EMPLOYMENT TRIBUNALS

Claimant: **Ms F Kaiser**

Respondent: **Khans Solicitors**

Heard at: **East London Hearing Centre**

On: **12, 13 May, 15, 18 and 19 July**
In chambers on 26 September 2022

Before: **Employment Judge Jones**
Members: **Ms P Alford**
Mr K Rose

Representation
Claimant: Mr Bletchley on Day 1 and then the Claimant in person
Respondent: Ms Evans-Jarvis on Day 1 and then Mrs Y Barlay, Consultant

RESERVED JUDGMENT ON RECONSIDERATION

1. **The Claimant was an employee from 1 April 2019 – 2 February 2021.**

2. **The Tribunal does not have jurisdiction to consider the complaints of sex harassment against Imitiaz Ali because they were issued outside of the statutory time limit set out at section 123 of the Equality Act 2010. The Tribunal does not exercise its discretion to extend time on a just and equitable basis.**

3. **The Tribunal has jurisdiction to consider all the Claimant's remaining complaints because they were submitted in time.**

4. **The complaint of disability discrimination succeeds.**

5. **The complaint of sex discrimination succeeds.**

6. **The complaint of race/nationality discrimination failed and is dismissed.**

7. **The complaint of automatic unfair dismissal succeeds.**

8. **The Respondent failed to give the Claimant itemised pay statements.**

9. **The Respondent failed to provide the Claimant with written terms and conditions in accordance with Section 1 of the Employment Rights Act 1996.**

10. **The Respondent made unauthorised deductions from the Claimant's wages.**

11. **The Claimant's claim for damages for breach of a contract of employment succeeds.**

12. **The Claimant is entitled to a remedy for her successful claims. A remedy hearing will be listed and the parties notified accordingly.**

REASONS

Claim and issues

1. The Claimant made complaint of breach of contract in the form of a failure to pay wages, overtime and agreed commission. She also complained that the Respondent failed to pay her for accrued but untaken holidays. The Claimant brought complaints of direct disability discrimination, failure to make reasonable adjustments, discrimination arising from disability, harassment related to disability and harassment related to sex and race/nationality. Lastly, the Claimant brought a complaint of automatic unfair dismissal for asserting a statutory right contrary to section 104 Employment Rights Act 1996. The Respondent contended that the Claimant was not an employee or a worker and that her complaints were out of time. The Respondent conceded that the Claimant was a disabled person in respect of each of the 6 disabilities relied on individually and taken together. However, the Respondent did not concede knowledge of disability or substantial disadvantage. The full list of issues was agreed at a preliminary hearing on 15 March 2022, before EJ WA Allen KC and set out in full in the section of these reasons entitled *'Applying Law to Facts'.*

2. The Tribunal apologises to the parties for the delay in the promulgation of this judgment and reasons. The Tribunal made its decision on this matter on 26 September 2022. The delay has been due to the Judge having a number of judgments to write up at the same time.

3. The Claimant was very unwell at the start of the second day, 13 May 2022. At the start of the hearing, she was lying in bed as she had just taken some pain medication and could not sit up without being in extreme discomfort. She wanted to continue with the hearing but the Tribunal considered that it would not be in keeping with the overriding objective to do so. The Tribunal decided to adjourn the hearing to a date in the future when it was hoped that Claimant's pain medication may be more effective and she would be in

a position to continue her cross-examination of Mr Khan. When we resumed the hearing on 15 July, she was well enough and we were able to complete the liability hearing.

The Respondent's application

4. At the start of the hearing on Day 1, the Respondent made an application to strike out claim because the Claimant had not adhered to the tribunal orders. Further discussion revealed that the Respondent had also not complied with tribunal orders. The Respondent submitted that having only received the Claimant's witness statement on the morning of the first day of the hearing, it would not be able to lead evidence in response to it. The Respondent submitted that the claimant's case, in particular her complains of disability discrimination had little reasonable prospects of success and her complaint of automatic unfair dismissal and age discrimination should therefore be dismissed.

5. Further discussion revealed that the Claimant had been actively pursuing her claim and in March, had resisted the Respondent's application for an extension of time in which to file its response. She had spoken to the Respondent on the telephone and agreed an extension of time for her to present her list of documents. The Claimant had also discussed the contents of the hearing bundle with the Respondent. The Claimant complained that a number of documents which she submitted to the Respondent, which she considered to be relevant to the issues, had not been included in the bundle, which was prejudicial to claim. This had caused a delay in her preparation of her witness statement. On closer examination, the Tribunal agreed that the documents were relevant and should have been included in the bundle.

6. The Tribunal considered both parties' submissions and decided that there had been delays on both sides and that the Claimant's delay had partly been caused by her contracting the Covid-19 coronavirus. Any delay was due to the actions or inactions of both parties. There was no evidence that the Claimant had abandoned her claim or that she had not been actively pursuing it. It was also absolutely still possible to have a fair hearing in this matter. After due consideration, it was the Tribunal's judgment to refuse the Respondent's application. Full reasons were given in the hearing and are not set out in detail here.

7. Mr Bletchley had only been instructed by the Claimant to resist the Respondent's application for her claim to be struck out. Once the Tribunal gave its decision on the Respondent's application, the Claimant took over her representation and presented her case.

Evidence

8. The Tribunal had a bundle of documents prepared by the parties and also witness statements from both the Claimant who gave evidence on her own

behalf and from Mr Mohammad Omar Khan, who gave evidence on behalf of the Respondent.

9. Although there were specific allegations of harassment against Marie Junkerre and Imitiaz Ahmed, Mr Khan decided not to call them as witnesses in the hearing. We were told that Mr Khan advises on Employment Law matters. The Tribunal discussed this with his representative on Day 1 and it was confirmed that Mr Khan was content to defend the Respondent from all the Claimant's allegations and had chosen not to call any additional witnesses.

10. The Tribunal made the following findings of fact from the evidence in the case. The Tribunal has only made findings which are relevant to the issues that we had to determine.

Findings of Fact

11. The Claimant began working for the Respondent as a paralegal between 2013 and 2014, when she worked mainly in the immigration and nationality department. She worked for the Respondent again, from 1 April 2019. The Respondent is a firm of solicitors. In April 2019, the partners were Muhammad Omar Khan, Shahid Dastgir Khan and Muhammed Akram Rana. The Respondent practised mainly in the areas of family law, immigration. conveyancing, probate and property. During the time that the Claimant worked for the Respondents, Marie Junkerre joined the business as a practice manager/consultant. She was not a lawyer or a partner in the business but the Respondent gave her authority over the Claimant and possibly the other caseworkers. The Claimant was told that Marie was engaged to assist the business to achieve accreditation/quality marks.

12. In 2019, the Claimant had discussions with the Respondent about working with them under a training contract. This is a prerequisite for anyone wishing to qualify as a solicitor. The Tribunal takes judicial notice of the fact that a training contract is a special type of paid employment contract for a fixed period between a trainee solicitor and an establishment - usually a firm of solicitors - in which they undertake to train the trainee in the core areas and skills required to become a solicitor. The Law Society would usually set a minimum salary for trainees. At the end of the training contract evidence of the training given will need to be submitted to the Law Society/Solicitors Regulation Authority (SRA) before the trainee can be admitted to the roll of solicitors. It is also possible for casework experience obtained prior to signing a training contract to be considered as meeting the requirements set out by SRA. This could reduce the amount of time that the trainee needs to spend in a training contract or remove the need for a training contract altogether.

13. The Claimant met with the Respondent's partners to discuss the firm employing her under a training contract. It is likely that they had a discussion

on 8 March 2019 and the Respondent was satisfied of her abilities as the Claimant was offered a training contract during the meeting.

14. We find it likely that when she was offered the training contract, the Claimant told the partners that because of her divorce, she had been declared bankrupt, as a consequence of the dissolution of a business she had with her husband. She considered that it might be prudent to seek a declaration from the SRA before signing a training contract, so that it would not be an issue for her or prevent her from becoming a solicitor. She asked the Respondent to put the training contract on hold while she sorted out the issue with the SRA. The Respondent asked the Claimant how long the SRA process would take and she said that it was likely to take around 180 days. On that basis, it was agreed that her training contract would begin on 1 October and in the interim, she would be employed as a paralegal.

15. On 13 March, the Claimant wrote to the Respondent to accept the offer and to ask for it to be put in writing so that she could submit her application to the SRA for the Suitability Test, which she expected would take approximately 6 months. She expressed her thanks for the offer of work and the offer of a salary or '*around £1100net per month'* plus 20% commission for work that she intended to introduce to the business. She confirmed that she would start on 1 April as agreed.

16. The Respondent wrote to the Claimant on 13 March to confirm the offer of work. Mr Shahid Khan, who was a partner in the Respondent, wrote the following to the Claimant on 19 March 2019.

> *"Dear Forida,*
>
> *I am pleased to confirm that we are happy to offer you employment as a caseworker from 1st April 2019 and a training contract/ position of a trainee solicitor in six months time i.e. from 1st October 2019 subject to your clearance and approval by the SRA with whom I understand you are in contact.*
>
> *We will also pay you 20% commission on clients you introduce. This will be on the net profit costs i.e. excluding VAT billed and received. You will pay your own tax on the commission you earn as a self-employed person. Alternatively this can be added to your salary and tax will be deducted under the PAYE scheme in the usual way.*
>
> *I am sending you a letter separately, which you can submit to the SRA in connection with your application for suitability test.*
>
> *I confirm your employment will commence on 1st April 2019. You will be paid at the statutory minimum wage rate i.e. £8.21 per hour for a 35 hour week. This comes to £14,942.20 gross per year (£1,245.18 per month gross) and after deducting tax and national insurance this should*

be around £1050 - £1100 per month. You will be entitled to the usual statutory holidays.
On behalf of the partners and all of us at Khans I welcome you and hope you will enjoy the part of our team.

Kind regards,

Shahid Dastgir Khan
Partner and Solicitor
Khans Solicitors"

17. The letter did not mention that the Claimant was required to submit time sheets or invoices in order to be paid.

18. In accordance with this offer of employment, the Claimant worked on a full-time basis for the Respondent at their offices, as a paralegal/caseworker from 1 April 2019. The Claimant would usually work in the office between the core hours of 9.30am – 5.30pm. She was given some flexibility on her start time, as she was a single parent and sometimes had to drop her children off at school but we find that it would be around 9.30am. She would regularly start work earlier than 9am and on those occasions, the agreement was that she would finish early but usually, she finished late.

19. Generally, she would work as required, including at the weekend. She would also start work earlier if necessary, such as when she attended the post office at 7.30am during lockdown to collect a parcel for Mr Muhammad Khan. The Claimant would not always take an hour's lunch break. She would sometimes take a break to go to the local mosque and occasionally, she would take a break to go to the nearby Boots chemist to collect her medication. She recalled occasionally going to the mosque with a colleague called Isra.

Disability

20. The Claimant would frequently go to Boots chemists and return to the office with one or two bags of medication, which was noticeable to her colleagues and the partners. The Claimant would collect Pregabalin which was her pain medication, Propanadol, pain patches, eye drops and medication for anxiety, stress and palpitations. The medication was usually in Sainsburys carrier bags. Her colleagues would sometimes comment on how much medication she needed. Mr Rana sympathised with her over her need to take medication for pain management, which she had over her whole body and he taught and referred her to many Islamic prayers/recitations that she could use, to help her with the stress and anxiety related to the pain.

21. The Claimant kept the Respondent informed of her hospital and doctor's appointments. The Claimant also sent in sick notes to the Respondent.

22. In January 2019, the Claimant had been diagnosed with stress and anxiety. She was prescribed drugs to be taken every day. She also had palpitations for which she attended the A&E department on numerous occasions by ambulance.

23. The Claimant did not use the word '*disabled'* at work. It is likely that she thought that using that word would jeopardise her chances of being kept on in the business and that the Respondent would not assist her to become a solicitor, which was her goal. However, we find that she told the Respondent's partners at various times that she had Glaucoma, arthritis and Fibromyalgia as they usually wanted to know where she was going when she asked for time off to attend medical appointments. She had to get permission to miss work to attend hospital appointments. She told the partners, Mr Muhammad and Mr Shahid Khan about her Glaucoma and dry eyes and that she needed a larger screen on the PC on her desk to relieve the discomfort caused by those conditions. The Claimant had to use eye drops and creams. She also told them that she had stress and anxiety.

24. We find that at various dates in June, August and September 2019, the Claimant spoke to Mr Khan and Quddoos, the Respondent's IT person, to request a computer with a bigger screen to help her do her work and to ease the discomfort caused by the Glaucoma and dry eyes. When she worked at Mr Khan's or Mr Rana's desks, there were two large computer screens which was a comfortable working environment for her. When they moved offices, the Claimant found that she was given a small computer screen to work on and this caused her to experience difficulty, dry eyes and discomfort. Quddoos told her that she should also have a screen protector to assist her with her Glaucoma. This was promised but never delivered. He also promised her that he would reduce the glare from the screen for her but this never happened. The Claimant told him and the Respondent that she was suffering with Glaucoma.

25. We find that although there were spare screens in the office, which we could see behind the Claimant on some of the photos she took of herself in the office, as a clerk, the Claimant did not have the authority or permission to simply take one. It was also not clear if they were all working. Most requests were made verbally as all the caseworkers shared a big office. There was no evidence that the Claimant was told to take another screen or that Quddoos was given permission to give her another screen or a screen protector.

26. The Claimant attended a Fibromyalgia support clinic at the local Diabetes Centre on Thursdays, from 10am – 12.30pm. This was held over 6 sessions, beginning on 16 May 2019. The letter inviting her to the sessions was on page 277 of the hearing bundle. The purpose of the clinic was to learn strategies for managing the chronic pain associated with that condition. The Claimant requested permission to attend the clinic. She printed off the email and gave it to the Respondent so that everyone would know why she was absent from the office on those Thursday mornings. The Respondent

authorised the Claimant's absence from the office to attend the clinic. The Claimant had to work extra hours to make up the time that she had spent at the clinic.

27. The Claimant also attended a Glaucoma clinic once every 2 – 3 months to get medication into her eyes before she attended work. She was diagnosed with Glaucoma in 2017 and told the Respondent's partners about it in June 2019, around the time that she needed to attend an appointment.

28. The Claimant was diagnosed with arthritis in July 2019. On 4 July 2019 the Claimant attended an appointment with a Consultant Rheumatologist at the hospital. She got permission from the Respondent to attend the appointment and afterwards she returned to the office. She also told Mr Khan that she had been diagnosed with chronic pain affecting her spine and that she was going to be referred for an MRI.

29. In the hearing bundle we had a text from the Claimant to Mr Muhammad Khan on 15 August 2019, apologising for only now informing him that she had a hospital appointment the following day. She also attached the contents of the hospital letter so that he could see that she was attending the Rheumatology Outpatients department.

30. The Claimant also sent a text message to Mr Rana at 6.56am on 16 October 2019 to remind him that she would not be going into the office and that as Antonella was off sick, either he or Mr Khan would have to open up.

31. The Claimant had another Glaucoma clinic appointment on 11 March 2020 and she asked the Respondent's permission to attend.

32. The Claimant continued to attend appointments, with the Respondent's permission, throughout 2020.

33. In August 2020, the Claimant asked Mr Khan and Quddoos to provide her with computer screens to enable her to work effectively as she was working from home, using her laptop. In November 2020, when she started working regularly in the Ilford office again, after the lockdown was lifted, she asked for a large computer screen to enable her to work comfortably. She was using Mr Rana's computer when he was out of the office. Mr Khan confirmed in the hearing that both he and Mr Rana used two screens as they were quite convenient.

34. On 22 November 2020, when Marie spoke to the Claimant to try to arrange another meeting at her home, the Claimant told her about her physical issues and asked if the Respondent could provide her with a support chair and a cushion to support her back as she was in a lot of pain in her shoulder, back and neck, due to the Fibromyalgia. Marie looked at the Claimant as though she was asking too much. She did nothing about the Claimant's request. The Claimant was not provided with a comfortable chair or a cushion at the office. The Claimant could not raise a grievance as there

was no grievance policy and she did not believe that any grievance she raised would be taken seriously. Around this time the Claimant was not being paid her wages, which gave her little confidence that the Respondent would address any other concern.

35. On 1 December, the Claimant asked Quddoos again for a larger computer screen. The failure to provide the Claimant with a larger screen adversely affected the Claimant. She had increased migraine headaches and her eyes were irritated and she had to increase her reliance on eye drops to relieve her discomfort with her dry eyes. She also believed that it would worsen her Glaucoma over time.

36. On 3 December 2020, Marie Junkerre, the Respondent's practice manager instructed the Claimant to move furniture around the office. We did not hear from Ms Junkerre in the hearing. The Claimant initially objected and stated that the arthritis in her hands made it difficult for her to lift furniture as her fingers would get numb from pain. Ms Junkerre's boyfriend was also present. They had to re-arrange furniture in a small office. Marie refused to accept what the Claimant was telling her and instead, she shouted at the Claimant that she *'must follow my directives'.* In the end, the Claimant and Marie's boyfriend lifted three desks, a large printer and moved a filing cabinet with files in it, because Marie insisted that she had to do so. Ms Junkerre said in a high, loud authoritative voice, which the Claimant described as the type you use to talk to small children *'you will not die so you better not give me any excuses. I will not accept any excuses!'*

37. The Claimant did as Marie asked as she was fearful of her and intimidated by her. When they had finished re-arranging the office, Mr Rana came out of the consultation room and noticed that the room had been re-arranged. He remarked at how quickly it had been done. Mr Rana also noticed how Marie was speaking to the Claimant and that it was hostile. He did not speak to Marie but instead advised the Claimant not to make a fuss about it and to *'just stay quiet'* and submit her application. We find that what he meant was that the Claimant should make sure that she completed and submitted her application to the SRA before raising any issue with Ms Junkerre.

38. The Claimant had severe neck pain after moving the furniture but Ms Junkerre told her to attend a consultation conference and take notes. The Claimant was at work until 7.15pm that night. Although she told Ms Junkerre about her neck pain, and that sitting in one position for long periods of time, without moving was making it worse, the Claimant was told that she could not leave until her all the work that Mr Junkerre had told her to do, was done.

39. The Claimant went off sick from work on 11 December due to stress at work. She wrote to the Respondent on 15 December 2020 to confirm that she was still not well enough to return to work and that she had already informed Mr Rana and Ms Junkerre. We had copies of four fit notes in the bundle. The first was for the period from 17 December to 31 January and referred to *'stress at work'* as the reason for her absence. The second was for the

period 31 December to 14 January 2021 and referred to as *being positive for Covid-19* as the reason for her absence; and lastly, the third was from 14 January to 4 February 2021 and referred to persistent *COVID symptoms, stress and anxiety and pain - awaiting MRI scan* as the reasons for absence.

40. On 26 January 2021, the Claimant returned Mr Khan's telephone call. Mr Khan asked about her health and whether she had had the vaccination. She told him about her Covid-19 diagnosis and repeated information about her other illnesses. She reminded him that she had Fibromyalgia and told him that she was having difficulties getting to sleep. She informed him that she had an MRI booked for the following day.

41. They spoke again a week later, on 1 February when Mr Khan called the Claimant to find out how she was. She was now able to give him her diagnosis. The MRI scan showed that she also had multiple level Cervical Spondylosis, which she understood was wear and tear of the bones (vertebrae) and discs in her neck. She told Mr Khan, *'you guys don't believe me what I say I am in so much pain in my neck'*. The diagnosis is confirmed by the Claimant's medical records which confirm that the diagnosis was made on 27 January of mild mid to lower Cervical Spondylosis. The Claimant was prescribed anti-inflammatory drugs to help reduce the swelling in the joints and muscles, especially in her neck. It was at that point that Mr Khan told the Claimant that she should stop working for the Respondent on a PAYE basis. She asked him why that was and he said that the business could not afford the Claimant but that he could continue to work with her if she changed to working on a self-employed basis. The Claimant refused this offer and Mr Khan said that he would send her an email to reflect their conversation.

42. The next communication from the Respondent was an email from Marie on 2 February 2021 to which she attached a letter of dismissal.

Work

43. We find that the Claimant was well known in the community for legal casework which meant that she was able to bring in many clients to the Respondent's business. She did not advertise. She brought in clients for a variety of issues – some were conveyancing clients, who would be given to Imitiaz Ahmed. Others were family or probate clients. Mr Khan would decide what to charge each client. That would be reflected in the client care letter, which he wrote. The bills would be generated by Mr Khan and the client would pay the Respondent. If the bill remained outstanding, the Respondent would tell the Claimant so she could chase up the client as it initially been her contact. When the matter was concluded and the bill paid, the Claimant would be paid 20% of the profit i.e. after deduction of VAT and disbursements. They were never the Claimant's clients although they were her referrals. The Respondent retained all the clients that the Claimant introduced to the firm.

44. The Claimant used the Respondent's equipment at work.

45. On 30 April, Mr Khan asked the Claimant for her National Insurance number and her address for payment. She provided those in a text message. She understood that he wanted that information so that she could be paid through the PAYE scheme. The PAYE scheme is used by employers to pay employees their wages, with tax and National Insurance contributions deducted at source and paid to the relevant government departments on their behalf. The employee is paid the net wage.

46. In the Respondent's response to the claim at page 35 of the bundle the Respondent pleaded that the Claimant made a counteroffer to the Respondent that she be taken on as a self-employed caseworker and that from 30 April 2019 – 30 October 2020, she submitted monthly invoices in respect of hours worked on the basis that she was a self-employed worker. No such invoices were shown to us in the hearing. It was not put to the Claimant that she made a counteroffer and we find that she did not make a counteroffer to the Respondent. In the hearing the Respondent changed its case. In the hearing, the Respondent's defence to the claim for outstanding pay was that the Claimant had never submitted invoices as expected and that they did not know how much time she spent on files and therefore were unable to pay her for her time from April 2019 – 1 December 2020 but had paid her some money because of her personal financial situation.

47. In April/May 2019, the Claimant continued to have discussions with the SRA/the Law Society about the process of her qualifying as a solicitor, as she was keen to qualify. On 1 May 2019, the Claimant telephoned the SRA to get some guidance on completing the Suitability application form. She was told that because of the nature and the breadth of the casework that she had done during her time working for the Respondent since 2013, she may not need a training contract at all. By 2020, the Claimant had over 5 years of casework experience.

48. From her conversations with the SRA, the Claimant understood that if she submitted an Equivalent Means application with the Suitability section completed, giving evidence of all the work that she had done; the SRA might consider that she had done sufficient training and covered all the areas of practice that she would have to do in a training contract. This could lead the SRA to agree to her being admitted to the Roll without the need to register for a training contract and spend a further two years as a trainee. The Claimant would be able to pay one fee and be admitted on to the Roll of Solicitors subject to completing the Professional Skills course. After having that conversation with the SRA, the Claimant was excited about the possibility of becoming a solicitor much earlier than she had initially expected. She was told that if the application was satisfactory, she could be admitted to the Roll of solicitors straightaway. She would need Mr Khan as her supervisor to certify the areas of work that she had done. The SRA would also have to check her bankruptcy and divorce papers, but she was

hopeful that this meant that her ambition to become a solicitor would soon come to fruition.

49. On 1 May 2019, after she spoke to the SRA, the Claimant wrote to Mr Khan to say:

> *"Further our earlier conversation regarding my employment, would you be kind as to put on hold until I discuss with Shahid sometimes today. Your support is highly appreciated."*

50. She intended to speak to Mr Shahid Khan to let him know the good news that she had just heard from the SRA and for them to discuss how they would work together to complete the Equivalent Means application.

51. We find it likely that later that day, the Claimant told Mr Rana, Mr Shahid Khan and Mr Muhammad Khan the good news and they agreed to support and assist her by providing a reference to confirm the work that she had done on the files. The Claimant worked mostly with Mr Shahid Khan and Mr Muhammed Khan on their files. At the time, Mr Muhammed Khan agreed to support her application for her experience at the Respondent to be treated as equivalent to a training contract so that she could be admitted to the roll.

52. After this email, there was no further correspondence from either party on this matter. There was no letter from the Respondent asking the Claimant for timesheets or invoices and no letter from the Respondent stating that the letter of 19 March had been rescinded. There was no letter from the Respondent confirming or setting out any new arrangement between the parties.

53. The Claimant was usually in the office early in the morning. There were text messages in the bundle which show her at work at 8.30am and at 9am (page 180). The Claimant was not paid for April 2019.

54. Her first payment from the Respondent was received on 23 May 2019. She was paid £1,100.00. The second payment was received on 13 June 2019 and was also in the sum of £1,100.00. She was not paid in July. There was a text message in the bundle from her to Mr Muhammad Khan on 23 July 2019 asking to be paid. The Claimant emailed Mr Khan at 6.53am on 23 July 2019 to confirm that she was working.

55. On 12 August 2019, the Claimant wrote to Mr Muhammed Khan. She stated as follows:

> *"It's been two months since I was paid and I cannot afford any longer to be without a regular wage. My agreement with Shahid was to work for 35 hours for the minimum wage of £8.21 per hour. That is the equivalent of £287.35 per week.*

I understand that with a move to a new office money will be tight for a while. Therefore, instead of asking for my money on a monthly basis I wonder if it would be possible for you to pay me on a weekly basis.

So can you please let me have a cheque for £287.35 today which I will pay in at lunchtime. Of course you can pay money direct into my account if you want.

When you have time we can talk about an arrangement to pay me the outstanding two months money.

Thank you in advanced."

56. Mr Khan agreed in evidence that he had received this letter and in response, the Respondent began to pay her on a weekly basis. However, this was not borne out by the evidence. On 31 August 2019, after the Respondent received this letter, it paid £850 by bank transfer into the Claimant's bank account.

57. On page 131 of the bundle the Claimant provided a spreadsheet setting out the payments she received from the Respondent against the amounts she expected to be paid from the terms set out in Mr Shahid Khan's letter of 19 March 2019. She also included her UTR (Unique Tax Reference) number in the spreadsheet. The Claimant obtained the UTR number from HMRC when she registered as self-employed when she worked for the Respondent in 2013. She put it on the spreadsheet which she prepared at the end of her employment as it related to the commission that was due to her for every client that she had introduced to the Respondent. As set out in Mr Khan's letter, the Claimant knew that she would need to pay tax and national insurance on the commission payments. The Claimant had already provided the Respondent with her national insurance number, date of birth and full address. It is likely that she had also provided details of her bank account as the three payments she received had been paid directly into it.

58. We find it likely that the Respondent would only have paid the Claimant the sums set out above if it considered that money was owed to her for her work. Mr Khan gave inconsistent evidence about the Respondent's reasons for making payments to the Claimant. At times during his evidence, Mr Khan stated that the Claimant was paid because the Respondent wanted to help her as she stated that she had rent and other bills to pay. Also during his live evidence he stated that the Respondent paid her on account, even though he also confirmed that she had not submitted any invoices or timesheets and that it made the assumption that she was working 35 hours per week. He also stated during his live evidence, that the Respondent paid her because she was asking to be paid and it paid her the amounts she requested.

59. However, the Claimant was not paid the amounts that she requested. As already stated, the Claimant was paid £1,100 in May and in June 2019,

which was the approximate net pay that Mr Khan referred to in his March letter. Then she was paid three payments of £850 on 31 August by bank transfer and £287.50 by cheque in September 2019. She was paid £500.00 by cheque on 31 October but the cheque was returned unpaid by the bank. The same amount was later paid to her by bank transfer on 28 November. The Claimant received a bank transfer from the Respondent of £800 on 1 November 2019.

60. On 29 November she sent a text message to Mr Muhammad Khan in which she stated that although she had not done the billing yet, he should pay her at least £1,000 before the end of the day as she had rent due on the following day and she did not have money to pay her rent. The Respondent transferred a payment of £1,000 into the Claimant's account on 6 December 2019. She also received £150 on 23 December and £200 on 31 December. We find that the reference to billing is the drafting of a bill to the client so that the firm could be paid. It is likely that this was something the Claimant sometimes did as part of her casework.

61. The Claimant spoke to Martin Quinn about her pay. Mr Quinn was a retired solicitor who was working for the Respondent as a Consultant. They sat next to each other in the office and he was aware of the hours she worked and the responsibility she had for the cases she was working on. It was he who suggested that she offer the Respondent the option of paying her on a weekly basis, which she incorporated into her letter on 12 August 2019.

62. Mr Quinn has since died and was therefore not able to give evidence at the hearing. We did have copies of email correspondence that he had with the Claimant. On 1 January 2020, the Claimant was in the office working and she emailed Mr Quinn to wish him a happy new year. It is likely that she had confided in him about the Respondent's failure to pay her money that was due to her. In his response he advised her to step back from working during the holiday period. He also stated that he considered that she was not having appropriate supervision which meant that there was '*too much of a burden resting on your shoulders'* in relation to the casework that she was doing. He advised her that they could work on a solution when he was next in but in the meantime, she should *'not do anything controversial or hasty'.*

63. On 8 January 2020, the Claimant complained to Mr Shahid Khan by email, that she was not being paid on a regular basis and that when she was paid, it was not the full amount. Mr Shahid Khan told her that although he was about to fly out of the country, he would make a payment to her before he left and would discuss the Claimant's wages with Mr Muhammad Khan on his return. On the same day Mr Shahid Khan transferred the sum of £1,000 from his personal account into the Claimant's bank account. The payment advice stated that it was payment on account. Mr Shahid Khan was still a partner in the business at the time he made this payment.

64. Although Mr Muhammad Khan denied in evidence that the Respondent had agreed to pay the Claimant an hourly rate he also stated that the Claimant's hourly rate was the national minimum wage rate and that the Respondent ran a minimum wage calculation which confirmed that the Claimant was receiving the national minimum wage. It was not clear in his evidence which period of time this referred to or whether it was his evidence that the Claimant was paid the national minimum wage for the whole time she worked there.

65. On page 236 of the main bundle there is a photo of the Claimant sitting in front of a computer working on the SRA form that she needed to complete to apply for a '*Period of Recognised Training'* exemption. The photo was taken on 1 March 2020.

66. The UK government issued a lockdown to curb the spread of the Covid-19 Coronavirus pandemic, which began on 23 March 2020. The Claimant continued to work for the Respondent during the lockdown. She sometimes accessed files from home and worked through the OneDrive portal. Other times she went to the office and opened up and was the only person there for the day. There are photos she took of herself in the office, in order to show Mr Khan that she was there. We saw no one else in those photos and Mr Khan did not tell us of anyone else who attended the office at the time.

67. The Claimant went to the Post Office to collect post for the Respondent. She scanned and emailed documents to Mr Khan and when necessary, to the other partners. The Claimant had evidence in the bundle of her attendance at the Post Office early in the morning at 7.22am to collect post, and of her communications with Mr Muhammad Khan where she was instructed to open the office or to call clients or prospective clients. The Claimant attached evidence from clients, instructions and queries by text or WhatsApp messages, and sent them to Mr Khan. During the lockdown the Claimant liaised with courts, clients and colleagues on cases. Her messages to Mr Khan were at different times of the day on most of the days during the lockdown, while the rest of the office was at home. The text messages show that she also continued to send Mr Khan referrals during the lockdown period.

68. Accordingly, the Respondent continued to pay her. However, the payments continued to be irregular and of varying amounts. She was paid £1,000 on 3 February by bank transfer and then £400 on 19 February 2020, £500 on 23 March, £600 on 28 April and £250 on 29 May.

69. In May 2020 the Claimant was instructed by Mr Khan to attend the office and print out documents and get them ready for Mr Shahid Khan to sign so that the Respondent could apply for the Coronavirus Business Interruption Loan from the Government. The Claimant did so and scanned and emailed the documents to him.

70. In an email to Mr Quinn on 14 May 2020, the Claimant expressed her frustration at not being paid correctly for her work. She told him that although she had worked helping Mr Shahid Khan over the weekend of 4th and 5th April 2019, she was content to treat it as though she had officially started working for the Respondent on 8 April 2019. She told him that the agreement that she had with the partners was to be paid the minimum wage of £8.21per hour for 35 hours per week. She calculated that given the hours she had worked so far, she should have been paid a total of £16,187.34 but she had only been paid approximately, £10,912.50. She was unclear of the amount because the Respondent had not provided her with any payslips or any other documentation about her pay. The Claimant calculated that she was owed £5,274.86. She considered that before lockdown she was owed a total of £2,784.50. That figure did not include the sums that she was owed as 20% commission on clients she introduced to the firm.

71. The Claimant was frustrated that she had to ask to be paid and that she was only paid after she asked many times. She told Mr Quinn that this was especially upsetting when she usually worked 50 – 60 hours per week. She stated that it was also embarrassing at home as her daughter worked part-time and was paid £19ph, which was more than she was being paid for doing legal casework and carrying responsibility for that casework. The Claimant asked Mr Quinn not to discuss this with the partners yet but was grateful that he was prepared to let her talk to him about it as she needed to speak to someone. The Claimant stated that as her goal was to complete and submit her SRA application, she was concerned to get that done before raising any issue with the Respondent. The Claimant told Mr Quinn that she considered that the Respondent's treatment of her was not right ethically, morally or humanely, given that she is a single parent, with three children and given that she does the work which helps the firm make money.

72. In his response, Mr Quinn promised to draft a letter that the Claimant could send to the Respondent that might prove effective in getting her pay. He reassured her that anything she told him would be treated in the strictest confidence. It is likely that he assisted her in drafting the following letter.

73. On 4 June 2020, the Claimant emailed Mr Mohammad Khan about her pay. She stated as follows:

> *"As you know I am on the minimum wage for the hours I work. I am also allowed a percentage of fees earned in certain matters as agreed but this note only concerns the minimum wage.*
>
> *Up until the time of the lockdown I was owed £2784.50 and I still have not been paid.*
>
> *Following that I continued to work on urgent matters and up to the end of April I am owed a total of £5274.86 (please find attached excel sheet for your reference).*

Can you please pay that to me now as I need to be able to pay my household expenses and support myself and my children. I cannot do that if I am not paid by KHANS as my tax credits and housing benefit offer only part of my living expenses.

Shahid refuses to talk to me about my wages and simply refers me to you.

I presume you have obtained from your Bank a Business Interruption Loan so you should be able to pay me in full.

I work hard and I am loyal to the firm and to the clients to at least the same degree as any of the partners and will continue to be so. I hope that is appreciated.

74. The Claimant attached the same Excel spreadsheet to that email that she had sent to Mr Quinn, which is likely to be the document on page 136 of the bundle, which was later updated.

75. The spreadsheet on page 136 shows that the Claimant received £1,000 from the Respondent on 11 June 2020, possibly in response to this email. There was no reply to the email from the Respondent. There was no letter in the bundle, no email or text message to the Claimant in response to this email, requesting an invoice or informing her that unless she provides an invoice, she would not be paid.

76. It is likely that whenever the Claimant raised the issue of her pay with Mr Mohammad Khan, he would apologise verbally to her or make promises to pay her. On occasions he would tell her that the Respondent did not have the money to pay her. In one of his emails to the Claimant discussing the pay issue, Mr Quinn also told the Claimant that he believed that the reason why she was not paid properly and had to ask to be paid was because the Respondent did not have the money to pay her.

77. In June the Claimant asked to be put on the Government's furlough scheme as she thought that she was on the Respondent's payroll. It was only then that the Claimant found out that she was not on PAYE and that the Respondent was therefore unable to pay her under the furlough scheme. The Claimant was upset to learn this and stressed about what to do about it. She had always thought that she was on the PAYE scheme and that the Respondent had simply failed to pay her properly and provide her with payslips.

78. From 1 August, the practice was taken over by the former managing partner, now managing director, Mr Muhammad Omar Khan. It was incorporated in July and began trading as Khans Solicitors from 1 August. Mr Khan also moved the business to larger premises at Canary Wharf. Mr Shahid Khan effectively retired from the practice and became a consultant.

79. The Claimant continued to work with Mr Muhammed Khan on his cases. She worked mainly on family and probate matters. She had not had prior experience of probate work but Mr Khan trained her in this area, which is how she came to be working on those cases. She also worked on immigration cases, as she recorded in her letter to the Respondent on 13 March. The Claimant was an experienced paralegal and ran many cases for the Respondent, from taking instructions from the client, preparing pleadings, trial bundles and other court documents, briefing Counsel where necessary, attending court, issuing proceedings, and conducting correspondence. She was supervised by the Respondent's solicitors. Mr Muhammed Khan supervised her work on probate, immigration, and family law matters. The Claimant gave detailed evidence on the files she had worked on and the various stages of proceedings for which she had been responsible. We are not able to refer to case names in these reasons because of the privacy of the clients concerned but the Claimant gave detailed evidence of exactly what work she did on files in the areas of probate, immigration, financial remedy, matters including taking over a complicated, contested matter from Isra when she left the business; completing applications on the Immigration matters that she took over from Mr Khan, preparing bundles of documents for hearings, conducting disclosure, completing questionnaires and statements. We find that she had minimal supervision from the partners in her work. They clearly trusted her with the files and with their clients and that trust was well placed as the clients were pleased with her work. She referred to grateful clients bringing her thank you cards, chocolates and flowers after she had done work on their cases and this was not challenged by the Respondent.

80. She demonstrated to the Tribunal that she had the integrity that a caseworker should have when she stated in her evidence that even though she was not getting paid properly, she did the work on the clients' matters, otherwise if she did not, it would be a failure of the firm and would reflect badly on the partners, which she did not want. She also stated that as a caseworker, your word is important and that you must comply with court deadlines if you do not want to jeopardise the case for the client.

81. The Claimant worked well in excess of 35 hours per week. She would frequently work 50 – 60 hours. She personally represented clients at various courts, including Hertford, Reading and Edmonton. She would sometimes have to leave home at 7am to get to the station to catch the train to get to court on time. She represented clients in family proceedings and prepared and submitted position statements, as necessary.

82. The Claimant introduced many clients to the Respondent. She would also open up the office if the receptionist Antonella was not coming to work. She also assisted with doing the post if Antonella was not there. She would collect the DX, which is a special legal post.

83. On Friday 21 August, there was a staff meeting at the Respondent's new offices in Canary Wharf. The Claimant had a copy of the minutes in her

supplementary bundle. Mr Khan was present as senior partner, as was Mr Rana. The Claimant, Mr Quinn and Marie Junkerre were all present.

84. Mr Khan opened the meeting by informing staff that the partnership structure was going to change so that he would be taking over *'the reins'* of the firm, while Mr Shahid Khan would be taking *'more of a back seat'*. He introduced Marie-Therese Junkerre to the staff and explained that she had been brought in as a Consultant to facilitate the Respondent's strategy to obtain accreditation such as Lexcel and CQS; by reviewing and strengthening the infrastructure of the firm. Marie introduced herself and explained in detail, her role and her objectives for the firm. The firm was going to focus on the CQS accreditation as it would assist it in getting onto various mortgage panels. It was noted that essential training was needed for all postholders to ensure that they were fully aware of all compliance requirements.

85. Listed in the action points arising from the meeting was the following:

> *'MTJ/FK – MTJ to meet with Forida to review her application to the Law Society with a view to submitting the same without delay. Meeting to take place w/c 14 September 2020.'*

86. MTJ was Marie Therese Junkerre and FK was the Claimant. That gave the Claimant the impression that the Respondent still wanted to assist her in preparing and submitting the application to the SRA, which could result in her being admitted as a solicitor.

87. A group photo was taken on that occasion of all the staff in the office, including the partners and a copy was shown to us in the hearing. We find that this was not the occasion that forms the subject of the Claimant's complaint about being left out of photos. The Claimant can be seen in this photo.

88. On 10 November, Marie Junkerre wrote to the Claimant by email to ask her basic details on a case that the Claimant was running for the Respondent, under Mr Khan's supervision. She ended the email by stating the following – '*This email forms part of your training and supervision and is sent to you on behalf of your supervisor – Omar Khan'*. Marie also told the Claimant that she was waiting for a complete list of the Claimant's live files, as she had asked in an email the previous weekend.

89. It was not clear whether the Claimant had been told that Ms Junkerre would be looking at her work in this level of detail, given that Mr Khan was the Claimant's supervisor. The Claimant duly responded later that night and answered all Marie's questions. She promised to forward a list of her live files as soon as she was able.

90. On 18 November 2020, the Claimant met with Ms Junkerre. Marie insisted that the meeting had to be held at her house, which was approximately 12.3

miles away from the Claimant's home. It is likely that the Claimant thought that the meeting was for Marie to assist her in collating the evidence for the forms that she needed to complete for her application to the SRA. It was not clear to us why the meeting was not held at the Respondent's offices, as it was a work meeting. There was further lack of clarity on the purpose of this meeting or the Respondent's intention behind it as Marie charged the Claimant a fee for the meeting. Marie told the Claimant that she personally had to pay her a £60 *'consultation fee'*. The Claimant produced to us proof of a cash withdrawal of £60 from a petrol station which she then handed over to Ms Junkerre. This was not challenged by the Respondent.

91. This was of concern for two reasons. Firstly, as practice manager, this was a work meeting held on behalf of the Respondent, which means that the Respondent should have been responsible for paying Marie's fee. Secondly, the Claimant had spent time in the meeting explaining to Marie that she was in difficult financial circumstances because the Respondent had not paid her regularly and even when she was paid, it was not up to the national minimum wage. She complained that she had not been provided with wage slips and that the Respondent had not put her on the furlough scheme but that at the same time she was required to work long hours. She referred to being exploited. She had already paid to travel to Marie's home. It was inconsiderate for Marie to then ask her to pay her a £60 consultation meeting.

92. She also told Marie about her concerns with the business and how she had been treated by Imitiaz, the conveyancer on many occasions, some of which had been observed by Mr Mohammad Khan.

93. The Claimant told Marie that her specialist area was financial remedies connected to marital breakdown and that she was the only person in the firm who did this type of family law cases. Marie realised that this could be a lucrative area of business for the firm. Marie told the Claimant that she would arrange a day's training at her home for the Claimant, on one day a week and that the Claimant must attend with her files. It was not clear what she was going to train the Claimant on as she was not a solicitor or a specialist in the areas of work that the Claimant did. The Claimant told her about her medical conditions and that she would not be able to drive to her house once a week.

94. Marie told her that she would assist her in getting it all sorted out.

95. Marie reported back to the Respondent everything that the Claimant told her. This made the situation worse as Mr. Khan telephoned the Claimant and accused her of '*backbiting'* to Marie about the firm. The Claimant told him that she shared those details with Marie because she needed a solution to the Respondent's treatment of her. She had not known what else to do. She also told him that she had paid Marie as a consultation fee of £60 and Mr. Khan was surprised at that as he had not expected the Claimant to be

charged. However, we were not told that he did anything about it and we were not told that the Claimant was ever reimbursed.

96. Marie wrote to the Respondent on 22nd November to notify Mr Rana and Mr. Khan that she had met with the Claimant. She did not give details of what the meeting was about but only said in writing that it had been a *'very productive meeting'*. She told them that she was meeting with the Claimant again that week at her home address and that it was a '*work-related activity*'. The only details she provided was that they would be working on the Claimant's files together and that she would '*provide training'* as necessary. She told the partners that the Claimant really needed some *'one-to-one'* support. When the Claimant saw a copy of that e-mail she questioned Mr Khan about its contents as she wanted to know whether Marie was qualified to supervise and train her.

97. On 22nd November, Marie telephoned the Claimant to tell her that she had arranged another meeting between her and the Claimant, at her home, on 25 November, for the whole day. The Claimant was told that it was for training. Marie told the Claimant that she must bring her files and that she must do as she was told. The Claimant tried to refuse because she felt unable to drive the distance to Marie's home again due to her chronic pain/fatigue associated with Fibromyalgia. She told her that she would find it difficult to walk up the stairs carrying the files but Marie insisted that she must do so and that it was part of her training. She threatened the Claimant that if she did not attend, it would impact on her SRA application/reference.

98. When the Claimant talked about her illnesses and the difficulties that she would experience in going to Marie's home, Marie said that the Claimant's illnesses had nothing to do with her job and that she would not allow any excuses. She directed the Claimant not to call or answer Mr. Khan and stated that the Claimant was only allowed to contact the Respondent when she directed her to do so. She told the Claimant that she was not allowed to go to Mr Khan's house even to discuss the cases that they were both working on, as they usually did. The Claimant asked whether she could work from home occasionally and Marie refused her permission to do so. She also refused the Claimant's request for flexibility in her work patterns because of her chronic physical conditions. The Claimant wanted to start late in the morning to allow her to take her pain medication so that it could start working before she had to attend the office. This was refused.

99. On 23rd November, the Claimant sent Marie a list of her current files, as she was instructed. Marie confirmed receipt and ask the Claimant to bring five files with her for that meeting on 25 November. She told the Claimant to regard 25 November as a normal working day, apart from the fact that she would be working from her home rather than from the office. She instructed the Claimant to bring her laptop with her, the files and be prepared to be at her house from 9.30am until 5pm.

100. The Claimant forwarded Mr Shahid Khan's email dated 19 March 2019 to Marie, in the hope that it would help her get paid the money that she considered that she was owed.

101. On the evening of 24 November, the Claimant received an email from Marie with a letter attached, from the firm. The letter informed the Claimant that the Respondent was pleased to confirm employment for the Claimant from 1 December, on a PAYE basis, as a paralegal on a salary of £14,000per year. The wage would be paid monthly, in arrears. The Claimant's hours would be 35 per week, from 9.30am – 5.30pm, with an hour's lunch break. The partners were happy to accommodate her request to work between Monday and Thursday and this would mean a pro-rata reduction in the wage. The Claimant was expected to produce at least 6 hours billable work per day for that wage. The Claimant was advised that she was expected to use the case management system that the Respondent was in the process of setting up and which they expected would be fully functional by mid-December. In the interim, the Claimant was expected to record her billable hours on a timesheet which Marie sent her, which she was to send back to Marie at the end of the week. The Claimant was informed that she was not to do overtime unless specifically authorised to do so.

102. The letter also stated -

> *'So far as the work that you have carried out to date as a self-employed person, I can confirm that the partners have asked that you provide an up-to-date spreadsheet (the one that you showed me), for their consideration. Once the information you provide has been checked and approved by the partners, payment arrangements will be put in place and you will be informed accordingly.'*
>
> *…*
>
> *I would also like to meet with you to have a chat about the work that you are currently undertaking and to review your Job Description and update the same as necessary.*
>
> *I would also like to use that opportunity for us to discuss and review your application to the Solicitors' Regulation Authority and the steps you need to take to progress your application, with a view to pursuing the training contract that has been offered to you, subject of course to your obtaining approval from the SRA and subject to satisfactory performance in your current role.'*

103. The Claimant was upset on receipt of this letter. She sent it to Martin Quinn for some advice as to what she should do about it. We find that it was the first time that anyone had ever mentioned the words *'self-employed'* to her. There were no documents produced to us in which the Claimant agreed to work with the Respondent on a self-employed basis. The Claimant was also concerned that the figures in the letter represented a reduction in what she thought was her pay and that other terms were changed to her disadvantage. There was no indication that the Respondent would assist

her with the SRA application and no indication that she would continue to receive commission for the clients that she introduced. The Respondent wanted to separate out the work that she had done during the lockdown period and up to 1 December. These issues all concerned the Claimant.

104. On the morning of 25 November, the Claimant sent a text message to Marie notifying her that she was unwell, as she had vomited a few times already, was having breathing problems and had been unable to sleep the night before. She stated that she would not be able to go to Marie's house. She also stated that the email and letter that she had received from Marie about her employment terms had caused her stress and overwhelm. Marie responded to say that she was surprised that her email had caused the Claimant some stress as she considered that it had rectified the matters that the Claimant raised with her and that it did so in the Claimant's favour.

105. They spoke during the day and later that night the Claimant received a long email from Marie in which she recounted the issues that the Claimant had raised with her. She stated that the partners had agreed to all the matters that the Claimant raised with her. She stated that upon receipt of updated Excel spreadsheets from the Claimant with details of all the work that she had carried out to date, the Respondent would review it and make arrangements for her to be paid whatever was outstanding. She asked the Claimant for details of the files that she worked on during the lockdown period from March 2020, *'for the partner's consideration'*. She told the Claimant that it was important for her to use her best endeavours to '*comply promptly with directives issued to you'*, whether in relation to client matters or personnel/HR matters. Marie asked her for details on a couple of cases, advised her to put all her key dates in Outlook and that she must complete time sheets for all her billable work.

106. She confirmed that she had sent the Claimant by e-mail a Training Record Development Plan which she proposed that they complete together when they next met as well as a training record sheet, to enable her to record all the training she received.

107. On 26 November, the Claimant and Marie met again to discuss the terms of the new employment letter sent to the Claimant on 25 November. The Claimant complained about the reduction in salary, which was now below the minimum wage. Marie told the Claimant that she should be happy that she had a contract. The Claimant complained that other members of staff were being paid regularly and asked why she was not being paid. She complained that she had not had any paid holidays while working for the Respondent. The Claimant was told that she had no option but to accept the new contract. She was also told that once she accepted it and provided the Respondent with the Excel spreadsheet with the outstanding wages, Marie would ask the Respondent to pay the sum due to her.

108. The Claimant did not want to take public transport to work as there were still concerns about the transmission of Covid-19 on public transport and the

Claimant felt particularly vulnerable due to her health conditions. The Claimant asked to be allowed to work from home on some days. There was no free parking at the office, which meant that she would have to pay to park, once she got to work. The Claimant's daughter had asthma and she was worried for her also. Marie's response was to say that she also had asthma and was travelling without any issue. The Respondent refused to allow the Claimant to start at 10am and make up the time later so that her day would end day later than 5.30pm. Marie said that she was not going to allow the Claimant to work from home as she could not monitor the Claimant to see her do the 6 billable hours and if she could not do so, the Claimant would not get paid.

109. During that meeting, Marie also told the Claimant that the Respondent would not pay her as they did not have enough money to do so. She was told that she should bring her own clients to the business and she would get paid, as long as she did 6 billable hours per day. This conversation took place in Mr Muhammad Khan's presence but he said nothing. The Claimant therefore believed that Marie had the authority to say these things.

110. On 27 November, the Claimant sent Marie the Excel spreadsheet again. She replied to the Claimant by email to confirm receipt. She stated that she would forward the same to the partners for their consideration. She asked again for details of all the files the Claimant worked on during the lockdown beginning 23 March and the number of hours she worked on each one. She then gave the Claimant instructions on a few files and told her that she must follow her '*directives'*.

111. In the hearing, Mr Khan accepted that it was likely that the Respondent owed the Claimant some money in the form of commission for clients that she introduced and whose names were in the further details she provided to the Tribunal and the Respondent in response to the Tribunal order dated 13 December 2021. The list is at page 120 of the hearing bundle. The list confirmed that the Respondent had only paid the Claimant in respect of Mr M. Mr Khan confirmed in the hearing that it was likely that she was owed outstanding commission but stated that he was not sure if the figures claimed were correct. However, it was also his evidence that since receipt of that document in December 2021, he had not checked the files or asked his bookkeeper or accountant to check the files so that he could confirm or dispute whether these were clients that she had introduced, which entitled her to be paid commission. He also had not checked the amounts claimed in the Excel spreadsheet.

112. At the time, the Claimant was worried that if she continued to resist the way in which the Respondent wanted her to work, the partners and Marie would not assist her with her application to the SRA, and she would not get the authorisation that she needed. As a result, she continued to work for the Respondent.

113. The Claimant's anxiety about her application to the SRA was evident in an email exchange she had with Martin Quinn on 29 November. This was a Sunday. The Claimant set out in an email what she thought she needed to do to follow the Equivalent Means route to qualification and the suitability application, both of which were necessary because of her bankruptcy. She asked for Mr Quinn's help in completing the paperwork. She stated *'I have spent too much time with khans without any progress and appraisals and I feel I am cornered to leave hence my urgency to submit my application and wait for another six months for the outcome…….Having worked as a paralegal for a number of years and have already accumulated the experience necessary to qualify, I am in the process of completing the application and I would so much appreciate it if you could kindly help me in this regard. I am happy to pay you at your hourly rate if you agree and this will save me another 12 months not to be used and abused and off course exploitation'*

114. Mr Quinn refused to charge her. He responded on the same day with some advice.

115. We have already referred above to the Respondent forcing the Claimant to move furniture, with Marie's boyfriend, on 3 December 2020.

116. On 9 December, the Claimant told Marie that she had accidentally dropped some tea on the keyboard that Marie was using and a few keys were not working. On the following day, Marie instructed the Claimant that she had to replace the keyboard. Mr Rana heard her say this and said that as it was an accident, the Claimant did not need to replace it and that the firm should do so, seeing that she was working for them. Marie insisted that she should.

117. On or around 10 December, the Claimant had a call from Resolutions membership who informed her that her Resolution membership had expired or was about to expire. Resolution is the largest membership organisation for family justice professionals in England. The Claimant maintained a personal membership but as she was the only person in the firm with it, the Respondent would not be able to use the logo on the firm's letterhead, if her membership was not renewed. The total outstanding fee for 2020 was £37 and the Claimant was told that it had to be paid that day. The Claimant asked Mr Rana if the Respondent could pay the fee. He stated that he could not do so as he did not have an office bank card with him. He told the Claimant that if she paid the fee, Mr Khan would reimburse her. The Claimant paid the sum of £37 and sent the email confirming that she had done so to the partners.

118. Marie told the Claimant off for sending the email to the partners. She promised to reimburse the Claimant from the Respondent's petty cash.

119. Later that day Marie referred to the CQS accreditation quality mark that she was working on. She told the Claimant that she will make sure that the Claimant is off on the day that the CQS assessor comes to the office. She

repeated this twice. The Claimant was offended by this comment and felt that despite all her hard work for the Respondent, Marie thought it was appropriate to insult and belittle her by suggesting that her presence would be detrimental to the Respondent's chances of getting the accreditation. The Claimant felt insulted by the way that Marie spoke to her at work that day.

120. Marie spoke to the Claimant in a similar way when the Claimant asked Mr Rana to allow her to use his computer to amend something on a client care letter before sending it out to the client. The Claimant had to ask to use his computer as she had been using her laptop, which did not have those documents on it and which she did not find easy to use for these tasks because of the difficulties she had with her eyes. Mr Rana worked on two screens, making it easier to see. He allowed her to use his computer. When, a short while later, she asked for permission to go on his computer again, he responded to say that she already had permission. Marie told the Claimant that she should not shout at a partner and then Mr Rana joined in and told the Claimant that she should not have shouted at him. The Claimant did not believe that she had shouted and she also felt humiliated and embarrassed as there were clients in the waiting room who were likely to have overheard them telling her off. Marie's partner was also in the office and he heard the way that the Claimant was spoken to. The Claimant became upset and went to the toilets to cry. She took some of her medication for her palpitations and headache and calmed down. The Claimant knew the power and authority that Ms Junkerre had in the business and this was reinforced when she told the Claimant that she would write to the partners and complain about her and that she was not following her '*directives'*. Once again she threatened the Claimant that if she did not follow her directives, it would have an impact on the Claimant's SRA reference.

121. The Claimant was upset at how Marie communicated with her and how she treated her. Every time Marie shouted at her it caused her to feel anxious and gave her a headache. She created an attendance note at the end of the day on 10 December and it is likely that she was contemplating raising a grievance with the partners about it. The note ended by stating that the whole situation was draining to her, not only mentally but emotionally and physically and that it was also having a psychologically detrimental impact on her children as they would often see her crying at home. The Claimant ultimately decided against raising a grievance as she was unsure of the Respondent's policy and who would actually deal with it. She also did not want to raise any issue until the SRA application was complete.

122. On 11 December 2020 the Claimant brought the new keyboard with her to work that she had purchased because Marie told her that she had to replace the one that she had accidentally damaged. She had to leave work early that day because of an urgent personal matter. The Claimant emailed Mr Rana to let him know. The Respondent responded immediately to ask the Claimant to advise the nature of the emergency.

Training

123. On 25 November, Marie emailed all caseworkers and partners to check with them that they had received an invitation to set up their individual log-ins for the CLIO case management system. She informed them that the Respondent had arranged for all staff to undertake training on the system and that they would soon receive their log in details for the training session. The Respondent was hoping to go live with the system around 15 December. The Claimant was therefore told about the training.

124. The Claimant missed a few follow-up emails about the training as her email account had been corrupted. This was confirmed by an email that Marie sent to Quddoos on 26 November. This email referred to the Claimant having duplicate emails in her inbox and it is also possible that some emails did not arrive in her inbox. There was an email from Rachel Devine on 24 November with information on the Respondent's works and training guides, sent to the partners and all the caseworkers, including the Claimant, so that they could set themselves up on Clio. There was another email from Marie Junkerre confirming that training sessions had been booked for staff on Monday 30 November and another on Thursday 3 December. The Claimant was booked to attend on 3 December. On 25 November, Ms Devine stated that she would send out the invitations with Zoom links to the training. The Claimant did not get the email with the Zoom links. She also did not work in the Canary Wharf office and up to that time had only ever gone there to attend the meeting on 21 August 2020. The Claimant continued to work at the Ilford office. She heard about the training at the office.

125. The Claimant produced copies of WhatsApp text messages which show that there were Zoom links sent to members of staff on 30 November and 3 December. The people who were invited are identifiable by their initials which appear in a circle or dot under the words '*Clio Training – Khans Solicitors Session 1'* and *'Clio Training – Khans Solicitors Session 2'.* The pages are reproduced on pages 272 – 276 of the hearing bundle. There was a third session on 8 December, which was titled *'Clio Training – Khans Solicitors Session 3/Q&A'*. The Claimant's initials – FK – do not appear in the circles for any of the days. The Tribunal identified that Mr Rana (R), Isra Hai (IH), Mr Muhammad Omar Khan (OK), Ms Siddiqui (SS) and Marie-Therese Junkerre (M) attended the training.

126. The Respondent had 3 sessions booked and purchased 6 licences, which should have included the Claimant. The third session later in December was not the main training session and was likely to have been a troubleshooting session for those already trained.

127. The Claimant sent a text message to Marie at 9.52am on 1 December asking her what time she would be getting trained on Clio. The printout on page 216 shows that Marie did not reply to the Claimant's text message. She also did not join the Claimant to the WhatsApp group of those attending that day. We find it likely that when she got the text, Marie telephoned the

Claimant and told her that she had decided that the Claimant did not need the training. She refused to give her the Zoom log-in details. The Claimant asked her why and Marie's response was that she was the person who decided who received training and she had decided that as the Claimant was '*always off sick'*, she was not going to give her the information. The Claimant was not given the Zoom log-in details and was unable to attend the training for the Clio case management system.

128. The Claimant was not invited to attend the offices in Canary Wharf to have her photo taken for the Respondent's newly revamped website. She only knew that photos were being done when Mr Rana told her that he was going to the new offices to have his photo taken. Isra was working at Canary Wharf and she telephoned the Claimant and asked her what time she would be coming to have her photo taken as she wanted to socialise with the Claimant afterwards. The Claimant told her that she had not been invited to come and have her photo taken. The Claimant realised that Isra was also going to have her photo taken, which meant that this was not just for partners, and that she had been excluded. She was told that Marie's boyfriend had been hired to take photos of each caseworker and partner for the website as he was a professional photographer.

129. The Respondent disputed that photos had been taken for the website and that the Claimant had been excluded. We find it likely that photos were taken. The Claimant did not know whether the photos that were taken were ever used but she recalled Marie showing her the photos that her boyfriend had taken and Mr Rana saying that they were quite good.

Annual leave

130. The Claimant never took any annual leave during the time that she worked for the Respondent. Her evidence was that she was keen on getting her qualification sorted out as she had worked many years to achieve it and it was her main focus. She was content to allow her holiday to build up so that she could take it at a later date, once the SRA confirmed that they had accepted her application. The Claimant stated that she was from Bangladesh but had not been there for 17 years. Her intention was that as soon as the SRA matter was resolved she would take her children there for an extended holiday.

Sex Discrimination

131. Sometime in August 2019, the Claimant was at work. A client called Mr H who had been seen by Mr Khan was in the reception area waiting to collect his documents. The Claimant was on the phone with a client.

132. The Respondent's offices in Ilford were open plan and so anyone in reception could overhear conversations in other parts of the office. The partners, Mr Khan and Mr Rana had closed rooms but everyone else worked in the open plan office. Mr Khan's client overheard the Claimant talking to her client on the phone about a financial remedy application she

was making for him. Mr Khan's client said to her that he might want her to do something similar for him once his current legal matter was resolved. The Claimant politely indicated that she wanted to get on with her work but Mr Khan's client in the office continued talking about his personal matters. At that point, Imitiaz Ahmed, the conveyancer, stood up, clearly annoyed at being disturbed, pointed to the door and said to the Claimant *'if you're so into it – you should go elsewhere!'* he also said that he was having difficulty concentrating because they were talking to each other. The Claimant was upset at this suggestion that she was having an intimate conversation with Mr Khan's client. She expressed this to him once Mr Khan's client left the office. Mr Ahmed was adamant that he was right and that it was her fault as she and Mr Khan's client had disturbed him. He shouted at the Claimant. Mr Rana heard the disturbance and came out of his room. He asked Mr Ahmed why he would make such comments and he defended the Claimant. They both shouted at each other.

133. In September 2019, Mr Imitiaz Ahmed saw a photo of the Claimant without a headscarf. He told her that if she did not wear her headscarf, she could attract men. The Claimant is a practicing Muslim woman who wears her headscarf as part of her religious observance. We find it likely that the Respondent was a predominantly Muslim business and that Mr Ahmed and others were used to women wearing scarfs as a garment that was significant to their religious observance. Mr Ahmed was also a practicing Muslim.

134. The Claimant was insulted and embarrassed and thought that he was suggesting that she would not be able to find a husband if she kept her scarf on. He knew that her marriage had ended.

Dismissal

135. The Claimant went off sick on 11 December 2020. She had messaged Marie and emailed Mr Rana and Mr Khan at the time to let them know that she had to go home due to an emergency. After a few days the Claimant emailed the Respondent on 15 December to say that she still felt unwell and that if she did not get better by the following day, she would obtain a fit note from her GP. The Claimant submitted fit notes from her GP on 17 December, 31 December and 14 January. The Claimant tested positive for Covid-19 on 31 December 2020. We have already set out the details above, under the *Disability* heading.

136. Mr Khan telephoned the Claimant twice to enquire after her health, on 26 January and again on 1 February 2021. On 1 February when he called her for the second time, the Claimant informed him of the recent diagnosis of Cervical Spondylosis. She told him that this was what she had been experiencing when the Respondent disbelieved her when she told them that she had so much pain in her body. Mr Khan asked the Claimant to come off the PAYE as she had been on PAYE since 1 December 2020. She asked

him why he wanted her to do so and he said that he could not afford the Claimant but that she could continue to work with the Respondent as a self-employed person. The Claimant refused this offer and Mr Khan told her that she would be receiving an email from the Respondent to reflect their conversation.

137. On 2 February, the Claimant received a letter from Marie, on behalf of the Respondent, which was stated to be further to her telephone conversation with Mr Khan. The letter informed the Claimant as follows:

> *'I am writing to you on behalf of the partners at Khans Solicitors.*
>
> *As you are aware, the COVID-19 pandemic has presented significant challenges to our business operations. The many financial constraints that have arisen as a result of this pandemic have caused us to closely re-examine Khans Solicitors' position in the marketplace.*
>
> *We currently have very few live client matters and the continued lock-down is hampering our efforts to increase our client base. As such, we have no choice but to take steps to reduce our operating costs and, hopefully, keep the business viable.*
>
> *We appreciate your contribution to Khans Solicitors over the period that you have been with us. We regret the current situation but we simply to do not have the case work to keep you in employment and without the fee income coming in, we cannot justify retaining our current workforce.*
>
> *We believe that a smaller workforce is one step towards maintaining a viable business in this uncertain economic climate. As such, we are announcing our voluntary layoff program which is only available to our full time employees.*
>
> *We are making this offer to you because you do not qualify for the government's furlough scheme. Unfortunately, you are not eligible to be placed on the furlough scheme because you were only offered the full time PAYE position which commenced on 1st December 2020.*
>
> *We are prepared to offer you one month's salary in lieu of notice. The notice period will begin from 1st February 2021. This severance package is available to you as a full-time employee, immediately. Please contact the senior partner, Mr Omar Khan, upon receipt of this letter.'*

138. We find that Mr Khan was aware that the Claimant was unwell when the decision was made to dismiss her as the Respondent had the Claimant's fit note which was not due to expire until 4 February. Also, he had spoken to the Claimant the day before the dismissal letter was written and she had told him that she was still unwell and about her diagnosis of Cervical Spondylosis.

139. Mr Khan's evidence was that the Respondent had suffered a reduction in files and had financial difficulties following the pandemic. He confirmed that

most of the fee earners at the firm were self-employed. He stated that the decision to dismiss the Claimant had been made on a commercial basis. His evidence was that 80% of the firm's work was Immigration matters and the remaining 20% was made up of different areas. He declined to bring any figures to the court. He confirmed that Ms Hai and Ms Siddique were also not put on furlough. The Claimant's evidence that she was the only person made redundant was not challenged but the Respondent's case was that she was the only caseworker who was an employee.

140. The August 2020 bank statement which the Claimant put in the bundle showed that the Respondent was running the business with an £8,000 overdraft.

141. As the Claimant was given one month's salary in lieu of notice, her termination date was 1 February 2021. The Claimant began the ACAS Early Conciliation process on 30 April 2021 and the certificate was issued on 11 June 2021. The claim was issued on 11 July 2021.

Law

Time limits

142. Section 123 (1) (a) and (b) of the Equality Act 2010 states as follows:

> 'Proceedings on a complaint within section 120 may not be brought after the end of –
>
> (a) A 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 things just and equitable.

143. 123 (3) also states that;

> 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;

144. The Claimant was dismissed on 2 February 2021. The Claimant complains about the dismissal and about various alleged acts of discrimination up to her dismissal. She alleges that her dismissal was automatically unfair because she had asserted her statutory right to be paid. The Claimant complains that the Respondent failed to pay her commission and wages up to the end of her employment. Without the application of the extension of

time provisions to facilitate the ACAS Early Conciliation process, the Claimant's limitation period would have expired on 1 May 2021.

145. The Claimant first contacted ACAS on 30 April 2021, within the limitation period of three months from her dismissal. The ACAS Early Conciliation certificate was issued on 11 June 2021. The Claimant issued her ET1 claim form at the Employment Tribunal on 11 July 2021. The Respondent submitted that the claim had been issued out of time and that the Tribunal did not have jurisdiction to consider any of the Claimant's complaints alleged to have happened before 11 April 2021 were out of time. The Respondent simply counted back three months from 11 July.

146. Section 207B of the Employment Rights Act 1996 deals with the extension of time limits to facilitate conciliation before institution of proceedings brought about by the ACAS Early Conciliation Procedure. It states as follows: -

> Section 207B (1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").
>
> . . ..
>
> (2) In this section—
>
> (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
>
> (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
>
> (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.
>
> (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
>
> (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

147. The Tribunal has firstly to decide whether any of these subsections apply to

the Claimant's case. If not, and the claim is out of time, the Tribunal has to decide whether to extend time to give it jurisdiction to hear the Claimant's complaints.

148. If the Tribunal uses its discretion to extend time, the Tribunal will have jurisdiction to consider the Claimant's complaints.

149. In considering this application to extend time, the Tribunal has to assess the balance of prejudice between the parties. The Claimant bears the burden of persuading the tribunal that it is just and equitable to extend time. There is no presumption that time will be extended. In doing so, the Tribunal will take into account anything which it judges to be relevant, including the strength of the case. This is the exercise of a wide, general discretion, which can include consideration of the time the Claimant first became aware of the right to present a claim, where to present it, her health and any other matter going on in her life at the time, that she has told us about. There is no requirement to go through all the matters listed in section 33 of the Limitation Act 1980, provided no significant factor is left out of account. This means that the Tribunal will consider the length of delay, the reason given for it, the effect on the cogency of the evidence, co-operation of the Respondent and the steps taken once the Claimant became aware that she had a cause of action.

150. If the Tribunal decides that it has jurisdiction to consider these claims, it will go on to consider the list of issues. The law relevant to the list of issues is as follows: -

Employee Status

151. The question for the Tribunal was whether the claimant was an employee, a worker or self-employed.

152. If she was a worker, then the Tribunal would have jurisdiction to hear her complaints of discrimination and of unlawful deduction of wages. If she was an employee, the Tribunal would have jurisdiction to hear all her complaints. If she was self-employed, the Tribunal would not have jurisdiction to hear any of her complaints and her claim would be dismissed.

153. It is the respondent's primary submission in its Grounds of Resistance that the Tribunal has no jurisdiction to consider this claim as the claimant was self-employed up to 1 December 2020 and that any money due to her was either already paid or was owed but could not be paid as she had not submitted invoices and they were unable to verify the time spent on specific files. The respondent submitted that there was no unlawful deduction of wages.

154. Section 13 of the ERA states that an employer shall not make a deduction from wages of a worker employed by him unless

(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) The worker has previously signified in writing his agreement or consent to the making of the deduction

155. Section 230 of the Employment Rights Act 1996 (ERA) defines an "employee" and 'worker' as follows:

(1) in this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act 'worker' means an individual who has entered into or works under –

a. A contract of employment, or

b. Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

156. In the case of *Readymix Concrete South East Ltd v the Ministry of Pensions and National Insurance* 1968 2 QB 497 (which was approved in the cases of *Hall (Inspector of Taxes) v Lorimer* [1994] IRLR 171 and *Autoclenz Ltd v Belcher and Others* [2011] UKSC 41) McKenna J posed the following 3 questions to help determine whether a contract of employment exists:

a. Did the worker agree to provide his own work or skill in return for remuneration? (limited or occasional delegation may not be inconsistent)

b. Did the worker agree expressly or impliedly to be subject to a sufficient degree of control for the relationship to be one of master and servant?

c. Were there any other factors inconsistent with the existence of a contract of service?

157. In the case of *Carmichael v National Power Plc* [2000] IRLR 43 Lord Irving of Lairg referred to an "irreducible minimum" of factors, being control, mutual

obligation and obligation of personal service as being necessary to creating a contract of service.

158. The presence of the irreducible minima does not make the relationship one of employer and employee but without all three elements such a relationship would not exist. A tribunal would consider all the other aspects of the relationship, for example:

    a. Can the claimant send a substitute and if so, who does the employer pay, the claimant or the substitute?

    b. The length of time the relationship has subsisted, a long period of time can suggest parties' intention to make the relationship permanent and more likely that a contract of service is implied *(Franks v Reuters Ltd* [2003] IRLR 423)

    c. is the claimant integrated into the employer's business?

    d. is the claimant in business on his own account, running his own business, taking a financial risk, providing his own capital? Who provides equipment?

159. There needs to be a contract, which can be set out in a written document or implied from the parties' conduct.

160. Sufficient control is required. This can be different if the person employed was a specialist and did not require day to day instruction on how to do their job. The putative employer had to have ultimate control i.e. the power to dismiss the worker, to define work and tools. Self-employed status could be demonstrated by worker having the freedom to choose the time, place and content of their work as well as their hours.

161. Mutuality of obligations means that the employer is obliged to provide the worker with work and the worker was obliged to carry out that work.

162. If the Tribunal's assessment of all these factors leads it to conclude that the claimant was not an employee then the next question is to assess whether she was a worker or self-employed.

163. A worker is someone who undertakes to do work personally. A right of substitution defeats both employee and worker status.

164. In conducting this assessment, the tribunal must consider questions such as whether the person was in business on their own account i.e. whether they were providing services personally to someone who was not a client or customer of their business undertaking. In the case of *Cotswold Development Construction Ltd v Williams* [2005] IRLR 181 Langstaff J suggested that one can usually answer this question by asking whether the claimant actively markets themselves as an independent person to the

world in general or whether they were recruited to work for the principal as an integral part of the organisation.

165. In the case of *Suhail v Barking, Havering and Redbridge NHS Trust* UKEAT/0536/14 (11 June 2015, unreported) the person claiming worker status was a doctor operating as an out of hours GP. He marketed his services, was free to and did work for anyone and charged by submitting invoices. He also looked after his tax matters himself. He had one particular engagement to work in one hospital department and the question was whether he was a worker in relation to that NHS Trust. It was held that he was not.

166. In conducting its analysis, the Tribunal must start with the statutory language. The ultimate question is whether the relevant statutory provisions construed purposively were intended to apply to this transaction. The Tribunal must also view the facts realistically.

167. The Respondent referred to the case of Court of Appeal case of *Pimlico Plumbers Ltd v Smith* (2018) UKSC 29 in which the Supreme Court held that there had been mutuality of obligations, an obligation to perform work personally and no right of substitution. In that case, the claimant was held to be a worker, entitled to holiday pay and wage protection.

168. The tax position while not decisive is a relevant consideration. If the claimant is fully self-employed it is likely that she would pay her own tax and national insurance. If she is employed then the Tribunal would expect to see tax and national insurance payments deducted from her gross wage and paid on her behalf to the authorities. The claimant would then be paid net pay. Various other arrangements between those two extremes are possible and would influence the conclusion on the claimant's status.

169. In the Court of Appeal case of *Secretary of State for Justice v Windle & Arada* [2016] IRLR 628 the court emphasised a continuing requirement for mutuality of obligations even when applying the '*worker'* definition. The case concerned casual interpreters for Her Majesty's Courts and Tribunals Service seeking to claim race discrimination. Underhill LJ gave the judgment and stated that the extended discrimination definition is indeed on all fours with the '*worker'* definition and so the two are to be interpreted in the same way. The Court decided that there was no difference in law between the classic 'employee' definition and the 'worker/discrimination law' definition in relation to mutuality as it applies to both. This means that where there are gaps between assignments with no mutuality during them, that will need to be considered and could be a factor pointing towards pure self-employed status as opposed to a worker or employee status.

170. Section 83(2) Equality Act 2010 defines employment as employment under a contract of employment, contract of apprenticeship or contract personally to do work, which could include workers.

Burden of proof in discrimination cases

171. In this case the Claimant alleges direct sex, race/nationality and disability discrimination. She also alleges discrimination arising from disability, harassment and a failure to make reasonable adjustments. The burden of proving the discrimination complaints rests on the worker bringing the complaint. However, it has been recognised that this may well be difficult for a worker who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the "shifting burden of proof" was developed to deal with this. This concept is discussed in a number of cases and is set out in section 136 of the Equality Act which states that *"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. If A is able to show that it did not contravene the provision then this would not apply."*

172. There is a substantial volume of case law which seeks to provide guidance on the concept of the "shifting burden of proof" as was set out in the Race Relations Act 1976 which preceded this section. It was dealt with most authoritatively in the case of *Igen v Wong [2005] IRLR* and confirmed in subsequent cases including *Madarassay v Nomura International Plc [2007] IRLR 246.*

173. The Court of Appeal of *Igen Ltd v Wong* specifically endorsed the following principles (amended by this Tribunal):

(1) it is for the Claimant who complains of discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the Respondent had committed an act of discrimination against the Claimant which is unlawful by virtue of the Equality Act. These are referred to below as "such facts".

(2) If the Claimant does not prove such facts she will fail.

(3) It is important to bear in mind in deciding whether the Claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit discrimination - even to themselves.

(4) In deciding whether the Claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.

(5) It is important to note the word "*could*" in the Act. At this stage the Tribunal does not *have* to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a Tribunal is looking at the

primary facts before it to see what inferences of secondary fact *could* be drawn from them.

(6) In considering what inference is or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.

(7) Likewise, the Tribunal must decide whether any provision in any relevant code of practice is particularly relevant and if so, take it into account in determining such facts. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(8) Where the Claimant has proved facts from which conclusions could be drawn that the Respondent had treated the Claimant less favourably on the grounds of sex, then the burden of proof shifts to the Respondent.

(9) It is then for the Respondent to prove that he did not commit, or as the case may be is not to be treated as having committed, that act.

(10) To discharge that reason, it is necessary for the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic, since *"no discrimination whatsoever"* is compatible with the Burden of Proof Directive.

(11) That requires the Tribunal to assess not merely whether the Respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the protected characteristic was not a ground for the treatment in question.

(12) Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, a Tribunal will normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal would need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

174. In essence, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the complainant. 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)*.

175. In every case the tribunal has to determine the reason why the claimant was

treated as she 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 reasons. It is sufficient that it is significant in the sense of being more than trivial.

176. In assessing the facts in this case the tribunal is also aware of the comments made in the case of *Bahl v The Law Society [2003] IRLR 640* that simply showing that conduct is unreasonable and unfair would not, by itself, be enough to trigger the reversal of the burden of proof. Unreasonable conduct is not always discriminatory whereas discriminatory conduct is always unreasonable. It was also stated in the case of *Griffiths-Henry v Network Rail Infrastructure Ltd [2006] IRLR 865* that an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. The employer only has to establish that the true reason was not discriminatory. Obviously, if unreasonable conduct occurs alongside other factors which suggest that there is or might be discrimination, then the tribunal should find that the claimant had made a prima facie case and shift the burden on to the respondent to show that its treatment of the claimant had nothing to do with the claimant's protected characteristic and in so doing apply the burden of proof principle as set out above.

177. It was the Respondent's case that it could not have discriminated against the Claimant on the grounds of her disability because it did not know that she was a disabled person.

Knowledge of Disability

178. The Respondent conceded that the Claimant was a disabled person for the purposes of the Equality Act 2010 in relation to all 6 conditions but disputed that it knew about it and also challenged that her conditions had a substantial effect on her.

179. The definition of disability in section 6 of the Equality Act 2010 is that a person is disabled if they have a physical or mental impairment and the impairment has a substantial and adverse effect on their ability to carry out normal day to day activities. In conceding disability, the Respondent accepts that the Claimant's mental and physical impairments had a substantial effect on her ability to carry out day to day activities.

180. Also, in relation to the issue of knowledge, the Tribunal were aware of the Court of Appeal's decision in *Gallop v Newport City Council* [2013] EWCA Civ 1358, [2014] IRLR 211 in which it was confirmed that before an employer can be answerable for direct disability discrimination against an employee, the employer need only have actual or constructive knowledge of the facts that make the employee a disabled person.

> *"For that purpose the required knowledge, whether actual or constructive, is of the* facts *constituting the employee's disability as identified in section 1(1) of the DDA. Those facts can be regarded as having three elements to them, namely (a) a physical or mental impairment, which has (b) a substantial and long-term adverse effect on (c) his ability to carry out normal day-to-day duties; and whether those elements are satisfied in any case depends also on the clarification as to their sense provided by Schedule 1. Counsel were further agreed that, provided the employer has actual or constructive knowledge of the facts constituting the employee's disability, the employer does not also need to know that, as a matter of law, the consequence of such facts is that the employee is a "disabled person" as defined in section 1(2)'."*

181. The statute also expressly requires the employer to have actual or constructive knowledge that the employee is disabled before the employer can be under a duty to make reasonable adjustments. (see now Equality Act 2010 Schedule 8, Part 3, paragraph 20). The employer cannot be under the duty to make adjustments if he *'does not know, and could not reasonably be expected to know'.* The Court of Appeal held that the same approach applied, namely what was required was actual constructive knowledge of the facts which made the person a disabled person, rather than that those facts in law constituted them a disabled person. The same applies to discrimination arising out of disability contrary to section 15 of the Equality Act 2010, which again, in section 15(2), applies the same requirement of actual or constructive knowledge of disability.

Direct Discrimination

182. The Claimant also complained of direct discrimination because of the protected characteristics of disability, nationality and sex. The Claimant alleged that the Respondent treated her less favourably than others who did not have those protected characteristics. The Claimant is a woman of Bangladeshi origin.

183. These are complaints of less favourable treatment or direct discrimination. Section 13 of the Equality Act 2010 (the Act) states that a person discriminates against another if, because of a protected characteristic, such as race, disability or sex; it treats that person less favourably than it would treat others.

184. The Claimant does not rely on a real comparator. Her case is that she was treated less favourably in comparison to a hypothetical comparator because of the protected characteristics of disability, race and sex in the circumstances outlined in allegation 7. Her complaint is that someone who was also a paralegal but not disabled, of Bangladeshi origin and a man would have been (1) provided with training on the new case management system, and (2) would have been invited to have their picture taken for the website.

Discrimination arising from Disability

185. A person (A) discriminates against a disabled person (B) if

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

This does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had a disability.

186. The complaints under this section are allegations about how the Claimant was treated related to her sickness absence, including her dismissal.

Failure to make reasonable adjustments

187. Section 20 of the Act imposes on the employer a duty to make reasonable adjustments on a person. Section 20(2) provides that the duty comprises three requirements. In this case we are interested in the second and third requirements.

188. Subsection (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons were not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

189. Subsection (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

190. The employer is not under a duty to make adjustments if the employer does not know and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the substantial disadvantage. This is the Respondent's defence in this case.

191. Section 212(1) EA defines a substantial disadvantage as something that is more than minor or trivial. An employer who fails to comply with the first, second or third requirement has failed to comply with the duty to make reasonable adjustments and discriminates against that disabled person.

192. In the case of *Project Management Institute v Latif* [2007] IRLR 579 the EAT decided that the Claimant must show evidence from which it could be concluded that there was an physical feature or a PCP causing a substantial disadvantage and that there was some apparently reasonable adjustment which could have been made. If the Claimant does this, the burden shifts. Once the burden has shifted, the claim will succeed unless the employer is able to show that it did not breach the duty.

193. Section 21 of the Act states that a failure to comply with the section 20 duty

to make reasonable adjustments is a failure to comply with a duty to make reasonable adjustments. The Respondent would have discriminated against the Claimant if it fails to comply with that duty in relation to her. The section 20 duty required affirmative action in certain situations. (see also *Archibald v Fife Council* [2004] ICR 9454 HL and the Equality and Human Rights Commission Code of Practice on Employment (2011) para 6.2).

194. In the case of *Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0552/10/JOJ in which it was stated that if there is a real prospect of an adjustment removing a disabled employee's disadvantage, that would be sufficient to make the adjustment a reasonable one; but that does not mean that a prospect less than a real prospect would not be sufficient to make the adjustment a reasonable one.

195. In the case of *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ. 640 CA the Court of Appeal held that the duty to comply with a reasonable adjustment requirement under section 20 begins as soon as the employer can take reasonable steps to avoid the relevant disadvantage.

196. The EAT in *SoS for the DWP v Alam* [2010] IRLR 283 outlined the questions to be asked as follows: - (i) Did the employer know both that the employee was disabled and that his disability was likely to affect him in the manner set out in the Act. If the answer is not then, (ii) ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in the Act.

197. The Tribunal was assisted by the guidance in the *Equality and Human Rights Commission Code of Practice on Employment (2011) (CoP)*. An employer must do all it can reasonably be expected to do to find out whether an employee has a disability which places him at a substantial disadvantage. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially *(CoP paragraph 5.15).* Employers can often prevent unfavourable treatment which would amount to discrimination arising from disability by taking prompt action to identify and implement reasonable adjustments (*CoP paragraph 5.20*). If an employer has failed to make a reasonable adjustment which could have prevented or minimised the unfavourable treatment, it will be very difficult for it to show that the treatment was objectively justified. *(CoP para 5.21).* Even where an employer has complied with a duty to make reasonable adjustments in relation to the disabled person, they may still subject a disabled person to unlawful discrimination arising from disability. This is likely to apply where, for example, the adjustment is unrelated to the particular treatment complained of *(CoP para 22).*

198. The duty to make reasonable adjustments is an objective duty which therefore does not depend on the employer's subjective decision as to

whether or not it considered that it was under a duty or as to the steps that could be taken. The Code of Practice at paragraph 68 suggests the following factors may be taken into account:

(a) Whether taking any particular steps would be effective in preventing the substantial disadvantage;

(b) The practicability of the step

(c) The financial and other costs of making the adjustment and the extent of any disruption caused;

(d) The extent of the employer's financial and other resources;

(e) The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

(f) The type and size of the employer

199. How the burden of proof principles are to be applied in a section 20 case was dealt with in the case of *Bethnal Green and Shoreditch Education Trust v Dippenaar* [2015] UKEAT 0064/15. In that case it was held that the provision, criterion or practice or in this case, the fixture or fitting, furniture, furnishings, materials, equipment in or on the premises, or any other physical element or quality; must be shown to be putting the Claimant at a disadvantage before any question arises of applying the statutory burden of proof. The tribunal must identify the relevant feature and be satisfied that it existed or that the auxiliary aid was needed to avoid substantial disadvantage, before proceeding any further.

200. If the tribunal find that there was a relevant physical feature or the need for the auxiliary aid, then we need to look at whether it/they put or would put, persons with whom claimant shares the characteristic, at a particular disadvantage, when compared with persons with whom she does not share it. The Respondent stated that it did not know and could not have known that the Claimant was a disabled person, since she admitted in the hearing that she never used the word disabled at work and therefore, it could not be expected to comply with a duty to make reasonable adjustments.

201. In *Essop* it was said that *'it must be open to the Respondent to show that the particular Claimant was not put at a disadvantage by the requirement. There was no causal link between the PCP and the disadvantage suffered by the individual: he failed (the test) because he did not prepare, or did not show up at the right time or in the right place to take the test, or did not finish the task. A second answer is that a candidate who fails for reasons such as that is not in the same position as a candidate who diligently prepares the test, turns up in the right place at the right time, and finishes the tasks he was set. In such a situation there would be a "material difference between the circumstances relating to each case", contrary to section 23(1), referred*

to above.'

Harassment

202. 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).

203. 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.

204. 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".*

205. 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.

206. 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.

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

Additional complaints

Automatic Unfair Dismissal

208. The Claimant also made complaints of automatic unfair dismissal under section 104 Employment Rights Act 1996 because she asserted her statutory right to be paid the National Minimum Wage. If the Tribunal comes to the conclusion that the reason or principal reason for dismissal was that the Claimant had asserted that right, then she will succeed in this claim and be regarded as unfairly dismissed.

209. The Respondent's case was that the Claimant was dismissed for redundancy.

Unauthorised deduction of wages

210. The Claimant stated that the wages paid to her were less than the National Minimum Wage and less than she was entitled to be paid because they did not cover the overtime that she worked. The Respondent's case was that firstly, she was not an employee until 1 December 2020 and secondly, that she failed to present invoices and therefore, she was paid on account as they could not verify the work that she did on files and therefore could not pay her what she expected.

211. Section 13 of the Employment Rights Act 1996 deals with the right to be paid the wage agreed, as part of the contract.

Breach of Contract

212. The Claimant claims that the Respondent failed to pay her commission due on clients that she introduced to the firm.

213. In the hearing the Respondent's position was that the Claimant was not owed any commission. When the Respondent wrote to the Tribunal with its written submissions, it also enclosed its calculations on the Claimant's claim for commission. In that document, the Respondent stated that it considered that the Claimant was owed £474.06 commission. The Claimant did not have an opportunity to comment on this as the Respondent did not put that to her or at all during the hearing.

214. The Tribunal's jurisdiction is to consider claims that are outstanding at the end of the employment under Article 3 of the Employment Tribunal (Extension of Jurisdiction) (England & Wales) Order 1994.

Holiday pay

215. The Claimant's complaint was that she never took any time off as holiday in the time that she worked for the Respondent. She submitted that she was owed holiday pay for the entire period, from 1 April 2019 until her termination on 2 February 2021. The Respondent disputed this. It was the Respondent's case that she was only employed from 1 December 2020 and therefore any holiday pay owed would be minimal.

216. In its submissions, the Respondent stated that it believed that the Claimant would be owed 5 days from that period of employment.

Payslips and a statement in accordance with Section 1 Employment Rights Act 1996

217. The Employment Rights Act gives an employee the right to written statement of particulars of employment. Subsection 1(3) sets out that the statement should contain the names of the employer and the worker, the date when employment began and the date on which the worker's continuous employment began. The statement should also contain details of the scale or rate of remuneration, the intervals at which remuneration is paid (I.e. whether weekly, monthly or some other specified period), the normal working hours, the days of the work she was expected to work and any terms and conditions relating to – holidays, sick leave, pensions and sick pay; for example. The statement should also give the employee details of the employer.

218. Section 8 of the same Act gives a worker the right to be given by her his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement. The statement should contain particulars of the gross amount of wages or salary, the amounts of any deductions from that gross amount and the net wages payable to the worker.

219. If an Employment Tribunal were to conclude that the employer had failed to provide the employee/worker with a statement of particulars and pay slips or pay statements, the Tribunal can make a declaration to that effect. Where under such a claim the tribunal finds for the employee, whether or not it makes an award in respect of that claim, and where when the proceedings were brought the employer was in breach of the duty to give written particulars, the tribunal will make an award of 2 weeks' pay unless it would be unjust and inequitable to do so, and may if it considers it just and equitable in all the circumstances make an award of 4 weeks' pay (see ss38(1) to (5) Employment Act 2002). For such an award to be made, the employer must be in breach of the obligation at the time the proceedings have begun.

Applying law to facts

220. The Tribunal will now apply the law as set out above to the list of issues agreed and written in EJ WA Allen KC's record of preliminary hearing dated 16 March 2022.

221. The first issue for the Tribunal was whether we had jurisdiction to consider the Claimant's complaints.

Time point

222. It is this Tribunal's judgment that the Claimant issued her claim on 11 July 2021. Her ACAS Certificate was issued on 11 June 2021. The Claimant's employment was terminated on 2 February as she was paid in lieu of notice.

223. It is this Tribunal's judgment that this claim is made up of a series of complaints that are all connected. The Claimant worked mainly with Mr Muhammad Omar Khan as he was the effective managing partner, even before the move to Canary Wharf. He was the only witness for the Respondent and he was the senior partner in the firm throughout the Claimant's time there and he was the principal solicitor, once Mr Shahid Khan retired and he took over from 1 August 2020. The Claimant has a continuing complaint about her pay from April 2019 until her departure from the business in February 2021. Her claim includes a complaint of a failure to pay her wages and commission dating back from the start of her employment and holiday pay, accrued up to her dismissal.

224. The Claimant also had complaints about the lack of payslips and the failure to provide her with a statement of terms and conditions of employment. Her discrimination complaints span the whole period of her engagement with the Respondent. The Claimant also complains about Marie, who engaged directly with the Claimant from around August 2020 as she was first introduced to the staff at the August meeting. It is our judgment that she was given authorisation by the Respondent to meet with and to manage the Claimant and her work, in the way that she did. She had Mr Khan's authority to do so.

Paragraphs 225 to 229 have been altered on reconsideration following referral by the EAT

225. *Taking all those matters into consideration, it is this Tribunal's judgment that, applying section 123 of the Equality Act 2010, the Claimant's complaints, apart from those against Mr Imitiaz Ali, were part of a continuing act up to 2 February. It is just and equitable to extend time to allow us to consider the discrimination complaints, apart from the complaint involving Mr Ali as he was not involved in anything else and was not one of the Claimant's managers or a partner in the business, as far as we were aware.*

226. *It is also our judgment that the ACAS conciliation extension of time provisions apply to both the dismissal and the discrimination complaints.*

(see Sections 140B, Equality Act 2010 and 207B ERA). This means that the Claimant had up to a month after the date of the ACAS Certificate to bring her claim in the Employment Tribunal.

227. *The Claimant's original limitation period would have expired on 1 May, being three months less one day after the termination of her employment on 2 February. The Claimant contacted ACAS to begin the conciliation process on 30 April, which is near to the end of the limitation period. Section 207B(4) states that if a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

228. *It is our judgment that the Claimant was in exactly this position. The relevant primary time limit to all her claims, since it is our judgment that they are all - apart from the sex harassment complaint against Mr Imitiaz Ali - part of conduct extending over a period, would have expired on 1 May, which is within the conciliation period in this case. Her Day A is 30 April 2021. In those circumstances, the time limit expires at the end of the period of a month after Day B. A month after 11 June is 11 July. The claim was issued on 11 July.*

229. *It is this Tribunal's judgment that the Claimant's complaints apart from that involving Mr Imitiaz Ali, were issued within time and the Tribunal has jurisdiction to hear those complaints.*

230. The second matter for the Tribunal to consider was whether the Claimant had been an employee from April 2019 or whether, as the Respondent submitted, she had been self-employed up to 1 December 2020.

Employee/Worker/Self-employed status

231. It is this Tribunal's judgment that the Claimant worked full-time for the Respondent from 1 April 2019. She was keen to qualify as a solicitor and the Respondent was keen to have her in the firm. The Claimant worked hard and delivered on cases and also brought work into the firm through her personal referrals.

232. It is our judgment that the issue that prevented her from signing a training contract in April 2019 was the Claimant's bankruptcy, which caused her to worry that this might be a bar to her becoming a solicitor. She was honest about this issue and told the Respondent about her bankruptcy in the same interview during which she was offered the training contract. She asked for time to sort out the bankruptcy issue with the Law Society/Solicitors Regulation Authority before they signed the contract. In the interim, she would continue to work for the firm as a paralegal. The Respondent agreed to this, which is why the letter dated 19 March stated that she would be

employed as a caseworker from 1 April and as a trainee solicitor from 1 October.

233. It is our judgment that from 1 April 2019, the Claimant worked on a variety of cases for the Respondent but they were always the Respondent's cases. The Claimant worked all day, every day during the week and sometimes at weekends, on the Respondent's matters. She would start work at 9.30 and continue until late most evenings, sometimes up to 11pm. She would definitely work until 5.30pm. The Claimant would arrange her family and personal life around the needs of the clients and of the Respondent's business. It is our judgment that she would wake up early to get to the office and open up, if Mr Khan required her to do so. She would start earlier if she needed to travel outside of Ilford to attend court hearings or to deliver or collect documents for the Respondent. The email correspondence with Martin Quinn, the Claimant's text messages to Mr Khan and the photographs in the bundle all confirm that the Claimant spent all her time, every day, between Monday – Friday, working for the Respondent. When she took time to attend medical appointments it was with the Respondent's permission and she always made up the time afterwards. Mr Quinn was concerned that she was working too hard. They sat next to each other in the office and he would have been aware of how much work she did. He told the Claimant off for being at work on New Year's Day, 2020.

234. It is also our judgment that whenever the Claimant was out of the office to attend a medical appointment, she had to first seek authorisation from the Respondent and tell the partners the reason for the appointment and her absence, before she was allowed to go. She also went back to work after some of her appointments. The Claimant had to account for her whereabouts during the day. On 11 December, she sent the Respondent's partners emails to let them know that she was leaving work early and the Respondent later emailed her to ask why she had done so. They would not have done so if she were self-employed.

235. It is this Tribunal's judgment that the Claimant had conduct of many cases for the Respondent and she received supervision from both Mr Muhammad Khan and before he retired, from Mr Shahid Khan. The Claimant had previously worked for the Respondent as a paralegal in 2013/2014, mainly in the Immigration and Nationality department. Then she had worked mainly with Mr Muhammad Khan. When she came back in 2019 the partners knew her and her work and had confidence in her ability to deliver the work for their clients. They trusted her to work on their files. They continued to supervise her but she mostly got on with preparation of matters for trial, preparing documents – including witness statements, bundles, briefs – attending court and liaising with the clients.

236. It is our judgment that the Claimant could not send a substitute to do her work for her. We did not accept that evidence from Mr Khan. We were not told of any of his caseworkers who sent substitutes in to do their work and the Claimant was never told that she could send a substitute. The nature

of the work was that she would build a relationship of trust and confidence with the client and it would be unlikely that the Respondent would have accepted it if she were to suddenly send in a substitute person to conduct interviews with clients or to attend court. The firm would be liable for any work that she did on those files and so she was personally required to do it, as opposed to anyone else who the Respondent did not know. The Claimant took over work from other caseworkers who left the Respondent, such as Isra. Again, this was because of the trust that the Respondent had in her ability to do the job. The Claimant worked on whichever files were delegated to her. The Claimant was never told that she could send in a substitute, even when she was ill in December and unable to attend work.

237. It is our judgment that the Respondent controlled the work that the Claimant did. We had copies of numerous text messages in the bundle where the Claimant is instructed to attend the office, to open up or to return calls from clients or to do other specific things for the Respondent. In addition, as a caseworker/paralegal the Claimant took on various matters on instruction from the Respondent and did what was necessary on the files. She would not have needed to be told what to do on each case, every day as she already had some casework experience. She was given such guidance and support as was necessary to run the cases for the Respondent and under Mr Khan's supervision.

238. If the Claimant wanted to continue to work for the Respondent, she had to accept the work that she was given. The Claimant held the Resolution certificate in her name as she had experience of family finance work. That enabled the Respondent to be able to advertise the firm as having that authorisation and accreditation to do that work. It is our judgment that the Claimant did not particularly want to be at work by 5am or to be the only person at work during the pandemic, but she did so because the cases required her to do so and the Respondent delegated those cases to her. The matters she was involved in required her to go to court and to attend the office, as she did. It is our judgment that there was mutuality of obligations between the parties. The Respondent was obliged to use her as a paralegal/caseworker, having appointed her as one and the Claimant was obliged to do the work on the cases that were assigned to her, under the Respondent's supervision.

239. It is this Tribunal's judgment that the Claimant had a UTR tax number from when she worked for the Respondent in 2013 as a paralegal. At that time, she registered as self-employed and was content to produce invoices to be paid for the work that she did. The Claimant was not against being engaged on a self-employed basis, if that was what was agreed. It is our judgment that the parties never agreed that the Claimant would be self-employed in 2019. If they had, the Claimant would have submitted invoices to be paid as there would be no reason for her not to do so.

240. The Claimant was not in business on her own account. The Claimant did not advertise her services and did not work for the clients as part of her own

business. All her legal work was done under Mr Khan's supervision. The clients that she referred to the Respondent were billed by Mr Khan and paid their fees to Mr Khan. She only got involved if someone was late with their fees and she needed to chase them up. They remained clients of the firm, Khan's solicitors, at all times.

241. The Claimant and the Respondent agreed that she would be paid commission for every client that she introduced to the business. The Claimant kept her UTR number so that she could report to the revenue and pay tax on her commission.

242. The Claimant asked the Respondent to set out the offer of a training contract in writing. The Respondent did so on 19 March 2019. In that letter the Respondent stated that the Claimant would be offered employment as a caseworker from 1 April 2019 and then a training contract from 1 October 2019, as both parties thought that the issue with the bankruptcy would have been sorted out by then. The arrangement was that the Claimant would be paid the National Minimum Wage of £8.21per hour for a 35-hour week, which came to £14,942 gross per annum and would give her approximately £1050 – £1100 net pay per month.

243. The Claimant accepted the verbal offer in her email of 13 March 2019.

244. It is this Tribunal's judgment that this offer and acceptance formed a binding contract on the parties. The Claimant's email of 1 May 2019, asking for the employment to be put on hold did not rescind the contract and did not convert it to a self-employed contract. Following that email, the Claimant had a conversation with the partners and they agreed to support her in submitting her Equivalent Means application. That is the significance of the 1 May email. It is our judgment that it went no further than that. The contract was never rescinded and was never amended.

245. If the parties had agreed in May 2019 that the Claimant should no longer be considered as an employed paralegal but would be self-employed from then on, we would expect the Respondent, as a firm of solicitors, to have set that out in writing to the Claimant. We would also have expected a firm of solicitors that gave any employment law advice to members of the public, to confirm clearly, in writing, as Mr Shahid Khan had done on 19 March; the terms of the Claimant's working arrangements. The Respondent would have written to her and let her know that she was to prepare and submit invoices and time sheets for the files she worked on, so that the Respondent could bill their clients and so that she could be paid.

246. The fact is that at no point between 1 April 2019 and 25 November 2020, more than a year later, did the Respondent ask the Claimant in writing, for time sheets. When the Claimant wrote to Mr Khan on 12 August 2019, by text message on 29 November 2019, spoke to Mr Shahid Khan on 8 January and wrote to Mr Khan on 4 June 2020 – about her outstanding pay and commission, the Respondent did not respond to ask the Claimant for

time sheets, invoices or anything else. The Respondent simply paid her some money in response to those communications, although it did not pay her all that she asked for or was owed. If she had been self-employed, it is our judgment that even though the Claimant was facing financial difficulties, the Respondent would not have paid her anything until she produced invoices and would have written to her to confirm the same.

247. It is also our judgment that Marie was tasked with the job of making the Respondent more efficient and more productive. It is our judgment that prior to Marie's appointment, it is unlikely that the Respondent required its caseworkers to rigorously keep attendance notes for every action they took on a file and she was seeking to introduce a more robust system. This may also have been the reason for the introduction of the Clio system, in December 2020. The Claimant was not averse to providing attendance notes or completing time sheets. Her concern was that at the same time as the Respondent was asking her to complete these documents, it also told her that she would be paid less per annum than the National Minimum Wage and less than the amount stated in Mr Shahid Khan's letter of 11 March. The Respondent also made other statements in the November letters which she did not agree with, regarding her outstanding wages. Even though she had not been told that Marie was her supervisor, the Claimant carried out Marie's instructions, provided her with her files, drove to Marie's house and paid her £60 because she believed that she had to.

248. In the circumstances, it is this Tribunal's judgment that all the main elements of employment – control, mutuality of obligations and personal service – existed in the relationship between the Claimant and the Respondent from March 2019. Also, the contract of March 2019 was never rescinded or superseded with any other. The Claimant worked to that contract and when she was paid, it was in accordance with it. The Claimant was not in business on her own account. The Claimant believed that she was on the PAYE scheme from 1 April 2019 and expected the Respondent to pay tax and NI on her behalf, to the relevant Government authorities. When she found out that this had not been happening, the Claimant was shocked. She believed that the amounts the Respondent were paying her was net pay.

249. Taking all relevant facts into consideration, it is our judgment that there is nothing that points away from employee status. There is nothing here that is inconsistent with a contract of service. The Claimant was employed by the Respondent as a caseworker from 1 April 2019 until her dismissal on 2 February 2021. A new contract was issued to start from 1 December 2020. This did not change the Claimant's status but confirmed that she was employed as a caseworker. It did seek to lower the Claimant's wages and under the National Minimum Wage.

250. The Claimant was to be paid commission for her referrals and her UTR tax number appears on the Excel spreadsheet in relation to the commission claimed. The balance of wages claimed are in respect of the Claimant's employment.

251. It is this Tribunal's judgment that the Claimant worked under the contract of employment which was set out in the letter from the Respondent dated 19 March 2019 and in her letter dated 13 March 2019.

252. In our judgment, the Claimant was an employee within the meaning of section 230 of the Employment Rights Act 1996 and section 83 of the Equality Act 2010 as she was employed from 1 April 2019 as a paralegal, under a contract personally to do work on cases for the Respondent.

Respondent's knowledge of Disability

253. The Respondent has conceded that the Claimant was a disabled person at the time of her employment in 2019, in relation to the following conditions: Fibromyalgia, Rheumatoid Arthritis, stress and Anxiety, Glaucoma and dry eyes; and Cervical Spondylosis.

254. When the Claimant returned to work for the Respondent in April 2019, (having worked for them on a self-employed basis in 2013/14), she was suffering with stress/anxiety, having been diagnosed with those conditions in January 2019. The Claimant had Glaucoma when she started in April 2019. She told the Respondent's partners about the Glaucoma in June and she was diagnosed with the arthritis in July 2019 and informed the partners of it then. It is this Tribunal's judgment that the partners therefore became aware of the Claimant's physical and mental impairments in 2019. The Claimant informed them on each occasion that she went for a hospital appointment and when she went to collect medication as she had to leave the office. She also informed them of her impairments when she requested equipment and adjustments to ease her pain and discomfort. The Claimant attended a pain management clinic in respect of her Fibromyalgia in May 2019, for which she required the Respondent's authorisation. The Claimant spoke to the partners and gave the Respondent a copy of the relevant letter. She usually did so when asking for permission to miss work to attend appointments.

255. The Claimant attended a Glaucoma clinic once every 2 – 3 months to get medication into her eyes before she attended work. The Claimant did not use the word '*disability'* and did not have to do so in order for the Respondent to know that she had conditions that had a substantial adverse effect on her ability to carry out day to day activities. The Claimant did not keep her conditions a secret from the Respondent. She kept them informed and discussed her medication and her treatment with them. She asked for additional screens, a screen protector, a cushion or comfortable chair in 2019 and in 2020. She asked the partners, the IT person – Quddoos and Marie. The Claimant complained about the arthritis in her hands and how moving the furniture as Marie ordered her to do would cause her further pain and discomfort. Marie told her that she did not want to hear it. The Respondent was aware that moving furniture caused the Claimant pain and discomfort but ordered her to do so regardless. The Respondent knew

about the pain in the Claimant's neck. Lastly, the Claimant asked Marie to be allowed to work from home on some days and to be able to start late because of the delay in the morning until her medication takes effect. This was refused. On more than one occasion, the Claimant spoke about pain in her neck, her hands and across her body. It is therefore this Tribunal's judgment that the Respondent therefore knew about the Claimant's impairments.

256. She told Mr Khan in January 2020 about her appointment for the MRI and the next time they spoke on 1 February, she told him that she had been diagnosed with Cervical Spondylosis.

257. It is this Tribunal's judgment that the Respondent either had actual knowledge or had constructive knowledge of the Claimant's stress and anxiety from the beginning of her employment in April 2019 and that the Respondent knew of her arthritis from July 2019 and her Glaucoma from June 2019. The Respondent also had constructive knowledge of the Claimant's Fibromyalgia from May 2019, if not before, when she asked for permission to attend the pain management clinic. All these conditions together made the Claimant a disabled person under the Equality Act 2010. Separately, the effects of her Fibromyalgia and the associated pain and her stress and anxiety were substantial and had been so for more than a year. Even though the Respondent did not know that the Claimant's neck pain was related to a condition called Cervical Spondylosis until 1 February 2021, the Claimant had been complaining for some time about the pain in her neck and shoulders. She made this complaint to Marie when she was made to move office furniture. The Respondent does not need to know the name of the condition for it to be apprised of the condition and its effects on the Claimant's ability to carry out day to day activities.

258. It is therefore this Tribunal's judgment that the Respondent had constructive knowledge that the Claimant was suffering from the effects of these conditions, that they caused her pain and discomfort and that she was taking an inordinate amount of medication to counter the effects of these conditions on her ability to carry out day to day activities. The Respondent knew that the Claimant was suffering from mental and physical impairments and that she had been so suffering from the start of her employment in April 2019 until she was dismissed in February 2021. At the time of her dismissal, the Claimant had just informed the Respondent that her complaints about pain in her neck, which the Respondent had dismissed, was a diagnosable condition and that the MRI had confirmed it.

259. It is this Tribunal's judgment that the Respondent had constructive knowledge from April 2019 that the Claimant was a disabled person under the Equality Act 2010.

Disadvantage

260. The list of issues includes at paragraph 6 that the Respondent disputed knowledge and disadvantage. It was not put to the Claimant during the hearing that her conditions had not caused her substantial disadvantage during her time working with the Respondent.

261. The Respondent simply repeated paragraph 6 in its submissions on this point. It is this Tribunal's judgment that during her employment, these conditions caused the Claimant substantial disadvantage in that the discomfort, pain, stress and anxiety which they caused her was more than trivial. It is unlikely that the Claimant would be referred to a pain management clinic if her level of pain could have been managed with over the counter pain killers. The Claimant also had pain patches. This evidence was not challenged in the hearing. The Claimant also informed the Respondent that she needed the additional screens because it was difficult for her to see on the small computer screen. She repeated this request on more than one occasion.

262. It is our judgment that the mental and physical impairments that the Claimant suffered – Fibromyalgia, Rheumatoid Arthritis, Glaucoma and dry eyes, stress and anxiety and pain in her neck and shoulder – caused the Claimant substantial disadvantage and had long-term adverse effects on the Claimant's ability to carry out day to day activities.

263. The Tribunal will now consider the allegations listed as 7 – 41 of the list of issues.

Direct Discrimination

264. It is our judgment that the Claimant was not provided with training on the case management system.

Allegation 7.1 –

265. It is our judgment that Marie refused to give the Claimant the Zoom log-in details so that she could join the course. The Claimant had received the initial emails for the Clio course. However, she was not sent the joining instructions. The Respondent was unable to produce any email in which she was provided with joining instructions. The evidence was that the Claimant was not included in the WhatsApp group created for those attending the training on all three days.

266. The Claimant called Marie and asked her for the joining instructions. Marie refused to give her the information. Marie's reason for doing so was because the Claimant was, as she put it, *'always off sick'*. That was the reason that the Claimant was given for not being given access to the training.

267. It is our judgment that this is an act of discrimination arising from disability as Marie's reason for not providing her with the Zoom log-in details was her sickness absence from work rather than because she had the impairments

referred to above. We will return to this when we assess allegations 10 – 12 below.

Allegation 7.2 -

268. The Tribunal had insufficient evidence to be able to make a judgment on why the Claimant was not asked to attend the Canary Wharf offices to have her picture taken for the Respondent's corporate website.

269. It is likely that there were women who were photographed and other caseworkers of Bangladeshi origin. We were not told who else was photographed for the website as the Respondent denied that it had happened at all. We were not sure whether anyone else who works for the Respondent was disabled and whether they were photographed for the website.

270. The evidence was that other members of staff were also of Bangladeshi origin and that female members of staff such as Isra were also photographed.

271. The Claimant has failed to prove facts from which we could conclude that the Respondent's failure to provide her with the log-in details for the Zoom training on Clio and to invite her to have her photo taken at the Canary Wharf offices for the website were because of her disability, nationality and sex.

272. The allegation of direct discrimination fails and is dismissed.

Discrimination arising from disability (section 15 Equality Act)

Allegation 10 -

273. It is this Tribunal's judgment that the Claimant's sickness absence during her employment with the Respondent arose from her physical impairments of Fibromyalgia, neck pain – which later turned out to be Cervical Spondylosis, Rheumatoid Arthritis, Glaucoma and dry eyes and the mental impairments of stress and anxiety. The Claimant's fit notes in the bundle show that in November and December 2020, her absences were directly related to stress and a diagnosis of Covid-19. The Claimant managed to attend work between April 2019 and December 2020, without missing any days, despite her ill-health and the effects of her impairments but after she was presented with the 'new contract' the stress became such that she was unable to continue working. The fit note stated that the reason for her absence was stress, which is part of the mental impairment of stress and anxiety.

274. It is therefore this Tribunal's judgment that the Claimant has proved facts from which we can conclude that her sickness absence arose in

consequence of her disabilities of Fibromyalgia, neck pain (Cervical Spondylosis), Rheumatoid Arthritis, Glaucoma, dry eyes and stress/anxiety.

Allegation 11 –

275. It is this Tribunal's judgment that Marie Junkerre told the Claimant in response to her text message in which she asked for the Zoom link to attend the Clio training, that she had decided not to allow the Claimant to attend the training because she was always off sick. It was not true that the Claimant was always off sick. Since Marie began working with the Respondent in August 2020, the Claimant had only been off sick in November, but this was the reason that Marie gave for not providing her with the Zoom link. The Claimant needed the Zoom link so that she could attend the training provided to all of the Respondent's caseworkers. It is our judgment that when Marie stated that the Claimant was always off sick, it is likely that she is referring to her conversations with the Claimant in November when the Claimant told her about her health conditions and asked for adjustments such as working from home or starting later in the morning. Marie had been unsympathetic and had stated that she was not interested and that the Claimant's health problems had nothing to do with work. As a practice manager, Marie should have been alert to the Respondent's responsibilities to its employees and that the Claimant was likely to be a disabled employee. Instead, it is our judgment that with that knowledge, she made the decision to exclude the Claimant from the training because of her ill-health which was directly related to her stress and anxiety, Fibromyalgia, neck pain, Rheumatoid Arthritis, Glaucoma and dry eyes.

276. It is also the Tribunal's judgment that when the Claimant informed Mr Khan during their telephone conversation on 1 February 2021, of her recent diagnosis of Cervical Spondylosis, this was the final straw for the Respondent. We say this because there had been no notification from the Respondent, prior to that conversation, that there was a redundancy situation at the firm. There was no discussion with the Claimant when Mr Khan called her on 26 January that the Respondent were contemplating making staff redundant or that there was a redundancy situation. She was not told that there was likely to be a reduction in staff/caseworkers or paralegals.

277. Mr Khan had told the Claimant on many occasions in 2019 and 2020 that the reason why he could not pay her what she was owed was because the Respondent was in financial difficulty. He had never said that it was because she had failed to provide invoices or timesheets.

278. The topic of conversation between the Claimant and Mr Khan on 26 January was the Claimant's health. It is appropriate if an employee is off sick for the employer to contact them to find out about the sickness and how long they expected to be absent and what the employer could do to bring them back to work.

279. However, when they spoke again on 1 February the Claimant told Mr Khan that she had recently been diagnosed with Cervical Spondylosis and she reminded him of her other health conditions. His response was to ask her to come off PAYE and become a self-employed person. The Respondent made it clear during a conversation about her health, that it did not want to continue to employ her. He also said that the Respondent could not afford to keep her on as an employee. When she told Mr Khan of her latest diagnosis, it is our judgment that Mr Khan considered that she was likely to continue to be off sick and that she was no longer an asset to his business.

280. The Claimant refused to become self-employed. Mr Khan responded by telling the Claimant that she would get a letter addressing this in the post. She received the letter the following day, 2 February, and it was a letter of dismissal. It is this Tribunal's judgment that the Claimant has proved facts from which we can infer that the decision to dismiss her was partly because of her continued demand for her wages, which is why she was asked to continue working but on a self-employed basis and partly because she had informed her employer of a diagnosis of another condition and he did not want to continue to employ someone who he assumed would continue to be off sick.

281. The Tribunal then considered the Respondent's defence to this complaint and whether the Respondent had showed that this was a proportionate means of achieving a legitimate aim.

282. In its submissions the Respondent did not suggest that this was a proportionate means of achieving a legitimate aim. It simply denied that the Respondent knew that the Claimant was disabled and denied that there was any link between the Claimant's sickness absence and her ill-health.

283. We considered whether the Respondent had proved a non-discriminatory reason for the Claimant's dismissal, which could have been a proportionate means of achieving the legitimate aim of running a financially viable business.

284. However, the Respondent did not provide the Tribunal with any information on how it decided who it would make redundant or the process of scoring or any other information. The Claimant told us that as far as she knew, she was the only person in the firm who was made redundant. In addition, as we have stated above, the Respondent did not mention redundancy when Mr Khan spoke to her on 26 January and it was not mentioned in the letters that Marie wrote to her towards the end of 2020. The Respondent had only just provided the Claimant with a new contract to start on 1 December. This was a clear indication that in November 2020, there were no concerns about the future of the business or about the Claimant's role. The Respondent failed to explain how the optimism for her role had disappeared at the end of January 2021.

285. Even though the Respondent continually told the Claimant that the firm could not pay her because there was no money, the business transferred its operation from Ilford to what was likely to be more expensive offices in Canary Wharf, in August 2020, during an uncertain time due to the Covid-19 Coronavirus pandemic. The evidence shows that there was likely a confidence about the firm and its future in 2020. The Respondent did not provide evidence of a redundancy situation or how it went about deciding who to make redundant.

286. It is our judgment that the Respondent failed to prove a non-discriminatory reason for the Claimant's dismissal and failed to prove that dismissing her was a proportionate means of achieving a legitimate aim.

287. The fact that Marie said to the Claimant that she was always off sick shows that the Respondent had a perception of the Claimant as someone who was frequently unwell. It is our judgment that the Claimant was unwell because of her disabilities, which we judge that the Respondent had constructive knowledge of.

288. In this Tribunal's judgment, the decision to dismiss the Claimant was unfavourable treatment partly because of her sickness absence and partly because she was advocating for her outstanding wages.

Allegation 12 -

289. It is our judgment that the Respondent had constructive knowledge of the Claimant's disabilities. The Claimant told the Respondent early in her employment that she had stress and anxiety. The Claimant had informed them of Fibromyalgia when she asked for permission to attend the pain clinic in May 2019. The Respondent knew that the Claimant was suffering with a lot of pain. She told the partners about the pain clinic in May 2019. In November 2020 she told Marie about her health when she was told to attend Marie's home for a work meeting and when they discussed the need for a second meeting. As set out under the heading ***knowledge of disability*** above, it is our judgment that the law does not require an employee to use the word disabled. As long as the employer knows of the conditions that the employee has, that she has had them for a while and the severity of them - in that they have a substantial effect on her ability to carry out day to day activities - then they have constructive knowledge of disability and that the employee is a disabled person for the purposes of the Equality Act.

290. The Claimant's complaint of discrimination arising from disability succeeds.

Reasonable adjustments

Allegation 13 –

291. It is our judgment that the Respondent had constructive knowledge of the Claimant's disabilities. It is our judgment, that the Respondent had the opportunity to ease the Claimant's suffering by giving her additional

screens, which she asked for on many occasions and to different people; a cushion and a comfortable supported chair which she asked Marie for in November 2020. She also asked Marie to allow her to attend work late so that the medication that she took for pain had an opportunity to work. These were all refused. The Respondent did not treat the Claimant very well, considering that she was a good and competent caseworker. She also worked hard for the business.

292. The Respondent knew of the Claimant's Fibromyalgia from May 2019 and her stress and anxiety from June/July 2019. The Respondent also became aware of the Glaucoma and the Rheumatoid Arthritis around the same time. They were also aware of the amount of medication she took and that she was suffering from pain most of the time. That was demonstrated by: - the amount of medication she was seen to collect from Boots, Mr Rana took the time to tell her about religious prayers that could help ease her pain and because of her request to be allowed to come in later in the morning to allow her pain medication time to work.

Allegation 14 –

293. This allegation refers to the lack of an auxiliary aid – namely a larger screen and/or a screen protector and their ability to address the disadvantage the Claimant suffered because of her Glaucoma and dry eyes.

294. It is our judgment that the Claimant asked Mr Khan, Quddoos and Marie for a larger screen and/or a screen protector on more than one occasion in 2019 and again in 2020. Quddoos promised to provide her with a screen protector and to remove or reduce the glare from the screen, which would affect her eyes. Mr Rana allowed the Claimant to use his larger screens, when she asked him but that was not a permanent solution to the problem. The Claimant complained about this and asked for a larger screen on more than one occasion.

295. The failure to provide her with this equipment meant that the Claimant had eye strain and that her dry eyes worsened and that she suffered from migraine headaches.

296. We had sufficient information from the Claimant to be able to conclude that the lack of a larger screen/screen protector put the Claimant at a substantial disadvantage in comparison to someone who did not have her disability. Provision of the larger screen and/or a screen protector would have eased her discomfort, which would have been more than a trivial amount of discomfort. The case of *Leeds Teaching Hospital v Foster* above is authority for the principle that there has to be a real prospect of an adjustment removing a disabled employee's disadvantage before it could be considered reasonable. It is our judgment that there was a realistic prospect that the provision of a larger screen would have made it possible for the Claimant to do her work with less discomfort. She would not be left at the end of the day with migraine headaches and worsened dry eyes and eye strain from

having to try to read a small screen all day. This would be worse than the usual tired eyes that most people would experience at the end of a day of looking at a small computer screen as the Claimant had the additional impairment of Glaucoma with dry eyes for which she took drops and creams.

Allegation 15 –

297. In November 2020, the Claimant asked Marie for a comfortable chair and a cushion to support her back and shoulders. This was refused. The Claimant asked her because she was the practice manager and a representative of the Respondent's partners. Marie refused and failed to make arrangements for the Claimant to be provided with these things.

298. If the Respondent was unsure that the Claimant needed the things that she was asking for they could have arranged for her to be assessed, but they failed to take her requests seriously or to link them to the impairments about which they were aware. The Claimant had told the Respondent about her Fibromyalgia as far back as May 2019 when she showed them the letter inviting her to the pain management clinic. The Respondent would have known from then that the Claimant was in such pain that she needed more than over the counter pain killers to deal with it. The Claimant complained about pain in her body and specifically in her neck, back and shoulder.

299. It is our judgment that the pain and discomfort that the Claimant suffered by not having a suitable chair or a cushion, at the office was more than trivial. It was substantial and the Claimant suffered substantial disadvantage in comparison to someone without her disability and that was why she kept asking the Respondent for the adjustment. She asked more than once.

Allegation 16 –

300. It is this Tribunal's judgment that the Respondent could reasonably be expected to know that the Claimant was likely to be placed at the disadvantages described above. She suffered discomfort after using the small screen for a day, her dry eyes and Glaucoma exacerbated the effect of the small screen on her eyes. The Claimant explained this to Mr Khan, to Mr Rana and to Quddoos on more than one occasion.

301. It is the Tribunal's judgment that the Respondent could reasonably be expected to know that the Claimant was likely to be placed at a disadvantage if she was not provided with a comfortable and suitable chair, when she was in pain in her body due to the Fibromyalgia. She explained this to Marie in November 2020.

Allegation 17 –

302. The Respondent's response to this allegation in its submissions was to say that the Respondent could not give what it did not have and that this meant that it could not make adjustments if it did not know of the Claimant's

disabilities. It is likely that what the Respondent meant to submit was that it could not address what it was not aware of.

303. It is our judgment that during her employment with the Respondent the Claimant expressed to the partners, to Marie and to Quddoos that she was suffering from Glaucoma, dry eyes and Fibromyalgia which meant that she was in a lot of pain. The Claimant told the Respondent what steps they could take to avoid the disadvantages, namely, the provision of a larger screen and/or screen protector and a chair or cushion to support her back and shoulders.

304. It is therefore our judgment (following the questions outlined in the case of *SoS for the DWP v Alam*) that the Respondent ought to have known both that the Claimant was a disabled person with the 6 conditions outlined above which she talked about at work. Also, the Respondent ought to have known that her mental and physical impairments were long-term as she had had them for some time. The Respondent had constructive knowledge that these impairments were likely to affect her in the manner set out in the Act as she was in pain, had been referred to the pain management clinic, was collecting pain patches from the Chemist, was complaining regularly of pain in different parts of her body, while at work; and that they put her at a substantial disadvantage in comparison with caseworkers who did not have these conditions.

305. The Respondent had not done all it could to find out whether the Claimant had a disability, which put her at a substantial disadvantage, even though they were aware of all her conditions.

306. The Respondent did not need to guess at what adjustments the Claimant required in order to alleviate the substantial disadvantages she experienced at work because on more than one occasion, she told them what she needed.

307. The Respondent did not give the Tribunal any reason why they failed to do this. Mr Khan's evidence was that the Claimant could have taken a screen if she wanted one. On another occasion he stated that he did not know and had not been that she needed a bigger screen or a screen protector. The Claimant was not required to use the word '*disabled'* in order for the Respondent to be under this duty. She told the Respondent of her mental and physical impairments early on in her employment and did so on more than one occasion.

308. It is this Tribunal's judgment that the Respondent were under a duty to make reasonable adjustments and that they failed to comply with this duty in respect of the larger screen and/or screen protector and the chair or cushion.

309. It is this Tribunal's judgment that it would have been reasonable for the Respondent to have taken those steps and that the Respondent failed to take those steps. The failure to provide the screen happened in May 2019 and the failure to provide the cushion or comfortable chair occurred in November 2020.

310. The Claimant's complaint of a failure to comply with the duty to make reasonable adjustments is successful.

Harassment related to disability (section 26 Equality Act 2010)

Allegation 20 –

311. It is our judgment that the Claimant has proved facts from which we could conclude that on 3 December, on behalf of the Respondent, Marie required the Claimant to move heavy furniture in the Ilford office. The Claimant told her that she could not do so because of her Fibromyalgia and the Rheumatoid Arthritis in her hands, making it difficult for her to lift furniture and because her fingers might go numb from the pain. Marie insisted that she should do it.

312. It is also our judgment that the Claimant has proved facts from which we can conclude that on the same day, in response to being told about the Claimant's Arthritis and pain, Marie shouted at the Claimant, told her that she would not accept any excuses and told her that she would not die.

313. It is our judgment that this was unwanted conduct. Both allegations 20.1 and 20.2 were unwanted conduct.

314. It is our judgment that Marie did not like the Claimant. She also felt superior to her and we came to that conclusion because she kept repeating that the Claimant must follow her directives as she was the practice manager. She did not treat the Claimant as a caseworker and therefore someone with responsibility in the business, who assisted the business in making a profit and who did valuable work. However, when the Claimant told her about her mental and physical impairments, as practice manager it was Marie's duty to advise the Respondent about the likelihood of the Claimant being a disabled person and of their duties towards her. As she dismissed the Claimant's health issues, it is unlikely that she did so.

315. The Claimant did not keep secret her concerns about lifting and moving the furniture. She told Marie what she thought might result from doing it – that she was likely to get pain in her fingers and it might affect her Arthritis and Fibromyalgia. It is possible that Marie did not believe her but she did not have sufficient information – such as a doctor's report or an occupational health assessment – to give her grounds for disbelieving the Claimant.

316. It is our judgment that the Claimant's role was not to move furniture. She was employed as a caseworker. It was not her job to rearrange the furniture

in the office. She was therefore being asked to help the Respondent by doing so. She should not have been ordered to do so.

317. The Respondent insisted that she move the furniture after the Claimant reminded Marie of her Fibromyalgia and Arthritis. The Claimant had already talked to Marie about her mental and physical impairments in their conversations and meetings in November and here again the Claimant reminded her about the Fibromyalgia and Arthritis and told her how those conditions might be affected by what she was being asked to do.

318. It is our judgment that the allegations at 20.1 and 20.2 are related to the Claimant's disability in the following ways. The Claimant said that she could not and should not do it because of the way it might affect her Fibromyalgia and Arthritis and was told to continue regardless. It is our judgment that Marie lost some respect for the Claimant after the Claimant told her about her impairments and that may be why she asked her to do this menial task in the first place. Lastly, the comment she made that the Claimant would not die from doing this was disrespectful, unnecessary and dismissive.

319. It is our judgment that both of these allegations had the effect of violating the Claimant's dignity and of creating a hostile, intimidating, degrading and humiliating environment for her. Marie shouted at the Claimant. She was made to carry out a menial task with Marie's boyfriend who was not an employee and she was told that the practice manager did not care about her welfare. She was forced to complete a menial task after she had informed the Respondent that it was likely to worsen her physical impairments.

320. This was harassment and it is this Tribunal's judgment that it was reasonable for the Claimant to have perceived it as harassment.

321. The Claimant's complaint of harassment related to disability is successful.

Harassment related to sex and race/nationality

322. It is our judgment that the allegations at 25.1.1 and 25.1.2 occurred. It was the Respondent's choice not to call Mr Imitiaz Ahmed to give evidence about these allegations. We only had the Claimant's evidence on them. Mr Khan simply stated that he asked Imitiaz about them and Imitiaz denied that this had ever happened. This means that Imitiaz could have attended the hearing to give evidence. It was the Respondent's choice not to call him. We were not provided with a witness statement from Imitiaz. We were told that both Imitiaz and Mr Rana remain associated with the Respondent.

323. It is our judgment that in August/September 2019, Imitiaz made the comment to the Claimant that if she did not wear a scarf, she might find it easier to attract men. He also shouted at her to go elsewhere with a client, which the Claimant took as a reference to being interested in the client in a sexual way.

324. These comments upset the Claimant. As a practicing Muslim man, Imitiaz would have known that modesty in dress is important to the Claimant as a Muslim woman and that he was likely to insult her by the suggestion that she needed to go against her beliefs in order to attract a man. The Claimant was being professional in speaking to Mr Khan's client and the suggestion that there was anything else going on hurt her feelings deeply. She felt disrespected and insulted by Imitiaz's comments.

325. It is our judgment that both comments were particularly offensive to her as a Muslim woman and that Imitiaz, who we were told was a Muslim man, would have known that.

326. It is our judgment that Imitiaz made these comments. We did not have any explanation from him or from the Respondent as to what he meant by them or if there was a different way of looking at them from the way the Claimant heard them. At the time, when he was challenged on the comment at allegation 20.5.2, he continued arguing with Mr Rana and did not apologise or accept that it had been inappropriate.

327. It is our judgment that both comments were offensive. In the particular circumstances of this case, where they are both practising Muslims, Imitiaz would have been aware of the importance of the scarf to the Claimant and how insulting, humiliating and offensive it would be to suggest that the Claimant should go off with a strange man. He still made those comments and refused to apologise for them. In this Tribunal's judgment, given the Claimant's personal circumstances, as a single, Muslim woman, all of which Imitiaz was aware of, it was reasonable for her to find both comments to be humiliating and offensive.

328. It is our judgment that it was reasonable for the Claimant to perceive these as acts of harassment.

329. It is not our judgment that these were acts of harassment relevant to the protected characteristic of race/nationality. We heard no evidence on that and the Claimant failed to prove facts from which we could conclude that these comments were related to her race/nationality.

Paragraphs 330 – 334 inserted on reconsideration following referral by the EAT.

330. *It is this Tribunal's judgment that the matters referred to above in paragraphs 131 – 134 occurred in August and September 2019. They are incidents of sex harassment.*

331. *It is our judgment that the complaint of harassment relating to Mr Ali's actions were issued along with the Claimant's other complaints, in 2021. They occurred in 2019. They were therefore issued out of time. Unlike the*

allegations against the firm which were specifically against Mr Khan and Ms Junkerre, the allegations against Mr Imitaz Ali were the only allegations of sex harassment and were not connected to any other allegations. The other allegations have all been held to be part of a continuing act. The Tribunal's judgment is that the incidents of harassment involving Mr Imitaz Ali were the only two allegations in which he was involved. He was not a partner in the business and was not involved in the Claimant's line management. He did mostly conveyancing.

332. *We did not have evidence on which to conclude that the instances of sex harassment against Mr Ali form part of the continuing act with the other allegations in the case. We did not have evidence from which we could conclude that that it is just and equitable to extend time to enable us to consider these matters, which were issued two years after they occurred. We did not have evidence from the Claimant on why she did not issue a complaint that included her allegations against Mr Ali from 2019 before 11 July 2021.*

333. *In the circumstances, it is this Tribunal's judgment that it does not have jurisdiction to consider the complaints of race and sex harassment as it relates to the allegations that involve Mr Imitaz Ali and they are dismissed.*

334. *The complaints against Mr Imitiaz Ali fails and are dismissed.*

Automatic Unfair Dismissal (Section 104 Employment Rights Act [assertion of a statutory Right])

335. It is this Tribunal's judgment that the Claimant asserted on numerous occasions her right to be paid wages owing to her between April 2019 and November 2020. From December 2020 to the end of her employment she continued to advocate for her wages to be paid and also, for the pay she received between December 2020 and February 2021 to be paid at the National Minimum Wage level, as was offered to her in Mr Khan's letter of 19 March 2019.

336. The Claimant spoke to the Respondent about her wages. This was unsuccessful. Her first attempt at raising the issue more formally was a text message to Mr Khan on 23 July 2019, in which she asked to be paid. She emailed on 23 July 2019 and again on 12 August 2019. The Claimant was paid some money after each of these communications but she did not get all the money that she claimed.

337. The Claimant continued to advocate for her full pay. She did so by text messages on 29 November 2019 to Mr Khan, by complaining to Mr Shahid Khan on 8 January. she emailed Mr Khan about her wages on 4 June 2020. She raised it with Marie on 18, 22, 25 and 26 November 2020.

338. The Claimant had been told on more than one occasion in 2020 that the Respondent could not afford to pay her what was owed. However, the Respondent continued to employ her. After she spoke to Marie the first time, she was accused of backbiting about the company. Marie's intervention was of no help to the Claimant.

339. The Claimant considered that she was on PAYE and it was not until she asked to be paid furlough pay that she realized that she was not on PAYE. It was then that she began to worry about what was happening with her wages and her position in the business.

340. When he made the decision to terminate the Claimant's employment, Mr Khan had just had a conversation with the Claimant on 1 February in which she told him about another health diagnosis. He had asked her to become self-employed and she had refused. She was dismissed the following day, on 2 February. The last time the Respondent had paid the Claimant any money was £800 on 1 November. The Claimant was insisting on her wages and had clearly increased the pressure for her wages in November as there were 4 meetings/discussions with Marie where she mentioned it.

341. Being paid for the job a person does is a basic, fundamental part of an employment contract. A person works and expects to be paid. It is not necessary for an employee to have financial difficulties in order for them to be entitled to be paid. Someone with no financial difficulties who works is also entitled to be paid on a regular, monthly or weekly basis. The Claimant was not paid on a regular basis.

342. It was also her refusal to come off PAYE that contributed to his decision to terminate her employment.

343. The Claimant was insisting on her statutory right to be paid. In her emails she alleged that her statutory right to be paid had been infringed (section 104(1)(b)).

344. The Respondent's defence to this claim is that the Claimant was made redundant. However, even if the Respondent was not able to pay her, that does not create a redundancy situation. It is also possible that the Claimant was replaced, which means that her position was not redundant. We were not given any evidence of a redundancy procedure or whether there was a pool of caseworkers and how the Respondent decided who out of the pool would be made redundant.

345. The evidence was that the Respondent applied for a Business Interruption Loan but the Tribunal was not given any evidence of the criteria for that loan, whether the Respondent got it and how it related to the Claimant's dismissal.

346. It is this Tribunal's judgment that the principal reason for the Claimant's dismissal was that she repeatedly advocated for her unpaid wages and was

increasing the number of times she raised this with the practice manager or with the partners. The other reason was because she was disabled, as already held above. The Respondent did not want to continue to employ someone who Mr Khan thought was likely to be off sick again and who continued to advocate for her wages.

347. It is this Tribunal's judgment that the Claimant's dismissal was automatically unfair, and this complaint succeeds.

Unauthorised deduction from wages

348. It is this Tribunal's judgment that the Claimant was not paid the wages she agreed to, which were set out in Mr Shahid Khan's letter of 19 March 2019. She was also not paid overtime.

349. The Claimant did not get specific permission to work overtime. The letter of 19 March 2019 did not refer to overtime. The second letter offering employment dated 25 November stated that the Claimant was not to do overtime unless she was specifically authorised to do so. It is our judgment that the Claimant is unlikely to be entitled to overtime pay although it is also our judgment that she frequently worked over 35 hours per week and frequently worked 50 – 60 hours per week.

350. The Claimant did not claim overtime as part of the Excel spreadsheet.

351. The Claimant has suffered unlawful deduction of wages as she was employed on a salary of £14, 942.20 gross per year and she did not receive that amount. Also, the contract she was offered on 25 November 2020 was less than the National Minimum Wage, which at the time was £8.72 per hour. This was therefore unenforceable. The Claimant will be entitled to the balance of wages due to her from the start of her employment on 1 April 2019 to the end on 2 February 2021, on the basis of 35 hours per week, on an hourly rate of £8.21per hour up to April 2020 when it changed to £8.72per hour.

Breach of contract

352. The Respondent conceded at the hearing that the Claimant had not been paid all commission that was due to her as part of their contract.

353. In its submissions the Respondent says that she is owed £474.06. The Claimant has not had the opportunity to comment on it and it is not agreed by her.

354. It is therefore our judgment that the Respondent has failed to pay the Claimant commission and that the amount due will be calculated at a remedy hearing.

Holiday pay

355. It is this Tribunal's judgment that the Claimant had not taken any holiday in the financial year beginning 1 January 2021.

356. It is also this Tribunal's judgment that the Claimant had accrued holiday over the period of her employment from 1 April 2019 – 2 February 2021. Two years holiday entitlement is due because the Claimant was not encouraged to take her leave or reminded that she should do so.

357. The number of days due to the Claimant will be calculated at a remedy hearing.

Payslips and Statement of terms and conditions of employment

358. It is this Tribunal's judgment that the Claimant was employed by the Respondent from 1 April 2019. She was not given written terms and conditions of employment.

359. She had an offer letter dated 19 March 2019, which contained most of the relevant terms but was silent on her entitlement to holidays or her entitlement to sick pay. It only referred to her entitlement to '*statutory*' holidays. It did not say how many days she was entitled to as holidays. As the Claimant had only worked for the Respondent before as self-employed she would have needed to know how many days leave the Respondent gave and if there were any additional requirements in how she could take them or how much notice the Respondent required before she could take leave. The Claimant was entitled to annual leave under the Working Time Regulations and her entitlement should also have been set out in her written terms and conditions of employment. Her contract should also set out her entitlement to pensions and details of any relevant pension schemes. All of this was missing from the letter dated 19 March 2019.

360. The letter dated 19 March 2019 does not comply with the requirements of section 1 of the Employment Rights Act 1996 (ERA). The letter of 25 November 2020 also does not comply with section 1, for similar reasons.

361. It is therefore this Tribunal's judgment that the Respondent failed to comply with the requirements of section 1 ERA.

362. The Claimant was also not given payslips until December 2020. The Claimant had three payslips – December 2020, January and February 2021, which were in the bundle. The Claimant was entitled to a payslip in accordance with Section 8 of the ERA, throughout the time of her employment with the Respondent.

363. The Respondent's only reason for failing to do so was that the Claimant was not an employee. However, there was no response to her requests for payment during 2019. The first time she was asked for invoices was in November 2020, when Marie effectively took over her line management.

364. The Claimant was entitled to payslips and was not provided with them.

365. Her complaint in relation to her written terms and conditions of employment and for payslips are also successful.

Judgment

366. The Claimant was an employee from 1 April 2019 – 2 February 2021.

367. The Tribunal has jurisdiction to consider all the Claimant's complaints as they were submitted in time.

368. The complaint of disability discrimination succeeds.

369. The complaint of sex discrimination succeeds.

370. The complaint of race/nationality discrimination failed and is dismissed.

371. The complaint of automatic unfair dismissal succeeds.

372. The Respondent failed to give the Claimant itemised pay statements

373. The Respondent failed to provide the Claimant with written terms and conditions in accordance with Section 1 of the Employment rights act 1996.

374. The Respondent made unauthorised deductions from the Claimant's wages.

375. The Claimant claim for damages for breach of a contract of employment succeeds.

376. The Claimant is entitled to a remedy for her successful claims. Case management orders setting out preparation steps for a remedy hearing will be sent to the parties in due course.

Employment Judge Jones
Date: 29 September 2023