



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4105192/2016

Held in Glasgow on 15 and 16 November 2017 and 11, 12, 13 and 28 June
2018

(Members' meeting)

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Employment Judge: Mary Kearns
Members: Mrs J Ward
Mr D Frew

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Miss K Wojcik

Claimant
Represented by:-
Mr P McGowan -
Solicitor

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South City Laundry Limited

Respondent
Represented by:
Mr N Yousaf
Respondent's Accountant

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Employment Tribunal was that:

(1) the claims of harassment contrary to section 26 Equality Act 2010 and/or sex discrimination contrary to section 13 are dismissed.

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(2) The respondent is ordered to pay to the claimant the sum of **£50 (Fifty Pounds)** in holiday pay accrued but untaken at the termination of her employment.

E.T. Z4 (WR)

REASONS

1. The claimant, who is 27 years of age, was employed by the respondent as a laundry assistant for approximately 12 months. She resigned on 6 May 2016. The claimant claims that she was sexually harassed by the director of her employer, Mr Abbas Zaman contrary to Section 26(1) or alternatively Section 26(2) Equality Act 2010 ("EqA") or that she was treated less favourably than a hypothetical male comparator would have been by reason of her sex contrary to Section 13 EqA. She also claims that she is owed holiday pay.

10 Issues

2. The parties had prepared an agreed list of issues for determination by the Tribunal as follows:

15 (i) During her employment with the respondent, was the claimant subjected to treatment that was less favourable in the workplace than would have been accorded a male counterpart?

20 (ii) Was the respondent proprietor Mr Abbas Zaman responsible for the above treatment?

(iii) If so, what was the specific nature of the above treatment?

(iv) When and in what circumstances did the above treatment occur?

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(v) Did the claimant intimate to colleagues [or] friends her concerns at the above treatment?

(vi) If so, when did she do so?

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(vii) Did the above treatment amount to direct discrimination by transgressing the protected characteristic relating to the sex of the claimant?

- (viii) Alternatively, has the claimant fabricated allegations of the above nature relating to the respondent proprietor?
- (ix) If the respondent proprietor conducted himself in the manner alleged by the claimant, did this conduct amount to harassment?
- 5 (x) What was the nature of the above conduct?
- (xi) Did the claimant take steps to intimate this conduct to colleagues or friends?
- (xii) If so, when did she do so?
- (xiii) Alternatively, did the claimant fabricate allegations of the above nature relating to the respondent proprietor?
- 10 (xiv) In this respect, is the claimant entitled to rely on the protected characteristic of her sex on the basis she believes a male counterpart would not have been subject to such treatment?
- (xv) Did the above conduct violate the dignity of the claimant by unwanted attention she received?
- 15 (xvi) Did the alleged above conduct intim[id]ate the claimant and lead to her becoming depressed?
- (xvii) Was the above conduct related to the gender of the claimant as she is female?
- (xviii) In light of the above, is the claimant entitled to remedy by way of
20 compensation from the respondent?
- (xix) Was the claimant paid holiday pay by the claimant at any time?
- (xx) In any event, does the respondent owe the claimant holiday pay?
- (xxi) Is the claimant entitled to compensation from the respondent in respect of unpaid holiday pay?

Evidence

3. The parties lodged a joint bundle of documents and referred to them by page number. Two other bundles were lodged subsequently; a supplementary claimant bundle and a further bundle containing transcripts of social media
5 conversations between the claimant and Mr Zaman. The claimant had originally produced extracts from these conversations, but the Tribunal were concerned that it would not be possible to make a proper assessment of them without the rest of the conversation of which they were a part; for example, in order to assess a message sent by Mr Zaman to the claimant, it was necessary to see
10 the message from the claimant to which he was replying.
4. The claimant gave evidence on her own behalf and called her friend Mrs Adrianna Dar. Mr Zaman gave evidence for the respondent and called Mr Anton Sawyers. Some of the evidence was in dispute and we explain how we resolved any conflicts below.

15 Findings in Fact

5. The following facts were admitted or found to be proved:-
6. The respondent is a limited company providing ironing and laundry services. Its director and principal manager is Mr Abbas Zaman. The claimant worked for the respondent as a laundry assistant from 20 April 2015 until she resigned on
20 6 May 2016. Her normal hours were 16 per week. Her normal take home pay was £107 per week. On 10 February 2015, prior to starting work with the respondent the claimant had been diagnosed with depression (J65). She had consulted her doctor on that date complaining of low mood and relationship problems, following a break up in 2014 with her unborn baby's father. She also
25 reported experiencing employment, housing and financial problems.
7. In mid - April 2015 Mr Zaman was approached on the claimant's behalf by his friend, Ahmed who owns the barber shop across the road from the respondent's laundry. Ahmed told Mr Zaman that the claimant was his wife's friend and that she was in a difficult situation, having broken up with the father

of her child; that her benefits had been suspended and that she needed a job working at least 16 hours a week in order to have her benefits reinstated.

Although Mr Zaman did not need anyone at the laundry, he did require staff at another premises, Clyde Ironing. Through Ahmed he arranged to interview the claimant and offered her employment. The claimant started work on 20 April 2015. Mr Zaman was conscious of her situation and was friendly and supportive towards her.

8. The claimant's mother visited her from Poland in the second week of her employment with the respondent around the last week in April 2015. The claimant was very frank and open about her personal situation with her new work colleagues, including Mr Zaman. She discussed her problems at some length in the workplace. She had advised Mr Zaman of the financial problems she was having because her benefits had been stopped. She had told him that she was entitled to a substantial back payment of benefits but that it had not yet been paid. Meanwhile, she did not have money for her mother's visit. Mr Zaman offered to collect the claimant's mother from the airport along with the claimant and her daughter, Sana. The offer was accepted by the claimant and much appreciated by her mother. After the claimant, her mother and Sana had arrived back at her flat, Mr Zaman left. On his way out, he handed the claimant an envelope containing £200. He told the claimant it was to help her financially and not to worry about paying it back until later. The claimant accepted the money. She borrowed money from time to time from her mother and from her friend Adrianna Dar. The claimant was close to both her mother and Mrs Dar and she discussed everything with them.

9. At the end of the claimant's mother's visit Mr Zaman took her back to the airport. On that occasion his partner, Luvleen Atwal and son Adam were also present along with the claimant, her mother and Sana.

10. Shortly after the claimant had started work at the laundry she had asked Mr Zaman if he knew of any nice places to go on the south side of Glasgow. He mentioned three parks including Pollok Park where he said he often went with his partner and son. They discussed a possible visit to Pollok Park with their

respective partners and children. At 12:03 on or around Sunday 10 May 2015 Mr Zaman sent the claimant a text (J24) in the following terms: *"No problem, that's good for me if you can wait till tomorrow, I am in the east end shop today, it's very quiet and it's terrible weather today, I hope Sana is happy, when the weather is better maybe I could take you and sana to Pollok country park, it's beautiful there,"* The text was a response to a message from the claimant which was not produced to the Tribunal. The claimant replied to the text at 12:51 on the same date (J25). Her reply was not produced.

11. On or around 6 July 2015 Mr Zaman had occasion to speak to the claimant about her work. He was unhappy about the amount of time the claimant was spending on her phone whilst at work. He also had a concern about garments being correctly loaded into the machine, put on at the right temperature and correctly folded. He had shown the claimant on numerous occasions how to change a till roll, but she was still summoning him to do it. Finally, Mr Zaman was unhappy about the way the claimant had spoken to him when he had tried to correct her. The conversation took place in a car park outside the claimant's home when Mr Zaman delivered to the claimant a payslip she had requested. Later the claimant discussed it on social media (in Polish) with her friend and colleague Weronika Kolodziejek ("WK") in the following terms: *"C: I got told off by Abby that I am aggressive whenever someone cautions me WK: That what? C: Apparently I am aggressive whenever he cautions me; that everyone says 'thanks Abby' and I am the only one saying that I know how to do it. WK: I understood that only what wrong/bad thing did you do? C: And that I was rude when I was leaving he said see you tomorrow and I told him not to forget pay slip because he promised to bring it and even [Luvleen] said that it was rude. I cannot remind him about anything because it is rude. He brought me pay slip and lashed out at me immediately. WK: Because they are taught that you have to be grateful for everything. Don't worry. But was he pissed off when he told you that? C: I felt strange when he told me off like that in front of my house 😞. WK: Maybe he had a bad day. C: He went on at me so much that I felt like crying and then a sudden change because he helps me out that I am not left all*

alone here and that is why I am aggressive. WK: He sometimes like to talk for the sake of talking and complain. C: But he went overboard a bit. He saw me bursting into tears. WK: Yeah so do not take it too personally. C: And tells me not to be ashamed of crying. But I was just sad when first he went on at me like
5 that 'cause he turns to me that everyone has got it tough in life, not only me. WK: I understand you. I don't know why he said that but you are not the only one Abby asks to pay attention so do not worry. C: But I would never in my life thought of myself as aggressive cause he shows me something for a hundredth time and I receive it (= take it) as a form of attack. WK Because you are not and
10 that is why I was surprised he said that. C: I don't know why he is like that. I haven't done anything to him. I do not ask him repeatedly for money. I keep telling him I can work more because of my situation. WK: As for me it is silly that he will not let you work on Saturdays so how would you gain more experience. C: I have got an impression that he doesn't want me there at all.
15 That he would prefer someone else." Ms Kolodziejek told the claimant that it was not about that and that from her experience and that of Monia Gefert, (another Polish member of staff) Mr Zaman got tired of listening to people's problems and so she and Monia had stopped sharing their personal problems with him (although they had both initially done so). She advised the claimant
20 "Kasia start telling him less and it will be alright about your private life and problems... .Just treat Abby as a boss that's all." The claimant said that that was her plan to 'keep him very much at bay'.

12. In or around mid - July 2015 the claimant transferred (with her agreement) from the South City Laundry to work at another of the respondent's premises, Clyde
25 Ironing. The workforce at that shop were mostly Polish females. Clyde Ironing was less convenient for the claimant as she had to catch a bus there instead of walking 10 minutes from her home. However, that was where Mr Zaman needed staff.

13. On five occasions between 17 July 2015 and 6 May 2016 the claimant
30 requested Mr Zaman to drop her wages in to her at her home and he did so. For example, on Saturday 15 August 2015 at 15:46 the claimant texted: "Hi

Abby. *Can you dropp later wages for me if you get a while?*” Mr Zaman replied: *“Yes I’ll pop over when I finish at south city.”* The claimant responded: *“Thank you. Just let me know because I gonna now pick up Sana and in 1h will be in home.”* Again, on Saturday 5 September 2015 at 18:35 the claimant texted:
5 *“can u dropp my wages today if is possible. Thx.”* Mr Zaman replied: *“sorry Kasia, I’ll drop them off Just after eight o’clock. X”* The claimant replied: *“ok thank you .I’and* Mr Zaman responded: *“See you shortly”*. Although Mr Zaman put X at the end of this message, the claimant did not know at that time what this meant. She only found out in 2017. At the time, the claimant was happy
10 with the message and the thought that she would receive her wages and was not affected in any way by the ‘X’. The social media conversations the claimant had had with Mr Zaman to this point and thereafter mostly concerned work matters and were usually initiated by the claimant. Mr Zaman’s tone was polite, respectful and business-like. Social media conversations between the claimant
15 and Mr Zaman concerning personal matters were rare, and when they happened, they were initiated by the claimant.

14. On Saturday 25 July 2015 the claimant was supposed to finish at 1pm. However, there had been a misunderstanding and Mr Zaman thought she was working until 4pm. The claimant’s friend Adrianna Dar was looking after Sana
20 and the claimant telephoned her to see if she could keep her until 4pm. Mrs Dar said she was could not do so as she had to be somewhere at 3pm. Mr Zaman was unable to cover the remainder of the shift because he had to go somewhere so he offered to pick up Sana from Mrs Oar’s house and bring her to the laundry if the claimant would agree to stay until 4pm. The claimant
25 agreed and arranged for Mr Zaman to go to her flat and pick up Sana’s car seat and thereafter, to go to Mrs Dar’s house, collect Sana and bring her to the laundry. At 12:40 the claimant told Weronika Kolodziejek about the unfolding plan on social media (J106): *“Abby has done me in. I am stuck till 4 and he
30 picks up Sana. What a turn of events. To add to it he has to enter my flat to pick up a baby seat. Think I’m gonna bow down or something ...”* Weronika said: *“Wait Kasia I don’t get it. You were supposed to be on till 4. Does it mean*

you finished earlier?" The claimant told her it was meant to be 1pm and that she was sitting with Sana and Mr Zaman's son Adam.

15. On one occasion on 25 August 2015, when the claimant was working at Clyde Ironing she missed her bus and was concerned about incurring extra charges at her daughter's nursery. Mr Zaman offered to drive her to the nursery to collect Sana. When they arrived at the nursery Mr Zaman entered the premises with the claimant. The nursery staff explained that their rule was that only relatives were allowed into the nursery. At some point on the same day the claimant and Mr Zaman shared personal information about their previous relationships.

16. At 22:36 on 25 August 2015 (J29 - 30) the claimant ("C") discussed her conversation with Mr Zaman ("Abby") earlier that day on social media with her friend and colleague Monia Gefert ("MG") in the following terms:

C: *"Abby dropped me off at my house today.*

15 MG: *Big deal, he's sat with me for two hours.*

C: *Glad.*

C: *He was telling me about his past. He's knocked up his girlfriend.*

MG: *Yeah.*

20 C: *He was asking how it was with me and Sana's father and he was telling his story. At the end that's it. He was at the nursery with me to pick up Sana. He even entered inside. I had a session yesterday. I am waiting for photos. Work tomorrow. Off Thursday. Friday at work and weekend off finally.*

MG: *OK kisses. "*

17. On Thursday 24 September 2015 the claimant sent Mr Zaman a text to say "Eid Mubarak Abby for you and your family". Mr Zaman replied: "eid Mubarak Kasia to you and Sana, and your mum and her partner.. "

18. On Saturday 26 September 2015 the claimant held a birthday party for her daughter Sana. She had invited around 30 people, including Weronica Kolodziejek, who did not attend because she forgot. She had also invited Mr Zaman who came, along with his partner Luvleen Atwal and son Adam. The claimant told Ms Kolodziejek on social media (J129) that she had invited Mr Zaman "as per my mother's wish for all the times he was helping us." She went on: "It doesn't behove me not to invite him. Especially that he was the one with catering." Ms Kolodziejek replied: "Nice of him." The claimant messaged her back: "I wonder whether he will come with a girl." Ms Kolodziejek responded: "He will definitely come. They are showing up together nowadays to parties. " At 13:04 on the day of the party the claimant sent Mr Zaman a text saying: "/Just remaind [sic] about Sana's birthday at 4.30pm. See you shortly. "

19. On five occasions between 17 July 2015 and 6 May 2016, Mr Zaman ended a message to the claimant with a single "x". The claimant did not know until 2017 that "x" signified a kiss. Aside from the message on 5 September 2015 set out in paragraph 13 above, and the message on 30 October 2015 in paragraph 24 below, the relevant messages were as follows: On Tuesday 28 July 2015 at 10:32 Mr Zaman sent the claimant the following message: "Hello Kasia, is it possible you can work again tomorrow (Wednesday) we are so busy in both shops? X". On Thursday 3 September 2015 at 14:39 the claimant texted Mr Zaman to say: "Hi Abby. We have stuff for wash and dry to get a ready tomorrow afternoon. One guy came to ask about alterations. He exactly wants cover a old name on from side and was asked that we can do this for him." Mr Zaman replied: "I'm coming shortly X". On Friday 6 November 2015 the claimant texted Mr Zaman at 17:33 to say: "we get some stuff to pick up for today yet. Miss Rodgers." Mr Zaman replied at 17:44: "No problem Kasia, I will pick up. X"

20. At some point in mid-October 2015 the claimant told Mr Zaman that it was a good day for her because her benefit arrears had been paid. This prompted Mr Zaman to ask the claimant if she could please repay the £200 he had given her a few months before. He noticed that when he said this her face fell.

21. On or about 17 October 2015 the claimant's wages were £11 short. She queried this with Mr Zaman by text (J80). He replied to her: *"My mistake and / apologise, Kasia I need you to try and pay back this 200 pounds I gave you a few months ago. I think if you pay this back at ten pounds a week is probably easier for you than in one payment?"* The claimant replied: *7 will give you £189 on Monday. Thanks."* Mr Zaman replied: *"No problem Kasia but only if you can afford it thanks"* The next day the claimant texted Mr Zaman: *"Hi Abby I have money to give you back with me. Could you collect it?"* Mr Zaman responded: *'Til be in shortly Kasia."*The claimant repaid the money to Mr Zaman.
- 10 22. On Friday 30 October 2015 the claimant contacted Mr Zaman (A7) in the following terms to ask whether he would be able to employ her best friend Alina Szewczyk: *"Hi Abby, Tm writing with a special 'case'. I have one friend who is looking for work. She is polish right now and single mother after hard situation with husband. She need a help because if she doesn't get any work she has to go back to Poland even if she been here 5 years. I spoke with her even asked about afternoon time. If is any chance to help her with a job just let me know. She is 32 years old and has 3 years old son."* Mr Zaman interviewed and subsequently employed Alina Szewczyk on the claimant's recommendation.
- 15 23. Later, on 30 October 2015 at 18:33 Mr Zaman sent a message to the claimant saying: *"Kasia you left iron switched on and also left the advertising board outside the shop, take your time when you leave please."* The claimant replied: *"Oh sorry I been really in rush. My apologies. "*
- 20 24. At 22:13 that evening the claimant texted Mr Zaman in the following terms: *"sorry Abby that I am disturbing. I am broken. I am getting messages where they scaring me that social service will take Sana because I am mentally ill. That they will go there and say something in revjejnge. I am really scared that after social services come for Sana."*
- 25 25. Mr Zaman replied at 22:17: *"Kasia don't listen to what those poisoned people are saying, I am your boss but also your friend and I will stand by you and defend you when I have to, nobody will take Sana away from you, they are*
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nasty people, one minute they are your best friend and the next minute they want to cause you harm and pain, and don't worry you are not disturbing me, I am alone at home watching shit telly. X". The claimant messaged back at 22:21: *7 got a lot of messages from them. I blocked them on facebook after they start sending messages on my phone and when I didn't reply they start making me scard. [sic] They exactly know that Sana is everything for me so attack in this way making me broken." Mr Zaman replied at 22:30: "If anything happens Kasia I will help you, I have a friend of a friend who works for social work department in a very high position, so social work department will NOT take sana anywhere, they are only trying to frighten you so that you will do something stupid.a.[sic]. Keep calm and be strong, don't show any weakness to these people and then they will become disturbed."

26. The claimant responded at 22:36: "Thank you Abby. Your message make me better. I don't see life without Sana. Can't believe that people doing this kind of things to push me down. It's not making anyone happy. Hope so God will judge them." Mr Zaman replied: "You are a bloody great mother Kasia, Sana is not an easy child to look after, she has strange sleeping times, sometimes she doesn't eat her food, she needs a lot of attention from her mother, a lot of mothers can't deal with their child when the child behaves like this, you've been through a lot in the past year, you are stronger than most women I know.."

27. On Thursday 12 November 2015 at 17:17 the claimant texted Mr Zaman to say: 7 leave some sweets for the south city laundry works. It's nothing special but hope so you will enjoy it. Polish tradition." Mr Zaman replied: "Lovely I'll collect it." On Thursday 24 November 2015 the claimant texted Mr Zaman to say there was no ironing, so they were cleaning the shop. Mr Zaman replied: "Don't worry if there is no ironing... If there is any Clyde ironing when I come tonight for you. Also happy birthday Kasia, you didn't tell us when your birthday was." The claimant replied: "Thank you Abby for wishes. ;)."

28. On Friday 11 December 2015 the claimant texted Mr Zaman at 15:49 (A10) saying: "Abby do u come to Clyde ironing today yet? I just need a small wages to buy a food on weekend if can get ;)."

Mr Zaman replied: "I can't come to

Clyde ironing till after six o'clock, I can leave it there then..." The claimant replied: *"Thanks Everything ok? Girls are worrying about you."* Mr Zaman responded: *'Everything is fine thanks Kasia, South city laundry is busy, I am doing okay, no need to worry but thank you.'*

5 29. On Tuesday 22 December 2015 the claimant texted Mr Zaman to say: *"Hi Abby can you drop of my wages to my flat after? I have no chance to south city morning time."*

10 30. Mr Zaman's father died on 29 December 2015 and he had to make a number of visits to Pakistan following this. He also had some health issues and a car accident.

15 31. The claimant asked for her wages to be dropped to her again on Wednesday 30 December 2015. Mr Zaman responded: *"Kasia I don't have time to drop them off to you. The best I can do is leave the wages at South city laundry. On Thursday 31 December the claimant texted Mr Zaman to say that she had been to the [South City] laundry but her wages were not there."* Mr Zaman replied: *"Luvleen has your wages. She is dropping me at the airport just now, she will phone you in about an hour and bring your wages to you"* (Luvleen is Mr Zaman's partner.)

20 32. On Saturday 9 January 2016 at 10:52 the claimant texted Mr Zaman to say: *"Hi Abby. Sana have a 38.5 temperature and I can't move from home. Can you drop me a wages at home? I am without money."* Mr Zaman replied: *"I will drop your wages off about 2 o'clock."* On Tuesday 2 February the claimant asked Mr Zaman to drop her wages to Clyde Ironing.

25 33. There had been some problems with the claimant's application to her work which were on-going. She was not using the vacuum pedal on the ironing machine and this had caused condensation. The machine had fused and had had to be fixed on two occasions. The claimant's colleagues had communicated their unhappiness to Mr Zaman about the amount of time the claimant was spending on her phone at work and Mr Zaman had spoken to the

claimant about it a number of times. The claimant had also become friendly with the young man in the shop across the road and she went over around twice a week to get change or for some other reason and stayed there chatting to him when she should have been working.

- 5 34. On Saturday 20 February 2016 at 14:45 the claimant texted Mr Zaman to tell him she had forgotten to switch off the heater. When he had not texted back by 16:27 she sent him a text asking him to call her. On Thursday 3 March 2016 the claimant texted Mr Zaman and asked: *I have request. Is possible to get wages today? Need because my mother is coming at morning tomorrow. "*
- 10 35. On Sunday 27 March 2016 at 17:51 the claimant texted Mr Zaman to say: *"Hi Abby I hope so your family in Pakistan are safe. I heard about Bomb attack. It's really sad."*
- 15 36. On 11 April 2016 Mr Zaman telephoned the claimant at the shop to discuss some mistakes made by the Clyde Ironing staff and other problems which had been brought to his attention by customers. He told the claimant he was unhappy about this, but that it was not personal to her alone. He said that customers had not been able to make themselves understood on the phone. After the call the claimant texted Michalina Gefeet on social media that evening (J44). She told Michalina: *"Abby has pissed me off... I had to listen how he's not happy with us, and that he will not take any of us to South as we make mistakes every week, and there are girls on South perfect. That lipstick and diamond are our fault, no respect for the client. That the clients are complaining every week, that we don't understand them over the phone".*
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- 25 37. On the same date the claimant texted her friend and colleague Alina Szewczyk (J46). She asked Alina: *"Why has he called me if you told him I am picking up the money? Because he has an issue with me for sure."* Alina replied: *"No Kasia, he's giving you a hard time as you know English and you have close relationship."* The claimant stated in a further text to Alina the next day that Mr Zaman was *"always angry with me about something. He's not happy about*
- 30 *Sana being not well. "*

38. By the end of April, shortly before the claimant resigned from her job with the respondent she was regularly going to the shop across the road around twice a week to get change. The claimant would stay and chat to the young man in his mid-twenties who worked in the shop, sometimes drinking fizzy drinks and eating chocolate, leaving the Clyde Ironing shop unattended meantime. Mr Zaman eventually spoke to the man in the shop about it. He told him: *"If she comes over here please don't let her sit and chat. She has a job to do."* The claimant sent messages to Ms Kolodziejek saying that Mr Zaman was 'bad-mouthing' her to the 'boy who works across the street'.
39. Mr Zaman had been very kind and friendly to the claimant at the beginning of her employment. As time went on he became less friendly and more formal. The reason for his less friendly demeanour toward the claimant from around July 2015 onward was that there were unresolved and on-going issues with her work. The claimant was spending time on her phone and talking to colleagues at length when she should have been working. Mr Zaman had concerns about her performance and was unhappy with her response to him raising these. He had had to show her numerous times how to do certain things, such as change the till roll or work the ironing machine correctly; and in early 2016 she had begun leaving the shop unattended around twice a week for periods while she chatted to the man who worked in the shop across the road.
40. The respondent's holiday year mirrors the tax year and runs from 6 April to 5 April. The claimant's final pay slip was not in the bundle. The claimant took the following holidays: 5 to 15 June 2015 and 30 November to 11 December 2015. The relevant payslips were not produced.
41. The claimant resigned from the respondent's employment on Friday 6 May 2016. She did not give notice. She told Mr Zaman that she had a new job to go to starting Monday 9 May 2016. At the time of her resignation the claimant had accrued one month's allowance of holiday pay for the holiday year which had started on 6 April 2016. Her entitlement to holiday pay accrued but untaken as at 6 May 2016 was £49.93.

Observations on the Evidence

42. There were a number of conflicts between the evidence of the claimant and that of Mr Zaman. We have explained in the decision section below how specific conflicts were resolved. However, we have a number of general
5 observations to make about the evidence. The full hearing in this case began in November 2017. The claimant had produced for that hearing a number of extracts from social media conversations she had had with Mr Zaman and with colleagues. Her conversations with her colleagues were in Polish and had not been translated. The interpreter provided by HMCTS translated them, but this
10 caused delay, loss of court time and a concern about lack of fair notice to the respondent. Mr Zaman does not speak Polish and was therefore unaware of the content of the messages until they were translated on the morning of the hearing.

43. The claimant had lodged screen shots of extracts from her social media
15 conversations with Mr Zaman. The claimant started her evidence with reference to the bundle of documents containing these extracts. As the hearing progressed, it became clear that although the claimant had lodged messages from Mr Zaman to herself, she had not lodged the messages she had sent him to which they were replies. Thus, the bundle contained messages which were
20 completely out of context. This caused a situation where the parties were clearly not, as far as practicable on an equal footing as referred to in the overriding objective. Furthermore, the Tribunal was becoming concerned that it would not be possible to make a proper assessment of the social media evidence if presented with small extracts from a conversation out of context.
25 The matter was raised with parties' representatives and Mr McGowan undertook to make available a full transcript of all conversations relied upon. The hearing was adjourned and resumed some months later in June 2018. At this time, the claimant lodged a fuller transcript of her social media conversations with Mr Zaman from 17 July 2015 to 23 May 2016 (A1 - 20). It
30 was unclear why the earlier messages were not produced, though the claimant did say that she was unable to produce her own part of the correspondence of

which Mr Zaman's text of 10 May 2015 was part because she had given her mother her phone and it had been wiped. The Tribunal noted that the claimant was emailing phone messages to her solicitor as early as 2 September 2016 (J32), though it may be that the earlier messages had already been wiped at that stage.

44. In any event, because of the above sequence of events, the claimant had begun her evidence without reference to the fuller transcript. Once the fuller transcript was produced, the claimant was given an opportunity to testify about it. With regard to Mr Zaman's messages to the claimant on the late evening of 30 October 2015 (paragraphs 25 - 6 above), the first time the claimant was asked about these messages in evidence in chief Mr McGowan asked her: *"Did you ask Mr Zaman for his help?"* The claimant replied *"/Vo"*. Mr McGowan asked: *"How did it come about?"* The claimant replied: *"Because he saw and heard about my problem at work"* In other words, before her own half of the conversation comprising her preceding messages was produced by her, her evidence was that Mr Zaman had sent his own messages on the evening of 30 October 2015 because he had seen and heard about the claimant's problems at work. Mr McGowan pointed to the further texts on the matter by Mr Zaman at J38 and 40, (which had been produced without the claimant's own intervening messages). He suggested to her that these were 'strong words'. The claimant agreed and said: *"They were words that would maybe come from a person that's truly my friend."* Mr McGowan asked her whether she had a close relationship with Mr Zaman and she said *"No"*. He asked: *"If not, why were these offers of help coming to you?"* She replied: *"It's difficult to say why"* Mr McGowan asked: *"What's your impression of why these offers of help were made?"* She responded: *"As I mentioned before, I might have been treated exceptionally to the other workers."* Despite multiple opportunities to do so she did not mention that she had initiated the whole conversation by sending Mr Zaman a message at 22:13 in the evening saying that she was "broken" and "really scared". Her earlier evidence supported her narrative that Mr Zaman was interfering uninvited in her private life, but that evidence was essentially misleading. In her evidence post-transcript, she accepted that she had sent the

messages from 22:13 onwards but claimed that she had done so in order to explain why she had left the iron on. The time difference and content of the messages do not suggest that was her main concern and we considered that explanation disingenuous.

5 45. Similarly, the ET1 alleges that in April, May and June 2015 Mr Zaman made a point of *“unnecessarily delivering her wages to C at her home.”* Pre-transcript the claimant testified: *“Mostly it happened that Abby dropped off my wages at my home. At the beginning it was every fortnight during the first three months of my employment. [After that] I started picking up my wages during my day off or*
10 *when I was next in.”* The fuller transcript does not cover the first three months of the claimant’s employment. She did not produce a transcript for that period. The transcript she did produce does, however, reveal that on a number of occasions between 17 July 2015 and May 2016 the claimant specifically asked Mr Zaman to bring her wages to her home. Thus, whilst it is correct that Mr
15 Zaman occasionally dropped wages to the claimant at her home, it would appear that he was doing so at her request rather than “unnecessarily” on his own initiative as she had claimed. These points reflected badly on the claimant’s credibility.

20 46. With regard to the invitation to Pollok Park on 10 May 2015, it is clear that the claimant initiated the conversation and that her own messages are missing. In the circumstances, we did not feel able to draw any conclusion from Mr Zaman’s message other than that it was a friendly gesture by him. We accepted his evidence about the discussions that preceded his message.

25 47. The claimant testified that she *“discussed everything with Weronika, Adrianna Dar and my mother”* We therefore considered it significant that the claimant’s mother was keen for the claimant to invite Mr Zaman to Sana’s birthday party on 26 September 2015. By that stage, the claimant had been working for Mr Zaman for 5 months. Had Mr Zaman been sexually harassing the claimant, on her evidence she would have discussed it with her mother who would not have
30 encouraged contact with him outside work. The claimant did say that she had not wanted to bother her mother with her problem with Mr Zaman because her

mother's friend had recently died but we considered that this was inconsistent with her earlier evidence that she discussed everything with her.

5 48. Mrs Adrianna Dar was an impressive witness. We accepted her evidence regarding the events of 25 July 2015, which corroborated the claimant's account of that incident. We preferred her evidence to Mr Zaman's on the issue of whether she requested the claimant to pick up Sana early (see below). As a wise person and a good friend, she expressed concern about the possible motivation for Mr Zaman's kind actions toward the claimant. For example, Mrs Dar was asked about the message inviting the claimant to the park and her reaction at the time. She responded: *"Obviously, Mr Zaman is a nice person. I never had any problems with him. To the claimant he was too nice. That can't be without reason. She was my friend, not my daughter but I told her to be really careful because I don't believe in such a kindness without reason. I warned her it would last 3 or 4 months. From being nice and helpful he*
10 *changed to being not very nice and helpful"* This was sensible advice, but it appeared to have been offered in a general sense rather than with specific knowledge of or reference to Mr Zaman himself. Indeed, we noted from Mrs Dar's evidence that the claimant did not appear to have confided anything to Mrs Dar that added to the factual matrix in this case. Her evidence did not show
15 that Mr Zaman's actions toward the claimant were 'of a sexual nature' or 'related to her sex', only that she suspected that kind acts on the part of an employer might be so motivated. Nor, indeed, did her evidence specifically show that Mr Zaman's actions toward the claimant were unwanted. Had that been the case, the Panel concluded that Mrs Dar would have known about it because both she and the claimant confirmed that they discussed private
20 details. As mentioned earlier, the claimant said she told Mrs Dar everything.

25 49. We considered that Mrs Dar's evidence was as significant for what she did not say as for what she said. Mr McGowan asked Mrs Dar several times whether she had noticed anything unusual about the working relationship between the
30 claimant and Mr Zaman. The first time she was asked she mentioned that the claimant had been told she would not get holiday pay for two years. The

second time she was asked she said that she had very strict opinions about relations with employers and that she was annoyed that the claimant was in contact with Mr Zaman outside her working hours. However, on drilling down it was clear her concern was about contact outside working hours about work matters such as hours of work. She said she had told the claimant: "You need to have a rota, to plan..." She mentioned that if the claimant had a message from Mr Zaman to cover a shift the next day she would do it because she was afraid that he would otherwise find someone else in her place. She said the arrangements were not appropriate. Mr McGowan asked her: "What was not appropriate specifically?" and she replied: "If she got a message on a day off saying 'can you work tomorrow, yes or no' She said she was annoyed that the claimant's wages were not paid by bank transfer and that she thought it inappropriate for Mr Zaman to deliver them to the claimant at her home. Mrs Dar also recalled an occasion when the claimant told her that Mr Zaman had called her rude. At the end of her evidence in chief she was asked: "What was your general impression/feeling over the course of the employment about the relationship" [between the claimant and Mr Zaman]. She replied: "It's hard for me to say because Mr Zaman had a partner - about favours bringing wages. I said do you feel he's compelled... does he fancy you? A man doesn't do this without reason and she was a single mother so she should watch herself.."

The impression on the Panel of Mrs Dar's evidence was similar to that of the fuller transcript - that, whatever she suspected in general about the reason why an employer might perform acts of kindness toward a young female employee, Mr Zaman had not, to her knowledge crossed the line into either 'conduct related to sex' or "conduct of a sexual nature".

50. We considered the evidence of Mr Zaman. We did not accept his evidence that he took his partner and child with him to the airport when collecting the claimant's mother, though all the witnesses were agreed that he did so on the return journey. We considered that a reliability issue and that he may have conflated the journeys, which were more than three years ago. Similarly, we preferred the evidence of Mrs Dar about the events of 25 July 2015 and considered that Mr Zaman's statement that Mrs Dar had called the claimant

and asked her to collect Sana early because she was crying was implausible. These were not big points, but they led us to be cautious about the reliability of aspects of Mr Zaman's testimony. In general, we preferred Mr Zaman's evidence to the claimants for the reasons set out above, especially where it was corroborated by documents or other witnesses. However, we considered his evidence on the two points outlined in this paragraph to be unreliable.

Applicable Law

Direct Discrimination:

51. Section 13 Equality Act 2010 ("EqA") provides so far as relevant as follows:-

"13 Direct Discrimination

(1) *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

52. Section 26 EqA concerns harassment and provides so far as relevant as follows:

"26 Harassment

(1) *A person (A) harasses another (B) if -*

(a) *A engages in unwanted conduct related to a relevant protected characteristic, and*

(b) *the conduct has the purpose or effect of-*

(i) *violating B's dignity, or*

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

(2) *A also harasses B if-*

- (a) *A engages in unwanted conduct of a sexual nature, and*
- (b) *the conduct has the purpose or effect referred to in subsection (1)(b).*

(3) *A also harasses B if-*

- 5 (a) *A...engages in unwanted conduct of a sexual nature or that is related to sex,*
- (b) *the conduct has the purpose or effect referred to in subsection (1)(b), and*
- 10 (c) *because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.*

(4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account -*

- (a) *the perception of B;*
- 15 (b) *the other circumstances of the case;*
- (c) *whether it is reasonable for the conduct to have that effect."*

53. Section 136 of the Equality Act 2010 deals with the burden of proof and provides as follows:-

20 **"136 Burden of Proof**

- (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 sub-section (2) does not apply if A shows that A did not contravene the provision. °

5

Discussion & Decision

Claims of Harassment - Sections 26 and 13 Equality Act 2010

54. As clarified with Mr McGowan, the claimant makes three arguments in the alternative: (A) she relies upon section 26(2) and claims that Mr Zaman engaged in unwanted conduct of a sexual nature, which had the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. (B) Alternatively, she argues that Mr Zaman engaged in unwanted conduct related to her sex and that it had the purpose or effect described above. (C) In the final alternative, she makes an argument under section 13 that because of her sex Mr Zaman treated her less favourably than he would have treated a man. Harassment is a particular species of direct discrimination and we therefore consider the section 26 claims first.

(A) Section 26(2) - unwanted conduct of a sexual nature;

55. In order to succeed with this claim the claimant must prove all of the following on a balance of probabilities: (1) that she was subjected to unwanted conduct of a sexual nature; and (2) that it had the purpose or effect of: (i) violating her dignity; or (ii) creating an adverse environment for her as set out in section 26;

(B) Section 26(1) - unwanted conduct related to sex;

56. In order to succeed with this claim the claimant must prove all of the following on a balance of probabilities: (1) that she was subjected to unwanted conduct; (2) that it had the purpose or effect of: (i) violating her dignity; or (ii) creating an adverse environment for her as set out in section 26; and (3) that it was related to a relevant protected characteristic; in this case her sex.

(C) Section 13 - Direct discrimination

57. To succeed with this claim, the claimant must show that she was treated less favourably than a male comparator (real or hypothetical) and that it was because of her sex.

5 **Burden and standard of proof**

58. With regard to the burden of proof, the Tribunal must apply a two-stage test. In the first instance it is for the claimant to prove facts from which the Tribunal could decide, in the absence of any other explanation that she was subjected to discriminatory harassment. Where a claimant receives unwanted adverse
10 treatment from a respondent and has a protected characteristic, that does not automatically mean that the conduct related to the characteristic. In order for the burden of proof to transfer to the respondent, there must be 'something more' in the factual matrix which could show, in the absence of explanation that the conduct related to the characteristic. If the burden of proof transfers to the
15 respondent, it must prove on the balance of probabilities that the conduct was in no sense whatsoever because of the protected characteristic.

59. Thus we apply the law to the facts found in relation to each of the acts of alleged discriminatory harassment put forward by the claimant as follows:

*(A) Section 26(2) - unwanted conduct of a sexual nature; (B) unwanted conduct
20 related to sex; and (C) section 13 - less favourable treatment because of her sex*

60. (1) Was the claimant subjected to unwanted conduct of a sexual nature? Alternatively, was she subjected to unwanted conduct related to her sex? If so, in either case, (2) did it have the purpose or effect of: (i) violating her dignity; or (ii) creating an adverse environment for her as set out in section 26? If not, was
25 the claimant treated less favourably than a comparable man because of her sex? The claimant puts forward the following allegations. We here explain the reasons for our findings in fact on the specific allegations and then apply the legal tests to the facts found:

Invitations to take walks with Mr Zaman

61. The claimant's ET1 states that: 'Z [Mr Zaman] invited C [the claimant] on numerous occasions to take walks with him or go to dinner with him.' We did not find this to be established in evidence. The claimant only referred in her evidence to one specific occasion when Mr Zaman had suggested a walk. In his text message on Sunday 10 May 2015 he said: "No problem, that's good for me if you can wait till tomorrow, I am in the east end shop today, it's very quiet and it's terrible weather today, I hope Sana is happy, when the weather is better maybe I could take you and sana to Pollok country park, it's beautiful there," The text was a response to a message from the claimant which was not produced to the Tribunal. The claimant replied to the text at 12:51 on the same date (J25). Her reply was not produced. Mr Zaman's evidence, which we preferred to the claimant's on this point, was that the claimant had asked him about nice places to visit on the south side of Glasgow and that they had discussed a walk with their respective families. This was put to the claimant in cross examination, but she denied it. On balance, we preferred Mr Zaman's evidence because there had clearly been messages from the claimant either side of this one which she had not produced and for the reasons given in our observations above, particularly the claimant's failure to mention in her original evidence that she had initiated the correspondence on the evening of 30 October 2015 and her misleading evidence on that matter. Thus, our finding on this was that the text was sent following an inquiry by the claimant about nice places to visit and the discussion of a walk with their respective partners and children. In these circumstances, we concluded that the text was a friendly gesture and that it was neither unwanted conduct of a sexual nature, nor unwanted conduct relating to the claimant's sex. We also find that it did not constitute or contribute to less favourable treatment because of the claimant's sex for the purposes of section 13 EqA. We concluded that a male friend in the same circumstances as the claimant would have been treated in the same way and that this did not amount to less favourable treatment because of the claimant's sex.

Invitations to dinner

62. The claimant testified that Mr Zaman had twice asked her to dinner. She stated:
"Unfortunately I don't have any evidence. I can tell you the time frames and
circumstances. Twice I was invited by him. Once with my parents and once on
5 my own. There is no corroboration. The first time it happened was the
beginning of May. He was carrying my child onto the third floor. He brought my
wages and he asked me to attend a dinner party with his father. I refused that
invitation. The second time it was around the end of August shortly before my
10 parents arrived when Abby dropped off my wages at my place and he said as I
am a Muslim and he is a Muslim we celebrate Eid together. He'd like to invite
myself and my parents to celebrate Eid and he would cook something for us. I
don't have proof of circumstances." The claimant's response to the Tribunal's
additional information order asking her to specify the 'unwanted conduct' stated
at (J17) "Mr Zaman invited the claimant and her mother to celebrate Ede with
15 him. On another occasion in May 2015 Mr Zaman invited the claimant to
dinner." It went on to say at (J19): "In May 2016 her employer invited her to
have dinner with him and he also wished for the claimant to meet his father." This
allegation appeared to be in addition to the allegation on (J17). Mr Zaman
denied that he had ever invited the claimant to have dinner with him. He
20 testified (and we accepted) that his father lived in Pakistan and that he died in
December 2015.

63. With regard to the allegation about Eid, the fuller transcript shows that on
Thursday 24 September 2015 the claimant sent Mr Zaman a text to say "Eid
Mubarak Abby for you and your family" Mr Zaman replied: "eid Mubarak Kasia
25 to you and sana, and your mum and her partner.." The claimant's mother was
in Glasgow around this time for Sana's birthday party. The claimant said in her
evidence: "Around September 2015, for an up-coming Eid Abby came over to
give me my wages at my flat. He knew my parents were flying in at that time so
he invited us over for dinner my whole family because he wanted to show off
30 his cooking skills." The transcript of social media messages contains nothing to
suggest that Mr Zaman dropped the claimant's wages to her on the weekend

that preceded Eid. Mr Zaman's message on Thursday 24 September 2015 went on to say that he was working in east city laundry and to answer a question from the claimant's previous message about a shift she wanted to change. There was no mention of any invitation having been given.

5 Furthermore, it appeared that Eid immediately preceded Sana's birthday party on Saturday 26 September, to which Mr Zaman had been invited. On balance, we accepted Mr Zaman's evidence that no such invitations had been given. We thought it likely, had the claimant's allegations been true, that she would have discussed them on social media with Weronika, Alina, Michalina or Monia. We

10 were not taken to any such conversation in evidence. As she accepted, she did not have any corroboration for her allegations that Mr Zaman had twice invited her to dinner. We concluded that he did not do so.

Mr Zaman telling several co-workers he had only employed the claimant because of her looks.

15 64. The claimant's ET1 states: '(The claimant] *understands that during the early months of her employment [Mr Zaman] told several of her co-workers he had only employed C because of her looks.*' Despite the ET1 referring to 'several co-workers' the claimant in her evidence in chief only referred to this having been said to Weronika Kolodziejek: '*Weronika mentioned Abby also interfered*

20 *in her private life. She said she had spoken to Abby and he said the reason why he hired me was not because I was recommended by the shop across the street but the fact that I looked this way and not another way.*' The respondent had lodged a statement from Weronika Kolodziejek in which this allegation was denied. The Tribunal did not give the statement any weight because Ms

25 Kolodziejek did not attend the hearing as a witness to speak to it. Nevertheless, Mr Zaman denied the allegation and the claimant's own evidence on the matter was hearsay. In the circumstances, and given our reservations about the claimant's credibility, we did not find the allegation to be established.

Interfering in her private life.

65. The ET1 states: *'To C personally, during April, May and June 2015 Z attempted to gain advantage by highlighting how he could help her in her position as a single mother, involving himself closely in her private life. On one occasion collecting her mother from the airport, and in April, May and June 2015 making a point of unnecessarily delivering her wages to C at her home.'*

5 With regard to the general allegation about Mr Zaman 'interfering in the claimant's private life', although we noted that he did offer help and involve himself in her private life to some extent, we concluded that this was encouraged and sometimes requested or initiated by the claimant. Mr Zaman
10 offered to drive the claimant to the nursery to pick up her daughter on 25 August 2015 because she had missed her bus. During the course of this trip they spoke about some personal issues. In evidence in chief the claimant said: *"he offered to drive me there to pick up my daughter." ... "Abby spoke to me about various matters. He discussed various matters and asked how it was with me and Sana's father. ..When it comes to my pregnancy and his past and other issues, this shouldn't be shared because I was his employee. I was neither his friend nor his acquaintance. "* In a social media conversation with Monia Gefert later that evening (J29 - 30) the claimant told Ms Gefert about the
20 conversation, but there was no suggestion that she had shared unwillingly or was upset or uncomfortable with Mr Zaman doing so. Indeed, on one reading of the conversation, she seemed almost to be boasting to Ms Gefert. It was clear from the claimant's approach to Mr Zaman on 30 October 2015 that, contrary to her evidence, she regarded him as a friend and sometimes sought out his support. In light of the various approaches she initiated to Mr Zaman outside
25 working hours we did not accept the claimant's evidence that she was neither his friend nor his acquaintance. We concluded on balance that she did treat him as her friend and that this conduct by him was reciprocated willingly and was not unwanted, nor was it conduct of a sexual nature or related to or because of her sex. A male friend would have been treated in the same way.
30 We do not conclude that either section 26 or section 13 were engaged in these circumstances.

66. With regard to Mr Zaman's trips to the airport to collect and return the claimant's mother, we preferred the evidence of the claimant and Mrs Dar to that of Mr Zaman to the effect that Mr Zaman offered to collect the claimant's mother, rather than being requested by her to do so and that on the way, those present were the claimant, Sana and himself. We thought it unlikely that the claimant would have made this request of her employer two weeks into a new job. However, we did not conclude that the offer was unwanted by the claimant. We concluded (and the claimant accepted) that on the way to take the claimant's mother back to the airport, Mr Zaman's partner, Luvleen Atwal was also present. We did not find that this was unwanted conduct either of a sexual nature or related to the claimant's sex, nor do we find it to be less favourable treatment because of her sex. We concluded on balance that it was a kind and friendly gesture.

Mr Zaman 'unnecessarily delivering wages to the claimant's home'

15 *Messages with x's*

67. The claimant's ET1 states that in April, May and June 2015 Mr Zaman made a point of "*unnecessarily delivering her wages to C at her home.*" The fuller transcript shows that on Saturday 15 August 2015 at 15:46 the claimant texted Mr Zaman in the following terms: "*Hi Abby. Can you dropp later wages for me if you get a while?*" and that he replied: "*Yes I'll pop over when I finish at south city.*" The claimant responded: "*Thank you. Just let me know because I gonna now pick up Sana and in 1h will be in home.*" On Saturday 5 September 2015 at 18:35 the claimant texted Mr Zaman: "*can u dropp my wages today if is possible. Thx.*" Mr Zaman replied: "*sorry Kasia, I'll drop them off just after eight o'clock.*" X^MThe claimant replied: "*ok thank you :)*" and Mr Zaman responded: "*See you shortly*". In cross examination Mr Yousaf asked the claimant: "*You were happy after that message?*" She replied: "*I was very happy. I was going to get my wage before Sunday and I not have to collect it.*" Apart from the odd pleasantries, the conversations up to this point in the transcript appeared to be exclusively work-related. According to the claimant her wages were due on a Friday if she did not work on Saturday but on a Saturday if she worked that

day. She testified that the reason she requested Mr Zaman to drop her wages to her house was to ensure she got them on time. That may have been the case. However, we thought it unlikely she would have wanted Mr Zaman coming' to deliver wages to her home if she felt sexually harassed by him.

5 •* Furthermore, the transcript evidence, (albeit regarding a later period) did not sit easily with the statement in the ET1 that Mr Zaman was "unnecessarily" delivering wages to the claimant's home in April, May and June, given that she repeatedly requested him to do so during the later period.

68. As mentioned earlier, Mr Zaman added "x" to the end of his messages on five
10 occasions according to the transcript. The claimant's evidence about this was:
"Regarding this X / found out about a year ago [i.e. 2017] they mean a kiss. At the time I ignored it because I don't know what it means." In these circumstances, taking account of the claimant's lack of perception that there was any issue, it cannot be seen as harassment unless it was done with the
15 purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We considered this carefully. Clearly, it is not good practice for an employer to end messages to an employee with a kiss. We first considered whether it was conduct of a sexual nature. We concluded that it could be depending on the circumstances.
20 However, the circumstances here were that all the messages that ended with x with the exception of the message of 30 October 2015 were concerned with laundry issues. The Tribunal members were all of the view that, whilst not really appropriate in the employment setting, friends, colleagues, family members and acquaintances often end messages with one "x" which is not intended or taken
25 in a sexual sense or as related to a person's sex. We doubted there was sufficient in this instance to transfer the burden of proof to the respondent. Nevertheless, we carefully considered Mr Zaman's explanation. Mr Zaman said in cross examination that he would sometimes end messages to male and female friends alike with "x" and that he routinely did so on messages to his
30 father and son. In none of these cases was the "x" 'conduct of a sexual nature' or 'conduct related to sex'. His position was that it was an *"innocent term of endearment"* We looked at the other content of the messages concerned and

the context. As observed above, there was no sexual content or context in or around any of the messages. Furthermore, the conduct was arguably neither wanted nor "unwanted" at the time because the claimant had no idea what "x" meant. As she testified, she ignored it for this reason. We concluded that Mr Zaman's use of an occasional single x was in line with his familiar demeanour but was not sexual in purpose or 'related to the claimant's sex' when taken in context. We accepted his explanation and concluded that it was in no sense whatsoever because of the claimant's sex.

The 'gift' of £200

69. The claimant testified that when her mother arrived at the end of April 2015, Mr Zaman gave her £200. She described the circumstances in the following way: *"When my mother and daughter got into the flat Abby asked me to step outside. He gave me an envelope and said 'Kasia, please take it'. I didn't want to, and I didn't know why he did that. He highlighted I shouldn't be repaying him because he knows I don't have any money. He highlighted that it was a gift without any reason."* Mr Zaman's account of the matter was that the claimant asked him for a loan because her mother was coming and told him she was waiting for a back-dated benefits payment. Both parties agreed that Mr Zaman did give the claimant £200 at the end of April 2015. They were also agreed that the claimant was in financial difficulty at this time and that she was awaiting a substantial back-dated benefit payment. The claimant said she did not ask for the money and could have borrowed from her mother or Mrs Dar. It was clear that she was in the habit of borrowing money from both when necessary. We concluded on balance that the claimant had discussed her financial and benefits problems with Mr Zaman and whilst possibly not explicitly asking, she had given the impression she was short of money for her mother's visit. We concluded on balance that as he gave her the money Mr Zaman had told her it was to help her financially and not to worry about paying it back until later. Although the claimant said in evidence that the money was a gift, *"without any reason"*, in her response to the information order (J17) she states: *"He told the claimant she did not need to pay back the monies unless she wished to. As the*

claimant had not made a request for any money she considered this to be a gift until he began to deduct the monies from her wages in October 2015." Both in her evidence in chief and in her response to the information order, the claimant mentioned discussion of circumstances for repayment. Her position was that she was told not to repay it. Mr Zaman's evidence was that it was a loan. We concluded that it was intended as a loan, though taken as a gift. We did not conclude from the claimant's evidence that it was unwanted conduct under section 26, nor did we conclude that it amounted to less favourable treatment because of the claimant's sex in the circumstances.

10 *Asking the claimant to work longer hours so he could drive her home*

70. The claimant's ET1 states that Mr Zaman would ask the claimant to work longer hours so he could drive her home. In her response to the order for further information (J17) the claimant stated: "*The claimant was required to work on a Saturday as were her colleagues however, the claimant was treated differently in the hours she was required to work. She was always required to work on after her colleagues had finished to enable the respondent to take her home in his car. She was never allowed to finish before any of her colleagues who worked alongside her on a Saturday.*" (Our emphasis). In her evidence in chief the claimant stated the complete opposite. The claimant's evidence in chief on the matter was that Mr Zaman did not let her work on Saturdays at that time even though she wanted to make some extra money and had offered to work extra hours and that she had been given no reason for this. She referred to a social media conversation with Weronika Kolodziejek on or around 6 July 2015 (J95). In that conversation Ms Kolodziejek opined "*it is also silly that he will not let you work on Saturdays so how would you gain more experience*". The claimant replied: "*I have got an impression that he doesn't want me there at all. That he would prefer someone else.*" (This contemporaneous comment also undermined her narrative that Mr Zaman fancied her and was forcing his company on her against her will.)

30 71. Around August 2015, the claimant had another conversation with Weronika Kolodziejek (J112) in which she said: "*I quit working Saturdays because I pay*

for nursery even if Sana doesn't go.. I pay in advance so I would rather not have Saturdays anymore, rather than lose £25." We gathered that the claimant may have worked some Saturdays between mid-July and August 2015 but that she stopped for this reason. Generally, the claimant's evidence about working Saturdays and/or longer hours was not consistent with her ET 1 and information order response. This again undermined her credibility. In the circumstances we did not conclude that the claimant had proved facts from which we could conclude that the Equality Act had been contravened in relation to this allegation. Indeed, the fact that her evidence was inconsistent with her pleadings on the point undermined its credibility.

72. The claimant's information order response also stated (we understood as a specific example of her working longer hours and being driven home): *"In July 2015 Mr Zaman require[d] the claimant to work additional hours. In order to facilitate this Mr Zaman called to her home to collect a car seat and the[n] collected her daughter from her sitter and brought to the workplace so that the claimant could continue working."* With regard to the events of Saturday 25 July 2015 to which this was a reference, we concluded from the claimant's contemporaneous social media conversation with Ms Kolodziejek (J107) (which showed that Ms Kolodziejek thought the claimant was on the rota until 4pm) that there had been a misunderstanding. Mr Zaman thought she was working until 4pm, whereas the claimant understood she was working until 1pm. The claimant's friend Adrianna Dar was looking after Sana and had to be somewhere at 3pm. Mr Zaman was unable to cover the remainder of the shift because he had to go somewhere so he offered to pick up Sana from Mrs Dar's house and bring her to the laundry if the claimant would agree to stay until 4pm. The claimant agreed and arranged for Mr Zaman to go to her flat and pick up Sana's car seat and thereafter, to go to Mrs Dar's house, collect Sana and bring her to the laundry. She tells Weronika Kolodziejek on social media that she is also with Mr Zaman's son Adam. The incident happened only once and appeared to be untypical of the usual position referred to in her evidence and her social media conversations with Ms Kolodziejek. If anything, it suggested to us a measure of trust between the claimant and Mr Zaman in that they were

each prepared to allow the other to be alone with their respective children. We did not conclude that this incident was a cynical attempt by Mr Zaman to interfere in the claimant's private life or to prolong her working hours so he could drive her home. Our impression from the evidence we accepted was that Mr Zaman was in a spot of bother covering the remainder of the shift and that the claimant agreed to help him out subject to him collecting Sana and bringing her to the laundry. In the circumstances, we did not conclude that this incident engaged either section 26 or section 13 Equality Act. It appeared to us to be an arrangement between friends to solve a logistical problem.

10 *Sana's party- 26 September 2015*

73. Sana's party - On 26 September 2015 the claimant held a birthday party for her daughter Sana. She invited around 30 people, including Weronica Kolodziejek, who forgot and Mr Zaman who came, along with his partner and son. There was a conflict in the evidence about whether the claimant had invited Mr Zaman alone or whether she had also invited his family. However, whether they were invited or not, he brought his family anyway. The claimant testified: *7f was my mother's wish for all the times he was helping us.*" Mr Yousaf asked the claimant in cross examination: *'Why was your mother doing this if he was not treating you properly and being flirty?'*" The claimant replied: *"My mother has a lot of problems, so I don't need to burden her with my problems. I didn't share all my private issues."* (This was inconsistent with her earlier evidence where, in answer to the question: *"Did you discuss these events with family, colleagues, friends?"* She replied: *7 discussed everything with Weronika, Adrianna Dar and my mother"*). We also noted that the claimant not only invited Mr Zaman to the party but reminded him by text to come on the day. This suggested to us that his presence was not unwanted as she claimed. The reminder was consistent with the claimant treating him as a friend. We consider the implications of this below.

Mr Zaman's social media messages of 30 October 2015

74. In her response to the information order (J17) the claimant refers to two texts sent to her by Mr Zaman on 30 October 2015. As explained in our observations on the evidence above, in her earlier evidence the claimant not only omitted to mention that she had herself initiated this conversation but also implied that Mr Zaman had initiated it and that the texts were unsolicited. When the fuller transcript was lodged it transpired that at 22:13 that evening the claimant had texted Mr Zaman in the following terms: *"sorry Abby that I am disturbing. I am broken. I am getting messages where they scaring me that social service will take Sana because I am mentally ill. That they will go there and say something in rev[e]nge. I am really scared that after social services come for Sana."*

75. Mr Zaman replied in the terms set out in our findings in fact above. His words are friendly and kind. They clearly do not constitute 'conduct of a sexual nature', nor did we conclude that they were related in any way to the claimant's sex. Indeed, in our deliberations we substituted a hypothetical young male employee who was a single father contacting Mr Zaman late in the evening in distress and whom Mr Zaman regarded as a friend. We had no difficulty envisaging the same response. Furthermore, there was no suggestion in the claimant's final message that Mr Zaman's support was unwanted. Indeed, she stated: *"Thank you Abby. Your message make me better...."* As we stated above, we considered the claimant's credibility seriously damaged by her disingenuous approach to this correspondence. In the circumstances (including the claimant's messages) we did not conclude that there was anything in this from which we could conclude that a contravention of the Equality Act had occurred.

25 *Altered conduct from July 2015 - shouting at the claimant in the street*

76. The ET1 states: *"From July 2015 the conduct of Z towards C altered. In July 2015 Z shouted at C in the street and reduced her to tears over an issue involving her payslip. It came to the attention of C that Z was disparaging her behind her back to work colleagues, making adverse and vulgar remarks about her child and her private life.... His derogatory remarks apparently continued through the remainder of C's employment... It is submitted that although nothing*

overtly sexual was said to C from mid-2015, the continuing spiteful conduct was nevertheless directly referable to rejection of initial advances by Z to C based on her gender and the entire passage of behaviour therefore constitutes sex discrimination.” The information order response (J18) states: “Mr Zaman engaged with employees Veronica and Michalina regarding the claimant. He asked Veronica about the private life of the claimant. He commented to Michalina on the Whatsapp account of the claimant.” “The respondent made comments about photographs he saw on the claimant’s Whatsapp account. ”

77. The claimant testified that “At some point Abby was not so into me.” When asked what she meant by this she said: “There was no dropping off at home, no giving of help and no dropping off of wages at home.” She dated this as beginning around July 2015. Having made the quite serious allegation in the ET1 about Mr Zaman making vulgar remarks about her child and private life, she completely failed to testify about this at all. The claimant also did not allege in evidence that Mr Zaman made comments about photographs on her Whatsapp account.

78. We did not conclude that Mr Zaman’s conduct toward the claimant was “spiteful”. We accepted Mr Zaman’s evidence about the claimant’s work issues. This was broadly corroborated by her contemporaneous conversations with colleagues on social media. We found that on 6 July 2015 Mr Zaman spoke to the claimant about her work. He testified, and the claimant accepted that she was spending time on her phone whilst at work. Mr Zaman also testified and we accepted that he had a concern about the claimant’s work performance and was unhappy about the way the claimant had spoken to him when he had tried to correct this. The conversation on 6 July 2015 took place in a car park outside the claimant’s home. Later the claimant discussed it on social media (in Polish) with her friend and colleague Ms Kolodziejek as described in paragraph 11 of our findings in fact above. The claimant complained to Ms Kolodziejek (J89) that Mr Zaman told her off for being aggressive when ‘cautioned’.

79. In her evidence in chief the claimant also referred to a telephone conversation with Mr Zaman on 11 April 2016 in which she claimed he was shouting “how

5 *unhappy he was with us.” She said it was not meant to be taken personally and that Mr Zaman had an issue with “the three of us” (which we understood to be the three members of staff at Clyde Ironing). She alleged that Mr Zaman had told Monia Gefert that she (the claimant) was a bad worker, that she was constantly taking days off, that she was a fake person and that no one should listen to her because she was a liar. We did not accept that all these things had been said by Mr Zaman. When she texted Michalina Gefert about the conversation on social media that evening (J44) she told Michalina: “Abby has pissed me off... I had to listen how he’s not happy with us, and that he will not*

10 *take any of us to South as we make mistakes every week, and there are girls on South perfect. That lipstick and diamond are our fault, no respect for the client. That the clients are complaining every week, that we don’t understand them over the phone” She also lodged a copy of a text conversation she had with her friend and colleague Alina Szewczyk on the same date (J46). She*

15 *asked Alina: ‘Why has he called me if you told him I am picking up the money? Because he has an issue with me for sure.’ AWnareplied: “No Kasia, he’s giving you a hard time as you know English and you have close relationship. ” The claimant stated in a further text to Alina the next day that Mr Zaman was*

20 *“always angry with me about something. He’s not happy about Sana being not well.”*

80. Around the end of April, shortly before the claimant resigned from her job with the respondent she sent messages to Weronika Kolodziejek to say that Mr Zaman was ‘bad-mouthing’ her to the ‘boy who works across the street’. The claimant said in cross examination that she had to go across the street to get

25 change from the boy who worked there around seven or eight times during her employment. However, at another point in her evidence she said that this happened on a regular basis, at least twice a week. She said that she never stayed to chat. Mr Zaman’s evidence on this (which we accepted) was that the claimant had become friendly with a man in his mid-twenties who worked in the

30 shop across the road. She would go over to chat to him, drink fizzy drinks and eat chocolate, leaving the Clyde Ironing shop unattended meantime. Mr Zaman said that eventually he spoke to the man in the shop about it. He said he told

him: *"If she comes over here please don't let her sit and chat. She has a job to do."*

81. The claimant's social media records with her friends to which we were referred, the transcript of her conversations with Mr Zaman and the evidence we
5 accepted did not, in our view show that Mr Zaman had made unwanted
amorous advances to the claimant which had been rejected by her, nor did they
show that he was being spiteful. As the claimant stated in her own words in
evidence, Mr Zaman had been very kind to her at the beginning of her
employment. Toward the end, he had become less friendly and more formal.
10 Mr Zaman referred briefly to a number of difficulties in his own life from the end
of December. His father died and he had to make a number of visits to Pakistan
following this. He had also had some health issues and a car accident.
However, our conclusion was that the reason why he became less friendly and
more formal toward the claimant as time went on was that there were the
15 following on-going issues with the claimant's work: she was spending time on
her phone and talking to colleagues when she should have been working; Mr
Zaman had to show her numerous times how to do certain things, such as
change the till roll or work the ironing machine correctly; she had, on one
occasion left the iron on and the advertising board outside the shop. On
20 another occasion she had left the heater on. Customers had raised problems
with Mr Zaman about the Clyde Ironing shop generally. Finally, the claimant
was leaving the shop unattended around twice a week for periods while she
chatted to the man who worked in the shop across the road. Thus, although the
claimant had been treated in a kind and friendly way by Mr Zaman, there were
25 on-going problems with her application to her work. We concluded that these
were the reason why Mr Zaman's behaviour toward the claimant became more
formal and distant as time went on and that it was in no sense whatsoever to
do with her sex. We also concluded that it was in no sense whatsoever
because the claimant had rejected sexual advances by Mr Zaman. He had not
30 made any such advances. Since we have concluded that no proscribed
unwanted conduct occurred in this case, it is not necessary to address its
purpose or effect, except to the extent we have done so above.

82. We would add that in coming to our conclusion, we also took into account the following facts and circumstances. The respondent is a very small organisation. The claimant was effectively employed by one person. In that setting, the relationship between business owner and staff may be less formal. We noted from the transcript of the text conversations between the claimant and Mr Zaman that these mostly concerned work matters and that much of the personal contact was initiated by the claimant. For example, On Friday 11 December 2015 the claimant texted Mr Zaman at 15:49 (A10) saying: *"Abby do u come to Clyde ironing today yet? I just need a small wages to buy a food on weekend if can get ;)."* Mr Zaman replied: *"I can't come to Clyde ironing till after six o'clock, I can leave it there then..."* The claimant replied: *"Thanks Everything ok? Girls are worrying about you."* Mr Zaman responded: *"Everything is fine thanks Kasia, South city laundry is busy, I am doing okay, no need to worry but thank you."* On Sunday 27 March 2016 at 17:51 the claimant texted Mr Zaman to say: *"Hi Abby I hope so your family in Pakistan are safe. I heard about Bomb attack. It's really sad."* We concluded that these messages from the claimant, taken alongside the evidence we accepted gave the impression that she regarded Mr Zaman as a friend.

83. Furthermore, the claimant's mother encouraged her to invite Mr Zaman to Sana's birthday party. The claimant's original evidence was that she told her mother everything. We concluded that had Mr Zaman been sexually harassing her, her mother would not have encouraged contact with him outside work. In addition, on Friday 30 October 2015, before the claimant had received the distressing messages about Sana she had contacted Mr Zaman to ask whether he would be able to employ her best friend Alina Szewczyk. Mr Zaman interviewed and subsequently employed Ms Szewczyk on the claimant's recommendation. We thought it most unlikely that the claimant would have done this if Mr Zaman had been sexually harassing her.

84. We considered carefully the claimant's own evidence about how she perceived Mr Zaman's treatment of her at the start of her employment. She said: *"At the beginning I perceived it as just being nice / pleasant."* Mr Yousaf put it to the

claimant in cross examination that Mr Zaman was a good employer who was trying to help her out. She replied "Yes". She stated: *"At the beginning Abby was very kind toward me. For the last few months he was very formal. I could even say that he was very unkind."* Mr Yousaf referred the claimant to her report to Ms Kolodziejek of her conversation with Mr Zaman in July 2015. He observed: *"Looking at this conversation there doesn't seem to be anything wrong with it?"* The claimant replied: *"This was the period of time Abby didn't hate me for anything."* We understood her to mean that it was before Mr Zaman had started to challenge her performance, pick her up for mistakes and tell her off about being on her phone too much. As set out above, we concluded that the claimant's claim of sexual harassment by Mr Zaman contrary to sections 26(1) and/or 26(2) does not succeed and is dismissed.

85. We turned to consider whether, in the alternative, the respondent directly discriminated against the claimant contrary to section 13 Equality Act 2010. For the reasons discussed above we concluded that the claimant was not treated less favourably than a male employee of the respondent was or would have been treated because of her sex. It follows that the section 13 claim also fails.

86. We answer the parties' issues as follows:

(i) During her employment with the respondent, was the claimant subjected to treatment that was less favourable in the workplace than would have been accorded a male counterpart? *No, for the reasons given above. Accordingly, questions (ii) to (vii) do not arise.*

(viii) Alternatively, has the claimant fabricated allegations of the above nature relating to the respondent proprietor? *Please see the discussion section above.*

(ix) If the respondent proprietor conducted himself in the manner alleged by the claimant, did this conduct amount to harassment? *See above. Questions (x) to (xviii) do not arise.*

Claim for Holiday Pay

87. Finally, the claimant made a claim in respect of holiday pay. The respondent disputed that this was due. The respondent's holiday year mirrors the tax year and runs from 6 April to 5 April. With regard to the 2015 holiday pay claim, the claimant testified that she took the following holidays: 5 to 15 June 2015 and 30 November to 11 December 2015 but was not paid for them. Neither party lodged the relevant payslips or records. We therefore found ourselves without the best evidence available to determine the matter. We were aware from the evidence we did hear that the claimant was given payslips. She gave oral evidence that she was not paid for holidays taken but this was disputed, and we had issues with her credibility. It is true that Mrs Dar referred to the claimant not receiving holiday pay for two years, but her information came from the claimant.

88. Regulation 13 of the Working Time Regulations 1998 ("WTR") entitles a worker to four weeks' annual leave in each leave year. Regulation 13A provides for additional annual leave. Altogether, a worker is entitled to 5.6 weeks' annual leave. Regulation 16 provides that a worker is entitled to be paid in respect of annual leave taken at the rate of a week's pay for each week of leave. Regulation 30(1)(b) states that a worker may present a complaint to an Employment Tribunal that her employer has failed to pay her the whole or any part of any amount due to her under regulation 16(1). Under Regulation 30(5) where a tribunal finds that an employer has failed to pay a worker in accordance with Regulation 16(1) it shall order the employer to pay the worker the sum due. (We would add that Regulation 30 also requires a claim to be brought before the end of the period of three months from the date when the payment should have been made or within such further period as a tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable to present the claim in time. The EC notification was received by ACAS on 29 July 2016 and the certificate issued 22 August 2016. The ET1 was presented on 14 September 2016. We therefore had concerns about whether we had jurisdiction to determine this matter in any event.)

89. Ultimately it is for the claimant to prove her case that her employer failed to pay her for the leave taken in 2015. Ordinarily, one might have expected the respondent to produce the relevant records, but a complicating factor here is that the respondent sold the business on 31 May 2016. In the circumstances we concluded that the claimant had not produced sufficient evidence to establish that she was entitled to payment in respect of the 2015 leave.

90. The claimant's final pay slip was not in the bundle. However, it was not in dispute that the claimant had not taken her accrued holiday for the month 6 April to 6 May 2016. We calculated the sum due as follows: The claimant's holiday entitlement for the year 2016/17 would have been 5.6 weeks. Her weekly pay was £107. Pro-rated to allow for her resignation one month into the holiday year, the calculation is: $(5.6 \times 107)/12 = £49.93$. This is rounded to the nearest whole pound.

Employment Judge: M Kearns
Date of Judgment: 09 July 2018
Entered in register: 18 July 2018
and copied to parties