



EMPLOYMENT TRIBUNALS

Claimant

Ms TF Maisdraki

v

Respondent

OCS Group UK Ltd

Heard at: Cambridge (by CVP)

On: 10, 11, 12 and 13 November 2020
3 December 2020 (Discussion day – no parties in attendance)

Before: Employment Judge Cassel

Members: Mrs S Laurence-Doig and Mr G Page

Appearances

For the Claimant: Ms Lana Ploom (Lay Representative).

For the Respondent: Ms L Quigley (Counsel).

COVID-19 Statement on behalf of Sir Ernest Ryder, Senior President of Tribunals

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

RESERVED JUDGMENT

1. The claim of unlawful direct discrimination fails and is dismissed.
2. The claim of harassment under the Equality Act fails and is dismissed.
3. The claim of unlawful deduction from wages fails and is dismissed.
4. The remedy hearing listed for 26 February 2021 is vacated.

REASONS

Background

1. In her claim form received by the tribunal on 13 February 2019, the claimant, Ms Theofano Fenia Maisdraki, brought a number of claims contrary to section 13, section 26 of the Equality Act 2010 and a claim of unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996. Other claims were also listed.
2. A Private Preliminary Hearing was held at Reading on 16 January 2020 before Employment Judge Vowles. At that hearing the name of the Respondent was amended to that as shown above, the claim against Andrew Pope was found not to be valid and a full merits hearing was set down for 9, 10, 11, 12 and 13 November 2020.
3. Because of the health emergency, with the agreement of the two representatives, for which we are grateful, the hearing was a remote one held by CVP and took place over four days, rather than the five that were originally listed. A face-to-face hearing was not held because it was not practicable. The documents that we were referred to are in a bundle of 352 pages.
4. At the end of the witness evidence the case was adjourned for a discussion in Chambers which took place on 3 December 2020. Submissions were made in writing by both parties which were received by the tribunal on 25 November 2020. Both parties were able to respond to those submissions and did so by 1 December 2020, so at our discussion in Chambers we had the witness statements of each of the witnesses, a full note of the evidence that was given by the witnesses, the bundle of documents and written submissions.
5. Employment Judge Vowles identified the claims to be considered by the tribunal at paragraphs 9, 10 and 11 of the Case Management Summary of 16 January 2020. They are claims of direct sexual orientation contrary to section 13 of the Equality Act 2010 with the protected characteristics being identified as sexual orientation, sex and civil partnership. There is also a claim of harassment contrary to section 26 of the Equality Act 2010 with the same protected characteristics and a claim of unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 in relation to what was said to be a contractual entitlement to 12 months company sick pay (including pension contributions) but for which she was only paid for 12 weeks.

Evidence

6. We heard evidence from the claimant, Ms Theofano Fenia Maisdraki, from Ms Lana Ploom, we had the statement of Ms Eleni Samara presented to us. We heard evidence from Judith Hugill on the behalf of the claimant. We were asked to consider video evidence. However, having heard

representations from Ms Quigley on behalf of the respondent who had not had the opportunity of seeing the video before nor had had the opportunity of considering whether or not to accept the services of a lip reader, as there was no audio feed we did not allow that evidence to be introduced. We heard evidence from Mr Andrew Pope, Ms Kelly Pennicard, Mr Alan Gibbon and Mr Paul Nurser on behalf of the respondent. All of the witnesses had prepared written witness statements which had been exchanged prior to the hearing. We also had presented to us a bundle of 352 pages of documents.

7. We explained to the parties that we would only consider those documents to which our attention had specifically been drawn, and the "pleadings" which had been submitted by the parties and tribunal decisions and judgements in relation to the claims.

Findings of Fact

8. We make the following findings of fact based on the balance of probabilities having considered those documents to which our attention has been drawn.
9. The respondent company provides security services and this case relates to activities and alleged incidents at the Nicholson Shopping Centre in Maidenhead.
10. The claimant was engaged as a security guard from 26 March 2001. Throughout her employment with the respondent she worked at the Maidenhead site.
11. Andrew Pope was also employed at the same site and became the Security Manager in 1996. He had considerable managerial experience and managed the team of, approximately eight security guards to undertake security work on site on a 24-hour basis. Of the eight in the team, six undertook day shifts and two undertook night shifts.
12. Their tasks involved patrolling the shopping centre in both the public and restricted areas. Mr Pope gave evidence and explained that the security guards provide assistance to visitors, report damage, deal with any health and safety risks, provide supervision of deliveries, assist the retail tenants with queries and monitor for any potential security risks.
13. The claimant was a successful and, by all accounts popular, member of staff who performed her tasks well. Mr Pope described the claimant as a:

“Very strong security guard and undertook a role to a high standard. The claimant’s strengths were that she was very caring, a fantastic demeanour with the general public, was always impeccably turned out was great with kids and the elderly alike. The claimant also had a great personality was very good with the client.”
14. We bear in mind that the claimant and Mr Pope had worked together for 18 years or so. Mr Pope’s description of the claimant was as follows:

“The claimant and I had a good working relationship and would describe her as a good friend. The claimant would always bring me a gift from her trips back home to Greece. I still have an ornament hanging in my garden that I was given some 15 years ago.”

15. The claimant’s view of the relationship, based in her statement and her claim form is entirely different. It is her complaint that from September 2001 at regular intervals Mr Pope subjected her to unlawful treatment.
16. We see the claims that have been brought essentially as a difference between two individuals who have given evidence of a relationship in completely different terms. There was little other witness evidence before us as to the interaction between the claimant and Mr Pope. Among the witnesses called was Judith Hugill. In her witness statement she referred to witnessing Andrew Pope “lose his temper, shouting and bullying and using offensive and abusive language when a situation arose with a member of the team.” She was cross-examined and in evidence accepted that he challenged people and did so in the same way to both men and women. More importantly for the purposes of these proceedings she never witnessed any bullying or homophobic or sexist behavior.
17. One of the ways we have assessed the nature of the relationship is to examine the text messages that were displayed in the bundle of documents starting at page 274-302. The text messages extend from November 2016 until October 2018. The picture that is painted is one of friendship, genuine and real concern for each other and consideration. The texts often ended with emojis showing smiley faces. At page 289 for example there are text messages from Mr Pope showing concern about the claimant’s recovery from illness.
18. We find as a fact, based on the information that we have been provided, that for the vast majority of the time the two work together well. All the hallmarks of friendship and kindness to each other were shown.
19. Mr Pope gave evidence that the claimant would regularly confide in him regarding her personal life and he would provide her with advice. He referred to his knowledge of the claimant having a previous girlfriend and her sharing details regarding the difficulties of their relationship and how it had led her to be in financial difficulties. He gave evidence that the claimant and her partner had been together for around 8 to 10 years and it was a very tumultuous relationship. When he was cross-examined he described the conversations about this relationship taking place on a one to one basis which the claimant would initiate in the control room, in the office, in the staff room and elsewhere. He gave further evidence that he would always treat those as private and confidential. In cross examination, the claimant accepted that the first time she raised the question as to Mr Pope’s alleged homophobia was at the grievance appeal meeting which took place in January 2019.

20. Ms Ploom started work at the shopping centre in November 2017. That period of work was as a contractor. In September 2018 June she again came to work at the shopping centre for what we were told was a three-week contract. We are in considerable doubt as to the precise nature of the contract under which she worked. Ms Ploom was reluctant to give evidence in providing details as to her assignment and indeed declined to give evidence in cross examination. Doing the best that we can with the evidence available to us the respondent's management became suspicious about the manner in which Ms Ploom was acting whilst on site. We make no findings of fact as to precisely what happened in regard to Ms Ploom's engagement under the contract as it is not strictly relevant to these proceedings. We simply note that in assisting the claimant in bringing this claim, Ms Ploom focused much of her questioning of the respondent's witnesses on their attitude to her and the alleged actions or misdeeds of which she was suspected.
21. In giving evidence the claimant accepted that although the relationship between her and Ms Ploom was a very close one and they had become engaged they had not formally undertaken a civil ceremony of marriage or entered into a civil partnership.
22. Before making any further findings of fact we note the following. The claim form was issued on 13 February 2019. It was in very broad terms and did not identify particular breaches and made generalised allegations. The case management hearing took place on 16 January 2020 when the nature of the claims being brought was clarified and orders for further and better particulars were made. Further particulars were provided and events in 2013, 2017 and several events in 2018 were highlighted in those particulars. The claimant provided a statement to the tribunal and the respondent dated 15 October 2020. In her statement there are events from 2001 onwards which in total comprise 26 separate complaints. The respondent was in difficulty at short notice to address all of those complaints and in our conclusions we deal with such important aspects of time in which to bring these proceedings and whether the acts constituted continuing acts and in this judgement we deal with each of those events complained of and make appropriate findings of fact.
23. Wherever there is a conflict of evidence we prefer the evidence of the respondent and its witnesses to that of the claimant. We found the claimant to be vague and evasive at times and unable to provide reasonable detail. Although not determinative of any of the issues we also note that no witnesses were called by the claimant to the events of which she complains. We made allowances for the facts that the claimant's first language is not English and that she was not professionally represented. As time went on, in regard to both the pleadings and the evidence she gave, the claims that she brought were continuing to multiply.
24. Save for the evidence of Mr Nurser, who dealt with the appeal, we found the respondent's witnesses coherent, concise and consistent. We were particularly impressed by the evidence given by Ms Pennicard who, in our

judgement, used her best endeavours to try to resolve the workplace difficulties.

25. In making these findings of fact we follow the specific allegations provided for in the claimant's statement:

25.1 The first allegation relates to September 2001. The first time this claim was advanced was within her statement. There is no evidence as to how the date was recalled, no reference to a calendar or diary or other means of recalling the event. The incident itself was in terms that Mr Pope shouted out, "If you don't sort yourself out, go find another fucking job.". This was denied by Mr Pope. In giving evidence the claimant accepted that this allegation related to a period while she was still on probation for her job, and that she had not raised any complaint in relation to it. Bearing in mind that it is the claimant that brings this claim and the need for us to adopt the balance of probabilities to determine whether or not we accept this evidence, we do not find this event to have happened, irrespective of any time issues in which to bring the complaint.

25.2 The second allegation relates to 2010. Again, this was the first time that this allegation has been raised. In the claimant's words, "after witnessing Mr Pope's bullying me, a colleague of mine told me that he had been removed from the previous site due to his aggressive behaviour". In giving evidence she accepted that she could not recall the exact date and there was nothing in the bundle of documents that related to this event. This was denied by Mr Pope and for the same reasons as above we reject this allegation as being true.

25.3 The third allegation also relates to 2010. This amounts to be an allegation of the request from a female store manager to the Centre manager, Jane Wright, for Mr Pope to be banned because of his aggressive behaviour. Giving evidence the claimant accepted that this was the first time that she had raised this allegation and she also accepted that Mr Pope, in his role as security manager, needed access to all areas of the shopping centre. Mr Pope denies this allegation and for the same reasons as above we do not accept that the events took place.

25.4 The fourth allegation relates to 2011. Again, this was the first time that this allegation has been made. It involved a request for the claimant to go on a roof which was slippery and dangerous and the allegation is that "Mr Pope would shout and swear until I went". We heard evidence from Mr Pope in regard to this allegation. Having heard his evidence we find that it was generally a requirement of staff to patrol the roof and that adequate precautions including the use of rock salt were in place. The claimant accepted that each of the security guards had to go on the roof and in cross examination she accepted that she had not been singled out and there was no reference to this event in the documents produced. The difference

she claimed was that Mr Pope had asked the boys “nicely” and had shouted at her. We bore in mind the evidence of Ms Hugill, that on occasions Mr Pope could lose his temper with any member of the team and didn’t single out the claimant. Again, we do not find this allegation has been made out for the similar reasons as to those above.

- 25.5 The fifth allegation relates to 14 October 2013. There was an apparent requirement, so the claimant asserted, for her to come to work and use a car. Mr Pope it was said looked at her car and was abusive. The particulars provided by way of further and better particulars, the description in her statement and the evidence which she gave to us were substantially different. We do not accept these events occurred.
- 25.6 The sixth allegation relates to January 2014. The allegation at its highest is one of race discrimination, by reference to Greeks. In giving evidence the claimant accepted that she had not brought a claim of race discrimination. It is not one therefore that falls to be determined by us but if it were, we would reject it for similar reasons as to those above.
- 25.7 The seventh allegation relates to 2015 and is an allegation that Mr Pope made comments about the claimant’s religious beliefs. The claimant accepted that she had not brought a claim of religious discrimination and again it is not one that falls to be determined by us but if it were, we would reject it on similar grounds to those above.
- 25.8 The eighth allegation relates to 2015/ 2016 when the claimant was made to work nights and told that “If you don’t like it then go and fucking find another job”. In evidence the claimant accepted that Mr Pope believed she was contractually required to work nights and when he realised she was not, he altered his position and she was no longer required to work nights. In this regard we accept Ms Quigley’s submissions that this is clearly unrelated to sex or sexual orientation or is discrimination on the grounds of civil partnership.
- 25.9 The ninth allegation relates to August 2017 which in the description of the claimant was a competition event with shops participating. The claimant accepted that this was the first time she had raised this incident. She alleges that Mr Pope made her help the Centre manager with a loaded trolley even though the male security guard was already helping and Mr Pope stated that this was a “woman’s job”. We bear in mind that this was the first time this allegation was made. It did not form part of her grievance and was denied by Mr Pope. On the balance of probabilities, we do not find this event took place.
- 25.10 The tenth allegation relates to December 2017 when Mr Pope asked the claimant to decorate the office at Christmas. She also alleged that

he said, "if you can't be fucking arsed then don't do it". Even on the claimant's account it was a request. We heard a considerable amount of evidence on this issue and we find that she had regularly volunteered to decorate the office and had not been required to do so. We prefer the evidence of Mr Pope who was quite clear and concise in his evidence and accept that he did not shout and swear at her.

- 25.11 The eleventh allegation relates to 6 August 2018 and is in terms that Mr Pope ordered her to start training for a half marathon. This was first raised in her further and better particulars. There are material differences in the account that she gave in the particulars and in her witness statement. The claimant accepted that there were differences in the accounts that she gave. Furthermore she alleged that there were two witnesses to the events, one of whom was someone by the name of Ryan, who witnessed that she had been ordered to start training for a half marathon and that if she didn't do she was told she would end up like "Susie" who was allegedly fat and in a wheelchair. Mr Pope produced the rota and copy of the daily log which demonstrated that Ryan was not at work on the day in question. In cross examination the claimant accepted that Ryan was not on duty and there was no explanation as to why in the particulars she claimed Ryan was present but accepted, apparently without difficulty, in cross examination that he wasn't. In any event we prefer the account of the respondent to that of the claimant and do not find this event took place.
- 25.12 The twelfth allegation relates to September 2018 when it was alleged that Mr Pope spoke to her using foul language on discovering that she had given his work email address to her partner. She alleged that he had used abusive language and slammed the door. This was the first time the allegation has been raised. There was no mention of it in the further and better particulars and no explanation as to why it was first raised in her statement, some two years after the events. Mr Pope denied the allegation which in any event does not appear to be anything to do with sex discrimination or other forms of unlawful discrimination alleged by the claimant and on the balance of probabilities we do not accept the events took place.
- 25.13 The thirteenth allegation relates to September 2018 when there was some discussion about the next of kin form. This was a new allegation that did not form part of the original claim, the further and better particulars and appeared in her statement for the first time. We accept the evidence of Mr Pope that this had nothing to do with his day-to-day management and was an issue managed by human resources. She was shown emails in the bundle at pages 98 and 99 and accepted that on the face of it the issue of next of kin had been dealt with by Ms Pennicard. There was no credible evidence that the next of kin form had in fact ever been raised with Mr Pope and we dismiss this allegation.

- 25.14 The fourteenth allegation relates to events of 17 September 2018. It is an allegation that Mr Pope had said when she approached him to log a homophobic Incident “homophobia is not a crime”. In giving evidence the claimant accepted that the allegation had in fact been raised with Savills who controlled the shopping centre and that Ms Ploom had been insulted by cleaner. Although there were text messages produced at page 192 of the bundle which showed text messages between her and Ms Ploom, that there was no reference to this “argument” in those messages and no real explanation as to why that was the case. We prefer the evidence of Mr Pope. His recollection of this particular incident is quite clear that it was not the claimant but Miss Ploom who had made the complaint and he that acted appropriately and had not uttered the words that were claimed indicating that he was prepared to assist the police in any investigation that they may choose to undertake. We dismiss this allegation as well reasons as outlined above.
- 25.15 The fifteenth allegation relates to September 2018 when the claimant alleges that a colleague of hers confidentially told her that Mr Pope was collecting evidence of any of her mistakes. Even at its highest this has nothing to do with unlawful discrimination and we dismiss this allegation.
- 25.16 The sixteenth allegation is a generalised one in that between September and October 2018 Mr Pope would systematically swear, shout and slam the doors and show very hostile behaviour towards her and her partner. This again is an entirely new allegation. It is not in the claim form or further and better particulars and was first referred to in the claimant’s statement. We prefer the evidence of Mr Pope who denied the allegation and for similar reasons to those described above and reject this allegation.
- 25.17 The seventeenth allegation relates to September 2018 when the claimant alleged that Mr Pope approached her on the shop floor to tell her not to proceed with the homophobic complaint. Again, this is an entirely new allegation not covered within the claim form nor the further and better particulars and no explanation was given as to why this had not been raised before. In giving evidence the claimant accepted that it did not appear in any of the previous accounts nor that there are any text messages to support it even though she regularly used text. She accepted that there was nothing in the bundle to prompt this recollection. In contrast Mr Pope was quite clear that no such event took place. We prefer the evidence of Mr Pope and reject this allegation.
- 25.18 The eighteenth allegation relates to September 2018 when the claimant alleged that Mr Pope repeatedly questioned her about her partner’s job and then said in an aggressive manner “how can you trust someone like her you know what she’s doing and not telling

me". This allegation first appeared in the further and better particulars and the account given in the particulars and in her statement are materially different. Mr Pope denies the allegation and we prefer his account and reject the allegation.

- 25.19 The nineteenth allegation relates to a claim that Mr Pope had asked the claimant's male colleagues to follow her and her partner Ms Ploom, zoom in and record their actions, for reasons not known to her and this caused distress and upset. When giving evidence and cross examined Mr Pope was adamant that he had not undertaken such behaviour and gave further evidence that others had access to the control room. As we understand the evidence, Savills, had concerns about the behaviour of Ms Ploom for reasons which are unclear to us but we accept the evidence in any event of Mr Pope and reject this allegation.
- 25.20 The twentieth allegation relates to September 2018. The claimant refers to a verbal complaint made to the area manager and that Ms Pennicard who in a statement she described as being "not very supportive" stating "I wouldn't go down that – grievance as you would have to continue working with him and it will be difficult". During the grievance meeting, the claimant was however full of praise for Ms Pennicard and when describing the relationship with Ms Pennicard stated, "I trust her 100% she is superb and that was invited to give her a call at any time". At its highest this has nothing to do with the allegations of discrimination and bearing in mind that the claimant has contradicted herself in this regard we reject her account.
- 25.21 The twenty-first allegation relates to September 2018 when following a meeting with the area manager Mr Pope allegedly shouted at the claimant in the following way, "Come here! What did you say to my boss? How do you complain about me to my boss.". In so doing he made the claimant feel unsafe and made the claimant cry. In giving evidence Mr Pope accepted that he had dealt with the matter in a forthright way and in hindsight could have dealt with it differently but at the time he was hurt by the allegation that had been made. We conclude on the evidence made available to us that this has nothing to do with direct unlawful discrimination or harassment and we reject the allegation in so far as it relates to unlawful behavior.
- 25.22 The twenty-second allegation relates to an allegation that during September 2018 she felt a hostile atmosphere in the office because she was excluded from meetings. In giving evidence Mr Pope accepted that there were meetings at which the behaviour of Miss Ploom was discussed because of concerns as to the security aspects of her behaviour. These in his words were not regular meetings but called for four the specific purpose as identified and normally, the claimant would be invited to staff meetings. We accept

the explanation in evidence given by Mr Pope and reject this allegation.

- 25.23 The twenty-third allegation relates to a requirement to having to see her GP because of long periods of stress, (causing) headaches and not be able to sleep at night. In our judgement this has absolutely nothing to do with allegations of unlawful discrimination.
- 25.24 The twenty-fourth allegation relates to her making a formal grievance against her line manager to human resources. She refers her witness Ryan Oliveira indicating that initially he was prepared to be a witness at the grievance hearing and then deciding against it. At its highest this has absolutely nothing to do with unlawful discrimination on the basis of the way it was presented in evidence.
- 25.25 The twenty-fifth allegation again relates to her request to be accompanied by Ryan Oliveira at the grievance meeting on 4 November 2018. We heard evidence that Mr Oliveira was not in fact available that day and on the evidence presented to us we can see no connection whatsoever with any allegation of unlawful discrimination.
- 25.26 The twenty-sixth allegation relates to the manner in which the appeal against the dismissal of the grievance was handled. It was apparent that there was considerable delay but having considered the evidence that was made available much of the delay was down to the claimant and not the respondent. Having heard evidence from Mr Nurser we do accept that the manner in which the appeal was dealt was inadequate. Witnesses were spoken to who were available and further investigation could have been undertaken. Although inadequate, further investigation would have been unlikely to have resulted in a different outcome given the nature of the allegation and the manner in which the investigation had been undertaken at first instance. Mr Nurser did however clarify the basis on which the appeal was being advanced and reached perfectly sustainable conclusions none of which were tainted with unlawful discrimination.

Conclusions

- 26 At the end of the evidence, and we remind ourselves that originally five days was set aside for the hearing of this case rather than the four days in which the evidence was heard, we directed that both parties should produce written submissions. We are grateful to both advocates for the careful and well considered submissions that were made and which we have considered at length.
- 27 The claimant has brought claims of direct discrimination under section 13 of the Equality Act 2010. Under this section:

“A person (A) discriminates against another (B) if, because of the protected characteristic A treats B less favourably than A treats or would treat others.”

28 She has also brought a claim under section 26 of the Equality Act 2010 alleging harassment. Under this section of the Act:

- “(1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if—
- (a) A engages in unwanted conduct of a sexual nature, and
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—
- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
 - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are—
- age;
 - disability;
 - gender reassignment;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.”

29 Under section 4 of the Act the protected characteristics are defined as follows:

“The following characteristics are protected characteristics—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.”

30 The claimant alleges discrimination on the grounds of civil partnership, sex and sexual orientation.

31 Parliament has determined that strict time limits apply requiring claimants to bring claims within specified periods. Under section 123 there is the following:

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

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

....

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.”

32 Under section 136(1) and (2) tribunals are reminded of the burden of proof which is as follows:

“(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.”

33 There is also a claim under section 13 of the Employment Rights Act in which there is a claim of an unauthorised deduction from wages relating to her payment during a period of sickness. This last matter can be disposed of quite quickly. There was absolutely no reference in evidence to this alleged

deduction. In effect there was no evidence on which we could reach any conclusion. Bearing in mind that it is the claimant who brings this claim and the standard of proof we must apply is the balance of probabilities we had no difficulty in dismissing this claim.

- 34 The claim form is the starting point in any such proceedings as the ones that have taken place before us. The claim form does not specifically refer to any individual acts and the tribunal considered it necessary to hold a Preliminary Hearing on 16 January 2020. The claimant was ordered to provide further and better particulars of her claim by 5 March 2020. We have referred to the further and better particulars and the detailed allegations contained within. On reliance of those details the respondent was allowed to amend its response. Later than was ordered at the Preliminary Hearing, in fact several weeks later, the claimant served her statement on the respondent in which there were a host of new allegations. There was no application to amend the claim form. We accept that Miss Ploom is not a professional representative and unfamiliar with tribunal proceedings. We note that Ms Quigley did not formally object to what amounts to such amendments but it is a matter that we have to consider. In view of our conclusions, we take the matter no further bearing in mind the Overriding Objective within the Rules of Procedure requiring us to put the parties on an equal footing.
- 35 Returning to the claims under the Equality Act it was disclosed in evidence that the claimant was not in fact in a civil partnership with Ms Ploom. In cross examination she initially confirmed that she was not in a civil partnership and that she was not engaged whilst employed. As Ms Quigley in her submissions pointed out the claimant's answers were straightforward and there was no scope for confusion. It was only in answer in re-examination that the claimant "remembered" that she was in fact engaged in December 2017. In her statement Ms Ploom makes no reference to a civil partnership. We do not accept that the relationship, although clearly a close one, amounted to a civil partnership but if we are wrong, as will be seen later in this judgement we would dismiss the claim in any event as there was no evidence that the respondent knew or had reason to believe that the claimant was in the civil partnership notwithstanding the time issues that will be discussed later.
- 36 The claimant's sexual orientation was well known to Mr Pope. There was no dispute that she is a woman. When considering a claim of unlawful discrimination our starting point must be the evidence that is available before the tribunal. We have looked carefully at the evidence, as will be seen in the findings of fact that we have made and can find no evidence that requires an answer from the respondent to an allegation of unlawful discrimination or harassment as has been alleged. Under section 136 we find that there are no facts to suggest that the respondent has contravened either provision of direct discrimination or harassment. It is apparent from those findings of fact that we prefer the evidence of the respondent and simply do not believe the claimant in the various allegations that she has made.

- 37 In any event we have to consider the provisions of section 123, time limits. The claim form was submitted on 13 February 2019. The period of three months is extended to enable mediation to take place through ACAS. It is of course a requirement that early conciliation does take place for a claim to be accepted by the Employment Tribunal. Even allowing for that period of conciliation it is apparent that individually each of the acts of which complaint has been made is out of time.
- 38 The tribunal does have power to extend that period of time if it considers it just and equitable to do so. However, no evidence has been provided for the tribunal to consider whether it is just and equitable to extend time. It is impermissible simply to do so without such evidence.
- 39 The tribunal can consider the provisions of section 123(3) to extend time if there is conduct extending over a period of time which is to be treated as done at the end of the period.
- 40 Ms Quigley has referred us to Commissioner of Police of the Metropolis v Hendricks [2003] ICR530 CA, Aziz v FDA [2010] EWCA Civ 304 and Greco v General Physics UK Ltd EAT 0114/16 all of which we have considered. It is relevant in our consideration, but not conclusive, that essentially it is the same individual, Mr Pope, who was involved in these incidents. But we are satisfied that his involvement was not a conclusive factor and we do find that the various specific allegations concerning different incidents are individual matters and not a continuing act. There are substantial periods of time between many of the acts of which complaint is made. The alleged conduct is varied and not linked. We are certain that the acts are not continuing ones and on this basis there is no reason to extend time to give the tribunal jurisdiction.
- 41 Having made the findings of fact that we have and the conclusions that we have reached there are no facts that we find require an explanation by the respondent.
- 42 For all these reasons we dismiss the claims. A remedy hearing was provisionally listed for 26 February 2021. In view of our unanimous decision to dismiss these claims that hearing is vacated.

Employment Judge Cassel

Date: 15.12.2020

Sent to the parties on: ..15/12/2020.....

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For the Tribunal Office