



EMPLOYMENT TRIBUNALS

Claimant: Mrs Catherine Manley

Respondent: Minsteracres Retreat Centre

Heard at: Newcastle Employment Tribunal

On: 2nd, 3rd, 4th and 5th January 2024 (deliberations: 12th February 2024)

Before: Employment Judge Sweeney

Representation:

For the Claimant: In person (assisted by Eugene and Kevin Manley)

For the Respondent: Antoine Tinnion, counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is as follows:

1. The claim of unfair dismissal is not well-founded and is dismissed.
2. The claim of wrongful dismissal is not well-founded and is dismissed.

REASONS

The Claimant's claims

1. By a Claim Form presented on **03 April 2024**, the Claimant brought a claim of unfair dismissal, contending that the reason for her dismissal was automatically unfair being in contravention of section 103A Employment Rights Act 1996. She also brought a claim for wrongful dismissal. Although there had been uncertainty about whether there was a claim of wrongful dismissal, I decided that there was and that it had always been pleaded on the face of the ET1.

Documents

2. The parties had initially agreed a joint bundle consisting of **450 pages**. There was an outstanding disclosure application regarding a report referred to by the parties as 'the Heartwood report'. In the morning of the third day, prior to the start of the

Respondent's case I ordered disclosure of the Heartwood Report and gave oral reasons. The Respondent also produced a further document consisting of the 'metadata' or document properties of a document at **page 89** of the bundle and some further documents concerning information sent by Mrs Morgan to Kate Smith. In all, this took the total bundle to **466 pages**.

3. Before Kevin Manley gave evidence, I raised with the parties the relevance of parts his witness statement, much of which appeared to be a mix of commentary and opinion evidence – Mr Manley later referred to himself as an expert. I emphasised the witnesses should all be witnesses of fact, that there was no permission obtained for opinion evidence, that its relevance was questionable and that I would not expect cross examination on such matters. I emphasised the limited function of the tribunal, that it was no conducting an inquiry but determining whether the Claimant made a protected disclosure or disclosures and if so whether that was the reason or principal reason for her dismissal.

The issues

4. During discussion at the outset of the hearing we discussed the issues (they are set out in the Appendix). It was agreed that the Claimant was relying on 6 alleged public interest disclosures (referred to as '**PIDs**'). Having clarified some of the confusion regarding the numbering of these '**PIDs**' in paragraphs 41 to 46 of the Amended Response [**pages 60 – 64**], it was agreed that the purported disclosures were as follows:
 - 4.1. A written disclosure to Mr Bockett on **24 October 2022** [**page 98**] ('**PID 1**')
 - 4.2. A verbal disclosure to Mr Bockett and Father Connelly on **11 January 2023** during a plenary session at a teambuilding event (the terms of which were set out on **page 45**) ('**PID 2**')
 - 4.3. A written disclosure to Mr Bockett on **16 January 2023** (not 15 January as stated in paragraph 43 of the Amended GOR) [**page 135 - 138**] ('**PID 3**'). The email attached a document called the 'Problems and Solutions' document
 - 4.4. A verbal disclosure to Mr Bockett on **16 January 2023** (the terms of which were set out on **page 46**) ('**PID 4**')
 - 4.5. A written disclosure to Father Connelly on **24 January 2023** [**page 150**] ('**PID 5**'). this is essentially the same as PID 3, as the Claimant forwarded the 'Problems and Solutions' document to Father Connelly)
 - 4.6. A verbal disclosure to Mr Bockett, Mrs Morgan and Father Connelly on **31 January 2023** (the terms of which were set out on **page 47-48**) ('**PID 6**')

5. Although not particularly clearly articulated, it was the Claimant's case that in these written and verbal disclosures she conveyed or disclosed information which tended to show, in her reasonable belief:
 - 5.1. that the Respondent had failed, was failing and was likely to fail to comply with a legal obligation to which it was subject, namely its duty of care to individuals (including the disabled) and groups attending retreats at the Respondent's retreat centre.
 - 5.2. That the health and safety of both attendees and staff on the retreats had been, was being and was likely to be endangered, the danger arising from the lack of effective health and safety planning and provision.
 - 5.3. That matters falling within these two categories had been, was being, and was likely to be deliberately concealed, namely by Mr Bockett.

Witness evidence

6. Sworn evidence was given by:
 - 6.1. The Claimant
 - 6.2. Dr Kevin Manley, the Claimant's husband
 - 6.3. Gail Logan-Chapman (remotely by CVP)
 - 6.4. Geoff Bockett, the Respondent's Director
 - 6.5. Claire Morgan, Chair of the Board of Trustees
7. In addition to the above, the Claimant invited the Tribunal to read statements prepared by Chris Young and Halina Holman.
8. Initially, the Claimant was represented by a family member, Eugene Manley who is a practising barrister in Ireland. However, during the hearing, Mrs Manley opted to represent herself, with assistance from her husband Kevin and with some continuing input from Eugene Manley. Evidence did not finish until late on Friday **05 January 2024**. The parties agreed to provide written submissions which they sent to the Tribunal on **10 January 2024**.

Findings of fact

9. The Respondent is a registered charity and company limited by guarantee It is overseen by a non-executive Board of Trustees ('the Board'). Claire Morgan is and was, at the time of the events relevant to these proceedings, the Chair of the Board. This is a voluntary, unpaid position, one she has held since 2012. The Respondent has three main charitable objectives: (1) the running of a Christian-based retreat

centre open to all; (2) an outreach programme providing for day and residential respite stays for those on the margins of society and (3) the maintenance of the property and grounds for the benefit of the public. The property, known as 'Minsteracres', is a grade II listed former mansion house with residential accommodation for up to 72 people. Minsteracres consists of the retreat house and the main house.

10. In the main house, there is a small resident community of Roman Catholic priests, nuns and lay people of the Congregation of the Passion of Jesus Christ ('the Passionists'). In the period relevant to these proceedings, the Rector of the community was Father Antony Connelly. There were two other resident priests, namely Father Mark and Father Emmanuel Kabinga and two lay members, Tina Martin ('Tina') and Pavan Martin ('Pavan'). Tina and Pavan also assisted with the running of the organisation, the former as Hospitality Manager and the latter as Facilities Manager.
11. The Respondent also employs some staff and utilises volunteers in the pursuit of its charitable objectives. Geoff Bockett is and was at the relevant time, the most senior employee. Although not a member of the board he held the title of 'director'. Mr Bockett commenced employment with the Passionists in **May 2010** before transferring to the employment of the Respondent in **2012**. He is responsible for the overall management of the operations, including regulatory compliance, staffing, safeguarding, building and estate management, fundraising and the day-to-day finances of the Respondent. Mr Bockett reports to the Board of Trustees, in particular to Mrs Morgan and Mr Jim Darlington. In addition, there is an employed Retreat Centre Administrator, namely Margo Mooney ('Margo'). She is a full-time employee, responsible for the co-ordination of events. Up until **December 2022**, she was assisted in this role by a part-time assistant, John McKean ('John'). He was subsequently replaced by Wendy Mabin ('Wendy') either towards the end of **2022** or early **2023**. During the period of the Claimant's employment, the Respondent employed 4 full-time and 11 part-time employees. In addition to the Passionist members and employed staff, the Respondent relies on volunteers drawn from the local community and beyond. It is a small and close-knit organisation. One such volunteer was Andrew Pennington who assumed the title Building and Estates Manager.

How external parties book events and retreats at Minsteracres

12. There are two ways to book a retreat or other event at Minsteracres, either on-line through the Respondent's website or by emailing the centre. When booking, a person is asked to specify any dietary requirements or disabilities that the Respondent needs to be aware of. Sometimes, a single individual organises retreats on behalf of a number of people. This person will collate information from each retreatant personally regarding matters such as dietary requirements and disabilities. The purpose of requesting the information is so that the Respondent knows in advance, of any special requirements prior to arrival. The information is

provided to the main office which then passes it on to Housekeeping and Catering. Sometimes a person will omit to state dietary requirements. This can happen more so where a single organiser has failed, for whatever reason, to send through dietary requirements for one or more individuals. The Respondent has a simple procedure in place to try and address such eventualities. Whenever a retreatant checks in, if they have not specified on their form anything about dietary requirements, this is drawn to their attention and they are asked at that point if they have any. That is reflected in the Respondent's Work Procedure [page 431]. The Claimant was aware of this procedure and practice.

The Claimant's appointment and contractual and other documents

13. The Respondent receives financial support from the Passionists. In addition, it derives income from retreats, functions and events that take place at Minsteracres. In the aftermath of the Covid pandemic, in 2022 the Board decided to advertise for and recruit a person to undertake the role of Sales & Marketing Manager. This was with a view to maximising income from such events thus achieving financial stability for the Respondent. The creation of the role of Sales & Marketing Manager was a new venture for the Respondent. When Mrs Morgan, Mr Darlington and Mr Bockett agreed to recruit someone, they agreed that the appointee should be subject to a six month period of probation, owing to the novelty (for the Respondent that is) of the role.
14. The Claimant, Mrs Manley, applied for, was interviewed and appointed to the position. She was, in fact, the only applicant. She commenced employment on **08 September 2022** on a part-time contract, working 2.5 days a week in return for a salary of £35,000 per annum, pro-rata. Mrs Manley worked Monday and Tuesday on site and worked from home for the remaining half day, flexibly either on a Wednesday or Friday.
15. Mrs Manley was issued with a written contract of employment which she and Mr Bockett signed on **10th and 11th August 2022**. There were two copies or versions of that contract in the bundle. Clause 5 of the contract gave the start of employment as **08 September 2022** and provided for a probationary period, which was a matter of controversy and dispute in these proceedings. After identifying the length of the probationary period, it added: "*A set of objectives for this period will be agreed with the Director. Upon satisfactory completion of the probationary period you will be confirmed in post. If these objectives are not completed satisfactorily the period of probation will be either extended or ceased.*"
16. Clause 10 of the contract provided for termination. It stated: "*If the Employer terminates your employment and you have not satisfactorily completed your probationary period, you will be given statutory notice. Otherwise, you will be given 4 weeks written notice or statutory notice if this is greater than four weeks.*"
17. In the first version of the contract [page 73-75], clause 5 said: "*The probationary period for your post is 3 months.*" I shall refer to this as the 'unamended contract'.

In the second copy [page 76-78] it said: “*The probationary period for your post is 3 months.*” However, the number ‘3’ was scored through by hand, and the number ‘6’ was substituted, in manuscript. Next to the number ‘6’, the following words were also added: “*Probation objectives Schedule*”, again in manuscript. I shall refer to that contract as the ‘amended contract’.

18. The only other difference between the two documents was that in the amended contract, the Claimant’s National Insurance number had been inserted against the typed letters ‘NI’. These manuscript additions were made by Mr Bockett. As articulated above, the entries regarding the period of probation was hotly disputed. Before I set out my findings on it, there was one other document that referenced terms of employment signed by Mrs Manley. That was a ‘statement of main terms of employment’ dated **11 August 2022 [pages 79-80]** (‘the Statement’). Although not all statutory statements of employment particulars amount to contractual documents, in this statement, it is stated that it forms part of the contract of employment except where the contrary is expressly stated. In the Statement the notice required to terminate the contract by the employer was stated as being 1 week if terminated after 1 month but before 2 years’ employment.
19. A job description and person specification had also been prepared and accompanied the unamended contract and the Statement [pages 81-84].

The probationary period and the meeting of 12 September 2022

20. The Claimant contended that her contractual probationary period was 3 months, as per clause 5 of the unamended contract. If that is right, then the probationary period would have been scheduled to end (subject to any extension) on **08 December 2022**. The Respondent contended that the probationary period was varied to 6 months. If that is right, it would end (again, subject to any extension) on **08 March 2023**.
21. The unamended contract and the Statement of Main Terms of Employment were the only contractual documents which the Claimant signed. When she signed the unamended contract, Mrs Manley noted that there was a three month period of probation. However, this was of no concern to her. Mrs Manley is a very confident person. She had no doubt about her own abilities and had not concerns about successfully passing probation.
22. Monday **12 September 2022** was Mrs Manley’s first day on site. On that day she and Mr Bockett met to discuss and agree, among other things, her probationary objectives. Mr Bockett gave Mrs Manley a paper copy of the objectives. I shall set out how he gave this document to her in below but for now I need to determine whether the probationary period of 3 months (as set out in the unamended contract) was varied or not. The Respondent contends that at this meeting, Mr Bockett and Mrs Manley discussed and agreed that the probationary period was to be six months. Mrs Manley does not accept this. She contended that there was no discussion at all regarding the length of her probation either at that meeting or at

any other time and that she never agreed to a change from 3 to 6 months. I find that there was a discussion and agreement about the length of probation and I set out below (in paragraphs 23 to 28) the facts which have led me to that finding.

23. It is common ground that, on **12 September 2022**, Mr Bockett and Mrs Manley talked through her probationary objectives. Very shortly after the meeting, Mrs Manley asked Mr Bockett to forward her a digital copy of the document which contained the probationary objectives [**page 86**] which he did [see **page 87**]. The document which he emailed to Mrs Manley [**page 88**] is headed: '*Sales & Marketing Manager Probationary Objectives 8 Sept 2022 to 9 February 2023*'. It then sets out, in tabular form, 6 objectives which were to be completed by specified dates. The dates were entered in the final column of the table. The first two objectives were to be completed within the first three months of employment. A third was to be completed by **31 December 2022** and the remaining three objectives by **09 February 2023**. The date by which the last of the probationary objectives was to be completed was **09 February 2023**, that is five months from the commencement of employment. The document did not purport to say that the probationary period ended on **09 February 2023**, only that the last of the objectives must be completed by that date, which was in fact one month before the end of the six-month probationary period. There is nothing wrong or unusual in this. A set of probationary objectives which are to be completed within 5 months is logically more consistent with a stipulated probationary period of 6 months than of 3 months. Mrs Manley did not query or say anything about the probationary timetable.
24. There had to be some explanation for her failure to raise any issue regarding the timeline for the achievement of the probationary objectives. One possibility was that she simply did not notice that the timeline went significantly beyond the three-month probationary period referred to in the unamended contract. Indeed, the Claimant tentatively suggested this in cross-examination. However, I rejected that as highly implausible. Mrs Manley has, as she accepted, an eye for detail. Indeed, I find it implausible that she and Mr Bockett had a conversation about completion of objectives without any discussion regarding the date by which they had to be completed. I also considered the possibility that Mrs Manley was reluctant to raise the inconsistency between the timeline for objective completion and the period stated in the unamended contract as an issue because she was a newly appointed employee and concerned about 'rocking the boat', so to speak. This was, after all, the first day of her employment on-site. However, I rejected that too. Firstly, Mrs Manley did not suggest this and secondly, Mrs Manley is a mature, confident person and has no difficulty in raising matters of significance to her. In any event, there were no problems between her and Mr Bockett at this very early stage of the relationship (or indeed up to **07 February 2023**). She and Mr Bockett got on well and there is nothing inherently problematic in an employee querying a simple discrepancy such as this. A third possible reason for not querying the probationary timetable was, as Mr Bockett maintained, that the two discussed the fact that the length of probation was supposed to be 6 months, that the original reference to 3 months was an error and that they agreed that it was in fact 6 months. Having considered the matter carefully, that is what I find happened at the meeting. I

accept Mr Bockett's evidence that both the objectives and timelines were discussed and agreed.

25. I find that when Mr Bockett came to draw up the probationary objectives in preparation for the meeting on **12 September 2022**, he realised this error, recalling his discussions with Mrs Morgan and Mr Darlington, prior to recruitment, that the probationary period was to be 6 months. He explained the error to Mrs Manley at the meeting and said that the probationary period was, in fact, six months. For her part, I find that Mrs Manley had no problem with a probationary period of 3 or 6 months. Confident in her own abilities and attributes, it was, at that time, simply of no concern to her. She agreed to the six-month period. As of **12 September 2022**, they both proceeded on the understanding that the probationary period was 6 months.
26. Mrs Manley asked for a copy of the objectives and received a copy. She never raised any objection to the timeline after the meeting. She continued in her employment in the full knowledge that stipulated probationary objectives were to be achieved by **February 2023**.
27. Any residual doubt on the matter is laid to rest by consideration of Mrs Manley's own words some five months later. In an email to Mrs Morgan of **14 February 2023**, she referred to whistleblowing disclosures she says she made to Mr Bockett in a letter of **24 January 2023** and again at a meeting on **31 January 2023**. She stated: "*I would like to state that when I disclosed the above, I did so in full knowledge of my vulnerability, believing at the time I was under probation.*" [page 232].
28. That is an unequivocal statement by Mrs Manley that, as of **31 January 2023**, she believed and understood, that she was still in probation. That was wholly consistent with Mr Bockett's evidence that they had agreed back in **September 2022** that the probationary period was agreed as being 6 months.
29. Mr Bockett ought then to have sent Mrs Manley an amended written contract. However, he did not. He simply made a manuscript change on his copy. He did not believe it would ever be an issue and that it was entirely uncontroversial. Mr Bockett is, I find, rather 'sloppy' when it comes to documenting and administering employment-related matters. There was the first error of inserting 3 months, rather than 6 months in clause 5 of the contract. There was the inconsistency between the period of notice to terminate as set out in the Statement and in the unamended contract (the former making no reference to the notice required to terminate during probation). It was also rather sloppy or careless of him to consider it sufficient to leave a file note as regards to contractual changes in a drawer for Mrs Manley, which I come to in the following paragraphs. The result was that, although they agreed that the probationary period was to be 6 months, rather than providing Mrs Manley with a written copy of the amended contract for her to retain, he simply made a manuscript-amendment [page 76] which was never given to Mrs Manley. Further down the line this served to fuel Mrs Manley's suspicions.

Mr Bockett's file note

30. Located within the reception at Minsteracres were a couple of closed cabinets which contained about fifteen or so drawers. The drawers were allocated to various people or departments (such as catering, marketing etc..). The Claimant had been allocated a drawer and she was aware of which drawer was for her – and for marketing – purposes. The purpose of these drawers was for managers to place information in them for the attention of the relevant member of staff who would from time to time check for mail, correspondence and business related information relevant to their work.
31. Although he did not send Mrs Manley an amended version of the written contract, Mr Bockett said that he prepared a file note [**page 89**] referencing the agreed change of probation period. This too was the subject of a significant dispute. The validity of that file note was hotly contested by Mrs Manley who alleged not only that she never received the file note but that it was a fabricated document. I set out the respective positions of the parties and my findings on this hotly disputed issue below (paragraphs 32 to 39).
32. The file note is dated **12 September 2022** on headed paper – the header being 'Minsteracres Retreat Centre'. It read as follows: "*File note by hand: CI Manley, 6-month probation objectives.*

"Dear Cath,

Following the discussion this morning, I confirm that we agreed that your probation period would be 6 months, not 3. The objectives covering this period are attached..

*G Bockett
Director"*

33. Mr Bockett said that he had left this note, along with the probationary objectives document [**page 88**] for Mrs Manley in an envelope in her drawer. Mrs Manley contended that Mr Bockett was lying about this and that the document, which she saw for the first time at the appeal against her dismissal, was a complete fabrication by Mr Bockett. During the hearing, I raised with the Respondent whether it would be possible to obtain the 'properties' (or as Mr Tinnion referred to it, the 'meta data') of the document and if so, ordered that it be disclosed to the Claimant. Consequently, a document was produced and added to the bundle as **page 451**.
34. The properties showed that the document had been created on **17 September 2015** and that it had last been modified on **13 October 2023**. The total editing time of the document was shown as 569 minutes. Mr Bockett was asked about this. I accepted as truthful his explanation as to how the document came into existence which I find to be as follows: he had saved on his computer a word document, which he saved under the name 'Headed paper.docx.' He referred to it as a 'template'. The document contains a header above a line at the top of the page

and a footer below a line at the bottom of the page. His preference was to write file notes, print them and give them to people. His practice was that whenever he needed to write a file note, he would open this document and type a note between the header and the footer lines. He then printed the document off as a hard copy, saving the document. The next time he needed to write a file note, he would repeat this process, in that he would open the document in order to type the note. Upon opening the file note, the text of the previous note he had made was still there, between the header and footer lines – unless he had deleted it when closing it the last time he had used it. He would then write over the previous text (that is, if he and not deleted it prior to closing the document the time before), thus effectively starting afresh each time he used it. Although he referred to this as a ‘template’, it was not a template in the strict sense (by which I mean, it was not a ‘dotx document’). Rather, it was a word document (with the suffix ‘docx’). However, he used it as a template. The 569 minutes editing time reflects that the document was indeed used and edited – or written over - many times since its creation in **2015**. As I have set out, I accept that this was Mr Bockett’s practice and that this is how the note at **page 89** came into existence. What it was not possible to determine, from the properties page alone or from an acceptance of Mr Bockett’s general practice, was that the note on **page 89** had been made by him on **12 September 2022**.

35. I considered very carefully what the Claimant said about this document. In her evidence she said she had not seen this until her appeal and that it was a falsified document. However, I was satisfied and so find that the document is not a falsification or fabrication. If it was, it seemed a rather unnecessary and elaborate falsification. The undisputed facts were:

35.1. On **12 September 2022** Mr Bockett had emailed the probationary objectives which referred to objectives that had to be achieved by **09 February 2023** (some five months after the commencement of employment). Therefore, there was a documentary record of something which clearly evidenced a probationary period of more than three months and which the Claimant had unquestionably received electronically. This raises the obvious question: why would Mr Bockett falsify a note referring to an agreement that the probationary period was 6 months and not 3 months when there was already something in existence which demonstrated that it was more than 3 months?

35.2. The Claimant had, as she accepts, never queried the length of her probationary period (and in fact, in her email of **14 February 2023**, referred to her understanding as of **31 January 2023** that she was still under probation then). This is, again, further confirmation that the period was 6 months and not 3 months. Why, one might ask rhetorically, would someone do something as serious as fabricate a document in those circumstances?

35.3. The Claimant raised for the first time any issue of the length of her probation after she had been told that it had been extended. Prior to her raising

any issue, Mr Bockett had no reason to believe that she would query something which he knew she had agreed to on **12 September 2022**.

36. I accepted Mr Bockett's account as being truthful. Mr Bockett's practices may be unwise in this day and age of electronic transmission of documents. Whether that is so or not, I find that he created the note as I have set out in paragraph 34 above. He then printed a hard copy of it and – unwisely - did not retain or send an electronic/digital copy. He intended to place a paper copy of the file note and the objectives [page 88] in an envelope in Mrs Manley's drawer. I was quite satisfied of this. What was more difficult was whether in fact he did place a copy of the file note in her drawer.
37. Contrary to Mrs Manley's evidence, I find that she did in fact receive a paper copy of the objectives document. As she explained in her oral evidence, she prefers electronic copies of documents. She emailed Mr Bockett on **12 September 2022** asking for a 'digital' copy of her probationary objectives [page 86] because she had received a paper copy only. Although she disagreed under cross examination, Mrs Manley was, I find, distinguishing between 'digital' and 'paper' copies. Had she not been so distinguishing, I would have expected her simply to say something like '*would you mind forwarding me my probation objectives which we discussed at the meeting?*'
38. She had, I find, retrieved the paper copy from the drawer. She then asked for a digital copy. However, I find that she did not receive a paper copy of the file note. Had she done so, I would have expected her to have asked for a digital copy of that as well.
39. The file note refers to the objectives being 'attached'. I considered that it was possible that Mr Bockett was covering his back by manufacturing a file note after the event (as suggested by Mrs Manley). However, I rejected this and find that Mr Bockett prepared the file note at the same time and that he intended to place the note with the objectives document in the drawer but omitted to do so. There was nothing sinister in this. It was more carelessness on his part. In recounting events many months later, he has recollected – wrongly – that he left the file note in the drawer. I do not find that Mr Bockett was intentionally misleading the tribunal or the Claimant in this evidence. I am satisfied and so find that he genuinely believed that the file note was placed in the envelope with the objectives. It is important to note that, on **12 September 2022**, everything was positive. The Claimant was new. Mr Bockett wanted her to succeed. They had a positive relationship. The discussion about objectives was constructive. There was no resistance to the objectives or time frames of probation. There was simply nothing controversial at all. It is unsurprising that, many months later, when Mr Bockett read the file note referring to the 'attached' objectives, that he believed the document had indeed been left in the drawer at the same time and along with the objectives document. He was wrong about that but it was a genuine error.

40. I shall address the events of **07 February 2023** later. However, it is important to set out my finding on why Mrs Manley subsequently adopted the position that her probation period always remained at 3 months. In the same email that she stated she believed she was still under probation on **31 January 2023**, she also said [at **page 231**] *“However, I did read my formal letter, Employment Handbook reference and confirmed my contractual probation of 3 months (which formerly concluded without comment on the **9th December 2022**, and as such I am legally advised that I am now considered a permanent employee).”*
41. I find that much of this comes back to Mrs Manley’s belief in her own abilities and her refusal to accept that her employment could be questioned. She was so shaken by the fact that her probationary period was extended by Mr Bockett on **07 February 2023**, that she took some advice. She also spoke to her husband. She dug out her written contract of employment which she had not looked at since starting employment and there noticed the reference to three-months’ probation. She was also conscious that she had received nothing in writing to say that this period had formally been extended. Having discussed matters at home and having taken some advice from somewhere, she adopted the position that, legally, the written contract trumped everything, so to speak. However, her belief, as of **31 January 2023**, that she was still under probation derived from the agreement she had reached at the meeting of **12 September 2022**. Back then, she was wholly unconcerned about probationary periods and about her future. However, when circumstances changed in **February 2023**, and her employment appeared under threat by the extension of probation, she reverted to the written document, believing that this addressed the ‘legal’ position. It was not to the point, as she now saw things, that she had understood and agreed she was under 6 months’ probation. She was of the view that the written contract trumped any earlier oral variation and that the Respondent had to stand by that document.

The Claimant’s relationship with Margo Mooney

42. Fairly early into Mrs Manley’s employment, on **04 October 2022**, she and Mrs Mooney had a disagreement regarding the role of Andrew Pennington. It being a small, close-knit organisation, this came to the attention of Mr Bockett. Part of the disagreement was whether Mrs Manley had referred to Mr Pennington as being ‘*second in command*’ and whether Mrs Mooney had failed to place an order for a chair and a desk for Mrs Manley and whether Mrs Mooney had been confrontational towards Mrs Manley. Mr Bockett managed the situation informally. He spoke to both individuals. He discussed with Mrs Manley the boundaries or limits of Mr Pennington’s role, particularly as regards being a signatory to cheques and his role in the organisation. Neither Mrs Manley or Mrs Mooney are ever likely to agree on the scope or reason for the dispute but the fact that there had been a dispute at all, so early on in Mrs Manley’s probationary period, raised a red flag with Mr Bockett. It may well be that he was more naturally inclined to accept the version of Mrs Mooney (rightly or wrongly) as a long serving member of staff as opposed to a new employee. I make no finding on that one way or the other. However, importantly, he regarded the friction as a bad sign.

43. On **24 October 2022**, Mrs Manley emailed Mr Bockett expressing some concerns over “*communications over bookings being missed, and stored in a non-public place for clarification, responses and follow up*”, the effect of which she said was “*affecting our professionalism and communications with users*” [page 98]. Mr Bockett met with Mrs Manley either that day or the following day, **25 October 2022**. He asked her to put her concerns in writing.

Mrs Manley’s grievance: 31 October 2022

44. She did so on **31 October 2022** in a formal grievance [page 101-104]. In highlighting her concerns, she said that they related directly to the behaviour of Margo Mooney following her arrival into post. In these proceedings Mrs Manley sought to emphasise that she was complaining in this document about ‘systems’ and not just about Margo Mooney.

45. It is clear from a reading of the grievance document that it is a complaint about bullying of her by Mrs Mooney. It is not a complaint about ‘systems’. To the extent that there is a reference to systems, it is in the context of Mrs Mooney allegedly ‘*assuming a lot of power beyond her own jurisdiction*’ I shall come to this issue of ‘systems’ in due course. At this juncture, however, I find that Mrs Manley has subsequently come to latch on to this notion of ‘systems’ and to exaggerate and distort her complaint of personal bullying against Mrs Mooney back in **October 2022** as being one of ‘whistleblowing’ concerning health and safety. If there was any concern expressed about the Respondent’s ‘systems’ in the grievance document, it was under ‘*issue 5: lack of transparent communication re: bookings, retreatant/facilitator communication*’. I set out what is said under issue 5 as it is relevant to the Claimant’s complaint that she was automatically unfairly dismissed for ‘whistleblowing’ in this document (in that it was said to relate back to what had been said when she made what Mrs Manley says was her first protected disclosure on **page 98**):

*“Margo Mooney has not made a practice of sharing bookings correctly, **which has directly impacted on my ability to evaluate the effectiveness of my publicity strategies, and raised direct concerns** regarding miscommunications between retreatants and retreat facilitators, **often resulting in a concerning display of un-professionalism, affecting presentation of Minsteracres to the public, and potentially affecting accurate costings, future bookings, and trust concerning colleagues relying on an expected transparent and professional administration.** Examples of this include the Darren Harper booking (16 turned up rather than the 10 documented and travel details/room requirements were not communicated to the wider team, despite Margo being on annual leave that week) the ‘Day of Consolation’ (lack of communication to potential retreatants and additional numbers not documented, resulting in a member of the public overtly challenging the lack of communication, publicly, on the social media platform which I oversee). **These are retreats that I have been directly involved in promoting***

and this has caused significant embarrassment for me personally, as well as promoting an unprofessional interpretation of Minsteracres.”

46. To the extent that Mrs Manley’s complaint in her grievance was about ‘systems’ it was about how Mrs Mooney managed ‘bookings’ in that, in Mrs Manley’s view, she did not share information on bookings correctly. Reading the document as a whole, and in conjunction with the comment about Mrs Mooney exceeding her power and having behaved in a similar way to other staff, I find that the Claimant was concerned about Mrs Mooney’s handling of the booking system and not the systems themselves. More importantly, when she wrote her grievance, Mrs Manley’s concern was primarily how Mrs Mooney’s behaviour affected her personally and how it showed the Respondent as unprofessional. I am entirely satisfied that, at no point when she wrote this, was Mrs Manley expressing any concern about health and safety issues arising out of Mrs Mooney’s ‘practice’ of keeping things to herself. She did not believe that to be the case at the time. The reference to ‘Darren Harper’ was expressed in the same vein, as an example of unprofessionalism. Mr Harper features later when Mrs Manley came to develop a whistleblowing case. However, her reference to him in this document had no connection with any concern she had about his health and safety or the health and safety of anyone else for that matter. It was raised as a concern that the confusion was a source of embarrassment for her personally and for the Respondent as an organisation.
47. I now need to say something briefly about the facts regarding Mr Harper as I have found them to be. Mr Eugene Manley, (prior to the Claimant taking over her own representation) told me that Mr Harper was relevant to ‘**PID 1**’, that he was an elderly man, as he put it, in his 60s, who was left to walk along a dangerous road from Riding Mill station to the Retreat Centre, laden with bags, risking his safety.
48. Mr Harper is an external facilitator of retreats up and down the country. He is not in his 60s. He is in his 40s. Contrary to the impression I was initially deliberately given, he is not vulnerable. In late **October 2022**, he was facilitating a retreat at Minsteracres. He had been facilitating another retreat elsewhere on the Sunday immediately before he was due to facilitate at Minsteracres. He had planned to get a train to Riding Mill station on Monday morning (which is about 5 miles from Minsteracres) and for someone to collect him from the station. However, he had no access to email or to a phone signal until late on Sunday, at which point he left a telephone message asking if someone could pick him up from the station. The message was not picked up until Monday morning. When he arrived at the station, no-one was there. That was because his message had only been picked up in the morning. Once it was picked up, Pavan drove to collect him. In the meantime, Mr Harper – rather than make another call or call a taxi – took it upon himself to start walking. Pavan saw him, stopped and brought him to the retreat.
49. Mrs Manley, who was on site on the Monday morning, apologised to Mr Harper. Mr Bockett also subsequently spoke to Mr Harper and apologised when he was made aware of what had happened.

50. There is no reference on **page 44** to the fact that Mr Harper was in fact collected and brought to the retreat centre by Pavan. The Claimant was silent about this until it emerged during Mr Bockett's evidence when he explained what happened. The initial impression that Mr Harper walked to the retreat changed to an assertion that he walked 'many miles' along the A68. To walk the whole 5 miles would take over 2 hours. To drive would take about 10 minutes or so. Mrs Manley never clarified what she meant by 'many miles'. It is more likely than not that he walked only a short distance before Pavan arrived. I have no doubt and so find that Mrs Manley was exaggerating this event for her own purposes in these proceedings. I further find that Mrs Manley was unconcerned about Mr Harper's safety at the time – it was never a question about his safety. The sole issue as she saw it was embarrassment to her and to the organisation. The person she held responsible for this embarrassment was Mrs Mooney.
51. In her discussion with Mr Bockett on **24 October 2022** (and which was alluded to in issue 5 of the written grievance in the sentence '*...has not made a practice of sharing bookings correctly*', Mrs Manley said that Mrs Mooney had been storing bookings in her individual email account. The employees each had their own individual email account. In addition, there was and had always been a central information email account called 'info@....' ("**the info@ account**"). One of the ways in which an external party might book an event, such as a retreat, was to send an email to the info@ account. It was a key task of Mrs Mooney to process and administer bookings, something she had been doing for many years. She had, over those years, developed a practice of checking the info@ account, then dragging any bookings from there into her own individual email account and then to work through the bookings from there. Mrs Manley was concerned that this meant that mistakes could happen because only Mrs Mooney would know what bookings had been made and that backlogs could build up without anyone other than Mrs Mooney being aware of this. Mr Bockett felt that this was a valid point.
52. The following day, **25 October 2022**, Mrs Manley emailed Mr Bockett with 'a further reflection' [**page 99**]. She highlighted that she did not think the issue was 'relational between Margo and myself'. She said she thought that the issue was much deeper, that it was a professional capacity issue regarding her professional performance and methods of interaction. In cross examination, Mr Tinnion suggested to Mrs Manley that, in this email, she was highlighting a serious concern about Mrs Mooney. Mrs Manley disagreed, saying that she was raising a serious concern about health and safety. Mr Tinnion is right. She was unequivocally challenging Mrs Mooney's professionalism and her way of interacting. Her words that she did not believe the issue to be '*relational between Margo and myself*' signified that she did not believe this to be a personality clash between her and Margo. Mr Bockett did not disagree. He forwarded the email to Mrs Morgan [**page 99**].
53. Although he had asked Mrs Manley to put her concerns to him in writing, he had not expected this to come in the form of a formal complaint against Mrs Mooney. He had intended to have a meeting with Mrs Manley, Mrs Mooney and Mr McKean.

He felt that they needed professional support from a solicitor and a meeting to clarify roles, responsibilities and boundaries to clear the air [page 105].

54. He met with Mrs Mooney and Mr McKean in the morning of **31 October 2022** and explained the issue regarding storing bookings in individual accounts. They agreed that the individual emails should be deleted and to work from the info@ account. Mrs Mooney expressed reluctance and subsequently did not agree to delete her individual account. The reason she gave for not deleting her individual account was, in Mr Bockett's view, a valid one. She had built up many relationships with retreatants over the years and she corresponded with them sometimes on confidential matters. She did not wish to do this from a public account such as the info@ account. She believed she needed to correspond from her own individual account. She was advised by Mr Bockett not to drag emails across, rather she could copy them into her own account. Therefore, as far as Mr Bockett was concerned, he could see the valid point made by Mrs Manley and he understood the valid response from Mrs Mooney. He sought to resolve it by reminding Mrs Mooney to copy bookings and emails across, not to drag them and to monitor the situation to see if there was improvement.
55. Later, in the afternoon of **31 October 2022**, Mr Bockett met with Mrs Manley. He broached the subject of a meeting between him, Mrs Manley, Mr McKean and Mrs Mooney about roles and responsibilities. However, Mrs Manley said she was not keen to do this.
56. Mrs Morgan, as Mr Bockett's effective line manager, was kept abreast of tensions between those in the main office and Mrs Mooney. By early **November 2022**, others were beginning to pick up on the tensions existing between Marketing (which was essentially Mrs Manley) and the main office. Father Connelly had begun to sense those tensions and especially between Mrs Manley and Mrs Mooney. Mrs Manley does not dispute that Father Connelly had sensed the tension. However, she does not accept that she was in any way responsible for any of this tension or friction.
57. On **07 November 2022**, Mr Bockett and Mrs Manley met to discuss her grievance. This was quite a long meeting and they went through each of the six issues raised by Mrs Manley. He expressed regret that Mrs Manley felt undermined and that she did not belong and said he would try to resolve this. It was a positive, constructive meeting and one in which Mrs Manley was genuinely grateful for Mr Bockett's support, something which she had already expressed in her formal grievance [page 104]. After the meeting, she emailed Mr Bockett thanking him for the helpful discussion the previous day. Having reflected, she withdrew her formal complaint against Mrs Mooney [page 114]. She did so entirely of her own volition, having talked it over at home and without any pressure from Mr Bockett. In her evidence to the tribunal, Mrs Manley said that nothing at all was discussed about Mrs Mooney at the meeting on **07 November 2022** and that Mr Bockett only discussed the issue relating to access to the bookings. I reject that evidence. It is wholly implausible. Mr Bockett discussed all the issues with her, all of which involved Mrs

Mooney. Mrs Manley has sought to minimise any 'relational' issues preferring to refer to the bookings issue as 'structural issues'. Mr Bockett was content to adopt that terminology as he was hoping relationships would improve. He also saw some validity in Mrs Manley's points regarding the management of bookings. Therefore, he replied that he looked forward to working with her and Margo to resolve the structural issues she had outlined in as constructive a manner as possible [page114].

58. Subsequently, and in these proceedings, Mrs Manley would seek to elevate these so-called structural issues to what she called concerns with 'massive' health and safety issues and breach of statutory regulations.

59. Ever since she started her employment Mrs Manley and Mr Bockett enjoyed a positive relationship. That was so even though Mr Bockett had his doubts about Mrs Manley being a team player and his perception that she involved herself in matters outside her area of responsibilities. Despite his reservations, he did not show this to her. Rather, he sought to clarify roles and boundaries and to give Mrs Manley time, hoping to work on improving those things. I find that there was also an element of conflict-avoidance on Mr Bockett's part. As far as Mrs Manley saw things, she continued to have a positive relationship with Mr Bockett right up until **07 February 2023**, the day he informed her that her probation was to be extended.

60. The reservations which Mr Bockett had were reflected in an email from him to Mrs Morgan on **04 November 2022** [page 112]. In that email he said:

"Herewith the JD. I've realised another two aspects of her behaviour that are not helpful that I will need to work on?"

1. *She assumes responsibility for things that are not her responsibility; and*
2. *She does not realise the importance of team playing in such a small organisation where a decision in one team has a significant impact on other teams. She cannot simply work away on her own."*

61. On **29 November 2022**, Mrs Manley gave a presentation to the Board of Trustees regarding the proposed retreat programme for **2023**. Mrs Manley's essential proposal was that there should be a change of emphasis, in that the Respondent should move more towards spiritual retreats and away from self-led groups. This presentation was generally well-received. However, the board did raise one concern regarding the fact that the calendar already contained bookings of self-led groups and that this move might cause serious '*pinch points*' for the community, staff and volunteers. That aside, the board was in agreement with the general direction and asked Mr Bockett to involve Father Connelly, Tina, Margo Mooney and Mrs Manley to look at the pinch points to ensure that the programme was deliverable without causing unnecessary stress.

62. The board minute states that '*clarity is needed between the roles and responsibilities for Cath, Margo and Wendy*' (who had just been recruited). It also

stated that staff morale had been low at times during the year and that Mr Bockett was looking to arrange a staff and community team building exercise early in January to address this [page 119].

63. On **02 December 2022**, Mrs Morgan emailed Mrs Manley [page 123]. She thanked her for the time and effort she put into the board presentation adding that they were impressed with what she had been able to consider since September. Mrs Morgan went on to explain that the plan for next year was to try to encourage at least 10 more retreatants to each event, rather than increasing the number of events. The concern (as reflected in the board minute) was that the Trustees did not wish to add stress to the staff, community and volunteers by doing too much too fast. Thus, she explained that Mrs Manley had developed plans more quickly than they would have expected and that there were capacity issues. The message was clearly that Mrs Manley was moving too fast, that the ship could not easily be turned around and that collaborative working would ensure a happy compromise.
64. Consistent with my above finding that the Claimant had agreed that her probation period was in fact six, not three months, come **08 December 2022** nothing was mentioned – either by Mr Bockett or by Mrs Manley – about the probationary period being up.

January 2023

65. Sometime in **January 2023**, Jean Haldane, a Trustee and volunteer co-ordinator complained to Mr Bockett that Mrs Manley had behaved in an intimidating and forceful manner towards her. The issue concerned the process and responsibility for producing a publicity leaflet for the recruitment of volunteers. Mrs Manley does not accept that she upset Mrs Haldane or that she was upset at all. It may be that Mrs Manley is right about this. It may be that she is not. It may be that Mr Bockett attached greater reliance to Mrs Haldane's account than he ought reasonably have. I make no finding on this either way. However, it was, in his mind, another negative signal in terms of team-working which he attributed to the Claimant's forceful personality as opposed to fault on the part of Jean Haldane. He did not discuss this incident with Mrs Manley at the time. It was, however, mentioned by Mrs Manley subsequently in the meeting of **31 January 2023** and then by Mr Bockett in the meeting of **07 February 2023**.

Team building event: 10 and 11 January 2023

66. The team building event referred to at the Board meeting of **29 November 2022** [page 119] took place over **10 and 11 January 2023**. It was facilitated and run by an external mental health charity, Heartwood which provides, among other things, counselling and mentoring for groups and organisations. The facilitators had prepared a short briefing of the event [page 133] the aim of which, in essence, was to try to 'find a way to grow in a constructive direction as a working team.'

67. The structure was that there was an initial large group (or 'plenary') session at the beginning followed by smaller group sessions and finishing, on the second day with a second plenary session. The point of the exercise was from the outset to enable staff, community and volunteers to express their feelings, to learn how to actively listen.
68. During the final plenary session, Mrs Manley spoke openly. The gist of what she said, is not disputed and is accepted that it is broadly as set out on **page 45** of the bundle as follows:
- "I am not afraid to speak out at this meeting because I know there are many people in this room who are afraid and feel intimidated to speak out themselves. Staff are feeling physically unwell with severe stress and some feel the need to leave their posts. There are recurring organisational issues affecting the health and wellbeing of many staff. We must be willing to work effectively together to resolve these issues".*
69. Mrs Manley said to Father Connelly and Mr Bockett: *"in order to respond effectively to these problems and find appropriate solutions, we need your help please."* Of course, at this juncture, Mrs Manley's relationship with Mr Bockett was still good. She did not see him as a problem. Rather, she had turned to him because she recognised that he would be instrumental in working effectively in the future to resolve the concerns raised at the event. It was not a question that demanded any response from Mr Bockett or Father Connelly, rather it was the Claimant turning to them because she saw them as being the right people to address the concerns.
70. Heartwood produced a feedback report of the event for management and a summary feedback document for staff. The staff feedback document was in the initial bundle at **page 175-177**.
71. The summary feedback document is, however, a watered-down version of the whole report, or to borrow Mrs Manley's description, a 'sanitised version'. It does not set out the themes which arose in small group discussions. Nor does it contain reference to individual comments made privately to the facilitators. The full report came to be referred to in these proceedings as 'the Heartwood report'. As alluded to above, in advance of the hearing, Mrs Manley made an application for disclosure of the report. This was resisted. Judge Aspden directed that it be determined by the Judge at the final hearing. I declined to make any order until I had fully read into the case and to understand its significance to the Claimant's case. I said that Mr Manley (who was still representing at that point) could make the application later if he wished. However, he did not, until I raised it at the end of the Claimant's case.
72. The Respondent had resisted disclosure primarily on the grounds of relevance and that it was not reasonably necessary for the fair disposal of the issues, in that the gist of what the Claimant said at the plenary session was not in dispute. It was also concerned that the Claimant wanted to see the report for her own personal agenda.

The Claimant submitted that the staff in small groups relayed concerns about allergens and health and safety and that without seeing the report she would be deprived of evidence relating to the issue of her disclosure. Both parties agreed that I should read it and I did so. Although noting that there was no reference about food allergens or health and safety, I could see the potential relevance to the issue of whether the Claimant held a reasonable belief that she was raising her concerns regarding staff welfare in the public interest. The report referred to the numbers of staff expressing concerns about bullying, which could be taken to be a reference to 'health and wellbeing' as per the alleged disclosure on **page 45**. I considered it reasonably necessary for the Claimant to have sight of the document as without it she would be deprived of evidence which might arguably support that part of her case and that it was also arguably relevant to the reason for dismissal as it referred to her (albeit not by name) speaking up at the plenary session. However, I retained a residual concern that Mrs Manley was on a 'fishing trip' and that the driving force behind the application was a desire to have a copy of a report that contained what she believed to consist of negative sentiments expressed against the organisation which she would see as vindication of her position and which she could then use against the Respondent to embarrass it. Despite that reservation, I ordered its disclosure. it was added to the bundle as **pages 452 to 458**.

73. Having ordered disclosure and allowed the Claimant a good break to go through the document, when the hearing resumed in the afternoon, rather dramatically Mr Eugene Manley (who was at this stage still representing the Claimant) began to read from a statement he and Mrs Manley had written during the break, in which they expressed abhorrence of what they referred to as 'concealment' of the Heartwood report suggesting that Mr Bockett and Mrs Morgan might not want to be cross-examined. The essence of the statement was that the Respondent should now simply concede everything. Mrs Manley clearly saw my order for disclosure of the Heartwood report as a victory and vindication and that it proved everything she had been saying. However, the document was not concealed from the Claimant. Its disclosure was withheld. I heard the respective arguments and ordered disclosure. As the case proceeded, the reservation that I held about Mrs Manley's real reason for seeing the report (namely vindication) was reinforced. I had, on a number of occasions, to clarify that this was not a public inquiry and that she needed to keep to the claim and the issues.
74. Following the teambuilding event, Mrs Manley drafted a document which, in these proceedings, was referred to as the 'Problems and Solutions' document [**pages 136-138**]. She emailed this to Mr Bockett on **16 January 2023** [**page 135**]. She referred to the document as one that "*focusses on the key areas which I feel are impacting directly on my being able to execute my role according to my job description, and also the inevitable ramifications across departments and for Minsteracres as a whole.*"
75. In the document, Mrs Manley summarised two issues, which had been discussed at the meeting on **31 October 2022** and which she had alluded to in the plenary session at the end of the teambuilding event:

75.1. **Issue 1:** *'bookings are not being correctly recorded and reported – the pivotal issue impacting on Minsteracres as a whole with significant cost implications'*

75.2. **Issue 2:** *'Clear Roles and Responsibilities'*

76. Under each issue, she then listed **'impacts'**, **'examples'** and **'potential solutions'**. As regards 'issue 1', the impact of not correctly recording and reporting bookings was uncertainty regarding the numbers of those attending, which impacted on marketing. She then broke this impact on marketing down into four components (a) to (d), within which she wrote *'major concern regarding diet considerations for health and safety'*. Under 'examples', in point number 3, she wrote and underlined *'serious reputational issues and possible harm to users'*. This was by reference to *'inconsistency in bookings resulting in miscommunication with retreatants, Kitchen diet accountability Health and Safety'*.

77. At the end of the document, under the heading **'My role:** (taken from my job description)' Mrs Manley made 13 suggestions.

78. Mr Bockett and Mrs Manley met on **16 January 2023** and discussed her Problems and Solutions document. The meeting, as were all meetings and interactions between them up to this point, polite and business-like. The Respondent does not contest the gist of what the Claimant says she said as set out on **page 46** of the bundle. I find that she did verbally convey these things, although I very much doubt and do not find that this is a word for word account, written as it was for the purposes of these proceedings, many months down the road. I find that, among other things, Mrs Manley disclosed the following information:

"As we heard at the training event there are some really deep concerns and anxieties about how we are adequately prepared to receive our guests..... the team have outlined that these issues are still ongoing.... I was speaking with Tina and she confirmed that a lady had paid her deposit but had no receipt or record of booking. Tina checked the info account and found no record of this lady, so asked the lady to send a copy of her email to Tina, which she did. I know that Tina was very concerned about this and settled and resolved these issues with the guest.

I myself have taken calls and witnessed inconsistent numbers being recorded across the admin system (diary) written records and the website which I am monitoring and asked Terry from IT to automate my email into all bookings to ensure consistency.

The worry is about adequate dietary provision and duty of care and risks to reputation. I know Maggie and the hospitality team are worried about appropriate preparation including covid safety and accessibility."

79. Mrs Manley told Mr Bockett that her husband, Kevin, could develop a management tool, a 'dashboard' which would improve the handling of bookings. This was something Mr and Mrs Manley had discussed at home and which he had offered, via his wife, to undertake voluntarily and for free. An example screenshot of how the dashboard system might look was included in the bundle at **page 447**.
80. Very shortly after this meeting, Mr Bockett made his own, personal brief note [**page 139**]. The note reads that some things had been agreed. It then states under number 4 '*probation meeting – date, need to set*'. The Claimant suggested in these proceedings that Mr Bockett was prompted to make this note because she had raised concerns at the teambuilding day and that the date of the note coincided with the Heartwood report. I do not accept this. I accept Mr Bockett's evidence that he made the note very shortly after the meeting. His making of the note (or its contents) had nothing to do with the Heartwood report. Mr Bockett's note says 'no' against three points. This is a reference to points 1,2 and 8 in the Claimant's note at **page 138** under '*my role*'.
81. In the evening of **16 January 2023**, Mrs Manley's husband, Kevin, emailed Mr Bockett under the subject 'data requirements & options' [**pages 141-142**]. This was a helpful document and Mr Manley clearly put some work into it.
82. On **24 January 2023**, Mrs Manley emailed Mr Bockett (with a copy to Father Connelly) [**page 149**]. The email was headed '*lack of support impacting my health and wellbeing*'. Mrs Manley said that she was unable to come to work that day as she continued to feel undermined and unsupported regarding her role, responsibilities and unreasonable workload expectations. She referred to the additional impact of manoeuvring around current inefficient systems and processes that affect her and the whole organisation and which were preventing her from doing her job to the best of her ability and had significant repercussions regarding success of Minsteracres as a retreat centre. She said that the current situation could not continue as it was affecting her health and wellbeing. She suggested a meeting with Mr Bockett and Father Connelly to discuss further. Mrs Manley did not, in that email at least, spell out what systems and processes she regarded as being inefficient. Shortly afterwards, Mrs Manley emailed Father Connelly separately [**page 150**], forwarding to him her earlier email to Mr Bockett and her Problems and Solutions document. [**pages 135-138**].
83. Mr Bockett forwarded the Claimant's email at **page 149** to Mrs Morgan and Mr Darlington, cc'd to Father Connelly. He said he did not know how to resolve this and whether it could ever be resolved, adding:

"her expectations of herself (she puts a lot of pressure on herself), her colleagues and of the organisation as a whole are unrealistic and too high. She also seems to be driven by a mission to improve the organisation unilaterally and without consultation. She simply does not fit within the organisation or its culture – and most staff will attest to this. I cannot continue to spend a disproportionate time

dealing with these issues as it is undermining my wider responsibilities and now beginning to affect my own health and well being.” [page 151].

84. Father Connelly replied, agreeing with Mr Bockett [page 156]. Mrs Morgan replied to both Father Connelly and Mr Bockett, agreeing with them both, saying that all that remains is to decide how they bring Mrs Manley’s employment to an end [page 158]. Mr Bockett suggested obtaining some legal input. He had mistakenly calculated that Mrs Manley’s probation ended on **09 February 2023** [page 158]. That was a month short. Mrs Morgan drafted a ‘possible’ response to Mrs Manley, which was never sent. The response was to terminate her employment and is drafted in rather terse terms [page 162]. This email, when Mrs Manley eventually saw it, served to fuel her suspicions of the Respondent further. However, it is not unusual for managers to write about employees privately behind the scenes. It is what managers do. Nor is it unusual for employees, when they eventually see such correspondence following a SAR or following disclosure, to feel and express their horror that they were being written about.
85. There was a board meeting held on **24 January 2023** and Mrs Manley’s employment was discussed. The consensus was that she had not settled into her employment with the Respondent, that she moved too fast for the organisation and staff and had unreasonable expectations of what could be achieved in unrealistic timeframes. It was believed that she put too much pressure on herself and on others, including Mr Bockett and Father Connelly. Mrs Morgan’s contemporaneous note of the meeting records the following: *“Cath M – doesn’t fit. Technically able and committed – mission to transform unilaterally – leads to friction – her expectations are unrealistic. Pressure on herself – difficult relationships. GB can’t do with it anymore”*. [page 164]. The factor that operated on the mind of Mr Bockett, Mrs Morgan and Father Connelly in arriving at the decision to recommend termination of Mrs Manley’s employment was, I find, their genuine concern over her ability to interact collaboratively with others in a cordial and effective way conducive to their own perception of the organisation and that the job was not working out either for the Respondent or for Mrs Manley herself.
86. The board was of the view that if things were not working to the mutual benefit of both parties after five months, things were unlikely to change and it decided to terminate Mrs Manley’s employment. Mrs Moran’s last entry reads: *“when we recruit concentrate on team players. Small organisation & be flexible”* [page 168].
87. At this meeting, the Board also discussed the outcome and feedback from the teambuilding day. It was noted that there was *“lots of stuff in the feedback reports ‘more negative does come from Cath”*. The Board decided that it would be counter-productive to disseminate the full Heartwood report. A decision was made to send the summary report only but to act quickly on the matters raised at the event and to address them. on **25 January 2023** Mr Bockett emailed the summary feedback to the relevant staff/community members who attended the retreat. There were 12

recipients [page 174]. It was a positive email designed to build on the lessons learned from the event.

88. However, the decision made at the board meeting that Mrs Manley's employment be terminated was not put into effect. Mrs Morgan decided to seek external legal advice. Rather than terminate her employment then, it was decided that Mrs Morgan and Mr Bockett would meet with Mrs Manley to discuss the concerns she had expressed as affecting her health and well-being. A decision could then be made after that. Mrs Morgan emailed Mr Darlington on **28 January 2023** [page 179]. She attached Mrs Manley's job description and the probationary objectives from **September 2022**. She noted Mrs Manley's reference to 'my role' (see paragraph 77 above) she expressed the view that Mrs Manley was '*exceeding her brief and criticising every level of management and team performance*'. Mrs Morgan opined that Mrs Manley's mindset and aspirations were appropriate for a much larger organisation and asked Mr Darlington whether he saw any way they can get her to concentrate on doing what is really in her job description or whether she would '*always require undue management time*'? Mrs Morgan and Mr Darlington arranged to speak on **30 January 2023**. Mr Darlington's view was that he wished to retain Mrs Manley but that she had to listen more and to be sensitive to the role of the retreat team and understand the need to work as part of a team recognising each other's strengths and weaknesses.

89. Mrs Morgan made a contemporaneous note of the conversation with Mr Darlington [pages 182-183]. They discussed her role. Mrs Morgan wrote '*the job is not to develop and oversee*'. That is a direct reference to Mrs Manley's point 1 under 'My role' on page 138. The note also records '*2 isn't her either*'. That is a direct reference to point 2 on page 138. The note records that the '*problem is willingness & ability to work as a team with others recognising we all have our own weaknesses*.' The upshot was that at the forthcoming meeting, Mrs Manley should be encouraged to listen more, to recognise the strengths and weaknesses of others and to work as part of a team.

Meeting of 31 January 2023

90. Mrs Manley met with Mr Bockett, Father Connelly and Mrs Morgan on **31 January 2023**, specifically to talk about the concerns she had raised about her health and well-being in her email of **24 January**. Mrs Morgan made a note of the meeting [pages 184-189] as did Mr Bockett [pages 190-191]. The substance of what Mrs Manley said was that that she believed there was a lack of clarity regarding her role; that she felt undermined by others but supported by Mr Bockett. The person Mrs Manley regarded as undermining her ability to do her role more than anyone else was Mrs Mooney (by the way she managed retreat bookings). By this time, Mrs Mooney was absent on planned sick leave for an operation. She was absent from **16 January 2023 to 02 March 2023**. Mrs Morgan and Mr Bockett were aware of Mrs Manley's views regarding Mrs Mooney. As Mrs Manley had said she felt undermined by others, they asked who they were. Mrs Manley referred to an incident with Jean Haldane. This is the matter referred to in paragraph 65 above).

Mrs Manley also said that there was a lack of administrative support for her from the office staff. She said that she believed there to be a reluctance from staff to adopt new systems and to respect Mr Bockett's role; that there was a lot of duplication, with bookings emails disappearing. Mrs Manley referred to Mrs Mooney arranging bookings from her work email account saying that the account should be deleted. This led to a discussion about the introduction of the 'dashboard' that Mr Manley had been working on. Mrs Morgan and Mr Bockett agreed that systems could be updated but that this could not be forced through at pace, that they needed to consult staff and get them to 'own' the developments. Special reference was made to not forcing a change on Mrs Mooney without consulting her.

91. Mrs Manley referred to two retreats: the first, a residential retreat, where more guests than anticipated had arrived for the retreat (this is the retreat referred to on **page 47**, where in the 5th paragraph it states "*where we have large groups turning up unaccounted for*") and a day event, where the facilitator, Darren Harper, had not been collected from the train station (this is the event referred to in the 6th paragraph of **page 47** where it states "*we have the example of Darren Harper, walking along the A68 due to the lack of requested transport*"). These were raised by Mrs Manley as examples of poor administration that caused embarrassment to the organisation. During the discussion about the retreat programme, it emerged that Mrs Manley had helped two retreat leaders put together the content of retreats. Mrs Manley, as noted by Mrs Morgan on **page 189**, did not want her role to be separate from content. To Mrs Morgan and others, this was further confirmation to them that Mrs Manley saw her role as being more than simply Sales & Marketing.
92. At one point during the discussion Mrs Manley said to the others present that she had been reluctant to raise her next point as it involved whistleblowing. Mrs Manley said she had spoken to Father Emmanuel, who had advised her to speak the truth as she saw it. She said her reluctance to raise it was that she was still on probation. Mrs Manley then went on to suggest that Mrs Mooney was deliberately concealing information from staff. Rather surprisingly (in light of the countless references to 'concealment' and 'concealed account' in her written submissions), in cross examination of Mrs Morgan, Mrs Manley put to her that she did not say there had been deliberate concealment by Mrs Mooney. She put to Mrs Morgan that she had said to her and the others that "*it was about power*". I find as a fact that, at the meeting on **31 January 2023**, Mrs Manley said that Mrs Mooney wanted to retain power over bookings, that this could be seen as manipulation and deliberate concealment of bookings by her. Mrs Morgan asked her why she thought Mrs Mooney might do this, Mrs Manley replied that she did not know but "*when we are about God's work, the devil is not far away*". Mrs Morgan was taken aback by the suggestion that Mrs Mooney was deliberately concealing information. Whilst she recognised Mrs Mooney's weakness in not efficiently passing information in a timely manner, Mrs Morgan regarded the allegation more as a reflection on the Claimant's inability to understand the dynamics of relationships in the organisation. Mrs Mooney had been the person responsible for bookings for many years and had developed her own system of managing them. This involved moving by

copying (and perhaps sometimes moving) bookings from the info@account to her own account. That had worked well for Mrs Mooney, despite some of its flaws, as highlighted by Mrs Manley. Mr Bockett, Mrs Morgan and Father Connelly encouraged Mrs Manley to listen more, to recognise the strengths and weaknesses of others and to work as part of a team..

93. Mr Bockett, Mrs Morgan and Father Connelly discussed Mrs Manley's job description with her. They encouraged her to keep to the key parts of her role. They referred, in particular, to how she had set out her understanding of her role in the Problems and Solutions document, notably under points 1, 2 and 8. They also mentioned the importance of team work. The importance of fitting with the size and ethos of the organisation was mentioned by one of Mrs Morgan, Mr Bockett or Father Connelly. Mrs Manley wondered whether she was indeed a fit and said that she would not wish to stay in an organisation in which she did not fit. However, she said that she wished to be a team player and would follow instructions as best she could. To help matters moving forward, Mr Bockett, Mrs Morgan and Father Connelly agreed to trial her husband's new Dashboard system on a trial basis on a few retreats and to give Wendy Mabin responsibility for inputting the data. It was also agreed to arrange a meeting between Mrs Manley and the Admin team and to retain one email account for members of the public and to close down Mrs Mooney's email account. Mr Bockett agreed to review her job description.

94. Mrs Manley had free rein at this meeting to discuss her concerns. In evidence, she accepted that it appeared to be a genuine attempt by those present to listen to her and to explore how issues could be resolved. However, she would later come to see this as a deceit and a set up because of what happened at the next meeting on **07 February 2023** and more so when she subsequently learned of what Mrs Morgan had written on **24 January 2022 [page 158 & 162]**. I find that the meeting was in fact a genuine attempt to understand Mrs Manley's concerns, to gain an understanding of how she saw her role and also to explain to her the limits of it. It was a constructive and positive meeting. Although the Board, on **24 January 2023**, had decided to terminate Mrs Manley's employment, and despite their serious reservations about the Claimant being able to work as a team in their small organisation, Mrs Morgan, Mr Bockett and Father Connelly were genuinely willing to give her an opportunity to prove them wrong. What they hoped for was that Mrs Manley would reflect on her relationships, take on board what Mr Bockett had fed back to her and that relationships would improve and settle down and she would keep to her job description. Before I move on in the chronology of events, I should record my finding that at this meeting of **31 January 2023**, Mrs Manley's reference to 'whistleblowing' was specifically that Mrs Mooney was 'deliberately concealing' information. In the document prepared for these proceedings, at the bottom of **page 47** Mrs Manley states that she said "*I feel that I must whistle blow on these issues...*". However, I am satisfied and so find that she did not say she was whistleblowing on 'these issues' or anything other than that Mrs Mooney was 'deliberately concealing information'.

95. Following the meeting with Mrs Manley, on Thursday, **02 February 2023** Mr Bockett had a further discussion with Mrs Morgan and Father Connelly. It was a debriefing of the meeting of **31 January**. They agreed that the meeting of **31 January** had been a constructive meeting and were relieved and reassured. They agreed that it would not be fair to end Mrs Manley's employment. They retained their concerns, as noted by Mrs Morgan's contemporaneous note, on **page 212** regarding Mrs Manley's lack of insight. They were of the view that she had not satisfactorily completed her probation. However, they believed that she had shown sufficient self-awareness at the meeting and agreed not to terminate her employment but to give her a chance to improve. They agreed, therefore, to extend her probation period (again, erroneously noting that it ended on **09 February 2023**). They agreed that there should be '*a good amount of time to see if things can work*'. They also agreed that Mr Bockett would meet with Mrs Manley on Tuesday, **07 February 2002** referring to the meeting as the 'probation meeting' at which he would tell her that her probation was to be extended by a further period of three months.
96. On **02 February 2023**, Mr Bockett emailed Mrs Manley a record of the meeting of **31 January 2023** [pages 213 - 215]. The unchallenged note is, in all respects, an accurate representation of the subject matter discussed. Sadly, the positive atmosphere that followed the meeting of **31 January 2023** did not last.

The meeting of 07 February and letter of 09 February 2023

97. Mr Bockett and Mrs Manley met on **07 February 2023**. It was a very long meeting, of up to 3 hours. He told her that he was extending her probation period by three months. He explained the reasons for the extension, that the concern was about how she interacted with colleagues in a small organisation. He told her that there was no concern regarding her technical abilities or performance but that they had concerns about whether she was suited to such a small organisation where team working was essential.
98. Mrs Manley did not react well to this. She had not expected any reference to probation and Mr Bockett had not told her in advance that the meeting was to review it. She was upset to be told that her probation was being extended. She said that she would not accept an extension as she had met all her objectives. She said that it was not fair or justified to raise issues of organisational fit or interpersonal relationships with colleagues because of endemic personnel and systems issues which have prevented her doing her job. She asked for evidence. He said that some people perceived her as being over assertive and somewhat intimidating. Mrs Manley did not accept this. She asked who perceived her in this way. Mr Bockett mentioned some of the names of those who he understood to have this perception of her, Liz Holmes, Jean Haldane, Wendy Mabin. Mrs Manley asked him for the evidence. Mr Bockett found the meeting difficult to manage. He said one person, whom he did not name felt that Mrs Manley was a bit scary. Mr Bockett did not have evidence to give to Mrs Manley. He had not set out to collate any such evidence. He had not intended to get into a debate about evidence or

proving to Mrs Manley how it was that people (as fed back to him) had a particular perception of her. His information came from speaking to people whom he saw daily, in passing conversations, where comments were made about Mrs Manley's interactions and manner. He had not intended this to be a disciplinary hearing or anything resembling that. He had hoped that by saying these things, Mrs Manley might reflect and consider how she presented herself to others in the team.

99. However, Mrs Manley became defensive. She said she had been asked to take on the role of developing the 2023 retreat programme which took a great deal of effort on her part. She again raised Mrs Mooney's obstruction tactics, that others were not clear what her role was and that she felt unsupported and undermined. She told Mr Bockett that she considered what he said to be slander and she did not want these issues pinned on her as a reason for not delivering. She told Mr Bockett that she would seek legal advice. She said she objected to the probation extension believing (as she explained to the tribunal) that to have agreed to it would have been '*professional suicide*'. She asked for the reasons for the extension to be given to her in writing. It was part of Mrs Manley's case that Mr Bockett bullied her at this meeting. I do not accept this. I find that Mr Bockett found the meeting difficult but that he was professional in his manner and interactions with Mrs Manley. There was no suggestion that he raised his voice or that he said anything inappropriately intimidating. I am satisfied and so find that what Mrs Manley refers to as bullying by Mr Bockett was the fact that he had told her that her probation was being extended and the reasons for it. In her oral evidence, she described Mr Bockett up to that meeting as someone she trusted and liked. However, her view of him changed instantly from that moment.

100. Mr Bockett's assessment of the meeting he had had with Mrs Manley regarding extending her probation was that she demonstrated no willingness to consider her own manner or behaviours and that she lacked insight in this respect. He believed that she was, in fact, insensitive to the importance of fitting into such a small organisation. He spoke to Mrs Morgan later in the same day and relayed his views to her. He believed that he could not see how things could work out to the benefit of the Respondent and the Claimant and that, in light of her reaction, things were unlikely to improve. He and Mrs Morgan reassessed their earlier hope that things might improve. He suggested that they terminate the Claimant's employment. Mrs Morgan agreed and approved that decision on behalf of the board.

101. Although by **07 February 2023**, Mr Bockett and Mrs Morgan had now decided that things were unlikely to work out after all and that Mrs Manley's employment should be terminated, nevertheless Mr Bockett emailed Mrs Manley on **09 February 2023** explaining the outcome of the probationary review [**pages 223-225**]. In his covering email, Mr Bockett said that he would like to see Mrs Manley at 12pm on Tuesday **14 February 2022**.

102. The attached letter of **09 February 2023** confirmed the extension of probation to **09 May 2023** and the reasons [**pages 223-225**]. Mr Bockett stated that during

the extended period, her performance and general suitability would continue to be monitored. She was asked to focus on:

*“Moderating her approach when interacting with colleagues to ensure harmonious working relationships;
Restrict her work to what has been agreed in the job description and with Mr Bockett and not to assume responsibility for other departments’ tasks including the following:
Content development and overseeing of the retreat programme;
Communication with retreat facilitators about size of group, spaces and IT support; and
Liaison with other internal teams to agree room capacity and accommodation;
To focus publicity and communications primarily on the sales and marketing of the retreat programme.”*

103. It seemed odd that Mr Bockett had sent a letter confirming the extension of Mrs Manley’s probation even though he and Mrs Manley had, in the interim, decided that her employment should in fact be terminated. However, I accept that the letter of **09 February 2023** was sent in these terms because Mrs Manley had asked for the extension and reasons to be given in writing and that Mr Bockett and Mrs Morgan considered it necessary to send a record of what had been discussed, which is what the letter did. Mr Bockett accepted that the date of **09 May 2023** referred to in the letter was wrong. It had been open to the Respondent to extend probation by three months from the date of the letter. Had that been the case, then **09 May 2023** would have been correct. But that was not what was intended. It is clear that by this date the mistaken belief had crept in that the six-month probationary period expired on **09 February 2023**. No-one had done the maths. In fact, it expired on **09 March 2023**. However, it is of no significance for present purposes. The Respondent was entitled to extend the probationary period by 1, 2 or 3 months as it considered appropriate. Either way, I was satisfied and so find that there was nothing sinister at hand and the extension being to **09 May 2023** was an honest but careless mistake.

104. It was, by this stage, academic as the purpose of the meeting on **14 February 2023** had now changed and it was to be the occasion on which the Claimant would be told her employment was being terminated.

105. Between the meeting of **07 February** and **14 February 2022**, Mrs Manley had started to prepare her challenge to the decision to extend her probationary period. She dug out her contract of employment at home, noting that it contained the reference to 3 months’ probation.

Meeting of 14 February 2023: the Claimant’s dismissal

106. Mrs Manley met with Mr Bockett and Father Connelly on **14 February 2023**. She was accompanied by a trade union representative, Emma-Jane Phillips. She had intended to challenge her probation and had come to the meeting with a

prepared statement. However, at the very outset of the meeting, Mr Bockett told her that her employment was being terminated. He too had a prepared letter, from which he read [page 228-229]. The reason he gave, as set out in the letter was “*the manner in which you reacted to the extension of your probationary period on the grounds of general suitability last week has caused us serious concern*”. Mrs Manley was given one week’s notice of termination, expiring on **21 February 2023**. Mrs Manley had not expected this. She asked to read out her prepared statement, which she then did. The statement, which is at **pages 234 to 240** of the bundle. It is a critique, if not of every paragraph, of most of them and ends with Mrs Manley making 7 requests in light of the inconsistencies and unjust claims as she regarded them. Although she understood she was under probation – as she had agreed to an extension of 6 months back in **September 2022** – Mrs Manley asserted that she could not be dismissed because she was still under probation. As I have found earlier, she made this assertion because she had noted the unamended written contract referred to 3 months.

107. Mrs Manley appealed the decision. She was, I find, by now aware of her exposed position as an employee of less than two years’ continuous employment. She had no right to pursue a claim of ordinary unfair dismissal. So she set about trying to build a case of automatically unfair dismissal. In her email to Mrs Morgan of **14 February 2023**, she wrote that Mr Bockett’s behaviour dramatically changed towards her following a letter she sent to him dated **24 January** and a subsequent meeting on the **31st January**. She said that it was her belief that Mr Bockett has sought to illegally dismiss her on the grounds of disclosures made in a public meeting on **31st January**. She went on to say that, on **24 October 2022**, she “*clearly raised in writing my concerns over bookings been missed and stored in a non-public place*”. That was a reference to the email on **page 98**. Mrs Manley then quoted from the Respondent’s Whistle Blowing Policy (which she had read in preparing the email of **14 February**) and states that she raised the matter (i.e. her concerns over missed bookings and not being stored in a public place) at the meeting of **31 January 2023** (that is the meeting attended by Mrs Morgan, Mr Bockett and Father Connelly). Mrs Manley attached a number of documents including the Problems and Solutions document. In her final paragraph she said: “*I honestly feel that I have been managed abominably and with acute unfairness, combined with a significant lack of ‘duty of care’ by my line manager Mr Bockett since my employment commenced on the 8th September. I have been deliberately bullied and intimidated to the extent of an attempt to force me out of my role...*”

Appeal against dismissal

108. Mrs Morgan arranged for, Kate Smith Head of People Relations and Policy at Newcastle University, to conduct and hear the Claimant’s appeal against dismissal. Mrs Manley prepared a document in support of her appeal and sent it to Ms Smith [pages 331 – 335]. In this document, she referred to the teambuilding event on **10 and 11 January 2023**, stating that she contributed (non-specifically) to the plenary feedback following the direct witness of the fact that the ‘safeguarding’ of staff mental health was at stake (evidenced by disclosures made in breakout groups).

She said that she stated that ‘*people are feeling unsafe to share their true feelings and are afraid.*’ Mrs Manley then referred to the meeting of **31 January 2023**, that “*this meeting made disclosures inevitable as it was clear to CM the lack of awareness from the panel of the serious issue concerning ‘bookings’ and missing emails...*” She goes on to address the subject of whistleblowing [page 333] where she says that she reported to Mr Bockett regarding the movement of key booking information from the info@ account, affecting sales, communications and reputation alongside health and safety concerns over food allergy reactions for centre users, identifying the ‘whistleblowing’ as being in the email of **24 October 2022**, verbally in one to one meetings and at the meeting on **31 January 2023**.

109. Mrs Manley attended the appeal hearing on **08 March 2023**, accompanied by her representative, Ms Phillips [pages 336-345]. Following this, Ms Smith interviewed Mr Bockett on **15 March 2023** [pages 346 – 357] and Mrs Morgan on **17 March 2023** [pages 358 – 364]. She prepared a report dated **31 March 2023** [pages 370 – 377]. She concluded that the relationship had broken down and that terminating Mrs Manley’s employment at the end of her probation was an option open to the Respondent. This report was discussed by the Respondent’s board on **11 April 2023**. The board agreed that the relationship had broken down and that it would be detrimental to both the Respondent and to the Claimant to reinstate her employment. On **20 April 2023**, Mrs Morgan wrote to the Claimant informing her that her appeal against dismissal was not upheld and included a copy of Ms Smith’s report [pages 369-381].

Submissions

110. The Claimant and the Respondent prepared written submissions which they sent to the Tribunal on **10 January 2024**. I have read those submissions and do not propose to set them out to avoid adding to an already length decision.

Relevant law

Public interest disclosures

111. Section 43B ERA 1996 provides:

(1) In this Part a “*qualifying disclosure*” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2)

(3)

(4)

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

112. In order for a disclosure to be considered a protected disclosure under the ERA two things need to be satisfied:

1.1. Firstly, there needs to be a ‘qualifying disclosure’ within the meaning of section 43B ERA.

1.2. Secondly, it must be made in a manner which accords with the scheme of the Act set out in s43C to s43H. In this way it becomes a ‘protected’ disclosure.

What is a qualifying disclosure?

information

113. The Act provides a broad definition of disclosure. The worker must disclose information: **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38, EAT. In **Kilraine v Wandsworth Borough Council** UKEAT/0260/15/JOJ Langstaff J observed that tribunals should observe the principle in **Cavendish Munro** with caution to the extent that it must not be ‘seduced’ into thinking that it must decide whether something is either ‘information’ or an ‘allegation’. Information may be provided in the course of making an allegation. However, the requirement is still for information to be disclosed. If there is a disclosure, it is necessary to consider whether that disclosure is a qualifying disclosure. This will depend on the **nature of the information disclosed**.

114. As can be seen from the exercise undertaken by Langstaff J (in paragraphs 31-35 of the **Kilraine** case) it is a question of carefully assessing what was said or written so as to determine whether information was provided (which meets the qualifying criteria in the Statute) whether or not an allegation was made as well, or whether what was said does not amount to information, for example because of the vagueness or lack of specificity or clarity.

The information must, in the reasonable belief of the worker, tend to show a relevant failure

115. Section 43B identifies 6 things which the disclosed information must, in the actual and reasonable belief of the worker, 'tend to show'. Each of the six categories involves some form of malpractice or wrongdoing and are referred as the 'relevant failures'. The worker is not required to establish that the information disclosed is true. Whistle-blowers do not have to be right. They may be wrong in their belief.
116. There is a subtle but vital distinction, in that it is not a case of asking whether the worker reasonably believed that a breach of a legal obligation had occurred, is occurring or is likely to occur. Rather, it is a case of asking whether he/she held a reasonable belief that the information they were disclosing **tended to show** that such a breach had occurred, is occurring or is likely to occur. Further, when assessing the worker's belief, the test is not a wholly subjective one. It is the **reasonableness** of the belief of the particular worker which is being assessed, not a hypothetical one.
117. In cases where a claimant relies on s 43B(1)(b) (breach of a legal obligation), the source of the legal obligation must be identified before going on to assess the reasonableness of the belief of the employee. In addition, it is necessary that the relevant information must tend to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. In this context the term 'likely' requires more than a possibility or a risk that the employer might fail to comply with a relevant legal obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable or more probable than not that the employer will fail to comply with the relevant legal obligation: **Kraus v Penna plc [2004] IRLR 260**.

Public interest

118. The worker must also actually and reasonably believe that he or she is making the disclosure in the public interest. That aspect is to be determined in accordance with the guidance of the Court of Appeal in **Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2018] I.C.R 731**. There is no 'bright line' between personal and public interest. It is not the case that any element of personal interest rules out the statutory protection. In a case of mixed interests, it is for the tribunal to determine as a matter of fact as to whether there was **sufficient** public interest to qualify under the legislation: see **Chesterton Global**, per Underhill LJ, at paras 36-37 said:
119. His Lordship identified four factors to assist in this exercise:

"(a) the numbers in the group whose interests the disclosure served;

- (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
- (c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;
- (d) the identity of the alleged wrongdoer – as [counsel for the employee] put it in his skeleton argument, “the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest” – though he goes on to say that this should not be taken too far.”

120. It is important to note that the mental element involves a two-stage test: (i) did the claimant have a **genuine belief at the time** that the disclosure was in the public interest, then (ii) if so, did he or she have **reasonable grounds** for so believing? I would add that the claimant's motivation for making the disclosure is not part of this test: **Ibrahim v HCA International** [2019] EWCA Civ 207. As the judgment of Underhill LJ puts it: *‘the necessary belief is simply that the disclosure was in the public interest’*. As to the requirement of **reasonableness** of the belief in public interest this may (in an atypical case) arise on later contemplation by the employee and need not have been present at the time of making the disclosure. **However, not so with the actual belief.** The employee must at the time actually and genuinely believe that she is raising the matter in the public interest.

Protection

121. If a disclosure is a qualifying disclosure then it becomes ‘protected’ if (among other things) it is made to the employer (s43(c)(1)(a)). The law protects the worker only against **the act of disclosure**. If the principal reason for dismissal is not the act or fact of disclosure then there can be no unfair dismissal contrary to s103A ERA.

122. Section 103A Employment Rights Act 1996 provides as follows:

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

123. No period of qualifying, continuous employment is required to bring a claim of automatically unfair dismissal. However, where the employee lacks the requisite continuous employment to claim ordinary unfair dismissal, he or she has the burden of proving, on the balance of probabilities, that the reason for dismissal was the automatically fair reason alleged: **Smith v Hayle Town Council** [1978] ICR

996, CA and **Ross v Eddie Stobart Ltd**, EAT 0068/13. The Tribunal must identify the reason or the principal reason for dismissal.

124. If the fact that an employee made a protected disclosure(s) was merely a subsidiary reason to the main reason for dismissal, then the employee's claim under s103A will fail.

125. When faced with a case in which a claimant alleges that he or she has made multiple protected disclosures, a tribunal should ask itself whether, taken as a whole, the disclosures were the principal reason for the dismissal: **El-Megrisi v Azad University (IR) in Oxford EAT 0448/08**.

Wrongful dismissal – breach of contract

126. If an employee is dismissed with no notice or in adequate notice in circumstances which do not entitle the employer to dismiss summarily, this will amount to a wrongful dismissal and the employee will be entitled to claim damages in respect of the contractual notice.

Discussion and conclusions

Protected disclosures

127. The first matter to be decided was whether Mrs Manley had made a protected disclosure or disclosures. I shall address each of the 'PIDS' as they were set out.

PID 1

128. The first qualifying disclosure was said to have been made by the Claimant in her short email of **24 October 2022 [page 98]** – see paragraph 44 above. I was initially inclined to agree with Mr Tinnion that Mrs Manley did not disclose any information in this email and that all she was doing was reporting her concerns that bookings were being missed and stored in a 'non-public place' (as she put it). I agree that she was expressing her concern but in the expression of that concern, it seemed to me that she was also conveying some albeit very limited information: namely that bookings were being stored in a 'non-public' place, which was a reference to Mrs Mooney's work email account and that they were being missed. The legal authorities allow for 'information' to be conveyed as an expression of concern or as an allegation and as the case law makes clear, there is no bright line between the two. Although she was expressing a concern, in my judgement this concern was not expressed in such a way as to be totally devoid of any factual content.

129. The next question, therefore, was whether, at the time, she believed this information that bookings had been stored in Mrs Mooney's email account (a 'non

public place') and that they were being missed tended to show that the Respondent had failed, was failing or was likely to fail to comply with a legal obligation to ensure the safety of guests in their care or that the information tended to show that the health or safety of any individual had been, was being or was likely to be endangered. Referring back to the authorities, the belief must relate to what the information 'tends to show'. As made clear by Underhill LJ in **Chesterton Global**, this has both a 'subjective' and an 'objective' element to it. That requires me to ask first of all whether Mrs Manley actually (subjectively) believed at the time that the information tended to show one or more of the relevant matters. The question is not whether the Claimant actually (or reasonably) believed that a legal obligation had been or was likely to be breached, or that the health or safety of any individual was being or was likely to be endangered – although those are not irrelevant considerations. If I conclude that she believed the information tended to show the relevant failure, I must then consider whether such belief was a reasonable one. That too can involve asking myself whether the information had sufficient factual content and specificity to be reasonably capable of tending to show the relevant failures.

130. What then did Mrs Manley actually believe that the information in this email tended to show? I am satisfied that when she sent this email to Mr Bockett on **24 October 2022** she believed the content tended to show that Mrs Mooney was wrongly dealing with bookings within her own email account and that this could lead to errors such as the organisation missing bookings and not following up bookings, as others would not know what had been processed and what had not been processed. I am satisfied that she believed that this tended to show the organisation as being unprofessional. I am equally satisfied that the Claimant did not actually believe at all that the information contained in it tended to show a breach of any legal obligation – actual or likely. Nor did she actually believe that it tended to show that the health or safety of any individual had been, was being or was likely to be endangered. Those matters, I conclude, simply did not enter her head at the time. She was concerned only with three things:

130.1. That Mrs Mooney liked to keep control or 'power' of these bookings to herself and

130.2. That the consequence of this was it made it difficult for her to do her job to the best of her ability and

130.3. That booking errors made the Respondent look unprofessional to users of its services.

131. The Claimant has argued that this email was in fact about Mr Harper's safety being in danger and also that guests were in danger because 16 of them had arrived when only 10 were expected, meaning that information regarding the dietary requirements of the unexpected guests had not been gathered, thereby putting their health and safety in danger. Although I was at pains to explain during the hearing that I was not conducting an inquiry, the Claimant persisted as if I was. I had explained that the 'information' must tend to show one or more of the relevant failures. I do not accept for one moment that the information in this email tends to

show that Mr Harper's safety had been endangered or that the health or safety of all or any of 16 guests had been endangered. This was sophistry, an argument Mrs Manley had, in my judgement, conceived after the event to elevate this into something it was not. In her written submissions, Mrs Manley referred to a verbal disclosure on **25 October 2022**. This was the document at **page 44**, which had been the subject of discussion at a case management hearing before Judge Aspden on **14 August 2023 (page 53, paragraph 35)**. This was despite agreeing at the outset of the hearing what the alleged disclosures were.

132. Throughout the hearing, Mrs Manley argued that she had raised issues which had a 'massive' impact on health and safety. However, in my judgement she did not. She only came to develop these arguments after her probation was extended. She has, in my judgement, exaggerated references to health and safety and breaches of legal obligations in order to advance her claim of automatically unfair dismissal and to air her grievances against the Respondent. In doing so, she has very probably come to convince herself over time that she has unearthed something sinister from the very beginning and exposed serious failings within the Respondent organisation. In truth, she has done nothing of the sort. Mrs Manley did herself no favours by exaggerating. Mr Harper started off by being described as a man in his 60s. In fact, he is a man in his 40s. I was initially told that he walked the five miles from the station to the retreat along a busy trunk road, only later to be told that he had, in fact, been collected by car and that he did not walk all the way. This then changed to him having walked 'many miles' without any credible evidence of that. The purpose of this exaggeration was, I conclude, to bolster a weak case, to add support to a weak argument that Mrs Manley was reporting 'massive' health and safety concerns.
133. I conclude then that Mrs Manley did not actually believe that the information in this email tended to show any relevant failure. At the time, she was simply (and I would say perfectly properly) raising matters about inefficient systems which could result in missed bookings and which could make the Respondent look unprofessional.
134. Had I concluded that Mrs Manley actually (subjectively) believed at the time that this information in the email of **24 October 2022** tended to show those relevant failures, in any event I conclude that such belief was not reasonably held. There is nothing in the email of **24 October 2022** that could reasonably be read as tending to show that Mr Harper's safety had been endangered, nothing that could lead me to conclude that any belief that it tended to show that users' health and safety was being endangered. It was fanciful even to suggest this.
135. As to the question of 'public interest', I am satisfied that at the time Mrs Manley did not actually believe she was raising this matter in the public interest. She was concerned only about the professionalism of the Respondent in terms of how its poor and inefficient organisation looked to the users of the services.

PID 2

136. The second disclosure was said to be on **11 January 2023** during a plenary session at a teambuilding event (the terms of which were set out on **page 45**). For the findings of fact see paragraph 66-69 above.
137. Again, I asked first of all whether any information was disclosed by the Claimant. I conclude that if there was any information it could only be the following: *“there are many people in this room who are afraid and feel intimidated to speak out themselves ... staff are feeling physically unwell with severe stress and some feel the need to leave their posts. There are recurring organisational issues affecting the health and wellbeing of many staff.”*
138. I agree with Mr Tinnion in that this is simply a vague generic allegation and it does not provide any factual information. There is no ‘information’ along the lines of ‘X is bullying Y’, or ‘Y feels bullied’. There is no factual content to the broad assertion that staff are afraid and feel intimidated or that they are feeling unwell with stress. There is no factual content to the ‘recurring organisational issues’. Nothing in particular is identified as adversely affecting this interest of staff wellbeing and morale. There is no particular or deliberate wrongdoing identified in the Claimant’s statement, other than a vague reference to the ‘recurring’ of ‘organisational issues’ – whatever those might be. No one person is identifiable as being responsible for the issues raised in the broad statement. ‘Therefore, I conclude that the Claimant did not in fact disclose information during this plenary session. I have arrived at this conclusion having had regard to the context in which the statement was made, that is, after small sessions where people had opened up to the facilitator on matters concerning them at work to do with staff welfare. It might be argued in those circumstances that the receiver of the information understood the factual content to which the broad statement related. To an extent, I conclude that Mr Bockett and Father Connelly understood that staff would have referred to personal experiences in the small sessions. But that was the very purpose of the event, to allow them to do so. That basic understanding was not, in my judgement, to confer sufficient factual specificity on the Claimant’s broad statement to enable me to conclude that she had conveyed ‘information’ as the authorities require. To that extent, I must find that it did not amount to a qualifying or protected disclosure within the meaning of section 43(1)(B).
139. However, I went on to ask what if I were wrong about that? What if this broad statement did amount to a disclosure of information, allowing for the context in which it was made. If so, the next question was whether the Claimant actually believed that what she said tended to show that a person’s health or safety had been, was being or was likely to be endangered. I am satisfied that the Claimant did actually (subjectively) believe that her statement tended to show that. Was that belief reasonably held? In my judgement it was, in that it arose out of what she had heard during the smaller sessions over the course of the event. The next question was whether, in raising the matter she believed she was doing so in the public interest. In my judgement she did. She did not actually consider the concept of ‘the public interest’ at the time but she was raising it for good reason and on behalf of all those working in the organisation. I have in mind here and have applied the guidance in the **Chesterton Global** case. This was far from a **Parkins v Sodexo** type situation. The Claimant was not raising the matter in her own personal interest. On the contrary, she did not feel bullied or undermined at all. She was not

intimidated or afraid of anyone. She expressly made the point that she was doing it on behalf of others.

140. Mr Tinnion submitted that her statement concerned staff morale within the Respondent and nothing more. It is true that it concerned staff morale but it was not limited to mere morale. It went beyond that. It was about staff well-being and stress. The disclosure served the interests of some of the 12 individuals who were present at the event. It is not possible to say how many within the group the Claimant's comment related to. I infer from the Heartwood report that it was certainly not everyone and that even within those who expressed their own views, the strength of concern varied [see **page 457**]. Nonetheless, it related to a sufficient number of employees as indicated by the Heartwood report to edge it towards being a reasonably held belief in the public interest.

141. I considered the nature of the interests affected. As indicated, the subject matter was about staff wellbeing (stress) and morale. Whilst all employees in all organisations will have an interest in having a stress-free environment, what is or is not a stress-free environment will vary according to the perception of the individual. In my judgement, there is nothing in the identity of the respondent, which would make the matters disclosed (staff morale and wellbeing) obviously in the public interest. That it is a religious based organisation does not alter this in my judgement. I do not consider that there is a greater public interest in ensuring good staff welfare and morale in the Respondent organisation than there is in any other organisation of a similar size. Therefore, I did not attach significance to the identity of the Respondent either way. Nonetheless, had I concluded that Mrs Manley had disclosed information in this statement, I would have concluded that she reasonably believed that it tended to show that the health of sufficient staff and volunteers was likely to be endangered and that, in raising the issue, she reasonably believed it was in the public interest, applying the guidance in **Chesterton Global**.

PID 3

142. This was the written disclosure to Mr Bockett on **16 January 2023** [**page 135 - 138**] (**'PID 3'**) being the following parts of the email attachment called the 'Problems and Solutions' document:

(a) The information contained in "Impacts: 1(a) – (d) on **page 136**,

143. Mr Tinnion submitted that this was the only part of the document on which the Claimant relied. It is right that the Claimant identified those parts of the document as amounting to the disclosures but I do not agree that I am confined to looking only at those paragraphs. That would be artificial in my judgment. The Claimant gives 'examples' in paragraphs 1 to 7 on **page 136**. It is only right that those should be considered along with what is set out under 'impacts' when considering whether she disclosed information and the other constituent parts of section 43B(1).

144. I conclude that the Claimant was disclosing some limited information in this part of her document. I agree she did not disclose any information in paragraphs 1(a) to (d) where she says: "*we could be promoting events which.....*" or "*it is not clear*

who...” or *“...if we don’t have any contacts...”* or *“it may not be possible to.....”*. These are hypothetical statements or questions. However, she does provide some very limited information under ‘example 1’ as follows: *“backlog of emails overlooked and filed”*; *“overlooking of bookings”* under example 1.

145. The things stated in examples 2, 3, 6 7 are, in my judgement in themselves, an expression of opinion: i.e. that the systems are poor and that bookings are inconsistent, that there is a lack of transparency in data collection and that communication is ineffective. However, Mrs Manley disclosed the following information: that there was a backlog of emails which were being overlooked and that bookings had been overlooked. To that information, she expressed her opinion regarding lack of transparency etc... The context of what she was saying was known to Mr Bockett, namely that the Claimant was talking about Mrs Mooney holding on to the booking system in her own work email account.

146. Having concluded that Mrs Manley disclosed information, the next question was again, whether she actually believe that this information tended to show that a person had failed or was likely to fail to comply with any legal obligation to which he was subject or that the health or safety of a person had been, was being or was likely to be endangered or that information tending to show either of those things had been or was likely to be deliberately concealed. I conclude that she did not actually believe that the information tended to show any of these things. In paragraph 20.22 of her written submissions the Claimant says that she: *“disclosed issues to the Respondent with the reasonable belief were in the public interest and relating to system failure, potentially resulting in serious concerns regarding staff and public health and safety, in relation to the Respondent complying with a legal obligation to ensure the safety of guests in their care.”*

147. That is not the language of the statute. The worker must believe that the information disclosed tends to show, for example, that a person has failed, is failing or is likely to fail to comply with a legal obligation. It is not that the ‘issues’ in her belief ‘related to’ system failure which had the ‘potential’ to result in serious concerns regarding staff and public health and safety...’ I approached matters on the basis that this was looseness of language on the part of the Claimant although I had emphasised the wording of the statutory provision, explaining that there must be information which, in her belief tends to show one of the relevant failures.

148. I conclude that on disclosing the information set out in paragraph 162 above the Claimant did not actually believe at the time that the information tended to show that the health and safety of any individual had been, was being or was likely to be endangered. At its highest, she believed that inconsistency in bookings and the overlooking of emails could possibly result in harm to some future retreatant who might have a food allergy, details of which might not be taken when the person checked in at reception. It is all very theoretical and shrouded in ‘possibilities’. It is not a case of the claimant believing that a person’s safety had been endangered or was being endangered or was likely to be or that the Respondent had breached or was breaching or was likely to breach any legal obligation to ensure their safety.

149. In any event, even if she did actually believe this, such belief was, in my judgement, not a reasonable one. At the heart of the Claimant’s case was a belief

that the Respondent's booking 'systems' were inefficient – by which she meant Mrs Mooney's tendency to work from her own email account. That is fine so far as it goes. However, these systems had been in place for some time and there was no evidence of any incident relating to a retreatant with a food allergy having been served something that had set off an allergic reaction. The Respondent's policy was that if a person with an allergy has not told the Retreat in advance what allergies they have, this is picked up by reception on check in. As set out above under the relevant legal principles section, the question is not whether the Claimant actually believed or reasonably believed that there was a breach of a legal obligation or danger to health and safety (albeit this is certainly not irrelevant). The belief has to concern what the information disclosed 'tends to show'. If Mrs Manley actually believed that the information regarding backlogging of emails and overlooked bookings tended to show a relevant failure, that belief must be a reasonable one. I assessed the reasonableness of the belief on the basis of the facts reasonably understood by Mrs Manley at the time and not on the facts found by me. The facts known or perceived by her to exist were that Mrs Mooney processed bookings from her own account, that some bookings had been missed and that some people, who had turned up for a retreat unexpectedly (i.e. not expected by the Respondent) 'might' have some food allergy. She also knew that the Respondent's policy was to check for allergies on arrival. I am satisfied that any belief that the information in paragraph 162 above disclosed any relevant failure was unreasonable.

PID 4

150. This was said to be the verbal disclosure to Mr Bockett on **16 January 2023** (the terms of which were set out on **page 46** of the bundle). For the factual findings on this, see paragraph 78 above. It is conceded that the Claimant disclosed some limited information to Mr Bockett on this occasion. Again, I do not agree with Mr Tinnion that the 'information' disclosed can be dissected and limited to that as set out by the Respondent in paragraph 44(b) of its GOR.

151. Yet again, the question is whether in disclosing the information in paragraph 78, the Claimant actually believed that it tended to show that the Respondent was in breach of its duty of care to users to ensure their health and safety or that the health and safety of any person was being or was likely to be endangered. The Claimant referred to a 'worry' about duty of care. I conclude she believed that the information she had disclosed (as out in the first two paragraphs of page 46) tended to show that the Respondent might possibly find itself in breach of a legal obligation to take reasonable steps to ensure the safety of retreatants (what she referred to as 'duty of care'). Mrs Manley did not actually believe that the information tended to show that any such duty had been breached, was being breached or was 'likely' to be breached (in the sense understood by the section: see **Kraus v Penna**, paragraph x above). The same goes for danger to the health and safety of any individual. She believed that the information tended to show that inefficient management of bookings might possibly result in a situation whereby a retreatant with a food allergy arrived unexpectedly and could be served something that set off an allergic reaction. She believed in the 'possibility' not in the 'likelihood' and because of this she believed that the information she disclosed tended to show that possibility. Even if I am wrong about this and she did actually believe that the

information showed that there was a relevant failure, any such belief was not a reasonable one in my judgement. As to the issue of public interest I am satisfied that the Claimant did not have in her mind at the time that she believed she was raising this matter in the public interest. As Mrs Manley saw it and believed it at the time, this was about inefficient systems that led to embarrassing mistakes and potential damage to the Respondent's reputation. Even if I am wrong about that, in my judgement any belief that this was being raised in the public interest was not a reasonably held one. It concerns the interests of some people whose bookings may be missed and thereby the adequacy of preparation to receive such guests by the Respondent. In the one example given, the issue had been resolved and there was no reference to dietary concerns or health and safety as regard to that particular lady. That inefficient booking systems might result in some details regarding dietary requirements being missed where the same organisation was known by the Claimant to check requirements at check in, does not render her belief that these matters were raised in the public interest a reasonable one in my judgement. In arriving at this conclusion, I applied the guidance in **Chesterton Global**: the numbers of the group whose interests the disclosure served was unascertainable. There was no evidence that any of those who attended unexpectedly in October had any food allergies. As to the nature of the wrongdoing and the interests affected, we are not here talking about a disclosure of any wrongdoing (simply inefficiencies). Nor did it directly affect an important interest of those attending retreats. Most people will know their allergies and will let the organisation know what they are before sitting down to eat. They have their own responsibility to speak up. Therefore, this alleged PID does not qualify for the reasons set out above.

PID 5

152. The Claimant relies on the written disclosure to Father Connelly on **24 January 2023 [page 150]** ('PID 5'). It is essentially the same as **PID 3**, as the Claimant merely forwarded the 'Problems and Solutions' document to Father Connelly)

153. I conclude that this did not amount to a protected disclosure for the same reasons as set out in paragraph 159 to 166 above.

PID 6

154. This was said to be the verbal disclosure to Mr Bockett, Mrs Morgan and Father Connelly at the meeting on **31 January 2023** (the terms of which were set out on **page 47-48**)

155. The Respondent accepted in paragraph 46(b)(i) to (v) of its GOR that parts of what is set out on **pages 47 to 48** amounted to the disclosure of 'information'. I do not agree that the information conveyed at that meeting can be dissected and limited as suggested by the Respondent in its GOR. I have grave reservations as to whether all of what is written on **pages 47-48** was said in the terms therein set out.

156. I have set out my findings of fact regarding this meeting in paragraphs 90 – 95 above. The Respondent did not challenge the gist of what the Claimant says she

said on **pages 47-48**. Nor does it challenge that she actually believed in what she stated, which I take as a concession that she actually believed the information tended to show that the Respondent (in the case of Darren Harper) had breached a legal obligation to ensure his safety and that his health and safety had been endangered; and (in the case of retreatants generally), that the information tended to show a likely breach of the same legal obligation to ensure their safety and that their health and safety was likely to be endangered. The Respondent does challenge the reasonableness of the Claimant's belief that the information it says she disclosed tended to show those or any relevant failure and challenge the reasonableness of her belief that she was raising these matters in the public interest.

157. The concession is as to the 'gist' of the information and the actual belief of the Claimant at the time of the meeting on **31 January 2023**. Had it not been for the concession, I would have concluded that the Claimant did not actually believe that the information she disclosed regarding Darren Harper tended to show that the Respondent had breached any legal obligation towards him. Mrs Manley knew that Mr Harper had not walked from the station to the retreat, along the A68. She knew only that he had taken it upon himself to set off, as opposed to waiting a bit longer or calling the retreat again that morning or calling a taxi. She knew that he had in fact been picked up by Pavan after he had set off. However, the Respondent made this rather generalised concession that the Claimant 'genuinely believed what she stated' and I proceeded on that basis.

158. To the extent that Mrs Manley actually believed the information regarding the booking system and that Mr Harper '*walking along the A68 due to the lack of requested transport*' tended to show a breach of a 'legal obligation' by the Respondent to ensure his safety, this was not, on the information known to her, a reasonably held belief. It was reasonable for the Claimant to believe that the information tended to show a break-down somewhere in communications that might harm the reputation in the eyes of Mr Harper. In these proceedings at least, the suggestion of danger to him (and more importantly of a belief that the information tended to show this) was, in my judgement, greatly exaggerated by the Claimant. Therefore, I conclude that the Claimant's belief that the information disclosed in **pages 47-48** tended to show a relevant failure in relation to Darren Harper was not a reasonable belief.

159. I arrive at the same conclusion as regards the information tending to show a breach or likely breach of a legal obligation towards retreatants and of the danger or likely danger to their health and safety. Had it not been for the concession, I would have concluded that the Claimant did not believe that the information she disclosed tended to show that any legal obligation to ensure the retreatants' safety had been, was being or was likely to be breached for the reasons in paragraph 168 above. However, proceeding on the basis that the Respondent has conceded this, the question for me was whether such belief was reasonable. Again, I conclude that it was not. It was the same belief based on the same understanding. It was reasonable for the Claimant to believe that the information she disclosed about the booking system tended to show that the Respondent might possibly breach a legal obligation to ensure the safety of future retreatants (by failing to obtain their dietary requirements in advance of their arrival which might then lead to a food allergy

incident) but not that there was a likelihood of this, owing to her knowledge that there had been no such incident and her knowledge that the retreat checked dietary requirements and allergies at the point of check-in.

160. I now consider the Claimant's contention that in telling those at the meeting that Mrs Mooney's practice of moving bookings to her email account could be seen as deliberate concealment of bookings, that she was disclosing information which in her reasonable belief tended to show:

160.1. that information tending to show that the Respondent had failed, was failing or was likely to fail to comply with its legal obligation to ensure the safety of guests had been, was being or was likely to be deliberately concealed, or

160.2. that information tending to show that the health or safety of any individual had been, was being or was likely to be endangered, was had been or was being or was likely to be deliberately concealed.

161. It was the Claimant's case that this information tended to show concealment or the likely concealment by Mrs Mooney, Mr Bockett and Mrs Morgan. Although she has asserted vigorously that Mrs Mooney deliberately concealed bookings, I conclude that the Claimant did not actually believe this. Her denial when cross examining Mrs Morgan that she had said this at the meeting on **31 January 2023** betrayed her real thoughts (paragraph 92 above). In my judgement. At the time Mrs Manley, no doubt for good reason, believed the way in which Mrs Mooney managed bookings was inefficient and had to change. She believed that Mrs Mooney, who had been doing it this way for some years, did not want to change because she wanted to retain the power or control over managing the bookings and did not want to lose this. I conclude that Mrs Manley said 'it could be seen as deliberate concealment' for effect, in order to persuade Mr Bockett and the others that the system had to change. However, she did not actually believe this I conclude.

162. Mrs Manley was making a bare allegation that Mrs Mooney was manipulating the systems because she wanted to retain power over bookings. That is what she actually believed the information regarding the personal email account tended to show. In any event, any belief that this information / allegation against Mrs Mooney tended to show the matters in paragraph 177.1 and 177.2 was not a reasonable belief. She said that it could be seen as manipulation and deliberate concealment. There has to be some objective or reasonable basis for the belief. All that the Claimant knew was that the person responsible for bookings had the practice of copying or moving bookings to her personal work account, that this had always been the way she had done it, that there had been some a few recent examples of miscommunications and that some bookings had been missed. That was the substance of what she had been telling Mr Bockett and Mrs Morgan. Simply adding to this her opinion that 'it could be seen as manipulation and deliberate concealment' does not render the belief that the information disclosed regarding bookings tended to show the matters in paragraph 177.1 and 177.2 above a reasonable belief. As to concealment by Mr Bockett and Mrs Morgan, I conclude that the Claimant did not actually believe that any of the things she said tended to show deliberate concealment of information relating to breaches of legal

obligations or endangerment of health or safety by Mr Bockett or Mrs Morgan. Certainly there was no reasonable basis for any such belief that the information she disclosed or statements she made to them tended to show actual or likely deliberate concealment by them.

163. I am satisfied and conclude that the Claimant did not make a protected disclosure in respect of the matters identified under **PID 6**.

164. I refer back to my findings in paragraph 45, where I set out part of the contents of Mrs Manley's grievance of **31 October 2022**:

*"Margo Mooney has not made a practice of sharing bookings correctly, **which has directly impacted on my ability to evaluate the effectiveness of my publicity strategies, and raised direct concerns** regarding miscommunications between retreatants and retreat facilitators, **often resulting in a concerning display of un-professionalism, affecting presentation of Minsteracres to the public, and potentially affecting accurate costings, future bookings, and trust concerning colleagues relying on an expected transparent and professional administration.***

These are retreats that I have been directly involved in promoting and this has caused significant embarrassment for me personally, as well as promoting an unprofessional interpretation of Minsteracres."

165. I have emphasised the relevant parts in bold to highlight that this is what Mrs Manley's complaints were about. She believed all along that Mrs Mooney was unprofessional by not sharing bookings correctly, that this resulted in miscommunications which impacted on her role and on the reputation of the Respondent. Everything else has, in my judgement been window-dressing by her. The underlying basis of her complaint never changed: Mrs Mooney. Yet it has been elevated and exaggerated in these proceedings as Mrs Manley having unveiled some 'massive' systems issues that raised serious health and safety issues for retreatants and which were being concealed by the Respondent. The reality was nothing of the sort.

The reason for the Claimant's dismissal

166. In light of my conclusion that the Claimant did not make a protected disclosure, the claim for automatically unfair dismissal must fail. However, I have also carefully considered the Respondent's reason for dismissing Mrs Manley.

167. I am satisfied in any event that the reason or principal reason for the Claimant's was not that she had made any protected disclosure (had any of the alleged 'PIDS' qualified as such). The reason for the Claimant's dismissal was simple: it was Mrs Manley's negative reaction to the decision to extend her probation communicated to her on **07 February 2023**. That decision to extend her probation was not because she made any disclosure (whether qualified or not).

168. Mrs Manley referred back to the decision by the board to terminate her employment on **24 January 2023**. She argued that that decision was made

because of what she had said at the plenary session (relying on the Heartwood report) and in her Problems and Solutions document from **October 2022 [pages 136-139]** (see paragraph 14 of the Claimant's written submissions). She submitted that Mr Bockett noted that he needed to set a date for a probation meeting 'as a *direct result of his anger at issues being made*' in those documents (paragraph 14.2 of the Claimant's submissions). I do not accept this submission. Mr Bockett was not angry with the Claimant. He wanted the role to succeed and he wanted the Claimant to succeed and he worked positively and constructively with the Claimant. Nor do I accept the submission in paragraph 12.3 of Mrs Manley's written submission. Firstly, I find it inherently implausible that there was a 15 minute period of silence at the plenary session. Secondly, the reference to Mr Bockett and Father Connelly looking '*incredibly angry and hostile*' had never been mentioned before. It did not feature in any of the written documents prepared by Mrs Manley nor in her interview with Kate Smith, nor in her witness statement or oral evidence and it was not put to Mr Bockett. This additional gloss was in keeping with my overriding impression of Mrs Manley as being prone to exaggerate and to look back and convince herself of her own narrative. There is a further illustration of the Claimant's capacity to convince herself of her own narrative in paragraph 14.17 of her submissions where she says Mrs Morgan admitted in cross-examination that '*it was the raising of repeated concerns*' which was in fact a reason for dismissal. In fact, she said the opposite. Mrs Manley put that contention to Mrs Morgan and she but Mrs Morgan disagreed with her.

169. I refer back to my findings regarding the decision on **24 January 2023** to terminate Mrs Manley's employment (paragraphs 85 – 86). Mr Bockett, whilst maintaining a positive and supportive relationship with the Claimant, had concerns about her interactions with others from early into her period of probation (see paragraphs 42 and 60 above). The first signs of friction with Mrs Mooney preceded any of the alleged PIDS. I also refer to my findings regarding the board's view in **December 2022** (paragraph 64 above). Even if what the Claimant alleged were 'PIDs' were in fact PIDS, I am satisfied that the decision to terminate her employment on **24 January 2023** was not because she had made any protected disclosure (by then, PIDS 1-5) or – for the avoidance of doubt – because of anything she might have said to Mr Bockett on **25 October 2022** [see **page 44**]. It was entirely down to Mr Bockett's and Mrs Morgan's perception of the Claimant's ability to work collaboratively with Mrs Mooney, Mrs Haldane and others, their belief that she assumed responsibility for matters outside her job remit and the belief of Mrs Morgan that this had become too diverting and stressful for Mr Bockett and Father Connelly to manage.

170. Had Mr Bockett and/or Mrs Morgan been exercised by the Claimant speaking out about any of the things she contends were 'PIDS', as she maintains, one might have expected them to have followed through and implemented the decision of **24 January 2023**. However, they did not in fact terminate Mrs Manley's employment then. That is because, in my judgement, they were not at all concerned that Mrs Manley had raised issues concerning the efficiencies of the booking system or that she had expressed concerns about health and safety including possible food allergies or COVID safety or Mr Harper, or that she had spoken up at the plenary session on **11 January 2023**. They saw the problem entirely as being one of relationships and of Mrs Manley assuming wider responsibilities than her job remit.

following the frank discussion on **31 January 2023** about relationships and job remit, they felt that they had gained 'sufficient' assurance of some insight on Mrs Manley's part. It was sufficient to persuade them to give Mrs Manley time to see if things could improve, which they considered to be fair to the Claimant. Thus, the decision to extend probation, which had nothing whatsoever to do with the fact that Mrs Manley had raised any of the issues referred to in these proceedings.

171. I refer to my findings in paragraphs 94 and 95 above that Mr Bockett and Mrs Morgan hoped Mrs Manley would reflect on matters. Mrs Manley did reflect but not as her managers had hoped. She could have said that, whilst she did not agree with the perception some had of her, nevertheless she would take on board Mr Bockett's feedback and strive, in a positive way, to correct those wrong perceptions of her. However, she was unwilling to countenance any possibility that anyone could have such a perception of her (rightly or wrongly). She refused to accept the extension. I refer to my findings in paragraphs 99 – 100 and 107. Mr Bockett and Mrs Morgan saw no hope that things would improve and decided to terminate Mrs Manley's employment which was communicated to her at the meeting on **14 February 2023**. Having regard to my findings, she was in my judgement entirely right to arrive at this decision. I am satisfied and conclude that the sole reason for dismissing Mrs Manley was that Mrs Morgan and Mr Bockett considered she lacked insight, was unwilling to accept the feedback and that things would not change for the better.
172. Mrs Manley carries the burden of showing that the reason or principal reason for terminating her employment was that she had made a protected disclosure or disclosures. Although I have concluded that she made no protected disclosure, had she proved this, she has, in any event, failed to establish that the reason or principal reason for her dismissal was that she had done so. Indeed, upon a careful examination of the evidence and factual findings, I am entirely satisfied that it had nothing whatsoever to do with any disclosures (protected or otherwise).
173. Whilst Mrs Manley has been unsuccessful in her claim, some of the criticisms she has made in these proceedings have, in my judgement, been valid - Mr Bockett's failure in documenting the change to the probationary period being one. Further, neither he nor Mrs Morgan notified Mrs Manley in advance of the meeting of **07 February 2023** to say that they were to discuss extending her probation. That came as a surprise to her which upset her. She had also expected the meeting on **14 February 2023** (at which she was dismissed) to be a follow up meeting to the meeting of **07 February 2023** (especially having received the letter of **09 February 2023** at **pages 223-225**). None of these things warranted the often exaggerated and dramatic way in which Mrs Manley advanced her case in these proceedings. However, these failings did serve to fuel her suspicion that she has been treated unjustly.
174. As her case depends on not only establishing that she had made a protected disclosure and that the reason or principal reason for dismissal was that she had done so, her failure to establish either of these things means her claim of unfair dismissal fails and must be dismissed.

Wrongful dismissal

175. The essential question on this complaint is: what notice was Mrs Manley entitled to? I refer to my findings that the Claimant and Respondent agreed to vary the contractual probationary period from 3 to 6 months (paragraphs 20 – 29 above). Was it 1 week, or was it 1 month? If the former, Mrs Manley, having been paid one week in lieu of dismissal, the claim for wrongful dismissal fails. If the latter, the claim succeeds and she is entitled to 3 weeks' net pay.

176. I conclude that the claim must fail. The position is governed by clause 10 of Mrs Manley's contract (see paragraph 16 above). That clause was never varied. Only the length of the probationary period as stated in clause 5 was varied (see paragraph 17 above). Reading clauses 5 and 10 together, the Respondent had concluded that Mrs Manley had not satisfactorily completed her 6 month probationary period (see paragraph 9 above). On the facts understood by them, and on the facts I have found and set out above, they were entitled so to conclude. Her employment was terminated within the 6 month probationary period and in those circumstances, the contract stipulates that she be given one week's notice of termination. That is what happened. Therefore, the claim for wrongful dismissal fails and is dismissed.

Employment Judge Sweeney

Date: 28 February 2024

APPENDIX

Protected Disclosures

1. Did the Claimant disclose the following information:
 - a. A written disclosure to Mr Bockett on **24 October 2022** [page 98] ('PID 1')
 - b. A verbal disclosure to Mr Bockett and Father Connelly on **11 January 2023** during a plenary session at a teambuilding event (the terms of which were set out on **page 45**) ('PID 2')
 - c. A written disclosure to Mr Bockett on **16 January 2023** (not 15 January as stated in paragraph 43 of the Amended GOR) [page 135 - 138] ('PID 3'). The email attached a document called the 'Problems and Solutions' document
 - d. A verbal disclosure to Mr Bockett on **16 January 2023** (the terms of which were set out on **page 46**) ('PID 4')
 - e. A written disclosure to Father Connelly on **24 January 2023** [page 150] ('PID 5'). this is essentially the same as PID 3, as the Claimant forwarded the 'Problems and Solutions' document to Father Connelly)
 - f. A verbal disclosure to Mr Bockett, Mrs Morgan and Father Connelly on **31 January 2023** (the terms of which were set out on **page 47-48**) ('PID 6')
2. Did the information, in the Claimant's belief tend to show one or more of the following relevant matters in section 43B(1): (b) and/or (d) and/or (f)?
3. Did the Claimant, in making the disclosure, believe that it was made in the public interest?
4. Were the above beliefs reasonably held beliefs?
5. If the Claimant made a qualifying disclosure was it made in accordance with section 43C such that it was a protected disclosure? [not in dispute]

Dismissal

6. Has the Claimant shown that the reason or principal reason for dismissal was that she made a protected disclosure?

Wrongful Dismissal

1.1. Was the Respondent entitled to terminate the Claimant's contract by the giving of 1 week's notice of employment?

1.2. If not, what notice was the Claimant entitled to?