



EMPLOYMENT TRIBUNALS

Claimant: C

Respondent: I

**Heard at: Leeds
Deliberations**

**On: 10,13,14,15,16,17,20 and 21 April 2026
On: 11 and 12 May 2026**

Before: Employment Judge Shepherd
Members: Ms Lancaster
Mr Taj

Appearances

For the claimant: In person
For the respondent: Mr Webster, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim of sexual harassment is not well-founded and is dismissed.
2. The claim of victimisation is not well-founded and is dismissed.
3. The claim of Detriment on the ground that the claimant had made a protected disclosure (whistleblowing) is not well founded and is dismissed.
4. The claim of Health and Safety detriment is not well-founded and is dismissed.
5. The claim of unfair dismissal is not well-founded and is dismissed
6. The claim of Automatically unfair dismissal is not well-founded and is dismissed.

REASONS

1. The claimant represented herself and the respondent was represented by Mr Webster.
2. An anonymisation order had been made in view of allegations of sexual misconduct. The Tribunal has anonymized the identity of the witnesses who gave evidence in order to avoid jigsaw identification.
3. The Tribunal heard evidence from:
 - C, the claimant;
 - SH, Professional Services Pharmacist;
 - PS , Area Manager;
 - JS, Director of Retail Operations;
 - PC, Head of Automation;
 - AS, Pharmacy Support and Services Manager;
 - SA, Web Shop Manager;
 - GS, HR Advisor;
 - MW, HR Advisor;
 - AG, Head of E-Commerce;
 - H; Branch Supervisor;
 - D; Area Manager;
 - GL, Commercial Operations Director.
4. The first day of this hearing was a reading day for the Tribunal.
5. At the start of the second day a number of preliminary issues were dealt with.
6. It was agreed that the anonymity order would be extended to cover the respondent and that there would be a restricted reporting order.
7. The claimant had made an application for disclosure of documents between the respondent's managers and their insurers. The respondent indicated that there were no such documents. There had been correspondence between managers and their legal advisers which were subject to legal privilege.
8. The claimant also sought to amend her claim to include a further claim of victimisation in respect of the alleged failure to allow her an appeal in a number of disciplinary hearings. This application for an amendment was not allowed as the protected acts relied on were the same as those in the existing claim of victimisation, the presenting of the claims to the Employment Tribunal on 21 October 2024 and 13 November 2024. The claimant said that the detriment was the refusal of the right to

appeal disciplinary and grievance outcomes; these detriments preceded the protected acts relied on.

9. RH, Director of Pharmacy Service also provided a written witness statement but did not attend to provide oral evidence as it was said that his evidence was only relevant to the question of remedy.

10.The Tribunal had sight of a bundle of liability documents which together with a supplemental bundle admitted during the course of the hearing was numbered up to page 1367. The Tribunal considered those documents to which it was referred by the parties.

11.The Tribunal was also provided with 12 media files which were recordings taken from the claimant's mobile phone. The Tribunal listened to these although some were inaudible until a way to amplify them was found.

12. The issues were set out in the record of a preliminary hearing dated 24 April 2025 and sent to the parties on 1 May 2025. An anonymity order was granted and sent to the parties on 1 May 2025. The anonymity order was to remain in force until 20 days after the promulgation of the liability judgment at which time it will cease to remain in force unless either party has made an application to extend it, in which case it shall remain in force until the application is determined.

13. The claimant's application to amend her claim to include a claim of unfair dismissal under section 98 of the Employment Rights Act 1996, dismissal by reason of making a protected disclosure under section 103A and victimisation under section 27 of the Equality Act 2010 had been granted by consent. The issues were discussed, agreed and recorded as follows:

Claims and Issues

Claims

1. The Claimant brings the following claims:
 - a. Sexual harassment – Section 26(2) of the Equality Act 2010 (“EA 2010”)
 - b. Victimisation- Section 27 EA 2010
 - c. Detriment done on the ground that the Claimant has made a protected disclosure (whistleblowing)- Section 47B Employment Rights Act 1996 (“ERA 1996”)
 - d. Health and safety detriment- Section 44(1)(c) ERA 1996

- e. Unfair dismissal – Sections 94 and 98 ERA 1996
- f. Automatically unfair dismissal – Section 103A ERA 1996

EA 2010 Claims

Limitation:

- 2. Given the date that the claim forms were presented (21 October 2024 and 13 November 2024) and the dates of early conciliation (1 September 2024 to 13 October 2024), any complaint about something that happened before 2 June 2024 may not have been brought in time.
- 3. Were the discrimination complaints made within the time limit in Section 123 EA 2010? The Tribunal will decide:
 - a. Was the claim commenced within 3 months (plus early conciliation extension) of the act to which the complaint relates?
 - b. If not, was there conduct extending over a period?
 - c. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i. Why were the complaints not made to the Tribunal in time?
 - ii. Is it just and equitable in all the circumstances to extend time?

Sexual Harassment: Section 26(2) Equality Act 2010

- 4. Did D engage in unwanted conduct of a sexual nature, namely (GOC para 12-14):
 - a. On 2 occasions in April/May 2024 (the Claimant cannot recall precisely when), D squeezed the Claimant's right buttock.
- 5. If so, did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant (having regard to the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect)?

Victimisation: Section 27 Equality Act 2010

- 6. Did the Claimant do a protected act? The Claimant relies upon the following:
 - a. Issuing ET claim number 6018520/2024 on 21 October 2024.
 - b. Issuing ET claim number 6015760/2024 on 13 November 2024.

7. If so, did the Respondent subject the Claimant to a detriment because she had done the protected act(s)? The Claimant relies upon the following:
 - a. The Claimant's dismissal on 17 April 2025

ERA 1996 Claims

Limitation (Section 48 ERA 1996):

8. Given the date that the claim forms were presented (21 October 2024 and 13 November 2024) and the dates of early conciliation (1 September 2024 to 13 October 2024), any complaint about something that happened before 2 June 2024 may not have been brought in time.
9. Were the detriment complaints made within the time limit in Section 48(3) ERA 1996? The Tribunal will decide:
 - a. Was the claim presented before the end of the period of 3 months (plus early conciliation extension) beginning with the date of the fact or failure to act to which the complaint relates or, whether that act or failure to act is part of a series of similar acts or failures, the last of them?
 - b. If not, is the Tribunal satisfied that it was not reasonably practicable for the claim to be presented within that period?
 - c. If so, was the claim presented within such further period as the tribunal considers reasonable?

Public Interest Disclosure Detriment

Public Interest Disclosure (Sections 43B(1) ERA 1996):

10. Did the Claimant disclose information? The Claimant says that she disclosed the following information (GOC para 33):
 - a. The Claimant's email sent to the Respondent on 19 June 2023.
 - b. The Claimant's formal grievance of 22 September 2023 in relation to D suggesting having a target of 5 near misses per week in the pharmacy system and D's conduct towards the Claimant and possibly to other employees.
 - c. An anonymous letter sent by the Claimant on 15 July 2024 to 3 different departments (namely Complaints, HR and JS(operations)).
 - d. In a meeting on 13 August 2024 the Claimant verbally informed GS and MW that she had been sexually assaulted by D 2 to 3 months ago.
 - e. After the meeting on 13 August 2024 the Claimant sent a document entitled '*This is My Story*' detailing the sexual assault to MW.

11. If so, did the Claimant reasonably believe that the disclosure was made in the public interest and that it tended to show one or more of the following (Section 43B(1)(a), (b), (d) and (f)) (GOC para 32):

- a. that a criminal offence had been committed, was being committed or was likely to be committed;
- b. that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject;
- c. that the health or safety of any individual had been, was being or was likely to be endangered; and/or
- d. that information tending to show any matter falling within any one of the preceding paragraphs had been, was being or was likely to be deliberately concealed?

12. If so, was the information disclosed to:

- a. The Respondent (as the Claimant's employer) (in accordance with the provisions in s.43C ERA 1996)?

Detriment (Section 47B(1) ERA 1996):

13. Was the Claimant subjected to any detriment by any act, or any deliberate failure to act, by the Respondent done on the ground that the Claimant had made a protected disclosure? The Claimant relies upon the following alleged detriments (GOC para 35):

- a. The Respondent held the Claimant responsible for wrongdoing whilst D was not under any investigation in relation to the sexual assault. By 'wrongdoing', the Claimant means the fact that she sent anonymous letters on 15 July 2024 regarding the alleged sexual assaults.
- b. On 1 August 2024 the Claimant was suspended by PC.
- c. The Respondent failed to investigate and/or suspend D regarding the Claimant's allegation that he had sexually assaulted her, either before or after 13 August 2024 when the Claimant told GS and MW that she was the victim.
- d. The Respondent failed to adhere to its whistleblowing policy as follows:
 - i. It failed to conduct an investigation into the matters raised by the Claimant in her protected disclosures.
 - ii. It failed to advise the Claimant of progress and/or an outcome to any investigation into the matters raised in her protected disclosures.

- iii. It concluded the investigation into the sexual assault complaint based only on meetings held with the Claimant on 30 July 2024 and 1 August 2024.

Health and Safety Detriment

Raising Health and Safety Concerns (Section 44(1)(c) ERA 1996- GOC para 31):

14. Did the Claimant bring to her employer's attention, by reasonable means, circumstances connected to her work which she reasonably believed were harmful or potentially harmful to health or safety? The Claimant relies upon the same matters that she says amount to protected disclosures.

15. If so:

- a. Was there no health and safety representative (or health and safety committee)? The Respondent says that JS was the health and safety representative.
- b. Alternatively, was it not reasonably practicable for the Claimant to have raised the matters through the health and safety representative or safety committee?

Detriment (Section 44(1) ERA 1996):

16. Was the Claimant subjected to any detriment by any act, or any deliberate failure to act, by the Respondent done on the ground that she brought matters to the Respondent's attention in accordance with s.44(1)(c)? The Claimant relies upon the same alleged detriments that she relies upon in respect of her public interest disclosure claim.

Unfair Dismissal

What was the reason or principal reason for the Claimant's dismissal (on 17 April 2025)? The Respondent contends that it was for a reason related to her conduct.

17. If there was a potentially fair reason for dismissal, was the dismissal fair? In particular:

- a. Did the Respondent genuinely believe that the Claimant was guilty of misconduct?
- b. Did the Respondent have in mind reasonable grounds upon which to sustain that belief?
- c. At the stage at which that belief was formed on those grounds, had the Respondent carried out as much investigation into the matter as was reasonable in the circumstances?

- d. Did the Respondent act reasonably or unreasonably in the circumstances in treating the misconduct as a sufficient reason for dismissal, having regard to its size and administrative resources and the equity and substantial merits of the case (Section 98(4) Employment Rights Act 1996)?
- e. Was the decision to dismiss and the attendant procedure within the band of reasonable responses?

Automatically Unfair Dismissal (Section 103A Employment Rights Act 1996)

18. Did the Claimant make a protected disclosure? The Claimant relies upon the same alleged protected disclosures referred to in paragraphs 10-12 above.
19. Was the reason (or, if more than one, the principal reason) for the Claimant's dismissal (on 17 April 2025) that she had made a protected disclosure?

Remedy

20. Should the Tribunal make a recommendation that the Respondent take a step to reduce any adverse effect on the Claimant? What should it recommend?
21. What financial loss has the discrimination and/or detrimental treatment caused the Claimant?
22. What injury to feelings has the discrimination and/or detrimental treatment caused the Claimant and how much compensation should be awarded for that?
23. If the Claimant was unfairly dismissed:
- a. What basic award is the Claimant entitled to?
 - b. What compensatory award is it just and equitable for the Claimant to be awarded in all the circumstances (including having regard to Polkey principles)?
 - c. Should the basic and/or compensatory awards be reduced by reason of any conduct of the Claimant (Section 122(2) / 123(6) ERA 1996)?
 - d. Has the Claimant mitigated her loss?
24. Is this a matter to which the ACAS Code of Practice on disciplinary and grievance procedures applies?
- a. If so, did the Respondent or the Claimant unreasonably fail to comply with the ACAS Code of Practice in any material respect?
 - b. If so, should any compensatory award be uplifted or reduced pursuant to Section 207A TULR(C)A 1992 on account of such failure and, if so, by what percentage?

25. Did the Respondent take reasonable steps to prevent the sexual harassment of its employees in the course of their employment within the meaning of Section 40A of the Equality Act 2010?

a. If not should the Respondent be ordered to pay a compensation uplift pursuant to Section 124A of the Equality Act 2010?

26. Should interest be awarded? How much?

14. It was agreed that, in view of the number of witnesses and matters to be determined, this hearing would determine liability only

Background/Findings of fact

15. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings made from which the Tribunal drew its conclusions.

16. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of findings are also set out in the conclusions to avoid unnecessary repetition. and some of the conclusions are set out within the findings of fact. The numbers in brackets are the pages referred to in the hearing bundle.

17. The claimant was employed by the respondent as a Pharmacy Manager on 6 January 2020.

18. D joined the respondent on 9 May 2023 as Area Manager covering a number of branches including the branch for which the claimant was the manager. The claimant had recently returned from maternity leave. She had no record of disciplinary issues.

19. On 5 June 2023 the claimant sent an email (page 256) to the branch and D in which she referred to the team having won 'branch of the quarter' 2/3 years previously and they had been promised money towards a night out/food and she asked whether there was any chance that they could have it before the next pandemic hits.

20. D replied that, unfortunately, it would not be paid on this occasion as it was going back two to three years. He said that most of the colleagues who contributed to delivering these results had left the business. He also referred to the line in which the claimant had stated "any chance we can have it before the next pandemic hits". D stated that he did not believe those were comments that they should be making " as the pandemic had an impact on all of us, some personally more than others and another pandemic is something that we should not be making comment on."

21. On 19 June 2023 D sent an email to all branches reminding them of the importance of reporting near misses which is when an error is made during the dispensing process which is then picked up by the pharmacist when completing a final check. He indicated

that he expected every branch should keep records. He indicated that he expected them to be recording at least five near misses each week which would show as green on his monitoring table.

22. The claimant replied (237) commenting that not everything is about targets, and that she recorded all near misses straight away and that she believed it was a culture that needed changing from the top. The claimant and D then had a telephone discussion about near miss reporting.

23. On 21 June 2023 the claimant alleges that D called her into a consultation room and said "Don't challenge me because a lot of people will be involved".

24. On 14 September 2023 the claimant emailed D (240) in which she complained about patients cancelling appointments for flu jabs. She said that someone had just come in and cancelled the flu jab and:

"Year in and year out we go through piles of consent forms provisionally booking patients, then calling again to book them in for flu jabs. These patients then get calls from the gp for flu jabs and they start cancelling our appointments because just maybe the gp's flu jabs have added sugar in it – (ours is sugar-free). I am now beyond annoyed with this because people don't realise the amount of work that goes into this. We will have ordered flu jabs in too. I guess people can go where they want to go, it's personal choice.

I am sorry to say I didn't hold back on my opinion. She then went on to say she had a sore arm last time she had it here. She successfully managed to really put it off and I am just wondering why I should bother. I don't think I will be doing any more to be honest with you. We have done the 16 over the last two days and I think that's me done. This has given me a big headache.

Retired vaccinator

25.. D said that he was concerned about the claimant's email and that it was inappropriate in terms of tone and content. He and an HR advisor met with the claimant and then conducted an investigation.

26. The claimant raised a grievance on 22 September 2023 against D for bullying behaviour. This related to the incident on 21 June 2023..

27. Following a disciplinary hearing on 4 October 2023 the claimant was issued with a 12 month first written warning (277). This was in respect of concerns raised in respect of the alleged misconduct:

"...inappropriate and unprofessional conduct in the form of email communications with your line manager and other support colleagues; I find that your email communications to your line manager/Area Manager and other colleagues at BSC (Branch Service Centre) were not worded appropriately and you agreed, in hindsight, that they were not of the required professional standard expected for a Pharmacy Manager.

In response to the allegation of inappropriate and unprofessional conduct in the form of verbal communications with a customer; I find that the discussion with the patient could have been handled more appropriately by taking the patient away from the shop/dispensary area and into the consultation room to discuss their needs in private in your professional capacity.

You admitted in the hearing that your actions and behaviours had breached your job description and company policies and the GPhC standards for Pharmacy Professionals which, as a registered Pharmacist you agreed to abide by. You showed remorse for the conduct issues and accept that, regardless of the intentions of the sender, a message can be interpreted differently and those messages can be misconstrued....”

It was indicated that the warning would remain active on the claimant's file for a period of 12 months.

28.. It was also stated that the issues that had been raised in the grievance by the claimant on 22 September 2023 relating to bullying and intimidation by her line manager, lack of support by her line manager, comments made by her line manager about the claimant 'challenging' him and the use of the word 'love 'when speaking to the claimant. The claimant's grievance was considered at the same hearing

29. The grievances raised by the claimant were not upheld apart from that the claimant's line manager had use the term "love" when speaking to her. That part of the grievance was upheld.

30. The claimant appealed the grievance outcome and, following a meeting on 2 November 2023, on 8 November 2023 (309), it was concluded that there was insufficient evidence to overturn the original grievance decision.

31. On 28 November 2023 (386) the claimant was issued with a final written warning following investigations into concerns over the claimant's conduct in relation to unlawful supply of a controlled drug, administration of a Covid vaccination to a patient who had booked a flu vaccination resulting in a customer complaint, concerns regarding the inadequate storage of Covid and flu vaccinations and unsafe practices for Covid and flu vaccinations.

32. The decision by AG was that no evidence was found of a balance discrepancy and no further action would be taken with regard to administering a covid vaccination to a patient who had booked a flu vaccination. However, the storage of flu and covid. vaccinations were found to be unsafe and a final written warning was issued.

33. The claimant was informed of improvements required and she was informed that the warning would remain active for 12 months. A failure to improve, repeat of similar misconduct or other misconduct of any kind could ultimately result in dismissal.

34. On 18 December 2023 a mediation session took place between the claimant and D and it was agreed that a number of steps would be taken to resolve issues between the claimant and D (388)

35. A further disciplinary investigation took place in respect of a complaint received from a job candidate alleging that their interview with the claimant was not carried out in a professional manner. The disciplinary hearing was carried out by PS, Area Manager. The outcome of the disciplinary hearing was provided to the claimant in an email dated 15 July 2024 (465). The conclusion was that the claimant's action and conduct warranted a sanction which:

“... could result in cumulative dismissal as you have had 2 prior warnings (a first written warning and a final written warning, which remains active on your employee file). However, taking everything into account my decision is to reinstate the final written warning which is active on your employee file. This warning will remain active on your file for a further 12 months from the date your active final written warning would have expired; so will remain active until 28 November 2025. A failure to improve, a repeat of similar misconduct or any other instance of misconduct of any kind during this period under the Company's rules may lead to further disciplinary action which could ultimately result in your dismissal.

When considering the above allegations I have considered your responsibilities in a Pharmacy Manager role and I have concluded that it is not appropriate for you to continue your managerial responsibilities, therefore, in line with the company's disciplinary policy, a loss of seniority has been imposed. Your role will be amended from Pharmacy Manager to Pharmacist. You will be issued with a variation of contract and job description to confirm the changes to your terms and conditions under separate cover...”

36. On 16 July 2024 the respondent received an anonymous letter (469) which had been sent to the Complaints Department, HR and H the Director of Retail Operations in which it was stated:

“I would like to report sexual assault done in one of your branches. I work as a pharmacy assistant in one of the busy branches D (named) who comes in regularly grabbed my buttocks and squeezed them. When it first took place last month I just thought maybe it was a mistake. He repeated it again a few days later. He whispered ‘don't bother reporting this love no one is going to believe you, they always take my side I have the upper hand’. I haven't been myself ever since this happened. I don't know who to talk to and I am too scared to open up due to the stigma associated with sexual abuse. If I tell my partner I am scared he will reject me. I just had to gather the courage to say something because I don't know how many more victims are scared to come out. Staff need protection and they need it immediately! I will see how this is dealt with and if nothing is done I will just go and report the company to the police and once I put myself together I will tell my best friend who is a reporter to alert everyone both those already in the company and those to come.

It has taken me a lot of courage to report this and I am scarred for life.’

37. PC, Head of Automation, carried out investigations into the anonymous complaint including interviewing D who was then told that he should not conduct any branch visits and should only work from the Branch Service Centre whilst the investigation was going on.

38. PC interviewed numerous staff members, obtained handwriting samples and looked into and interviewed staff members who could have used the post office from which the anonymous letter was sent. PC said that, in responding to his questions, C did not provide clear or direct answers on several occasions and that, taken together with the surrounding circumstances and the existing issues between C and D, this raised concerns about the credibility of the anonymous complaint.

39. GS, HR Advisor said that on 18 July 2024 she received a visit from PC Kaye from South Yorkshire Police and was informed that they had received an anonymous complaint of sexual assault by D. The date of birth given was checked and did not match any of the respondent's current or former employees. A said that PC Kaye commented that they believe the complaint to be false.

40. On 2 August 2024 (495) the claimant was suspended on the ground that there was a reasonable belief of the claimant's involvement in sending an anonymous complaint to the company to discredit another employee.

41. On 13 August 2024 the claimant attended a meeting with GS and MW, HR Advisor, where the claimant informed them that she had sent the anonymous letter following her assault, her concerns about the investigation and that she had recordings of her team commenting on the "don't challenge me " comment.

42. On 15 August 2024 (516) the claimant was informed of the outcome of her grievance

It was stated:

"... Having completed my investigation I found no evidence to support your allegations of wrongdoing by D, Area Manager. The findings of your previous grievance and grievance appeal, which you raised again in this process, were all investigated at the time by separate parties; I found that they were handled thoroughly and there were no irregularities with the processes that were followed. I found no further evidence to support your allegations, which were raised several months later following a separate disciplinary process. I am therefore unable to uphold your grievance due to the above reasons...."

43. Also on 15 August 2024 (519), the claimant was invited to an investigation meeting in relation to a number of issues including "making covert recordings of conversations with colleagues, Compromising the integrity of evidence from potential witnesses, which may give rise to a possible breach of data protection and GDPR rules

44. On 19 August 2019 the claimant sent an email to GS, HR Advisor (521) in which she stated that, even though she was not in agreement with the grievance outcome letter she was 'Ok with the recommendations'.

45. On 20 August 2024 (523) the claimant wrote to the respondent indicating that her preferred means of communication was by email.

46. On 29 August 2024 (528) the claimant attended a meeting with SA.. The notes of the meeting shows that the claimant wanted to continue her working relationship with the respondent and wished to draw a line on matters and move on. The notes show that the claimant put forward:

“1 swapping of area manager, because my relationship with D has completely broken down.

2 installation of CCTV, because I need my work environment to be protected.

3 I need a break from disciplinary proceedings for the next 12 months, as I have been in and out of M (anonymised) house, I need a break from it unless I have done something very serious, that’s not to say I should be treated differently to anyone else.

4 I want my job title back to that of Pharmacy Manager.

5 for the company to consider its processes when dealing with disciplinary proceedings to make sure they are fair and reasonable at all times.

6 and lastly just a pay rise, an increase of about £5 an hour.

We can draw a line, sign on it and we can all move on.”

47. On 29 August 20 (531) the claimant sent an email to the respondent asking for investigation questions. The respondent sent the claimant the interview questions.

48. On 2 September 2024 the claimant wrote to the respondent (541) indicating that she would not be answering the questions and she had passed the matter to ACAS.

49. On 5 September 2024 GS (543) wrote to the claimant indicating that they would like to arrange an appointment for the claimant with an Occupational Health provider.

50. On 7 September 2024 (544) the claimant replied that the best thing was to wait to hear from ACAS to see if matters can be resolved and, if not, it will be left for a Employment Judge to decide.

51. On 21 October 2024 the claimant presented a claim to the Employment Tribunal in which she indicated it she was bringing a claim of whistleblowing in which it was stated that the sexual assault had taken place in February – March 2024 (exact date not sure) in which her Area Manager had touched her right buttock and squeezed it gently. A couple of days later he had touched her buttock this time and whispered “don’t bother reporting this love known as no one is going to believe you, they always take my side I have the upper hand”

52. On 13 November 2024 (16) the claimant presented a further claim to the Employment Tribunal in which she claimed sex discrimination and whistleblowing. A representative was named and the grounds of claim indicated that the claim arose out of the same facts and circumstances as case number 6015760/2024 and that the claimant wished for both claims to be joined together. In this claim the date of the alleged assault was stated as April/May 2024.

53. On 21 November 2024 the claimant was invited to a rescheduled investigation meeting (568)

“... the purpose of the meeting will be to undertake a fact-finding review in relation to a number of issues including:

- Making covert recordings of conversations with colleagues;
- Compromising the integrity of evidence from potential witnesses, which may give rise to a possible breach of data protection and GDPR regulations.”

54. On 26 November 2024 the claimant wrote (569) indicating that she would not be attending the meeting. The reason for her absence was work-related stress as the respondent has not dealt with the sexual assault matter that she had reported.

55. The claimant was again invited to an investigation meeting on 31 January 2025 (585).

56. On 5 February 2025 (595) the respondent reported the claimant to the General Pharmaceutical Council in respect of not meeting the GPHC standards (594).

57. The claimant was invited to an investigation meeting on 10 February 2024 but indicated that she would not attend indicating that the reason for her absence would be work-related stress because the respondent had not dealt with the sexual harassment matter for the past 6 months (593).

58. The respondent indicated that if the claimant failed to attend a meeting it would be held in her absence (596).

59. On 7 February 2024 the claimant raised a grievance in respect of the respondent not having dealt with the sexual abuse matter and unfair processes and procedures (598).

60. The claimant provided answers to the investigation questions in respect of covert recordings (603).

61. On 13 February 2025 (609) AS produced an investigation report in respect of making covert recordings and the recommendation was that this should move to a disciplinary hearing.

62. On 18 February 2025 the claimant was invited to a disciplinary hearing. She requested copies of the documents to be sent electronically for her lawyer to access. She asked that the grievance she had raised to be concluded before the disciplinary process.

63. On 19 February 2025 the respondent wrote to the claimant indicating that it may be appropriate to deal with the grievance and disciplinary cases concurrently.

64. On 28 February 2025 the claimant attended the disciplinary and grievance hearing chaired by AG (833). The claimant also provided written answers to the respondent's questions.

65. On 16 March 2025 (902) the claimant sent the respondent further videos. She said that the reason for using “handbrake App” was because she needed compress the videos in preparation for the disciplinary hearing. She said that she did not give consent for her videos to be played to the relevant employees.

66. The Tribunal listened to the video recordings and considered the IT reports by the IT specialists instructed by the respondent and the claimant. The Tribunal is satisfied that those reports and analysis of metadata do not establish that the recordings were of significant assistance to either party and, from the evidence of the employees who had been recorded, it was clear that consent had not been given before the recording was made. H gave evidence to the Tribunal and indicated that he had never been asked for permission to being recorded.

67. The claimant had been asked to provide written consent from the employees who had been recorded. (1140) H informed the appeal investigation and Tribunal that at no point did he give consent to being recorded.

68. F (1144) said that she was not aware that she was recorded at any point and did not give consent. E told the investigation (143) that she did not give consent to being recorded at all, although she was aware that she was being recorded on one occasion.

69. On 17 April 2025 AG wrote to the claimant providing the outcome of the disciplinary proceedings and the grievance. (1044) The grievance was not upheld and the claimant was dismissed. In the letter the conclusion was:

“From my investigations I believe that you sent the anonymous complaints to the company containing false allegations of sexual harassment by D with deliberately misleading and false information, with the malicious intent of discrediting D. And that by making an anonymous complaint to the police about D on the same day with fabricated information. It is reasonable to assume that your intention was to cause further reputational damage to D and subvert an investigation. You also confirmed in your written statements that you wished for the company to deal with the matter internally. However, I find you simultaneously reported the allegations to the police which is an inconsistency you could not explain. You also reported the allegations to a local MP, to the General Pharmaceutical Council and, in the anonymous complaints, threatened to report the matter to the media, which I find was done to involve as many people as possible inside and outside the organisation with malicious intent to harm D’s reputation. I find that the dates of the alleged incidents provided by you in the anonymous letters gave a short timeline of the previous month, indicating that the events took place in June 2024, which you later changed to varied date ranges between May, June and July. It is my belief that this was to deliberately stymie the investigation, to give greater scope to when D could have taken place to support your narrative and to force the investigator into wide-ranging and time-consuming investigations. I found that you were given support, advice and reassurances by the investigating officer (PC) in both meetings investigating the source of the anonymous complaints. During your grievance hearing with JS who was also responsible for Health & Safety, you were repeatedly prompted to come forward with any relevant information. I did not find any clear reason why you could not have been more specific with the information and why this changed substantially after you receive guidance from ACAS. I find there were inconsistencies in your reports to the company and the police and in your written statements about the location and firmness of the alleged assaults and despite attempts to clarify these points in the disciplinary hearing you could not provide an adequate account. I find the complaints posted at Shoreham post office on 15 July 2024 at 09:26 were made after notification of the disciplinary outcome on 12 July 2024, which also suggests

to me that you had an ulterior motive as you had the opportunity to raise any such issues at an earlier stage which you did not do. I find there was sufficient evidence in the disciplinary hearing on 28 February 2025, together with the submission of clearly false evidence to the company and the police, that you are willing to falsify claim and it is my belief from reviewing all of the evidence that the intended outcome of the anonymous letters you sent, which came immediately after a concluded disciplinary hearing and sanction, was to maliciously discredit your line manager D....

In response to allegation 2; making covert recordings of conversations with colleagues in sharing their personal data without their explicit consent and without knowledge of what data was being shared...

I found that the investigations with witnesses clearly show that they were not aware of any recordings made by you prior to your grievance hearing on 26 July 2024, even if they could recall a conversation about the use of the word "challenge" they did not know that the conversations were being recorded and therefore did not consent to those recordings prior to 26 July 2024....

I have been unable to find sufficient evidence for a specific protection or GDPR breach relating to patient data from the information I have reviewed...

I have concluded that your actions in respect of point 1 of making false allegations of sexual harassment maliciously and with the ulterior motive of discrediting D are of such a serious nature that this breaches the fundamental employment relationship and the duty of trust and confidence between you and the company, and in of itself amount to gross misconduct.

I concluded that your actions in respect of making covert recordings is extremely serious and under the company's Disciplinary Policy and Procedure would, on its own, fall within the definition of gross misconduct. Furthermore I find that you knowingly submitted deliberately falsified evidence in an attempt to support your version of events about the recordings and whilst the allegation I'm concerned with is making covert recordings, I have concerns about the authenticity of the evidence you've supplied. If I were not finding that your actions amounted to gross misconduct for making covert recordings, I would be recommending a further disciplinary process in relation to knowingly supplying falsified information within a disciplinary process and this further leads me to question your credibility and the reliability of evidence supplied by you. As it stands, my finding is that your actions in relation to point 2 amounted to gross misconduct.

I concluded that personal data of recordings with colleagues was shared without the full understanding from all colleagues of what was being shared and for what purpose. In respect of the allegation of compromising the integrity of evidence from potential witnesses, which may give rise to a possible breach of data protection and GDPR regulations, I find that your actions in respect of point 3 did compromise the integrity of evidence and could have been treated as a further act of misconduct. However, my findings are that regulations had been breached, given I had already made two separate findings of gross misconduct are that it was not necessary to consider if any specific data protection or GDPR regulations

had been breached, given that I have already made two separate findings of gross misconduct.

In my findings I have also considered your position as a Pharmacist within the company. A registered professional in a position of trust and responsibility. I find your actions are of serious concern and are not in keeping with those the company would expect from a registrant and professional. I also find your actions do not meet the GPhC standards for Pharmacy Professionals in that you did not adequately take into account the importance of managing information responsibly and securely, furthermore you did not reflect on the environment and take steps to maintain a person's privacy and confidentiality in line with standard 7 of the professional standards you are bound by as a registrant.

I have considered the evidence very carefully, including what you have told me and thought long and hard about my decision. Taking everything into account, and having concluded that 2 of the matters before me separately amounted to gross misconduct on your part, I have decided that both of these matters separately warrant summary dismissal. You are therefore summary dismissed (without notice pay) your dismissal date is therefore 17 April 2025.

Before reaching the decision to dismiss you I have carefully considered whether an alternative to dismissal would be a sufficient response. However, I have decided that it would not be. Your misconduct is significant. You already had your role change to Pharmacist and your disciplinary record is not good, being the subject of an active extended final written warning (albeit subject to a live appeal).

I should add that even if I had concluded that your actions only amounted to misconduct, I would nevertheless have dismissed you, albeit on notice, having regard to the live final written warning....”

70. The claimant appealed against her dismissal on 24 April 2025. She said that she believed it was automatic unfair dismissal because it followed after she had whistleblown to the respondent that she was sexually assaulted by D. She also said that she had presented evidence that she had not done covert recordings which had been ignored. She had not been given the opportunity to appeal against her last disciplinary hearing that led to her demotion. She also said that the dismissal letter has a lot of false things in it that she wished to address with evidence.

71. The claimant provided written submissions and asked for the appeal to be dealt with in writing.

72. The appeal officer, GL wrote to the claimant asking the claimant to consent to the recordings being played to the employees (1125). The claimant did not provide consent.

73. On 6 June 2025 the claimant was provided with the outcome of the appeal process (1149). Further investigations had been carried out and a detailed letter from GL which concluded that the dismissal was upheld. The appeal against the disciplinary outcome of 15 August 2024 was partially upheld in that the final written warning was maintained that the sanction of demotion was overturned. The appeal against the grievance outcome was rejected.

The law

Limitation

Protected Disclosure Claim

74. Section 43B(1) of the Employment Rights Act 1996

“(1) In this part a ‘qualifying disclosure’ means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –

- (a) 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 or safety of an 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 the preceding paragraphs has been or is likely to be deliberately concealed”.

75. Section 47B (1)

“A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the workers made a protected disclosure.”

76. Section 103A

“An employee 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) for the dismissal is that the employee made a protected disclosure.”

77. The definition of a qualifying disclosure breaks down into several elements which the Tribunal must consider in turn.

Disclosure

78. In **Cavendish Munro Professional Risks Management Limited – Geduld 2010 IRLR 37**, Slade J stated:

“That the Employment Rights Act 1996 recognises a distinction between “information” and an “allegation” is illustrated by the reference to both of these terms in S43F.....It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings.....the ordinary meaning of giving “information” is conveying facts.

In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating “information” would be “The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around.” Contrasted with that would be a statement that “you are not complying with Health and Safety requirements”. In our view this would be an allegation not information. In the employment context, an employee may be dissatisfied, as here, with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better, they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee’s position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee’s position. In our judgment, that situation would not fall within the scope of the Employment Rights Act section 43 ... The natural meaning of the word “disclose” is to reveal something to someone who does not know it already. However, s43L(3) provides that “disclosure” for the purpose of s 43 has the effect so that “bringing information to a person’s attention” albeit that he is aware of it already is a disclosure of that information. There would be no need for the extended definition of “disclosure” if it were intended by the legislature that “disclosure” should mean no more than “communication”.

79. Simply voicing a concern, raising an issue or setting out an objection is not the same as disclosing information. The Tribunal notes that a communication – whether written or oral – which conveys facts and makes an allegation can amount to a qualifying disclosure.

In **Kilraine –v- London Borough of Wandsworth UKEAT/0260/15** Langstaff J stated:

“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”.

Public interest

80. In **Chesterton Global Ltd -v- Nurmohamed [2015] IRLR** Supperstone J stated:

“I accept Ms Mayhew’s submission that applying the **Babula** approach to section 43B(1) as amended, the public interest test can be satisfied where the basis of the public interest disclosure is wrong and/or there was no public interest in the disclosure being made provided that the worker’s belief that the disclosure was

made in the public interest was objectively reasonable. In my view the Tribunal properly asked itself the question whether the Respondent made the disclosures in the reasonable belief that they were in the public interest..... The objective of the protected disclosure provisions is to protect employees from unfair treatment for reasonably raising in a responsible way genuine concerns about wrongdoing in the workplace (see **ALM Medical Services Ltd v Bladon** at paragraph 16 above). It is clear from the parliamentary materials to which reference can be made pursuant to **Pepper (Inspector of Taxes) v Hart [1993] AC 593** that the sole purpose of the amendment to section 43B(1) of the **1996 Act** by section 17 of the 2013 Act was to reverse the effect of **Parkins v Sodexho Ltd.** The words “in the public interest” were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. As the Minister observed: “the clause in no way takes away rights from those who seek to blow the whistle on matters of genuine public interest” (see paragraph 19 above)..... I reject Mr Palmer’s submission that the fact that a group of affected workers, in this case the 100 senior managers, may have a common characteristic of mutuality of obligations is relevant when considering the public interest test under section 43B(1). The words of the section provide no support for this contention..... In the present case the protected disclosures made by the Respondent concerned manipulation of the accounts by the First Appellant’s management which potentially adversely affected the bonuses of 100 senior managers. Whilst recognising that the person the Respondent was most concerned about was himself, the tribunal was satisfied that he did have the other office managers in mind. He referred to the central London area and suggested to Ms Farley that she should be looking at other central London office accounts (paragraph 151). He believed that the First Appellant, a well-known firm of estate agents, was deliberately mis-stating £2-3million of actual costs and liabilities throughout the entire office and department network. All this led the Tribunal to conclude that a section of the public would be affected and the public interest test was satisfied”.

Reasonable Belief

81. In **Darnton v University of Surrey** and **Babula v Waltham Forest College 2007 ICR 1026** it was confirmed that the worker making the disclosure does not have to be correct in the assertion he makes. His belief must be reasonable. In **Babula** Wall LJ said:-

“... I agree with the EAT in **Darnton** that a belief may be reasonably held and yet be wrong... if a whistle blower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided that his belief (which is inevitably subjective) is held by the Tribunal to be objectively reasonable neither (i) the fact that the belief turns out to be wrong – nor (ii) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence – is in my judgment sufficient of itself to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute... An employment Tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the

criteria set out in one or more of the subsections in the 1996 Act section 43B(1)(a) to (f). The second is to decide objectively whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith”.

Legal Obligation

82. A disclosure which in the reasonable belief of the employee making it tends to show that a breach of legal obligation has occurred (or is occurring or is likely to occur) amounts to a qualifying disclosure. It is necessary for the employee to identify the particular legal obligation which is alleged to have been breached. In **Fincham v HM Prison Service EAT0925/01 and 0991/01** Elias J observed: “*There must in our view be some disclosure which actually identifies, albeit not in strict legal language, the breach of legal obligation on which the worker is relying.*” In this regard the EAT was clearly referring to the provisions of section 43B(1)b of the 1996 Act.

83. The Tribunal has noted the criticism by the EAT in **Fincham** of the decision of the Employment Tribunal in that case that a statement made by the claimant to the effect “*I am under pressure and stress*” did not amount to a statement that the claimant’s health and safety was being or at least was likely to be endangered.

84.. In the case of **Eiger Securities LLP v Korshunova** UKEAT/0149/16/DM Slade J stated:

“The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation. However, in my judgement the ET failed to decide whether and if so what legal obligation the claimant believed to have been breached.”

85. In **Goode –v- Marks and Spencer plc** UKEAT/0042/09 Wilkie J stated the judgment of the EAT at paragraph 38 to be:

“...the Tribunal was entitled to conclude that an expression of opinion about that proposal could not amount to the conveying of information which, even if contextualised by reference to the document of 11 July, could form the basis of any reasonable belief such as would make it a qualifying disclosure.”

Method of Disclosure

86. The claimant in this case seeks to rely upon disclosure to the respondent and section 43C of the 1996 Act provides:-

“A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith

87. It is, in some cases, appropriate to distinguish between the disclosure of information and the manner of its disclosure but in so doing the Tribunal must be aware not to dilute the protection to be afforded to whistleblowers by the statutory provisions: **Panayiotou –v- Kernaghan 2014 IRLR 500.**

Claim for Automatic Unfair Dismissal Section 103A 1996 Act

88. Section 103A

“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) for the dismissal is that the employee made a protected disclosure”.

89. The burden of proof lies with the respondent to establish the reason for dismissal. If the reason is established it will normally be for the employee who argues that the real reason for dismissal was an automatically unfair reason to establish some evidence to require that matter to be investigated. Once that has been done the burden reverts to the employer who must prove on the balance of probabilities which one of the competing reasons was the principal reason for dismissal.

90. In the case of *Eiger Securities LLP v Korshunova* UKEAT/0149/16/DM Slade J referred to the distinction between automatically unfair dismissal by reason of making a protected disclosure and detriment on the ground of making a protected disclosure as follows

“The Claimant’s claim for “ordinary” unfair dismissal under ERA section 98 had been struck out as she did not have the necessary qualifying period of employment to bring such a claim. A claim for unfair dismissal for making a protected disclosure requires no qualifying period of employment and is brought under ERA section 103A. Section 103A provides:

“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) for the dismissal is that the employee made a protected disclosure claim.

Detriment

91. Section 103A, automatic unfair dismissal by reason of making a protected disclosure, and section 47B(1), a right not to be subjected to a detriment on the ground of making a protected disclosure, are in different Parts of the ERA, Part IX and IV respectively and use different language. The consequences of these differences for the tests in establishing claims for unfair dismissal under ERA section 103A and being subjected to detriment under ERA section 47B(1) were authoritatively determined by the Court of Appeal in ***Fecitt v NHS Manchester* [2012] IRLR 64**, a claim under ERA section 47B(1). These differences were explained by Elias LJ in paragraph 44 in which he held:

“ I accept, as Mr Linden argues, that this creates an anomaly with the situation in unfair dismissal where the protected disclosure must be the sole or principal reason before the dismissal is deemed to be automatically unfair. However, it seems to me that it is simply the result of placing dismissal for this particular

reason into the general run of unfair dismissal law. As Mummery LJ cautioned in *Kuzel v Roche Products Ltd* [2008] ICR 799, para 48, in the context of a protected disclosure.

Unfair dismissal and discrimination on specific prohibited grounds are, however, different causes of action. The statutory structure of the unfair dismissal legislation is so different from that of the discrimination legislation that an attempt at cross fertilisation or legal transplants runs a risk of complicating rather than clarifying the legal concepts.”

92. Different tests are to be applied to claims under ERA sections 103A and 47B(1). Thus for a claim under ERA section 103A to succeed the ET must be satisfied that the reason or the principal reason for the dismissal is the protected disclosure whereas for a claim under ERA section 47B(1) to be made out the ET must be satisfied that the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s detrimental treatment of the Claimant.”

93. The definition of a qualifying disclosure breaks down into several elements which the Tribunal must consider in turn in order to determine whether there was a qualifying disclosure. There are several appellate authorities which would normally be considered

Victimisation

94. Section 27 of the Equality Act provides as follows:-

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because--
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act--
 - (a) Bringing proceedings under this Act;
 - (b) Giving evidence or information in connection with proceedings under this Act;
 - (c) Doing any other thing for the purposes of or in connection with this Act;
 - (d) Making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

95. In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because

of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

“The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so”.

96. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof. To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says, “Detriment does not ... include conduct which amounts to harassment”. The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** is applicable.

97. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi EAT0269/09**. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent’s state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport [1999] IRLR 572** and **Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830**, and **St Helen’s Metropolitan Borough Council v Derbyshire [2007] IRLR 540**. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others [2010] IRLR 136**. In **Martin v Devonshires Solicitors EAT0086/10** the EAT said that:

“...The question in any claim of victimisation is what was the “reason” that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and, if not, not. In our view there will in principle be cases where an employer had dismissed an employee (or subjected him to some other detriment) in response to a protected act (say, a complaint of discrimination) but he can, as a matter of common sense and common justice, say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable. The most straightforward example this were the reason relied on is the manner of the complaint....

We accept that the present case is not quite like that. What the Tribunal found to be the reason for the Appellant’s dismissal was not the unreasonable manner in

which her complaints were presented (except [in one relevant respect]). Rather, it identified as the reason the combination of interrelated features – the falseness of the allegations, the fact that the appellant was unable to accept that they were false, the fact that both those features were the result of mental illness and the risk of further disruptive and unmanageable conduct as a result of that illness. But it seems to us that the underlying principle is the same: the reason asserted and found constitutes a series of features and/or consequences of the complaint which were properly and genuinely separable from the making of the complaint itself. Again, no doubt in some circumstances such a line of argument may be abused; but employment tribunals can be trusted to distinguish between features which should and should not be treated as properly separable from the making of the complaint.”

98. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan v Agnew [1994] IRLR 61**. In **Owen and Briggs v James [1982] IRLR 502** Knox J said:-

“Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination.”

99. In **O’ Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615** the Court of Appeal said that if there was more than one motive it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

Unfair dismissal

100. Section 98 Employment Rights Act 1996 (the 1996 Act)

“98(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair it is for the employer to show –

- (a) the reason (or if more than one the principal reason) for the dismissal, and
- (b) that it is either a reason falling in subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

- (2) The reason falls within this subsection if it –
- (a) relates to the capability or qualifications of the employee for performing work of a kind which he was employed to do;
 - (b) relates to the conduct of the employee ...
- (4) In any other case where the employer has fulfilled the requirements of subsection (1) the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
 - (b) shall be determined in accordance with equity and the substantial merits of the case".

101. In accordance with the case of **British Home Stores Limited v Burchell [1978] IRLR379** it is for the respondent to establish that it had a genuine belief in the misconduct of the claimant at the time of the dismissal and that that belief was based upon reasonable grounds and the dismissal followed a reasonable investigation and a reasonable procedure. This formulation is commonly termed the "Burchell test". If the Burchell test is answered in the affirmative, the Tribunal must still determine whether the decision of the employer to dismiss the employee rather than impose a different disciplinary sanction (or no sanction at all) was a reasonable one. When Burchell was decided the burden lay with the respondent to show some elements of fairness. That burden was removed by primary legislation in 1980 and there is now no burden on either party in relation to section 98(4) of the 1996 Act. The burden lies neutrally between them. It is of key importance to avoid substituting the Tribunal's view for that of the respondent. The Tribunal must judge the questions posed by section 98(4) from the standpoint of the hypothetical reasonable employer and note that the band of reasonable responses can in appropriate cases encompass both dismissal and a lesser disciplinary punishment. The size and resources of the respondent are relevant to the matters to be determined under section 98(4) of the 1996 Act..

102. In **Sainsbury's Supermarkets Limited v Hitt [2003] IRLR23** the Court of Appeal confirmed that the range of reasonable responses test applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to any other procedural and substantive aspects of the decision to dismiss the person from his employment for misconduct reason.

103. In the decision of **South West Trains v McDonnell [2003] EAT/0052/03/RN** HHJ Burke at paragraph 36:

"Whilst not only unfair it is incumbent on an employer conducting an investigation followed by a disciplinary hearing both to seek out and take into account information which is exculpatory as well as information which points towards guilt, it does not follow that an investigation is unfair overall because individual components of an investigation might have been dealt with differently, or were

arguably unfair. Whilst, of course, an individual component on the facts of a particular case may vitiate the whole process the question which the Tribunal hearing a claim for unfair dismissal has to ask itself is: in all the circumstances was the investigation as a whole fair?"

104. In the case of **Orr –v- Milton Keynes 2011 ICR 704** Aitkens LJ provided guidance

“.....the ET must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If it has, then the employer's decision to dismiss will be reasonable. But that is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. (7) The ET must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The ET must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which "a reasonable employer might have adopted". (8) A particular application of (6) and (7) is that an ET may not substitute its own evaluation of a witness for that of the employer at the time of its investigation and dismissal, save in exceptional circumstances. (9) An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any appeal process) and not on whether in fact the employee has suffered an injustice.

105. Section 123(6) of the 1996 Act provides – ‘Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the compensatory award by such proportionate as it considers just and equitable having regard to that finding’. We note that for a reduction from the compensatory award on account of contributory conduct to be appropriate, then three factors must be satisfied namely that the relevant action must be culpable or blameworthy, that it must have actually caused or contributed to the dismissal and it must be just and equitable to reduce the award by the proportion specified. The Tribunal must concentrate on the action of the claimant before dismissal because post dismissal conduct is irrelevant. The Tribunal has considered the provisions of Section 122(2) of the 1996 Act and the basis for making deductions from the basic award. Brandon LJ in **Nelson –v- BBC (No 2) 1980 ICR 110**:

“It is necessary, however, to consider what is included in the concept of culpability or blameworthiness in this connection. The concept does not, in my view, necessarily involve any conduct of the complainant amounting to a breach of contract or a tort. It includes, no doubt, conduct of that kind. But it also includes conduct which, while not amounting to a breach of contract or a tort, is nevertheless perverse or foolish or, if I may use the colloquialism, bloody minded. It may also include action which, though not meriting any of those more pejorative terms, is nevertheless unreasonable in all the circumstances. I should not, however, go as far as to say that all unreasonable conduct is necessarily culpable or blameworthy; it must depend on the degree of unreasonableness involved”.

106. The provisions of Section 123 of the 1996 Act in relation to the fact that compensation must be 'just and equitable' and the decision of **Polkey –v – A E Dayton Service Limited 1988 ICR142**. The Polkey principle applies not only to cases where there is a clear procedural unfairness but what used to be called a substantive unfairness also. However whilst will likely involve a greater degree of speculation which might mean the exercise is just too speculative. Deductions can be made for both contributory conduct and Polkey but when assessing those contributions the fact that a Polkey deduction has already been made or will be made under one heading may well affect the amount of deduction to be applied for contributory fault.

Langstaff P in **Hill –v- Governing Body of Great Tey Primary School 2013 IRLR 274** provided guidance as to the correct approach to the Polkey issue.

“A “Polkey deduction” has these particular features. First, the assessment of it is predictive: could the employer fairly have dismissed and, if so, what were the chances that the employer would have done so? The chances may be at the extreme (certainty that it would have dismissed, or certainty it would not) though more usually will fall somewhere on a spectrum between these two extremes. This is to recognise the uncertainties. A Tribunal is not called upon to decide the question on balance. It is not answering the question what it would have done if it were the employer: it is assessing the chances of what another person (the actual employer) would have done. Although Ms Darwin at one point in her submissions submitted the question was what a hypothetical fair employer would have done, she accepted on reflection this was not the test: the Tribunal has to consider not a hypothetical fair employer, but has to assess the actions of the employer who is before the Tribunal, on the assumption that the employer would this time have acted fairly though it did not do so beforehand”.

107 The Tribunal had the benefit of written and oral submissions from Mr Webster on behalf of the respondent and from the claimant. In addition, the claimant was allowed to provide further written submissions in response to the very lengthy and detailed submissions from Mr Webster and it was ordered that the respondent could provide a brief response limited to any perceived errors of fact or law.

Conclusions

108. It is clear that there were issues between the claimant and D, the Area Manager from the start of his employment and his role as the claimant's Area Manager. There were numerous disciplinary proceedings and grievance proceedings together with appeals. A lot of these were in place before the alleged sexual assault which was first raised anonymously.

109. The anonymous complaint referred to D grabbing her buttocks and squeezing them. The respondent received this anonymous complaint on 16 July 2024. This was just after the decision to reinstate the final written warning and the claimant's demotion on 15 July 2024.

110. The claimant acknowledged that some of her emails were unprofessional and the relationship with D was difficult.

111. The relationship between the claimant and D was extremely difficult from the time that D became the claimant's Area Manager. The claimant had been employed as the Pharmacy Manager for a number of years prior to D being employed by the respondent. She had recently returned from maternity leave.

112. The claimant says that on the very first day that D came to the branch he pulled her into a consultation room and said that she was rude. D gave evidence that he did raise issues with regard to the tone of the claimant's emails.

113. There were a substantial number of disciplinary/grievance procedures and appeals over a short period of time and, included within that time were the anonymous and then, following investigations, the claimant's allegations of sexual assault. The allegations were made a number of months after the alleged assault; this is not unusual in these circumstances. The allegation to the respondent refers to two occasions and she referred to the first as possibly an accident when it first happened. She then said that D had threatened her by telling her not to report it as no one would believe her and that they always take his side.

114. Mr Webster, on behalf of the respondent, made submissions in which he said that credibility is at the core of this case and that the claimant, as a party and as a witness, is entirely unreliable and that the Tribunal can attach no weight to what she has said, save the extent that there is independent corroboration. Mr Webster then gave lengthy and detailed submissions with regard to credibility. The Tribunal has considered the position with regard to the claimant's credibility in respect of each of the issues to be determined.

115. In respect of the limitation issues, some of the dates of the sexual harassment alleged by the claimant would have been out of time but, as the Tribunal has concluded that they were false allegations, the question of limitation does not arise.

Sexual Harassment

116. The timing and inconsistency of the allegations of sexual harassment were such that the respondent found that these allegations were not true. The Tribunal is satisfied that this was a reasonable conclusion.

117. The claimant initially raised the allegation anonymously on 15 July 2024 (469) and said that it had taken place "last month". She later, on 13 August 2024 (501), stated that it occurred about two or three months ago and then (506) said that it could be May, June or July).

118. The anonymous allegation had been made the day after the claimant had been found guilty of gross misconduct and provided with a reinstated Final Written Warning for a further 12 months and the demotion from Pharmacy Manager to pharmacist.

119. In her claim to the Tribunal presented on 21 October 2024 the claimant said a sexual assault occurred in February – March 2024. She then presented a further claim

to the Tribunal on 13 November 2024 when she was represented by a solicitor and said that the assault occurred in April/May 2024.

120. It was submitted by Mr Webster that the “shifting sands” reflects a realisation on behalf of the claimant that D did not visit her branch at all in June.

121. The claimant was also inconsistent as to what occurred indicating that D had grabbed her buttocks and squeezed them and, on another occasion touched her right buttock and squeezed it gently.

122. The claimant did have a history of responding to allegations about her own conduct by making allegations or raising grievances herself.

123. The Tribunal gave very careful consideration to this serious allegation against the claimant’s Area Manager.

124. The respondent conducted over 20 interviews in relation to identifying the person who had made the anonymous allegations of sexual assault. The police took no further action and informed the respondent that they thought it was a false allegation.

125. It is significant that the claimant wanted to draw a line under the matters and move on, 29 August 2024 (529) which, Mr Webster submitted was a decidedly odd request from someone who is a genuine victim of a double sexual assault.

126. The dates of the allegations made by the claimant were inconsistent and unreliable. Her demeanour during the Tribunal hearing was such that her evidence was unreliable. The Tribunal is satisfied that if the claimant had been subjected to the alleged sexual misconduct she would have raised a complaint at the time. She was not reluctant to complain to the respondent and raise grievances and appeals.

127. The Tribunal finds that when questioned by the respondent’s representative and the Tribunal the claimant was unable to provide any details of the alleged assault.

Victimisation

128. Section 27 (3) provides that:

“Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.”

129. The protected acts relied on by the claimant are the presenting of claims to the Tribunal on 21 October 2024 and 13 November 2024. The Tribunal finds that these are not protected acts as they included false allegations which were made in bad faith.

130. The alleged detriment of the claimant’s dismissal on 17 October 2025.

131. The Tribunal is satisfied that the reason why the decision to dismiss the claimant was made was that the claimant had made a false and malicious allegation of sexual

assault and had made covert recordings of her colleagues. The allegations of misconduct were raised prior to the claim being presented to the Employment Tribunal.

Public Interest Disclosure

132. The claimant's alleged disclosure (237) was a response to D's email about near misses and that his view was that these were being underreported.

133. The claimant indicated to D that she did not agree with what she said was, in her opinion, setting targets for near misses.

134. The Tribunal is not satisfied that the claimant believed that D was inviting employees to make false allegations of near misses. She was not conveying any information but providing an opinion.

135. In respect of the alleged disclosure in respect of the grievance raised by the claimant in respect of the allegation of the "Don't challenge me..." remark by D made by the claimant, the Tribunal gave careful consideration to this issue and, on balance, it is not satisfied that the claimant believed that such a disclosure was made in the public interest and, if it had been, then it was not a reasonable belief. The claimant was being managed by D and a comment informing her not to challenge him was an individual issue relating to the personal management of her.

136. If it had been a protected disclosure then the claimant suffered no detriment as there was an investigation into this allegation included in the grievance outcome (309). The claimant confirmed that the allegations that the respondent failed to conduct an investigation, or to advise the claimant of progress and/or an outcome to any investigation into the matters raised in her protected disclosures, relate only to the disclosures pertaining to the alleged sexual assault.

137. In respect of the alleged disclosures in respect of the complaint of sexual assault on 15 July 2024 and 13 August 2024, the Tribunal finds that there was no disclosure in this regard. The claimant made a false allegation and did not believe that D had sexually assaulted her. She knew he had not.

138. The Tribunal finds that the claimant did not suffer a detriment as a result of a protected disclosure. The alleged detriment was that the claimant was suspended and D was not under investigation. However, the evidence has shown that D was investigated.

139. There was no credible evidence that the decision to suspend the claimant was materially influenced by any disclosure.

140. It was submitted by Mr Webster that, once a preliminary view had been reached that there was evidence that the claimant had made a false allegation of sexual assault to discredit D, then her suspension was inevitable. It was also submitted that a registered pharmacist who was alleged to have made a false allegation of sexual assault could pose a risk to patients. Pharmacists are required to provide people (patients) with

safe and effective care which includes being trustworthy and acting with honesty and integrity. This is included within the standards for pharmacy professionals (232).

141. The respondent denies that not suspending D but instead confining him to the branch service centre was to the claimant's detriment. The respondent implemented measures short of suspension to restrict D. The respondent had received an anonymous allegation against D and had suspicion that the claimant had made a malicious false allegation against D.

142. D was not in a patient facing role and it was open to the respondent to take measures short of suspension and to require him to work in the Branch Service Centre in an open plan office.

143. The claimant confirmed during the course of the Tribunal Hearing that the allegations of failing to carry out an investigation related only to the disclosures relating to the alleged sexual assault.

144. The respondent did investigate the claimant's allegation of sexual assault. D was investigated and approximately 20 interviews were carried out in order to identify the person who sent the anonymous letter.

Health and Safety Detriment

145. The Tribunal finds that the claimant did not bring to the respondent's attention circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health and safety.

146. The claimant did not reasonably believe that D had invited employees to raise false near miss reports or that he had sexually assaulted her.

147. The alleged disclosure in respect of the "don't challenge me" comment. The Tribunal considered this carefully and, on balance, it finds that it was not reasonable for the claimant to believe this was in the public interest or harmful to health and safety.

148. The claimant has not established that she was subjected to a detriment because she had raised health and safety issues.

Unfair Dismissal

149. The Tribunal finds that the claimant was dismissed by reason of her conduct; the respondent held a genuine belief that the claimant was guilty of misconduct on reasonable grounds following a reasonable investigation.

150. The decision to dismiss was within the range of reasonable responses.

151. The respondent reasonably believed that the claimant had made a false allegation of sexual assault in order to discredit D.

152. The respondent also reasonably believed that the claimant had made covert recordings of her colleagues without their consent. It was clear that consent had not been given.

153. This is within the list of matters that the respondent views as amounting to gross misconduct which would entitle the respondent to summarily terminate the employee's contract without notice or pay in lieu of notice in the disciplinary policy and procedure which was contained within the Branch Procedures Manual (169) which had been in force at the time (1366).

154. The appeal was thorough and the claimant asked for it to be conducted in writing rather than in person.

155. The Tribunal is satisfied that the dismissal was within the band of reasonable responses available to the respondent.

Automatically Unfair Dismissal

156. As set out above, the Tribunal is satisfied that there was no protected disclosure that was the reason or principal reason for dismissal. The reason for the dismissal was the claimant's conduct.

157. If there had been any procedural defect which would make the dismissal unfair, then the Tribunal is satisfied that any basic and compensatory award would be reduced by hundred percent in view of the claimant's contributory fault and also under the principles set out by the House of Lords in the case of **Polkey v A E Dayton Services Ltd [1988] 1 AC 344**.

158. The Tribunal is satisfied that the claimant made false allegations of sexual assault as set out above and had covertly recorded other employees. It was clear from the evidence that consent had not been given to the recordings.

159. In all the circumstances, the Tribunal has reached the unanimous judgment that all the claims brought by the claimant are not well-founded and her claim are dismissed in their entirety.

Employment Judge Shepherd

29 May 2026