EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109432/2021

Held in Glasgow on 14, 18, 21 and 24 March 2022

Employment Judge L Wiseman
Members J Anderson and G Mackay

Ms Dominika Klukowska	**Claimant** **In Person**
Bridge of Weir Leather Co Ltd	**Respondent** **Represented by:** **Mr M McLaughlin - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to dismiss the claim.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 19 January 2018 alleging she had been discriminated against because of race, sexual orientation and sex. The claimant brought claims of direct discrimination (section 13 Equality Act); indirect discrimination (section 19 Equality Act); harassment (section 26 Equality Act) and victimisation (section 27 Equality Act).

2. The respondent entered a response in which it denied the allegations of discrimination.

3. There have been a number of case management preliminary hearings in this case, and an appeal to the EAT. This explains the time it has taken to get this case to a hearing.

4. We heard evidence from the claimant; Mr Billy Budgen, former Health, Safety and Training Manager with the respondent; Mr Kevin Rodger, former Production Manager with the respondent; Ms Karen Marshall, who is currently Chief Operating Officer of Scottish Leather Group and who was, at the time of these events, Managing Director of the respondent; Mr Michael Carnachan, Commercial Director and Mr Callum MacInnes, former HR Business Partner.

5. The claimant and respondent each produced their own documents for the hearing.

6. The claimant confirmed, at the commencement of the hearing that the claim was proceeding on the basis of discrimination because of the protected characteristics of sex and/or sexual orientation and/or race. The claimant amended this position at the start of her evidence when she confirmed the claim was restricted to arguing discrimination because of the protected characteristic of race.

7. We, on the basis of the evidence before us, made the following material findings of fact.

Findings of fact

8. The respondent is involved with the processing of leather for use predominantly in the automotive industry. The respondent, as at March 2018, employed 300 shop floor employees of whom 28% were Polish, and 84 office employees, of whom 6% were Polish.

9. The respondent is a large employer within the local community and is proud of its reputation within the local community and with local suppliers, many of whom have had long-standing working arrangements with the respondent.

10. The claimant commenced employment with the respondent on the 27 June 2016 as a Commercial Assistant. Her role involved providing administrative support (arranging travel, lunches, keeping the diary) to Ms Karen Marshall, Managing Director, providing cover on the reception and arranging lunches and travel for visitors.

11. The claimant's Conditional Contract of Employment was produced at respondent's documents page 51. The claimant was paid weekly.

12. The claimant reported directly to Mr Carnachan, Commercial Director. Her desk was located just outside his office.

13. The claimant is Polish and gay.

September 2016

14. The claimant took it upon herself to send an email dated 13 September 2016 (Rp 62) to the four Production Managers (which included Mr Kevin Rodgers) and copied the email to Ms Karen Marshall. The email concerned the respondent's smoking policy. The email was in the following terms:

"Dear Managers

Every day I come across people smoking in places they are not allowed to smoke.

I have now paid attention to several people (standing and smoking at the car park; smoking while walking on the walking paths towards the car park) that smoking is only permitted in the designated places. One person that I paid attention to today said he ***did not know*** *that he is not allowed walking and smoking, then ignored me and walked away still holding a cigarette in his hand blowing cigarette smog (sic) in my face as I walked behind him.*

There were several incidents where I could not pass through a walking path between NCT and Baltic 1 as there were people standing and smoking on the path. To avoid the smog and crowded path I had to step out the walking path and walk through a hazardous area.

Could you please stress out that ***smoking is ONLY permitted in the designated areas – inside the smoking shelters?*** *Also, that smoking is only allowed in their allocated breaks as I keep seeing the same people smoking every time I pass by."*

15. The claimant followed this email with another email on the 28 September (Rp 61) which was also copied to Mr Budgen, Health, Safety and Training Manager. The email referred to the previous email and went on to say *"I still observe (on a daily basis!) people smoking everywhere and throwing their cigarette butts on the floor. Could you please make sure the message is delivered to* ***everyone?*** *The CCTVs will be randomly checked and appropriate actions will be taken for those not following company's policy."*

16. Mr Rodger replied to the claimant by email of the 28 September (Rp 61) to confirm all teams had been briefed. Mr Rodger believed, at that time, that the claimant's email had come on authority from Ms Marshall, Managing Director. He passed the emails to his supervisors and asked them to brief their teams regarding the designated smoking areas.

17. The claimant emailed Mr Rodger on the 3 October (Rp 60) to say she had just walked past people from his department smoking outside the smoking shelter, blowing their "smog" into her face.

18. Mr Rodger spoke to some people in his department who had been on their break to ask if anyone had blown smoke into the claimant's face. Mr Rodger was met with blank faces: no-one had even seen the claimant walk past. Mr Rodger asked the claimant to name the people she had been referring to. The claimant provided one name. Mr Rodger spoke to that person, whom he described as a "most mild mannered person", and she totally denied blowing smoke into the claimant's face.

19. Mr Rodger decided to speak to the claimant rather than continue to exchange emails. Mr Rodger approached the four desks where the claimant sat. The claimant was facing away from him so he lightly touched her shoulder to get her attention and asked to have a chat about the emails. He told the claimant he had spoken with the person she had named, and that she had flatly denied blowing smoke into the claimant's face. Mr Rodger wanted to resolve things rather than resort to email, but he found the claimant to be very abrasive.

20. The claimant emailed Mr Rodger later that morning (Rp 60). The email was regarding "unacceptable behaviour" and was copied to Ms Marshall. The email was in the following terms:

"Our smoking policy was communicated to you on several occasions and you assured me that your employees were briefed. It is your responsibility to effectively deliver the massage (sic) and to make sure all your employees follow our company policy.

I did not appreciate you barging into my office showing your frustrations after my last email and distracting me from my work. I DO communicate via email as I have more important things to do than coming to your office and pointing out people who I noticed were smoking in the forbidden areas. Please note, next time you wish to see me to discuss the matter do not hesitate to contact me first to arrange a meeting as that's what professional people do.

Regarding the matter, you could have checked the CCTV cameras first to get your facts right if you were certain your employees did nothing wrong instead of intimidating me in front of my colleagues and other people. I also refuse to take a part in any confrontational situations between you and any member of your team. My job is to communicate important information and not to solve your problems.

Your behaviour was unprofessional and raises concerns of how you treat employees.

I have cc'd our Managing Director to make her aware should similar situation occur in the future."

21. Mr Rodger replied to the claimant's email (Rp 59) in which he referred to her coming across as *"dictatorial and condescending."* Mr Rodger went on to say that his conduct and integrity had never been called into question and that he did not appreciate her calling into question his professionalism whilst copying Karen Marshall into the emails.

22. The claimant replied to Mr Rodger (Rp 58) saying she would discuss the matter *"with your Managing Director, seeing as you classify shouting at me,*

poking my arm, dictating to me to follow you and intimidating me in front of other people to the point where my office colleagues were concerned about my wellbeing as acceptable behaviour." The claimant went on to say that she "did not care for your personal opinion neither your ways of dealing with issues. What I care about is my time being wasted on unproductive incidents like the one with you this morning. Should you be professional in the first place, I wouldn't have to question it."

23. Mr Rodger considered the whole issue had been blown out of proportion by the claimant and he decided not to reply to any further emails.

24. The claimant copied all of the emails to Mr Carnachan. Mr Carnachan was in South America at the time and by the time he returned he believed the matter had been resolved.

25. Ms Marshall decided to get Mr Rodger and the claimant together to diffuse the situation. She also asked people present in the office when Mr Rodger had spoken to the claimant to ascertain whether they had heard shouting: they had not.

26. A mediation meeting took place with Ms Marshall, Mr McDonald (Operations Director), Mr Rodger and the claimant present. Mr Rodger felt the claimant spoke over him and would not take on board the comments made regarding her behaviour. Ms Marshall understood both parties felt aggrieved but she was keen for Mr Rodger and the claimant to understand that whatever had happened, they had to put it behind them and move on.

October - December 2016

27. The claimant and Mr Billy Budgen, Health, Safety and Training Manager had a good relationship and exchanged a lot of emails in which there was "banter" and which were mildly flirtatious. For example, on Rp 68 Mr Budgen offered to put licence certificates on a wall, because he would be able to get them higher up. The claimant replied *"cheeky ;) I liked that 😊".* Mr Budgen replied *"It has been said before! Thanks 😊".* The claimant responded *"I assumed*

😊 I just said you asked where she wants them up 😊" to which Mr Budgen replied *"I meant the cheeky bit!".*

28. Mr Budgen asked in an email dated 6 October (Rp 66) how many commercial support assistants there were. The claimant responded *"There is only one but if I won't stop eating crap there soon be two ;)"*. Mr Budgen replied *"Lol – exercise is the key! Well don't tell any of the others, but you are my favourite CSA 😊".* The claimant responded *"They don't really care, all they care about is chocolate ;)".* Mr Budgen then *replied "If you could be a chicken or a red devil who would you be?;o)".* The claimant responded by sending a photo of herself dressed up as a red devil (Rp 69). Mr Budgen replied to say *"That answers my question – very nice – perhaps I would like to meet her outside of work?"* The claimant replied *"Haha she prefers ladies ;)"*. Mr Budgen responded *"Lol, never saw that one coming – lucky ladies"*. The claimant replied *"lucky indeed ;)"* and Mr Budgen *replied "well you're still my favourite 😉".*

29. Mr Budgen had not known, prior to this email exchange, that the claimant was gay. It was of no consequence to him and did not impact on their relationship. The emails exchanged between Mr Budgen and the claimant continued to be of the same nature.

30. The claimant undertook some work on surveys and emailed Mr Budgen to confirm she was starting the work (Cp 26). Mr Budgen replied *"I am very happy to know that – perhaps one day you will allow me to treat you to a Prosecco :o)".* The claimant replied to say *"I don't really drink :) I only collect bottles 😊 …"* Mr Budgen responded and the claimant again replied to say *"But I don't like empty bottles ;) I like them full and unopened 😉".*

31. The claimant subsequently became a member of the health and safety committee which is chaired by Mr Budgen. He found the claimant and one other Polish woman very helpful because they translated the minutes into Polish for the shop floor workers.

January/February 2017

32. The claimant and Mr Budgen continued to exchange emails in which there was a degree of banter and which were mildly flirtatious. In January 2017 (Rp 78) Mr Budgen sent an email in which he asked *"who says I miss you?"*. The claimant responded *"I heard you saying ;)"* and then *"If you miss me that much you could take all the surveys from Agnes and bring it to me 😊 she won't be able to do them any time soon and my day tomorrow looks fine so I would finish it 😊"*. Mr Budgen *replied "Thank you very much - you get a [gold star emoji]"*.

33. Mr Budgen indicated in an email to the claimant on the 13 January 2017 (Rp 80) that he was unable to attend an event planned by Ms Marshall. The claimant replied *"you will be missed ;)"*. Mr Budgen responded *"Yeah sure I will! 😊"*.

34. The claimant sent Mr Budgen an email on the 16 February 2017 (Rp 82) to tell him he had left his phone in the meeting room and she had given it to Paul McDonald. Mr Budgen emailed back to say *"thank you I now have it in my possession 😊"*. The claimant *replied "what would you do without me heh? ;)"*. Mr Budgen replied *"As the saying goes, "behind every good man, there is a GREAT woman" ;)"*. The claimant replied *"now you exaggerated a bit ;)"*.

35. The claimant's relationship with Mr Budgen broke down in May 2017 following a number of emails in which the claimant questioned Mr Budgen's competency (see below).

November 2016

36. The respondent company had, for many years, used Barrhead Travel to arrange and book much of their travel, and also for customer/visitor travel. The claimant's duties included booking travel. The claimant's remit included reducing travel costs where possible, but the claimant had no authority to end agreements with suppliers or enter into new agreements.

37. The claimant raised an issue with Barrhead Travel regarding car hire. The claimant proposed the cheapest car hire be used, notwithstanding a caution from Mr Graeme O'Donnell, Account Manager for Corporate Travel at Barrhead Travel, that the respondent may need to accept a reduction in service (for example, reliability) if the cheapest car hire option was used. The claimant disagreed.

38. Mr O'Donnell emailed the claimant on the 4 November 2016 (Rp 76) regarding the car hire issue, following an incident when the cheapest car hire had been used and there had been a problem with it. Mr O'Donnell confirmed he had approached the particular company, explained the situation and was awaiting a response. Mr O'Donnell went on to say that he had stressed before that the recommended suppliers for corporate car hires had been offered, but the claimant had stated she would make the car hire booking herself. Mr O'Donnell explained the company used by the claimant was more of a leisure orientated supplier. He suggested (again) that if a more corporate service was needed, then the recommended suppliers should be used because they were geared towards the corporate market. He concluded the email by stating he thought the claimant needed to make a decision between reliability and cost to save this happening again in the future.

39. The claimant responded (Rp 75) to say that it didn't matter which car rental supplier provided their services: they should all provide a top class service if they wanted their business to function. The claimant stated she *was "here to cut cost hence taking on the cheapest option. Again, I expect it to be provided."* The claimant explained the people had tried to make contact with the company and when no-one answered they hired another car from the airport. The claimant stated *"So I will not take any excuse for an answer. I have had a guy from Enterprise last week and depending on the prices he will offer to us, I may actually start using him directly."*

40. Mr O'Donnell replied the same day to say that they also expected top service to be provided and, based on their wealth of experience, they would always recommend certain suppliers from a business perspective. Mr O'Donnell went on to say they would happily discuss possible negotiated rates with

Enterprise, but they would probably expect all of the respondent's business. The claimant was to let him know if the respondent wished to do this.

41. The claimant replied to say she would leave it as it was for now.

42. Mr O'Donnell emailed the claimant a week later (Rp 73) to say he had had a response from the cheaper car hire company and the charges would need to stand because there had not been a call to their emergency number. Mr O'Donnell included the full email explanation for the claimant to see.

43. The claimant replied to not only disagree with the explanation but to say that she did not agree with the charges and *"don't want to see them listed in our invoice (I will check it myself). At the end of the day I have bought a service from Barrhead Travel and not from [the cheap car hire company]. This service hasn't been provided and I don't see the reason why we should pay for it. Again, I'm not satisfied that we even have this conversation."*

44. Mr O'Donnell *responded "I'm a little confused that you're dissatisfied at having this conversation? I'm trying to explain why you are being charged so it's a conversation we need to have unfortunately."* Mr O'Donnell explained why the charge had been made and went on to say *"I've also mentioned twice previously that this is not a supplier we promote. The only reason we've offered it is because you advised us our original quotes (with the reliable car hire companies, geared more towards the corporate market) were too expensive and said you would book it yourself. We're trying to work with you and offer you what you want Dominika but I have, on numerous occasions, highlighted the dangers of booking solely on price and not factoring in reliability. I'm afraid these charges stand and you will be invoiced for them. I can only reiterate that you book with our recommendations in future as we carry out thorough reliability and price checks with all suppliers we offer."*

45. The claimant responded to disagree with what had been said and concluded her email: *"And just to let you know, I have started using Corporate Traveller since this incident and I am far more satisfied with their service so you won't be seeing any major booking coming from me".*

46. Ms Marshall was made aware of this incident at the time. The respondent and Barrhead Travel had a long-standing relationship and it was raised with Ms Marshall by Mr O'Donnell. Ms Marshall spoke to Mr Carnachan about it and he spoke to Mr O'Donnell. Mr O'Donnell not only expressed frustration because he had warned the claimant about cheapest not being best, but he also expressed concern regarding the aggressive nature of the claimant's emails.

47. Mr Carnachan spoke to the claimant about this incident and offered advice about how to deal with such situations. Mr Carnachan did not shout at the claimant during this meeting and did not say "I don't give a shit".

April 2017

48. Mr Gordon Macdonald of Kilmacolm taxis sent the claimant an email on the 21 April 2017 (Rp 84) confirming the details of various pick-ups. The claimant replied to confirm the details were correct and went on to say *"for future reference, please do not call me to abuse me with your frustrations. The whole office heard it questioning your professionalism. I am open to having a conversation but I will not take any abuse from anyone.".* Mr Macdonald replied *stating "I do not know who's benefit this reply was for but I can assure you I didn't abuse you on the phone. It is you who makes me frustrated as I have been doing this job professionally for over 18 years and on my 10th year in bridge and I have never worked with someone quite like you. I said I had agreed all the transport with Paul Hull and you told me taxing had nothing to do with him but for me it's good to have a contact when you're away home in the evenings or at the weekends when no one is in the office. I spoke to Linda about 10am this morning and told her that all work today would be covered. Then she called me and said that Renfrewshire were going to do the work. I called you and you needed (your words a snappy) decision and when I ask you to maybe call me in future to get that (snappy) decision then you said you have bigger work to do than talk to me at times and again your words (I even struggle to go for a pee) at times which I don't need to hear. I don't know what seems to be your problem with me or my company but it's that again that frustrates me. Again today's work is covered but I would like this nonsense to*

stop before any other work is done and needing to speak or confirm it numerous times."

49. The claimant reported to Mr Carnachan that Mr Macdonald had shouted at her. Mr Carnachan spoke to Mr Macdonald who denied it. Mr Carnachan spoke to the claimant and sent an email (Rp 90) confirming the principles to be followed when booking taxis.

May 2017

50. Mr Budgen produced a health and safety memo (Rp 89a) to explain that police officers had visited the respondent's premises to explain that residents from Kilbarchan had complained that a number of vehicles had gone through the village at high speed. The police advised they would be setting up speed monitoring in the village and they did not want any of the respondent's employees getting caught speeding. The memo explained the narrow road through the village and the fact pedestrians could appear suddenly. The memo detailed the action to be taken by employees and concluded by stating *"Police Scotland will be informing Bridge of Weir if any of our employees are caught speeding".*

51. Mr Budgen sent an email (Rp 88) to a large number of employees regarding speeding through Kilbarchan and drew their attention to the memo attached to the email. Mr Budgen asked people to print off the memo and place it on every exit because they needed to get the message out to all employees.

52. The claimant replied to Mr Budgen's email (Rp 88) stating *"Please take the last statement off the memo. No police would ever inform employers about fines they gave their employees. Best wishes".*

53. Mr Budgen responded to say *"With respect, you might think I would be aware of this, however, on this occasion, they will (not names) but they will inform us if they catch any of our employees. It is present for effect not fact."*

54. The claimant replied *"Well that is not true either, Billy. The effect was that everyone commented on this rising doubts about your competency. People*

are not stupid and threatening them is not a solution when they know the threats are empty."

55. Mr Budgen replied *"Are you saying that this statement has given rise to my competence as a health and safety manager, and secondly, you are basically calling me a liar?".*

56. The claimant replied *"Firstly, I'm telling you what the effect of your statement was. And secondly, the police office you spoke to is my friend who I call to get more info about it … you can call yourself whatever you want, but the information you give is not true."*

57. Mr Budgen replied *"If you spoke to him, he would have told you that he has already told me that a number of employees were stopped and that they were given a warning, they were asked to slow down and spread the word that the police would be setting up speed monitoring. They even went on to tell me the excuses they used … The Police did not say who, but did say that a number of people had been stopped. I will be taking this up with Karen, I feel you are over stepping the mark and basically telling me that I am useless at my job, I take great offence at that. I might put things on the memo that can be construed one way, this is for effect, if I get one person slowing down and that stops them from hitting a pedestrian then it is worth it. The purpose of the memo is to get the information out and warn people not to speed, not to frighten them. I do not feel that you have the right to cast doubt over my competence and you certainly are not my line manager and I should not have to explain myself to you".*

58. The claimant replied to Mr Budgen (Rp 86) to say the Police would never inform an employer about their employees being caught speeding. She went on to say that she thought Mr Budgen was being "oversensitive" and "over dramatic" and that she had only intended to give him "feedback".

59. Mr Budgen replied to say that he was not going to debate it. He went on to say *"I am neither over sensitive nor dramatic, it is not in my nature. I can accept feedback, but I take offence at being called a liar and comments like* ***"everyone commented on this rising doubts about your competency".***

It is not your place to make comments like this, and they would be taken offensively by any member of staff. Please do not email again. I will discuss this with Michael."

60. Mr Budgen forwarded the emails to HR and Mr Carnachan, and the claimant was spoken to about the matter. Mr Budgen tried to draw a line under what had happened, but the claimant resigned from the health and safety committee and their relationship thereafter became purely professional.

61. Mr Carnachan spoke to the claimant about this exchange of emails with Mr Budgen and about the fact she fell out with people. He informed the claimant that if she had any difficulties with Mr Budgen she should let him know so he could deal with it. Mr Carnachan did not shout at the claimant during this exchange.

August/September 2017

62. The claimant was asked by Mr Carnachan to be a Fire Marshall. Mr Carnachan made this decision because the claimant was one of the few people who were office based (most of the people in the office travelled a great deal). The claimant was required to do online training modules. Mr Budgen wrote to the claimant on the 1 September (Rp 95) referring to the instructions from the trainers regarding these online training modules and saying that once she had completed the two modules and passed the test, she would be issued with a certificate. Mr Budgen asked the claimant to ensure she had completed the training by the 9 September because fire drills were taking place the following week. The email, although addressed to the claimant, was sent to Mr Carnachan and forwarded by him to the claimant.

63. The claimant replied asking to be excused from being a fire warden. She said she did not want anything to do with health and safety, and that Mr Budgen and his department were disorganised. The claimant went on to say *"His communication is below standard. He never replies to my emails, ignores my H&S concerns and often lets me know I am not on the level significant enough to be considered by him saying "did it come from Karen/managers"? on my reply that it comes from me, he ignores me and problem.*

64. Mr Carnachan replied to inform the claimant that she was to be the fire warden because he was too busy to do it. He went on to say that *"we all work with people we either don't like, get on with or maybe even respect. But we need to be professional at all times, remove any emotion and just get on with it. Specifically, if you have any issues with Billy, let me know and I will address this."*

65. The claimant replied to say she had communicated the poor quality of training to Mr Budgen and lack of communication regarding the training results, but had not received any reply. The claimant also stated she did not feel the training was sufficient. The claimant said she took health and safety seriously and would not take responsibility unless she felt properly trained. She repeated her wish to be excused from being a fire warden and if not, then she wished to do another training course she had identified.

66. The claimant completed and passed the two online training modules. The claimant emailed Ms Hardie (Rp 108) to ask if she had been emailed the results of her tests and if so, requesting she pass them on to the claimant. Ms Hardie replied to confirm the claimant had scored 100% in her fire safety test (and well over 80% in the other test). The claimant replied to Ms Hardie requesting a list of the questions and the answers. Ms Hardie confirmed it was not policy to give out the answers. The claimant would not accept this and went back to Ms Hardie (Rp 106) to say the answers were listed at the end of each course and could easily be copied, although the claimant had not done so. The claimant explained she wanted to review the answers she got wrong, and this had nothing to do with company policy. The claimant insisted she should be given the answers so she could learn from her mistakes and avoid a health and safety disaster.

67. Ms Hardie forwarded the emails to Mr Budgen, who emailed the claimant on the 14 September (Rp 105). Mr Budgen confirmed Ms Hardie was quite correct, and she was not allowed to forward the email notifying of the answers, as it could be used to cheat. Mr Budgen confirmed it was his policy and as a manager, he was entitled to make this policy in order to protect the integrity of the test. He confirmed the claimant had passed the tests and would be

given the opportunity to re-sit them once the date came up for refresher training.

68. The claimant replied to say that she was not one for cheating, but she wanted to learn from her mistakes. The claimant asked Mr Budgen to confirm he had refused to give her the answers, so that in the event of her making a wrong decision in real life, she had the "cover" of the fact the Health and Safety Manager had refused her the possibility to learn.

69. Mr Budgen went back to the claimant to clarify no-one was accusing her of cheating, but there had been previous occasions when the answers had fallen into the wrong hands. Mr Budgen reiterated the policy and said if the claimant did not accept his position she should raise it with Ms Marshall.

70. The claimant replied to say she would raise it with Mr Paul McDonald, and she also had other things to complain about as well.

71. Mr Budgen emailed Mr Carnachan on the 14 September (Rp 103) to say the claimant was once again over-stepping the mark.

72. Mr Carnachan emailed Mr MacInnes, HR, seeking advice on the fact the claimant was continually falling out with people internally and externally. Mr Carnachan considered trust in the claimant was starting to deteriorate.

November/December 2017

73. Ms Linda MacMillan, Receptionist at the respondent, sent an email dated 9 November to Ms Bryson at Renfrewshire Cabs querying why a driver had agreed to take a passenger on a tour round Glasgow when this had not been agreed with the respondent. The sum involved was £53. Ms Bryson responded on the 15 November to explain what had happened.

74. The claimant picked up this matter on the 22 November (Rp120) to say she could not accept the charge. The claimant explained no customer had authority to change a booking "no matter what excuse they come up with". The claimant queried what would happen if next time someone asked for a tour round Scotland.

75. Ms Bryson responded (Rp 118) to say she would not be removing the charge and suggested that as the passenger had made the request, he should be asked to pay.

76. The claimant subsequently sent a further email on the 1 December (Rp 117) stating the accounts department would be closing the following week, and Ms Bryson should resend the corrected invoice for payment. Ms Bryson replied to say the charge would not be removed.

77. The claimant responded (Rp116) to say she would advise the accounts department to pay the invoice less the disputed amount. The claimant went on to say she would be looking *"to replace your services with another provider as I am unhappy with how things work between us."*

78. The claimant sent a further email response to Ms Bryson to say that because of incorrect charges, the process of payment would now be postponed because it had to be approved by herself and the finance director, and as the claimant was not approving the payment, it would not be referred to the finance director.

79. Ms Bryson responded to say that in order to close the matter off, she had re-issued the invoice and removed the charge for the detour. Ms Bryson noted the company had not changed its view regarding this matter. Ms Bryson confirmed she had asked for the final invoice to be sent in order to "close your account" immediately.

80. The claimant replied (Rp114) to say that whilst she was satisfied with the revised invoice, she was not happy Ms Bryson had "requested to close the account without my agreement and my authorisation. The account must be opened until I authorise to close it." The claimant stated it was another example of how bad the service to the respondent was, and she was going to formally complain to the owner of Renfrewshire Cabs about Ms Bryson's poor performance.

81. Ms McCulloch replied to the claimant's email to confirm the account would remain closed, as per company policy, until payment had been brought up to date.

82. The claimant continued to email Ms McCulloch regarding payment times, until ultimately she concluded by stating *"I am going to speak to your father about it."*

83. The claimant emailed Ms McCulloch again on the 4 December (Rp 111) regarding the timing of payments and stating *"so again, nothing we did wrong that would allow you to make this irrational decision to close our account".* The claimant "reminded" Ms McCulloch of the number of employees working with the respondent who used Renfrewshire Cabs for work and privately and went on to say *"You can only imagine what their view about your services will be when they find out how unreliable and disappointing service you have provided to us and how badly you treated your customers. I was actually shocked all weekend of what happened and how we were firstly scammed and then mistreated by yourself (holding a Director position) …"*

84. Ms McCulloch was on holiday and so a reply came from Ms Muir, Manager. She confirmed they awaited payment. She further confirmed *"we feel the current arrangement is untenable and will no longer be able to provide a service going forward. We reject your assertions that we tried to "scam" your company and that you have been "mistreated", and we feel we have reached an impasse that cannot be resolved and that closing the account is the only option at this stage."*

85. The claimant sent a letter to Mr McCulloch, owner of Renfrewshire Cabs (Rp 127) in which she stated *"I write to inform you that "we" are very disappointed to be mistreated by your company staff."* The claimant suggested she had been responsible for setting up the agreement of cooperation. The claimant set out her version of events and went on to say *"trying to find out the reason for unauthorised change to our booking we met nothing but disappointment, lack of responsibility taken by your operators leading to our account being immediately closed without any notice given".* Further, *"no apology all the way*

through for mistreating us, for trying to manipulate cost and for staff's mistakes. This situation resulted in you losing over £1000 a month of business from us …. If you continue your business the way it is now, you may have no business left in a few years. I am not in a position to advise you but from my own observation and experience changes to your management must be done. Perhaps replacement with men would lead to less irrational decisions and better service".

86. The claimant did not report to Mr Carnachan or Ms Marshall that the respondent's account with Renfrewshire Cabs had been closed. Ms Marshall learned of this when she phoned for a taxi to pick her up one morning and was told the account had been closed. Ms Marshall could not believe it. They are a long-standing supplier who have had a very good relationship with the respondent for very many years. Ms Marshall had personally used the company for over 20 years. Ms Marshall was so concerned about it that she immediately contacted Mr Carnachan.

87. Mr Carnachan investigated what had happened by speaking to the Finance Director at Renfrewshire Cabs, and asking him to provide a copy of the email exchange. He reported back to Ms Marshall that the account had been closed because of an issue between the claimant and Renfrewshire Cabs. Ms Marshall was furious because she had not been made aware of this and it was not within the claimant's remit to close the account. Ms Marshall considered that if the claimant felt Renfrewshire Cabs had acted wrongly, she should have raised it with her line manager. The claimant did not have the authority to decide on suppliers. Further, Bridge of Weir is a small place and the respondent's brand is very important to them both internationally and locally. Ms Marshall did not want this to be damaged.

88. Mr Carnachan issued an instruction that the money be paid to Renfrewshire Cabs. He then met with the claimant regarding this matter to inform her that her communications and approach to this matter had been unacceptable.

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89. Mr Carnachan emailed Mr MacInnes on the 7 December (Rp 129) seeking advice and giving a breakdown of the issues he had had with the claimant and which he had spoken to her about.

90. Ms Marshall and Mr Carnachan made the decision to terminate the claimant's employment because they no longer had trust in the claimant.

91. Mr Carnachan, accompanied by Mr MacInnes, met with the claimant on the 8 December. The claimant was informed her employment was terminating and she was given a letter explaining why her employment had been terminated (Rp 130). The letter made reference to the claimant failing to work professionally with colleagues, not conducting herself in line with the company values and seriously breaching the company's confidence due to inappropriate communications with external suppliers.

Claimant's letter of complaint

92. The claimant sent a letter dated 11 December (Rp 132) and entitled Formal Complaint against Michael Carnachan, to Ms Marshall. The issues raised by the claimant included the following points:

- with regard to Renfrewshire Cabs, she had acted professionally;
- Mr Carnachan had accessed and read her work emails;
- Mr Carnachan's behaviour towards her had been threatening on several occasions;
- she had made complaints about Mr Budgen to Mr Carnachan, including sexual harassment and Mr Carnachan had not believed her and
- Mr Carnachan had commented negatively about Polish workers.

93. Mr MacInnes was asked to conduct an investigation into the claimant's complaint. Mr MacInnes interviewed Mr Carnachan (RP 142); Ms Claire Toogood (Rp 146); Ms Katrina Whyte (Rp 148); Mr Kevin Rodger (Rp 150) and Mr Ricky Hughes (Rp 154).

94. Mr MacInnes emailed the claimant on the 20 December (Rp 156) stating he would like to meet with her to review the complaint and gain some further information. The claimant responded to this by saying her letter included all of the necessary information he needed to know and that she expected to receive a written response to the matters raised by the 22 December.

95. Mr MacInnes wrote to the claimant on the 22 December (Rp 158) and set out an explanation in relation to each of the matters raised by the claimant. Mr MacInnes concluded the allegations made in the formal complaint were unfounded and many of the allegations were untrue.

96. Mr Carnachan did not access and read the claimant's emails, nor did he block the claimant's email account. The claimant had tried to access her emails remotely on a Saturday and locked herself out of the account by entering a wrong password (Rp 183).

Since dismissal

97. The claimant obtained alternative employment, at a similar salary, in February/March 2018 as an Administrative Assistant. The claimant left that employment in July 2018.

98. The claimant undertook a Masters degree during 2018/2019 and has been in receipt of Universal Credit since 2019.

Credibility and notes on the evidence

99. The tribunal found the respondent's witnesses to be both credible and reliable and in any dispute we preferred their evidence to that of the claimant.

100. We found, in contrast to the respondent's witnesses, that the claimant's evidence lacked credibility and reliability. The claimant, for example, maintained she had sent an email to Mr Carnachan complaining of sexual harassment by Mr Budgen. The claimant could not produce this email and blamed the respondent for this, implying this had been deliberate. We preferred the evidence of Mr Carnachan in this matter and found there was no email complaint of sexual harassment. Further, we found there was no

verbal complaint of sexual harassment. We considered the incidents set out above clearly demonstrated that if the claimant had wished to raise a complaint of sexual harassment she would have done so, and would not have rested unless and until the matter had been dealt with to her satisfaction. The fact the claimant did not follow up on her alleged complaint of sexual harassment illuminated very clearly the fact no such complaint was made.

101. A further example was the claimant's assertion that Mr Carnachan had blocked her email account. Mr Carnachan had this assertion investigated and was able to confirm the reason the claimant's email account had been blocked was because she had tried to access it remotely using the wrong password. The claimant did not challenge Mr Carnachan's evidence.

102. We formed the impression the claimant was willing to make assertions which were clearly wrong or which could not be supported. It appeared to the tribunal that much of the claimant's evidence was how she now chose to interpret or present what happened, rather than what actually happened at the time.

103. The claimant appeared unable, or unwilling, to understand the remit of her role and the concept of appropriate behaviour and interactions with others in a more senior position within the company. The claimant, for example, asked Mr Budgen why it was alright for Ms Marshall to question him about competency, but not alright for her to do so. Ms Marshall was the Chief Executive of the company at the time of these events and Mr Budgen reported to her. The claimant was a commercial assistant many grades below Mr Budgen.

104. The claimant also refused to accept an explanation for any issue she raised. Mr Budgen, for example, told the tribunal that although it had not been within the claimant's remit to comment on the health and safety poster regarding speeding, he had revisited the matter after the claimant's intervention. The problem was that the claimant would not accept the explanation provided and matters escalated with every email she sent. This pattern could be seen in the claimant's exchanges with Mr Rodger, Barrhead Travel and the two taxi companies.

105. The claimant also acted on her own account in raising/dealing with these matters: she was not acting on the authority of Ms Marshall. The claimant did not have authority to close accounts with existing suppliers: she did not have authority to enter into contracts with new suppliers.

Claimant's submissions

106. The claimant presented a written document in which she set out the alleged acts of direct discrimination, the comparator, the protected characteristic relied upon and a summary of the evidence/findings. The claimant set out the relevant law and her conclusion that she had provide facts from which conclusions could be drawn that the respondent had continually treated the claimant less favourably/not equally on the ground of race. There was no material difference between the circumstances of the comparators, and the burden of proof shifted to the respondent.

107. The respondent invited the tribunal to believe that Mr Carnachan employed her (Polish) in preference to a British applicant, but they had produced no evidence to support this.

108. The respondent had failed to discharge the burden of proof on the balance of probabilities that race was not a ground for the treatment in question either by denying facts happened or failing to provide adequate reasoning why it treated her less favourably/not equally.

109. The complaint of indirect discrimination related to the fact the claimant had been given a weekly paid contract. The provision, criterion or practice applied by the employer was the fact Polish workers were given less advantageous contracts. Two male Polish employees had progressed from the shop floor to the office and had progressed to monthly paid contracts. Two Polish females working in the office had never been offered monthly paid contracts.

110. The claimant submitted she had been put at a disadvantage by this because weekly paid employees received one day less annual leave, a lower rate of sick pay and only one week's notice. The claimant submitted her British predecessor had had a monthly paid contract.

111. The claimant submitted, in relation to the victimisation claim, that she had done a protected act when she complained to Mr Carnachan that Mr Budgen had made romantic advances towards her and that he was treating her badly because she had refused them. The claimant, in the written submission, identified the detriments said to have occurred because she had done the protected act.

112. The claimant submitted she had complained about the abusive behaviour of Mr Rodger to Ms Marshall and Mr Carnachan but her complaints had not been acted on and were disbelieved. She had also complained about the abusive behaviour of Gordon MacDonald of Kilmacolm taxis, but her complaint was not believed.

113. The claimant submitted the respondent had repeatedly failed her and the unwanted conduct had created a hostile working environment.

Respondent's submissions

114. Mr McLaughlin addressed the written submission he had provided to the tribunal. Mr McLaughlin submitted the claimant must prove, on the balance of probabilities, facts from which the tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination has occurred. If such facts are not provide, the claim will not succeed. Mr McLaughlin referred to the case of **Madarassy v Nomura International plc 2007 ICR 867** and submitted it was not enough for the claimant to simply show that she had been treated badly or unreasonably: there must be something more. Further, the case of **Laing v Manchester City Council 2006 ICR 1519** was authority for the proposition that if the tribunal is satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or subconscious discrimination, then there is no need to look further.

115. Mr McLaughlin submitted the claim had (initially) been struck out because the claimant had been unable to show more than simply stating this happened to me, I am Polish, therefore there has been discrimination.

116. The claimant sought to reply on three protected characteristics, but at no stage had she been able to say which alleged behaviour was linked to which protected characteristic. Mr McLaughlin submitted the claimant could not say because she did not know, and she did not know because at the time of these events she did not believe it. She "joined the dots" after dismissal. In any event, the case now rested on one protected characteristic, race (Polish nationality).

117. Mr McLaughlin submitted the claimant failed to make out a prima facie case. The claimant's case was set out at claimant's documents page 120 – 137, but only two facts were agreed: (i) she had a weekly paid contract and (ii) she was dismissed. The claimant had not come close to proving anything else.

118. The claimant had put almost none of her case to the respondent's witnesses. She had not, for example, asked Mr Carnachan if he had said "bloody Poles" or "I don't give a shit" or suggested he shouted.

119. Mr McLaughlin submitted the case failed because the claimant had not proved the facts to get her to the next stage. And, there were insufficient facts from which to draw an inference.

120. The respondent had led a significant amount of evidence and, it was submitted, it was crystal clear the claimant was dismissed for falling out with people: her abrasive, aggressive style of communication was repeated with internal employees and external suppliers. It was submitted that all the respondent required to do was persuade the tribunal that the reason for dismissal was not tainted by discriminatory motive either conscious or subconscious.

121. Mr McLaughlin submitted, in relation to the harassment case, that it was incredible the claimant took the oath and then described her email exchanges with Mr Budgen as unwanted conduct. It was nonsensical. The claimant did not complain or raise a grievance. The claimant's position was that she had complained, but could not produce the email in support of that position. Mr McLaughlin invited the tribunal to find that at no stage was a complaint raised by the claimant about Mr Budgen. The relationship between Mr Budgen and

the claimant only ended after the speeding incident, when the claimant conducted herself in a manner which was inappropriate.

122. Mr McLaughlin submitted the claim of victimisation had to fail because there was no protected act. The claimant maintained she had made a complaint of sexual harassment about Mr Budgen to Mr Carnachan, but there was no evidence other than her oral evidence that there was any such complaint. Mr Carnachan spoke with the claimant in September regarding the fire warden issue and the claimant told him Mr Budgen was complaining because she had refused his sexual advances. Mr McLaughlin submitted this was not a complaint of sexual harassment, but an explanation. The tribunal was invited to dismiss this complaint.

123. Mr McLaughlin submitted the complaint of indirect discrimination also failed because the claimant had not articulated a provision, criterion or practice and the claim was framed personally about the claimant and what had happened to her. Further, there was no argument that any rule was applied with disproportionate impact on Polish people.

124. Mr McLaughlin invited the tribunal to prefer the evidence of the respondent's witnesses to that of the claimant in any dispute. The claimant's credibility was undermined by the fact she had been argumentative, would not wait for the question to be asked, gave the response she wished to irrespective of the question and making wild allegations, for example, saying Mr Carnachan had blocked her emails when in fact the email had been blocked because she had been trying to access the system at a weekend.

125. Mr McLaughlin invited the tribunal to dismiss the claim in its entirety. If, however, the tribunal was not with him, an award in the lowest Vento band should be made and financial loss should be limited to the time she obtained alternative employment.

Discussion and Decision

Direct Discrimination

126. Section 13 of the Equality Act provides that a person discriminates against another if, because of a protected characteristic, the person treats the other less favourably than they treat or would treat others.

127. Section 23 of the Equality Act makes clear there must be no material difference between the circumstances relating to each case when determining whether the claimant has been treated less favourably than a comparator. The comparison must compare like with like. The comparator must be someone who does not share the claimant's protected characteristic and is in not materially different circumstances to her.

128. The claimant identified the following alleged acts of less favourable treatment:

    i. Mr Carnachan ignored her concerns regarding Mr Budgen's untrue statement on a company memo;

    ii. Mr Carnachan appointed her to a Fire Warden role;

    iii. Mr Carnachan ignored her concerns regarding Mr Budgen's inappropriate behaviour (ignoring her health and safety concerns and not considering her emails unless they came from Ms Marshall);

    iv. Mr Carnachan ignored her concerns regarding Mr Budgen's inappropriate behaviour which was caused by her refusal of sexual advances, and he threatened her with losing her job if she reported it to HR and blocked her email account so she could not print off emails from Mr Budgen;

    v. Mr Carnachan raised his voice and used inappropriate language;

    vi. Mr Carnachan monitored her electronic communications;

    vii. Mr Budgen ignored her concerns about health and safety risks at work and her request for additional fire warden training because she refused his sexual advances and

viii. the claimant was dismissed.

129. We firstly must determine whether these alleged acts took place. We were satisfied, in relation to allegation (i) that Mr Carnachan did not ignore the claimant's concerns regarding Mr Budgen's (alleged) untrue statement on a company memo. Mr Carnachan's evidence, which we accepted, was that he spoke to the claimant and to Mr Budgen regarding this matter. He was not sure the statement made in the memo was untrue, but in any event that was not the issue: the issue was the tone and content of the claimant's emails. Mr Budgen was the Health, Safety and Training Manager and it was not for the claimant to question his competence or authority. Mr Carnachan also made it clear to the claimant that she should contact him with any difficulties before escalating the matter herself.

130. There was no dispute in relation to allegation (ii) that Mr Carnachan appointed the claimant a Fire Warden in September 2017.

131. We considered allegations (iii) and (iv) together because they both concern an allegation that Mr Carnachan ignored the claimant's complaints about Mr Budgen's inappropriate behaviour, which the claimant believed was caused by her refusal of Mr Budgen's sexual advances. We firstly noted the claimant did not ever complain in writing or orally to Mr Carnachan regarding alleged sexual advances by Mr Budgen. The claimant made reference in her evidence to an email having been sent, but she could not produce the email. The inference was that the respondent refused to provide her with a copy of it. We preferred the evidence of Mr Carnachan that no written complaint had ever been made to him. Mr Carnachan was asked about this in his evidence in chief and in cross examination. Mr Carnachan's evidence, which we accepted, was that the suggestion by the claimant that she had complained to him about sexual harassment by Mr Budgen was "absolutely untrue" and that he had checked back through all of his emails in preparation for the hearing, and had not found anything.

132. Mr Carnachan did acknowledge, in the interview conducted by Mr MacInnes (Rp 143), that in response to being challenged about an unacceptable email

exchange, the claimant had said Mr Budgen did not like her because she had refused his advances. Mr Carnachan described the claimant as not appearing in any way concerned about the advances, and she had not suggested there was anything untoward: it was simply her explanation for what had happened. Mr Carnachan had not taken from what was said that the claimant had any issue with what had happened: there was no complaint and nothing to follow up on. We accepted from Mr Carnachan's evidence that no complaint was made by the claimant regarding any alleged inappropriate conduct by Mr Budgen. We considered we were supported in this by the fact the claimant had demonstrated very clearly that if she had wanted to complain and to raise the matter formally, she would have done so.

133. We preferred Mr Carnachan's evidence that he did not threaten the claimant with losing her job if she reported Mr Budgen's inappropriate behaviour to HR. Mr Carnachan did not say this because there was no report of inappropriate behaviour to him or anyone else.

134. The claimant asserted Mr Carnachan had, after being told she was going to complain about sexual harassment, blocked access to her email account so she could not print off emails sent by Mr Budgen. We found as a matter of fact, preferring the evidence of Mr Carnachan which was given after having conducted an investigation into the claimant's assertion, that the claimant had effectively locked herself out of her email account when she tried to access it remotely from home on a Saturday and used the incorrect password.

135. The claimant did inform Mr Carnachan that Mr Budgen was ignoring her emails. The claimant, in an email to Mr Carnachan on the 1 September, asked to be excused from fire marshall duties and said she did not want to have anything to do with Health and Safety because Mr Budgen and his department were disorganised, his communication was below standard, he never replied to her emails, ignored her health and safety concerns and often let her know she was not on the level significant enough to be considered.

136. The claimant emailed Mr Carnachan again on the 5 September saying Mr Budgen did not communicate with her, did not reply to her emails and ignored her health and safety concerns.

137. Mr Carnachan did not specifically raise these issues with Mr Budgen, but many were issues which arose from previous interactions between the claimant and Mr Budgen and had, in that context, been addressed. For example, the health and safety concerns relating to the "speeding" memo issue: Mr Carnachan had spoken to Mr Budgen about this. Also, the "refusal of health and safety training" related to the fire warden training and this is dealt with below.

138. We concluded Mr Carnachan did not ignore the claimant's concerns regarding alleged inappropriate behaviour by Mr Budgen; and he did not ignore her assertion that Mr Budgen did not reply to her emails.

139. We preferred the evidence of Mr Carnachan to that of the claimant regarding allegation (v) and we found as a matter of fact Mr Carnachan did not raise his voice and did not use inappropriate language to the claimant.

140. We also preferred the evidence of Mr Carnachan in relation to allegation (vi) and found as a matter of fact the claimant's electronic communications were not monitored. The claimant relied on the fact the email produced at Rp 111 had her name at the top of it. Mr Carnachan was asked specifically about this and confirmed that he had been asked by Ms Marshall to look into the Renfrewshire Cabs account being closed, and he had been sent the email exchange by Mr Archibald, the Finance Director at Renfrewshire cabs, who had obtained it from the person at Renfrewshire cabs with whom the claimant had been exchanging emails.

141. The claimant asserted (allegation vii) that Mr Budgen discriminated against her when he refused to provide additional training for the fire warden role, and this happened because she refused his sexual advances. There was no dispute regarding the fact the claimant undertook the required training for the fire warden role. She passed the online tests. The claimant wanted to be provided with a copy of the questions and answers, but this request was

refused. The dispute was ultimately referred to Mr Budgen, who informed the claimant that she had been correctly informed that she could not be provided with a copy of the questions and answers, and that he had put in place this policy to protect the integrity of the tests. The claimant challenged Mr Budgen on this again, and he confirmed that she should raise it with Ms Marshall.

142. We did not consider the above facts to be a "refusal to provide additional training". There was no additional training: the claimant had completed and passed the training required for the fire warden role.

143. There was no dispute regarding allegation (viii) that the claimant was dismissed.

144. We, in conclusion, found the following acts did occur:

- Mr Carnachan appointed the claimant to be a fire warden and
- the claimant was dismissed.

145. We must next ask whether the claimant was treated less favourably, when she was appointed a fire warden, than an actual or hypothetical comparator was or would have been treated. The claimant referred to there being 10 people in Mr Carnachan's team (8 men and 2 women) all of whom were British, and all of whom she considered would have been more suitable for the role, particularly the men because the claimant believed the role was more suited to a man.

146. Section 23 Equality Act provides that there must be no material difference between the circumstances relating to each case when determining whether the claimant has been treated less favourably than a comparator. In other words, like must be compared with like. The claimant, although referring to 10 other people in the department, provided no evidence regarding their job roles or working hours. The claimant was the only Commercial Assistant: accordingly the other people in the department must have held different roles to the claimant. We considered that in the absence of information regarding the other people in the department, their roles and hours, it was not possible

for this tribunal to understand whether the others in the department were an appropriate comparator.

147. Mr Carnachan told the tribunal he asked the claimant to be a fire warden because she would be in the office at all times, whereas all others, with the exception of Claire (we believe this is a reference to Claire Toogood), would often be out of the office travelling. It therefore appeared, on the face of it, that the appropriate comparator would be Claire Toogood, but we had no other information about her job role or hours of work. Claire was British, and we assumed, for the purposes of this exercise, that she carried out a job role which meant she was in the office all or most of the time.

148. The claimant was asked to undertake the fire warden role and Claire was not. Was this less favourable treatment? We accepted Mr Carnachan's evidence that the claimant initially had no issue with taking on the fire warden role. The issue only arose after the claimant had completed and passed the online training but her request for the answers to the tests was refused. It was only at this point that the claimant asked to be excused from being a fire warden, failing which asked for additional training. We concluded, having had regard to this evidence, that the claimant was not treated less favourably when she was asked to become a fire warden. We say that because at that time the claimant accepted it and was not resistant to it.

149. We did go on to ask whether (if the claimant had been treated less favourably when asked to be a fire warden) that less favourable treatment occurred because of the protected characteristic of race. The tribunal must, when considering this question, focus on the reason why, in factual terms, the employer acted as it did. We were entirely satisfied that the reason why Mr Carnachan acted as he did (in asking the claimant to be a fire warden) was because she was a Commercial Assistant employed to "make life easier" for Ms Marshall and him. Mr Carnachan did not have time to be the fire warden and he therefore asked his assistant, the claimant, whom he knew was in the office at all times.

150. The claimant invited the tribunal to draw an adverse inference of discrimination from her suggestion that Mr Carnachan had made negative comments about Polish people. There was no evidence of this before the tribunal: in fact, the evidence indicated the contrary position. The respondent employs a large number of Polish employees; Mr Carnachan had employed the claimant and he had identified and promoted at least one Polish worker. There was no basis upon which the tribunal could draw an adverse inference of discrimination.

151. We concluded the claimant was not treated less favourably when asked to be the fire warden and, if we erred in that matter and there was less favourable treatment, this did not happen because of the protected characteristic of race. The claimant was asked to be a fire warden because she was the Commercial Assistant and in the office all of the time.

152. We next considered whether the dismissal of the claimant was less favourable treatment. The claimant did not name a comparator and therefore the tribunal may construct a hypothetical comparator. The hypothetical comparator would be a person not of the claimant's race, but who had acted in the same or a similar way to the claimant. We considered a hypothetical comparator would be someone who was British and who had interacted with managers and suppliers in the same way as the claimant.

153. The claimant does not have the necessary period of qualifying service to bring a complaint of unfair dismissal: accordingly, the question of the reasonableness of the dismissal is not one for this tribunal. The issue for determination is the reason for dismissal: was the claimant dismissed because of her conduct in failing to work professionally with her colleagues, not conducting herself in line with the Company values and seriously breaching the Company's confidence due to inappropriate communications with external suppliers; or was she dismissed because of the protected characteristic of race, namely being Polish.

154. The claimant asserted her complaints (harassment, sexual harassment, discrimination and victimisation) against Mr Rodger, Mr Budgen, Mr Gordon

MacDonald and Mr Carnachan had not been investigated. We considered this assertion.

155. The incident with Mr Rodger is set out above and not repeated here. The claimant asserted Mr Rodger had "physically and mentally harassed" her by tapping her on the shoulder and shouting at her in front of work colleagues. The claimant further asserted her "complaint" about Mr Rodger had not been investigated.

156. The claimant did not make a complaint (formal or otherwise) about the alleged conduct of Mr Rodger. The claimant copied her email of the 3 October 2016 (Cp 13) to Mr Rodger, to Ms Marshall. The claimant, in that email stated *"I will discuss this matter with your Managing Director seeing that you classify shouting at me, poking my arm, dictating me to follow you and intimidating me in front of other people to the point where my office colleagues were concerned about my wellbeing as an acceptable behaviour".*

157. Ms Marshall told the tribunal that being copied into the email was not a formal complaint. She had, however, met with the claimant and Mr Rodger separately and then jointly, and then arranged for the mediation to take place. Ms Marshall also made enquires of people in the office at the time of these events regarding the claimant's position that Mr Rodger had shouted at her. Ms Marshall, based on what she had been told by the people in the office, concluded Mr Rodger had not shouted at the claimant in the manner alleged.

158. The claimant complained of a number of issues regarding Mr Budgen, which included his "false statement and lies" on the speeding memo, his refusal of health and safety training, his lack of communication, ignorance and sexual harassment. There was no dispute regarding the fact Mr Budgen copied to Mr Carnachan the exchange of emails which took place between himself and the claimant regarding the speeding memo. Mr Budgen considered the claimant had "overstepped the mark". Mr Carnachan spoke to Mr Budgen and also the claimant regarding this matter. He was not at all convinced the statement on the memo was a false statement or a lie, because the respondent company and the Police work closely together in the local community. It was, for

example, not uncommon for the Police to raise issues with the company which affected the local community. In any event, Mr Budgen had acknowledged that whilst the Police may not have given the company the names of any employee caught speeding, the whole thrust of the initiative by the Police and by Mr Budgen was to raise awareness of the issue and prevent speeding. Mr Carnachan advised the claimant regarding the aggressive style of her emails and the fact it was not the way the respondent does business and it was not how the respondent treated its employees. Mr Carnachan also impressed on the claimant that she should raise issues with him rather than escalate matters.

159. Mr Carnachan also spoke to the claimant regarding the alleged refusal of health and safety training. There had not been a "refusal" to provide health and safety training: all of the training necessary for the fire warden role had been provided to the claimant and she had passed the online tests. The "refusal" related to Mr Budgen refusing the claimant's request to be provided with the answers to the questions. Mr Carnachan reiterated Mr Budgen, as the Health, Safety and Training Manager was entitled to make the decision in order to protect the integrity of the tests. He advised the claimant to stop escalating issues and instead to report issues to him to deal with. The claimant did not take this advice.

160. We have set out (above) that Mr Carnchan did not specifically ask Mr Budgen about an alleged lack of communication with the claimant in terms of not responding to her emails, but we were satisfied this was raised generally when other matters were dealt with, for example, the speeding memo. We also had regard to the fact that not every email sent by the claimant to Mr Budgen required a response. We accepted his evidence that he would often forward the email to the person responsible for taking the necessary action.

161. The claimant did not make a complaint of sexual harassment by Mr Budgen. Mr Carnachan told Mr MacInnes (Rp 143) that the claimant said Mr Budgen made an advance "on the second time that I spoke to her". The context of that statement was that Mr Carnachan had told the claimant that her email exchange was unacceptable, and she had replied that "Billy did not like her

as she had refused his advances". There was no suggestion the claimant was making a complaint about this, or wanted Mr Carnachan to take any action regarding it. Mr Carnachan took it as the claimant's explanation why Mr Budgen had complained about the email exchange.

162. We considered there was support for Mr Carnachan's position based on the fact the claimant made this statement to him on the second time he spoke to her about her conduct. This, we estimated, must have been in or about May 2017. We believed that if the claimant considered she had made a complaint of sexual harassment by Mr Budgen, she would have raised the matter again with Mr Carnachan, Ms Marshall and/or HR. She did not do so.

163. The claimant provided Mr Carnachan with copies of the email exchange with Mr Gordon MacDonald of Kilmacolm taxis and complained that he had shouted at her. Mr Carnachan spoke with Mr MacDonald about this and he denied it.

164. The claimant alleged Mr Carnachan had shouted at her and stood over her at one of the meetings. Mr Carnachan rejected the suggestion he had shouted at the claimant. We accepted his evidence and preferred it to the evidence of the claimant. Mr Carnachan told the tribunal that his office was very small and so, when he spoke with the claimant in December 2017, regarding the Renfrewshire Cabs issue, the meeting had been in his office and he had stood in order to allow the claimant to sit. We accepted this explanation of why he had been standing and we further accepted he had been standing a distance from the claimant and not standing over her as alleged.

165. We concluded from the above that the claimant did not make a formal complaint about sexual harassment by Mr Budgen. Further, the issues which she did raise informally were investigated informally by Ms Marshall and Mr Carnachan. The claimant was not dismissed because she raised complaints about Mr Rodger, Mr Budgen, Mr MacDonald and Mr Carnachan. The issues raised about Mr Rodger and Mr MacDonald were dealt with by the respondent. There was no complaint of sexual harassment made against Mr

Budgen; and there was no complaint about Mr Carnachan until after the claimant had been dismissed.

166. We next considered the conduct issues. The incidents the claimant had with Mr Rodgers, Mr Budgen, Barrhead Travel, Kilmalcolm taxis and Renfrewshire cabs are set out above and not repeated here. Each of the incidents involved email exchanges with the claimant which were inappropriate, rude and escalated matters far beyond what was appropriate and far beyond the claimant's grade and authority. The claimant was spoken to by Mr Carnachan after each incident (with the exception of Mr Rodgers) and told her interaction was not appropriate and that it was not the way in which the company conducted itself. The claimant was told to report to Mr Carnachan rather than escalate matters and procedures were reiterated. The claimant would not take the advice and guidance offered by Mr Carnachan.

167. Mr Carnachan sought advice from HR in September 2017 following the exchange between the claimant and Mr Budgen regarding the speeding memo, and Mr Budgen's complaint to Mr Carnachan that the claimant had "once again, overstepped the mark". Mr Carnachan told the tribunal he could not remember the advice provided by HR, but the issue was that his trust in the claimant was being undermined by her behaviour. Mr Carnachan described that the claimant's role was to be a support to him and Ms Marshall, but in fact it was the "exact opposite".

168. The incident which brought matters to a head was the claimant's exchange with Renfrewshire Cabs. The claimant knew, following her lengthy email exchange with persons at Renfrewshire Cabs, that the respondent's account with Renfrewshire Cabs had been blocked. The claimant did not report this to Mr Carnachan or Ms Marshall, or indeed to anyone in the respondent company.

169. Mr Carnachan spoke to the claimant about the incident with Renfrewshire Cabs and asked whether she was going to tell anyone in the Commercial team that the respondent no longer had an account with them. The claimant did not respond to this question and maintained she had done nothing wrong.

Mr Carnachan ended the meeting when it became apparent the claimant did not intend to apologise or recognise that her behaviour had not been appropriate.

170. The respondent company has had a long-standing relationship with Renfrewshire Cabs and many of the staff, including Ms Marshall, used them not only for business but also personally. Ms Marshall had used them for over 20 years. Ms Marshall only learned the account had been blocked when she contacted Renfrewshire Cabs to arrange a taxi to collect her the following morning. She told the tribunal she "could not believe it and was so concerned about it, [she] phoned Mr Carnachan to find out what had been going on". Ms Marshall, when learning what had happened, was "furious" because she had not been told about it, and because it had not been within the claimant's remit to close (or have closed) the account.

171. Ms Marshall and Mr Carnachan had a discussion regarding the claimant and concluded there was a complete lack of trust in her being able to conduct herself professionally with other employees and suppliers. There had, for example, been no need for the claimant to fall out with and alienate suppliers. The decision was taken to terminate the claimant's employment.

172. We asked ourselves whether the hypothetical comparator in the same or similar circumstances to the claimant would have been dismissed and we concluded they would have been. We say that because an employee, employed in the role the claimant held and at the same grade, who had repeatedly engaged in hostile and aggressive email communications; had challenged managers and external suppliers; would not accept an explanation when one was given; would not take the advice of Mr Carnachan regarding how to deal with matters and to refer things to him rather than escalate them; did not report to the manager or Ms Marshall that the account with Renfrewshire Cabs had been closed and did, by her actions, damage the respondent's relationship with an external supplier whom they had used for very many years; potentially damage the company's reputation locally and embarrass the Managing Director of the company would have been dismissed.

173. The claimant was not treated less favourably than a hypothetical comparator would have been in the same or similar circumstances.

174. We should say that if we have erred in our conclusion that there was no less favourable treatment, we would have had to determine whether the dismissal was because of the protected characteristic of race. We, in considering this, must focus on the reason why, in factual terms, the employer acted as it did. We must also have regard to what was influencing the mind of the decision – maker.

175. The claimant in her evidence, suggested Mr Carnachan had made a comment about "bloody Poles" and that this showed a bias against polish people. We preferred Mr Carnachan's evidence that no such comment had been made. Mr Carnachan referred to the large number of polish workers employed by the respondent (30 – 40% of the workforce), many of whom he had managed when he had been Production Manager. He also identified a polish worker whom he had identified on the shop floor as having potential, and who had been moved to the finance team. The claimant was not the only polish person working in the office.

176. The claimant, apart from this one comment alleged to have been made by Mr Carnachan, did not lead any evidence to support her suggestion she had been treated less favourably because she was Polish. In **Madarassy v Nomura Int plc 2007 ICR 867** it was said that something more than a difference in treatment and status is required to shift the burden of proof. This means the claimant cannot simply point to different treatment and the fact she is Polish: there must be something more. There was nothing more in the claimant's case. We started with a claim in which it was said various alleged acts or failures to act happened because of the protected characteristics of sex, sexual orientation and race. The claimant then changed her position and confirmed she was relying only on the protected characteristic of race. The claimant offered no evidence whatsoever so explain why it was said the alleged less favourable treatment happened because of the protected characteristic of race. The position appeared to be based solely on an assertion that British people would have been treated differently. An example

of this occurred when the claimant told the tribunal Mr Carnachan monitored her electronic communication because she was Polish. The claimant stated no British worker had had their electronic communication monitored, but when asked how she knew this, she could not answer. It was apparent the claimant had no basis for suggesting race was the reason for what had (allegedly) happened.

177. The reason why, in factual terms, the claimant was dismissed was because of her conduct (as detailed above). The factors influencing the mind of the decision-maker were that the claimant had damaged relationships with yet another external supplier, she had potentially damaged the reputation of the respondent within the local community, she had embarrassed the managing director and had failed to take the advice and guidance previously offered by Mr Carnachan in how to deal with situations and avoid escalation of the issue. The claimant was not dismissed because of the protected characteristic of race.

178. We decided, for all of the reasons set out above, to dismiss the complaint of direct discrimination.

Indirect discrimination

179. We had regard to section 19 Equality Act which provides that a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. A provision, criterion or practice (a PCP) is discriminatory if A applies, or would apply, it to persons with whom B does not share the characteristic; it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with person with whom B does not share it; it puts, or would put, B at that disadvantage and A cannot show it to be a proportionate means of achieving a legitimate aim.

180. The claimant argued she had been given a weekly paid contract because she was Polish. She told the tribunal this was "less favourable treatment" and that she should have been given a monthly paid contract because she worked in the office. The PCP was giving weekly contracts to Polish workers.

181. The complaint of indirect discrimination was confused. The claimant appeared to have confused direct and indirect discrimination because she sought to argue that she had been given a weekly contract and should have been given a monthly paid contract. Secondly, there was no PCP of giving weekly paid contracts to Polish workers. The practice was that workers on the shop floor were given weekly paid contracts. The workers on the shop floor were predominantly British. Thirdly, it appeared most employees in the office were given a monthly paid contract, although there was reference to some office employees being on weekly paid contracts. There was also evidence that a polish worker who moved from the shop floor to an office position, moved to a monthly paid contract.

182. We concluded that if the PCP was, as the claimant maintained, giving weekly paid contracts to Polish workers, then that was a PCP which was also applied to persons not sharing the protected characteristic. There was no evidence to suggest Polish people were more disadvantaged by the application of the PCP than other non-Polish workers. We decided for these reasons to dismiss this claim.

Harassment

183. We referred to section 26 Equality Act which provides that a person harasses another if they engage in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating the employee's dignity or creating an offensive environment.

184. There are three essential elements of a harassment claim:

- unwanted conduct;
- that has the proscribed purpose or effect and
- which relates to a relevant protected characteristic.

185. The claimant complained that the following acts had occurred:

- on the 3 October 2016 Mr Rodger had tapped her on the shoulder and shouted at her;

- on the 10 October 2016 Mr Budgen had propositioned her to meet outside work;
- between October 2016 and March 2017 Mr Budgen had made inappropriate comments about enjoying her presence, and offering her Prosecco and he had ignored her health and safety concerns and not responded to her emails;
- on the 11 November 2016 Mr Carnachan had shouted at her regarding the Barrhead Travel issue and had said "I don't give a shit";
- on the 21 April 2017 Gordon MacDonald had shouted at her over the phone;
- Mr Carnachan had failed to deal with her complaint regarding this matter and had compounded matters by giving Kilmacolm taxis priority on bookings which meant the claimant had to work with Mr MacDonald;
- On the 4 May 2017 Mr Carnachan shouted at her for confronting Mr Budgen about the speeding memo and accused her of falling out with people;
- On the 15 September 2017 Mr Carnachan shouted at her after Mr Budgen complained about her and said "how can you be so stupid" and
- On the 8 December 2017 Mr Carnachan shouted at her regarding the Renfrewshire Cabs incident and said her communications had been unacceptable.

186. The first issue for the tribunal to determine is whether the alleged conduct occurred and if so, whether it was unwanted conduct.

187. We noted there was no dispute regarding the fact Mr Rodger did tap the claimant on the shoulder to get her attention when he went to speak to her about the email exchange. We accepted Mr Rodger's evidence that the "tap" had been a "light fingertip touch". We also preferred Mr Rodger's evidence that he had not shouted at the claimant. This evidence was supported by the fact that when Ms Marshall asked those present in the department whether

they had heard shouting, they confirmed they had not. We accepted being lightly tapped on the shoulder was unwanted conduct for the claimant.

188. There was no dispute regarding the fact Mr Budgen sent an email to the claimant (Rp65) in which he said *"That answers my question – very nice – perhaps I would like to meet her outside of work?"* We, in considering whether this was unwanted conduct, had regard to the fact the email was part of an exchange of emails between the claimant and Mr Budgen which were of a mildly flirtatious nature. The claimant, in response to Mr Budgen's email, replied *"Haha she prefers ladies ;)"* and Mr Budgen responded *"Lol, never saw that one coming – lucky ladies!"* and the claimant responded *"Lucky indeed ;)".*

189. There was nothing in the email exchange which suggested this was unwanted conduct: there was no complaint about it either at the time or subsequently. We concluded for these reasons that the conduct was not unwanted.

190. The claimant, in her document at Cp128, provided further particulars of her claim and alleged Mr Budgen had made several inappropriate comments regarding the way she looked and had whispered comments in her ear. The claimant gave no evidence of this and did not cross examine Mr Budgen about this. There was no suggestion in the claimant's evidence that Mr Budgen had said inappropriate comments: the claimant's evidence focussed entirely on the email exchanges which had taken place. We decided, on the basis there was no evidence before the tribunal regarding this allegation, to dismiss it.

191. There was no dispute regarding the fact that in an email dated 15 December 2016 (Cp 26) the claimant said *"You'll be happy to know I'm starting on surveys now ;P" and Mr Budgen replied "I am very happy to know that – perhaps one day, you will allow me to treat you to a Prosecco :o)".* The claimant replied to the email saying *"I don't really drink ;) I only collect bottles 😊".* The email exchange continued with messages concluding with smiley emojis. We again concluded this was not unwanted conduct because, at the time, there was nothing to suggest in the emails that the claimant was

unhappy with the suggestion and there was no complaint subsequently about this.

192. The claimant alleged Mr Budgen did not reply to her emails and ignored her health and safety concerns. Mr Budgen acknowledged that he had not replied to all of the claimant's emails (for example Cp 23, 24, 27, 30, 32 and 33) and explained that if there was no reply it meant he would have passed the email to someone else to action. The emails, for example at Cp23 and 24, concerned cars being parked on an evacuation point. Mr Budgen passed those emails to the appropriate person to answer. Also, the email at Cp32 would have been passed to the training co-ordinator to deal with. We concluded, based on this evidence, that Mr Budgen did not respond to all of the claimant's emails and this was unwanted conduct.

193. The alleged ignoring of health and safety concerns referred to the fact the claimant wanted the answers from the tests she completed for fire warden training. There was no dispute regarding the fact the claimant had made an issue regarding this matter but we could not accept that Mr Budgen "ignored" the claimant's health and safety concerns. The claimant had been asked to be a fire warden, and had been given the necessary and appropriate training for the role. The fact the claimant wished to be given additional training which she considered would be relevant to the role, was not ignored by Mr Budgen: he refused it and gave a reason why he had refused it. We therefore concluded Mr Budgen did not ignore the claimant's health and safety concerns.

194. The claimant alleged Mr Carnachan had shouted at her regarding the Barrhead travel issue and said "I don't give a shit". Mr Carnachan agreed he had met with the claimant regarding the Barrhead travel issue to discuss what had happened and how to deal with these issues. Mr Carnachan emphasised the fact the claimant did not have authority to decide which suppliers to use. We preferred Mr Carnchan's evidence to that of the claimant and found that he did not shout at the claimant and did not say "I don't give a shit".

195. The claimant next alleged Mr MacDonald of Kilmacolm taxis had shouted at her over the phone. Mr Carnachan agreed the claimant had raised this with him and he had spoken to Mr MacDonald about it. Mr MacDonald denied shouting at the claimant over the phone. Mr Carnachan accepted what he was told by Mr MacDonald. Mr Carnachan had a copy of the email exchange between the claimant and Mr MacDonald. We accepted Mr Carnachan's evidence regarding this matter.

196. The claimant alleged Mr Carnachan had shouted at her in May 2017 because she had confronted Mr Budgen about the speeding memo, and in September 2017 regarding the training issue. We preferred Mr Carnachan's evidence to that of the claimant and we found Mr Carnachan did not shout at the claimant on these occasions.

197. The claimant alleged Mr Carnachan had shouted at her in December 2017 regarding the Renfrewshire Cabs incident. She alleged Mr Carnachan had been standing over her and aggressively gesticulating and accused her of inappropriate communication. There was no dispute regarding the fact Mr Carnachan did meet with the claimant following the Renfrewshire Cabs incident to discuss not only what had happened but also to question the claimant when she was going to tell anyone the account had been closed. Mr Carnachan accepted he had been standing during that meeting whilst the claimant had been sitting. This was explained by the fact Mr Carnachan's office is very small and if one person was sitting the other had to stand.

198. We preferred Mr Carnachan's evidence to that of the claimant and we found Mr Carnachan did not shout at the claimant; did not stand over her or aggressively gesticulate. Mr Carnachan did describe the claimant's emails as inappropriate because he considered they were inappropriate both in terms of tone and content.

199. We, in summary, concluded the following acts occurred and amounted to unwanted conduct:

- Mr Rodger tapping the claimant on the shoulder to get her attention;

- Mr Budgen did not reply to every email sent by the claimant and
- Mr Carnachan described her email communications with Renfrewshire Cabs as inappropriate.

200. We next asked whether the unwanted conduct had the purpose of violating the claimant's dignity or the effect of creating an offensive environment. In deciding whether the conduct had the effect of creating an offensive environment each of the following factors must be taken into account: the perception of the claimant; the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

201. We were entirely satisfied the unwanted conduct did not have the purpose of violating the claimant's dignity. Mr Rodger did lightly tap his finger on the claimant's shoulder in order to gain her attention. He did this in an open-plan office in front of colleagues. Mr Rodger's purpose in doing so was to get the claimant's attention because she was at a desk facing away from him. His intention was not to violate the claimant's dignity.

202. Mr Budgen, by failing to reply to every email sent by the claimant, did not intend to violate the claimant's dignity. The facts and circumstances of the case support Mr Budgen's position that he acted to forward emails to the person responsible for dealing with them. Further, Mr Budgen did not reply to the claimant's emails about the no smoking policy because the matter was already in hand and Mr Rodger had confirmed the managers had briefed their teams.

203. Mr Carnachan did not, by describing the claimant's email communications as inappropriate, intend to violate the claimant's dignity. Mr Carnachan had repeatedly spoken to the claimant about her tone and content of her emails and that she was not to escalate matters, but instead to refer them to him. The claimant ignored his advice. The purpose of Mr Carnachan informing the claimant her email communication was inappropriate was to try to have her understand her conduct was not acceptable.

204. We acknowledged the claimant perceived the unwanted conduct to have had the effect of creating a hostile or offensive environment. We must consider the other circumstances of the case, and whether it was reasonable for the conduct to have that effect. The other circumstances of the case include the fact that it was the claimant who raised and created each of the situations which Mr Rodger, Mr Budgen and Mr Carnachan had to deal with, and who escalated matters both in terms of the tone and content of the email exchange. The other circumstances also include the fact the claimant was angry with Mr Rodger and Mr Budgen, not because of the above acts of unwanted conduct, but because they had not done as she wanted.

205. The real issue with Mr Rodger was not that he had tapped her on the shoulder, but that he had challenged her to name those whom she alleged had been smoking in the wrong place and had blown smoke in her face. The real issue with Mr Budgen was not that he had failed to reply to some of her emails, but that he had refused to remove a point from the speeding memo which the claimant considered was wrong. We concluded for these reasons that it was not reasonable for the conduct to have the effect alleged by the claimant.

206. We also considered it was not reasonable for the unwanted conduct of Mr Carnachan to have the effect alleged by the claimant. We say that because the claimant's email communications were inappropriate.

207. We, in summary have decided there were acts of unwanted conduct, but they did not have the purpose or effect of creating an offensive environment. We acknowledged that if we have erred in that conclusion, and the unwanted conduct did have the purpose or effect of creating an offensive environment, then we would have had to next ask whether those acts were related to the protected characteristic of race. The claimant did not provide any evidence or offer any explanation why she considered the above acts were related to the protected characteristic of race. The only statement made by the claimant was that no British people had complained about Mr Rodger's or Mr Budgen's unwanted conduct.

208. We have referred above to the number of Polish workers employed by the respondent both on the shop floor and in the office. Why did the claimant believe the unwanted conduct was related to her being Polish? We simply do not know because there was no evidence regarding this matter and there were no primary facts which would allow the tribunal to draw an adverse inference.

209. We decided to dismiss the complaint of harassment because the unwanted conduct did not have the purpose or effect of creating an offensive environment; but even if it had created that environment, the unwanted conduct was not related to the protected characteristic of race.

Victimisation

210. We had regard to section 27 Equality Act which provides that a person victimises another if s/he subjects him/her to a detriment because s/he does a protected act or believes s/he has done a protected act.

211. A protected act includes doing any other thing for the purposes of or in connection with the Equality Act and making an allegation (whether or not express) that a person has contravened the Equality Act.

212. The claimant relied on the protected act of having complained to Mr Carnachan about sexual harassment by Mr Budgen. The claimant asserted the complaint had been made by email (the missing email) and verbally and that Mr Carnachan knew the claimant intended to complain to Ms Marshall.

213. We found as a matter of fact the claimant did not send an email to Mr Carnachan complaining of sexual harassment by Mr Budgen. Further, the claimant did not orally complain to Mr Carnachan of sexual harassment by Mr Budgen; and Mr Carnachan did not know the claimant intended to complain to Ms Marshall. We have referred above to the fact Mr Carnachan acknowledged in the interview with Mr MacInnes that the claimant had *"said that Billy made an advance on the second time that I spoke to her. Her argument back when I said that her email exchange was unacceptable was that Billy didn't like her as she had refused his advances. She didn't seem in*

any way concerned about the advances, or suggest that there was anything untoward. I didn't see it was any of my business as she didn't make a complaint …"

214. We considered whether the above could be interpreted as making an allegation that a person had contravened the Equality Act. We did not consider a statement of explanation by the claimant that Mr Budgen did not like her because she had refused his advances, could be interpreted as an allegation that Mr Budgen had contravened the Equality Act. We say that because there was no allegation or complaint by the claimant. The claimant was not, at that time, complaining of sexual harassment.

215. We should state that if we are wrong in this conclusion and the words do amount to a protected act, then we would have to consider whether the alleged detriments occurred because the claimant had done the protected act. The alleged detriments were (i) that Mr Carnachan had refused to release her from being a fire warden and refused to provide additional health and safety training; (ii) Mr Budgen complained to Mr Carnachan because he knew she was going to tell Mr Carnachan about his behaviour; (iii) Mr Carnachan threatened the claimant that she would lose her job if she complained to HR about Mr Budgen's behaviour and (iv) Mr MacInnes knew she was going to complain about Mr Budgen's behaviour and did not act on it.

216. Mr Carnachan refused the claimant's request to be released from being a fire warden. He refused the request for two reasons: firstly, because he considered the claimant was suited to being a fire warden because she was in the office all of the time, compared to others who were frequently travelling; and secondly, because the claimant only became resistant to being a fire warden when she did not get her own way regarding receiving the answers to the test.

217. Mr Carnachan's decision had nothing whatsoever to do with the fact the claimant had previously told him Mr Budgen did not like her because she had refused his advances. Mr Carnachan took what he had been told as the claimant's explanation for why it was said her email communication was

unacceptable. He did not take it as a complaint of any sort: the claimant had been unconcerned about it and he did not think it was any of his business. We accepted his evidence. In the circumstances we concluded the protected act had no influence whatsoever on the detriment of not being released from being a fire warden.

218. Mr Budgen complained to Mr Carnachan about the claimant's emails following the exchange about obtaining the answers in the online tests regarding fire warden training. Mr Budgen considered the claimant had once again over-stepped the mark. The claimant did not suggest this detriment had occurred because of the protected act: rather, she argued Mr Budgen had complained because she had told him she was going to complain to his line manager about his discriminatory behaviour and other things. We dismissed this complaint because it was not said by the claimant that the detriment occurred because of her having done the protected act.

219. We accepted Mr Carnachan's evidence that he did not threaten the claimant with losing her job if she complained to HR about Mr Budgen's behaviour. Mr Carnachan did not know there was any issue with Mr Budgen's behaviour. We concluded this alleged detriment did not occur.

220. The claimant sought to argue that Mr MacInnes knew she was going to complain about Mr Budgen's behaviour and therefore he ought to have taken some action. We could not accept the suggestion Mr MacInnes ought to have acted notwithstanding there was no complaint. However, even if he should have acted, his failure to do so was not because of the protected act, because he did not have knowledge of the protected act until after the claimant's dismissal when he carried out the investigation.

221. We, in conclusion, decided there was no protected act, but even if there was a protected act, the alleged detriments either did not occur or were in no way whatsoever influenced by the protected act. We decided to dismiss this complaint.

222. We decided, for all the reasons set out above, to dismiss the claim in its entirety.

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Employment Judge: **L Wiseman**
Date of Judgment: **12 May 2022**
Entered in register: **16 May 2022**
and copied to parties

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