EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms E James **v** **West London Mental Health NHS Trust**

Heard at: Watford in person and by CVP **On**: 26, 29 and 30 November 2021

Before: Employment Judge Manley
Members: Mrs Hancock
Mr Surrey

Appearances
For the Claimant: Did not attend
For the Respondent: Mr Sudra, counsel

JUDGMENT having been sent to the parties on 2 December 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant brought claims for constructive unfair dismissal, harassment and victimisation. The issues were summarised at one of the preliminary hearings in August 2018, of which there have been four in this case. They were as follows:

   Sexual harassment (s26 Equality Act 2010)

   1. Can the claimant show that Mr Vandi engaged in unwanted conduct related to her sex that had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her in that, it is alleged, he ogled at her, licked his lips and looked at her crotch area in meetings on 20 and 23 March 2017?

   2. In deciding whether the conduct had that effect, was it reasonable, taking into account the claimant's perception and other circumstances, for it to have that effect?

   Victimisation (s27 Equality Act 2010)

3. Did the claimant carry out a protected act when, it is alleged, she raised Mr Vandi's behaviour with her line manager Ms Isted on or around 20 or 21 March 2017?

4. If so, was she subjected to a detriment, namely her secondment agreement being terminated in April 2017, because she had done that protected act?

Constructive Unfair Dismissal (s95 (1) (c) Employment Rights Act 1996

5. Did the respondent commit a fundamental breach of contract as set out by the claimant in a letter to the respondent on 9 February 2018? In particular the claimant complains of the following:-

   a) The failure to carry out an investigation into the claimant's grievance of sexual harassment fairly and in a timely fashion in accordance with the Dignity at Work Policy;

   b) The alleged sexual harassment incident as set out above;

   c) The alleged incident with Ms London in March/April 2018 where the claimant was asked about the dress code aggressively and the claimant was humiliated and the later sharing of the claimant's email address with Ms London;

   d) The respondent seeking to recover an overpayment of salary at a rate the claimant could not afford and Neil Jones acting in a dismissive manner;

   e) Failing to provide all documents under her subject access requests.

6. If so, was that the reason for her resignation and did she resign without delay?

Jurisdiction (s123 Equality Act 2010)

7. Were any of the Equality Act claims brought out of time in that it can (*should read "cannot*") be shown that there was conduct extending over a period?

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

The hearing

2. Before the hearing commenced on Friday 26 November 2021, the claimant had applied for a postponement on two occasions. One was with respect to an outstanding matter at the Employment Appeal Tribunal and the other was when she sent in a doctor's note saying that she was not fit for work. Both of those postponement applications were refused.

3. On the first day of this hearing in person the claimant sent an email with a fit note. The relevant part reads:

> *"I write out of courtesy to inform the tribunal that I am not presently fit to attend this hearing and therefore will not be in attendance."*

4. There was no further request for a postponement. The tribunal therefore caused an email to be sent to the claimant. In summary, we said that we noted that the fit note had expired; that the tribunal was reading the witness statements and relevant documents and that the case would continue on the Monday 29 November. It was suggested that the claimant might be able to join by CVP, if she could not attend in person and we asked for any comments. None were received before the tribunal commenced again on the Monday.

5. We then read witness statements and relevant pages in the bundle on the first day. There were seven witnesses for the respondent; they were:

   - Ms Isted, line manager
   - Ms London, Ms Isted's line manager
   - Mr Vandi, ward manager
   - Ms Dosanjh, line manager
   - Ms Fitzsimmons, HR dignity at work
   - Mr Jones, payroll manager
   - Mr Miah, information governance manager

6. There were also two witness statements for the claimant, one of which was in direct response to the respondent's witness statements.

7. Four witnesses did attend on the Monday; Ms Isted, Ms London, Mr Vandi and Ms Fitzsimmons and the tribunal considered whether it was necessary to hear from the other witnesses and decided there was nothing further that we needed to ask them. We did ask questions of the witnesses who attended, based on the issues and matters raised by the claimant in her witness statements.

8. There was an extensive bundle of documents, over 800 pages, but as is often the case, we needed to read only those to which we were referred, amounting to around 100 pages.

9. There was an issue with the bundle because there were two page numbers and the respondents' witnesses had referred to different ones. Where we refer to page numbers in this judgment it is those appearing in the middle of the page.

10. After we had heard from witnesses, Mr Sudhra, for the respondent, made short oral submissions and we deliberated and gave judgment on the morning of the third day.

11. After the judgment was given, a short judgment was sent to the parties on 2 December 2021. It seems that the claimant made an application for reasons within time but this was not seen by the tribunal office or referred to the judge until the claimant wrote later in 2022 asking about the reasons. It took some time to find out whether reasons had been requested within time and

the claimant, upon request, sent a screen shot of her application, made by email. The judge has been away and needed the electronic bundle to provide the reasons and that took some time. There have therefore been significant delays before these reasons could be prepared and sent to the parties, for which we apologise.

12. These are the relevant facts

The facts

13. The claimant began employment with the respondent as a Medical Secretary in the CAMHS unit for about 18.75 hours a week in June 2015.

14. The respondent is a substantial employer delivering mental health services. It has a number of the usual written policies. There is an Induction Policy, a Dress Code Policy, Dignity at Work, Supervision and Grievance and a number of others that appeared in the bundle. Some are more relevant than others.

15. In November 2016 the claimant began a 12 month secondment within the Sports and Leisure Services as a Technical Instructor at Broadmoor. She then attended various training induction sessions between November 2016 and February 2017 as follows:

    14.1 Teamwork Course, which was a five day course,
    14.2 A Security Update Course.
    14.3 Clinical Risk Training,
    14.4 PSTS Theory Induction Group
    14.5 Equality and Diversity
    14.6 An Introduction to boundaries
    14.7 Recovering Patient Involvement training
    14.8 Safeguarding Adults and WRAP training and that was repeated in February.

16. The respondent has a policy with respect to uniform particularly in relation to the claimant's post in Sports and Leisure. Part of the Dress Code which we have seen appears at page 279. A short extract from section 9.1 - clothing and it reads:

> *"Clothing must be safe having regard to the activities being carried out at the time and comply with the Health & Safety Regulations to ensure personal safety and that of service users and carers. Clothing that is too tight, too revealing or see through is unacceptable. All clothing must be of a type that promotes dignity and professionalism and is not provocative or could be construed as such."*

17. The claimant had a number of one-to-one supervision sessions with Ms Isted, who was her direct line manager, with Ms London being Ms Isted's line manager.

18. There were supervision sessions in December 2016 and we have seen a note from that at page 399 of the bundle. That makes specific reference to question of the claimant maintaining patient boundaries.

19. There was a further supervision session in January 2017.

20. In February 2017 there was an incident on the Woburn Ward involving the claimant. This concerned a patient who was following the claimant around and matters were discussed with the claimant. A note appears about that at page 403.

21. In March 2017 Ms Isted spoke to the claimant about work concerns involving her. In particular, she was concerned that the claimant was putting herself in a vulnerable position.

22. At paragraph 27 of Ms Isted's statement, she talks about a particular incident where the claimant was asked to sit near the alarm bell but did not stay there and mingled with patients instead. These matters were discussed with the claimant.

23. On 20 March 2017 the claimant says that she met with Mr Vandi, who was responsible, at that point, for the Dover Ward. There are at least two versions of this meeting but no direct contemporaneous note about it. The claimant's version in that she met with Mr Vandi and that he ogled her, licked his lips and looked at her crotch area. Mr Vandi denies that absolutely. He says there was a very brief meeting on that day which was just to organise a time for them to discuss an incident which had occurred on the Dover Wad. He said the meeting was only a very few seconds, other people were in the room and he did not look at the claimant in any inappropriate way.

24. The claimant did not mention this at the time. Her version is that she did speak to Ms Isted at some point but that is denied by Ms Isted. The first time there is anything in writing about this alleged incident at all is when the claimant raised it later on 25 August 2017.

25. The tribunal is not satisfied that such behaviour occurred, particularly because the claimant did not raise it until so much later even though, as we will come to, she raised a considerable number of other concerns. The tribunal accepts Mr Vandi's evidence and finds there was no inappropriate behaviour by him on that day.

26. As it happens, the Dover Ward Manager, Mr Robinson, was raising concerns with Ms Isted about the claimant on 25 March. He was particularly concerned about her interaction with a particular patient and said that she had stayed behind speaking to that patient after her shift. Ms Isted asked the claimant not to work on Dover Ward until matters were resolved. At this point, the claimant did allege that she was being bullied but, as stated, she did not mention any alleged inappropriate behaviour by Mr Vandi.

27. There was then a meeting between Mr Vandi and the claimant on 23 March. This was to discuss a dispute between a couple of patients. Again, the claimant repeats the allegation of inappropriate looking by Mr Vandi. Mr Vandi again disputes any such behaviour. Both of them wrote, when the matter was investigated, to give their versions. The tribunal finds that Mr Vandi did not and would not have behaved in such a way. In particular, the claimant wrote a detailed grievance, which we will come to, in June 2017 which goes through a number of concerns she had and did not mention either of these alleged incidents. There was no such inappropriate behaviour by Mr Vandi.

28. A bit later in March, around 27th, Ms Isted raised concerns she had about the claimant with her line manager, Ms London. At page 413 Ms London records her as saying this:

> *"Cautiously managing of Elaine James regarding a possible boundary issue with patient CD on Dover Ward. Mandy has had to be very clear with EJ regarding her alleged behaviour when entering Dover Ward after her shift was finished. EJ appears to find it hard to receive feedback from staff. However Mandy is supervising EJ and giving her very clear feedback at this time. This situation is being monitored very clearly."*

29. There was then a further supervision meeting with the claimant and Ms Isted on 30 March. In that meeting the claimant appears to have mentioned bullying and harassment. Page 414 reads:

> *"Elaine feels that Vandi (Dover) is bullying her as he has stopped her from going to the ward. Elaine feels that he had not really given her a good reason for this."*

30. In any event, the claimant then did stop going to Dover Ward.

31. There was then a further incident about which the claimant complains when Ms London had cause to speak to her about inappropriate clothing: this was on 13 April. The claimant was wearing leggings and was with two other colleagues from Sports and Leisure. The claimant's version is that Ms London was aggressive, that she was verbally abusive and she got her name wrong. Ms London accepts that she called the claimant Emily rather than Elaine in error, but she did decide to speak to her immediately because she was concerned that she was not wearing the uniform, which was tracksuit bottoms. The claimant said that she had none and she was allowed to carry on. The claimant was concerned about the way in which she was spoken to and complained about it later. The tribunal finds that there is nothing untoward about this discussion. Ms London was entitled to speak to the claimant about the clothing she was wearing given the respondent's firm rules on dress code. We do not find that she was at all aggressive or raised any inappropriate matters with the claimant

32. Later that same day Ms Isted also discussed inappropriate clothing with the claimant. That is recorded at page 431, an extract reading:

> *"I explained to Elaine that she had been provided with a uniform and should therefore wear it. I also pointed out to Elaine that she had read the Dress Code to which she agreed. Elaine admitted that the leggings were inappropriate but felt I was unfair about her top which was also very tight. Once again, I reinforced that this was not uniform issue and she should only wear what is appropriate."*

33. Ms Isted instructed the claimant not to attend any wards until she had spoken to Ms London. This was partly because she had received an email from Mr Vandi about difficulties with the claimant attending the Dover Ward on 20 April.

34. Managers at the respondent were getting concerned about how they could utilise the claimant and there was a meeting between the claimant and Ms London on 21 April when the claimant was put on paid leave. This was partly because they were finding the claimant a little difficult to manage.

35. The meeting was recorded by Ms London; part of the note reads:

> *"During the meeting Ms London did not feel confident that Ms James understood the serious nature of the concerns raised by her supervisor, nursing staff and colleagues. She demonstrated fixed views and an inability to reflect or consider the concerns of her managers and colleagues. Ms London considers this is a risk in a high security setting. In the meeting Ms London decided it would be safer to stop Ms James secondment in the Sport and Leisure Department due to her inability to value and respond to the views of the staff with whom she worked. Ms James was informed of this decision in the meeting.*

36. Ms London checked with the claimant's line manager at CAMHS Unit, Ms Dosanjh, whether she would be able to return there if the secondment was brought to an end.

37. Other matters which occurred in April related to the claimant having a deduction from her pay. This was a little over £200 and was a result of an attachment order sent to the respondent by a court. There was a deduction but then there was also an instruction to cancel that deduction. In May and June the claimant was repaid on two occasions so that she was overpaid a little over £400. It was agreed that £50 per month would be deducted but the claimant was unhappy with this. This was much less than was usually agreed when there had been an overpayment. The claimant was absolutely clear that she was aware that she had been overpaid. Most of this is dealt with in Mr Jones' witness statement.

38. At some point, although the tribunal is not sure when this is alleged to have occurred, the claimant met with Mr Jones. The claimant says that he was dismissive; Mr Jones says he was not. The claimant was not satisfied with the explanation about the deduction but it was made. The tribunal can find nothing untoward about anything that happened about this overpayment. It

was clear the respondent was entitled to recover money incorrectly sent to the claimant by mistake.

39. At some point in April or May, Ms Isted copied an email she was sending to the claimant to Ms London which meant Ms London was able to see the claimant's email address. The claimant says this is a breach of data protection but it seems to the tribunal that it would be no such breach; this is information which the respondent quite properly had and had been provided to it by the claimant.

40. On 4 May the claimant met with Ms Isted and she was informed that her secondment was to be terminated. A very detailed letter was sent to her which went through all the incidents of concern, some of which are referred to above, and the claimant returned to her CAMHS Medical Secretary post.

41. The claimant was then on sick leave between 16 June and 1 September and she then had some more leave until she went into CAMHS on 12 September.

42. In the meantime, she had raised a fairly detailed grievance. This is a seven-page document and appears at pages 502 to 509 of the bundle. In essence, the claimant complains at length about Ms London and about the termination of her secondment, giving her explanation for some of the matters which had occurred. Nowhere in there does the claimant say anything about any inappropriate behaviour by Mr Vandi with respect to looking at her inappropriately.

43. The respondent set up a grievance hearing with a panel and the claimant was accompanied by a union representative. A grievance outcome was sent to her which appears at 588 of the bundle. Again, this is a very detailed outcome of her grievance. Part of the conclusion reads as follows:

> *"The panel considered all aspects of your grievance and concluded that whilst there may have been some flaws in the process, the decision to terminate your secondment was based on serious safeguarding concerns. The panel accepted the rationale given by Ms London for the decision to terminate your secondment which was that there was a catalogue of concerns about you that were being raised from both inside and outside the department including very experienced staff and managers in the hospital. These concerns have been brought to your attention. You were given clear guidance and at times even instructions which you failed to take on board or chose to ignore. This showed a lack of awareness of understanding on your part of the importance of relational security and maintaining firm professional boundaries when working in a high secure environment. As a result of this it is the finding of this panel that your grievance is not upheld."*

44. That was received by the claimant on 14 August and on 25 August, the claimant raised written complaints about Mr Vandi. She said in that document, (page 610), that she wanted it to be dealt with informally. But, in

essence, she raised the concerns we referred to earlier about how Mr Vandi had allegedly looked at her.

45. Towards the end of August there was a sickness absence management meeting with the claimant and Ms Dosanjh, who was by then her line manager, and the claimant expressed that she was unhappy with her role at CAMHS.

46. In relation to the complaints about Mr Vandi, the respondent initially asked the claimant's line manager, Ms Dosanjh, to do the investigation but Ms Dosanjh said she was not suitable and then Mr Caider was appointed in October 2017. This led to a delay in the grievance being considered.

47. In the meantime, the claimant had made a Subject Access Request in early September with replies to that request in November and December 2017. The claimant suggests that she has not received all documents that she should have but the tribunal has no knowledge as to what those documents might be.

48. We read the witness statement from Mr Miah which provides an explanation for the delay in dealing with the claimant's Subject Access Request. In summary, it was a very busy time for the respondent and the tribunal is aware these can be very time-consuming requests and there was a severe backlog. So, there was a delay before she received documents under that process.

49. At a supervision in late 2017 the claimant said that she needed a reference because she had another job. Then there was some discussion about who would be the appropriate person to give such a reference.

50. The claimant then had further sick leave during January.

51. On 20 December the claimant sent an email to Ms Young who was in the HR Department. Amongst other things she said, this is at page 738, "*As you are aware I wish to leave the Trust and have initiated seeking employment elsewhere."*

52. It was some time before the grievance outcome was sent to the claimant. There is a detailed document which appears at 733 of the bundle; it is undated but the tribunal understands that it was prepared in December 2017, because we can see emails around it. For reasons the tribunal have not entirely understood, the claimant says that she did not read it until 18 January when she collected it from a post box. She did ask for a meeting with Mr Kamera who had written the document following Mr Caiden's investigations and he suggested that it would be wise to meet after she had read the letter, which it appears at that point she had not done. We have no evidence whether a meeting occurred or not.

53. On 1 February the claimant resigned from employment. This was in a short email again to Ms Young. It reads:

> *"Please accept this email as confirmation of my resignation in line with my contract and I have provided notice on 15th January. My last working day will be Friday 9th February 2018 with 13.5 hours of leave remaining. My last physical day in the office will be Tuesday 6th February 2018."*

54. The tribunal does not know and the respondent is unaware to what the claimant is referring when she mentions having given notice on 15 January. Notice was formally given as indicated on 1 February.

55. The claimant did follow up that letter with a more detailed letter which appears at 778 and 779 of the bundle, where she complains about some of the matters that appear in this list of issues for the tribunal. She also says, this is at page 779, that the last straw was "*The circumvention of Mr Kamera to meet with me to discuss pursuing the matter of my allegation further".*

56. The claimant's effective date of termination was 9 February 2018. She approached ACAS on 28 February with the certificate being dated 27 March, and the ET1 was presented on 26 April 2018.

The law

57. The Equality Act (EQA) claims are brought under section 26 and 27 EQA. The relevant parts of those sections read:-

"26 Harassment

(1) A person (A) harasses another (B) if—

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

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

(a) the perception of B;

(b) the other circumstances of the case;

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

(5) The relevant protected characteristics are—

- sex;

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

58. The burden of proof provisions are at s.136 and apply to both those claims as does the time point which is s.123.

123 Time limits

(1) Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

136 Burden of proof

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

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

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

(4) -

(5) -

(6) A reference to the court includes a reference to—

(7) (a)an employment tribunal;

61. The claimant's claims for harassment do not require her to identify a comparator. The steps that are required by section 26 EQA are first, for her to show unwanted conduct that is related to sex and that it had the purpose or effect of violating her dignity or creating the environment as described. In assessing this, the tribunal must apply the test as in section 26 (4) which amounts to a subjective and objective test. The ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the tribunal of all the facts. The claimant's subjective perception of the conduct in question must also be considered. Having taken account of whether the claimant perceived her dignity to have been violated the objective question is a question of whether it is reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for her.

62. The claimant also brings a claim for victimisation under section 27 EQA. The burden of proof provisions apply here too. The issue for the tribunal is to consider whether there was a protected act as described. Then, we must

decide whether the claimant was subjected to the detriment she relies upon and, if she was, whether it was because she had made that protected act.

63. Section 123 EQA (quoted above) provides that a discrimination claim may not be brought after the end of three months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable. This provision is very similar to that provided by the previous anti-discrimination legislation. In British Coal Corporation v Keeble 1997 IRLR 336 it was said that the discretion is as wide as that given to the civil courts by section 33 of the Limitation Act 1980. When considering whether it is just and equitable, the tribunal is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension and to have regard to all the other circumstances, in particular the length of and reasons for the delay, the extent to which the cogency of evidence is likely to be affected by delay, the extent to which the party sued has cooperated with any requests for information, the promptness with which the claimant acted once they knew of the facts giving rise to the cause of action and the steps taken by the claimant to obtain appropriate advice once they knew of the possibility of taking action. However, it is said that there is no legal requirement on a tribunal to go through such a list in every case provided of course that no significant factor has been left out of account by the tribunal or judge in exercising its discretion. Robertson v Bexley Community Centre 2003 IRLR 434 reminds tribunals that the discretion to extend time should be exercised as an exception rather than the rule.

64. The constructive unfair dismissal is covered by section 95 (1) c) Employment Rights Act 1996 (ERA). This provides for these circumstances to amount to a dismissal:-

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

65. It requires the claimant to show a fundamental breach of their employment contract and an intention by the respondent to be no longer bound by the contract. As in this case, the most common breach relied upon is the implied term of mutual trust and confidence.

66. In essence, the tribunal's task is to find any relevant facts and then apply legal tests to them, coming to conclusions on the facts as found. There is no real dispute about the legal principles and they are also summarised in the list of issues.

67. We had short oral submissions from Mr Sudhra for the respondent; deliberated by considering all the evidence, including the statements of the claimant. We then reached the conclusions and gave oral judgment as follows.

Conclusions

68. We considered the first issue - the sexual harassment allegation. This reads "*Can the claimant show that Mr Vandi engaged in unwanted conduct related to her sex that had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her in that it is alleged he ogled at her, licked his lips and looked at her crotch area in meeting on 20 and 23 March 2017"*. It is clear from our findings of fact that the claimant has not shown that that occurred.

69. The second question is to decide whether the conduct had that effect, was it reasonable taking into account the claimant's perception and other circumstances for it to have that effect. We do not need to answer that question because the claimant has not shown that the conduct occurred at all.

70. Turning briefly to the jurisdiction question which is at issue 7 and 8 - the question of whether that claim is made out of time. It is quite clear that that claim relating to this allegation is of course a long way out of time as it occurred, on the claimant's case, at the latest on 23 March 2017 with the claim form not being presented until April 2018. So, in that case, we can consider whether it is conduct extending over a period. There is no evidence to that effect. Nothing happened with respect to Mr Vandi after that point nor has the claimant given any evidence with respect to it being just and equitable to extend time. So, in essence, even though we have found no conduct by Mr Vandi which meets that test, even if we had found that there was such conduct, the claim would have been out of time. There being no evidence as to why we should grant a just and equitable extension, the claim could not have proceeded because it was out of time. In any event, the conduct did not occur.

71. Turning then to the victimisation claim, which is issue 3 - *Did the claimant carry out a protected act when it is alleged she raised Mr Vandi's behaviour with her line manager Ms Isted on or around 20 or 21 March 2017"*. We have found that the claimant did not raise matters with Ms Isted as she alleges. Therefore, she cannot have carried out that protected act.

72. Turning to issue 4, "*If so, was she subjected to a detriment namely her secondment agreement being terminated in April 2017*". Because she had not done that protected act, as indicated, we do not need to find that issue as she has shown no protected act. Even if she had, the tribunal could not have found that the termination of her secondment was because her having raised that issue with Ms Isted. The tribunal are satisfied that the respondent had good and reasonable reasons for terminating the secondment which she was well aware of having been told of it in a number of meetings. It was clearly set out in the letter she received. She therefore cannot succeed in any victimisation or harassment claims.

73. In any event the victimisation claim would also have been out of time as the secondment was terminated in April 2017 and the claim form presented in April 2018. For the same reasons the tribunal does not believe this is conduct extending over a period or that there has been any evidence that it was just and equitable to extend time, so, those claims are bound to fail.

74. We then considered the constructive unfair dismissal at issue 5 - "*Did the respondent commit a fundamental breach of contract as set out by the claimant in the letter to the respondent of 9 February 2018. In particular, the claimant complains of the following*" and then there are letters (a) to (e) for which our findings are these:-

(a) The failure to carry out an investigation into the claimant's grievance of sexual harassment fairly and in a timely fashion in accordance with the Dignity at Work Policy.

The tribunal accepts that there were some delays with respect to this matter. We understand that the Dignity at Work Policy suggests an outcome within 25 working days and this was somewhat longer. On the other hand, the claimant was supposed to raise this matter within three months and she did not do so, but the respondent decided that, given the nature of the complaints, they would look into it. The tribunal is satisfied with the reasons given for the delay in relation to the change in the investigator and our experience is that it often takes longer to investigate these matters than is anticipated. The process was an entirely fair and equitable one including the trade union side being able to review the outcome. There is no breach with respect to the investigation of the claimant's grievance except a very small technical breach with respect to timings.

(b) relates to the alleged sexual harassment.

We have found no such sexual harassment so there can be no breach.

(c) is the alleged incident with Ms London in April of 2017 where it is alleged the claimant was asked about the dress code aggressively and the claimant was humiliated, and later sharing of the claimant's email address with Ms London.

There are two aspects to this. As our findings of fact have made clear, we have no difficulties with the conversation that Ms London had with the claimant about the dress code and we have not found any aggressive behaviour by her. There is no breach of contract there. Similarly, with respect to the email address, this was something the claimant had already shared with the respondent. It had no impact on her whatsoever. At most, it is an unfortunate mistake. It certainly does not amount to a breach of contract.

(d) is the respondent seeking to recover an overpayment of salary at a rate the claimant could not afford and Mr Jones acting in a dismissive manner. We can find no breach here. The respondent was entitled to recover an overpayment the claimant was well aware of, at a level which she should have been able to afford having received money to which she was not entitled as she was well aware. We have not found any dismissive behaviour by Mr Jones and there is no breach there.

(e), failing to provide all documents under a Subject Access Request.

We have found that although this was slower than is ideal, we cannot find that it had any particular impact on the claimant and we do not accept that that amounted to a breach.

75 In summary, we have not found any breaches of contract. At most, if there have been some procedural delays, for instance with the sexual harassment grievance and the Subject Access Request compliance, these were a breach of policy rather than a breach of contract. Even if there was a breach of contract, it certainly cannot amount to a fundamental breach. There was no indication of any intention by the respondent to be no longer bound by the contract. Even if there had been such a breach, the tribunal would not have found that that was the reason for the claimant leaving as she had made it clear some months previously that she intended to leave the respondent.

76 For all these reasons the tribunal has not been able to find a breach of contract, much less a fundamental breach and the claimant's claim for constructive unfair dismissal must fail and is dismissed.

77 All claims have not been proved, fail and are dismissed.

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Employment Judge Manley

Date: 9 March 2023

Sent to the parties on: 11th March 2023

GDJ
For the Tribunal Office