



EMPLOYMENT TRIBUNALS

Claimant: Mrs Iyabo Parkes
Respondent: Vigilant Security (Scotland) Ltd
t/a Croma Vigilant

FINAL HEARING

Heard at: London Central Employment Tribunal
In Person

On: 11th, 12th, 13th, 14th, 17th, 18th, 19th, 20th & 24th October 2023
23rd, 25th, 26th, 29th January 2024
30th, 31st January 1st February 2024 Deliberations Judge & Members
2nd February 2024 Deliberations Judge alone
12th, 13th February 2024 Judgment & Remedy

Before: Employment Judge Gidney
Ms Derian Keyms
Mr Ian McLaughlin

Appearances

For the Claimant: Iyabo Parkes (In Person)
For the Respondent: Thomas Fuller (Representative)

JUDGMENT WITH FULL WRITTEN REASONS

The Judgment of the Tribunal is that:

- 1. The Claimant's claim of harassment related to sex, pursuant to s26 Equality Act 2010 succeeds in respect of the following complaints:**
 - 1.1. Issue 6: inappropriate videos, images and texts sent to the Claimant by Edward Amofah;**

- 2. The Claimant's claim of direct sex discrimination, pursuant to s13 Equality Act 2010 succeeds in respect of the following complaints (identified here for identification purposes only):**
 - 2.1. Issue 9: Martin Arscott placed his finger into the Claimant's clenched fist;**
 - 2.2. Issue 14: The Claimant was excluded from an email thread inviting applications for Edward Amofah's former position;**

- 3. The Claimant's claim of harassment related to disability, pursuant to s26 Equality Act 2010 succeeds in respect of the following complaints:**
 - 3.1. Issue 21: The Claimant learning of Martin Arscott's statement regarding standing for two hours;**
 - 3.2. Issue 22: The Claimant learning of Martin Arscott's statement 'Iyabo Parkes is the worst security officer;**
 - 3.3. Issue 30: The Claimant learning of the forwarding of the Claimant's sick note to Martin Arscott;**
 - 3.4. Issue 31: The Claimant told to contact Martin Arscott about her yearly bonus;**
 - 3.5. Issue 32: The Claimant told by Greg at Dumfries Security Control to contact Martin Arscott;**
 - 3.6. Issue 33: The Claimant learning Martin Arscott instructed Lee Willis to send him the Claimant's sicknotes.**

4. **The Claimant's claim of harassment related to race, pursuant to s26 Equality Act 2010 succeeds in respect of the following complaints:**
 - 4.1. **Issue 27: Martin Arscott's statement 'Richard is the chief on site'.**
5. **All of the Claimant's remaining claims of direct sex, race and disability discrimination, and harassment related to sex, race and disability are dismissed.**
6. **The Tribunal awards the Claimant compensation in the sum of £84,082.79**

REASONS

7. Reasons for the liability decision were given orally at the end of the liability hearing. The Claimant asked for written reasons of the liability decision. Those full reasons are set out below:

INTRODUCTION

8. By a Claim Form dated 25th July 2022 [9]¹ the Claimant presented claims of direct discrimination on the grounds of sex, race and disability and harassment related to sex, race and disability. Her complaint was based on 34 allegations of less favourable or detrimental treatment which, when married to the legal claims, required 72 separate decisions on liability.
9. The Claim was case managed by Employment Khan on 18th October 2022 [48]. The Order recited a number of separate factual complaints, said to amount to

¹ Numbers refer to pages within an Agreed Trial Bundle

direct discrimination on the grounds of sex or race or disability, or harassment related to sex or race or disability.

10. The claim was case managed again by Employment Judge Christensen on 1st February 2023 [71]. A Preliminary Hearing took place on 19th April 2023 [98] at which Employment Judge Snelson struck out 7 allegations all relating to the period 2010 to 2012, on the grounds that they had been presented out of time and, on time grounds, had no reasonable prospect of success. Following that hearing an Agreed List of Issues [118] was prepared that contained sections for each legal head of claim, and within each section, set out each factual allegation. That document was rather unwieldy as many of the factual allegations were repeated multiple times under each legal head of claim.

11. At the outset of the hearing I prepared a single schedule of factual allegations, with columns indicating which legal claim was relied on by the Claimant for each factual allegation. With the agreement of the parties this schedule replaced the List of Issues. The factual allegations as they appeared in the schedule are set out in our analysis section, below.

12. At the beginning of the hearing the Claimant represented herself. However it was clear that she was finding the process exceptionally difficult, both her terms of conducting the litigation and reliving the events to which the claim relates. The hearing ran for 19 days:
 - 12.1. 11th October 2023 (day 1) – housekeeping and reading in;
 - 12.2. 12th October 2023 (day 2) – reading in and the Claimant’s evidence;
 - 12.3. 13th to 14th October 2023 (days 3 & 4) – Claimant’s evidence;
 - 12.4. 17th to 18th October 2023 – (days 5 & 6) Claimant’s evidence (with interruption due to Claimant’s health issues);
 - 12.5. 19th October 2023 (day 7) – Claimant’s evidence & Richard Assan’s evidence;
 - 12.6. 20th October 2023 (day 8) – Richard Assan’s evidence (with delay caused by weather related travel disruption);

- 12.7. 24th October 2023 (day 9) – Guy Rampe evidence. We ran out of time and had to relist the hearing in January 2024. On return, the Claimant attended with Ms Lisa Crivello, who works with the Citizen’s Advice Bureau. She had agreed to step in and represent the Claimant. We are very grateful to Ms Crivello for stepping in. We have no doubt of the work involved in taking on this case, which we understand Ms Crivello took annual leave to undertake.
- 12.8. 23rd January 2024 (day 10) – Martin Arscott evidence;
- 12.9. 25th January 2024 (day 11) – Martin Arscott evidence (24th January missed due to illness of the Judge);
- 12.10. 26th January 2024 (day 12) – Caterona Archibald, Thomas Fuller evidence.
- 12.11. 29th January 2024 (day 13) – Ruth McGowan evidence & legal submissions.
- 12.12. 30th to 31st January 2024 (days 14-15) – Days 1 & 2 of Tribunal Deliberations (Judge and Members)
- 12.13. 1st February 2024 (day 16) Day 3 of Tribunal Deliberations (Judge and Members)
- 12.14. 2nd February 2024 (day 17) Judge alone (judgment preparation).
- 12.15. 12th February 2024 (day 18) Judgment and Remedy
- 12.16. 13th February 2024 (day 19) Remedy

13. We were provided with a bundle containing 701 pages, and a supplementary bundle containing 42 pages, to which some further evidence was given. All of the witnesses referred to above gave evidence under oath and were cross examined.

14. As we have mentioned, we were very grateful to Ms Crivello for stepping into assist the Claimant halfway through in a very complex case. Ms Crivello gave up annual leave to assist the Claimant and her dedication to pro bono advocacy could not have been better illustrated by the steps she took to in this case.

15. We were also grateful to Mr Fuller for his presentation of the Respondent’s case. His conduct was exemplary, particularly in the way he presented his case

to the Claimant. His knowledge of the papers and the claims and the depth and quality of his written submissions was excellent and we were greatly assisted by it.

FACTUAL HISTORY

16. The essential factual history of this matter is set out below. Findings of fact as they relate to each allegation that we have been tasked to resolve, are contained within the analysis of each allegation.
17. The Claimant is female and Black African. At all material times she was disabled by the physical impairment of bilateral lower limb primary lymphoedema, and from 1st March 2022 (for reasons we shall explain) the mental impairment of depression. Both conditions qualify as disabilities as defined by s6 of the Equality Act 2010 ('**EqA**').
18. On 10th December 2007 the Claimant commenced employment as a Security Officer with Wilson James Ltd. That employment transferred to the Respondent on 4th May 2010. The Claimant, with her security officer colleagues, provided security at a social housing tower block located at 33 Cavendish Square, London, NW1 0PW. The work was shift work, split between day and night shifts and a number of days off.
19. The early years of the Claimant's employment were not easy. At a prior Preliminary Hearing (set out above) a number of allegations for determination in this claim were struck out on time grounds. We only mention one, being a sexual assault by a colleague, Colin Jordan, known as 'Mr A' at a Christmas party on 9th December 2011. The Claimant raised a complaint against Mr Jordan on 2nd February 2012 stating '*I could feel that I was being touched inappropriately. I turned to see that it Colin. I was very shocked as he had inserted his hand touching the outer part of my vagina squeezed and pulled at the left side of my bottom*' [280]. The Claimant was very upset and told Richard

Assan, Rej Rahman, Jamie Lee Chambers and Paul Moakes what had happened [283].

20. On 8th February Guy Rampe suspended Mr Jordan [282]. During the investigation Guy Rampe told the Claimant to show him how Colin Jordan had sexually assaulted her in the presence of colleagues in the security room. The Claimant felt extremely embarrassed. It was like reliving the sexual assault all over again. She told Paul Williamson that she was suicidal and had to have counselling. Guy Rampe did not uphold the complaint because there had been no witnesses saw any physical contact taking place. He came to this conclusion notwithstanding the following evidence:
 - 20.1. a statement from Raj Rahman confirming that Mr Jordan sent him a text the following day saying 'have I done anything stupid last night' and Mr Rahman replying 'yes, you touched lyabo's ass last night';
 - 20.2. a statement from Mr Jordan accepting he had been drinking all day and had no recollection of the incident.
21. Whilst this incident and how it was investigated is not a formal claim before us (having been struck out on time grounds at an earlier hearing) by way of background for the purposes of drawing an inference we have reached findings of fact upon it. We have no doubt that the Colin Jordan assault happened as the Claimant describes. We also consider that Mr Rampe's decision not to uphold that the assault had happened because there were no live witnesses to it, despite the Claimant's own evidence, the evidence of who she told on the night, and the evidence from Raj and Mr Jackson himself to be a remarkable failing on the part of Mr Rampe. Mr Jordan had as good as admitted the assault yet Mr Rampe chose to disbelief the account of the victim, because, we feel, she was female. The belief that an assault on a female cannot be true unless verified by independent evidence is itself likely to be sex discrimination.
22. Furthermore, we find on the balance of probabilities that Mr Rampe (because we accept the Claimant's evidence on this) did ask the Claimant to reenact the assault for the amusement or pleasure of the male security officers in the room.

Had this complaint been in time and allowed to proceed we would have upheld it. We do find that it speaks to the culture with the Respondent at the time to its female employees.

23. On 16th October 2013 security officers watched an attempted rape of a woman unfold live on CCTV. It was alleged that they took no steps to prevent it. The Respondent told us that from June 2022 it launched a 'safe haven' outreach programme in which its resources were used to help keep people, and women in particular, safe.
24. The first of the allegations of detrimental treatment that we are concerned with began on 17th November 2014. The last incident occurred in as late as February 2023, being the receipt of a grievance appeal outcome report from Ruth McGowan, in which the Claimant's prior grievance complaints regarding her treatment (made to Catreona Archibald) were dismissed. We have dealt with the factual circumstances of those incidents in our analysis of the Issues.
25. The Claimant remains employed. She commenced a period of sickness due to depression on 2nd March 2022. She has not yet recovered sufficiently to return to work. We do hope that the Respondent, following the conclusion of this case, does all that it can to facilitate a return to work for the Claimant in an environment in which she feels safe, and free of triggering events.

THE LAW

26. The key legal principles are as follows:

Direct Discrimination pursuant to s13 EqA – for sex, race and disability.

27. The relevant provisions of section 13 of the **Equality Act 2010** state:

(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.

28. In every case the tribunal has to determine the reason why the Claimant was treated as she was². 'This is the crucial question'.
29. It is for the Claimant³ to prove the facts from which the Employment Tribunal could conclude an unlawful act of discrimination. Did the discriminator, on racial grounds, subject the Claimant to less favourable treatment than others⁴? The relevant question is to look at the mental processes of the person said to be discriminating⁵.
30. The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the claimant unreasonably. The mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one⁶.
31. Where the Claimant has proved facts from which conclusions may be drawn that the Respondent has treated the Claimant less favourably on the ground of race then the burden of proof moves to the Respondent.
32. 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.
33. 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 race. That requires the tribunal to assess not merely whether the Respondent has proved an explanation but that it is adequate to discharge the burden of proof on the balance of probabilities that race was not a ground for the treatment in question.

² Lord Nicholls in **Nagarajan v London Regional Transport** [1999] IRLR 572 at 575, HL

³ **Igen Ltd & Others v Wong** [2005] IRLR 258 CA

⁴ Section (13)(1) if the **EqA**.

⁵ **Advance Security UK Ltd v Musa** [2008] UKEAT/0611/07

⁶ **London Borough of Islington v Ladele** [2009] IRLR 154

34. The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg race) 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 the respondent had committed an unlawful act of discrimination⁷.
35. “Could conclude” must mean that “a reasonable tribunal could properly conclude” from all the evidence before it. This would include evidence adduced by the claimant in support of the allegations of discrimination. It would also include evidence adduced by the respondent contesting the complaint.
36. The tribunal needs to consider all the evidence relevant to the discrimination complaint, ie (i) whether the act complained of occurred at all, (ii) evidence as to the actual comparators relied on by the claimant to prove less favourable treatment, (iii) evidence as to whether the comparisons being made by the claimant were of like with like, and (vi) available evidence of the reasons for the differential treatment.
37. The circumstances of the comparator must be the same, or not materially different to the Claimant’s circumstances. If there is any material difference between the circumstances of the Claimant and the circumstances of the comparator, the statutory definition of comparator is not being applied⁸.
38. It is for the Claimant to show that the hypothetical comparator would have been treated more favourably. It is still a matter for the Claimant to ensure that the tribunal is given the primary evidence from which the necessary inferences may be drawn⁹.

⁷ Madarassy v Nomura International Plc [2007] IRLR 246 CA

⁸ Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL at para 108 (Lord Scott).

⁹ Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting [2002] IRLR 288

Harassment pursuant to s26 EqA – related to sex, race or disability.

39. The relevant provisions of section 26 of the **Equality Act 2010** state:

(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; and (c) whether it was reasonable for the conduct to have that effect.

40. Harassment claims require 3 elements¹⁰, namely (i) unwanted conduct; (ii) having the purpose or effect of either (a) violating the claimant's dignity; or (b) creating an adverse environment; (iii) which are related to the Claimant’s race.

41. In order to decide whether the conduct has either of the proscribed effects under sub-paragraph (1)(b) a Tribunal must consider *both* whether the putative victim perceives themselves to have suffered the effect in question *and* whether it was reasonable for the conduct to be regarded as having that effect¹¹.

42. The statutory words ‘intimidating, hostile, degrading, humiliating or offensive’ are important.

43. Elias J¹² stated ‘*Tribunals must not cheapen the significance these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.*’

¹⁰ **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336

¹¹ **Reverend Canon Pemberton v Right Reverend Inwood, former acting Bishop of Southwell and Nottingham** [2018] IRLR 542, CA

¹² **Land Registry v Grant** [2011] IRLR, 748, CA

OUR ANALYSIS OF THE ISSUES

44. Our analysis of the issues are as follows. We have used the agreed schedule of factual allegations, as follows:
45. **Allegation 1 dismissed. On 17th November 2014 the Claimant informed Paul Moakes she should not be sharing a locker room with male colleagues, but her requests were ignored.**
- 45.1. Relied on for direct sex and race discrimination and harassment related to sex and race.
- 45.2. This did happen. The reception staff locker rooms were moved from the security lockers after an incident on 17th November 2014 in which a receptionist, Tammy Deetman lodged a complaint [295]. We conclude that IP did ask to have her locker moved, but that MA refused, as he did not deem it necessary to move her locker [IP34]. MA accepts that he was aware of her request but did not action it as he felt she did not need it, as she put on her uniform at home and carried a large bag with her personal possessions. He failed to grasp that she changed at home and carried a large bag, because she felt uncomfortable using the lockers. The position was not rectified until she raised it with Richard Assan on 24th October 2018 [SB50] and [RA11]. Her locker was moved on the same day [IP34].
- 45.3. **Time.** The Claimant notified ACAS of a dispute on 14th June 2022, and obtained an ACAS Early Conciliation certificate on 5th July 2022 [8]. The Claimant presented her Claim Form on 22nd July 2022 [9]. Taking these dates into account any incident occurring before **5th April 2022** is out of time (as per EJ Khan's Case Management Order [51]). The Claimant's locker was not moved until 24th October 2018, making the complaint 3 years and 6 months out of time. It was a continuing act for the period 17th November 2014 until it ended on 24th October 2018. The end date for the continuing act is nonetheless 3 years and 6 months. No adequate explanation for that period of delay provided by the Claimant. She told us that she had not even heard of an Employment Tribunal until 2022 but

given the wide reporting of Tribunal Judgments and their public profile generally, we consider this very unlikely.

- 45.4. In the circumstances we consider it would not just and equitable extend time.
- 45.5. **Direct sex discrimination:** Yes. The treatment was less favourable treatment than a male security guard would have received and was because of the Claimant's sex, however the claim fails on time grounds.
- 45.6. **Direct race discrimination:** No. We consider that had the Claimant been a white security officer, that changed into her uniform at home and kept her personal belongings in a large handbag, that MA would have treated her in the same way.
- 45.7. **Harassment related to sex:** No. Had the incident been in time, we would have upheld it as direct sex discrimination.
- 45.8. **Harassment related to race:** No. There was nothing to indicate that this incident was related to the Claimant's race.
46. **Allegation 2 dismissed. On 20th January 2016 Paul Brady took his trousers off and said to the Claimant 'lyabo avert your eyes'.**
- 46.1. Relied on for direct sex and race discrimination and harassment related to sex and race.
- 46.2. This did happen. Yes. The incident is described in the Claimant's statement [IP43-45]. Paul Brady was senior to both the Claimant and Mr Assan, She describes the boxer shorts Paul Brady was wearing when he disrobed. Mr Assan also recalls the incident [RA24] and that he reported to his line manager, who was Paul Brady.
- 46.3. **Time.** The incident occurred before **5th April 2022**. This was a single incident by Paul Brady on 20th January 2016. This is 6 years and 3 months out of time. This period is just too long. The Respondent did not call any evidence to gainsay this allegation which likely reflects the difficulty in collating evidence after such a long period of delay. Paul Brady (who the Respondent was intending to call as a witness at the date of the Case Management Hearing on 18th October 2022 [48]) was no longer its employee at the date of the final hearing in October 2023.

The Respondent would have suffered prejudice caused by the delay. We conclude that it would not be just and equitable to extend time for this allegation.

- 46.4. **Direct sex discrimination:** This incident happened. We reject completely the Respondent's submission [para 71] that telling IP to 'avert her eyes' could ever be described as more favourable treatment. Undressing in front of a female in a control room is completely unacceptable. We consider, on the balance of probabilities, that the use of the expression 'avert your eyes' suggests Mr Brady was taking some measure of enjoyment at disrobing in front of the Claimant and her discomfort. This claim fails on 'time' grounds only.
- 46.5. **Direct race discrimination:** No. We think that if Paul Brady felt it was acceptable to undress in front of women in public, he would have done so regardless of the Claimant's race and would not have held back had she been white. There was nothing about this to indicate that race may have been a factor.
- 46.6. **Harassment related to sex:** No. Had the incident been in time, we would have upheld it as direct sex discrimination.
- 46.7. **Harassment related to race:** No. There was nothing to indicate that this incident was related to the Claimant's race.
47. **Allegation 3 dismissed. On 14th December 2017 Martin Arscott placed a plastic object over his trousers and stimulated it in an up and down motion.**
- 47.1. Relied on for direct sex and race discrimination and harassment related to sex and race.
- 47.2. This incident happened. There was no documentary evidence available to support this allegation. The Claimant's account is at [IP46]. The Claimant attended the party with a friend, and when the friend went to the toilet, the Claimant asserts the incident occurred. It is an unusual event with unusual details, that we consider the Claimant is unlikely to have made up. Paul Brady was present, who joked about being a witness. She told Richard Assan about it on her next shift, and both

noted that if Paul Brady had witnessed it and done nothing, there was nothing they could do, as he was more senior than they were [RA25-26]. Having listened to the transcripts of Martin Arscott we believe that when he considers himself to be in a safe environment his true character emerges. We consider that the Martin Arscott captured in the transcripts is quite capable of acting in the way the Claimant asserts. He denied to Catrina Archibold that any of the comments were made, despite the transcripts subsequently and unquestionably proving that they were. We don't doubt Mr Arscott's assertion that he is happily married, but we also do not accept it as a defence. A happily married man is quite capable of engaging in a sexually harassing office prank or joke on another employee. On the balance of probabilities we accept the Claimant's account over Mr Arscott's and find that this allegation occurred.

- 47.3. **Time.** The incident occurred before **5th April 2022**. It is 4 years and 4 months out of date. There was a break of over a year (the whole of 2021) in which the Claimant raised no complaints at all. We conclude, notwithstanding our conclusions that this incident occurred, that it would not be just and equitable to extend time. 4 years and 4 months is just too long and the Respondent's ability to defend this incident has degraded over time, to the point that all they could do was deny it. No CCTV evidence could be obtained at that stage.
- 47.4. **Direct sex discrimination:** This incident happened. Mr Arscott would not have done it to a male security guard. This claim fails on 'time' grounds only, however we consider it to amount to harassment related to sex, not direct sex discrimination.
- 47.5. **Direct race discrimination:** We are not sure that it was. We feel on the balance of probabilities that Martin Arscott may well have treated a white female security guard in the same way.
- 47.6. **Harassment related to sex:** This matter is pleaded as both direct sex discrimination and harassment related to sex. We consider that the allegation is one of sexual harassment and not direct sex discrimination. We accept the Claimant's evidence on this issue. Performing an act of simulated masturbation is plainly related to IP's sex. The Claimant had

told Martin Arscott of prior incidents of sexual harassment and we conclude that it the incident had the effect of harassing her.

- 47.7. **Harassment related to race:** The Claimant's evidence on this is at **IP46-47**. She describes the incident in terms from which we conclude that her sex was a motivator in the treatment. The Claimant does not suggest in her evidence that it had a racial motivation. We do not conclude that the Claimant has adduced facts from which we could conclude race was a factor.
48. **Allegation 4 dismissed. On 14th December 2017 Martin Arscott placed a plastic object over his trousers and stimulated it in an up and down motion.**
- 48.1. Relied on for direct sex and race discrimination.
- 48.2. This incident happened. The Claimant's evidence is at **[IP51]**. During the July 2019 heatwave she was instructed to open all of the windows in a tower block to assist in ventilation. There were corridors on the north, south, east and west aspects of the tower, with a number of windows at the end of each corridor, and 20 floors. If there were two windows at each corridor end, the instruction to the Claimant was to open 160 windows. The Claimant during the hearing referred to there being over 100 windows. The Respondent asserts that it was cheaper to ask security officers to open the windows (two additional shifts) than the Site Contractors, and that the Claimant was the only officer available at the time. Richard Assan told us **[RA28]** the Respondent's client GVA instructed him to ask the Claimant to open the windows. The Claimant confirmed this in during cross examination on day 3.
- 48.3. **Time.** This incident before **5th April 2022** and is 2 years and 10 months out of time. This is an isolated incident regarding an instruction to Mr Assan from the client, GVA. The period of nearly three years is too long for it to be just and equitable to extend time.
- 48.4. **Direct sex discrimination:** No. We accept the Respondent's evidence that the that the request came from the client, GVA, and was allocated by

Richard Assan to the only available security officer. There was nothing whatsoever to indicate that sex was a factor.

48.5. **Direct race discrimination:** No. We accept the Respondent's evidence that the that the request came from the client, GVA, and was allocated by Richard Assan to the only available security officer. There was nothing whatsoever to indicate that race was a factor.

49. **Allegation 5 dismissed. On 26th October 2020 Martin Arscott was aggressive to Claimant by clinching his fist at her saying she had no rights.**

49.1. Relied on for direct sex and race discrimination.

49.2. This incident happened. The Respondent accepts that MA made the comments attributed to him by the Claimant. It arose in circumstances in which the Claimant sought to argue that she had taken an emergency job at the end of her shift such that the report that she had not signed out at the end of her shift was incorrect. She describes [IP53] MA displayed threatening behaviour, invading her personal space, clenching his fist and telling the Claimant that she had no rights. Richard Assan [RA30] states that he witnessed the comment being made and that it was raised aggressively. 17 months later she raised the matter with Guy Rampe [449] stating that when she questioned what he meant MA said '*you don't have any rights at all*'. Mr Arscott states [MA21] that the Claimant was the aggressor. He asserts that he told the Claimant she had no right to challenge the content of a computer generated timesheet report. We find that the comment '*you have no rights*' was made (the Respondent accepts that). As to whether it was done so aggressively with a clenched fist, on the balance of the probabilities we conclude that it was. This is because two witnesses told us so and because we think it reflects Mr Arscott's way of doing things, as suggested by his unguarded behaviour during the transcribed interviews with Mr Assan. The behaviour was unreasonable.

49.3. **Time.** The Incident before **5th April 2022**. The incident was 1 year and 6 months out of time. There was a break of over a year (the whole of 2021)

in which the Claimant raises no complaints. The period of 1 year and 7 months is too long. We do not believe that it would be just and equitable to extend time to allow such a claim to proceed.

- 49.4. **Direct sex discrimination:** No. We note from the Claimant's complaint to Guy Rampe that he stated '*once again Martin approached me and demanded I look at this mobile phone*' [449]. We conclude that this was in order to show the Claimant the timegate reports. On the balance of probabilities, we conclude that he did so, because he wanted to show the Claimant the timegate report [SB19] which he believed 'she had no rights' to challenge. We also note that Mr Assan, who witnessed the exchange, gave no indication in his statement that sex or race played a part in Martin's behaviour.
- 49.5. **Direct race discrimination:** No. There was nothing whatsoever to indicate that race was a factor in this allegation.
50. **Allegation 6 upheld as harassment related to sex. On 2nd February 2022 the Claimant was sent inappropriate videos, images, and texts by a colleague, Edward Amofah.**
- 50.1. Relied on as direct sex and race discrimination and harassment related to sex.
- 50.2. This incident happened. Edward Amofah accepts that he sent images on to the Claimant that he had received from others [521]. Those images appeared in our papers at [501-519]. The Claimant asserts that they were received between 2017 and 2nd February 2022, although no evidence of earlier images has been provided. The last item, sent on 2nd February 2022, was a 21 second video featuring a 13 year old girl. The Claimant blocked Mr Amofah after that video and told him that she would report it [511b]. The Claimant did raise a complaint to Mr Arscott about the images on 6th April 2022 [460] after receipt of a video sent on 2nd February. She shared the images at a grievance hearing on 6th May 2022 [478]. Mr Amofah was interviewed on 18th May 2022 [520] and then resigned on or about 24th May 2022.

- 50.3. **Time.** The Incident before **5th April 2022**. The incident is 2 months and 3 days out of time. There was a continuing act for the period that the images were sent, which ended on 2nd February 2022. This means there was no continuing act for the purposes of bringing this allegation into time. This is a very serious matter. The Claimant did not bring the complaint in time, being 2 months late, however, she was suffering from depression at the time and the parties memories of the incident had not faded. In the circumstances we do consider it just and equitable to extend time in respect of this allegation.
- 50.4. **Direct sex discrimination:** No. We consider the circumstances of this allegation were better aligned to a claim of harassment related to sex.
- 50.5. **Direct race discrimination:** No. There was nothing whatsoever to indicate that race was a factor in this allegation.
- 50.6. **Harassment related to sex:** This incident was unwanted. The Claimant complained about the incident on 6th April 2022 **[460]**. The images and jokes were all of a sexual nature. The sending of the images and the purpose to harass. The images were sent intentionally. Edward Amofah argued that he did not intend any offence however it seems to us that he must have known offence was likely. In any event the actions had the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
- 50.7. **Vicarious liability:** The images were sent from EA's work phone, and many, although not all, were sent during working hours. The Respondent commenced an investigation into the incident. In the circumstances we conclude that, subject to the statutory defence, the Respondent is vicariously liable for the actions of EA.
- 50.8. **Statutory Defence:** S109(4) EqA provides a defence if an employer took all reasonable steps to prevent (Edward Amofah) from (sending indecent images) or from doing anything of that description. The Respondent's harassment policy identifies this behaviour as sexual harassment and indicates disciplinary action will be taken if it occurs **[265]**. There is no evidence EA acknowledged receipt of the policy or the handbook, which contains the same harassment policy in shorter form **[SB106]** and states that breach of the Equality legislation will be treated as gross misconduct

[SB101]. The Respondent provided EA's training record. That suggests that Mr Amofah received an on-line training session headed 'equality, diversity and cultural awareness' on 6th December 2019, 22nd December 2020 and 31st December 2021 **[276]**. We were told not how long they were or whether a recipient of the training simply clicked to say it was completed. No details of the content of that course were provided. We have had no evidence that it dealt with sexual harassment, rather than diversity and cultural awareness more generally. Put shortly, we have no evidence that sexual harassment and the consequences for engaging in it were raised with EA in this training. It is clear however, if EA received the training over three years, that it had no effect in curtailing his behaviour. In the circumstances we conclude that the Respondent has failed to establish that it did all that it reasonably could to prevent EA's actions.

51. **Allegation 7 dismissed. On 6th February 2022 Sorin Raducan, acted in a hostile and unprofessional manner towards the Claimant.**

51.1. Relied on as direct sex and race discrimination.

51.2. This incident happened. The Claimant raised a grievance regarding Mr Raducan on 6th February 2022 **[418]**. We conclude on the balance of probabilities that the Claimant was treated in a hostile and unprofessional manner by Mr Raducan.

51.3. **Time:** The Incident occurred before **5th April 2022**. It is 2 months out of time. The complaint is a one off incident, it is not part of a continuing act of discrimination. We would extend time or the reasons stated above. We consider that it would be just and equitable to extent time for this claim.

51.4. **Direct Sex Discrimination:** The complaint makes no reference to the Claimant's race or sex as a factor or explanation of Sorin's behaviour. At the investigation meeting that followed the Claimant set out various incidents of less favourable conduct, but does not suggest a motive, other than it was done to belittle her because of her dyslexia. This incident is not relied on as a disability claim, and the Claimant has not asserted that she was disabled by reason of her dyslexia. If she thought

that at the time that his actions were discriminatory on grounds of sex or race, she would have said so. The Claimant's witness evidence on this point [IP57] does not attribute SR's conduct to race or sex.

- 51.5. **Direct Race Discrimination:** There is no evidence to suggest that race was a factor in this incident. The Claimant has not established evidence from which we could conclude race was a factor.
52. **Allegation 8 dismissed. On 6th February 2022 the Claimant raised a grievance about Sorin Raducan, but the Respondent did not get back to the Claimant about this.**
- 52.1. Relied on as direct sex discrimination.
- 52.2. This incident happened. Mr Arscott accepts that he was tasked with responding to the Raducan grievance, but that it fell by the wayside as the Edward Amofah grievance had been made, which was, on any analysis far more serious. Mr Arscott accepts that was a mistake and that he did not update the Claimant on the Raducan grievance [MA39-40]. It, as he himself admits, 'fell by the wayside'.
- 52.3. **Time:** The Incident occurred before Incident before **5th May 2022**. It is 2 months out of time. It is a single allegation and not part of a continuing act of discrimination. This claim was presented 2 months late. We have extended time for other allegations raised within 3 months, and for the reasons stated therein, would do so again.
- 52.4. **Direct Sex Discrimination:** The Claimant has not proved any facts that could lead us to conclude that sex was a factor. We accept MA's explanation for this failure. Whilst it is an example of very poor management, we find that focusing on the Edward Amofah grievance was the explanation, and that explanation had nothing to do with the Claimant's sex.
53. **Allegation 9 upheld as direct sex discrimination. On 7th February 2022 Martin Arscott placed his finger in the Claimant's clenched fist.**
- 53.1. Relied on as direct sex discrimination and harassment related to sex.

- 53.2. This incident happened. The Claimant's evidence on this is at **[IP58]**. She describes Mr Arscott push his finger inside her partly closed fist (she was holding a remote control). Mr Arscott denies the allegation **[MA59]** and asserts his first knowledge of it was when it was raised as a grievance. The Respondent points to the fact that the Claimant continued to work with Mr Arscott after the event, which was odd, if the event happened. However the Claimant did report this incident to the Police **[565]** albeit not until July. She raised it as a grievance with Ms Archibold also in July **[573]**. There was a 5 month delay between the incident and the reporting of it, however she went off sick on 2nd March until 20th April. On the balance of probabilities we find that the incident probably did happen, given the seriousness of escalating the matter to the Police. We also accept that Martin Arscott may well not have realised there was an issue until it was raised as a grievance.
- 53.3. **Time:** This Incident before **5th April 2022**. It is 2 months out of time and not part of a single continuing act. We have extended time for incidents occurring within three months for the reasons already stated. We consider that extending it on this occasion would be just and equitable.
- 53.4. **Direct Sex Discrimination:** It was less favourable treatment than a male, we do not consider that Mr Arscott would have done it do a male. It is a gross invasion of personal space. For the reasons stated, we consider that it was done because of the Claimant's sex.
- 53.5. **Harassment related to sex:** This is already judged to be an act of sex discrimination. It cannot also be sex related harassment.
54. **Allegation 10 dismissed. On 21st February 2022 Martin Arscott informed Claimant he would not be speaking with Sorin Raducan.**
- 54.1. Relied on as direct sex and race discrimination.
- 54.2. This incident did not happen. Martin Arscott told the Claimant at his grievance meeting with the Claimant on 8th February that he will speak to Sorin **[433]**. He repeated that in an email on 14th February **[681]** stating he would speak to Sorin on 18th February 2022. The Claimant asserts Arscott told her on 21st February that he (Martin Arscott) would not be

speaking to Sorin as it would not be fair as he had just got back from his holiday [IP61]. Martin denied this [MA35]. Given the documentary evidence clearly establishes an intention to speak to Sorin, on the balance of probabilities we conclude that Mr Arscott did not tell the Claimant on 21st February that he would not speak to him.

- 54.3. **Time:** The incident before **5th April 2022**. It was presented one and a half months out of time. It was not part of a continuing act. We would have extended time, for the reasons stated above.
- 54.4. **Direct sex discrimination:** We have dismissed this allegation on its facts.
- 54.5. **Direct race discrimination:** We have dismissed this allegation on its facts.
55. **Allegation 11 is dismissed. On 23rd February 2022 the Claimant complained about Martin Arscott's comment on 26.10.20 to Guy Rampe, with no response.**
- 55.1. Relied on as direct sex and race discrimination.
- 55.2. This incident happened. The Claimant dealt with this at [IP62]. She complained about the 'I have no rights' comment to Guy Rampe [448]. She asserts Guy Rampe told her he would revert back to her, but that he did not. Guy Rampe appears to accept that he did not respond, stating at [GR36] he considered she was only explaining why she did not feel comfortable providing evidence in Richard Assan's grievance, not that she was raising an issue herself [448]. In cross examination the Claimant accepted that she did not raise a grievance, but that she was complaining.
- 55.3. **Time:** The incident before **5th April 2022**. It was presented one month out of time. It was not part of a continuing act. We would have extended time, for the reasons stated above.
- 55.4. **Direct sex discrimination:** On examination of the email chain, it is certainly possible that the Claimant was raising a complaint, however, her email is ambiguous. It clearly starts as an explanation for not wishing to give evidence in Assan's grievance. If so, no specific response would

be required. On balance we accept Mr Rampe's explanation that he did not read it as a complaint, even if he should have done. We are unable to conclude that the Claimant has established facts from which we could conclude an unlawful act of discrimination, ie that the decision not to reply was motivated by sex or race.

- 55.5. **Direct race discrimination:** No, for the reasons stated above.
56. All of the remaining incidents occurred after 5th April 2022. They are in time. The issue of time is no longer a factor in our determination of the following issues.
57. Before turning to the remaining issues, it is necessary to set out our conclusions and findings on whether, in respect of both of her impairments, the Claimant was disabled, and if so, from when. The Respondent accepts that IP was disabled by Primary Lymphedema at all material times. The Respondent accepts that IP was disabled by Depression from end April 2022.
58. Lymphedema causes swelling in the body tissues. The Claimant's lymphedema affects her legs, ankles and toes [131]. The Claimant told us in her impact statement that standing for long periods of time causes additional pain which is made worse in hot weather. Mr Arscott told us in his evidence [MA87] that he was aware of the conditions and the problems it posed.
59. We are tasked with determining when the Claimant's mental impairment of depression qualified as a disability under s6 **Equality Act 2010**. We note that the Respondent, in its submissions, invites us to discount the 1989, 2012 and 2015 as limited bouts of depression that cannot be said to meet the statutory definition. We note that the Respondent accepts that the Claimant was disabled by depression from the end of April 2022, but Mr Fuller has not set out why disability from the end of April has been accepted, rather than an earlier date in March or April. The first disability complaint is said to have occurred at the beginning of the month, on 6th April. The Claimant's GP records reveal that the Claimant had been diagnosed with depression (first) on 2nd March 2022 [178]. She was recorded as having suicidal thoughts on 14th March [178]. She was already on prescribed medication (sertraline) at that time. In the circumstances,

we find that the Claimant's depression met the statutory definition of disability from the point of the first formal diagnosis on 2nd March 2022. We reject the Respondent's contention that she was not so disabled until the end of April.

60. We turn next to the question of the Respondent's knowledge of the Claimant's depression. The GP records state a Med3 (fitnote) for depression was first issued on 2nd March 2022 [179]. The fitnote itself appears at [440]. This date is referred to in the Respondent's chronology. We conclude that the Respondent with knew that the Claimant was disabled by depression from 2nd March 2022 or in the alternative, the Fitnote of that date recording depression is such that the Respondent should reasonably have known from that date. We also note that she told Mr Arscott on 14th March 2022 that she could not attend an SIA course as she had counselling for her depression. Finally, the Claimant's Return to Work meeting on 20th April [466] notes the Claimant's reason for absence as 'depression relapse' for the period 1st March to 19th April. In the circumstances, when we come to consider the Claimant's disability complaints, which start from 6th April 2022, she was, at all material times, disabled by reason of lymphoedema and depression.

61. **Allegation 12 is dismissed. On 6th April 2022 Martin Arscott emailed the Claimant saying he wanted to meet with her off-site to discuss her experiences and to meet to discuss her return to work.**

61.1. Relied on as harassment related to sex and disability.

61.2. The Claimant's grievance about Edwards Amofah was dated 6th April 2022. Martin Arscott wrote to the Claimant inviting her to a grievance meeting on 11th April [462] which offered her a choice of venues, at the office, home, or a neutral venue, or when she returned to work. The Claimant did return to work on 19th April 2022, at which point Mr Arscott said that the grievance meeting would be arranged [701]. The Claimant then emailed to say she would prefer Richard Sackey to conduct the meeting. To that extent this event occurred, albeit to discuss the Amofah grievance, rather than 'her experiences and return to work'.

- 61.3. **Harassment related to sex:** The Claimant would have preferred Richard Sackey to conduct the grievance and return to work meetings, so we conclude that it was. We can see no basis whatsoever conclude that the offer of alternative venues was in anyway related to the Claimant's sex. There is no evidential basis for concluding that Mr Arscott's offer of alternative venues had the purpose of harassing her on grounds related to her sex. Looked at objectively and taking into account all of the circumstances, we conclude that it cannot be said to have had that effect.
- 61.4. **Harassment related to disability:** The Claimant would have preferred Richard Sackey to conduct the grievance and return to work meetings, so we conclude that the conduct was unwanted. We consider that the offer of alternative venues was related to the Claimant's disability of depression. We doubt that the offer would have been made in those terms had the absence been the flu or back pain. There is no evidential basis for concluding that Mr Arscott's offer of alternative venues had the purpose of harassing her on grounds related to her disability. We conclude that the offer was made in good faith, and that it gave the power to make the decision to the Claimant, it did not impose a venue. It is also a standard offer to be made to employees returning to work in these sorts of circumstances. Looked at objectively and taking into account all of the circumstances, we conclude that it cannot be said to have had that effect.
62. **Allegation 13 dismissed. On 20th April 2022 the Claimant was pressured to agree to Martin Arscott chair a grievance meeting or told he could not guarantee confidentiality.**
- 62.1. Relied on as direct sex discrimination and harassment related to sex and disability.
- 62.2. This incident did not happen. The Claimant attended two meetings on that date. The Claimant attended a factfinding meeting with Mr Arscott at 7pm [467]. She was told that EA was no longer on site and that her grievance investigation meeting would take place the following week.

The notes record that Martin Arscott offered the Claimant an alternative investigator if she wished [467] and that the Claimant could revert to him about the date of the meeting and who was to host it. The Claimant asserts [IP70] that if someone else conducted the hearing that confidentiality could not be guaranteed, however that is expressly contradicted by the meeting notes which confirm full confidentiality if an alternative investigator was used. The Claimant's return to work meeting was then conducted by Richard Sackey [466].

- 62.3. **Direct sex discrimination:** We have dismissed this allegation on its facts.
- 62.4. **Harassment related to sex:** We have dismissed this allegation on its facts.
- 62.5. **Harassment related to disability:** We have dismissed this allegation on its facts.
63. **Allegation 14 upheld as an allegation of direct sex discrimination. On 24th April 2022 the Claimant was not included in an email thread about Edward Amofah's former position being advertised.**
- 63.1. **Direct sex discrimination:** The email inviting applications for EA's position is in the bundle at [525]. It was sent on 24th May 2022 to all of the male security officers. It was not sent to the Claimant. She complained about this to Catreona Archibald on 30th May 2022 [535]. Ms Archibald evidence is that she was told by Paul Brady and Rajaur Rehman that the Claimant was not included in the email distribution because she was off sick. We do not believe this, in itself, is a good reason for not including an employee into a group email of this nature. More importantly, however, the 33 Cavendish Estate Roster [SB30] confirms that the Claimant was in work (albeit not on sift) on the day of the email. She was not showing as an 'S' (sick) on the roster. She had had her return to work meeting on 19th April 2022. This means that the Respondent's explanation for not sending the Claimant the advert is a false explanation, which we reject. Finally, Martin Arscott told us in evidence that he had said that the Edward Amofah replacement advert

should be sent 'to all the guys'. When challenged on this expression, he said that he meant all the officers, rather than all of the men. In its submissions the Respondent accepted that the term was 'unfortunate'. We conclude, on the balance of probabilities, that the advert was intentionally sent to all the guys, ie all the male employees. The Claimant was not included in the distribution list and we have rejected its explanation (the Claimant was off sick) as false. She was not off sick. In the absence of an explanation for the less favourable treatment, we infer that the Claimant being female was the reason for it, and we do consider the 'send it to the guys' comment as supportive of our conclusion on this point.

64. **Allegation 15 is dismissed. On 8th June 2022 the Claimant received a response to her grievance about sexual harassment but no response to her complaint about Sorin Raducan.**

64.1. Relied on as direct sex and race discrimination.

64.2. This incident happened. This is a repeat of Issue No.8, save for the date, as on this occasion the Claimant asserts she should have had both decisions on 8th June 2022. Mr Arscott accepts that he was tasked with responding to the Raducan grievance, but that it fell by the wayside as the Edward Amofah grievance had been made, which was, on any analysis far more serious. Mr Arscott accepts that was a mistake and that he did not update the Claimant on the Raducan grievance [MA39-40]. It, as he himself admits, 'fell by the wayside'.

64.3. **Direct sex discrimination:** The Claimant has not proved any facts that could lead us to conclude that sex was a factor. We accept Mr Arscott's explanation for this failure. Whilst it is an example of very poor management, we find that focusing on the Edward Amofah grievance was the explanation, and that explanation had nothing to do with the Claimant's sex.

64.4. **Direct race discrimination:** We accept MA's explanation for this failure. It is an example of very poor management. We find that focusing on the

Edward Amofah grievance was the explanation, and that explanation had nothing to do with the Claimant's race.

65. **Allegation 16 is dismissed. On 27th June 2022 the Claimant emailed Paul Williamson about Arscott's sexist/racist behaviour and Rampe's inaction and asking the Claimant to demonstrate how she touched on 09.12.11 with no response.**

65.1. Relied on as direct sex and race discrimination.

65.2. This incident happened. The Claimant deals with this at [IP75]. Her grievance, on 27th June 2022 is at [546]. It was addressed to Paul Williamson, the Respondent's Executive Director. The Harassment Policy directs employees to raise formal harassment complaints with Paul Williamson [268]. Her grievance was acknowledged by Ms Archibold on 6th July [571] and a grievance meeting took place on 19th July [574]. There was then a delay in the investigation process, before an outcome was sent on 8th December 2022 [627]. It is clear from the Claimant's witness statement [IP75] that she expected a response from Mr Williamson, and that her complaint is that she did not get a response from him, not that she did not get a response at all. In so far as she asserts that she received no response from Paul Williamson, as a matter of fact, this allegation is made out.

65.3. **Direct sex discrimination:** Whilst the policy states that a complaint should be made to Mr Williamson, that, in our opinion, does not create an obligation upon him to investigate it. Once received by him, it can be, and was, delegated to another grievance hearing manager, in this case Ms Archibald. We accept this explanation for the non-response by Paul Williamson personally, and we conclude that the explanation has nothing whatsoever to do with the Claimant's sex or race.

65.4. **Direct race discrimination:** No, For the reasons stated above.

66. **Allegation 17 is dismissed. On 4th July 2022 the Claimant received an email from Martin Arscott regarding the Claimant's counselling sessions taking place at work.**

- 66.1. Relied on as harassment related to disability.
- 66.2. This incident did happen. The letter, dated 30th June, confirming the Claimant's counselling sessions on 8th July 2022 is at [186]. The Claimant emailed a request for time off to Valentin Ardeleanu. The Claimant does not ask that the request be kept from Mr Arscott. Valentin acknowledges the communication, copying in Mr Arscott [550]. Martin Arscott replied on 4th July [549] confirming the appointment and making an adjustment for it. Later that day the Claimant contacts Ms Archibold and objects to Martin Arscott dealing with the management of her medical issues [558]. It is dealt with by the Claimant at [IP77] and by Mr Arscott at [MA56-58]. The Claimant objects to the fact that Mr Arscott replied. He confirms that the objection was not made until after he had responded, and the Claimant's request was then granted.
- 66.3. **Harassment related to disability:** The Claimant clearly did not want Mr Arscott to reply. The request related to counselling for the Claimant's depression. Martin Arscott confirmed that an adjustment could be made for the Claimant to attend her counselling. At the time the Claimant had not indicated that Mr Arscott should not be involved. We consider that his response was appropriate and that there is no basis at all for suggesting that it had the purpose of violating IP's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. On one level, we are prepared to accept that the Claimant, who did not want Mr Arscott involved in the management of her depression related sickness absence, to have been upset by the fact that he had replied to a communication that had not been sent to him. However, taking all of the circumstances of this incident into account, we do not conclude that it was reasonable for Mr Arscott's response to have had the effect of humiliating the Claimant. We have regard to the seriousness of the words used.
67. **Allegation 18 is dismissed. On 17th July 2022 the Claimant was told by the police that Martin Arscott said he had met the Claimant in a nightclub.**

- 67.1. Relied on as direct sex discrimination and harassment related to sex and disability.
- 67.2. This incident happened. The Claimant reported the incident of sexual touching (the February 2022 finger in the fist incident) to the Police, we think, in early July, receiving a crime reference number. The Police responded by letter on 5th July 2022 [569]. It appears that the Police undertook an initial investigation and reported back to her by telephone. The call, on 17th July 2022, between the Claimant and Police Constable Franciso Santana is transcribed at [588]. In it the PC clearly tells the Claimant that he had interviewed Mr Arscott and that Mr Arscott told the Police that they had met in a night club. The Claimant complained Mr Arscott's response (having no reason to doubt PC Santana) to Ms Archibald and Mr Williamson on 18th July 2022, the next day [573]. Martin Arscott denies that he ever spoke to PC Santana, stating that after a missed call and voice message Mr Arscott emailed PC Santana on 18th July 2022 [SB57]. PC Santana responded on 24th July 2022 stating that he had closed the report into a sexual offence, but that a hate crime report remained outstanding. On balance we accept that the Claimant was told by PC Santana that Martin Arscott had said that they had met in a nightclub.
- 67.3. **Direct sex discrimination:** The difficulty here is that, whilst we have found as a fact that PC Santana did tell the Claimant the 'meeting in a night club' explanation, we also find, on the facts, that Mr Arscott did not say that to PC Santana. There are various issues with PC Santana. He referred to Mr Arscott in the call as 'a young man'. With the greatest respect to Mr Arscott, we think that such a description is unlikely to have been used by anyone that had met Mr Arscott. Further, in the PC's emailed reply, he confirms to Mr Arscott that the sexual touching offence had been already closed down, before they had spoken. He also refers to a hate crime, but there is no evidence of that being reported anyway. The Claimant does not say she reported a hate crime. Bizarre as it is, we find, on the balance of probabilities that PC Santana did give that report to the Claimant, but he was not told it by Mr Arscott. As such, there is no actionable claim here against Mr Arscott.

- 67.4. **Harassment related to sex:** We have dismissed this allegation on its facts.
- 67.5. **Harassment related to disability:** We have dismissed this allegation on its facts.
68. **Allegation 19 is dismissed. On 23rd October 2022 the Claimant complained about comments made by Martin Arscott which had come to light, but she received no reasonable response.**
- 68.1. Relied on as direct sex discrimination and harassment related to sex and disability.
- 68.2. This incident happened. On examination this incident relates to a complaint about Mr Arscott that the Claimant made to her ACAS Conciliator, Tom Knoedler on 25th October 2022 **[SB117]**. To be actionable, the Claimant must be able to establish that this complaint made its way from ACAS to the Respondent's representative and then to the Respondent, who chose to ignore it. Mr Knoedler responded to the Claimant's email on 28th October 2022 **[SB119]** stating that he had tried to contact the Respondent's representative without success. The Respondent's representative at the time was Mr Fuller. We agreed that it would be necessary to have Mr Fuller tell us about his dealings with Mr Knoedler under oath, and he was sworn in for that purpose. He told us that he had not received a call or email from Mr Knoedler at that time. We have no grounds for disputing Mr Fuller's evidence in this regard, which was not challenged by the Claimant. Ms Archibald had had no contact with the Claimant either.
- 68.3. **Direct sex discrimination:** Whilst the complaint was made, to be actionable the Claimant must show that the failure to respond was an act of discrimination. However, we accept the evidence that we have heard the failure to respond to the ACAS communication was because it had not been forwarded to the Respondents. There is no evidence at all to suggest otherwise, and supporting evidence that it was not raised, both from Mr Knoedler himself and Mr Fuller. This allegation, and all of the discrimination claims based on it, fails.

- 68.4. **Direct race discrimination:** Dismissed for the reasons stated above.
- 68.5. **Harassment related to race:** Dismissed for the reasons stated above.
69. Allegations 20 to 29 are the ‘transcript allegations’. They relate to two grievance investigation meetings held on 2nd September 2020 [339] and 9th September 2020 [363] in which Mr Arscott was investigating a grievance that had been raised by Richard Assan. Mr Assan covertly recorded both meetings. Whilst this was, by necessity, a dishonest act on his part, the meetings do reveal Mr Arscott talking with his guard down. Mr Arscott has read the transcripts and listened to the actual recordings. To his credit Mr Arscott accepts the majority of the comments attributed to him, subject to a couple of amendments that we shall consider in turn. Mr Arscott told us that the context of the meetings was his attempt to get Mr Assan to step up to the new quasi-management role that he had, and that Mr Assan now had to manage security officers that he had previously worked with as colleagues. That said the language used by Mr Arscott and the way in which, unguarded, he choose to express himself was quite shocking, and we conclude, was an insight as to how he approached certain issues and the views he had of people with certain characteristics, particularly people suffering from illness and disability.
70. **Allegation 20 is dismissed. On 23rd October 2022 the Claimant learned that Martin Arscott had said ‘Threaten them with fucking money as well. Some of them will fucking lose their bonuses. Fuck them all.’**
- 70.1. Relied on as direct race discrimination and harassment related to race.
- 70.2. The comment was made. This context for this comment was a recent theft of two bicycles. Mr Arscott was explaining to Mr Assan what tools he had to control the security offices, and he suggested threatening them with their bonuses. Mr Arscott told us that he said ‘that will fuck them off’ rather than ‘fuck them all’ and we agree. It is clear that this comment was aimed at all of the security officers, not just the Claimant. The comment was said.
- 70.3. **Direct race discrimination:** The only ethnic origin evidence of the security guards that we have is at [256] as at the date of a TUPE transfer

in May 2010. In terms of this incident it is 10 years out of date, which we consider unfortunate. It shows black 3 African security officers, 1 black Caribbean, 1 Pakistani, 1 Indian, 2 white British, 1 white other security guards. The ethnic origin for Team Leaders is similar in its diversity. We were told that there are a number of Eastern European officers working on site at in 2020. Whilst we do not have up to date information, we conclude that the security officers at 33 Cavendish Square were made up of a mix of ethnic origins. Guy Rampe told us in cross examination that the security officer team was mainly black and ethnic minority, and multicultural. The Claimant identifies as Black African. The comment was clearly aimed at all of the security officers, regardless of their ethnic origin. In the circumstances it cannot be said to be because of the Claimant's race.

- 70.4. **Harassment related to race:** This claim fails as the comments were not related to the Claimant's race.
71. **Allegation 21 upheld as harassment related to disability. On 23rd October 2022 the Claimant learned that Martin Arscott had said *"Get that time roster smack on... I don't give a fuck what Lyabo Parkes thinks of fucking standing for fucking two hours. I really couldn't give a shit"***
- 71.1. Relied on as direct disability discrimination and harassment related to sex and disability.
- 71.2. These words were said. Martin Arscott accepts that he used the words captured in the transcript.
- 71.3. **Direct sex discrimination:** No. The comment was not made to the Claimant, and she only discovered that it had been made two years later. There was no unfavourable treatment of the Claimant by the making of this comment to Richard Assan.
- 71.4. **Harassment related to sex:** Both male and female individuals can suffer from primary lymphoedema. In the circumstances we cannot conclude that the comment was related to the Claimant's sex.
- 71.5. **Harassment related to disability:** We conclude that Mr Arscott used the example of the Claimant complaining about standing for two hours,

specifically because she had the condition. It did not have the purpose of harassing the Claimant. Mr Arscott made the comment privately, with no intention or expectation that the Claimant would ever learn that it had been said. It did have the effect of harassing her. Notwithstanding the delay between when the comment was made and when the Claimant found out about it, we have no hesitation in concluding that it had the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

72. **Allegation 22 upheld as harassment related to disability. On 23rd October 2022 Claimant learned that Martin Arscott had said *'If you want me to sit here, under a day, I will fucking badger those fuckers Lyabo Parkes is the worst security officer, I have ever met in my fucking life. Ten fucking blowouts this year, fucking ten, but there is nothing I can do about it because legally, you can't do it because she will say I am threatening her, and she will tell me I'm picking on her'***

72.1. Relied on as direct sex discrimination and harassment related to sex, race and disability.

72.2. These words were said. Martin Arscott accepts that he used the words captured in the transcript.

72.3. **Direct sex discrimination:** No. The comment was not made to the Claimant, and she only discovered that it had been made two years later. There was no unfavourable treatment of the Claimant by the making of this comment to Richard Assan.

72.4. **Harassment related to sex:** No facts have been adduced from which we could conclude that the comment was related to the Claimant's sex.

72.5. **Harassment related to race:** No facts have been adduced from which we could conclude that the comment was related to the Claimant's race.

72.6. **Harassment related to disability:** Mr Arscott told us that a 'blow out' was a shift, and that the Claimant had missed 10 shifts this year, ie between January and September 2020. Mr Fuller invites us to conclude that the absences were due to the Claimant's wrist injury (a non-disability related injury) however this was sustained in July 2019 and therefore

could not have been what Mr Arscott was referring to. The Respondent has not provided us with the Claimant's 2020 absence record, so it was difficult to determine whether the 10 blow outs were disability related or not. The failure to provide the sickness record absence for the Claimant does not reflect well on the Respondent. Doing the best we can and on the balance of probabilities, we find that they were. We do so, noting two videos taken by the Claimant of her feet in July 2020 (which is in the relevant period). Her feet were very swollen and in the video the Claimant refers to the heat. We conclude that it was very unlikely that the Claimant could have worked as a security guard during this flare up, and on balance therefore conclude that the absence during 2020 was at least in part disability related. As the comment was never intended to be heard by the Claimant it did not have the purpose of harassing her, however we consider that it had the effect of harassing her, when she heard the recording of the meeting.

73. **Allegation 23 dismissed. On 23rd October 2022 the Claimant learned that Martin Arscott had said ‘You’ve got to let people help you, and when *lyabo*, ‘ I am not doing that’, you say, hang on a second, alright, I will come back to you. We just gonna go to Landmark and Martin, such and such and such. I will send you the process”. Martin Arscott also commented “It’s the little weedy people who disagree with you”.**

73.1. Relied on as harassment related to sex and race.

73.2. The comments were said. The first comment ‘*when lyabo I’m not doing that, you say, hang on a second*’ is at [382] and the ‘*little weedy people*’ comment [380]. In the first comment Mr Arscott appears to be using the Claimant as an example of someone who might complain and how that might be dealt with. Martin Arscott evidence is at [MA93]. He says he used the Claimant in a fictitious example of someone complaining. That comment was specific to the Claimant. Martin Arscott does not state who he meant by ‘little weedy people’ or what he was referring to by the description of someone who was weedy. There is no evidential basis for

linking this to the Claimant. The Claimant accepts that this was not a specific reference to her but suggests that he might have meant underdeveloped or dyslexic.

73.3. **Harassment related to sex:** There are no facts to support the proposition that this comment was in any way related to the Claimant's sex.

73.4. **Harassment related to race:** There are no facts to support the proposition that this comment was in any way related to the Claimant's race.

74. **Allegation 24 is dismissed. On 23rd October 2022 the Claimant learned that Martin Arscott had said *'I am sick of Lyabo Parkes who's had sixteen days or up to sixteen days sick because I hurt my hand on the window and Omar who did not electrocute himself in the f**king.. inaudible... Who are these fucking people***

74.1. Relied on harassment related to sex and race.

74.2. The comments were made by Martin Arscott in the recorded transcripts referred to above.

74.3. **Harassment related to sex:** There are no facts to support the proposition that this comment was in any way related to the Claimant's sex.

74.4. **Harassment related to race:** There are no facts to support the proposition that this comment was in any way related to the Claimant's race.

75. **Allegation 25 is dismissed. On 23rd October 2022 the Claimant learned that Martin Arscott Claimant learned that Martin Arscott had said *'All these fucking Mohamed going for a prayer on a Friday'***

75.1. Relied on harassment related to sex and race.

75.2. The comments were made by Martin Arscott in the recorded transcripts referred to above subject to the following point: Mr Arscott told us that he did not say 'these'. He was referring to a specific individual, Mohammed

Aitazzouzene, who is Black African and Muslim. He was giving an example of how Mr Assan should manage that employee when he wished to leave site to attend Friday prayers.

- 75.3. **Harassment related to sex:** There are no facts to support the proposition that this comment was in any way related to the Claimant's sex.
- 75.4. **Harassment related to race:** We conclude that the comment was related to religious belief. Such a comment, referring to another individual, is still capable of harassing the Claimant, however, she has not presented a harassment related to religion or belief claim. We cannot see that the comment was related to race. We are obliged, in the circumstances to find that this comment was not related to race.
76. **Allegation 26 is dismissed. On 23rd October 2022 the Claimant learned that Claimant learned that Martin Arscott had said '*Ambrose, sometimes he looks like a sheep in a herd ranch*'**
- 76.1. Relied on harassment related to race.
- 76.2. Mr Arscott told us that he said a 'sheep in headlights'. Having listened to the transcript we agree with that amendment. Mr Arscott explained he meant Ambrose looked startled, and that he mixed up his metaphors, intending to say 'rabbit in headlights'. With that amendment we accept that this comment was said.
- 76.3. **Harassment related to race:** The Claimant argued that the reference to a sheep in a herd range suggested Mr Arscott was dehumanising a black individual (Ambrose) by referring to them as a herd animal. We do not accept that this was said. The reference was to Mr Ambrose looking startled. In the circumstances we do not accept that this comment was related to race.
77. **Allegation 27 is upheld as harassment related to race. On 23rd October 2022 the Claimant learned that Claimant learned that Martin Arscott had said '*Richard is the chief coconut on the site*'.**

- 77.1. Relied on harassment related to race.
- 77.2. The transcript records the full statement, in context as *'I'm not going to step on your toes, unfortunately for you Richard, as we've always used the chief coconut, you are the big head puncher here, people are gonna come and look at you'*.
- 77.3. **Harassment related to race:** The comment was not aimed at, or about the Claimant and she was never intended to hear it. We were struck by the fact that Mr Arscott seemed genuinely surprised by the explanation of how the expression 'chief coconut' could have a racial connotation to it, so in the circumstances we conclude that the comment did not have the purpose of violating IP's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The position with 'effect' is different. When considering 'effect' we are required to take into account the Claimant's perception, the other circumstances of the case and whether it was reasonable for the comment to have had the effect of violating IP's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The expression 'coconut' is a widely used form of racial abuse, referring to someone who was black on the outside but white on the inside, or a black person that acts like a white person. Mr Arscott was telling Mr Assan, a black man, that he now had to step up and act like a manager and not a friend of the other security officers, many of whom were also black. He had to be the chief coconut. 'Chief' has tribal connotations, and Mr Assan was to be the chief coconut or the head black guy that had to act like a white guy. We conclude, given the context of trying to get Mr Assan, a black man to start line managing other black security officers who used to be his colleagues, and the widely known racially offensive way in which both the expressions 'chief' and 'coconut' is used, that the Claimant, on hearing the expression did find it violated her dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for her and that in all of the circumstances it was reasonable that it did so.
78. **Allegation 28 is dismissed. On 23rd October 2022 the Claimant learned that Martin Arscott had said *'I couldn't give a fucking monkey's too shit that he***

is fucking 66 and he hasn't done anything, and he's possibly got skin cancers'.

78.1. Relied on as harassment related to race and disability.

78.2. Martin Arscott accepts that this is an accurate transcription of what he said. Mr Arscott is referring to Ivan Bradov.

78.3. **Harassment related to race:** There are no facts to support the proposition that this comment was in any way related to race.

78.4. **Harassment related to disability:** The context of this was Mr Arscott giving Mr Assan another example of how to manage a security officer. Mr Bradov had allowed thieves to pass his security check point, and was therefore guilty in Mr Arscott's eyes, who made it plain that he did not consider the fact that Mr Bradov was 66 or had skin cancer, as any sort of acceptable mitigation, particularly as Mr Bradov had not told the Respondent he had cancer, until it was used by him as mitigation. The clear reference to cancer makes this comment one that can fairly be said to be related to disability. The comment was not aimed at, or about the Claimant and she was never intended to hear it. When considering the effect, we do not think the comment was an attack on cancer or cancer sufferers, rather a rejection of the condition as an excuse for poor performance. It was heard by the Claimant two years later. We do not conclude that such a comment had the effect of harassing the Claimant. It is more likely to be considered distasteful, but falls short of meeting the definition of harassment, that the appellate authorities remind us, we must not trivialise.

79. **Allegation 29 dismissed. On 23rd October 2022 the Claimant that Martin Arscott had said *Let's fucking build a case on that fucking Edward. Let's get rid of the cunt. Excuse my French excuse my French that's how I am, that's how I am. Let's get rid of him'.***

79.1. Relied on as harassment related to race.

79.2. Mr Arscott accepts that this comment was made by him. It is a reference to Edward Amofah. Mr Arscott deals with it at [MA144-145]. He says that

he was trying to get Mr Assan to appreciate that he has to manage poor performing employees and if necessary build a case of examples to effect a dismissal. Mr Arscott's language is unpleasant in the extreme.

- 79.3. **Harassment related to race:** We do not believe that the comment was related to race. There is nothing in this whatsoever to suggest that. The Claimant had reported Edward for sending inappropriate pornography and jokes to her, which lead, during the subsequent investigation, to his resignation. We do not believe that the comments about Edward had the effect of harassing the Claimant.
80. **Allegation 30 upheld as harassment related to disability. The Claimant's sick note was forwarded to Martin Arscott when the Claimant was assured there would be no contact with Martin Arscott.**
- 80.1. Relied on as harassment related to disability.
- 80.2. The Respondent, in its submissions (paragraph 247) accepts that this allegation is factually correct **[630]**.
- 80.3. **Harassment related to disability:** The Respondent argues that the sicknote was forwarded in error, a genuine mistake, and that it could not have the proscribed effect of harassing the Claimant. The comment was related to disability. The sicknote was for depression **[228]**. It did not have the purpose of harassing the Claimant. The Claimant accepts that the sender of the sicknote did so innocently and without knowledge of the instruction not to involve Mr Arscott. It did have the effect. The agreement to remove Martin Arscott from the Claimant's direct line management was made in July 2022 **[555, 557]**. We consider that the cumulative effect of this allegation, along with allegations 31 and 32 did have the effect of harassing the Claimant. The Claimant explains why communications from Martin Arscott are likely to make her poorly, and the Respondent accepted that proposition. Nonetheless the Claimant received either contact from or proof that Martin was still involved in her line management. We have no doubt that this had the proscribed effect of harassing her.

81. **Allegation 31 upheld as harassment related to disability. On 13th December 2022 the Claimant received an email about her yearly bonus and told to contact Martin Arscott about this.**

81.1. Relied on as harassment related to race and disability.

81.2. The Claimant received an email from 7th December 2022 from Shelia Sloan regarding her bonus. It said that she had been awarded £208 and that if the Claimant had any concerns about the email she should contact Mr Arscott [630].

81.3. **Harassment related to race:** We do not believe that the comment was related to race. There is nothing in this whatsoever to suggest that.

81.4. **Harassment related to disability:** This examples, along with issue 30 and 31, all relate to the Claimant being contacted by or told to contact Mr Arscott, after it had been agreed that there would be no further contract, in order to safeguard her mental health. When considered with the other communications involving Martin Arscott, we conclude that this incident did have the effect of harassing the Claimant.

82. **Allegation 32 upheld as harassment related to disability. On 5th January 2023 the Claimant emailed Lee Willis regarding the instruction to contact Martin Arscott regarding her sick note.**

82.1. Relied on as harassment related to race and disability.

82.2. The Claimant was told by Greg at Dumfries Security Control to contact Martin Arscott regarding her sicknote. The Claimant did email Lee Willis to complain about this [SB37].

82.3. **Harassment related to race:** We do not believe that the comment was related to race. There is nothing in this whatsoever to suggest that.

82.4. **Harassment related to disability:** This examples, along with issue 30 and 31, all relate to the Claimant being contacted by or told to contact Mr Arscott, after it had been agreed that there would be no further contract, in order to safeguard her mental health. When considered with the other communications involving Martin Arscott, we conclude that this incident did have the effect of harassing the Claimant.

83. **Allegation 33 upheld as harassment related to disability. On 15th January 2023 received a call from Lee Willis saying that Martin Arscott had instructed him to send Martin Arscott the Claimant's sick notes and (*wanted to get rid of her because of her mental health issues*).**

83.1. Relied on as harassment related to disability.

83.2. Lee Willis was called by the Claimant by phone on 17th January 2023 [639]. This call was transcribed by the Claimant. There is evidence of a call made to the Claimant by Lee Willis on 15th January, namely his request that they swap numbers on that day [638] and the Claimant's oral evidence [IP92] in which she asserted that Martin Arscott had told Lee Willis that he intended to get rid of her due to her medical condition. It is in that context, we think, that the Claimant called Lee back on 17th January, this time covertly recording the conversation, in the hope that he would make the same or similar statement again. We consider that the transcript is accurate and it does support the Claimant's assertion that Martin Arscott had told Lee Willis that he intended to dismiss her because of her mental health issues. Martin Arscott denies any such conversation with Lee Willis, asserting that he was new to company and had himself been dismissed for failing his probationary period. He suggests Lee Willis acted in bad faith. On the balance of probabilities we conclude that this was another example of Mr Arscott expressing his true thinking in an unguarded moment, and that the comment was made.

83.3. **Harassment related to disability:** This examples, along with issue 30 and 31, all relate to the Claimant being contacted by or told to contact Mr Arscott, after it had been agreed that there would be no further contract, in order to safeguard her mental health. When considered with the other communications involving Martin Arscott, we conclude that this incident did have the effect of harassing the Claimant. The comment did not have the purpose to harass. Mr Arscott's comment was not said or directed to the Claimant. It did have the effect. We have no doubt that this comment had the effect of harassing the Claimant.

84. **Allegation 34 dismissed. On 17th February 2023, the Claimant received a flawed grievance appeal outcome, as key witnesses were not interviewed, it was predetermined and littered with untruths and inconsistencies.**

84.1. Relied on as direct sex and race discrimination.

84.2. The grievance appeal outcome, conducted by Ruth McGowan is at [669].

It is correct that Mohammed Aitazzouzene was not interviewed. He did not wish to co-operate but was not given a management instruction to attend an interview. Richard Assan was not interviewed either, but he did provide a statement. The Claimant asserts that the decision was pre-determined, but there is no evidential basis to support this statement. It appears that the Claimant was looking at the appeal as a rehearing, rather than a review of her grounds of appeal. Whilst we do not think the decision was pre-determined, we do conclude that it was flawed. Ms McCowan asked the Claimant for more details, without giving a timeline, and then, when they were received the day before the appeal, refused to accept them, suggesting they should form the basis of a new grievance. The Claimant's original grounds of appeal simply challenged the process and outcome of the original grievance decision by Ms Archibald who had listed 6 points [627]. The Claimant's further information [641] clearly, in our opinion, related to the same 6 decision points, notwithstanding the Claimant's reference to them as minutes. It is clear that the Claimant was not referring to the minutes of the Archibald grievance hearing [574]. The decision of Ms McGowan not to either consider the Claimant's additional grounds and/or postpone the appeal until she had had time to consider them, rendered the appeal flawed, to such extent that had this been a dismissal appeal, the dismissal would have been unfair.

84.3. **Direct sex discrimination:** The Claimant has failed to prove facts from which we conclude that sex was a factor. We got the impression that both the grievance and grievance appeal officers were 'towing the company line' and/or supporting their management team. However, that reason, if true, had nothing whatsoever to do with the Claimant's sex. We are not to conflate unfair treatment with discriminatory treatment.

84.4. **Direct race discrimination:** The Claimant has failed to prove facts from which we conclude that race was a factor. We got the impression that both the grievance and grievance appeal officers were 'towing the company line' and/or supporting their management team. However, that reason, if true, had nothing whatsoever to do with the Claimant's race.

CONCLUSION

85. In short form, by way of summary:

85.1. The Claimant's claim of harassment related to sex, pursuant to s26 **Equality Act 2010** succeeds in respect of:

85.1.1. Issue 6: inappropriate videos, images and texts sent to the Claimant by Edward Amofah;

85.2. The Claimant's claim of direct sex discrimination, pursuant to s13 Equality Act 2010 succeeds in respect of:

85.2.1. Issue 9: Martin Arscott placed his finger into the Claimant's clenched fist, and,

85.2.2. Issue 14: The Claimant was excluded from an email thread inviting applications for Edward Amofah's former position;

85.3. The Claimant's claim of harassment related to disability, pursuant to s26 Equality Act 2010 succeeds in respect of:

85.3.1. Issue 21: The Claimant learning of Martin Arscott's statement 'I don't give a fuck what lyabo Parkes thinks of standing for two fucking hours. I really could not give a shit';

85.3.2. Issue 22: The Claimant learning of Martin Arscott's statement 'lyabo Parkes is the worst security officer I have ever met in my

fucking life. Ten fucking blowouts this year, fucking ten, but there is nothing I can do about it';

- 85.3.3. Issue 30: The Claimant learning of the forwarding of the Claimant's sick note to Martin Arscott after the Claimant had been assured there would be no contact with Martin Arscott.
- 85.3.4. Issue 31: The Claimant told to contact Martin Arscott about her yearly bonus after the Claimant had been assured there would be no contact with Martin Arscott.
- 85.3.5. Issue 32: The Claimant told by Greg at Dumfries Security Council to contact Martin Arscott after the Claimant had been assured there would be no contact with Martin Arscott.
- 85.3.6. Issue 33: The Claimant learning Martin Arscott instructed Lee Willis to send him the Claimant's sicknotes because he wanted to get rid of her for mental health issues.

85.4. The Claimant's claim of harassment related to race, pursuant to s26 Equality Act 2010 succeeds in respect of:

- 85.4.1. Issue 27: Martin Arscott's statement 'Richard is the chief coconut on site'.

- 86. All of the Claimant's remaining claims of direct sex, race and disability discrimination, and harassment related to sex, race and disability are dismissed.
- 87. To the Advocates we say this: We are very grateful to both Ms Lisa Crivello and Mr Thomas Fuller for their efforts in presenting a very complex, long and in many ways, difficult case. We have no doubt that this experience could have been much more arduous for all involved, had they not acted with the dedication and very high standards that they did. We are very grateful to them for their efforts.
- 88. To the Claimant we say this: Over many years you have been treated poorly by the Respondent and many of its staff, often due to characteristics of yours that you cannot change. We have seen just how difficult this has been for you, and

we commend you for your fortitude to press ahead and present your case. We wish you the very best in the recovery of your health.

89. To the Respondent we say this: We have not been asked to make any formal declarations, but we do feel it is necessary to ask the Respondent, at its highest levels of management, to reflect on this case. 34 allegations of less favourable treatment have been raised, and many others could not proceed as legal claims due to the passage of time. That does not mean that they did not happen. Looked at as a whole, there appears to be far too many of the Respondent's employees and managers that, it seems, to pay scant regard to their obligations to act fairly to all people of all characteristics protected by the Equality Act. This is a said reflection on an organisation whose purpose is to provides security to people, many of whom will have vulnerabilities.

Employment Judge Gidney

28th February 2024

JUDGMENT SENT TO THE PARTIES ON

21 March 2024

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FOR THE TRIBUNAL OFFICE