



EMPLOYMENT TRIBUNALS

Claimant: Ms C A Cheptanariu
Respondent: Care UK Community Partnerships Ltd
Heard at: East London Hearing Centre
On: 15, 16 and 17 November 2023 and 29 November 2023 (in chambers)
Before: Employment Judge S Park
Members: Ms J Isherwood
Ms V Nikolaidou

Representation

For the Claimant: In person
For the Respondent: Mr S Proffitt (Barrister)

RESERVED JUDGMENT

1. The claimant's claims for direct discrimination on the grounds of race all fail and are dismissed.
2. The claimant's claims for harassment related to race all fail and are dismissed.

REASONS

Claims and issues

1. At a preliminary hearing held on 14 June 2022 the issues in the claimant's claims had been identified. The claimant pursued claims for direct discrimination on the grounds of race and harassment on the grounds of race. The issues were set out in a record of that hearing that was sent to the parties on 9 February 2023. This was the second version of the list of issues as the parties had provided corrections to the first version that had been sent out by the Judge following the preliminary hearing.

2. At the start of this hearing we confirmed with the parties that the list of issues was as set out in the second version dated 9 February 2023. Unfortunately, the version of the list of issues that had been included in the bundle, prepared by the respondent, was the original version. This only became apparent at the end of the hearing, during submissions. The claimant and Tribunal had the second version of the list of issues but the respondent's counsel did not. He was invited to make further submissions based on the correct version of the list of issues.
3. The claimant said that the respondent did the following and that was less favourable treatment because of her race:
 - 3.1 Allow her to be harassed by Savannah in the following ways:
 - 3.1.1 In the remarks she made to the Claimant in the first three shifts in May 2021, telling the Claimant that she should know what the residents need and be stocked up; by not letting the Claimant speak, by raising her eyebrows and rolling her eyes when the Claimant did speak;
 - 3.1.2 On 25 May 2021, by telling the Claimant that she was not well-mannered, that she was nothing and that she did not do her job;
 - 3.1.3 On 25 May 2021, by treating the Claimant with disrespect by addressing her as 'hostess', refusing to address her by her name and telling her that she was the worst hostess;
 - 3.1.4 On 25 May 2021, by giving the Claimant an 'ironic' smile in the dining room after a meeting in the supervisor's (Maciej's) office;
 - 3.1.5 On 25 October 2021, by continuing to treat her in the same way after she received the outcome of the formal grievance appeal meeting 1.2.2
 - 3.2 Fail to take seriously her complaints about Savannah's treatment of her as follows:
 - 3.2.1 On 25 May, orally to Maciej Wegrzyniak, and
 - 3.2.2 On 28 May by email to the Home Manager, Maria Covington;
 - 3.2.3 On 16 June by written grievance to the Home Manager:
 - 3.3 Fail to make its grievance procedure on its website accessible to employees for whom English is not their first language.
 - 3.4 Fail to uphold her grievance.
 - 3.5 Fail to stop Savannah from continuing to harass the Claimant after she submitted the grievance, and they were aware of her complaint.
 - 3.6 Disregard the Claimant's complaint about Savannah's treatment of her.

4. The conduct the claimant says happened and was harassment related to race was:
 - 4.1 Allow her to be harassed by Savannah in the following ways:
 - 4.1.1 In the remarks she made to the Claimant in the first three shifts in May 2021, telling the Claimant that she should know what the residents need and be stocked up; by not letting the Claimant speak, by raising her eyebrows and rolling her eyes when the Claimant did speak;
 - 4.1.2 On 25 May 2021, by telling the Claimant that she was not well-mannered, that she was nothing and that she did not do her job;
 - 4.1.3 On 25 May 2021, by treating the Claimant with disrespect by addressing her as 'hostess', refusing to address her by her name and telling her that she was the worst hostess;
 - 4.1.4 On 25 May 2021, by giving the Claimant an 'ironic' smile in the dining room after a meeting in the supervisor's (Maciej's) office;
 - 4.1.5 On 25 October 2021, by continuing to treat her in the same way after she received the outcome of the formal grievance appeal meeting 1.2.2.
 - 4.2 Fail to stop Savannah from continuing to harass the Claimant after she submitted the grievance, and they were aware of her complaint.
 - 4.3 Disregard the Claimant's complaint about Savannah's treatment of her.

Procedure, documents and evidence heard

5. The claimant appeared in person. She was assisted by a Romanian interpreter. The respondent was represented by counsel.
6. A bundle of documents had been prepared. At the outset of the hearing the claimant advised that the respondent had provided additional documents the week before when the final bundle was filed with the Tribunal. This was confirmed by respondent's counsel. The claimant did not object to the inclusion of this additional evidence. We advised the claimant that given this evidence had been disclosed after the exchange of witness statements she could add to her statement orally if she wished to say anything about these documents.
7. The claimant had prepared a witness statement and was cross examined.
8. The respondent called four witnesses who had prepared statements and were cross examined. They were Maria Covington, Urszula Wegrzyniak, Roda Williams and Kerri Gray.

Findings of Fact

9. The claimant was employed by the respondent as a hostess from 24 March 2020. She worked at a care home called Weald Heights. Her role as a hostess involved serving meals, drinks and snacks to residents of the care home.
10. The claimant is Romanian. She speaks some English. The claimant explained that she informed the manager of Weald Heights she was in the process of learning English when she first joined their employment.
11. We heard evidence from the manager of Weald Heights, Maria Covington. Mrs Covington had been involved with recruiting the claimant. She explained that the workforce at Weald Heights is very multicultural. There are a lot of employees who do not speak English as their first language and Mrs Covington explained that they were used to managing such situations. She also explained that all new employees went through an induction process where they were provided with an induction booklet including the information they needed to know. New employees were also provided access to the intranet where policies could be found. We accepted Mrs Covington's evidence on these issues.
12. The evidence from the claimant about her induction was limited. However, we have no reason to doubt that it was any different from the process explained by Mrs Covington. The claimant's evidence also showed that she did download policies onto her phone, demonstrating that she did have access to the respondent's intranet. She did not say she only obtained this access sometime after her employment started. We have inferred from this that the claimant was provided with access to the intranet from the beginning of her employment in accordance with the usual induction process as described by Mrs Covington.
13. Weald House has several different floors. Some staff, including hostesses and care assistants, are assigned to specific floors each shift. In March 2021 the claimant started to working on the second floor of Weald House. A particular care assistant, Savannah Drawbridge, was also working on the second floor. The claimant says she had difficulties with Ms Drawbridge from the outset.
14. The claimant described in her evidence Ms Drawbridge treating her disrespectfully when they first worked together. This included raising her eyebrows, rolling her eyes and making faces when interacting with the claimant. The claimant also said Ms Drawbridge would give her orders and not let the claimant speak. Ms Drawbridge acted in a similar way towards the claimant the next time they worked together. The claimant also said that Ms Drawbridge was rude to her in front of others, saying that the claimant did not do her job and was not mannered. The claimant tried to speak with Ms Drawbridge privately. Ms Drawbridge said to the claimant that she was "*the worst hostess*" and that the claimant was "*fake*".
15. The only evidence we heard about these incidents was the claimant's account and this was not challenged in cross examination. Ms Drawbridge did not give evidence. We also noted that within the documentary evidence provided there were documents relating to an investigation into a complaint about Ms Drawbridge made by another employee. These documents show that other employees describe Ms Drawbridge as being moody with staff and if she is not happy, she starts to shout. Taking all this into account we accepted that the

claimant's account was accurate and Ms Drawbridge did treat the claimant as she described.

16. On 25 May 2021 the claimant and Ms Drawbridge were both working on the second floor again. An incident occurred involving the claimant, Ms Drawbridge and another care assistant called Katherine Young. The claimant said that Ms Drawbridge refused to call her by her name and instead said "*I know your name very well ... Alina, but I can call you hostess*". She also told the claimant she was a bad hostess. The claimant asked Ms Drawbridge to stop as it was bullying. Ms Drawbridge responded angrily and said she would report the claimant. Again, this evidence was not challenged and we accepted this is what occurred.
17. The claimant went to see the nurse on the floor, Maciej Wegrzyniak, to ask for advice. He said that Ms Drawbridge had also complained about the claimant being rude. Mr Wegrzyniak called the claimant and Ms Drawbridge into an office to try and resolve matters. The claimant says that she thought a consensus had been reached at the meeting. After this meeting the claimant saw Ms Drawbridge and says that Ms Drawbridge smiled at her '*ironically*'. It was not completely clear what the claimant meant by this. However, again the claimant's evidence was not challenged and we were not provided with any conflicting evidence so we accepted the claimant's account of events.
18. According to the claimant, the same day Mr Wegrzyniak spoke with Ms Drawbridge and Ms Young and took statements from them. He did not ask the claimant to provide a statement. In her evidence the claimant has suggested that this discrepancy is of significance. We have seen the statement by Ms Drawbridge dated 25 May 2021. We presume it was taken on the day, but we heard no other evidence on the circumstances in which it was written. We just note that as a matter of fact Mr Wegrzyniak line managed Ms Drawbridge but he was not the claimant's manager.

The claimant's complaint and grievance

19. On 28 May 2021 the claimant sent two emails complaining about Ms Drawbridge and what had happened on 25 May 2021. These were sent to Maria Covington, and to Urszula Wegrzyniak, Deputy Home Manager. The emails were sent separately but the wording was the same.
20. On 7 June Mrs Covington met with the claimant for an informal discussion about her email. We accepted Mrs Covington's evidence that in this meeting she discussed with the claimant the different options available. She gave her the choice of a formal or an informal approach to dealing with the situation. The claimant told Mrs Covington she wanted to go down a formal route.
21. The claimant suggested in her evidence that she was not told properly about the grievance policy by Mrs Covington during this meeting. We accept that Mrs Covington may not have set out the policy in detail during the meeting. Nonetheless we are satisfied that Mrs Covington explained the options available and said she would send the claimant the forms to complete to start a formal grievance. We also accepted Mrs Covington's evidence that she had the policy with her to refer to if needed.

22. After this meeting Mrs Covington sent the grievance form to the claimant. This was the form that was set out in the policy. The claimant completed it and sent the formal grievance to Mrs Covington on 16 June 2021. The claimant has not indicated in her evidence she had any difficulty doing this. Neither have we seen any evidence, such as further email correspondence, that indicates she did not understand what to do.
23. Mrs Covington appointed Mrs Wegrzyniak to investigate the grievance. Mrs Wegrzyniak was the deputy manager and she was also married to Mr Wegrzyniak, who the claimant had spoken to on 25 May 2021. During the appeal and in her evidence to this Tribunal the claimant has raised this as a concern. There is no evidence though that she thought this was a problem at the time or raised any concerns before the appeal. The claimant has only subsequently complained that it is in breach of the respondent's policy on relationships at work.
24. Our findings about the appointment of Mrs Wegrzyniak to handle the grievance are as follows:
 - 24.1 Mrs Covington explained that complaints are handled within each care home. It was standard practice for the Deputy Manager to carry out the initial investigation and hear the grievance. Then the Home Manager would consider an appeal.
 - 24.2 We accepted this was the case and hence it was standard practice for Mrs Wegrzyniak to investigate the claimant's complaint.
 - 24.3 We do note though that in this case this meant that Mrs Wegrzyniak interviewed her husband as part of the investigation. The allegations were not against him, he was just a witness. Nonetheless, it is understandable that the claimant could perceive this as being a problem and that the investigation was not wholly independent. The respondent has not provided any evidence to show that it considered this risk or took any steps to address it.
 - 24.4 However, there is also no evidence that this situation did affect how the claimant's grievance was handled or investigated.
25. As part of the investigation Mrs Wegrzyniak interviewed Ms Drawbridge, Ms Young, Mr Wegrzyniak and the claimant. She then put together a report and sent a letter with the outcome to the claimant. There were some delays and the outcome letter was finally sent to the claimant by letter dated 23 August 2021.
26. Mrs Wegrzyniak concluded that there was insufficient evidence to fully uphold the grievance as the accounts of witnesses were inconsistent. However, she did uphold it in part. The allegations were split into 2 parts. The first was that Ms Drawbridge had used intimidating and disrespectful behaviour. The second was that this was with an intent to harass, bully and victimise. Mrs Wegrzyniak said she partially upheld the first allegation, that Ms Drawbridge used intimidating and disrespectful behaviour. She did not uphold the second allegation that it was intentional.

27. Having reviewed the report and the letter we were unclear what specifically Mrs Wegrzyniak upheld and what she did not uphold. She did not set out in the report any factual allegations that she found were likely to be true. There is no detail on this in either the report or letter. Her evidence in her witness statement did not provide any further real explanation. Nonetheless, she did inform the claimant that her grievance was upheld in part.
28. The factual allegation by the claimant that we need to determine is that the respondent failed to uphold her grievance. As a matter of fact, this is not completely true because it was partially upheld. However, it is still the case that most of the grievance was not upheld. In terms of the outcome, while we have noted that the reasoning for the findings is limited, we still find that Mrs Wegrzyniak's conclusions were genuine. There was no dispute that an incident occurred between the claimant and Ms Drawbridge on 25 May 2021. The evidence that Mrs Wegrzyniak obtained during her investigation was inconclusive and both the claimant and Ms Drawbridge alleged it was the other who had been rude.
29. After receiving the outcome to her grievance, the claimant contacted another Romanian employee who worked at Weald Heights. This was Bianca Vasile, who was a nurse. Ms Vasile had raised a grievance about Ms Drawbridge earlier in the year which had been upheld. The claimant said she heard from co-workers that others had problems with Ms Drawbridge and had reported this to management, which is why she contacted Ms Vasile. We were provided with translations of messages between the claimant and Ms Vasile in which the claimant sought some general support from her.

The Appeal

30. In the outcome letter the claimant was informed she could appeal by writing to Mrs Covington. On 26 August 2021 the claimant sent a short email to Mrs Covington. In this she asked that her appeal was dealt with by a neutral manager or director from outside Weald Heights who had no prior involvement in the case. She said this was in accordance with the respondent's policy. Mrs Covington responded to say that she had requested an independent manager deal with the appeal.
31. Initially Anna Allen was appointed to hear the appeal. Mrs Covington informed the claimant of this on 27 August 2021. Later the same day the claimant sent an email to Angi Knight, the Regional Director, with a longer letter attached setting out her grounds of appeal. In the email the claimant said that this was to meet the 5-day limit for appealing. The claimant has suggested she did not know who to send her appeal to, even though Mrs Covington had already informed her that Anna Allen would hear the appeal. Ms Knight forwarded the letter to Mrs Covington.
32. The appeal hearing was arranged for 1 September 2021 to be held by zoom. According to the claimant Ms Allen had not received the grounds of appeal or any of the supporting evidence the claimant had sent. The claimant has said that Ms Allen offered to reschedule but she declined. It was not clear why the claimant decided she did not want Ms Allen to reschedule. She has said in her evidence

that she was waiting to hear from Ms Knight, but again her explanation was not clear.

33. In any event, a different manager was appointed to hear the appeal. This was Roda Williams. A meeting was arranged for 5 October 2021. Before this meeting the claimant had asked for a Romanian interpreter to be present. Another employee was present at the hearing to act as an interpreter. During this hearing there was some discussion about the grievance policy and the claimant complained about not being supported in the grievance procedure. Ms Williams explained to the claimant that she could have asked for support and she could access the information she needed on the intranet.
34. On 7 October 2021 the claimant sent an email to Ms Williams with more information. This included a copy of the grievance policy in which the claimant had downloaded and then underlined parts she thought were relevant. She set out further detail of some of her complaints about the grievance process, such as not being given notes to read and sign during the investigation. She also provided the email addresses of two other colleagues who she said would be able to give evidence about Ms Drawbridge's behaviour.
35. On 22 October 2021 Ms Williams wrote to the claimant with the outcome of the appeal. The majority of the appeal was not upheld. However, she partially upheld the claimant's complaint that she had not been given copies of the formal grievance meeting minutes. She said these would be sent to the claimant.
36. The claimant wrote to Ms Williams asking what she could do next if she was not happy with the outcome. On 2 November 2021 the claimant also sent Ms Williams a letter reiterating her original complaints about Ms Drawbridge and stating that Ms Drawbridge had been harassing her again. Ms Williams forwarded the correspondence to HR and has said she heard no further so assumed it had been dealt with. The claimant said she did not receive an answer to her letter but has not otherwise complained in her claim about this.

The claimant's complaints of ongoing harassment by Ms Drawbridge

37. Within the evidence we were provided was a letter from Mrs Covington to Ms Drawbridge dated 20 September 2021. This indicated that Mrs Covington had met with Ms Drawbridge on 14 September 2021 to discuss her behaviour. It is not a formal warning but is titled '*Letter of Concern*'. Mrs Covington states she is formally advising Ms Drawbridge that her attitude and behaviour was unacceptable and she is warned it must improve. The behaviour of concern is described as being intimidating, confrontational or disrespectful. Mrs Covington did not explain the context of this letter in evidence. However, it is consistent with the conclusions in Mrs Wegrzyniak's investigation.
38. The claimant said that Ms Drawbridge continued to be hostile towards her after her appeal had concluded. She described Ms Drawbridge talking to her with disdain and raising her voice at her on 25 October 2021. This evidence was not challenged so we accept this happened.
39. The same day the claimant had a conversation with another care assistant, Ms Mahasamilage, about Ms Drawbridge. According to the claimant

Ms Mahasamilage said that she had also complained about Ms Drawbridge's behaviour. Ms Mahasamilage is not Romanian. The claimant was not sure of her background.

40. The claimant then spoke with Mrs Wegrzyniak who said that the claimant would not work with Ms Drawbridge from then on. She did work with Ms Drawbridge on 2 occasions in November but from her evidence it seems rotas were rearranged and she was told to work on a different floor.
41. In December 2021 the claimant heard that Ms Drawbridge would be leaving the respondent's employment. Ms Drawbridge's employment terminated at some point in January 2022.

The Law

42. The Claims pursued by the Claimant are:

42.1 Direct race discrimination

42.2 Harassment on the grounds of race

Direct Discrimination – Section 13 Equality Act 2010

43. Direct discrimination takes place where a person treats the claimant less favourably because of race than that person treats or would treat others. Under s23(1) Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. 'Race' includes nationality or national origins.
44. Decisions are frequently reached for more than one reason. Provided the protected characteristic or, in a victimisation claim, the protected act, had a significant influence on the outcome, discrimination is made out. (**Nagarajan v London Regional Transport [1999] IRLR 572, HL**)
45. Section 136 of the Equality Act 2010 sets out the burden of proof. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision.
46. Accordingly, where a claimant establishes facts from which discrimination could be inferred then the burden of proving that the treatment was in no sense whatsoever unlawful passes to the respondent. Guidelines on the burden of proof were set out by the Court of Appeal in **Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258**. Once the burden of proof has shifted, it is for the respondents to prove that they did not commit the act of discrimination. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive. Since the facts necessary to prove an explanation would normally be in the possession of the respondents,

a tribunal would normally expect cogent evidence to discharge that burden of proof.

47. The Court of Appeal in **Madarassy v Nomura International plc [2007] EWCA Civ 33; [2007] IRLR 246**, a case brought under the then Sex Discrimination Act 1975, states:

'The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.'

48. Inferences can only be drawn from established facts and cannot be drawn speculatively or on the basis of a gut reaction or 'mere intuitive hunch' (**Chapman v Simon [1994] IRLR 124**) or from 'thin air' (**Chief Constable of the Royal Ulster Constabulary [2003] ICR 337**). Discrimination also cannot be inferred only from unfair or unreasonable conduct (**Glasgow City Council v Zafar [1998] ICR 120**).
49. This means that to succeed with any of his claims for direct discrimination the claimant must first show that he has been treated less favourably than others in the same circumstances. The claimant must also have shown facts from which we can infer that the reason for the less favourable treatment may have been due to the claimant's race. Only after this does the burden shift to the respondent who must show that there is a different non-discriminatory reason for the treatment, that it is in no way due to the claimant's race.

Harassment – Section 26 Equality Act 2010

50. Under section 26 Equality Act 2010

- (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. ...
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

51. With a claim for harassment the claimant must prove on the balance of probabilities that the conduct he has complained of occurred.
52. The test of whether the conduct amounted to harassment is part objective and part subjective. The Tribunal must take into account the claimant's subjective perception but it is also required to look at that objectively to see if it was reasonable for the claimant to have considered his dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.
53. In **Grant v HM Land Registry [2011] EWCA Civ 769** the Court of Appeal said that:
- “Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive environment”. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”*
54. In **Richmond Pharmacology v Dhaliwal [2009] ICR 724** the EAT stated:
- “Dignity is not necessarily violated by things said or done which are trivial and transitory, particularly if it should have been clear that any offence was unintended. While it is also important that employers, and tribunals, are sensitive to the hurt that 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.”*
55. Whether or not the conduct is related to a protected characteristic is a matter of fact for the Tribunal drawing on all the evidence before it.

Discussion and conclusions

56. The claimant made six allegations of fact that she says are direct discrimination on the grounds of race. The first of these includes five individual allegations and the second allegation is in three parts. Of the six allegations, three she has alternatively argued as being harassment on the grounds of race. There are no allegations of harassment that are not also argued to be direct discrimination.
57. In this judgment we will consider the specific factual allegations in turn, considering direct discrimination and, where pleaded in the alternative, harassment.
58. To succeed with any of the claims for direct discrimination on the grounds of race the claimant must first have proved on the balance of probabilities the factual basis of the claim, i.e. the act, conduct or omission that she says is less favourable treatment actually happened as she has described. The claimant must then show facts from which the Tribunal could conclude that the reason for the less favourable treatment was race. As set out in **Madarassy** and other cases referred to above, the claimant must establish facts from which such inferences can be inferred and it is not sufficient for the claimant to just show she has a particular protected characteristic.

59. To succeed with a claim for harassment the claimant must also first prove on the balance of probabilities that the conduct she says happened did in fact occur. If she does this we then consider if it meets the definition of harassment, taking into account the claimant's perspective of events but also looking at whether it was reasonable for her to consider that conduct had the proscribed effect. The context will also be relevant. Even if we find that there is harassment, it will only be unlawful under the Equality Act 2010 if it is also related to race. This is also a matter of fact.

Harassment by Savannah Drawbridge

60. In the updated list of issues there were five separate allegations of conduct by Ms Drawbridge that the claimant described as harassment. The first was when the claimant initially worked with Ms Drawbridge and the next three were specific allegations about events of 25 May 2021. The fifth related to events on 25 October 2021.
61. In the original list of issues there was a single allegation, just that the respondent allowed the claimant to be harassed by Ms Drawbridge. The specific incidents were not listed. The list of issues was updated following representations by the respondent so was agreed by them and this is the list of allegations we considered.
62. We have considered the specific wording of the issue to be determined and whether that there are claims about the incidents themselves or just a complaint about the respondent 'allowing' this. Our conclusion is that the claimant's original claim indicates she wanted to pursue a claim about Ms Drawbridge's conduct towards her. The respondent will generally be liable for the conduct of their employees and the description in the list of issues as the respondent 'allowing' this is just a way of expressing this.
63. In terms of the 5 specific allegations of fact about Ms Drawbridge, we have accepted the claimant's account of events. As we have noted, her evidence was not challenged on this. It was also consistent with documentary evidence in the bundle about Ms Drawbridge's conduct in general.
64. We first considered the claims for harassment on the grounds of race. The conduct on all 5 occasions was clearly unwanted by the claimant and she felt that it was disrespectful and created a hostile environment.
65. We have then considered whether it meets the definition of harassment when looked at objectively, i.e. was it reasonable for the claimant to consider that it had that effect. When considering this we have taken into account the guidance in **Grant v HM Land Registry [2011] EWCA Civ 769** and **Richmond Pharmacology v Dhaliwal [2009] ICR 724**. We have concluded that generally the incidents complained of by the claimant do not meet the definition of harassment, such as Ms Drawbridge telling the claimant what to do or raising her eyebrows. This type of conduct may be rude and unprofessional in the workplace but looked at objectively it does not have the proscribed effect.

66. However, there were some specific comments by Ms Drawbridge which the claimant complained about which we concluded went beyond just being rude. These were:
- a. the refusal to call the claimant by her name, and just referring to her by her job role; and
 - b. direct insults, such as telling the claimant that she was the worst hostess and that she was *'nothing'*.

Deliberately refusing to call someone by their name or telling someone they are *'nothing'* are clearly attempts to put a person down or belittle them. This is degrading and in doing this Ms Drawbridge was being overtly hostile to the claimant.

67. Our conclusion is that not all of the allegations made by the claimant about Ms Drawbridge's conduct amount to harassment. However, the second and third allegations that include these specific comments do amount to harassment. In particular, the refusal to call the claimant by her name and telling her she is *'nothing'* is harassment.
68. We then considered whether this harassment was on the grounds of race. This is a question of fact. We did not find any facts from which we could conclude that the harassment was related to the claimant's race. The claimant did not report any comments or conduct by Ms Drawbridge that could be understood as having any connection or association with her being Romanian. The comments and behaviour the claimant complained of, while rude and at times offensive, were of a general nature. Ms Drawbridge could have made the same type of comments or acted in the same way towards any other hostess and they would have felt similarly offended, irrespective of their race or nationality.
69. We have also considered whether Ms Drawbridge's conduct could still be related to race because Ms Drawbridge targeted the claimant because she is Romanian. We have not been able to identify facts based on the evidence we heard that suggest this was the case. At the time the claimant did not think Ms Drawbridge had acted the way she did because of the claimant's nationality. The claimant did not complain about this in her grievance or during the appeal. The claimant's own evidence was that several other employees also complained about similar behaviour by Ms Drawbridge. In her claim the claimant says *"there were people who had problems with Savannah and after that they reported to the home managers. They all have a different nationality"*.
70. In her claim identifies two employees who complain as also being Romanian. One of those was Ms Vasile, who raised a grievance that was upheld. We have considered in more detail the evidence about Ms Vasile's complaint. We do not consider the fact that Ms Vasile complained about Ms Drawbridge is sufficient for us to infer that Ms Drawbridge acted the way she did towards the claimant because she was Romanian. It is another example of Ms Drawbridge acting in a way that was disrespectful, but the fact that Ms Vasile was also Romanian is incidental. The evidence from the investigation into Ms Vasile's complaint also shows that Ms Drawbridge was perceived by other employees as being moody and difficult. Others reported that if Ms Drawbridge was not happy with someone she would shout at them. The others the claimant identified in her evidence,

such as Ms Mahasamilage, were either of different backgrounds or the claimant did not know or say what their race or nationality was.

71. We have concluded that the claimant's evidence was that Ms Drawbridge acted in a similar way to people with a range of backgrounds. In this context the fact that she has identified other Romanians is not sufficient to show that Ms Drawbridge may have acted towards the claimant because she is Romanian. There was no evidence that this was anything other than coincidence. Therefore, our conclusions are that although some of Ms Drawbridge's conduct towards the claimant was harassment it was not related to race. It was harassment of a more general nature.
72. The claimant also argued that this conduct was direct discrimination. On this, our conclusions are based on the same findings of fact. The claimant did not identify any actual comparator so relies on a hypothetical comparator. Based on the evidence we heard, which showed that Ms Drawbridge had a tendency to be rude and disrespectful in general, we have concluded that the claimant has not shown Ms Drawbridge treated her worse than any hypothetical comparator. Ms Drawbridge exhibited similar behaviour towards a number of employees and this was well known. On this basis the claimant has not shown she was treated less favourably than another hostess who was the same other than her nationality.
73. Based on these conclusions, the claimant's claims for harassment and direct discrimination based on Savannah Drawbridge's treatment of her fail.

Failure by the respondent to take seriously her complaints about Savannah's treatment of her.

74. There were three parts to this claim and this was only argued to be direct discrimination on the grounds of race. The three separate complaints were:
 - a. Her oral complaint to Maciej Wegrzyniak on 25 May 2021.
 - b. Her email to Maria Covington on 28 May 2021.
 - c. Her written grievance dated 16 June 2021.
75. We heard little evidence about the claimant's complaint to Mr Wegrzyniak. The evidence of the claimant was that she spoke to him on 25 May 2021 and he called both her and Ms Drawbridge into his office. After the meeting the claimant thought the matter was resolved. The fact she thought it was resolved suggests that the situation was dealt with by Mr Wegrzyniak to her satisfaction, at least initially. This is contrary to her assertion now that it was not taken seriously. She has not explained what else she expected him to do, or what failings there were by Mr Wegrzyniak. Therefore, we find that the claimant has not shown that Mr Wegrzyniak did not take her complaint seriously.
76. In terms of the email to Mrs Covington and the written grievance, based on our findings of what happened we have also concluded that these were taken seriously. As a matter of fact, when Mrs Covington received the email she arranged a meeting with the claimant to discuss what the claimant wanted to do

and explain the different options available. After this Mrs Covington provided the claimant with the form she needed to raise a grievance. These actions show she was taking the matter seriously. Therefore, the claimant has not shown that Mrs Covington failed to take her email complaint seriously.

77. We have also concluded the respondent took the claimant's grievance seriously. We appreciate that the claimant feels there were flaws in the process and she was unhappy with the outcome. However, the respondent investigated the grievance, met with her and provided an outcome. The grievance was partially upheld. We have noted that the reasoning for this is not completely transparent, but it was still partially upheld. This in itself shows that Mrs Wegrzyniak did consider what the claimant had said about Ms Drawbridge, because she concluded Ms Drawbridge's behaviour was disrespectful. We also note that the respondent then spoke to Ms Drawbridge about her behaviour and told her it needed to improve.
78. Therefore, in respect of all three allegations we find that the claimant has not shown that the respondent failed to take her complaints seriously. On the contrary, the evidence we have seen shows that the complaints were taken seriously as she progressed from an initial informal complaint through to a formal grievance process.
79. The claimant has not expressly complained about the appeal process. But as far as it forms part of the grievance process, we have also concluded this was dealt with seriously. In particular, the respondent twice changed who heard the appeal in order to accommodate the claimant's requests.
80. As the claimant has not shown the respondent failed to take her complaints seriously these claims fail. For completeness though we also note that the claimant has not provided any evidence which indicates the way her complaints were dealt with was any worse than how the respondent treated or would have treated the complaints of anyone else.
81. On this basis these claims for direct discrimination fail.

Failure by the respondent to make its grievance procedure on its website accessible to employees for whom English is not their first language

82. The claimant has put this complaint forward as one of direct discrimination. Therefore, what we need to decide is whether she was treated less favourably than a comparator. The claimant has not named a specific comparator and relies on a hypothetical comparator. In this case, the comparator would be someone else working as a hostess, or potentially other job that was not desk based, whose first language was English.
83. The evidence we heard showed that the respondent made its policies available to employees on the intranet. The claimant had access to the intranet in the same way as any other employee. The claimant provided evidence that showed she did access the grievance policy as she downloaded it on her telephone and during the appeal, she provided an annotated copy. Any other hostess working at Weald Heights would access the policy in the same way, so on a smart phone

or other personal device. As a matter of fact, the claimant was treated exactly the same as any hypothetical comparator in terms of accessing the policy itself.

84. The problem the claimant faces with this argument is that her complaint does not really seem to be one of direct discrimination. The respondent did not fail to make the policy accessible to the claimant because she is Romanian or due to her race. All employees were treated the same in that the policy was available to everyone, but just in English. The claimant's complaint on this point appears more like a complaint of indirect discrimination on the grounds of race. There was a provision, criterion or practice in place of providing the policy in English. The claimant is suggesting that this placed her at a particular disadvantage due to English not being her first language.
85. The claimant did not pursue a claim for indirect discrimination. No indirect discrimination claim was identified at the preliminary hearing and only a direct discrimination claim was included in the list of issues. This means that the respondent has not been able to defend such a claim, including being able to evidence any defence of justification.
86. We have also looked at the claimant's original claim, and in that this complaint is not put forward in such a way that it could be understood to be an indirect discrimination claim. On the contrary, in her original claim the claimant expressly stated "*I have never stated I do not understand the policy*" and that her complaint is that during the grievance she believed that "*the fact I am in process of learning English language was used against me*". This does not suggest an indirect discrimination claim, but is more like a direct discrimination claim of being treated less favourably during the investigation due to her lack of English.
87. This is different than the claim that was identified in the list of issues. In terms of our conclusions, there are no findings of fact that would support such a claim in any event. The evidence we were provided with shows that the claimant was able to raise a grievance and engage fully in the process. We have not made any findings of fact consistent with the claimant being disadvantaged during the grievance process due to her language.
88. On this basis, we have concluded that this part of the claimant's claim fails however it is understood.

Fail to uphold her grievance

89. The claimant has said that this was direct discrimination.
90. Our first conclusion is that this allegation is not completely true. The claimant's grievance was partially upheld, though it was not upheld in full.
91. To the extent that it was not upheld, the claimant has not shown any facts from which we could infer that the respondent reached this decision due race. The burden of proof does not shift.
92. We also note that the reason why the claimant's grievance was not upheld was because the evidence provided by the various witnesses was inconsistent. We are satisfied the respondent has shown this is the case. In support of this the

respondent was able to rely on the outcome to Ms Vasile's grievance. Ms Vasile is also Romanian and the respondent upheld her grievance. We are satisfied this shows that the respondent did not fully uphold the claimant's grievance due to the lack of supporting evidence, rather than for any reason related to her race.

The respondent failed to stop Savannah from continuing to harass the claimant after she submitted her grievance

93. This allegation was argued to be harassment or in the alternative direct discrimination.
94. We have found that Ms Drawbridge did act towards the claimant in a disrespectful way in October 2021. However, we have already concluded that the conduct described by the claimant that occurred in October 2021 did not amount to unlawful harassment by Ms Drawbridge. Therefore, the harassment claim does not succeed for the same reasons as given before.
95. In terms of whether the respondent failed to stop Ms Drawbridge's generally disrespectful conduct, we have concluded that the respondent did take action. Specifically, as a matter of fact, in September 2021 Ms Drawbridge was warned about her behaviour and told that it had to improve. Also, the claimant's own evidence was that when she raised concerns in October 2021 steps were taken to make sure they did not work together.
96. On this basis, we have concluded that the claimant has not shown that the respondent failed to stop Ms Drawbridge from continuing to harass the claimant. As a matter of fact, it took reasonable steps to prevent further conduct of the type that the claimant had complained about.
97. To the extent that there was still some ongoing disrespectful behaviour by Ms Drawbridge, our conclusions are as before, i.e. there were no facts from which we could infer that this may have been due to the claimant's race.
98. Therefore, both this harassment and direct discrimination claims fail.

Disregard the claimant's complaint about Savannah's treatment of her

99. The claimant pursued this allegation as being harassment or direct discrimination in the alternative.
100. It is not clear what the claimant is suggesting under this allegation that is different to the complaints we have already considered about her grievance, failing to take her complaints seriously or failing to stop Ms Drawbridge harassing her.
101. For the same reasons as we have given in respect of those claims, these harassment and direct discrimination claims also fail. As a matter of fact, the respondent did not disregard the claimant's complaint. To summarise:
 - a. Mrs Covington did take the email complaint seriously. She arranged a meeting with the claimant and advised her of her options. When the

claimant said she wanted to pursue formal action Mrs Covington sent her the grievance form.

- b. When the claimant raised a grievance, it was investigated and partially upheld. Some action was taken to reprimand Ms Drawbridge about her behaviour.
- c. When the claimant appealed that was considered fully. This included assigning two different people to hear the grievance in response to the claimant's requests.

102. The claimant has not shown her complaints were disregarded. Therefore, these two claims both fail.

Conclusions

103. For the reasons given above all the claimant's claims fail and are dismissed.

104. Given the above conclusions, the Tribunal did not consider it necessary to address any issues about time limits.

**Employment Judge S Park
Date: 12 January 2024**