EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms B Marapara	AND	Millbrook Healthcare Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY **ON** 12, 13, 14, 15 and 16 April 2021
By Cloud Video Platform

EMPLOYMENT JUDGE N J Roper **MEMBERS** Ms B Catling
Mr P Flanagan

Representation
For the Claimant: In person
For the Respondent: Mr G Self of Counsel

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that the claimant's claims are all dismissed.

REASONS

1. In this case the claimant Ms Beatrice Marapara claims that she was discriminated against because of three protected characteristics, namely her age, her race, and her religion and belief. The claim is for direct discrimination; indirect discrimination; harassment; and victimisation. The claimant also claims that she has been unfairly constructively dismissed, and she brings two monetary claims. The respondent contends that there was no discrimination, that the claimant resigned, and that there was no dismissal, and in any event that its actions were fair and reasonable. The respondent also disputes the monetary claims.

2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents to which we were referred are in what was originally an agreed bundle of three sections: A of 123 pages, B of 511 pages, and C of 8 pages. The claimant then added two supplemental bundles AP1 of 207 pages and AP 2 in two sections of 39 and 73 pages, the contents of which we have recorded. The order made is described at the end of these reasons.

3. We have heard from the claimant, and from Ms Dominique McKella on her behalf. For the respondent we have heard from Mr Malcolm Lock, Mr Neil Mecklenburgh, Mr James Brooks and Mr Mohamoud Ali.

4. There was a degree of conflict on the evidence. We have heard the witnesses give their evidence and have observed their demeanour in the witness box. We had significant concerns about the claimant's credibility. The claimant showed a propensity to make wild allegations which had no basis in fact, and many of her assertions were contrary to the evidence of the contemporaneous documents. She continued to make serious allegations of conspiracies against her said to have been committed by her work colleagues, the respondent's management, and even her own trade union representative. She repeatedly refused to accept the effect of her actions and attitude on others even when it was obvious from the evidence before her. This included allegations of racism which she made (and continued to make) against her colleagues who were themselves of both similar and different racial origin. In contrast the respondent's witnesses gave their evidence in a calm and measured manner which was supported where necessary by the contemporaneous documents, and they were accordingly much more credible. Bearing all of this in mind, wherever there was a direct conflict of evidence between the claimant and the respondent, we preferred the respondent's version of events. Against this background we found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

5. <u>The Facts:</u>

6. The respondent company is a large healthcare company which has two contracts with Hackney Borough Council in London to support elderly and disabled citizens. The respondent took over these contracts from a previous provider on 25 August 2017. The respondent has tele-care response officers who work on a rota system to attend to callouts from residents of Hackney BC who may be in need of medical assistance. The rota system is operated 24 hours per day and seven days per week. The service is considered to be the fourth emergency service because the respondent's staff are first responders and normally they are the first on scene to resolve residents' issues or to provide access for the London Ambulance service to gain access to users' properties.

7. The claimant Ms Beatrice Marapara was born on 7 December 1955, and she was aged 65 at the date of this hearing. She was aged 63 at the time of many of the matters complained of in these proceedings. She relies on being within the age group of "over 60s". She was born in Zimbabwe but moved to the UK and has been a British citizen for many years and throughout the period relevant to these proceedings. She describes herself as "Black African British". She is a practising Christian, specifically a member of the Pentecostal Church. She would ordinarily wish to attend her church every Sunday, and usually on a Sunday morning.

8. The claimant was employed as a Telecare Response Officer. Her period of continuous employment commenced on 1 August 2008. Her employment transferred under TUPE to the respondent on 25 August 2017. She resigned her employment with immediate effect on 8 April 2019. At that time the telecare team consisted of eight members of staff. This telecare response team was very diverse and of the eight members of the team only one person identified as "white English" whilst the other seven identified as BAME, including Mauritian, Turkish, Nigerian and Somalian.

9. The claimant had been issued with a written contract of employment and a written job description. Her role in the telecare response team consisted of responding to client emergencies, attending if necessary to their home to facilitate medical attention or to resolve minor issues which some residents faced on a daily basis. The administration duties were important and involved keeping client records, maintaining key security, and updating relevant parties of any welfare concerns. The role also required carrying out low level repairs at service users' properties if required.

10. The claimant was required as part of her duties to work a shift pattern which included night shifts and weekend working. The provision relating to Hours of Work in her contract of employment stated: "Your normal working hours will average 35 hours per week over an eight-week, 24-hour shift rota which includes weekends. The current rota is available from the Team Manager Telecare Response Service. The rota may be changed at any time, entirely at management discretion." The contractual sick pay provisions in the claimant's contract of employment afforded her contractual sick pay at her normal rate of pay over and above statutory sick pay (SSP) for 65 working days, and this was calculated on a 12 month rolling period from the first day of any period of sick leave. Before the events which unfold below, the claimant had had an operation and was absent on certified sick leave from 25 August 2017 until 31 October 2017.

11. The employees working this original shift pattern had historically been allowed to take time off in lieu, referred to as TOIL. If they had worked on beyond the end of a normal shift, or occasionally if they had missed their unpaid break, they could ask to take TOIL, which normally meant being allowed to start another shift late, or to finish the current shift or a different shift early.

12. Mr James Brooks, from whom we have heard, is the respondent's Operations Manager for the contract with Hackney BC. He joined the respondent on 13 November 2017, and he took responsibility for the team which included the claimant. He soon concluded that the shift rota system for the staff was functioning poorly. In particular the telecare manager Mr Onuba was spending a considerable portion of every day reviewing changes to the rota in order to try to make each member of the team's shift pattern work within the rota. There were constant changes required and this made it difficult for the respondent to track who was on shift at any particular time or day. It also frequently meant that some staff were required to work one day on followed by two days off, and then another three days back on shift, and there were major inconsistencies within the shift patterns. In addition, the informal system of TOIL was difficult to manage and had become disruptive. It also became clear that the rota was easy to manipulate with some individuals working more favourable shifts. Mr Brooks concluded that the claimant appeared to be taking advantage of this, and she was increasingly putting Mr Onuba under pressure to be allocated favourable shifts to the detriment of other members of the team.

13. The respondent's HR Director at that time was Mr Neil Mecklenburgh, from whom we have heard. Following discussion with senior management, Mr Mecklenburgh and Mr Brooks commenced consultation with the staff with regard to the introduction of a new improved rota system. This involved consultation with individual members of staff; group consultation; and consultation with recognised trade unions who represented the staff. The summary of the consultation process adopted was as follows.

14. On 19 January 2018 the respondent sent a detailed letter to all staff announcing the consultation process with regard to a change in the working rota, including the proposed new rota. Between 19 January 2018 and 31 January 2018, Mr Brooks held one-to-one meetings with each of the employees. This included a meeting on 30 January 2018 between Mr Brooks and the claimant. On 8 February 2018 all staff were sent a letter giving them 12 weeks' notice of the change in the rota with the new rota due to start on 7 May 2018. This letter explained the reasons in full why the respondent considered that the old rota was not working efficiently and why the new rota more properly met its business needs. On 23 March 2018 Mr Brooks and Mr Mecklenburgh met with both Unison and GMB trade union representatives to discuss the working of the rota, and the unions in question agreed to meet with employees subsequently to discuss the rota. The meeting with the union representatives and the employees took place at the Hackney Depot office between 4 April 2018 and 6 April 2018. On 9 April 2018 the trade unions agreed the final rota proposals. By letter dated 26 April 2018 the respondent advised that there would be a one-week delay in the commencement of the new rota, which started with its first day on 14 May 2018. The

rota was on a 24 week cycle, and the last day of the first 24 week rota was 28 October 2018.

15. During this extensive consultation process Mr Mecklenburgh wrote a detailed letter to all individual members of staff, including the claimant, and his letter to the claimant was dated 26 April 2018. The letter confirmed that the telecare team to support the new rota was to consist of eight employees with six telecare responders working a rotating shift pattern and cycle covering four shifts on and four shifts off. Each shift was to be 10 hours in duration, on a repeating cycle of four early shifts (6 am to 5 pm) with one hour unpaid for lunch, followed by four days off; followed by four late shifts (1 pm to 12 am) with one hour unpaid for lunch, followed by four days off, then followed by four night shifts (10pm to 9 am) with one hour unpaid for lunch, followed by four days off. The full cycle was over 24 weeks during which there would be 84 separate 10 hour shifts which equated to an average working hours of 35 hours per week, which was the same as the pre-existing contractual working hours.

16. In addition, that letter explained that the other two employees would now specifically cover maintenance and welfare calls. These roles would not be part of the rotating cycle of shifts, but rather were to work more regular hours of 9 am to 5 pm Monday to Friday. The existing members of the telecare team, including the claimant, were all invited to apply for these positions.

17. In addition, it was made clear to all staff before the new rota system commenced, that TOIL would not be permitted under the new rota system, and if that any employees considered that they had TOIL to take, then this had to be agreed and taken before the new rota commenced.

18. Mr Brooks sent an email to all members of staff, including the claimant, on 11 May 2018. That email attached a copy of the new rota which was adopted with effect from 14 May 2018. Mr Brooks confirmed that it was the responsibility of each individual employee to ensure that the relevant lunch break was taken during the shift. He made it clear that: “there is no excuse and TOIL will not be given for missed lunch hours unless directly agreed with me.” It was thus made clear that there was no requirement to work for 11 hours during each of the shifts, indeed the contrary was the case, in that employees were required to take the necessary break. He also confirmed that there had been a disappointing lack of response on the two new internal vacancies and that Mr Salem Edoo would be appointed to cover maintenance, and Ms Vicky O’Dwyer would be appointed to cover the welfare calls. These were the only two members of the team who had applied for these positions

19. The new rota was adopted with effect from 14 May 2018. It commenced with the claimant working four late shifts in a row from Monday, 14 May 2018 followed by the Friday, Saturday, Sunday and Monday off. She was then on four early shifts from Tuesday 22 May 2018, followed by Saturday, Sunday, Monday and Tuesday off. She then had to work four night shifts from Wednesday, 30 May 2018 followed by four days off commencing on Sunday, 3 June 2018. In other words, she had the first three Sundays off under the new rota cycle.

20. We have also seen the claimant’s payslips for the periods both before and after the introduction of the new rota. It is clear that she received the same gross pay both before and after the introduction of the new rota, and that there was no reduction in her salary from May 2018.

21. During this consultation process, the various members of staff had been invited to discuss the proposals and to put forward any suggestions of their own. The claimant put forward proposals of the rota which suited her own requirements without discussion or agreement with some of her colleagues. Mr Ali had complained about the claimant’s conduct in this

respect. In addition, and despite being specifically invited to do so, the claimant did not apply for either of the maintenance or welfare positions.

22. In addition, Mr Brooks became concerned about the claimant's conduct during this period. One such matter involved complaints which had been received about cars being parked under the respondent's office, which is a sort of archway and entrance to a restaurant and other flats in the courtyard. It consisted of the only access for emergency services to access the properties. There was a removable post to prevent parking, and employees including the claimant were reminded that they should not park in that area. Secondly there was an incident in which the claimant failed to respond properly to a Priority 1 call. She failed to attend an emergency callout because she had seen the service user earlier in that day and had assumed that everything was in order. She returned to the office some two hours later and despite the fact that she was unable to make contact with the service user by telephone she left the matter to someone else to deal with before leaving. Mr Brooks instructed Mr Edoo to attend and when he did so an ambulance had been called to attend the client.

23. On 1 May 2018 Mr Brooks received an email from Ms Vicky O'Dwyer raising a grievance about the claimant. Ms O'Dwyer complained about offensive comments which the claimant had made. The claimant had complained that she was not happy about the new rota and that she was unhappy that the person who was now doing the new welfare job was only working 9-to-5. As noted above that person was Ms O'Dwyer. The claimant had alleged that it was discrimination that the tele-response team would be doing long hours while the welfare and maintenance workers were only working days but on the same pay. The claimant alleged that Ms O'Dwyer and Mr Edoo were both white and that the rest of the team were black, and they were not working as part of the team. Ms O'Dwyer confirmed that she was extremely upset particularly as the claimant had had the right to apply for the job but had failed to do so. She felt that the claimant's views were "polluting other colleagues". Mr Brooks asked Ms O'Dwyer if she wished to pursue a formal grievance but Ms O'Dwyer decided against it because she was worried about possible repercussions against her and her colleagues from the claimant.

24. On the very first shift under the new rota on 14 May 2018, the claimant asked Mr Brooks if she could finish early because she had not taken her break during her shift. Mr Brooks gave her permission to finish one hour early for that shift only, but he made it clear that she had been provided with clear information and instructions that she had to arrange to take her lunch break during the shift. Two days later Mr Onuba reported to Mr Brooks that the claimant had told other staff that Mr Brooks had given her general permission to finish shifts early. Despite being told by Mr Brooks and other members of staff that she did not have permission to finish shifts early, she continued to leave subsequent shifts earlier than authorised.

25. In addition, the claimant continued to ask Mr Brooks for TOIL when she claimed she had failed to take breaks as instructed during her shift. She also claimed that she had TOIL left over from the old rota system, but Mr Brooks repeated the earlier instructions, as confirmed in his emails, that if any TOIL was not taken in time before the introduction of the new rota then it would be lost. Mr Brooks refused her requests for TOIL and repeatedly explained that she had to take breaks during her shifts and there was no excuse for not doing so.

26. The claimant then became more disruptive and confrontational in her attitude to her work, her colleagues and to Mr Brooks. She repeatedly complained that the new rota did not work and that she did not have enough time off (despite the fact that each four days working were followed by four days rest). She accused Mr Brooks and the respondent of "stealing her days off" and forcing her to work more hours every week. Mr Brooks repeatedly tried to explain that no one was required to work more than their normal contractual hours.

27. The claimant also complained to Mr Brooks that the new rota interrupted her personal life and prevented her from attending church and having access to her grandchild. In the first place, the claimant complained that she could not attend church on a Sunday morning because she had to work some Sundays. That had always been the case under the pre-existing rota and Mr Brooks asked her if her church was open on her rest days and whether she could attend on these days. The claimant replied to the effect "I guess so" and did not raise the issue again, which Mr Brooks therefore assumed had been resolved. The claimant also suggested that she shared custody of her grandchild and had to provide childcare. Mr Brooks invited her to provide evidence of this joint custody and her childcare requirements and suggested that he could then discuss flexibility about her shifts, but the claimant simply refused.

28. The respondent has a straightforward system for employees to request holidays. They are required to fill out a form and submit it to Mr Brooks for approval. Mr Brooks will then decide whether to approve or reject the application, and he then signs the form accordingly. In late May 2018 the claimant met with Mr Brooks to discuss her applications for holiday, which included Christmas Day 2018, and Mr Brooks made it clear that the claimant did not have sufficient annual leave remaining to take the days which she requested. He asked her to reconsider her applications to ensure they fell within her remaining contractual allowance. She did so, and she did not request to take Christmas day 2018 as annual leave because she had chosen to prioritise other dates within her allowance. The claimant now relies on leave application forms which she has included in the bundle of documents for this hearing, but Mr Brooks denies that these were ever submitted to him for approval or rejection because he has not signed them to indicate that they have been processed by him either way. In addition, the claimant alleges that Mr Brooks had authorised Mr Edoo to take Eid as holiday, simply because this day was not recorded on the tele-care team calendar. Mr Brooks has explained that the claimant misunderstood the position. The annual leave for Mr Edoo and Ms O'Dwyer was no longer recorded on the telecare team calendar because there was no need to arrange cover for their new jobs of maintenance and welfare. Mr Brooks simply meant that Mr Edoo's leave generally was not recorded on the telecare team calendar (rather than the Eid festival being recorded) and Mr Brooks had no reason to refuse Mr Edoo's request for leave on that date.

29. Mr Brooks had also been made aware again that some staff had not been taking their lunch breaks and asking whether they could claim TOIL. On 23 May 2018 Mr Brooks sent another email to all members of the team, including the claimant, to explain that there was no reason why they should be unable to take any break required during their shifts because there would be sufficient cover available. He also repeated his earlier confirmation that there was no provision for TOIL and that the employees were only able to leave their shifts early with his express permission.

30. On 24 May 2018 Mr Ali emailed Mr Brooks to complain that the claimant was not undertaking various requirements of the job. When Mr Brooks tried to speak with the claimant about it, she became very defensive and accused Mr Ali of lying. She refused to discuss the matter any further.

31. There was an instance on 31 May 2018 when the claimant lost a set of keys in the respondent's van and had left it for other members of the staff to retrieve them. When Mr Brooks challenged her about this, she failed to see that there was any difficulty because someone else had retrieved them. Mr Brooks was becoming more and more frustrated with the claimant's failure to take responsibility and her irresponsible approach to her work.

32. The claimant has alleged that on 1 July 2018 Mr Ali had had a conversation with Mr Brooks in which he had said: "Don't listen to Beatrice, she is a liar and pretends to be a Christian" and that Mr Brooks had replied to the effect that it was due to "cultural differences." Mr Brooks denies that any such conversation took place with Mr Ali. Mr Ali also denies that

any such conversation took place. The weight of evidence is against the claimant in this respect and we accept their evidence, and we reject the claimant's assertion that this conversation took place.

33. On 18 July 2018 the claimant again asked Mr Brooks if she could use TOIL which she had accrued. By email dated 18 July 2018 Mr Brooks reiterated yet again that there was no entitlement to TOIL. He then had a detailed discussion with the claimant again about the fact that she was not entitled to claim TOIL and that it was her responsibility to ensure that she took the relevant lunch breaks.

34. Towards the end of August 2018 other members of the team who had been taking over from the claimant informed Mr Brooks that she had been leaving early. Mr Brooks investigated and reviewed the respondent's clocking in system. This clearly showed that the claimant had repeatedly been leaving the office between 15 to 60 minutes early. Mr Brooks met with the claimant on 28 August 2018. The claimant continued to raise the matter of TOIL which she alleged was due to her despite being repeatedly told that she could not take this. She also alleged that the clocking in machine was wrong and told Mr Brooks that she refused to discuss the matter further and left to go home. The claimant now alleges that Mr Brooks shouted at her and demanded that she signed a piece of paper which she had not read. Mr Brooks denies this, and he points out that Ms Angele Lebrun was present as an independent notetaker for that meeting, and that there is no record of the same. We accept Mr Brooks's evidence that he did not shout at the claimant and nor did he demand that she signed a piece of paper which she had not read.

35. Meanwhile, by detailed letter dated 13 August 2018, the claimant raised a formal grievance "Against the discretional change of rota and other issues." She alleged that "Having a fixed rota is discriminatory, is unfair, is unjust, and it doesn't meet the standards of health and safety regulations." The claimant did not explain in that letter why she considered that the new rota was in any way discriminatory. When asked under cross-examination why she assumed that the new rota was discriminatory, she asserted that it was because Ms O'Dwyer and Mr Edoo had been removed from the team of eight which then left the other six to carry on with the rota. She was unable to explain why this was discriminatory given that Ms O'Dwyer and Mr Edoo obtained the maintenance and welfare positions because they were the only two who had applied, and the other six members of the rota were all treated equally within the same rota. In any event Ms Tregellas went on to investigate the grievance and she subsequently rejected it. The claimant conceded in cross-examination that Ms Tregella had investigated her concerns thoroughly. During the course of that investigation Ms Salem Yildiz had also given a statement, to the effect that she had had issues with two of her colleagues, but this was on the basis that they were not answering their emails. She did not raise any complaint against colleagues on the grounds that they were of any specific race or national origin.

36. On 29 August 2018 and shortly before the claimant's grievance meeting was scheduled to take place, the claimant told Ms Tregellas that she had a headache and was going home early from her shift. Mr Brooks tried to speak to the claimant about this and to enquire as to her symptoms, but she flatly refused and said that she was going home. She then left the office without ensuring that there was anyone to cover her shift which Mr Brooks considered was likely to put other service users at risk. The claimant was then signed off work by her GP from 29 August 2018 and she returned to work some four weeks later on 27 September 2018.

37. On 25 September 2018 Mr Brooks emailed the tele-response team to explain that it would not be possible for them to book annual leave over Christmas and the New Year because of the respondent's requirement for the service to run smoothly every day of the year. He explained that he would try to make the shift patterns as fair as possible to ensure that those that worked on one Christmas day would not have to do so the following year. Ms

O'Dwyer subsequently reported to Mr Brooks that the claimant had said that she intended to call in sick on Christmas day in any event if she was not permitted to take it. Mr Brooks did not consider that the claimant had made an application for leave on Christmas Day, and he decided to keep the situation under review.

38. The claimant attended a return to work meeting with Mr Brooks on 27 September 2018. At the end of that meeting they had a frank discussion in which the claimant became emotional and told Mr Brooks that her children were worried about her after she had been signed off from work. She thanked Mr Brooks for having arranged to take home her after she was ill on 29 August 2018, and she informed him that she had some property to sell if she wished to do so rather than to continue working. Mr Brooks considered that she seemed to be very emotional and tried to be supportive.

39. On 1 October 2018 the claimant emailed Mr Brooks to complain that she had not taken a lunch break on 30 September 2018. Mr Brooks remained frustrated that the claimant was simply failing to follow his instructions about taking breaks.

40. On 6 November 2018 Mr Brooks noted that the company van had been parked on the road rather than in its allocated space in the basement under the office. The claimant explained that she had moved the van onto the road so that she could park her car in the basement in the allocated space, because she had allowed her local authority parking permit to expire. Mr Brooks had previously given explicit instructions that the van was to remain parked in the basement when not in use, and he explained this to the claimant again. The claimant reacted angrily and insisted that she had a right to use the parking space because she was an employee of the respondent.

41. On 7 November 2018 the claimant was due to attend a grievance meeting after her shift finished. Mr Brooks explained that she was authorised to leave her shift at 10 am in order to allow her time to meet with her union representative to prepare for the grievance meeting. The claimant reacted angrily that she was not being released earlier, and started speaking aggressively to Mr Brooks, and she pointed her finger in his face. Mr Brooks denied that he became aggressive and shouted at the claimant in reply, as now alleged by the claimant. For the reasons previously explained with regard to the claimant's credibility, we accept Mr Brooks's version of events.

42. During November 2018 Mr Brooks decided to approach the respondent's HR team for support because he was becoming increasingly frustrated with the claimant's attitude and her refusal to engage with him whenever he wished to address her conduct. He considered that the claimant had become more obstructive, argumentative and threatening towards him. Mr Wotton of the HR Department agreed with Mr Brooks that a formal approach was now more appropriate. This then led to a subsequent investigation under the respondent's procedures, which is explained further below.

43. In addition, the claimant's general attitude was causing difficulties within her team. By letter dated 23 November 2018 her colleague Mr Edoo raised a formal grievance against her. An investigation meeting took place on 30 November 2018. Mr Edoo confirmed that he had been deeply shocked and upset by the claimant's comments that he was a racist and that he did not wish to work with Africans and Nigerians, and that she had also stated that he had informed their co-workers that she the claimant was not a good worker. Mr Edoo was clearly distressed by these allegations and was brought to tears at the meeting at the thought that the claimant should even consider him to be a racist. He stated: "There is only one outcome that would satisfy me that is that BM should be removed from the company. She has caused so many problems to the point that it would be impossible to continue to work with her especially as she has caused so much distress."

44. The claimant then commenced a period of certified sickness absence. This commenced on 26 November 2018 and she returned to work on 27 January 2019. The respondent's HR Department calculated that she had already exhausted her contractual entitlement to 65 days of full pay within the previous 12 month rolling period. Bearing in mind her absences in the previous year and during August 2018, this does not seem surprising. She was therefore paid statutory sick pay (SSP) only for this period which was paid at the end of December 2018 and January 2019 respectively. The claimant asserts that she questioned this at the time by telephoning the HR Department, who confirmed at that stage that she was only entitled to SSP. The claimant did not pursue any challenge to this decision until she subsequently included a claim for her full pay for this period in the course of these proceedings.

45. The day after her return to work, on 28 January 2019, the claimant asked Mr Brooks if she could move to the other team which was working the alternative shift pattern. Mr Brooks explained that it was not just as straightforward as moving her to another team, because he would need to move another employee back to her team, namely either Mr Adesanya or Mr Sobowale. He suggested that she spoke to either of these colleagues to see if they were willing to switch, and even if they were willing to switch, she would need to inform members of the current team because the change would affect them as well. Mr Brooks heard nothing further, and subsequently Mr Adesanya and Mr Sobowale confirmed that the claimant had not asked them whether they were prepared to swap shifts, and in any event they were not willing to change because they did not wish to upset the pattern and methods of working which had bedded in satisfactorily with their other team members.

46. On 13 February 2019 the claimant then reported to Mr Brooks that she had misplaced her work mobile phone. The claimant did not treat this matter with any sense of urgency despite Mr Brooks confirmation that it was her responsibility and that she needed to locate it. She failed to do so and on 28 February 2019 she emailed Mr Brooks to enquire what was happening. Mr Brooks then searched the office thoroughly and eventually found it in a gap between two desks. The phone was damaged and was in a shocking condition. When the claimant returned on shift Mr Brooks challenged the claimant about it and told her that it was a company asset which was supplied by the company and that she was required to take more care. She confirmed when challenged that she would not have let her personal phone get into the same condition.

47. The claimant now alleges that Mr Brooks said words to the effect: "How dare you damage your mobile you should have looked after it properly" and said "a woman of your age, what's wrong with you?" and went on to say in front of staff that the claimant was a bad worker, picking things out of files". Mr Brooks denies that he made these comments to the claimant. Given our earlier comments about the claimant's credibility we accept Mr Brooks's evidence that he did not say these things as alleged.

48. On 15 February 2019 Mr Ali then telephoned the claimant. He explained that the purpose of the call was "in order to resolve our differences". He objected to the claimant having dragged him into the other issues which she was having with the rest of the team. The claimant surreptitiously recorded that conversation, but only told Mr Ali that she was recording the conversation halfway through it. Mr Ali objected and told her that the conversation was confidential and that she was not to use the recording in any way. Notwithstanding this, the claimant has produced a transcript of that conversation, which she included in the Agreed Bundle of Documents for this hearing. In his evidence Mr Ali said that he had not been sent the transcript for potential agreement as to its accuracy, and he disputed some of the contents. In particular he disputes that he said that the new rota was not fit for purpose and that it was endangering the lives of service users, even though these comments appear in the transcript.

49. Mr Malcolm Lock, the respondent's Regional Training Officer, from whom we have heard, then held an investigation meeting on 25 February 2019. He had originally arranged to meet the claimant on 13 February 2019, but she objected to the meeting going ahead without her chosen trade union representative, and he adjourned the hearing to accommodate that request. When the claimant was interviewed by Mr Lock on 25 February 2019, she was accompanied by her chosen trade union representative, Mr West from the GMB. The purpose of this meeting was to consider the grievance raised by Mr Edoo against the claimant, and to consider whether there had been any breaches of the respondent's various policies by the claimant, and whether any further disciplinary action should follow.

50. Mr Lock interviewed the claimant's manager Mr Brooks, and Ms Tregellas who had investigated the claimant's earlier grievance, as well as Mr Wotton from the HR Department. Apart from these three people and the claimant, Mr Lock also interviewed six of her work colleagues namely Mr Godfrey Onuba, Mr Salem Edoo, Mr Mohamoud Ali, Ms Vicky O'Dwyer, Mr Ombrai Oguoko, and Ms Angele Lebrun. Mr Lock rejected the suggestion that the claimant's colleagues were attempting to fabricate their evidence as she had alleged, and because of the number of allegations made against the claimant, and the corroborating evidence given by the witnesses, Mr Lock concluded that there were clear and serious issues with regard to the claimant's attitude and behaviour in the workplace.

51. With regard to TOIL, Mr Lock concluded that there was clear evidence that the claimant had repeatedly taken TOIL without first seeking permission from her manager Mr Brooks, and had repeatedly failed to accept what was clearly written in her contract of employment with regard to her appropriate leave entitlement. There was also clear evidence that the claimant had continued to leave the office early to suit herself, and that she had failed to follow the respondent's protocols and guidelines to ensure that the shift patterns and times were completed properly under the new rota. Mr Lock concluded that these issues potentially amounted to misconduct.

52. Mr Lock investigated the grievance raised by Mr Edoo in connection with an alleged racist comment made by the claimant. Mr Lock accepted Mr Edoo's evidence that this had happened following their interview because a number of the claimant's colleagues also reported allegations of racist comments that the claimant had made. Mr Lock concluded that there was sufficient evidence to suggest that the claimant had committed gross misconduct in this respect.

53. Mr Lock investigated the matter of the claimant allowing her phone battery to run flat and then borrowing another work phone, when the evidence suggested that she borrowed the work phone in order surreptitiously to look at documents stored on it in connection with a grievance which had been made against her. Mr Lock concluded that this was potential misconduct because the claimant knew that she was on call and duty bound to ensure that all of the equipment was serviceable.

54. Mr Lock investigated the allegations of aggressive behaviour towards Mr Brooks, and the claimant's refusal to follow a clear management instruction from Mr Brooks that she should remain on duty until she was given authorisation to leave. This was supported by the other members of staff. Mr Lock considered that this deliberate failure to follow clear management instructions could be also considered to be gross misconduct.

55. There was also the matter that the claimant had failed to attend a Priority 1 call. The claimant admitted the same, and there was further evidence to support it. Mr Lock concluded that the safety of a member of the public had been compromised by the claimant and that an ambulance crew was forced to attend when the claimant should have attended and assessed the situation. She then returned to the office and handed the Priority 1 call

to another member of staff adding further delay, which Mr Lock considered to amount to gross misconduct.

56. In addition, Mr Lock concluded that the claimant had used the company's underground car parking facility for her own use which was both without permission from Mr Brooks, and in direct contradiction of his clear instructions on several occasions. The claimant admitted that she had done this, and this was supported by other witness evidence. He did not consider that her failure to apply for a replacement parking permit to allow her to park on the public road was sufficient excuse. He considered that her wilful disobedience amounted to gross misconduct.

57. Mr Lock also concluded that the claimant had threatened to take sickness absence over Christmas after she had been refused Christmas leave. Mr Brooks had not had to process any application from the claimant for leave at Christmas, which the claimant did not dispute, and Ms O'Dwyer and Mr Edoo confirmed that the claimant had made the threat to take sick leave instead. Mr Lock considered this to be potential misconduct.

58. As a result of that detailed investigation meeting and bearing in mind the various policies and procedures of the respondent, Mr Lock recommended that the matter should proceed to a formal disciplinary hearing.

59. On 26 February 2019 the claimant then emailed Mr Brooks to complain again about not being able to take a break during a shift, and again trying to claim TOIL for untaken breaks. The claimant was the only member of staff who persisted with this approach. Shortly thereafter in early March 2019 Mr Brooks became aware of a serious breach of procedure by the claimant in connection with the Paradoc service, which is a medical callout service as an alternative to an emergency which might require an ambulance. The respondent staff had clear instructions not to give details of access to properties, which could present a serious security issue in the events that keys went missing. Mr Brooks noted that in breach of these procedures the claimant had given Paradoc personnel the keycode details for a client's key safe. He reported this to the HR Department, and it was agreed that a further investigation should ensue because of the seriousness of the breach.

60. Before this was fully under way, another serious event involving the claimant then arose on 1 April 2019. Mr Ali and Mr Brooks were inspecting the company van because of a defect in its heater. Mr Ali discovered a set of keys to a service user's premises under the clutch pedal. They checked the key records which showed that the claimant had been the last person to use the van and had attended the service user's premises to which the keys related. The claimant failed to report that she had either lost or had not returned the keys when she had returned to the office, which Mr Brooks considered to be another serious breach of security.

61. Mr Brooks invited the claimant into his office to discuss the serious issues which directly affected the safeguarding of clients, and apparent repeated breach of the respondent's procedures and policies. It became clear from her responses that the claimant was not following the policies and procedures required and Mr Brook was concerned that the claimant appeared not to care about the issues which he had raised. The claimant's view was that no one had been hurt and that it therefore did not really matter. Mr Brooks took advice from the HR Department, and he then suspended the claimant with immediate effect in order to allow a formal disciplinary investigation to commence. He asked the claimant to surrender her company ID and the keys to the office. The claimant then just shrugged her shoulders and walked away, and she began to start making copies of various documentation all of which had client information on it. Mr Brooks informed the claimant that she could not do that. She then handed in her passes and keys and Mr Brooks escorted her from the building.

62. The claimant alleges that Mr Brooks had lost his temper and shouted at her that she had made too many mistakes and would be suspended immediately, and he kept shouting at her that she should get out of the door, and then shutting the door behind her. Mr Brooks denies that account as being untrue. His evidence is that the claimant's suspension only occurred as a result of the urgent investigation which he had undertaken, and only after he had sought guidance from HR. He denied losing his temper and shouting at the claimant and denies having made the alleged comments. For the reasons explained above about the claimant's credibility, we prefer Mr Brooks' version of events.

63. Meanwhile Mr Mecklenburgh, the respondent's HR manager, had decided to commence a formal disciplinary process against the claimant in connection with the earlier matters which Mr Lock had investigated, and by letter dated 19 March 2019 she was invited to a disciplinary meeting on 25 March 2019. She was told that she would face two allegations: 1 Persistently and wilfully disobeying direct instructions from the Operations Manager (James Brooks) which could constitute gross misconduct; and 2 Conduct likely to offend colleagues which could constitute misconduct by reference to the allegation that she had put her finger in Mr Brooks's face to the point that he felt threatened and intimidated. Examples were given under the first allegation which might amount to gross misconduct being (i) leaving the workplace early without authority on seven occasions in May 2018 on the grounds of TOIL despite the fact that TOIL was no longer in practice; (ii) leaving work early and arriving late without authority four times in July 2018; (iii) leaving work early and arriving late without authority three times in August 2018; (iv) parking under the arch on 8 November 2018 despite being told not to do so on 7 November 2018; and (v) ignoring company guidelines regarding annual leave booking and failure to comply with the Christmas booking system and failure to adhere to the rota for Christmas to gain unauthorised time off.

64. The claimant attended the disciplinary hearing on 25 March 2019, and she was accompanied by Mr Brown her chosen trade union representative. The claimant made a number of accusations that the evidence against her been fabricated by her work colleagues, including allegations that the clock time entries had been manually altered. In the interests of fairness Mr Mecklenburgh decided to adjourn the hearing in order to make further investigations, and as part of these investigations he interviewed Mr Edoo, Ms O'Dwyer, Mr Ali, Mr Onobu, and Mr Brooks, between 1 and 4 April 2019.

65. During that first disciplinary hearing, which lasted approximately five hours, the claimant raised an allegation that her colleague Songul had accused her of stealing her purse. This was investigated and it seems that Songul had mislaid her purse, and she asked the claimant whether she knew where it was. We do not accept that Songul accused the claimant of stealing her purse. It is clear from the claimant's answers under cross-examination that Songul had mislaid her purse, and she did no more than ask claimant whether she knew where it was.

66. The disciplinary meeting subsequently resumed on 8 April 2019, and this meeting lasted approximately four hours. The claimant was again represented by her chosen trade union representative Mr Brown. The claimant continued to assert that all the evidence against her should be dismissed because it had been fabricated by her colleagues. Mr Mecklenburgh considered that the claimant's attitude was uncooperative and evasive. There was then an extraordinary exchange between the claimant and her union representative Mr Brown, who was clearly exasperated at the claimant's attitude, which he also clearly thought was uncooperative and confrontational. The minutes of the meeting record that Mr Brown made the following comments to the claimant: "It doesn't come across like you're helping yourself … You haven't helped yourself and you're not helping yourself … Constantly getting into a situation which does sound confrontational is not helping you. Finally I will ask you straight. Do you want this job? If you don't, I would advise you to resign. If you do then you need to start listening … Let me be blunt. They've indulged you.

In my capacity as a manager, I would not have allowed this to get to where it has got to … Stop arguing, listen, and if you still wish to keep your job, take it on board. If you don't, it's out the door … I don't normally get that annoyed, but I am. I think it needed to be said … I've been doing this work for 30 years. At the end of the day, they make a decision. As it stands at this moment, I don't see you with a job … You've acted exactly against the instruction that James gave you … That's sticking two fingers up to someone. When you are that defiant, when you refuse to follow instructions, you leave that person with no alternative but to act, especially those responsible for leadership over you … I've dealt with cases where, half, one third, one quarter of that time, you'd have been out the door … That is the issue. If you're not willing or able, or you're stubborn, to not be willing to change, then unfortunately you are facing only one thing, Okay?"

67. The claimant clearly reflected on the events of that meeting because later that evening by email dated 8 April 2019 at 8:34 pm the claimant resigned her employment with immediate effect. Her email to Mr Brooks reads: "Dear James, I am tendering my resignation with immediate effect as I had no option than to resign. Regards"

68. By that stage Mr Mecklenburgh had decided that the claimant had committed gross misconduct and he had intended to terminate her employment summarily for that reason. The claimant's resignation pre-empted that decision, and Mr Mecklenburgh accepted the claimant's resignation as offered.

69. The claimant then commenced the Early Conciliation process with ACAS on 28 June 2019 (Day A); and the Early Conciliation Certificate was issued on 22 July 2019 (Day B). She then presented these proceedings on 21 August 2019.

70. Finally, the claimant relies upon an allegation made by Mr Edoo which she says was included in a text message to her on 7 December 2019. We have seen a copy of a text message which suggests that Mr Edoo said to her: "I just can't believe how a person who goes to church falsely accused me of being a racist … I think you are just a jealous old woman, God will punish you for this, I have never said a single bad word about you." This is said to have been sent some eight months after the claimant had left her employment, and the claimant was unsure whether Mr Edoo was even still employed by the respondent at that time. There are no dates or other information in the transcript which we have seen to indicate that this did come from Mr Edoo, or if it did, exactly when. He was not available to give evidence on the matter either way, although as mentioned in the facts above, he was extremely upset and raised a formal grievance after the claimant had earlier accused him of racism.

71. Having established the above facts, we now apply the law.

72. <u>The Agreed List of Issues:</u>

73. Following a number of case management preliminary hearings, the parties agreed a List of Issues to be determined by this tribunal which is dated 15 February 2021. The claims are these by reference to the paragraph numbers of the Agreed List of Issues: direct discrimination because of age (paragraph 26); indirect age discrimination (paragraph 27); direct discrimination because of race (paragraph 28); harassment related to race (paragraph 29); direct discrimination because of religion or belief (paragraph 30); indirect discrimination on the grounds of religion or belief (paragraph 31); harassment related to religion or belief (paragraph 32); victimisation (paragraph 33); and constructive unfair dismissal (paragraph 34). These are all dealt with in turn below.

74. <u>Discrimination Claims - The Law:</u>

75. This is a claim alleging discrimination on the grounds of three protected characteristics under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the

respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges direct discrimination, indirect discrimination, harassment; and victimisation.

76. The protected characteristics relied upon are age, race, and religion or belief, as set out in sections 4, 5, 9 and 10 of the EqA.

77. As for the claim for direct discrimination, under section 13(1) of the EqA a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

78. As for the claim for indirect discrimination, under section 19(1) of the EqA a person (A) discriminates against another (B) if A applies to B a provision criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. A provision criterion or practice is discriminatory in these circumstances if A applies, or would apply, it to persons with whom B does not share the characteristic; it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it; it puts, or would put, B at that disadvantage; and A cannot show it to be a proportionate means of achieving a legitimate aim.

79. The definition of harassment is found in section 26 of the EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B.

80. The definition of victimisation is found in section 27 of the EqA. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The following are all examples of a protected act, namely bringing proceedings under the EqA; giving evidence or information in connection with proceedings under the EqA; doing any other thing for the purposes of or in connection with the EqA; and making an allegation (whether or not express) that A or another person has contravened the EqA. Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

81. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides that 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. However this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.

82. We have considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").

83. We have considered the cases of; Chapman v Simon [1994] IRLR 124; Igen v Wong [2005] IRLR 258 CA; Madarassy v Nomura International Plc [2007] ICR 867 CA; Nagarajan v London Regional Transport [2000] 1 AC 501; Hewage v Grampian Health Board [2012] IRLR 870 SC; Ayodele v Citylink Ltd and Anor CA [2017]; We take these cases as guidance, and not in substitution for the provisions of the relevant statutes.

84. With regard to the claim for direct discrimination, the claim will fail unless the claimant has been treated less favourably on the ground of her race and/or religion and/or age than an actual or hypothetical comparator was or would have been treated in circumstances which are the same or not materially different. The claimant needs to prove some evidential basis

upon which it could be said that this comparator would not have suffered the same allegedly less favourable treatment as the claimant.

85. In Madarassy v Nomura International Plc Mummery LJ stated: "The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an act of discrimination". The decision in Igen Ltd and Ors v Wong was also approved by the Supreme Court in Hewage v Grampian Health Board. The Court of Appeal has also confirmed that Igen Ltd and Ors v Wong and Madarassy v Nomura International Plc remain binding authority in both Ayodele v Citylink Ltd [2018] ICR 748 and Royal Mail Group Ltd v Efobi [2019] EWCA Civ 18.

86. The Constructive Unfair Dismissal Claim - The Law:

87. Under section 95(1)(c) of the Employment Rights Act 1996 ("the Act"), an employee is dismissed if she terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct.

88. If the claimant's resignation can be construed to be a dismissal then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".

89. We have considered the cases of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA; Malik v Bank of Credit and Commerce International SA [1997] IRLR 462 HL; Courtaulds Northern Spinning Ltd v Sibson [1987] ICR 329; Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA; Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA; Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA; Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA; Tullett Prebon PLC and Ors v BGC Brokers LP and Ors [2011] EWCA Civ 131; Claridge v Daler Rowney [2008] IRLR 672; Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23 CA; Lewis v Motorworld Garages Ltd [1985] IRLR 465; Nottingham County Council v Meikle [2005] ICR 1 CA; Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07; and Wright v North Ayrshire Council [2014] IRLR 4 EAT; Leeds Dental Team v Rose [2014] IRLR 8 EAT; Hilton v Shiner Ltd - Builders Merchants [2001] IRLR 727 EAT.

90. We have considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").

91. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively

dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

92. In Tullett Prebon PLC and Ors v BGC Brokers LP and Ors Maurice Kay LJ endorsed the following legal test at paragraph 20: "… whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract."

93. In Courtaulds Northern Spinning Ltd v Sibson it was held that reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract. However, if there is such a breach, it is clear from Meikle, Abbey Cars and Wright, that the crucial question is whether the repudiatory breach "played a part in the dismissal" and was "an" effective cause of resignation, rather than being "the" effective cause. In need not be the predominant, principal, major or main cause for the resignation.

94. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: The following basic propositions of law can be derived from the authorities: 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence". 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer".

95. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

96. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v

Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).

97. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust. Having reviewed the case law on the "last straw" doctrine, the Court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation by the employee.

98. In addition, it is clear from Leeds Dental Team v Rose that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed, and it does not turn on the subjective view of the employee. In addition, it is also clear from Hilton v Shiner Ltd - Builders Merchants that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.

99. Decision:

100. We now deal with each of the separate claims as raised in the Agreed List of Issues.

101. Direct Discrimination Because of Age (s13 EqA)

102. There are two allegations under this category, as follows: 26.1.1 The claimant's manager (Mr James Brooks) making reference to her age and the need for her to retire, at a return to work interview on 27 September 2018. The words used were that Mr Brooks "had a duty of care as a company that he insured one of the then newly appointed young staff, who was pregnant, was allowed to work 9 am to 5 pm instead of shift-work. So he told me to retire and sell my property so that I could retire gracefully and look after my grandchildren"; Secondly, 26.1.2 that James Brooks said to the claimant on 19 February 2019: "How dare you damage your mobile you should have looked after it properly" and said "a woman of your age, what's wrong with you?".

103. For the reasons explained above, we prefer the evidence of Mr Brooks. At the meeting in question the claimant confided in him that her children advised her to retire and sell a property so that she didn't have to work. He tried to be supportive to the claimant who was upset during that meeting. Mr Brooks did not tell her to retire gracefully, or words to that effect. Similarly, Mr Brooks was entitled to challenge the claimant about the poor condition of her company phone, but he did not make any comments about her age as alleged. We do not accept that the claimant was in any way treated less favourably because of her age.

104. In this case, we find that no facts have been established upon which the tribunal could conclude (in the absence of an adequate explanation from the respondent), that an act of discrimination has occurred. In these circumstances the claimant's claim of direct discrimination fails, and it is hereby dismissed.

105. Indirect Age Discrimination s19 EqA:

106. The Provision Criterion and/or Practice (PCP) relied upon by the claimant was that the respondent applied a requirement to work 11 hours a day without a break. However, during this hearing and in the course of her cross-examination, the claimant conceded that

there was no such PCP applied by the respondent, and at no stage was the claimant required to work 11 hours a day without a break. In the absence of a PCP to this effect the claim for indirect age discrimination relying upon this PCP must fail, and it is hereby dismissed.

107. Direct Discrimination Because of Race s13 EqA:

108. There are four such allegations. Each case the claimant relies upon Ms O'Dwyer and Mr Edoo as direct comparators. However, they are not true comparators because they both applied for and were appointed different specific roles (maintenance and welfare) which the claimant could herself applied for, but she chose not to do so. Given that she is comparing the alleged less favourable treatment with two employees who are not true comparators, that is in itself is sufficient to dismiss these claims, because it cannot be said that she was treated less favourably than true comparators had been or were likely to be treated. In any event, we go on to consider the four allegations, as follows:

109. (28.1.1) Black people were required to work weekends more often than people who were not Black;

110. This is factually untrue because under the new rota system there were rigid requirements whereby over the structured rota period everybody worked precisely the same pattern, regardless of their race.

111. (28.1.2) Black people were required to work longer shifts than people who were not Black and who were able to work from 9 to 5;

112. Similarly, it is factually untrue that Black people were required to work longer shifts than others who were not Black under the rota for the reasons explained under 28.1.1. As for the comparison with those who were able to work from 9 to 5, these were Ms O'Dwyer and Mr Edoo, who for reasons explained above were not true comparators.

113. (28.1.3) These first two requirements were said to be in place from 13 May 2018 until the end of the claimant's employment;

114. These aspects are dealt with under 28.1.1 and 28.1.2 above. In addition, it is to be noted that the claimant conceded in cross-examination that everyone in the rota worked the same amount and number of shifts, including antisocial shifts and weekends, regardless of their ethnicity.

115. (28.1.4) In May 2018 Songul [Mr Edoo] said that Black people don't work and Salem [Ms Yildiz] also said that.

116. Neither of these people gave evidence to this tribunal, but it is clear from Mr Edoo's statement for the purposes of his grievance, and from those that interviewed him, that he denied this comment and was bitterly upset at the suggestion that he should make any such racist comments. Ms Yildiz had also given a statement during the investigation into the claimant's grievance in October 2018, and she accepted that she had had issues with two of her colleagues, but this was on the basis that they were not answering their emails. There is no evidence that she raised any complaint against colleagues on the grounds that they were of any specific race or colour. We do not accept the claimant has established on the balance of probabilities that these comments were made.

117. In this case, we find that no facts have been established upon which the tribunal could conclude (in the absence of an adequate explanation from the respondent), that an act of discrimination has occurred. In these circumstances the claimant's claim of direct discrimination fails, and it is hereby dismissed.

118. Harassment Related to Race s 26 EqA:

119. There are 11 such allegations as follows:

120. (29.1.1) "On 28 August 2018, two days before the grievance hearing, the claimant asked for one hour to prepare for the hearing. James Brooks came to her in front of Angele and said he had concerns about her timekeeping, demanded she signed a piece of paper without reading it and his behaviour was shouting and humiliating"

121. We have accepted Mr Brooks's evidence that this did not occur.

122. (29.1.2): "On 29 August 2018 James Brooks insisted, in front of others, that the claimant attended a grievance meeting that day."

123. Again, this is factually incorrect. Mr Brooks does concede that he tried to encourage the claimant to proceed with the grievance in order that it could be progressed, but the claimant did not attend a grievance meeting on that day, and Mr Brooks did not insist that she did so.

124. (29.1.3): "On 7 November 2018 the claimant asked if she could leave work at 9.30 on 9 November. James Brooks said it would depend on whether Salem attended. James Brooks then shouted at the claimant became more aggressive towards her. At the same time he refused to allow her to park her car in the basement like other staff."

125. We accept that Mr Brooks would have told the claimant that she could not leave work until cover was in place by way of another member of staff being present, but we do not accept that this is factually correct in that we do not accept that Mr Brooks shouted at the claimant or became aggressive to her. In addition, he was perfectly entitled to require the claimant not to park her car in the basement, and the same requirement applied to other staff.

126. (29.1.4): "On 24 November 2018 Songul accused the claimant of stealing her purse".

127. We do not accept that Songul accused the claimant of stealing her purse. It is clear from the claimant's answers under cross-examination that she had mislaid her purse, and she did no more than ask the claimant whether she knew where it was. In any event the claimant accepted in cross-examination that this allegation had nothing to do with the claimant's race.

128. (29.1.5): "On 28 January 2019, James Brooks refused to allow the claimant to move team."

129. This allegation is factually correct, but only to the extent that Mr Brooks told the claimant she would have to find another member of staff in the opposing rota team to swap with her. The claimant failed to do that and did not progress that request. The position adopted by Mr Brooks was entirely reasonable and understandable, and it had nothing to do with the claimant's race.

130. (29.1.6): "On 2 February 2019 Mo said the claimant was the "Queen of Trouble", started shouting at her and called her a "lazy bugger".

131. Mr Ali in his evidence before us strongly refuted that he had ever made these comments to the claimant. Given our comments about the claimant's credibility we accept his evidence and we reject the allegation that these comments were made. In any event this allegation appears to have nothing to do with the claimant's race.

132. (29.1.7): “On 13 February 2019 James Brooks insisted the claimant attended at an investigatory meeting without a representative.”

133. We have accepted Mr Brooks’s evidence that this did not occur, but in any event under cross-examination the claimant conceded that this allegation had nothing to do with her being Black.

134. (29.1.8): “On 19 February 2019 James Brooks accused the claimant of damaging her phone and not looking after it properly saying “How dare you damage your mobile you should have looked after it properly” and said “a woman of your age, what’s wrong with you?” Went on to say in front of staff that the claimant was a bad worker, picking things out of files. When the claimant tried to show the other staff had made mistakes, he took the papers she was relying upon the way.”

135. For the reasons explained in our findings of fact above we reject the claimant’s allegations in connection with this incident and we accept the evidence of Mr Brooks. It was entirely reasonable for Mr Brooks to make enquiries as to why the respondent company phone was so badly damaged. The claimant’s allegations are rejected, and in any event, there is no apparent link between the alleged comments and the claimant’s race.

136. (29.1.9): “Around 30 March 2019, James Brooks said to the claimant that she had made many mistakes and that she would be suspended. He then shouted to get out of the door, took her to the door and demanded she leave, shutting the door behind her. This happened at night time.”

137. For the reasons explained in our findings of fact above, we reject the claimant’s allegations in connection with this incident we accept the evidence of Mr Brooks. He had reasonable and proper cause to suspend the claimant and it was appropriate for him to accompany her off the premises.

138. (29.1.10): “On 2 April 2019 James Brooks suspended the claimant.

139. As noted above, we agree that Mr Brooks suspended the claimant, but we find that he had reasonable and proper cause to do so. The decision to suspend her was caused entirely by the claimant’s own conduct, and this decision was not related to the claimant’s race.

140. (29.1.11): “On the claimant’s last day of work Mo and James Brooks laughed at the claimant saying: “Do you think you will be here tomorrow”.

141. Both Mr Brooks and Mr Ali in their evidence before us denied that these comments were made. The claimant subsequently suggested that this allegation is against Mr Edoo and Mr Ali. In any event it remained denied by Mr Ali. The weight of evidence is against the claimant. In addition, given our comments about the claimant’s credibility, we accept the evidence of Mr Ali in this respect and we find that these comments were not made.

142. As a result of these findings, we dismiss the claimant’s assertion that the respondents or its staff have engaged in unwanted conduct related to the claimant’s race, and we reject the claimant’s assertion that there has been any conduct related to the claimant’s race which had the purpose or effect of violating the claimant’s dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for the claimant. Accordingly, we dismiss the claim for harassment related to her race.

143. <u>Direct Discrimination Because of Religion and Belief s13 EqA:</u>

144. There are eight such allegations as follows:

145. (30.1.1): From 14 May 2018 being required to work for 26 weeks without a weekend off.

146. We find that this allegation was simply untrue. It is clear from the rota that the claimant had the first two weekends off, and on the third weekend was not required to work on the Sunday. This allegation is dismissed.

147. (30.1.2): Not being allowed to swap shifts

148. This allegation is not true, in that the claimant was informed that she would be allowed to swap shifts provided that she had reached agreement with another employee from the opposing rota team to do so. The claimant failed to pursue that possibility.

149. (30.1.3): Not being allowed to take Christmas Day off in 2018

150. When the claimant originally applied for leave on Christmas Day in 2018, Mr Brooks pointed out that she was applying for leave in excess of her contractual holiday entitlement and asked her to reconsider her application, and limit it to her available days. When she did so she did not apply for leave on Christmas Day in 2018. To the extent that the claimant did not have Christmas Day off in 2018 this was because she had not applied for the same, and this had nothing to do with her Christian religion.

151. (30.1.4): When the claimant said to James Brooks that Salem could take Eid off, he said that it was because Eid was not on the calendar.

152. For the reasons set out in our findings of fact above, this was a misunderstanding. What Mr Brooks informed the claimant was that Mr Edoo was not on the leave calendar along with the six tele-response staff on the rota, because he was now doing a different job. It is simply not the case (even if it is alleged by the claimant which is not clear) that Mr Edoo was allowed to have leave over the Eid festival when she was denied leave over the Christmas festival, and that this was because she was a Christian.

153. (30.1.5): On 25 June 2018 Mo said that everything the claimant says is a lie

154. We have accepted Mr Ali's evidence that Mr Ali did not say this.

155. (30.1.6): On 1 July 2018 Mo said that he did not like Christians because they lie too much and Christians are liars. He said to James Brooks "don't listen to Beatrice, she is a liar and pretends to be Christian."

156. Again, we have accepted Mr Ali's evidence that Mr Ali did not say this.

157. (30.1.7): When the claimant complained to James Brooks about Mo's comment about Christians he said that it was due to "cultural difference".

158. We have accepted Mr Brooks's evidence that Mr Brooks did not say this.

159. (30.1.8): On 7 December 2019 Salem sent a message to the claimant stating that she was "a jealous old woman" and that God will punish her because she had falsely accused him of being racist.

160. This relates to the text message of unclear provenance which the claimant now asserts was sent by Mr Edoo some eight months after her employment had ended. The claimant was not clear whether Mr Edoo was still employed by the respondent, and it is not

clear why the respondent is said to be responsible for this text which does not appear to have arisen in the course of either his employment or that of the claimant. What is clear is that Mr Edoo had been considerably distressed and upset at the false allegations of racism which the claimant had made against him, and if made any such comments appear to have arisen from these false allegations, and are not related to the claimant's Christian religion.

161. In this case, we find that no facts have been established upon which the tribunal could conclude (in the absence of an adequate explanation from the respondent), that an act of discrimination has occurred. In these circumstances the claimant's claim of direct discrimination because of religion or belief fails, and it is hereby dismissed.

162. Indirect Religion or Belief Discrimination s19 EqA:

163. The Provision Criterion and/or Practice (PCP) relied upon by the claimant was that the respondent applied a requirement that the claimant worked on all Sunday mornings for 26 weeks and that this PCP had been in place since May 2018, and that Mr Brooks told the claimant about it but he may have been instructed by somebody more senior. However, during this hearing and in the course of her cross-examination, the claimant conceded that there was no such PCP applied by the respondent, and at no stage was the claimant required to work on all Sunday mornings since May 2018. Indeed, it is clear from the commencement of the new rota in May 2018 that the claimant had the first three consecutive Sundays off. In the absence of a PCP to this effect the claim for indirect religion and belief discrimination relying upon this PCP must fail, and it is hereby dismissed.

164. Harassment Related to Religion or Belief s 26 EqA:

165. The claimant relies upon the same acts as set out in relation to her claim for direct discrimination on the grounds of religion or belief. There are eight such allegations as noted above.

166. However, in circumstances where these allegations raised by the claimant have all been rejected, we dismiss the claimant's assertion that the respondents or its staff have engaged in unwanted conduct related to the claimant's religion or belief, and we reject the claimant's assertion that there has been any conduct which had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for the claimant. Accordingly, we dismiss the claim for harassment related to her religion or belief.

167. Victimisation section 27 EqA:

168. The claimant relies on two protected acts, namely (33.1.1) presenting a written grievance on 13 August 2018; and (33.1.2) making oral allegations of discrimination at a grievance meeting on 2 October 2018 that Salem had said that he did not want to work with black people that did not work. The allegations of unfavourable treatment relied upon by the claimant following these protected acts are the same alleged acts of unfavourable treatment and/or harassment set out above which postdate the dates of the protected acts in question.

169. The respondent asserts that the allegations were made in bad faith, and that they therefore cannot amount to protected acts. Although we accept that the allegations made were not true, we do not make a finding that they were necessarily made in bad faith, and given that allegations of discrimination were made, we accept that the claimant's allegations amount to protected acts under section 27 EqA.

170. However, the claimant has given no evidence as to what if any detrimental treatment she alleges was caused by either of these two protected acts. The course of

unfavourable treatment of which the claimant complains commenced well before the protected acts were said to have been made. The claimant also conceded that her grievances were thoroughly investigated. In the circumstances the claimant has not established that she suffered any less favourable treatment because she had made either of the protected acts. Her claim for victimisation is therefore dismissed.

171. The tribunal therefore dismisses all of the claimant's complaints that the respondent has contravened the provisions of part 5 of the EqA, and the claimant's claims of discrimination and victimisation are all dismissed.

172. Constructive Unfair Dismissal:

173. The claimant asserts that the respondent acted in fundamental breach of contract, and she relies upon a breach of the implied term that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. There are nine specific allegations, and the last three of these are said to have amounted to "the Last Straw". The allegations are as follows:

174. (34.1.1): Reducing the claimant's salary from May 2018.

175. We find that this was factually untrue. For the reasons explained in our findings of fact above, it is clear from the claimant's payslips that she received the same gross pay both before and after the introduction of the new rota and that there was no reduction in her salary from May 2018.

176. (34.1.2): Altering the claimant's job description in May 2018.

177. Again, we find that this was factually untrue. For the reasons explained in our findings of fact above, at no stage did the claimant's job description change. She may have done less maintenance and welfare within her normal duties, but her job description and duties did not change.

178. (34.1.3): Increasing her hours of work from 35 hours a week to 40 hours a week in May 2018.

179. Again, we find that this was factually untrue. For the reasons explained in our findings of fact above, the claimant fails to accept that the new rota did not increase her weekly hours. The position was set out in detail in Mr Mecklenburgh's letter to the claimant dated 26 April 2018. Instead of working 35 hours over a seven-day week she ended up working 40 hours over an eight day period, with the result that (over the 24 week rota period) the average number of hours worked every week was exactly the same.

180. (34.1.4): On 30 March 2019, James Brooks said to the claimant that she had made many mistakes and that the claimant would be suspended. He then shouted at her to get her out of the door, took her to the door, and demanded that she leave shutting the door behind her. This happened at night time.

181. We accept Mr Brooks' evidence before us that when he did suspend the claimant he explained the position and that he did ask the claimant to leave, but that he did so in a calm manner. We reject the assertion that he did so in an aggressive or rude manner.

182. (34.1.5): On 2 April 2019 James Brooks suspended the claimant.

183. We accept that this happened. However, for the reasons explained in our findings of fact above, Mr Brooks had reasonable and proper cause to do so. This act was not therefore a breach of the implied term relied upon.

184. (34.1.6): Disciplining the claimant for taking time off in lieu.

185. We accept that this happened, because the claimant was due to face disciplinary proceedings for a number of reasons, including this one. However, for the reasons explained in our findings of fact above, the respondent had reasonable and proper cause to do so. This act was not therefore a breach of the implied term relied upon.

186. (34.1.7): Colleagues making false allegations against the claimant

187. The weight of evidence was against the claimant in this respect. Both Mr Lock during the course of his investigation, and Mr Mecklenburgh during the disciplinary process, had interviewed the claimant's colleagues. Their evidence against the claimant was consistent, and they corroborated each other's events. They both concluded that the allegations which her colleagues had made against the claimant were more likely than not to have happened. They had reasonable and proper cause to do so.

188. (34.1.8): The investigation into the disciplinary allegations was flawed because it did not include all of the evidence.

189. For the reasons set out onto the previous paragraph, we cannot conclude that either Mr Lock's investigation or Mr Mecklenburgh's investigation were in any way flawed. On the contrary, they were both careful and considered in their investigations, and they took account of all the relevant evidence before them. Indeed, Mr Mecklenburgh even postponed the disciplinary hearing in order to carry out further investigations into the allegations of this nature which had been raised by the claimant. We reject the assertion that the disciplinary investigation was flawed.

190. (34.1.9): In the disciplinary hearing the dismissing officer presented evidence from colleagues which was false.

191. This allegation effectively raises the same point as 34.1.7. It is true that the dismissing officer Mr Mecklenburgh was proposing to rely on the evidence presented from the claimant's colleagues, but it is not true that this evidence was false, in the sense that Mr Mecklenburgh had reasonable and proper cause to consider that this evidence was more likely to have been true than not. In any event there was no need for Mr Mecklenburgh to rely on this evidence because the claimant pre-empted his likely decision to dismiss her by tendering her resignation, which was then accepted.

192. The allegations relied upon by the claimant are therefore factually incorrect, in that they did not happen, or are matters which did take place, but in circumstances where the respondent as the claimant's employer had reasonable and proper cause to take such action against the claimant. The matters relied upon cannot therefore amount to a fundamental breach of the implied term that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.

193. In the absence of any breach of a fundamental term, the claimant's resignation cannot be construed to have been her dismissal. Her resignation on 8 April 2019 was exactly that, namely her resignation and not her dismissal by the respondent. In circumstances where the claimant was not dismissed, she cannot be said to have been unfairly dismissed, and her constructive unfair dismissal claim is also dismissed.

194. <u>Monetary Claims:</u>

195. We now turn to the matter of what monetary claims have been raised by the claimant, and which fall to be determined by this tribunal.

196. In the first place, the Agreed List of Issues to be determined by this Tribunal does not include any monetary claims, and at first glance there are none which are before us and need to be determined. However, the matter does not end there. We thank Mr Self who as counsel for the respondent was scrupulous in his duty of fairness to the claimant and to this Tribunal by explaining that arguably there are two live claims which fall to be determined. The reason lies in the history of the case management preliminary hearings for this matter in which the claimant was asked to give full particulars of any such claims, and subsequently (by way of different emphasis) to include particulars of any such claim in her Schedule of Loss. The claimant did raise potential claims in her Schedule of Loss, but the matters raised did not find their way into the Agreed List of Issues, which was prepared by the respondent's previous solicitors, before the respondent changed its legal advisers. Mr Self also made the point (with which we agree) that only such claims as may have been included in the claimant's Originating Application form ET1 are live claims before this tribunal, and any other claims would require a formal application to amend these proceedings.

197. At various stages during these proceedings the claimant has mentioned what she perceives to be a different less advantageous level of pay both before and after the TUPE transfer in 2017; accrued holiday pay; pay for TOIL; and motoring expenses. None of these are claims which fall into the category of having been raised in the originating application and subsequently particularised during the case management process. We unanimously conclude that these are not therefore live claims to be determined by this tribunal.

198. Similarly, the claimant has made reference to her lost notice pay. She did not bring a claim for breach of contract or wrongful dismissal in respect of her notice pay, but she did include a claim for the lost notice period as part of her potential compensation for unfair dismissal as set out in her Schedule of Loss. This was only a live claim therefore to the extent that it might have formed part of a remedy for a successful unfair dismissal claim. In any event any such discussion is now academic, because we have found that the claimant resigned her employment without notice and was not dismissed in breach of contract or unfairly dismissed. Even if there were any such claim (which is doubtful) it is also now dismissed.

199. There are however two live monetary claims remaining, both alleging unlawful deduction from wages, and we deal with each of these in turn.

200. The first is a claim that the claimant was wrongly paid statutory sick pay instead of the higher amount of full contractual pay during her period of certified sickness absence between 26 November 2018 until 27 January 2019.

201. This claim was not really pursued by the claimant during the course of this hearing and we have only been referred to limited evidence on this claim. What is clear is that the claimant's contractual terms only afforded her the right to receive contractual sick pay over and above SSP for up to 65 working days in any rolling period of 12 months. The claimant had already taken substantial sickness absence in the period leading up to the claim in question, and when she made a telephone enquiry at the time she was told by the HR Department that she had exhausted contractual sick pay and was only due SSP. That decision does not seem surprising given the claimant's previous sickness record. The claimant did not challenge that information at the time. The burden of proof is on the claimant to prove her claim, and the claimant has not given any evidence as to her understanding of the contractual provision relied upon; the amount of any sickness absence which she had taken; the amount of sick pay said to be due to her; the amount of SSP paid instead; and the balance which she claims to be due. She has failed to prove that any sums claimed are due to her on the balance of probabilities. Accordingly, we dismiss this claim.

202. The second claim relates to the claimant's assertion that between 14 August 2018 until her resignation on 8 April 2019 the claimant was required to work 44 hours per week by the respondent instead of the 35 hours per week which she was contractually required to work. She claims underpayment for nine hours per week for each week of this 46 week period.

203. We find that the claimant has repeatedly failed to understand or (more probably) refused to accept that under the new rota there was simply no change in the amount of hours which she was required to work. They were of course structured in a different way. Instead of working 35 hours over every seven day period with effect from May 2018 she was required to work for 40 hours over each eight day period. However, over the course of each 24 week period of the rota she was required to work exactly the same amount of hours per week, as she had previously been required. We therefore reject the assertion that she was ever required to work 44 hours per week and/or that she was ever required to work any more hours than she had always been contractually required to do, and this claim is also dismissed.

204. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 6 to 70; a concise identification of the relevant law is at paragraphs 75 to 98; and how that law has been applied to those findings in order to decide the issues is at paragraphs 101 to 203.

Employment Judge N J Roper
Date: 16 April 2021

Judgment sent to the Parties: 27 April 2021

FOR THE TRIBUNAL OFFICE