



EMPLOYMENT TRIBUNALS

Claimant: Miss J Bailey

Respondent: Casino 36 Ltd

Heard at: Birmingham **On: 18, 20, 21 & 22 November 2019
& 20 December 2019 (panel only)**

Before: Employment Judge Miller
Ms D Wood
Mr R White

Representation

Claimant: Mr R Ennis – solicitor

Respondent: Mr J Small – counsel

RESERVED JUDGMENT

The judgement of the tribunal is as follows:

1. The claimant's claim that she was automatically and constructively unfairly dismissed because she made protected disclosures succeeds.
2. The claimant's claim that she was subject to detriments on the ground that she made protected disclosures succeeds.
3. The tribunal does not have jurisdiction to hear the claimant's claim that she was subject to harassment related to her sex as it was presented out of time and it is not just and equitable to extend time.
4. Remedy will be determined at a further hearing.

REASONS

Introduction

1. The claimant was employed by the respondent from 16 September 2013 initially as an Inspector and then as a Gaming Manager in the respondent's

casino. On 1 November 2017 the claimant was appointed as the respondent's Compliance Officer which included the role of Money Laundering Reporting Officer (MLRO). The role of MLRO related to ensuring that the respondent complied with its legal and regulatory requirements under various pieces of legislation, codes of practice and licence conditions imposed by the respondent's regulatory body, the Gambling Commission.

2. The claimant resigned from this position with immediate effect on 28 August 2018. On 5 September 2018 the claimant contacted ACAS to commence Early Conciliation and she received an Early Conciliation certificate dated 19 October 2018. The claimant then made a claim to the tribunal on 20 November 2018. The basis of the claimant's claim was that she had been constructively unfairly dismissed, subject to detriments on the basis of making protected disclosures and subject to harassment on the grounds of sex and/or sexual harassment.
3. This related broadly, the claimant says, to her raising concerns about the respondent's compliance with the regulatory regime resulting in the removal from her post and specific allegations of harassment against her line manager.
4. The respondent's case, conversely, is that it sought to comply with the regulatory regime but that the claimant was not performing the role adequately. The allegations of harassment were denied.

The issues

5. The issues to be decided in this case were agreed by the parties at a Case Management hearing on 13 January 2019. That list is set out in the appendix to this judgment.

The hearing

6. At the hearing the claimant was represented by a solicitor, Mr Ennis, and the respondent was represented by Mr Small of counsel. We checked with the parties whether any of the witnesses, parties or representatives needed any adjustments and none were necessary.
7. We confirmed with the parties that the hearing originally listed for 5 days had been shortened due to judicial availability to 4 days and it was agreed that it would be possible to hear evidence and submissions but it was unlikely that the tribunal would have time to deliberate and give judgment within that period. That is what happened and that is why this decision is reserved.
8. The tribunal had a brief opportunity to discuss the case after submissions but then reconvened on 20 December 2019 to reach its conclusions.
9. We heard evidence from the claimant, and we heard from the following witnesses for the respondent

- a. Chris Taylor – Head of Finance
 - b. James Thomas-Horton – Head of Marketing
 - c. Adrian Ballard – Director and Owner
 - d. Craig Dobson – Group General manager
10. Each of the witnesses provided a witness statement which we read and there was an agreed bundle of documents comprising 232 numbered pages but including a substantial amount of sub-numbered pages. Both parties produced additional documents throughout the hearing, in respect of which the other party agreed to be admitted.

Preliminary issues

11. The respondent raised the issue of its customers' names in the bundle and noted that there was a number of observers at the tribunal on the first day. It was agreed to redact all personal details from the public bundle while the tribunal read the statements and relevant documents. It was also agreed that the parties and the tribunal would only refer to any such individuals by initials during evidence.
12. We checked that the list of issues was still correct, and it was agreed that it was. We observed that all detriments relied on appeared to be completed by 10 July 2018. The claimant confirmed that the last two alleged disclosures referred to in the list of issues (dated 6 and 10 August and said to be made to the Gambling Commission) were no longer relied on as forming part of the claimant's claim.
13. In respect of the time point, it was agreed that any incidents occurring before 8 July 2018 were potentially out of time and the respondent observed that the claimant had brought no evidence about that.

Findings of fact

14. We make only such findings of fact as are necessary to deal with those issues identified in the list of issues. Where we have made findings about disputed facts, we have made those decisions on the balance of probabilities. We have heard a great deal of evidence, but it is not necessary for the purposes of coming to a decision on this claim to make a decision about every matter.

Craig Dobson "fat bird" comment

15. The first incident referred to in the list of issues is an allegation that on 31 October 2017 Craig Dobson said in a meeting with the claimant that he would "sit next to the fat bird". The claimant's evidence in her witness statement was that "On 31 October 2017 he said that he would sit next to "the fat bird" by which he meant me. This was one of many offensive remarks he made about my weight". In cross examination, the claimant was taken to a record of her grievance meeting and it was put to her that she had then reported that Mr Dobson had said "us fatties will sit together". The claimant said that Mr Dobson had said that, and then had walked over to the claimant and said he would sit by the fat bird.

16. This is consistent with what the claimant then said in the grievance meeting – that Mr Dobson said “things like that” and “there is a number of things he has said”. In the claimant’s grievance of 8 July 2018, she said “he said he would sit by the fat bird – meaning me”.
17. Mr Dobson denied saying this. He said that he had probably said something like “come and sit next to the fat guy”.
18. Mr Thomas-Horton said in response to the statement that was put to him that “Mr Dobson is well known in the business for making inappropriate sexual comments” and that Mr Dobson did engage in “banter” which he clarified as “jokey comments around the office”. Mr Thomas-Horton also confirmed that there was no statement taken from David Whitehouse who was said to have witnessed the “fat bird” comments and Mr Whitehouse did not attend today to give evidence. We accept that Mr Whitehouse no longer works for the respondent, but we have not heard why this would prevent him from giving evidence.
19. We were also referred to an email from Sandra Mitchell (a former colleague of the claimant) to Adrian Ballard apparently following a request from the claimant for Mr Ballard to speak to Ms Mitchell about her complaints about Mr Dobson. It is worth setting that email out in its entirety as it was relied on by both parties. It says:

“Hello Adrian
I have advised Jayne today that I will be playing no part in her grievance towards Craig.
Yes, I have had issues in the past and both myself and Craig have resolved our differences. If I have anything to say I will do so to Craig or yourself in person and will not be involved in a campaign about the group manager, and let’s face it this is banter which I have dealt with all my career as a licensee”.
20. The respondent relied on this to show that the claimant was involved in a campaign against Mr Dobson and the claimant relied on it to show that Mr Dobson had a history of inappropriate conduct. The claimant said that the reason Ms Mitchell did not want to get involved was because she was frightened for her job.
21. On balance, we prefer the claimant’s evidence and that Mr Dobson did call the claimant a “fat bird” on or around 31 October 2017. The account she gave was consistent from the first time she put in her grievance. We accept the claimant’s explanation that she had not raised this previously as she was concerned for her job. We interpret the email of Ms Mitchell and the evidence of Mr Thomas-Horton as consistently to the effect that Mr Dobson engaged in “banter” at work and the clear implication from Ms Mitchell is that that was inappropriate and unwanted banter. Although Mr Thomas-Horton was not explicit, it was apparent to the tribunal in the slightly evasive way that he answered the question that he considered that Mr Dobson’s conduct was not always appropriate.

22. We have also taken into account the fact that Mr Whitehouse, who was a witness to this incident, was not called to give evidence either to the tribunal or in the course of the claimant's grievance. We draw the inference that at least part of the reason Mr Whitehouse was not asked to give evidence about this matter was because he may well have confirmed the claimant's account. The respondent did not give any other convincing explanation for the absence of any statement from Mr Whitehouse – whether as part of the grievance or to the tribunal.
23. We also find that the comment “fat bird” was related to the claimant's sex and was derogatory. Mr Dobson agreed that “bird” is a derogatory term for a woman.
24. The claimant said that this was offensive and demeaning to her and unnecessary and we accept the claimant's evidence on this point. We find that this was unwanted conduct that had the effect of creating a degrading, humiliating and offensive environment for the claimant from the claimant's perspective.
25. In respect of the allegation that the claimant was waging a campaign, we accept her evidence that she was not. The claimant agreed that she had first raised these issues after the extension of her probationary period (see below) but said that that was because she'd “had enough” and that she had spoken with other female members of staff about it. This is wholly consistent with the email from Ms Mitchell – it does imply that she had had discussions with the claimant about this matter, but that Ms Mitchell had not wished to pursue it.

Appointment of claimant to role of Money Laundering Reporting Officer (MLRO)

26. The claimant was appointed to the role of Compliance Officer and MLRO on 1 November 2017. The nature of the role was to ensure that the respondent's casinos were compliant with appropriate legislation, the requirements of the Gambling Commission and the Licence conditions and Code of Practice (LCCP).
27. The role had previously been occupied by Melissa Rose who had undertaken the role part time. The claimant was interviewed initially by Mr Dobson and then by Mr Ballard. Mr Dobson said he had some concerns about whether the claimant would be up to the job as she did not have relevant training in respect of risk and compliance. Mr Ballard thought that the claimant came across well in the interview and that she would have the experience needed. Mr Ballard also said that “with some development training and support” the claimant would make a good candidate for the role.
28. This supports the claimant's evidence in her witness statement that she was subsequently told by Mr Dobson after being appointed that he would give her all the support and training she needed. Mr Dobson says that he was appointed as her line manager *so to speak* “and to assist with her training and development”.

29. Both Mr Ballard and Mr Dobson used the turn of phrase “so to speak” in respect of the management relationship between the claimant and Mr Dobson. We consider that this is an ambiguous phrase and it was never satisfactorily explained why it had been put in this way.
30. We find that the claimant was appointed to the role on the understanding that she was not experienced in a compliance and MLRO role, but that training and support would be provided to her to enable her to fulfil that role and that both Mr Ballard and Mr Dobson were aware that the claimant needed role specific training.
31. In the event, we find that the claimant did not initially receive specific training on the role. Mr Dobson said in his witness statement that the respondent facilitated a number of training courses to assist the claimant. In fact, the first training course that the claimant undertook was a one-hour web-based training course on “Smartsearch” which the claimant said, and Mr Ballard did not dispute, all managers had to do – it was not specific to her role as MLRO.
32. It was not until 1 March when the claimant started a more substantial training course on Anti Money Laundering (AML). The other support that the respondent pointed to was attendance at “NCF” meetings, a workshop provided by the Gambling Commission on 7 March 2018, GDPR training which was for the senior management and “NEON EDD process training” which is described as the provision of a step by step guide. NEON is the computer system used by the respondent.
33. There was no evidence of Mr Dobson providing any focussed support or mentoring to the claimant in respect of her new role. He said he had not been able to arrange as many one to ones as he would have liked, despite on his account sharing an office with the claimant, and when asked about the support he provided, Mr Dobson said that he was in the process of producing it.
34. We also find that Mr Dobson was the claimant’s line manager. It was put to Mr Ballard that Mr Dobson was his “right hand man”. Mr Ballard said that he was not at the casinos every day and Mr Dobson was his second in command.
35. We find therefore, that until the claimant started the external AML training in March 2018, she was given no specific training for her new role and was not given sufficient support or mentoring to develop into her new role by Mr Dobson, her line manager.
36. We also find that the claimant was not given a job description, or any other clear guidance as to the nature and extent of her role. The claimant said that when she asked Mr Dobson about a job description for the role he said, “go Google it”. Mr Dobson said that in fact he had told the claimant to put a job description together and they would review it.

37. We prefer the claimant's evidence on this issue. It was clear that the respondent did not produce a job description for the claimant, and it is equally clear that there were no formal review or supervision meetings during the first few months of the claimant's employment. We consider that the claimant's account is consistent with the approach the respondent appeared to take to managing the claimant. Mr Ballard and Mr Dobson were both consistent in their views that the claimant should be autonomous and just get on with it.
38. In fact, Mr Ballard said that it was not possible to provide a job description for an MLRO role as it is a set procedure. In our view, this misses the point. While the role of MLRO includes regulatory responsibilities, matters such as reporting lines and the approach to be taken must be a matter for the respondent to set out in a job description or similar document. Without such a document, the claimant is left guessing about some aspects of her role.

Probationary period

39. It was agreed between the parties that the claimant had been appointed subject to a 6-month probationary period. However, the claimant had worked for the respondent for just over 4 years by the time she was appointed as Compliance Officer, so it was unclear what the parties understood by the term "probationary period".
40. Although there was an agreement between the claimant and Mr Ballard as to the terms of the appointment that the parties referred to as a probationary period, it was not agreed between the parties what that agreement was.
41. The claimant said that she understood that the offer of the role was subject to a 6-month probationary period. Initially, the claimant said that it was just for her benefit, to see if she was happy with the role. However, in response to questions from the tribunal, the claimant said that "Everyone has a 6-month probation period. To cover the company...same when any member of staff started". The claimant also said that she could have been sacked if she had "acted unlawfully".
42. Mr Ballard says in his witness statement

"To assist Jayne, when we offered her the role, she was told that it was going to be subject to a probationary period of six months which would be reviewed on a regular basis. The reason for this was to essentially assess suitability for the role whether she felt she had the ability to take on such a role. It was a new role for her with new and increased responsibilities, differing duties and the fact that she had to work autonomously. Therefore, it was agreed that should she deem the role not suitable or if we felt that perhaps the role was not suitable for her, and then she could revert back to her previous role. Also, should Jane need a little bit more time to get to grips with the role or to allow a further time to get settled into the role, we agreed that the initial probationary period could be increased to give each party long enough to determine suitability for the role."

43. However, in cross examination, Mr Ballard said that he did not have an express conversation with the claimant that her probationary period could be extended as he wasn't her line manager. He referred to the respondent's staff handbook which does describe a right of the respondent to extend the probationary period of new starters. Mr Dobson does not mention the possibility of an extension in his witness statement at all. Both Mr Ballard and Mr Dobson do say that the purpose of the probationary period was to allow the claimant to return to her previous role if the Compliance Officer role did not work out.
44. We find, on the balance of probabilities, that it was agreed between the claimant and Mr Ballard that the claimant's appointment to the role of compliance officer was subject to a 6 month probationary period during which time the claimant could revert to her former role in the event that the claimant was unhappy with the role or if the respondent felt that the claimant was not suitable for the role.
45. The relevant extract from the staff handbook says: "During this [probationary] period your work performance and general suitability will be assessed and, if it is satisfactory, your employment will continue. However, if your work performance is not up to the required standard, or you are considered to be generally unsuitable, we may either take remedial action or terminate your employment without recourse to the disciplinary procedure".
46. Although this could not apply directly to the claimant because of the length of her continuity of employment, we find that it was the intention of the claimant and Mr Ballard in agreeing a six month probationary period that the respondent would be able to remove the claimant from Compliance Officer role within six months if her work had been assessed as not up to the required standard or she was considered to be generally unsuitable. The consequences of removal from the compliance officer role within the probationary period would be that the claimant had a right to return to her former role of Gaming Manager.
47. We find that it was not agreed that the respondent had the right to extend the claimant's probationary period. This is because Mr Dobson gave no evidence that he had agreed that the probationary period was subject to the three-month extension, Mr Ballard said that he had not made such an agreement, and the claimant said that no agreement was made. There is therefore no evidence to support the respondent's assertion that this was an express term of the claimant's contract.
48. To be clear, we do not find that the section on the probationary period in the staff handbook applies directly to the claimant, only that those basic principles underlie the terms that were expressly agreed between Mr Ballard and the claimant on the claimant's appointment to the job.

Conversation on 2 January

49. The claimant says that on 2 January she had a conversation with Mr Dobson about what she perceived to be breaches of the respondent's

licensing or legal obligations. She says, specifically, that she said that enhanced due diligence (EDD) checks on customers were not being undertaken, sanctions were not being applied to customers and debit limits were being breached. The purpose of these enhanced checks is to minimise the risks to people with gambling problems and to seek to reduce the risks of the casino being used to launder the proceeds of crime.

50. Mr Dobson does not explicitly agree that the conversation took place on this date but said that he had conversations with the claimant about compliance on a daily basis. His view was that the claimant should have been addressing the issues rather than telling him about it – he said “that was missing the point” which suggests that the claimant did have this conversation. On the balance of probabilities, we find that this conversation did happen. We find the respondent’s view that the claimant should have just got on and dealt with the non-compliance issues rather than telling the respondent about it surprising. It was reasonable just two months into a new, difficult job for the claimant to tell Mr Dobson about these breaches.
51. We find that this was the disclosure of information. The claimant’s evidence, which we accept, is that, she told Mr Dobson that EDD was not being done and sanctions were not being applied directly to customers. The claimant gave evidence that in her view the need to undertake EDD was the respondent’s legal obligation.

Meetings with the Gambling Commission

52. It was common ground that there were meetings with the Gambling Commission between February and July 2018. The claimant says she met with Louisa Clarke from the Commission on 4 January, but we saw no evidence about that. What is clear and not disputed is that the Commission had concerns about the respondent’s compliance and the claimant was at some meetings with the Commission where this was discussed. The claimant was therefore well aware of the risks of the respondent being non-compliant and the importance of ensuring compliance. We were shown a press release by the Gambling Commission about a settlement reached between the Commission and the respondent which says:

“Personal management licence holders at Casino 36 must undertake extra training as part of a £300,000 penalty package for money laundering and social responsibility failures.

A Gambling Commission investigation revealed the operator had failed to ensure adequate customer Enhance Due Diligence (EDD), Source of Funds (SOF) and Source of Wealth (SOW) checks were carried out for 33 customers. Casino 36 also failed to ensure sufficient customer interaction was taking place when customers were potentially displaying signs of suffering gambling harm”.

53. Although this press release is dated 11 July 2019 and therefore postdates the claimant’s employment, it relates to an investigation commenced on 8 October 2018 following concerns that activities may, prior to 8 October 2018, have been carried on in purported reliance on the respondent’s operating licence but not in accordance with a condition of its licence.

54. In our view, this is compelling evidence that the claimant's concerns about non-compliance with licence conditions in the period prior to her resignation were credible and reasonable. Particularly, the press release records that "During the relevant period from 10 November 2017 to 8 October 2018, 33 customers were allowed to gamble significant sums of money in Casino 36 without adequate EDD, SOF [source of funds] and SOW [source of wealth] checks being conducted"

Wolverhampton to Stockport car journey – 16 January 2018

55. The claimant said that on 16 January 2018 she travelled from Stockport to Wolverhampton with Mr Dobson in his car and that throughout that journey Mr Dobson made many gestures and crude jokes, talking about his penis and at one point rubbing his nipple.
56. When these allegations were put to Mr Dobson he said about the obscene gestures "first I heard of this was in the grievance"; in respect of crude jokes he said "I can't tell what exactly was said but I assure you I did not"; in respect of talking about his penis he said "why would I talk about my penis?"; in respect of the suggestion that he had talked about using butt plugs he said "I was gobsmacked and angry when I heard that allegation"; when asked about whether he rubbed his nipple he said "Can't even answer that. How can rubbing nipple be a sexual gesture. Can't recall that at all" and that he "100% denied" licking his finger and miming rubbing his nipple.
57. The tribunal is in a difficult position – it has two contradictory accounts and no other evidence on which to rely. It was put to the claimant that she did not mention the car journey in her grievance of 8 July 2018 – the specific allegations she had made then had been in relation to compliance meetings – and that if this had actually happened, she would have mentioned it in her grievance. The claimant said, in reply, that it happened so often that it would have been impracticable for her to mention all the allegations.
58. The claimant also said that she did not raise it previously because she had two young children she needed to support, that Mr Dobson was Mr Ballard's right-hand man and that she had seen other employees "got rid of". We refer to our discussion above and, in our view, it was reasonable for the claimant to view Mr Dobson as Mr Ballard's "right-hand man". He was clearly responsible for the running of the casinos in Mr Ballard's absence.
59. We also refer again to the evidence of Mr Thomas-Horton who confirmed that the claimant engages in "banter". When asked if Mr Dobson made personally offensive comments to him, Mr Thomas-Horton said "nothing I took offence at". However, the tribunal's view of Mr Thomas-Horton's evidence on this point was that these questions appeared to make him more uncomfortable than the other questions and he avoided answering the questions directly.
60. The claimant's evidence on this was clear, detailed and specific. However, when questioned as to whether the incidents of sexual harassment on which the claimant relies were part of the reason for her resignation, she

said no. In our view, this was a candid response which tended to support the claimant's evidence on this issue as it potentially harmed her case. This response is also consistent with the claimant's evidence that such behaviour is part and parcel of the environment in which she worked and was consistent with the similar implication in Ms Mitchell's email referred to above.

61. In our view Mr Thomas-Horton's evidence on this was not sufficiently plausible to support Mr Dobson, in fact it undermined it somewhat, and on the balance of probabilities we prefer the claimant's evidence that Mr Dobson made the comments referred to above in the car journey on 16 January 2018.
62. Notwithstanding that the behaviour did not contribute to the claimant's decision to resign, we do accept that the claimant did not enjoy, invite or want this behaviour. She said she wanted it to stop and we accept that.

Disclosure of 19 January 2018

63. The next incident that the claimant relies on as a protected disclosure is that on 19 January 2018, the claimant told Mr Dobson that the receptionists were breaking the law by handing out free bets. It became apparent that the claimant had a different view on the lawfulness of this act from Mr Dobson and Mr Ballard. The respondent's view was that as the receptionists were handing out non-negotiable vouchers with no monetary value, they did not need to be licenced. The claimant's view was that they did need to be licenced.
64. However, both Mr Dobson and Mr Ballard accepted that this conversation happened, and it was not disputed that the claimant had said that the receptionists were giving out free bets. It was also agreed that the respondent had stopped the practice following the claimant raising the concerns.
65. We find that this amounted to a disclosure of information – namely that the receptionists were giving out free bets. We also find that the claimant did believe that this was a breach of the respondent's licencing conditions.

15 March email about AW

66. On 15 March 2018, the claimant sent an email to a number of email addresses. Under cross examination both Mr Dobson and Mr Ballard accepted that they had access to an account to which that email was sent. That email said, as far as is relevant, "As Compliance Manager and MLRO of Casino 36, I am making the decision NOT to reinstate AW. He has changed his name twice, provided very weak I.D. and with the knowledge we all have on him it would not be in the Companies (sic) best interests to reinstate him".
67. The claimant explained in questioning that the risks associated with what were outlined in this email were that the customer might be using the casino to launder the proceeds of crime.

68. The claimant agreed in cross examination that there was nothing in the email that shows a criminal activity or breach of legal obligation has taken place. However, on re-examination, the claimant confirmed that the customer's spending did not match his income and there was a real risk that he was laundering money. We find that this email disclosed information to Mr Ballard and Mr Dobson and that they, and the claimant, would have realised the implications of the matters set out in that email – namely that there was a risk of the casino being used to launder the proceeds of crime.
69. We also find that the claimant had a reasonable belief that the information in the email tended to show a breach of a legal obligation or the commission of a criminal offence. In our view, although the question directly from Mr Small as to whether the email showed a criminal offence or breach of legal obligation was quite proper, the claimant's subsequent explanation in re-examination clarified that she had misunderstood the question. The email clearly does not *refer* to the commission of an offence or breach of a legal obligation but it is perfectly clear that the claimant understood the implications of the information she was imparting from her explanation then and on other occasions in the hearing of the nature of money laundering.
70. We also find that this email shows that the claimant did act on the information she had and suspended AW from the casino.

20 March email about Mr S

71. On 20 March 2018, the claimant sent a further email to Mr Dobson which says "We have received a pay slip as proof of income for Mr S which shows very low income. We need to establish where he is getting his funds from. His win/loss for the last three months as of today is £58,440 with a loss of £10,800. He is only to be spoken to by Craig, Dave, Bal or myself. Maybe we can inquire if he has just sold a house etc, and explain to him the reasons for asking him this".
72. We find that this email also disclosed information to Mr Dobson and that he and the claimant would have realised the implications of the matters set out in that email – namely that there was a risk of the casino being used to launder the proceeds of crime.
73. We also find that this email shows that the claimant did act on the information she had and responded appropriately as MLRO.

Restrictions on making prohibited wealth checks

74. The claimant alleges that on 27 March 2018, Mr Ballard instructed managers not to undertake EDD and proof of wealth checks in breach of the relevant regulations and licence conditions. The claimant says that she was told this by Mr Dobson. Both Mr Dobson and Mr Ballard denied this. We find that Mr Ballard did restrict who could conduct these checks to general managers and the claimant. We refer to the minutes of the compliance meeting of 6 March 2018, at which Mr Dobson was present, in which it is recorded as saying that "Craig and Balasz confirmed that it is

only GM or higher to speak to VIPs regarding proof of income". The claimant sent an email on 28 March 2018 confirming this, and another on 30 March, and on 7 April 2018 Mr Dobson endorsed the claimant's email reminding managers of this instruction.

75. We were also shown an email of 1 April 2018 from Mr Ballard to his managers and the claimant. This email appears to set out Mr Ballard's frustrations at the way his managers were dealing with compliance, and particularly requires detail about the point at which EDD checks are done. He says that he is concerned about unauthorised changes to procedures and the erratic application of EDD checks. In Mr Ballard's view, they are being undertaken before it is necessary. This, in our opinion, shows that Mr Ballard was expecting his staff to undertake relevant due diligence. His concerns set out in this email might also explain a decision to restrict the number of people who could undertake these sensitive customer interactions. The email is genuine in its tone and, given the lack of paperwork in respect of the claimant's employment, we do not think that this email was sent for the purposes of creating a visible "audit trail" but rather that the matters set out in this email reflect Mr Ballard's genuine views at the time.
76. In cross examination, the claimant was unsure as to who was told not to do EDD checks and when. Initially she said that Mr Dobson had told her and then later she said it might have been Mr Whitehouse.
77. There is no other evidence to support the claimant's assertions that as at 1 April 2018 Mr Ballard had forbidden his managers from undertaking any and all EDD checks and we prefer Mr Ballard's evidence on this point. We find that Mr Ballard did not instruct his managers generally not to undertake EDD checks except to the extent that who could undertake the checks was limited to general managers and the claimant. This is not to say, however, that Mr Ballard or Mr Dobson did not give instructions not to undertake checks in respect of specific customers on occasions, as to which, see below.

Meeting with the Gambling Commission 17 April 2018

78. There was a meeting with the Gambling Commission on 17 April 2018 at which the claimant, Mr Dobson and Mr Ballard attended. At this meeting the claimant told the Gambling Commission that she had not received adequate training for her role. The claimant says that after that meeting, Mr Ballard said "we got away with it before, I doubt we will this time". When this was put to Mr Ballard, he said this was incorrect – they weren't trying to get away with anything. Craig Dobson said, in cross examination, "the first time I saw or heard that was when I read the claimant's statement".
79. Although Mr Ballard refers to that meeting in his witness statement, he does not address the allegation and Mr Dobson does not refer to the meeting, despite the allegation being set out in the claimant's claim form. We prefer the claimant's evidence on this matter. It was clear on its own evidence that the respondent had been having difficulties with compliance issues, there was no reason for the matter not to be addressed in Mr Ballard's and Mr

Dobson's witness statements and Mr Dobson's answer in cross examination fell short of an outright denial.

80. We therefore find on the balance of probabilities that Mr Ballard did say, after his meeting with the Gambling Commission on 17 April 2018, "we got away with it before, I doubt we will this time" or words substantially to that effect.

Comments about Mrs Ballard

81. The claimant alleges that in April she heard Mr Dobson call Mr Ballard's wife "the fat heifer". The claimant provides no further detail about this and provided no further detail in cross examination. Mr Dobson denied that he said that. Mr Dobson also said that he was offended and upset by this allegation as he and his wife and Mr Ballard and his wife were friends.
82. Again, the tribunal is in a difficult position having two conflicting versions of events and no corroborating evidence. On balance, however, we prefer the evidence of the claimant. The allegation is consistent with the earlier allegation that Mr Dobson called the claimant "the fat bird" and Mr Dobson's answers in cross examination were unconvincing. For example, he professed to be unsure of how the reference to heifer was sexist or even really what it meant. This is not a plausible response.
83. We deal here also with the allegation that between November 2017 and May 2018 Mr Dobson had conversations with the claimant in which he made comments about 'his penis' and 'butt plugs'. Again, the claimant did not provide any specific detailed information about this in her witness statement. She says on "more than one occasion he made comments in front of me about his penis about butt plugs". She also says, "he asked female members of staff, including me, to wipe and straighten our skirts when leaving his office, to make it look as though oral sex had just taken place".
84. In respect of these latter two allegations, Mr Dobson said that he had no recollection of those conversations. In our view this falls a little short of a clear denial and for the reasons set out above in respect of the October 2017 allegation, we prefer the evidence of the claimant. Particularly, in respect of the latter allegation, the claimant provided a clear explanation that, in our view, is too detailed to have been fabricated.
85. These allegations are consistent with the references to banter, our findings in respect of Mr Thomas-Horton and Mr Dobson's demeanour and language in answering these allegations.
86. We find though, that the claimant's evidence on the context of these conversations and particularly when and where they happened was unclear. What is clear, however, is that even on the claimant's evidence, the last allegation was completed by the end of May 2018.

3 May submission of April Compliance Report

87. On 3 May 2018 the claimant submitted her compliance report to Mr Ballard. This included the following "AS: Payslip on file. Does not match with level of play. DW to interact asap".
88. We find that this was the disclosure of information about the inconsistency between AS's level of income and the amount he was gambling which could show that there was a risk of a criminal offence being committed, namely money laundering. We further find that the claimant was aware of the implications arising from this information – it was part of her job and the reason for making compliance reports.

3 May meeting in public area and probation extension

89. On 3 May 2018, the claimant had a meeting with Mr Dobson in the Lounge Bar, an area of the Casino open to the public, although Mr Dobson said there were no members of the public in there at that time. This meeting was said to be a probationary review meeting which Mr Dobson said "was to consider her performance during the period and to assess whether there were any areas of concern or any needs or wants of Jayne, so it is as much her opportunity to tell us what we needed to do to help her, as much as it was our opportunity to tell her what we needed her to do".
90. The claimant says that Mr Dobson said that Mr Ballard felt she needed a little extra time to think if this role was for her and that "We both know you have the company by the balls". The claimant said that when she asked if there was anything wrong with her work, Mr Dobson said there was not, and she worked hard.
91. There was no formal invitation to the meeting, no prior explanation of what the meeting would be about, and no contemporaneous notes taken.
92. The claimant said that Mr Dobson was in a rush to leave as he was waiting to go out for a leaving do with one of his colleagues. Although Mr Dobson disputed that people were waiting downstairs for him, he did say that people were coming upstairs for the event. We find on the balance of probabilities, that Mr Dobson was in a rush to complete his meeting with the claimant as he wanted to leave to attend his colleague's event.
93. We prefer the claimant's evidence about this meeting. If it was, as the respondent said, a formal review meeting, there is no obvious reason why this would not have been notified in advance to the claimant and notes taken. It was not appropriate to hold such a meeting in public and we accept the claimant's evidence that there were offices available or that could reasonably have been made available. Mr Dobson himself said that he shared an office with the claimant – we do not understand why the meeting could not have taken place in there. We consider that, on the balance of probabilities, Mr Dobson was in a rush to leave and wanted to raise his general concerns about the way the claimant was seeking to undertake her compliance role. We consider that the reference to the claimant having the

company by the balls referred to her knowledge of the issues with compliance that the respondent was having.

94. Mr Dobson sent a letter by email to the claimant the following day informing her that her probationary period had been extended. It was disputed as to whether the claimant was informed on 3 May that her probationary period would be extended but we do not need to make a finding about that. The claimant's probationary period had ended on 1 May 2018 and it is clear that the respondent did purport to extend the claimant's probationary period on either 3 or 4 May, after the probationary period had ended. The letter was dated 4 May and extended the probationary period by 3 months to 4 August 2018.
95. The letter is vague – it has no detail of what was discussed. Mr Dobson's witness statement sets out in more detail the concerns he says he had but given the impact on the claimant, we consider that if those matters had been discussed and reflected a genuine concern of the respondent they should have been set out in the letter of 4 May 2018. We find that, on the balance of probabilities, what Mr Dobson sets out in his witness statement does not reflect what the claimant was told at the time. This is further supported by the claimant's evidence (that we accept – see below under 30 May) that she was expecting a joint meeting with Mr Ballard and Mr Dobson to discuss her probation extension. This is consistent with the claimant not having had a clear explanation previously.
96. We do not accept that Mr Dobson had a reasonable reason for extending the claimant's probationary period at that time. The claimant had not been informed of any problems before or at that meeting, there had been no review meetings during the probationary period and there was no evidence before the tribunal of the issues the respondent said they had – for example of poorly completed customer interaction forms. The respondent was aware of the claimant's claims yet did not bring any contemporaneous evidence of the claimant's allegedly poor work.
97. We also find that Mr Ballard had been a party to that decision, although not the meeting. He confirmed in evidence that the decision was the result of a discussion between him and Mr Dobson. This discussion must have taken place before 4 May 2018, the last date on which the decision to extend the claimant's probation could have been communicated to her.
98. The tribunal has not seen or heard any evidence from which it could conclude that the respondent genuinely believed that the claimant's work was not adequate.
99. However, the claimant did not take any issue at the time with the decision to extend her probationary period. Although she disputed on 11 June (see below) that the respondent had reason to extend her probationary period, she did not challenge that the respondent had the power to do so. In her claim form, the claimant says that she did not understand the reasoning behind the suggestion that she needed more time to think if the role was for her. The claimant does not at that point say that the respondent had no power in any circumstances to extend her probationary period.

100. We find that the claimant agreed, by her conduct in challenging the *reasons* for the extension and the respondent's motivation that she implicitly agreed that the respondent did have the power to extend her probationary period even if, in the claimant's view, they had no grounds to do so at that time. We deal with whether the respondent had any basis on which to extend the claimant's probationary period below.

9 May emails about Mr SS' failure to produce income

101. On 9 May 2018, the claimant sent an email to Mr Dobson about a Mr SS. The email said:

"Looking at Mr SS's Neon profile, I added three grace visits in February and this message has been deleted? Mr SS was approached twice regarding proof of income and said both times that he was happy to bring it in, please see attached customer interaction reports. He then had his three grace visits and was suspended on the 23/02/2018. I notice that this was then lifted by Balasz on the 14/04/2018 while I was on holiday, however, he has not been in since. In the last 12 months Mr SS has a drop of £154,900 with a loss of £32,300. As Mr SS is on the Gambling Commission scoping list of information required I think we need to discuss this further".

102. We find that the claimant disclosed information in this email, namely that Mr SS had lost over £32,000 without being able to demonstrate the source of his money. Further Mr SS was known to the Gambling Commission.

103. It is clear that the respondent appreciates the importance of undertaking appropriate checks to check the source of the money, as did the claimant, and the respondent did not suggest that it would not have understood the implications of this report by the claimant. Mr Ballard agreed that casinos are seen as key targets for criminals for laundering money.

104. We have heard no evidence of what action, if any, was taken as a result of that email.

11 May email about speaking to Mr LS

105. On 11 May 2018 the claimant sent a further email to "Casino36 Compliance". It was not explicit who had access to this email address, but Mr Dobson did not deny that he received a copy of that email. Mr Ballard said that he was not copied into that so he couldn't say if he saw it.

106. We find, therefore, that Mr Dobson received a copy of this email. The email said

"I am concerned about the level of knowledge that we have on Mr LS member number [XXXXX]. He was asked to bring in proof of funds some time ago, which he willingly did. He bought (sic) us a payslip in with information that he works for a company called [XXXX]. The payslip on file shows that he is on an hourly rate of £7.50 and he works a 48-hour week. A note was put on his profile from Bal saying that proof of income had been

concluded, he then completed a risk profile on this person and said that his known proof of funds was still affordable to his play. The customer is in for £615,000 in the last 12 months with a loss of £77,000.

I would like to request the member of senior management speak to Mr LS ASAP, as clearly his level of play does not match his income”.

107. It is clear from the context of the email that this email included information from which the respondent could conclude there was a risk that Mr LS was seeking to launder the proceeds of crime. It is obvious that the information shows that his level of transparent income is not consistent with his level of gambling. Mr Dobson agreed in cross examination that this information would have given rise to a concern that Mr LS was spending illicit funds. Mr Dobson went further and said that the claimant, as compliance officer, should have ended Mr LS’s relationship with the respondent’s casinos.
108. The claimant said that Mr Ballard forbade anyone from speaking to Mr LS. Mr Ballard denied that. He said he didn’t know if he had seen this email and he refused under cross examination to accept that the information provided in the email was *potentially* indicative of money laundering. Mr Ballard also says that it would be in his interest to undertake EDD as without it, the casino would lose a source of income from Mr LS – on the basis that they would not accept money from him in those circumstances.
109. This reasoning from Mr Ballard does not make sense. If the respondent had a cavalier attitude toward the risks of money laundering (and we make no findings about that), it might well be prepared not to undertake checks where to do so might indicate that the money was not lawfully obtained. In such circumstances, it would clearly be to the respondent’s advantage not to undertake EDD checks.
110. In our view it would have been simple for the respondent to demonstrate that it had approached Mr LS and/or suspended him by the provision of copies of customer interaction forms. It is not sufficient to say that the claimant ought to have ended Mr LS’ relationship with the respondent, because it is clear from this email that she was not going to. Further, given that the claimant has demonstrably on a number of occasions of her own volition taken action against customers it is difficult to understand why she would now be asking a member of the senior management team to speak to Mr LS unless she had been led to believe that she was not permitted to do so herself.
111. Conversely, however we refer to the email of 1 April 2018 from Mr Ballard and findings above and acknowledge that this is potentially inconsistent with our finding that Mr Ballard prevented managers from speaking to Mr LS.
112. Mr Dobson says in his witness statement that the claimant had not checked what information the respondent already had about Mr LS. He says specifically that there are 198 records in this customer’s audit trail none of which were inserted by the claimant. Most updates from the system were uploaded by Dave Lowry, Balasz Balint and Mr Dobson.

113. The claimant's evidence about the circumstances in which she says managers were prevented from talking to Mr LS is effectively that she says that she was told by Mr Whitehouse that this had happened. Having regard to all the above evidence, in our view the claimant genuinely believed that she was prevented from contacting Mr LS. There is no evidence from which we can conclude that Mr Ballard directly instructed the claimant not to contact LS. The claimant gives no such evidence herself. However, we find that on the balance of probabilities Mr Dobson made it clear to the claimant that the circumstances in which she could contact customers was restricted.
114. It is clear that the claimant had regular daily interactions with Mr Dobson. Mr Dobson was Mr Ballard's "right-hand man", and the claimant clearly was of the view that she could not contact Mr LS by virtue of the email of 11 May 2018. In respect of Mr LS, we find that on the balance of probabilities the claimant was told not to contact him. This is wholly consistent with the evidence of Mr Dobson in his witness statement and the claimant's contemporaneous email. We find, again on the balance of probabilities, that it was Mr Dobson who communicated this instruction to the claimant. We note further that Mr Dobson's evidence in cross examination was that the information provided by the claimant in that email should have caused her to end the relationship with Mr LS. There is no evidence, and it was not asserted, that Mr Dobson discussed this matter with the claimant after this email. We find, therefore, that it was a reasonable conclusion for the claimant to reach that the respondent's reasons for restricting her contact with Mr LS were not legitimate.

16 and 22 May 2018 – letters stopped

115. The claimant says in her witness statement that on 16 May 2018, she initiated three letters to go out to customers regarding EDD and proof of income and another letter to a customer who was gambling a lot of money and about whom they knew nothing. The claimant says that on 22 May 2018 she initiated four further letters to customers for similar reasons. The claimant says that Mr Dobson prevented these letters going out and wrote to a number of customers welcoming them back.
116. Mr Dobson denied in cross examination that he had prevented the letters from going out, although he did accept in his witness statement that he had stopped some letters from being sent because, he said, the respondent already had sufficient information. It was put to Mr Dobson that the customers in respect of whom the letters had been stopped had had "soft" due diligence checks (comprising, we understand, of internet based research into the customer) but not EDD that required proof of income and Mr Dobson agreed. He also agreed that although that would have been in accordance with their policy at the time it was not now adequate.
117. In his witness statement, Mr Dobson said "...when Jayne states that she was barred from sending letters to customers with no proof of funds or when she raised concerns regarding customers who are playing with bundles of money which could have been the proceeds of crime, these customers that Jayne raised information relating to were customers whom proof of funds were already received in respect of the regulations, and were

in fact playing with funds that were acquired in house with winnings at the casino”.

118. Mr Dobson was vague in his oral evidence about the circumstances when such letters had been stopped whereas the claimant was clear and consistent. Mr Dobson did, however, agree that he had stopped some letters and, in its response, the respondent accepted that “the letters were stopped from being sent to customers”. We find therefore that Mr Dobson did prevent letters going out in circumstances where the claimant believed that insufficient information had been obtained about the customers on or around 22 May 2018.
119. The claimant relies on raising this issue with Mr Dobson as a further protected disclosure. The claimant says in her witness statement “I spoke to Craig either on 22nd May itself or shortly afterwards expressing concern about these letters going out”. Mr Dobson denied in cross examination that this conversation happened. We do not accept this. In his witness statement, Mr Dobson explains that the claimant had raised a number of issues but that she was mistaken about most of them. He also says that the claimant was mistaken about the need to send letters out. Mr Dobson’s subsequent denial of any conversation about this conflicts with his other evidence about the soft checks and the stopping of some letters.
120. We therefore prefer the claimant’s evidence on this point and find that there was a conversation on or around 22 May 2018 in which the claimant raised concerns about the letters not going out.
121. The claimant’s evidence about the conversation was not challenged in cross examination. In our view, “raising concerns” necessarily includes the giving of information about the failure to send letters requesting EDD checks and, as set out above, Mr Dobson would have understood the implications of failing to obtain adequate information about source of wealth and income for high spending customers.

Discussion about profits going down

122. The claimant said in her witness statement that in May she had a conversation with Mr Ballard to the effect that he said since the claimant had started work his profit had gone down.
123. In cross examination it was put to the claimant that she had no basis for asserting that profits had decreased, and Mr Ballard’s evidence was that in fact profits were continuing to increase.
124. This does not mean, however, that Mr Ballard did not express this to the claimant, possibly as a throwaway comment or an aside and the conversation, rather than the actual revenue position of the respondent, was not challenged in cross examination of the claimant.
125. We find therefore, on the balance of probabilities, that Mr Ballard did say in May something to the claimant to the effect that since she had come into post his profits were reducing.

30 May – discussion about cash players and probation extension

126. The claimant says in her witness statement that on 30 May 2018, she spoke to Mr Dobson and Mr Ballard about 8 customers who were all playing with loose cash. The respondent accepted this in its response and Mr Dobson refers to the conversation in his witness statement. There was some discussion about whether this was in fact a breach. Mr Ballard was keen to explain that the money was previous winnings and therefore traceable. However, the respondent had subsequently changed its policies to ensure a tighter audit trail for the money. This process involved recording the amount won previously and ensuring that the cash was brought back in sealed bags so that the casino could be sure it was the same money. The new part was recording the amount won previously.
127. The claimant did not accept in cross examination that bringing in money in sealed bags alone was acceptable and it appears that she was correct as the process was subsequently amended to include a requirement to record the previous win.
128. We therefore find that the claimant disclosed information – namely that customers were bringing in and playing with large bundles of cash – and that she reasonably believed this tended to show the commission of a criminal offence, namely money laundering as set out above.
129. The claimant also says that on this day she had a discussion with Mr Ballard asking about her probation extension. She said that he denied knowing anything about it other than that Mr Dobson had extended it. Mr Ballard agreed that a conversation had taken place, although was unsure of the date. He said that although he knew the probation period had been extended, he didn't know what Mr Dobson had spoken to the claimant about or written to her.
130. In the notes of the grievance meeting of 8 August 2018, Mr Ballard said there that he knew nothing about the reason for the probation extension. This is consistent with the claimant's evidence and more contemporaneous. We therefore find that Mr Ballard told the claimant on 30 May 2018 that he did not know why her probation had been extended.
131. The claimant also said that Mr Ballard told her at that point that they would have a joint meeting with Mr Dobson that afternoon to discuss the reasons why the extension took place. She says that meeting never took place, and it did not.
132. We find, on the balance of probabilities, that Mr Ballard must have had some idea why the claimant's probation had been extended but that he told the claimant he did not know why the claimant's probation had been extended. He said that he was not aware of the detail, but we have found that no detail was given to the claimant at the meeting on 3 May and very little was given in the subsequent letter of 4 May 2018.

133. Mr Ballard agreed that he made the decision with Mr Dobson but has said he had no detail about the decision. We find, therefore, that to the extent that Mr Ballard made or contributed to the decision to extend the claimant's probationary period, he had no good reason for doing so.

5 June 2018

134. There were two incidents on this day. Firstly, the claimant says she was excluded from a training day at Dudley. Mr Dobson and another colleague were working together studying for the AML course and the claimant had not been invited. There was an exchange of WhatsApp messages in the course of which Mr Dobson accused the claimant of accusing him of copying her work. This exchange clearly happened as we have seen it – the claimant asked about having a study day and was clearly told she was not welcome to join Mr Dobson and their colleague. Mr Dobson said he was angry at the time about the accusation and apologised again in the tribunal for it. It was clear, however, that the claimant had been excluded from this study session.
135. The other issue on 5 June related to a meeting between Mr Ballard and Mr Dobson at which the claimant's probationary period was discussed. Mr Dobson had mistakenly included in his witness statement that he had arranged to meet with Mr Ballard and the claimant to discuss "her progress and development as well as some of the concerns we had. For example Jayne had raised a number of issues with us, which we took on board".
136. At the start of his evidence, Mr Dobson corrected that to the effect that only he and Mr Ballard met to discuss these issues. Mr Ballard says, at paragraph 23 of his witness statement,
- "A month later [after extending the claimant's probationary period] and I could still see no improvement having been party to the compliance meetings that took place and due to a number of emails sent by Jayne to a number of staff regarding individual customers. However, she had not completed the necessary due diligence because if she had, she would have noticed that we have the proof of funds available. In the emails she raised concerns, but as the compliance officer it was down to her to act and she didn't. I shared these points with Craig and I am aware that he raised these with Jane and told her that we would provide additional training and support."
137. This must relate to the meeting on 5 June 2018 between Mr Ballard and Mr Dobson. It is also clear, that at that meeting Mr Dobson and Mr Ballard discussed the issues the claimant had raised with Mr Dobson, and from the context it is clear that those issues related to concerns the claimant had about her perception that the respondent was failing to undertake sufficient checks of the sources of money customers were using to spend in the casinos.
138. It is also clear, that the subsequent letter of 9 June 2018 (below) was sent following this conversation. Mr Dobson says as much in paragraph 32 of his witness statement and it is clear on the face of the letter.

June compliance report submitted

139. In June (no date has been provided) the claimant submitted to Mr Ballard the compliance report for May 2018. The claimant relies on this as a protected disclosure and we have considered the report to identify whether it does include disclosure of relevant information. The only information contained within the report that might suggest the commission of a criminal offence is at page 3 of the report which is at page 188 of the bundle. It identifies that two members attempted to use a debit card that belonged to someone else.
140. We accept that this is the provision of information, and we also accept that it tends to show that a criminal offence is likely to have been committed, possibly an offence of attempted theft or attempted fraud or something similar. However, the claimant provided no evidence as to her belief of what this report tended to show at the time and nor did she give any evidence about this in cross examination.
141. We therefore find that the claimant, at the time she submitted this report, did not have any belief that the information she was providing in this report tended to show that a criminal offence had or is likely to be committed.

9 June 2018 letter

142. On 9 June 2018, Mr Dobson sent a letter to the claimant following his meeting with Mr Ballard. It says, "The purpose of this letter is to draw your attention to some concerns that have flagged during compliance meetings, informal meetings and the general monitoring of your development".
143. It is perfectly clear, therefore, that this letter was sent from Mr Dobson, but as a result of the decision of both him and Mr Ballard. The letter sets out 10 bullet points each one addressing an issue that Mr Dobson says he has about the claimant's performance.
144. The claimant responded by way of an email to the letter on 11 June 2018. We set out here the respondent's concerns in each bullet point, the claimant's response and our findings about each matter.

- a. Bullet point 1 - Failure to provide monthly direct report as agreed

The claimant says that she had submitted the April compliance report on Thursday, 3 May 2018. She says that if the format of compliance report is not adequate to please provide further details.

The respondents gave no evidence as to what was meant by this beyond the compliance report, and we find that the respondent had no good reason for making this criticism.

- b. Bullet point 2 - The claimant failed to realise the flags were missing and customer risk ratings were missing from the respondent's NEON system.

The claimant said this was a new system and that everybody, including Mr Dobson, was still trying to understand it.

The respondent provided no evidence to support this concern and again we find that it had no valid reason for raising this issue in this way.

- c. Bullet point 3 - Mr Dobson asked what action the claimant had taken to ensure that all managers and staff are trained

The claimant said that Mr Dobson himself had said at meetings that he was rolling out training with the management team. Further that she asked him two weeks prior to her letter when the staff training was due to start to which she says Mr Dobson replied very soon. She added that if she is to take over responsibility for training from Mr Dobson to let her know.

Again, the respondent produced no evidence to support their assertions and we prefer the evidence of the claimant. The respondent had no good reason for making this criticism.

- d. Bullet Point 4 - Mr Dobson said that managers had received little if any feedback after sending poorly conceived or thought out reports. The claimant had just accepted and uploaded them to the relevant profile

The claimant says that she wasn't aware the managers needed feedback after submitting their responsible gambling reports and, if this was a requirement, she asked to have this in writing

We find that it was reasonable for the claimant to address poor quality reports – it is inherent in her role as compliance officer. However, the claimant said in evidence that the reports were not poorly completed. It would have been straightforward for the respondent to bring evidence of these poorly completed reports to demonstrate its genuine belief that the claimant was failing in her role. The respondent produced no such evidence and we do not accept that the respondent had a genuine reason for making this allegation to the claimant.

The respondent relies on a failure by the claimant to suspend a problem gambler (Mr W) having raised it as an issue on 6 June, and by failing to obtain EDD information from Mr MS on 29 May. In both cases, in our view, the claimant had acted appropriately in raising these issues in light of the interventions by Mr Dobson on 16 and 22 May by preventing letters going out, and the claimant's reasonable perception that Mr Ballard was preventing the obtaining of EDD information from at least some customers (see above).

- e. Bullet point 5 - Mr Dobson asked if there was a local authority risk assessment and if it had been followed up as required

The claimant says that she believed this was the responsibility of Balasz Balint. She then added that she thought that Dave Lowry had taken over his position and that he will be overseeing those assignments. She asked for further information as to how to undertake this task if she was then required to do it.

We note that the respondent said that part of the support it said it was providing was the assistance of both Balasz Balint and Dave Lowry. Again, the respondent has provided no evidence to support the assertions in this letter and the claimant's case is consistent with the respondent saying (as they do below) that Balasz Balint and Dave Lowry were undertaking some of the additional compliance work. We therefore find that the respondent has shown no good reason for making this allegation.

- f. Bullet point 6 - Mr Dobson criticised the claimant for not making "house edge leaflets" available on all sites.

The claimant says that as Mr Dobson has pointed out to senior management many times that he was waiting for the marketing department to complete this.

We have seen no evidence from the respondent to support this allegation or that it is the fault of the claimant. We therefore find that the respondent has not shown any good reason for making this criticism of the claimant.

- g. Bullet point 7 - Mr Dobson criticises the claimant for failing to delegate tasks to Balasz Balint or Dave Lowry or involve them in compliance team meetings.

It is worth setting out the claimant's response in full to this point: "Baldas Balint was employed by Casino 36 to complete a hefty workload; head of cash desk, head of IT, responsibility of service, deputy general manager, duty manager, duty cashier. You, yourself said that Balazs should not been appointed as deputy MLRO - you said that you have made this decision to somewhat shelter me from the 'wrath' of Adrian. I'm still confused by that comment. Dave Lowry is now the deputy MLRO as well as deputy general manager, during the short time that he has been here, we have all been working tirelessly on the ICA course, Dave is also rotored (sic) as a duty manager. During Balazs time under the role of deputy MLRO he said that he simply did not have the time to give to the MLR role, this was admitted by yourself also.

As you know Balazs came to 1 NCF meeting where he fell asleep, possibly because of the massive workload he was enduring. NCF meetings require one MLRO from each company to attend, I have only missed two since I took on the role, and I have provided notes and feedback to yourself upon my return. At no point have you suggested that Dave or Bal attend the NCF meetings. I have made

many friends there and remain a positive face with the NCF for Casino 36”.

We have seen no evidence to justify the respondent’s allegation set out in this bullet point and we find that the respondent has shown no good reason for making this allegation.

- h. Bullet point 8 - Mr Dobson says that the claimant has not been flexible enough with regard to her approach to working hours. He says “the compliance manager’s role is primarily Monday to Friday but business needs take priority”

The claimant’s response is to the effect that it’s obvious that she is concerned that Mr Dobson expects her to not take days off despite the fact that he knows she has childcare commitments.

Again, there is no evidence before the tribunal of the claimant failing to work her hours or being inflexible. We find that the respondent has not shown any good reason for making this allegation.

- i. Bullet point 9 - This is worth setting out in full again:

“EDD interactions and a commonsense approach to analysing information is needed to ensure that we remain compliant with regards to our legal obligations whilst maintaining a commercial understanding of our core business. This is an area that I feel you need to concentrate on, an example being: meeting 22/05/18 letters were printed out and ready to go to customer asking for further information like source of funds. One of the customers had already provided this information and several were playing with funds that were required in-house. This was discussed at length as well as the lack of any information on the letters for a customer to reply to it. The meeting dated 06/06/2018, the sample of customers that were earmarked for letters or interaction once again were either low value players or players that were “holding” winnings from our casino”.

- j. Bullet point 10 - Mr Dobson criticises the claimant for only visiting Stockport one occasion in seven months.

The claimant does not set out numbered responses to bullet points 9 and 10.

145. We have dealt above with the claimant’s views on EDD interactions. The evidence we have seen shows that there was nothing to suggest that the claimant was not taking a proper approach to identifying risks that was presented to the tribunal. The claimant was clearly alive to the risks of and from the potential laundering of criminal proceeds and she sought to take what she considered to be appropriate steps to deal with it. We have also found that she was to a large extent unsupported and untrained in the early stages of her role as MLRO, despite Mr Dobson and Mr Ballard both being

aware of the need to provide training and support, and it is apparent that the claimant perceived that she was receiving conflicting messages from Mr Dobson and Mr Ballard. In her letter of 11 June 2018, in reply to the 9 June letter she says “I would like to point out that as MLRO I should be allowed to approach the company director, Adrian Ballard. As you said last week ‘Adrian was furious that I approached him directly regarding my probation extension’ - if Adrian does not wish to be approachable then please let me know. I have never been given a job description for my role as compliance manager/MLRO, so I remain unsure of how to fulfil my job role 100% to requirements”

146. The criticism set out in bullet point 9 of the letter of 9 June is unjustified. We note also that it further confirms that Mr Dobson stopped letters being sent out on 22 May.
147. Finally, in respect of bullet point 10, we had no evidence about this at all and make no findings about the veracity or otherwise of that allegation, although we do consider that were the claimant not regularly visiting the sites for which she had responsibility, this would be a valid criticism.
148. What is clear to us, is that this is the first time these detailed concerns (even if they were genuine) had been put to the claimant. In our view, it was not appropriate to set out these issues in the letter in this format without first discussing them with the claimant. They should have been discussed in detail at what the respondent referred to as the probation review meeting. This would have given the claimant an opportunity to explain her position and discuss them with the respondent. Mr Dobson says that he would like to see a drastic improvement in both her understanding of overall management of the Department and her progress will be reassessed on 27 June 2018.
149. Mr Dobson does not offer in reasonable terms to discuss the contents of the letter with the claimant before that or identify any support that he is willing to put in place to help the claimant overcome what he perceives to be the problems. The claimant identified in her response of 11 June that although the letter following her probation extension meeting identified the need for support and training, none had been provided between then and this letter.
150. He does say, “if you have any queries regarding the contents of this letter please contact me as your line manager” but, in our view, the formal tone of this sentence is a long way from inviting constructive discussion.
151. We note also that most, if not all, of the concerns set out in the letter could have easily been evidenced. For example, copies of EDD forms that were said to be poorly filled out, correspondence relating to the provision of leaflets and the local authority risk assessment, printouts from the NEON system and so forth. The respondent brought none of this and we conclude that this was because there was no documentary evidence to support their assertions about the claimant’s performance.
152. Finally, in respect of this letter, we find that it amounts to detrimental treatment of the claimant. It is clear from her response that she does not

accept the criticism, and we have found that the criticism was on the whole unwarranted.

15 June – 28 June

153. From 15 to 28 June, the claimant was absent from work due to ill health. During her absence on 27 June 2018 Mr Ballard met with Mr Dobson, Mr Lowry and Mr Whitehouse. At this meeting, Mr Ballard is recorded as saying “We have lost confidence in Jayne Bailey as compliance manager, she is struggling with her health due to the stress of this position, her confidence was knocked during the first meeting with the Gambling Commission and she has not recovered.”
154. The notes of this meeting are in the bundle and the claimant confirmed in cross-examination that she had not seen this before. It is apparent that it was following this meeting that Mr Dobson wrote to the claimant on 28 June 2018. The letter says “after receiving your sick note I realise how stressful and overwhelming the position of compliance manager/nominated officer has proved to have been for you. With the pressing issues and ongoing monitoring needed to ensure the compliance department performed to an acceptable standard, I’ve asked Dave Lowry to act up for the time being. I do not want to add any further undue stress or pressure on you whilst you’re not well, so when you feel well enough to attend the meeting I’d like to discuss the possibility of you stepping down and taking on a more suitable role within the company if you feel that the compliance role is not for you.”
155. We were not shown a copy of the claimant’s fit note, but it was put to Mr Dobson that there was no suggestion that the claimant was off sick because of stress at work. Mr Dobson conceded this and said that the perception was in his eyes that perhaps her absence was related to stress.
156. It is the claimant’s case that this letter was an attempt to persuade the claimant to resign from her role. We find that it was. It is apparent from the notes of the meeting of 27 June 2018 that by then Mr Ballard no longer wanted the claimant in the role of compliance manager. He says “she is struggling with her health due to the stress of this position” but he has no reasonable basis for saying that. The claimant gave undisputed evidence that she was off with IBS, a long-standing condition, there was no evidence before them as at 27 June 2018 from which either Mr Dobson or Mr Ballard could reasonably conclude that the claimant was suffering with stress. We note that the claimant says in her letter of 28 June in which she rejects the suggestion that she stand down, that the claimant refers to a long-standing anxiety disorder that she had told Mr Dobson about previously. However, there is still no evidence that the claimant’s absence was related to stress.
157. In that letter of 28 June from the claimant, she requests a meeting with Mr Dobson on 4 July 2018 to discuss the concerns he raised in his previous letters. That meeting is arranged for 3 July with Mr Dobson and Mr Ballard and the claimant confirmed in her witness statement that she knew that meeting was to review her probation.

3 July – meeting with Mr Ballard

158. In her witness statement, the claimant says “when I met with Adrian he suggested I step down to a less demanding role and also raised the possibility that I could take redundancy as an alternative. I declined to do so. I did not need a less demanding role. I just need them to take the compliance issues that are raised seriously.”
159. Mr Ballard says “I met with Jayne on 3 July 2018 and unfortunately failed her probationary period. I lost confidence in her ability to carry out the role. I felt rather than make progress, we had fallen behind and I was concerned what the next step will be from the Gambling Commission. I offered Jayne her roll back as Gaming Manager with no change to her salary, which was increased when she took on the compliance role however she mentioned that she would not be able to take on that role as her daughter had got herself a role as a barmaid and so had lost childcare for her youngest son. I mooted the idea of her working at Dudley where we could give her more suitable hours to account for childcare but she did not seem interested. Therefore I suggested that she took time off to consider the position as I noted that she was upset which was understandable. I also confirmed that whilst there was no obligation for her to complete the course, we would still pay for it if she wanted to complete it. I asked Chris Taylor to write to Jayne to confirm this and also give her the opportunity to appeal should she wish and I would consider it.”
160. There are no additional notes of this meeting. There is a letter at page 108 which merely says “as per your meeting with Adrian Ballard on 3/7/18 it was decided that the company had carefully monitored your performance and conduct during your probationary and extended probationary periods we are now writing to confirm that the Company has taken the decision to allow you to return to the role of Gaming Manager rather than terminate your contract of employment as a Compliance Officer. Your current salary will remain the same”. It then offered to the right of appeal.
161. Effectively, the claimant and the respondent agree their accounts of this meeting. In reality, Mr Ballard told the claimant that she could either go back to her previous role or she would be dismissed. The only matter in dispute is whether the claimant was put on gardening leave at that meeting or subsequently on 10 July 2018. Mr Ballard said that he suggested she took time off to consider the position and the claimant’s witness statement does not deal directly with this particular matter.
162. Mr Ballard in cross examination says that he put the claimant on gardening leave on 3 July. However, this is not consistent with his witness statement in which he said he gave her a few days to think about it. There is an email dated 9 July 2018 from Mr Ballard to the claimant in relation to her grievance (see below). He says in this final large paragraph “I’m officially going to put your garden leave until further notice due to this process taking longer than normal as I am on holiday, you will remain on full pay during this period and you will not be required to go into the casino”.

163. In our judgment the decision to put the claimant on garden leave was not made and communicated to the claimant until 9 July 2018.
164. We note that the claimant had been given a pay rise of £500 a year on the appointment to the MLRO job and she would be entitled to keep this if she returned to her previous role. The claimant, however, gave evidence that the practicalities of returning to her previous job as Gaming Manager would be difficult to deal with due to her childcare arrangements. Mr Ballard confirmed that he was aware of the issues relating to the claimant's childcare and he said that he would have sought to accommodate her arrangements.
165. As set out above, in relation to the letter of 9 June 2018, the respondent has not provided any credible evidence for believing that the claimant was failing in her role as MLRO. There was no evidence of any further monitoring, training or support between that letter and the decision to remove the claimant from the MLRO role which was made on the 27 June 2018 at the meeting at which the claimant wasn't present, and was communicated to the claimant on 3 July 2018.
166. We further find that in coming to the decision on 27 June 2018 to remove the claimant from the MLRO role, Mr Ballard and Mr Dobson both had regard to the disclosures the claimant made as set out above. Mr Dobson refers to the EDD checks, which form a substantive part of the claimant's disclosures, in his letter of 9 June and Mr Ballard referred in the meeting of 27 June 2018 to having lost confidence in the claimant as compliance manager, a fundamental part of which required her to raise issues relating to EDD checks and other compliance issues.

Grievance and appeals

167. On 8 July 2018 the claimant submitted a grievance against Mr Dobson. The grievance was sent to Chris Taylor, Head of Finance, who then forwarded it to Mr Ballard as Director to deal with. In response to this, Mr Ballard emailed the claimant and put her on garden leave "until further notice". Mr Ballard said that before meeting with the claimant to discuss her grievance, he would conduct a full investigation.
168. Mr Ballard also confirmed that the claimant could continue working on the AML course from home.
169. Although the grievance did not raise any of the matters pleaded as protected disclosures except in relation to the failure to provide a job description, it broadly covered the issues set out above forming the claimant's claim. In respect of the job description, the claimant effectively complained as above that Mr Dobson told her to Google what a compliance officer was which she did and presented the results to him but in respect of which she was still awaiting a response.
170. In respect of this complaint in relation to the job description, we find that this was the disclosure of information - namely that the claimant did not have a job description. However, we have not heard anything identifying in what

way the claimant considered this to be a breach of a legal obligation. In the grievance itself the claimant does refer to a document, but she does not identify what that is. We find, on balance, the claimant did not believe that in making the grievance and in respect of the job description she was disclosing information that tended to show breach of a legal obligation.

171. The grievance also raised, for the first time, allegations of sexual harassment against Mr Dobson. Specifically, she said:

“During my time with Casino 36, Mr Dobson has continuously sent sexually explicit and obscene things to me in front of both senior management and staff, during serious compliance meetings he has spoken on several occasions about ‘his penis’ and ‘butt plugs’, this I find insulting and unprofessional and I feel that I can also speak for most of the management team. In my opinion Mr Dobson has a problem with women, he says demeaning and derogatory comments to a lot of female staff and it is unwanted”.

172. On 1 August 2018, Mr Taylor wrote to the claimant inviting her to a meeting with Mr Ballard on 6 August 2018 for a formal grievance hearing.

173. On 9 July 2018, the claimant attended work as usual. It was put to the claimant that she had not been entitled to be at work and had attended for the purposes of amending an entry in the respondent’s computer system. The amended entry clearly has been changed. We accept that it has been changed by the claimant by reference to her initials. It appears that the computer system records every access and change by various users. One of the entries relating to letters sent on 16 May 2018 has been changed to include “letter to stopped ref AB/CD”

174. It is perfectly clear that this change was made by the claimant in an attempt to record that Mr Ballard and Mr Dobson had prevented letters going out.

175. We find that the claimant did make these changes, but we also find that she genuinely believed that the letters had been prevented from being sent out as set out above. We also find that the claimant was entitled to be at work and access the system at the time the changes were made. The changes made on 9 July 2018 of which there were five were all made between 11:09 AM and 11:29 AM. All of the amended entries refer to alleged instructions not to send letters to customers.

176. The respondent’s case was that the claimant was effectively suspended – on garden leave – when these amendments were made and therefore did not have the right to access the computer system. We have found that the claimant was not put on garden leave until 9 July 2018. Specifically, the email from Mr Ballard explaining that was sent at 9:49 PM so that at the time the claimant made the amendments, for whatever reason, she was in fact entitled to access the computer system.

177. On 10 July 2018 Mr Taylor wrote to the claimant on behalf of Mr Ballard to confirm that the claimant was no longer the MLRO but was entitled to return to her previous role of Gaming Manager. That letter conferred a right of

appeal which the claimant exercised on 11 July 2018. The grounds for her appeal were that she had not received support from Mr Dobson.

178. On 1 August 2018 the claimant was informed that her grievance meeting would be on 8 August 2018 with Mr Ballard at 12pm and Mr Ballard would hear her appeal against the decision to fail her probation period on the same day at 3pm.
179. The claimant attended both meetings and was accompanied at both meetings by her colleague, Annette Allen.
180. Mr Ballard wrote to the claimant on 10 August 2018 in respect of both meetings. Mr Ballard did not uphold the claimant's appeal against the failure of her probation period. In summary, he said that the claimant had had satisfactory support and training. We have made findings about the training the claimant was given above, and we will not repeat that.
181. Mr Ballard did not uphold the claimant's grievance. He effectively summarised the claimant's grievance as 'inappropriate and unprofessional behaviour' and 'no support or training'.
182. Again, we have set out our findings about these matters above. In respect, however, of the grievance process, we find that Mr Ballard did not undertake an adequate grievance process. Particularly, in respect of the allegations of inappropriate behaviour, Mr Ballard records in the grievance outcome that the only person he spoke to was Mr Dobson and he confirmed this in cross examination. In our judgment, this was not adequate. At the very least, Mr Ballard should have taken a statement from Mr Dobson so that the claimant could comment on his responses to the allegations. This information was not provided to the claimant so that she had no opportunity to comment on Mr Dobson's responses.
183. We also find that Mr Ballard's relationship with Mr Dobson as his "right hand man" was too close for him to be able to carry out an independent investigation into these allegations. It is accepted that Mr Ballard is the only Director and the only person more senior in the organisation to Mr Dobson but we heard nothing to suggest that Mr Ballard had given any consideration to any alternatives such as engaging an independent person to investigate these serious allegations.

Resignation

184. The claimant had holiday booked for 10 – 27 August. She was due to return to work on 28 August. The claimant says, and in light of the appeal decision above it was clear, that she was expected to return to her previous role of Gaming Manager. Instead, the claimant sent an email tendering her resignation on 28 August 2018.
185. The claimant's resignation letter says:

"Please take this as my resignation with immediate effect.

I cannot and will not jeopardise the conditions of my licence by remaining a member of the management team for Casino 36.

The Gambling Commission and National Casino Forum issue regulations and guidelines for licence holders to follow, I believe that Casino 36 has failed to comply on many occasions.

Due to decisions made by yourself, resulting in non-compliance by Casino 36, you have made my position untenable.

My position has also been made untenable by the way in which I have been treated by Casino 36. This was set out in some detail in the grievance. The dismissive manner in which my grievance has been handled gives me no confidence that this inappropriate treatment would stop if I returned to work.

The inappropriate treatment has culminated in me being demoted because I've raised compliance concerns. This is unacceptable."

186. We find that this letter sets out the claimant's genuine reasons for her resignation. It is wholly consistent with the complaints that she raised throughout her period of employment as MLRO culminating in her grievance.
187. We also find that this resignation was submitted as soon as was reasonably practicable following a final determination of the decision to fail her probation period in the appeal heard by Mr Ballard. The claimant was on holiday until 27 August 2018 and she did not delay at all on return from her holiday in tending her resignation. We consider that until the final decision in her appeal against the decision to remove her from the MLRO post was made, there was still a possibility that the respondent would return the claimant to her MLRO post.
188. We heard evidence that the claimant had been exploring other employment options, and that she was offered new employment on 10 September 2018. The respondent sought to argue that the claimant must have been investigating alternative employment prior to this for a formal offer to be made so soon after her resignation.
189. The claimant said that she applied to InTouch Games Ltd during her garden leave. We have no reason to disbelieve the claimant on this point, but in any event given the situation she clearly found herself in after 9 July 2018 it was reasonable for the claimant to consider looking for alternative employment.
190. It is clear, however, that as at the date of her resignation the claimant did not have a formal offer from InTouch Games Ltd as this was not made until 10 September 2018. We find therefore that the offer of a new job with InTouch Games Ltd cannot have been the reason for the claimant's resignation on 28 August 2018.
191. Finally, we note that the claimant appealed against the grievance outcome on 28 August 2018. In response to that appeal Mr Ballard said that as he

was the only person who was senior to Mr Dobson there was no one else who could consider the grievance. He did, however, agree to allow Mr Taylor and the claimant's representative to review the evidence again independently and bring their findings to an appeal hearing. In the event Mr Taylor did arrange an appeal hearing before Mr Thomas-Horton. The claimant did not attend and Mr Thomas Horton considered all the documentation he had in any event. Mr Thomas-Horton's decision, unsurprisingly, in the absence of the claimant was that the appeal was not upheld

Public interest

192. Turning generally to the issue of why the claimant made the disclosures that she did, she said, on a number of occasions, that she wanted to get the company compliant. In our view, the claimant considered it part of her job to raise these issues. The claimant clearly understood that the reason for her job was to assist the respondent in complying with its licence conditions and regulations and the reason for this was to reduce the risk of and from criminal activity and to people with gambling problems. We also note that the claimant was at some of the meetings with the Gambling Commission, and it is apparent that the claimant understood from those meetings the importance of and reasons for the licence conditions and regulatory obligations the respondent was subject to.
193. We consider, therefore, that it was inherent in the claimant's role and in making the disclosures that she therefore considered that she was doing so in the public interest – effectively to uphold the law in relation to the operation of casinos. It may be that the claimant was motivated by a wish to do her job as well as she could and take the steps that she considered would protect the respondent from intervention by the Gambling Commission, but it is obvious that the claimant had a clear understanding that to do so was in the public interest, namely the reduction/prevention of crime and the protection of people vulnerable to gambling addiction.

Matters relating to delay in bringing the claim

194. The claimant produced no direct evidence in her witness statement of the reasons for the delay in bringing her claims of harassment related to sex. In response to a question from the tribunal as to why the claimant had delayed in bringing her claims she said she was very upset, she wasn't sure if she would be believed, she had spoken to other members of staff, everyone was worried about losing their jobs and she needed time to think whether she should go ahead or not.
195. In our view, this explanation does not make sense. The claimant had first raised the issues in her grievance on 8 August 2018 so, it appears, had clearly by that point come to the conclusion that she was prepared to raise this matter then. Further, this matter was raised with Mr Ballard who was obviously the person who could exact retribution if he so wished.
196. We also note that the claimant did not give any explanation in either her claim form or her witness statement as to the reasons for delay and the

claimant explicitly said in the course of the hearing that the alleged harassment did not form part of the reasons for her resignation.

197. On balance, we do not consider that the claimant has provided any good reason or explanation for the delay in bringing her claims of harassment.

The Law

Protected disclosures

198. The law relating to protected disclosures is set out in Part IVA of the Employment Rights Act 1996.

199. Section 43A (Meaning of “protected disclosure”) 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.

200. Section 43B (Disclosures qualifying for protection) says, as far as is relevant:

(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 occur

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

...

201. Section 43C (Disclosure to employer or other responsible person) provides:

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure . . .—

(a) to his employer..

202. This means that in order to be protected, the relevant disclosure must satisfy all of the following requirements:

- a. It must be the disclosure of information
- b. The worker disclosing the information must reasonably believe both:
 - i. That the information tends to show one of the listed matters; and
 - ii. That the disclosure is in the public interest.
- c. The disclosure must also be made to an appropriate person – namely the worker’s employer or, where the conduct relates to someone other than his employer, that person or, in respect of any other matter for which someone other than his employer has responsibility, that person. It is not disputed that the alleged disclosures were made to the claimant’s employer, and that the claimant was a worker.

203. The tribunal considered *Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)* 2018 ICR 731, CA in respect of the question of what it means to say that the worker has a reasonable belief that the disclosure is made in the public interest. There is, in effect, a two-stage test for the tribunal in determining this question:

- d. At the time of making the disclosure, did the worker actually believe that the disclosure was in the public interest; and
- e. If so, was that belief reasonable.

204. It was also explained in *Chesterton* that “while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it”.

205. Finally, in respect of protected disclosures, it was held in *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436 at paragraphs 35 and 36 that

*“35. The question in each case in relation to s 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 sub-s (1). The statements in the solicitors' letter in *Cavendish Munro* did not meet that standard.*

*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 the 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 s 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 LJ 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”.*

206. In respect of each of the disclosures, therefore, the claimant must

- a. have actually disclosed sufficient factual information to be capable of showing that
 - i. a criminal offence has been committed, is being committed or is likely to be committed; or

- ii. (as the case may be) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject; and
 - b. subjectively believe that the information she has disclosed does tend to show the particular matter.
207. We note also that in *Hibbins v Hesters Way Neighbourhood Project* [2009] IRLR 198 it was confirmed that “the identification of the wrongdoer as 'a person' expands the legislative grasp to include all legal persons without being limited to the employer. In other words, there is no limitation whatsoever on the people or the entities whose wrongdoings can be subject of qualifying disclosures”.
208. This means that disclosure of information suggesting, in this case, that a criminal offence has been committed, is being committed or is likely to occur as a result of the actions of the respondent’s customers may also be a qualifying disclosure.

Detriments

209. The law relating to detriments is set out in Part V of the Employment Rights Act 1996
210. Section 47B (Protected disclosures) provides:
- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
 - (1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
 - (a) by another worker of W’s employer in the course of that other worker’s employment, or
 - (b) by an agent of W’s employer with the employer’s authority,on the ground that W has made a protected disclosure.
211. Detriment is not defined in the statute. However, it has a wide meaning and includes being put at a disadvantage. It does not necessarily have to be an economic disadvantage and should be considered from the worker’s perspective.
212. In respect of bringing a claim of detriment on the grounds of making a protected disclosure
213. Section 48 (Complaints to employment tribunals) provides
- (1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.
 - (2) On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
 - (3) An [employment tribunal] shall not consider a complaint under this section unless it is presented—
 - (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or,

where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the “date of the act” means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected do the failed act if it was to be done.

(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).

214. This means that it is for the employer to show the ground on which any act or deliberate failure to act was done. This is explained in Volume 14 of the IDS handbook as follows:

“it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure”.

215. However, in *Ibekwe v Sussex Partnership NHS Foundation Trust* UKEAT/0072/14/MC, HHJ Clarke held

“I do not accept that a failure by the Respondent to show positively why no action was taken on the letter of 5 April before the form ET1 was lodged on 12 June means that the section 47B complaint succeeds by default (cf. the position under the ordinary discrimination legislation, considered by Elias LJ in Fecitt). Ultimately it was a question of fact for the Employment Tribunal as to whether or not the ‘managerial failure’ to deal with the Claimant’s letter of 5 April was on the ground that she there made a protected disclosure”.

216. In *Abernethy v Mott Hay and Anderson* [1974] IRLR 213, it was held that ‘A reason for [an act or omission] is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to [act or refrain from acting]’

217. In *Fecitt v NHS Manchester* [2012] IRLR 64 Lord Justice Elias held “In my judgment, the better view is that s.47B will be infringed if the protected

disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. If Parliament had wanted the test for the standard of proof in s.47B to be the same as for unfair dismissal, it could have used precisely the same language, but it did not do so".

218. This means that if the claimant is able to show that she made protected disclosures, and that she was subject to a detriment the burden moves to the respondent to show the reason that caused the respondent to subject the claimant to the detriment and that the reason for the detriment was not materially influenced by any protected disclosures made by the claimant. However, a failure to show the reason for the detrimental act does not automatically mean that the claimant succeeds by default. There must still be some evidence from which the Tribunal could conclude that the detrimental act was materially influenced by a protected disclosure.

Constructive dismissal and automatically unfair constructive dismissal

219. The [ERA 1996 s 103A](#) provides that:

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

220. In respect of the claimant's claim for unfair dismissal, the questions are whether the claimant was dismissed within the meaning of s 95(1) Employment rights Act 1996 (ERA) in that she resigned in response to a repudiatory breach of contract; and if she did resign in response to a repudiatory breach of contract was the reason for the repudiatory breach of contract that the claimant made protected disclosures?
221. Section 95 ERA sets out the circumstances in which an employee is dismissed, and s 95(1)(c) says that this includes circumstances where "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct".
222. In *Western Excavating (ECC) Ltd v Sharp* [\[1978\] QB 761](#) the Court of Appeal confirmed that questions of constructive dismissal should be determined according to the terms of the contractual relationship and not in accordance with a test of 'reasonable conduct by the employer'.
223. In *Malik v Bank of Credit and Commerce International SA* [\[1997\] IRLR 462](#), [\[1997\] ICR 606](#) it was held that contracts of employment include the following implied term:
- "The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*
224. The question for the tribunal to determine is therefore whether the respondent without reasonable and proper cause conducted itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee, thereby breaching its contract of employment with the claimant and, if so, did it so conduct itself for the reason that the claimant had made protected

disclosures. In *Eiger Securities LLP v Korshunova* [2017] IRLR 115 the EAT held at paragraph 61 that

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

225. The question for the tribunal is therefore whether the reason or principal reason that the respondent “without reasonable and proper cause conducted itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee” (if it did so) was that the claimant made protected disclosures.
226. If the respondent is in breach of the implied term of trust and confidence set out above, the tribunal must then determine if that breach was repudiatory – if it was sufficiently serious so as to allow the claimant to treat the contract of employment as discharged.
227. Finally, the tribunal must decide whether, if there was such a breach, the claimant resigned in response to that breach.
228. Finally, we note that in *El-Megrissi v Azad University (IR) in Oxford* UKEAT/0448/08 the EAT held

“But in a case where a claimant has made multiple disclosures section 103A does not require the contributions of each of them to the reason for the dismissal to be considered separately and in isolation. Where the Tribunal finds that they operated cumulatively, the question must be whether that cumulative impact was the principal reason for the dismissal”.

229. We were also referred to *W E Cox Toner International Ltd v Crook* [1981] IRLR 443 and *Chindove v William Morrisons Supermarket plc* UKEAT/0201/13/BA in relation to the question of waiver or affirmation. In light of our findings, above, we need only deal with this shortly, but in summary a claimant must not wait too long (depending on the circumstances) to resign in response to the alleged breaches or they may be found to have affirmed the contract. There is no fixed period of time, and the passage of time alone is not sufficient to amount to an affirmation but the claimant must not conduct themselves in such a way as to demonstrate that they are content to continue to work under the contract of employment.

Harassment relating to sex

230. Section 26 of the Equality Act 2010 provides:

- (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....

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

231. The question of whether conduct is unwanted is to be assessed subjectively (*Thomas Sanderson Blinds Ltd v English* EAT 0316/10).

232. As to whether the conduct had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, there is a two part test. This is explained in *Pemberton v Inwood* [2018] EWCA Civ 564, citing *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 – the conduct must actually have had the effect on the claimant (a subjective test) and it must, having regard to all the relevant circumstances, have been reasonable for the conduct to have had that effect. This is a matter of factual assessment for the tribunal.

233. In so far as is relevant, the provisions relating to the burden of proof set out above in relation to direct discrimination also apply to harassment.

Time limits in relation to harassment claims

234. Section 123 Equality Act 2010 provides

(1) [Subject to [sections 140A and [section] 140B],] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

235. In *Robertson v Bexley community Centre T/a leisure link* [2003] EWCA Civ 576 Lord Justice Auld said “it is also important to note that the time limits

are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.”

236. In *British Coal Corporation v Keeble and ors* 1997 IRLR 336, EAT it was held that the tribunal is required consider the following matters: the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular:

- a. the length of, and reasons for, the delay;
- b. the extent to which the cogency of the evidence is likely to be affected by the delay;
- c. the extent to which the party sued has cooperated with any requests for information;
- d. the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and
- e. the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

237. Finally, in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640 Leggatt LJ said “... the discretion given by section 123(1) of the Equality Act to the Employment Tribunal to decide what it “thinks just and equitable” is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone any requirement that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard”.

238. We do note, however, that in the same judgment it was acknowledged that the length of and reasons for the delay are almost always likely to be relevant to consider when exercising any discretion to extend time and that in *Morgan*, the tribunal had given consideration to the reasons why the claimant had delayed in commencing proceedings.

Analysis and conclusion

239. We refer to the list of issues and deal with the claims in the order they are set out there.

Constructive unfair dismissal

240. It was a term of the claimant’s contract that she was employed as a Compliance Officer. That is clear from the agreement. It is also clear from our findings that it was a term of the claimant’s contract of employment that her position was subject to a 6-month probationary period during which time she could return to her previous role of Gaming Manager should either she or the respondent consider that the role was not suitable for her. In the case of the respondent, we find that the term was that the respondent could

remove her from the Compliance Officer role during her probationary period if the respondent felt that the claimant was not suitable for the role. We consider that “felt” must, in reality, mean that the respondent had a genuine belief that the claimant was not suitable for the role based on reasonable grounds. It is inconceivable that the claimant would agree to a term by which the respondent could remove her at its whim and the claimant’s evidence was that she accepted that she could be removed if she “acted unlawfully”. In such circumstances the claimant would be entitled to return to her previous role.

241. There was no term agreed at the time that the six month probationary period was extendable by the respondent so that by the time the claimant was informed on 3 or 4 May that she had failed her probationary period, the respondent had lost the right to summarily reinstate her to her Gaming Manager role. However, by her conduct – namely challenging the grounds for the failure, rather than the right to do so and the fact that the claimant continued to work in that role and engage with the respondent about it – the claimant impliedly agreed to a variation of her contract to the effect that her probationary period was extended to 4 August 2018.
242. The claimant was demoted by letter on 10 July 2018 to the role of Gaming Manager. This was during the extended probation period so that the respondent had the potential power to do so. However, for the reasons set out above, the respondent had no good reason for demoting the claimant. It cannot have had a reasonable belief that the claimant was not suitable for the role and as such the respondent acted in breach of contract by demoting the claimant on 10 July 2018.
243. We have further found, as above, that the respondent did do those acts as set out at paragraph 3 of the list of issues. The claimant no longer relies on the inappropriate comments as a breach of the implied term of mutual trust and confidence. In respect of the other matters, however, we find that cumulatively they did amount to a breach of the implied term of mutual trust and confidence. The respondent had no good reason for any of these actions.
244. In our view, these acts were clearly calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The unjustified actions of the respondent completely undermined the claimant’s role and it is clear from the discussion at the meeting on 27 July 2018 that the respondent wanted the claimant to step down from her role, even though it had no objectively demonstrable reason for doing so.
245. It follows that the respondent did not have reasonable and proper cause for its conduct and that these actions were so serious as to amount to repudiatory breaches.
246. The claimant resigned in response to these breaches, the final straw being, in our view, the failure to reinstate the claimant to her role on appeal. In light of the fact that the claimant resigned immediately on her return from leave, it is clear that there is no question of waiver or affirmation.
247. For these reasons we find that the claimant was constructively dismissed.

Reason for dismissal

248. The respondent says that in the event the tribunal finds that the claimant was constructively dismissed, she was dismissed for a fair reason namely capability. It is clear from our findings (above) that the respondent did not have any reasonable basis for concluding that the claimant was unable to perform her role.
249. The claimant's case is that the reason she was constructively dismissed was the protected disclosure she made. The acts set out and relied upon as cumulatively forming a breach of the implied term of trust and confidence are (with the exception of the allegations of inappropriate comments) the same acts that are relied on as detriments that the claimant was subject to on the ground she had made protected disclosures.
250. We therefore consider this aspect of the constructive unfair dismissal claim under detriments (below).

Harassment

251. It is clear on the claimant's evidence that the final allegation of harassment was concluded by, at the very latest, the end of May 2018. The claims in respect of all the allegations are therefore out of time. The claimant has failed to provide any reason at all for the delay in bringing claims of harassment related to sex.
252. We have had regard to the case law set out above relating to the exercise of our discretion to extend time where it is just and equitable to do so for the bringing of a claim under section 26 Equality Act 2010. In our view, although we accept that failure to provide a good reason is not necessarily determinative in terms of the exercise of our discretion, it is impossible for us to conclude that it would be just and equitable to extend time for the presentation of the harassment claims in circumstances where we simply do not know why the claims were not brought in time. The claimant's explanation was vague and unconvincing and not consistent with having brought a grievance about these issues previously.
253. We remind ourselves that the onus is on the claimant to demonstrate why we should extend time and the claimant has been unable to show any good reason why we should do so.
254. For those reasons, the claimant's claims of harassment related to sex are out of time, it is not just and equitable for the tribunal to extend time for the presentation of those claims and consequently the tribunal does not have the jurisdiction to hear them.

Detriment on the ground that the claimant has made protected disclosures

Protected disclosures

255. In our judgment the disclosures relied on by the claimant were, with the exception of the submission of the May compliance report in June 2018 and the grievance raised on 8 July 2018, protected disclosures within the meaning of section 43A Employment Rights Act 1996.
256. In respect of the grievance, we have found that the claimant did not believe that a complaint about the job description tended to show that anyone was in breach of a legal obligation. It cannot therefore amount to a protected disclosure.

257. In respect of the May compliance report submitted in June, the claimant did not have a reasonable belief that anything in that report tended to show either a breach of a legal obligation or the commission or likely commission of a criminal offence.
258. In respect of the other disclosures, they were all made to her employer in compliance with section 43C Employment Rights Act 1996. We have found further that in respect of each of the other disclosures the claimant genuinely believed that they tend to show that a criminal offence has been or is likely to be committed in respect of the disclosures relating to EDD. In respect of the other disclosures relating to the respondent's compliance, we have found that the claimant believed that the respondent was in breach of its licensing conditions.
259. In our judgment it was reasonable for the claimant to have these beliefs. The claimant was clearly apprised of the risks relating to money laundering and compliance with the respondent's licence conditions as a result of the regular and ongoing meetings with the Gambling Commission. We are further supported in our conclusions by the press release we were shown in relation to the settlement agreement between the respondent and the Gambling Commission.
260. We refer also to the changes in policy in respect of soft EDD checks and the subsequent stopping of receptionists handing out free bets. Both of these changes tend to suggest that the claimant's concerns were justified and consequently she had a reasonable belief that the disclosure of that relevant information tended to show either the commission of a criminal offence or breach of a legal obligation.
261. Similarly, we have found that the claimant reasonably believed that she was making each of these disclosures in the public interest. The claimant clearly had an appreciation of the importance of compliance with the regulatory regime and licence conditions, and we refer to the claimant's concerns about problem gamblers. Although the claimant expressed on a number of occasions in the contemporaneous evidence that she was concerned that the respondent's licence might be at risk, we note that this motivation does not preclude the claimant having made the disclosures in the public interest.
262. We therefore find that all of the disclosures relied on as protected disclosures (up to and including the disclosure on 30 May 2018 that eight customers were playing with large loose bundles of cash) are protected disclosures.

Detriments

263. The claimant relied on five detriments. We deal with each of them in turn

a. Failure to provide support and training

We find that this was a detriment. The respondent was aware that the claimant needed additional support and training on commencement of the role but it failed to provide adequate training. We acknowledged that the claimant was enrolled on the AML training but in the initial stages of her employment she was given no meaningful role specific training and no meaningful support from Mr Dobson.

However, this detriment was not on the ground that the claimant had made protected disclosures. This is because the first protected disclosure was not until 2 January 2018 and the rest occurred thereafter. The initial failure to provide training cannot possibly have been as a result of this protected disclosures and the provision of the AML training occurred after some of the disclosures had been made.

- b. Extending the claimant's probationary period on 4 May 2018

We have found that this did happen and that the respondent had no reasonable basis for doing this.

- c. Attempting to persuade the claimant to resign

We have found that pursuant to the letter of 28 June 2018, Mr Dobson was trying to persuade the claimant to resign. Again we have found that the respondent had no reasonable basis on which to send this letter.

- d. Criticising the claimant's performance on 5 June, 9 June, 3 July and 10 July 2018

The claimant conceded that the respondent had not criticised her specifically on 5 June or 10 July 2018. However, it is clear that the respondent in the form of Mr Dobson set out a number of unjustified criticisms of the claimant and the letter of 9 June 2018 and there was no reason to do that. Similarly, the letter of 10 July 2018 failing the claimant's probationary period is critical of her. Not only is the extension of the probationary period itself implicitly critical the letter refers to her performance and conduct. We have found that the respondent had no genuine reason to fail the claimant's probationary period.

- e. Failing the claimant's probationary period on 10 July

As referred above, the respondent did not have a genuine reason for failing the claimant's probationary period.

- f. Reverting the claimant to a previous role

As per the previous two detriments, the respondent did not have a genuine reason for doing this.

264. It is, in our view, self-evident that these are all detriments. However, we are mindful of the guidance in *Ibekwe* set out above. It is not sufficient for there to be protected disclosures and detriment to reverse the burden of proof without something more. In our view, the nature of the conversation between Mr Ballard and Mr Dobson on 27 June 2018 implies that Mr Ballard and Mr Dobson were concerned about the claimant's raising of compliance issues. We refer also to the letter of 9 June 2018 from Mr Dobson which explicitly takes issue with the claimant writing to customers for further information. We also note the two statements by Mr Dobson and Mr Ballard respectively that "the claimant had the company by the balls" and "we got away with it before, I doubt we will this time" as evidence that both Mr Ballard and Mr Dobson were concerned about compliance and specifically the way the claimant was raising compliance issues.

265. In our judgement, this is sufficient to reverse the burden of proof pursuant to section 48(2) Employment Rights Act 1996. We have found that the respondent had no good reason for taking any of the steps that it took that amounts to detriments and therefore failed to show the reason for acting as it did.
266. For these reasons the claimant's claim of detriment on the grounds of making a protected disclosure is successful in respect of detriment (b) to (f) as set out in the list of issues.
267. In respect therefore of the claimant's claim of automatically unfair dismissal pursuant to section 103A of the Employment Rights Act 1996, we find that each of the acts relied on as comprising the breach of the implied term of mutual trust and confidence with the exception of failing to provide the claimant with support and training were done by the respondent because the claimant had made protected disclosures.
268. It follows, therefore, that the reasons for the claimant's dismissal was the making of protected disclosures.
269. For the foregoing reasons, therefore, the claimant's claim of unfair dismissal and detriments on the grounds that she made protected disclosures are successful. The tribunal does not have the jurisdiction to hear the claimant's claim of harassment because it was brought out of time and it is not just and equitable to extend time.

Employment Judge **Miller**
29 January 2020

Appendix

List of issues

Constructive dismissal

1. Was it a term of the claimant's contract that she was employed as compliance manager?
2. If so, did the respondent act in breach of that term on or around 10 July 2018 by demoting her from the position of compliance manager to gaming manager?
3. Did the respondent breached the implied term of mutual trust and confidence;
 - a. through Craig Dobson making inappropriate comments about the claimant and other women and/or of a sexual nature as per paragraph 32-36 of the particulars of claim;
 - b. failure to provide the claimant with support and training throughout her time in the role from November 2017 to July 2018;
 - c. by extending the claimant's probationary period on 4 May 2018;
 - d. attempting to persuade the claimant to resign acting by Craig Dobson as per paragraph 21 of the particulars of claim;
 - e. by criticising the claimant's performance on 5 June 2018, 9 June 2018, 3 July 2018 and 10 July 2018. By failing the claimant's probationary period on 10th July as per Chris Taylor's letter;
 - f. reverting the claimant to her previous role.
4. Did such conduct occur?
5. If so, was it conduct that would destroy or seriously damage the trust and confidence between employee and employer?
6. Was the reasonable and proper cause for the respondent's conduct?
7. Did the respondent act in repudiatory breach of contract? If so:
 - a. did the claimant resign in response to such breaches; or
 - b. did the claimant from the contract?

Unfair dismissal

8. If the claimant was dismissed, was this fair or unfair having regard to the following:-
 - a. What was the reason or principal reason for the dismissal? Claimant says that it was the protected disclosures which she made. The respondent says it was a reason relating to capability section 98 (2)(a) ERA

- b. If the respondent establishes that the reason for dismissal was capability, did the respondent act reasonably or unreasonably in treating this as sufficient reason for dismissal?

Harassment

9. does the tribunal have jurisdiction to hear the claims:-

- a. when did the acts occur?
- b. Was there conduct extending over a period? If so, when did the period end?
- c. Where the claim in respect of any act(s) is out of time, is it just equitable to extend time?

10. Did Craig Dobson engage in the following conduct:

- a. On 31 October 2017 making fun of the claimant's weight and saying that he would "sit next to the fat bird" (paragraph 34)
- b. On 16 January 2018 during a car journey from Wolverhampton to Stockport with the claimant making obscene gestures, telling crude jokes, talking about his penis and his use of butt plugs and rubbing his nipple (paragraph 36)
- c. In April 2018 (the claimant cannot recall the exact date) calling Michelle Ballard "the fat heifer" (paragraph 35)
- d. On occasions between November 2017 and May 2018 making crude comments to the claimant about his penis and butt plugs (paragraph 33)
- e. On occasions between January and February 2018 told female members of staff, including the claimant, to wipe their mouths and straighten the skirts on leaving his office, to make it look as though oral sex had taken place (paragraph 33)
- f. On occasions between November 2017 and May 2018 making offensive comments about the claimant and other women (paragraph 32)
- g. On occasions between November 2017 and January 2018 making sexually explicit comments (paragraph 32)

11. Was this unwanted conduct?

12. Was it related to sex and/or of a sexual nature?

13. Did it have the purpose or effect of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

Whistleblowing detriment

14. Did the claimant make the following disclosures of information:-

note - the claimant's case in respect of all of the disclosures of information is that each one of them tended to show that a criminal offence had been, was being or was likely to be committed and/or that a person had failed,

was failing or was likely to fail to comply with any legal obligation to which she was subject-section 43B (1) (a) and/or (b) Employment Rights Act 1996.

- a. On 2 January 2018 the claimant disclosed to Craig Dobson at a face-to-face meeting her concerns that gambling regulations were not being complied with, debit limits were being breached, enhanced due diligence (EDD) was not being carried out where it was required and sanctions were not being applied to customers appropriately (paragraph 5)
- b. On 19 January 2018 the claimant disclosed to Craig Dobson that the receptionists were breaking the law by issuing free bets to customers as part of a promotion, because they were not licensed to do so (paragraph 31)
- c. On 15 March 2018 the claimant emailed Craig Dobson and others informing them that customer AW was not being reinstated due to him having changed his name twice and week ID (paragraph 31)
- d. On 20 March 2018 the claimant emailed Craig Dobson and others stating that steps needed to be taken to establish proof of funds from customer Mr St as his gambling pattern appeared to be inconsistent with his low income (paragraph 31)
- e. On about 3 May 2018 the claimant submitted to Adrian Ballard the compliance report for April 2018 raising the compliance issues which had occurred during that month (paragraph 31)
- f. On 9 May 2018 the claimant emailed Craig Dobson with concerns about customer Mr SS failure to produce proof of income and the fact that his suspension had been lifted while the claimant was on holiday. This was of concern to her in particular because Mr S was on the gambling commission's scoping list information (paragraph 31)
- g. On 11 May 2018 the claimant emailed Casino 36 compliance about customer LS requesting that he be spoken to by member of senior management because his level of play did not match his apparent income. Adrian Ballard forbade anyone from speaking to him (paragraph 31)
- h. On or shortly after 22 May 2018 claimant spoke to Craig Dobson expressing concern that he had blocked letters going out customers on whom proper EDD had not been carried out and/or who had not been able, or required, to produce satisfactory proof of income (paragraph 12)
- i. On a date between 22nd and 30 May 2018, the exact date of which the claimant cannot recall, the claimant spoke to Adrian Ballard and Craig Dobson to inform them that eight customers were playing with large loose bundles of cash, raising suspicions that these were the proceeds of crime (paragraph 13)
- j. In about June 2018 the claimant submitted to Adrian Ballard the Casino 36 directors compliance report for May 2018 raising the compliance issues which had occurred during that month (paragraph 31)
- k. On 8 July 2018 the claimant raised a formal written grievance with Chris Taylor about Craig Dobson. Amongst the matters raised was

a complaint that she had not been provided with the job description in writing, contrary to the applicable requirements (paragraph 24)

- i. On 6 August 2018 the claimant emailed Louisa Clark of the gambling commission informing her that:-
 - i. She had been stopped from putting procedures in place to comply with gambling commission requirements concerning anti-money-laundering
 - ii. Duty managers had been instructed not to approach customers concerning EDD
 - iii. Her position as money-laundering reporting officer (MLRO) had been taken off her purely because of her desire to carry out her duties to the letter of the law (paragraph 31)

- m. On 10 August 2018 the claimant emailed Erica Young of the gambling commission informing her that:-
 - i. She had been threatened with a job for putting EDD in place and suspending very high risk customers
 - ii. Craig Dobson had reversed suspensions and hand-delivered letters to barred customers asking them to come back in
 - iii. Adrian Ballard had brought in one of Craig Dobson's friends to replace the claimant as MLRO (paragraph 31)

15. Was it a qualifying disclosure?

16. Where these in her reasonable belief in the public interest?

17. Did they tend to show that a criminal offence had been, was being or is likely to be committed and/or that a person had failed, was failing or is likely to fail to comply with any legal obligation to which he was subject?

18. Did the respondent subject the claimant the following detriments as a result of such disclosures?

- a. Failure to provide the claimant with support and training throughout her time in the role from November 2017 to July 2018;
- b. By extending the claimant's probationary period on 4 May 2018
- c. Attempting to persuade the claimant to resign acting by Craig Dobson as per paragraph 21 of the particulars of claim;
- d. By criticising the claimant's performance on 5 June 2018, 9 June 2018, 3 July 2018 and 10 July 2018;
- e. By failing the claimant's probationary period on 10 July 2018 as per Chris Taylor's letter;
- f. Reverting the claimant to her previous role.