



EMPLOYMENT TRIBUNALS

Claimant: Mr S Raquib

Respondent: Lewis & Tucker Chartered Surveyors

HELD AT: London Central

ON: 26, 27, 28, 29 February & 1 March,
6 March 2024 (in Chambers)

BEFORE: Employment Judge Akhtar

Members: Ms S Aslett
Mr S McLaughlin

Representation:

For Claimant: In person

For Respondent: Mr B Uduje, of Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The Respondent has not contravened s13 Equality Act 2010 in respect of direct race, religion, sex and age discrimination. The Claimant's claims of race, religion, sex and age discrimination are not upheld.

2. The Respondent has not contravened s26 Equality Act 2010 in respect of race and religion related harassment. The Claimant's claim of race related harassment is not upheld.
3. The Respondent has not contravened s27 Equality Act 2010 in respect of victimisation. The Claimant's claim of victimisation is not upheld.
4. The Claimant's claim in respect of holiday pay and unlawful deduction from wages is not upheld.

REASONS

Oral reasons, having been given to the parties on 7 March 2024 and written reasons having been requested in accordance with rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

CLAIMS AND ISSUES

1. The Claimant brings claims of race, religion, sex and age discrimination, race related harassment, unpaid holiday and unlawful deduction from wages. The issues were identified and set out in a final agreed list dated 24 January 2024 pursuant to directions made at a preliminary hearing on 28 June 2023 by Employment Judge Snelson. The acts of discrimination were also set out in a separate schedule on pages 72 to 79 of the bundle, containing 8 acts corresponding with various claims in the list of issues. As many of the acts are repeated across the different heads of claim, we will use the number set out in the schedule when we come to our discussions and conclusions section.
2. The issues are set out below and were further clarified and confirmed at the start of this hearing. With regard to the constructive unfair dismissal claim, the Claimant accepted he did not have the requisite 2 year qualifying service to bring such a claim and confirmed his claim in respect of constructive unfair dismissal was limited to this being an act of discrimination on the grounds of race and religion.

LIST OF ISSUES

Time limits

1. Have the Claimant's claims of direct race discrimination, direct religion or belief discrimination, direct sex discrimination, direct age discrimination, harassment and victimisation been brought within three months of the acts complained of, taking into account the effect of the 'stop the clock' provisions in respect of early conciliation?
2. The Claimant began ACAS Early Conciliation on 2 January 2023 and obtained an Early Conciliation Certificate on 25 January 2023. The Claimant issued the claim on 20 February 2023.
3. The Respondent contends that any acts that occurred prior to **3 October 2022** are out of time.
4. In respect of any complaints which are argued to be out of time by the Respondent, do they form part of a continuing act, taken together with acts which are in time?
5. If the complaints were not submitted in time, would it be just and equitable to extend time?

Direct race discrimination

6. Did the Respondent treat the Claimant less favourably than it treats or would have treated others?
7. The Claimant relies on the following alleged conduct:
 - a. On 1 **August 2022** Benjamin Goldberg made false accusations of "theft, swindling monies, within Lewis Tucker staff & outside people" against the Claimant and that management of the Respondent did nothing to protect his reputation;
 - b. In **April 2022** Mark Guy swore at him because he disagreed with how the Respondent's accounts should be processed;
 - c. In **May 2022** Mr Guy swore at him again on the phone;

- d. In **July 2022** Mr Guy stated: “you’re a fucking cunt come down if your man enough”;
 - e. On or around **5 September 2022** he was replaced as Head of Accounts by Mahesh Kewal and that Mr Kewal was offered a salary of £60,000;
 - f. On or around **September 2022** Avi Van Messel was allowed to work from home and to leave early on Fridays;
 - g. From **April – July 2022** Mr Lewis told Property Managers to apply pressure to get the maximum out of him;
 - h. Between **4 August – 26 August 2022**, whilst he was signed off work, he was forced to complete work, that calls were being transferred to him, and that client’s were contacting him directly;
 - i. Between **30 August – 5 September 2022** whilst he was on holiday, Mr Davies contacted him to advise him that his holiday had not been authorised and that he would be expected in work on 5 September 2022;
 - j. The Respondent not allowing him to work from home permanently on Mondays;
 - k. On **26 October 2022** Mr Lewis stated:
 - i. “I don’t need you now”
 - ii. “You brought this on yourself”
 - l. On or around **1 August – 30 September 2022** the Respondent gave Kyra Goodman a salary increase of £10,000;
 - m. On or around **1 August – 30 September 2022** the Respondent gave Evita Grybauskait a salary increase of £10,000.00.
8. Was any less-favourable treatment accorded to the Claimant because of race?
9. What is the appropriate comparator?
- a. The Claimant asserts the appropriate comparators are:

- i. Mahesh Kewal;
 - ii. Kyra Goodman;
 - iii. Evita Grybauskait; and
 - iv. Avi Van Messel
- b. The Respondent asserts the appropriate comparator is a hypothetical comparator, namely a white Client accountant.

10. Are there facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant?

11. If so, has the Respondent shown that it did not discriminate against the Claimant?

Direct religion or belief discrimination

12. Did the Respondent treat the Claimant less favourably than it treats or would have treated others?

13. The Claimant relies on the following alleged conduct:

- a. On **1 August 2022** Benjamin Goldberg made false accusations of “theft, swindling monies, within Lewis Tucker staff & outside people” against the Claimant and that management of the Respondent did nothing to protect his reputation;
- b. In **April 2022** Mark Guy swore at him because he disagreed with how the Respondent’s accounts should be processed;
- c. In **May 2022** Mr Guy swore at him again on the phone;
- d. In **July 2022** Mr Guy stated: “you’re a fucking cunt come down if your man enough”;
- e. On or around **1 August 2022 – 30 September 2022** Kyra Goodman, a temporary holiday worker, was offered £38,000 to make her stay with the Respondent.

- f. On or around **5 September 2022** he was replaced as Head of Accounts by Mahesh Kewal and that Mr Kewal was offered a salary of £60,000;
 - g. From **April – July 2022** Mr Lewis told Property Managers to apply pressure to get the maximum out of him;
 - h. Between **4 August – 26 August 2022**, whilst he was signed off work, he was forced to complete work, that calls were being transferred to him, and that client's were contacting him directly;
 - i. Between **30 August – 5 September 2022** whilst he was on holiday, Mr Davies contacted him to advise him that his holiday had not been authorised and that he would be expected in work on **5 September 2022**;
 - j. The Respondent not allowing him to work from home permanently on Mondays;
 - k. On or around **September 2022** Avi Van Messel was allowed to work from home and to leave early on Fridays
 - l. The Respondent applied extra work load on the Claimant and this meant he never finished on time and left late as he had to complete other employees work.
 - m. On **26 October 2022** Mr Lewis stated:
 - i. "I don't need you now"
 - ii. "You brought this on yourself"
14. On or around **1 August – 30 September 2022** the Respondent gave Evita Grybauskait a salary increase of £10,000.00];
15. Was any less-favourable treatment accorded to the Claimant because of religion or belief?
16. What is the appropriate comparator?
- a. The Claimant asserts the appropriate comparators are:
 - i. Mahesh Kewal;

- ii. Kyra Goodman;
- iii. Evita Grybauskait;
- iv. Avi Van Messel

b. The Respondent asserts the appropriate comparator is a hypothetical comparator, namely a non-Muslim Client accountant.

17. Are there facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant?

18. If so, has the Respondent shown that it did not discriminate against the Claimant?

Direct sex discrimination

19. Did the Respondent treat the Claimant less favourably than it treats or would have treated others?

20. The Claimant relies on the following alleged conduct:

- a. On or around **1 August 2022 – 30 September 2022** Kyra Goodman, a temporary holiday worker, was offered £38,000 to make her stay with the Respondent;
- b. On or around **1 August – 30 September 2022** the Respondent gave Evita Grybauskait a salary increase of £10,000.00.
- c. On or around **1 August – 30 September 2022** the Respondent offered Maria Egiert a salary increase to stay; and
- d. The Respondent not allowing him to work from home permanently on Mondays.

21. Was any less-favourable treatment accorded to the Claimant because of sex?

22. What is the appropriate comparator?

- a. The Claimant asserts the appropriate comparators are:

- i. Kyra Goodman;
- ii. Evita Grybauskait; and
- iii. Maria Egiert.

b. The Respondent asserts the appropriate comparator is a hypothetical comparator, namely a female Client accountant.

23. Are there facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant?

24. If so, has the Respondent shown that it did not discriminate against the Claimant?

Direct age discrimination

25. Did the Respondent treat the Claimant less favourably than it treats or would have treated others?

26. The Claimant relies on the following alleged conduct:

- a. On or around **1 August 2022 – 30 September 2022** Kyra Goodman, a temporary holiday worker, was offered £38,000 to make her stay with the Respondent;
- b. On or around **1 August – 30 September 2022** the Respondent offered Evita Grybauskait a pay increase;
- c. On or around **1 August – 30 September 2022** the Respondent offered Maria Egierta pay increase to stay; and
- d. The Respondent not allowing him to work from home permanently on Mondays.

27. Was any less-favourable treatment accorded to the Claimant because of age?

28. What is the appropriate comparator?

- a. The Claimant asserts the appropriate comparators are:
 - i. Kryra Goodman;

- ii. Evita Grybauskait; and
- iii. Maria Egiert.

b. The Respondent asserts the appropriate comparator is a hypothetical comparator, namely a younger Client accountant.

29. Are there facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant?

30. If so, has the Respondent shown that it did not discriminate against the Claimant?

Harassment

31. Did the Respondent engage in unwanted conduct related to race towards the Claimant?

32. The Claimant relies on the following alleged conduct:

- a. In **April 2022** Mark Guy swore at him because he disagreed with how the Respondent's accounts should be processed;
- b. In **May 2022** Mr Guy swore at him again on the phone;
- c. In **July 2022** Mr Guy stated: "you're a fucking cunt come down if your man enough";
- d. From **April – July 2022** Mr Lewis told Property Managers to apply pressure to get the maximum out of him;
- e. On 1 **August 2022** Benjamin Goldberg made false accusations of "theft, swindling monies, within Lewis Tucker staff & outside people" against the Claimant and management of the Respondent did nothing to protect his reputation;
- f. Between **4 August – 26 August 2022**, whilst he was signed off work, he was forced to complete work, that calls were being transferred to him, and that client's were contacting him directly;

- g. The Respondent not allowing him to work from home permanently on Mondays;
- h. On **26 October 2022** Mr Lewis stated:
 - i. "I don't need you now"
 - ii. "You brought this on yourself"

33. Was the conduct unwanted?

34. Was the conduct related to race and/or religion or belief?

35. Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

36. If so, was it reasonable for the alleged conduct to have the said effect?

Victimisation

37. Did the Claimant do a protected act within the meaning of section 27(2) of the Equality Act 2010??

38. The Claimant relies on the following as alleged protected acts:

- a. On or around **April/May 2022** and **August 2022** the Claimant made complaints of "harassment" to Clive Lewis, Jonathan Lewis Tucker, and Gideon Davies on "false accusation of theft mishandling of funds and his reputation was not defended in public";
- b. On or around **July 2022** the Claimant made complaints to Clive Lewis about "abuse from another employee but Respondent did nothing";
- c. On or around **1 August 2022 – 30 September 2022** the Claimant made complaints to Clive Lewis about "equal pay as ex staff and to deliver all promises".
- d. On or around **14 March 2022 – 30 April 2022** the Claimant was a Witness to Mark Guy abusing Ishmael Lartey a 60-year-old fragile man the predecessor

head of accounts. The Claimant said to Clive Lewis and Alex Norman that “Mark Guy was out of order for swearing and offering to fight Ishmael, telling him to come downstairs. Mark was in the wrong to suggest how to treat a credit note on a tenant to Ishmael Head of Accounts. Because he was corrected, he didn't like it and lost his temper. Ishmael was so sad and down. he was teary and took tablets because he had breathing issues.”

39. Did the Respondent subject the Claimant to a detriment because the Claimant had done a protected or the Respondent believed that the Claimant had done, or may do, a protected act?

40. The Claimant relies on the following alleged conduct as amounting to a detriment:

- a. On **1 August 2022** Benjamin Goldberg made false accusations of “theft, swindling monies, within Lewis Tucker staff & outside people” against the Claimant and that management of the Respondent did nothing to protect his reputation;
- b. In **April 2022** Mark Guy swore at him because he disagreed with how the Respondent's accounts should be processed;
- c. In **May 2022** Mr Guy swore at him again on the phone;
- d. In **July 2022** Mr Guy stated: “you're a fucking cunt come down if your man enough”;
- e. On or around **1 August 2022 – 30 September 2022** Kyra Goodman, a temporary holiday worker, was offered £38,000 to make her stay with the Respondent.
- f. On or around **5 September 2022** he was replaced as Head of Accounts by Mahesh Kewal and that Mr Kewal was offered a salary of £60,000;
- g. From **April – July 2022** Mr Lewis told Property Managers to apply pressure to get the maximum out of him;
- h. Between **4 August – 26 August 2022**, whilst he was signed off work, he was forced to complete work, that calls were being transferred to him, and that client's were contacting him directly;

- i. Between **30 August – 5 September 2022** whilst he was on holiday, Mr Davies contacted him to advise him that his holiday had not been authorised and that he would be expected in work on **5 September 2022**;
- j. The Respondent not allowing him to work from home on Mondays;
- k. On **26 October 2022** Mr Lewis stated:
 - i. “I don’t need you now”
 - ii. “You brought this on yourself”

Discriminatory constructive dismissal

- 41. Was the Claimant constructively unfairly dismissed contrary to sections 95 or 98 of the Employment Rights Act 1996 ('ERA')?
- 42. The Claimant relies on the acts as set out under direct race discrimination, direct religion or belief discrimination, direct sex discrimination, direct age discrimination, harassment, victimisation, and breach of contract as a fundamental breach.
- 43. Did the Claimant resign in response to the alleged breach?
- 44. Has the Claimant affirmed the contract?
- 45. Insofar as the Claimant was constructively dismissed, was such dismissal itself discriminatory?
- 46. The Respondent denies it was in breach of the Claimant's contract of employment thereby entitling him to terminate his contract insofar as this may be alleged or at all.
- 47. It is further denied that the Claimant was subjected to discrimination, and that any alleged act(s) of discrimination sufficiently influenced the Claimant's decision that there had been a repudiatory breach of his employment contract (entitling him to take the decision to resign) such that his dismissal was discriminatory within the meaning of Section 39 EqA.

Holiday Pay (Reg 16 WTR 1998)

48. Did the Claimant have accrued and untaken leave at the termination of his employment?
49. The Claimant considers that on termination he was owed £157.48 which he accepts was paid to him in May 2023.

Unlawful deduction of wages/Breach of contract

50. Did the Claimant work overtime whilst employed by the Respondent?
51. Is the Claimant entitled to payment in respect of any overtime worked?
52. The Claimant states that he is owed £846.46 in respect of overtime worked.
53. Did the Respondent agree to increase the Claimant's salary to £50,000?
54. The Claimant states that this was agreed by Clive Lewis at the three-month probation in May/June 2022.
55. Was the Claimant contractually entitled to payment of a salary of £50,000?
56. The Claimant states that he is owed £6,706.04 in respect of the underpayment of his salary.
57. Was the Respondent in breach of the Claimant's employment contract in respect of a failure to make a payment in respect of overtime?
58. The Claimant states that he is entitled to payment of £3,083.68 in respect to the two weeks he was signed off between **4 August – 26 August 2022**.
59. Was the Respondent in breach of the Claimant's employment contract in respect of the increased salary as alleged?
60. Is the Claimant entitled to recover the sums claimed as above?

Remedy

61. If the Claimant's claims are upheld, what financial remedy is appropriate in all of the circumstances?

Procedure, documents and evidence heard

1. The Tribunal heard evidence from the Claimant and read the written evidence of Ms Danielle Brennan, Ms Maria Egiert and Mr James Norman, all ex-employees of the Respondent.
2. The Tribunal also heard the evidence of the following witnesses on behalf of the Respondent:

Mr Gideon Davies, Shareholder and owner

Mr Clive Lewis, Director

Mr Mahesh Kewal, Head of Client Accounts

Mr Mark Guy, Associate Director

3. With regard to the Claimant's 3 witnesses, who did not attend to give oral evidence, we gave appropriate weight to this evidence, however, where we were unable to reconcile disputed evidence, we did so by referring directly to documentary evidence.
4. There was a bundle of documents running to 363 pages. Various additional documents were handed up during the course of the hearing. These pages were numbered and added to the bundle. The Tribunal informed the parties that unless it was taken to a document in the bundle it would not read it.

Findings of fact

5. Having considered all the evidence, both oral and documentary, we made the following findings of fact. These findings are not intended to cover every point of evidence given but are a summary of the principal findings that we made from which we drew our conclusions. We have made findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background. These findings may have been relevant to drawing inferences and conclusions.

Background

6. The Respondent is a small property management and investment consultancy company.
7. The Claimant was employed by the Respondent as a Client Accountant from 28 February 2022 until 31 October 2022, following his resignation from the Company on 14 October 2022.
8. The Claimant complains of race, religion, sex and age discrimination, race and religion related harassment, victimisation, unpaid holiday and unlawful deduction from wages.

Benjamin Goldberg Allegations/lack of management support – Act 1

9. The Claimant alleges on 1 August 2022 Benjamin Goldberg made false accusations of “theft, swindling monies, within Lewis Tucker staff & outside people” against the Claimant and that management of the Respondent did nothing to protect his reputation.
10. Mr Goldberg was never an employee of the respondent. Mr Goldberg is employed by Landswood decoy LLP as an Associate Partner.
11. Mr Goldberg worked for the Respondent as a property manager handling various properties for a specific client. He left the respondent on 31 May 2022.
12. The email communications between the Claimant and Mr Goldberg commence on 22 June 2022, when Mr Golberg sends the Claimant an email requesting a client statement for the service charge fund for a particular property that he had handled whilst working with the Respondent. Mr Goldberg copies in Emma Brown his manager at Landswood de Coy as well as Jonathan Landsman, a Consultant Accountant employed by the Respondent.
13. The Claimant responds on the same day attaching statements, however these do not include VAT payments, which is queried by Mr Goldberg on 23 June 2022, as well as a further request relating to payment of monies for other properties that had been under Mr Goldberg’s portfolio whilst he was working at the Respondent company. In his response of 23 June, Mr Golberg copies in Mr Clive Lewis, a Director of the Respondent and Edward Schwab another manager at Landswood de Coy.

14. No response is received and Mr Goldberg chases this on 28 June. The Claimant responds on 29 June advising that he was prioritising the workload and hoping to respond within the next 7 days. Mr Goldberg responds on the same day querying whether there were any specific issues and requesting that a particular account payment be transferred immediately so that he could pay suppliers.
15. The Claimant does not respond and Mr Goldberg sends further emails on 4 and 8 July 2022 requesting an update. Mr Goldberg suggests the bank transfer would take a couple of minutes to complete and the Claimant could continue with sorting out the reconciliation.
16. On 13 July 2022, Mr Golberg removes individuals including the Claimant from the email chain specifically addressing his email to Mr Lewis and Mr Gideon Davies, a shareholder and owner of the Respondent and copying in Mr Schwab. Mr Goldberg requests the money to be paid urgently so that he can pay an electricity bill for the client.
17. Mr Davies responds on the same day advising that the reconciliation has been done and Mr Landsman was checking it. Mr Davies also advises that payment of the majority the money could be sent with any remaining balance to be sent once any charges with regard to closing the account were checked.
18. On 13 July, Mr Davies requests the Claimant to make the payment to Mr Golberg in 3 amounts below £50,000. At this stage Mr Golberg brings the Claimant back into the email chain. The Claimant then seeks confirmation of bank accounts which Mr Goldberg provides immediately. Mr Davies then confirms payment.
19. In his email of 13 July confirming bank accounts, Mr Golberg also requests a download of all transactions on the RBS account for the past 4 months. The Claimant provides a list of 4 month transactions together with fund balances. Mr Goldberg then asks for confirmation that the rent account has been entirely reconciled including all transfers being made from the general account to a particular client account. He also seeks clarification regarding transfers 'OUT' to the Respondent and what these related to.
20. The Claimant responds on the same day stating; *“as you are aware the Qube property fund balances do not entirely match the RBS bank balance. This is because since October 2021 to July 2022 payments and receipts were not recorded through Qube properly. Where you have made direct payments they were not put through Qube. On*

the bank reconciliation as you can see if all the transactions were put through Qube IE receipts and payments then RBS bank balance will match Qube balance.....Regarding the Lewis & Tucker IAT entries, I will have to get back to you on this”.

21. Mr Goldberg responds to the Claimant on the same day thanking the Claimant and advising the number of direct payments was miniscule and that he looked forward to receiving the IAT information which he understood would be “fairly easy” to see where the payments went.
22. On 1 August 2022, Mr Goldberg responds to the Claimant stating the following: *“rubbish full stop you reversed payments, made stuff up and moved money around accounts without asking. You are fully aware payments from were nothing to do with me and you are also fully aware that you didn't read the e-mail sent. Absolute, unadulterated rubbish. Worse than that borderline illegal behaviour. What ever @ Clive Lewis as per my previous e-mail this isn't about the money. It is obvious to me that money has been taken out that shouldn't have been there so there is a more important question for you as to how you go forward with your accounts team”.*
23. It is this email that the Claimant relies on in support of his allegation that Mr Goldberg accused him of theft.
24. The Claimant responds to Mr Goldberg the same day stating: *“Benjamin, I suggest you don't make false accusations like this and use appropriate language. If you feel we at L&T done something wrong, why did you not sit down with me and Clive and go through the bank reconciliations? I put my signature to confirm the authenticity. You run because you mismanaged the funds over 8 years and now expect me to provide you with explanation? And getting all rude - totally inappropriate. However, if you wish to come to a meeting I am here.”*
25. Mr Davies responds directly to the Claimant on 1st of August 2022 copying in Mr. Lewis and Mr Lansman stating: *“Raquib don't rise to it we will discuss tomorrow”.*
26. We find no suggestion in Mr Goldberg's email that the Claimant was stealing or making any personal gains, rather it was the process that the Claimant was undertaking i.e. *“making stuff up and moving money around without asking”* that was described as *“borderline illegal behaviour”*. We find that these were strong words but perhaps said out of frustration and in retaliation to an allegation made by the Claimant that Mr Goldberg had mismanaged funds whilst working for the Respondent. There had been

lengthy email communications between the Claimant and Mr Goldberg, which prior to this point had been civil and courteous. Mr Goldberg had been attempting to have funds transferred to him since 22 June 2022, after many chasers, payment was eventually sent to him on 13 July 2022 after Mr Golberg set out in frank terms that he had a significant electric bill to pay for the client.

Mark Guy – swearing incidents x 3 – Act 2

27. The Claimant alleges in mid-April 2022 and mid-May 2022 Mark Guy, an Associate Director of the Respondent swore at him because he disagreed with how the Respondent's accounts should be processed. Mr Guy denies both incidents.
28. The incidents are vague with no specific detail provided by the Claimant as to when they took place, what was said or any specific detail as to what was being discussed. The Claimant alleges the incidents took place over the phone and he in turn phoned Mr Lewis, Mr Davies and Mr Lansman who stated that he should just leave it. They also stated that Mr Guy can get stressed and the Claimant has got to learn not be too sensitive. It is not clear which of them are alleged to have said what and when these conversations allegedly took place.
29. Both Mr Lewis and Mr Davies state that they don't recall the Claimant making them aware of these incidents. We find that whilst they are unable to speak to the incidents themselves, the fact they don't recall being contacted by the Claimant does not support these allegations. We were taken to no documentary evidence. Ultimately, it is up to the Claimant to prove the allegations that he makes on the balance of probabilities and he has failed to do that with regard to the 2 incidents he alleges occurred mid-April and mid-May.
30. The Claimant states that in July 2022 Mr Guy said to him *"you're a fucking cunt come down if your man enough"*. In respect of this incident, Mr Guy admits to swearing at the Claimant but not in the terms alleged. His evidence is that the Claimant would not move away from his desk despite him requesting him to leave his desk on 4 or 5 occasions. Mr Guy states that he was having a conversation with the Claimant about an accounting process relating to spreadsheets, he felt exasperated with the Claimant and when they failed to agree on a position, he asked the Claimant to leave his desk on a number of occasions. The Claimant refused to do that and Mr Guy then told him to *"fuckoff and leave his desk"*.

31. This incident took place in the office with Mr Lewis also present. Mr Lewis in his oral evidence stated that he heard Mr Guy 'politely' request the Claimant leave his desk, he stated the Claimant was being obnoxious, refused to leave and then Mr Guy told him to "*fuckoff and leave his desk*". He stated Mr Guy then left the office and Mr Lewis followed him outside. He states Mr Guy was upset and he attempted to calm him down.
32. Mr Lewis further states he has no memory of the Claimant coming down to his office and handing him his keys, stating he was leaving. We heard no further evidence in relation to what happened, however, the Claimant did not leave and remained in employment with the Respondent .
33. The Claimant also stated that immediately following Mr Guy swearing at him, he asked Mr Lewis whether he was going to do anything, to which Mr Lewis stated "*you deserved it, you shouldn't have upset him*". Mr Lewis denies this and states that he immediately followed Mr Guy down so could not have said this.
34. The Claimant states that other than Mr Lewis there were other people in the office when the incident took place including Maria Egiert, a property management assistant. We have seen a written witness statement from Ms Egiert although she did not attend to give evidence. Ms Egiert makes no reference to this incident in her statement and therefore provides no corroboration for the Claimant. This is in contrast to Mr Guy whose account is corroborated by Mr Lewis. In light of this and in respect of this particular incident we prefer the evidence of Mr Guy and we find this allegation partially proven in that he did swear at the Claimant by telling him to "*fuck off and leave his desk*".
35. In addition the Claimant references a similar incident involving Ishmael Lartey, ex-Head of Accounts, where it is alleged Mr Guy swore at him in similar terms. Mr Guy denies this incident, both Mr Davies and Mr Lewis deny any contact from the Claimant in respect of this incident. None of the Claimants witnesses mention this evidence and as such we find there is simply not enough evidence to conclude that this incident took place.

Salary Increases – Act 3

36. The Claimant produced no evidence of any salary increases for any comparators that he relies on. The Claimant relies on Ms Marie Egiert, Ms Evita Grybauskait and Ms Kyra Goodman as comparators. Both Ms Egiert and Ms Grybauskait were employed as Assistant Property managers in different departments to the Claimant carrying out different roles. Ms Goodman was employed as a temporary holiday worker to cover period of leave for staff in both property management and accounts.
37. All three are described by the Claimant as female, white and christian. Ms Goodman is described as aged between 26 and 28, Ms Egiert aged between 30 and 32 and Ms Grybasukait as 24 years of age. This description of protected characteristics of these three comparators was unchallenged by the Respondent.
38. Mr Lewis and Mr Davies deny any increases of salary for Ms Goodman and Ms Egiert to encourage them to stay with the Respondent, although admit to a salary increase of approximately £4,000 for Ms Grybauskait.
39. The Respondent's state that the reason for Ms Grybuskait's salary increase was that she was doing 2 separate roles, that of property manager and accounts clerk and therefore her starting salary of £28,000 was increased on 2 sperate occasions by £2,000 to approximately £32,000. The Claimant did not challenge the Respondent's evidence in this regard, as such we find that Ms Grybuskait was doing 2 roles and that was the reason for her salary increases.
40. We also note that in her written statement, Ms Egiert does not mention any salary increase offered to her to encourage her to remain in employment with the Respondent.

Mahesh Kewal, Head of Accounts Appointment – Act 4

41. The Claimant alleges that on or around 5 September 2022 he was replaced as Head of Accounts by Mahesh Kewal and that Mr Kewal was offered a salary of £60,000. The Claimant describes Mr Kewal as male, Indian, hindu and around 48 years of age. This description of Mr Kewal's protected characteristics was unchallenged by the Respondent.

42. Mr Lewis and Mr Davies deny asking the Claimant to undertake the Head of Accounts role upon the termination of the previous Head of Accounts employment in April 2022. They accept that in the absence of a Head of Accounts, the Claimant was doing elements of this role as were others, until Mr Kewal was recruited.
43. The Claimant as set out in his contract of employment was employed as a client accountant on a £40,000 salary. We prefer the evidence of the Respondents in relation to this matter. We were not taken to any documentary evidence referencing the Claimant being asked to undertake a Head of Accounts role and we find that the Claimant failed to prove the factual basis of this complaint.
44. In his letter of appointment, it is stated that the Claimant's starting salary will be £40,000 and will be reviewed at the end of his probationary period of 3 months. We find that "*will be reviewed*" does not mean an increase is guaranteed. This is in contrast to the appointment letter of Danielle Brennan, one of the Claimant's witnesses and ex-employee of the Respondent. Ms Brennan's appointment letter clearly states there will be an increase to salary after the probationary period of 6 months is completed.
45. We were not taken to any documentary evidence of any increase in salary being agreed with the Claimant. Any agreement to an increase in salary from 40,000 to 50,000 was denied by Mr Lewis and Mr Davies.
46. The Claimant states that this was agreed by Mr Lewis at the three-month probation in May/June 2022. The Claimant's evidence was that text messages between him and Mr Lewis support his evidence that a salary increase had been discussed. The first text message exchange takes place on 28 May 2022, when the Claimant sends a text to Mr Lewis stating that he has been pondering their discussion and asks that he keeps it confidential as he doesn't want office politics with the rest of the staff. Mr Lewis replies on the same day stating "*absolutely, it will have to await my return anyway*". On 30 September 2022, the Claimant sends another text message to Mr Lewis asking whether he has decided on their conversation. Mr Lewis responds on the same day to advise that "he was drugged up on the eyeballs, not able to think about anything".
47. On both occasions the text message exchanges include reference to case matters that the Claimant was working on at the time. Mr Lewis was unable to recall what these message were about, however, he denied discussing or agreeing salary increases with the Claimant. We find the messages vague and we accept the Respondents submission that they could be about anything. We were not taking to any documentary

evidence relating to the the probationary reviews and what was discussed nor to any other evidence of salary increases being discussed and agreed. In the circumstances, we find the Claimant has failed to prove on the balance of probabilities that such conversations took place and that any salary increase was offered or agreed.

48. The Head of Accounts role was a senior manager role and that role was the line manager of the Claimant from the outset of his employment. When the Claimant initially joined, the individual in that post was Mr Ishmael Lartey. Mr Lartey left in April 2022 and Mr Kewal was appointed in September 2022 on a salary of £65,000. Mr Kewal was not a qualified accountant but he had considerable experience in similar roles. His last 2 roles were working with much larger employers managing larger teams. We find the salary of the Head of Accounts role would clearly be significantly more than that of a client accountant and entirely consistent with the Respondent's evidence that this was the reason for the differences in pay.
49. Mr Davies in his oral evidence stated that the Respondent had been considering recruiting for a long time, even prior to Mr Lartey's departure, due to his poor performance, we find this is supported by the fact Mr Kewal was eventually recruited. We also accept the unchallenged evidence of Mr Lewis, that if there had been any agreement for the Claimant to take over the Head of Accounts role, the increase in salary would have been formally notified to external accountant.
50. With regard to some of the duties of the Head of Accounts role that the Claimant was undertaking, such as training on Qube. We find that this was not in a manager capacity but rather as someone familiar with the processes of the Respondent company who was showing new starters the systems of that company.
51. The Claimant did not seek payment from April to September and once he became aware of recruitment to the role, he did not seek to apply for the role or speak to his managers about not being offered a role, which he understood he was carrying out.
52. We do not find it plausible that the Claimant did not seek payment from April to September if he indeed understood that he was carrying out the role of Head of Accounts. It is also not plausible that once he became aware of recruitment to the role, he did not seek to apply for the role or speak to his managers about not being offered a role, which he understood he was carrying out.

August 2022 sickness/Work Pressure – Act 5

53. The Claimant provided the Respondent with a fit note on 15 August, this covered the period 4 to 16 August 2022. The fit note was dated 12 August 2022 and specified depression as the reason for absence.
54. In his oral evidence, Mr Davies stated that the Claimant had requested to work from home on or around 4 August and he had agreed, he denies forcing the Claimant to complete work. At that time, we find as far as the Respondent was aware, the Claimant was not off sick but simply working from home.
55. Regarding clients contacting the Claimant directly, Mr Davies stated and we accept that the Claimant's signature on email contains his number and therefore clients could contact him directly. The Claimant failed to produce any evidence that the Respondent provided his contact number to clients and that is the reason they contacted him directly.
56. Mr Lewis and Mr Davies admitted that there was work pressure as they were understaffed but this applied to everybody. We noted the evidence of Danielle Brennan, the Claimant's own witness who speaks of unmanageable workloads and high staff turnover in the Company.

Contacting the Claimant whilst on holiday – Act 6

57. The Respondent accepts that Mr Davies contacted the Claimant whilst he was on leave, however the position of the Respondent is that this leave was unauthorised. The Claimant states that Mr Lewis authorised his leave from 25 August to 9 September. The Tribunal were not taken to any documentary evidence covering a holiday request for the whole of this period. The Claimant's evidence was this was done verbally in the presence of others, however, no witnesses provided evidence in this regard.
58. We were taken to an email from Mr Lewis to Mr Davies where he confirmed that he had authorised the Claimant's leave from 25 August to 2 September and the Vacation tracker reflected this. Mr Davies confirmed the tracker was updated retrospectively. The Tracker states leave was not approved by Mr Lewis but added to tracker as the Claimant had taken this leave so it was done to effectively balance the Claimant's leave.

59. There was a significant point of contention in relation to the evidence relating to this issue and it was the Claimant's assertion that the Respondent's evidence was fabricated in relation to this. The document that the Claimant states was fabricated was a screenshot from Mr Davies of a text message in the bundle on page 201 as well as the vacation tracker which was subsequently updated. The Claimant stated that the screenshot was fabricated as there was a gap between the message and the word "today". The message was not dated other than "today" and that this had been done to deliberately exclude the messages from 5 September. There was also an unread message for which the text appeared and as the Claimant did not have an iPhone he was unsure as to why this was.
60. Mr Davies stated that the screenshot was taken on 30 August hence the date being "today". He points to an email sent to Mr Lewis which on 30 August attaching the screenshot. He states would not have had messages from 5 September for that reason at that time. Mr Davies, stated the message was unread as he had not read that particular message at time of screenshot.
61. The Claimant also later stated that the time stamp on the screenshot was 14.00 and further evidence of fabrication was that the email to Mr Lewis was timed at 13.02. In his evidence Mr Lewis states that he was on holiday in France at the time and there was an hour's time difference.
62. We conclude that there was absolutely no evidence of fabrication. The evidence of Mr Lewis and Mr Davies was corroborated by one another. The Claimant did not suggest that anything was taken out of the text message or indeed what effect any fabrication would have had other than to exclude messages which were already part of the bundle. Those messages did not include any reference to leave being requested covering the period 5 to 9 September. With regard to the vacation tracker, the updates are consistent with the documentary evidence and the fact that the leave was retrospectively added meant the Claimant was not negatively impacted by any reduction in salary for unauthorised leave during that period.

Working from home – Act 7

63. Mr Avi Van Messel was recruited on or around 5 September as a purchase ledger clerk. The Claimant described Mr Van Messel as male, white, jewish and around 24 years of age, this description was unchallenged by the Respondent.

64. Both Mr Lewis and Mr Davies stated in evidence that there was a specific agreement at the point of Mr Van Messel's recruitment that he was allowed to leave work early on a Friday. Mr Van Messel was an orthodox Jew and the Respondent agreed for him to leave early on Friday so that he could be home by the time the Sabbath came, due to his religious beliefs.
65. There was nothing formally included in the Claimant's contract regarding working from home on Mondays and coming in later on Tuesdays. The Claimant states that this was agreed at the point of his recruitment. The Respondent states that there was an informal arrangement in place and the Claimant was allowed to work from home generally on Mondays but would be required occasionally to come in to work as and when required. He did come in later on Tuesdays and was allowed to take lunch around afternoon prayer.
66. The Respondent accepts and we find that other staff were also working from home on various days on similar informal arrangements to the Claimant.
67. The Claimant did not dispute that he was allowed to take lunch around afternoon prayer or that he came in later on Tuesday, although in a later addition to his claim, he states that he was not allowed to take Friday afternoon for formal congregational prayer. There is no evidence that the Claimant asked for time off for Friday prayer and that this was declined. The Respondent was allowing the Claimant to attend prayer every day, which the Claimant did not dispute, as such we find that time off for prayer would not have unreasonably been refused had the Claimant requested this.
68. The Claimant only produced evidence of one occasion where he was required to come into work on a Monday. In light of this, we do not find that there was a regular requirement for the Claimant to attend the office on Mondays, apart from the first few weeks of his employment to which he had agreed. We find he may have been asked from time to time to come in on Monday, which is in line with the Respondent's position that the arrangement was flexible as and when the business required.

Claimant's resignation/ Clive Lewis Comments – Act 8

69. On 14 October 2022, the Claimant resigned from his employment with the Respondent, giving 2 weeks notice. His termination date was 31 October 2022. In his resignation

letter, the Claimant states that he is resigning because he has been waiting around for a salary increase which has not transpired. There is no mention of discrimination. In his oral evidence, the Claimant stated that he did not mention discrimination as he was still in employment at that point and did not want bad references. In the letter he also states that he has been offered a job which matches his experience and work ethics.

70. On 19 October 2022, the Claimant by his own admission approaches the Respondent and seeks consultancy work with them. In his email, the Claimant is convivial and mentions nothing in respect of discrimination. We find he would not have made this approach if he had felt that the employment relationship had broken down to such an extent that he was forced to resign.
71. A Meeting took place on 26 October 2022 including the Claimant, Mr Lewis, Mr Davies and Mr Kewal to discuss the Claimant's offer to carry out consultancy work.
72. The Claimant's evidence is that at the meeting on 26 October, Mr Lewis stated that "I don't need you now" and "you brought this on yourself" in response to the Claimant advising of financial difficulties that he was experiencing. Mr Lewis' evidence was that he did not recollect saying this, this is corroborated by Mr Kewal and Mr Davies who also don't recollect this being said. Mr Lewis states he did recall saying the computer/printer were not working and they did not like the Claimant but stated that this was said in humour.
73. We prefer the evidence of the respondents in relation to this matter as it is corroborated by 3 witnesses and we find that Mr Lewis did not make the comments "I don't need you now" and "you brought this on yourself".
74. On 28 October 2022, the Claimant sent an email to the Respondent setting out what he described as complaints of bullying and mistreatment throughout his employment.
75. On termination of his employment, the Claimant was owed £157.48 which he accepts was paid to him in May 2023. The Claimant did indicate that there may be further holiday pay claims but despite being afforded an opportunity to detail and present evidence of any such claims he failed to do so.
76. There is nothing in the Claimant's employment contract that provides him with contractual right to overtime payment. We accept the Claimant's evidence that he may

have worked late on occasion, but we find this did not give rise to a right to overtime payments.

Time Limits

77. The Claimant first made contact with ACAS at the end of November 2022, however, ACAS Early Conciliation was not commenced until 2 January 2023 and ended on 25 January 2023. The Claimant submitted his Claim Form to the Tribunal on 20 February 2023. The Respondent therefore avers that any alleged act or omission occurring before 3 October 2022 is prima facie out of time, this would be the majority of the claims that are being pursued by the Claimant.
78. The Respondent does not accept that any of the pleaded allegations occurring before 3 October 2022 were part of any continuing act or series of acts, or that it would be just and equitable to permit the Claimant to pursue his claim in relation to those allegations. The Respondent therefore submits that the majority of claims are out of time, and should be struck out.
79. In his oral evidence to the Tribunal, the Claimant stated that that he did not wish to present any complaints to his employer whilst he was still employed for fear of a bad reference. Further, he stated that he was trying to resolve matters amicably with the Respondent and was following the ACAS process. We find the fact that the ACAS process came to an end on 25 January 2023 and the Claimant delayed until 20 February to submit his claim; this does not support the Claimant's position in respect of delay.

Relevant Law

Direct discrimination

80. Section 13 of the Equality Act 2010 provides as follows;

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”.

Burden of Proof

81. Section 136 of the Equality Act 2010 provides;

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

82. In ***Islington Borough Council v Ladele [2009] ICR 387*** Mr Justice Elias explained the essence of direct discrimination as follows: *“The concept of direct discrimination is fundamentally a simple one. The Claimant suffers some form of detriment (using that term very broadly) and the reason for that detriment or treatment is the prohibited ground. There is implicit in that analysis the fact that someone in a similar position to whom that ground did not apply (the comparator) would not have suffered the detriment. By establishing that the reason for the detrimental treatment is the prohibited reason, the Claimant necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic.”*

83. ***Burrett v West Birmingham Health Authority 1994 IRLR 7, EAT*** is an example of the proposition that it is for the tribunal to decide as a matter of fact what is less favourable treatment and the test posed by the legislation is an objective one. The fact that a Claimant believes that he or she has been treated less favourably does not of itself establish that there has been less favourable treatment, although the Claimant's perception of the effect of treatment is likely to be relevant as to whether, objectively, that treatment was less favourable.

84. In order for a disadvantage to qualify as a “detriment”, it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to “*detriment*”. However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, ***Shamoon v Chief Constable of RUC [2003] UKHL 11***.

85. ***Igen v Wong and Others [2005] IRLR 258 and Madarassy v Nomura International PLC [2007] IRLR 246.*** The employment tribunal should go through a two-stage process, the first stage of which requires the Claimant to prove facts which could establish that the Respondent has committed an act of discrimination, after which, and only if the Claimant has proved such facts, the Respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the Claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the Respondent and the Claimant.
86. ***Madarrassy v Nomura International Ltd 2007 ICR 867*** - the bare facts of the difference in protected characteristic and less favourable treatment is not “without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the Respondent” committed an act of unlawful discrimination”. There must be “something more”.
87. ***Nagarajan v London Regional Transport [1999] IRLR 572, HL***,-“The crucial question in every case was, 'why the complainant received less favourable treatment ... Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?’”
88. ***Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL***, - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for ...'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: 'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'

Harassment

89. Section 26 of the Equality Act 2010 provides;

(1) A person (A) harasses another (B) if— (a)A engages in unwanted conduct related to a relevant protected characteristic, and (b)the conduct has the purpose or effect of— (i)violating B's dignity, or (ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B. (4)In deciding whether conduct has the effect referred to

in subsection (1)(b), each of the following must be taken into account— (a)the perception of B; (b)the other circumstances of the case; (c)whether it is reasonable for the conduct to have that effect.”

90. ***Richmond Pharmacology V Miss A Dhaliwal [2009] ICR 724.*** There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the Respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so.
91. ***Grant v HM Land Registry & EHRC [2011] IRLR 748 CA*** emphasised the importance of giving full weight to the words of the section when deciding whether the Claimant's dignity was violated or whether a hostile, degrading, humiliating or offensive environment was created: "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."
92. ***Pemberton v Inwood [2018] EWCA Civ 564.*** Underhill J "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).

Victimisation

93. Section 27 of the Equality Act provides as follows:-

*(1) A person (A) victimises another person (B) if A subjects B to a detriment because--
(a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.*

(2) Each of the following is a protected act - (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing

any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

94. In a victimisation claim there is no need for a comparator. The Act requires the tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:- “*The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so*”. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.
95. To get protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says “Detriment does not ... include conduct which amounts to harassment”. The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** is applicable.
96. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi EAT0269/09**.

97. Once the tribunal has been able to identify the existence of the protected act and the detriment the tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. In the case of ***St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540*** the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see ***R (on the application of E) v Governing Body of JFS and Others [2010] IRLR 136***.
98. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, see ***Nagarajan*** above.
99. In ***Owen and Briggs v James [1982] IRLR 502*** Knox J said:- "*Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination.*"
100. In ***O' Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615*** the Court of Appeal said that, if there was more than one motive, it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

Time limits

101. Section 123 of the Equality Act 2010 provides as follows;

(1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of— (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. (3) For the purposes of this section— (a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

102. ***British Coal Corporation v Keeble [1997] IRLR 336***, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion'
103. ***(Southwark London Borough v Afolabi [2003] IRLR 220). Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA*** - there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.
104. ***Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640*** - the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the Respondent".
105. The Court of Appeal made it clear in ***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686***, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what she has to prove, in order to establish 'an act extending over a period', is that (a) the incidents are linked to each other, and (b) that they are evidence of a '*continuing discriminatory state of affairs*'. The focus of the enquiry should be on whether there was an "*ongoing situation or continuing state of affairs*" as oppose to "*a succession of unconnected or isolated specific acts*". It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

106. ***South Western Ambulance service NHS Foundation Trust v King 2020 IRLR 168***
“non-discriminatory acts alleged to be part of a course of conduct extending over a period cannot form part of a continuing act”.

Constructive Unfair Dismissal

107. The Employment Rights Act 1996, Section 95 (1)(c) provides that an employee is to be regarded as dismissed if : “the employee terminates the contract under which he was employed (with or without notice) in circumstances which he is entitled to terminate it without notice by reason of the employee’s conduct.”
108. The leading case on constructive unfair dismissal is *Western Excavating (ECC) Limited v Sharp [1978] ICR 221* in which Lord Denning held that :-
- “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed.”
109. While that reasoning has stood the test of time the law in this area has been altered by the emergence of the implied term of trust and confidence, which was approved by the House of Lords in ***Malik and another v Bank Of Credit & Commerce International SA (in compulsory liquidation) [1998] AC 20*** when it held that this implied term means that:
- “The employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee” (Lord Steyn).*
110. In ***Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978*** the Court of Appeal held that where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:
- What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
 - Has he or she affirmed the contract since that act?

- If not was that act (or omission) by itself a repudiatory breach of contract?
- If not, was it nevertheless a part (applying the approach explained in ***Waltham Forest v Omilaju [2004] EWCA Civ 1493***) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a previous affirmation, because the effect of the final act is to revive the right to resign.)
- Did the employee resign in response (or partly in response) to that breach?

111. In *Waltham Forest* the Court of Appeal held that the 'final straw' must contribute something to the breach, although what it adds might be relatively insignificant. The final straw must not be utterly trivial. The act does not have to be of the same character as earlier acts complained of. It is not necessary to characterise the final straw as "unreasonable" or "blameworthy" conduct in isolation, though in most cases it is likely to be so.
112. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective.
113. Unlike the statutory test for unfair dismissal, there is no band of reasonable responses test. It is an objective test for the Tribunal to assess whether, from the perspective of a reasonable person, in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and to refuse to perform the contract. (***Tullet Prebon plc v BGC Brokers LP 2011 IRLR 420***)
114. There is no rule of law that a constructive dismissal is necessarily unfair. If it finds there has been a constructive dismissal a Tribunal must also consider whether that dismissal was fair or unfair having regard to **section 98(4) of the Employment Rights Act 1996**, which provides:
- "(4) Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-*
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

(b) shall be determined in accordance with equity and the substantial merits of the case”.

115. The Tribunal must therefore consider whether the respondent had a potentially fair reason for the breach (***Berriman v Delabole Slate 1985 ICR 546***) and whether it was within the range of reasonable responses for an employer to breach the contract for that reason in the circumstances. When making this assessment, the Tribunal must not substitute its own view of what it would have done but consider whether a reasonable employer would have done so, recognising that in many cases there is more than one reasonable response.

DISCUSSION & CONCLUSIONS

116. In terms of approach, we initially determined if there had been breaches of the Equality Act before moving on to determine the time limits question. This was in line with the dicta in ***South Western Ambulance service NHS Foundation Trust v King 2020 IRLR 168***, which states that non-discriminatory acts cannot be part of “conduct extending over a period” of time.

117. As many of the acts are repeated across the different heads of claim, we will use the numbering set out in the schedule, which appears at pages 72 to 79 of the bundle. This schedule essentially encompasses all of the individual acts of discrimination set out in the list of issues. For each act we will consider and determine each head of claim relevant to that particular matter apart from victimisation which we will consider separately.

Act 1 – Benjamin Goldberg allegations/ Lack of management support

118. The Claimant alleges on 1 August 2022 Benjamin Goldberg made false accusations of *“theft, swindling monies, within Lewis Tucker staff & outside people”* against the Claimant and that management of the Respondent did nothing to protect his reputation.

119. In respect of this Act, the Claimant alleges race and religion discrimination and victimisation.

120. We repeat the conclusions we reached in paragraph 26 of our findings in that there is no suggestion in Mr Goldberg’s email that he is accusing the Claimant of theft.

121. In terms of action being taken by management to support the Claimant, Mr Lewis in his oral evidence stated that he did not do anything as he did not believe that Mr Goldberg was making allegations of theft specifically against the Claimant, it was wrongdoing being alleged against all of the accounts team. We note at that time the accounts team did include Mr Landsman, so there was at least one additional person to whom the allegations from Mr Goldberg were being directed to. As set out earlier in our findings, we agree with Mr Lewis' view that Mr Goldberg was not making an allegation of theft against the Claimant.
122. Mr Lewis was also not involved in any line management of the Claimant and in his oral evidence appeared unfamiliar with the Claimant's day to day work including his working days in the office, we conclude it would be unlikely that he would have involved himself in any line management matters.
123. Mr Davies, who was more involved with day to day management did in fact send an email to the Claimant advising him not to rise to it and whilst we heard no evidence of any action being taken against Mr Goldberg, there was also no action taken against the Claimant in respect of the allegations that Mr Goldberg had levelled against him relating to procedural failings. We find that this supports the proposition that the Respondent simply did not pay any notice to what Mr Goldberg had said.
124. With regard to people being copied in, we find there was nothing untoward in relation to this, management from both organisations were involved as there were significant sums of money involved and on Mr Golberg's side a real critical need to pay outstanding bills.
125. In conclusion, we find the factual basis of this allegation unproven. Had we found it proven, other than bare assertions of race and religious discrimination, the Claimant adduced no evidence to suggest that the actions of Mr Lewis and Mr Davies would not have been the same if the situation involved a person who was not Bangladeshi or a muslim. The Tribunal therefore conclude that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.
126. We will come on to victimisation separately below.

Act 2 - Mark Guy, swearing incidents x 3

127. The Claimant alleges that in mid-April 2022 and mid-May 2022 Mark Guy swore at him because he disagreed with how the Respondent's accounts should be processed. Further, in July 2022, the Claimant alleges Mr Guy swore at him stating; "you're a fucking cunt come down if your man enough".
128. In respect of this Act, the Claimant alleges race and religion discrimination, harassment related to race and victimisation.
129. In relation to the alleged incidents in mid-April and mid-May, we repeat the conclusions we reached in 28 and 29 of our findings in that the Claimant has failed to prove that these incidents took place.
130. In respect of the incident in July 2022, Mr Guy admits to swearing at the Claimant but not in the terms alleged by the Claimant. We repeat paragraphs 30 to 34 of our findings, where we conclude this allegation partially proven in that Mr Guy did swear at the Claimant by telling him to *"fuck off and leave his desk"*.
131. Mr Guy was clearly frustrated and annoyed with the Claimant, however, other than bare assertions of race and religious discrimination, the Claimant adduced no evidence to suggest that the actions of Mr Guy would not have been the same if the situation involved a person who was not Bangladeshi or a muslim. We therefore conclude that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.
132. With regard to harassment, whilst clearly the swearing incident in July 2022 was unwanted conduct and the Claimant would no doubt have felt humiliated and embarrassed, there is simply no evidence to conclude that this incident was related to the Claimant's race or religion.
133. We will come on to victimisation separately below.

Act 3 – Salary increases

134. The Claimant alleges that between 1 August and 30 September 2022, the Respondent gave Kyra Goodman a salary increase of £10,000; Evita Grybauskait a salary increase of £10,000.00 and Maria Egiert a salary increase to stay.

135. In respect of this Act, the Claimant alleges sex, age, race and religion discrimination and victimisation.
136. The Claimant produced no evidence to support these allegations. We also note that Ms Egiert does not mention any salary increase offered to her stay in her witness statement. Mr Lewis and Mr Davies denied any increases of salary for Ms Goodman and Ms Egiert. We accept that Ms Grybauskait' was doing 2 separate roles, property manager and accounts and therefore her starting salary of 28k was increased on 2 separate occasion by 2k to approximately 32k.
137. In conclusion, we do not find these allegations proven. Had we found the allegations proven, we find that these are again bare assertions of sex, age, race and religious discrimination. There is simply no evidence to suggest that the actions of the Respondent would not have been the same if the situation involved a person who was not male, in their 40s, Bangladeshi or a muslim. The only person who was given a salary increase was given this for reasons associated to the additional role that she was doing. We therefore conclude that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.
138. We will come on to victimisation separately below.

Act 4 - Mahesh Kewal Appointment

139. The Claimant alleges that on or around 5 September 2022, he was replaced as Head of Accounts by Mahesh Kewal and that Mr Kewal was offered a salary of £60,000 because Mr Guy liked him.
140. In respect of this Act, the Claimant alleges race and religion discrimination and victimisation.
141. We repeat the conclusions in paragraphs 43, 46 and 47 of our findings, in that the Claimant was never asked to undertake the Head of Accounts role and that a salary increase was never discussed or agreed with him. He was employed as a client accountant on the applicable salary for that role. The salary of £65,000 was the applicable salary for the Head of Accounts role.

142. In conclusion, we find this allegation unproven. Had we found it proven, other than bare assertions of race and religious discrimination the Claimant adduced no evidence to suggest that the actions of the Respondent would not have been the same if the situation involved a person who was not Bangladeshi or a muslim. The Tribunal therefore conclude that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.

143. We will come on to victimisation separately below.

Act 5 – Applying work pressure

144. The Claimant alleges that between April and July 2022 Mr Lewis told Property Managers to apply pressure to get the maximum out of him. Further, that between 4 August and 26 August 2022, whilst he was signed off work, he was forced to complete work, that calls were being transferred to him, and that clients were contacting him directly.

145. In respect of this Act, the Claimant alleges race and religion discrimination, harassment related to race and/or religion and victimisation.

146. With regard to the allegations directly levelled against Mr Lewis, this is the Claimant's word against that of Mr Lewis who denied that he did this. The Claimant did not take us to any documentary evidence or produce any witnesses in relation to this. His evidence was vague and lacking detail. We found earlier that Mr Lewis was not involved in any direct line management of the Claimant and was unlikely to be aware of his day to day activities.

147. Mr Lewis and Mr Davies admitted that there was work pressure as they were understaffed but this applied to everybody. Indeed Danielle Brennan, the Claimant's own witness speaks of unmanageable workloads and high staff turnover in the Company.

148. We repeat the conclusions in paragraphs 54 to 56 of our findings. As far as the respondent was aware, the Claimant was not off sick but simply working from home during this period, at least until 15 August 2022 when Mr Davies received a sick note dated 12 August covering the period 4 August to 16 August 2022. Regarding clients contacting the Claimant directly, it was admitted by the Claimant that his signature on

email contains his number and therefore clients could contact him directly. There was no evidence put forward that the Respondent had provided the Claimant's contact details for clients to contact him direct.

149. In conclusion, we find the factual basis of these allegations unproven. Had we found them proven, other than bare assertions of race and religious discrimination the Claimant adduced no evidence to suggest that the actions of the Respondent would not have been the same if the situation involved a person who was not Bangladeshi or a muslim. We therefore conclude that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.

150. With regard to harassment had we found the allegations proven, there is simply no evidence to conclude that this conduct was related to the Claimant's race or religion.

151. We will come on to victimisation separately below.

Act 6 – holiday/sickness

152. The Claimant alleges that between 30 August and 5 September 2022 whilst he was on holiday, Mr Davies contacted him to advise him that his holiday had not been authorised and that he would be expected in work on 5 September 2022.

153. In respect of this Act, the Claimant alleges race and religion discrimination, harassment related to race and victimisation.

154. We repeat paragraphs 58 to 62 of our findings, in that Mr Davies did contact the Claimant whilst he was on holiday to advise his holiday was not authorised, however, this was because the Claimant had taken unauthorised leave from work and it was reasonable of the Respondent to expect him to be back at work.

155. In conclusion, whilst we find this allegation proven in that Mr Davies did contact the Claimant whilst he was on leave and advised that his holiday was not authorised, there is no evidence to suggest that the actions of the Respondent would not have been the same if the situation involved a person who was not Bangladeshi or a muslim. The Tribunal therefore conclude that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.

156. With regard to harassment had we found the allegations proven, there is simply no evidence to conclude that this conduct was related to the Claimant's race or religion.

157. We will come on to victimisation separately below.

Act 7 – Working from home

158. The Claimant alleges that on or around September 2022, Mr Van Messel was allowed to work from home and to leave early on Fridays. Further, that the Respondent did not allow him to work from home permanently on Mondays.

159. In respect of this Act, the Claimant alleges sex, age, race and religion discrimination, harassment related to race and victimisation.

160. The Respondent accepts that Mr Van Messel was allowed to leave work early on a Friday for religious reasons. There is no evidence that the Claimant asked for time off for Friday prayer and/or that this was declined. The Respondent was allowing the Claimant to attend prayer every day, which the Claimant did not dispute, as such we find that time off for prayer would not have unreasonably been refused had the Claimant requested this.

161. We repeat the conclusions in paragraph 68 of our findings in that the Claimant was allowed to take lunch around afternoon prayer and that he came in later on Tuesday. There was not a regular requirement for the Claimant to attend the office on Mondays apart from the first few weeks of his employment to which he agreed. He may have been asked from time to time which is in line with the Respondents position that the arrangement was flexible as and when the business required. This was the same arrangement for other staff who also worked from home on various days.

162. In conclusion, we find this allegation unproven and find that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.

163. With regard to the complaint of sex discrimination in relation to working from home. The Claimants comparators included both female and male comparators (Mr Van Messel) which further contradicts any argument that the Respondent discriminated against him on the grounds of sex.

164. We will come on to victimisation separately below.

Act 8 – Mr Lewis’ change in demeanour and comments

165. The Claimant alleges that Mr Lewis’ demeanour and behaviour towards him changed following the recruitment of Mr Kewal. Further that On 26 October 2022, Mr Lewis said to him comments “I don’t need you now”, “You brought this on yourself” and that the computer printer does not like you.

166. In respect of this Act, the Claimant alleges race and religion discrimination, harassment related to race and/or religion and victimisation.

167. We repeat paragraphs 46 and 47 of our conclusions and conclude that Mr Lewis did not make comments stating “I don’t need you now” and “You brought this on yourself”.

168. Mr Lewis did makes comments around the computer/printer not liking the Claimant but we accept that this was said in humour, there is simply no evidence to suggest that these comments were made to the Claimant because of his race and/or religion or that they related to his race or religion in any way. The Tribunal therefore conclude that the Claimant has not proven facts from which a tribunal can conclude that discrimination has occurred.

169. We will come on to victimisation separately below.

170. In summary all of the Claimant’s complaints of discrimination and harassment are dismissed.

Victimisation

171. The Claimant relies on the following as alleged protected acts:

- (a) On or around April/May 2022 and August 2022 the Claimant made complaints of “harassment” to Clive Lewis, Jonathan Lewis Tucker, and Gideon Davies on “false accusation of theft mishandling of funds and his reputation was not defended in public”;
- (b) On or around July 2022 the Claimant made complaints to Clive Lewis about “abuse from another employee but Respondent did nothing”.

- (c) On or around 1 August 2022 to 30 September 2022, the Claimant made complaints to Clive Lewis about “equal pay as ex staff and to deliver all promises”.
- (d) On or around 14 March 2022 to 30 April 2022 the Claimant was a Witness to Mark Guy abusing Ishmael Lartey and he said to Clive Lewis and Alex Norman that “Mark Guy was out of order for swearing and offering to fight Ishmael, telling him to come downstairs. C accepted in his oral evidence and we find that he did not raise any discrimination complaints with his employer until after he left.

172. In relation to the first protected act, we heard no evidence of any earlier acts of discrimination relating to false accusations and harassment in April or May 2022. There was also no evidence presented of any complaints made in August 2022. The Claimant admitted in his oral evidence that he made no complaints of discrimination whilst he was still in employment, this is applicable to all our findings in respect of protected acts as by his own admission the Claimant admits that he did not make such complaints.

173. With regard to the second protected act, we presume the July 2022 relates to the swearing incident with Mr Guy. Even if we accept a complaint was made to Mr Lewis, this was not about discrimination under the Equality Act and therefore is not a protected act.

174. In relation to the third protected act, whilst complaints about equal pay could be discrimination complaints, the Claimant accepted in his oral evidence and we find that he did not raise any discrimination complaints with his employer until after he left his employment in October 2022.

175. Finally, with regard to the fourth protected act, the Claimant is clear in his resignation letter dated 14 October 2022, that he is resigning because he has been waiting around for a salary increase which has not transpired. There is no mention of discrimination and the Claimant admitted in evidence that he did not mention discrimination as he was still in employment at that point and did not want bad references. He had been offered a new job on a higher salary.

176. In summary we conclude that none of the acts relied upon are protected acts. Even if we are wrong about that, we conclude complaints of discrimination were only made after the Claimant left the Respondent's employment and therefore then can be no causal link between the detriments complained of and any protected act. If we are wrong about that, then we repeat our conclusions in respect of all alleged discriminatory acts and as the Claimant relies on these as detriments, we conclude they are also not proven.

177. The claimant's victimisation complaints are also dismissed.

Constructive unfair dismissal

178. The Claimant by his own admission approached the Respondent and sought consultancy work; the email he sent in relation to this was very convivial and mentioned nothing in respect of discrimination. We find he would not have made this approach if he had felt that the employment relationship had broken down to such an extent that he was forced to resign.

179. The Claimant continued to work for the Claimant following each act of discriminatory behaviour that he alleges and it is unclear in the end which act was the final straw for him.

180. We conclude that all of the actions and/or omissions of the respondent were reasonable and proper. As such neither the final straw or any of the acts set out above individually or cumulatively amounted to a repudiatory breach of the implied term of trust and confidence.

181. In light of all of our earlier conclusions in respect of acts of discrimination not being proven, we conclude that the claimant was not constructively unfairly dismissed.

182. If we are wrong about that, we also conclude that the Claimant did not resign in response to any repudiatory breach. In his resignation letter, the claimant makes it clear that he is leaving as he has secured a higher salary. We conclude that the claimant's true reason for leaving was not because there had been a repudiatory breach of contract but because he had secured a higher salary.

183. We also find the claimant affirmed his contract by continuing to work after each discriminatory act he complains of. He also sought consultancy work with the Respondent after handing his resignation in and whilst he was not taken up on the offer, this is further evidence of the fact that was prepared to continue working for the Respondent despite the discriminatory acts he complains of.

Holiday Pay

184. Did the Claimant have accrued and untaken leave at the termination of his employment?

185. The Claimant considers that on termination he was owed £157.48 which he accepts was paid to him in May 2023. The Claimant did indicate that there may be further holiday pay claims but despite being afforded an opportunity to detail and present evidence of any such claims he failed to do so. In light of this his holiday pay claim is also dismissed.

Unlawful deduction of wages/breach of contract

186. Did the Claimant work overtime whilst employed by the Respondent?

187. We find that the Claimant had no contractual right to overtime payment, he may have worked late on occasion but this did not give rise to a right to overtime payments.

188. We repeat paragraphs 46 and 47 of our conclusions in respect of salary increase, in summary that the claimant failed to prove that any such salary increase had been agreed.

189. We find the Claimant has not proven on the balance of probabilities that he was contractually entitled to payment of a salary of £50,000. Therefore his claims for unlawful deduction of wages and breach of contract are also dismissed.

Time Limits

190. As we have concluded that none of the claims were discriminatory acts, there can be no continuing course of conduct, as such all claims prior to 3 October 2022 are also out of time.

191. We reminded ourselves that the discretion to extend time should only be exercised in exceptional circumstances.
192. In his oral evidence to the Tribunal, the Claimant stated that that he did not wish to present any complaints to his employer whilst he was still employed for fear of a bad reference. Further, he stated that he was trying to resolve matters amicably with the Respondent and was following the ACAS process. The claimant first contacted ACAS at the end of November 2022 evidencing that he was aware of the process, he also refers to employment tribunal proceedings in his letter to the Respondent of 28 October 2022. Additionally, the ACAS process came to an end on 25 January 2023 and the Claimant delayed until 20 February to submit his claim. These are all factors which weigh against the balance in terms of the Tribunal exercising its discretion to extend time.
193. The onus is on the Claimant to satisfy the Tribunal that it would be just and equitable for time to be extended and we conclude that he has failed to discharge this burden.
194. In light of all these factors, had we not dismissed all claims that took place before 3 October 2022, we conclude that it would not have been just and equitable to extend time.

Costs/Preparation Time Order

195. At the end of the hearing both parties made costs applications, which we summarise briefly below.
196. Rule 76(1) of the Employment Tribunals Rules of Procedure 2013 provides:

A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that:

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

197. The Tribunal rules impose a two stage test when a Tribunal considers an application for a costs or preparation time order. First the Tribunal must ask whether a party's conduct falls within rule 76(1)(a) or (b). If so, the Tribunal must then go on to ask whether it is appropriate to exercise the discretion in favour of awarding costs against that party.
198. We deal firstly with the Respondents claim for costs for what they say is unreasonable conduct of the Claimant in relation to his allegations of fabrication, and the length of time that this added to the hearing.
199. We do not find that the Claimants conduct in relation to these allegations was deliberate. He was troubled by what he saw as fabricated evidence and became so entrenched in his view that the documents had been fabricated that he was unable to accept the explanations provided, which in the Tribunals findings were ultimately backed by documentary evidence.
200. The Claimants own application for costs was premised on what he said was the unreasonable conduct of the Respondent and their legal advisors in preparing this case for hearing. We accept there was an issue in terms of a paper bundle being provided and the omission of an index, certainly this was the position for the Tribunal. However, there were also a number of applications for late additions of documents to the bundle by the Claimant, the Respondent did not unfairly object to these and due to the Claimant's submissions regarding the difficulties he experienced the Tribunal expressed no criticism of the late applications.
201. In light of these findings, we do not find it appropriate to make a costs award in respect of either party.

Employment Judge Akhtar

2 July 2024

Sent to the parties on:

3 July 2024

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For the Tribunal Office:

M PARRIS

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Note

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.