



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A Okeke-Ojiudu

**Respondent:** Caritas Anchor House

**Heard at:** East London Hearing Centre (by CVP)

**On:** 20, 21, 22 October and 13 December 2021  
In chambers on 28 March 2022

**Before:** Employment Judge Jones

**Members:** Ms P Alford  
Ms Y Fisher

**Representation**

Claimant: Mr J Yetman (counsel)

Respondent: Mr T Sheppard (counsel)

## RESERVED JUDGMENT

*The Claimant was not dismissed.*

*The complaint of constructive unfair dismissal fails and is dismissed.*

*The complaints of harassment related to the protected characteristics of race and religion fail and are dismissed.*

## REASONS

1. The Claimant brought complaints of constructive dismissal and harassment related to race and religion. The Respondent resisted the claim.

### Evidence

2. The Tribunal heard live evidence from the Claimant. From the Respondent the Tribunal heard live evidence from Amanda Dubarry, the Respondent's chief executive and the Claimant's former line manager; Andy Haines, one of the Respondent's Trustees; Craig Hardaker, the Respondent's Director of People; and John Lowery, Director of Front-line Services. The Tribunal had signed witness statements from all the witnesses. Some of the Respondent's witnesses prepared second supplementary witness

statements to address points made by the Claimant in hers. In the hearing, the Claimant had the opportunity to challenge all the Respondent's evidence.

3. The Tribunal apologises to the parties for the delay in the promulgation of these reasons and the judgment. This was due to difficulties fixing a date between the members of the Tribunal to meet in chambers and the pressure of work on the judge resulting from the pandemic and generally.

## **Findings of Fact**

4. The Tribunal has only made findings of fact on the evidence as necessary to assist us in reaching a decision on the issues in this case.
5. The Respondent is a registered homeless charity providing accommodation and life-skills support for single homeless adults. Each year, it works with hundreds of people who are experiencing homelessness and rough sleeping in the London Borough of Newham, which has the highest levels of homelessness in the country. The Respondent provides homes and supports hundreds of people experiencing homelessness into secure and sustained employment, and a high percentage of residents are supported to move on from the Respondent's premises and into their own home.
6. The vast majority of the Respondent's funding was for specific purposes and had to be geared to the provision of services to the public. This was a not for profit organisation, which did not have vast reserves. Ms Dubarry's evidence was that the Respondent was only allowed to apply a small management charge to cover overheads, when applying for grant funding. Each grant could come with a contribution towards core costs, which would provide the Respondent with a limited pot to apply to overheads. The biggest overhead expense was staff salaries, which meant that the Respondent had to be careful how it spent that money and be able to account to its funders for the costs incurred.
7. The Respondent had several years of deficit before Ms Dubarry started in the job. This meant that she did not have vast resources to simply add more posts, even if she considered that they were required.
8. The Claimant began her employment with the Respondent on 23 February 2018 as the Interim HR manager. This was on a 3-month fixed term contract. When she started work, the Claimant reported to the former Head of Business Services who at the time was working out her notice. That person left in April 2018. The Claimant continued working for the Respondent on another fixed-term contract, with a salary of £42,500 as Interim HR Manager. The Claimant was not given a job description at the time, but it was agreed that she was appointed to the full HR remit, with a particular emphasis on working on policies for the organisation. The Claimant became Head of HR in October 2018, when she began a one-year fixed term contract.
9. The Claimant began a permanent contract as Head of HR on 15 November 2019. Although the Claimant had not been given a complete job description at the start, she was clear and it was agreed that her day to day

responsibilities were to support and later, lead the Respondent's people management function.

10. Amanda Dubarry was appointed to the chief executive post in March 2018. In addition to her employment with the Respondent, Ms Dubarry also sat on the board of national charity, Homeless Link and local charity One Newham. She chairs both the National Advisory Council and End Women's Homelessness Panel for Homeless Link.
11. In 2018, at the time of the Claimant's appointment, the Respondent was going through a significant change in leadership as the Finance Director, Interim Chief Executive and Director of Business services were all due to leave their posts. Once Ms Dubarry was appointed, she recruited two new senior leadership team members, a Director of Frontline Services (John Lowery from October 2018) and a Director of Finance (Siva Selliah from June 2018).
12. The Respondent required the Claimant, in her post as Head of HR, to set up, refine and recommend procedures for appraisal, assessment, supervision and for dealing with grievances and disciplinary matters. We find that those were appropriate tasks for a Head of HR. The Claimant had more experience than the previous postholder and that was one of the reasons the Respondent agreed to the salary increase. The Respondent hoped that the Claimant was the right person to assist it in becoming an organised, professional charity, efficiently providing services to its users and giving value for money to its funders.
13. At the start of her employment, the Respondent needed the Claimant to update/revise existing policies and procedures and she also had to write some policies from scratch. Mr Haines confirmed in his evidence that a prime reason for the Claimant's appointment was the Respondent's belief in her capacity to contribute to the development of the organisation by introducing and embedding policies. The Respondent hoped that once those policies were introduced, they would guide and determine HR procedure and would apply equally to all employees, including the Claimant herself.
14. From around July 2018 the Claimant began advocating for an increase in her salary. In early September 2018, after a one-to-one meeting with Ms Dubarry, the Claimant sent her this email

*'Further to our conversation on Friday 27<sup>th</sup> July as part of my one to one, I shared with you my request for a salary increase reflective of my current role and performance and I also shared with you a comprehensive Job description indicative of this and in line with current market practice.*

*I am now reviewing my responsibilities both financially and as a single parent raising my young family and about to support my eldest son through his university journey. I hoping to cement my decisions within this month and therefore would value your confirmation on our discussion.'*

15. The Claimant's main concern was that she should be paid what she considered to be the appropriate wage for her job. She made it clear that she considered that her salary should be increased to £50,000 and she made that case to Ms Dubarry. She raised with Ms Dubarry that one of the reasons why she considered that a pay rise was appropriate was that she had been managing the HR function on her own and that her salary was not at the level she considered that it should be. At the time, the Claimant was still in a fixed term role. In their continuing correspondence at the beginning of September, the Claimant told Ms Dubarry that she was turning down other offers of work, that the option of resigning continued to 'rage' in her thoughts as she had a family to cater for and that she did not want to wait until the remuneration review in the new year to have her wage reviewed. Apart from saying that she was busy and outlining the areas of the business that she supported, she did not express any concerns about workload at that time. In her live evidence she stated that it was important to her to be paid properly for the job that she was doing.
16. Ms Dubarry confirmed in live evidence that it was not uncommon for staff to come forward and say that their salary is too low or that their title should be changed. As part of the remuneration review the Respondent had planned to revise all job descriptions and update them as part of its review of the organisation. The Claimant was due to assist with this piece of work. However, as the Claimant wanted her salary reviewed before that process completed, she prepared a job description which allowed the Respondent to do some benchmarking around her job to see if the salary increase she requested was in line with other charities in the sector. Some of the information the Claimant sent Ms Dubarry in support of her advocating for an increased salary related to the commercial sector. After due consideration and further discussion, Ms Dubarry supported her application for increased salary and the Respondent agreed it.
17. The Respondent recruited and appointed the Claimant at a higher level of skill and expertise than her predecessor in order for to assist in to put in place the policies and procedures that were required to put the organisation on to a more professional and organised footing. That was another reason that her salary increase was agreed.
18. During her employment the Claimant requested additional support. This was something that she had raised with Rebecca, the person who held the post of CEO before Ms Dubarry was appointed, well before she was familiar with her workload. The Respondent was not able to hire another full-time member of staff. At the time of the hearing, the Respondent was still not able to do so as Mr Hardaker, the Claimant's successor, told us that he also does not have a full-time assistant in the HR department.
19. While the Claimant was employed, in an effort to support her, Ms Dubarry agreed that she could engage an intern to help the work in the HR department. As a charity, the Respondent had limited funds. Also, the Respondent believed that the careful recruitment of a suitable intern could provide the assistance that the Claimant needed. The Respondent has been operating for 50 years and in all of that time, it has never had more than one person employed in HR. The Claimant was asking for the Respondent to double the personnel in the department and the Respondent did not agree there was the extensive workload, that the Claimant referred

to warrant that. The Respondent agreed to give her what support it could by engaging interns, re-organising the work and supporting her so that she could delegate work accordingly.

20. The Claimant recruited an intern called Farrah Siddique who began her work with the Respondent in July 2018. Ms Siddique had a MSc Occupational and Organisational Psychology and had completed a Human Resource Management course at the University of London. She had worked as a Human Resource Volunteer for six months prior to beginning her internship with the Respondent. She worked with the Respondent on three days a week, for 3 months and all that time was given to the HR department. This was funded by the University. Although the Claimant's live evidence was that Ms Siddique could not assist her with her work but instead only performed basic administrative tasks, we find it likely that she was of assistance to the Claimant and that the Claimant was able to delegate tasks to her. We say this because at the end of her internship the Claimant asked whether the Respondent could keep Ms Siddique. The Respondent had some funds related to Housing Benefit which it decided to use to engage Ms Siddique to assist the Claimant. The Respondent advertised and recruited to the role of HR Administrator and Executive Assistant on a one-year fixed term contract. This was a split role with half of her time reporting to the Claimant as HR Administrator and half her time reporting to Ms Dubarry as Executive Assistant. The Claimant selected Ms Siddique from the other applicants. The Claimant could have selected someone else if she considered that Ms Siddique was not a help to her. Instead, she chose to offer the position to Ms Siddique. We find that it likely that she was good in her job as a HR Administrator, otherwise she would not have been appointed.
21. In 2018, the Claimant produced a Stress Management Policy for the Respondent which was adopted by the Management Board. In the policy, stress is defined as follows:

*"Stress is a condition that may be experienced when a person feels excessive pressures or other demands are placed upon them, beyond their ability to respond. It is not an illness, but can lead to health problems if prolonged or particularly intense. Some pressure at work can be motivating if managed correctly but when it becomes excessive it may lead to unhealthy physical, emotional and behavioural symptoms."*
22. At no time during her employment did the Claimant let Ms Dubarry or anyone at the Respondent know that she was suffering from excessive pressures or demands placed on her, beyond her ability to respond.
23. One of the policies the Claimant crafted for the Respondent was a grievance policy and procedure. We had a copy in the hearing bundle. It was adopted in September 2018. Despite being aware of and intimately familiar with the policy as she had worked on it, the Claimant did not raise a grievance with the Respondent about either Ms Dubarry or Mr Lowery or generally, at any time during her employment or even after her resignation. We had no evidence of the grievances she referred to in her oral evidence and she was not able to tell us when she raised them and what it was that she said.

24. Ms Dubarry assisted the Claimant with her role in writing policies as she provided the Claimant with templates for policies, or links to places on the internet where policies and other documents could be found. For example, Ms Dubarry sent her a link so she could see a staff survey form, which she could then tailor to the Respondent's requirements. Ms Dubarry also provided her with a copy of the Homeless Link Remuneration Policy and other policies, which the Claimant was to tailor towards the Respondent's needs. Ms Dubarry then provided feedback and comments on the Claimant's draft policies so that they more closely fitted the Respondent's needs. We saw email correspondence between them which demonstrated that the production of policies was sometimes a collaborative effort between them rather than the Claimant going away and drafting policies from scratch, on her own. Ms Dubarry wrote the on-call policy. The Claimant's name was on most of the policies in the bundle, but we find that means that she completed the work and was the lead person on them. It is likely that most of them were produced from templates provided by Ms Dubarry, with her comments and that of other managers, which were incorporated to create the final version. It was unusual for Ms Dubarry to be this involved in the production of HR policies, when there is a Head of HR in place.
25. It was not unusual for senior managers as well as staff within the organisation to be on fixed term contracts. There was a high proportion of staff on fixed term contracts. This was due to the nature of the Respondent's funding. As the funding from the Council and other funders is usually provided on a short-term contract basis, the jobs available have to be offered on a similar basis. The Respondent cannot fund a job if the funding has expired. The expectation or hope would be that the funding would be renewed at the end of the term but having the employee concerned on a fixed term contract would assist the Respondent, in the event that the funding is not renewed; which was real possibility.
26. The Respondent was well aware that the Claimant was busy, as were the other employees at the Respondent. This was a successful charity offering a service that was in demand, in an area of great need. The Respondent never said that the Claimant was not working hard. There were times when the Claimant was busy and she sometimes expressed that in an email to her line manager, Ms Dubarry. However, the Claimant's emails about her health were not always related to work. As her line manager, Ms Dubarry would be told about anything that affected the Claimant's attendance at work. The earliest emails which referred to the Claimant's health was an email on 24 July 2018 in which she told Ms Dubarry that she had to go home early as she had not slept well the night before and was feeling increasingly *'irritable and incoherent'*. There was no indication that this was related to work. Ms Dubarry replied almost immediately to confirm that she was okay with the Claimant leaving early. The Claimant had already left by the time Ms Dubarry responded. The Claimant did not raise this as an issue related to work.
27. The Claimant was off with headaches and dizziness between 17 – 21 September 2018. In live evidence the Claimant stated that this occurred due to the stress that she was going through at work. Ms Dubarry took the Claimant off the on-call rota to give her time to rest. Around this time the Claimant was advocating for an increase in her salary because she believed that she could do the role and that it warranted an increase in her wage.

When the Claimant returned to work she met with Ms Dubarry for a return to work meeting. It was noted on the return to work sheet that the Claimant informed Ms Dubarry that she had been to the optician about her headaches and had been informed that she needed new glasses as the ones she was wearing were of an incorrect prescription. The note recorded her as telling Ms Dubarry that she now had the correct glasses and that there were '*no more headaches*'.

28. In November 2018 the Claimant was at a meeting in which John Lowery was a bit pushy towards someone else. He later apologised to the Claimant because she witnessed it. The Claimant relied on the email in which he apologised as evidence of him being pushy towards her and that he had been rude and hostile towards her. When Mr Lowery gave evidence, he was able to explain what happened and put the email in context. He had not been pushy to the Claimant but felt that he needed to explain himself as the Claimant had witnessed what had happened.
29. There were instances in the hearing bundle of Ms Dubarry authorising leave for one employee and Mr Lowery's request to work from home on one day a week. Those employees had not made their applications/requests through the HR department.
30. Ms Siddique left the Respondent in December 2018 because with the training and experience she received at the Respondent she was able to find employment elsewhere as an HR administrator. Salliah Braimah had no previous HR experience before being appointed as an HR administrator for the Respondent on 29 January 2019 through an internship scheme with the University of Essex. The Respondent wanted to continue to provide the Claimant with support but had to be creative in how it did this as it did not have funds to employ an HR administrator, which was what the Claimant wanted. Mr Braimah was completing a BA Financial Economics Degree. Due to the experience he gained while with the Respondent during his internship, he was able to secure a one-year fixed term contract with the Respondent as HR Officer, once the internship ended. The one-year role was a dedicated role to support the Claimant with processing HR admin in the organisation. Mr Braimah remained employed and supported the Claimant until she left the Respondent. Certainly, by 31 January 2020 the Claimant had confidence in him being able to deal with queries on his own as in an email, she referred to Mr Braimah as someone who managers could contact for HR advice, in her absence.
31. We find that while the Claimant was on a fixed term contract, there was some discussion between her and Ms Dubarry on her title, as there was no one else in the staff team who was titled '*Head of*'. This was also around the same time the Claimant was advocating for an increase in her remuneration. Ms Dubarry and the Respondent needed to be aware of treating everyone fairly across the organisation and not just the Claimant. Ms Dubarry and the Claimant had been discussing streamlining the titles within the organisation and there was no '*Head of*' in the structure that they discussed. It is likely that Ms Dubarry expected the Claimant to take their discussions into account when discussing her own personal situation but she did not. Eventually, after further discussion, the Respondent agreed to her request. The contract that was given to her when she became a permanent member of staff referred to her job title as '*Head of Human*

*Resources'* (at page 536). This was agreed on a 1-year basis to give the Respondent some stability and to give the Claimant some reassurance that the Respondent recognised her hard work. The Claimant was Head of HR from October 2018. The intention was that after a year, the title would revert to the HR Manager title, which was the role that the Respondent wanted to retain in the business. The Claimant's role did not revert back before her departure.

32. We find that Ms Dubarry and Mr Lowery did not tell the Claimant's colleagues that she was useless and did not have the intelligence to understand her role within the organisation or the ability to do her job properly. The Claimant told Ms Dubarry that she had been told that John Lowery had said that she was useless. Ms Dubarry challenged Mr Lowery about this as it would have been inappropriate to be talking like this about a senior colleague. Mr Lowery denied saying this and Ms Dubarry fed that back to the Claimant. The Respondent would not have employed the Claimant in such a responsible, senior position if the CEO did not believe that she was intelligent and able to fulfil her role. Ms Dubarry would not have described the Claimant in this way as she was the person who recommended that the Claimant be given a permanent contract and who passed on to the SMT (senior management team) and supported the Claimant's request for her salary to be increased to £50,000.
33. In his live evidence Mr Lowery confirmed that he had not said that the Claimant was useless as that would not have been professional. His experience of working with the Claimant was positive and professional although he did have concerns about her competence. He believed that she sometimes fell below standards expected of someone in her position. He expressed those concerns in his one-to-one meetings with Ms Dubarry and did not speak openly about this in front of others. His concerns arose out of his experience of having to step in to support the Claimant on a couple of occasions in management meetings when one or two of the management team were becoming frustrated. He never discussed getting rid of the Claimant or expressed a belief that she could not do her job or lacked intelligence. He also did not question that the Claimant was hard working.
34. In December 2018, the Claimant, Amada Dubarry, John Lowery and Siva Selliah, who was the Respondent's Finance Director were on an Awayday at St Katherine's Dock, Limehouse. The Respondent had engaged a facilitator to be with them on the day to assist them in their planning/blue sky thinking for the organisation, for 2019. We had copies of pre-prepared typed pages for discussion on KPI's and the pages of the flip chart used on the day. It is likely that the facilitator wrote on the flip chart pages as she guided and recorded the discussions.
35. From those pages we can see that the discussions were not divided between the different departments of the organisation. Instead, the discussions were centred on KPIs (Key Performance Indicators) and their benefits to the organisation and to members of staff individually and as teams. The first flip chart page ended with the question '*what can we do differently?*' The '*we*' included everyone in the organisation. We find that that discussion included all of the managers who attended that day. The Claimant was invited because she and her department were part of the consideration of KPIs and what could be done differently to benefit the



whole organisation and how to shape the service in the near future. On the next flip chart page, the notes show that the discussion then moved on to what makes a good KPI. The notetaker wrote down that it should be SMART, which we find is likely to have been a reference to the acronym SMART which stands for S – specific, M – measurable, A – Agreed, R – realistic, and T – timebound. Also noted was another acronym – DAFT, with the words – ‘*Defined, Achievable, Focussed and Targeted*’, written underneath. On the following flipchart sheet were some of the functions/systems of the organisation such as IT and telephone, systems such as HR and Finance; the Assessment Hub, Asset Management Strategy, the positivity of staff and the culture of the organisation, buildings, the service offered and the recognition that the service had received awards, which meant that the work it did had been recognised. The rest of the notes record the discussion that the managers had on how to raise money for services, how to make the most of trumpeting the services offered – such as using residents’ success stories and how to increase engagement with users. The last flipchart page recorded a discussion on what could be measured. Here were noted significant points in the discussion such as the satisfaction of service users/residents, response times in relation to maintenance needs, improved health and wellbeing of residents and sustained job/housing outcomes for users. We find that the HR department was not excluded from the discussion. We find that HR was specifically referred to on the third flipchart page. Also, from the brief notes made on the flipchart pages we find that the aim of the day was not to discuss each department separately but for the managers to pool their respective areas to discuss strategy for the organisation as a whole, how to improve the service and outcomes for users and how to increase the funding for the charity and its profile. Even though HR is not providing direct services to users, the Claimant’s HR department would have had a part to play in those discussions as it ensures that the teams are operating smoothly and it is likely that her colleagues expected her to join in the discussion on the day.

36. We find it highly unlikely that the Claimant was upset that day or that the facilitator had to comfort her. We also find that there was no reason for the Claimant to be upset that day. Her department was part of the organisation and she would have been expected to participate in the discussion on how the Respondent could equip itself to take on the challenges of the future and to show to funders and users that it was providing value for money. If there had not been that expectation, the Respondent would not have invited her to the Awayday.
37. We find that during the Claimant’s employment the Respondent’s staff complement increased slightly as the number of employees increased from 44 to 49. The Respondent supported the Claimant with her work by taking out a subscription to an HR advice service called Moorepay HR. Moorepay HR is a telephone and online HR service which supports HR professionals to monitor payroll, attendance, and to seek advice and training. It provides indemnity insurance as well as ad hoc advice, templates that members could access and many other areas of HR support. The service is accessible 24/7, 365 days a year and the Claimant had full access to this service from 2019. Initially, the Claimant strongly opposed the suggestion that the Respondent needed to acquire this service, even though it was done to give her the support she requested. However, she actively used this service during her employment and there are emails in the bundle

where she referred to seeking Moorepay's advice on the Respondent's proposed action in the matter of an employment dispute with an employee (page 458).

38. In January 2019, in a one-to-one with Ms Dubarry, they discussed that the Claimant needed to recoup some time back as TOIL (time off in lieu) as she had worked over the weekend. That shows that she was not routinely expected to work weekends and when she did, the Respondent was happy to acknowledge that and give her back the time. Ms Dubarry readily agreed to record TOIL for the Claimant. The Claimant confirmed in live evidence that she would claim TOIL if ever she worked overtime and that she only claimed TOIL on one or two occasions during her employment. Ms Dubarry agreed to take on the task of writing up guidance for managers on performance appraisals and pay reviews as the Claimant did not feel that she had the time/capacity to do so. They discussed the agenda for the forthcoming Board HR subcommittee meeting.
39. The Claimant stated that she was feeling overwhelmed with work and that she was considering leaving. She requested the Respondent provide her with a third HR person. Ms Dubarry felt that the Respondent did not require three fulltime people in HR, given the size of the organisation. However, she had other ideas to assist the Claimant. One of those was that if the Claimant providing training to managers on matters that come up on a regular basis, such as attendance, appraisals and sickness management, that would equip them to deal with those things themselves, rather than the Claimant having to respond to such queries on a regular and reactive basis. The Claimant was not happy with the suggestion that she should delegate work to junior managers. Ms Dubarry also offered to review the Claimant's workplan and priorities to ensure that her workload was manageable. It is likely that the Claimant believed strongly that the only strategy that would assist her was to have a team of HR administrators working for her.
40. The Claimant spoke to one of the Directors, Andy Haines at the end of a Sub-Committee meeting about her desire to have more resources in HR and her concerns around that. She told him her general concerns that she did not have enough resources to do her job and that Ms Dubarry would not give them to her. She spoke to him in an informal manner at the end of a meeting. Neither of them could recall when she did so but it was agreed that there had been a conversation, which the Claimant initiated, in which she talked about how busy she was and her disappointment at not being provided with more resources. She did not tell him that she was raising a grievance or that she wanted him to do anything about it. He understood that she was talking to him about a difference in opinion between herself and Ms Dubarry about how the department should be run. He encouraged her to raise it with her manager in the first instance, which was in line with the policy.
41. There were around twelve meetings that the Claimant attended during her employment when she could have raised these issues. Mr Haines remembered speaking to her about it on a few of occasions. Mr Haines did not appreciate that the Claimant was complaining to him about harassment or intimidation or anything like that as she did not use those words and did not describe anything that could be considered harassment or intimidation to him. She did not tell Mr Haines that she was being called names by Ms

Dubarry and Mr Lowery. She also did not tell him that she was making a complaint against her line manager. It would not have been appropriate to raise a complaint in such a casual manner and as a senior HR professional, it was likely that the Claimant was aware of that.

42. Mr Haines was a volunteer Trustee. That role did not require him to be at the Respondent's premises during the day or to take day to day management decisions on the running of the organisation. He was Chair of the HR Sub-Committee and had a spell as interim CEO. He was aware that the Claimant and Ms Dubarry had different views on HR workload and the appropriate level of specialist resources that were needed in the HR department. His evidence was that most people working in the charity sector would like additional resources but that is not always possible. He was not aware that the Claimant was overloaded with work. He believed that she was busy, as were all the Respondent's employees, but was able to manage her workload. He was never made aware that the Claimant felt that her discussions with Ms Dubarry were exhausted and that she needed him to step in. There was no mention of 'bullying' in any of their conversations and nothing that would indicate to him that she was complaining of improper conduct from Ms Dubarry or Mr Lowery. Mr Haines did not tell the Claimant that he was going to conduct an investigation and he had not been told about anything that required investigation.
43. The Claimant and Ms Dubarry got along well during the Claimant's employment. There was evidence of communication between them in the bundle where the Claimant signed off her emails to Ms Dubarry with xx's, which would usually be seen as kisses. We did not accept the Claimant's explanation that those x's meant 'seen and done'. She bought Ms Dubarry a cake for her birthday in August 2019 and also an expensive present for Ms Dubarry's daughter. She did not do this for all her colleagues.
44. The Claimant and Ms Dubarry did discuss some personal matters during their time working together. In or around March 2019, the Claimant led Ms Dubarry to believe that that she was single and interested in meeting someone. They talked about whether online dating would suit the Claimant and Ms Dubarry mentioned that she had seen a dating site for Christian singles advertised on the underground. They had a friendly conversation. Ms Dubarry did not press the Claimant about her religious views and did not tell her to consider a Christian dating site. The Claimant's live evidence was that by the time Ms Dubarry mentioned this to her, she was in a relationship but she did not tell Ms Dubarry and there was no way that Ms Dubarry could have known that she was no longer looking for someone to date. The Claimant was not put under pressure and Ms Dubarry did not express any negativity about the Claimant's Christian faith or beliefs. Ms Dubarry did not refer to the Christian Fellowship as a cult in October 2019 or at any other time. The phrase '*pray against others*' was not a phrase that Ms Dubarry ever used in conversation with the Claimant. It was not a phrase that she was familiar with and she did not know what it meant.
45. There were times during her employment when the Claimant expressed to Ms Dubarry that her workload was peaking and she requested extensions on timelines or requested help from Ms Dubarry or from other members of SLT. Ms Dubarry gave the Claimant assistance, when she asked for it and gave her time off, as appropriate. She also discussed with her about setting

up some training for other managers so that they could be more self-sufficient in addressing issues so that they did not always have to go to her. It was also because of these conversations that the Respondent invested in MoorePay.

46. On other occasions the Claimant express unhappiness about what she perceived as being left out of an HR issue. On 4 March 2019, the Claimant wrote to Ms Dubarry to complain as follows:

*'As the Head of Human Resources, my role is to advise and guide you and the Senior Management Team (SMT) in all aspects of Human Resources as well as being the bridge between staff. For the month of February 2019, Caritas Anchor House received 3 Employee Grievances - 2 against the Charity and 1 against a manager. As the Head of Human Resources these matters should have been dealt with by the HR team in conjunction with SMT. Should HR have operated within the realms of their capacity, leading on such Grievance matters, in line with Caritas Anchors policies and procedures, such Grievances could have been averted and even quashed.*

.....

*The recent instruction given by yourself to the Director of Finance on how to investigate the grievance raised by (name of staff member) is ignoring the role and responsibility of HR and advise rendered outside of the remits of HR, given at the detriment to the Charity and may lead to an Employment Tribunal application. HR should be contacted and allowed to deal with all people issues as well as advise managers, directing them to the right policies, procedures, ethical, statutory and legal responsibilities.*

*I am asking you to please allow me to lead the organisation from the office of the Head of HR to ensure that issues arising are properly dealt with and Managers have a clear understanding of the role of HR in this Charity.'*

47. We find that here the Claimant was objecting to the Director of Finance seeking advice from Ms Dubarry, as his line manager, about an HR matter. This could have been an opportunity for the Claimant to get some assistance with her workload but on this occasion, she is indicating that she wanted everything to be addressed through her, which was appropriate but not the only way to organise this. The email was sent to Ms Dubarry and a member of the Board. Ms Dubarry responded straightaway to confirm that she wanted to discuss this with the Claimant as it was a serious matter. The Claimant responded to say that she was too busy to do so as there were many pressing issues at hand and that she would not be able to discuss it for two weeks. Ms Dubarry found that unacceptable as the Claimant had complained about a serious matter to both her and a member of the Board and was now saying that she did not have time to discuss it.
48. Later that night, in another email to Ms Dubarry, the Claimant expressed that she was struggling to meet every demand of the organisation and that she and Salliah would be spending the next period sorting out the remuneration letters to go out to staff. She stated that she expected to have a reduced workload in two weeks' time but in the interim, Ms Dubarry should

email her if she needed her. When challenged about this, the Claimant responded to say that what she meant was that she would prefer to discuss it in person rather than over the phone.

49. It is likely that on 7 March they had a discussion about the Claimant's email about managers going to Ms Dubarry for support rather than always going to the Claimant.
50. A few days later, on 13 March, the Claimant complained in a one-to-one meeting with Ms Dubarry that she was receiving calls from staff on her personal mobile about work matters, at unsociable hours. She said that this was making it difficult for her to switch off and relax after work. The Claimant had not been required to give her mobile number to managers. As soon as Ms Dubarry found out about this, she arranged for the Claimant to be provided with a work mobile, with a new number. The new phone was provided to the Claimant about 5 days after she raised this with the Respondent. Ms Dubarry also promised to speak to the managers to advise them that they should not contact the Claimant during unsociable hours because as Head of HR, she was not providing a frontline service and should not have to deal with those calls.
51. There was a planning meeting in May 2019 at which the Claimant, John Lowery and other managers were present. During the warmup, ice breaker exercise, delegates were asked to say something about themselves that no one knew. They took it in turns. When it came to the Claimant's turn she said that she ran a marathon every day. Mr Lowery gently asked the Claimant if she realised that a marathon was 26.2 miles. In doing so, he was clarifying whether she realised the distance of a marathon and suggesting by implication, that she must have been mistaken. At the time neither the Claimant nor Ms Dubarry told Mr Lowery that he had spoken improperly to the Claimant and the Claimant never raised any complaint to him about this comment.
52. Ms Dubarry usually asked the Claimant about workload and stress in their one-to-one meetings. 'Workload' was one of the recurring items on her one-to-one template form. There were sine one-to-one meeting minutes where nothing was noted on workload. There was always an opportunity for stress or workload issues to be raised by the Claimant as it was usually the first thing that Ms Dubarry would bring up in their meetings. In the March 2019 one-to-one meeting, apart from the issue of the phone calls, the Claimant did not raise anything about workload. There was no such discussion recorded in the minutes and when the minutes were sent to the Claimant, she did not respond to say that there was anything missing.
53. The Claimant would occasionally work on weekends and evenings but there was never an expectation that she would do so and Ms Dubarry never asked her to do so. She was not expected to work at reception at all although she told us about an occasion, possibly on Easter Monday, when she did so. Ms Dubarry did not know beforehand that she planned to do this and it was not part of her role. The members of staff who gave service direct to the public had their line managers who would be responsible to cover for them if they were unwell. It would not fall to the Claimant as the Head of HR to do this.

54. On 11 April, the Claimant wrote to Ms Dubarry to complain that Mr Selliah in Finance had put an advert on the Respondent's site for a Finance Officer to assist him. She had also discovered that Mr Selliah had asked that responses to the advert should be sent to him rather than to the HR department.
55. In the Claimant's appraisal in June 2019 it was noted that she appreciated the assistance from Mr Braimah and that she had found Moorepay useful. She also indicated that she was happy with her role (465). She referred to stress and to the challenges of the job but there was no indication that she was finding the stress unmanageable or that she needed any intervention from the Respondent to assist her in dealing with it.
56. The overall assessment of the Claimant's performance was good and was as follow: -

*'Manager's COMMENTS*

*Angie has moved our HR function on a quantum leap from the starting position she took over in February 2018 and is clearly working very hard. She has embedded the new relationship with MoorePay into her practice which has been beneficial in terms of managing risk across the HR function and will support and develop our knowledge.*

*She is very good at being responsive to issues in a timely manner as they arise and has been very effective in filling vacancies and managing issues. It will be positive if this can be replicated with a new approach to recruiting volunteers in the year. There is more to do in developing our procedures and management training around HR systems and approaches which will create further improvements in the year to come. We also need a more complete training and induction programme for our team and more current job descriptions across the organisation.*

*It is important for Angie to build on her relationships across the team, and in particular the management and senior management teams to develop the most effective working relationships with each manager.'*

57. On the printed appraisal form the Claimant's name was spelt incorrectly. We find that this was a typographical error and that this document was only shared between the Claimant and Ms Dubarry. The Claimant did not complain at the time about this as it is likely that she saw it as a typographical error. The Claimant did not sign this appraisal form, although it was sent to her for approval and her signature. Ms Dubarry sent it to the Claimant 6 months after the meeting as she had been busy but once she received it, the Claimant did not respond to say that it was incorrect. She also failed to respond to Ms Dubarry's emails chasing up her signed copy of the appraisal form.
58. It was noted in this appraisal meeting that the Claimant was interested in doing *'something in the organisation around spirituality, both with staff and residents, such as bible study sessions after work. This might be linked to plans around wellbeing hours. Angie will be leading on identifying faith champions in the team to support a broader faith offer across the organisation and will be a member of the Spirituality and Well Being sub committee'*.

59. We find that Ms Dubarry supported that initiative as it was noted in the appraisal form. As a result of their discussion, Ms Dubarry was active in suggesting that the Claimant should lead the Caritas Anchor House Christian Fellowship meetings. The Claimant disputed this but her live evidence on this was inconsistent. At one point in her evidence she stated that it was Father Tim who suggested that she chair the Fellowship and later on, she suggested that it was Father Dominic who suggested that she should chair the Fellowship. It is likely that she did not know who suggested that she chair the Fellowship and it is our conclusion from all the evidence that Ms Dubarry, her manager did, based on their conversation in the one-to-one meeting.
60. There was evidence in the bundle where Ms Dubarry passed on emails from Transform Newham about a prayer group, to the Claimant. We find it highly unlikely that Ms Dubarry would be so unprofessional as to refer to the Claimant's faith as a cult. If she did, the Claimant would have complained at the time as her faith was important to her. Ms Dubarry remembered the Claimant being open about her faith. About a year into her employment the Claimant shared with Ms Dubarry that she was an ordained pastor and Ms Dubarry was complimentary about that and expressed an interest in her church work, which the Claimant freely shared with her. In addition to supporting the setting up of the Spirituality and Wellbeing Sub Committee and the Christian Fellowship, Ms Dubarry also supported the setting up of an equivalent Muslim Fellowship, which was also open to residents and staff members. Although it has Christian roots, the Respondent is a secular charity, which supports those of all faiths and none. Before working for the Respondent, Ms Dubarry worked for a charity called Step by Step, which was founded by Christians. Her unchallenged evidence was that she has worked running charities founded by Christians for at least 25 years.
61. Ms Dubarry was not responsible for organising the Christian Fellowship meetings and was not aware of when those meetings were happening. She did not intentionally schedule meetings with or for the Claimant so that they would clash with the Christian Fellowship meetings.
62. It was Ms Dubarry's live evidence that the Claimant had assistance from Moorepay in reviewing internal policies and advice from them on all employee relations matters. Moorepay also supported her with drafting the Respondent's staff handbook. The Respondent was concerned that she submitted the draft handbook with the comments from Moorepay without adding any of her own critical analysis to it.
63. There was also correspondence between the Claimant and various managers in the hearing bundle in which she referred to seeking advice from Moorepay or where she summarised their advice. The Claimant made extensive use of Moorepay during her employment with the Respondent.
64. In August 2019, just before the Claimant went on leave and after an extended email discussion on the wording of a staff wellbeing letter that she had drafted, the Claimant responded to Ms Dubarry to say that her brain was tired and that she could not wait for her holiday. We find that it is not unusual for someone to experience tiredness just before starting their leave. Most employees book leave because they need a break from work and this

email shows that the Claimant was feeling the need for a break at this time. There was nothing in the email that should give Ms Dubarry an indication that the Claimant was experiencing severe or abnormal work-related stress.

65. We find that Ms Dubarry was accessible to staff and that she operated an open-door policy. In addition to one-to-one meetings, members of the team who reported to her, which included the Claimant; could call, email or visit her in her office, whenever they needed to. The Claimant did not contact her to report worrying levels of stress or stress that she needed support to manage.
66. We find that most of the policies in the hearing bundle were dated in 2018 and it is likely that the bulk of the work in updating policies took place at the start of the Claimant's employment. The work on creating the policies ended around February 2019. The Claimant's evidence was that there was some work in 2019 updating those policies and reviewing the staff handbook. It was unlikely that all the policies required updating or that updating them would have taken as much time or involved as much complexity as the initial work required to create/craft them in the beginning. It is likely that the Claimant's workload reduced in 2019. Her workload did not increase.
67. Around 3 October 2019 the Claimant and Ms Dubarry had a telephone conversation. They discussed how well the policies that the Claimant spearheaded were being taken up by the other managers. We find that Ms Dubarry did not call the Claimant '*stupid*', '*idiot*' or '*moron*' during this conversation. Ms Dubarry did not call the Claimant any of those things or use those words. Ms Dubarry is a professional, senior manager who has managed many people over many years in different organisations. We find that she would not have used those words and that she did not do so on 3 October 2019.
68. In October 2019, a manager in the assessment hub, Megan, had some time off for surgery. As the surgery had been planned, she raised with Ms Dubarry whether it should be classed as sick leave or whether she could take it as annual leave. Ms Dubarry raised at the SMT meeting and they made an executive decision that it should be taken as annual leave. Megan did not report to the Claimant. The Claimant was concerned about this and that she had not been told about it. Ms Dubarry considered that it was in line with the Respondent's policies that it should be recorded as annual leave as the surgery had been planned.
69. Although the Claimant had been busy creating policies for the Respondent and heading up the HR department, major changes within the organisation in 2018/2019 were happening in finance, where there were, what Ms Dubarry described as '*root and branch*' changes taking place; and with the opening of the assessment hub which was to be staffed mainly with agency workers. Those were all big changes for the organisation. The assessment hub was mainly Mr Lowery's responsibility. The finance review mainly involved changing how the Respondent dealt with management accounts and collecting rent from the Council and dealing with funders. That was the responsibility of Ms Selliah, the new head of Finance. The Claimant worked with and provided support for both of those managers. Some of the support she gave Mr Lowery is outlined below.



70. On 21 November 2019, Ms Dubarry was at work and busy with meetings all day. There was no diarised meeting between her and the Claimant. Ms Dubarry usually worked from 8am to 4pm and worked from home on one day of the week. The Claimant also worked one day at home and the balance of the week in the office, working from 9am – to 5pm.
71. It is likely that the Claimant was happy with the level of support she received at this time because in November 2019, she accepted the Respondent's offer of permanent employment as Head of HR.
72. During the Claimant's employment Ms Dubarry closed the kitchen, which reduced the number of staff employed by the Respondent. The Respondent also deleted the ETE programme manager role. The Respondent opened an Assessment Hub as part of its reorganisation program but the employees who staffed it were agency staff who were recruited and managed by John Lowery, with help and support from the Claimant. Mr Lowery's staff delivered frontline services to the Respondent's users who come from a variety of places – some are rough sleepers, while others are residents. The teams under him delivered services to those residents/users through 6/7 teams some of which were the community partnership team, facilities team, customer service team, personal development team and the impact team. The organogram at page 564 shows that the majority of the Respondent's employees worked in Frontline Services, which included the Assessment Hub.
73. In his live evidence John Lowery confirmed that HR would be involved in sickness and capability issues, when they came up, if the direct line managers required support. There was an increase in demand for support from HR at the setting up of the Assessment team, but he confirmed that once it was set up, the Respondent wanted the managers to take on management of some issues like reporting of sickness and capability discussions. The Respondent's intention was that HR would assist with training the management team so that they could complete these tasks competently on their own, which would reduce the burden on HR. Mr Lowery told us that he worked quite closely with the Claimant to make sure that managers understood the appraisal process and that they organised the training together.
74. In relation to the revision of the appraisal process, we find that John Lowery did a lot of work on the policy, with the Claimant and Ms Dubarry's support. He was heavily involved in working on the appraisal forms. He knew that he would be the person who would have to appraise all the agency workers within his team. He was expected to be responsible for implementing the Respondent's policies in relation the approximately 40 team members of the Respondent's Frontline Services Directorate. His job entailed him having to work proactively on a range of issues including recruitment, learning and development, employee relations, employee evaluation (hence the interest in appraisals) and job evaluation. He was not the person to deliver training to his team although it would be right for him to identify learning and development training needs in his team. We find that he would meet regularly with the Claimant to talk over procedures as they related to his area of work. We find that although they would sometimes disagree on strategy, they had a positive working relationship.

75. He also told us about a variety of issues relating to staff in the Assessment Centre that he was working with and which the Claimant supported him in managing. There was the issue of a manager's management style and whether that suited the service and how to address that, the restructure of the reception area – from an institutional approach to a more professional and respectful model, the management of a long-serving facilities manager, the recruitment of a new facilities manager, and the restructure of the kitchen staff/the catering services. Mr Lowery was appreciative of the Claimant's support in navigating all of those challenges.
76. Towards the second half of 2019, as part of her Head of HR function, the Claimant was the main person the Respondent expected would be steering the Remuneration review. Ms Dubarry had to become heavily involved in the process of pulling together the policy documents on which the review would be based. We saw emails in which Ms Dubarry had detailed input into the amendment of the policy from the template which she sourced from Homeless Link in order to tailor it to the Respondent's needs. Ms Dubarry was involved in the process of putting the report together as well as receiving the completed report from the Claimant. It was unusual for Ms Dubarry as the Chief Executive to be sourcing policies for their Head of HR to adopt.
77. It is unlikely that the Claimant and Ms Dubarry had a conversation on 3 January 2020 because when she wrote to the Claimant by email on 7 January, she remarked that she had not *'caught up with you since the holidays'*. Ms Dubarry had emailed the Claimant on 3 January to send her the typed appraisal document and to ask her to add her comments and sign it but it is unlikely that they also spoke on the day. It is likely that there were times that the Claimant and Ms Dubarry spoke about work on the telephone when either one of them were working from home. We find it unlikely that in any of those calls Ms Dubarry was hostile and intimidating towards the Claimant, although they would occasionally disagree. If she had, we would have expected the Claimant to have raised a grievance, write to the Board or raise it with Ms Dubarry at a one-to-one meeting. The Claimant did not do any of those things.
78. On 16 January, the Claimant and Ms Dubarry met for a one-to-one meeting. They discussed a couple of issues concerning the Claimant's communication with a member of staff who was contemplating raising a grievance against her and an issue that she had with a manager. Ms Dubarry authorised the Claimant to take TOIL for the weekend that she had worked. This was the second weekend that we had evidence of her having worked. The Claimant should have agreed with her beforehand that she was going to work on the weekend but had not done so. The Claimant stated that she did not have capacity to prepare a guidance note for managers on performance appraisal and pay and Ms Dubarry offered to assist her by preparing a draft for her. The Claimant then stated that she needed a third person in the HR department. Ms Dubarry considered that this was disproportionate to the size of the organisation. She advised that the Respondent should provide training for the managers rather than responding to queries and issues on a reactive basis. The Claimant said that she was *'drained'* in reference to dealing with a particular manager. Ms Dubarry advised her to develop a template to stop the particular issue with

the manager from happening in future. The Claimant said that she was also feeling overwhelmed with workload and was considering leaving. Ms Dubarry once again offered to review the Claimant's work priorities to ensure that her workload was manageable and to change the timetable/extend deadlines to give her more room to complete existing work.

79. Ms Dubarry wanted the Claimant to build the skills of the management team to make them more self-sufficient and self-reliant so that they would rely less on the Claimant. By bolstering their skills through training, that would cause them to make less demands on her time. The Claimant's evidence in the hearing was that that was why she needed an L&D team. The Respondent did not agree that she required a team to do so and considered that she could provide the training that was needed or it could be accessed from outside providers.
80. On 31 January 2020, the Claimant sent some documents by email to Ms Dubarry for comment and approval. They were documents that she had prepared for the forthcoming HR Sub-committee meeting scheduled for 4 February. The enclosures were as follows: a set of guidelines for managers regarding Annual Performance Related Pay Appraisals, a proposed volunteer rewards scheme, the volunteering overview, the Final Sickness Policy & Procedure, her Head of HR report, the Staff Survey report and the Remuneration Project for Senior Managers.
81. Ms Dubarry looked at the documents and responded with some suggestions. She picked up typographical errors in one document. She advised the Claimant that it would not be a good idea to attach the sickness absence report to the documents being sent to the committee as it contained personal and sensitive details relating to members of staff, which they do not need to see in order to understand the level of sickness absence the Respondent was dealing with. Ms Dubarry advised the Claimant that it would be better for her to attend the meeting with a copy of the report, in case she was asked about it at the meeting or needed to refer to it. Ms Dubarry also asked the Claimant to provide some analysis to the staff survey rather than simply reproducing the stats. In her response the Claimant stated that she could not provide analysis and would propose instead that the stats were discussed in a meeting. There were no consequences to the Claimant for not following Ms Dubarry's instructions.
82. On 4 February, the Claimant spoke to Ms Dubarry and repeated a request that she had made earlier, which was for the Respondent to provide her with a team of staff for Learning and Development to run training programmes for the organisation. Ms Dubarry's evidence was that she was aware from their conversation that the Claimant was not happy. However, it was not clear to her what the members of this Learning and Development (L&D) team would do that were not already being done by members of staff. The Claimant did not provide Ms Dubarry with an estimate of how many staff she needed, costings, job descriptions or any other details of her vision for the HR department. Ms Dubarry responded by asking the Claimant for that information. Her initial impression was that the Claimant's idea seemed disproportionate to the size and scale of the charity as there were many specialist training organisations that the Respondent could use, which would be more cost effective.

83. On 4 February, at an HR Sub-committee meeting, the Claimant resigned at the end of the meeting. She had not discussed this with her line manager, Ms Dubarry before the meeting. Her resignation was a shock to Ms Dubarry and also to the Board members that were present. Even though Ms Dubarry was aware that the Claimant was not happy, she was not expecting her to resign. The Claimant did not refer to bullying or harassment when she resigned. She did not refer to improper conduct by her manager towards her. When she was asked why she was leaving, she stated that she wanted to move on. The Chair of the Board asked to speak to her before she left the building and they had a private conversation. The Claimant informed him that she wanted to give the Respondent three months' notice. After the Claimant left, the Trustees discussed with Ms Dubarry the Claimant's request for 3 months' notice. They were aware that her role was important to the ongoing daily work and that it would be helpful to the Respondent not to have a vacant post but they made it clear to Ms Dubarry that she would have to speak to the Claimant about maintaining professional standards and professional relationships across the organisation during her notice period.
84. On 4 February, the Claimant wrote the following resignation letter to Ms Dubarry:

*Dear Amanda,*

*Following our conversation this afternoon, I am writing to confirm that after careful thoughts about my life and future, I wish to provide you with 3 months' notice where by this time, will allow me to complete all tasks at hand and a hand over to my successor if appointed within this time frame.*

*From our previous discussions, I have put forward that I am a standalone HR professional delivering on set tasks devised from you for which it is impossible for one HR professional to research, devise, implement and evaluate.*

*One person cannot possibly fulfil the HR strategic and operational role by themselves for such an organisation like Caritas Anchor House.*

*However, should you wish to extend my remit and allow me to take on an HR L&D team, which will allow me to focus solely on strategic and Operational HRM, then this can be negotiated.*

*Thanking you and CAH Board of Trustees and SMT for the 2 years of our working relationship and wishing you all the best in your future endeavours.*

*Regards,*

85. Once she received the written resignation Ms Dubarry had a discussion with the Claimant about it. The Claimant stated that she thought that she had already resigned to Ms Dubarry and apologised for not doing so. Ms Dubarry accepted her apology and they talked about the Claimant's notice period. Ms Dubarry had been advised that it would be better for the organisation for the Claimant to be on immediate garden leave during her notice period. Ms Dubarry spoke to the Claimant about maintaining

professionalism while working her notice. The Claimant agreed that she would be able to do that. Ms Dubarry agreed that on that basis, the Respondent was prepared to agree to the Claimant having a notice period of three months. The Respondent did not expect the Claimant to give three months' notice. Such a long period of notice was not required and had not been requested. The meeting lasted about 20 – 30 minutes. It was not hostile although it is likely that it was cool, given that the Claimant had bypassed her line manager, in handing in her notice.

86. Ms Dubarry accepted the Claimant's resignation on 5 February, as follows:

*To confirm I accept your resignation and the 3 month notice period you have given. Three months from yesterday would run to Sunday 3rd May so I assume your last working day would be Friday 1st May – please confirm this date.*

*I have discussed with you my concerns about the importance of us being able to work positively, cooperatively and cohesively throughout this time, and you have agreed that you feel able to do that. In essence I would like for us and the wider management team to act as one team, working together to shared values and common goals. I do not want for us to be in a position again where we are at odds with one another.*

*We are not in a position to take on an additional L & D team to support our HR function I'm afraid, and I don't believe this would be proportionate or affordable for an organisation of our size.*

*I would like to thank you for you the two years' service you have given to Caritas Anchor House so far and for all that you've put in place and achieved in that time. I look forward to continuing to work with you over the next three months. As discussed we can discuss priorities in workload and handover when we meet for our 121 tomorrow.*

*Kind regards,*

87. The Claimant's response, also on 5 February was as follows:

*Hi Amanda,*

*Thank you for confirming your acceptance of my resignation.*

*My last working day will be Friday 1st of May 2020.*

*Amanda, please note that I am never at odds with our staff or management. All I ask is, their cooperation and understanding of my role. I am aware that the weeks ahead will be busy for me in the HR team as I will be finalising major tasks and projects at hand but I am hopeful that my colleagues will understand.*

*Best wishes,*

88. On 9 March 2020, the Claimant wrote to Andy Haines to ask whether he would be prepared to be a personal referee for her, to assist her in her

search for employment. He replied on the same day to confirm that he would be able to do so.

89. While the Claimant was working out her notice, the Respondent had to change the way it worked in response to the Covid-19 pandemic and the resulting lockdown in March 2020.
90. In March 2020, about one week before lockdown, the Respondent moved from having everyone working on site to being dispersed. Mr Lowery continued to be on site as most of the services his team offered were direct services to the homeless and those in accommodation. The Claimant and the rest of business support were still working but not on site. The senior management team (SMT) met daily in response to the pandemic, to decide how to ensure that there was a safe working environment for staff, while managers were not all on site to conduct checks as they would normally do.
91. There were 2 colleagues who disclosed underlying health conditions and the Respondent had to consider how this affected their ability to continue to provide services during the pandemic and their vulnerability to Covid-19 and the health and safety of everyone else who would have to work with them. The Respondent also had to ensure that it was being consistent in the way it treated its employees and users.
92. It was in this context that the SMT discussed the need to have confidential information about the health conditions and vulnerabilities of those employees who were providing direct services to the public, in a confidential folder so that it could be accessed when deciding who needed to be shielded and who could work. It was in that context that the SMT decided that Mr Lowery should be given access to the HR confidential disc drive in order to store a spreadsheet which recorded incidents of potential COVID-19 symptoms amongst staff. This was to ensure that the Respondent was managing the situation as best as it could. There were significant concerns about how the Respondent had failed to capture employees' health concerns up until then and where that information was kept. Mr Lowery was authorised to access the information for a specific purpose, which was to ensure a safe working environment for staff. At the hearing the Claimant's main complaint about this was that she had not been sent an email informing her that this was going to be done.
93. On 21 April 2020, the Claimant submitted a sick certificate for stress and anxiety to the Respondent. The certificate was due to expire on 3 May, which was after the end of the Claimant's employment on 1 May.
94. The Claimant began new employment on 2 June as Senior HR Advisor to a Housing Association. The post was for 6 months and due to expire on 30 December 2020.
95. After the Claimant left the Respondent's employment, the Respondent reviewed its provision and decided that it needed HR to be addressed at a higher level than previously. It decided that the organisation would be better served by an HR Director. The Respondent wanted to increase the level of skill and experience overseeing its HR work so it restructured and created a fourth leadership team role, initially called Director of Human Resources and later re-titled as Director of People. This would enable the Respondent

to recruit someone with even more experience, at minimal extra costs. Before she left, the Claimant was consulted about this new role.

96. Following a recruitment exercise, Craig Hardaker was appointed to the role of HR Director. He was an experienced HR person, having worked in generalist HR roles and led on Learning & Development roles for 13 years prior to coming to the Respondent. He was a Chartered Member of the CIPD (the Professional Body for Human Resources and People Development) and had HR experience in complex organisational structures both in the public and charity sector. On 1 June 2020, Mr Hardaker started his employment at the Respondent at a salary of £10,000 above the Claimant's salary. Mr Hardaker's role made him a member of the Respondent's SMT. His work was more proactive than reactive as a large part of it was to assist the Board to look at workplace development and policy. His role was more than responding to problems that arose. Mr Hardaker does get involved with disciplinaries and hearings but also operates at a policy and development level. He automated a number of functions such as new starter documents. He is a person with disabilities. When she was in post, the Claimant was not a member of SMT as she did not have the required experience and her post of Head of HR was not at that level within the organisation. This is probably why although she was aware of the recruitment, which happened during her notice period, the Claimant did not apply for the job. By the end of May 2021, the Respondent had 65 members of staff. This was another factor that was different to when the Claimant was Head of HR.
97. At the time of the hearing, in addition to Mr Hardaker, the Respondent's HR team also consists of a part-time People & Learning advisor (P&L) and a part-time trainee. The Respondent did not fund either of those posts. The P&L role was in exchange for Salliah Braimah's role. The postholder manages the HR systems, oversees recruitment, Learning and Development and assists with apprenticeships. Mr Hardaker and the P&L postholder worked together to manage recruitment and other issues for the Respondent for some months. This was similar to the Claimant working with Salliah Braimah.
98. When the Government began the Kickstart Funding, the Respondent applied for funding for a trainee position. That was granted and in April 2021, the Respondent was awarded sufficient funds to have a trainee on the National Minimum Wage for 25 hours per week. That was approximately a year after the Claimant left. The Respondent was able to add a small amount to that (no more than £2,000) to increase it to the London Living Wage. We find that at the time of the hearing, the Respondent's HR team comprises Mr Hardaker, the P&L advisor and the trainee. The Respondent has continued to find creative ways to provide more resources to HR without spending money that it does not have. The Respondent also continues its subscription to MoorePay.
99. As a member of SMT, Mr Hardaker attends meetings with Ms Dubarry – the Chief Executive, Ms Selliah - the Director of Finance, and Mr Lowery - the Director of Frontline Services where they discuss and agree policy and a number of operational people management and development requirements. The Claimant was not operating at that level and therefore did not attend

SMT meetings or have much direct input into strategic operations within the organisation.

100. On 17 August 2020, the Respondent received a request for a reference for the Claimant. The Respondent replied on the same day to provide a written reference for the Claimant confirming that she had been employed as Head of HR and her employment dates. The Respondent had no record of receiving any other requests for references for the Claimant. Although the Claimant complained that there had been other requests, we did not have evidence of them and this was not something that she addressed in her witness statement or referred to in her live evidence at the hearing.

## **Law**

### *Constructive Unfair Dismissal*

101. The Claimant's complaint was of constructive unfair dismissal. Section 95(1)(c) of the Employment Rights Act 1996 states: -

*"The employee terminates a contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers' conduct"*.

102. The circumstances in which an employee would be entitled to terminate her contract would be where the employers' conduct amounted to a repudiatory breach of contract.

103. The leading case of constructive dismissal remains the case of *Western Excavating Ltd v Sharp* [1978] ICR 221 (CA) where, as Lord Denning stated:

*"If the employer is guilty of conduct which is a significant breach going to the root of employment, which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminated the contract by reason of the employer's conduct. He is constructively dismissed"*.

104. The Tribunal was aware of the case of *Post\_Office v Roberts* [1980] IRLR 347 where it was held by the EAT that the conduct by the Respondent which amounted to a repudiatory breach of contract need not be deliberate or intentional or prompted by bad faith.

105. A breach of the Equality Act is not always a repudiatory breach. The tribunal would need to consider and decide on that. A repudiatory breach cannot be remedied by (See *Buckland*).

106. If the tribunal decides that there has been fundamental breach of contract or breach of the implied duty of trust and confidence, the tribunal then has to consider whether the employee has accepted the breach or affirmed the contract.

107. After any repudiatory breach the employee has a choice, either to affirm the contract and continue to work, or to accept the breach, resign and treat



themselves as dismissed. If there is a '*last straw*' and no affirmation after it, the Claimant can refer to earlier events (see *Lewis* and *Williams* above).

108. An employee will be held to have affirmed a contract where (with knowledge of the breach) he acts in a manner inconsistent with treating the contract as at an end. In *Bashir v Brillo Manufacturing Co* [1979] IRLR 295 it was held that delay in itself is not sufficient to be considered as affirmation of a breach of contract. The employee needs to actually do the job for a period of time without leaving, or some other act which can be said to affirm the contract as varied. Whether or not he has affirmed the breach would depend on the circumstances in each case.
109. Delay in resigning after the breach, is not, of itself, but may be evidence from which we could infer affirmation because, by working and receiving a salary, the employee can be said to be doing acts distant with further performance of the contract and therefore affirmation of it. *WE Cox Toner Ltd v Crook* [1981] ICR 823 EAT, in which the court also stated that '*..... if the innocent party further performs the contract to a limited extent but at the same time makes it clear that he is reserving his rights to accept the repudiation or is only continuing so as to allow the guilty party to remedy the breach, such further performance does not prejudice his rights subsequently to accept the repudiation*'.
110. If the tribunal's decision is that there has been fundamental breach contract/breach of the implied term of trust and confidence and there has been no affirmation of contract or the employee has accepted breach, the tribunal then has to decide whether the employee has left at least partly in response to the breach.
111. The Tribunal satisfied that the employee left at least partly in response to the breach or that it was the effective cause or principal reason for leaving. *Nottinghamshire County Council v Meikle* [2004] IRLR 703 CA.
112. If there is a constructive dismissal, the tribunal then needs to consider whether it was unfair. Firstly, tribunal has to decide what is the reason for the dismissal i.e. what was the reason for the conduct which amounted to the breach? In *Buckland v Bournemouth University Higher Education Corporation* [2010] IRLR 445 CA, it was stated that it is open to the employer to show that such dismissal was for a potentially fair reason. If it does so, it will then be for the tribunal to decide whether the dismissal for the reason, both substantively and procedurally, fell within the range of reasonable responses, and was fair. Clearly, if the conduct is disputed, it would be difficult for the employer to say it had a good reason for the conduct.

Harassment related to religion or belief and race

113. The law on harassment is contained in section 27 Equality Act 2010:

“A person (A) harasses another (B) if –

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purposes or effect of

- (i) violating B's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B".

A also harasses B if –

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

114. Section 27(4) states that in deciding whether conduct has the effect referred to in subsection (1)(b) set out above, each of the following must be taken into account:

- (a) The perception of B
- (b) The other circumstances of the case
- (c) Whether it is reasonable for the conduct to have that effect.

115. The Tribunal was aware of the case of *Land Registry v Grant* [2011] EWCA Civ. 769 in which Elias LJ focused on the words "intimidating, hostile, degrading, humiliating or offensive" and observed that:

*"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caused by the concept of harassment"*.

116. In the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 the EAT stated that the conduct that is treated as violating a complainant's dignity is not so merely because he thinks it does. It must be conduct which could reasonably be considered as having that effect. The Tribunal is obliged to take the complainant's perspective into account in making that assessment but must also consider the relevance of the intention of the alleged harasser in determining whether the conduct could reasonably be considered to violate a complainant's dignity.

117. It is also important where the language used by the alleged harasser is relied upon, to assess the words used in the context in which the use occurred.

118. The Respondents disputed that they had harassed the Claimant at all.

### Burden of Proof

119. Section 136 of the Equality Act 2010 states that if there are facts from which the court can decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. This does not apply if A shows that A did not contravene the provision. This means that if the Claimant proved facts from which the Tribunal could infer that the reason for her treatment was her race and/or her religion or belief, then the burden of proof would shift to the Respondent to prove a non-discriminatory, cogent reason for the treatment.

If the Respondent was able to do so, then the claim would fail. If the Respondent had failed to do so, then the claim is likely to succeed.

120. In the case of *Laing v Manchester City Council [2006]* ICR 1519 tribunals were cautioned against taking a mechanistic approach to the proof of discrimination. The court held that the tribunal can consider all evidence before it in coming to the conclusion as to whether or not a claimant has made a prima facie case of discrimination (see also *Madarassay v Nomura International Plc [2007]* IRLR 246).
121. In every case the tribunal has to determine the reason why the claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport [1999]* IRLR 572 “this is the crucial question”. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

## **Applying Law to Facts**

122. Here the Tribunal will set out the list of agreed issues that we had to decide and explain our judgment on each of those issues.

### Credibility

123. Where there has been direct conflict of evidence between the Claimant and Ms Dubarry or Mr Lowery, we have preferred the Respondent’s evidence to the Claimant’s. We did this mainly because of the inconsistencies in the Claimant’s evidence. A few examples of her inconsistent evidence are as follows. The Claimant tried to persuade us that the email in which she stated that she was off work with dizziness and headaches was evidence of stress at work. It was not until the Respondent gave evidence that we saw that the reason she was experiencing headaches and dizziness was more likely to be related to her glasses which were of an incorrect prescription. In the return to work meeting she clearly stated to Ms Dubarry that when she got glasses that were more suited to her, the headaches went away.
124. She insisted that Ms Dubarry was not the person who put her forward to lead the Christian Fellowship but, she was unable to say who had. At one point in her evidence she stated that it was Father Tim and later, that it was Father Dominic. This was inconsistent and unhelpful.
125. The Claimant complained to us that she was constantly referred to as the HR Manager when scrutiny of the documents showed this not to be the case. The Claimant was called the Head of HR from October 2018, even before she was employed on a permanent contract. Her email sign off was ‘Head of HR’ and Ms Dubarry referred to her as Head of HR until her resignation. Although this was only meant to be for a year, the Claimant’s title never reverted to HR Manager and the Claimant would have known that.

126. The Claimant claimed that she was not consulted when decisions were being made but could not refer to any examples when questioned about this by Respondent's counsel.
127. The Claimant had not read the bundle of documents in her own case. There was a lack of preparation on her part. She did not refer to documents in her witness statement and did not make a concerted effort to set out her case. She was evasive in her answers to Counsel and did not answer questions directly.
128. In contrast, we found Ms Dubarry and Mr Lowery were professional and helpful to the Tribunal. They were prepared and gave their evidence in a straightforward manner. They were credible and did not give answers to help the Respondent's case but tried to assist the Tribunal.
129. The issues the Tribunal will decide are set out below.
130. The Tribunal will answer each of these questions in turn. The Tribunal will address the allegation of harassment first and then move on to assess the complaint of constructive unfair dismissal. The sections in italics below are taken from the agreed list of issues. The rest is the Tribunal's judgment on the issues.

Harassment

131. The agreed issues under the heading of harassment were as follows: -

- 131.1 *Did the Respondent or its employees carry out the following acts:*

- 131.1.1 *In December 2018 Amanda Dubarry and John Lowrey humiliated the Claimant on a manager's away day.*
- 131.1.2 *On 4 March 2019 Amanda Dubarry inappropriately asked the Claimant about her religious views, enquired why she was not in a relationship, and suggested that the claimant use a Christian dating website.*
- 131.1.3 *On 16 August 2019 Amanda Dubarry criticised the Claimant's religious views, including by telling the Claimant that all she did was pray against others.*
- 131.1.4 *On 3 October 2019 Amanda Dubarry insulted the Claimant's intelligence during a telephone call.*
- 131.1.5 *Amanda Dubarry called the Caritas Anchor House Christian Fellowship a "cult" and implied that the Claimant was the cult's leader.*
- 131.1.6 *Amanda Dubarry scheduled meetings with the Claimant so that the Claimant could not attend meetings of the Caritas Anchor House Christian Fellowship.*
- 131.1.7 *From 10 October 2019 Amanda Dubarry and John Lowrey told the Claimant's colleagues, that the Claimant*

**Case Number: 3201557/2020**

*was useless, did not have the ability to understand her role, and belittled her abilities to do her job.*

- 131.1.8 *On 21 November 2019, Amanda Dubarry was hostile and aggressive towards the Claimant in an attempt to stop the Claimant expressing her Christian faith.*
- 131.1.9 *On 3 January 2020 Amanda Dubarry was abusive and hostile to the Claimant, in circumstances where the conversation was overheard.*
- 131.1.10 *On or about 2 February 2020 the Claimant was forced to amend the reports she had written for the board.*
- 131.1.11 *During the subsequent board meeting shortly after 2 February 2020, Amanda Dubarry blamed the Claimant for those reports being incomplete and improperly written.*
- 131.1.12 *On 4 February 2020 Amanda Dubarry told the Claimant she “could not write” and questioned where she was born, her upbringing and education. Amanda spoke to the Claimant in an aggressive and hostile tone.*
- 131.1.13 *On 4 February 2020, following the Claimant’s resignation, Amanda Dubarry spoke to the Claimant in an aggressive and hostile manner.*
- 131.1.14 *On 3 April 2020 Amanda Dubarry told the Claimant that she “could not speak English” and ridiculed her pronunciation.*
- 131.1.15 *Following complaints to the Respondent’s Senior Leadership Team and Board of Trustees, the Respondent failed to take any action to protect the Claimant from bullying and harassment.*

132. The Tribunal’s judgment on the allegations of harassment set out at 132.1.1 – 132.1.15, is as follows:

- (1) It is our judgment that the Claimant was not humiliated by John Lowery and Amanda Dubarry on the manager’s Awayday in December 2018. The evidence did not support this allegation.
- (2) It is our judgment that in March 2019, the Claimant and Ms Dubarry had a conversation about dating. The Claimant had previously led Ms Dubarry to believe that she was single and interested in dating and that was why Ms Dubarry told her about the advert she saw on the underground. We did not have evidence that Ms Dubarry enquired why the Claimant was not in a relationship. The Claimant had earlier volunteered that information. It is our judgment that this was not an inappropriate conversation, in the context of their working relationship, which at the time was a good one. It was not something that the Claimant objected to at the time. In our judgment, Ms Dubarry did not tell the Claimant that she should join the website or

that she should start dating. The Claimant's evidence was that she was in a relationship at the time but she had not told Ms Dubarry this, which means that Ms Dubarry was unaware that the Claimant's circumstances had changed from their earlier conversation.

- (3) It is our judgment that Ms Dubarry did not criticise the Claimant's religion and tell her that all she did was '*pray against others*'. This was not a phrase that Ms Dubarry used, in August 2019 or at any other time.
- (4) It is our judgment that Ms Dubarry did not insult the Claimant's intelligence during a telephone call on 4 October 2019. We did not have evidence that Ms Dubarry called the Claimant an *idiot*, *moron* or *stupid* at any time during her employment, either in person or in a telephone conversation.
- (5) It is our judgment that Ms Dubarry did not refer to the Caritas Anchor House Christian Fellowship as a cult or the Claimant as a cult leader. Ms Dubarry was supportive of the Claimant running the Fellowship and it is likely that it was she who put the Claimant forward to do it, after their meeting.
- (6) It is our judgment that Ms Dubarry did not schedule meetings with the Claimant to coincide with the Christian Fellowship meetings so that the Claimant could not attend them. Ms Dubarry was the Claimant's line manager and the Respondent's CEO. She did not conduct herself in such a petty manner. If she did not want the Claimant to attend the Fellowship meetings, it is likely that she would have told her that she could not go. There would have been no need for her to address it in this way. It is our judgment that she did not do this.
- (7) In our judgment, Mr Lowery and Ms Dubarry did not say that the Claimant was useless. Although in this claim the Claimant accuses both of them of saying that she was useless, at the time, she approached Ms Dubarry to complain that Mr Lowery had said that about her. She did not initially accuse Ms Dubarry of saying this until she brought this claim. That supports our conclusion that it did not happen. Mr Lowery did not say that the Claimant was useless and he was not openly critical of the Claimant. However, he did say to his manager, Ms Dubarry, that he believed that the Claimant's performance sometimes fell below the standards expected of someone in her position. His reasons for saying so are set out in the findings of fact above.
- (8) It is our judgment that we did not have evidence that Ms Dubarry was hostile to the Claimant on 3 January 2020 at all or to prevent her from practising her Christian faith. We did not hear evidence of what acts the Claimant considered were designed or intended to stop her from practising her Christian faith. Ms Dubarry was busy leading the changes to the organisation and supporting the Claimant. She also spent time commenting on the Claimant's drafts of policies and helping her to formulate documents. The evidence showed that she

was supportive of the Claimant and not concerned about the Claimant's practice of her faith.

- (9) It is our judgment that Ms Dubarry was not abusive to the Claimant in a telephone conversation on 3 January 2020. It is unlikely that they had a telephone conversation that day. Even if they did, it is highly unlikely that Ms Dubarry was abusive to the Claimant. It is our judgment that this did not happen.
- (10) It is our judgment that in February 2020, Ms Dubarry asked the Claimant to amend a typographical error in one of the documents she had prepared for the HR sub-committee. This was to help the Claimant and we did not have evidence that she was forced to do so. There were instances where Ms Dubarry asked the Claimant to do something and she refused. It is also our judgment that Ms Dubarry advised her to remove the document that gave details of staff sickness as it contained confidential information. Again, that was to help the Claimant. It is therefore our judgment that Ms Dubarry did not force the Claimant to amend reports for the Board. As CEO, Ms Dubarry's job included making sure that the documents that went to the Board were professional, well-written and appropriate. Board members are volunteers and not staff. They are not entitled to be privy to confidential information about members of staff except in certain situations such as recruitment or disciplinary procedures. Ms Dubarry was not creating a hostile, intimidating or other environment for the Claimant by doing her job.
- (11) It is our judgment that the Claimant had been the author of the reports presented to the sub-committee on 4 February. She sent them to Ms Dubarry for approval before they were sent out. The Claimant was therefore responsible for the way in which the information was presented. We did not have evidence that any issue/s identified with the reports at the meeting were the same as Ms Dubarry advised her to change before the meeting. It is our judgment that Ms Dubarry did not inappropriately blame the Claimant for the state of the reports that the Claimant had written.
- (12) It is our judgment that we had no evidence that Ms Dubarry told the Claimant on 4 February that she could not write. The Claimant did not refer to this in her witness statement. She did not give evidence that Ms Dubarry had questioned her birth and her upbringing on 4 February. It is our judgment that Ms Dubarry was not hostile or aggressive towards the Claimant on 4 February.
- (13) It is our judgment that Ms Dubarry did not speak to the Claimant in a hostile or aggressive way, on 4 February. Ms Dubarry was shocked at the Claimant's resignation and was surprised and disappointed that the Claimant had chosen to resign in the way she had. She was concerned about the Claimant continuing to work for another three months and she was concerned to ensure that the Claimant conducted herself in a professional manner during her notice period. It is likely that their discussion on 4 February in the Claimant's office was not relaxed or jovial but it is our judgment that Ms Dubarry was

not hostile or aggressive. It is likely that she was professional, precise and clear as this was an important conversation.

- (14) The Claimant's witness statement did not refer to a conversation with Ms Dubarry on 3 April 2020. She also did not refer to it in her live evidence.
- (15) It is our judgment that the Claimant did not complain to Mr Haines or to any other member of the Respondent's Board that she was experiencing bullying or harassment. Putting her complaints to Mr Haines at its highest, the Claimant complained to him that she was not being given the resources that she considered that she needed in the HR department. This is not a complaint of harassment or bullying. Mr Haines response was to advise her to talk to her manager. That was an appropriate response in the circumstances. She did not ask him to investigate and she did not tell him that she was making any type of complaint of inappropriate conduct by Ms Dubarry.

*Were those acts connected to a protected characteristic held by the Claimant? The Claimant relies on the protected characteristics of race and religion.*

- 133. It is this Tribunal's judgment that these allegations did not happen or did not happen as described. These acts could not have been connected to either the Claimant's religion or her race because they did not occur at all or as described.

*Did those acts have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*

- 134. It is this Tribunal's judgment that the Respondent did not treat the Claimant in any way that could be construed as violating her dignity or creating a hostile, intimidating, degrading, humiliating or offensive environment for her; either related to her race or to her religion.
- 135. Mr Yetman submitted on the Claimant's behalf that we were not bound by the list of issues. We did not find any other facts from which we could conclude that the Respondent had treated the Claimant in any way that could be construed as violating her dignity or creating a hostile, intimidating, degrading, humiliating or offensive environment for her, whether related to her race or her religion.
- 136. In this Tribunal's judgment, the Claimant was paid the salary and given the title she asked for so that she could do the responsible job of Head of HR. The Claimant was assisted in doing her work by a busy CEO. Ms Dubarry took time out of her day to support the Claimant and to provide templates for policies that made the Claimant's job of producing the finished product much easier than it otherwise would have been. She also held regular one-ones with the Claimant and was in regular email contact with her. These were all the supportive measures she took to help the Claimant who everyone agreed worked hard and was busy. She agreed that the Claimant would have interns and that they could be hired once their internship came to an end, if they were useful. The Claimant actually had HR Administrators



during her time at the Respondent as both Mr Braimah and Ms Siddique were employed as HR Administrators.

137. The Claimant and Ms Dubarry also got on well and that is evidenced by the birthday cake which the Claimant bought for her. There was no evidence that she did so for all her colleagues or for any other colleagues. The Claimant was not harassed by Mr Lowery either. They also worked well together. He did not think that she was perfect but he made no comment to that effect to the Claimant or to others about her. The evidence does not support a conclusion that he said that the Claimant was useless.
138. The Claimant was busy as were all the witnesses who appeared before us.
139. The Claimant has failed to prove evidence from which the Tribunal could conclude that she had been harassed by the Respondent in any way.
140. The complaint of harassment fails and is dismissed.

*Constructive unfair dismissal*

141. *Did the Respondent commit a repudiatory breach of the implied term of mutual trust and confidence in the Claimant's employment contract by the following acts, either individually or collectively:*
  - 141.1 *Placing increasing demands on the Claimant despite the Claimant informing the Respondent of her inability to carry out a heavy workload.*
  - 141.2 *Failing to provide the Claimant with the resources she required to properly carry out her duties.*
  - 141.3 *Making it impossible for the Claimant to carry out her duties.*
  - 141.4 *Failing to consult the Claimant about matters relating to the HR department and her role within it.*
  - 141.5 *Deliberately excluding the Claimant from Senior Management decisions and meetings which concerned the HR department.*
  - 141.6 *Acting contrary to the Claimant's advice on HR matters.*
  - 141.7 *Doctoring the Claimant's reports to the Board of Trustees.*
  - 141.8 *Inappropriately placing the blame for incomplete and improperly written reports on the Claimant.*
  - 141.9 *Failing to ensure the Claimant's information was confidential.*
  - 141.10 *Directing the Claimant to release sensitive personal information about the Respondent's employees.*
  - 141.11 *Carrying out the acts of harassment listed in paragraphs 7 below.*

*The Tribunal will now give its judgment on each of these alleged acts, and the complaint of constructive unfair dismissal, as follows:*

142. It is this Tribunal's judgment that the Claimant was busy. However, it is not our judgment that the Claimant was placed under increasing demands during her time at the Respondent. The evidence showed that her workload was at its highest at the beginning of her employment and while still on a fixed term contract, when she was revising and creating policy documents. Her work reduced in 2019, when her workload was mainly revising existing policy documents, working on a review of the handbook and the remuneration review.
143. The Claimant did not tell the Respondent that she was unable to carry out a heavy workload. She did complain about being busy. She usually did so when seeking an increase in her wage or when advocating for a change in her title or for a and L&D team to work with her. The Claimant worked hard and was busy but that is not the same as telling the Respondent that she was unable to carry out a heavy workload. The Claimant never told the Respondent that she was not capable, instead, it was her case that she was quite capable but that she needed HR assistants to take on the admin tasks, or an L&D team to do training.
144. The conversations that she had with Mr Haines and with Ms Dubarry were about managing her workload and whether it was appropriate for the Respondent to provide her with more resources in the HR department. She had initially asked for HR Administrator. She was given an HR Administrator when Ms Siddique was employed and when she left, the Claimant eventually hired Mr Braimah as an HR Administrator, solely dedicated to working with her. Later, towards the end of 2019, the Claimant began asking for a team of people. The Respondent did not consider that this was required because it was a charity and did not have the funds to support such a team. Also, because the Claimant had not evidenced the need for such a team or put forward detailed proposals of what such a team would cost and what they would do.
145. In our judgment, it is incorrect to say that the Respondent failed to provide the Claimant with the resources she required to properly carry out her duties. The Respondent did not give the Claimant the resources that she wanted but she was given additional resources. Firstly, Ms Dubarry spent a lot more of her time supporting, assisting and directing the Claimant than she would have expected to do for a Head of HR. She was prepared to do that in order to support the Claimant. The Claimant also had support from Mr Lowery in relation to the production of the appraisal policy. Secondly, the Respondent worked with the Claimant to source suitable interns to assist her. Although the Claimant was sceptical in the hearing about the usefulness of the interns, we found that she had intern support for most of her time at the Respondent. The two interns both remained with the Respondent for some time and when she had the opportunity to recruit an assistant, the Claimant chose to continue with the intern. Thirdly, the Respondent subscribed to MoorePay and the Claimant used MoorePay on many occasions for advice and assistance thereafter. Fourthly, Ms Dubarry offered on more than one occasion that we saw in the one-to-one notes to go through the Claimant's workload and to assist her in prioritising her work to ensure that she could complete tasks as required, with the resources and

time available to her and fifthly, the Respondent asked the Claimant on a regular basis to create templates and provide training to managers so that she could delegate some tasks to them so that everything did not need to go through the HR office. Those were all additional resources and tangible and helpful actions that the Respondent took to support the Claimant and assist her in managing her workload in the time available.

146. In our judgment, the Respondent did not make it impossible for the Claimant to carry out her duties. It was not clear to the Tribunal what this issue referred to. The Respondent provided the Claimant with the necessary equipment and time to do her job. It also supported her, mostly by Ms Dubarry's efforts, to do her job. Ms Dubarry sourced more than one policy template for the Claimant from Homeless Link, which the Claimant then had to tailor make for the Respondent's use. That would have been a much shorter process than if she had to either source them herself or write them from scratch.
147. The Claimant was not expected to give all managers her personal mobile number. When she made the Respondent aware that she had been getting calls from managers during her personal time, Ms Dubarry organised for her to be given a new phone. This was done within days of her notifying the Respondent. She was not expected to work at reception. She volunteered to do so on Easter Monday 2019 but this was not part of her job. Whenever she worked extra hours, she claimed TOIL. There were two occasions in the bundle when she claimed TOIL and the evidence was that those were the only two occasions when it came up.
148. It is our judgment that there were times when the Respondent did not inform the Claimant about minor matters that related to HR. We found that the Claimant had not been told about the SMT's decision that Megan should be allowed to take time off as annual leave for surgery rather than as sick leave. The Claimant had not been told about an arrangement that Mr Lowery would work from home nor had she been told beforehand about Mr Selliah's recruitment of a finance officer in April 2019.
149. It is our judgment that the Claimant was not excluded from decisions relating to the HR department. However, the Claimant's role was not part of the SMT and so she would not have been involved in SMT decision making. The Claimant was included in the discussions at the team's Awayday. The HR department was crucial to the discussions on the day and an integral part of any plans that arose out of that day as no changes could be made to the organisation without HR's involvement. The Respondent did not exclude HR from the discussions on the day. The discussions were not done according to department and we saw that not only HR but also Finance, and Admin were not on the flip chart pages but that is a simplistic view of the day. The discussion was according to KPI's across the organisation and the topics that were discussed such as supervision, staff retention, safeguarding, the need for unity across the staff team, clearer policies etc. all concerned all of the departments within the organisation; including HR.
150. It is our judgment that the Respondent may sometimes have acted contrary to the Claimant's advice on HR matters. The Claimant's role was to advise the Respondent on HR matters. It is possible that the Respondent may have taken a different view on matters from the Claimant's advice.

151. It is our judgment that the Respondent did not ‘*doctor*’ the Claimant’s reports to the Board of Trustees. There were occasions when Ms Dubarry suggested amendments to reports the Claimant produced because they had incorrect information, contained confidential information – such as the sickness absence report – or contained typographical errors. We did not have evidence that the Claimant’s reports were changed to make her look bad or to sabotage her. We did not have evidence that any changes were made to her reports without her agreement and cooperation. The evidence was that Ms Dubarry suggested changes and that the Claimant agreed with them and made them to the reports. She did not object at the time or say that the reports were being wrongly altered. Ms Dubarry’s actions were to assist the Claimant and to ensure that the documents produced to the Board were professional and correct and it is likely that she assumed that the Claimant also wanted the same thing.
152. It is our judgment that the Claimant was not inappropriately blamed for incomplete or improperly written reports. The Claimant wrote the reports that were presented to the Board from HR. She did not tell us who should have been held responsible instead of her. If this is a reference to reports produced from the HR department then it is our judgment that the Claimant would properly bear responsibility for their contents. Even if Ms Dubarry suggested an amendment to a report, she would have made that suggestion to the Claimant and the Claimant then made the change. If the change did not make sense or altered the meaning of the report it would be the Claimant’s responsibility to ensure that it was corrected.
153. It is our judgment that the Respondent ensured that the Claimant’s information remained confidential.
154. It is our judgment that the Respondent gave Mr Lowery access to confidential information about members of staff in relation to managing them and continuing to provide a safe service during lockdown. Managing a public service during the early days of a pandemic was an exceptional circumstance, which the Respondent was doing its best to manage. Mr Lowery was a senior member of staff. He did not simply access this information on his own but had been given permission to access the information by the SMT, for a specific reason. There was no evidence that he misused the information or that he shared it or did anything else improper with it. It is our judgment that the Respondent did direct that sensitive personal information about the Respondent’s employees should be accessed by one of its senior managers.
155. It is our judgment that the Respondent did not commit the acts of harassment as alleged above or at all.

*Did the Respondent commit a repudiatory breach of the implied term in the Claimant’s contract of employment that it would provide a suitable working environment by failing to take reasonable steps to protect the Claimant from bullying and harassment?*

156. It is this Tribunal’s judgment that the Respondent did not commit a repudiatory breach of the Claimant’s contract of employment. The Respondent sometimes did not follow the Claimant’s advice and on

occasion, decisions were made by the CEO on HR matters before the Claimant was told. It is our judgment that those matters did not amount to a repudiatory breach of the Claimant's contract of employment.

157. The Respondent provided the Claimant with a suitable working environment. The Claimant was not subjected to bullying and harassment. The Claimant was employed in a senior position in a charitable organisation that was changing. She was employed to assist and in some respects lead on some of those changes. The Claimant was busy and the Respondent believed that she was finding the work challenging and stimulating. At times - such as just before going on holiday, just before a Board meeting or after writing lengthy reports – she would be exhausted and tired, as expected. But the Claimant's position had always been that she was quite capable of doing the job.
158. The Claimant resisted attempts that were made to get her to train managers to deal with some of the less complicated matters such as sickness reporting or booking of annual leave, as she saw this as undermining her position. It was possible for her to collate records of annual leave and sickness on a regular basis but have individual requests put through managers rather than having to deal with each request herself. Attempts to get her to prepare templates to assist with reporting was also resisted. The Claimant was critical of the assistance that the interns provided to her. It is true that they did not come to the Respondent as qualified HR Administrators but they both were employed with that title, after their internships ended. Both were of assistance to her, especially Mr Braimah who worked with the Claimant up to her departure and also provided assistance to Mr Hardaker. Both Ms Siddique and Mr Braimah were of assistance to her and it was up to her how much work she delegated to them.
159. In our judgment, the Claimant was a senior employee. The Respondent expected her to have many demands on her time and that she would be able to prioritise her work and decide what work could be delegated to the managers and/or the interns and what work could be left for another day while she did more urgent work. That was a reasonable expectation for the Respondent to have.
160. It is this Tribunal's judgment that the Claimant decided that the only suitable solution for a busy HR department was to have a team of qualified HR Administrators or an L&D team, with her as Head of HR at the helm. The Claimant was not prepared to consider any other solution or any other way of addressing the situation. The fact that the Respondent did not provide her with a team of HR Administrators and/or an L&D team, as she requested, was not a fundamental breach of contract.
161. Although the Claimant's case is that she was bullied and harassed, she mentioned neither bullying nor harassment in her letter of resignation. She did not tell the HR subcommittee meeting on 4 February 2020 that she was resigning because of bullying and harassment. In our judgment, if the Claimant really believed that she was being bullied and harassed, it is unlikely that she would have given considerably more notice than she was contractually obliged to give as it was unlikely that she would have wanted

to spend more time with Ms Dubarry and Mr Lowery than she was required to do.

162. If the Claimant had been bullied and harassed or considered that the Respondent had breached her contract of employment, she would not have offered to stay on for three months after giving in her notice. In the letter of 4 February, the Claimant stated that she would consider staying at the Respondent if the Respondent expanded her remit and gave her the L&D team that she wanted. She also stated in that letter that she had no issue or was not at odds with staff or managers. That also contradicts the case that she put forward in the hearing that this was an unsafe working environment for her as she was being bullied and harassed, overworked and unsupported as if that were true, we would not have expected her to offer to stay under any circumstances.
163. It is this Tribunal's judgment that the Respondent did not breach the Claimant's contract and instead, provided her with a suitable working environment. There was no evidence to support a conclusion that the Respondent subjected the Claimant to an environment of bullying and harassment, made it impossible for her to carry out her duties or placed increasing demands on her with an unmanageable workload.

*Did the Claimant resign in response to any such repudiatory breach of contract or to simply take up employment elsewhere?*

164. It is this Tribunal's judgment that the Claimant was not dismissed. The Claimant resigned because she wanted to move on. The Claimant had asked for an L&D team and when that was not forthcoming, she decided to leave. There was a difference in opinion between the Claimant and Ms Dubarry as to the function and purpose of HR within the Respondent, once all the policies and procedures were done. Essentially, they did not agree on how to move forward from there.
165. The Claimant saw an opportunity to set up a training unit within the Respondent to train the managers and more junior staff in various forms of personnel development. The Respondent wanted to outsource most of that training. The Respondent's idea of what its HR department should look like is demonstrated by the HR department that it has now, with Mr Hardaker as its Director. In elevating the lead post, the Respondent now has someone who can feed in at Director level as well as get involved with disciplinaries, absence management and the day to day problems, if needed. He also automated some of his functions such as the provision of new started documents – which was something that the Claimant chose not to do. The next level of staff down from Director level is the same as what the Claimant had. The P&L person is on the same level of qualification as Mr Braimah. The Kickstart person is a trainee and therefore needs training – as Ms Siddique and Mr Braimah did at the beginning. The Kickstart trainee did not start until over a year after the Claimant left, when the funding became available and the Respondent saw an opportunity. It is likely that had the Claimant been employed at that time, the Respondent would have done the same thing and applied for the funding to provide her with an assistant. The P&L person was a straight swap for Mr Braimah who had left and was engaged at zero cost to the Respondent, as Mr Braimah had been. The trainee is funded by the government scheme.

166. The Claimant worked three months' notice and began a new job on 2 June 2020.
167. The Claimant was not dismissed.
168. The complaint of constructive unfair dismissal fails and is dismissed.
169. All the Claimant's complaints fail and are dismissed.

**Employment Judge Jones**

**1 March 2023**