

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8001971/2024**

**Held in Aberdeen by CVP on 12-13 May & 1-2 September 2026**

**Employment Judge Sangster**

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| **Mr C Milne** | **Claimant**<br>**In Person** |
| **WBC Media CIC** | **Respondent**<br>**Represented by:**<br>**Ms N Nicholson &**<br>**Ms L Kirby,**<br>**Lay Representatives** |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that:

- The claimant's complaint under section 23 of the Employment Rights Act 1996 (**ERA**) is successful. The respondent is ordered to pay to the claimant the gross sum of One Thousand, Four Hundred and Six Pounds and Twenty Five Pence (**£1,406.25**), which was unlawfully deducted from his wages, contrary to s13 ERA.
- The claimant's remaining complaints do not succeed and are dismissed.

**REASONS**

**Introduction**

1. In a claim presented on 26 November 2024, the claimant brought complaints of

   1.1. Direct sex discrimination;

1.2. Harassment related to sex/of a sexual nature;

1.3. Victimisation;

1.4. Detriment as a result of making a protected disclosure;

1.5. Unfair dismissal; and

1.6. Unauthorised deductions from wages.

2. At a preliminary hearing, held on 28 May 2025, it was determined that the claimant was a worker, and the complaint of unfair dismissal was dismissed.

3. In advance of the final hearing, parties lodged a joint bundle, extending to 154 pages.

4. The claimant gave evidence on his own behalf and called the following individuals as witnesses:

4.1. Karen Day (**KD**), Director of the respondent; and

4.2. Robert Graham Barron (**RGB**), Director of the respondent.

5. The respondent led evidence from:

5.1. Janice Forest (**JF**), Director of the respondent; and

5.2. Gavin Harper (**GH**), formerly Station Manager for the respondent.

6. Other individuals referenced in this judgment are:

6.1. Robert Forest (**RF**), Director of the respondent.

**Issues to be determined**

7. The parties provided separate lists of issues, but not an agreed list. The lists were discussed, in detail, at the start of the hearing. The list of issues to be determined is contained in the schedule to this judgment.

**Representation at the Final Hearing**

8. The claimant represented himself at the final hearing. The respondent was represented by Ms Nicholson on the first two days of the final hearing. It was only possible to complete the evidence of the claimant and his witnesses during that time. On the second day of the hearing, two further dates were agreed for the respondent's evidence and submissions. On the commencement of the continued hearing, the respondent was represented by Ms Kirby. She indicated that, despite having agreed the dates for the continued hearing, Ms Nicholson was on holiday and unavailable to represent the respondent for the remainder of the hearing. Ms Kirby stated that she would be representing the respondent

at the continued hearing, and was content to proceed, although she had not been provided with a note of the evidence led on the first two days of the hearing.

**Findings in fact**

9. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider to decide if the complaints made succeed or fail. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues. The relevant facts, which the Tribunal found to be admitted or proven, are set out below.

10. The respondent is a community interest company. It was established in 2023 by JF, RF and RGB. KD was also involved from the outset. She had the same financial stake in the respondent as each of the directors, but was not a director as she was working full time elsewhere. The company was established to take over a local radio station in Peterhead, Waves Radio. While that did not come to fruition, it was decided the company would start their own radio station, Coast Radio.

11. GH became the only employee of the respondent. He was employed as Station Manager. Presenters were engaged on a freelance basis.

12. The claimant was known to the respondent's directors. RGB and the claimant had known each other for over 20 years, having both worked in radio throughout that time, often together. They had a good relationship and could speak openly to each other. KD had known the claimant for around 10 years. The other directors knew him also.

13. In May 2024, the claimant was asked by RGB and KD to assist the respondent in their start up. Initially this was to assist in the production of adverts, but at the end of May 2024 he was also asked to provide some assistance to the Station Manager, GH, on a temporary/short term basis. His work was to include assisting with music, clocks, station sound and adverts, as well as assisting in dealing with presenters and programming. He was not provided with a contract. It was agreed that he would work 20 hours per week (at times to be determined by the claimant, to fit round his business and childcare commitments) and would be paid £12.50 per hour, on the provision of an invoice to the respondent. There was a separate arrangement for payment in respect of each advert created, namely £20 per advert.

14. The claimant commenced working with the respondent, under this arrangement, from 27 May 2024. He was referred to internally as the Programme Controller.

15. The claimant and GH worked closely together. They had not known each other before working together. Their views did not always align professionally, but they got on reasonably well and did not ever fall out. They messaged each other regularly in relation to work matters, and engaged in light-hearted, amicable chat when working together. They agreed to work together on some outside broadcasts, socialised together outside work, and the claimant, on one occasion, invited GH to his house for supper. Whilst GH was technically the claimant's line manager, the claimant would generally liaise with RGB regarding key work related decisions, rather than GH, as he had known and worked with him for a lot longer, and RGB was a director of the company. This left GH feeling undermined, and that the claimant did not respect/recognise his position as Station Manager.

16. The claimant submitted 2 invoices to the respondent in the time he worked with them, as follows:

    16.1. The claimant's invoice for the period from 27 May to 30 June 2024 (just under 5 weeks) was for £1,510. This comprised 108 hours work, at £12.50, totalling £1,350, plus 8 adverts at £20 each, totalling £160.

    16.2. The claimant's invoice for July 2024 (4.5 weeks) was for £1,646.25. This comprised 128.5 hours work, at £12.50, totalling £1,606.25, plus 2 adverts at £20 each, totalling £40.

17. No particular concerns were raised in relation to the first invoice, although it was higher than the respondent had expected. Due to cash flow issues, the respondent indicated that they could not pay it all immediately. The claimant was paid £750 on 29 July 2024.

18. The second invoice was higher than the respondent had expected. As a small, start-up CIC, with limited funds, the receipt of an invoice in excess of budget created significant concern for the directors. JF was responsible for financial matters. She discussed the claimant's July invoice with him when he submitted it, stating it was higher than she had been expecting (she was expecting £1,000 each month). The claimant accepted this and, following discussion, it was agreed that the claimant's July invoice would be paid (in due course), but he would not invoice for hours in August 2024, which would then bring things back within budget. JF indicated that she would need to discuss with the directors about his invoices generally being higher than expected, and she would speak to him when he got back from holiday (which he was about to commence) about how to take things forward.

19. On Monday 19 August 2024, while not officially working that day, the claimant went into the office for a short time. This was the first day he attended the office following his holiday. GH mentioned to him, while he was there, that JF & RF

had asked him if they should end the claimant's contract, but that he had stated that he was still needed. That evening the directors and KD discussed the claimant's invoices, and the fact that it was felt that these were beyond what they had authorised and could afford. They discussed whether they should end the claimant's contract. It was agreed instead that it would be beneficial for the claimant to continue, but there needed to be certainty regarding his costs, and his hours could not, therefore, exceed 20 hours per week.

20. On Wednesday 21 August 2024, JF sent the claimant a WhatsApp message stating '*Conscious of the fact that haven't been in touch this week. Had a productive meeting on Monday. If you're free to pop in can update you and hopefully get a way forward'*. The claimant understood this related to his working hours/pay and agreed to come in at 4pm that day. JF, RF and GH were present at the meeting with the claimant. The meeting was relaxed and light-hearted. JF indicated that they would need to make changes to the way the claimant worked and, going forward, whilst they would like the claimant to continue to assist them on particular matters, each piece of work would need to be discussed and costed in advance of it being undertaken. This was to provide them with certainty regarding the amount of the claimant's invoices. JF stated that any/all work requests would require to go through GH, who would also agree in advance with the claimant the amount which could be invoiced, once the work was completed. The claimant agreed to this and gave a thumbs up sign. GH, who felt that up to that point the claimant had not recognised/respected his position of Station Manager, laughed and stated *'you're my bitch now'.* Others in the room, laughed at this, taking it as a joke. The meeting continued, then ended amicably. The claimant then did around 30 minutes of work and left the office. The claimant raised no issues/concerns during the meeting, or immediately after. JF and GH believed that the claimant had also laughed at the comment made, and had taken this as a joke.

21. On the evening of Friday 23 August 2024, the claimant met with RGB. This followed on from a series of text messages between the claimant and RGB earlier that day, where the claimant stated to RGB that he was no longer Programme Controller, that GH was now in charge, and that this had been the case since Wednesday. During their discussion that evening, the claimant told RGB about the meeting which he had had on 21 August 2024, and that he had agreed to move to an 'as and when required' working arrangement. RGB was surprised that this had been proposed, and that it had been agreed by the claimant. He had understood that the claimant would 'go back to' working 20 hours a week, and would retain principal responsibility for programming duties, as Programme Controller. While the claimant discussed the meeting on 21 August 2024 with RGB, he did not mention to RGB the comment GH made (*'you're my bitch now'*) and made no reference to any further complaints or concerns which he may have in relation to GH.

22. On the evening of 23 August 2024, it was reported to JF by a presenter that he could see (but not hear) the claimant and RGB in an office. He stated that they appeared to be having an argument, so he didn't want to interrupt, but thought she should be aware. JF was concerned that this may be related to the directors' decision, which she had conveyed to the claimant earlier that week, regarding the claimant's working arrangements. She contacted the claimant about that via WhatsApp stating *'Hi Craig. I thought we had things kind of agreed this week. I'm hearing there's been a bit of an argument tonight. What's going on?'* He responded to her around 9 minutes later, stating *'What are you talking about? Now is not the time. I've personal things to sort and a radio station is the least of my problems. Please respect my space rather than feed tales of lies at the worst time possible. I clearly stated my situation to Gavin. Shocking behaviour.'* She understood that the claimant was experiencing some difficult personal circumstances at that time, so did not press the point. Instead, she simply responded, a few minutes later stating *'Was just concerned. Not feeding tales of lies Apologies.'* The claimant responded to JF around 30 minutes later, stating '*I'd like you to explain your claim of an argument at a later date which is clearly feeding lies. Nothing I detest more than a liar who said there was an argument? Who said anything about the so called argument was to do with an agreement this week? You need to realise who is trustworthy as clearly someone is going to you with these crazy accusations. But as I clearly stated to Gavin and yourself now is not the time. When you need people you can trust and instead the liars come out. Disgusting. But clearly true colours. Thanks for adding to my plate of worry.'* JF did not respond to that message.

23. On 26 August 2024, GH texted the claimant stating that he needed to change the wording on a particular advert which the claimant had created. He asked if the claimant could send the voice used for the advert. The claimant responded that day stating that *'It was stated that I was producing adverts by Janice, Bob and yourself and from your message this is clearly not the case. Could you please clarify?'.* GH responded stating *'Sorry I thought you needed space so didn't want to bother you, are you happy to do an amendment to it?'*. The claimant responded stating *'Thank you for clarifying but you seem to think alot that isn't reality Gavin. I'm seeking counselling and being advised from your behaviours and stress you have caused me from lies. With this, please do not contact me again. I will be dealing directly with directors to expose the truth with evidence. Do the decent thing and be honest about me before I get the details to them as I will not stand for someone trying to damage my reputation to cover your lies. The upset you have caused is disgusting.'* GH responded stating *'Sorry what are you talking about?'* The claimant did not respond and blocked GH from contacting him further.

24. On 27 August 2024 at 11:52, JF followed up on the request GH had made the previous day, as the respondent needed the advert to be changed. She sent a

message to the claimant by WhatsApp, asking whether he was able to do that. He did not receive that, as he had blocked JF from messaging him on WhatsApp. The message accordingly remained undelivered. JF was unaware that one grey tick on a WhatsApp message indicated that the message had not been delivered, so presumed the claimant had received this.

25. At 1:17 on 27 August 2024, the claimant sent an email to JF, RF, KD and RGB, headed *'Formal official complaint of conduct'*. His email stated:

*'I am writing directly about unreasonable and unlawful treatment that I have been subjected to within the Coast Radio workplace.*

*It is a problem that is causing me concern and that I have been unable to solve without bringing this to your attention. I hope in doing so we can deal with the issue quickly and amicably.*

*My complaint is regarding sexual harassment, false allegations and defamation of character towards myself. I would like you to investigate these allegations. I would also like you, as a company, to take appropriate and prompt action to stop the behaviour complained of and to remedy it.*

*The name of the perpetrator is Mr Gavin Harper, Station Manager, Coast Radio. My complaint is set out below, where I describe the events that constitute sexual harassment, false allegations and defamation of character.*

*1. My services within Coast Radio was Programme Controller, as given my Mr Gavin Harper and witnessed by Mr Graham Barron, which included dealing with presenters, schedule, station sound and imaging. My work role also involved any schedule changes and cover where required.*

*2. During my time within Coast Radio regular inappropriate comments from Mr Gavin Harper of a sexual nature were made towards myself. This became alarming towards myself and others including members of the public like the male work experience placement and people visiting the radio station.*

*This course of conduct has also been witnessed by Mrs Janice Forrest, Company Director, and Mr Robert Forrest, Company Director, but no further action was taken at the time to rectify this. This includes, of recent, Mr Gavin Harper on Wednesday 21 August 2024 at a meeting at Coast Radio where he stated to me "your my bitch now". Both Company Directors present did not comment or address this behaviour.*

*This has became a regular occurrence from Mr Harper in the way of degrading and foul language that causes alarm and makes me feel degraded and worthless as a person.*

*Mr Harper constantly contradicts himself in lies with claims of wanting me to continue working with him including on Wednesday 21 August 2024 stating "please don't leave", witnessed by Mrs Janice Forrest and Mr Robert Forrest, and on another occasion telling me "you know more about programming than me". Prior to this Mr Harper gave me the title Programme Controller. Despite this Mr Harper stated to a number of people negative comments about me including "why is Craig even here" referring to me working at Coast Radio. A list of witnesses can be provided to reflect this.*

*Mr Harper has also stated to me "Janice and Bob have asked me if they should get rid of you" on Monday 19 August 2024 within Coast Radio premises. I found this behaviour and mind games to be detrimental to the companies aims and goals as well as affecting me mentally with how I stand with those I work alongside. I no longer know, feel comfortable or trust any words within Coast Radio due to this.*

*Mr Harper also makes an effort to damage peoples opinion of myself. This is done in blaming wrongdoing on myself when I was never involved. This includes changes in music and clocks when Mr Harper was behind this change himself. I now question how people see me and remain confused from the false statements as to why someone would do this to anyone.*

*Mr Harper and Mr Jon Mitchell have both took steps to remove social media access. I also have had revoked access to other Coast Radio platforms yet the meeting on Wednesday 21 August 2024 stated I was a part of the station. With this, it suggests I am no longer part of the station especially when Mr Harper requested advert copy details by text despite an agreement for myself to produce adverts. I take from this that this was all decided, and overall voted plus agreed, at Director level before Management acted in this way. I seek clarification of this.*

*There's also an accusation of an argument taking place on Friday 23 August 2024 about the meeting on Wednesday 21 August 2024. This is untrue. Again - I seek clarification of where these lies came from and why it was thought to be regarding the meeting two days prior to this.*

*This entire project, due to Mr Harper's actions, has created great upset and stress for myself. I feel degraded and this is now to a point of damaging my mental health. I have since had to attend counselling as this has been ongoing since May 2024. This should not be happening when the core aim is to make entertaining radio as a team.*

*3. The conduct described above was unwanted towards myself and inappropriate in front of others. A workplace should not be exposed to sexual harassment, false allegations and defamation of character. The conduct has*

*continued with myself and others and this is now affecting my mental health as it does not stop. I find it offensive with a lack of respect towards myself and witnesses to the behaviour. A zero tolerance approach should be in place without question.*

*4. I would like the following action to be taken:*

*i. An investigation to take place into the events that occurred and a finding to be made in relation to my complaint.*

*ii. No further direct contact from Mr Harper towards myself.*

*Please let me know the next steps in the process.*

*I have never experienced conduct like this and makes me on edge and very embarrassed when this is taking place in front of others. I have also had to return to counselling sessions to find the correct path in how to deal with this behaviour.*

*Any further correspondence please do this in writing. This is also in an effort to protect my mental health from the damage that is already done.'*

26. The directors asked KD to investigate the claimant's complaint. She agreed to do so. She conducted interviews with each person identified in the complaint, but not the claimant. She attempted to meet with the claimant, but he would not answer her calls, or respond to her emails/messages. She concluded her investigation in October 2024 and prepared a written document setting out her findings, which she provided to JF. She concluded that the allegations were unfounded.

27. On 16 September 2024, a presenter contacted the claimant by WhatsApp or text, to ask why he had not responded to her email to him. She sent a screenshot of the email, which had been sent to the claimant and GH. At that stage the claimant was unable to access the respondent's systems to see emails sent to his Coast Radio email address.

28. The claimant was paid a further £1,000 on 18 October 2024, bringing the total amount he received from them to £1,750. He did not receive any further payments from the respondent.

29. Wave Radio ceased broadcasting in November 2025.

**Submissions**

30. Parties each lodged written submissions. Each extended to 11 pages. Each party, very briefly, supplemented their written submissions orally. As the parties' substantive submissions are set out in writing, they are not summarised or reproduced in this Judgment. They have however been carefully considered.

**Relevant Law**

*Direct Discrimination*

31. Section 13(1) EqA states:

> ***'****A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'*

32. The basic question in a direct discrimination case is: what are the grounds or reasons for treatment complained of? In ***Amnesty International v Ahmed*** [2009] IRLR 884 the EAT recognised two different approaches from two House of Lords authorities - (i) in ***James v Eastleigh Borough Council*** [1990] IRLR 288 and (ii) in ***Nagaragan v London Regional Transport*** [1999] IRLR 572. In some cases, such as ***James***, the grounds or reason for the treatment complained of is inherent in the act itself. In other cases, such as ***Nagaragan,*** the act complained of is not inherently discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in ***R (on the application of E) v Governing Body of the Jewish Free School and another*** [2009] UKSC 15.

33. For direct discrimination to occur, the relevant protected characteristic needs to be a cause of the less favourable treatment *'but does not need to be the only or even the main cause' (paragraph 3.11,* ***EHRC: Code of Practice on Employment (2011)***). The protected characteristic does however require to have a '*significant influence on the outcome'* (***Nagarajan v London Regional Transport*** 1999 ICR 877).

*Harassment*

34. Section 26(1) EqA states that:

> ***'****(1) A person (A) harasses another (B) if—*
>
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b) the conduct has the purpose or effect of—*
> *(i) violating B's dignity, or*
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.'*

35. There are accordingly 3 essential elements of harassment claim under section 26(1), namely (i) unwanted conduct, (ii) that has the proscribed purpose or effect and (iii) which relates to a relevant protected characteristic.

36. Section 26(4) EqA states that:

> *'(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
>
> *(a) the perception of B;*
> *(b) the other circumstances of the case;*
> *(c) whether it is reasonable for the conduct to have that effect.'*

37. ***The EHRC: Code of Practice on Employment (2011)*** explains, at paragraphs 7.9-7.11, that 'related to' has a broad meaning. It occurs where there is a connection with the protected characteristic. Conduct does not have to be 'because of' the protected characteristic.

38. In ***Logo v Payone GMBH & others*** [2025] EAT 95, HHJ Tayler reviewed the requirements for a complaint of harassment, setting out, in paragraphs 8-23 of his judgment, a useful summary of the constituent parts of a complaint of this nature, and the case law/established principles relating to each.

39. In ***Pemberton v Inwood*** [2018] IRLR 542, CA, Lord Justice Underhill stated:

> *'In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.'*

40. Not all unwanted conduct will be deemed to have the proscribed effect. In ***Richmond Pharmacology v Dhaliwal*** [2009] IRLR 336, Mr Justice Underhill, in the EAT, stated *'not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the*

*imposition of legal liability in respect of every unfortunate phrase.'* Mr Justice Langstaff affirmed this view in ***Betsi Cadwaladr University Health Board v Hughes and ors*** UKEAT/0179/13, stating *'The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.'*

*Victimisation*

41. Section 27 EqA states:

*'(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.'*

42. For the purposes of a victimisation complaint '*Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage*' (*paragraph 9.8,* ***EHRC: Code of Practice on Employment (2011)***). In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] IRLR 285 confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An 'unjustified sense of grievance' is not enough.

43. The meaning of *'because of'* is discussed above, in relation to direct discrimination.

*Burden of proof*

44. Section 136 EqA provides:

*'If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision.'*

45. There is accordingly a two-stage process in applying the burden of proof provisions in discrimination cases, explained in the authorities of ***Igen v Wong*** [2005] IRLR 258, and ***Madarassy v Nomura International Plc*** [2007] IRLR 246, both from the Court of Appeal. The claimant must first establish a first base or *prima facie* case of direct discrimination or harassment by reference to the facts made out. If the claimant does so, the burden of proof shifts to the respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the complaint should be upheld. If the explanation is adequate, that conclusion is not reached.

46. In ***Madarassy***, it was held that the burden of proof does not shift to the employer simply by a claimant establishing that they have a protected characteristic and that there was a difference in treatment. Those facts only indicate the possibility of discrimination. They are not, of themselves, sufficient material on which the tribunal 'could conclude' that, on a balance of probabilities, the respondent had committed an unlawful act of discrimination. The Tribunal has, at the first stage, no regard to evidence as to the respondent's explanation for its conduct, but the Tribunal must have regard to all other evidence relevant to the question of whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the claimant or the respondent, or whether it supports or contradicts the claimant's case, as explained in ***Laing v Manchester City Council*** [2006] IRLR 748***,*** an EAT authority approved by the Court of Appeal in ***Madarassy***.

*Protected Disclosures*

47. Section 43A of the Employment Rights Act 1996 (**ERA**) provides:

*'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.'*

48. A qualifying disclosure is defined in section 43B ERA as

*'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.'*

49. Section 43C ERA states that *'a qualifying disclosure is made in accordance with this section if the worker makes the disclosure to his employer…'*

50. In ***Williams v Brown*** UKEAT/0044/19, His Honour Judge Auerbach stated:

*'9. It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. 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 sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.*

*10. Unless all five conditions are satisfied there will be not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five. That is for two reasons. First, it will identify to the reader unambiguously which, if any, of the five conditions are accepted as having been fulfilled in the given case, and which of them are in dispute. Secondly, it may assist the Tribunal to ensure, and to demonstrate, that it has not confused or elided any of the elements, by addressing each in turn, setting out in turn its reasoning and conclusions in relation to those which are in dispute.'*

51. In ***Kilraine v London Borough of Wandsworth*** [2018] IRLR 846, at paragraphs 35 and 36, the Court of Appeal set out guidance on whether a particular statement should be regarded as a disclosure of information:

*'35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in sub-paragraphs (a) to (f).' 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 a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1).*

*36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill J in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters, and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.'*

52. In ***Simpson v Cantor Fitzgerald Europe*** [2020] ICR 236, the EAT stated:

*'43... As the Court of Appeal in Kilraine v Wandsworth London Borough Council [2018] ICR 1850 made abundantly clear, in order for a statement or disclosure to be a qualifying disclosure, it has to have sufficient factual content and specificity such as is capable of tending to show breach of a legal obligation…*

*69. The tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach.'*

*Detriment Claim – Protected Disclosures*

53. Section 47B ERA states that:

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

54. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] IRLR 285 confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An 'unjustified sense of grievance' is not enough.

55. Whether a detriment is 'on the ground' that a worker has made a protected disclosure involves consideration of the mental processes (conscious or unconscious) of the employer acting as it did. It is not sufficient for the Tribunal to simply find that 'but for' the disclosure, the employer's act or omission would not have taken place, or that the detriment is related to the disclosure. Rather, the protected disclosure must materially influence (in the sense of it being more than a trivial influence) the employer's treatment of the whistleblower (***Fecitt and others v NHS Manchester*** [2012] IRLR 64).

56. Helpful guidance on the approach to be taken by a Tribunal when considering claims of this nature is provided in the decision of ***Blackbay Ventures Ltd (t/a Chemistree) v Gahir*** [2014] IRLR 416 at paragraph 98.

*Unauthorised deductions from wages*

57. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless:

    57.1. The deduction is required or authorised by statute or a provision in the worker's contract; or

    57.2. The worker has given their prior written consent to the deduction.

58. A deduction occurs where the total wages paid on any occasion by an employer to a worker is less than the amount of the wages properly payable on that occasion. Wages are properly payable where a worker has a contractual or legal entitlement to them (***New Century Cleaning Co Limited v Church*** [2000] IRLR 27).

**Discussion & Decision**

*Direct Discrimination/Harassment*

59. Given that the same asserted acts were relied upon as direct discrimination or harassment, the Tribunal considered these together, assessing whether each asserted act occurred and, if so whether it was direct discrimination or, failing

which, harassment. The Tribunal's conclusions in relation to each (in chronological order, rather than the order in the list of issues) are as follows:

59.1. **In August 2024, GH touched the claimant on the leg in a sexually suggestive manner.** This allegation is addressed first, as the claimant stated in evidence that this occurred prior to the other two incidents, but he could not recall the date when it occurred, other than that it occurred in August 2024. As 19 August 2024 was the first day he was in the office following his holiday (albeit that he was not working that day), the assertion could only be that it occurred prior to the claimant's holiday, so in early August 2024. The claimant stated that GH placed his hand on the claimant's upper thigh for a prolonged period, while staring at him, and while the claimant's chair was backed against the wall, so the claimant could not move/escape. He stated that he did not raise this at the time as he did not want to cause a conflict. GH stated in evidence that this did not occur. The Tribunal have made no findings in fact in relation to this, as it found that this did not occur. In reaching that conclusion, the Tribunal took into account that no complaint was made by the claimant in relation to this matter immediately after the claimant asserted that it occurred. Even if the claimant had not initially raised the matter as he did not want to cause conflict, that was no longer the case when he made allegations of sexual harassment against GH on 27 August 2024. His written complaint, which is replicated in full in paragraph 25 above, was detailed and lengthy and included express assertions of sexual harassment. The Tribunal concluded that, had GH done what the claimant now asserts, this would have been referenced in that letter of complaint. It was not. The Tribunal concluded that the fact that it was not, when the claimant was expressly making allegations of sexual harassment against GH, fundamentally undermined his evidence. There was no reference in his complaint to GH touching him, or to there being any physical contact. As the Tribunal concluded that this did not occur, the claimant's complaints that this constituted direct discrimination or harassment in relation to this cannot succeed and are dismissed.

59.2. **On 19 August 2024, GH stated that JF and RF had asked him if they should get rid of the claimant.** The Tribunal's findings in relation to this are set out in paragraph 19 above. While GH could not recall stating this, it was clear from the evidence that this was something being considered at the time, and which was discussed at the directors' meeting that evening. The Tribunal concluded, on balance, that JF/RF would have sought GH's views, as Station Manager, on this, in advance of the directors' meeting, and that GH did mention this to the claimant, to warn him that this had been raised with him. This is also supported

by the terms of the complaint submitted by the claimant, just over a week later.

59.3. The Tribunal concluded however that that the claimant did not establish that this was less favourable treatment: there was no suggestion that GH would have treated anyone else, in the same or not materially different circumstances to those of the claimant, differently. As he did not establish a *prima facie* case, the burden of proof did not shift to the respondent. Even if the burden of proof had shifted to the respondent however, the Tribunal would have reached the conclusion that the claimant's sex did not influence GH in any way. There was no basis upon which it could be inferred that GH's comments were because of sex. For these reasons, the claimant's complaint of direct discrimination in respect of this does not succeed and is dismissed.

59.4. The Tribunal then considered whether the established conduct amounted to harassment related to sex or that it was harassment of a sexual nature. While Tribunal accepted that this could be unwanted conduct, from the claimant's perspective, there was no evidence before the Tribunal from which it could be concluded that this was, in any way, related to sex or was of a sexual nature. The claimant's complaint of harassment in relation to this cannot therefore succeed and is dismissed.

59.5. **On 21 August 2024, Mr Gavin Harper stated, "you're my bitch now", in the presence of directors who did not intervene.** The respondent accepted that this comment was made, and GH confirmed this in evidence. GH stated that the remark was made as he felt that the claimant had not treated him as station manager up to that point: he felt that the claimant had acted as if he were equal to, or above, GH, in the hierarchy, but would now need to recognise that GH was his manager. He was accordingly, by his own admission, asserting that the claimant was subordinate to him in the hierarchy. JF accepted that the directors did not intervene when the comment was made. The Tribunal concluded however that that the claimant did not establish that this was less favourable treatment: there was no suggestion that GH would have treated anyone else, in the same or not materially different circumstances to those of the claimant, differently. Similarly, there was no suggestion that the directors would have intervened had the comment been made to a hypothetical comparator. As he did not establish a *prima facie* case, the burden of proof did not shift to the respondent. Even if the burden of proof had shifted to the respondent however, the Tribunal would have reached the conclusion that the claimant's sex did not influence GH in any way. He made the comment

to assert his authority over the claimant, in circumstances where he felt the claimant had not recognised this in the past, not because of the claimant's sex. For these reasons, the claimant's complaint of direct discrimination in respect of this does not therefore succeed and is dismissed.

59.6. The Tribunal then considered whether the established conduct amounted to harassment related to sex, or harassment of a sexual nature. As set out above, it was accepted the comment was made, and that the directors present did not intervene. The Tribunal accepted that the comment and the directors not intervening were unwanted conduct, from the claimant's perspective. There was no evidence before the Tribunal however from which it could be concluded that either was related to sex. The claimant did not assert this: he asserted that GH did so to assert power over him as his supervisor, which he felt was derogatory, demeaning and devaluing. In context, the comment was not conduct of a sexual nature: GH was asserting that the claimant was subordinate to him in the hierarchy. There was no evidence before the Tribunal which suggested, or from which it could be inferred, that the comment was of a sexual nature. The directors failing to intervene was also not conduct of a sexual nature. The claimant's complaint of harassment regarding this does not therefore succeed and is dismissed.

*Protected Disclosure – s43A-H ERA*

60. The Tribunal considered whether the claimant's email of 27 August 2024 constituted a protected disclosure. The Tribunal was mindful that five elements require to be considered in determining whether each asserted disclosure amounted to a qualifying disclosure (was there a disclosure of information, did the claimant believe that the disclosure tended to show a relevant failure, was that belief reasonable, did the claimant believe that the disclosure was made in the public interest, was that belief reasonable?). Unless all five conditions are satisfied, there will not be a qualifying disclosure.

61. While the claimant made general allegations of 'sexual harassment' and 'defamation of character', he did not provide, in relation to those allegations, information *with a sufficient factual content and specificity, capable of tending to show a relevant failure.* Information was provided regarding false allegations, mismanagement and improper treatment, but the Tribunal did not accept that the claimant believed that that information showed a relevant failure. If he did, that was not, the Tribunal concluded, reasonably held. Further, the Tribunal did not accept that the claimant believed, when making his complaint on 27 August 2024, that he was disclosing information in the public interest: his complaint related solely to how he, personally, had been treated. Alternatively, if he did believe that he was disclosing information in the public

interest, that belief was not reasonably held, given the content of the complaint. The Tribunal accordingly concluded that this was not a qualifying disclosure.

*Protected Act*

62. The respondent conceded in submissions that the claimant's email of 27 August 2024 'may' constitute a protected act. The Tribunal found that this was the case. The claimant, within his complaint, made allegations that GH had contravened the EqA, by making comments which constituted sexual harassment. This is a protected act under section 27(2)(d) EqA.

*Detriment/Victimisation*

63. The Tribunal then considered whether the claimant had been subjected to the detriments asserted and, if so, whether this was because of the established protected act. The Tribunal's conclusions in relation to each are as follows:

    63.1. **Withdraw an agreed 20-hour work schedule.** The Tribunal's findings in relation to this are set out in paragraph 20 above. The withdrawal, which the claimant agreed to, was intimated to the claimant at the meeting on 21 August 2024. As this was prior to 27 August 2024, it cannot have been because of the protected act. The claimant's complaint in relation to this accordingly cannot succeed.

    63.2. **Revoke the claimant's access to Coast Radio systems/platforms.** The claimant stated in his complaint of 27 August 2024 *'I also have had revoked access to other Coast Radio platforms'.* Given that this was referenced in the complaint, it was clearly done prior to it and cannot have been done because of it. Accordingly, any complaint in relation to revocation of access to Coast Radio platforms cannot succeed. The claimant also referenced not being able to access the respondent's IT systems or premises after his complaint (he was informed that the keycode on the door to the office had been changed and he was not provided with it). Even if these occurred however, the Tribunal concluded that these would not constitute a detriment in circumstances where the claimant did not require to access the respondent's IT systems or premises: he had agreed to move to a working 'as and when required' basis on 21 August 2024. At no stage after that date did he agree to undertake further work. He accordingly did not require access to the respondent's IT systems or premises. In those circumstances, not having access to the respondent's IT systems or premises is not something about which a reasonable person would complain. As he has not established that he was subjected to a detriment, the complaint in relation to this cannot succeed.

63.3. **Exclude the claimant from programming duties.** The claimant stated to RGB, in text messages on 23 August 2024, that he was no longer Programme Controller (see paragraph 21 above). He stated that this was done at the meeting on 21 August 2024, when he agreed to move from working 20 hours per week to working 'as and when required'. As this occurred prior to 27 August 2024, it cannot have been because of the protected act. The claimant's complaint in relation to this accordingly cannot succeed.

64. For these reasons, the Tribunal concluded that the claimant's complaints of detriment as a result of making a protected disclosure and victimisation do not succeed and are dismissed.

*Unauthorised Deductions from Wages*

65. The Tribunal considered what sums were properly payable to the claimant. Whilst there was no written contract in place, the Tribunal concluded that the agreement between the parties was as set out in paragraph 13. Other than in relation to the number of hours he was to work each week, the claimant gave evidence that these were the terms agreed, and it was not put to him that that was not in fact the case. In relation to the hours to be worked each week, while the claimant stated in evidence that there was no restriction on the hours he was to work, the Tribunal did not accept this to be the case. All other witnesses, including those he called, stated that the initial agreement was that he would undertake 20 hours of work each week. The Tribunal did not accept that the respondent would have agreed to an unlimited number of hours each week, in the circumstances. While JF stated that, as the respondent was advertising the claimant's company on their radio station, the value of that advertising should be offset against the advertising which the claimant created, it was not put to the claimant that there was any such agreement. In addition, JF stated that she did not raise any particular concerns about the claimant's invoice to the end of June. The Tribunal concluded she would have done so, had she believed that the claimant was invoicing the respondent for the creation of 8 adverts, but was not entitled to do so.

66. The Tribunal concluded that the claimant undertook the work he invoiced for. It was not suggested that he did not.

67. In relation to the invoices submitted, while the first invoice was around 8 hours more than the respondent anticipated, they did not raise any particular concerns with this and agreed to pay it. JF accepted this in evidence. In relation to the second invoice, while this was higher than expected (by approximately 38.5 hours), it was agreed that this would be paid by the respondent, and the claimant would not invoice for the work he did in August 2024, which would

'iron things out'. Again, JF accepted this in her evidence. The claimant did not then submit any invoice for work undertaken in August 2024.

68. JF's agreement to pay each invoice created a legal entitlement to that payment, even if none existed prior to that. The claimant has accordingly demonstrated that the sums he invoiced for, namely £3,156.25 as set out in paragraph 16, were properly payable. He received £1,750 (see paragraphs 17 & 28). The sum of £1,406.25 was accordingly deducted from his wages, without authorisation.

**Date sent to parties** 25 September 2026

**Schedule to Judgment**

**List of Issues**

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**1. Direct Discrimination – s13 EqA**

1.1. Did the respondent do the following:

1.1.1. On 19 August 2024, Mr Gavin Harper stated that Janice and Bob had asked him if they should get rid of the claimant.

1.1.2. On 21 August 2024, Mr Gavin Harper stated, “you’re my bitch now”, in the presence of directors who did not intervene.

1.1.3. In August 2024, Mr Harper touched the claimant on the leg in a sexually suggestive manner.

1.2. If so, was that less favourable treatment (i.e. did the respondent treat the claimant less favourably than it treated or would have treated others (‘comparators’) in not materially different circumstances)? The claimant relies on hypothetical comparators.

1.3. If so, was this because of sex?

**2. Harassment – s26 EqA**

2.1. Did the respondent do the things listed at paragraph 1.1?

2.2. If so, was that unwanted conduct?

2.3. If so, was it conduct of a sexual nature/related to sex?

2.4. 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?

**3. Victimisation – s27 EqA**

3.1. Did the claimant do a protected act? The claimant relies on an email he sent, on 27 August 2024 to the respondent’s directors.

3.2. Did the respondent do the following?

3.2.1. Withdraw an agreed 20-hour work schedule;

3.2.2. Revoke the claimant’s access to Coast Radio systems/platforms;

3.2.3. Exclude the claimant from programming duties.

3.3. If so, by doing so, did the respondent subject the claimant to a detriment?

3.4. If so, did the respondent subject the claimant to those detriments because of the protected act?

**4. Protected Disclosure – s43A ERA**

4.1. Did the claimant make one or more qualifying disclosures, as defined in section 43B ERA? The claimant relies on an email he sent, on 27 August 2024 to the respondent's directors.

4.2. In relation to each asserted disclosure, the Tribunal will decide:

4.2.1. Did the claimant disclose information?

4.2.2. Did the claimant believe the disclosure of information was made in the public interest?

4.2.3. Was that belief reasonable?

4.2.4. Did the claimant believe it tended to show that:

4.2.4.1. a criminal offence had been, was being or was likely to be committed; and/or

4.2.4.2. the health or safety of any individual had been, was being or was likely to be endangered;

4.2.5. Was that belief reasonable?

4.3. If the claimant made a qualifying disclosure, was it also a protected disclosure (s43C-43H ERA)?

**5. Detriment – s47B ERA**

5.1. Did the respondent do the things listed at paragraph 3.2?

5.2. If so, by doing so, did the respondent subject the claimant to a detriment?

5.3. If so, was this on the ground that he had made a protected disclosure?

**6. Remedy**

6.1. If the claimant establishes any of their complaints, to what remedy are they entitled? Specifically:

6.1.1. What financial losses has the detriment/discrimination caused the claimant?

6.1.2. What injury to feelings has the detriment/discrimination caused the claimant and how much compensation should be awarded for that?

6.1.3. What, if any, personal injury has the detriment/discrimination caused the claimant and how much compensation should be awarded for that?

**7. Unauthorised Deductions from Wages – s13 ERA**

7.1. Did the respondent make unauthorised deductions from the claimant's wages by failing to pay the full sums owed to the claimant in respect of hours worked and work undertaken?

7.2. If so, how much was deducted?