

BETWEEN

MSVHAYLES

Claimant

and

THE HOME OFFICE

Respondent

DRAFT LIST OF ISSUES

Disability Status

1. Did the Claimant suffer from a mental impairment having a long-term substantial adverse effect on her ability to carry out normal day to day activities?
 - a. The Claimant contends that she was disabled by virtue of suffering from work-related stress and anxiety.
 - b. The Respondent denies that the Claimant was disabled.

2. - If the Claimant was disabled, did the Respondent have actual or constructive knowledge of her disability?
 - a. The Respondent denies that it had knowledge or constructive knowledge of the Claimant's disability.

Discrimination arising from disability

3. Did the Respondent treat the Claimant unfavourably because of something arising in consequence of her disability?

4. The "something arising" is the Claimant's absences from work.

5. The unfavourable treatment relied upon is:

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- (i) on 11 February 2019, indicating that the Claimant could be dismissed in a letter inviting her to a meeting to discuss her absence owing to work-related stress and anxiety (§6 ET1) as instigated by Carole Scarr, Stuart Lomax and Kieran Bower;
 - (ii) in late July 2019, during a catch-up meeting with the Claimant's line manager the latter suggested that the Respondent was going to hold a meeting concerning her sickness absence and that she may be given a warning (§7 ET1); and
 - (iii) on 10 October 2019 the Respondent gave the Claimant a first written warning lasting 12 months owing to her absences (§8 ET1).
6. Was the treatment a proportionate means of achieving the legitimate aims of (1) effectively managing the Respondent's resources, (2) encouraging employees to maintain good attendance at work, and/or (3) treating employees consistently under the Attendance Management Procedure.

Failure to make reasonable adjustments

7. Did the Respondent apply a provision, criterion or practice (PCP) which put the Claimant at a substantial disadvantage when compared to non-disabled employees?
 - a. The Claimant relies upon the PCP of the Respondent's sickness absence procedure (the first PCP); and
 - b. the requirement to attend work (the second PCP).
 - c. The Respondent accepts that the PCPs were applied.
8. The Claimant contends that the first PCP put her at a substantial disadvantage when compared to non-disabled employees because her disability meant that:
 - (i) she was more likely to be given a warning or dismissed as a result of her disability-related absences; and
 - (ii) the threat of a warning or dismissal pressured the Claimant to attend work when she may not have felt otherwise able to do so.
9. The Claimant contends that the following reasonable adjustments should have been made to remove the disadvantage of the first PCP:
 - (i) on 11 February 2019, not threatening the Claimant with dismissal as a result of her absence (§12 ET1);
 - (ii) on 10 October 2019, not giving the Claimant a written warning (§12 ET1).

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10. The Claimant contends that the second PCP put her at a substantial disadvantage when compared to non-disabled employees because her disability meant that attending work was often stressful and anxiety-inducing, which was exacerbated when the Claimant returned to work from a period of sick leave.
 11. The Claimant contends that the following reasonable adjustments should have been made to remove the disadvantage of the second PCP:
 - (i) from March 2019, the Respondent should have provided the Claimant with a "buddy" (§12 ETI); and
 - (ii) from March 2019, the Respondent should have provided the Claimant with the managerial support referred to in her occupational health reports (§12 ETI).
 12. If there was a breach of the duty to make reasonable adjustments, when did it occur?

Direct race discrimination

13. Did the Respondent treat the Claimant less favourably because of her race:
 - a. The Claimant relies upon being black as a protected characteristic.
 - b. Who is the appropriate comparator?
14. The less-favourable treatment relied upon is that:
 - (i) in January 2018, Kieran Bower blamed the Claimant for a near-miss incident (§5 ETI); and
 - (ii) on or around 10 October 2019, Mr Lomax sent the Claimant an email alleging that she had committed some wrongdoing and had communication issues (§18 ETI).
15. Are there facts from which the Tribunal could conclude that the discrimination occurred?
16. If so, has the Respondent shown that the treatment was not because of the Claimant's race?

Victimisation

17. The Claimant contends that she did protected acts when between September and December 2019 she informed senior civil servants (Scott McPherson (the Deputy Race Champion), Georgina Balmforth and Caron Welsh) that she was being racially discriminated against, harassed and bullied, and that her GDPR had been compromised (§23 & §27 ET1). In particular:

- (i) on 11 October 2019, in a conversation with Scott McPherson where the Claimant raised treatment which she considered to be unfavourable and discriminatory (as set out in her grievances), the Claimant further stated that she had been and was the only black Immigration Officer in IE Ops at Sandford House since September 2001, implying that she had been discriminated against because of her race. The Claimant also stated that she believed that management were suppressing claims of discrimination and that her GDPR had been breached when management accessed sensitive medical information by wrongly stating they were her line manager;
- (ii) on 5 November 2019, in a telephone conversation with Caron Welsh where the Claimant raised treatment which she considered to be unfavourable (set out in her grievances), the Claimant stated that she had been and was the only black Immigration Officer in IE Ops at Sandford House since September 2001, implying that she had been discriminated against because of her race;
- (iii) on 10 December 2019, in a conversation with Georgina Balmforth where the Claimant raised treatment which she considered to be unfavourable and discriminatory (set out in her grievances), the Claimant stated that she had been and was the only black Immigration Officer in IE Ops at Sandford House since September 2001, implying that she had been discriminated against because of her race. The Claimant also stated that she believed that management were failing to adhere to equality legislation in their recruitment practices and were suppressing claims of discrimination.

18. The detriments relied upon are:

- (i) 4 September 2019 Stuart Lomax attempting to prevent the Claimant from attending a meeting at the Home Office Head Quarters in Marsham Street, London
- (ii) 4 September 2019 Mr Lomax demanding that the Claimant inform him what the content and the nature of the Marsham Street meeting was about, despite the Claimant informing him that the meeting was private and confidential;
- (iii) Mr Lomax forcing the Claimant to take annual leave in order to attend the Marsham Street meeting;
- (iv) On 10 October 2019 giving the Claimant a first written warning;
- (v) In or around September 2019 individuals, believed to be John Astley, Paul Fraser, Steve Newbould and Parhan Khan, scrutinising the Claimant's work, as reported to her by Stuart Lomax on 30 September 2019;

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- (vi) The Officer In. Charge on 4 September 2019, the Immigration Officer who provided feedback, and such other colleagues as referred to by Stuart Lomax in his email to the Claimant of 12 September 2019, belittled, denigrated and undermined the Claimant's work by suggesting that she did not carry out checks properly;
 - (vii) Stuart Lomax on 12 September 2019 defended the colleagues who belittled, denigrated and undermined the Claimant's work by making accusations against the Claimant but refusing to advise her who had made the same.
 - (viii) On 11th May 2021 declining the Claimant's request for an alternative manager.

19. Was the Claimant subjected to the detriments because she did the protected act?

Jurisdiction for EqA complaints

20. Did any complaint occur more than three months before the presentation of the ET1 taking into account the provisions of ACAS Early Conciliation?

21. If so, was it conduct extending over time?

22. If not, is it just and equitable to extend time?

Whistleblowing detriment

23. The Claimant contends that she made protected disclosures when between September and December 2019 she informed senior civil servants (Scott McPherson (the Deputy Race Champion), Georgina Balmforth and Caron Welsh) that she was being racially discriminated against, harassed and bullied, and that her GDPR had been compromised (§23 & §27 ET1). In particular:

- (iv) on 11 October 2019, in a conversation with Scott McPherson where the Claimant raised treatment which she considered to be unfavourable and discriminatory (as set out in her grievances), the Claimant further stated that she had been and was the only black Immigration Officer in IE Ops at Sandford House since September 2001, implying that she had been discriminated against because of her race. The Claimant also stated that she believed that management were suppressing claims of discrimination and that her GDPR had been breached when management accessed sensitive medical information by wrongly stating they were her line manager;

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- (v) on 5 November 2019, in a telephone conversation with Caron Welsh where the Claimant raised treatment which she considered to be unfavourable (set out in her grievances), the Claimant stated that she had been and was the only black Immigration Officer in IE Ops at Sandford House since September 2001, implying that she had been discriminated against because of her race;
 - (vi) on 10 December 2019, in a conversation with Georgina Balmforth where the Claimant raised treatment which she considered to be unfavourable and discriminatory (set out in her grievances), the Claimant stated that she had been and was the only black Immigration Officer in IE Ops at Sandford House since September 2001, implying that she had been discriminated against because of her race. The Claimant also stated that she believed that management were failing to adhere to equality legislation in their recruitment practices and were suppressing claims of discrimination.

24. The Claimant contends that the above disclosures tended to show a breach of a legal obligation and the concealment or likely concealment of the same.

a. Was such a belief reasonable?

25. In the reasonable belief of the Claimant were the disclosures made in the public interest?

26. Were the disclosures (if qualifying) protected?

27. The detriments relied upon are:

- (ix) 4 September 2019 Stuart Lomax attempting to prevent the Claimant from attending a meeting at the Home Office Head Quarters in Marsham Street, London
- (x) 4 September 2019 Mr Lomax demanding that the Claimant inform him what the content and the nature of the Marsham Street meeting was about, despite the Claimant informing him that the meeting was private and confidential;
- (xi) Mr Lomax forcing the Claimant to take annual leave in order to attend the Marsham Street meeting;
- (xii) on 10 October 2019 giving the Claimant a first written warning;
- (xiii) In or around September 2019 individuals, believed to be John Astley, Paul Fraser, Steve Newbould and Farhan Khan, scrutinising the Claimant's work, as reported to her by Stuart Lomax on 30 September 2019;
- (xiv) The Officer In Charge on 4 September 2019, the Immigration Officer who provided feedback, and such other colleagues as referred to by Stuart Lomax in his email to the Claimant of 12 September 2019, belittled, denigrated and undermined the Claimant's work by suggesting that she did not carry out checks properly;
- (xv) Stuart Lomax on 12 September 2019 defended the colleagues who belittled, denigrated and undermined the Claimant's work by making

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- . accusations against the Claimant but refusing to advise her who had made the same.
- (xvi) On 11 May 2021 declining the Claimant's request for an alternative manager.

28. Was the Claimant subjected to the detriments on the ground that she made the protected disclosures?

Jurisdiction for detriment complaints

29. Did any complaint occur more than three months before the presentation of the ETI taking into account the provisions of ACAS Early Conciliation?

30. If so, are they part of a series of similar acts or failures?

31. If not, was it reasonably practicable to have brought the claims within three months, taking into account the provisions of ACAS Early Conciliation?

32. Have they been presented within a further period of time which the Tribunal considers reasonable?

Remedy

33. If the Claimant's claims succeed, what compensation is she entitled to?

Personal injury

34. If the Respondent discriminated against the Claimant, did that discrimination exacerbate the Claimant's pre-existing mental health difficulties or cause her a recognised psychiatric illness?

Dated: 22 March 2022