EMPLOYMENT TRIBUNALS

Claimants: Mr Mark Holden (first claimant)

Mr Christopher Holden (second claimant)

Respondents: Mr Mark Corr (t/a The Strands Hotel) (first respondent)

Mrs Lesley Corr (t/a The Strands Hotel) (second respondent)

HELD AT: Manchester (by CVP) **ON:** 17, 18, 19, 20, 21 and 24 May 2021 (with 25 May 2021 not sitting), 24 (chambers), 25, 26 and 27 October 2022 and 24 January 2023 (with 31 January 2023, 2 February 2023, 22 March 2023 being chambers days).

BEFORE: Employment Judge Johnson

MEMBERS: Ms Bernadette Hillon
Ms Celia Jammeh

REPRESENTATION:

Claimants: Ms R Mellor (counsel) (17 to 24 May 2021)
Mr M O'Carroll (counsel) (25 to 27 October 2022 and 24 January 2023)

Respondents: Ms P Hall (Peninsula advocate) (17 to 24 May 2021)
Mr M Sutton (Peninsula advocate) (25 to 27 October 2022 and 24 January 2023)

JUDGMENT

The judgment of the Tribunal is that:

<u>In the case (the) of the first claimant</u>

(1) The complaint of unfair dismissal by reason of a protected disclosure having been made contrary to section103A Employment Rights Act 1996 not well founded which means it is not successful.

(2) The complaint seeking notice pay is successful and the respondents shall pay the first claimant the gross sum of £400 in respect of this successful complaint.

(3) The complaint of detriments arising from the making of a protected disclosure contrary to section 47 Employment Rights Act 1996 is not well founded which means it is not successful.

(4) The complaint of direct discrimination by reason of sexual orientation contrary to section 13 Equality Act 2010 is not well founded which means it is not successful.

(5) The complaint of harassment by reason of sexual orientation contrary to section 26 Equality Act 2010 is not well founded which means it is not successful.

(6) The first claimant was disabled within the meaning of section 6 of the Equality Act 2010 by reason of a stomach and back injury causing irritable bowel syndrome ('IBS') and left leg pain.

(7) The complaint of direct discrimination by reason of disability contrary to section 13 Equality Act 2010 is not well founded which means it is not successful.

(8) The complaint of discrimination arising from a disability section 15 Equality Act 2010 is not well founded which means it is not successful.

(9) The complaint of a failure by the respondents to make reasonable adjustments contrary to sections 20 & 21 Equality Act 2010 is not well founded which means it is not successful.

(10) The complaint of victimisation contrary to section 27 Equality Act 2010 is not well founded which means it is not successful.

(11) The complaint of unpaid holiday pay contrary to section 13 Working Time Regulations 1998 is not well founded and is not successful.

(12) The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996 is not well founded and is not successful.

In the case of the second claimant

(13) The complaint seeking notice pay is successful and the respondents shall pay the first claimant the gross sum of £400 in respect of this successful complaint.

(14) The complaint of detriments arising from the making of a protected disclosure contrary to section 47 Employment Rights Act 1996 are not well founded and are unsuccessful.

(15) The complaint of direct discrimination by reason of sexual orientation contrary to section 13 Equality Act 2010 is not well founded which means it is not successful.

(16) The complaint of harassment by reason of sexual orientation contrary to section 26 Equality Act 2010 is not well founded which means it is not successful.

(17) The complaint of victimisation contrary to section 27 Equality Act 2010 is not well founded and is not successful.

(18) The complaint of unpaid holiday pay contrary to section 13 Working Time Regulations 1998 is not well founded and is not successful.

(19) The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996 is not well founded and is not successful.

Introduction

1. This claim arises from the first and second claimants' employment with the first and second respondents during the summer of 2018 from 28 June 2018 to 13 August 2018.

2. The claimants presented a claim form to the Tribunal on 13 December 2018 following a period of early conciliation and complaints of unfair dismissal discrimination on grounds of discrimination and sexual orientation, notice pay, holiday pay and arrears of pay were brought.

3. The respondents presented a response resisting the claim in its entirety and this was accepted by the Tribunal.

4. The case was subject to case management at a preliminary hearing before Employment Judge ('EJ') Morris on 3 June 2019. A list of issues was identified in a preliminary form, but subject to further information. The case was listed for a final hearing and case management orders were made.

5. The final hearing has taken an unfortunate fragmented path. The list of issues was not properly finalised before the first day of the final hearing and the Tribunal did find this meant that on a number of occasions throughout the hearing, the list had to be clarified. The final hearing initially took place on 18,

19, 20, 21 and 24 May 2021 (with 25 May 2021 not sitting). The hearing was adjourned following the hearing of the claimants' evidence because the first claimant became ill and he attended hospital on day 4 and it became clear that he would not recover before the listing finished.

6. Accordingly, the case was adjourned and relisted, but this took some time to be arranged for a number of reasons which it is not necessary to dwell upon in this judgment. However, the respondents' representative changed by the time of the second hearing and the claimants' counsel also changed. This did cause some issues concerning continuity of representation. This should not be treated as pointing the finger of blame at any party or their representatives, but it did not assist with the smooth running of the hearing. The resumed final hearing began on 24 October 2022 (in chambers) and then continued in public on 25, 26 and 27 October 2022. Despite this listing, it was not possible to conclude all of the respondents' witness evidence and a further adjournment was necessary with a final hearing date of 24 January 2023 which concluded with final submissions. Not surprisingly, a case where evidence was heard over such a long period required a lengthy chambers discussion and these took place on 31 January 2023, 2 February 2023 and 22 March 2023. As a full Tribunal was involved, it was not always easy to find a date where the whole panel was available, and this has added to the time required to complete the reserved judgment and reasons.

The issues

7. As discussed above, the Tribunal encountered a number of difficulties with the finalisation of the list of issues, but having heard the parties throughout the final hearing and considering their final submissions, the list was described as follows:

Time limits

8. a) Given the date the claim form was presented and the effect of early conciliation, any complaint about something that happened before 9 August 2018 may not have been brought in time.

   b) Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010 ('EQA) and were the unfair dismissal / unauthorised deductions / whistleblowing etc complaints made within the time limit in sections 111 / 48 / 23 etc of the Employment Rights Act 1996 ('ERA')?

   c) Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether it was not reasonably practicable for a complaint to be presented within the primary time limit; whether time should be extended on a *"just and equitable"* basis; when the treatment complained about occurred.

Unfair dismissal

9. a) As neither claimant had been employed by the respondent for at least two years by the time of their alleged dismissal, the claimants do not have sufficient continuous

service in order that they can bring a complaint of ordinary unfair dismissal contrary to section 108 ERA.

b) However, the claimants have relied upon section 103A (Protected Disclosure) which are unfair dismissal claims which are not subject to section 108 ERA.

c) If so, were the claimants dismissed? The respondents deny that the first claimant was dismissed (noting that his last working day was 12 August 2018), but accept that the second claimant was dismissed on 13 August 2018. They were both employed from 28 June 2018.

d) If the claimants were dismissed, was the reason or (if more than one reason), the principle reason, that the claimants were dismissed by reason of them making a protected disclosure contrary to section 103A ERA? The respondents deny that the second claimant was dismissed for these reasons and instead, was dismissed on grounds of gross misconduct. Gross misconduct is a potentially fair reason for dismissal under section 98(2) ERA.

e) The respondents do not accept that the first claimant was dismissed, they have not advanced a reason for his dismissal that might be potentially fair in accordance with section 98(2) ERA.

Wrongful dismissal / Notice pay

10. a) Are the claimants entitled to any outstanding monies in respect of notice pay?

b) If so, how much notice pay is owed to the claimant?

Protected disclosures

11. a) Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

i) The claimants submitted a formal complaint on 23 June 2018 about the Health and Safety issues posed by the caravan.

ii) The first claimant raised complaints on behalf of himself and the second claimant about continuing harassment from Derreck Patterson and John Evans.

iii) On Saturday 30 June 2018, the first claimant handed the second respondent a written complaint about her failure to comply with her Health and Safety obligations.

iv) The first claimant advised the second respondent that she was failing to comply with the Health and Safety at Work Act 1974 ('HASWA') including ensuring employees washed their hands after smoking; covered their arms when waiting on tables; untrained kitchen staff obtained the basic food hygiene certificates.

v) The first claimant raised concerns with the second respondent that she was paying staff cash in hand, and these employees were also in receipt of benefits. He raised concerns that she was unlawfully retaining customer's credit card details, and that these were retained for years, and that receipts for monies

taken from the till were either not provided or retained, and there were consistent stock taking failures.

vi) The first claimant by way of letter dated 9 July 2019, raised complaints about the continued misconduct of John Evans and Derreck Patterson.

vii) The first claimant sent a letter dated 25 July 2018 setting out a grievance against the respondents' continuing failure to make reasonable adjustments and complained about harassment on grounds of the first and second claimant's sexual orientation.

viii) On 26 July 2018, the first claimant reminded the second respondent that Peninsula had raised 36 Health and Safety breaches. The breaches included the failure to carry out risk assessments, fire safety training, the removal of asbestos behind the bar, carbon monoxide and the testing of electrical appliances.

ix) The first claimant handed the second respondent a letter dated 1 August 2018 complaining about Health and Safety breaches and continuing harassment.

b) Did the claimants disclose information?

c) Did they believe the disclosure of information was made in the public interest?

d) Was that belief reasonable?

e) Did they believe it tended to show that:

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

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

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

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

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

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

f) Was that belief reasonable?

g) Did the respondents dismiss the claimants?

h) If so, was it done on the ground that they made a protected disclosure?

Direct sexual orientation discrimination (EQA- section 13)

12. a) Have the respondents subjected one or other of the claimants to treatment falling within section 39 EQA as follows?

b) Derreck Patterson and John Evans commenced a campaign of harassment against the claimants by calling them both *"bum boys", "queers"* and both refused to take instructions from a *"queer".* Both Derreck and John stated that they hated gays.

c) The second respondent told the first claimant that he was *"disgusting"* for perspiring, when he was working in an enclosed space, it was very hot and although other employees perspired, they were not told that they were disgusting.

d) On 14 July 2018, the second respondent told the first and second claimants they were not to kiss when saying goodbye.

e) The second respondent told the first and second claimants that John Evans and Derreck Patterson told her that they did not like them touching and found them kissing each other disgusting.

f) John Evans told customers and staff not to eat from a bowl of crisps, because the second claimant had already had his hands in there.

g) On or before 16 July 2018, the second respondent told the first and second claimants that it would not be fair to pay them as much as Mr and Mrs Bussey as the latter couple had family responsibilities. This offended the first claimant because he felt that the first respondent did not consider him of having family responsibilities because of his sexual orientation.

a) Derreck Patterson deliberately put spice into the first claimant's food knowing that this would make him very ill.

b) The first and second claimant were paid less money for working more hours than unqualified temporary staff.

h) Was either claimant treated less favourably than the respondents would treat others?

i) If so, has either of the claimants proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic of sexual orientation?

j) If so, what is the respondent's explanation? Do they prove a non-discriminatory reason for any proven treatment?

Harassment (on grounds of sexual orientation)

13) a) Did either respondent engage in unwanted conduct relating to the claimants' sexual orientation in the following ways?

i) Derreck Patterson and John Evans commenced a campaign of harassment against the claimants by calling them both *"bum boys", "queers"* and both refused to take instructions from a *"queer".* Both Derreck and John stated that they hated gays.

ii) The second respondent told the first claimant that he was *"disgusting"* for perspiring, when he was working in an enclosed space, it was very hot and although other employees perspired, they were not told that they were disgusting.

iii) The second respondent told the first and second claimants that John Evans and Derreck Patterson told her that they did not like them touching and found them kissing each other disgusting.

iv) On 24 June 2018, the first claimant overheard customers talking with staff about "the new gay management couple". The first claimant found it offensive that staff were discussing his sexual orientation with customers in a derogatory manner.

v) On Monday 8 July 2018, Derreck Patterson and John Evans refused to take instructions from the first claimant because he was " queer" and just hired help.

vi) The first respondent insisted that the first claimant wrote the following on all of the quiz sheets to be given to customers: "The Quizmaster has the final say, even though he is Scouse and Gay".

vii) On 28 July 2018, Gary Edwards asked the first claimant about whether he liked to experiment with sexual positions, and who liked to be on top to take it and who liked to give it.

viii) On Wednesday 14 August 2018, all the employees, encouraged by Gary Edwards, were calling the second claimant homophobic names.

c) Further or in the alternative, was the above unwanted conduct relating to the claimants' protected characteristic of sexual orientation?

d) Did the above conduct have the purpose or effect of violating the claimants' dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment?

e) In deciding whether the conduct has the effect referred to in section 26(1)(b) EQA, the Tribunal must take into account:

i) The perception of the claimants;
ii) The other circumstances of the case; and,
iii) Whether it is reasonable for the conduct to have that effect.

Disability discrimination (first claimant only)
Disability (Equality Act 2010 section 6)

14) a) Did the first claimant have a physical or mental impairment at the relevant time?

[NOTE: it is understood by the Tribunal that the respondents accept that the first claimant was disabled at the material time but disputed knowledge of that disability]

b) if so, did the impairment have a substantial adverse effect on the first claimant's ability to carry out normal day to day activities?

c) if so, is that effect long term? In particular, when did it start and:

i) has the impairment lasted for at least 12 months?
ii) Is or was the impairment likely to last at least 12 months or the rest of the first claimant's life, if less than 12 months?

Direct disability discrimination (EQA- section 13)

15) a) Have the respondents subjected the first claimant to treatment falling within section 39 EQA as follows?

j) The second respondent told the first claimant that he was *"disgusting"* for perspiring, when he was working in an enclosed space, it was very hot and although other employees perspired, they were not told that they were disgusting.

k) Derreck Patterson deliberately put spice into the first claimant's food knowing that this would make him very ill.

b) Was either claimant treated less favourably than the respondents would treat others?

c) If so, has either of the claimants proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic of sexual orientation?

d) If so, what is the respondent's explanation? Do they prove a non-discriminatory reason for any proven treatment?

Discrimination arising from disability (Equality Act 2010 section 15)

16) a) Did the respondents know or could they reasonably have been expected to know that the first claimant had the disability? If so, from what date?

b) If so, did the respondents treat the first claimant unfavourably in any of the following alleged respects:

i) Referring to the first claimant as being *'disgusting'* when he wiped perspiration using a towel when working in the bar?
ii) Dismissing the first claimant because of his sickness absence requiring him to have time off work?

17) Did the following things arise in consequence of the first claimant's disability:

i) The first claimant's disability resulted in him perspiring heavily when compared with other non-disabled employees?
ii) The first claimant's disability required him to have time off work following his return from hospital?

18) Has the first claimant proven facts from which the Tribunal could conclude that the unfavourable treatment was because of any of those things?

19) If so, can the respondents show that there was no unfavourable treatment because of something arising in consequence of a disability?

20) If not, was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were: ***[NB: the respondents did not confirm what this was]***

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

21) a) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

b) A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

i) A requirement to work more than 40 hours per week?
ii) The requirement to work immediately upon his return from hospital?

c) Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that those without the first claimant's disability could have been able to cope with the PCPs without any significant effects upon their health?
d) Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
e) Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable:

i) allowing the first claimant to work 40 hours or less which he says was agreed with the respondents when he accepted the offer of employment with them?
ii) to allow the first claimant to have additional time off sick following his return from hospital?

f) By what date should the respondent reasonably have taken those steps?

Victimisation (Equality Act 2010 section 27)

22) a) Did the first claimant do a protected act as follows:

i) Mr O'Carroll in his final submissions asserted that the protected acts under section 27 EQA were the discrimination and harassment of Mark H in relation to the complaint letters which were sent on 30 June, 9 July, 25 July and 1 August 2018.

b) Did the respondent do the following things:

i) It was understood that the detriment was the undermining the trust and confidence that the Mark H had with the respondents because they failed to deal with his concerns regarding discrimination and harassment causing him to resign

c) By doing so, did it subject the claimant to detriment?
d) If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?
e) If so, has the respondent shown that there was no contravention of section 27?

Holiday Pay (Working Time Regulations 1998)

23) Did the respondent fail to pay the claimants for annual leave the claimants had accrued but not taken when their employment ended?

Unauthorised deductions

24) Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

25) The list had clearly not been finalised or narrowed by the parties before the hearing began, but it did at least provide the Tribunal with the basis of a list for consideration. The findings below are of course made with this list in mind but have been made based upon the evidence heard and the submissions provided by the parties.

Evidence used

26) During the first part of the hearing in 2021, the Tribunal heard the claimant's evidence, namely Mark Holden (C1), Helen Holden (C2's mother), Christopher Holden (C2), Syrus Baker (former GA colleague working for R1and R2). On the morning of day 5 (21 January 2021), Ms Mellor informed the Tribunal that Mark Holden had become unwell and had attended hospital. Because he was a party it was not possible to resume the hearing and following a short period to see whether he was well enough to attend, the Tribunal agreed to the remainder of the day being a non sitting day with the hearing resuming on day 6 (24 May 2021). Unfortunately, Mark Holden remained unwell and it was necessary to adjourn the hearing part heard with it being resumed in October 2022.

27) Following an initial reading day (24 October 2022) in order that the Tribunal could read its notes, the witness evidence and hearing bundles, the hearing resumed on 25 October 2022 with the respondents' calling their witnesses in the following order:

a) Mrs Corr (R1) (25 and 26 October 2022)

b) Mr Corr (R2) (27 October 2022)

c) Eddie Pede (successor manager to claimants) (27 October 2022)

d) Gary Edwards (son in law of the respondent) (27 October 2022)

e) Sapphron Turnage (former employee and occupant of the caravan 1) (27 October 2022)

f) John Evans (chef) (27 October 2022)

g) Richard Revell (customer) (27 October 2022)

h) Mrs Jean Revell (customer) 27 (October 2022)

i) Mike Carr (customer) (24 January 2023)

j) Mike Dyer (customer and training provider) (24 January 2023)

28) There was also a potential respondent witness who was the kitchen porter, Mr Patton. (sometimes incorrectly named Mr Pattinson). Unfortunately, he has since died, and no statement was taken from him during the proceedings.

29) The Tribunal was provided with two lever arch bundles which had been agreed by the parties and which contained the proceedings and case management orders, contractual documentation, emails, meeting notes, grievance letters, other documents with the bundle ran to 608 pages. In addition, the following additional documents were added to the bundle during the hearing and with agreement of the parties:

a) Pages 609 to 659 – which were disclosed by the respondents and consisted mainly with photographs of the hotel location.

b) Pages 660 to 672 – which were disclosed by the respondents and related to training documents.

c) Pages 673 to 675 - disclosed by the respondents and which contained the job application by Charlie Duffy.

d) Pages 676 to 679 - disclosed by the respondents and which consisted of documents related to Syrus Baker.

e) Pages C1 to C4 - During the second part of this hearing on 26 October 2022, we received additional disclosure from the claimant's solicitor Ms Whitehead which consisted of copies of Companies House documents relating to Mr and Mrs Dyer's companies.

30) Limited witness evidence was heard from Mr Baker during the first part of the final hearing, but on balance the Tribunal found that this evidence did not add significantly to matters which the Tribunal had to consider and where there was any conflict with the respondents' witness evidence, it was this latter evidence which was preferred.

Findings of fact

<u>The respondents and their business</u>

31) The respondents are the joint owners of The Strand Inn and The Screes located in Nether Wasdale, Cumbria. This is a small Lake District village with the two premises being located on either side of the main road. They form a complex of a hotel, bar and microbrewery on the Strand Inn side and restaurant and bar on The Screes Inn side which also has rooms for residents too.

32) Not surprisingly the respondents needed to rely upon migrant employees from outside of the nearby towns and villages and provided caravan accommodation on their site with one caravan located behind The Strand Inn and adjacent to the microbrewery, ('Caravan 1') and another located behind the main restaurant on the other side of the road, ('Caravan 2'). It is understood that employees who were allocated the caravans would typically agree to a small deduction of typically £5 per day from their wages to cover 'board and lodgings'.

33) Mr Andrew Bussey and Mrs Carole Bussey were married and in a heterosexual relationship. They were recruited by Mr and Mrs Corr to help manage the business on 4 May 2018. Mr Bussey had a premises licence which meant he could assume the role of licensee of the pub. Their application documents and statement of terms and conditions were included within the hearing bundle, (p350). We accept Mrs Corr's evidence that they were recruited as a couple acting as managers together at the respondents' business in Nether Wasdale.

The claimants

34) Mr Mark Holden (Mark H – claimant 1 to avoid confusion with Mr Christopher Holden – claimant 2) and Mr Christopher Holden (Chris H – claimant 2) are married and were in a same sex relationship at the time of their employment with the respondents. Mark Holden's former name before his marriage was Mark Charles.

35) Mark H was an RAF veteran. There was some dispute as to Mark H's CV and the reliability of evidence. Paragraph 9 of the grounds of complaint on page 15 of the bundle referred to having been awarded the Military Cross while serving in Afghanistan. The Tribunal takes judicial notice of this award for gallantry being a military decoration awarded to servicemen and servicewomen of the British and Commonwealth Armed Forces, "…*being awarded for gallantry during active operations against the enemy*", (webarchive.nationalarchives.gov.uk). It is often referred to the 'MC' and is the third level award for gallantry below the Victoria Cross ('VC')and Distinguished Service Order/Medal ('DSO'/'DSM'), respectively.

36) Mark H also referred to his name and titles/awards on his CV (pp123-4) in the heading using bold, large type text as ***'Dr Mark Charles MC MMath'***. The title of Dr clearly gave the impression of a person who had successfully completed a PhD as a postgraduate or was a medical doctor and MMath suggested the successful completion of Mathematics Masters postgraduate qualification with MC suggested an award of the Military Cross as described in the previous paragraph. Ms Hillon questioned Mark H following the completion of his cross examination about his CV, the title of 'Doctor/Dr' and what the initials 'MC' stood for. It was important that the Tribunal heard evidence concerning the provenance of these initials as they suggested titles and awards and where produced on documents which would be shared with third parties. Mark H said that he could not explain why 'MC' was there and that the title of 'Dr' was because he had used a pro forma from the internet. He said that the use of 'MC' was a mistake and he confirmed that he had not been awarded an MC.

37) It was also noted that Mark H's CV did not include a section relating to his career history which included the period of 2001 until 2016, which would have included the period when the service injury to which he had referred to, would have been sustained. He said that this actually arose from a typographical error and went on to mention having dyslexia since the age of 9. However, the Tribunal noted that there was no mention of dyslexia either in relation to a complaint of disability discrimination or in relation to adjustments required during the proceedings as can be indicated within the claim form. The Tribunal had not been made aware of how such an impairment might affect proof reading or processing of documents.

38) On balance, the Tribunal was left to conclude that the replies given by Mark H lacked credibility and the inclusion of prestigious titles and decoration were on balance of probabilities deliberate acts aimed to increase his prestige with the person reading the document. This unfortunately, when combined with other evidence before us in these proceedings left us feeling that Mark H was not a credible witness overall and his evidence lacked reliability in relation to a number of matters considered. However, it is accepted that he gained vocational qualifications while serving in the RAF relating to hospitality and prior to his employment with the respondents, he said he was working *'helping fledgling businesses as a management consultant'.*

39) Mark H described his disability as being *'permanent damage to my bowel and spine, and severe pain in my left leg, with significantly reduced mobility',* which he says arose from *'serious multiple shrapnel and bullet injuries to my lower abdomen and left leg'* which he said were sustained in 2007 while serving with the RAF in Afghanistan. He said he is registered as a disabled person and receives a disability war pension. He produced a lengthy disability impact statement during the proceedings which described a number of impairments upon his day to day activities including digestive issues which he attributed to IBS.

40) We understand that the respondents accepted that Mark H was disabled within the meaning section 6 Equality Act 2010 but disputed actual knowledge at the time of the alleged incidents. Both Mr Corr and Mrs Corr accepted that Mark H told them at the interview on 8 June 2018 of having been shot in the stomach while in Afghanistan, but he had reassured them that he was nonetheless able to work. Mr Mark H had said that he had a slight limp when in pain, but neither of the respondents when asked in evidence, could recall seeing any such limp. Additionally, they said they were not aware Mark H had difficulty standing for long periods of time and denied they discussed with him or observed a 'blue disability badge' on the claimants' car. We should add that Mrs Corr convincingly explained to us that she knew what a blue badge looked like as she described one which was affixed to her mother's car windscreen. Mr and Mrs Corr also denied knowledge of Mark H informing them that he was unable to eat spicy food because of an impairment sustained from the abdominal injuries. It was clear however, that they were aware that Mark H had informed them of an injury to his abdomen.

41) There was an undated note of a management meeting from 8 July 2018 in which Mark H says was taken from a covert audio recording, (p574). The transcript is disputed by the respondents, but we accepted that it broadly covered the discussions which took place. However, this is on the basis that Mark H was aware that the meeting was being recorded and could have tailored answers accordingly, whereas the Corrs and the Busseys who formed the management team were ignorant of this fact. On pages 580 & 581, a discussion was recorded concerning the health issues of staff, with the note recording a short description by Mark H concerning his health. He simply states he has *'a sixty year old spine all due to the Air Force'.* The Tribunal noted that this was all that he discussed at the meeting in relation to his own health issues

42) On balance of probabilities, we accepted that Mark H's stomach injury or some IBS arising from that injury made it difficult for him to eat spicy food and in addition, he may have had difficulty standing as a result of the injury. However, we found that there was insufficient evidence for us [to be] to accept that on balance of probabilities he alerted the respondents to specific impairments which could amount to a disability so that they were provided with knowledge of these problems at the beginning of his short period of employment with the respondents. Moreover, there was insufficient visible evidence available to the respondents where they quite reasonably could have been expected to become aware of a significant impairment sufficient to amount to a disability while Mr Mark H was working for them.

43) We did note that Mr and Mrs Corr became aware of a digestive problem when Mark H reacted badly to spicy food being given to him, but that was all. The health issues which arose following the spicy food incident and following a fall were not sufficient to give notice of a disability to Mr and Mrs Corr as they appeared to relate to acute incidents rather than a chronic condition. We note that the respondents accepted disability based upon the available medical evidence during the proceedings (which were not included in the bundle) and it was not disputed Mark H had a 'war disability'. However, what is important for our deliberation of the disability discrimination complaints, is that the respondents did not have knowledge of a disability at the material time when the alleged incidents took place.

44) Christopher H [CV] had previously worked in retail for the CoOp in Rainford, Lancashire and had also worked in other hospitality establishments.

45) The claimants prior to working for the respondents lived together in Rainford.

<u>The recruitment of the claimants by the respondents</u>

46) The claimants were looking for alternative employment in 2018 and became aware that the respondents were looking to recruit a management couple and that this had been advertised online using the 'Gumtree' platform. This was the job that the Busseys were recruited to and had already started when the claimants expressed an interest on 7 June 2018. Nonetheless, a telephone

interview took place between Mrs Corr and Charles H. she explained that the management couple role had already been filled, but as Sapphron Turnage (a General Assistant ('GA')) was soon to leave her caravan, she asked whether the claimants would be interested as being taken as GA's with a caravan being provided as accommodation.

47) Both claimants were invited for an interview which took place on 8 June 2018 at the respondents' premises and with both Mr and Mrs Corr being present. We accept it was quite an informal interview and the primary purpose was to meet the claimants in person which is not surprising given the nature of the role being offered. There was some dispute over the interview notes attributed to each respondent, but we accepted that they were produced as their handwritten entries on the standard Peninsula forms which was a company whose employment services they used. The notes appeared to be natural in terms of how they were written and produced individually. Copies were included in the bundle and although they were most likely made following the interview, they were effectively contemporaneous notes (368-9 and 373-4). Both notes described them as being offered roles as general assistants.

48) The claimants were shown the proposed accommodation which was the caravan 1 at the back of the Strands and the Tribunal was shown an aerial photograph of its location, (501).

49) They were introduced to Mr and Mrs Bussey by Mrs Corr and she gave credible evidence that she did not introduce them as 'the gay couple' but did say that they were engaged to be married the next year. We did not accept that they were introduced as another management couple to the Busseys but as simply two new members of staff. We also accept they were offered employment on 8 June 2018 but did not make a decision to accept them until 10 June 2018 when a phone call was made by Mark H accepting the offer on behalf of both claimants.

50) There was some dispute as to what job was offered to the claimants by the respondents. The respondent relies upon the contracts of employment (pp370-1 and 375-376), which they say were offered to both claimants and which described them as GAs. They are blank and not accepted by the claimants. Mrs Corr said the documents formed part of a pack of employment information which was given to the claimants when they arrived on 28 June 2018 and that she never received the signed documents back. Mark H relied upon a single page from a statement of main terms describing him as *'Exective Manager' (sic), (p89).* We noted that this was not a complete document.

51) There was also reference made to a document described as an 'application form' (pp90-95) and naming Mr Mark H as applying for *'Ex-Management'.* Mrs Corr asserted that she had not seen these documents until they had been disclosed during the proceedings by the claimants. This application form had used a combination of handwriting including a signature attributed to the Corrs dated 15 June 2018 with an annotation of a start date of 15 June 2018. The Tribunal noted that the footer of each page described the document as being printed on 20 June 2018. Mrs Corr asserted that it was a forgery. While accepting that the 'start date' annotation was her signature, she said that the

accompanying date written as '15June 2018' was not her writing and the box where both signatures had been inserted would only be completed if immigration was an issue. This would not have been case with claimants who were migrating from Merseyside/West Lancashire to Cumbria.

52) Syrus Baker, who was a witness, called by the claimants was asked about the names of the managers at the respondents' premises during the summer of 2018. He described them as being *'Caz and Andy, Mark Charles and Chris, (after Busseys had left)'.* This would make sense as the Busseys left their employment on 19 July 2018. Mrs Corr had previously said to the claimants that management roles had gone, and it is unlikely that the respondents would have two management couples at what was a relatively small site at the same time.

53) The Tribunal finds that the claimants were initially taken on as general assistants and p575 of the transcript of the meeting produced by the claimants confirms that management roles were taken and if the Corrs were away from the premises, the claimants should go to the Busseys for support. Mark H confirmed on a number of occasions during that meeting that never held out as being management, p594. The application form and the extract of contract of employment relied upon by Mark H were not genuine documents and we must conclude that the claimants were offered GA roles beginning on or around 28 June 2018. This involved hours of work of 40 hours per week and their pay was £400 per week each.

State of caravan and ongoing issues

54) The claimants arrived at the respondents' premises on 23 June 2018. The caravan was situated outside the Strand Hotel on 8 June 2018 when they attended for an interview, and it was offered to them then as accommodation if they accepted the job. The claimants said that they had expected it to be cleaned before the moved in when arriving to start work. Mark H described the caravan as found on 23 June 2018 as being in *'…a disgusting state'.* He described *'…a thick carpet of long dog hairs'* and asserted that the bathroom appeared not have been cleaned. He also said there were broke cupboard doors, bare wires, leaky roof and windows.

55) The Tribunal was taken to a number of photographs as part of the documentary evidence and which appeared to have been taken at the time of the claimants' arrival by the claimants. We also heard evidence from Christopher H, his mother and Ms Turnage who had left the caravan a few weeks earlier. Christopher H and his mother broadly repeated what Mark H said

56) Ms Turnage who had actually lived in the caravan while working for the respondents as a GA until 1 June 2018 felt the photographs simply revealed an old caravan, which she accepted it was. She noted that the photographs made *'it look worse than it is'* and that there had been some adjustments such as removing a socket for an electric radiator as an oil heater was supplied and that it was difficult to clean showers, but that she had removed hair before she

left. There was no mould she said, arguing that the photographs simply showed sealant which had become discoloured. She mentioned painting the interior herself while living in the caravan, hoovering regularly and using throws to stop her dog's hair getting everywhere. She conceded there was an occasional drip experienced from the ceiling in heavy rain. We accepted that she did ask the Corrs for assistance with the caravan which she received when she asked for it, as this was unchallenged. Indeed, she explained how she needed additional space for a bigger bed and a platform was built by the Corrs to enable this.

57) The Tribunal felt that having heard the available evidence and looked at what were poor quality photographs, the caravan was clearly old. However, we prefer the respondents' and Ms Turnage's evidence (who had no reason to support the respondents), that the caravan was perfectly habitable, and the previous occupant Ms Turnage had lived there happily for several years. The respondents were willing to provide support to improve and repair the caravan if necessary (they put up shelves for the claimants for example). Had it been so bad as alleged, the claimants could have reasonably made enquiries about alternative accommodation while the caravan was cleaned and/or repaired, but we heard no evidence that they did such a thing.

58) We accepted that the caravan was located about 10m from a waste water treatment plant which was used by the respondents in a sunken pit. The claimants argued that there was an intrusive smell or odour from the plant. Ms Turnage did say that when the plant was constructed while she was living in the caravan, there was a smell present, but she recalled a fault being found and there were no more smells after that. Mr Corr answered questions about the agriculture in the nearby environs and we accept his evidence that there was a mixture of cows and sheep nearby and that slurry would be spread as a fertiliser. This did produce an odour and how strong that odour was at the respondents' premises depended upon the direction of the wind.

59) On balance the Tribunal accepted that while the treatment plant would have been visible to the claimants from the garden surrounding their caravan, it was likely that any odours which were present related to agricultural emissions rather than emissions from the plant itself. The plant was regularly inspected and because it needed to be effectively treated before being discharged, it was likely that the smells encountered were the usual smells which could be encountered in a rural setting.

60) Following the ending of their employment, the claimants wrote to Ms Turnage in September 2018 asking her to provide a letter *'about how long they made you live in the caravan the state of the caravan',* [p333f]. Ms Turnage replied later in September 2018 [p333h] saying *'I lived quite happily in the caravan for 3 years'.* She did not provide anything particularly damning about the accommodation, rather that she was glad to leave her job because of other issues that she had with the respondents.

<u>The Busseys departure and a management role for the first claimant</u>

61) Mr and Mrs Bussey resigned from their management role on or around 19 July 2018. The respondents argued that their resignation was connected with difficulties in working with the claimants. There had been a clash on 8 July 2018 which gave rise to the meeting which was the meeting covertly recorded by Mark H. It appeared that the reason behind the meeting was to clear the air between the Busseys and the claimants, but whatever the reason for their departure, the Bussey's resignation left the respondents without management support.

62) Mark H says he was appointed as the Executive Manager and Chris H was appointed as an Assistant Manager. Mr and Mrs Corr said that Mark H was simply appointed as manager with Chris H remaining as a GA because he had insufficient experience to assume a management role at that stage. On balance, the Tribunal did accept that Mark H *'stepped into the shoes'* of the Busseys as a manager, Chris H continued in a GA role as before.

63) An issue which did arise at this time related to the Bussey's pay which Mark H said was more than Chris' and his and that Mr Corr had made reference to the former's child caring responsibilities which he believed had homophobic overtones. This was resisted by both Corrs and while the claimants noted that the final pay schedule provided by the respondents which still included the Busseys as employees, (p167) revealed that the Busseys had received £640 each compared with claimants £400 each, Mrs Corr said that this was due to accrued annual leave payable to the Busseys upon termination of employment. We noted that earlier pay schedules evidenced that the Busseys and the claimants were paid exactly the same at £400 each, per week and despite the difference in job titles, the Busseys and the Holdens were paid the same per person each week.

Hospitalisation of Mark H and 'the food incident'

64) Mark H said that from the first day of his employment on 24 June 2023, he made it clear to both respondents and all staff working at the hotel and bar that he could not eat any spicy food at all and that it would make him ill if he did so. He made particular reference in his evidence to telling all of the Chefs and Kitchen Staff including John Evans and Derek Patton. Mr Evans disputed that he was informed of this food intolerance.

65) On Monday 16 July 2018, Mark H said that he ordered a sandwich from the bar. We accepted Mrs Corr's evidence that while working their shifts, staff could order anything from the menu when they were having their lunch or equivalent meal break, apart from high value items such as steak. Mark H said that the sandwich tasted odd, and he noted that a large amount of paprika had been added by Derek Patton deliberately. Mark H said Mr Patton was homophobic and had added this spice maliciously.

66) The Tribunal noted Mr Patton fulfilled a kitchen porter role which would have included bringing the food out to Mark H. Mr Patton has sadly died since this

alleged incident and could not give evidence to rebut this allegation. However, the chef who would have been working at that time was John Evans and his evidence was that Mark H had actually ordered chilli con carne. Not surprisingly this meal option would have contained some spices given the nature of dish. Mr Evans said he was not aware at the time of the incident that Mark H had an intolerance to spices and did not see any difficulty with fulfilling this order.

67) Mr Evans said that he was not homophobic, nor had he witnessed any homophobic behaviour from Mr Patton or anyone else with whom he worked.

68) On Tuesday 17 July 2018, Mark H described himself as being *'doubled up in pain and had to be rushed into Hospital'.* He was issued with painkillers and diagnosed with a small bleed in the bowel. Mark H had a day's absence from work on 18 July 2018, for which he was paid his usual day's wages. He then attended hospital once more on 21 July 2018 which Mark H attributed to a bleed on the bowel, although the Tribunal did not see any medical evidence supporting these hospital attendances. This evidence was not challenged, and the Tribunal accept on balance that Mark H suffered an adverse reaction to something which affected his digestive system. It is not clear that the cause of the first hospital attendance was the meal he had eaten the previous day (or indeed the second hospital attendance) and whether this delayed response was caused by eating spicy food.

69) Based upon the issues that the Tribunal had with Mark H's evidence as described above, we did wonder if despite being aware of his difficulties, Mark H may have remained partial to the taste of spicy food and fancied 'taking a chance' so he could enjoy this food. Moreover, the Tribunal felt that whatever the reasons were behind him being served with chilli, Mark H would have been able to taste spice being present as he took each bite. Had he experienced something more potent than he expected, it is reasonable to conclude that he would have spat out the food and/or not eaten any more of the meal in question. He had to take responsibility for what food passed his lips after all.

70) However, in conclusion and on balance of probabilities, the Tribunal felt that there was insufficient evidence to persuade us that Mark H was deliberately given a meal by the kitchen staff which contained hidden spices which they knew would have caused him some sort of discomfort. We are unable to accept that they knew of this food intolerance before the first hospital attendance took place and that they had deliberately provided spicy food because of homophobic views or even a simple dislike of Mark H. His evidence was not sufficiently convincing and there was insufficient evidence in support to persuade us that the incident could have happened as alleged.

<u>Quiz sheets</u>

71) The respondents ran a weekly quiz in their bar, and this required a quiz sheet to be prepared by a member of staff. Ms Turnage explained that in the past, she had prepared the questions when she worked for the respondents and we

accept her evidence that she would prepare them as part of her worked time, rather than as being separately for this task.

72) When Ms Turnage left the respondent's employment, it is understood that Mr or Mrs Corr may have prepared a few quiz sheets, before a replacement member of staff was able to take on this role. Mark H agreed to assume this role and it appeared to the Tribunal that he was enthusiastic about not only preparing the questions, but also being the compere asking the questions in the bar. In the transcript of Mark H's covert recording of the management meeting in July 2018 (602/3), he talks about his preparations for the forthcoming quiz. He made specific reference to a footer at the end of the quiz sheet which he had prepared stating *'The quiz master has the last say, even though he is Scouse and gay'.* He went on to say that *'Lesley and me came up with it. It is just a bit of fun for the bottom'* and later *'I don't care, I take the mickey out of my own'.*

73) Mark H argued that he was pressurised into putting this comment at the foot of his quiz sheets by the respondents. The Tribunal does not accept that this was the case and Mr Corr gave convincing evidence that he told Mark H it was inappropriate to use these words. However, Mark H told him that he disagreed because it related to his identity and '*things were more tolerant than they used to be'*. Mr Corr said that with hindsight, he such have stopped these words being used and gave a very clear understanding of what was meant by homophobia to the Tribunal and explained his position of acceptance concerning people's sexual orientation. The Tribunal was not surprised by this response given that the bar and restaurant would have received a diverse clientele of walkers and other visitors to the Lake District.

74) This allegation appeared on balance to arise from Mark H asserting his identity and he wanted to establish himself as the quizmaster with his own unique character. While it is debateable as to whether or not it is appropriate for the 'owner' of theses characteristics to make these statements, it was his decision, it related to him, and we did not hear sufficient evidence of conversations or management instruction which suggested that there may be unlawful discrimination by the respondents. Indeed, we prefer and accept their evidence that they were concerned about Mark H using these comments, even if he himself felt it appropriate.

<u>Hygiene issues and beer towel and sweating</u>

75) Mark H alleged that on 4 July 2018, Mrs Corr told him that he was *'disgusting'* when he was seen to be perspiring. It was very hot that day and he believed that these words were not used in relation to other employees working for the respondents. He said that he wiped himself using a towel which he brought from his caravan, (p19 of his bundle and paragraph 86 of his statement). He said that Mr Evans complained to Mrs Corr about this incident, and it was Mark H's belief that this treatment was motivated by him being gay.

76) Mrs Corr disputed that the incident happened in this way and gave evidence that a customer called Mick Dyer had actually complained to her about Mark H perspiring and using a pot towel (which the Tribunal understood to be a bar or kitchen towel used for carrying and wiping of food related equipment such as glasses and plates), to wipe his face. She says that she spoke with him in private about the matter and asked him in private to wipe himself away from the sight of guests using available towels and to place them in the laundry afterwards, (paragraph 36 of her statement). Mr Dyer referred to this matter in his witness evidence and confirmed Mrs Corr's version of events in her statement and expressed the view that he thought Mark H's behaviour in this instance was disgusting, rather than the person himself.

77) During cross examination Mark H said he used his own tea towel to wipe his forehead but believed he was away from customers. However, he accepted that Mrs Corr raised the complaint with him in the kitchen and the Tribunal accepts a discussion took place in private area away from customers. Mr Dyer's evidence in his witness statement concerning this matter was not challenged in cross examination and as it broadly agreed with the evidence given by Mrs Corr, we find that she dealt with the matter reasonably. It dealt with appropriate issues of hygiene and was not motivated by Mark H being gay or him perspiring because of symptoms arising from his disability. It was *where*, *when* and *how* (our emphasis) he wiped perspiration which was the real issue here. Mark H accepted that he did know whether other people had been spoken to about these matters given that he had not witnessed any such incidents.

78) If the word *'disgusting'* was used by Mrs Corr (which she denies), we find that she would have simply quoted what had been said to her by Mr Dyer and which he referenced in his witness statement. On balance of probabilities, we prefer Mrs Corr's and Mr Dyer's version of events and do not accept that Mark H was treated any differently by reason of his sexual orientation or indeed his disability.

<u>Alleged abuse from staff and guests</u>

79) The claimants alleged that they were subjected to forms of homophobic abuse in their list of issues which included the following allegations:

a) On various unspecified dates, Messrs Patton and Evans using derogatory terms such as *'bum boys', 'queers'* and expressly stated that they hated gays, found their kissing/touching disgusting and told customers not to eat from a bowl of crisps because Christopher H had already had his hand in the bowl.
b) That on 14 July 2018, Mrs Corr told the claimants not to kiss when saying goodbye.
c) That on 28 July 2018, Gary Edwards asked the claimant about experimenting with sexual positions in lurid detail.
d) That on 14 August 2018, Gary Edwards encouraged other employees to call Christopher H, homophobic names.

80) In summary, the claimants were arguing that an environment existed at the respondents' premises which [and] tolerated and perhaps even encouraged homophobic abuse against them from both employees and customers.

81) Mark H said that he did not tell everyone about his sexuality although he had informed the respondents. He said that some staff accepted Chris and him, but not everyone did. He said he could not recall the dates of the alleged incidents involving Messrs Patton and Evans and was unable provide greater details concerning these allegations. Reference was made to a letter dated 9 July 2018 (p178), which Mark H said he gave to the respondents by hand, and which complained about the behaviour of the staff. Although the respondents denied receiving this letter at the time, the Tribunal noted that while reference was made to the staff not doing what Mark H told them and referring to him as a *'hired help',* no reference was made to specific homophobic abuse. If these things had been happening and Mark H said that this abuse began before he started his first shift with the respondents, the Tribunal would have expected him to raise these issues of abuse as part of his complaint. We did not hear a satisfactory answer as to why a complaint the abusive comments were not so raised at that time by either of the two claimants.

82) The 'fourth' grievance which was given by Mark H to the respondents on 1 August 2018 (pp182 to 184) (although the respondents denied receiving this letter at this time), made reference to *'…gay jokes and insults towards me and Christopher'.* On 4 August 2018, there was a further allegation that Mr Patton kicked Mark Charles' stool, and this resulted in a meeting with the claimants, the respondents and Messrs Patton and Evans. The purpose of the meeting was recorded in a handwritten note as being *'To discuss Mark's issue with John and Derek',* (p.193). The meeting appeared to be short, and it was agreed that it was done by accident and the meeting apparently resolved with everyone shaking hands. It did, however, provide the claimants with an opportunity to raise the concerns that they say they had regarding homophobic abuse, and it is surprising that they were not recorded as doing so. They did not dispute this veracity of this note during their evidence and did not argue that more issues were discussed, including homophobic abuse.

83) Chris H also gave evidence regarding these matters. He was also vague and by his own admission had trouble recalling the dates and details of the alleged incidents. There was a general absence of specific recollections, nor was there any evidence of challenge regarding the alleged comments contained the list of allegations by either claimant. This was equally the case, whether it related to a challenge against the person accused or more generally in terms of training or management decisions once Mark H became manager following the Busseys leaving the respondent's employment.

84) Mrs Corr denied the allegations made and disputed that the grievance letters had been sent at the time they were dated. This was repeated by Mr Corr. She disputed that she ever told the claimants to stop kissing and had no issues with them cuddling. She stated that she was actually invited to the claimants' wedding and the Tribunal understands that this was the case.

85) Evidence from the other respondent witnesses, included Mr Pede, Mr Edwards, Ms Turnage, Mr Evans, Mr Revell and Mr Dyer. The Tribunal found that on balance, they all gave consistent oral evidence rebutting the allegations of homophobic abuse and their evidence was credible that the allegations made by the claimants relating to this form of discrimination took place as alleged or at all.

86) Interestingly, Mr Edwards did concede when asked whether he had made homophobic comments, he replied *'…when younger, I may have done….'* but he said that now he had gay friends including a couple he had met when on holiday. Mr Evans when asked about homophobic language, replied that he had made them in the past, but *'…not since school, not in adult life'.* The candour regarding their past and the willingness to acknowledge inappropriate use of language then, seemed to be credible to the Tribunal and did not reflect the generalised allegations made by the claimants.

87) Ultimately, the Tribunal is unable to accept that these incidents happened as alleged by the claimants and that they were subject to a culture of homophobic abuse from either the respondents, their co-workers or customers while working at the Strands Hotel and Screes Inn.

<u>Dismissal of the second claimant and the manner of C1's departure and the attitude of claimants on departure and behaviour of respondents</u>

88) Mrs Corr said that on 14 August 2018 at around 10pm, Chris H walked into the bar in an angry mood and asked the customers drinking there to leave immediately as it was being closed. This was despite the closing time for the bar being 11pm. She was not in the bar herself at the time of the incident but was informed by customers the next day during breakfast, who complained about the incident and also Chris H's attitude and demeanour. Chris H denied that he behaved as alleged and that he was in a bad mood, describing himself as *'…remaining professional throughout'.* He gave limited evidence concerning what he recalled as happening that evening, but disputed in cross examination that he had said to customers that he was fed up of being Mark H's *'lackey'.* The Tribunal noted that the customers who Mrs Corr referred to as raising the complaints were hotel residents and not regular drinkers from the locality, who might have a close relationship with the respondents.

89) It was difficult to know exactly what happened that evening, as Chris H gave limited evidence denying the allegations and Mrs Corr giving evidence which was based upon guests raising complaints with her at breakfast the next day. Having considered the evidence before us, the Tribunal found that Mrs Corr gave credible evidence of an incident which would have caused her concern regarding the conduct of Chris H. Chris H was unable to provide a great deal of evidence concerning a context behind the incident, instead relying upon a simple denial.

90) Understandably, Mrs Corr was left with complaints, which if correct, would support a decision that there was misconduct on the part of Chris H which

might have justified his dismissal. Unfortunately, as discussed below, she did not proceed to investigate and adopt any form of disciplinary process.

91) When questioned by Ms Hillon about what led to her decision to dismiss the second claimant, Mrs Corr said that both claimants had started work professionally, but over time, Chris H *wandered around a lot, arguing with Mark H a lot…being rude to customers and balatantly looking at customers and walking away'.* She said that the incident on 14 August when he closed the bar early without any reason, was the last straw and she decided that Chris H must be dismissed. As a consequence, she appeared to assume the complaint was correct based upon her belief that the behaviour complained of, was something which Chris H had already done on other occasions.

92) Mrs Corr decided she could take immediate action regarding the alleged behaviour. She went over to the claimants' caravan during 15 August 2018 and told Chris H that *'it wasn't working out'* and that his employment was terminated. The claimants said that she arrived around midday. She confirmed that she made no decision regarding Mark H's employment as she had no issues with his work. The Tribunal noted that this effectively amounted to a summary dismissal of the Christopher H and with no investigation taking place.

93) Mrs Corr acknowledged that by dismissing Christopher H, this did place Mark H in a difficult position given that they had been employed as a couple and at the same time. She accepted that there was little or no alternative work available for Christopher H close to the Strands Hotel and Screes Inn.

94) Later that day at 16:40, Mark H sent an email to Mr and Mrs Corr and it is worth repeating its contents in this judgment, (p328):

'Dear Lesley and Mark

May I first Thank You both from the bottom of my heart for the opportunity to work at your beautiful home and business. I can honestly say I have never worked for two nicest people in my life. I'm sorry I fell ill and let you both down as that was never my intention.

All I ever wanted to do is help where ever I could and fit in here. I'm genuinely upset as I feel so awful. I would like to stay as friends when we leave as I would like to be able to come and visit and stay as guests as I genuinely love here and care for your family and friends.

I'm only going to leave the bed and sky cable as I have fitted the joint cable and don't want to take it out as it works perfect and would be great for people that move into the van.

The bed cost £200 and sky cable was just £10 as it has 35 meters on it.

I do however have a kettle and toaster that is brand new if you could use them as we will not need them. If not it is not a problem as we bought them and I'm just asking in case you can use them.

I hope you understand how I am feeling and know that genuinely I was here with only good intentions and really do care. Your both more than welcome to come over to the van, I just don't feel right coming into the pub right now as its not right for your staff or myself.

We will endeavour to move out tomorrow evening at the latest Friday morning.

Sorry for letting you both down.'

The Tribunal did not hear any convincing evidence to the contrary and concluded that it was his decision not to go to pub. While people sometimes can be disingenuous as to their reasons for not doing something. The context of the email does not support his allegation that he was told that he could not go to the pub by the respondents.

95) This email was accepted by the parties as being Mark H's letter of resignation and its contents were not disputed. A further email was sent by Mrs Corr the next day (16 August 2018) at 8:38 in reply and which said the following, (p329):

'Hi Mark and Chris

I am so gutted too about it not working out.

I really hope this will give you an insight to what you both really want to do next.

I have Gwen coming in today to do the wages please tell me everything that I need to pay you both and For the bed, toaster, cable and kettle etc forward what invoices you have and total how much I need to pay you which I will Pay you cash for.

Also do you need me to bring some boxes over? Or anything you need please just ask.

And yes you are two lovely people and you can come and stay in the future with pleasure xxxxxx

Lesley ☹ xxxxxxxxxxxxxxxxx'

It is difficult to conclude that at this point, there was anything but a genuine sense of sadness between both the claimants and the respondents as to how things turned out.

96) Very much with regret and generous in tone. Mark H replied at 10:28 stating the following, (p329):

'Morning Lesley

Chris is owed now for 12 days pay and owed for Just 7 days pay. My only concern is putting all that through would sting us with more tax for Chris's so could you put two extra days that Chris worked onto mine. If it's ok I understand.

The bed was £200
The kettle and toaster was £39.99
The wire was just £10

A few boxes would be appreciated please thank You so much I'll email invoice for kettle and price I had to pay for bed is on my fb chat with the guy which I'll screen shot and send over Hun.

Thank you so much.

Mr Mark Charles
Royal Air Force Veteran'

97) He then sent copies of the two invoices referred to in the previous email at 10:33. Mrs Corr replied at 10:55 saying that the invoices were fine and that nothing else was needed, (p330). The final email in this exchange was sent by Mark H at 14:11 and he said the following, (p330):

'Lesley,

This is just from mark I'm so sorry Way things turned out. If I had known the problems I could have sorted it.

I just hope you both know how much I do care for you, mark and all the family and your homes. I so never wanted to ever leave. You have both built a great place and I hope to you all soon.

Love always.
Mr Mark Charles
Royal Air Force Veteran'

98) The Tribunal felt it was important to record this exchange of emails over a 24 hour period between the Mark H and Mrs Corr because they were not the subject of the challenge by the parties. Mr O'Carroll argued in final submissions that the emails should not be read as plainly as that. He submitted that there was the email sent by Mark H were actually *'sent as placatory messages to facilitate passage'.* The Tribunal does not accept that this was the case and neither claimant gave any evidence which suggested that the messages did not honestly express Mark H's feelings about the decision to resign. We accept that the decision to resign was understandable given the dismissal of Christopher H and that this created practical implications for his own job. However, we accepted Mrs Corr's evidence that she did not have any intention of dismissing or forcing Mark H to resign, and the decision was clearly his alone.

99) Mark H suggested in paragraph 187 of his statement that following Christopher H's termination of employment and his resignation that staff lit a bonfire close to their caravan which they found intimidating and they said members of staff were gathered around it and making comments about how happy they were that they *'…had gotten rid of the gays'.* This evidence depicted a rather ghoulish and horrific scene, which if true would represent shocking behaviour on the part the respondents' employees. However, these allegations did not form part of the list of issues before the Tribunal and for us to accept that this event happened as alleged, we would need to hear something more than this simple statement, especially given our concerns regarding Mark H's credibility as a witness and discussed below.

100) Mark H did not only communicate with Mrs Corr following his resignations but also sent handwritten letters to her grandson Kai who had worked casually in the bar and restaurant and also to Gary Edwards and his partner Sammy. These letters were heartfelt and expressed the hope that they could remain in touch. Not only did these letters reveal a sense of sadness in resigning, it also revealed and absence of grievance with either the respondents or other at the Strands Hotel and Screes Inn. Indeed, on 10 September 2018, Mark H exchanged text messages (with Sammy which included the following question (p313):

'Would your mum employ me back, as it was said it was his [Chris H] fault why we got sacked?'

The Tribunal felt that this message sent a month following Mark H's dismissal suggested that he had no ongoing grievances with the respondents and would happily return to work with them. There were also documents of an exchange of messages between Mark H and Ms Turnage in the previous weeks which suggested that the claimants were taking the respondents to court, (p333B). It was not clear whether there was a change of heart concerning the respondents by Mark H, was being manipulative or he was simply in a state of confusion. Whatever the reason, these contradictory messages sent over the period of a month support the Tribunal's concern that Mark H's evidence lacked credibility and reliability.

Protected disclosures

101) The claimant relies upon a number of protected disclosures which they believe contributed or caused some of the treatment that they complain of. Although the protected disclosures in relation to the victimisation complaint were not finalised by the parties during the hearings, the Tribunal has taken account of those which may relate to the Equality Act 2010 as well and as appropriate.

The claimants submitted a formal complaint on 23 June 2018 about the Health and Safety issues posed by the caravan.

102) The claimants moved into the caravan on 23 June 2018 and Mark H argued that the respondents had failed to clean and fix the caravan in a way which had been agreed when they initially visited the respondents' premises for their interview on 8 June 2018. Photographs were taken of the caravan, but the Tribunal was not provided with any evidence that a formal complaint was made to the respondents either in writing or verbally. The Tribunal does not accept that a disclosure was made as alleged.

The first claimant raised complaints on behalf of himself and the second claimant about continuing harassment from Derreck Patterson and John Evans.

103) Mark H alleged in paragraph 76 of his statement that he had daily meetings with Mrs Corr regarding Mr Patton and Mr Evans concerning their *'continuing misconduct'* between 25 June and 30 June 2018. Mrs Corr says that neither claimant raised these complaints with her. Taking into account our previous comments concerning Mark H's credibility as a witness, we find ourselves faced with one witness version of events against another and the only document which supports this allegation is the letter dated 30 June 2018 which refers to the conduct of Patton and Evans and 4 meetings about the matter, (p172).

104) Throughout this case, both Mr and Mrs Corr denied receiving this document and other letters relating to grievances, raised by the claimants. They also disputed that the meetings had taken place as alleged and verbal complaints were made too.

105) The Tribunal were unhappy with the letter as it was letter headed with *Mark Charles Manager of Strands Brewery* and used the address as the Strands Brewery B&B. It did not reflect the job which Mark H was appointed to and was not a job title referred to in any other document before the Tribunal. We must therefore conclude that this letter was not created and given to the respondents on or around 30 June 2018. We therefore prefer Mrs Corr's evidence that this letter was not provided to her and that the complaints referred to, were not made verbally to her or her husband.

On Saturday 30 June 2018, the first claimant handed the second respondent a written complaint about her failure to comply with her Health and Safety obligations.

106) This is the first allegation made by the claimants which is supported by a letter, and which was included in the hearing bundle and mentioned in the previous paragraph, (p.172). It referred to 3 issues being problems relating to the caravan, inappropriate comments made by Messrs Evans and Patton and that they had been appointed as a management couple and not glorified bar staff and waiting on staff.

107) For the reasons given in the previous section, we are not satisfied that this letter was provided to the respondents and accordingly, we are unable to conclude that this disclosure was made as alleged.

The first claimant advised the second respondent that she was failing to comply with the Health and Safety at Work Act 1974 ('HASWA') including ensuring employees washed their hands after smoking; covered their arms when waiting on tables; untrained kitchen staff obtained the basic food hygiene certificates.

108) This complaint appeared to refer to a conversation rather than a specific document provided by Mark H to Mrs Corr. The transcript of the covert recording of the management meeting which allegedly took place after 8 July 2018 following Mark H's altercation with the Busseys while the respondents were on holiday. Mrs Corr did not accept that this was a complete record of what was said during the meeting. On p.599 of the transcript Mark H did say that members of staff who smoked, would return from their break without washing their hands. This was acknowledged by the others present in the meeting, but the record suggests that the discussion moved onto the question of smokers having too many breaks rather than issues specifically relating to hygiene.

109) However, the Tribunal were not taken to any other extracts of this document which supported the other allegations made and we must conclude that the smoking issue was the sole allegation raised by Mark H.

The first claimant raised concerns with the second respondent that she was paying staff cash in hand, and these employees were also in receipt of benefits. He raised concerns that she was unlawfully retaining customer's credit card details, and that these were retained for years, and that receipts for monies taken from the till were either not provided or retained, and there were consistent stock taking failures.

110) Tribunal did not hear any evidence supporting this allegation during the hearing and Mrs Corr's evidence at paragraph 38 of her statement that they paid their employees by BACS bank transfer, apart from causal teenage staff under 18. She explained convincingly in our view, that these teenage staff could often be unreliable, not turn up for a shift and if they knew they would receive cash at the end of each shift, this was incentive for them to attend. We accepted on balance, her evidence that Mark H never ever raised this as a concern with her.

The first claimant by way of letter dated 9 July 2019, raised complaints about the continued misconduct of John Evans and Derreck Patton.

111) A second letter purported to have been sent by Mark H on 9 July 2018 and using the same letterhead as that dated 30 June 2018 was included in the hearing bundle at p.178. It primarily related to an ongoing issue concerning

Mark H's perception that Mr Bussey was speaking to him abruptly. Mention was made of ongoing conduct relating to Messrs Patton and Evans, but no specific reference was made concerning homophobic comments and instead it appeared to relate to these men not accepted Mark H as a manager.

112) As with the previous letter dated 30 June 2018, the Tribunal's main difficulty with this document is that it does not accept that it was created at or around 9 July 2018 and in terms of credibility and reliability we accept the respondents' evidence that they did not receive this letter on or around this time.

The first claimant sent a letter dated 25 July 2018 setting out a grievance against the respondents' continuing failure to make reasonable adjustments and complained about harassment on grounds of the first and second claimant's sexual orientation.

113) A letter using the now familiar Manager of Strands Brewery letterhead dated 25 July 2018 was included in the bundle at p.180 and purported to have been sent by Mark H. Again, this was a letter which the respondents denied receiving at the time it was allegedly created. Moreover, by this stage, the Busseys had left the respondents employment and Mark H had been appointed as manager from 23 July 2018. It does not make reference to him being appointed as executive manager and based upon Mark H's The letter does make reference to issues arising from Mark H's health and how it impacts upon his ability to carry out his duties. It also makes reference to Messrs Patton and Evans *'…are slagging me and Chris of [sic]'.* However, we must again conclude that when balancing this evidence with our findings concerning credibility of witnesses, we do not accept that this letter was given to the respondents at the time it was supposedly date or indeed during the claimants' employment with them.

On 26 July 2018 the first claimant reminded the second respondent that Peninsula had raised 36 Health and Safety breaches. The breaches included the failure to carry out risk assessments, fire safety training, the removal of asbestos behind the bar, carbon monoxide and the testing of electrical appliances.

114) The Tribunal heard witness evidence from Mr Dyer who with his wife were customers and friends of the respondents. They were involved with a business which provided health and safety training and whose services the respondents used to provide training of their staff.

115) The business was operated through two limited companies which were registered separately with Companies House. Social and Healthcare Solutions Limited (Company number 06559826) and this was dissolved on 13 September 2016. Social and Healthcare Services Limited (Company number 9260056) was active at the time when the claimants were employed by the

respondents and continues to operate. Both companies had the same registered officers and Mr and Mrs Dyer were the directors of both.

116) The bundle included a series of training records provided by Social and Healthcare Services Limited, but with the company number provided for Social Healthcare Solutions Limited, (which of course was dissolved from 2016), (pp412-460). The respondents subsequently provided during the first part of this hearing, additional documentation which were training invoices for the training provided, (pp660-672). These documents covered a period of training and certification of staff trained from 2016 until March 2019. They related to a variety of training issues including hygiene, food safety and fire safety. The invoices included the correct company name and company number. Mark H took issue with these documents and argued that they were not produced at the time the training allegedly took place and this was evidence that they were a fabrication, meaning that the training had not been completed at this time. He said that as the respondents used a company called Peninsula for employer services and they would have used that company for health and safety training as well. This was denied by the respondents and supported by Mr Dyer, who said that it was Social Healthcare Services Limited whom they used for this sort of training.

117) Mr Dyer asserted that the error in the company number was an administrative error and they had also made the same error in relation to documents they had produced for the Care Quality Commission (known as the 'CQC'). The Tribunal found on balance of probabilities that the respondents' evidence was correct and the documents were contemporaneous records of training having taken place and the error in company number was a simple administrative error, which is not an uncommon occurrence in the workplace. Moreover, Mr Dyer went further in his evidence than he needed to in order to rebut Mark H's allegations and volunteered additional errors in documentation produced outside of his company's relationship with the respondents. We felt that this supported our conclusion that he was a credible and reliable witness.

118) In relation to this matter of the alleged disclosure by Mark H, we did not hear persuasive evidence from him to support the allegation made. He appeared to have focused upon an absence of training from Peninsula, when it was another company who was providing the training. The letter of 1 August 2018 (discussed in the section below), which was sent by Mark H to Mrs Corr opens with a reference to a discussion on an earlier discussion about these health and safety concerns, but says it took place on 25 July 2018. This is not accepted by Mrs Corr and for the reasons which we have already explained in relation to earlier letters produced by the claimant with the heading *Mark Charles Manager of Strands Brewery,* we do not accept that they were produced and sent to Mrs Corr on or around the date given in each letter. Taking into account our concerns regarding Mark H's credibility and reliability overall, we prefer the respondents' evidence that this meeting and these concerns did not take place.

The first claimant handed the second respondent a letter dated 1 August 2018 complaining about Health and Safety breaches and continuing harassment.

119) Mark H referred to a letter dated 1 August 2018 using the Manager of the Strands Brewery heading (p182) and which was addressed to Mrs Corr. However, she denies receiving this letter at or around this time and for the reasons already given above in relation to letters of this nature and taking into account our concerns about Mark H's credibility and reliability, we do not accept that this was a letter which was created and sent to Mrs Corr during his employment with the respondents.

The Law

Unfair dismissal (section 103A ERA only)

120) Part X of the Employment Rights Act 1996 ('ERA') deals with complaints of unfair dismissal. Section 94 of the ERA confirms that an employee has a right not to be unfairly dismissed.

121) Section 95(1)(c) ERA provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he was entitled to terminate it without notice by reason of the employer's conduct.

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

123) Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair or unfair depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and must be determined in accordance with equity and substantial merits of the case.

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

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

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

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

126) The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the ERA.

127) Section 103A ERA provides that an employee who is dismissed (including where there has been a relevant resignation under section 95(1)(c)), shall be regarded 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. Protected disclosures are described in section 43B ERA.

128) In Polkey v Dayton Services Ltd [1988] ICR 142, it was stated that if an employer could reasonably have concluded that a proper procedure would be "utterly useless" or "futile", he might be acting reasonably in ignoring it.

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

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

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

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

133) The Tribunal must award compensation that is just and equitable. Even if the loss arising from the dismissal is substantial, the Tribunal can still award no compensation if it would be unjust or in equitable for the employee to receive it. This might be the case where acts of misconduct discovered after the

dismissal means that it would not be just and equitable to award compensation; see W Devis & Sons Ltd v Atkins [1977] IRLR 314.

Wrongful dismissal

134) The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.

135) A claim for notice pay is a claim for breach of contract; Delaney v Staples 1992 ICR 483 HL.

136) In Neary v Dean of Westminster [1999] IRLR 288, it was held that conduct amounting to gross misconduct justifying summary dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.

137) In cases of wrongful dismissal, it is necessary for the Respondent to prove that the Claimant had actually committed a repudiatory breach of contract. See: Shaw v B & W Group Ltd UKEAT/0583/11.

Unlawful deduction from wages

138) Section 13 of the Employment Rights Act 1996 ('ERA') provides that a worker has the right not to have their employer make an unauthorised deduction from their wages.

139) The exceptions are where a deduction is required or authorised by a statutory provision or a relevant provision of the worker's contract or where the worker has previously given in writing their agreement to the making of the deduction.

140) Section 14 ERA provides that section 13 does not apply where the deduction is made by the employer to reimburse an overpayment of wages.

Holiday pay

141) Regulations 13 and 13A of the Working Time Regulations 1998 ('WTR') provide that a worker is entitled to annual leave in each leave year, (4 weeks and 1.6 weeks respectively).

142) Regulation 13(2) WTR, provides that a worker's leave year begins on

a) On such date during the calendar year as may be provided for in a relevant agreement: or

b) Where there are no provisions of a relevant agreement which apply, the date will be (for all employment beginning after 1 October 1998), on the date which that employment begins and each subsequent anniversary of that date.

143) The word 'calendar year' is interpreted by regulation 2 WTR as meaning *'…the period of twelve months beginning with 1st January in any year'.*

144) Leave may not normally be carried over into a subsequent leave year, unless there is agreement between the parties or where it was not reasonably practicable to take the leave as a result of the effects of the coronavirus in accordance with regulation 13(10) WTR as amended.

145) Regulation 30 WTR, provides workers with the right to bring a complaint to the Tribunal regarding (amongst other things), breaches of rights under regulation 13 and 13A.

Disability

146) Section 6 of the Equality Act 2010 provides that a person has a disability if he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his ability to carry out day-to-day activities. Section 212 provides that substantial means more than minor or trivial. Schedule 1 of the Act provides that the effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to correct it and but for that it would be likely to have that effect.

Sexual orientation

147) Section 12 of the EQA provides that sexual orientation is a protected characteristic.

Discrimination

148) Section 39(2) of the Equality Act 2010 provides, amongst other things, that an employer must not discriminate against an employee by dismissing him or subjecting him to any other detriment.

149) Section 13 of the Equality Act 2010 sets out the legal test for direct discrimination. A person (A) discriminates against another (B) if, because of a protected characteristic (race in this case), A treats B less favourably than A treats or would treat others.

150) For the purposes of direct discrimination, section 23 of the Equality Act 2010 provides that on a comparison of cases there must be no material

difference between the circumstances relating to each case. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual. The circumstances relating to a case include a person's abilities if on a comparison for the purposes of section 13, the protected characteristic is disability.

151) Section 15 of the Equality Act 2010 provides that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. However, this kind of discrimination will not be established if A shows that he did not know, and could not reasonably have been expected to know, that B had the disability.

152) Sections 20, 21 and 39(5) read with Schedule 8 of the Equality Act 2010 provide, amongst other things, that when an employer applies a provision, criterion or practice ("PCP") which puts a disabled employee at a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. Paragraph 20 of Schedule 8 provides that an employer is not expected to make reasonable adjustments if he does not know, and could not reasonably be expected to know that the employee has a disability and is likely to be placed at the disadvantage.

153) Section 40 of the Equality Act 2010 provides that an employer must not, in relation to employment by him, harass an employee. The definition of harassment is set out in section 26(1) of the Equality Act 2010. A person (A) harasses another (B) if:

a. A engages in unwanted conduct related to a protected characteristic (disability in this case); and

b. the conduct has the purpose of effect of : -

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

154) Section 26(4) provides that 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.

155) Section 27 provides

156) Section 136 of the Equality Act 2010 sets out the burden of proof that applies in discrimination cases. Subsection (2) provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that person (A) has contravened the provisions concerned, the Tribunal must hold that the contravention occurred. However, subsection (2) does not apply if A shows that A did not contravene the provision.

Time limits under the Employment Rights Act 1996

157) Section 111(2) provides that a Tribunal shall not consider such a complaint unless it is presented to the Tribunal: (a) before the end of the period of three months beginning with the date of termination; 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.

Time Limits under the Equality Act 2010

158) Section 123(1) of the Equality Act 2010 provides that a complaint 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 Tribunal thinks just and equitable. Under section 123(3) conduct extending over a period is to be treated as done at the end of the period; and failure to do something is to be treated as occurring when the person in question decided on it. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something (a) when P does an act inconsistent with doing it; or (b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Discussion

159) Such was the multiplicity of complaints and allegations raised by the claimants, it would be very easy to discuss the findings of fact and the application of the law to those facts over many pages. Accordingly, in order that a proportionate approach can be adopted, the discussion has been made as concise as possible, focussing only upon the most essential elements of the findings in relation to the issues above. Even so, it has still necessitated a lengthier section than we would ideally have liked.

Complaints relating to the first claimant only

Unfair dismissal

160) The first claimant, Mark H was only employed by the respondents for a few months during the summer of 2018. He clearly did work continuously for a period of 2 years or more at the effective date of termination, which took place on 15 August 2018, (he commenced employment on June 2018). Consequently, he is unable to rely upon a complaint of ordinary unfair dismissal in accordance with section 108 Employment Rights Act 1996 (ERA).

161) This was conceded by Mark H's counsel, Mr O'Carroll and instead, he argued that he can rely upon the complaint of automatic unfair dismissal contrary to section 103A ERA arising from the bringing of protected acts under section 43B ERA and which is not subject to the minimum continuous employment requirement under s108.

162) In order to rely upon this complaint under section 103A, a claimant does of course need to demonstrate that a disclosure was made before the decision to dismiss took place and which was communicated in a way which gave it protection under section 43B. In broad terms, the disclosures relied upon by Mark H, are matters relating to the caravan which the claimants occupied, matters of health and safety, operations within the hotel and compliance with the employer's duty to manage health and safety training in the workplace. Potentially, these are matters which could constitute legal obligations or health and safety obligations placed on an employer and covered by section 43B(1)(b) and (d).

163) Had Mark H been able to convince us that the disclosures which he had complained about had been made to Mr or Mrs Corr at the material time and certainly before he was dismissed, he would have been able to demonstrate that protected disclosures were made as alleged. Unfortunately, a significant issue in this case has been his credibility concerning the provenance of documents which he included within the hearing bundle, and which were denied as having been received by the respondents at the date when they were allegedly drafted. These include the letters where he described his job title as Manager of the Strands Brewery, and which have been discussed at length in the findings of fact above.

164) In addition, we were unable to accept that complaints were made when the claimants began their employment with the respondents concerning health and safety matters relating to the caravan. Ms Turnage gave convincing evidence that the respondents would deal with any issues relating to the maintenance of the caravan and while it was clearly accommodation of some vintage, ongoing repairs and modifications were made as required, including the addition of shelf requested by the claimants. The respondents denied that the complaints were made and as we agreed with them, protected disclosures did not take place.

165) For the avoidance of doubt, we therefore conclude that the alleged protected disclosures under section 43B were not made and as a consequence they cannot be relied upon for the purposes of bringing a complaint of automatic unfair dismissal under section 103A.

166) Moreover, we were unable to conclude that Mark H was dismissed. The Tribunal felt it was important to repeat the contents of the emails exchanged between Mrs Corr and Mark H around 15 August 2018 and these were included in the findings of fact, above. Importantly, it was Mark H who decided to resign and additionally, he did so without seeking to argue that the respondents had done something which undermined mutual trust and confidence between employer and employee. Quite the contrary in fact. He was effusive in his

praise, and we simply do not accept Mr Caroll's submission as being correct, that these favourable comments were simply a '*means of gaining a smooth exit'* from Mark H's employment. Indeed, we referred to documentation sent some weeks following his resignation, where Mark H remained positive about his experience working for the respondents and he even explored the possibility of returning to work in messages with Mr and Mrs Corr's daughter.

167) Accordingly, the decision to resign was Mark H's alone. It was not anything that could amount to a constructive unfair dismissal with the principal reason being that protected disclosures under section 43B had been made. It is fair to say, that the dismissal of his partner Chris H made his employment more difficult, but we accept the respondents' evidence that had he chosen to do so, Mark H could have remained in his employment.

168) Mark H did rely upon detriments arising from the protected disclosure alleged, namely abuse following the disclosure having been made. However, even if we had found that the disclosures had been made and subject to the protection of section 43B (which we did not find), we did not hear any credible evidence to support the allegation that Mark H was subjected to this (or indeed any), abuse as a result.

Discrimination

Protected characteristics (sections 6 and 12 EQA)

169) There was no dispute that Mark H was a gay man for the purposes of sexual orientation under section 12 Equality Act 2010 (EQA). This also applied to his partner Chris H in relation to his complaint of discrimination.

170) In relation to disability under section 6 EQA, it was not disputed by the respondents that Mark H had made them aware at his interview of having been shot been in stomach while in Afghanistan, but that he remained fit for work. They accepted at the beginning of this hearing that he was disabled within the meaning of section 6 EQA as a consequence, but were not entirely clear as to what impairments arose from the injuries identified to them by the Mark H. No medical evidence was available in the hearing bundle and our finding was (on balance having considered the evidence before us), that while disability was accepted, this amounted to ongoing issues relating to IBS and an intolerance to spicy food and reoccurring pain in his left leg which could affect his mobility and standing for prolonged periods.

171) However, the key issue in relation to disability in this case was whether the respondents knew of Mark H's disability at the material time, being the period when he was employed by them. They were aware that he had been injured in the past, but there was no convincing evidence heard which persuaded us that they were aware of the difficulties in his left leg and despite Mark H referring to a 'slight limp' when in pain, we accepted the respondents' evidence that this not noticed by them. According to the note of the covert recording of the management meeting (the contents of which were disputed by the respondents), Mark H did mention having a damaged back as a result his

service with the RAF but made no reference to ongoing impairments. Similarly, although they were aware of a stomach injury in the past, they were not informed of an intolerance to spicy food and a risk that unwittingly eating this type of food could cause an injury or reaction. There was no convincing evidence heard that Mark H or his partner Chris H informed other members of staff of these impairments directly and we must conclude that the respondents and their employees were not aware of Mark H having the asserted disabilities while he was working for them during the summer of 2018.

172) As a result of these conclusions, while we will consider the allegations of disability discrimination below, it is difficult to see how they can succeed given the lack of knowledge at the material time by the respondent or their employees.

Direct discrimination (section 13 EQA)

173) The first allegation of treatment which was alleged, related to the claim that Mrs Corr told Mark H that he was *'disgusting'* for perspiring. We found that this incident arose from that word forming part of a complaint made to a customer to Mrs Corr when Mark H had been seen wiping his face in the bar area with pot towel which would usually be used to wipe glasses etc. Mrs Corr dealt with this incident sensitively and spoke with Mark H away from the customers in private and made sure that he knew the correct towels to use and to do so away from public view. The word *'disgusting'* was found to have been used by a customer concerning what he saw, and Mrs Corr was simply reported to Mark H what had been said.

174) We were unable to find that this treatment was connected with Mark H's disability (or sexual orientation), and that any other employee in the same situation but of a different sexual orientation or without a disability would have been treated any differently. The treatment was non-discriminatory and related to matters of hygiene and health and safety.

175) The second alleged treatment related to Mr Patton deliberately putting spice into Mark H's food either because he knew about his intolerance to spice or because of his sexual orientation.

176) We were unable to find that Mr Patton would have known of this impairment relating to spicy food, although as he has since died, we were not able to hear any evidence from him about whether he was homophobic or not. However, we concluded from the evidence heard that Mark H actually ordered chilli from the kitchen when this incident arose (and not a sandwich with chilli added as he alleged). Chilli was a food that a reasonable person would be expected to know contained spicy ingredients. Given Mark H's experience of hospitality, we expect that he would have been aware that by ordering this dish, he would have risked eating something which could be quite spicy and hot to taste. Had he been unhappy with the heat of the dish, he would have known this from the moment he put the food in his mouth.

177) We were not convinced that Mr Patton deliberately added spice to the food ordered By Mark H and accordingly the treatment did not happen as alleged. Mr Evans said that he never heard Mr Patton speak in homophobic terms and taking into account the entirety of the respondents' witnesses' evidence, we cannot conclude that an environment existed at the respondent's premises where homophobic behaviour existed or was tolerated.

178) For these reasons, these direct discrimination complaints cannot succeed as the incidents did not happen as alleged or in a way where in the absence of a reasonable explanation from the person so accused, the Tribunal must conclude the discrimination took place. Although there are other allegations of direct discrimination made, they apply to both claimants and will be discussed below.

Discrimination arising from disability (section 15 EQA)

179) The respondents could not reasonably have been expected to know that the first claimant Mark H had the disability alleged. However, in relation to this complaint, he argues that he was treated unfavourably because of two matters.

180) The first allegation relation to being called *'disgusting'* when he wiped perspiration using a pot towel while working in the bar. He argues this arose in consequence of his disability in that he perspired more heavily than non-disabled colleagues. We have already considered the alleged treatment in relation to the direct discrimination complaint above and would repeat what has been said there. However, we are unable to conclude that Mark H has proven facts that the treatment in question happened as alleged and that it was because of the things arising from his disability. As we have already discussed, Mrs Corr raised this issue with Mark H because of a complaint made by a customer who had used the term *'disgusting'* and she was repeating what was said. She was referring to the practice of wiping perspiration in the bar using a pot towel and instead explaining how it should be done away from public areas and using the correct towels. Mark H had argued that he was using his own personal towel and not one used for glasses etc. However, the issue was clearly about the impression which his behaviour gave to customers, and it was simply a matter of hygiene and not connected with things arising from his disability.

181) The second alleged unfavourable treatment was that Mark H was dismissed because of sickness absence which arose from symptoms connected with his disability. As we have found that Mark H was not dismissed by the respondents, we are unable to find that this unfavourable treatment happened as alleged.

182) Although the respondents did not appear to rely upon a legitimate aim in relation to this allegation, it is not necessary for them to do so given the findings made above.

Reasonable adjustments (sections 20 & 21 EQA)

183) The respondents could not reasonably be expected to know that Mark H was disabled at the material time when he was employed by them. However, Mark H says that he was subject to a PCP requiring him to work more than 40 hours per week and to work immediately upon his return from hospital following the spicy food incident and/or falling in his caravan.

184) Mark H had contractual hours of 40 hours per week, and we did not hear much evidence concerning the hours of work. He did say in cross examination that he did offer to work extra hours to help out the Busseys if required, but that he was never asked. Confusingly, when asked if working extra hours was voluntary or not, he denied that ever being asked to work extra hours, we were unable to accept that Mark H was actually required to work more than 40 hours per week, giving his inconsistent evidence in relation to this matter and elsewhere during the hearing.

185) In relation to the alleged PCP that Mark H was required to work following his return from hospital, we preferred Mrs Corr's evidence that she told him to take what time he needed to recover and on balance there was insufficient evidence available to persuade us that he was asked, let alone pressurised into working while still ill.

186) Accordingly, it is not necessary to consider substantial disadvantage, given that we do not accept that the PCPs arose as alleged. Nor do we need to consider reasonable adjustments.

187) We should add at this point that in his impact statement, Mr Mark H argued that he suffered a significant drop in his capacity to work because of what happened while working for the respondents between June and August 2018. Based upon the evidence before us at this hearing, we are unable to find that this was the case and if so that it arose from the treatment by the respondents. Mark H's resignation was not prompted by health issues which affected his capability to work and as has already been explained, he was asking to return to work with the respondents (via messages with their daughter), in September 2018.

Victimisation (section 27 EQA)

188) It was not clear what protected acts were relied upon when the list of issues was considered at the beginning of the final hearing in May 2021. It was suspected that they might be a repetition of the protected acts identified in relation to the complaint under section 103A ERA (automatic unfair dismissal). However, Mr O'Carroll in his final submissions asserted that the protected acts under section 27 EQA were the discrimination and harassment of Mark H in relation to the complaint letters which were sent on 30 June, 9 July, 25 July and 1 August 2018.

189) The difficulty for Mark H relying upon these disclosures is that we have already concluded on balance of the evidence before us that these letters were not created and sent to the respondents while he was employed by them. As

a consequence, there are no valid protected acts to rely upon and the complaint of victimisation must fail.

Both claimants (second claimant only where relevant)

Wrongful dismissal/Notice pay

190) As employees whose employment terminated, the claimants can potentially claim wrongful dismissal.

191) As described above, Mark H (first claimant) resigned and was not dismissed. He resigned without providing any evidence of a breach of the implied term of trust and confidence between employer and employee. It was not clear from the emails between Mark H and the Mrs Corr that he had an agreed date when his employment would terminate, although in his email dated 15 August 2018 sent at 16:40, it was implicit from its contents that he had informed her of his resignation.

192) He did not actually work his minimum notice period and Mrs Corr did not adequately resolve the question of the date of termination and notice pay. Although the relevant section of his contract of employment was included in the documents before the Tribunal, taking into account his length of service, his minimum notice period would have been one week in accordance with section 86(2) ERA.

193) Mrs Corr asked Mark H to provide her with information of how much money he was owed when his employment terminated. However, we did not see any evidence which showed that he had been paid his notice pay or that he had been informed that he was not entitled to such a payment with reasons being given. Accordingly, we conclude he is entitled to a week's pay which we calculate at £400 gross based upon the pay documentation contained within the hearing bundle.

194) In relation to the second claimant Chris H, although he was ostensibly dismissed for gross misconduct, it was clear that little or no process was followed, and his summary dismissal arose from a loss of patience from the respondents about his perceived behaviour. However, they did not investigate, hold a formal hearing or at least allow Chris H to defend any allegations made. Although we acknowledge that his employment lasted less than 2 months, he was nonetheless entitled to some sort of disciplinary procedure in accordance with the ACAS Code of Practice. Mr Corr confirmed that they made an error regarding the absence of a formal investigation and no formal letter of dismissal.

195) For this reason, we conclude that the respondents could not dismiss Chris H without notice, he was entitled to his notice pay of one week and the respondents must pay the gross sum of £400 to him.

196) Chris H did not of course have sufficient service under section 108 ERA with which to be able to begin a complaint of unfair dismissal. As we found above in relation to Mark H, he was not dismissed in connection with any protected disclosure as we did not accept that those relied upon, were so protected.

Unlawful deduction from wages/holiday pay

197) This complaint appeared to get lost amongst the more diverse and significant allegations that were made by the parties. Ultimately, we were not provided with sufficient evidence that allowed us to find that there was a loss of these wage related items when the claimants' employment ended and if anything, it appeared that there was a careful negotiation between the respondents and Mark H to ensure that not only were the claimant paid their outstanding pay, but also, that it was delivered in the most *tax efficient way.*

198) It is not a matter for this Tribunal as to whether or not the claimants paid all of the tax which should have been paid during this employment, but in the absence of any evidence to prove that a loss of earnings or holiday pay arose, we must conclude that these complaints are not proven.

Direct sexual orientation discrimination (section 13 EQA)

199) There were 8 allegations of treatment made against the respondents in relation to this complaint relating to one or both of the claimants and in connection with their sexual orientation as gay men and as a gay couple.

200) The allegations relating to Mark H being called *'disgusting'* and the incident relating to the chilli have already been discussed and have not been found to have happened as alleged. We would repeat our comments made in relation to these allegations and cannot conclude that these complaints are well founded. The perspiration incident clearly related to hygiene and was not connected with Mark H's sexual orientation and we find that any employee behaving in the same way who was not a gay man would have been treated in the same way.

201) We have already discussed the question of alleged homophobia within the respondents' premises, either from employees, customers or the respondents themselves. We were unable to find that any of the allegations happened as alleged and our conclusion was that in terms of their sexual orientation the claimants were accepted and were not subject to any discriminatory treatment. Indeed, the witnesses called by the respondents were candid about ill informed and prejudiced views they may have had when younger and gave convincing evidence of a personal insight as to the importance of not being discriminatory in relation to this protected characteristic.

202) As a consequence, the treatment did not happen as alleged and there was no difference in treatment between the claimants and other employees by reason of their being gay men.

Harassment (section 26 EQA)

203) The claimants relied upon 8 allegations of unwanted conduct. Many of these allegations repeat the allegations of direct discrimination and we would repeat our findings made above in relation to them. Consequently, we cannot conclude on balance of probabilities, they happened as alleged.

204) There were separate allegations relating to customers talking with staff about the new gay management couple on 24 June 2018. This was denied by respondents and the witnesses they called. On balance, we find that there may have been some awareness that the claimants as new staff were a gay couple. However, we did not hear evidence which convinced us that unwanted comments were made of this nature which the purpose or effect of violating the claimants' dignity etc. There was clearly no secret about their sexual orientation and the claimants appeared to be comfortable in everyone being aware of their sexual orientation. Indeed, the quizmaster comments discussed below, clearly demonstrated that Mark H in particular was happy to express his sexual orientation to customers.

205) There was a separate allegation of quizmaster comments. We found that this was decision made by Mark H and it was something he was very keen to do, even though it raised concerns with the respondents and Mr Corr in particular. We would add that having heard the evidence, we did not find on balance that these concerns were in any way because of Mark H's sexual orientation, but the self-deprecatory way in which they were raised. We accept the quiz sheets contained the comments, but it was not unwanted conduct because it arose from a decision made by Mark H as the new quizmaster and nobody else. Had he asked the respondents whether it was appropriate, based upon the evidence heard, we find that they would told him not to use the comments

Time limits

206) In the end, it was not necessary to consider time limits in any detail given the findings and decisions made above. The complaints of unfair dismissal and complaints made under the ERA were presented in time and were accepted.

207) Potentially, the issue of time limits in relation to the discrimination complaints may have been a matter of some consideration in relation to the earlier allegations which took place before the claimants' respective dates of termination. However, had the actual allegations been credible and accepted as alleged, the short period of employment and the connectivity between the alleged incidents and the date of termination means that in all likelihood, they would have been deemed to be continuing acts with the last act ending in time (at the date of termination or afterwards), or that it would have been just and

equitable to extend time. As it was, the claims brought under the EQA all failed and no further consideration is required.

Conclusion

208) This was a case which was unfortunate in that we had to consider the credibility of both sides' evidence and over three hearings spread many months apart. The claimants and in particular the first claimant simply lacked credibility in terms of the evidence which they gave. It is all the more unfortunate because in many ways, the Tribunal sensed that there was during their time with the respondents, a genuine affection between the parties.

209) However, we are required to make a decision regarding the relevant surviving allegations before us at the final hearing and out conclusion is as follows:

In relation to the first claimant

a) The complaint of unfair dismissal by reason of a protected disclosure having been made contrary to section103A Employment Rights Act 1996 not well founded which means it is not successful.

b) The complaint seeking notice pay is successful and the respondents shall pay the first claimant the gross sum of £400 in respect of this successful complaint.

c) The complaint of detriments arising from the making of a protected disclosure contrary to section 47 Employment Rights Act 1996 is not well founded which means it is not successful.

d) The complaint of direct discrimination by reason of sexual orientation contrary to section 13 Equality Act 2010 is not well founded which means it is not successful.

e) The complaint of harassment by reason of sexual orientation contrary to section 26 Equality Act 2010 is not well founded which means it is not successful.

f) The first claimant was disabled within the meaning of section 6 of the Equality Act 2010 by reason of a stomach and back injury causing irritable bowel syndrome ('IBS') and left leg pain.

g) The complaint of direct discrimination by reason of disability contrary to section 13 Equality Act 2010 is not well founded which means it is not successful.

h) The complaint of discrimination arising from a disability section 15 Equality Act 2010 is not well founded which means it is not successful.

i) The complaint of a failure by the respondents to make reasonable adjustments contrary to sections 20 & 21 Equality Act 2010 is not well founded which means it is not successful.

j) The complaint of victimisation contrary to section 27 Equality Act 2010 is not well founded which means it is not successful.

k) The complaint of unpaid holiday pay contrary to section 13 Working Time Regulations 1998 is not well founded and is not successful.

l) The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996 is not well founded and is not successful.

In the case of the second claimant

a) The complaint seeking notice pay is successful and the respondents shall pay the first claimant the gross sum of £400 in respect of this successful complaint.

b) The complaint of detriments arising from the making of a protected disclosure contrary to section 47 Employment Rights Act 1996 are not well founded and are unsuccessful.

c) The complaint of direct discrimination by reason of sexual orientation contrary to section 13 Equality Act 2010 is not well founded which means it is not successful.

d) The complaint of harassment by reason of sexual orientation contrary to section 26 Equality Act 2010 is not well founded which means it is not successful.

e) The complaint of victimisation contrary to section 27 Equality Act 2010 is not well founded and is not successful.

f) The complaint of unpaid holiday pay contrary to section 13 Working Time Regulations 1998 is not well founded and is not successful.

g) The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996 is not well founded and is not successful.

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Employment Judge Johnson

Date 17 April 2023

JUDGMENT SENT TO THE PARTIES ON
18 April 2023

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990
ARTICLE 12

Case number: **2417876/2018 & Other**

Name of case:	**Mr M Holden & Other**	v	**Mr Mark Corr (t/a The Strands Hotel) & Other**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 18 April 2023

the calculation day in this case is: 19 April 2023

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:
   www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.