



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss N Wildman

**Respondent:** ADM Healthcare Ltd

**Heard at:** Birmingham (By CVP)      **On:** 12, 13, 14 and 15 April 2021  
28 and 29 April 2021 in  
chambers

**Before:** Employment Judge Miller  
Ms R Addison  
Mr B Allen

## Representation

**Claimant:** Mrs M Wildman (the claimant's mother)  
**Respondent:** Mr S Tibbitts (Counsel)

# RESERVED JUDGMENT

1. The claimant's claim that she was subject to harassment under section 26 Equality Act 2010 was presented out of time. It is just and equitable to extend time to 7 December 2019 for the claimant to bring her claim.
2. The claimant's claim that she was subject to harassment under section 26 Equality Act 2010 is unsuccessful and is dismissed.
3. The claimant's claim that she was unfairly constructively dismissed is unsuccessful and is dismissed.

# REASONS

## Introduction and issues

1. The claimant in this case, Miss Nicola Wildman, was employed by the respondent as a pharmacy dispenser. The respondent is the owner of a

small chain of pharmacies. It operates three branches in and around Wednesbury.

2. Miss Wildman started working in the pharmacy on 25 September 2016 which was at that point owned by a different company. The current respondents took over on or around 1 September 2018.
3. The claimant says that shortly after the respondent took over running the pharmacy, she started to experience harassment at the hands of Mr Harpal Bhandal. The claimant says that this extended over a number of months until March 2019 when she went off sick and then in August 2019 she tendered her resignation, her notice expiring on 16 September 2019.
4. By a claim form dated 7 December 2019 and following a period of early conciliation from 16 September 2019 to 14 October 2019 the claimant brought claims of unfair dismissal and sex discrimination against Mr Bhandal personally.
5. At a preliminary hearing before Employment Judge McCluggage on 19 May 2020, the claimant's claims were clarified as comprising harassment related to sex and constructive unfair dismissal. It was clarified at the outset of this hearing that that was the entirety of the claimant's claims.
6. The allegations comprising the claimant's claims are set out in a table of allegations that she subsequently provided after the preliminary hearing on 19 May 2020 and that consists of nine separate allegations. Seven of those allegations are about things that the claimant says Mr Bhandal did or is responsible for, and two of them (the last two on 5 March 2019 and 8 March 2019) are about things that the claimant said Mr Onkar Singh did or is responsible for.
7. At the outset of this hearing, the claimant confirmed that the allegations of harassment related only to the first seven allegations in connection with Mr Bhandal. As we understand it, the entirety of the nine allegations are what the claimant relies on as forming the basis for her claim for constructive unfair dismissal. This includes the allegations about Mr Singh who the claimant said failed to intervene, assist or support the claimant in respect of her concerns or complaints about Mr Bhandal.
8. The respondent's response was, effectively, that either the allegations were of incidents that did not happen or that they did happen but not in the way or the circumstances that the claimant describes. Where the respondent agrees that the various conversations did happen, it says that these amounted to the respondent legitimately managing the claimant as they are entitled to do.
9. The particular issues were discussed and agreed at the outset.
10. They are, firstly, whether the allegations set out on pages 38 to 42 of the bundle (and attached as an appendix to this judgment) as identified as the acts of Mr Bhandal amount to harassment related to the claimant's sex. In respect of each allegation, therefore, the question for us is whether the incident happened as described, whether it comprised unwanted conduct, whether that was relevant to the claimant's protected characteristic of being a woman and whether that conduct had a purpose or effect of violating the

claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether any such conduct did have that effect, we are required to consider whether it actually had that effect and, if it did, whether it is reasonable that it did. We address the particular law in more detail later on.

11. Secondly, the claimant resigned by way of a letter dated 27 August 2019. In respect of the claimant's claim of constructive unfair dismissal, the issue is whether the claimant resigned in response to a repudiatory breach of contract. The term of the contract on which the claimant relies is the implied term of mutual trust and confidence. The claimant relies on the alleged conduct of the respondent referred to previously and as set out on pages 38 to 42 of the bundle in the claimant's list of allegations. The issues for the tribunal to decide are whether those allegations happened in the way that the claimant describes, (or at all) and, if so, whether cumulatively or individually any of those matters were serious enough to amount to a breach of the implied term of mutual trust and confidence sufficient to enable the claimant to treat the contract of employment as discharged by the respondent and then resign.
12. Particularly relevant in this case is whether the claimant has affirmed her contract of employment or waived any breaches in the intervening period between the last act on which she relies (being the allegations of 8 March 2019) and deciding to resign.

### **The hearing**

13. This case was listed for a four-day hearing conducted by CVP. There were nine witnesses in total including the claimant. It was therefore challenging to complete the case within the time period. It appears that there was also some issues with the late production of documents and witness statements. This is unfortunate but, regrettably, not uncommon. We are grateful for the cooperation and assistance of the parties in enabling the case to proceed this week.
14. We note at this point that the claimant was represented by her mother, Mrs Marlene Wildman, who identified herself as the claimant's advocate and also gave evidence on the claimant's behalf. In order to ensure that the hearing was fair, we requested that the claimant gave her evidence before her mother to ensure that the evidence we heard from the claimant was her own evidence. The respondent did not object to this course of action.
15. In respect of the evidence we had, we were provided with an agreed bundle of 203 numbered pages. That bundle included documents relating to without prejudice discussions and negotiations between the parties. It was disputed whether any of those documents were relevant at the outset. The tribunal therefore removed all the without prejudice documents from the bundle and did not take them into account. The tribunal directed that in the event either party felt it necessary to refer to one of the potentially without prejudice documents in the course of any witness's evidence, we would

hear representations about the relevance of that document and whether it was appropriate to allow the document into evidence at that point.

16. In the event, no such documents were referred to and no representations were made. The respondent did agree that the document at page 178 of the bundle, which was the claimant's appeal against the grievance outcome dated 26 September 2019, was potentially relevant and included details of without prejudice discussions. The respondent provided a redacted copy of that page which obscured the value of any financial offers made or said to be made between the parties.
17. We were provided with witness statements from the claimant and her mother, Mrs M Wildman, who both attended and gave evidence. The respondent provided witness statements from
  - 17.1. Mr Harpal Bhandal
  - 17.2. Mr Onkar Singh
  - 17.3. Ms Sian Capewell
  - 17.4. Ms Sam Clayton
  - 17.5. Ms Nabeela Hussain
  - 17.6. Ms Michelle Callaghan
  - 17.7. Ms Reema Dewett
18. Attached to Ms Dewett's witness statement was a chain of emails relating to a reference request in March 2019. Mrs Wildman did not raise any objections to the inclusion of those emails but in any event we consider that they were relevant to the matters to be decided. Mrs Wildman was given an opportunity to read them and address any issues arising from them by putting questions to Ms Dewett. In our view it was in the interests of justice to admit those emails.
19. All of the respondent's witnesses attended and gave evidence.

### **Findings of fact**

20. We heard a great deal of evidence in this case, some of which is not directly relevant to the matter to be decided. We remind ourselves that we are limited to deciding the issues set out in the appendix and as referred to above and we have only made such findings of fact as are necessary to determine those issues.
21. Where issues of fact are disputed we have made the decision on the balance of probabilities.

### **Background**

22. The claimant was employed as a relief dispenser. Her role was to dispense medicines under the supervision of a pharmacist; she worked at each of the respondent's three branches. The three branches are relatively close to each other but are described as Bradely, Moxley and Darlaston. The claimant has worked in these pharmacies from 2016, but previously for a different employer. The respondent took over the pharmacies on or around

1 September 2018. The respondent company is owned by Mr Bhandal and Mr Singh who are both pharmacists. Mr Bhandal worked at Moxley as a pharmacist. Mr Singh also undertook some work as a pharmacist but, as we understand it, his time appears to have been spent more in running the business.

23. Staffing of the respective branches was (as far as is relevant) as follows

24. Moxley –

24.1. Mr Bhandal (pharmacist)

24.2. Ms Clayton (dispenser)

25. Darlaston –

25.1. Ms Dewett (pharmacist)

25.2. Ms Husain (dispenser)

25.3. Ms Callaghan (counter assistant)

26. Bradely –

26.1. “Sanjay” (pharmacist)

27. As previously stated, the claimant was a relief dispenser so she was required to work across all three of the respondent’s pharmacies. There were other employees and locums who also worked at some of the shops but, with the exception of some names, we did not hear any detail about them.

28. Mrs Wildman said, in her evidence, that she noticed a change in the claimant’s psychological emotional health from September 2018. She says that although she asked the claimant what was wrong, the claimant would not tell her, she just broke down crying.

29. The implication was clearly that the claimant had been having problems at work from September 2018 when the respondent took over ownership of the pharmacies. The claimant says, in her witness statement however, “On the 1<sup>st</sup> September 2018 ADM healthcare repurchased pharmacies - Darlaston, Bradley and Moxley branches. There are a lot of changes of which I adapted to quite well just simply carried on with my work as a locum dispenser”.

30. Reference to repurchasing is a reference to the fact that Mr Singh had previously owned pharmacies. This appears to have been before the claimant started working at the pharmacies. The reference to a locum dispenser means relief dispenser. There was no dispute as to whether the claimant was employed by the respondent or not.

31. There are no allegations before us against the respondent in respect of the period from September to December 2018. However, we note the inconsistency between the claimant’s and Mrs Wildman’s evidence and, particularly, the claimant’s obvious reluctance to discuss any difficulties that she might have had.

**17 December 2018**

32. The first substantive issue for us to deal with is the allegation relating to 17 December 2018. The allegation is that Mr Bhandal spoke to the claimant in an aggressive manner on the telephone when he asked her who had given her authority to do timesheets.
33. The claimant's witness statement does not provide any additional detail about what this allegation specifically refers to in respect of the completion of timesheets. Mr Bhandal does not dispute that this conversation happened; in fact he does not address it at all in his witness statement. In the respondent's response to the list of allegations Mr Bhandal says that the respondent was merely ascertaining who normally completes the timesheets and that he was entitled to ask that question. In cross examination the claimant did not deny that the respondent was entitled to make that enquiry. Her complaint was, rather, Mr Bhandal's tone. In her witness statement, the claimant referred to "a very aggressive manner". In cross examination the claimant said, in response to the question whether it was unreasonable for Mr Bhandal to ask that question "no, but the tone he used was". Meaning that Mr Bhandal's tone was unreasonable.
34. The claimant was unable to really expand any further about the way in which Mr Bhandal's tone was unreasonable or aggressive. It was agreed that Mr Bhandal did not shout at the claimant, and there is no suggestion that he used abusive or threatening language. In his evidence, Mr Singh said that he had never heard Mr Bhandal raise his voice.
35. This is an issue to which we will return, but we heard evidence from a number of the respondent's witnesses and particularly Mr Singh and Ms Hussain that Mr Bhandal had a "no-nonsense" approach to work. Ms Hussain said that he did not engage in chitchat and he could be firm or brief. Mr Singh said that Mr Bhandal "fires instructions". When asked to expand what he meant by that Mr Singh said that Mr Bhandal is very good at managing a busy pharmacy and gets the job done. He also described Mr Bhandal as having a good energy and a good vibe and that he could be generous; for example, with lunch breaks.
36. In our view, we prefer the respondent's witnesses evidence about Mr Bhandal's conduct in this instance. This suggested that Mr Bhandal was businesslike at work and this could potentially come across as harsh or lacking in empathy in certain circumstances.
37. In our view, and on the balance of probabilities, we find that Mr Bhandal did not act unreasonably or aggressively in his conversation with the claimant on 7 December 2018. He was entitled to ask the question that he did - that was agreed - and we think it likely that Mr Bhandal came across as a little short with the claimant. Having heard the evidence of Mr Singh and Ms Hussain particularly we think that this was a reflection of his busyness and brusque approach at work.
38. The claimant may well have been upset by this interaction as she says but this was not, in our view, as result of any unreasonable conduct on the part of Mr Bhandal.

**19 December 2018**

39. Mr Bhandal contacted the claimant on the telephone when she was working at Darlaston to tell her that the next day she would have to go to the Moxley branch to help prepare the MDS trays. These were referred to as measured dose trays and required the apportioning out of medication. The claimant said that she was concerned that if she didn't stay at Darlaston she would not be able to complete the MDS trays for vulnerable patients before Christmas.
40. The claimant says that Mr Bhandal aggressively replied "when you pay my wages then you can question me".
41. 19 December 2018 was a Wednesday. Mr Singh said that the Moxley branch send out their MDS trays on Thursday each week and that Moxley was the busiest of the three branches. Darlaston, by contrast, was the quietest branch and the MDS trays were due out of Darlaston on a Monday.
42. It was put to the claimant in cross examination that Mr Bhandal was simply directing the claimant to do her job in the way he preferred as he was entitled to do as the claimant's manager. Again, the claimant agreed that Mr Bhandal did have this right but he didn't have to say "when you pay my wages you can question me".
43. The claimant also sought to rely on a text message exchange with Ms Hussain on the same date as evidence that the respondent was effectively overstaffed at Moxley, leaving Ms Hussain to deal with the entire workload at Darlaston without assistance, and that that was unreasonable.
44. In fact, it was clear from that text exchange that there was substantially less work to do at Darlaston in respect of the MDS trays compared to the other two branches. In the text exchange Ms Hussain said that it wasn't too bad and in evidence before the tribunal she said that although it might be busy she would be able to cope.
45. We find, therefore, that Mr Bhandal was in any event entitled to direct the claimant to work at any of the three shops - she was employed as a relief dispenser and that was her job - but in the particular circumstances it did appear objectively reasonable to allocate more staff to the busiest branch.
46. We think, on the balance of probabilities, that Mr Bhandal probably did say "when you pay my wages you can question me" or words to that effect. We heard other evidence from a number of the respondent's witnesses that the claimant did not always quickly follow directions. In our view, it is likely that Mr Bhandal was irritated by having his management instruction challenged. It is unnecessary to say "when you pay my wages you can question me" and not conducive to a harmonious working relationship. However, this is in keeping with the description of Mr Bhandal as having a short, and/or brusque manner.
47. We do not think that Mr Bhandal spoke in an aggressive way as alleged by the claimant. We think it more likely that he was abrupt and possibly even

dismissive but, in our view, this falls short of aggressive or substantially inappropriate conduct.

48. The next issue is recorded on the list of allegations as having happened on 20 December 2018 and refers to Mr Bhandal saying “oh, she’s here ready to start her pity party early”. Mr Bhandal said in evidence that he was away in Stoke on the morning of 20 December 2018. He was given an opportunity to obtain documentary evidence of his attendance in Stoke overnight and it was agreed by the claimant that Mr Bhandal was not at Moxley on the morning of 20 December 2018. He said he returned at 2 or 3 pm, although we think it likely that it was earlier as he accepts speaking to the claimant while other staff were at lunch (see below).
49. The claimant said that this particular incident actually took place on 19 December 2018.
50. The claimant said in evidence that she had been advised to start keeping a diary of the incidents and that that had started to do so before December 2018. The diary was not disclosed as part of these proceedings and there was no part it included in the bundle.
51. We note in the claimant’s grievance (see below) that the only reference to pity party is ‘Harpal constantly says “oh look Nick started her pity party early”’.
52. In her claim form the claimant says that Mr Bhandal said it every day, together with other allegations.
53. It was only after the case management hearing before employment Judge McCluggage that this was crystallised as happening on 20 December 2018. It seems likely to us that the claimant reviewed her claim form after the preliminary hearing and concluded that that allegation must also have happened on 20 December 2018.
54. We have had a great deal of difficulty in determining this allegation. In our view, this is a very unusual phrase and we cannot imagine where it came from if the claimant had not heard someone say it. On the other hand, it is wholly without context and the claimant’s evidence as to when it happened is inconsistent and changing. For example, in her claim form the claimant alleges that Mr Bhandal “[was] saying every day “oh look Nick started her pity party early”, questioned how long it took me to drive from one pharmacy to another calling me a liar”.
55. There is only one allegation about the time taken to drive between pharmacies that we will come to shortly, and it is clear that this is not something that was happening every day. The claimant also refers to Mr Bhandal asking her daily if she wanted her P45.
56. In our view, the claimant is unclear and imprecise in the allegations that she has levelled at Mr Bhandal. We think that the passing of time has resulted in these allegations expanding in the claimant’s mind to take on a level of seriousness and repetition was probably not the case at the time.
57. None of the respondent’s witnesses said that they heard Mr Bhandal make this comment and Mr Bhandal denies it.



58. We also feel compelled to observe that, in our view, the claimant's case and evidence has been influenced by the involvement of Mrs Wildman. We will return to the claimant's grievance later, but Mrs Wildman helped the claimant write her grievance. Mrs Wildman is, she said, a mental health professional and, wholly understandably, very concerned with her daughter's mental health and well-being. It also became clear during the course of the evidence that the way in which the claimant presented to her mother at home was different to how she presented to her colleagues at work. We did not find this to be either surprising or unusual.
59. We conclude from Mrs Wildman's evidence that the claimant was sometimes upset as a result of things that happened at work and she went home and told her mother about these. Her mother, we think, understandably wanting to support her daughter discussed those issues with her and they have assumed a greater importance in the course of those discussions that what the claimant perceived at the time. The claimant was experiencing a substantial amount of difficulty in her personal life. This related to her children, her partner and her father. It is not necessary to set that out in detail in this judgment. It is also clear that the claimant had some significant financial difficulties. The claimant also had other ongoing health problems.
60. In our view, it is absolutely inconceivable that the problems in the claimant's personal life did not contribute to her stress. We find the extent of these issues may well have affected her mental health. Mrs Wildman said that the claimant had no reason to be worried about these issues because she had shouldered all of the financial and emotional burden. Again, we have no doubt that Mrs Wildman did take on as much as she could in respect of the claimant's personal problems but in reality they remained the claimant's problems to be worried about.
61. In our view, the reference to "pity party" is an example of an issue that has in all likelihood arisen as a result of the claimant discussing her problems with her mother. The claimant has not shown on the balance of probabilities that Mr Bhandal used this phrase on either 19 or 20 December 2018 and we prefer Mr Bhandal's evidence that he has not used the phrase "pity party" to the claimant.

#### **20 December 2018**

62. There are a number of allegations arising on this date when the claimant was working in Moxley with Ms Clayton and Mr Bhandal and we deal with each of them in turn:
63. Firstly, that Ms Clayton and Mr Bhandal were whispering about the claimant. The claimant said in oral evidence that she could not hear what they were saying, but that they went in to the store room together and came out laughing and whispering. She said that "you just know when someone is talking about you".
64. Mr Bhandal and Ms Clayton deny this. We prefer the evidence of Mr Bhandal and Ms Clayton. We heard that the shops have a quasi-open-plan

layout and it was wholly possible that anyone having a private or confidential conversation would keep their voice low. There was no evidence, beyond the claimant's belief, that Mr Bhandal and Ms Clayton were whispering about the claimant. Further, the suggestion that Ms Clayton and Mr Bhandal were laughing together was not part of the claimant's witness statement and it was not mentioned in her grievance – it was mentioned for the first time in cross examination.

65. The next issue is that Mr Bhandal spoke to the claimant about her “talking around other pharmacies” and that she needed to keep her mouth shut and if he or Mr Singh heard anything else the claimant would be “dealt with”. The claimant complains about the language used by Mr Bhandal; that the conversation was not in private – Ms Clayton was present; and the claimant was not given the opportunity to be accompanied by a colleague. The claimant said she felt “so demoralised and intimidated”.
66. Mr Bhandal said in his witness statement that it was an informal chat, there were no customers about and he had the discussion while other staff were at lunch. He said that he asked if it was ok to have the discussion while Ms Clayton was there and said that the claimant did not object.
67. Mr Bhandal said “I gave her a heads up (as with other staff) that a lot of tittle tattle / gossip was going around and just ignore and don't spread it If she heard it. She thanked me for the heads up. This conversation had been had with other staff too”.
68. Both Mr Bhandal and the claimant each provided the same account in the course of the grievance as in their witness evidence. Mr Bhandal said in oral evidence that he had given the claimant the opportunity to go somewhere private but she had refused. He also said that the issue was more relevant to the claimant for two reasons – firstly, that she was a relief dispenser so travelled between the shops more often than other staff, and secondly that her partner, Phil, was a driver who worked for the respondent and some of the “gossiping” related to how she had described Phil. He said it was more by way of a friendly chat while they were working.
69. Mr Bhandal's evidence was also that he had spoken to all the staff about gossiping.
70. Ms Callaghan and Ms Hussain both separately confirmed that Mr Bhandal had not spoken to them about gossiping. We note that neither of these two witnesses were present for the whole of the hearing so we tend to place more weight on their evidence. Ms Clayton said that she had been spoken to about gossiping.
71. On balance, we think that Mr Bhandal only spoke to the claimant about this issue. It was clearly more relevant to her and the evidence of Ms Callaghan and Ms Hussein completely contradicts the evidence of Mr Bhandal.
72. However, we do not consider that Mr Bhandal behaved unreasonably in having this conversation with the claimant. We prefer Mr Bhandal's evidence that this was an informal chat, despite his inconsistent evidence about speaking to all other employees. We also prefer his evidence that he did not tell the claimant to keep her mouth shut.

73. We refer again to the involvement of the claimant's mother in drafting the grievance and the reliability of the information set out in it (see above). We also note that all of the respondent's witnesses consistently said that the claimant discussed detailed private information at work including about her personal and sexual relationship with her partner. Although Mrs Wildman put it to each of the witnesses that this was not true, and that the claimant only confided in Ms Hussain due to their longstanding friendship, there was no evidence from the claimant to support that she did not discuss her personal life at work and, as previously mentioned, it became apparent that there were matters that the claimant did discuss with her colleagues at work that she did not discuss at home with her mother. In light of this, we think it likely that Mr Bhandal did think it necessary to ask the claimant to refrain from gossiping between shops, whilst seeking to protect the claimant's partner's privacy and dignity (particularly as he was also an employee of the respondent), but that he sought to do so in an informal way.
74. It was not necessary for a colleague to be present – this was clearly not a formal disciplinary situation. Mr Bhandal ought, ideally, to have had this discussion privately, regardless of whether the claimant objected or not. However, given Mr Bhandal's perception of the claimant as being open about her private life at work it was, in our view, reasonable for him to take into account her lack of objection to an informal in the course of their work and in the presence of Ms Clayton.
75. The other issue related to this is that Mr Bhandal did not provide the claimant with evidence about his concerns. We find that he did not provide her with any evidence but in light of the informal nature of the conversation, there was no obvious need to do so.
76. We also prefer Mr Bhandal's evidence that he did not say the claimant would be dealt with if he heard anything else.
77. The next allegation in respect of 20 December is that later that day Mr Bhandal asked who had put MDS trays on a certain shelf. The claimant replied "me, Sam told me to put them there". Then Mr Bhandal turned to Ms Clayton to ask her and said "Nick said that you told her to put them there, she's lying, I'm sure you wouldn't say that", as to which Ms Clayton replied "I didn't". Ms Clayton looked at the claimant and then replied "oh I can't remember"
78. Further that Mr Bhandal, whilst he was working alongside Ms Clayton and the claimant, said to Ms Clayton "Has Nick even got her dispensing qualification?"
79. Again, there is diametrically opposed evidence from the claimant on the one hand and Mr Bhandal and Ms Clayton on the other. For the reasons already outlined, we prefer the evidence of the respondent's witnesses and we find that Mr Bhandal did not accuse the claimant of lying or question her dispensing qualification.
80. We refer also, however, to the fact that the claimant asserts that "At 3pm that day I finished my shift, Sam pulled me aside and said "I know you are having a hard time with Harpal at the moment. I just wanted to tell you that I

have not said anything against you and all you need to say is "yes Harpal, no Harpal" agree with everything and say nothing. that's the best way to be with him".

81. Ms Clayton does not dispute that there was a conversation but she says "I did pull Nicola aside. And I did say I understood she was having a hard time. But this is where she has completely twisted what actually happened. I spoke to her about her child. She had been telling me of his struggles [detail omitted for the protection of the claimant's child] I do understand what a difficult process that is. We discussed about how best to be supportive. I did advise her to get on with her work as she was never very good at following instructions. As with any work situation you have to do as your boss asks, not do the opposite. As you can see what actually happened and what Nicola has portrayed are two very different accounts".
82. Ms Clayton also describes an amicable relationship with the claimant.
83. We prefer Ms Clayton's evidence. It is consistent with the presentation of the claimant at work as described by all the respondent's witnesses and is consistent with Mr Bhandal being efficient, brusque or firm.
84. Finally, on 20 December 2018, the claimant says "I was asked on this day as well as several other days if I wanted my P45. I was so fed up I replied not quite just yet, to which he replied, "so you will want it in the future, I will give it to you now". This was not addressed in detail in any evidence – simply a blanket denial by Mr Bhandal and confirmation that it did happen by the claimant. The allegation is set out in a similar way in the claimant's grievance but is not dealt with in the grievance interviews.
85. For the reasons already stated, we prefer the evidence of the respondent and find that the claimant has not shown, on the balance of probabilities, that Mr Bhandal did offer her her P45 on 20 December 2018.
86. In December 2018, the claimant attended a work Christmas party. The relevance of this is that it was the respondent's evidence that the claimant engaged with her colleagues, appeared to be having fun and, particularly, asked for a photograph of her hand Mr Bhandal together. The claimant said that she was excluded at the Christmas party or from the arrangements. This does not form one of the allegations. However, we prefer the evidence of Mr Bhandal that the claimant engaged and appeared to be having fun at the Christmas party. Although we did not see the photographs, their existence was not denied. As we understand it, the claimant was said to be putting on a brave face.
87. The claimant's account is inconsistent with how she said she was feeling about the respondent, and Mr Bhandal particularly, at the time. Even if she was, however, putting on a brave face (and this is consistent with the other evidence we heard about how the claimant presented her problems about work at work) the respondent cannot be blamed for not knowing how the claimant was feeling.

**11 January 2019**

88. On 11 January 2019, the claimant was working at the Moxley branch. She left the Moxley branch at 3:30 PM and arrived at the Darlaston branch at

3:50pm. There was then a conversation on the telephone between Mr Bhandal and the claimant during which Mr Bhandal questioned the claimant's journey time between the two branches.

89. The claimant's case is that Mr Bhandal said "Sam has done that journey many times and it hasn't taken her 20 minutes". It is then alleged that he said "your lying, where have you been, you've been somewhere else haven't you, just tell me where you have been". The claimant says that she told Mr Bhandal that the traffic was bad and she got stuck behind a school bus to which she says that Mr Bhandal replied "you're lying and if I find out where you have been you will be dealt with".
90. In her grievance letter, the claimant says that Ms Hussain had phoned Mr Bhandal to ask where the claimant was before she arrived at the Darlaston shop. She says that after she arrived Mr Bhandal phoned her and the conversation took place as referred to above. In her witness statement, the claimant says that as she arrived at the shop Ms Hussain was on the phone with Mr Bhandal and Mr Bhandal told Ms Hussain that he wanted to speak to the claimant. The claimant said in her oral evidence that Ms Hussain was already on the phone with Mr Bhandal as she arrived at the Darlaston branch.
91. Mr Bhandal does not deal with this allegation explicitly in his witness statement. In the respondent's response to the table of allegations, it says that it is denied that the claimant was spoken to aggressively or told that she was lying. She was simply told to inform Mr Bhandal when she had arrived at Darlaston. In oral evidence Mr Bhandal said that the claimant's account that she passed three schools was not correct, there was only one school on the route. He also said that he did not accuse her of lying and if the claimant says that she was delayed he accepted that.
92. Mr Bhandal was very insistent in his evidence that the journey should not have taken 20 minutes, that it would normally take five or 10 minutes. The respondent's other witnesses also confirmed that the journey was more in the region of 10 minutes. It was clear that Mr Bhandal was frustrated by the claimant's account at the hearing. We find, on the balance of probabilities, that Mr Bhandal was skeptical about the claimant's account in the course of the telephone conversation and in all probability irritated by the delay in her transfer between the two shops. However, we prefer his oral evidence that he did believe the claimant and we find on the balance of probabilities that he did not accuse her of lying in that telephone conversation and nor did he speak to her aggressively.
93. For the reasons already outlined above, we think it more likely that Mr Bhandal spoke shortly or abruptly to the claimant in that conversation. He had been contacted by Ms Hussain who had to leave at 4 o'clock and he was no doubt frustrated or irritated by the delay in the claimant's arrival. However, we think that his frustration probably went no further than an abrupt manner of speaking.

**14 January 2019**

94. On 14 January 2019 the claimant was working at the Moxley branch with Mr Bhandal and Ms Clayton. The claimant alleges that Mr Bhandal had been trying to cause conflict between her and Ms Clayton by saying that the claimant had been talking about Ms Clayton. In her witness statement the claimant says "Harpal turned round out of the blue and said to me "you couldn't shut up about Sam the first two weeks when we took over" I replied "what are you on about". Harpal said "you know what you have been saying about Sam". I replied "I haven't said anything about Sam". Harpal kept digging and digging at me about it and Sam turned to me and said "have you been talking about me then". I was so fed up of there childish games I said " If Harpal says I have, then I must have. To this Harpal said "you know what you have been saying so shall we tell Sam then, Sam replied "I don't want to Know cause if its bad I will HIT her". I was glad my shift ended at 3pm as I only had approximately 2 hours left, I couldn't believe what was happening".
95. Mr Bhandal denies that this happened in his witness statement. Ms Clayton says that she did not threaten to hit the claimant. She said they had had lots of conversations all day about the claimant's home life and her children.
96. The claimant confirmed in cross examination that she perceived the threat from Ms Clayton to be a genuine threat that Ms Clayton would hit the claimant. There is no evidence that the claimant reported or disclosed this threat to any other person whether a different manager in the respondent, the police or even in text communications with her friends Ms Hussain and Ms Callaghan. Mrs Wildman does not say in her witness statement that the claimant specifically disclosed this allegation to her at the time.
97. We prefer the evidence of Ms Clayton and Mr Bhandal about the event on 14 January 2019. Namely, that the claimant spent the whole day working and in the course of doing so she discussed her personal issues with Mr Bhandal and Ms Clayton. Mr Bhandal did not seek to cause problems between Ms Clayton and the claimant - as the manager of what he described as a very busy pharmacy with a great deal of work to be done it simply does not make any sense for him to deliberately disrupt the work. We find the suggestion that Ms Clayton seriously and deliberately threatened to hit the claimant solely on the basis that Mr Bhandal had said that the claimant said "something" about Ms Clayton wholly lacking in credibility.
98. Around this time, is not clear when exactly, Ms Dewett the claimant's line manager, noticed that the claimant appeared "a bit quiet" and so she spoke to her. In the grievance interview, Ms Dewett says that the claimant expressed her concern for how she was being treated and Ms Dewett advised her to speak to Mr Singh about it and he will be able to address it. In oral evidence, Ms Dewett was unable to provide any additional details about what the claimant had said in that meeting. She said that the claimant was not happy with how she was treated in another branch.
99. We recognise that this was a long time ago. However, we consider that had the claimant made a specific allegation that Mr Bhandal had been bullying

or harassing her and that Ms Clayton had actually threatened to hit her Ms Dewett would have remembered this. Further, we found Ms Dewett be a plausible and reliable witness. She was not employed by the respondent, but a self-employed locum pharmacist; and she had not observed the whole of the proceedings. These two factors, in our view, lead us to give Ms Dewett's evidence greater weight.

100. For these reasons, we find that Ms Clayton did not threaten to hit the claimant on 14 January 2019 and that Mr Bhandal did not act in the way set out in the claimant's list of allegations on this date.

### **18 February 2019**

101. This allegation is that while the claimant was working at Moxley and on her lunch break she had a conversation with one of the drivers, Glyn, while the claimant was sitting in her car. The claimant says that when she returned to the dispensary Mr Bhandal said to her, "what were you and Glyn on about" and then went on to say "see why can't you answer me, you're going to make something up aren't you". The claimant said no she was on a break and was asking Glyn how his wife was. She said that Mr Bhandal said that she was lying. The claimant said that Mr Bhandal then accused her of having an affair with Glyn (which the claimant says is not true) and then Ms Clayton said "I hope it's not true, I know Glyn's wife and she is lovely, if Nicola is I will hit her".
102. Mr Bhandal says that this is not correct. He said that the claimant used to joke that people would think she and Glyn were having an affair because, effectively, they got on well and when Glyn went to the Darlaston store he would pull the claimant's ponytail. Mr Bhandal said that this was a joke that the claimant had made. He said that the claimant was the only person who ever referred to an affair between her and Glyn and it was obviously intended to be a joke.
103. Again, the claimant confirmed that she perceived the threat by Ms Clayton to be a serious threat of actual physical assault. Ms Clayton refers to this conversation and the assault as a work of fiction.
104. We prefer the evidence of Mr Bhandal and Ms Clayton in respect of this allegation. For the reasons set out above we feel that the claimant's account has been misremembered and/or exaggerated. Further, we find it difficult to believe that the claimant would not have reported, or even mentioned, this serious allegation to somebody at some point and there is no reference to it anywhere.
105. For these reasons we find that Mr Bhandal did not accuse the claimant of having an affair with Glyn and nor did Ms Clayton threaten to hit the claimant.

### **22 February 2019 – conversation with Onkar Singh**

106. On or around 22 February, the claimant had a conversation with Mr Singh. In her grievance, the claimant said that Mr Singh again warned her not to talk between the shops and she replied that Mr Bhandal had already had this conversation with her. The claimant then says that Mr Singh asked

her if she had been applying for other jobs; she said that she had but she had not at that time had any offers.

107. In oral evidence, Mr Singh said that the respondent's attitude towards staff getting new jobs is that they are broadly supportive, He said that hospital pharmacy jobs with the NHS are generally better paid and with better conditions than community pharmacies can offer, so it is common for people to move from community to hospital pharmacies. He said they understand why and accept it and, he said, they tend to be supportive of this career progression. We accept that evidence.
108. It was put to the claimant, and was the respondent's evidence, that in this conversation the claimant had raised some concerns about, or mentioned, that she was having some problems with Mr Bhandal. The claimant denied that it was on this occasion. We think it likely that it was around this time, but in any event, the conversation between the claimant and Mr Singh was, Mr Singh says, to the effect that Mr Singh offered to speak to Mr Bhandal about it and the claimant declined this offer.
109. The claimant's evidence about this was unclear. She appeared to accept that there had been a conversation with Mr Singh about Mr Bhandal before 8 March, but could not say when. The news that the claimant was looking for a new job came to Mr Singh's attention by way of someone coming into one of the shops to ask if they could have the claimant's job – they said that the claimant had posted news about her new job on social media.
110. We prefer Mr Singh's evidence about this as he was able to provide a date and some context – it is reasonable that Mr Singh would ask the claimant if she had applied for a new job and it is reasonable that the problems that the claimant said that she had been having with Mr Bhandal would come up in that conversation.
111. We also prefer Mr Singh's evidence that the claimant said she did not want Mr Singh to speak to Mr Bhandal about it. We asked Mr Singh what problems, exactly, the claimant said she had been having with Mr Bhandal. Mr Singh was unable to provide any detail – he said that the claimant had not given him any detail and that the issues had been from before Christmas. This conversation is also referred to in Sian Capewell's contemporaneous notes of the grievance interview of Mr Singh and, although no date is recorded there, it refers to it being a few weeks earlier.
112. Mr Singh's evidence that the claimant did not provide detail is consistent with the evidence of Ms Dewett that the claimant was not forthcoming about the issues she said she was having, and we prefer Mr Singh's evidence about this. We find that there was, on the balance of probabilities, a conversation on 22 February 2019 between the claimant and Mr Singh about problems the claimant said that she had had with Mr Bhandal; but that the claimant did not give any detail about those problems, and she declined Mr Singh's offer for him to speak to Mr Bhandal about it.

#### **4 March 2019**

113. The next allegation relates to the claimant's request on 4 March 2019 to have one hour off on 13 March to take her son to a recurring appointment.



She had taken him to this appointment a few times before. It was the claimant's case that this was her son's fourth weekly appointment and she had misplaced his appointment card but did have an email from her son's counsellor confirming the appointment. The claimant says that Ms Dewett told her that Mr Bhandal had said that it had to be a letter or an appointment card and he would not agree to the claimant having time off without this and on the basis of an email only.

114. Ms Dewett was the claimant's line manager and she said that it was her decision as to whether the claimant was allowed the time off. Ms Dewett said that she did remember that the claimant needed regular time off for her son's appointments and she did tell the claimant that she needed to provide an appointment card or letter. Ms Dewett said that she did not recall anything about an email, or the card or letter being misplaced but had the claimant sent the email she would have forwarded it to HR as evidence that the claimant needed time off and authorised the time off.
115. Mr Bhandal said that it was the respondent's policy that an employee provide a card or letter, and he did not remember seeing a text or email. He did say that he had asked for a card but did not hear anything more about it after that. He referred to the fact that the claimant clearly had been able to attend appointments as this was the fourth one.
116. In the event, the claimant did attend the appointment with her son, but she was off sick at that point.
117. In our view, the respondent did not finally refuse the claimant permission to attend the appointment. We prefer Ms Dewett's evidence – for reasons referred to above we found her to be a plausible and reliable witness. She said it was her decision whether the claimant could have the time off and we think that the reasons Ms Dewett can remember little about this is because it was not a big issue at the time. We think it likely that Ms Dewett did say that the policy is that the claimant needed to prove the appointment with a card or letter, or words to that effect, but that the issue with the email was just never resolved. We prefer Ms Dewett's evidence that she did not actually see the email – we were not shown a copy of it, although that would not necessarily have assisted – and we think it more likely that the claimant misinterpreted Ms Dewett's statement of the policy as a refusal.
118. We do accept the claimant's evidence that she felt under stress and attributed that to the acts of the respondent. We do not find that the respondent had done anything unreasonable in this incident to reasonably cause that stress. We think it likely that the claimant's perception of the respondent, and specifically Mr Bhandal, contributed to this misunderstanding.
119. The next allegation on this day was that Mr Bhandal phoned the claimant about a stock delivery from Darlaston, where the claimant was working, to Moxley. The claimant says that the driver had already left and she did not realise that he was going to Moxley before coming back so she had not provided the stock to deliver. The respondent did not deny that there was a such a telephone conversation, but Mr Bhandal denied ever speaking

aggressively to the claimant or accusing her of lying. The claimant said that Mr Bhandal was aggressive, would not let her explain and told the claimant that she was lying.

120. We prefer the evidence of Mr Bhandal about this conversation. He was entitled to ask where the deliveries were, and we accept that he might have been frustrated. We think it likely that he did put the phone down on the claimant. However, as referred to above we consider it more likely that the claimant has misinterpreted Mr Bhandal's abrupt, business like way of dealing with things as a personal slight on the claimant. We think that Mr Bhandal could have handled it better – he could have been more patient with the claimant – but we accept that the pharmacy is a busy environment; particularly at Moxley. We heard that there was a lot of work to do and it was reasonable for Mr Bhandal to want to bring the conversation to an end. We think it more likely that the claimant's external stresses contributed to her perception of Mr Bhandal and the respondent and her perception was not accurate.

### **5 March 2019**

121. The next allegation relates to Mr Singh on 5 March 2019. This is that Mr Singh accused the claimant of asking Ms Dewett to lie for her and putting her in a difficult situation. This is set out in the list of allegations and the grievance letter but is not referred to in the claimant's witness statement. The claimant said that she had not realised that she needed to produce a separate witness statement beyond her clam form and grievance. The matter was addressed in oral evidence in some detail in any event.
122. It was not disputed that the claimant had asked Ms Dewett to provide a reference for her job application to work at Russells Hall Hospital. The claimant denied asking Ms Dewett not to inform Mr Singh but she did say that she did not want it widely known. Ms Dewett clearly understood the claimant to want Ms Dewett to keep the reference confidential and said that she told that claimant at the time that she would have to tell Mr Singh as she would be providing the reference in the role of a manager for the respondent on their headed paper. Ms Dewett said that she felt that not telling Mr Singh would be dishonest and deceitful.
123. We find that Ms Dewett did reasonably believe that the claimant wanted her to keep the fact of the reference request from Mr Singh and Mr Bhandal.
124. Mr Singh's evidence was that he did consider that the claimant had asked Ms Dewett to lie by being dishonest about the reference. Obviously, this did put Ms Dewett in a difficult position. Mr Singh's response was reasonable and he confirmed in oral evidence that he expressed concerns to the claimant that she had put Ms Dewett in a difficult position. In our view, the reason that Mr Singh accused the claimant of lying – and we find that he did – is because he genuinely and reasonably believed that the claimant had asked Ms Dewett not to inform him that she had asked her to provide a reference. This, he reasonably considered, was deceitful and it did put Ms Dewett in a difficult position.

**8 March 2019**

125. 8 March 2019 turned out to be the claimant's last day at work. The claimant's evidence about this day in her witness statement is reasonably brief, but there is a fuller account in her grievance.
126. The claimant alleges two incidents on this day. Firstly, that Mr Singh said to one colleague in front of other colleagues not to bother with the claimant's attachment of earnings as she would be leaving soon any way.
127. Mr Singh's account was that he did refer to the claimant's attachment of earnings, but only to the manager who was trying to sort out some paperwork associated with the claimant's attachment of earnings. There had been a problem with payments. The person who was trying to resolve it was the person responsible for HR – Steph –who Mr Singh said that he spoke to about it. Steph had been unable, Mr Singh said, to get through to the relevant department to resolve the issues with the payments. At that time, Mr Singh said he understood that the claimant was going to work at Russells Hall Hospital so there was no point trying to resolve the matter before she left. The communications with Ms Dewett requiring a reference (see above) made it clear that the claimant had already been offered a job. There is no suggestion that the claimant had actually given in her notice by then.
128. Mr Singh did not dispute the conversation. The claimant said that it was said in front of Michelle Callaghan. Mr Singh said there was no-one else present. Ms Callaghan also said in evidence that she did not hear the conversation. She could not say where she was when the conversation took place because she did not hear it. However, she could at the time have been in the dispensary, on the shop floor or in a back room.
129. We prefer the evidence of Mr Singh and, particularly, Ms Callaghan and we find that Mr Singh did not talk about the claimant's attachment of earnings in the presence of Ms Callaghan. We think it likely that Ms Callaghan was in the shop at the time and we can understand why the claimant might have been concerned that someone could have heard the conversation, but there is no evidence that anyone did hear it.
130. The claimant says that that same afternoon, she decided to talk to Mr Singh about the problems she says she had been having with Mr Bhandal. She says
- “After lunch at 2.00 pm. I asked Onkar if I could talk to him as Michelle had finished her shift. Onkar gave me no eye to eye contact during the conversation and I explained that I never wanted to look for another job. but the way Harpal had been treating me over the past few months, I didn't see any other way forward as I was on the verge of a nervous breakdown.
- I told Onkar about Harpal trying to make conflict between me and Sam and some of the other things he had done to me. Onkar said "why didn't you come to me earlier about this. I said I was frightened as I knew he would have spoken to Harpal and I would still have to go to work with Harpal and

Sam and I felt intimidated by both of them. I asked Onkar if I could work in any other branch then I would stay”

131. The claimant’s concerns, which are not apparent from her witness statement, are firstly that she says Mr Singh refused to stop her working at Moxley, where Mr Bhandal was based. Nowhere in her grievance or witness statement does the claimant say that Mr Singh refused her request – she does not say what his response was at all.
132. The claimant then goes on to say in the table of allegations  
“I had applied to the examining board for my GCSE certificates as the hospital needed a copy of them and explained this to Onkar. Onkar replied “I never thought I would say this but let’s just hope the hospital will accept you”. All I wanted was some support from Onkar of to which I had none. I was so deflated by this and the nerves in my stomach were going around”.
133. The implication that we understand the claimant to be making is that when she asked Mr Singh if she could stop working at Moxley, his reply was that he hoped the hospital would accept her for the new job.
134. Mr Singh said in oral evidence in respect of her request to stop working at Moxley, that he could not commit to basing the claimant at one shop. Her job was as a relief dispenser and if he based her at one shop he would either need to recruit a new relief dispenser or change one of the other employees roles to relief dispenser.
135. In respect of the comment about her GCSE certificates, Mr Singh said:  
“I deny ever having stated that I hoped that she would get the job at the hospital other than in the context that she had no GCSE certificates and I knew that this job paid a higher salary which would help with her financial worries. This conversation has been totally taken out of context, it is however true that I was very disappointed about her deceit and manipulative behaviour over the previous few weeks. I feel there was a breach of fidelity which had destroyed my confidence and trust in Nicola”.
136. In oral evidence he said that by then he knew the claimant had accepted a job at Russells Hall Hospital because of the telephone conversation with Ms Dewett. He said he was just talking to the claimant generally and the claimant was concerned about her lack of GCSE certificates – she said she had looked everywhere. It was in that context, he says, that he said “let’s hope they accept you”
137. As referred to above, Mr Singh was quite clear that people moving on to better paid jobs in hospitals was a common feature of his business.
138. In respect of the claimant raising issues about Mr Bhandal, Mr Singh’s evidence was that the claimant said it had all been resolved before Christmas and she did not want him to raise it with Mr Bhandal. The claimant did not set out any detail about what she told Mr Singh in either her witness statement or the list of allegations. In the grievance she says  
“After lunch I said to Onkar can I talk to you now before the rush starts, as we were the only 2 In the pharmacy. Onkar gave me no eye contact during this conversation and I explained that I never wanted to look for another job,

but after the way Harpal had been treating me over the past few months, I didn't see any other way forward as I was on the verge of a nervous breakdown. I told Onkar about Harpal trying to make conflict between me and Sam and some of the other things he had done to me. Onkar said why didn't you come to me earlier about this, I said that I was frightened as I knew he would speak to Harpal and I would still have to go and work with Harpal and Sam and I felt intimidated by the both of them. I said that at the end of the day I just want to come to work and go home. I said to Onkar put me in any other shop except Moxley and I would stay".

139. On balance, we prefer Mr Singh's evidence about his exchange. The claimant has not been able to communicate clearly the precise problems she had with Mr Bhandal. The claimant gave little information to Ms Dewett (as above) and we think that she gave little information to Mr Singh. We find that she did tell Mr Singh that she did not want him to speak to Mr Bhandal about it. We accept that the claimant did ask not to work at Moxley but we do not find that Mr Singh said, in reply, that he hoped the hospital would take her. That conversation was, we find, solely about the claimant's concerns about her GCSE certificates.
140. We do not know what steps Mr Singh could have taken once the claimant had raised some concerns about her relationship with Mr Bhandal other than offer to speak to him. Mr Bhandal is an owner of the business. The claimant would always have to work with or for him in some capacity. Mr Singh said, and we accept, that he spoke to Mr Bhandal a week later anyway. Mr Bhandal said that nothing had happened. He said that the claimant needed to be told two or three times to do things before she would do them and Mr Singh referred to the increased pace of work and tighter restrictions since they had taken over the pharmacies compared to under the previous owners. He said the business had been failing and it was necessary to take steps to turn it around.
141. We find that on balance, Mr Singh probably did communicate to the claimant that he could not agree, there and then, to a change in her role but we find that his reasons for doing so were for the legitimate and reasonable business reasons set out above.
142. We also find that Mr Singh was aware that the relationship between the claimant and Mr Bhandal was not as good as it could have been. It was clear that the claimant was having difficulties and that she had previously had problems before Christmas. However, we find that the claimant was not explicit about what those problems were, and she did tell Mr Singh that she did not want him to speak to Mr Bhandal about them. We also find that, had the claimant requested Mr Singh to take some action about her relationship with Mr Bhandal, he would have done so.
143. On the balance of probabilities, we find that the problems perceived by the claimant of her relationship with Mr Bhandal related to his management style and the requirement to work differently under new ownership. We think it likely that this increased pressure on the claimant at work combined with multiple stressors in her personal life caused the claimant to perceive

relationship problems with Mr Bhandal that were not, objectively, as bad as she perceived them to be.

144. The final allegation is that the same day there had been a mistake with a prescription – two more controlled tablets had been given to a patient than ought to have been. The claimant went to the patient's house and collected the prescription. She says that Mr Singh then asked why the claimant didn't just take the two tablets out of the bag and she said, "I didn't want to open the bag which had been stapled" as she did not want to breach the Controlled Drugs Act 1974. She says "Onkar then said thank god that was sorted and after finishing my shift at 6pm I delivered the prescription back to the customer. I received no thanks or appreciation for what I did". The claimant also says that she felt like she was made to feel like it was her fault even though she had not personally dispensed that prescription.
145. Although there was no evidence about this except as set out in the grievance letter, it was not challenged and we accept the claimant's account of this interaction as set out in her grievance letter.

#### **11 March 2019**

146. On 11 March 2019 the claimant went off sick with stress at work and anxiety and she remained off sick with the same or similar conditions thereafter.

#### **12 March 2019**

147. On 12 March 2019 the claimant submitted a grievance. The grievance was seven pages long and dealt with the issues in this case as already discussed.
148. Mrs Wildman confirmed that she had assisted the claimant in "putting the grievance together". Mrs Wildman said it was based on a diary of incidents the claimant had been keeping.
149. We heard a great deal of evidence from the respondent's witnesses that the claimant was very open about her personal life at work and that she went into graphic detail about some aspects of it. Ms Hussain said that the claimant's father had lent her money on his bank card.
150. Ms Wildman put it to the respondent's witnesses in cross examination that the claimant did not and would not share personal information with anyone except Ms Hussain and that the claimant's father did not have a bank card. We prefer the respondent's witnesses evidence about the claimant's conduct at work – they saw her every day and their evidence was consistent. We conclude that Mrs Wildman sees a different side of her daughter from how she presents at work and when the claimant went off sick and told her mother about her perceived problems, her mother helped her to write a grievance. We think that Mrs Wildman had a significant amount of input into the grievance. It is apparent that the claimant was very ill when she went off sick. Given the claimant's description of her health at the time, it seems unlikely that she would have been able to draft such a lucid and lengthy grievance without a great deal of assistance.
151. We think that both the claimant and Mrs Wildman were seeking to be honest in that grievance but that events were painted in such a way as to

put the blame for the claimant's poor health on the respondent without any objective consideration of the wider factors – such as the reasonableness or otherwise of the respondent's actions or the personal stressors in the claimant's life.

152. Although, therefore, the grievance is more contemporaneous and there is little to no other written evidence about the matters in this case, we are unable to give it as much weight as we might otherwise do.
153. Had we seen the claimant's diaries and if they had reflected the claimant's account we might have been in a different position but they were not provided. The claimant said she was advised to keep them when she started to perceive the poor treatment at work. The only possible reason for keeping such diaries is to demonstrate what has happened if required to do so. This is obvious. We therefore conclude that the claimant's failure to disclose them to the respondent was because they did not fully support the account that the claimant set out in her grievance and claim.

#### **14 March 2019**

154. On 14 March 2019, Ms Dewett provided a reference for the claimant for her role at Russel's Hall Hospital. This is not in the list of issues, but we note that the reference appears to have been provided in the time scale requested by the hospital despite them repeatedly getting Ms Dewett's name wrong. It was finally provided at the insistence of Mr Singh. We conclude that, despite Mr Singh's irritation at the way the claimant went about trying to obtain a reference from Ms Dewett, he still took steps to ensure that a reference was provided.

#### **Grievance, settlement and resignation**

155. The claimant's grievance was acknowledged by Miss Kilburn, who was responsible for HR matters, on 18 March 2019 and originally she was going to undertake the grievance investigation meeting, The claimant considered that this was inappropriate given her role in the respondent and that she had been named in the grievance. After some correspondence, Ms Sian Capewell was appointed to hear the grievance. Ms Capewell was the Head Office Manager of Medi-Zen Services Ltd which is an associated company to the respondent.
156. Initially, Ms Capewell invited the claimant to a grievance meeting on 17 April 2019. This meeting was delayed because of issues about availability and other matters from the claimant and the respondent. Nothing turns on this delay. There were also attempts to agree a neutral venue at which to meet and in the end, the claimant met Ms Capewell on 17 June 2019 at the claimant's home, accompanied by Mrs Wildman.
157. Ms Capewell was also accompanied by a Mr Jayesh Patel who attended to assist her and offer guidance. Mr Patel appears to be an owner or director of Medi – Zen Services Ltd. However, Ms Capewell said, and we accept, that she was the decision maker in the grievance process.

158. We were not taken in detail through the notes of the grievance meeting. It is clear, though, (and it was not disputed) that by the date of that meeting the claimant was looking for a financial settlement to bring her employment to an end. The last page of the grievance minutes record that a return to work has been rejected and the claimant was just looking for compensation for her loss of earnings.
159. In the course of seeking to resolve the claimant's issues and before agreeing any settlement, Mr Singh requested a meeting with the claimant. The claimant rejected that request. In an undated letter sent by the claimant after the grievance meeting, the claimant said that she considered it inappropriate for Mr Singh to want to speak to her at that time when he had, she said, refused to help her previously.
160. In that same letter, the claimant says "It was also said at our meeting by Jayesh that Harpal may now realise how he has behaved towards me". The respondent denied this, in submissions, but we heard no direct evidence about it from any party. The comment is not recorded in the contemporaneous notes of the grievance meeting. On balance, and recognising that this letter clearly formed part of an ongoing negotiation, we place little weight on that assertion in the letter. Such a statement, if it was made, could equally apply to the management style of Mr Bhandal as discussed above as it could to allegations of bullying or inappropriate behaviour.
161. After the grievance meeting and in July 2019, Ms Capewell interviewed a number of the respondent's employees and put most, although not all, of the claimant's allegations to them. Ms Capewell relied on these interviews to formulate the outcome of her grievance. The claimant did not get an opportunity to consider or challenge the statements in these interview notes and the typed version were not produced until February 2020 for the purpose of these proceedings. However, we accept the evidence of Ms Capewell that the typed versions accurately reflect the handwritten notes taken at the time.
162. Mr Singh's candid evidence was that, in reality, the parties were focusing on reaching a settlement agreement throughout this period rather than on the grievance investigation. This was on the basis that the claimant had made it clear in her grievance meeting that what she wanted was a settlement to resolve the issue. We accept Mr Singh's account of this period. We do not criticise the claimant for wanting to resolve the matter in this way.
163. Ms Capewell sent the claimant the outcome of her grievance in a letter dated 21 August 2019. None of the claimant's complaints were upheld.
164. In the meantime, it appears that negotiations were ongoing. On 27 August 2019, the claimant submitted her resignation. The claimant said  
"Due to my current emotional and psychological health, I feel I have been left with no choice but to leave, and feel this will help me to move forward and enable my health to improve.  
I will be submitting a letter of response regarding the current GRIEVANCE SETTLEMENT by the 30<sup>th</sup> August as requested".



165. Although there is nothing in the claimant's witness evidence specifically addressing this, it is clear that the claimant did not feel well enough to continue working for the respondent.
166. The following day, 28 August 2019, the respondent accepted the claimant's resignation and on 29 August 2019 the respondent withdrew the offer it had previously made to settle the claimant's claim. We have not seen direct evidence of that offer, but we have seen references to it in other documents and heard evidence about it.
167. In her appeal against the grievance dated 26 September 2019, the claimant makes it clear that she had decided ;to accept the respondent's offer which they had expressed to be open until 30 August 2019.
168. We do not know the terms of that offer. However, having considered these events, we find that, on the balance of probabilities, the claimant resigned at that point on 27 August 2019 because she had decided to accept the offer from the respondent to settle her claim that was due to expire on 30 August 2019. We think it likely that the claimant was pleased to be able to draw the matter to a close and consequently resigned, believing that she would then accept the offer and neither party would have to worry about the issues any more.
169. Unfortunately, we also conclude that once the claimant resigned, the respondent considered that this had solved the problem from their perspective, so there was no longer any need to proceed with the offer to the claimant.
170. In our view, the claimant had clearly formed the view that she could no longer work for the respondent by the time of her grievance meeting on 17 June 2019. We find that the claimant was experiencing stress and was unwell by this point – and from 11 March 2019 when signed off sick – and she attributed this illness to the acts of the respondent. Mrs Wildman said that the final straw was the conversation between the claimant and Mr Singh on 8 March 2019 in the course of which the claimant says Mr Singh failed to help her.
171. The delay in the end of the claimant's employment from then until 27 August was because the claimant was seeking to negotiate acceptable terms on which to end her employment. Having considered that acceptable terms had been reached she then formally resigned.

### **Appeal**

172. The claimant appealed against her grievance outcome on 26 September 2019. There was, thereafter, further correspondence about the grievance appeal but it appears that the appeal was never heard. Ms Capewell says that this was because the only outcome the claimant wanted was financial compensation.

### **Other matters**

173. We consider other relevant factual issues.

174. The claimant's and Mrs Wildman's evidence was that the claimant sought advice about her employment issues from the Citizen's Advice Bureau, the Birmingham People's centre and ACAS. The precise dates were unclear but the claimant said that ACAS suggested she keep a diary of incidents which she started in December 2018. Mrs Wildman and the claimant both agreed that they had spoken to the Citizens' Advice Bureau by 11 March 2019 when the claimant went off sick.
175. We were also referred to a letter from the claim to Ms Capewell dated 16 April 2019 in which the claimant said that she would have no hesitation in referring her case to ACAS with a view to attending a tribunal if she did not obtain a satisfactory outcome.
176. We find, therefore, that probably by 11 March 2019, but certainly by 16 April 2019, the claimant was aware of her rights to bring a claim to the Employment Tribunal. We did not hear anything about the advice she received but on the balance of probabilities and relying on our experience, we think on the balance of probabilities that the claimant will have been informed of the time limits for bringing a claim to the Employment Tribunal. The claimant said, in any event, that the reason she did not bring her claim sooner than she did was because she was trying to resolve it without needing to start proceedings. She did not say that she had been misadvised or was unaware of the time limits. In fact, she agreed that she could have brought the claim sooner, were it not for her attempts to resolve the dispute informally.
177. In relation to the allegations of harassment, we heard no evidence at all that any of the alleged conduct of Mr Bhandal was connected in any way to the claimant's sex. We did hear evidence about the sex of the people occupying various roles in the respondent. However, this evidence was inconclusive. Most of the employees were, at the time the claimant worked for the respondent, women except the van drivers, Mr Bhandal and Mr Singh and some locum pharmacists. However, we do not give this gender split much weight. There was no evidence to suggest that any of Mr Bhandal's conduct – even on the claimant's case – was related to her sex and in fact one of the claimant's complaints was that she was treated less favourably than Ms Clayton. Of course, this does not exclude the possibility of harassment related to sex, but neither does it assist the claimant.
178. We heard no evidence of the use of any sexually discriminatory language and none of the respondent's witnesses made any complaints about any discriminatory conduct.
179. We comment also on the character references provided by the claimant. We said we would read them, and we did. However, the fact that the claimant completed her work and, aside from an alleged reluctance to unquestioningly and quickly comply with instructions, the respondent had no complaints about the claimant's work. The references were unsurprisingly supportive of the claimant but they did not have any bearing on our assessment of the evidence.
180. We note that a feature of this case has been the claimant's reluctance to explain her problems in detail to the respondent. We refer to our findings

particularly in relation to the claimant's conversations with Mr Singh and Ms Dewett. While we understand that the claimant may be reticent to explain her problems in detail, the respondent, or more particularly its managers, cannot be blamed for then failing to take any action about a problem of which they were not fully appraised.

181. Finally, we conclude our findings by restating that we do not suggest that the claimant was not experiencing a significant amount of mental distress by the time she went off sick in March 2019, or that she was unwell as a result of it. We have made findings about the management style of Mr Bhandal (above) and we accept that the claimant found this challenging. However, we also heard evidence of a great deal of personal difficulties that the claimant was facing throughout the period, combined with the change of employer from September 2018. We have not set out the claimant's personal difficulties as we are mindful that this judgment will be published and it is not necessary to go into detail. However, we do not accept that these problems had no significant impact on the claimant's mental wellbeing. We note that Mrs Wildman said that she had shouldered these stressors and sought to alleviate the practical burdens, as a parent would naturally try to do. However, that does not remove the worry from the claimant herself. We think it much more likely, in the absence of any specific medical evidence, that these personal issues impacted significantly on the claimant and were the underlying cause of her problems leading to her distress and sickness absence in March 2019.

### Law Harassment

182. Section 26 Equality Act 2010 provides:

- (1) A person (A) harasses another (B) if—
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B....
- (2) A also harasses B if—
  - (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - (a) the perception of B;
  - (b) the other circumstances of the case;

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

(5) The relevant protected characteristics are—

age; disability;

gender

reassignment; race;

religion or belief;

sex; sexual

orientation.

183. There are a number of steps to consider (*Richmond Pharmacology v Dhaliwal* [2009] ICR 724)

183.1. Was there unwanted conduct?

183.2. Did the conduct have either purpose or effect under s.26(1)(b) of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

183.3. Any such unwanted conduct must be 'related to' a protected characteristic (in this case sex)

184. The question of whether the conduct was unwanted is to be assessed subjectively and is a question of fact for the tribunal (*Thomas Sanderson Blinds Ltd v English* EAT 0316/10).

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

186. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 Underhill J (President), giving the judgment of the Employment Appeal Tribunal with respect to a similarly worded provision in the Race Relations Act 1976, held that, in assessing whether the effect of the conduct, objectively viewed, fell within either of the two paragraphs:

*"12 One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt."*

*13 Ms Monaghan submitted that this was erroneous because it confused purpose and effect. She says that the intention of the speaker can be relevant only where the purpose is in issue. I do not agree. When assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken*

*vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable”.*

187. In respect of the nature of the conduct and whether it did have the proscribed effect, at paragraph 47 of *HM Land Registry v Grant (Equality and Human Rights Commission intervening)* [2011] EWCA Civ 769 Elias LJ said:

*“As to the former, in my view, there can be no detriment because, having made his sexual orientation generally public, any grievance the claimant has about the information being disseminated to others is unreasonable and unjustified. Furthermore, even if in fact the disclosure was unwanted, and the claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset that he could not release the information in his own way, but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the tribunal did as subjecting the claimant to a “humiliating environment” when he heard of it some months later is a distortion of language which brings discrimination law into disrepute”.*

188. It is clear that all surrounding circumstances must be considered in determining whether the alleged acts did have the proscribed effect and whether it was reasonable for them to do so. These are predominantly matters of fact for the tribunal to decide. Having regard to all the circumstances, did the alleged conduct *actually* result in the proscribed outcome, bearing in mind that the proscribed outcome is of a more serious character than minor upset. If it did, was it objectively speaking reasonable for it to do so.

189. In respect of whether the alleged conduct is “related to” a protected characteristic, “related to” is a wide concept. In *Warby v Wunda Group Plc* UKEAT 0434/11, the EAT cited *The Constable of West Yorkshire Police v Khan* [2001] UKHL 48 at para 29:

*“The phrases 'on racial grounds' and 'by reason that' denote a different exercise: why did the alleged discriminator react as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact”*

190. The EAT said that “related to” was indistinguishable from “by reason that”.

191. Whether the alleged conduct was related to a protected characteristic is, again, a question of fact having regard to all the circumstances.

192. Finally, we consider section 136 Equality Act 2010 which provides:

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

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

193. The tribunal must consider all the evidence before us to determine whether the claimant has proved facts from which we could conclude that the respondent has committed the discriminatory acts complained of. We are entitled at that stage to take account of all the evidence but must initially disregard the respondent's explanation. In respect of each of the elements referred to above, the claimant must prove facts from which we could conclude that the respondent acted in the prohibited way or for a prohibited reason as the case may be.

194. If we are satisfied that the claimant has proven such facts, it is then for the respondent to prove that the treatment suffered by the claimant did not, in respect of each or any relevant element amount to harassment related to sex.

#### **Constructive unfair dismissal**

195. In respect of the claimant's claim for unfair dismissal, the first question is whether the claimant was dismissed within the meaning of s 95(1) Employment rights Act 1996 (ERA). The respondent has not asserted any potentially fair reason for the claimant's dismissal within section 98 ERA.

196. Section 95 ERA sets out the circumstances in which an employee is dismissed, and s 95(1)(c) says that this includes circumstances where "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct".

197. In *Western Excavating (ECC) Ltd v Sharp* [1978] QB 761 the Court of Appeal confirmed that questions of constructive dismissal should be determined according to the terms of the contractual relationship and not in accordance with a test of 'reasonable conduct by the employer'. The test is an objective one (*Leeds Dental Team Ltd v Rose* 2014 ICR 94, EAT)

198. In *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 462, [1997] ICR 606 it was held that contracts of employment include the following implied term:

*"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*

199. The question for the tribunal to determine is therefore whether the respondent without reasonable and proper cause conducted itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee, thereby breaching its contract of employment with the claimant.

200. The respondent referred to *Omilaju v London Borough of Waltham Forest* [2005] IRLR 35 in which it was confirmed that a series of acts can amount to a fundamental breach of the implied term but the last straw – the final act triggering the resignation – must add something to the overall breach. It cannot be a merely innocuous act on the part of the employer.
201. If the respondent is in breach of the implied term of trust and confidence set out above, the tribunal must then determine if that breach was repudiatory – if it was sufficiently serious so as to allow the claimant to treat the contract of employment as discharged.
202. Even if there has been a repudiatory breach, the claimant can by their conduct affirm the contract or waive the breach. Mere passage of time of itself will not necessarily be sufficient to amount to either a waiver or an affirmation although there will come a point at which delay will be sufficient to indicate that the claimant affirms the contract. In *Cockram v Air Products plc* [2014] ICR 1065, Simler J said:
- “22 Affirmation can take various forms, express or implied. Mere delay by itself is unlikely to amount to affirmation, but the case law establishes that the employee must not delay too long in deciding whether to accept the breach and resign, because if he delays too long, while deciding what to do, there may come a time when he will be taken to have affirmed the contract and to have lost the right to treat himself as discharged. Affirmation can be implied, for example, where the employee calls for further performance of the contract (see for example the facts of WE Cox Toner (International) Ltd v Crook [1981] ICR 823) because in such circumstances his conduct is likely to be treated as consistent only with the continued existence of the contract.*
- 23 However, whereas at common law the giving of any notice to terminate the contract would amount to affirmation of it, under section 95(1)(c), the fact of giving notice does not by itself constitute affirmation. This is a limited variation of the common law position to allow only for the giving of notice. 24 Accordingly, to satisfy the requirement that his resignation with or without notice is “in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct” the employee must not affirm the contract—whether by prolonged delay before resigning, by implication, by an equivocal election or by conduct that is consistent only with the continued existence of the contract”.*
203. The question whether the employee has affirmed the contract is fact sensitive and depends on whether the claimant does anything inconsistent with not affirming the contract.
204. Finally, the tribunal must decide whether, if there was such a breach, the claimant resigned in response to that breach.

### **Time points**

205. In respect of claims under the equality Act, s 123 (1) provides that

proceedings on a complaint within section 120 may not be brought after the end of—

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

206. Subsections (3) and (4) say

- (3) For the purposes of this section—
  - (a) conduct extending over a period is to be treated as done at the end of the period;
  - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
  - (a) when P does an act inconsistent with doing it, or
  - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

207. Although the Tribunal has a wide discretion, the burden is still on the claimant to satisfy the Tribunal that it is just and equitable to extend time

### **Conclusions**

208. We consider first the allegations of harassment by addressing each allegation by reference to the appended table of allegations and the dates referred to in that table.

#### **17/12/18 telephone conversation.**

209. Mr Bhandal did ask the claimant who had given her authority to do the time sheets. However, we have found that he did not behave aggressively or even unreasonably.

210. It may be that from the claimant's perspective this was unwanted conduct. She perceived it as a challenge to her work. However, it did not actually have, and could not reasonably have had, the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant nor of violating her dignity. It was a straightforward management interaction.

211. Further, in our view the purpose of this conversation was for Mr Bhandal to find out who had authorised the timesheets - nothing more.

212. Finally, there was no evidence that this conversation was in any way related to the claimant's sex. This allegation of harassment is therefore not upheld.

#### **19/12/18 telephone conversation.**

213. We have found that Mr Bhandal did say "when you pay my wages then you can question me". We have found that Mr Bhandal did not behave in an aggressive manner in this conversation. We have found that he was short with the claimant and probably irritated. Again, we can accept that this conduct was unwanted by the claimant



214. However, it did not actually have, and could not reasonably have had, the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant nor of violating her dignity. It was again a management interaction.
215. In our view the purpose of this interaction was for Mr Bhandal to express his irritation at the claimant. This was not good practice and, we think, reflected, Mr Bhandal's brusque management style. However, it fell short of the seriousness of behaviour referred to in *Land Registry v Grant* that would amount to harassment.
216. In any event, there was no evidence that this conversation was in any way related to the claimant's sex. This allegation of harassment is therefore not upheld.

**20/12/18 "pity party"**

217. We have simply found that this did not happen as described – whether on 19 or 20 December. For this reason, this allegation of harassment is therefore not upheld.

**20/12/18 "needed to keep my mouth shut"**

218. We have found that this conversation did not happen in the way described by the claimant. There was a conversation in which Mr Bhandal told or asked the claimant not to spread gossip or tittle tattle between the shops. However, he did not behave aggressively or unreasonably.
219. Again, we have no doubt this conversation was unwanted by the claimant. She was being criticised for her behaviour. However, again it did not actually have, and could not reasonably have had, the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant nor of violating her dignity. If it did cause any upset, it can have reasonably only been minor. It was a reasonable management interaction.
220. The purpose of the conversation was to prevent the spread of rumours and gossip between the shops and, we accept, for the protection of the claimant's partner about whom she sometimes spoke.
221. There is, in any event, no evidence to link this allegation to the claimant's sex in anyway at all. We found that the claimant was effectively singled out for this conversation. However, the reason for this was that she was the only peripatetic dispenser and had the most cause to be travelling between shops. The issue was therefore more relevant to her for this reason than any other employees.

**20/12/18 – accusing the claimant of lying**

222. We have found that Mr Bhandal did not accuse the claimant of lying or question whether she had her dispensing qualification, and nor did he offer to give the claimant her P45. For these reasons, this allegation of harassment is therefore not upheld.

**11/1/18 – accusing the claimant of lying, saying she will be dealt with**

223. We have found that Mr Bhandal did not accuse the claimant of lying or speak to her aggressively in this conversation. We found that he did believe the claimant about her journey but was irritated by the delay in her arrival time.

224. Again, we have no doubt this conversation was unwanted by the claimant. She was being criticised for her delay, which she felt was unjustified. However, again it did not actually have, and could not reasonably have had, the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant nor of violating her dignity. If it did cause any upset, it can have reasonably only been minor. It was a reasonable management interaction.

225. The purpose of the conversation was to establish where the claimant had been and to ensure that Ms Hussain could leave work on time.

226. Mr Bhandal's irritation does not meet the threshold for harassment. For these reasons, this allegation of harassment is therefore not upheld.

**14/1/19 – Mr Bhandal causing conflict between the claimant and Ms Clayton.**

227. We have found that this interaction did not happen in the way described by the claimant. In short, Mr Bhandal did not try to cause problems between the claimant and Ms Clayton. For this reason, this allegation of harassment is therefore not upheld.

**18/2/19 – accusing the claimant of lying, causing problems with Ms Clayton and accusing the claimant of having an affair**

228. We have found that this interaction did not happen in the way described by the claimant. In short, Mr Bhandal did not try to cause problems between the claimant and Ms Clayton and he did not accuse the claimant of lying or having an affair. For this reason, this allegation of harassment is therefore not upheld.

**4/3/19 – refusing the claimant time off and speaking aggressively on the telephone about a delivery**

229. The claimant was not actually refused time off. Ms Dewett told her the policy about providing an appointment card and then nothing further happened. We have found that Ms Dewett would have allowed the claimant time off had she provided the additional evidence but she did not do so before she went off sick. The restatement of the policy by Ms Dewett may have been unwanted from the claimant's perspective but it did not actually have, and could not reasonably have had, the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant nor of violating her dignity. If it did cause any upset, it can have reasonably only been minor. It was a reasonable management interaction.

230. In respect of the interaction about the delivery, we have found that Mr Bhandal was short with the claimant and did put the phone down on her.

231. We accept that this was unwanted conduct from the claimant's perspective. We think that it may well have actually had the effect of creating a hostile, degrading or humiliating environment for the claimant and could have violated her dignity from her perspective. We have found, however, that the claimant was under significant personal external stressors and further that she had not communicated the extent of her feelings to the respondent. Objectively, in our view, and in this context it was not reasonable for Mr Bhandal's actions to have such an extreme effect on the claimant. 232. Again, we think this was part and parcel of Mr Bhandal's short, brusque management style and in light of the claimant's ongoing views of her relationship with the respondent she did react badly to this interaction. However, the respondent cannot be held responsible for this reaction.
233. In any event, however, there is no evidence at all that Mr Bhandal's conduct was related to the claimant's sex. The reason for his irritation, in our view, was the fact that he had missed a delivery and he perceived the claimant to be at least partly responsible for this.
234. We, again, think that Mr Bhandal's behaviour fell short of best practice and putting the phone down was unreasonable. However, it does not amount to harassment.
235. For these reasons, the claimant's claim that she was subject to harassment related to sex are unsuccessful and are dismissed.

#### **Time limits**

236. The claimant's claims of harassment are significantly out of time. The last allegation was on 4 March 2019. Early conciliation ran from 16 September 2019 to 14 October 2019 and the claimant submitted her ET1 on 7 December 2019. The last date for bringing a claim of harassment was 3 June 2019. The claim is therefore 6 months out of time.
237. The claimant did not provide any good reason for the delay in bringing a claim except that she was seeking to resolve matters without the need to do so. While the tribunal does encourage settlement and resolution that is not, of itself, a good reason to delay bringing proceedings. The claimant had, before March 11 2019, obtained advice about her employment rights and by 16 April 2019 had expressed a willingness to start proceedings.
238. The burden is on the claimant to show that it is just and equitable to extend time. Although we recognise that the claimant was not professionally represented, she did agree that she could have brought proceedings earlier and has not provided any good reason why we should extend time.
239. A significant period of time has elapsed since the events in question and that, as has been seen, has caused evidential difficulties for both parties. However, the claimant's claim for unfair dismissal is in time and the same evidence would be required to be heard for both claims and no prejudice is caused to the respondent in being required to address the same allegations under the guise of a harassment claim as an unfair dismissal claim. We heard the evidence and have come to a conclusion on it. In all of those

circumstances, we find that it is just and equitable to extend time for the claimant to bring her claim and time is extended to 7 December 2019.

**Constructive unfair dismissal**

240. The claimant's claim that she was constructively unfairly dismissed is based on the same allegations as set out above plus two further allegations relating to the alleged conduct of Mr Singh.

241. We have found that the following allegations effectively did not happen:

241.1. The comment on 20/12/18 by Mr Bhandal "oh she's here ready to start her pity party early"

241.2. The comment on 20/12/18 by Mr Bhandal that the claimant was lying, questioning the claimant's dispensing qualification and offering her her P45

241.3. The alleged actions of Mr Bhandal on 14/1/19 causing conflict between the claimant and Ms Clayton resulting in Ms Clayton threatening to hit the claimant

241.4. The alleged actions of Mr Bhandal on 18/2/19 accusing the claimant of lying, accusing her of having an affair and of seeking to cause trouble between her and Ms Clayton

242. It follows, therefore, that none of these allegations amounted to or contributed to any breach of the implied term of trust and confidence between the claimant and the respondent.

243. In respect of the remaining incidents involving Mr Bhandal, **17/12/18 telephone conversation.**

244. Mr Bhandal did ask the claimant who had given her authority to do the time sheets. However, we have found that he did not behave aggressively or even unreasonably as set out above.

**19/12/18 telephone conversation.**

245. We have found that Mr Bhandal did say "when you pay my wages then you can question me". We have found that Mr Bhandal did not behave in an aggressive manner in this conversation. We have found that he was short with the claimant and probably irritated. The claimant perceived this as unreasonable behaviour but objectively speaking, in our view, it was not.

**20/12/18 "needed to keep my mouth shut"**

246. We have found that this conversation did not happen in the way described by the claimant. There was a conversation in which Mr Bhandal told or asked the claimant not to spread gossip or tittle tattle between the shops. However, he did not behave aggressively or unreasonably.

247. Again, we have no doubt this conversation was unwanted by the claimant. She was being criticised for her behaviour. However, it was a reasonable management interaction.

248. The purpose of the conversation was to prevent the spread of rumours and gossip between the shops and, we accept, for the protection of the claimant's partner about whom she sometimes spoke.

249. As stated above, the claimant was effectively singled out for this conversation. However, the reason for this was that she was the only peripatetic dispenser and had the most cause to be travelling between shops. The issue was therefore more relevant to her for this reason than any other employees.

**11/1/18 – accusing the claimant of lying, saying she will be dealt with**

250. We have found that Mr Bhandal did not accuse the claimant of lying or speak to her aggressively in this conversation. We found that he did believe the claimant about her journey but was irritated by the delay.

251. Again, we have no doubt this conversation was unwanted by the claimant. She was being criticised for her delay which she felt was unjustified. However, ultimately we found that Mr Bhandal did believe the claimant and no further action was taken.

252. The purpose of the conversation was to establish where the claimant had been and to ensure that Ms Hussein could leave work on time. It was reasonable for Mr Bhandal to ask this questions as Ms Hussein's work finished at 4pm and he needed to ensure that cover would be provided.

**4/3/19 – refusing the claimant time off and speaking aggressively on the telephone about a delivery**

253. The claimant was not actually refused time off. Ms Dewett told her the policy about providing an appointment card and then nothing further happened. We have found that Ms Dewett would have allowed the claimant time off had she provided the additional evidence but she did not do so before she went off sick. The restatement of the policy by Ms Dewett may have been unwanted from the claimant's perspective but it was a reasonable management interaction. It was reasonable for Ms Dewett to check the position with Mr Bhandal.

254. In respect of the interaction about the delivery, we have found that Mr Bhandal was short with the claimant and did put the phone down on her.

255. We accept that this was unwanted conduct from the claimant's perspective and it was unreasonable behaviour on the part of Mr Bhandal. We accept that the claimant was upset by this. We have found, however, that the claimant was under significant personal external stressors and further that she had not communicated the extent of her feelings to the respondent. Objectively, in our view, and in this context it was not reasonable for Mr Bhandal's actions to have such an extreme effect on the claimant. 256. Again, we think this was part and parcel of Mr Bhandal's short, brusque management style and in light of the claimant's ongoing views of her relationship with the respondent she did react badly to this interaction. However, the respondent cannot be held responsible for the claimant's reaction.

257. We reiterate that Mr Bhandal's behaviour fell short of best practice, and putting the phone down was unreasonable.

258. The additional incidents relied on by the claimant do not involve Mr Bhandal, only Mr Singh.

**5/3/19 – Mr Singh accusing the claimant of asking Ms Dewett to lie for her**

259. Mr Singh did accuse the claimant of asking Ms Dewett to lie for him. The reason for this was because he reasonably believed that the claimant had asked Ms Dewett not to disclose to him her reference request. It may have been intemperate to accuse the claimant of lying, but Mr Singh did genuinely and reasonably believe that the claimant was being dishonest in her dealings with the respondent and, in broad terms, Mr Singh's accusation was justified.

260. In the event, Mr Singh took steps to ensure that a reference was provided and we found that Mr Singh bore no ill will to the claimant for looking for alternative employment.

**8/3/19 – failing to support the claimant's concerns about Mr Bhandal, the comment that he hoped the hospital would take the claimant and not expressing gratitude for the claimant's assistance.**

261. Effectively, we have found that Mr Singh acted reasonably in these exchanges. There is nothing that we have found that could amount to even unreasonable conduct on the part of Mr Singh on this day. It was, in fact, difficult to draw out from the table of allegations the precise nature of the claimant's complaint about Mr Singh on that day. We concluded that it was a perception of a refusal to allow the claimant to not have to work at Moxley and then an impression that Mr Singh hoped the claimant would go to work at the hospital.

262. Our findings about this conversation are set out above. In our view, Mr Singh acted reasonably. He offered to speak to Mr Bhandal and he gave appropriate reasons for not being able to agree there and then that the claimant could change her working arrangements to avoid Moxley.

**Breach of the implied term**

263. Considering, then, the question of whether these events cumulatively, concluding on 8 March 2019, amounted to a breach of the implied term of trust and confidence, we find that they do not. It should be clear from our findings that the respondent did not conduct itself in a way either likely or calculated to destroy or seriously damage the relationship of trust and confidence between it and the claimant. The respondent's actions amounted, in reality, to no more than robust management within a busy pharmacy.

264. We think that Mr Bhandal could have been a better manager. He could have been more sensitive to the claimant, but the claimant did not help herself by not being open with everyone about the problems she perceived herself as having. Objectively considered, the respondent acted reasonably almost all of the time. The only unreasonable act was Mr Bhandal putting the phone down on the claimant. This is not good management, but that incident is not enough for the claimant to treat the contract of employment as repudiated.

265. For these reasons, therefore, we find that the claimant was not dismissed and her claim for unfair dismissal is unsuccessful.

266. It is not strictly necessary to consider the issue of waiver or affirmation. However, considering all the circumstances it was clear by 17 June 2019 at the very latest that the claimant had no intention of returning to work. Throughout the following 2 months she sought to negotiate a mutually satisfactory exit from the respondent. Although this delay was predominantly for the claimant's own purposes, we do not consider that throughout this period she was acting in a way that would suggest she was affirming the contract; quite the opposite. We do not criticise the claimant for wanting to make financial provision for herself or seeking to resolve matters more amicably. We also do not think that the fact that the claimant only resigned once she believed that settlement had been achieved is material. In our view, from the claimant's perspective, her relationship with the respondent was over by the time of the grievance hearing, if not before.
267. Had we found that the respondent was in repudiatory breach of contract, the delay in resignation would not have amounted to an affirmation of the contract. However, the fact remains that in our judgment the respondent was not in fundamental breach of contract so that the claimant's claim for unfair dismissal fails in any event.

Employment Judge Miller

18 May 2021