Case Number: 3314001/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss O A Ajiga	**v**	(1) The Chimneys Ltd (2) Elysium Health Care (3) Tafara Care Services Ltd

Heard at: Cambridge (CVP then Hybrid) **On:** 30 October – 2 November 2023
Chambers 2 November 2023 (PM)

Before: Employment Judge L Brown

Members: Mr Allan and Ms Allen

Appearances
For the Claimant: In person
For the Respondent: (1) Mr Lawrence - Counsel
(2) Mr Lawrence - Counsel
(3) Mr Busumani (in person)

RESERVED JUDGMENT

The judgment of the Tribunal is:

1. The Claimant's claims for direct discrimination contrary to s.13 of the Equality Act 2010 ('EqA') on the grounds of sex and religious belief are not made out and fail.

2. The Claimant's claim for harassment related to sex contrary to s.26(1) (a) of the EqA 2010 is not made out and fails.

3. The Claimant's claim for sexual harassment contrary to s.26 (2)(a) of the EqA 2010 is not made out and fails.

RESERVED REASONS

Background and Claims

1. The Claimant had been supplied as an agency worker, and as a mental health support worker, by the Third Respondent to the Second Respondent to work in their home for mentally unwell patients, which was The Chimneys Ltd, the First Respondent in these proceedings. She commenced employment with the Third Respondent on the 14 December 2020, and she left their employment on or around the 30 October 2021, and her placement with the First Respondent ended on the 21 March 2021.

2. By way of an ET1 filed on 28 July 2021 the Claimant brought claims for unfair dismissal, discrimination on the grounds of sex and a claim for a redundancy payment. On 15 November 2021 the First, Second and Third Respondents filed their ET3 Response denying all claims.

3. On 17 January 2022 the Claimant failed to attend an in person Preliminary Hearing which was listed to deal with a Strikeout application and/or a Deposit Order application and to deal with any amendments.

4. On the 1 June 2022 a telephone Case Management Hearing took place before Employment Judge Gumbiti-Zimuto. The Claimant was ordered to provide Further Information about her claims by 24 June 2022. This Further Information related to a direct sex discrimination claim, her claim that she was discriminated against or victimised because she was an agency worker, her claim that she was discriminated against or victimised because she was a Christian and for her application to amend her claim form in that she alleged that she was forced to work for six hours daily with little or no opportunity for breaks.

5. She was also warned that other claims may be struck out due to Judge Gumbiti-Zimuto's view that the claims lacked any reasonable prospect of success on jurisdictional grounds. They were a claim for negligence against the First Respondent, and a claim for misrepresentation against the Third Respondent.

6. A Preliminary Hearing took place on 15 February 2023 before Employment Judge Mason via CVP. The Claimant's claims for victimisation and discrimination as an agency worker were then struck out.

7. The Claimant withdrew her claims for negligence and misrepresentation on the grounds of lack of jurisdiction.

8. The Claimant was allowed to amend her claim to add a claim of discrimination on the grounds of religious and philosophical belief and was also allowed to add a reference to an alleged attempted second sexual assault by Amir Asil on 16 March 2021.

9. The Second Respondent's applied to strike out the religious discrimination claim that had been permitted by way of amendment at the hearing, but that application failed.

10. The Claimant's claims were therefore defined by Judge Anderson as: -

    10.1 Direct sex discrimination contrary to s.13 of the EqA 2010;

    10.2 Direct religious discrimination, contrary to s.13 EqA 2010, and

    10.3 Harassment on the grounds of sex and/or sexual harassment, contrary to s.26 1(a) and 2(a) of the EqA 2010.

11. The Respondents were given leave by the 8 March 2023 to amend their Responses to address the claims of religious discrimination and the allegation of a second sexual assault on 16 March 2021.

12. It was set out that the Claimant did not have a right of reply, response or rejoinder as is the norm in this jurisdiction and that she may address any matters relating to any amended Response in her Witness Statement. The Respondents then filed an amended Response on the 15 November 2021.

13. It was then recorded that the Claimant was applying to further amend the grounds of her claim and that the statutory provisions she relied on were provisions in the EqA 2010 relating to direct sex discrimination, harassment related to sex, sexual harassment and direct religious discrimination.

14. It was ordered that if the Claimant wished to pursue this application to amend, she must provide certain information to the Tribunal, with a copy sent to the Respondents, by 8 March 2023.

15. The parties were ordered to endeavour to agree a List of Issues by the 22 March 2023.

16. On 16 March 2023 the Claimant then provided Further Information in relation to her application to further amend her Particulars of Claim eight days later than ordered. She also served her Schedule of Loss.

17. The First and Second Respondents endeavoured to agree a List of Issues but this did not result in an agreed List of Issues, and their draft of the 8 March 2023 **[p.134]** was never agreed to by the Claimant, and the Claimant simply served her own List of Issues on the 22 March 2023 **[p 130].**

18. On 26 May 2023 a Third Preliminary Hearing took place in person before Employment Judge Anderson. It was recorded that the Claimant sought to bring a claim of discrimination on the grounds of race and to extend her claims of discrimination on the grounds of religion. It was recorded the facts relied upon had been raised in various documents filed by the Claimant since the claim was filed on 28 July 2021 but were not raised in the ET1 form **[p. 245].**

19. In particular, the Claimant sought to amend her claim to include an allegation that she was treated less favourably in the allocation of shifts and observations on the grounds of race. She also alleged that she and other agency staff were made to do cleaning tasks and that this was less favourable treatment on the grounds of race and religion.

20. The Claimant's application to amend her claim as detailed in the Further Information filed by the Claimant on 16 March 2023 was refused.

Issues

21. It appears the claims for Unfair Dismissal and Redundancy indicated on the ET1 form were never dealt with at any of the three Preliminary Hearings nor were they referred to at this final hearing by the Claimant. In any event this Tribunal had no jurisdiction to hear either claim due to the Claimants lack of continuous employment for two years. In the Case Management Summary of Judge Anderson on 26 May 2023, the Claims and Issues were identified following the three Preliminary Hearings and various amendment applications as follows:

The Complaints

51. The Claimant is making the following complaints:

51.1 Direct discrimination on the grounds of sex and religion.
51.2 Harassment related to sex.
51.3 Sexual harassment.

52. The issues the Tribunal will decide are set out below:

Factual Issues

1. C alleges the following factual issues:

1.1 On Saturday 20 February 2021, Lewis of the Chimneys Ltd/Elysium Health Care Ltd (R1/2), unlocked a toilet door whilst the Claimant was using the toilet, without apologies or reasons for his actions.

1.2 On Sunday 21 February 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2), smacked the Claimant on her left buttock.

1.3 On 5 March 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) revealed the Claimant's identity to a female Third party and continued to disparage the Claimant's personality to other HCA workers at the Respondents.

1.4 On 7 March 2021, Simba of Tafara Care Services Ltd (R3) contacted the Claimant and questioned the veracity and authenticity of the workplace sexual assault she suffered.

1.5 Tafara Care Services Ltd (R3) failed to respond to the Claimant's email dated 3 March 2021, sent to Simba and Donald, informing them of her willingness to report the matter to the police and press charges.

1.6 On 16 March 2021, Amir Asil of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) tried to assault the Claimant following a U-turn as he approached the staff room.

1.7 Tafara Care Services Ltd (R3) ceased to assign shifts to the Claimant following the report of a crime she made to the Hatfield Police Station.

1.8 Tafara Care Services Ltd (R3) failed to respond to the Claimant's query dated 22 April 2021 in which she requested to know the status of her employment, in particular "whether or not there is a subsisting or foreclosed agency – staff relationship".

1.9 On 24 May 2021, Donald of Tafara Care Services Ltd (R3) called the Claimant and told the Claimant to find other agencies to work for following an email from the Claimant on the same date.

Jurisdiction.

2.The Claimant commenced ACAS conciliation proceedings on 27 May 2021. Are any acts of alleged discrimination that took place prior to 28 February 2021 out of time?

3.If so, is it just and equitable to extend time?

Direct sex discrimination (s.13 EQA)

4.Was the Claimant subject to the treatment set out at 1.1 to 1.9 above?

5.If so, was such treatment less favourable treatment than that which was, or would be done to a relevant comparator materially in the same circumstances as the Claimant? The Claimant relies on a hypothetical comparator.

6.If so, was the reason for the treatment the Claimant's sex?

7.In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2).
Did they take all reasonable steps to prevent the relevant employees from doing that thing or doing anything of that description?

Harassment related to sex (s.26 (2) (a) EQA).

8. Was the Claimant subjected to the treatment set out at 1.1 to 1.9 above?

9. If so, was that conduct:

9.1 unwanted?
9.2 related to the Claimant's sex?

10.If so, did the conduct of the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

11.In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2), did they take all reasonable steps to prevent the employees from doing that thing or from doing anything of that description?

Sexual harassment (s. 26(2) b EQA)

12. Was the Claimant subjected to the treatment set out at 1.1, 1.2, and 1.6 above?

13.If so, was that conduct:

13.1 Unwanted?
13.2 Of a sexual nature?

14. If so, did that conduct have the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

15. In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2), did they take all reasonable steps to prevent the relevant employees from doing that thing or from doing that thing or from doing anything of that description?

Direct religious discrimination (s.13 EQA)

16.Was the Claimant subject to the treatment set out at 1.3 to 1.9 paragraphs above?

17. If so, was such treatment less favourable treatment than that which was, or would be done to a relative comparator materially the same circumstances as the Claimant? The Claimant relies on a hypothetical comparator.

18. If so, was the reason for the treatment the Claimant's religion? the Claimant is a Christian.

19. In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2), did they take all reasonable steps to prevent the relevant employees from doing that thing or from doing anything of that description?

REMEDY

20.What financial losses has the discrimination caused the Claimant?

21. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

22. Should interest be awarded? How much?

THE HEARING

22. The Claimant, by the time of the hearing, had not filed a witness statement of any substance. Instead, her witness statement simply referred to documents in the bundle. This was surprising given the multiplicity of documents filed by the Claimant in an attempt to broaden her claim repeatedly in the run up to the hearing. I proposed, and Counsel for the First and Second Respondent did not object, that I would take the Claimant to her ET1 form and particulars of claim, filed on 28 July 2021, at the outset of the hearing and in respect of which she could confirm it was true to the best of her knowledge, information and belief, and this would stand as her evidence in chief.

23. The Claimant did not object to this but did make repeated references to giving her 'evidence in chief' and complained in a generalised way that I was somehow restricting her giving her evidence in chief. This is dealt with in detail below.

24. The Claimant gave evidence but did not call any other witnesses.

25. The First and Second Respondent called the following witnesses to give evidence: -

(i) Lewis Masilo.

(ii) Amir Khan, but for reasons set out below, this Tribunal stopped the cross-examination of him by the Claimant shortly after it began.

(iii) Geraldine Willimott, but for reasons set out below the Claimant was prevented by this Tribunal from cross-examining her for reasons set out below.

26. For the Third Respondent a witness statement of Donald Gwindi was filed but he did not attend the hearing. The Third Respondent indicated despite him not being present they could arrange his attendance. For reasons set out below, the Tribunal did not compel Donald Gwindi's attendance.

27. In relation to the Third Respondent's other witnesses, Shepherd Musarurwa and Simbarashe Busumani, they also did not attend.

28. There was a bundle of documents for the hearing that ran to 308 pages.

Day 1 of the Hearing

29. By the time of the hearing the issues were not in dispute and the hearing commenced at 10.00am.

30. Unusually, this hearing was disrupted to an extreme level due to the unreasonable behaviour of the Claimant throughout the hearing, the details of which are now set out. It is necessary to set out these disruptions in great detail as it is relevant to the Orders we made in this hearing.

31. The hearing commenced at 10.00 am and I defined the issues. After setting out the issues the Claimant then objected to giving her evidence first and alleged that Judge Anderson did not advise her that she would be giving evidence first. I advised her that in a discrimination claim Claimants gave evidence first. There was no discernible reason given for why the Claimant objected to giving evidence first.

32. This interaction unfortunately set the tone for the rest of the hearing in that anything that occurred the Claimant would object to whether it was to her disadvantage or not, and she would take it as an opportunity to argue with me and to disrupt the hearing.

33. A protracted discussion then took place about how long Counsel's cross-examination of the Claimant would be. She demanded to know exactly how long it would take and again I explained to her this could not be predicted with any accuracy.

34. The Claimant also objected to the Representative appointed by the First and Second Respondent, Mr Lawrence, Counsel appearing on their behalf. A protracted discussion took place whereby I explained it was a matter for the First and Second Respondent who they instructed and that was not something that she could complain about, nor was she entitled to be given the details of the Brief that he was sent.

35. Prior to adjourning the hearing, it had become apparent that there was somebody in the room with the Claimant and we could hear a male coughing, talking and receiving notifications on a device.

36. Eventually we adjourned after defining the issues at 10.35 am to read the papers and requested that the parties come back at 12.30 am and that cross-examination would continue for half an hour by the Claimant of the First witness of the Respondent, Lewis Masilo until lunchtime, when we would break for lunch.

37. The Third Respondent was not initially present, and Counsel advised that he did not think they were legally represented and had not expected them to turn up at the hearing. I instructed the clerk to telephone the Third Respondents to enquire why they were not at the hearing. During our recess the clerk advised he could not obtain any answer from the Third Respondent, despite phoning them on multiple occasions. I instructed the clerk to ring again and leave a specific message to advise the Third Respondent that there was a hearing taking place

and they must attend if they wished to defend the claim, and to also email them to that effect.

38. Due to the fact that we were still trying to contact the Third Respondent, I advised the clerk during the adjournment to tell the parties that we would restart the hearing at 12.45 pm and not 12.30 as originally intended and I asked him to put a message in the chat box for the parties so that they were aware.

39. At 12.45 am the parties were brought into the CVP hearing room by the clerk. I told the Claimant I could not hear her. She then became audible and began to complain about the hearing starting 15 minutes late and that she should have been advised. She then referred to my statement saying that I hadn't been able to hear her via the CVP screen and she stated, *"I don't believe you".*

40. I gave her a warning that her implication that I was lying about not being able to hear her was a serious allegation to make against a Judge. At this point the Claimant's screen froze and she left the hearing. She then re-entered the hearing.

41. I asked her if she was able to be in a room on her own as we had noticed that there was a male present in the room, and it was distracting the Members and myself. She did not confirm that she had a room she could be present in on her own and connection difficulties continued. At this point in the hearing the Claimant was appearing on the screen twice and she explained that she was now connected to the hearing on two different devices but on one device she could not hear the Tribunal. I confirmed we could hear her, and we would proceed. I then administered the Oath.

42. We then continued to have technological issues. The Claimant reappeared on the screen standing outside on a road under a tree with noisy traffic in the background. I asked her if she was attending the hearing from outside and she confirmed that she was. I asked if she could access the bundle and she confirmed that she couldn't. She then commented on my question about whether she was attending the hearing from the street and said words to the effect that it was making her *"emotionally destructed, and I could be tapdancing in your court room - we must proceed".* It was difficult to follow all she was saying as she spoke very quickly in an agitated manner. The Claimant then froze again on the screen.

43. At this point, Counsel pointed out that this was not going to work, that he could not cross-examine her when she was outside in the street, and with no access to the bundle and that she had to relocate with a PC and a secure connection to take part in the hearing so as to access the bundle peacefully. It was agreed at this point that the hearing would break for lunch, and we would start at 1.45 pm. I ordered the Claimant that she had to attend from a room with internet access and that she could not attend the hearing from the street. I then adjourned the hearing at 1.05.

44. The hearing then recommenced around 12.48 and an interpreter was now present on the screen. He introduced himself as Sammuel Olumoyegun. I explained that we may not need him. I said this because the Claimant had been

communicating in excellent English. He had attended due to my request for an interpreter in advance of the hearing in the event one was needed. At this point the Claimant's name was on the screen but we could not see or hear her. After further delay I then told the interpreter he was not required, as at no point had the Claimant referred to the need for an interpreter.

45. A further delay occurred because we could not still hear the Claimant or see her. I stated to Counsel that we may have to adjourn until 10.00 am tomorrow because of the IT difficulties. The Claimant then appeared but she was on mute, and we still couldn't hear her.

46. Counsel stated he had no objection to an adjournment to the following day but that if she failed to engage properly in the hearing, he would make a submission her conduct was unreasonable and make applications. I asked him to clarify what his applications would be.

47. He stated they would be applying for a strike out of Claimant's claims and that this would be on the grounds of her unreasonable behaviour and in particular that her conduct to the Employment Tribunal i.e., other Judges, and to me, as the Employment Tribunal Judge, were outrageous, and he would deal with this when he made the application.

48. At this point the Member, Mr Allen, who was attending remotely, whereas I was in court and not connected on my laptop to the hearing and so could not see the chat box and only the court screen, stated that the Claimant had typed something into the chat box. I was not able to read the chat box during the hearing for technological reasons. I commented I would not in any event engage with the Claimant via the chat box, but the Member stated he thought I should know what it said, and so I asked him to read it, which he did, and he read as follows:

"I don't know what the Judge said before now, what is R responding to - this is racism in the fact of the Court – I need to give my evidence - my data and network is intact – I can hear you all – how come you cannot hear me – how come you cannot read my chats".

49. Shortly after this, the Claimant then appeared again on a street under the tree. I gave the decision of the Tribunal that we would not allow the Claimant to carry on appearing in the hearing from a street. I said I could not conduct a fair hearing in accordance with Rule 2 of the Employment Tribunal Rules of Procedure 2013.

50. While I tried to read out my decision, the Claimant interrupted me and tried to shout over me. I told her not to shout over me. She ignored me and shouted over me again and again and I told her not to shout over me. I referred to not being able to conduct a fair hearing whilst the Claimant tried to give evidence standing in the street, and I also referred to the Claimant accusing me of lying today when I said I couldn't hear her via CVP.

51. I also referred to her comments about other Judges and in particular, Judge Zimuto-Gimbuto, who she said at one Case Management Hearing, as recorded in the case management summary of Judge Anderson, had talked *"piss and*

poppycock" and was a racist, and that she had called Judge Anderson a racist and that she had now said this court was racist. Whilst I was speaking and referred to not allowing her to give evidence standing in the street, she interrupted me to say, "I am not standing Judge, I am sitting". This type of interaction with the Claimant was typical of her conduct in the hearing where she would respond to anything said to her and make inflammatory argumentative remarks.

52. I reminded her that I was the Judge in charge of the hearing, the hearing ran according to my decisions, and we were not hearing evidence from her in the street. I also warned the Claimant again her conduct was unreasonable, and she put herself at risk of a costs order and/or at a risk of her claim being struck out and this warning was given in relation to her constant interruptions and arguing and trying to attend a court hearing from a noisy street.

53. I ordered her to attend in person in the Cambridge employment tribunal the next day or that she could attend from a room that had access to an internet, but she must ensure that she had access to the bundle for cross-examination purposes.

54. The hearing was adjourned at 1.50 pm until the following day at 10.00 am. The Claimant was sent by email the order of this Tribunal on 30 October 2023 adjourning the hearing until the next day, and it ended by warning her that her conduct at the hearing had been unreasonable and that she put herself at risk of her claim being struck out and/ a costs order in favour of the Respondent.

Day 2 of the Hearing

55. The hearing recommenced at 10.00 am the next day but there were connection problems, not just for the Claimant but with the Third Respondent who was now appearing by Mr Busumani, one of their Directors. Eventually, at 10.15 am, everybody was on screen.

56. Once again, initially we could not hear the Claimant and she had connected with two devices again. Once we could hear her, I took the Claimant to the ET1 form and her Particulars of Claim and asked her to make a statement of truth about them due to the absence of a detailed witness statement. This was not objected to by Counsel for the First and Second Respondents.

57. I was then referred by Counsel for the Respondents to an email that the Claimant had sent to the Tribunal and the Respondents the day before. He said it was very lengthy. At this point I had not had the email sent to me. I therefore took a short adjournment for ten minutes to read the email and discuss it with my Members.

58. I don't repeat the entirety of its contents but there were comments about her problems connecting to the hearing. She complained that she had only been given 30 minutes for her examination in chief. She complained about the Respondent's change of Counsel for the sixth time. She sought to defend her statement to me that she didn't believe me when I said I couldn't hear her. She then alleged that I had instructed her to swear by the Bible at the risk of being

'levied with costs.' At no point did I refer to costs when asking her to take the Oath.

59. She also complained that there was someone present during the afternoon of the first day who was an interpreter but who had been told by me that he was not required. The Claimant asserted in her email that her choice of wishing to address the Court in her original language arose from the fact the previous Employment Judge had not been able to hear her. She complained that I had dismissed the interpreter, and that she had expressed a need for the interpreter to be on standby. She asked that the interpreter be brought in for "precautionary measures".

60. It became clear that the email was simply a complaint about this Tribunal's conduct of the hearing, but it did typify her behaviour in that she would seize on anything that happened during the hearing and try and use it to her advantage and escalate complaints unnecessarily thereby wasting Tribunal time and disrupting the hearing.

61. Following the adjournment, we tried to reconnect everybody to the hearing but once again, the Claimant was not present in the hearing. The Claimant then re-joined at 10.41 am. Unfortunately, Counsel was then not present, and we waited for him to appear. Mr Busumani of the Third Respondent was now present. Technical issues then occurred with Mr Busumani not being able to speak and he had to leave the hearing and reconnect. Counsel then re-joined the hearing at 10.45 am, apologising that there had been an emergency of some sort from where he was conducting the hearing. Once again, we could not hear the Claimant but then her voice then became audible.

62. I told her that I had read her email to the Tribunal yesterday and I had seen reference to various complaints that she could raise separately after the hearing. I said I would not discuss in detail with her the matters she alleged about me as the Judge of the hearing, but I was doing my best to give her a fair hearing.

63. I then clarified that Judge Anderson at the last preliminary hearing had stated that, although an interpreter was there, he hadn't been used and when he did try and interpret the Claimant spoke over him, and that one was not required, and as the interpreter hadn't turned up until yesterday afternoon and nor did she refer to wishing to have an interpreter present, I had taken the decision when the interpreter arrived to say that we didn't need him.

64. I asked her, if she wished to give evidence in Yoruba with an interpreter present. but I could not get a clear answer from the Claimant. She said it was a precautionary measure. She said that if she was asked the same question more than once she could become emotionally distressed and would want to speak in her "biological mother tongue". She said that "if push comes to shove", I might suddenly speak my language.

65. I pointed out that we didn't have an interpreter in the hearing, but I would make enquiries, but the likelihood was that we would not have an interpreter now until the next day. I asked Counsel to comment on the issue of an interpreter. He said he understood she was saying that she wanted an interpreter as a

precaution. He said on day two we had made no progress with this case. He said an Employment Judge had already looked at this issue of the interpreter and she could speak English perfectly well. He said he did not think an interpreter would be of assistance to this Employment Tribunal.

66. After discussing it with my Members, I stated that if the Claimant wanted an interpreter, she must have one and we must arrange for one, however inconvenient.

67. There was a then a short discussion about Counsel's intended application to strike out the Claimant's claim on the grounds of her unreasonable conduct of the claim and in this hearing, and also to apply for costs against her and it was agreed that would take place on the morning of day three of the hearing as we needed to get on with the Claimant's cross-examination that day.

68. I then asked everybody to go into the waiting room and to re-join the hearing at 12.00 whilst I made further enquiries about an interpreter. Counsel raised an issue that one of his witnesses, Lewis, was only available from 12.00 until 3.00 today and a discussion took place about his evidence being interposed and the Claimant cross-examining him that afternoon.

69. Once again, the Claimant said she wished to have an interpreter present in case she decided to speak her language. However, she went on to say that she wanted to get on with the cross-examination of her by the Respondents and, for the record, she would start now. I sought to clarify that she meant without an interpreter, and she confirmed she wished to proceed without an interpreter.

70. At this point it was ten past eleven in the morning and we then proceeded, despite the Claimant further disconnecting from the hearing and re-joining for cross-examination at 11.10 am.

71. Prior to cross-examination the Claimant asked again about giving her evidence in chief. She appeared to want to want to give evidence orally and address the court without reference to any detailed witness statement or document. I had already explained to her twice that because she hadn't filed a witness statement with any content in it, we would be taking her to the ET1 and particulars of claim, as her evidence in chief, and that we didn't need her to read it out and that she would be cross-examined.

72. I asked Counsel if he objected to the Claimant making an additional oral statement. Counsel objected, He stated that he had already been lenient in not objecting to this Tribunal taking her ET1 form and attached Particulars of Claim as her evidence in chief. He said we had a coherent particular of claim.

73. After a further protracted discussion where the Claimant intimated that I was stopping her giving her evidence in chief, I ordered that upon the Claimant confirming the ET1 and its attachment was true to the best of her knowledge information and belief that cross-examination would commence.

74. The Claimant then told us that her computer was updating. This was at 11.19 am. The Court waited until 11.25 am and cross-examination finally commenced.

At this point the Claimant confirmed her ET1, and Particulars of Claim were true to the best of her knowledge information and belief,

75. By the time cross-examination started at 11.30, we had lost the whole afternoon of day one, and half of the morning of day two of the hearing due to the Claimant's frequent interjections, arguments, and disappearing from the hearing and re-joining, including trying to give evidence from the street. Counsels' cross-examination on behalf of the First and Second Respondents finished at 12.50 am.

76. I explained to the Claimant we were breaking for a very short lunchbreak until 1.30 and that she would cross-examine the First and Second Respondent's witness, Lewis Masilo for one and a half hours until 3.00 pm, prior to her cross-examination by the Third Respondent. Once again, she objected to my direction on this and stated she wanted to be cross-examined by the Third Respondent immediately and did not want Lewis Masilo's evidence interposed.

77. Mr Busumani, on behalf of the Third Respondent said he was not yet ready to cross-examine the Claimant in any event as he thought the Claimant would be cross-examining the First and Second Respondents witness, Mr Masilo, after lunch, as I had ordered.

78. After hearing from the Claimant, who objected to the interposition of Mr Masilo's evidence, I ordered we would break now for lunch and that she would be cross-examining Lewis Masilo as ordered at 1.30 pm. I also ordered that cross-examination of her by Mr Busumani would then take place from 3.00 pm until 4.00 pm.

79. The hearing then adjourned at 12.55 for 35 minutes. At 1.30 we recommenced the hearing.

80. Throughout the cross-examination, if I interjected to ask her to repeat the question she had just asked, or to put a question instead of making a long statement, the Claimant would complain and shout vociferously over me and complain that I was interrupting her cross-examination. I reminded her I was the Judge and, as the Judge of this Court, I ran it according to the Rules of Procedure 2013 and that, at any point, I could ask a clarification question.

81. The Claimant frequently asked the witness a question and then, when he tried to reply, shouted over him. I interrupted on various occasions and ordered her to let the witness answer the question and not to shout over him when he attempted to answer. In response, the Claimant stated to me "you attack me".

82. When I interjected at a further point in her cross examination she shouted over me once again, and I reminded her the Respondent was making a costs application against her because of her unreasonable conduct and shouting over a Judge, refusing to let a Judge speak to her was unreasonable conduct. I reminded her I was in charge of the Court and that she was shouting over me and witnesses and refusing to allow them to answer,

83. At this point the Claimant reacted by saying the 'Judge is interjecting on me – Judge is threatening me every time with costs – this is not my country.' I tried to

reply but she reacted by shouting over me *"Jesus Christ".* I warned her that she was now swearing in my court room, and this was more unreasonable behaviour. At this point I called a break after only half an hour into the hearing for ten minutes to allow for the Claimant to calm down. It was now around 2.05 pm.

84. The hearing recommenced at 2.20 pm. I gave the Claimant another warning about her conduct. I said she had been extremely rude and disrespectful to this court and to myself and that every time she behaved in this manner by interrupting me or shouting over me, that she increased the risk of a costs order or a strike out of her claim by this Tribunal the following morning when the Respondent made its application for a strike out and/or costs. I warned her the costs order could be many thousands of pounds.

85. Shortly after the warning was given, the Claimant's started speaking over the witness and shouting over him again. I ordered her to "stop shouting over the witness, desist from doing that". The Claimant ignored me while I was speaking to her and shouted over both me and the witness, defying the order I had made.

86. Once again, not long after this interjection, I had to interject again, and I warned her once more about costs and strike out and about not letting witnesses answer the question. The Claimant refused to take any notice of my warning and continued to shout over the witness when he tried to answer a question put to him. The witness asked if she would allow him to answer, and I intervened once more and told her to allow the witness to answer. She laughed in response, yet again showing contempt to this Tribunal as she had throughout the hearing. At around 2.40 pm I had to warn her again to let the witness answer.

87. Cross-examination of Mr Masilo then finished, and we took a short 10-minute break from 2.55 pm to 3.05 pm.

88. The Claimant was called again to give evidence and to be cross-examined by the Third Respondent. I administered the Oath once more and noticed that when I read out the words on the Oath card for swearing on the Bible, that the Claimant deliberately refused to repeat the correct words and changed them.

89. In particular I asked her to repeat the words "I swear by almighty God" and she replied, "I swear by the highest god". When I asked her to say that the evidence that she would give would be "the truth and the whole truth", she repeated "is all the truth". When I asked her to say, "nothing but the truth", she repeated "nothing less than the truth and so help me God". The Claimant once again showed deliberate contempt to this Court to the extent she would not even repeat the words of the Oath correctly.

90. In the event, the Third Respondent's cross-examination of the Claimant by Mr Busumani finished at 3.20 pm. It had been a very long and complicated day with only a short break taken for lunch and so it was decided that the hearing would finish at 3.25 pm and the hearing would recommence at 10.00 am the following morning.

Day 3 of the Hearing

91. On the Third day of the hearing, we commenced at 10.05 am. I told the Claimant that the interpreter was arriving today but was not yet here and would not be arriving until 11.30 am. I gave the Claimant a choice of carrying on without an interpreter or to wait. I told her that the first matter we would be dealing with was the Respondent's application for a strike out and costs and asked specifically if she wanted an interpreter to assist her. She then stated that she spoke English and typed in English and that "when I am speaking you pretend not to hear me". I pointed out to her that this was the second time she had accused me of lying about not being able to hear her. The Claimant sought to defend herself by saying she meant the Tribunal who she referred to as the 'corporation aggregate' and not me personally as the Judge. This made no sense as it was myself that had stated on occasion, we couldn't hear her, and it was to me to whom she responded when she said she did not believe me.

92. I asked again whether she wanted an interpreter there or not and she said that if she felt prejudiced, she would speak in her own language. I said I took that as confirmation she wanted to wait for an interpreter. She said it was up to me. Once again, I discussed the issue of the interpreter with Counsel, and he said she did not need one. He said she had equivocated once again about the need for an interpreter, and it was simply not clear what she was saying and that we should continue with the hearing.

93. I asked her once more if she wanted an interpreter or not and I asked her to give me a yes or no answer. She replied by saying, we could go ahead without one, but she would speak her language if she needed to. I replied that she could not speak her language in this Court without an interpreter.

94. We then decided that as she had no difficulty understanding English that we would go ahead with the Respondent's application for a strike out and/or costs order against her and that once they had made their application, if she still wished to address us in her original language, then we would wait for the interpreter to attend.

95. After this discussion, Counsel then advised that the First and Second Respondent were withdrawing their application for a strike out because the witnesses wished to have findings of fact as they wished to *'clear their names.'* He stated an application for costs would be made in the normal way during submissions. He indicated that the costs were in the region of £10,000.00 to £14,000.00 but he was waiting for a detailed spreadsheet from his instructing solicitor.

96. The Claimant then asked if we had read the email that she had sent to the Employment Tribunal before 10.00 am that day. I confirmed that we had read it. In short, the email complained alleging a gross miscarriage of justice and that she did not feel safe with *'this kind of courtroom practice.'* That email was sent at 9.09 on Wednesday 1 November.

97. It should be noted that many emails of complaint were sent by the Claimant throughout the hearing, and they are too numerous to recite in detail in this Judgment.

98. However, and in particular we received a second email from the Claimant at 9.52 am on the 1 November 2023 where she complained about various matters but which ended with a quote from an 'unknown/anonymous person,' which stated that: -

"a corrupt doctor can still save lives. But a corrupt Judge is more useless than a wizened limb or tasteless salt. He is useless to himself and the society".

I noted at this point in the hearing that the Claimant was accusing me of being a corrupt Judge.

99. The Claimant went on in the hearing to complain about having to proceed now with cross-examination of the next witness of the First and Second Respondent, Mr Amir Khan. She said she thought she would be defending the strike out application and that she wasn't prepared for her cross-examination. She then referred to asking specifically the day before about the order of witnesses and she said, *"jungle justice is prevailing".* She then stated she wanted the Respondents to disclose a photograph of the corridor leading to the big lounge and the dining room in the Second Respondents premises.

100. I suggested that the Claimant be given until 12.00 noon that day to prepare her cross-examination of Mr Khan and Miss Willimott. Counsel stated that he thought that was too long and that it would mean this hearing would not finish today, as he had hoped it would.

101. Having heard from Counsel I ordered that the Claimant be given an hour and a half to prepare her cross-examination and that we adjourn to allow the Claimant to have this time.

102. We then dealt with the Claimant's application for specific disclosure of a photograph of the corridor. Counsel objected and said it was a disproportionate request made far too late in the day and it was not entirely clear why it would be evidentially probative.

103. This Tribunal noted that the Claimant had attended three Preliminary Hearings and only now, on day three of the hearing, was she requesting disclosure of a photograph. It was not clear to us that a photograph even existed, and she seemed to be demanding the creation of evidence during the Third day of the Tribunal hearing. We considered the Claimant's application for specific disclosure and then refused it on the grounds it was not proportionate to the issues in dispute, and also on the grounds that it was not clear the photograph existed.

104. The Claimant referred to not being able to access the witness statements in the bundle and this was the first time she had raised this, even though she had conducted her cross-examination of one witness the day before. I therefore

arranged for a link for the bundle to be sent to her and confirmed that our links to the witness statement bundle all worked.

105. The hearing then adjourned at 10.22 and I ordered that we recommence in an hour and a half time at 12.10. The Claimant then tried to re-enter the hearing room and speak to me but as the other parties had left, I spoke over her and said I could not hear from her when the other parties were not in the room, and she was then disconnected from the hearing.

106. At 12.10 we recommenced the hearing. When we recommenced the hearing, Sammuel Olumoyegun the interpreter, was present. I directed that the interpreter remains in the hearing in the event that he was needed.

107. I reiterated once more why the specific disclosure request was rejected and the Claimant began to argue with me. I told her not to interrupt me, that it was not being reconsidered, I was simply clarifying before we proceeded, the basis of the decision. She responded by shouting over me *that "I know the court is not in my favour, I am a bold Nigerian lady"* and that she had another application to make. She then stated that she wanted a witness order to be issued for Donald Gwindi, who was a witness for the Third Respondent, but who, despite a witness statement being filed was not present at the hearing.

108. Counsel stated that whilst it was not the First and Second Respondent's witness that he did not see why the Third Respondent's witness, who they had not called, should be compelled to come to court. The Claimant persisted in shouting over me when I was trying to discuss the matter with Counsel.

109. Once again, I warned her that she was not to speak over myself and other people in my Tribunal and that I would come back to her and hear what she had to say further in a moment.

110. Counsel said it was not a coincidence that on the morning the Respondent decided not to make an application for strike out, she now came forward with a plethora of applications and that they were made too late and there was no compelling reason for a witness order.

111. I commented that it was not normal for a Tribunal to issue witness orders for the purposes of one party to cross-examine them. Witness orders were made when a party's own witness was not able to or could not attend without a witness order.

112. I then heard from Mr Busumani about whether they intended to call Donald Gwindi, their witness, to the hearing. I also asked whether he was intending to give any evidence although we did not have a witness statement from him. I asked him this because the Claimant had said, if Mr Busumani wanted to give evidence, she would not insist on Mr Gwindi being called. He said he was happy to be cross-examined by the Claimant.

113. In the absence of a witness statement, we concluded that Mr Gwindi could simply confirm that the contents of the ET3 filed on behalf of the Third Respondent were true and the Claimant could cross-examine him on that, as had occurred in relation to the lack of a witness statement from the Claimant.

114. I asked the Claimant, now that Mr Busumani had said he was happy to be cross-examined, whether she was still asking for a witness order from Mr Gwindi or not. She referred once more to the statements in the witness statement bundle not being accessible but did not reply to my specific question about her application for a witness order for Mr Gwindi.

115. Further connection problems occurred. Eventually, everybody re-joined the hearing. The Claimant then asked us to 'expunge' the witness statement of Donald Gwindi from the records. I explained that we did not need to do so. I attempted to clarify once more whether she wanted a witness order for Mr Gwindi or not. She replied and simply referred to simply cross-examining Mr Busumani the representative of the Third Respondent.

116. After retiring we advised the Claimant that we were not issuing a witness order for Donald Gwindi and it was a matter for the Respondent who they called as a witness, and that her application for a witness order was refused.

117. The Claimant continued to argue with me about the Tribunal's decision and I reminded her that, whether she agreed with me or not, I was the Judge in charge of the proceedings and I did not enter into debates or arguments with parties and that the time lost in this hearing, by the time of day three, was entirely down to the way she had conducted these proceedings and I would not have any more time of the Tribunal wasted. I said we would now take lunch until 1.50 pm.

118. The Claimant refused to accept my decision at this point saying that she wanted to proceed with her cross-examination now and continued to argue with me. I reminded her once again that she would be doing her cross-examination when the hearing commenced at 1.50 pm and she was not to argue with me as I was the Judge. I suggested to her that she show more respect to this Tribunal. I instructed the Court Clerk to disconnect all parties from the hearing to end the argument.

119. Eventually, the hearing recommenced at 2.00 pm due to some connection difficulties. We then had some IT issues which were fixed by the Court Clerk.

120. I advised the Claimant that under Rule 45 of the Employment Tribunal Rules of Procedure we were limiting the Claimant's cross examination of the three remaining witnesses of up to one hour each and that we would sit until 5.15 pm so that her cross-examination of the Respondents witnesses could conclude at the end of day 3 of the hearing.

121. I went on to give the Claimant a warning. I stated that just because the Respondents had withdrawn their strike out application of her claim, which did not mean that this Tribunal could not, of our own volition, strike out her claim.

122. While I tried to explain this to her she interrupted me and shouted over me. I told her to stop interrupting me and shouting over me, and not to treat everything I said as an opportunity to have an argument with me and that she would wait until I had finished speaking and this was my final warning to her about a strike out by this Tribunal.

123. At this point in the hearing the Claimant had been given approximately seven warnings about her behaviour during the hearing and all had been ignored. Her behaviour had been unruly, unreasonable, vexatious and disruptive, and by this point in time we had lost about half of the time allotted to the hearing due to her frequent disconnections from the hearing, trying to give evidence from a street, and arguing and interrupting myself, and Counsel.

124. I warned her that if we did consider striking out, it would be because of her disrespectful and unreasonable behaviour where she repeatedly showed contempt to this court, and due to her unreasonable conduct of the proceedings. I said, if we decided to consider striking out her claim, she would be given an opportunity to address us as to why we shouldn't and we would then retire and make a decision. I told her that there had been unreasonable, vexatious and disruptive behaviour and that we would have to consider whether a fair trial was possible within the trial window and that evidence had to finish by the end of today because day four was for us to hear closing submissions and then we would be sitting as a Tribunal to consider our decision for the rest of the day.

125. I then told the Third Respondent it was for them who they decided to call as a witness as we had received an email saying they could still call Mr Gwindi. I said that I realised they were not legally represented but that if Mr Busumani wished to give evidence, I would simply take him to the ET3 filed by the Third Respondent and ask him to confirm that its contents were true, and he could be cross-examined on that.

126. Mr Amir Khan was then called by the First and Second Respondent as their second witness and he took the Oath. By this time, it was 2.20 pm and I told the Claimant that she had one hour until 3.20 pm to cross-examine Mr Khan.

127. Further connection problems ensued at around 14.30 pm. The Claimant asked him a question and when he tried to answer she shouted over him. I intervened and said, "let the witness answer". She responded by shouting out "Jesus Christ". I responded by saying her behaviour was appalling and I was giving her a final warning about her blaspheming in Court. She replied very loudly "Jesus", again defying me once more.

128. Further questions were put to Mr Khan but every time he tried to answer she shouted over him. I intervened and said, "stop shouting over him, let him answer", but she responded by shouting over me and the witness.

129. At this point in the hearing, I ordered the Claimant to stop speaking and I told the witness not to answer the question. The Claimant shouted out once more, "Jesus". I told her that we were now moving to consider a strike out on her claim.

130. I reminded the Claimant of the law on strike out and the four-stage test that we had to apply. I referred to the case law in this area. I referred to Rule 37(1)(b), and her unreasonable conduct of the proceedings, and that this covered where litigants were unruly and disruptive. I referred to the test of whether a fair trial was possible within the current trial window. I stated we should have finished the evidence by today, but we had not been able to do so because the Claimant had behaved in a disruptive, vexatious and unreasonable manner.

131. I said in addition that she had not only insulted this court, and implied I was lying when I said I could not hear her on two occasions, but she had called the previous Judges racists, and had called this court racist. I also referred to the fact that she had referred to this court being a "jungle court".

132. The Claimant disconnected. I told the clerk to tell her that if she didn't dial back in, we would retire to consider strike out without hearing from her. At 14.36 pm the Claimant re-joined the hearing. I repeated what I had said before she disconnected as she claimed she had not been able to hear what I said.

133. I repeated the case law on strike out applications. I referred to the misconduct in our court and her reference to her being able to give evidence in this court 'whilst tapdancing' if she chose to, and that she had disrupted the proceedings and refused to follow my instructions on allowing witnesses to answer. I referred to the fact that every time I said something to her she would commence an argument with me and that she had shown contempt to this court, calling it a 'jungle court'. I referred to her stating she didn't believe me when I said we couldn't hear her on two occasions. I said she had ten minutes to address the Court until 2.45 to tell us why we shouldn't strike out her claim and then I would hear from Counsel.

134. It was difficult to understand the Claimant because she spoke at speed. She said her email referred to 'jungle justice' but this did not mean 'jungle court'. She said shouting out "Jesus" wasn't swearing. She said she had not caused any delay. She said her references to other Judges being racist should not be relevant. She denied saying this Tribunal was racist despite what she had put in the chat box, earlier in this hearing. She said, "I need to be able to pay my bills". She referred to "I need to guide the Respondent's witnesses". She referred to her post-traumatic stress disorder and being assaulted as a child when she was six. She said she did not say "jungle court" but "jungle justice". She ended her submissions to me by shouting out "Jesus Christ".

135. Counsel then addressed us setting out that, in his recollection, she did utter the words "jungle court" in the hearing today. He said we had already listed the instances of her unreasonable conduct. He reminded the Tribunal that she had also called Judge Mason a "racist" and referred us to page 256 of the bundle. He pointed out that at no point had the Claimant withdrawn her accusations against the Employment Tribunal that it was racist and that she said it in her email to the Tribunal this morning. He remarked that the email about corrupt Judges was obviously directed at me as the Judge.

136. Counsel referred us to case law and in particular *De Keyser Limited v Wilson [2001] IRLR 324, EAT*. He also referred to *Bolch v Chapman [2004] – IRLR140, EAT,* and paragraph 55 which reminded us of the four-stage test to be applied when considering whether to strike out a claim, which were as follows: -

    (i) Whether there was scandalous and vexatious conduct?
    (ii) Whether a fair trial was no longer possible?
    (iii) Whether strike out was proportionate?
    (iv) If the claim was struck out what were the consequences?

137. He also referred to her intimidation of the witnesses due to her style of cross-examination. He said part of her conduct was the constant interrupting and talking over of everyone in court. He put it that she talked to people for the purpose not of making a point but to control the dynamic of the conversation and that she was intent on controlling every conversation and could not listen and that her style of communication was simply to make the other person listen rather than interacting with them.

138. He went on to refer to the case of *Edmondson v BMI Health Care [2002] EAT* as in that case the Claimant lay Representative behaved disruptively throughout the case, levelled insults at the other Representatives and interfered with the evidence. He said in that case the claim was struck out based on conduct, which included interference and insults during the hearing.

139. He referred to further comments that would be made at costs stage when he made the submissions. However, he said the witnesses of the Respondent were innocent people who did fantastic things in their day to day lives and did not deserve this ordeal. The Respondents witnesses were a doctor, a mental health nurse, and an employee of the Third Respondent who supplied agency staff to secure homes for mentally unwell people.

140. Mr Busumani, on behalf of the Third Respondent, pointed out they were a small family run business and had spent an enormous amount of time having to deal with the Claimant. They submitted it had taken its toll and had an impact on them as a business. He said that some of the things she had submitted today such as paying her in cash had the potential to cause reputational damage and that their system is completely automated, and they had never paid her in cash.

141. This Tribunal then adjourned to consider striking out the Claimant's claims of our own volition. We adjourned at around 3.00 pm until 4.00 pm that day.

Decision on Strike out of the Claimant's claims pursuant to s.37(b)

142. We then returned to deliver our decision. I started my oral judgment by expressing my utter dismay at the contempt shown to this Tribunal by this Claimant and I gave a summary of how she had behaved which I don't repeat in full but gave the following examples of her unreasonable conduct of the proceedings: -

    142.1 By way of background the Claimant had tried to amend her claim multiple times, causing three Preliminary Hearings to take place.

    142.2 The Claimant appeared in front of Judge Gumbiti-Zimuto, and said he talked "piss and poppycock" and was a "racist". She said Judge Mason was a "racist" at the hearing on 26 May. She appeared before Judge Anderson and said she was "racist to Nigerians". She had also accused this Tribunal of racism towards her.

142.3 On day one of this hearing the Claimant started off as she meant to go on; argumentative and unreasonable about there being a new Representative for the Respondent and I had had to tell her twice that they didn't have to explain why they had instructed a new Representative for the hearing in place of Catherine Meenan.

142.4 The Claimant launched into a tirade about the lateness of the hearing, and about there being no explanation of why the hearing had started late after an adjournment and when I said at one point that I couldn't hear her she said, "I don't believe you".

142.5 The Claimant appeared under a tree on the street, and I asked her if she was giving evidence from the street and she replied with words to the effect of "you're making me unsettled, you're getting me emotionally destructed. What's it matter whether I am outside or tap dancing in your court? We should proceed".

142.6 The Claimant then later typed into the chat box:

"I don't know what the Judge said before now, what is the Respondent responding to? This is racism in the face of the court. I need to give evidence. My data in my network is intact. I can hear you all, how come you cannot hear me, how come you cannot hear me, how come you cannot read my chats."

142.7 The Claimant ignored all my instructions not to interrupt me when I was speaking and shouted over me, Counsel, and witnesses for three days.

142.8 I referred to her previous comments about other Judges being racist from Judge Zimuto talking *"piss and poppycock"* and whilst I was delivering my judgments, she interjected when I referred to her giving evidence standing outside on the street, *"I am not standing in the street Judge, I am sitting",* which gives an indication of the level of belligerence and the obstructive nature of this Claimant, who takes delight and pleasure in being confrontational and aggressive to Judges and to this Tribunal.

142.9 I gave several warnings that her conduct was unreasonable, and she put herself at risk of a cost order or strike out.

142.10 I also noted, when she was sworn in for the second time that when I asked her to repeat the words on the Oath card, she deliberately changed the words slightly, and did so deliberately in our judgment to show further contempt to this Court.

142.11 She showed continuous contempt for this Court throughout, pulling faces at me when I spoke, as noted by my Members, laughing at witnesses answers, when I spoke she would interrupt me and shout over me and she continually refused to take direction from me on procedure and then would accuse me of putting her off at cross-examination when I told her not to stop

witnesses answering questions she had asked. The Claimant shouted out, *"Jesus Christ"* when I reprimanded her for her behaviour and took a short adjournment.

142.12 There were numerous examples of her unreasonable behaviour such as referring to a "jungle court" and "jungle justice". In particular, she sent an email to this court where, in the final paragraph of the email, she said:

> *"A quote from an unknown, anonymous person:*
>
> *"A corrupt doctor can still save lives, but a corrupt judge is more useless than a wizened limb or a tasteless salt, he is useless to himself and the society".*

The Claimant knew very well, there was only one Judge on this Tribunal, and that was me, and that was a clear intended reference to me being corrupt.

142.13 Her cross-examination of the Claimant's witnesses was extremely aggressive, in that she would ask a question and shout over them as they tried to answer. When I intervened to order with words to the effect of *"let them answer, desist from shouting over them",* she would shout over me too. She was given numerous warnings by me about her conduct, she took no note of what I said and continued with her unruly and disgraceful conduct.

143. I said we had no doubt that the first limb of the test had been satisfied, in that there had been scandalous, unreasonable and vexatious conduct that amounted to an abuse of the Tribunal's process.

144. In *James v Blockbuster Entertainment Ltd [2006] All ER (D) 360* it said that as to unreasonable conduct, tribunals should have broad shoulders and the Courts and Tribunals of this country are open to the difficult, as well as the compliant, so long as they do not conduct their case unreasonably. However in this case it could not be said about the Claimant that she had conducted her case reasonably, and I stated that it had been unreasonable to a level that, before I heard this case, it would have been difficult to imagine.

145. It was clear to us under Rule 37(1)(b), and we found, that the definition of scandalous, unreasonable and vexatious conduct had been met by this Claimant, in that she had shown deliberate contempt to this Tribunal and to me, as a Judge, and which had been visited on the other three Judges on previous occasions and that it was not simply about the way she had treated this Tribunal and previous Judges or me, but that, it was the way in which she had tried to intimidate the witnesses in the way she cross-examined them and refused to allow them to reply, instead shouting over them. As Counsel very astutely remarked:

> *"This is a Claimant who will not be spoken to by anybody and has to be in complete control of any interaction and in order to achieve that goal she will shout over the person she is speaking to and who is trying to reply to her and*

this behaviour has been endemic in every interaction with witnesses in this Tribunal and she seems to take pleasure in showing contempt for the rules of this Court and this Tribunal and she showed that contempt to this Tribunal, to myself, Counsel and to the witness that gave evidence".

146. The case of *Blockbuster* set out a four-stage test. The first stage of the test was where there had been scandalous, unreasonable, vexatious conduct of the proceedings and we concluded there had been.

147. The second stage is whether a fair trial is no longer possible, and we had regard to that being whether a fair trial is possible within this trial window and the trial window in this case, of course, concluded tomorrow. We needed evidence to have concluded by today, with closing submissions tomorrow, so that tomorrow we could consider our findings and make findings of fact. We did not consider that a fair trial was possible within this trial window. Evidence could not be concluded today in terms of the Claimant cross-examining the witnesses – it was now ten past four.

148. She had been given a warning on Day 3, that any further unreasonable behaviour from her would result in us, of our own volition, considering a strike out and despite that warning her unreasonable behaviour towards this Court and the witnesses continued, and when we adjourned to say that we were going to consider a strikeout, she shouted "Jesus Christ" in the Court. She had been warned not to blaspheme in this Court and she deliberately ignored it. As it would not be possible for cross-examination of the remaining two witnesses of the first and second Respondents and a witness for the third Respondent to be concluded within the trial window and then to allow for findings of fact by this Tribunal, we concluded a fair trial, within the trial window was no longer possible.

149. The third part of the test was that if we concluded a fair trial was no longer possible in this trial window, we must consider whether strike out of the Claimant's claim would be a proportionate response to the conduct in question and we considered this in detail.

150. Even though we reached the conclusion that a strike out would be a proportionate response to the conduct in question, having regard to the extreme contempt that this Claimant had shown to this Court and, no matter that she had several warnings from me that she refused to take heed of and refused to show any respect to the Tribunal and would not allow me to guide her on how she must allow witnesses to answer her questions, and that she must not shout over me or witnesses, and despite the fact we concluded a fair trial could not take place in this trial window, we did go on to consider what the consequences of strike out would be and this is the fourth stage of the test.

151. In relation to the consequences of striking out we did not think it was within the interest of justice when three days of a four-day hearing had taken place to simply strike out the claim, even though we found it would be a proportionate response to the Claimant's quite frankly appalling conduct. We found that the proportionate response, instead of striking out, would be to order the Claimant

may not conduct any further cross-examination of any of the Respondent's witnesses, and that instead we would attach weight to the witness statements filed in coming to our judgment, and that in doing this that would enable a fair trial to take place in the trial window as it would prevent the Claimant from further disrupting the court hearing and her attempts to intimidate witnesses on cross-examination.

152. We found that while it is not the usual course of a Tribunal, and the normal rule is that witnesses must be cross-examined, in circumstances where the Claimant prevented a fair trial from taking place due to her conduct, within the trial window, then in accordance with the overriding objective and in the interests of justice, and taking into account what the consequences of strike out would be, which would be the Respondents witnesses would not get their findings of fact that they wished this Tribunal to deliver, we decided that we would proceed straight to closing submissions at 10.00 am, and that the Claimant would be debarred from further cross-examination of any witnesses.

153. In making this decision we had regard to Rule 2 of the 2013 Rules of Procedure, which gives effect to the overriding objective, and which enables us to deal with this case fairly and justly. We also had regard to Rule 29 which entitled us on my own initiative to make a case management order, and in effect our decision to prevent further cross-examination by the Claimant of the Respondents witnesses was an exercise of this Tribunals case management powers.

154. We also had regard to Rule 41 which states that a Tribunal may regulate its own procedure and that we may conduct the hearing in a manner we considered fair, having regard to the principles in the overriding objective. Rule 41 also provided that this Tribunal was not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts, and so this enabled this Tribunal to attach weight to the remaining witness evidence of the witnesses for all the Respondents despite the fact we were stopping further cross-examination of them by the Claimant.

155. Finally, in doing so we had regard to my order to her to 'stop shouting over the witness, desist from doing that', and which she deliberately ignored despite my clear order to stop doing this. In particular I had regard to Rule 6(c) of the Rules of Procedure 2013 which enabled us, where a party amongst other things had 'failed to comply with any order of the Tribunal,' to debar the Claimants further participation in the proceedings, although we restricted this sanction to debarring her right to cross examine any further, and allowing her to still make final submissions.

156. In making this decision not to strike out and to instead prevent any further cross-examination we also had regard to the case of Laing *O'Rourke Group Services Ltd and ors v Woolf and anor EAT 0038/05.* In that case the EAT found that instead of striking out the employer's response for unreasonable conduct it was said as follows: -

'Courts should not be so outraged by what they see as unreasonable conduct as to punish the party in default in circumstances where other sanctions can be deployed and where a fair trial is still possible.'

In the EAT's view, in that case the tribunal should also have considered whether striking out the claim was a proportionate sanction and whether an alternative, such as allowing the hearing to proceed without evidence from the employer, would have been more appropriate.

157. We therefore concluded that restricting further cross-examination by the Claimant of the Respondent's witnesses would be appropriate in this case, and would mean a fair trial could then conclude in the trial window, and so instead I ordered the parties to proceed straight to closing submissions the following morning.

158. I therefore made the following Order: -

134.1 At 10.00 am tomorrow on day four of the hearing the First and Second Respondents would make their closing submissions through their Counsel, Mr Lawrence for up to one hour.

134.2 Mr Busamani would then make closing submissions on behalf of the Third Respondent for up to one hour.

134.3 The Claimant would then make her closing submissions in her case for up to one hour.

134.4 The hearing would then conclude at 1.00 pm, with the Tribunal starting its deliberations in the afternoon.

159. On the fourth day of the hearing, we heard oral submissions from all parties.

160. The First and Second Respondents then applied for costs in the sum of £9,240.00 and in doing so referred in detail to her unreasonable conduct of the proceedings and her outrageous conduct towards other Judges and myself.

161. The Third Respondent said due to not wishing to spend any more time on this claim, and due to having no expectation of recovering any costs against the Claimant they did not apply for costs against the Claimant.

162. The Claimant did not address us on the issue of the cost's application against her, nor make any submissions about her means.

163. The hearing then ended at 1.15 pm on day 4 of the hearing. We advised the parties that our decision was reserved.

Findings of fact

164. On the 12 December 2020 the Claimant was engaged as an agency worker by the Third Respondent **[P.31].** On the 14 December 2021 she was then placed with the First Respondent as an agency worker**. [P.108]**

165. On the 20 February 2021 it was alleged by the Claimant that Lewis Masilo opened toilet door while she was on the toilet whilst working at the First Respondent.

166. The next day on the 21 February 2021 it was alleged by the Claimant that whilst working at the First Respondents that Mr Amir Khan allegedly smacked her on the on left buttock.

167. On the 28 February 2021 the Claimant advised Donald Gwindi of the Third Respondent of the toilet and smacking incident **[WS of Donald Gwindi para 11 – P.27]** but declined to disclose the names of her alleged assailants. He advised her he was reporting it to his Human Resources Department. He also advised her to report it to the police **[WS of Donald Gwindi para 19-20 and p.65].**

168. On the 1 March 2022 a meeting took place between Geraldine Willimott of the First Respondent and the HR department of the Third Respondent **[WS of Geraldine Willimott para 3 – P.23]** at which the incident relating to the toilet was discussed but Geraldine Willimott stated she could not recall whether the other incident about the Claimants bottom being smacked had been discussed as the meeting notes had been lost. She stated in her witness statement, and we found that the Claimant did not discuss her religion in that interview or disclose it **[Para 5 – p.24].**

169. Due to the fact the alleged assailants had been supplied by another agency Sam's Medcare, on the 1 March 2021 Shaun O Gara of the Second Respondent emailed a person called Tendai **[P 207, P261, 264-265]** at Sam' s Medcare and reported the two alleged incidents but stated that the Claimant did not want to supply their names. That day on the 1 March the Claimant then disclosed the names of Mr Khan and Mr Masilo **[P.264].** Mr Khan denied smacking the Claimants bottom **[p.207].**

170. On the 5 March 2021 CCTV footage was obtained of the Claimant banging her head against the wall while at work on the First Respondents premises **[p.270].** It was set out when she was asked why she was doing this she replied she 'wanted to know what it felt like' but that she was warned not to do this as it may be triggering for the patients.

171. On the 13 March 2021 the Claimant sent a WhatsApp message to Simbarashe Busumani at the Third Respondents referring to these two incidents **[p.211-216].**

172. On the 16 March 2021 the Claimant alleged that Mr Amir Khan tried to assault her again and that she threatened to slap him. On the 21 March 2021 the Claimant carried out her last shift for the First Respondent.

173. On the 22 April 2021 the Claimant sent an email to the Third Respondent querying her employment status with the Third Respondent **[p.228-229].** On the 24 April a reply was sent stating they were checking this **[p.228].**

174. On the 24 May 2021 the Claimant alleged Donald Gwindi called her and told her to obtain employment with other agencies. She sent an email on the 24 May enquiring if she would receive any shifts from the Third Respondent **[p.230].** On the 24 May 2021 Donald Gwindi emailed her and said she had not yet been accepted by another of their clients Thornford Park **[p.230].**

175. On the 6 August the police interviewed Amir Khan and, on the 9 August 2021, **[p.232]** the police closed the file opened in relation to the case against him.

176. On the 13 October the Claimant told the Third Respondent to remove her from their mailing list **[p.239].**

Allegations against the First and Second Respondents

1.1On Saturday 20 February 2021, Lewis of the Chimneys Ltd/Elysium Health Care Ltd (R1/2), unlocked a toilet door whilst the Claimant was using the toilet, without apologies or reasons for his actions.

177. We found that Lewis Masilo unlocked and started to open the toilet door on Saturday 20 February 2021 and then, when the Claimant shouted out, he apologised when he realised there was someone in there. It was not disputed that he opened the door, and that the Claimant was using the toilet when he did so. It should be noted that it was not in dispute that this toilet door was kept locked and only staff had a key. The reason for this was that patients who were at risk of self-harm and suicide would otherwise be able to enter the toilet door and lock it from the inside if a key was not required and could harm themselves.

178. The evidence that was given was that the Claimant unlocked the toilet door and then locked it from the inside. However, Lewis Masilo gave evidence and we found that he was not aware anyone was in there and so after asking 'is anyone in there', and receiving no reply, he unlocked and opened the toilet door.

179. The Claimant then shouted out as the door opened, and he gave evidence, and we found, that he recognised her voice. He realised that she was in there and the Claimant shut the door herself.

180. The Claimant stated that he did not shout out 'is anyone in there'. The Claimant gave evidence that the door furniture would have shown red, which would alert him to the fact that somebody was in there using the toilet. She also gave evidence that they had passed on the stairs shortly before she used the toilet, and he must have known that she was in there. She gave evidence that he intentionally entered the toilet knowing that she was in there. We preferred Mr Masilo's evidence on this. He gave evidence, and we found, that there was no door furniture on the door showing red for occupied. We preferred his evidence on this. We accepted, and we found, that it was an accident on his part, and he did not intentionally enter the toilet to harass the Claimant.

181. We also found he did not know anyone was in there when he tried to enter, but, in any event, the Claimant did not establish that he knew she was in there. Her claim on this matter was based on mere assertion by her and having found that he did not know anyone was in there, nor that the Claimant was in there when he tried to enter the toilet.

182. We found it was a simple accident of Mr Masilo unlocking the toilet and after asking 'is anyone in there?' and receiving no reply, he then tried to enter, but upon hearing her voice he apologised, and the Claimant then locked the door. We did not find this incident occurred because of and/or was related to her sex.

183. We found that the burden of proof did not shift to the First and Second Respondent on this allegation.

1.2 On Sunday 21 February 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2), smacked the Claimant on her left buttock.

184. We did not find that Amir Assal (Mr Amir Khan) smacked the Claimant on her left buttock when he was in the corridor with her. Although he only gave evidence for a short time before, as Counsel put it, the Claimant "self-destructed" her own cross-examination, our brief impression of him was that he was very calm and measured.

185. He said he was not working on Sunday the 21 February but was working between the weekdays of the 15-19 February 2021. He said he remembered passing through a narrow corridor from the TV Lounge to Room 4 to try to attend to an alarm, and someone, who he later learned to be the Claimant, was standing facing the glass window. He said as he was passing, she stepped back and the back of his hand brushed against her back. He said he did not recall which part of her back he brushed. He said it was totally accidental and unintentional and he apologised. He said she looked at him and replied 'okay' or something like that. We accepted his oral evidence and this evidence in his witness statement and found the event occurred as described by him.

186. His account **[p. 207]** was also set out in an email to his agency manager**.** It should be noted he was not supplied by the Third Respondent in these proceedings but by a different agency Sams Medcare. We found this event occurred as described by Mr Khan and we did not find it was an intended sexual advance to the Claimant in that he smacked her left buttock, and we found it was a brief moment of unintended contact with the back of his hand on an area of her back as described by him.

187. Overall, we did not find the Claimant a credible witness in any way whatsoever. She was inconsistent throughout her evidence. One example of her inconsistency was when she asserted that the Third Respondent paid her in cash and then she later denied this in her submissions.

188. We did not find on the balance of probabilities, that Mr Khan purposely slapped her left buttock. We found it was an accidental fleeting moment where

his hand brushed part of her back when she stepped backwards as he was walking past her.

189. It was not in dispute that he apologised immediately, and we found it most unlikely that if he had deliberately slapped her bottom he would then apologise. We found the apology showed an accidental brief moment of contact and we found that Mr Khan did not subject the Claimant to unwanted sexual advances in any way. We did not find this incident occurred because of and/or was related to her sex.

190. We found that the burden of proof did not shift to the First and Second Respondent on this allegation.

1.3 On 5 March 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) revealed the Claimant's identity to a female Third party and continued to disparage the Claimant's personality to other HCA workers at the Respondents.

191. This allegation amounts to the Claimant's 'inkling', and it can be put no higher than that, that Amir Assal, (Mr Amir Khan), was talking about her to a female third party, and in particular the allegation is that he "revealed the Claimant's identity to a female Third party and disparaged the Claimant's personality to other HCA workers at the Respondents".

192. The account of the Claimant **[Para 4 – p 39]** was when she said she bumped into *her 'assailant, AMIR and discovered that he was revealing my identity to a female third party even though he was clearly at fault for his actions. I was deeply disturbed by this act of victimiization. Months later I discovered that AMIR continued to disparage my personality to other HCA workers at the Chimneys.'*

193. Mr Khan in his witness statement stated that in fact many people came to him to ask, 'what did you do to Olu?' after the assault allegation that he smacked her bottom was made about him. He stated that it was in fact in his view the Claimant was revealing his identity and making disparaging comments about him and not the other way round. We found on the balance of probabilities it was the Claimant who was revealing his identity to third parties and disparaging him and that it was not the case of Mr Khan revealing her identity to third parties and disparaging her. We did not find on the balance of probabilities that this occurred at all.

194. We found that the burden of proof did not shift to the First and Second Respondent on this allegation.

1.4 On 16 March 2021, Amir Asil of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) tried to assault the Claimant following a U-turn as he approached the staff room.

195. This allegation that Mr Khan then tried to assault the Claimant a second time, following a U-turn in her direction as he approached the staff room was

described by Counsel for the First and Second Respondent as "surreal". We also struggled to understand this allegation.

196. At its highest it appeared to be that the Claimant thought that Mr Khan was going to try and assault her when he did a U-turn in her direction and so she moved out of his way to the left. There was no evidence whatsoever that he had any intention to assault her when he did a U-turn in her direction. No contact took place. He could have done a U-turn for any number of reasons.

197. The Claimant stated that she threatened to slap him. He stated that she did not threaten to slap him and if she had done so he would have reported it as a safeguarding issue in the workplace. We did not find that the Claimant threatened to slap him if he came near her.

198. We did not find that Mr Khan performing a U-turn in her direction, indicated he may be about to try and assault her or that it was because of and/or was related to her sex.

199. We found no evidence that this incident of the U-turn was because of or related to the Claimant's sex and found that the burden of proof did not shift to the First and Second Respondent on this allegation.

Allegations against the Third Respondent

1.4 On 7 March 2021, Simba of Tafara Care Services Ltd (R3) contacted the Claimant and questioned the veracity and authenticity of the workplace sexual assault she suffered.

200. In relation to the allegation that Simbarashe Busumani of the Third Respondent did not believe the Claimant on the question of the veracity and authenticity of the workplace sexual assault that she alleged she suffered, the Claimant simply said in her closing submissions that Samba, as she called her, was not "passionate" like Donald was.

201. It was not in dispute that the Claimant had initially refused to name the alleged assailants, Mr Khan and Mr Lewis, to Simbarashe. The Claimant did not name her alleged assailants until 1 March and only six days later Simbarashe spoke to her about it. We did not find the allegation against Simbarashe was made out on the balance of probabilities. As with much of the Claimants evidence this was mere assertion by her with no actual evidence to back this up and we did not find that Simbarashe of the Third Respondent questioned the veracity and authenticity of the alleged workplace sexual assault reported by the Claimant to the Third Respondent. We found that on the 1 March 2022 a meeting took place between Geraldine Willimott of the First Respondent and the HR department of the Third Respondent **[WS of Geraldine Willimott para 3 – P.23]** at which the incident relating to the toilet was discussed but Geraldine Willimott stated she could not recall whether the other incident about the Claimants bottom being smacked had been discussed as the meeting notes had been lost. We found after reporting it and discussing it with the Claimant on the

1 March 2021 they then left it in the hands of the police and the First and Second Respondents.

202. In any event, there was no evidence that the way Simbarashe allegedly responded to the reporting of the alleged assaults was because of and/or was related to the Claimant's sex and/or religion and we found the allegation was not made out and the burden of proof did not shift to the Third Respondent on this allegation.

1.5 Tafara Care Services Ltd (R3) failed to respond to the Claimant's email dated 3 March 2021, sent to Simba and Donald, informing them of her willingness to report the matter to the police and press charges.

203. The allegation that the Third Respondent failed to respond to the Claimant's email dated 3 March 2021 about her willingness to report the matter to the police and press charges, was it appeared at its highest simply a failure by the Third Respondent to reply to an email about what the Claimant intended to do. Her alleged assailants were not supplied by the Third Respondent to the Second Respondent or the First Respondent. Both Mr Khan and Lewis were employed by Sam's Medicare Ltd an agency and had no connection with the Third Respondent.

204. We found that it was not therefore a matter for the Third Respondents to respond to, following their initial investigations into the alleged incidents, as the Claimant had taken the matter into her own hands and was reporting it to the Police.

205. In any event, there was no evidence that the Third Respondent failing to respond to this email was because of and/or was related to the Claimant's sex and/or religion and we found the allegation was not made out and the burden of proof did not shift to the Third Respondent on this allegation.

1.7 Tafara Care Services Ltd (R3) ceased to assign shifts to the Claimant following the report of a crime she made to the Hatfield Police Station.

206. This allegation was that the Third Respondent ceased to assign shifts to the Claimant following the report of crime she made to the Hatfield Police Station.

207. The Third Respondent was simply an Agency that supplied workers to the First and Second Respondent. In the ET3 form it was stated that shifts were advertised on an open platform without any gender specification on a 'first come first serve basis' and the gender specification was only 'done' by the client to meet their gender balance. It stated that the Third Respondent then proposed candidate staff names to the client who made the final selection and once the client accepted the candidate, they would then confirm this with the candidate.

208. At paragraph 36 of the statement of Mr Gwindi, he stated, and we accepted and found that the P45 was issued at the Claimant's request after she found another job, and they did not terminate her employment. We found she resigned. There was an email from the Claimants **(p.239)** asking them to, "*kindly remove*

me from the mailing list", and we found this was indicative of a resignation and supported our findings that she resigned.

209. In any event, we found there was no evidence that the Third Respondent deliberately failed to assign shifts to the Claimant or that the absence of any shifts being allocated to her was because of and/or was related to the Claimant's sex and/or religion and we found the allegation was not made out and the burden of proof did not shift to the Third Respondent on this allegation.

1.8 Tafara Care Services Ltd (R3) failed to respond to the Claimant's query dated 22 April 2021 in which she requested to know the status of her employment, in particular "whether or not there is a subsisting or foreclosed agency – staff relationship".

210. This complaint related to the Claimant enquiring on 22 April 2021 about the status of her employment and in particular "whether or not there is a subsisting or foreclosed agency-staff relationship**" [p.228-229].** We found this was an enquiry by the Claimant as to whether the Third Respondents were still trying to find work for the Claimant.

211. There was no evidence of any reply from the Third Respondent to the Claimant. However, we did not find that the failure to reply was because of and/or was related to her sex and/or religion. We found that the burden of proof did not shift to the Respondents on this matter.

1.9 On 24 May 2021, Donald of Tafara Care Services Ltd (R3) called the Claimant and told the Claimant to find other agencies to work for following an email from the Claimant on the same date.

212. We did not find the allegation, that Donald Gwindi of the Third Respondent called the Claimant on 24 May 2021 and told her to find other agencies to work for following an email from the Claimant on the same date, was proven. We found that this incident did not occur.

213. We accept, and find on the balance of probabilities, the evidence at paragraph 35 of the Donald Gwindi's witness statement **[p. 30],** to which we attached weight, that they did carry on trying to find work for the Claimant. We do not find, on the balance of probabilities, that they told her to find other agencies to work for. The burden of proof on this matter did not therefore shift to the Third Respondents.

Submissions

214. We heard submissions from all parties, and they were fully considered in reaching our decision, but we do not repeat them here.

LAW, FURTHER FINDINGS AND OUR CONCLUSIONS

Burden of Proof

215. This claim relied entirely on s.13, and s.26 of the EqA 2010.

216. S.136 of the EqA 2010 provides as follows: -

> *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.*

217. In *Fennell v Foot Anstey LLP EAT 0290/15* it was said by HHJ Eady that, 'although guidance as to how to approach the burden of proof has been provided by this and higher appellate courts, all judicial authority agrees that the wording of the statute remains the touchstone'.

218. The relevant principles have been established in four lead cases, all of which were decided under previous legislation: *Igen and ors -v Wong and other cases – 2005 ICR 931, CA; Laing v Manchester City Council and anor 2006 ICR 867, 1519, EAT; Madrassey v Nomura International plc 2007 ICR 867, CA*; and *Hewage v Grampian HealthBoard 2012 ICR 1054, SC.*

219. Lord Hope (giving a judgment with which all members of the Court agreed) approved the two earlier decisions of the Court of Appeal in *Igen* and *Mandrassy* as providing ample guidance.

220. *Igen* remains the leading case in this area. The Court of Appeal established that the correct approach for a tribunal to take to the burden of proof entails a two-stage approach. At the first stage the Claimant must prove facts from which the tribunal could infer that discrimination has occurred. Only if such facts have been made out to the tribunal's satisfaction (i.e., on the balance of probabilities) is the second stage engaged, whereby the burden then 'shifts' to the Respondent to prove — again on the balance of probabilities — that the treatment in question was 'in no sense whatsoever' on the protected ground.

221. In summary it was said that it is for the Claimant to prove, on the balance of probabilities, facts from which the tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination. If the Claimant does not prove such facts, the claim will fail.

222. In applying the burden of proof this Tribunal reminded itself that in deciding whether there are such facts, that it is unusual to find direct evidence of discrimination. In many cases the discrimination will not be intentional.

223. We also reminded ourselves that this burden of proof applied both to harassment under s.26 and direct discrimination under s.13. We also reminded ourselves that this tribunal does not have to reach a definitive determination that such facts would lead it to conclude that there was discrimination, but we simply decide what inferences could be drawn.

224. We also noted that when there are facts from which inferences could be drawn that the Respondent has treated the Claimant less favorably on a protected ground, the burden of proof moves to the Respondent, and it is then for the Respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed that act, and to discharge that burden it is necessary for the Respondent to prove, on the balance of probabilities, that its treatment of the Claimant was in no sense whatsoever on the protected ground.

Harassment – s26 (1) (a) and s.26 (2)(a) of the EqA 2010

225. S.26. (1) a. and s.26 (2) (a) of the EqA 2010 sets out as follows: -

26. Harassment

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

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

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

(i)violating B's dignity, or

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

(2) A also harasses B if—

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

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

226. For unlawful harassment to occur under s.26 (1) (a) EqA 2010 the unwanted and offensive conduct must be 'related to a relevant protected characteristic', and it will not constitute harassment unless there is a relationship between the act complained of and in this case the Claimants protected characteristic of sex. It was said that if a tribunal that fails to engage with this point it will fall into an error of law as per *London Borough of Haringey v O'Brien EAT 0004/16.*

227. In *Richmond Pharmacology v Dhaliwal [2009] ICR724* it was observed,

> "A Respondent should not be held liable merely because his conduct has had the effect of producing a prescribed consequence: it should be *reasonable* that that consequence has occurred… overall the criterion is objective because what the

> Tribunal is required to consider is whether, if the Claimant has experienced those feelings or perceptions, and it was reasonable for her to do so. Plus, if, for example the Tribunal believes that the Claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for the Claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the Tribunal as to what would be important for it to have regard to all the relevant circumstances including the context of the conduct in question. One question that may be material is whether it should reasonably be apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the prescribed consequence): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt…
>
> (22) …dignity is not necessarily violated by what was said or done which was trivial or transitory, which should have been clear, but any offence was unintended. But it is very important that employers and Tribunals are sensitive to the hurt which can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

228. In *Land Registry v Grant [2011]* ICR 1390, CA, Elias J said,

> "It is not importing intent into the concept of effect to say that intent would generally be relevant to assessing effect. It would also be relevant to deciding whether the response of the alleged victim is reasonable".

229. We had to determine as follows and we deal with these factual allegations under s.26(1) (a): -

Harassment related to sex (s.26 (1) (a) EQA).

8. Was the Claimant subjected to the treatment set out at 1.1 to 1.9 in the factual issues below?

9. If so, was that conduct:

9.1 unwanted?
9.2 related to the Claimant's sex?

10.If so, did the conduct of the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

11.In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2), did they take all reasonable steps to prevent the employees from doing that thing or from doing anything of that description?

List of Issues - Factual Issues

1. C alleges the following factual issues:

1.1 On Saturday 20 February 2021, Lewis of the Chimneys Ltd/Elysium Health Care Ltd (R1/2), unlocked a toilet door whilst the Claimant was using the toilet, without apologies or reasons for his actions.

230. As set out above [Paragraph 180] we did not find that Lewis of the First and Second Respondent unlocked a toilet door whilst the Claimant was using the toilet without apologies or reasons for his actions. We found as set out above he asked if anyone was in there and when no one replied he unlocked the door and then apologised when realising someone was in there when the Claimant shouted out. The reason for his actions were to use the toilet and so we found he did not unlock the toilet door for reasons related to her sex in accordance with the case of *London Borough of Haringey.*

231. We did not find it was reasonable for the Claimant to perceive that his actions were related to her sex.

232. In addition, in assessing the effect of this incident on the Claimant we looked at the intent of Lewis Masilo. In the case of *Grant* intent is relevant to assessing effect on the Claimant and we did not find he opened the door with the intent of harassing her. As Counsel submitted, and we found, she never once considered whether this incident was a simple accident.

233. We did not find the burden of proof shifted to the First and Second Respondent on this allegation.

234. Accordingly, this allegation fails.

1.2 On Sunday 21 February 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2), smacked the Claimant on her left buttock.

235. As set out above [paragraph 189] we did not find that Amir Assal (Mr Khan) of the First and Second Respondent smacked the Claimant on her left buttock. We found as set out above he accidentally brushed past her in a narrow corridor, and he apologised after making accidental contact with her back with the back of his hand and this incident we found in accordance with *Haringey* was not related to her sex.

236. We did not find the actions of Amir Khan in accidentally contacting her with the back of his hand to be related to this Claimants sex nor did we find it was reasonable for her to perceive that his actions were related to her sex.

237. In assessing the effect of this incident on the Claimant we looked at the intent of Amir Khan. In the case of *Grant* intent is relevant to assessing effect on the Claimant and we did not find he intentionally made physical contact with her in the corridor. We did not find he smacked her bottom and accepted his evidence it was an accidental touching of some part of her back with the back of his hand. We did not find her perception and response as asserted by her that he smacked her bottom and was sexually harassing her to be reasonable.

1.3 On 5 March 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) revealed the Claimant's identity to a female Third party and continued to disparage the Claimant's personality to other HCA workers at the Respondents.

238. As set out above [Paragraph 193] we did not find that Amir Assal (Mr Amir Khan) revealed the Claimants identity to a female and continued to disparage the Claimants personality to other HCA workers at the First and Second Respondents. Having found that on the balance of probabilities it was more likely that the Claimant in fact disclosed his identity and disparaged him to third parties and we did not find this event took place and this allegation fails.

1.4 On 7 March 2021, Simba of Tafara Care Services Ltd (R3) contacted the Claimant and questioned the veracity and authenticity of the workplace sexual assault she suffered.

239. Having found that this did not occur as set out above [Paragraph 188] then this allegation fails.

1.5 Tafara Care Services Ltd (R3) failed to respond to the Claimant's email dated 3 March 2021, sent to Simba and Donald, informing them of her willingness to report the matter to the police and press charges.

240. As set out above [Paragraph 204] above we found that the failure by the Third Respondent to respond to the Claimant's email was not related to her sex in accordance with *Harringey,* but was simply due to the fact the matter was being dealt with by the police, and the First and Second Respondents.

241. We did not find the failure to reply to her email was related to this Claimants sex nor did we find it was reasonable for her to perceive that this was related to her sex.

242. In assessing the effect of this incident on the Claimant we looked at the intent of the Third Respondent in failing to reply to her. In the case of *Grant* intent is relevant to assessing effect on the Claimant and we did not find the Third Respondent intentionally failed to reply because the complaint related to her sex. We find they failed to reply because the police and the First and Second Respondents were dealing with the matter. We did not find her response and perception that this failure to reply was related to her sex to be reasonable.

1.6 On 16 March 2021, Amir Asil of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) tried to assault the Claimant following a U-turn as he approached the staff room.

243. As set out above [Paragraph 198] having found that the U-turn made by Mr Amir Khan in the Claimants direction could have been for a number of reasons we did not find this was unwanted conduct related to her sex in accordance with

Haringey. We did not find the U-turn in the corridor in her direction was for the purpose of trying to assault her.

244. We did not find the actions of Amir Khan to be related to this Claimants sex nor did we find it was reasonable for her to perceive that his actions were related to her sex.

200. In assessing the effect of this incident on the Claimant we looked at the intent of Amir Khan. In the case of *Grant* intent is relevant to assessing effect on the Claimant and we did not find he intentionally did a U-turn towards her to try and sexually harass her. We did not find her response and perception as asserted by her that he did a U-turn in her direction for the purposes of sexually harassing her to be reasonable.

1.7 Tafara Care Services Ltd (R3) ceased to assign shifts to the Claimant following the report of a crime she made to the Hatfield Police Station.

245. As set out above [paragraph 195] having found that the Third Respondent did not cease to assign shifts but had simply been unable to find more shifts for her to do on behalf of its clients, we did not find this was unwanted conduct related to her sex in accordance with *Haringey*.

246. We did not find the inability of the Third Respondent to offer her more shifts related to this Claimants sex, nor did we find it was reasonable for her to perceive that this was related to her sex.

247. In assessing the effect of this on the Claimant we looked at the intent of the Third Respondent. They could only offer work to the Claimant if their clients selected her for assignments, so we did not find there was any intention on the Third Respondents part not to offer her work in accordance with *Grant* above.

248. We did not find her response or perception as asserted by her that they did so for reasons related to her sex to be reasonable.

1.8 Tafara Care Services Ltd (R3) failed to respond to the Claimant's query dated 22 April 2021 in which she requested to know the status of her employment, in particular "whether or not there is a subsisting or foreclosed agency – staff relationship".

249. As set out above [paragraph 195] we did not find that the failure of the Third Respondents to respond to the Claimants query dated the 22 April 2021 about what the status of her relationship was with them related to her sex.

250. We did not find the failure of the Third Respondent to reply related to the Claimants sex but instead was because they had not found work for her. We did not find her response as asserted by her that they did so for reasons related to her sex to be reasonable.

1.9 On 24 May 2021, Donald of Tafara Care Services Ltd (R3) called the Claimant and told the Claimant to find other agencies to work for following an email from the Claimant on the same date.

251. As set out above [paragraph 213] we did not find that Donald Gwindi of the Third Respondent called the Claimant and told the Claimant to find other agencies to work for following an email from the Claimant on the same date and so this allegation fails.

Sexual harassment (s. 26 (2) (a) EQA)

252. S.26 (1) (a) and (2) b. of the EqA 2010 sets out as follows: -

26. Harassment

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

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

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

(i)violating B's dignity, or

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

(2) A also harasses B if—

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

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

253. In determining whether sexual harassment has taken place we had to consider the three incidents set out below.

254. Whether the conduct in question can be categorised as sexual in nature will usually be self-evident. The EAT in *Driskel v Peninsula Business Services Ltd and ors 2000 IRLR 151, EAT,* considered that sexual harassment should be defined on a common-sense basis by reference to the facts of each particular case. In this case we apply the test to each allegation separately.

255. We had to determine as follows: -

12. Was the Claimant subjected to the treatment set out at 1.1, 1.2, and 1.6 above?

13.If so, was that conduct:

13.1 Unwanted?
13.2 Of a sexual nature?

14. If so, did that conduct have the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

15. In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2), did they take all reasonable steps to prevent the relevant employees from doing that thing or from doing that thing or from doing anything of that description?

Allegation 1.1

1.1. On Saturday 20 February 2021, Lewis of the Chimneys Ltd/Elysium Health Care Ltd (R1/2), unlocked a toilet door whilst the Claimant was using the toilet, without apologies or reasons for his actions.

256. As set out above [Para 180] we did not find that Lewis of the First and Second Respondent unlocked a toilet door whilst the Claimant was using the toilet without apologies or reasons for his actions. We found as set out above he asked if anyone was in there and when no one replied he unlocked the door and then apologised when realising someone was in there. The reason for his actions was to use the toilet. Whilst the Claimant did not want anyone to unlock the toilet door while she was using it, we did not find the actions of Lewis Masilo were unwanted conduct of a sexual nature as we found he simply wished to use the toilet and so this allegation fails.

Allegation 1.2

1.2 On Sunday 21 February 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2), smacked the Claimant on her left buttock.

257. As set out above [paragraph 186] we did not find that Amir Assal (Mr Amir Khan) of the First and Second Respondent smacked the Claimant on her left buttock. We found as set out above he accidentally brushed past her in a narrow corridor, and he apologised after making accidental contact with her back with the back of his hand. We did not find this was unwanted conduct of a sexual nature and so this allegation fails.

Allegation 1.6

1.6 On 16 March 2021, Amir Asil of the Chimneys Ltd/Elysium Health Care Ltd (R1/2) tried to assault the Claimant following a U-turn as he approached the staff room.

258. As set out above [paragraph 198] above having found that the U-turn made by Mr Amir Khan in the Claimants direction could have been for a number of reasons we did not find this was unwanted conduct of a sexual nature and so this allegation fails.

Direct Discrimination Claims

259. 153) Section 13 of the Equality Act 2010 provides,

> 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.

260. In cases of alleged direct discrimination, the Tribunal is focused upon the 'reasons why' the Respondent acted (or failed to act) as it did. That is because, other than in cases of obvious discrimination (this is not such a case), the Tribunals will want to consider the mental processes of the alleged discriminator(s): *Nagarajan v London Regional Transport [1999] ICR877.*

261. To succeed in his claims under the Equality Act the Claimant must do more than simply establish that she has a protected characteristic and was treated unfavourably: *Madarassy v Nomura International Plc [2007] IRLR246.* There must be facts from which we could conclude, in the absence of an adequate explanation, that the Claimant was discriminated against. This reflects the statutory burden of proof in section 136 of the Equality Act 2010, but also long-established legal guidance, including by the Court of Appeal in *Igen [2005] ICR931.*

262. It has been said that a Claimant must establish something "more", even if that something more need not be a great deal more: Sedley LJ in *Deman v Commission for Equality and Human Rights [2010] EWCA Civ.1279***.** A Claimant is not required to adduce positive evidence that a difference in treatment was on the protected ground to establish a prima facie case.

263. It is for the Tribunal to objectively determine, having considered the evidence, whether treatment is "less favourable". Whilst the Claimant's perception is, strictly speaking, irrelevant, her subjective perception of his treatment can inform our conclusion as to whether, objectively, the treatment in question was less favourable.

264. The grounds of any treatment often must be deduced, or inferred, from the surrounding circumstances and to justify an inference one must first make findings of primary fact identifying 'something more' from which the inference could properly be drawn. This is generally done by a Claimant placing before the Tribunal evidential material from which an inference can be drawn that they were treated less favourably than they would have been treated if they had not had the relevant protected characteristic: *Shamoon v RUC [2003] ICR337.*

265. 'Comparators', provide evidential material. But ultimately, they are no more than tools which may or may not justify an inference of discrimination on the relevant protected ground, in this case disability. The usefulness of any

comparator will, in any case, depend upon the extent to which the comparator's circumstances are the same as the Claimant's. The more significant the difference or differences the less cogent will be the case for drawing an inference.

266. In the absence of an actual comparator whose treatment can be contrasted with the Claimant's, as in this case, the Tribunal can have regard to how the employer would have treated a hypothetical comparator. Otherwise, some other material must be identified that is capable of supporting the requisite inference of discrimination. This may include a relevant statutory code of practice or adverse and discriminatory comments made by the alleged discriminator about the Claimant might, in some cases, suffice.

267. Discrimination may be inferred if there is no explanation for unreasonable treatment. This is not an inference from unreasonable treatment itself but from the absence of any explanation for it.

268. It is only once a prima facie case is established that the burden of proof moves to the Respondent to prove that it has not committed any act of unlawful discrimination, so that the absence of an adequate explanation of the differential treatment becomes relevant: *Madarassy v Nomura [2007] EWCA Civ.33*.

269. Our conclusions in relation to the Claimant's direct discrimination complaint because of her sex and religion are as follows:

List of Issues - Direct sex discrimination (s.13 EQA)

4.Was the Claimant subject to the treatment set out at 1.1 to 1.9 above?

5.If so, was such treatment less favourable treatment than that which was, or would be done to a relevant comparator materially in the same circumstances as the Claimant? The Claimant relies on a hypothetical comparator.

6.If so, was the reason for the treatment the Claimant's sex?

7.In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2).

Did they take all reasonable steps to prevent the relevant employees from doing that thing or doing anything of that description?

List of Issues – Direct discrimination of the grounds of the Claimants religion – (s.13 EqA)

16.Was the Claimant subject to the treatment set out at 1.3 to 1.9 paragraphs above?

17. If so, was such treatment less favourable treatment than that which was, or would be done to a relative comparator materially the same circumstances as the Claimant? The Claimant relies on a hypothetical comparator.

18. If so, was the reason for the treatment the Claimant's religion? the Claimant is a Christian.

19. In respect of claims against The Chimneys Ltd/Elysium Health Care Ltd (R1/2), did they take all reasonable steps to prevent the relevant employees from doing that thing or from doing anything of that description?

Applying the Law to the Facts and Conclusions

1.1 On Saturday 20 February 2021, Lewis of the Chimneys Ltd/Elysium Health Care Ltd (R1/2), unlocked a toilet door whilst the Claimant was using the toilet, without apologies or reasons for his actions.

270. We repeat our findings of fact at paragraph 180 above. In short, we did not find that this incident occurred because of the Claimants sex or that she was treated less favourably because of her protected characteristic, than a hypothetical comparator.

271. We asked ourselves how a hypothetical man would have been treated in these circumstances. We found the same events would have occurred if a man was using the toilet and that Lewis would also have accidentally opened the toilet door.

272. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex fails.

1.2 On Sunday 21 February 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2), smacked the Claimant on her left buttock.

273. We repeat our findings of fact at paragraph 189 above. In short, we did not find that this incident occurred because of the Claimants sex or that she was treated less favourably because of her protected characteristic, than a hypothetical comparator.

274. We asked ourselves how a hypothetical man would have been treated in these circumstances. We found the same events would have occurred if a man had been standing in the corridor when Mr Amir Khan walked past him, and he would also have been brushed accidentally by the back of Mr Khan's hand.

275. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex fails.

1.3 On 5 March 2021, Amir Assal of the Chimneys Ltd/Elysium Health Care Ltd (R1/2) revealed the Claimant's identity to a female Third party and continued to disparage the Claimant's personality to other HCA workers at the Respondents.

276. We repeat our findings of fact at paragraph 189 above. In short, we did not find that this incident occurred.

277. On this allegation we did not find that the Claimant had her identity revealed or was disparaged and so we find that a hypothetical comparator was not necessary in any event. There was no treatment of the Claimant that she could complain of on our findings of fact.

278. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex and/or religion fails.

1.4 On 7 March 2021, Simba of Tafara Care Services Ltd (R3) contacted the Claimant and questioned the veracity and authenticity of the workplace sexual assault she suffered.

279. We repeat our findings of fact at paragraph 189 above. In short, we did not find that this incident occurred because of the Claimants sex and/ or religion and that she was treated less favourably because of her protected characteristics, than a hypothetical comparator.

280. On this allegation we did not find that Simbarashe of Tafara Care Services Ltd (R3) contacted the Claimant and questioned the veracity and authenticity of the workplace sexual assault she suffered and so there was no treatment of the Claimant that she could complain of on our findings of fact.

281. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex and/or religion fails.

1.5 Tafara Care Services Ltd (R3) failed to respond to the Claimant's email dated 3 March 2021, sent to Simba and Donald, informing them of her willingness to report the matter to the police and press charges.

282. We repeat our findings of fact at paragraph 192 above. In short, we did not find that this incident occurred because of the Claimants sex and/or religion or that she was treated less favourably because of her protected characteristic, than a hypothetical comparator.

283. We asked ourselves how a hypothetical man, or a person who was not of Christian faith would have been treated in these circumstances where they sent

an email to Simba and Donald of the Third Respondent, informing them of their willingness to report the matter to the police and press charges. We found the same events would have occurred if a man or a person who did not have a Christian faith had sent the same email.

284. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex and/or religion fails.

1.6 On 16 March 2021, Amir Asil of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) tried to assault the Claimant following a U-turn as he approached the staff room.

285. We repeat our findings of fact at paragraph 198 above. In short, we did not find that this incident occurred because of the Claimants sex and/or religion or that she was treated less favourably because of her protected characteristic, than a hypothetical comparator.

286. We asked ourselves how a hypothetical man, or a person who was not of Christian faith would have been treated in these circumstances. We found the same events would have occurred if a man or a person who did not have a Christian faith had seen Mr Amir Khan and that he would still have made a U-turn towards them.

287. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex and/or religion fails.

1.7 Tafara Care Services Ltd (R3) ceased to assign shifts to the Claimant following the report of a crime she made to the Hatfield Police Station.

288. We repeat our findings of fact at paragraph 208 above. In short, we did not find that this incident occurred because of the Claimants sex and/or religion or that she was treated less favourably because of her protected characteristic, than a hypothetical comparator.

289. We asked ourselves how a hypothetical man, or a person who was not of Christian faith would have been treated in these circumstances. We found the same events would have occurred if a man or a person who did not have a Christian faith had been waiting for more shifts from the Third Respondent, i.e., the clients of the Third Respondent would not have chosen them leading to the those hypothetical comparators not being offered work.

290. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove

a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex and/or religion fails.

1.8 Tafara Care Services Ltd (R3) failed to respond to the Claimant's query dated 22 April 2021 in which she requested to know the status of her employment, in particular "whether or not there is a subsisting or foreclosed agency – staff relationship".

291. We repeat our findings of fact at paragraph 188 above. In short, we did not find that this incident occurred because of the Claimants sex and/or religion or that she was treated less favourably because of her protected characteristic, than a hypothetical comparator.

292. We asked ourselves how a hypothetical man, or a person who was not of Christian faith would have been treated in these circumstances. We found the same events would have occurred if a man or a person who did not have a Christian faith had asked about the status of the employment relationship with the Third Respondent.

293. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex and/or religion fails.

1.9 On 24 May 2021, Donald of Tafara Care Services Ltd (R3) called the Claimant and told the Claimant to find other agencies to work for following an email from the Claimant on the same date.

294. We repeat our findings of fact at paragraph 212 above. In short, we did not find that this incident occurred.

295. Due to our findings that this incident did not occur no comparator was required.

296. Accordingly, no facts being established by the Claimant from which we could infer discrimination the burden of proof did not shift to the Respondent to prove a non-discriminatory reason for this treatment of her and accordingly this allegation of less favourable treatment because of her sex and/or religion fails.

297. To conclude the Claimants claims for less favourable treatment contrary to s.13 of the EqA 2010 on the grounds of her sex and/or her religion all fail and are dismissed.

Jurisdiction

298. We did not consider it necessary to consider time limits in any detail given the findings and decisions made above. As it was, the direct discrimination and harassment claims all failed, and no further consideration was required.

299. However, we note that the Claimant commenced ACAS conciliation proceedings on 27 May 2021, and so any acts of alleged discrimination that took place prior to 28 February 2021 were potentially out of time. The allegations referred to as allegations 1.1 and 1.2 took place on the 20th and 21st of February 2021. As these acts were allegedly perpetrated by two different individuals there would have been an insufficient basis upon which to find any form of continuing act or continuing course of conduct in any event.

300. The Claimant did not put forward any reasons why the tribunal should have exercised its discretion to extend time on a just and equitable basis under s.123 (1)(b) Equality Act 2010. Had any of the matters allegedly occurring before the 28th of February 2021 succeeded, then it is likely that we would have found that they were out of time in any event.

301. The remainder of the allegations referred to as allegations 1.3 to 1.9 were brought within the primary limitation period but these claims failed in any event.

302. It is the unanimous decision of the tribunal that all the complaints by the Claimant fail and are dismissed.

303. For the avoidance of doubt any claims for unfair dismissal and redundancy which were not in any event referred to throughout these proceedings are also dismissed on the grounds that the Claimant did not have two years continuous service.

Application for Costs

304. Due to the Claimant failing to address us on the cost's application against her in the sum of £9240.00 by the First and Second Respondent during her submissions the Claimant is now directed to make submissions in writing on why a costs award should not be made against her on the grounds of her unreasonable conduct.

305. She should also address us on her income and capital and whether she has the means to pay any costs award if one is awarded.

306. The Claimant is ordered to send her submissions in writing to this Tribunal and to the Respondents in the next 14 days.

307. If the Claimant wishes to address us at a hearing to take place by CVP then she must advise the Tribunal of this.

308. However, if she requests a hearing and the First and Second Respondent attend, she must be aware that this may increase the costs being sought against her due to their attendance at any such costs hearing.

_____
Employment Judge L Brown

Date: ……14 December 2023…….

Sent to the parties on:
3 January 2024.....

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For the Tribunal Office