



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs D Berk

**Respondent:** Shaw Trust Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** London South (By CVP) **On:** 31 July 2023 to 3 August 2023

**Before:** Employment Judge Self  
Mr P Adkins  
Mrs A Rodney

### Appearances

For the Claimants: In Person  
For the Respondent: Ms J Danvers - Counsel

## RESERVED JUDGMENT

1. The Claims of Age Discrimination are not well-founded and are dismissed.
2. The Claims of Sex Discrimination are not well-founded and are dismissed.
3. The Claims of victimisation are not well-founded and are dismissed.
4. The Claim of unfair constructive dismissal is not well-founded and is dismissed.

## WRITTEN REASONS

1. By a Claim made on 18 August 2021 the Claimant asserts that she was subjected to Direct Sex and Age discrimination, Victimised and Constructively Dismissed. By a response lodged on 24 September 2021 those Claims were denied. ACAS Early Conciliation was entered into on 22 June 2021 and concluded on 3 August 2021. Any discriminatory act or omission prior to 19 May 2021 is potentially out of time subject to it being part of a continuing act.

If not part of a continuing act the Claimant asserts that it would be just and equitable for time to be extended.

2. This hearing was originally listed by me at a Case Management Hearing on 4 October 2021. There was a further Public Preliminary Hearing on 23 March 2023 before EJ Abbott at which an application to strike-out the Age and Sex discrimination claims was refused, but an application for a deposit order on the Age discrimination grounds succeeded.
3. The Claimant made a number of applications to postpone this hearing on account of the birth of her child on 19 May 2023 and because the Claimant's ADHD would cause her concentration to be at an insufficient level. On 27 June 2023, the applications were refused by the Tribunal. It appeared from correspondence that the Claimant may be wishing to renew that application at this hearing, but she did not do so.
4. In closing submissions, the Claimant made comments about how she had received the bundle and other documents late and how this meant that she could not properly prepare for the case especially with the needs of a young child to tend to. The Tribunal were, at all times, mindful of the Claimant's childcare situation during the course of the hearing and provided the Claimant additional time whenever requested, with the end result being that this has had to be a reserved decision. As examples, the Claimant was given additional time to prepare cross examination for Ms Audley and was also given from 1225 on Day 3 to 0900 on Day 4 to compose her closing submissions. The Tribunal considered that these were reasonable amendments to the timetable and also from time to time accommodated the Claimant by providing her time to reset her thoughts.
5. The Tribunal considers that the Claimant has been given the necessary assistance that she requested to ensure that as far as possible the Claimant's personal circumstances had as little impact upon her ability to conduct the hearing. Whilst the Tribunal cannot assess whether the Claimant would have been better with more time, they are quite satisfied that the Claimant acquitted herself admirably during the course of the hearing both in cross examination and in her lengthy but relevant closing submissions. We were unable to see that the Claimant was at any material disadvantage.

6. The Tribunal were able to deliberate and come to their decision on the fourth day of the hearing but unfortunately these reasons, based on those deliberations have, as indicated at the hearing, taken some time to draft and perfect on account of other sitting and personal commitments.
7. We heard oral evidence from the Claimant in support of her case plus Ms Begum and Ms Cirotti were called as witnesses for her. We heard oral evidence from Ms Vaghela and Ms Audley for the Respondent. Both parties provided very helpful closing submissions and we also considered such documents, within substantial bundles, as we were taken to by the parties.
8. The List of Issues which the Tribunal has had to consider are set out below. They were originally finalised at the Case management Hearing before EJ Abbott on 23 March 2023 and those issues have been tweaked taking into account concessions made by the Respondent at paras 2.2, 3.5 and 5.1 below and upon the Claimant effectively withdrawing some matters which were alleged to have led to her constructive dismissal when she accepted that the matters originally set out at 2.1.1.7.2, 2.1.1.7.3 and 2.1.1.7.6 either took place, or she only became aware of, after the decision was made to resign.

## **Time limits**

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

## **2. Unfair dismissal**

2.1 Was the claimant dismissed?

2.1.1 Did the respondent do the following things:

2.1.1.1 Pressure the claimant into managing two teams under the guise of being well financially compensated which “could help pay for my wedding”.

2.1.1.2 On 21 June 2019 declining the claimant’s request to complete a Level 6 qualification in Careers Information Advice and Guidance despite her having a verbal agreement to do so with Hassan Osman.

2.1.1.3 On 18 February 2021, Janice Pigott called the claimant in to warn her re “overstepping boundaries” and claimed she had been going over people’s heads and not sticking to her job.

2.1.1.4 In March 2021 denied the claimant’s request to have her outstanding annual leave balance paid.

2.1.1.5 Being chronically short staffed and denying the claimant’s requests to recruit resulting in her having to work a considerable amount of overtime in order to cover the duties as well as working from home with COVID.

2.1.1.6 The things listed under paragraph 5.2 below under the victimisation claim.

2.1.1.7 Fail to comply with its own policies and procedures in the handling of the claimant’s grievance:

2.1.1.7.1 Taking longer than necessary to carry out the investigation and get a response.

2.1.1.7.2 .....

2.1.1.7.3 .....

2.1.1.7.4 Arranging meetings at short notice giving the claimant inadequate time to prepare.

2.1.1.7.5 Not sending the policies through ahead of the meeting.

2.1.1.7.6 .....

2.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

2.1.2.1 Whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.1.2.2 Whether it had reasonable and proper cause for doing so.

2.1.3 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

2.1.4 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

2.2 In the event there was a constructive dismissal the Respondent accepts that the dismissal would be unfair within the meaning of section 98(4) of the Employment Rights Act 1996?

### **3. Direct Age Discrimination (Equality Act 2010 section 13)**

3.1 The age group that the Claimant relies upon is someone in their thirties.

3.2 Did the respondent do the following things:

3.2.1 In November 2018, when she was managing both the Central and East London teams, give the claimant the sum of £200 gross per month for managing a second team.

3.2.2 In October 2020, after the claimant applied for the position of Delivery Development Manager, the salary being offered was reduced from £42k to £37k on the basis of one bullet point being removed from the advertised job description.

3.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The claimant says she was treated worse than:

3.3.1 Hassan Osman, a man in his forties, who was paid a salary of £42k when responsible for managing two teams, whereas the claimant was paid £35.4k.

3.3.2 Jonathan Reynolds and Nigel Bewsher, both men in their forties, who were offered roles toward the upper end of advertised salary bands.

3.4 If so, was it because of age?

3.5 The Respondent does not assert that the treatment a proportionate means of achieving a legitimate aim?

#### **4. Direct sex discrimination (Equality Act 2010 section 13)**

4.1 The Claimant is female.

4.2 Did the respondent do the following things:

4.2.1 In November 2018, when she was managing both the Central and East London teams, give the claimant the sum of £200 gross per month for managing a second team.

4.2.2 In October 2020, after the claimant applied for the position of Delivery Development Manager, the salary being offered was reduced from £42k to £37k on the basis of one bullet point being removed from the advertised job description.

4.2.3 In March 2021, the claimant's request to have her outstanding annual leave balance paid was denied.

4.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The claimant says she was treated worse than:

4.3.1 Hassan Osman, a man in his forties, who was paid a salary of £42k when responsible for managing two teams, whereas the claimant was paid £35.4k.

4.3.2 Jonathan Reynolds and Nigel Bewsher, both men in their forties, who were offered roles toward the upper end of advertised salary bands.

4.3.3 Kryzstof Jednec, a male manager at the respondent, whose outstanding annual leave balance was paid.

4.4 If so, was it because of sex?

#### **5. Victimisation (Equality Act 2010 section 27)**

5.1 The Respondent admits that the claimant did do a protected act when she raised a grievance about age and gender discrimination on 23 April 2021?

5.2 Did the Respondent do the following things:

5.2.1 During the period of late April to July 2021, excluding the claimant from weekly manager's meetings and therefore what was going on in the business.

5.2.2 During the period of late April to July 2021, excluding the claimant from communications pertaining to her line manager Natasha Osborne's absences.

5.2.3 During the period of late April to July 2021, significantly reduced frequency of contact between the claimant and the Head of National Careers Service, Shilpa Vaghela, from almost daily contact between January to March 2021 to once every 2-3 weeks. When those interactions did take place, the manner in which the claimant was spoken to was harsh and critical compared to the kind and supportive manner prior to raising the grievance.

5.2.4 On the 14th of May 2021, during a quarterly review with Shilpa Vaghela and Natasha Osborne, the entire meeting was spent degrading the claimant's performance and my team, stating that the managers do not think that the claimant did a good job, and told her she should be more like an ex-colleague of theirs.

5.2.5 Ignoring issues raised by the claimant around recruitment whilst her grievance was investigated, leading to the loss of a female applicant.

5.2.6 Shilpa Vaghela not contacting the claimant for 3 weeks after she submitted her resignation and suffered a bereavement.

5.3 By doing so, did it subject the claimant to detriment?

5.4 If so, was it because the claimant did a protected act?

### **Factual Background**

9. The Respondent is an organisation which helps support individuals back into employment and they hold several government contracts to achieve this. The Claimant had previous experience in assisting getting people back into work and was appointed to the post of Trainee National Careers Service Advisor for Prospects Services and commenced her employment for them on 4 September 2017 on a salary of £22,000 (355-356).

10. Very soon after the Claimant's appointment she became a Delivery Team Leader with a substantially increased salary at £33,000 per annum. (378). On 17 April 2018, the Claimant was told that she had successfully passed her probationary period (386). In October 2018, the Claimant's role title changed to Delivery Team Manager (DTM).
11. Around that time another DTM had gone onto maternity leave and a replacement had not been found. The Claimant was asked by Mr Osman and Mr Sandford if she would be prepared to look after two teams and that if she did, she would be "fairly compensated". We accept the Claimant's evidence that it was a big job but it was one that the Claimant was prepared to take on without delineating what "fair compensation" would look like. The Tribunal are in no position to assess what fairness would dictate but accept that there would be widely differing views about what that looked like.
12. We formed the view that the Claimant was a diligent worker for whom work was an important part of her life. She clearly has a desire to do things to the best of her ability and we find she was ambitious to progress. We do not accept that she was pressured by the Respondent into doing the job. There was a job to be undertaken because of circumstance, she was asked and after a while she agreed to do it. From 12 November 2018 the Claimant was awarded an extra £200 per month for the added responsibilities (396) and this was confirmed on 9 January 2019 (399).
13. At a conversation on 8 January 2019 the Claimant was told that £200 was the most that the Respondent could give as they could not get authority from anybody higher up the organisation (para 7 - Claimant's statement. We accept that was the case. The Claimant did not raise a grievance at this stage and continued to work for the sum she had been awarded.
14. We accept the Claimant's evidence that she was very busy whilst working for the Respondent. It seems that the Respondent's retention rate was poor as we have heard substantial evidence about a constant churn of staff. As there were insufficient staff, individuals very often had to cover more than one job. Whilst we accept that this did affect the Claimant, we are also of the view that it affected many other staff within the Respondent organisation. We also consider that because the Claimant was ambitious and driven, she saw the



additional work as a means to demonstrate her commitment and hopefully to get promoted further.

15. In September 2020, the Claimant applied for a new role that of Delivery Development Manager. That job was due to encompass Marketing, Labour Market Information, Partnership Development, Employer Engagement National Careers Hotline and Contact Centre for the whole contract. It was advertised at a salary of £42,000 and was a chance to be part of the Senior Management Team.
16. The Claimant was interviewed by Ms Pigott and Ms Kerwin but it was subsequently decided that the job role was too big for one person and that the National Careers Hotline and the Contact Centre would remain under the management of Mr Sandford and Ms Kerwin respectively. As the Claimant had done well at interview, she was notified that the revised job would be advertised again but the Claimant would not be required to re interview. This would appear to be favourable treatment towards the Claimant and shows that Ms Pigott and Ms Kerwin wanted her for the new role. The salary for the new role was not specified but it seems to have been understood agreed that it would be somewhere between the Claimant's salary at that time and the £42,000 originally offered.
17. At some point between 28 September 2020 and 19 October 2020 Ms Pigott asked the Claimant whether she wanted the job of DDM and that the salary had been set at £37k and the Claimant agreed and the Claimant started the new role on 19 October 2020. There is no indication that at the time the Claimant had any issue with the salary offered. The Claimant knew the salary, had a reasonable expectation of the role's demands and accepted it. We do not accept that she was pressurised to do so in any way. The Claimant saw it as a promotion and a further step on the promotion ladder.
18. On the Claimant's evidence discontent seemed to arise after she had accepted the offer. In particular, it seems that the Claimant's trip to the West Midlands team at the end of October was the start point for her concerns when she discovered (on her account) that her individual role seemed to be covered by three separate individuals in the West Midlands' team and the Claimant's team seemed to be severely understaffed in comparison too. In

essence others had it easier than she did. In November 2020 contracts were obtained by the Respondent and allocated to the Claimant in respect of supporting the rollout of a large number of staff destined to work in the Covid vaccine programme.

19. There were other resignations towards the end of 2020 and early 2021 which again added to the Claimant's workload. On 4 January 2021 Ms Vaghela started and she was going to take over from Ms Pigott who was retiring at the end of March. The Claimant has described a fractious relationship with Ms Pigott and we have not heard the other side of that debate as Ms Pigott has not been caused to give evidence. We note however that, despite the alleged issues, Ms Pigott was prepared to accept the Claimant by promoting her, all be it only to a £37k salary. In those circumstances we are unable to conclude that Ms Pigott truly held an adverse view of the Claimant or that the Claimant's gender or age was an impediment to her progress within the organisation.
  
20. The Claimant asserted that she had a positive introductory meeting with Ms Vaghela on 8 January 2021. Unfortunately, Ms Vaghela was absent with Covid shortly after this meeting. The Claimant was very much hoping that she would be able to replace two members of staff and believed that they would be recruited, but shortly after this meeting the claimant was told that the recruitment was placed on hold. Due to this and other issues such as Ms Pigot and Ms Vaghela being absent sick and Mr Sandford leaving the Claimant was working long hours and had no real opportunity to take annual leave.
  
21. On 18 February 2021, following a meeting with Advisers, the Claimant was cautioned by Ms Pigott over what she perceived as the Claimant going beyond her role with what was suggested as being a risk of giving the Advisers mixed messages. There was clearly a discussion as there is an email that refers to it on the same date from Ms Pigott to the Claimant (447). That email appears courteous and professional setting out expectations as the roles she required individuals to undertake and Ms Pigott makes reference to some "great work" the Claimant had done which she hoped would continue. The email is balanced, and we consider reflective of what was discussed. Whilst the Claimant complains of the tone of the conversation which preceded the email, we consider that at this point in time the Claimant was unhappy with aspects of what she perceived was going on and was likely to be

sensitive to what she perceived as being unjustified criticism, especially if delivered in a direct way as Ms Vaghela suggested Ms Pigott was prone to do.

22. On 23 February 2021, the Claimant had a meeting with Ms Pigott and Ms Vaghela in order to discuss her performance. The Claimant believed that she had done well and exceeded her targets despite the dearth of support she felt she was getting. The Claimant described Ms Pigott as hostile and stated that Ms Vaghela called her afterwards to commiserate with the Claimant in respect to how she had been addressed by Ms Pigott and resolved to try and act as a buffer. Ms Vaghela indicated that she became aware that Ms Pigott's direct style was making the Claimant uncomfortable and so followed up afterwards to check on the Claimant. Ms Pigott was leaving and Ms Vaghela suggested that she take on the remainder of the appraisal. On the same date the Claimant sent Ms Vaghela her understanding of what staff she should have and what the budget was and made proposals for the future which included increasing her own salary to £42,000 and if so **"she would take on extra responsibilities"**. (460) The Tribunal deduce from that the Claimant understood that her current role was not worth £42,000 and that to merit that she would have to undertake additional duties. In our view that undermines the Claimant's suggestion at this hearing that the role she was undertaking as worth £42,000.

23. In March 2021, the Claimant cancelled leave she had booked so that she could be on hand to deal with a project that ran through March and April. Again, we do not consider that she was pressured to do so but rather that she was a diligent and conscientious employee who was prepared to forego her leave for the best interests of the Respondent. On 22 March, the Claimant received copies of the Job Descriptions for members of her team and also her own job description.

24. In mid-April, the Claimant had a meeting with Ms Vaghela in relation to the operation of her team and what their KPIs were. During that meeting the Claimant was told that she could advertise her vacancies and that they had been signed off already.

25. On 20 April, the Claimant discovered that Jonathan Reynolds was on £30,000 as opposed to the £28,000 she believed. She emailed Ms Vaghela the Job Descriptions and suggested that they meet up to discuss salaries. Ms Vaghela responded by saying that she wished to have further discussion on KPIs targets and duties of the Claimant's team before she advertised for the role. The Claimant saw this as inconsistent with the previous meeting in mid-April and pointed that out to Ms Vaghela, asking to push forward with the recruitment and then to review in May if required.
26. On 23 April 2021, the Claimant raised what she called a Salary Grievance (531-534). As previously stated, the Respondent accepts that this document was a protected act on the basis that the Claimant clearly sets out that she considered herself to have been subjected to age and sex discrimination. She starts her grievance by asking for her salary to be reinstated to £42k and for that salary to be backdated to the date she took the DDM role on 19 October 2020
27. In support of that in her grievance, which was sent to Miss Vaghela, her line manager and Ms Richards from HR, she:
- a) Set out what she perceived had taken place in the DDM Recruitment;
  - b) Stated that her salary at 37k was inappropriate as there was only one less bullet point in the Job Description and the difference in job did not justify a £5k mark down;
  - c) The lowering of her pay was on account of age / sex discrimination;
  - d) In support of that proposition, she gave the example of the Employer Engagement role which was obtained by Mr Bewsher and Mr Reynolds at £30k;
  - e) She raised the 2018 situation when she took on an additional team and only got an additional £200 gross per month;
  - f) The fact that the Claimant was not permitted to take cash in lieu of untaken leave but the male manager of the contact centre was permitted.
  - g) That as there had been a substantial loss of senior managers there would be little time to take leave and she should be paid to do the additional work being short staffed would inevitably bring.
28. That grievance was sent at 1900 and at 2300 that same evening Ms Vaghela forwarded the grievance on to Ms Osborne who had just become the

Claimant's line manager and Ms Kerwin asking that the grievance be discussed between them (285-286). On 26 April Ms Kerwin responded acknowledging that she had interviewed the Claimant the previous September and expressed surprise that it had taken 7 months to be raised.

29. On 27 April Ms Vaghela indicated that she had a meeting with Ms Richards that day and the delay had been due to Ms Richards' leave and that she would be in touch shortly thereafter. On 6 May she followed up stating that Ms Richards would be in touch to book a meeting the following week and the Claimant responded by return that she thought it **"best to get the project stuff wrapped and ops review out of the way first before we had this meeting anyway"**. She also reflected that as it was a busy time that **"it would not have been a good time for any of us"**. (542)
30. On 13 May 2021, the Claimant was called by Ms Richards to see if she could do the grievance meeting that afternoon. The Claimant accepts (para.56 WS) that she was given the option to have the meeting with more notice but the Claimant indicated that she was keen to get the meeting dealt with. There was late notice for the meeting but the issues that could arise because of that i.e., lack of preparedness, could have been obviated had the Claimant taken up the offer made. Ultimately it was the Claimant's choice to have the meeting that day.
31. The meeting took place at 3 pm and so the Claimant had 3-4 hours' notice of the meeting. The Claimant had written a detailed grievance and the notes of the meeting which are agreed are set out at 131-137 of the bundle and it took place over one hour forty minutes. The Claimant summarises by saying that she considers £42k is reflective of her workload at that time and that it should be backdated. She wanted to have the Level 6 made available to her and she would like to be paid rather than take 5 days annual leave. There is very little, if any actual discussion about the discriminatory elements of the grievance but the focus is upon being paid what was promised or deserved for the roles the Claimant has taken on. At the end Ms Vaghela and HR promise the points raised would be explored further and an outcome would be sent as soon as possible. (137). WE are satisfied that the Claimant was given every opportunity to articulate her grievance and that there was an appropriate and respectful 2-way dialogue at this meeting.

32. The grievance procedure itself is a fairly standard document and is reflective of the ACAS Code on Disciplinary and Grievance Procedures. One of the principles is that grievances should be dealt with in a timely manner with no unreasonable delays and later in the document it is said that there should be regular communications in case there are any delays. We conclude that there was an unreasonable delay and the Claimant was not kept properly updated about those delays and to that extent the Respondent failed to comply with their own policy.
33. It appears that the only investigation that Ms Vaghela did was to speak to Ms Kerwin and notes were attached to the investigation report in respect of that. There is no date given for that conversation. The Tribunal have been told that Ms Vaghela has suffered some form of brain injury and although not supported by any medical evidence have borne that in mind in assessing Ms Vaghela's evidence. The Tribunal barely gained any assistance from Ms Vaghela's evidence which was vague in the extreme as to what she had actually done, why she had not done other things in the investigation and why there was a delay. Her evidence was very unsatisfactory.
34. We accept that she was busy as everybody seemed to be in the organisation and that was compounded by staff shortages in her team. We have also been told of her IT problems. We were not satisfied that the grievance was dealt with in a timely manner and nor were we satisfied that the investigation she did was comprehensive at all. Ms Vaghela did not seem to really know what she was doing or what she needed to do to deal with the grievance. We find that these were the reasons for the delay.
35. On 14 May 2021, the Claimant had a meeting with Ms Vaghela and Ms Osborne to discuss what the team did and what the future for the team looked like. It does not surprise the Tribunal that there was such a meeting taking into account the fact that both managers were new to the organisation. It also does not surprise the Tribunal that there may have been some criticism which may or may not have been justified and that there may have been comments about the abilities of others they had worked with who had undertaken the roles to their satisfaction. We are unpersuaded that this meeting was a character assassination as suggested by the Claimant, who we find was in a raw state because of her general disapproval of the Respondent and those whom she reported to at that time.

36. The Claimant states that she felt ostracised at this time. Again, she had two new managers who, no doubt, did things differently from previous managers. We are satisfied that when Ms Osborne came into the picture on 1 May that it was inevitable that Ms Vaghela would contact the claimant less. We have considered such emails as we have been taken to and the tone of emails between Ms Osborne and the Claimant are professional and business like e.g., the exchanges about Job Referral data at 566-567 which ends with Ms Osborne thanking the Claimant for providing info that is giving Ms Osborne a clearer picture.
37. On 28 May and before annual leave the Claimant raised the issue of the fact that her managers appeared to have changed the salary for the LEC at £27k as opposed to £28K and other issues. The Claimant was then on leave until 8 June. On 15 June, the Claimant set up a meeting with Ms Osborne to discuss this issue. It was explained that co-ordinator roles were circa £25k. The Claimant was concerned that this lower salary (27k) would mean that she would lose an individual who had also applied for another job (which she did) and that would leave her very short staffed for 2 virtual career events. The Claimant states that Ms Osborne did not express any real concern nor seemed to care about the issue. We do not accept that she did not care but rather that she reasonably held a contrary view to the Claimant
38. In the List of Issues there is no specific last straw given but in the Claimant's witness statement at paragraph 63 she states:
- “Feeling frustrated that my concerns around the salaries were not being addressed, I was not being supported to recruit from my team and the length of time my grievance was still outstanding, I felt I had no other option but to resign.”***
39. The Claimant resigned on 16 June 2021 initially offering three months' notice and so initially believing that her last day at work would be 30 September 2021. The Claimant in her appeal (but not in her witness statement) stated that she had tried to contact HR on 16 June before she resigned but had received no response. On 22 June, the Claimant emailed to say that in fact her notice was one month but that she wished to work effectively two months' notice so as to finish on 13 August 2021.

40. The Claimant was asked why she did not resign immediately and replied that she did not have another job to go to and she did not consider it fair on her partner / husband to leave immediately and thereby not bring her share into the relationship. This squares with what the Tribunal consider to be a very strong dutiful streak within the Claimant. Having said that she is asserting the Respondent's conduct was such that there had been a repudiatory breach of the implied term of trust and confidence or to put it another way the Respondent's behaviours was such that she was entitled to accept their breach and resign. We will return to this issue and the issue of affirmation in our conclusions.

41. It is common ground that the Claimant did not receive any contact from the Respondent about her grievance and the progress or otherwise thereon between 13 May meeting and the resignation. On 22 June she wrote to Ms Richards making that point and that she had entered into Early Conciliation. The Tribunal can find no response to that and on 13 July 2021 a response to the grievance was made. Clearly the quality of the Grievance Investigation / result of it was not in the mind of the Claimant when she resigned and so could not have been part of the rationale for her resignation. In essence the Response stated:

- a) The £42k /37k salary complaint was rejected but it was confirmed that the salary would be reviewed in line with the harmonisation process that was ongoing to ensure the salary was fair.
- b) Sex Discrimination was rejected because her examples were spot salaries not on a salary scale and because the job roles were not comparable.
- c) Age discrimination was rejected because no evidence had been produced in support.
- d) The annual leave issue was partially upheld in that it was conceded that the Claimant could have five days of her annual leave paid as pay. It was accepted that a male had also been allowed this allowance but it was not accepted that gender played a part in the decision-making process.
- e) A deputy to the Claimant would be appointed so as to allow her to delegate.

42. The part of the letter that constitutes the Response to the grievance is not much longer than the summary above. There was no apology or acknowledgment for the delay. On 20 July, the Claimant appealed (230-234). She added some elements of grievance in and also reiterated her



former position and took the view that there had not been a proper investigation into her grievance. We agree with her last point.

43. The Claimant contacted HR on 2 August 2021 as she was concerned that she was about to leave the organisation and on 3 August 2021 the Claimant was invited to an Appeal meeting on 11 August 2021 and Ms Audley, the Continuous Improvement Director, was appointed to consider the Appeal.
  
44. At 1216 on the day of the grievance meeting the Claimant was provided with documents that she had asked for. In fact, the only document that she had not seen were Mrs Kerwin's comments that had been obtained by Ms Vaghela which were less than a page long. In those circumstances whilst we accept that the document should have been provided at an earlier time, we do not consider that the Claimant, who from our own observations is highly capable and intelligent, would have been placed at any more than a minor disadvantage by this oversight and the short notice. The Claimant was offered the chance to postpone the meeting but declined and the meeting was then delayed for 90 minutes to allow time for her to consider the documents. We consider that the original delay was an oversight as opposed to a deliberate act and the Respondent took appropriate steps to ameliorate the issues that flowed from the delay and ultimately the Claimant was not disadvantaged.
  
45. The Appeal and the way it was considered was in stark contrast to the original grievance. The List of Appendices at 157-158 demonstrates in our view the care and attention that Ms Audley put into the appeal. Similarly, the witness evidence from Ms Audley was in stark contrast to that of Ms Vaghela being detailed and thoughtful as opposed to being vague and nebulous. Ms Audley interviewed six individuals in relation to the grievance and considered a substantial amount of other information both signposted to her by the Claimant and beyond.
  
46. The appeal outcome was sent out on 18 September 2021. The Grievance was not upheld but Ms Audley did recommend that there be a ***“review of guidelines for communication frequency and investigation timeliness for grievance investigations to ensure that the aggrieved party is well informed and that the grievance chair is supported to deliver the***

**outcome in a timely manner.”** We believe this recognises certain failings on the part of the organisation in terms of the failure to communicate about the progress of the grievance and also seems to suggest that HR did not fully support Ms Vaghela in the process. Further there was a recommendation that there be a review of salary protocols via the current Harmonisation Project. We believe that this shows that Ms Audley recognised that the current system needed to be reviewed and hopefully clarified as soon as possible.

47. Ms Audley explained that she investigated whether or not men and / or older people were being paid higher salaries and/or being promoted to more senior positions. She was unable to find any evidence that suggested that was the case. The specific findings were as follows:

**“Salary and Duties - On the evidence available this allegation is not upheld as you submitted an application to the revised job for consideration suggesting you're aware of the key differences in the two roles. However the salary will be reviewed in line with the current harmonisation process to ensure the salaries are a fair reflection of duties and in line with the salary offered by competitors or similar businesses.**

**Sexism - salaries - This allegation is not upheld as the positions you have referenced are spots salaries and not a salary scale. Furthermore the job roles are not comparable to the work you undertake as you are in a more senior position.**

**Age discrimination - this allegation is not upheld as no argument evidence has been supplied in support of this claim if evidence is submitted I will investigate this point.**

**Sexism - annual leave this allegation is partly upheld. The decision to allow a male colleague to be paid leave is not based on gender, but rather a reflection of duties that could not be carried out by another member of the team. As there was no deputising structure in place for your role we will make a business case for this to be paid to you also.”**

48. Following those conclusions Ms Audley set out clearly her reasoning and attached to it was many appendices which demonstrate in the Tribunal's view the thoroughness that she had applied to the issues raised.

#### **The Law – Equality Act 2010**

49. The relevant statutory provisions in the Equality Act 2010 are section 13, section 27 and section 136 and they read as follows (so far as relevant to this case):

### **13 Direct discrimination**

**(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.**

### **27 Victimisation**

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

**(a) B does a protected act, or**

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

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

**(a) bringing proceedings under this Act;**

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

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

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

### **136 Burden of proof**

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

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

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

50. Guidance on the burden of proof was given by the Court of Appeal in **Igen v Wong [2005] ICR 931**. This guidance has subsequently been approved by the Court of Appeal in **Madarassay v Nomura International plc [2007] ICR 867** and by the Supreme Court in **Hewage v Grampian Health Board [2012] ICR 1054**.

51. In a claim where there is no room for doubt, the burden of proof has nothing to offer where the employment tribunal is in a position to make positive findings on the evidence one way or the other.
52. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of a satisfactory explanation, that the Claimant's treatment was because she was female or that she was in the relevant age group.
53. In order for the burden of proof to transfer from the Claimant to the Respondent, it is well established that it is insufficient for the Claimant merely to show a difference in status and detrimental treatment (see Madarassay at paragraph 54). In **Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865**, Elias J at paragraph 15 said that the mere fact that an unsuccessful candidate was a black woman and successful candidates were white men would be insufficient to be capable of leading to an inference of discrimination in the absence of a satisfactory non-discriminatory explanation. To shift the burden of proof a claimant must also prove something more. That is, in the present case the Claimant must prove facts from which the Tribunal could infer that there is a connection between the protected characteristic of the Claimant and the detrimental treatment, in the absence of a non-discriminatory explanation.
54. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the decision to reject the Claimant's application.
55. The burden of proof provisions also applies to the victimisation claim as well as the direct discrimination claim.
56. The Claimant will be successful in this claim if she demonstrates that she was subjected to the detriments alleged because she had raised a grievance relating to sex and age discrimination. She would have to offer sufficient in order to move the burden of proof over to the Respondent and at that point it would be for them to demonstrate that the decision was for a non-discriminatory reason.
57. The Tribunal is obliged to consider the conscious or subconscious motivation of the decision makers not to offer her the role. It will require an examination of the decision maker's mental processes and if the necessary link between the detriment suffered and the protected act is established then the victimisation claim will succeed. There is no need to establish that the detriment was visited upon the Claimant solely because of the protected act, it

must simply have a significant influence on the employer's decision making. Significant in this context means ***“an influence that is more than trivial”***.

## Conclusions

### Sex Discrimination

- 58.4.2.1 – As a matter of fact the Claimant was given an additional £200 to manage two teams in November 2018. The Claimant seeks to compare herself with Mr Osman who was male and who was paid £42k when managing two teams as opposed to the Claimant being paid £35.4k. The Claimant considered her pay rise should have been £500 per month which would have brought her up to £39k. It would appear that even on her own case she accepts that her role was not worth the same as Mr Osman's role.
59. We do not consider Mr Osman to be an appropriate comparator. He was at a more senior level than the Claimant and was already paid more than the Claimant for a different role. We have received no evidence that the roles were comparable at all. We do not accept that his position was the same or even similar. As stated above there was a job to be done, the Claimant was asked and after a while she agreed to do it. The Claimant was told that £200 was the most that they could give as they could not get authority from anybody higher up the organisation (para 7 - Claimant's statement). We accept that was the case. The Claimant did not raise a grievance at this stage and continued to work for the sum she had been given. The reality is that the Respondent were understaffed and the Claimant took on the role before properly assessing what the extra work should have been paid. She was paid that sum because she accepted the job before the pay was clarified. The Tribunal can see no link to the Claimant's gender at all. This claim is dismissed.
60. 4.2.2 – The answer to why this took place is contained within the allegation itself. The role as originally countenanced was valued at £42k and when changes were made it was valued at £37k. Whilst the Claimant emphasises that there was only one bullet point removed within that bullet point were two reasonably substantial responsibilities. The Claimant had a choice whether to take the enhanced role at £37k or not. She chose to do so. The Tribunal do not accept that the reduction was linked to the Claimant's sex at all. It was clearly linked to the value ascribed to the new role by those above her. In actual fact the Claimant was treated preferably over this role in that when she did not get the first manifestation of the role, she did not have to reinterview.

We do not accept that the burden shifts but if it did then we would accept the Respondent's explanation for why the Claimant was paid at the rate she was. Further we conclude that the Claimant has not shown any actual comparator and any hypothetical male comparator would have been paid exactly the same as the Claimant. We reject this Claim

61.4.2.3 – The Claimant was originally rejected on her application for untaken leave to be paid to her. We do not consider her circumstances equate to her comparator Mr Jednec as he was seeking a financial payment for accrued time off in lieu that he could not take whereas the Claimant was seeking to be paid for annual leave not taken. We consider that taking into account the importance of leave it is not surprising that the request was refused but on the other hand taking into account what we see as the Claimant's dedicated approach to her work and her tendency to put work first we can understand why the Claimant would have been disappointed by that decision and why it could have been granted. We do not consider Mr Jednec to be an appropriate comparator. We are unable to infer any gender bias from the surrounding circumstances and do not consider that the Claimant has sufficient evidence to shift the burden of proof. In any event we consider that at worst it was a discretion exercised against the Claimant in good faith and we do not consider that the Claimant's gender played any part in the decision. It follows that this allegation and the claims of direct sex discrimination as a whole are dismissed.

#### Age Discrimination

62.3.2.1 and 3.2.2 – During the course of the hearing this was very much a subsidiary argument for the Claimant whose primary focus in the hearing and when discussing the perceived differentials was gender based as opposed to age based. We have already indicated above that we do not consider that the individuals identified are actual comparators upon which the Claimant could rely. We are quite satisfied that the Respondent made spot decisions on salary which on occasion ran in favour of an employee e.g., Mr Reynolds. The Claimant was keen to progress and keen to take responsibility. She was ambitious and driven and was prepared to take roles for the sums offered or at times take on roles before a figure had been concluded. The Tribunal can find no evidence of age being a factor at all and reject the Age discrimination claims.

### 63. Victimisation

The Tribunal notes that the Claimant complains about the conduct of Ms Vaghela before the protected act was made. The Claimant complains that Ms Vaghela gave her the green light on recruitment and then pulled back on the same seemingly wanted to go over what the Claimant considered old ground. The Claimant was frustrated by the actions of Ms Vaghela as expressed by her email on 22 April 2021 (526). The Tribunal form the view that by this time the Claimant was very frustrated by the orgainsation in that she did not feel she was being paid at an appropriate rate for the work and the effort she was putting in, she had discovered that others may be doing less work that she was doing as they had smaller portfolios (West Midlands team), she had discovered that somebody else had been permitted to be paid days in lieu and that one of her juniors was being paid more than she had thought. All of these things built up to her venting her grievances on 23 April.

**64.** The Claimant asserts that she was very critical of the Claimant in a meeting on 14 May (allegation 5.2.4) and the Claimant indicates that this was a change with the allegation being that the change was because of the allegations of age and sex discrimination. There were many changes around that time and both Ms Vaghela and Ms Osborne were new and had their own ideas. It is clear on 22 April pre grievance Ms Vaghela wants to discuss KPIs duties and targets of the team and so was scrutinising the Claimant's operation. The Tribunal considers that the queries Ms Vaghela had was before the grievance and there is no evidence to suggest that any conduct within the meeting of 14 May flowed from the protected act. We consider it likely that at this time because of the Claimant's discontent with the business which she did not consider were supporting her in the way she considered she was entitled that the Claimant mistook genuine feedback from her managers in an unduly negative way. Managers are entitled to manage and the Tribunal do not accept that Ms Vaghela did anything more that conduct herself in a business-like manner at this meeting. This allegation is dismissed

**65.** We accept that there was a reduced level of communication between Ms Vaghela and the Claimant from April onwards (Allegation 5.2.3) but we are satisfied that this was because Ms Osborne had been employed as the Claimant's line manager and accordingly much of the communication would be channelled through Ms Osborne as line manager rather than directly. We accept the Respondent's explanation for why there was less communication and reject that the reason for that was the issuing of the allegations of discrimination. We also reject the Claimant's allegation that she was spoken to harshly or critically. Again, we consider it likely on the balance of

probabilities that the Claimant was overly sensitive at this time to what were in truth honest views held by Ms Vaghela about her work.

**66.** We do not accept that there were weekly managers meetings over the period from April to July 2021. We have seen no evidence of such meetings being called nor have we seen any evidence that such meetings took place via minutes and the like. In the absence of any evidence that there actually were such meetings and Ms Vaghela indicated that there were not we cannot find that the Claimant was excluded from them. In any event we do not accept that the issuing of the discrimination allegations would have made any difference. Further, the Claimant states within her statement that meetings were cancelled which would mean that none of the managers would have attended Allegation 5.2.1 is dismissed.

**67.** Similarly, we have no adequate evidence of any communications relating to Ms Osborne's absences and so have no foundation upon which we can say that the Claimant was excluded from such correspondence. The Claimant does not refer to this allegation within her statement and it was not raised adequately orally during the evidence. Allegation 5.2.2 is dismissed.

**68.** Allegation 5.2.5 relates to the Claimant's suggestion that the Claimant wanted to offer a candidate £28k as opposed to the budgeted £27k and was not permitted to do so. Whilst we accept that this was not progressed, we are also unable to discern any link whatsoever to the raising of the allegations. Ms Vaghela was very busy and so was Ms Osborne and both had substantial work to do and new roles to get to grips with. We take the view that progress here was just something that slipped through the net and was not an act of victimisation.

**69.** Allegation 5.2.6 relates to the Claimant not being offered condolences from Ms Vaghela for three weeks. Ms Vaghela indicated that she believed that she had offered condolences but on balance we prefer the evidence of the Claimant. There is no evidence direct or inferential that suggests that any failing was influenced by the grievance and we reject the allegation as an act of victimisation.



**70.** In all the circumstances the victimisation claim is rejected.

#### Constructive Dismissal

71. The statutory basis for constructive dismissal is set out at section 95 (1) (c) of the Employment Rights Act 1996 and that section states that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

72. It follows that the test for constructive dismissal is whether the employer's actions or conduct amounts to a repudiatory breach of the contract of employment (**Western Excavating (ECC) Limited v Sharp (1978) 1 QB 761**).

73. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Malik v BCCI SA (1998) AC 20**).

74. Any breach of the implied term of trust of and confidence would amount to a repudiation of the contract of employment and the test of whether or not there has been a breach of the implied term is objective (**Malik at 35C**). There is no need to demonstrate intention to breach the contract. Intent is irrelevant.

75. A relatively minor act may be sufficient to entitle the employee to resign and leave the employment if it is the last straw in a series of incidents. The particular incident which finally causes the resignation may in itself be insufficient to justify that action, but that act needs to be viewed against a background of such incidents that it may be considered sufficient to warrant treating the resignation as a constructive dismissal. It is the last straw that causes the employee to terminate a deteriorating or deteriorated relationship.

76. It is clear that the repudiatory conduct may consist of a series of acts or incidents, some of which may be more trivial, which cumulatively amounts to a repudiatory breach of the implied term of trust and confidence. The question to be asked is whether the cumulative series of acts alleged, taken together, amount to a repudiatory breach of the implied term. Although the final straw may be relatively insignificant, it must not be entirely trivial. It must contribute something to the preceding acts.

77. The paragraphs prior to his one within this Law section are a summary of Lord Dyson's Judgment in **London Borough of Waltham Forest v Omilaju (2005) ICR 481**.

78. In **Kaur v Leeds Teaching Hospitals NHS Trust (2018) EWCA Civ 978** it was identified that normally it will be sufficient to ask and answer the following questions to establish whether an employee has been constructively dismissed.

a) What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?

b) Has he or she affirmed the contract since that date?

c) If not, was that act or omission in itself a repudiatory breach of contract?

d) If not, was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?

e) Did the employee respond to that breach?

79. Where an employee waits too long after the employer's breach of contract before resigning, he or she may be taken to affirm the contract, and thereby lost the right to claim constructive dismissal. It is important to remember, however, that the issue is essentially one of conduct not the passage of time. Does, in all the circumstances, the employee's conduct show an intention to remain in employment rather than resign.
80. Whilst at common law an employee wanting to claim wrongful constructive dismissal must resign without notice. However, the situation as regards unfair constructive dismissal is different because section 95 (1) (c) ERA provides that a dismissal will take place where an employee resigns with or without notice ***"in circumstances in which is entitled to terminate it without notice by reason of the employer's conduct"***. This means that the act of giving notice cannot by itself constitute affirmation of an unfair constructive dismissal claim. That said a notice period far in excess of the employee's contractual obligation can be held to amount to an affirmation.
81. We rely upon the factual findings that we have made above when considering whether or not the Claimant was constructively dismissed. We further deal with any specific matters pleaded as contributing to the constructive dismissal that has not been alleged additionally as an act of discrimination or victimisation.
82. We will deal with each of the matters that the Claimant asserted contributed to her decision to resign in turn:
- a) 2.1.1.1 - As we have said at paragraph 12 above we do not consider that the Claimant was pressured into managing two teams. The Respondent offered and the Claimant accepted and we find that she did so before ensuring that she knew what remuneration that she would receive. The Claimant was keen and ambitious and saw the additional role as something that would stand her in good stead in her career. We reject this allegation.
  - b) 2.1.1.2 – The Claimant tendered no evidence in support of this allegation within her witness statement nor orally. The only information we have about it is at page 198 where Ms Pigott is asked about it in the grievance appeal by Ms Audley where she expressed the view that the level 6 course was not suitable as it would not assist the Claimant's role at that time. We reject this allegation because we do not have any evidence in support of it.
  - c) 2.1.1.3 – We have dealt with this at paragraph 21 above. Ms Pigott formed the view that the Claimant needed to follow a certain path

when reporting issues. She was managing the Claimant and it is not unreasonable to call somebody into manage them and ask them to do things in a manner prescribed by the manager. The Claimant may disagree but we do not consider that this fell outside the realms of normal day to day management.

- d) 2.1.1.4 – The Claimant was denied her request to have her outstanding leave balance paid. We have already determined that this was not a discriminatory act. The Claimant raised a grievance and that matter was resolved at the appeal. We accept that the Claimant was disappointed by this exercise of discretion but on our finding it was not a discriminatory act
- e) 2.1.1.5 – We accept that the Respondent was short staffed and there was delay in permitting the Claimant to recruit. We further accept that this did result in the Claimant having to work additional hours to cover those gaps. Such was the Claimant's diligence to her duties we have little doubt that she did work whilst off sick with Covid too although that was her choice. Having said that there were a number of resignations from the team in a relatively short space of time and there was new blood above her as well who were entitled to get a feel for their roles and understand what was genuinely needed. There was an adverse impact upon the Claimant in terms of the amount of work the Claimant was obliged to undertake.
- f) 2.1.1.6 – We have dealt with the matters relating to the victimisation claim above and we have rejected the allegation that they were acts as victimisation. We acknowledge that even if not acts of victimisation any detriment that we found could contribute towards the Claimant's constructive dismissal.
- g) 2.1.1.7 – The initial part of the grievance (Ms Vaghela's) was issued poorly as we have set out above. It was not conducted with any appropriate speed, the Claimant was not kept updated. The Claimant had already resigned by the time she found out that the investigation was substandard and the outcomes lacked any real substance. There is little positive to be said about it Ms Vaghela's handling of the grievance.

83. The Claimant states that at the time of her (paragraph 63 of the statement she was,

***“Feeling frustrated that my concerns around the salaries were not being addressed, I was not being supported to recruit from my team and the***

***length of time my grievance was still outstanding, I felt I had no other option but to resign.”***

84. We accept that those were the reasons which led the Claimant to resign and it appears that the real issues were in relation to issues of concern not being addressed via the grievance and recruitment not going at a pace the Claimant required.

85. The Claimant resigned on 16 June 2021 initially offering three months' notice and so initially believing that her last day at work would be 30 September 2021. The Claimant in her appeal (but not in her witness statement) stated that she had tried to contact HR on 16 June before she resigned but had received no response. On 22 June, the Claimant emailed to say that in actual fact her notice was one month but that she wished to work effectively two months' notice so as to finish on 13 August 2021.

86. The Claimant indicated that she did not resign immediately because she did not wish to put pressure on her husband who would be the sole earner within the family. That may be so but it also demonstrates that the relationship was not so serious that it had to be severed immediately. Indeed, the Claimant chose to work one month longer than her notice period. To put it another way she was quite prepared to remain working at the Respondent being paid and indeed was prepared to extend her notice period to facilitate that.

87. We have considered whether that amounts to an affirmation of the contract as suggested by the Respondent. We consider that in all the circumstances it did not. The extending of notice from one to two months has to be seen in the context of the initial view that it was three months.

88. The trigger for the Claimant to resign is set out above. We have taken what the Claimant has said as being the last straw and we do not accept that it amounts to a repudiatory breach of contract nor does it meet that test when added to the other matters that the Claimant complains about. The implied term of any contract of employment is that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of the implied term of trust of and

confidence would amount to a repudiation of the contract of employment and the test of whether or not there has been a breach of the implied term is objective.

89. Whilst we accept that the Claimant was entitled to hold some frustration about the recruitment delays and the delay in her grievance resolution and some of the other issues, we have set out above we do not accept that those matters of themselves were calculated to amount to a repudiatory breach of contract by the Respondent nor of themselves were likely to do so. Further we do not consider looking at the totality of the complaints the Claimant makes and our findings on them, including the fact that on our findings the Claimant was not discriminated against or victimised, that we do not accept that these matters amount to a repudiatory breach of contract.
90. It may well be that had the Claimant waited for the report from Ms Vaghela to be produced that the paucity of detail and care therein may have been sufficient for her to assert that there had been a repudiatory breach at that time, but that is not the factual situation that we have before us. Arguably the Claimant resigned too early.
91. Whilst we accept that the claims of discrimination were brought out of time (last act known on 5 March 2023) we formed the view that the Respondent has been able to deal with the allegations effectively and that there is no prejudice to the Respondent (beyond having to deal with the Claims). The Claimant raised a grievance in good time and the Respondent delayed in dealing with the same and accordingly it is just and equitable for time to be extended.
92. The constructive dismissal claim is not well-founded and is dismissed.

**Employment Judge Self  
27 October 2023**