EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000015/2026

Held in Glasgow on 18 May 2026

Employment Judge: Mrs M Kearns

Mr R Coulter	**Claimant** **In person**
MJ Fort UK Ltd **c/o McLay, McAlister & McGibbon LLP**	**Respondent** **Not present and not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was that:

(1) The claimant was dismissed for the reason or principal reason that he made protected disclosures. The dismissal is accordingly unfair under section 103A Employment Rights Act 1996. The respondent is ordered to pay to the claimant compensation of **£3,558 (Three Thousand, Five Hundred and Fifty Eight Pounds).** The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award. The monetary award is £3,558. The prescribed element is £3,558 and relates to the period from 28 July 2025 until 31 August 2025 (5 weeks). The monetary award does not exceed the prescribed element.

(2) The respondent failed to pay the claimant holiday pay accrued but untaken on termination of his employment. The respondent is ordered to pay to the claimant the sum of **£348 (Three Hundred and Forty Eight Pounds)** therefor.

(3) The claim for arrears of pay is dismissed upon withdrawal by the claimant.

REASONS

1. The claimant - who is aged 37 years - was employed by the respondent from 1 April until 27 July 2025, as the manager of their Monterey Jack's restaurant at Glasgow Fort shopping centre. On 4 January 2026, having complied with the early conciliation requirements, he presented an application to the Employment Tribunal in which he claimed: (i) automatically unfair dismissal for the reason or principal reason that he had made protected disclosures; (ii) holiday pay; and (iii) arrears of pay. The respondent did not defend the claim. The claim for arrears of pay had not been quantified and the claimant withdrew it at the hearing.

Issues

2. The issues for determination are set out and addressed in the discussion section below.

Evidence

3. The claimant lodged a bundle of documents and referred to them by page number. He gave evidence on his own behalf. The respondent did not attend the hearing.

Findings in fact

4. The following material facts were admitted or found to be proved:

5. On 1 April 2025, the claimant began work for the respondent as Manager of its Monterey Jack's restaurant at Glasgow Fort shopping centre. He had relocated from another part of the UK to take up the job. The claimant was given an employment contract (1–11). This provided that his job title was 'Manager' and his salary was £37,000 per year. The contract stated that the respondent's holiday year ran between 1 April and 31 March and that the claimant was entitled to 5.6 weeks' paid holiday per year.

6. In early April 2025, not long after the beginning of his employment, the claimant shared a spreadsheet with the respondent's directors, Richard Fergie and Gary Marshall setting out some concerns he had which he felt should be addressed.

7. On or about 1 May 2025, the claimant received a phone call from Mr Fergie to say that the Assistant Manager had broken his hip. From that point onwards, the claimant worked around 75 hours per week to cover for his senior colleague and he became increasingly exhausted.

8. As part of his role, the claimant had weekly meetings with Mr Fergie and at these meetings he took the opportunity to discuss the issues on the spreadsheet. At one meeting with Mr Fergie in mid-May 2025, the claimant told him that the fire safety certification for the restaurant building had expired and that it required by law to be renewed. He said that a fire risk assessment needed to be done urgently. Mr Fergie said it was "*something he would get*

around to”. At the same meeting, the claimant also discussed with Mr Fergie another issue on the spreadsheet. He said that there needed to be a professional process to dispose of sanitary bin waste from the restaurant toilets. Mr Fergie told him to “*just throw it in the bin*”. The claimant believed that the fire safety certification disclosure was in the public interest as one of the shopping centre authorities managers had told him that fires had occurred on the premises previously and the claimant was concerned to take necessary fire prevention steps. He believed that the failure to renew the fire safety certification was a failure to comply with a legal obligation and also that it endangered the health and safety of staff and customers. With regard to the sanitary waste disclosure, the claimant considered this was in the public interest because the waste was potentially hazardous and there are rules and regulations about how it should be handled and disposed of. He believed the failure to deal with this he had disclosed tended to show both a failure by the respondent to comply with its legal obligations and that the health or safety of staff and customers was being endangered. The claimant continued to raise these issues with Mr Fergie in subsequent weekly meetings

9. The restaurant was busy in the week leading up to Fathers’ Day (Sunday 15 June 2025). One of the claimant’s junior colleagues had repeatedly cleaned floor mops in the food preparation sinks and the claimant had told him on four occasions not to do this. However, he just kept doing it and became confrontational when challenged about it. On Saturday 14 June, the claimant spoke to the colleague’s line manager, the head chef. The result of this was that the junior colleague walked out at the end of the evening and went off sick for a month.

10. At a weekly meeting in late June 2025, the claimant disclosed to Mr Fergie that the junior colleague had been repeatedly cleaning floor mops in the food preparation sinks and refusing to stop. The claimant had drafted a disciplinary letter for Mr Fergie’s approval to deal with the issue but this was not sent at any stage, even after the colleague returned from sick leave. The claimant believed that the disclosure of this matter to Mr Fergie was in the public interest because the practice disclosed was unhygienic and tended to show both a failure by the respondent to comply with its legal obligations and that the health or safety of staff and customers was being endangered.

11. Paragraph 1.2 of the claimant’s employment contract stated that the first 3 months of employment would be a probationary period, which could – at the respondent’s discretion – be extended for up to a further 3 months. The paragraph stated: “*During this probationary period your performance and suitability for continued employment will be monitored.”* The claimant’s probationary period was not extended and the period expired on 1 July 2025 without any issues being raised with the claimant about his performance or suitability for continued employment.

12. The claimant continued to raise the fire safety certification; waste disposal and mop cleaning issues with Mr Fergie at weekly meetings. However, although Mr

Fergie had originally said he would get around to the fire safety matter, he now said that it was not an expense he was prepared to incur, nor was he prepared to pay for professional sanitary bin waste disposal. The claimant began to sense that his insistence on the fire certification and hygiene matters was beginning to infuriate Mr Fergie.

13. On 10 July 2025, the respondent's two directors, Mr Fergie and Mr Marshall asked for a meeting with the claimant. At the meeting, Mr Fergie told the claimant he wanted to 'reassess the structure of the outlet' and that he would like the claimant to finish up in the role. He told the claimant: "*I don't know what that means but I will ring you tonight. I'll give you a week's notice in the meantime".* However, Mr Fergie did not call the claimant that evening, nor did he call him again until 6pm on Sunday 20 July, when he called him to say the claimant could come back to work the next morning. The claimant again found that he had again been put on the rota for a 75 hour week. On Wednesday 23 July, the claimant collapsed from exhaustion and was sent home in a taxi. He was off sick for 4 days.

14. On or around 21 July 2025, the claimant raised two further matters with Mr Fergie at a weekly meeting. The respondent had employed a 16 year old junior member of staff. The claimant told Mr Fergie that 16 year olds are legally required to have certain breaks. Mr Fergie replied: "*If he wants a job he can work for it."* The respondent had also employed another young person in the role of Head Chef. The new head chef ended up working excessive hours. He became upset at the pressure he was placed under and after working very late one night, he never came back. The young man was never paid the amounts owed to him and the claimant brought this to Mr Fergie's attention. Mr Fergie replied: "*At this point, they can f***ing sue me."* The claimant believed it was in the public interest to raise these two issues with Mr Fergie because they concerned the responsible employment of young persons. He believed they tended to show that the respondent was failing to comply with its legal obligations under the Working Time Regulations 1998 and its duty of care to young workers.

15. On Sunday 27 July, Mr Fergie emailed the claimant purporting to terminate his employment with retrospective effect from 10 July. The email stated that the claimant's final pay packet would include payment for all hours worked including on Monday 21 and Tuesday 22 July as well as pay in lieu of notice.

16. The effective date of termination of the claimant's employment was 27 July 2025. After his dismissal the claimant looked for other jobs. He found a new job and started work on 1 September 2025 at a salary of £35,000 per year. He was unemployed for 5 weeks between 28 July and 31 August 2025 and claimed universal credit during this period.

17. The claimant's salary per his employment contract was £37,000 per year. His weekly pay was £711.54 (£37,000/52 = £711.54) He was unemployed for 5 weeks. £711.54 x 5 = £3,577.70 or £3,558, rounded to the nearest whole pound.

18. On the termination of his employment, the claimant had 3 days' holiday, accrued but not taken. The respondent failed to pay him for this. The claimant seeks £348 by way of holiday pay.

Applicable Law

Automatically Unfair Dismissal for Making a Public Interest Disclosure

19. Section 103A ERA provides, so far as relevant as follows:

*"**103A Protected disclosure***

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."

20. With regard to protected disclosures, the following provisions apply. Section 43A states:

*"**43A Meaning of "protected disclosure"***

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

21. Section 43B provides, so far as relevant:

*"**43B Disclosures qualifying for protection***

(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 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.

……………………………..

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."

22. Section 43C states:

*"**43C Disclosure to employer or other responsible person***

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith –
(a) to his employer, or
(b) ……"

Discussion and Decision

Claim of Unfair Dismissal for Making a Protected Disclosure

23. With reference to the legislation set out above, in order for a disclosure to be a qualifying disclosure it must satisfy a number of tests. The tests to be applied to each alleged disclosure are as follows: (***Williams v Michelle Brown Am*** UKEAT/0044/19 (2019 October 2019, unreported)): "*First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."* The final issue to be considered in relation to whether a qualifying disclosure is protected is whether it was made in the correct manner. I have applied these tests to the facts in relation to each alleged disclosure below.

(i) In respect of each disclosure, did the claimant disclose information?

24. A qualifying disclosure must convey information, in the form of facts even if those facts are already known to the employer (Section 43L). Mere allegations are not sufficient. In ***Cavendish Munro Professional Risk Management Ltd v Geduld*** 2010 ICR 325 the EAT illustrated the distinction between information and mere allegation with the following example: "*The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying* around" would amount to the communication of information. By contrast "*You are not complying with health and safety requirements"* would be an allegation but not (without more) the conveying of information. In ***Kilraine v London Borough of Wandsworth*** [2018] EWCA (Civ) 1436 the Court of Appeal said that 'to be a qualifying disclosure, a statement has to have sufficient factual content and specificity to tend to show one of the matters listed in section 43B ERA. The Court said that whether an identified statement meets that standard is a matter for "evaluative judgment" by the Tribunal in light of all the facts of the case, assessing the disclosure in context. The question is whether sufficient information is disclosed.

25. The claimant's evidence (which I accepted) was that he made the following disclosures:

    (a) In early April 2025, the claimant shared a spreadsheet with the respondent's directors, Richard Fergie and Gary Marshall setting out a number of concerns he had. He then met with Mr Fergie weekly and reiterated them. At a meeting with Mr Fergie in mid-May 2025, the claimant told him that the fire safety certification for the building had expired and that it required by law to be renewed. He said that a fire risk assessment needed to be done urgently. I concluded that telling the respondent's director that the fire safety certification for the building had expired and required renewal *was* the communication of information for the purposes of section 43B.

(b) At the same meeting in mid-May, the claimant told Mr Fergie that there needed to be a professional process to dispose of sanitary bin waste from the restaurant toilets. I concluded that telling the director that a professional process was required for the disposal of sanitary bin waste in circumstances where this was not happening constituted the communication of information.

(c) In or around June 2025, at one of his weekly meetings with Mr Fergie, the claimant told him that a named junior member of staff was repeatedly cleaning floor mops in the food preparation sinks and refusing to stop. Again, I concluded that this was the communication of information.

(d) On 21 July 2025 the claimant told Mr Fergie that 16 year olds are legally required to have certain breaks. This was said in the context of the recent hiring of a new 16 year old member of staff. In that context, I considered on balance that it was the disclosure of information as opposed to a mere allegation.

(e) Also on 21 July, the claimant advocated for the new head chef, who had recently left his post to be paid for the work he had done. On the evidence I heard, I did not conclude that this constituted the disclosure of sufficient information to meet the test under section 43B(1) ERA.

(ii) If the claimant did disclose information, did he believe that the disclosure was made in the public interest?

Public interest

26. In relation to the public interest test, helpful guidance was given by Underhill LJ in ***Chesterton Global Limited v Nurmohamed*** [2017] IRLR 837. At paragraph 27 he said this: *"The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable."* He went on to observe that the tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker and that there may be more than one reasonable view of the matter.

27. At paragraph 37 Underhill LJ listed some potentially helpful factors (from submissions recorded at paragraph 34) that would normally be relevant as follows:

> *"(a) the numbers in the group whose interests the disclosure served…;*
>
> *(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;*
> *(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;*
> *(d) the identity of the alleged wrongdoer – ….. "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure*

> *about its activities engage the public interest" – though he goes on to say that this should not be taken too far."*

28. At paragraph 35 Underhill LJ said this: *"It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the numbers of people sharing that interest."*

29. I accepted the claimant's evidence that the four disclosures found to be of information above ((a) to (d)) were believed by him to be in the public interest for the reasons he gave, which are recorded in the findings in fact above. It is uncontroversial that disclosures in relation to fire safety and prevention and the proper disposal of hazardous waste as well as unhygienic mop cleaning and the proper management of young staff members would affect staff and (for (a) to (c) – customers) and would be in the public interest.

(iii) Was his belief reasonable?

Reasonable belief

30. A qualifying disclosure must, in the reasonable belief of the worker making it be made in the public interest and tend to show one or more of a number of the states of affairs listed in Section 43B(1) (a) to (f). In ***Kilraine*** the Court of Appeal said this (at paragraph 35 – 6):

> "35 *Grammatically, the word 'information' has to be read with the qualifying phrase, 'which tends to show [etc]' (as, for example, in the present case, information which tends to show that a person has failed or is likely to fail to comply with any legal obligation to which he is subject). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in sub-s (1). The statements in Cavendish Munro did not meet that standard…."*

31. Thus, whilst this is a subjective test in the sense that section 43B says *"in the reasonable belief of the worker making the disclosure"* it has an objective element to it. The belief must be "*reasonable*" which suggests there must be some proper basis or degree of substantiation for it. On the basis of the findings in fact above, I concluded that the disclosures (a) to (d) met the test in ***Kilraine*** in that – on the evidence before me - they had sufficient factual content and specificity and a proper basis/degree of substantiation.

(iv) Did the claimant believe that the disclosures tended to show one or more of the relevant matters listed in section 43B(1)(a) to (f)?

32. I accepted the claimant's evidence in relation to disclosures (a) to (d) as follows.

    (a) The claimant believed that the disclosure of the failure to renew the fire safety certification tended to show a failure by the respondent to comply with a legal obligation and also that the health or safety of staff and customers was being endangered.

(b) With regard to the sanitary waste disclosure, the claimant considered this was in the public interest because the waste was potentially hazardous and there are rules and regulations about how it should be handled and disposed of. He believed the disclosed failure to properly deal with this tended to show both a failure by the respondent to comply with its legal obligations and that the health or safety of staff and customers was being endangered.

(c) The claimant believed that the disclosure to Mr Fergie that the junior colleague was repeatedly cleaning floor mops in the food preparation sinks and refusing to stop tended to show both a failure by the respondent to comply with its legal obligations and that the health or safety of staff and customers was being endangered.

(d) The claimant believed that the disclosure to Mr Fergie on 21 July 2025 (in the context of the employment of a 16 year old member of staff) that 16 year olds are legally required to have certain breaks tended to show that the respondent was failing to comply with its legal obligations under the Working Time Regulations 1998 and its duty of care to young workers.

(e) This was not a protected disclosure as explained above.

(v) Was his belief reasonable?

33. In ***Babula v Waltham Forest College [2007] ICR 1026***, the Court of Appeal considered the reasonable belief provisions of s.43B of the 1996 Act. Wall LJ held: *"41. Darnton's case [2003] ICR 615 seems to me clear authority for the proposition that whilst an employee claiming the protection of section 43B(1) of ERA 1996 must have a reasonable belief that the information he is disclosing tends to show one or more of the matters listed in section 43B(1)(a) to (f) , there is no requirement upon him to demonstrate that his belief is factually correct; or, to put the matter slightly differently, his belief may still be reasonable even though it turns out to be wrong. Furthermore, whether or not the employee's belief was reasonably held is a matter for the Tribunal to determine."*

34. On the basis of the evidence given and facts found, I concluded that the claimant's belief was reasonable in relation to each of the disclosures at (a) to (d) above. It therefore follows that disclosures (a) to (d) were qualifying disclosures as defined in section 43B.

(vi) The manner of the disclosure

35. The fact that a disclosure is a qualifying disclosure under section 43B is not sufficient on its own to make it a protected disclosure. The disclosure must be made in the correct way. A qualifying disclosure made to the employer will normally be a protected disclosure. (Section 43C(1)(a) ERA). In this case, all disclosures were made to the employer and disclosures (a) to (d) were therefore protected disclosures as defined.

(vii) Whether the reason or principal reason for the claimant's dismissal was that he made a protected disclosure?

36. On the basis of the evidence accepted and the facts found, I concluded on the balance of probabilities that the reason or principal reason for the claimant's dismissal was that he made the protected disclosures at (a) to (c) above. With regard to (d), it appeared to me that the respondent had already expressed an intention to dismiss the claimant at their meeting with him on 10 July, albeit that they did not in fact carry out that intention and dismiss him until 27 July. Therefore, (d) was not a reason or principal reason for dismissal.

37. The claimant's employment contract stated that the first 3 months of employment would be a probationary period, which the respondent could extend for up to a further 3 months. The paragraph stated: "*During this probationary period your performance and suitability for continued employment will be monitored.*" The claimant's probationary period was not extended by the respondent and the 3 month period expired on 1 July 2025 without any issues being raised with the claimant about his performance or suitability for continued employment.

38. The claimant's disclosure about the junior colleague repeatedly washing mops in the food preparation sinks had been made to Mr Fergie in late June. The claimant testified and I accepted that he also continued to raise the fire safety certification and waste disposal issues with Mr Fergie at weekly meetings. Mr Fergie had originally said he would get around to the fire safety matter. However, around the beginning of July, he now said that it was not an expense he was prepared to incur. In relation to the sanitary bin disposal issue, he had made it clear to the claimant that he was not prepared to pay for this and that the claimant should just throw the sanitary waste in with the general rubbish. The claimant said in evidence that his insistence on the fire certification and hygiene matters appeared to infuriate Mr Fergie.

39. On 10 July 2025, the respondent's two directors, Mr Fergie and Mr Marshall asked for a meeting with the claimant. At the meeting, Mr Fergie told the claimant he wanted to 'reassess the structure of the outlet' and that he would like the claimant to finish up in the role. He told the claimant: "*I don't know what that means but I will ring you tonight. I'll give you a week's notice in the meantime".* However, Mr Fergie did not call the claimant that evening, nor did he call him again until 6pm on Sunday 20 July, when he called him to say the claimant could come back to work the next morning. In the rota he gave the claimant on 20 July 2025 (15), Mr Fergie had allocated him around 75 hours' work for the week. The respondent did not defend this claim, so their position on this is unknown. However, this allocation of work to the claimant on 20 July did not appear consistent with any genuine reason for dismissal.

40. On Wednesday 23 July, the claimant collapsed from exhaustion and was sent home in a taxi. He was off sick for 4 days. On Sunday 27 July, Mr Fergie emailed the claimant purporting to terminate his employment with retrospective effect from 10 July. The email stated that the claimant's final pay packet would include payment for all hours worked including on Monday 21 and Tuesday 22 July as well as pay in lieu of notice.

Remedy

Basic award

41. The claimant did not have sufficient service to claim a basic award.

Compensatory award

42. With regard to the compensatory award, the claimant's salary with the respondent was £37,000 per annum. His weekly pay with the respondent was £37,000/52 = £711.54. Following his dismissal, he was unemployed for 5 weeks. £711.54 x 5 = £3,557.70 or £3,558 rounded to the nearest whole pound. Although his new employment was at a salary of £35,000, whereas his salary with the respondent was £37,000, the claimant said he did not seek to recover the difference. The compensatory award accordingly relates only to the period from 28 July to 31 August 2025, when the claimant was unemployed.

43. Per Harvey on Industrial Relations and Employment Law; Division PI Practice and Procedure; 1. Employment Tribunals; ZD. Recoupment of benefits: "*The 'prescribed element' is that part of the monetary award which is attributable to loss of wages or arrears of pay, or to the amounts found due to the employee, for a period before the conclusion of the tribunal proceedings (see SI 1996/2349 reg 3 and Sch). The period of the prescribed element is therefore directly linked to the period in respect of which compensation has been awarded, and it must not exceed that period; so if compensation is only awarded for six of the 10 months up to the conclusion of the hearing, the period of the prescribed element is six months (Homan v A1 Bacon Co Ltd [1996] ICR 721, EAT).*" In this case, the claimant only sought compensation for the period between 28 July and 31 August 2025, when he was unemployed. Thus, the prescribed period is from 28 July to 31 August 2025.

44. For the purposes of the Employment Protection (Recoupment of Benefits) Regulations 1996, the monetary award is £3,558. The prescribed period is from 28 July 2025 to 31 August 2025 (5 weeks). The prescribed element is £3,558. The monetary award does not exceed the prescribed element. As the claimant has been in receipt of Universal Credit, the relevant Department will serve a notice on the respondent stating how much is due to be repaid to it in respect of Universal Credit. Meantime the respondent should only pay to the claimant the amount by which the monetary award exceeds the prescribed element. The balance, if any, falls to be paid once the respondent has received the notice from the Department.

Date sent to parties **<u>01 June 2026</u>**