EMPLOYMENT TRIBUNALS

Claimant: Ms J Mayes

Respondent: The Carrbridge Centre Limited

HELD AT: Liverpool **ON:** 30 & 31 March & 1 April 2026 (chambers on 27 April 2026)

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: Unrepresented

Respondent: Mr R Merry (trustee)

JUDGMENT

The judgment of the Tribunal is that:

Unfair Dismissal

(1) The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

(2) The complaint of being subjected to detriment for making a protected disclosure is not well-founded and is dismissed.

(3) The case will now proceed to a remedy hearing listed to take place on 1 day on a date to be confirmed, in the Liverpool Employment Tribunal and which will include consideration of issues relating to the application of Polkey,

adjustments connected with the ACAS Code of Practice and/or contributory fault.

REASONS

Introduction

1. These proceedings arose from the claimant's employment as a community support worker following the termination of her position on 30 September 2024. She had begun her employment on or around 4 January 2021.

2. She presented a claim form on 22 October 2024 following a period of early conciliation from 10 September to 22 October 2024. She identified complaints of unfair dismissal and detriments (including dismissal), arising from the making of protected disclosures.

3. The respondent presented a response and grounds of resistance on 23 November 2024 resisting the claim.

4. I considered this case at a preliminary hearing case management (PHCM) on 4 March 2025.

5. The case was listed for a judicial mediation which was before Judge Aspinall on 14 November 2024. It was unsuccessful and with the parties' agreement, converted upon its conclusion to a further PHCM to revise case management orders that I had previously made.

6. The progress of this case since Judge Aspinall's PHCM has not been a smooth one. Several applications were made by Mr Merry on behalf of the respondent before the final hearing. This included a request for a postponement because of caring responsibilities relating to several elderly relatives and more general concerns regarding compliance with the case management orders and one of the respondent's witnesses, Lesley Reitgh being unwell.

7. No decisions were made prior to the final hearing taking place and I had a discussion with the parties on the morning of Day 1 and was able to identify several statements, some unsigned and undated. Neither side was represented and adopting a flexible approach in accordance with the overriding objective (Rule 3 of the ET Procedure Rules 2024), I decided to utilise grounds of complaint and resistance within the claim form and response respectively as the basis of witness evidence.

8. I noted that Mr Merry had been able to secure the support of his sister for the duration of the hearing so that his caring responsibilities would be covered. Conscious that delay would not assist either party and noting that Mr Merry could give evidence as the dismissing trustee for the respondent, I concluded that it was in the interests of justice to proceed with the final hearing, (see discussion of evidence below).

Issues

9. The issues which the Tribunal has been asked to consider

Unfair dismissal

Dismissal

1. *Can the claimant prove that there was a dismissal?*

Reason

2. *Has the respondent shown the reason or principal reason for dismissal? It is understood that the respondent relies upon conduct as the reason.*

3. *Was it a potentially fair reason under section 98 Employment Rights Act 1996?*

Fairness

Was the reason or principal reason for dismissal that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

4. *If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?*

5. *If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:*

   (1) The respondent genuinely believed the claimant had committed misconduct;

   (2) there were reasonable grounds for that belief;

   (3) at the time the belief was formed the respondent had carried out a reasonable investigation;

   (4) the respondent followed a reasonably fair procedure;

   (5) dismissal was within the band of reasonable responses.

Protected disclosures

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

   (1) What did the claimant say or write? When? To whom? The claimant says s/he made disclosures on these occasions:

PD1 *On 18 July 2024 during a meeting with Ms Lesley Reith (trustee) and Damian McGregor (founding trustee), the claimant verbally informed the trustees that Matthew Gibbs (CEO) was behaving inappropriately. This included aggression in the workplace regarding vulnerable volunteers, kicking his dog when in the workplace, sexualised behaviour and innuendo and mismanagement of money. The claimant had been invited to a meeting to discuss allegations regarding an incident involving Mr Gibbs.*

(2) Did she disclose information?

(3) Did she believe the disclosure of information was made in the public interest?

(4) Was that belief reasonable?

(5) Did she believe it tended to show that:

(a) a criminal offence had been, was being or was likely to be committed;

(b) a person had failed, was failing or was likely to fail to comply with any legal obligation;

(c) a miscarriage of justice had occurred, was occurring or was likely to occur;

(d) the health or safety of any individual had been, was being or was likely to be endangered;

(e) the environment had been, was being or was likely to be damaged;

(f) information tending to show any of these things had been, was being or was likely to be deliberately concealed.

(6) Was that belief reasonable?

7. *If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.*

If so, it was a protected disclosure.

<u>*Detriment (Employment Rights Act 1996 section 48)*</u>

8. *What are the facts in relation to the following alleged acts or deliberate failures to act by the respondent?*

D1 *When Matthew Gibbs returned to workplace and on 21 August 2024 he shouted at the claimant, called her names, swearing at her, physically intimidating her and made accusations against her*

D2 *The claimant was instructed to work from home by the trustees after the incident after 21 August 2024 while a disciplinary investigation took place into the incident on 21 August 2024 leaving her isolated.*

9. *Did the claimant reasonably see that act or deliberate failure to act as subjecting him/her to a detriment?*

10. *If so, was it done on the ground that she made a protected disclosure / other prohibited reason?*

Evidence used

10. This was a case where both parties had failed to properly prepare for the final hearing and extensive case management was required as part of the initial discussion which involved the entirety of Day1.

11. The claimant had obtained several statements from witnesses to various incidents described in the claim but had failed to produce her own witness statement in advance of the final hearing. I noted that the claim form background provided sufficiently detailed grounds of complaint to provide a basic witness statement. I also permitted her to provide a short supplemental statement replying to any matters within Mr Merry's 'opening statement,' (see below).

12. The respondent had failed to produce a witness statement in advance of the final hearing and in accordance with the case management orders previously made. Following a discussion with Mr Merry and Mrs Egan, it became clear that Mr Merry as trustee and dismissing officer, would be able to deal with evidence relevant to the allegations within the list of issues. While Ms Cross the external HR investigating manager and the appeal hearing manager may have been welcome as additional witnesses, on balance and considering the relevant principles within the overriding objective, it was proportionate that I could proceed hearing from Mr Merry as the respondent's sole witness for this case.

13. It was likely that meaningful and relevant evidence could be obtained using the response and supplemental document as well the 'opening statement' document produced at the beginning of the hearing and shared with the claimant. It was drafted by Mr Merry and effectively represented his witness statement rebutting the complaints that had been brought by the claimant.

14. Documents were provided within a respondent bundle of 578 pages. This consisted of disciplinary papers, some of the Tribunal documents and various other matters, not all of them relevant to the issues.

15. I heard evidence from the claimant and Roger Merry, a Trustee and dismissing officer. I did not hear witness evidence from any of the other

Trustees, and I appreciated that health issues had been a problem for the respondent. However, these proceedings had been running for some time, I had case managed them in 2025 and there had been a failure by both parties to plan and prepare properly in advance of this hearing.

16. The application to postpone had been made on 25 March 2026 less than 7 days before the final hearing and in relation to Trustee Lesley Reith's non-availability due to health reasons. Rule 32 only permitted me to postpone in such circumstances where there are exceptional circumstances, (Rule 32(2)(c) and 32(3)). Given that this case was primarily an unfair dismissal case, sufficient evidence was available from the respondent, and the dismissing officer Mr Merry was available, postponement could not be allowed as the circumstances were not exceptional. It was in the interests of justice to proceed.

17. The claimant referred to an audio recording of her meeting on 18 July 2024, but I did not hear this evidence and no transcript was provided. There was a note produced, however, which appeared to have been signed by the claimant.

18. The claimant provided late disclosure on 1 April 2026, which was the final day of the hearing and which I concluded was too late in the proceedings and it was not proportionate to allow it. The parties had sufficient time to prepare for this final hearing, and it would not be in the interests of justice to allow evidence at such a late stage.

Findings of fact

19. The parties should note that the Tribunal's findings of fact do not seek to deal with every point where the parties disagree, simply what is relevant to the issues which the Tribunal is being asked to consider. If the discussion of an incident or point is not referred to within these findings, it does not mean that it has not been considered by the Tribunal, simply that it is not relevant to the issues and the findings that we are required to make.

20. In terms of the findings that we make, the Tribunal has reached its decision on what it considers to be on balance of probabilities the most likely way/reason in which an incident arose.

<u>The parties</u>

21. The respondent is a private company limited by guarantee. It was incorporated on 22 August 2014 and is registered with Companies House. Its officers are described as trustees although they are recorded as directors on the 'People' tab on the Companies House website. The current directors are Roger Merry, Louise Egan and Lesley Reith.

22. Its registered office address is The Carr Bridge Centre, Carr Bridge Road, Wirral, Merseyside.

23. The claimant (Ms Mayes) confirmed that she began her employment as a Community Support Worker on 4 January 2022 and that she was dismissed on 30 September 2024. She was subject to the respondent's disciplinary procedure dated November 2019 and a description of gross misconduct together with a non-exhaustive list of examples of this misconduct were described, together with overall disciplinary process, (pp150-160).

24. The claimant described her work as dealing with vulnerable families, children and the elderly. She offered community support, provide emergency food and signposted users to services elsewhere.

25. She was based at the respondent's Hoole Road Hub and she worked with 6 paid members of staff and 5 or 6 volunteers. Some of the volunteers were vulnerable having come from backgrounds which had experienced domestic violence, abuse and/or were neurodiverse. She confirmed that she did not occupy a managerial role and worked between 15 and 21 hours each week.

Issues between the claimant and Matthew Gibb

26. She was managed by Mathew Gibb the CEO and with whom she had experienced tensions at work. Over a 6-to-8-month period, his behaviour became increasingly worse because of what the claimant believed were mental health issues and he would shout and swear and throw boxes. She recalled that one volunteer walked out consequently. She also described him being rough in the way in he handled his dog. She also argued that he could use inappropriate sexualised language and recalled that he jumped on a table and gyrated and thrusted his hips. In conclusion, she said that this behaviour *'became the norm'.*

27. She described the most significant incident took place on 14 July 2024 when Mr Gibb was involved in an altercation with a volunteer outside the Carrbridge Centre.

The alleged protected disclosure

28. On 18 July 2024, a meeting took place with Trustees Lesley Reith and Damian McGregor and the claimant. The brief attendance note recorded in relation to Mr Gibbs, the claimant reporting *'Difficult environment', 'Many volunteers come from vulnerable background', 'Don't feel safe because of Matt's [Gibbs] aggression and sexual innuendo', 'Abuse to the dog', 'Speaking to staff "like crap"', 'Been going on for 18 months', '3 volunteers prepared to walk out'.* That was the totality of the note relating to the complaint by the claimant.

29. The claimant accepted that the meeting on 18 July 2024 was when she made the protected disclosure to the Trustees. She appeared to have signed her agreement to the note but referred in evidence to a 25-minute audio file which could not be transcribed because the file was too big. I was unable to listen to the recording, but the claimant explained that she believed that she had made a disclosure in the public interest because it was protecting vulnerable colleagues. She noted that some of the adults who worked with her or were

service users could come from backgrounds where abuse had happened and Mr Gibbs behaviour was inappropriate and could trigger within, feelings of trauma.

Subsequent incidents

30. The next month on 21 August 2024, the claimant described a further incident when a service user complained about crates being in the way of the door to the Hub. Mr Gibbs once told, reacted badly and was swearing and being angry towards to volunteers. The claimant said that she tried to stand between Mr Gibbs and the volunteers. He became angry towards her and accused the claimant (incorrectly), of alleging that he had committed sexual abuse at the meeting on 18 July 2024 with the Trustees. She said that he was screaming in her face and saying, *'I am the CEO'* and described herself as being *'in a state'* after this event. She then tried to contact Ms Reith. She was instructed to work from home although, she was not formally suspended at this point.

The meeting and allegations against the claimant

31. A note was included within the bundle which was described as a statement from an anonymised person dated 4 September 2024, (pp84-5). It discussed the meeting the previous Sunday, (understood to be 1 September 2024). It referred to the anonymous person being invited to the meeting by the claimant because it was about organising community work within the Woodchurch estate. However, when she asked about its purpose, the reason given was to either *'get rid of Carrbridge'* or to get Matt Gibbs sacked. The anonymous person was recorded as saying to Ms Reith that the claimant was *'riling others due to her concern over her job'.* This was not a statement as it took the form of an attendance note recording what had been said by both the anonymouse person and Ms Reith. But it contained limited detail about what the claimant had done or precisely said at the meeting in the Woodchurch Hotel that caused the respondent significant concern.

32. Laura Cross (who was a HR professional appointed by the respondent's Trustees following the claimant's complaint about Mr Gibbs in July 2024), recorded a phone call with a person described as 'x' and which she said took place on 11 September 2024, (her note was dated 14 October). They said that the claimant had attended a meeting at the Woodchurch Hotel where Carrbridge was discussed and where John Eccles said *'right, how can we get them out'.* Ms Cross noted that he meant the current management of the Centre, (p102). While clearly causing the Trustees some alarm given that they were the current management, other than mentioning the claimant being in attendance, it did not suggest the claimant had organised the meeting, the agenda, or made negative statements of the type attributed to Mr Eccles.

33. There was also a note produced by Lesley Reith at 11:30am and which although undated, was referred in the index to being dated 23 April 2025. It was not clear whether this was a recollection of an earlier conversation or a contemporaneous note, (p83). There was an undated note in the bundle at page 149 covering the same conversation. However, it recorded a

conversation between Ms Reith and Adam Woodcock, Community Regeneration Manager for Magenta Living, (a Housing Association operating within the Wirral MBC area). Mr Woodcock was recorded as confirming that a member of his staff attended a meeting and informed him that there was a witch hunt against Mr Gibbs and the management committee of the Carrbridge Centre with the aim of undermining the management. The anonymous colleague (not the same person as the previous anonymous caller to Ms Reith above), was said to have been asked whether as a Magenta employee, he could get those attending the meeting, the Centre. The call concluded by Mr Woodcock reassuring Ms Reith that this request was not being taken seriously by Magenta. The note did not refer to the claimant.

34. It was later disclosed that the anonymous Magenta employee approached at the meeting was Greg Povall. On 20 September 2024, he emailed the Trustees email of the respondent, (p91). In a short email he stated that he told Mr Woodcock that there were several people unhappy with how the Carrbridge centre was being managed and the Hub having been closed and this came to light at the resident's meeting. However, he added that it was quickly dismissed as it was not considered relevant to the setting up of a new group. He was keen to deny having said anything negative about Mr Gibbs himself, but nor did he name the claimant or attribute any negative behaviour on her part.

<u>The fact finding meeting with the claimant</u>

35. The fact finding meeting with the claimant took place on 12 September 2024 and was held by Ms Cross (and the claimant being supported by Michael Edwards), at the Carrbridge Community Centre. A Note of the meeting records that it began at 1:30pm, (pp161-178). Within the meeting note, the claimant was clearly concerned about the investigation being conducted properly and all relevant witnesses being interviewed. The claimant explained that Mr Gibb had been responsible for a couple of aggressive incidents directed at her which seemed to focus upon him swearing at her, but she was unable to give precise dates. She described the gist of what had been said.

36. They then discussed an incident on 21 August 2024 which ultimately involved Mr Gibb speaking inappropriately to service users and volunteers at the Hub and then he started swearing at the claimant and behaving in an aggressive manner. She acknowledged she may have used swear words in retaliation and stood up to him for speaking to her in that way in her workplace but also described feeling scared and intimidated. She said that she ended up leaving the Hub, getting into her car and that she then *'cried my eyes out'.*

37. She then referred back to Mr Gibb dancing in a sexualised way in the Hub when members of the public were present, describing it as inappropriate.

38. The discussion then turned to the meeting at the Woodchurch Hotel which the claimant accepted she attended and that its purpose was to establish themselves within the community. She agreed the meeting was at a public house but was unwilling to discuss the meeting, feeling it was not relevant.

Once questions were asked by the claimant and Mr Edwards her companion about the anonymous message, Ms Cross quickly closed this discussion down.

39. Although based upon the transcript the claimant appeared to be reluctant to discuss the Woodchurch Hotel meeting, it also recorded her concern about the relevance of that meeting. She added in her evidence during the hearing that she was reluctant to discuss this matter because she had not been provided with any evidence by Ms Cross to consider. All that was mentioned was the anonymous source and the moment the claimant and Mr Edwards enquired as to that person's identity, Ms Cross moved on with her discussions to other matters.

40. At this point, the formal disciplinary allegation had not yet been put to the claimant, and her reasonable understanding was at this stage that the meeting was focusing upon her relationship with Mr Gibb and his behaviour. The meeting opened with a reference being made to concerns that the Trustees of the respondent had, and the claimant had not been warned about the widening of the investigation. Ms Cross did not give oral witness evidence during the final hearing and Mr Merry was not yet involved with the disciplinary process being hearing officer. On balance, I found the claimant's evidence concerning this matter to be credible and not evasive. Ms Cross sprung this matter onto the claimant by opening, *'There's one other thing I want to ask you about, and this has been information that's been passed to me directly…'* referred to anonymous evidence and then asked whether the claimant attended the community meeting at the Woodchurch Hotel. This really was something that with a professional HR advisor involved, the claimant should have been notified of the allegation in writing before the meeting took place.

41. The claimant was formally suspended by letter on 13 September 2024, although during the meeting with Ms Cross, the claimant described being prevented from returning to work (pp193-4). Her understanding was that the Trustees had placed her on leave pending the investigation into the altercation on 21 August 2024.

42. Roger Merry (Trustee), sent a letter to the claimant on 16 September 2024 by email inviting her to a disciplinary meeting, (pp93-4). He explained that he would be that chair and set out the allegation as being, *'You have participated in a group which has been set up with the malicious aim of removing the current management and the CEO of the Carrbridge Centre and thus acquiring the use of the centre and the Hoole Road Hub from Magenta Living'.* He enclosed evidence from Ms Reith (Woodcock conversation), report by Ms Cross and transcript of the fact finding meeting held by Ms Cross on 12 September 2024. The claimant was informed that she could attend with a companion.

Disciplinary hearing and dismissal

43. The meeting took place remotely on *25* September 2024 by Teams.

44. On 30 September 2024, Mr Merry as disciplinary hearing officer, wrote to the claimant regarding the disciplinary hearing. He observed that no note taker was present, but both parties had recorded the hearing, the letter ran to 4 pages and explained his decision, (pp95-98). The respondent's transcript was included within the bundle, (pp195-205).

45. He identified the allegation provided in the previous invitation letter to the disciplinary meeting. He noted that the claimant had attended the meeting but did so in *'a profession, personal capacity',* believing it was part of her job role to attend community meetings and offer support to residents of the Woodchurch Estate.

46. He referred to considering the evidence of Gregory Povall of Magenta and his line manager Adam Woodcock. I noted that within the transcript the claimant argued that Mr Povall's evidence contradicts the allegation made against her. In her note that she read out to Mr Merry, she confirmed attending the meeting at the pub which she understood was a community meeting, it was positive and she explained her role at Carrbridge Centre and the support she could offer. She denied hearing any derogatory comments concerning the Centre or Mr Gibb while she was there.

47. Mr Merry seemed concerned that the anonymous person had gone to the trouble of contacting Ms Cross. He noted in his decision letter that this person provided information to Laura Cross on anonymous basis because she was in fear of being *'stabbed'* for discussing what happened at the meeting and he had concerns regarding one of the attendees who had recently assaulted an employee of the respondent and who threatened to stab that person. He believed the anonymous person should remain anonymous and their evidence was credible in supporting the allegation against the claimant.

48. He believed the claimant had been evasive in her interview with Ms Cross and that this was not reasonable.

49. He identified comments being made during the meeting as not being positive towards the respondent and that the meeting was malicious in the terms described within the alleged misconduct. His finding was that the claimant participated in the meeting and the meeting aimed to remove the respondent as managers of the Carrbridge Centre. He concluded that the this amounted to, *'gross misconduct due the malicious nature of your and the potential damage and risk to the organisation which has caused an irreparable breakdown in trust.'*

50. His decision was that the claimant should be summarily dismissed. He took account of previous good conduct but described the claimant's actions as being irreparably damaged. A right of appeal was offered.

<u>The appeal</u>

51. On 1 October 2024, the claimant emailed the Trustees' email seeking to appeal Mr Merry's decision, (p566). She asserted that it was unfair and that it happened because of concerns she had raised about Mr Gibb.

52. The appeal took place on 11 October 2024 before Manda Gillard who was another Trustee. In her two page letter dated 16 October 2024, she confirmed that the decision was to uphold the appeal and that the summary dismissal remained in place, (pp383-4).

53. The conclusion was that she had attended a meeting and participated in the new community group which had been formed with malicious aims to remove the current management committee and the CEO of Carrbridge. She noted that the claimant said she attended late and did not hear the conversation where a discussion took place about Matt Gibbs, but this had not been mentioned previously. She doubted that the meeting would have changed in tone in the way that the claimant described immediately after her arrival. She felt that the use of anonymised evidence was not ideal but believed there were good reasons on this occasion because of the threat of violence to that person and the witness' concerns for their safety.

Law

Unfair dismissal

54. Under section 98(1) of the Employment Rights Act 1996, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee holding the position he held. A reason relating to conduct is a potentially fair reason falling within section 98(2).

55. The reason for the dismissal is the set of facts or the beliefs held by the employee which caused the employer to dismiss the employee. In determining the reason for the dismissal, the Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal.

56. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and substantial merits of the case.

57. When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in *British Home Stores v Burchell* 1980 ICR 303, , the Tribunal must consider a threefold test:

    a. The employer must show that he believed the employee was guilty of misconduct;
    b. The Tribunal must be satisfied that he had in his mind reasonable grounds upon which to sustain that belief; and

c. The Tribunal must be satisfied that at the stage at which the employer formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

58. The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996. When determining the question of reasonableness, the Tribunal will have regard to the ACAS Code of Practice of 2015 on Disciplinary and Grievance Procedures. That Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most cases. Under section 207 of the Trade Union & Labour Relations (Consolidation) Act 1992, in any proceedings before an Employment Tribunal any Code of Practice issued by ACAS shall be admissible in evidence and any provision of the Code which appears to the Tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

59. However, it is not for the Tribunal to substitute its own decision as to the reasonableness of the investigation. In *Sainsburys Supermarkets v Hitt* [2003] IRLR 23 the Court of Appeal ruled that the relevant question is whether the investigation fell within the range of reasonable responses that a reasonable employer might have adopted.

60. Nor is it for the Tribunal to substitute its own decision as to the reasonableness of the action taken by the employer. The Tribunal's function is to determine whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. See: *Iceland Frozen Foods v Jones* [1982] IRLR 430; *Post Office v Foley* [2000] IRLR 827.

61. In respect of certain claims, such as unfair dismissal and breach of contract, Section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 provides that where an employer or employee has unreasonably failed to comply with the Code of Practice, it may, if it considers it just and equitable in all the circumstances to do so, increase or reduce compensation awards by up to 25% (this does not apply to any Basic Award for Unfair Dismissal).

Issues to be considered at the remedy hearing (see below)

62. The *Polkey* principle established by the House of Lords is that if a dismissal is found unfair by reason of procedural defects, then the fact that the employer would or might have dismissed the employee anyway goes to the question of remedy and compensation reduced to reflect that fact. The Tribunal should consider:

(a) what potentially fair reason for dismissal, if any, might emerge as a result of a proper investigation and disciplinary process. Was it conduct? Was it some other substantial reason, that is a loss of trust and confidence in the employee? Was it capability?

(b) depending on the principal reason for any hypothetical future dismissal would dismissal for that reason be fair or unfair? Thus, if

conduct is the reason, would or might the Respondent have reasonable grounds for their belief in such misconduct?

(c) even if a potentially fair dismissal was available to the Respondent, would he in fact have dismissed the Appellant as opposed to imposing some lesser penalty, and if so, would that have ensured the Appellant's continued employment?

63. Section 122(2) of the Employment Rights Act 1996 provides that where the Tribunal finds that any conduct of a Claimant before the dismissal was such that it would be just and equitable to reduce the amount of the Basic Award, the Tribunal must reduce that amount accordingly.

64. Section 123(6) of the Employment Rights Act 1996 provides that where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the Claimant, it must reduce the amount of the compensatory award by such proportion as it considers just and equitable.

65. The Tribunal must award compensation that is just and equitable. Even if the loss arising from the dismissal is substantial, the Tribunal can still award no compensation if it would be unjust or in equitable for the employee to receive it. This might be the case where acts of misconduct discovered after the dismissal means that it would not be just and equitable to award compensation.

Whistleblowing

66. The law relating to the protection of whistleblowing in the context of employment legislation is primarily found within the Employment Rights Act 1996 (1996 c 18), at Part IVA (and within Part X in relation to unfair dismissal complaints involving protected disclosures).

Section 43B - Disclosures qualifying for protection

67. Section 43B(1) provides that disclosure is protected where there is (i) a disclosure of information, (ii) which, in the reasonable belief of the worker making the disclosure, (iii) is made in the public interest and (iv) 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 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.

68. When considering whether a disclosure is protected, it is immaterial whether the relevant failure (i) occurred, (ii) occurs or (iii) would occur in the United Kingdom or elsewhere, and (iv) whether the law applying to it is that of the United Kingdom or of any other country or territory.

69. A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

70. A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

71. Section 43C(1) explains that a disclosure is made to an employer or other responsible person where the worker discloses it:

(a) to his employer, or
(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—
(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility,

to that other person.

Section 47B - Detriments

72. 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.

73. This includes any act or deliberate failure to act by another worker of the worker's employer in the course of that other worker's employment, or by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

74. In this case, the detriment will be treated as also done by the worker's employer and it is immaterial whether the thing is done with the knowledge or approval of the worker's employer. However, it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker:

(a) from doing that thing, or

(b) from doing anything of that description.

75. This section applies to employees and workers. However, where the complaint concerns an employee and the detriment amounts to a dismissal, the employee's complaint must be brought under section 103A and not section 47B.

Section 103A – automatic unfair dismissal by reason of making a protected disclosure (Part X)

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

Discussion

Unfair dismissal

77. The claimant was employed from 4 January 2022 until her summary dismissal on 30 September 2024 and has more than 2 years continuous service. Consequently, in accordance with section 108 ERA 1996, she can bring an unfair dismissal complaint.

78. She presented her claim form on 22 October 2024 following ACAS early conciliation and the Tribunal can accept this complaint as having been presented in time.

79. There is no dispute that she was dismissed. The respondent has shown its reason for dismissing the claimant as being conduct. This is a potentially fair reason under section 98 ERA 1996.

80. I will deal with the question of the protected disclosure below. However, in terms of applying the test of fairness under section 98(4) of the ERA 1996, I have reminded myself that I must focus upon the reasonableness of Mr Merry's decision making as dismissing officer and must not in these deliberations *'step into the shoes'* of the decision maker role.

81. Firstly, having considered Mr Merry's evidence, I accepted that he genuinely believed that the claimant had committed misconduct. He recognised the difficulties that she had experienced with Mr Gibbs, but in relation to the allegation at the disciplinary hearing, he believed that she had attended the Woodchurch Hotel for the community meeting on or around 1 September 2024, that she participated in the meeting and that the meeting was malicious in nature.

82. Secondly, I considered whether Mr Mery had reasonable grounds for that belief. The disciplinary hearing did take place following an investigatory meeting with the claimant where she had been able to answer questions relating to the matters under investigation. Ms Cross was a qualified HR advisor instructed by the respondent to conduct the investigation. However, based upon the available evidence, I was not taken to an invitation letter that warned the claimant about the investigation into the Woodchurch Hotel meeting. This was only raised as an additional matter towards the end of the investigation meeting. The claimant having

been told to stay at home following the incident on 21 August 2024 and the focus upon her relationship with Mr Gibbs during this interview meant that she was taken by surprise when questioned about the incident.

83. Mr Merry treated the claimant's reluctance to discuss the Woodchurch Hotel meeting as being suspicious and her suggestion during the actual hearing that the meeting was positive was not a genuinely held belief. The assumption that the anonymous witness could be reliable without providing evidence of how it was tested or corroborated should have been a concern for Mr Merry. In reality, he only had the claimant's confirmation that she attended the meeting and some other evidence which confirmed her attendance and only anonymous evidence suggesting the claimant had been '*riling others'* without any further interrogation of the witness concerning what the claimant was overheard saying. Mr Povall failed to attribute any blame upon the claimant in relation to the matter.

84. There may have been concerns about the claimant attending the meeting or failing to alert the Trustees after it had taken place about what had been said. However, at its highest, a reasonable manager conducting a disciplinary hearing would have concluded that the claimant was at a meeting which may have involved discussions hostile towards the respondent, but would have been unable to reasonably conclude that the claimant was participating in a group set up with the malicious aim of removing the respondent's management and the then CEO from the Carrbridge Centre. The concerns about the claimant's attendance did not in themselves amount to participation to the degree that gross misconduct had taken place as alleged.

85. The respondent had carried out an investigation before the disciplinary hearing took place but failed to properly consider the evidence that had been obtained. They placed great reliance upon evidence from an anonymous witness who said that the claimant had riled others without obtaining more detail as to what was said. It was especially important given the decision to keep the witness' name anonymous because the claimant could not ask questions of her. It was unfortunate that that before Mr Merry determined the disciplinary decision, he did not ask further questions about what the witness recalls the claimant actually saying at the meeting.

86. The other witnesses failed to provide any evidence of the claimant participating meaningfully or at all in this meeting that would support the allegation against her. Ultimately, although the investigation did appear to be reasonably thorough at first glance, a reasonable manager considering the available evidence and the claimant's arguments at the hearing itself, could not have concluded of the gravity identified within the allegation.

87. Consequently, the respondent was left with a reasonable conclusion that the claimant had attended a public meeting in a local public house where individuals were plotting against the respondent or may have spoken but with no real idea of what had been said or meaningful evidence describing the gist of what had been said. There may have been less serious conduct issues about the perception of the claimant attending such a meeting without the formal agreement of management given the overlap between her work responsibilities and her interests as a local Woodchurch resident. But this was not the finding made and even if it had been

found by Mr Merry, it would not be within the range of reasonable responses available to a disciplinary officer.

88. As it was, the respondent could not reasonably rely upon the findings made and the respondent failed to act reasonably in all the circumstances as treating the conduct in question as a sufficient reason to dismiss the claimant. The claimant was not unfairly dismissed.

Protected disclosures

89. The claimant asserts that on 18 July 2024 during a meeting with the Trustees Ms Reith and Mr McGregor, she verbally informed the trustees that the then CEO Mr Gibbs was behaving inappropriately. This included aggression in the workplace regarding vulnerable volunteers, kicking his dog when in the workplace, sexualised behaviour and innuendo and mismanagement of money. The claimant had been invited to a meeting to discuss allegations regarding an incident involving Mr Gibbs.

90. Firstly, the claimant accepts that Mr Gibbs was not involved in the mismanagement of money in the sense that any fraud or dishonesty was involved. Additionally, she did not allege that he had committed any sexual offences, contrary to what Mr Gibbs asserted during the altercation on 21 August 2024.

91. However, the claimant did during this meeting raise concerns about Mr Gibbs behaving inappropriately towards colleagues including volunteers, whom he would have known often came from vulnerable backgrounds.

92. In this respect the claimant did make verbal disclosures to the Trustees who were effectively her employer given that they were trustees of the respondent. This was information and it was done in the public interest given that it was clearly a matter causing upset to vulnerable colleagues and service users and this was a reasonably held belief.

93. However, I was not persuaded that the claimant reasonably believed that one of the section 43B grounds were being breached as the disclosure did not seek to assert any obvious legal failing, rather the poor conduct in work of another employee. It may have been the CEO but the complaint was about the way in which he was upsetting the claimant, her colleagues and service users rather than asserting a criminal offence, a failure to comply with legal obligations. In terms of endangering health and safety of any individual (section 4b(1)(d) ERA 1996), the claimant was not recorded as disclosing information asserting this ground or something amounting to this ground. As mentioned above, the claimant accepted she did not believe there had been any dishonesty relating to money or any sexual offences had been committed by Mr Gibbs.

94. Consequently, I concluded that the claimant did not make a protected disclosure on 18 July 2024 which means that the protected disclosure/detriment (whistleblowing), complaint fails.

95. In terms of the two detriments D1 and D2, even if the claimant had persuaded me that a protected act had been made under section 43B ERA 1996, I

was unable to accept that they were deliberate acts made by the respondent's Trustees on the grounds that a protected disclosure had been made.

96. Mr Gibbs behaved poorly on 21 August 2024 (D1) when he upset the claimant and colleagues, but that was not because of any failure or failure to act on the part of the respondent.

97. In terms of the claimant being instructed to work from home after the altercation (D2), this was done as part of a disciplinary investigation and not with the aim of isolating her. This arose from an altercation between two employees and an employer seeking to investigate the matter in question and establish where responsibility lay as part of a disciplinary process. There may have procedural issues in the way that the disciplinary process was managed, but that in itself did not suggest any detrimental act under Part IVA ERA 1996. It is understood that both Mr Gibbs and the claimant were asked to work from home while the matter was investigated and that was a reasonable step for management to take when confronted by an altercation between two employees in the workplace. This was not a detriment carried out in relation to an earlier disclosure.

98. Clearly, given my conclusion regarding the protected disclosure, the claimant was not dismissed for the reason or principal reason that she had made a disclosure contrary to sections 43B and 103A ERA 1996. However, I am satisfied that the reason for the dismissal was the respondent's belief that the claimant had actively participated in the meeting on 1 September 2024 at the Woodchurch Hotel with a community group with the purpose of undermining the respondent. This was nothing to do with any earlier disclosure made regarding Mr Gibbs on 18 July 2024.

Conclusion

99. Consequently, my conclusion was that the claimant was unfairly dismissed, but that her complaint of detriments and/or dismissal arising from the making a protected disclosure are not well founded and must be dismissed.

100. The case will therefore proceed to a remedy hearing in person before me at the Liverpool Employment Tribunal on a date to be confirmed. At this hearing I will consider the quantification of the claimant's losses in relation to the successful unfair dismissal complaint.

101. Because of the way the parties had prepared for this final hearing, I was unable to make findings relating to the question:

a) of *Polkey* (percentage chance claimant would have been fairly dismissed in any event),
b) uplift or deductions to compensatory award for failures relating to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015, and
c) any reduction to remedy for contributory fault.

This was because of the limited witness evidence, the documents I was referred to and the limited submissions made. These matters are discussed

further within the Law section above under the heading relating to matters for consideration at the remedy hearing.

102. Consequently, I will hear evidence and submissions from the parties at the remedy hearing and will make findings as part of my overall judgment on remedy.

EJ A Johnson

Employment Judge Johnson

Date 27 April 2026

JUDGMENT SENT TO THE PARTIES ON

8 Jun 2026

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

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