to be a disclosure within the meaning of the Act.
  - b) That disclosure must be a qualifying disclosure.
  - c) It must be made by the worker in a manner that accords with the scheme set out at **ERA 1996 ss 43C–43H**. This is made out in this case because the alleged disclosures were made to the Respondent's staff.
80. The first issue that needs to be considered is whether or not there has been a disclosure for the purposes of the Act. The Act provides a very broad definition of what amounts to a disclosure and **"any disclosure of information"** will qualify (ERA 1996 s 43B(1)). In **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38**, it was not sufficient that the Claimant had simply made allegations about the wrongdoer (especially where the claimed whistleblowing occurs within the claimant's own employment, as part of a dispute with his or her employer). As Slade J put it in that case: **"... the ordinary meaning of giving "information" is conveying facts"** and went on to distinguish between a mere allegation and the conveying of information .
81. However, in **Western Union Payment Services UK Ltd v Anastasiou UKEAT/0135/13** Eady J, following and applying the Cavendish distinction between information on the one hand and the making of an allegation or statement of position on the other, commented that **'the distinction can be a fine one to draw and one can envisage circumstances in which the statement of a position could involve the disclosure of information, and vice versa. The assessment as to whether there has been a disclosure of information in a particular case will always be fact sensitive.'**
82. This comment was made in the context of one of two possible qualifications (or at least explanations) of the basic **Cavendish** principle, namely that although the

most obvious form of disclosure will concern primary facts, there can also be cases of mixed primary facts and opinion which on balance would still qualify.

83. In **Kilraine v London Borough of Wandsworth** ([2018] IRLR 846 one of four alleged protected disclosures was ruled out by the tribunal under the **Cavendish** approach, as falling into the category of 'allegation'. In the EAT ([2016] IRLR 422) Langstaff J said at [30]:

*"I would caution some care in the application of the principle arising out of Cavendish Munro. The particular purported disclosure that the Appeal Tribunal had to consider in that case is set out at paragraph 6. It was in a letter from the Claimant's solicitors to her employer. On any fair reading there is nothing in it that could be taken as providing information. The dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined. The decision is not decided by whether a given phrase or paragraph is one, or rather the other, but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point."*

84. On further appeal to the Court of Appeal it was decided was that whatever is claimed to be a protected disclosure **must contain sufficient information** to qualify under the ERA 1996 s 43B(1) (my emphasis). Agreeing with Langstaff J, the position was said to be that, in effect, there is a spectrum to be applied and that, although pure allegation is insufficient (the actual result in Cavendish), a disclosure may contain sufficient information even if it also includes allegations. Moreover, the very term "information" must grammatically be construed within the overall phraseology which continues 'which tends to show ...'. Ultimately, this will be a question of fact for the Tribunal, which must take into account the context and background. At para 41 of the judgment puts the point neatly by adapting the famous example given in Cavendish itself. The contrast was made there that if a nurse says to the management that **'the ward is filthy and there are sharps left about'** that can be information, whereas if he or she simply says **'You are breaking health and safety law'** that would be mere allegation. To this, the judgment adds that if the nurse made the latter remark while pointing to sharps lying around, that should be sufficient.
85. The question therefore is whether there is sufficient by way of information to satisfy s 43B and that is a matter of fact for the tribunal. Clearly, the more the statement consists of unsupported allegation, the less likely it will be to qualify, but this is as a question of fact, not because of a rigid information/allegation divide.

86. Once a disclosure has taken place it becomes necessary to consider whether or not that disclosure can be categorised as a qualifying disclosure. The definition breaks down into a number of elements.
- a) There must be a disclosure of information.
  - b) The worker must believe that the disclosure is made in the public interest.
  - c) If the worker does hold such a belief, it must be reasonably held.
  - d) The worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f).
  - e) If the worker does hold such a belief, it must be reasonably held.
87. As an initial starting point, it is necessary that the worker making the disclosure has a reasonable belief that the disclosure is in the public interest and tends to show one of the six statutory categories of 'failure' set out below (**ERA 1996 s 43B(1)**). All that is required is that the worker has a reasonable belief.
88. It is not necessary for the information itself to be actually true. It follows that a disclosure may nevertheless be a qualifying disclosure even if it subsequently transpires that the information disclosed was incorrect. Having said that the factual accuracy of the allegations may be an important tool in determining whether or not the employee did have such a reasonable belief the assessment of the individual's state of mind must be based upon the facts as understood by him or her at the time.
89. It is also important to note that the statutory test is a subjective one. This is because the Act states that there must be a reasonable belief of the worker making the disclosure. It follows that the individual characteristics of the worker needs to be taken into account and the relevant test is not whether a hypothetical reasonable worker could have held such a reasonable belief. This was affirmed by the EAT in **Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4, EAT**.
90. If there is more than one disclosure, the requirement is that there was a reasonable belief in relation to each. It is not enough that the Claimant can be shown to have believed in the general gist of his or her complaints.
91. The issue of the public interest element of whistleblowing was considered in the leading case of **Chesterton Global Ltd v Nurmohamed [2017] IRLR 837**, that demonstrated that there is a 'bright line' between personal and public interest, with any element of the former ruling out the statutory protection. In a case of mixed interests, it is for the tribunal to rule as a matter of fact as to whether there was sufficient public interest to qualify under the legislation. The decision of the Court of Appeal (largely upholding that of the EAT) contains guidance as to how to approach that task.

***"The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is***

*in fact in the public interest but what could reasonably be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the Parkins v Sodexo kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of section 43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers – even, as I have held, where more than one worker is involved. But I am not prepared to say never. In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest.*

*Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker.... The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but [counsel for the employee's] fourfold classification of relevant factors which I have reproduced ... above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."*

92. The four factors adopted were as follows:

- (a) The numbers in the group whose interests the disclosure served;
- (b) The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
- (c) The nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;
- (d) The identity of the alleged wrongdoer – as [counsel for the employee] put it in his skeleton argument, **“the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously**

***should a disclosure about its activities engage the public interest”***

– though he goes on to say that this should not be taken too far.

93. In addition, the very term 'public interest' is deliberately not defined by Parliament, leaving it to be applied by tribunals and not to be influenced by precedents from other areas where it is used in other contexts.

94. The mental element imposes a two-stage test:

- a) Did the claimant have a genuine belief at the time that the disclosure was in the public interest,
- b) if so, did he or she have reasonable grounds for so believing?

This point was explored further in **Ibrahim v HCA International [2019] EWCA Civ 207**, where it was held that the claimant's motivation for making the disclosure is not part of this test. As the judgment of Underhill LJ puts it: ***'the necessary belief is simply that the disclosure was in the public interest' and 'the particular reasons why the worker believes it be so, are not of the essence'***.

95. The necessary reasonable belief in that public interest may (in an atypical case) arise on later contemplation by the employee and need not have been present at the time of making the disclosure (though as an evidential matter, the longer any temporal gap, the more difficult it may be to show the reasonable belief).

96. Having dealt with the public interest element of the statutory test the Act sets out six categories of 'failure' to which the information must relate if the disclosure is to be one qualifying for protection (ERA 1996 s 43B(1)(a) to (f)). The categories of failure are as follows:

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health and safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been or is likely to be deliberately concealed.

In this case the Claimant within the List of Issues relies upon those set out at (a), (b), and (d) above.

97. With regard to head (b) (failure to comply with a legal obligation), the word 'legal' must be given its natural meaning, with the result that the fact that the individual making the disclosure thought that the employer's actions were morally wrong, professionally wrong or contrary to its own internal rules may not be sufficient. Subject to this possible limitation, a wide interpretation is to be given as to the nature of the legal obligation in question. Sub-s (1)(b) is in very broad terms and is capable of covering the commission of a tort such as defamation or breach of statutory duty.
98. Case law has established that s 43B places two obligations on the employee. First, the disclosure of information in question must have identified to the employer the breach of legal obligation concerned: **Fincham v HM Prison Service UKEAT/0991/01**. It was, however, said there that this need not be *'in strict legal language'*. Moreover, it has also been held that the context of the communication(s) must be borne in mind; in particular, this requirement is also met if the breach complained of is perfectly obvious.
99. An employee wanting to rely on the whistleblowing protection before a tribunal bears the burden of proof on establishing the relevant failure. In **Boulding v Land Securities Trillium (Media Services) Ltd UKEAT/0023/06** Judge McMullen said:

***"As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:***

***(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.***

***(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject."***

### **Public Interest Disclosure Detriment and Dismissal**

100. **Section 47B of the ERA 1996** reads as follows, so far as is material:

***"(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.***

***(1A) A worker ('W') has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done***

***(a) By another worker of W's employer in the course of that other worker's employment, or***

***(b) By an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.***

**(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer**

**(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer."**

101. Section 103A of the Employment Rights Act 1996 states that:

**"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed, if the reason (or, if more than one, the principal reason) is that the employee made a protected disclosure"**.

102. The use of the phrase '**subjected to**' in section 47B ERA imports ordinary ideas of causation and does not require a further element of wilfulness and/or control of events on the part of the employer. '**Detriment**' is not defined in the statute, but it is a well-known concept in discrimination law, and it is proper to apply that case law there under this section i.e., that there is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment: In particular, 'detriment' is to be given a wide interpretation.

103. This formulation means that there is a causative element, namely that the protected disclosure needs to have materially influenced (in the sense of being more than a trivial influence) the employer's alleged detrimental treatment of the whistleblower: **Fecitt v NHS Manchester [2012] IRLR 64**. Moreover, the test here is not the same as that for dismissal for whistleblowing in s 103A where it must be shown that the protected disclosure was the reason or principal reason for the dismissal. That is a far tougher test.

104. The requirement of causation means that, in common with victimisation in discrimination law, it is possible for an employer to defend a claim on the basis that the reason for the detrimental treatment was not the doing of the protected act in question, but the unacceptable way in which the claimant did it. This was established in **Martin v Devonshires Solicitors [2011] ICR 352, EAT** (a discrimination law case). In the whistleblowing case of **Panayiotou v Kernaghan [2014] IRLR 500, EAT**, it was said that the distinction is logical and that there is no requirement of exceptional circumstances, though it was also accepted that a tribunal must be alive to the possibility of spurious defences by employers relying on such circumstances.

105. **S 48(2) ERA** applies to all detriment claims which are brought under **s 47B ERA** (which includes whistleblowing cases) and is drafted in the following terms:

**"On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done."**

106. The statutory burden is on the employer to show on the balance of probabilities that the act, or deliberate failure, complained of was not on the grounds that the employee had done the protected act; meaning that the protected act did not

materially influence (in the sense of being more than a trivial influence) the employer's treatment of the employee: **Fecitt**.

107. However, it is important not to cast that burden too highly and to apply the statutory wording. Although it may at first look like the well-known statutory reversal of the burden of proof in discrimination law (EqA 2010 s 136)], it appears that a direct analogy is not to be drawn with that discrimination law position which mandates a finding for the Claimant if the employer fails to convince the tribunal of its version of events. **Serco Ltd v Dahou [2017] IRLR 81**. This concerned detriment on trade union grounds, under TULR(C)A 1992 s 148 which uses similar wording ("**...it shall be for the employer to show what was the sole or main purpose...**"). The tribunal had considered that this was indeed to be interpreted in the same way as the burden of proof reversal in discrimination law, but the EAT ([2015] IRLR 30) pointed out that the wording there is different, actually requiring the tribunal to find against the employer if it does not satisfy the burden. TULR(C)A 1992 s 148, however, was said to be cast in terms which are more in line with those in the ERA 1996 s 48(2) which, according to **Kuzel v Roche Products Ltd [2008] IRLR 530**, CA (a case on whistleblowing dismissal, but showing a similar approach; This means that if the employer fails to show an innocent ground or purpose, the tribunal may draw an adverse inference and find liability but is not legally bound to do so. At para 53 Simler J summed the position up as follows:

***"Accordingly, if a tribunal rejects the employer's purported reason for dismissal, it may conclude that this gives credence to the reason advanced by the employee, and it may find that the reason was the one asserted by the employee. However, it is not obliged to do so. The identification of the reason will depend on the findings of fact and inferences drawn from those facts. Depending on those findings, it remains open to it to conclude that the real reason was not one advanced by either side."***

That was endorsed by the Court of Appeal.

108. One other point of law arose in the appeal in **Dahou**, concerning the position of the claimant in a case such as this and the whole question of when the statutory reversal is triggered. Does he or she have to produce some evidence of the illegal reason in order for the ultimate burden to be reversed? The EAT decision in **Yewdall v Secretary of State for Work and Pensions UKEAT/0071/05** suggested that, like discrimination law, there is an initial burden on the claimant to show a prima facie case. It has been argued that as a matter of policy this places too high an onus on the claimant, but in the Court of Appeal's decision **Yewdall** is cited at some length and with approval, the judgment stating that **'the burden of proof only passes to the employer after the employee has established a prima facie or arguable case of unfavourable treatment which requires to be explained'**. To this limited extent, discrimination law does act as a precedent here.

## Harassment related to Sex

Section 26 of the Equality Act 2010 reads, so far as is relevant to this case as follows:

- (1) A person (A) harasses another (B) if—
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B....
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are....religious or philosophical belief.

109. In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336**, the EAT stated that the approach to be taken to harassment claims should be broadly the same, regardless of the particular form of discrimination in issue and that, in each context, **'harassment'** is defined in a way that focuses on three elements:

- (a) unwanted conduct;
- (b) having the purpose or effect of either:
  - (i) violating the claimant's dignity; or
  - (ii) creating an adverse environment for him/her;
- (c) on the prohibited grounds (that is, of sex, race, disability and so on).

That refers back to wording of the statute before the Equality Act 2010 and now the consideration needs to be whether it is related to the relevant protected characteristic which in this case is sex.

110. The EAT remarked that it would normally be a **'healthy discipline'** for tribunals to address each factor separately and ensure that factual findings are made on each of them.

111. In **Dhaliwal**, the EAT went on to make the following general points:

- (a) Older case law decided before the modern statutory coverage is **'unlikely to be helpful'**. Similarly, assistance is not to be sought from the **'entirely separate provisions'** of the Protection from Harassment Act 1997.
- (b) The alternative bases in element (b) above of purpose or effect must be respected so that, for example, a respondent can be liable for effects, even if they were not his purpose (and vice versa).

- (c) In each case, there is a proviso that means that, even if the conduct has had the proscribed effect, it must also be reasonable that it did so. There is of course a subjective element ('... **having regard to ... the perception of that other person ...**') but ultimately the proviso can deal with cases of unreasonable proneness to take offence. Although '**purpose**' is not determinative, it can be a factor: '**the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt**' (at para 15 of the Judgment). Ultimately, this is all '**quintessentially a matter for the factual assessment of the tribunal**'.
112. In **Pemberton v Inwood [2018] EWCA Civ 564**, the Court of Appeal took the opportunity to re-visit the guidance given in Dhaliwal, to address what was identified to be a subtle change in wording in the Equality Act 2010 s 26, as compared to the earlier formulation under the RRA 1976 s 3A. Although not considering that this gave rise to any difference of substance, Underhill LJ re-formulated the guidance to better reflect the language of the Equality Act, as follows:
- "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))."***
113. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for them, then it should not be found to have done so.
114. **Dhaliwal** concluded as follows:
- "We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."***
115. The question of whether or not the conduct is unwanted requires an assessment of the Claimant's reaction to what has taken place. The Claimant has set out in the List of Issues the specific conduct that he asserts was unwanted and an assessment needs to be made if that is truly the case.

116. 'Conduct' can be physical or oral and can cover messages and images contained in documents or sent by email or distributed or displayed by other means. The conduct complained of as an act of harassment may be a dismissal. This was confirmed in relation to positive dismissals in **Urso v Department for Work and Pensions [2017] IRLR 304, EAT**.
117. Although a complaint of harassment carries the implication of conduct persisting over a period of time, there is no requirement that this be so. A single act, if of sufficient seriousness, can be enough. It is important to remember not to take each allegation as an isolated incident, but each successive episode has its predecessors, and the impact of successive incidents may accumulate, and the work environment created may exceed the sum of the individual episodes (**Reed v Stedman (1999) IRLR 299**).
118. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them) hereafter the prescribed effect).
119. A claim based on 'purpose' would plainly require an analysis of the alleged harasser's motive or intention. This may, in turn, require the Employment Tribunal to draw inferences as to what that true motive or intent actually was as the person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused, as it does in other areas of discrimination law.
120. Where the claim simply relies on the 'effect' of the conduct in question, the perpetrator's motive, or intention, which could be entirely innocent. is irrelevant. The test in this regard has, however, both subjective and objective elements to it and the EqA says that the following must be taken into account: the perception of the complainant, the other circumstances of the case and whether it is reasonable for the conduct to have had the effect. The assessment requires the Tribunal to consider the effect of the conduct from the complainant's point of view; the subjective element. It must also ask, however, whether it was reasonable for the complainant to consider that conduct had that requisite effect; the objective element.
121. As a consequence of the objective element to the test of whether conduct amounts to 'effect' harassment, the fact that the claimant is peculiarly sensitive to the treatment accorded him or her does not necessarily mean that harassment will be shown to exist. In this regard, see the guidance given by the EAT in **Driskel v Peninsula Business Services Ltd [2000] IRLR 151**, which concerned the approach to be taken by employment tribunals, in determining whether alleged harassment constituted discrimination on grounds of sex. In Driskel the EAT held that although the ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the tribunal of all the facts, the claimant's subjective perception of the conduct in

question must also be considered. That said, harassment giving rise to the defined effect may arise as a result of nicknames, teasing, name calling or other behaviour even when this is carried on without malicious intent.

122. Although the focus will be on the behaviour which is complained of as harassment, the conduct of the complainant themselves may not be entirely irrelevant. Tribunals will wish to be careful not to engage in 'victim-blaming', but the complainant's own behaviour and perspective will be part of the context in which the alleged 'harassment' will have to be seen.
123. There is no requirement for the complainant to put forward a comparator (hypothetical or real). The conduct must, however, be 'related to' a relevant protected characteristic. Ultimately, the protection is against harassment that is, itself, a form of discrimination. Bullying is, of itself, not discrimination, except in the unhelpful sense that it involves treating some individuals differently to others.
124. All that said, 'related to' imports a potentially very broad test, leaving the scope of the term largely to employment tribunals to apply on a case-by-case basis. Having established on the evidence what was the conduct of the particular individual or individuals in question, the employment tribunal has then to apply an objective test in determining whether it was 'related to' the protected characteristic in issue; the intention of the actors concerned might form part of the relevant circumstances but will not be determinative of the question the tribunal has to answer.
125. Whilst the view of the complainant that the conduct in question is related to the protected characteristic in question is a relevant matter, it is not determinative. The Tribunal should articulate distinctly, and with sufficient clarity, what feature or features of the evidence or facts found have led it to the conclusion that the conduct is related to the characteristic as alleged. It may be "because of" the protected characteristic but case law dictates that related to is wider than just "because of".
126. Section 136 of the Equality Act 2010 deals with the burden of proof to be applied for both harassment and direct discrimination claims. That section reads as follows so far as is relevant:

**136 (1) This section applies to any proceedings relating to a contravention of this Act.**

**(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**

**(3) But subsection (2) does not apply if A shows that A did not contravene the provision.**

127. As discrimination is frequently covert and therefore can present special problems of proof, section 136 EqA provides that, once there are facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof 'shifts' to the respondent to prove a non-discriminatory explanation.
128. If a Claimant is unable to establish a clear case of discrimination, he or she can attempt to shift the burden of proof onto the respondent by establishing what is commonly known as a '**prima facie case of discrimination**'. It is clear from S.136(2) that a prima facie case of discrimination is established if there are facts from which the court could decide, in the absence of any other explanation, that the Respondent has contravened the provision concerned (i.e. unlawfully discriminated against the Claimant).
129. The issue of what amounts to a prima facie case of discrimination lies at the heart of the shifting burden of proof. It will depend on what inferences can be drawn from the surrounding facts.
130. In **Madarassy v Nomura International plc 2007 ICR 867**, it was stated that: ***"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."***
131. A failure of the Respondent to provide an explanation, without more, is not capable of shifting the burden of proof. Having said that Tribunals have been encouraged to retain a flexible approach when applying the burden of proof. In **Laing v Manchester City Council and anor 2006 ICR 1519** the EAT, emphasised that ***"the process of drawing an inference of discrimination is a matter for factual assessment and is situation-specific"***.

## Conclusions on Issues

132. I will start with the sexual harassment claims. I note that many of these specific allegations were not put to witnesses during cross examination which is disappointing. Allegations of this sort are very serious and can cast a blight upon individual's characters and/or careers. The specific allegations should be put. I did so on the Claimant's behalf by simply putting the allegation to the witness as drafted, but the opportunity to cross-examine witnesses was lost.
133. I will try and combine some of the allegations for ease:
- a) **5.1.1.2 and 5.1.1.5** – I have found that Saunders, largely on his own evidence, had no time for the Claimant from the outset of his engagement. In his email of 12 December, he states that ***"as you will have gathered, I was not best pleased that you claim not to have seen the spread sheet..."*** I accept that Saunders did shout and swear at the Claimant in the manner

alleged at 5.1.1.2 and 5.1.1.5. It is somewhat ironic that one of his criticisms about her was her bad language considering the finding I have made. I accept that the comments and the tone in which they were delivered created a hostile environment and that it was reasonable taking into account the Claimant's perception of the other circumstances of the case. I do not accept that even if an individual is loud, out-there, and uses foul language that does not mean that they cannot be harassed. The acts of Saunders as described were harassing in nature. I will return to whether they were sex or gender based later in this Judgment.

- b) On the evidence I am unable to find as a fact the following matters as proven on the balance of probabilities:
- i) **5.1.1.1** Coltman and Kiss calling the Claimant an idiot from 17 October onwards. Whilst I consider that Coltman thought the Claimant was an idiot I consider it more likely that he kept his own counsel. Whilst it is possible that the Claimant overheard Coltman and Kiss speaking about her, that allegation was not put in cross examination. The allegation is rejected.
  - ii) **5.1.1.3** The Claimant was not promoted even on her own evidence to General Manager between 27 October and 11 November and so this allegation must fail. Further it was not put to Mr Coltman.
  - iii) **5.1.1.4** I am satisfied that Kiss did make an accusation in respect of the under-age drinking matter. I have found that Kiss deliberately exaggerated the same to try and get the Claimant into trouble and she was the main driver of that at a time when she was jockeying for position within the Respondent. There was some basis for questioning what the Claimant had done but I am satisfied that Kiss raised it maliciously for her own ends. It was unwanted and it did create a hostile environment. Again, I am satisfied that this was an act of harassment as defined within the Act.
  - iv) **5.1.1.6** It is correct that Coltman and the kitchen staff did not attend a staff function organised by the Claimant. Whilst I am satisfied that there was no intention at that time for Coltman to socialise with the Claimant I accept his evidence that there was some confusion and that is the main part of the reason why it went as it did. This matter was not put to Coltman. I do not consider that it amounts to an act of harassment.
  - v) **5.1.1.7** This was not put to Coltman by the Claimant in cross examination. He denied it when I asked the question. Whilst it is possible that it took place, but I do not consider that there is evidence I can base a finding that it did happen on the balance of probabilities.
  - vi) **5.1.2** There was no evidence given about any informal meeting on 12 December by the Claimant in support of this allegation and nor was any witness of the Respondent questioned about it. I note that on 6

December the Claimant accepted that she had spent excessively on candles. In the absence of evidence this allegation is dismissed.

- vii) **5.1.3** The Claimant asserts that she raised issues of harassment regularly with Taylor and the fact that action was not taken then that was harassment. It was acknowledged that no formal grievance was raised which was at least notionally available to the Claimant from her contract (even if I have found there was not one ultimately). As the ACAS Code reflects that informal steps should often be the first step and if that does not work a formal grievance should be escalated. The Claimant never sought to do so. Taylor did consider the underage issue, and did so proportionately in my view, and came out with an appropriate outcome: no formal disciplinary required and effectively some informal words of warning / advice. Whilst I acknowledge that the Claimant did raise matters of complaint, she elected not to escalate them. I do not consider that the same amounts to harassment.
- viii) **5.1.4** The Claimant was dismissed. It was the culmination of what, quite frankly, been on the cards for months. It was unwanted although I suspect not entirely unexpected and in fact it may have brought the Claimant some relief taking into account the uncomfortable months that she had endured. That is why she did not fight back. Whilst I accept that any dismissal is humiliating and may affect dignity, I do not think in the circumstances that pertained in this case and knowing what the Claimant knew it could be said to be reasonable for it to be so in this case.
- ix) **5.1.5** – No adequate evidence was led on this issue and none of the witnesses were questioned about the same, so the claim is dismissed.

134. I have found that certain claims do amount to harassment and they are Kiss' exaggerated allegations re the underage drinking and Saunders conduct towards the Claimant in December. Whilst all of these matters are out of time, I find that it would be just and equitable to extend time as I consider that the Respondent has had every opportunity to call evidence to rebut what are serious matters and has been able to do so. Kiss' absence is in my view, down to the Respondent as the date of this hearing has been known for a very long time. Due to my final conclusion on the harassment matters I will not dwell further on the time point.

135. Ultimately the Claims that I found to be harassing in nature will be dismissed because I am not satisfied that they are linked to gender or sex. I have found as a fact that the reason why the Claimant was ultimately discarded was because she was deemed not to be the right fit for the business the Respondent wanted. It could be described as a class issue or alternatively it was that the Claimant's personal character traits, none of which would be ascribable to her gender, just did not fit with what was required and the Claimant's abilities and performance and conduct were quite simply not sufficient to bridge the gap in what was wanted from what the Claimant was. As both sides became further entrenched

into a siege mentality the gulf just got wider and wider until the Claimant was dismissed. The Claimant's gender was an irrelevance in respect of the allegations found to be harassment. Kiss harassed her in order to try and gain the upper hand for potential advancement and Saunders thought little of the Claimant as a person and I am quite satisfied that sex / gender had no bearing in what for him was an individual personality thing. He did not believe that she fitted high-end dining.

136. The claims of sexual harassment are dismissed as I am wholly satisfied on the evidence before me that the conduct I have found to be harassing was not in any way related to the Claimant's gender. I do not accept that the Claimant has produced evidence that would support a shifting of the burden of proof and even if she had I am satisfied from the evidence that there was a non-discriminatory reason for the conduct complained of.
137. The preceding paragraph explains what I consider to be the reasons for dismissal. I am quite satisfied that the principal reasons for the dismissal was a view that the Claimant was not the right type of person in terms of character to be a manager in a fine dining establishment and her conduct and performance was such that they either perpetuated that view or alternatively were insufficient to override her perceived deficiencies. I do not consider that anything she said about illegal practices taking place vis a vis tips had any bearing on her dismissal whatsoever let alone be the principal part. The decision that she was not suitable for the Respondent and would be replaced had been made well before any disclosure was made. When she did make the disclosure, the Respondent reflected and changed their previous process for tips. I detected no adverse reaction to the Claimant raising this point and the change was an inevitability with the law changing in the near future anyway. The automatically unfair dismissal claim is not well-founded and is dismissed.
138. So far as the alleged detriments are concerned, I am satisfied that even though the matters referred to at 3.1.1 and 3.1.2 did take place after the disclosure the decision that they would take place at some point in the future was already in place. That decision that the Claimant would be removed had already been taken and it was just a matter of the complaints from staff falling into place.
139. In any event 3.1.1 did not contain false allegations as there were complaints from Goillon, Zoremb and Kiss which initiated from them and which the Respondent utilised for the coup de gras i.e., the dismissal. Ms Taylor was not questioned about 3.1.2.
140. I accept that the whistleblowing claims have unusually been dealt with by dealing with causation elements first but that just simply flowed better from the sexual harassment claims. I will finally tidy some loose ends.
141. Was there a protected disclosure? The Claimant's case was pretty chaotic in relation to this, but I consider that there was a protected disclosure on 1 February when the Claimant alleged that what was going on at the business was illegal. I consider that there was a sufficient disclosure of information especially taken in context with previous discussions that there was a breach or there was

going to be a breach of a legal obligation. I have considered the Claimant's evidence and do accept she had a reasonable belief that the Respondent's policy either was in breach or would be in breach and I also accept that on this occasion she raised it for a sufficient number of staff to be in the public interest. Further of course it was the public who were paying the service charge

142. Clearly the fact that within a week a decision has been made that all tips should go to staff is indicative of an organisation that has reflected and changed. Whilst of course it is possible they could make the change and still submit the Claimant to a detriment having considered the circumstances here, I reject that.
143. The Respondent raised a time limit point based on the allegations raised at 3.1.1 and 3.1.2. Although the Claimant suggested that the detriments took place on or around 8 February the evidence clearly shows that these matters arose just before the date of dismissal. I consider them to have been lodged after 22 February and so they are in time.

**APPROVED BY  
EMPLOYMENT JUDGE SELF  
29 December 2025**

Sent to the parties on  
14 January 2026