Case Number: 6000010/2022

EMPLOYMENT TRIBUNALS

Claimant: **Miss S Bailey**

Respondent: **Aviva Employment Services Limited**

Heard at Sheffield **On:** **13th, 14th, 15th, 18th and 19th September 2023**
20th, 21st, 22nd, 23rd and 24th November 2023
16th, 17th, 18th and 19th January 2024
11th March 2024 (in chambers)
14th, 15th, 17th, 20th, 21st and 23rd May 2024.

24th May 2024, 12th July 2024 (in chambers)

Before: **Employment Judge Brain**
Members: **Ms R Hodgkinson**
Mr D Fields

Representation

Claimant: **In person**
Respondent: **Mr T Benjamin, Counsel**

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. UPON the Tribunal of its own motion (on 21 May 2024) considering whether to strike out the claimant's case:

1.1 The manner in which the claimant conducted the proceedings during the hearing in May 2024 was scandalous and unreasonable.
1.2 The scandalous and unreasonable conduct rendered a fair trial impossible.
1.3 It is not proportionate to strike out the claim.

2. The claimant's complaint that the respondent discriminated against her because of her race (which complaint is brought pursuant to section 13 of the Equality Act 2010 when read with section 39(2) of the 2010 Act) fails and stands dismissed.

3. The claimant's claim that the respondent discriminated against her because of her sex (which claim is brought pursuant to section 13 when read with section 39(2) of the 2010 Act) fails and stands dismissed.
4. The claimant's complaint that the respondent victimised her (which complaint is brought pursuant to section 27 when read with section 39(4) of the 2010 Act) fails and stands dismissed.

REASONS

Introduction and preliminaries

1. The Tribunal reserved judgment following the conclusion of the parties' submissions on 23 May 2024. The Tribunal now gives reasons for the judgment that we have reached.
2. Aviva Employment Services Ltd is the employing company for most staff of the well-known Aviva plc group of companies. The claimant was employed by the respondent as a direct customer expert. She worked at the respondent's offices in Sheffield. She worked within the respondent's healthcare business. It is agreed that she was employed from 21 March 2022 until her resignation with immediate effect on 25 May 2022.
3. The claimant presented her claim form to the Tribunal on 3 August 2022. The respondent presented their response to the claim on 14 September 2022. Arising from her employment, the claimant pursues complaints of direct race and sex discrimination and victimisation. The claimant describes herself as a black British woman of Caribbean descent.
4. The case benefited from three case management preliminary hearings. The third of these was at a hearing which came before Employment Judge Miller on 12 May 2023. He identified one complaint of direct sex discrimination, 10 complaints of direct race discrimination and 21 allegations of victimisation. The list of allegations is at pages 139 to 141 of the final hearing bundle. The 32 allegations are set out in the annex to his case management order which is reproduced in paragraph 240 below. There is a 33rd allegation of constructive dismissal per paragraph 2.2.1 of Employment Judge Miller's case management order (also at paragraph 240).
5. The case was heard over 20 days between September 2023 and May 2024. The Tribunal heard evidence from the claimant on 15 and 16 September 2023.
6. The Tribunal heard from the following witnesses called to give evidence on behalf of the respondent:
    6.1. Christopher Shaw. He is employed by the respondent in the role of direct sales and retention leader. Evidence was heard from him on 16 September 2023 and then on 23 November 2023.
    6.2. Jessica Pitcher. She is employed by the respondent as a platform account manager. The Tribunal heard evidence from her on 20 November 2023.
    6.3. Amanda Baguley. She is employed by the respondent as a sales team leader. Evidence was heard from her on 20 and 21 November 2023.

6.4. James Shergold. He is employed by the respondent as a customer expert. Evidence was heard from him on 21 and 22 November 2023.

6.5. Ross Pennant. He is employed as direct training lead. Evidence was heard from him on 22 and 23 November 2023.

6.6. Carly McCafferty. She is employed by the respondent in the role of data protection and privacy manager. Evidence was heard from her on 23 November 2023. She gave evidence by CVP.

6.7. Ross McIntosh. He is employed in the role of leader consultant. Evidence was heard from him on 17 January 2024.

6.8. Helen Graham. She is employed by the respondent in the role of digital lead. Evidence was heard from her on 14 May 2024.

6.9. Vicki McLean. She is employed as head of direct and trading. Evidence was heard from her on 15 May 2024.

6.10. Lani Jaques. She is employed by the respondent as head of planning, insight and governance. Evidence was heard from her on 17 and 20 May 2024.

7. This case has had a difficult and complex procedural history.

8. On 18 January 2024, the respondent made an application for the claimant's claim to be struck out upon the basis of scandalous and unreasonable conduct. A reserved judgment refusing the respondent's strike out application was promulgated on 14 March 2024.

9. The reasons for that judgment set out the procedural history up to and including 19 January 2024 (at paragraphs 39 to 124 of the 14 March 2024 reserved judgment). It is convenient to copy in those paragraphs here. We shall then pick up the procedural history post-19 January 2024 from paragraph 10 of these reasons. *(We have annotated the case citations in paragraph 10 of these reasons by adding the full case name and/or case number in square brackets. This was necessary as the several authorities had been cited in full already before paragraph 39 of the reasons for the 14 March 2024 reserved judgment).*

The procedural history of this case

39. The Tribunal will now set out the procedural history in this case before moving on to deal with the events of 16 to 19 January 2024.

40. The claimant presented her claim form on 3 August 2022. The respondent presented their response to the claim on 14 September 2022. The matter was listed for a case management preliminary hearing to take place by way of telephone on 21 October 2022.

41. This was postponed to 13 December 2022. The matter then came before Employment Judge Jones. He identified that the claimant was making the following complaints:

- *Victimisation.*
- *Direct race and sex discrimination in the form of constructive dismissal and detrimental treatment.*
- *Unauthorised deduction from wages.*
- *Compensation for accrued but untaken holiday pay.*

[A complaint raised by the claimant of unfair dismissal was dismissed upon withdrawal].

42. *Ahead of the hearing, the claimant had produced a schedule of allegations in tabular form. The respondent was represented at the hearing of 13 December 2022 by their solicitor, Louise Stratton. She is (relevantly, as we shall see) white. She raised concerns that whilst some of the matters raised in the claimant's table were extant and within the claim form, some were not and for which the claimant would be required to make an application to amend her claim. The matter was therefore listed for a further telephone case management hearing.*

43. *This came before the Employment Judge. The hearing was preceded by correspondence with the Tribunal from each party. It is not necessary to go into the detail about this. However, on 10 February 2023 the claimant drew to the respondent's and the Tribunal's attention a mental health assessment which she had undergone on 16 December 2022 following which her general practitioner had increased her antidepressant medication. She requested, as an adjustment, that, when listing the case for hearing, the Tribunal allow for a weekend break after the first three days of the hearing.*

44. *The Employment Judge allowed the claimant to amend her claim to include several of the allegations in the table, refused others, and held that some within the table were extant as they were within the claim form in any case. The case was listed to be heard on 13, 14 and 15 September 2023, and then after the weekend of 16 and 17 September, to resume for a further four days on 18, 19, 20 and 21 September 2023. The claimant's adjustment request was therefore accommodated by the Tribunal.*

45. *On 27 February 2023, the respondent made an application to strike out the claimant's claim upon the basis that it had no reasonable prospect of success. In the alternative, the respondent made an application that the claimant should pay a deposit as a condition of continuing to advance the claim on the basis that it enjoyed little reasonable prospect of success.*

46. *On 28 February 2023, the claimant objected to the listing of a preliminary hearing to determine the respondent's applications. In an application to vary case management orders made by Employment Judge Davies (dated 27 April 2023 at paragraph 26) she acknowledged that the Employment Judge's Orders made at the hearing of 13 February 2023 had considered her mental impairment (by allowing for a weekend break after the first three days of the hearing).*

47. *The respondent's strike out and deposit application came before Employment Judge Miller on 12 May 2023. He identified the claimant's claims and then made an Order that she pay a deposit of £2.50 as a condition of being permitted to continue to advance each of them. It was identified that there were 33 allegations. The respondent's application to strike out the claims upon the grounds that they enjoyed no reasonable prospect of success was dismissed. In the schedule to his Order, Employment Judge Miller attached an appendix setting out 32 allegations. (There was in fact a thirty-third allegation, that being the claimant's contention that individually or cumulatively the acts of discrimination and victimisation amounted to a discriminatory constructive dismissal of her).*

48. *Employment Judge Miller identified one complaint of direct sex discrimination, ten complaints of direct race discrimination and 21 allegations of victimisation. The list of allegations is at pages 139 to 141 of the final hearing bundle.*

49. *On 15 May 2023 the claimant sent an email to the Employment Tribunal (copied to Miss Stratton). This concerned issues around her means relevant to the deposit order. She also attached her latest prescription of antidepressants.*

50. *On 25 August 2023, the claimant made an application to strike out the response. This was upon the basis that the manner in which the proceedings were being conducted by Miss Stratton was unreasonable. This application was refused by the Employment Tribunal on the first morning of the hearing on 13 September 2023. (The Tribunal notes that in support of her strike out application that the claimant cited paragraph 55 and 56 of the judgment of Chadwick LJ in **Arrow Nominees** [Inc v Blackledge [2000] EWCA Civ 200] which is referred to in paragraph 9 above).*

51. *It follows therefore that the claimant is aware of the principles that: first, the court will not do justice to the other parties to the proceedings if its process is allowed to be abused such that the real point in issue becomes subordinated to an investigation into the effect which the conduct of one party has on the fairness of the trial; second, that hijacking a trial is to be deprecated; and third that the decision to stop a trial in those circumstances is not one based on punishment of a party but rather that the fairness of a trial has been compromised by the impugned conduct of a party.*

52. *On 5 September 2023 the respondent's solicitor made a second application to strike out the claimant's claim. This was made upon the basis of several of the grounds in Rule 37(1), these being: (b) that the manner in which the proceedings had been conducted by the claimant was scandalous, unreasonable and/or vexatious; (c) there was non-compliance with Orders of the Tribunal (d) that the claimant was not actively pursuing her claim. This application was withdrawn by the respondent's solicitor on 8 September 2023.*

53. *The hearing commenced on 13 September 2023. After hearing the parties, the Tribunal utilised 13 and 14 September as reading days.*

54. *The Tribunal made an Order on 13 September 2023 that the claimant be given permission to serve a supplemental witness statement. This was to be served upon the respondent's solicitor by 2pm on 14 September 2023. This arose out of late disclosure on the part of the respondent.*

55. *The claimant gave her evidence on 15 and 18 September 2023. Her case concluded just before the lunchbreak on the latter date.*

56. *The respondent then called their first witness who was Christopher Shaw. Mr Shaw's cross-examination concluded just after 4 o'clock on 18 September.*

57. *On the morning of 19 September 2023, the claimant applied for "half a day's leave". This was upon the basis that she did not feel well enough to continue that day. This was because of an issue which she said had arisen the*

previous day, 18 September 2023. The claimant alleged that Mr Shaw and others associated with the respondent had sought to enter the claimant's consulting room.

58. *At this point, it is right that the Tribunal should give a brief description of the layout. The proceedings were heard in court 15 in the Sheffield Combined Court Centre. (This is where the Sheffield Employment Tribunal is based). The claimants' waiting room is in the anteroom adjoining the public entrance door to court 15. At one end of the waiting room is a consultation room which is reserved for claimants and their representatives. The court 15 waiting room is also used as a waiting room for other court users. The respondents' waiting room is elsewhere within the building.*

59. *The waiting room is covered by CCTV. The CCTV footage is above the door of the consulting room, the interior of which is not therefore captured on CCTV.*

60. *As was said, the claimant applied for an adjournment of the hearing on 19 September 2023 with a view to resuming the next day. However, the Tribunal was concerned about the claimant's fitness to conduct proceedings during the rest of the week. Of their own motion, therefore, the Tribunal adjourned matters to 20 November 2023. This was out of concern for the claimant's welfare.*

61. *An order was made for the claimant to serve upon the respondent's solicitor a General Practitioner's fit note about her fitness to proceed (with which the claimant complied very quickly). She was also ordered to serve upon the respondent's solicitor and file with the Employment Tribunal a report or a letter from her GP certifying her as fit to attend the hearing for 20 to 24 November 2023. (In the event, the Tribunal varied this order and waived these requirements upon the basis that the claimant self-certified her fitness to resume on 20 November 2023 and to which the respondent raised no objection).*

62. *The case was therefore relisted for a hearing between 20 and 24 November 2023. Upon the resumption of the matter on the morning of 20 November 2023 the Tribunal converted the hearing to a private case management hearing to discuss the claimant's wish to play the CCTV footage from the relevant time on 18 September 2023 at which the alleged conduct mentioned at paragraph 57 took place.*

63. *The Tribunal had concern that other court users may have been captured on the CCTV footage (as had been the respondent's witnesses). While there was no issue regarding the latter, the Tribunal was concerned about the rights of the members of the public captured on the footage. Article 8 of Schedule 1 to the Human Rights Act 1998 provides that everyone has the right to respect for their private and family life, their home and correspondence. As a public authority, there is an obligation upon the Employment Tribunal to act in a way compatible with Convention rights. This is provided by section 6 of the 1998 Act. Those Article 8 rights of course must be balanced against the parties' right to a fair trial in accordance with Article 6 of Schedule 1.*

64. *The solution arrived at by the Tribunal was to invoke the powers under Rule 50 of Schedule 1 to the 2013 Regulations. To protect the Convention rights*

of other court users to a private life, the Tribunal held that the part of the hearing at which the Tribunal would view the CCTV footage of 18 September 2023 and receive evidence about it would be held in private and that the identities of others would not be disclosed to any members of the public in attendance at the hearing of this case. (When making findings of fact in the case for the public record, the anonymisation of the court users could be maintained without in any way denuding the findings of content such that a reader could not understand the reason why the findings had been made).

65. *The private case management hearing held on the morning of 20 November 2023 was therefore concluded. An adjournment was allowed to enable the setting up of the video evidence. The hearing then proceeded in private pursuant to the Order made under Rule 50. The video evidence was viewed. Then, matters resumed in public. Mr Shaw was recalled for further cross-examination on the afternoon of 23 November 2023. When he was recalled, the Tribunal converted the hearing to a private hearing from which the members of the public present were excluded to preserve the anonymity of the court users.*

66. *At around 3.30pm on 23 November 2023 the Tribunal was informed that the respondent wished to make a third application to strike out the claimant's claim. This was made upon the grounds that the manner in which the proceedings had been conducted by or on behalf of the claimant has been scandalous, unreasonable and/or vexatious. The application was emailed to the Tribunal by the respondent's solicitor at 15.17 that day.*

67. *Late in the afternoon of 23 November 2023, the respondent's counsel made an application that this be heard on 24 November 2023. The claimant objected to this suggestion.*

68. *The Tribunal adjourned for 15 minutes between 3.35pm and 3.50pm on 23 November 2023. This was to consider the application for the strike out application to be heard the next day. Upon the resumption, the Employment Judge informed the parties that it was the decision of the Tribunal that there was insufficient time for the claimant to properly respond to the strike out application. Hearing the application of the morning of 24 November 2023 (where she had only received notice of it at around 3.30pm on 23 November 2023) would not be to give her a reasonable opportunity to make representations as required by Rule 37(2) of sch. 1 to the 2013 Regulations. This was even more so given that the claimant was scheduled to cross-examine one of the respondent's witnesses on 24 November in any case.*

69. *At the conclusion of the hearing on 24 November 2023, the Tribunal gave directions. The strike out application was provisionally listed for hearing on 23 December 2023. Subject to the respondent's strike out application, the matter was listed to resume on 15 January 2024 and then to continue for the remainder of that week.*

70. *The Tribunal directed the respondent to write to the Tribunal and the claimant on or before 1 December 2023 to confirm whether the strike out application was pursued. The Tribunal drew to the respondent's attention that the strike out application had not addressed the second, third and fourth criteria to be considered upon strike out applications per* ***Bolch v Chipman*** *[[2004] IRLR 140] (at paragraph 7 above). The Tribunal directed the*

respondent's solicitor to address the question of whether a fair trial remained possible and if not whether a lesser remedy than strike out may be more proportionate.

71. *On 1 December 2023 the respondent's solicitor wrote to the Employment Tribunal to confirm that the respondent did not pursue the strike out application dated 23 November 2023. The matter therefore remained listed for hearing during week commencing 15 January 2024. The hearing listed for 23 December 2023 was vacated.*

72. *At the conclusion of the hearing on 24 November 2023 the Tribunal ruled in the claimant's favour upon her application for a specific disclosure order. The class of documentation the subject of the specific disclosure order was that generated by the grievances raised against the claimant by two of the respondent's witnesses (Mr Shaw and Jessica Pitcher). The Tribunal also ruled in the claimant's favour that a disclosure statement should be given by a nominee of the respondent to be agreed between the parties (or in default of agreement to be ordered by the Tribunal). In the event, there was no agreement and Tribunal ordered that the disclosure statement be given by Ross McIntosh.*

73. *When the matter concluded on the afternoon of 24 November 2023, there were four witnesses still to be heard. One of these was Mr McIntosh. The expectation was that the evidence would be finalised, submissions made by each party and then the Tribunal may use the remainder of the week commencing 15 January 2024 for chambers deliberations.*

***The events during week commencing 15 January 2024**.*

74. *It is most unfortunate that these plans were upset by a serious flooding incident which occurred at the Sheffield Combined Court Centre on the evening of Thursday 11 and Friday 12 January 2024. The building was closed on Friday 12 January 2024. A decision was taken that day also to close the building on Monday 15 January 2024. The parties were notified.*

75. *On Monday 15 January the Employment Judge directed the Employment Tribunal administration in Leeds to invite the parties to say whether they would agree to the case being heard by video the next day (and possibly for the rest of the week). The parties agreed.*

76. *The case was therefore listed to proceed by way of a video hearing on Tuesday 16 January 2024. There was an unfortunate delay of 40 minutes as Mr Fields experienced technical issues in joining the video link. Happily, this was resolved, and the proceedings were able to commence at 10.40am.*

77. *The claimant said at the outset that she wanted to say something. She was permitted to do so by the Tribunal but was directed to wait until Mr Fields joined as otherwise the Tribunal was not fully constituted. Upon him joining and the hearing resuming at 10:40. the claimant said that the Tribunal "should not accept money from the respondent to sway a case." She complained that one day of the trial window (between 15 to 19 January 2024) had been lost because of what she referred to as the "apparent flood" (a phrase which she has used several times, suggestive of scepticism on her part that a flood had occurred).*

78. *She went on to say that the respondent's solicitor had connections with the Employment Tribunal. (The Tribunal observes that this is not the first time that the claimant had mentioned connections between the respondent's solicitor and the Employment Tribunal. On 22 November 2023 the claimant had said that she believed that Employment Judge Davies knew Louise Stratton).*

79. *The claimant said that there are "inappropriate connections" involving two Employment Judges. She said that the Employment Tribunal favoured Miss Stratton as correspondence from her was responded to more promptly than was correspondence from the claimant. She went on to say that there needed to be an investigation into "corruption in HM Courts and Tribunal Service." (We shall now refer to HM Courts and Tribunals Service as 'HMCTS').*

80. *The claimant then applied for the case to be heard in person to which the respondent's counsel said he had no objection. At this point, the Tribunal took a short break between 11.40 and 12.10pm.*

81. *Upon the resumption of the hearing, the respondent appeared to have changed their position and asked for the Tribunal to take live evidence that day by video. This met with a strenuous objection from the claimant. Rightly, she reminded the Tribunal of the need to make reasonable adjustments to accommodate any disability issues. The respondent's counsel then agreed to proceed by way of an in-person hearing after all.*

82. *Mr Benjamin had experienced technical difficulties that morning. His connection went down at 11.02 (before the short adjournment) and then (after the adjournment) at 12.27 and 12.53. This was frustrating for all and did not help the smooth running of proceedings.*

83. *The claimant voiced her concern (quite properly) about the loss of the two hearing days on 15 and 16 January 2024 and that she would therefore come under a time constraint in cross-examining the four remaining respondent witnesses, there now only being three days for the hearing instead of five as anticipated. During the short adjournment, the Tribunal had identified that they could sit as a panel during the entire week of 22 April 2024. This was announced in Tribunal upon the resumption to reassure the claimant that she did not fall under any time constraint as additional days could be made available.*

84. *The Tribunal then took the opportunity to warn the claimant about her conduct. The Tribunal referred to paragraph 27 of **Bennett** [v Southwark London Borough Council [2002] ICR 881] and the definition of the word "scandalous" in Sedley LJ's judgment (cited at paragraph 22 above). The Tribunal expressed concern that the claimant was misusing the privilege of legal process to vilify others and was giving gratuitous insult to the court during such process. The claimant had vilified Miss Stratton, the staff of HMCTS (alleging that they were not responding to her correspondence), and the Employment Tribunal. The claimant had also given gratuitous insult to the Tribunal in alleging that the Tribunal was corrupt.*

85. *The claimant protested that she "cannot open my mouth". The Tribunal assured her that she could legitimately prosecute her case, but it was not open to her to level unfounded gratuitous allegations against the*

Employment Tribunal, HMCTS and members of the respondent's legal team.

86. *The claimant then accused the Tribunal of "retaliatory treatment" and that this was "to justify the respondent making a strike out application." She added that all of this would come out "at a future public inquiry". The claimant had mentioned the prospect of a public inquiry into the respondent's conduct on a number of occasions throughout the hearing in September and November 2023. Plainly, the claimant was now suggesting that the Tribunal would fall within the purview of the putative inquiry. The claimant accused the Tribunal of unreasonably delaying the case until April 2024. The difficulty in co-ordinating three busy people's diaries was explained. The Tribunal informed the parties that while a potential three months' delay was less than ideal, on balance offering additional days and extending the trial window to compensate for the lost time was preferable to imposing an artificial limit on the claimant's cross-examination of the respondent (particularly as there had been no time constraint upon the respondent's cross-examination of her).*

87. *Unfortunately, this did not mollify the claimant. She went on to again accuse the Tribunal of retaliatory treatment of her. She said the Tribunal was, "doing this to a coloured person, and a person with a tongue in my head". The Tribunal took the view that this was tantamount to an accusation of race discrimination on the part of the Tribunal.*

88. *The claimant expressed concern that the Tribunal was laying a foundation for the respondent to make a further strike out application. This was a surprising submission. The Tribunal took the opportunity to remind the parties that the strike out application of 23 November 2023 had been withdrawn (presumably upon the basis of the respondent's acceptance, after the Tribunal had pointed out the **Bolch** criteria, that they were unable to demonstrate that a fair trial was no longer possible and that it would be proportionate to strike out the claim). The Tribunal had put it to Mr Benjamin that it was difficult to see why a fair trial was no longer possible as of 16 January 2024 when it had been on 15 January. Therefore, far from laying the foundation for a strike out application the Tribunal was in fact counselling caution on the part of the respondent before making another application.*

89. *At the hearing of 16 January 2024, the Tribunal followed the guidance as to how to approach matters per paragraph 43 of **Bennett** cited at paragraph 25 above. The Tribunal had returned from its deliberations after the break during the morning of 16 January 2024 and informed the parties of their collective view about the claimant's remarks and warned her as to her conduct. The Tribunal had not at this stage required the claimant to affirm or withdraw her accusations. To borrow the words of Ward LJ in **Bennett** (at paragraph 56) the Tribunal had metaphorically shrugged its shoulders and resolved to get on with the case in order not to jeopardise the hearing of the case, mindful that the case had already occupied 10 days of hearing time.*

90. *After the adjournment at 13:10, later the afternoon of 16 January 2024, the claimant emailed the Employment Tribunal. She sent a copy of the latest prescription of her antidepressant medication. She enclosed a disability impact statement in compliance with section 6 of the 2010 Act. She*

reminded the Tribunal that one of the side effects of the antidepressants is anxiety.

91. *She asked, as a reasonable adjustment, for the matter to proceed in person rather than by video. This adjustment in fact had already been made as the Tribunal had directed that morning that no live evidence would be taken by video and the matter would proceed in person the next day (17 January 2024).*

92. *Matters went relatively well on 17 January 2024. The claimant had estimated that she would take one day to cross-examine Mr McIntosh. This time estimate held good. A timetable was then agreed for the remaining two days to dispose of the three outstanding respondent's witnesses. Built into the timetable were submissions from each party which it was hoped could be entertained on the afternoon of 19 January 2024.*

93. *The metaphorical shrugging of the Tribunal's shoulders seemed to have paid dividends. There was no suggestion on the part of the respondent at this stage that a fair trial was no longer possible. The respondent did not that day apply for strike out of the claimant's case. The Tribunal had listened to the claimant's representations on 16 January 2024 with 'phlegmatic fortitude' (to borrow Ward LJ's description in paragraph 42 of **Bennett**). Mr McIntosh began his evidence at 10.15am on 17 January 2024. Sufficient time therefore had been allowed for the Tribunal to compose themselves and the claimant's 'ardour' (to again use Ward LJ's description) appeared to have calmed. The Tribunal had guarded against the trap of allowing the claimant's 'invective' to infect it with prejudice. As Ward LJ said, the accusations against the Tribunal were unpleasant and uncomfortable but the Tribunal had taken care to avoid getting on its 'high horse' about matters.*

94. *Unfortunately, notwithstanding the relatively smooth running of proceedings on 17 January 2024, matters took a turn for the worse on the morning of 18 January 2024. The Tribunal entered the hearing at 10.20am. Barely had the Tribunal sat down when the claimant started to repeat many of the accusations that she raised on 16 January 2024. She said that she was concerned about how she had been unfairly treated by the Tribunal. She asked rhetorically, "why is there corruption?" and "the respondent has links with certain people." She raised concerns about the several disconnections from the video link experience by Mr Benjamin on 16 January. It was clear that implicit within this was a suggestion that these had not been genuine or accidental.*

95. *She then went on to say that the Tribunal had not rebuked Mr Benjamin at any point, but the Employment Judge had spoken to her "like dirt on his boots." She went on to say, "the corruption has to stop. We have corruption in the police [there was then mention of the Sarah Everard case] and that Judges have committed crimes." She then said that the Employment Judge "had spoken to Louise Stratton like she has because she's white". She went on to say "I am a Royal Navy veteran. Does my service to this country mean nothing? These people pay bribes. There should be no corruption. Does the Equality Act mean nothing? Somebody out there must stand up for what's right".*

96. *The contention that the Tribunal had not rebuked Mr Benjamin was unfounded. During Mr McIntosh's evidence on 17 January 2024, the Tribunal had ruled that an intervention by Mr Benjamin was inappropriate as he had sought to assist Mr McIntosh with an answer to one of the claimant's questions. However, it is right to observe that the claimant had raised several times her concern that Mr Benjamin was allegedly helping witnesses. This was not in fact the case. He was simply helping to locate documents referred to by the witnesses. This was compliant with his duty to further the overriding objective to assist the Tribunal. The Tribunal had assured the claimant that were Mr Benjamin to have acted inappropriately the Tribunal would stop him (as indeed was done on 17 January). It is of course open to the Tribunal, in the exercise of proper case management in accordance with the overriding objective, to exclude irrelevant evidence and argument and stop lines of questioning and submissions which do not assist. During the hearing on 18 January 2024, the Tribunal mentioned the dicta of Peter Gibson LJ in* ***Barche v Essex County Council*** *[2000] IRLR 251 to this effect (This passage is in fact referred to in* ***Edmondson*** *[v BMI Healthcare and another [2002] UKEAT 0654] at [33]). Whereas Mr Benjamin's cross examination of the claimant had been focussed and called for little intervention from the Tribunal, the same cannot be said for the claimant's cross examination of the respondent's witnesses. This has, perhaps unsurprisingly, not been as focussed and called for the Tribunal's intervention from time-to-time. (If further authority were needed, in* ***Davies v Sandwell Metropolitan Borough Council*** *[2013] EWCA Civ 135, [2013] IRLR 374, both Mummery LJ (at [28]) and Lewison LJ (at [33]) reiterated, in forthright terms, the necessity for tribunals to concentrate on the relevant and to eliminate the irrelevant. Thus, tribunals are 'not obliged to read acres of irrelevant materials nor do they have to listen, day in and day out, to pointless accusations or discursive recollections which do not advance the case' (Mummery LJ). Moreover, tribunals should not hesitate to use their powers to prevent irrelevant cross-examination and should 'take a firm grip on the case' if the parties fail to assist it to further the overriding objective (Lewison LJ).*

97. *The Tribunal adjourned at 10.30am on 18 January 2024 to deliberate. The Tribunal resolved to follow the guidance at paragraph 43 of* ***Bennett*** *(quoted at paragraph 25 above). Upon the resumption at 11:45am the Tribunal referred to this passage from Ward LJ's judgment in* ***Bennett*** *and to* ***Edmondson*** *(and the opportunity offered to the claimant in that case to distance herself from her representative and effectively disavow his behaviour). By application of the guidelines in these cases, the claimant was therefore invited to affirm or withdraw and disavow her accusations and comments.*

98. *The claimant's response was to say, "I cannot withdraw the remarks. I have been targeted." She then referred to Mr Benjamin as "so-called counsel".*

99. *She went on to say that she has a right under Article 10 of Schedule 1 to the Human Rights Act 1998 to freedom of expression. The claimant does, of course, have such a right. However, it is a qualified right. As is said in Article 10(2) the exercise of the freedoms in Article 10(1) carries duties and responsibilities and "may be subject to such formalities, conditions, restrictions or penalties for [amongst other things] maintaining the authority*

and impartiality of the judiciary." The right to freedom of expression does not give an untrammelled right to make baseless accusations or be offensive.

100. *The claimant reminded the Tribunal that she is a disabled person for the purposes of section 6 of the 2010 Act. The case is not one of disability discrimination. The Tribunal observes that there has in fact been no adjudication of her disability status. However, the Tribunal of course accepts that the claimant has depression for which she is prescribed antidepression medication. She has, as we have seen, mentioned her mental health issues several times in her correspondence with the Tribunal. The claimant rightly drew to the Tribunal's attention the Employment Tribunal's Presidential Guidance to General Case Management published in 2018. Note 4 of the Guidance deals with disability. Paragraph 14 of the Guidance provides that an application should be made to the Tribunal as soon as possible so that the Tribunal can consider any reasonable adjustments that might be made. The Tribunal put it to the claimant that the reasonable adjustments which she has sought have been made (those being arranging for there to be a weekend after the first three days of the hearing in September 2023 and not holding any part of the hearing at which evidence is given by video).*

101. *The claimant then repeated her accusation that the Tribunal was inviting the respondent to make a further strike out application against her. The Tribunal pointed out that the respondent had been positively discouraged from doing this on 16 January 2024 and had not done so, but now matters had moved on, given that the claimant had repeated the accusations against the Tribunal and the respondent of corruption and the Tribunal of racism. In any case, the Tribunal was doing no more than applying Court of Appeal authority: per paragraph 43 of **Bennett** the prospect of a strike out ought to be contemplated in the event of affirmation of the impugned remarks and behaviour.*

102. *The Tribunal adjourned at 12.30pm on 18 January to allow the parties to reflect upon their position. The claimant asked just before the adjournment, "If I withdraw the remarks can I still complain?" It is of course the claimant's right to raise such complaint as she sees fit. Her wish to effectively reserve her right to do so left the Tribunal with real concerns that any withdrawal of her remarks would be insincere and disingenuous.*

103. *The Tribunal adjourned for a little over 90 minutes to enable the parties to reflect upon their positions.*

104. *Matters resumed at 2.10pm. The claimant again asked as to the consequences for her of the withdrawal of her remarks. The Tribunal was concerned that the claimant was only prepared to withdraw them conditionally (that is to say, she seemed to be willing withdraw them only if there were no adverse consequences for her in the future pursuit of any complaints or process arising out of the litigation).*

105. *The claimant was asked by the Tribunal for the evidence she had of corruption on the part of the respondent. She maintained that she had evidence of the respondent's corruption and links with the Employment Tribunal Service. The Tribunal invited her to disclose her evidence. She said, "I cannot disclose it now" and maintained that she had a right to privacy*

of correspondence under Article 8 of Schedule 1 to the Human Rights Act 1998. This is of course a qualified right, taking into account the protection of the rights and freedoms of others. This encompasses the respondent's right to a fair trial.

106. *To reassure the claimant, the Tribunal suggested of their own motion holding that part of the hearing at which the evidence of the respondent's corruption will be disclosed in private pursuant to Rule 50 of Schedule 1 to the 2013 Regulations. This power had been utilised already in the proceedings in connection with the CCTV footage of the court 15 waiting room referred to in paragraphs 62 to 64 above. The claimant was therefore familiar with this power. It had been utilised effectively by the Tribunal already to air relevant evidence while preserving the privacy of others. The claimant refused. She said that the matter was to be the subject of a public inquiry. She commented, "There is a planned campaign against me. There is an element of corruption, the respondent is a very large organisation. They have attempted to get my medical details. There is a plan of destruction." The Tribunal asked the claimant to confirm that the respondent was implicated in this. She replied, "I cannot say".*

107. *At this point, the claimant apologised to each member of the Tribunal individually. She contended that she was not being disrespectful but was standing up for her rights. She went on to say, "I am not a hypocrite. If a party favours one party over another I cannot say that is not case." The Tribunal asked the claimant if she was prepared to unequivocally withdraw her comments. She said that she was unable to do so. She maintained there to be "a plan against me but I'm covered by the blood of Jesus. They can't touch me as I'm covered by the blood of Christ."*

108. *The Tribunal then invited Mr Benjamin's submissions as to the respondent's position. The respondent made an application to strike out the claim upon the basis that a fair trial was now no longer possible. (Before inviting his submissions, the Tribunal referred the parties again to the cases of **Bennett** and **Edmondson**, and in addition referred to **Sud** [v The Mayor and Burgesses of the London Borough of Hounslow [UKEAT PA-0156-14], [Smith v] **Tesco Stores Limited** [2023] EAT 11, and **Chidzoy** [v British Broadcasting Corporation [UKEAT/0097/17]).*

109. *The Tribunal invited Mr Benjamin to make his submissions solely upon the basis of the conduct of the claimant on 16 and 18 January 2024. In the Tribunal's judgment, it was not open to the respondent to revisit the strike out grounds in the withdrawn application dated 23 November 2023 and nothing untoward had happened between then and 16 January 2024. Mr Benjamin had in fact used the time during the adjournment to prepare his submissions in note form which he consulted when making his submissions. The Tribunal suggested that these be emailed to the claimant so that she had them before her and which may help her to prepare her response. Mr Benjamin did so, after being allowed a short period to tidy them up.*

110. *After hearing from Mr Benjamin, the Employment Judge asked the claimant if she was maintaining her suggestion that Mr Benjamin had deliberately caused a disconnection during the hearing on 16 January 2024. She said that was her position. However, this was quickly retracted.*

111. The Employment Judge asked the claimant whether she was definitively affirming or withdrawing the remarks which she had made during the morning. The Tribunal still did not have a clear position. The claimant replied, "I won't say anything again, but I do have to put things in writing as the people involved are in a position of trust." The claimant would not enlighten the Tribunal about to whom she was referring.

112. The Tribunal asked the claimant if she would have sufficient time to prepare her response to the strike out application the next morning (19 January 2024). (By this stage, we had got to around 3.30 in the afternoon). The claimant confirmed that she would have sufficient time to prepare her submissions for the next morning. She added that "there is a secret plan to get my documents. I need to investigate it." She accused Mr Benjamin of being "callous" towards her. Mr Benjamin replied that he was "disgusted with the claimant's statement, as a man of colour."

113. The Tribunal was mindful that it was highly unlikely that with the time available we would be able deal with the strike out application and finish any of the three outstanding respondent's witnesses without the risk of one of them going part heard while under oath. That being the case, the Tribunal released the three witnesses from attending on 19 January 2024. The Tribunal directed that if the case survived the strike out application, then we would hear from them during week commencing 22 April 2024. With that in mind, the Tribunal directed that the hearing on 19 January 2024 would resume at 11am thus affording the claimant a little extra time.

114. In the event, the hearing on the morning of 19 January 2024 commenced at 11.25am. The claimant observed (rightly) that this was the fourth application made by the respondent to strike out her claim.

115. She said that "as a Christian I cannot be hypocritical … I cannot say something I do not whole heartedly believe. I cannot unequivocally withdraw a heartfelt statement.

116. The claimant then said that she was disappointed not to have got closure by today. She observed that the evidence and the submissions could have been heard on 18 and 19 January 2024. That may be correct. However, that of course overlooks that the Tribunal had to deal with what was said by the claimant between 10.20 and 10.30am on 18 January.

117. The claimant maintained that the statements that she had made were not malicious and that a fair trial was still possible. She asked the Tribunal to take account of her protected characteristics of race, disability, and her Christian belief.

118. In mitigation, the claimant relied upon her disability and that a side effect of the medication was anxiety. She said that the circumstances which arose because of the flood had led to an exacerbation of her anxiety and to her not being in the best frame of mind. The claimant submitted that she had not mentioned HMCTS staff by name. (The Tribunal observes that the claimant did in fact name the individual who has acted as the Tribunal clerk throughout the hearing).

119. She maintained that the Tribunal Service was preferring Louise Stratton because "she doesn't share my protected characteristic". Plainly, this was a reference to Miss Stratton being white and was a further accusation of

race discrimination against the Tribunal and HMCTS. The claimant then cited one example of Legal Officer Singh having decided upon an application made by the respondent without giving the claimant the opportunity of filing her representations. (The Tribunal notes that the claimant complained about this on 20 April 2023).

120. *The claimant repeated her contention that Miss Stratton has connections in the Employment Tribunal. She said that there must be a formal inquiry.*

121. *She mentioned that she had been participating in online forums (or at any rate reading them). She said there was a widespread belief amongst the forums' participants that the Employment Tribunals have a history of favouring large and powerful respondents, and that corruption exists.*

122. *The claimant again sought to rely upon her disability as mitigation of the need to vent her feelings. She said that she had been told by "a therapist to get it out." She said that in future she would do as her therapist had suggested and write down her feelings in her diary and would not verbally ventilate them. The Tribunal observed that no evidence from a therapist or other treating medical practitioner has been seen to support the claimant's claim upon this issue.*

123. *The claimant said that if her claim is struck out then she will not have achieved closure. She said that it would be draconic to strike out after all this time and that her hard work may be for nothing.*

124. *Her parting words were to say that there must be a public inquiry and that as a Christian she was unable to unequivocally withdraw he remarks. She said that to do otherwise would be hypocritical. Such would be contrary to the Christian faith. The claimant apologised unreservedly for any offence that she may have caused. Judgment was reserved at 15:10. At 17:53 on 19 January 2024 the claimant emailed the Tribunal with some written submissions. She said that "in hindsight, expressing my views and opinions in respect of being treated less favourably on 16 and 18 January 2024 was not the most appropriate way of going about things." She said that her focus was to ensure she received fair treatment "with an intention to help in improving the services provided by [HMCTS]." She described her views about HMCTS as "subjective" and that she did not intentionally behave in the impugned manner but her belief in the legal basis of them exonerates them from being scandalous or unreasonable. She recorded her apology proffered to the tribunal during the hearing on 18 January 2024."*

10. These passages record the procedural history of the case from presentation up to and including 19 January 2024. As we say, the reserved judgment refusing the respondent's strike out application was promulgated on 14 March 2024. *(The Tribunal was told by the claimant on the morning of 14 May 2024 that she had appealed to the Employment Appeal Tribunal against the 14 March 2024 reserved judgment. Neither party applied for an adjournment nor stay of the Tribunal proceedings pending the outcome of the appeal. The Tribunal was notified by the EAT on 2 July 2024 that one of the claimant's eight grounds of appeal has been permitted to proceed to a hearing following the sift of the appeal by DHCJ Bowers KC pursuant to rule 3(7) of the Employment Appeal Tribunal Rules 1993. A sealed copy of the Notice of Appeal and Order dated 8 July 2024*

was received by the Tribunal that day. There was no Order staying the proceedings before the Tribunal. Doubtless, this reserved judgment will be drawn to the attention of the EAT by the parties).

11. The resumed hearing dates listed for April 2024 (referred to in paragraph 113 of the 14 March 2024 reserved judgment) had to be adjourned due to the non-legal members' prior commitments. The matter was then listed to resume on 14 May 2024 and to continue on 15, 17, 20, 21, 23 and 24 May 2024.

12. Although not without the occasional difficulty, matters proceeded on 14 and 15 May 2024 sufficiently smoothly to enable us to hear the evidence of Helen Graham and Vicki McLean.

13. At 6.55 on the morning of 17 May 2024, the claimant emailed the Employment Tribunal. She asked the Tribunal to provide *"a member of their internal diversity, equality and inclusion team at the remainder of the in-person hearing."* She went on to say that *"This is very important as I am a vulnerable person. I do not feel safe or comfortable proving my case at the hearing without a representative from the equality team being present. I need such a person to witness what EJ Brain is saying to me and the manner in which he is speaking to me. This is a high priority matter as I have a final key witness question. EJ Brain has previously adjourned the hearing on at least four occasions. The respondents have submitted four strike out applications. EJ Brain has entertained two of the respondents' strike out applications within the trial windows of the actual reconvened hearings."* The claimant then cited Rule 2(a) of Schedule 1 to the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* (that being part of the overriding objective to ensure that the parties are on an equal footing).

14. At the outset of the hearing on 17 May 2024, the Tribunal explained that there is no diversity, equality and inclusion team. The charity *Support Through Court* has a presence at the Sheffield Combined Court Centre (where the Employment Tribunal is based) but unfortunately, they only work on Wednesdays. (17 May 2024 was a Friday). The Tribunal explained to the claimant that she may bring a supporter with her (and always has had that facility given that the hearing is in public). As a further safeguard, the Tribunal explained that the proceedings are recorded.

15. The Tribunal also observed that it was open to the respondent to apply for strike out. It was then a matter for the Employment Tribunal as to how to deal with any such application. The Tribunal reminded the claimant of the history of the first three strike out applications as recorded in paragraph 9 (at paragraphs 47, 52 and 66 to 71 of the 14 March 2024 reserved judgment). The fourth strike out application was the subject of the 14 March 2024 reserved judgment and was determined in the claimant's favour.

16. After dealing with these issues, the Tribunal then arranged for the swearing in and hearing of evidence from Lani Jaques. The claimant had not concluded her cross-examination of Mrs Jaques when the hearing was adjourned on the evening of Friday 17 May 2024. Mrs Jaques was therefore part heard over the weekend.

17. On Sunday 19 May 2024 at 20:16, the claimant emailed the Tribunal. A copy was sent to the respondent's solicitor.

18. The claimant said, *"I have expressed great concern to the three member Employment Tribunal that I do not believe the case … is actually live. In other words, I am extremely suspicious of legal fraud. To add to my suspicion, the hearing clerk who has been present throughout these proceedings suddenly disappeared on 17 May 2024."* She went on to say that "*after [the clerk's] sudden disappearance, a gentleman who says his name is [the new clerk was then named] came to the claimant's waiting room. What greatly concerned me is that he did not have a clipboard to record my time of arrival."* She went on to allege that he had not given the claimant the opportunity to set up before the panel entered the room on the morning of 17 May.

19. She then went on to repeat her concern that the Tribunal had adjourned the hearing on at least four occasions. In this respect, the claimant is correct. The circumstances of the first adjournment in September 2023 are at paragraphs 57 to 61 of the 14 March 2024 reserved judgment in paragraph 9. The circumstances of the second adjournment in November 2023 are in paragraphs 62 to 68. The circumstances of the third adjournment in January 2024 are in paragraphs 74 to 124. The first adjournment arose out of the Tribunal's concerns for the claimant's health. The second adjournment arose because the claimant did not have sufficient time to cross-examine all the respondent's witnesses. As of 23 November 2023, she still had to cross-examine Mr McIntosh, Mrs Graham, Mrs McLean, and Mrs Jaques. The third adjournment in January 2024 arose out of the claimant's conduct. By that stage, she had had the opportunity of cross-examining Mr McIntosh but still had to cross-examine the final three witnesses. A further trial window was made available for this purpose. This was adjourned for a short period from April to May 2024 due to the non-legal members' prior commitments.

20. Returning to the email sent on the evening of Sunday 19 May 2024, the claimant then complained that the Tribunal had unreasonably entertained two of the respondent's strike out applications. This point has been dealt with already in paragraph 15.

21. She then said that she had raised complaints about the Employment Judge and the respondent's solicitor. She said that *"these matters were dealt with via the formal complaints process and judicial review and/or public inquiry."* As was observed in paragraph 86 of the reserved judgment of 14 March 2024, the prospect of a public inquiry into matters is something mentioned by the claimant on a number of occasions.

22. The claimant then repeated her contention that *"legal fraud has been committed, which is extremely serious. The sudden disappearances of the hearing clerk … and the respondent's solicitor [who had not appeared in the Tribunal on Friday 17 May 2024] further arouses suspicion."*

23. The Tribunal was very concerned by the contents of the email of 19 May 2024. The flavour of the complaints against the respondent's solicitor and the Employment Tribunal was similar to that raised by her on 16 and 18 January 2024.

24. Upon the resumption of the hearing on 20 May 2024, the Tribunal directed that we would deal with the issues raised in the claimant's email of the previous evening after completing the evidence of Mrs Jaques. She was the final witness. The Tribunal's judgment in this respect was vindicated as her evidence did not in

fact conclude until 16:40. The Tribunal then directed that issues arising out the claimant's email of 19 May 2024 would be addressed the next morning.

25. After some discussion at the end of the hearing on 20 May 2024, the Tribunal directed the parties to file with the Employment Tribunal and serve on the other party closing written submissions by 11:30am on 21 May 2024. The Tribunal had suggested that these be done by 12 noon but on reflection the Employment Judge commented that some additional hearing time ought to be allowed on 21 May to deal with the email of 19 May 2024 given that it was open to the Tribunal of its own motion (pursuant to Rule 37(1)(b) of the 2013 Rules) to strike out all or part of a claim upon the basis that the manner in which the proceedings were being conducted was scandalous and unreasonable. The claimant protested that, *"this was always the Tribunal's plan."* A direction was given for the parties to attend to make their closing submissions at 13:30 on 21 May 2024. This was to give the Tribunal time to read the written submissions.

26. In parting just before the proceedings were adjourned at 17:00 that afternoon (20 May 2024), the Employment Judge explained that the hearing clerk who had attended to the parties before 17 May 2024 was on leave and that the new clerk had simply stepped in to cover her absence. There was nothing sinister. It really was as simple as that. Mr Benjamin explained that Miss Stratton (the respondent's solicitor) was absent due to childcare issues.

27. On 21 May 2024, at 10:47, the claimant applied for an extension of time to present her written submissions. The Tribunal granted that application, extending time for her so to do from 11:30 am to 13:00. The time for the parties' attendance to present their submissions was deferred from 13:30 to 14:00 accordingly.

28. The respondent presented their written submissions at 11:00 on 21 May 2024. These were accompanied by an application to strike out the claimant's complaint upon the grounds of scandalous and unreasonable conduct.

29. In the event, the hearing on 21 May 2024 did not go underway until 14:45. This is because the claimant's submissions were presented at 13:55. The Tribunal therefore took time to read them.

30. When the hearing got underway, the claimant protested that the Tribunal had invited the respondent to make a strike out application. This was not, of course, the case. In fact, this was quite to the contrary as the Tribunal observed (just before the adjournment on the evening of 20 May 2024) that even if the claimant's conduct in sending the email of 19 May 2024 was scandalous and unreasonable such as to render a fair trial impossible, it was unlikely to be proportionate to strike out the claim given that all of the evidence had been heard and there only remained for the Tribunal to receive submissions. By way of reminder, the Tribunal had effectively discouraged further pursuit by the respondent of the strike out application of 23 November 2023 upon the basis that the issue of a fair trial and proportionality had not been addressed (paragraphs 70 and 71 of the 14 March 2024 reserved judgment) and had discouraged a strike out application based upon the claimant's conduct on 16 January 2024 (paragraph 88). Nonetheless, as was explained to the claimant, it is the respondent's prerogative to make a strike out application. The Tribunal cannot prevent a party from making an application at any time. It is for the Tribunal to then decide how to deal with any such application.

31. At the conclusion of this discussion on the afternoon 21 May 2024 around the respondent's (fifth) strike out application, Mr Benjamin indicated that he had instructions to withdraw it. The claimant said that she had not, in any case, read the strike out application or the respondent's submissions. These had been submitted by the respondent's solicitor at 11:00 am on 21 May 2024. There were two attachments. One was a strike out application and the other was the respondent's written submissions. The claimant explained that she had not wanted to read the strike out application and had not realised that the submissions were by way of a separate attachment. She had therefore read neither.

32. The claimant went on to say that her mental and physical health was being affected by litigation. She commented, "*I've crawled in [to the Tribunal] today."*

33. The Tribunal then directed there to be an adjournment so that we could discuss in chambers whether there should be a strike out of the claimant's claim of the Tribunal's own motion. The Tribunal decided in chambers that we should consider strike out of our own motion.

34. Upon the resumption, the parties were informed of the Tribunal's decisions to consider strike out of our own motion. The claimant was invited to make representations as to why the contents of the email of 19 May 2024 was not scandalous or unreasonable. The claimant said that she was not being treated fairly. She then referred to her right to freedom of expression under Article 10 of the European Convention on Human Rights. The Tribunal reminded the claimant that this is a qualified right and does not give an untrammelled right to make baseless accusations or be offensive. This is an issue to which the Tribunal referred in paragraph 99 of the 14 March 2024 reserved judgment in paragraph 9 above. The Tribunal asked the claimant to explain what she meant by *"legal fraud"* in the email of 19 May 2024. She commented, "*there are attempts to strike out. Strange things are happening."* She then alleged there to be "*interference with my medical records."*

35. After hearing from the respondent's counsel, a ruling was given that the claimant's claim would not be struck out upon the basis of scandalous and unreasonable conduct. *(The Tribunal, during the adjournment, had provisionally decided as a panel that the claim should not be struck out and reasons for that decision. The Tribunal was mindful of the time and had decided in chambers that the Employment Judge would check with the non-legal members in the hearing that their position remained the same after hearing submissions upon the resumption. This the Employment Judge did).*

36. The Tribunal held that the claimant's email of 19 May 2024 was scandalous within the definition given by Sedley LJ in **Bennett v Southwark London Borough Council [2002] ICR 881**. This definition is set out in paragraph 22 of the reserved judgement of 14 March 2024. There, paragraph 27 of **Bennett** is set out where Sedley LJ said, "*In its colloquial sense [the word 'scandalous'] signifies something that shocks the speaker … I am confident that the relevant meaning is not the colloquial one. Without seeking to be prescriptive, the word 'scandalous' in its present context seems to me to embrace two somewhat narrow meanings: one is the misuse of the privilege of legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such process."*

37. In our judgment, the claimant has misused the privilege of the legal process to vilify the Employment Tribunal panel members and HMCTS staff. She has also

given gratuitous insult to the Tribunal in making baseless allegation of legal fraud within the email of 19 May 2024. The vilification of HMCTS staff in somehow being involved in a conspiracy against her is plainly scandalous conduct. It is also unreasonable conduct.

38. For the same reasons as in the reserved judgment of 14 March 2024, a fair trial is not possible. This is because, again, the Tribunal has had to sit in judgment of serious allegations made against it. These are of course baseless allegations. There is no merit in them. They fail on the facts. Nonetheless the claimant placed the Tribunal in the invidious position of judging their own conduct particularly on the issue of involvement with the respondent in a conspiracy.

39. That said, on any view it would be disproportionate to strike out the claim at this stage. As of 21 May 2024, the proceedings had occupied 18 days of Tribunal time. The Tribunal had heard evidence from the claimant and from 10 witnesses called by the respondent. The Tribunal had received written submissions which only needed to be supplemented by oral submission by way of amplification or response to the other parties' written submissions. The proceedings were therefore almost concluded such as to enable the Tribunal to commence chambers deliberations. The allegations against the Tribunal are of no merit. As was the position in January 2024, the Tribunal dismisses them as unmeritorious, can put them to one side, and then proceed to sit in judgment of the substantive case on its merits. The unmeritorious allegations may be taken into account by the Tribunal upon an assessment of the claimant's credibility. While placing the Tribunal in an invidious position by requiring us to sit in judgment of ourselves, it clearly would be disproportionate to vacate the judgment seat in the circumstances.

40. Accordingly, the Tribunal ruled that the claimant's claims would not be struck out. The consequence was that the Tribunal then went on to entertain closing submissions.

41. By the time the strike out issue had been dealt with, the time was around 15:45. The Tribunal expressed concern that there was insufficient time to receive closing oral submissions. The Tribunal also expressed concern for the claimant's health given what she had said earlier about having had to "*crawl in"* to the hearing.

42. Remarkably, the claimant objected that her health should not be brought into consideration and that she has a right to a private life under Article 8(1) of the ECHR. She is of course correct in that observation. However, the fact is that it was the claimant who raised issues of her health on the afternoon of 21 May 2024. She cited her health as justification for not being able to bring herself to read the respondent's strike out application. Article 8(1) is of course qualified by the provisions of Article 8(2) which permit interference with the exercise of such rights for (amongst other things) the protection of health. The Tribunal was concerned about the claimant's health which had been raised by her and in particular her ability to absorb Mr Benjamin's submissions and respond accordingly.

43. It seems to the Tribunal to be most unfortunate that the claimant took umbrage with the Tribunal's concerns for her health and welfare. This resonates with the events of 19 September 2023 mentioned in paragraphs 57 and 60 of the 14 March 2024 reserved judgment.

44. The Tribunal therefore directed that the proceedings would be adjourned, and submissions would now be made at 10am on 23 May 2024. (The Tribunal was unable to sit on 22 May 2024). This adjournment therefore gave the parties an opportunity to file supplemental submissions. The Tribunal directed that these be filed and served by 4pm on 22 May 2024. Each party availed themselves of the opportunity and presented helpful written submissions addressing each of the issues identified by Employment Judge Miller.

45. We now turn to the events of 23 May 2024. Mr Benjamin, on behalf of the respondent, made brief submissions supplementing the two sets of written submissions which had been presented by the respondent. The claimant was then invited to make her submissions.

46. The Tribunal noted that the claimant had mentioned five protected acts (in paragraph 3 of her supplemental closing submissions). We shall of course come to the protected acts in due course. The claimant had omitted the protected act agreed by the respondent to have been made on 27 and 28 April 2022 and had included within her closing written submissions as a protected act a grievance appeal dated 28 June 2022. The respondent was content for the Tribunal to proceed upon the basis of six protected acts.

47. The claimant then wished to refer to a table of allegations other than that in pages 139 to 141 of the bundle. The Tribunal observed this to be unfortunate given that the parties and the Tribunal had been working with that table throughout. After some discussion, it transpired that the table to which the claimant was wishing to refer is in the hearing bundle at pages 74 to 87. The claimant wanted to draw the Tribunal's attention to the right-hand column headed *"impacted detriment".* This is a remedy issue. The Tribunal confirmed that remedy issues would be dealt with at a subsequent remedy hearing if required.

48. The Tribunal then directed the claimant to proceed with her submissions. She was reminded that the Tribunal had already read the two sets of submissions filed by her. She therefore only needed to amplify any points and reply to anything said on behalf of the respondent.

49. Although not reading her submissions word for word, it quickly became apparent to the Tribunal that the claimant was in fact simply repeating what was in the written submissions. Unfortunately, this appeared to precipitate the claimant into raising a litany of complaints against the Tribunal.

50. She accused the Tribunal of "*working with the respondent to defeat the claim."* She accused the Tribunal of "*gagging me".* She alleged the Tribunal were subjecting her to *"retaliatory treatment."* She accused the Employment Judge of *"being involved in something."*

51. Most seriously, she accused the Tribunal of lying. As the Tribunal understands matters, this accusation is about the events of 16 to 19 January 2024. A contention was that on 18 January 2024, the Tribunal had directed the respondent to base the strike out application solely on what had occurred that day and on 16 January. It will be recalled (from paragraph 112 of the 14 March 2024 reserved judgment) that the claimant was afforded time on the afternoon of 18 January 2024 to respond to the strike out application such that she was able to present her submissions on 19 January 2024. The allegation against the Employment Judge of *"lying"* appears to be because what the parties said on 19

January 2024 was recorded in the reasons for the reserved judgment promulgated on 14 March 2024.

52. This was, of course bound to be the case given that the claimant was afforded until 19 January 2024 to make her representations about the events of 16 and 18 January. It would be remiss of the Tribunal not to record what had been said on 19 January 2024 as well. Indeed, the Tribunal is confident that had we omitted mention of what she said that day the claimant would have complained.

53. It is difficult to see how the Tribunal has done anything improper in recording what was said on 19 January 2024 and incorporating those remarks within the 14 March 2024 reserved judgment. It is, to say the least, unfortunate that the claimant chose to make very hurtful allegations against the Tribunal (and in particular the Employment Judge) on 23 May 2024.

54. The claimant confirmed on 23 May 2024 that she did not wish to repeat her application for the recusal of the Tribunal. The hearing was therefore adjourned between 12:10 and 12:30. Upon the resumption, the Tribunal directed that in the interest of proportionality no action would be taken that day but that the events of 23 May 2024 would be recorded in these reasons. It was noted that the respondent had not made a further strike out application arising out of the claimant's conduct that morning. It was observed by the Employment Judge that were the Tribunal to have contemplated strike out of their own motion this would inevitably give rise to the same outcome as was the case two days earlier on 21 May 2024.

55. The claimant was therefore invited to present her oral submissions. She did this until 1:15pm and then from 2pm to 2:30pm.

56. The Tribunal then directed that chambers deliberations would now follow. Judgment was reserved. The Tribunal commented that the claimant's conduct between 19 May and 23 May 2024 was contemptuous of the Tribunal and had extended to allegations of corruption and lying upon the part of the Tribunal. The Tribunal indicated that consideration would be given to making a referral to the Regional Employment Judge as a first step in contempt of court proceedings. There was insufficient time to reach a conclusion on 23 and 24 May 2024 and therefore the Tribunal continued their deliberations on 12 July 2024. The Tribunal has determined that no contempt referral shall be made although that decision is not to be taken in any way as condonation of the claimant's conduct.

57. That concludes the reasons upon the procedural history of the case. We now turn to make factual findings.

Findings of fact

Neutral chronology of events

58. The Tribunal proposes to take each of the allegations in the table at pages 139 to 141 of the hearing bundle in turn. It will, we think, assist the reader to have a factual overview to give context to the individual allegations. The allegations will be taken individually one-by-one, which entails recounting some overlapping events. The Tribunal therefore commences the factual findings by giving a neutral chronology of events which is as follows:

22 February 2022. The claimant was interviewed for the role (pages 314 to 317).

21 March 2022. The claimant commenced employment with the respondent. Her contract of employment confirming the start date is in the bundle at pages 204 to

213. The claimant was placed under the line management of Mr Shaw (page 216).

11 April 2022. Lizzie Walker started her employment as a direct customer expert (that being the same capacity in which the claimant was employed). We refer to page 336.

20 April 2022. The claimant was placed with Stephen Curry who acted as her buddy (page 342).

25 April 2022. The claimant and Mr Shaw discussed the issue of logging IDD (Insurance Distribution Directive) training hours (page 360).

27 and 28 April 2022. The claimant attended a meeting with Mr Pennant and Anita Walters to discuss issues which had arisen during the claimant's employment (pages 379 and 1136 to 1134).

3 May 2022. The claimant is buddied with Daniel Cave. This coincided with the completion by her of her classroom training (page 905).

5 May 2022. The claimant raised the first part of her grievance (pages 392 to 394). She was buddied on the same day with Elizabeth Harding (page 395).

13 May 2022. Miss Pitcher and the claimant are buddied together for the day. Following a discussion between Mr Pennant and Mr McIntosh, the claimant is asked to leave the workplace (page 431).

19 May 2022. The claimant attended a meeting with Mrs Maclean to discuss her return to work (pages 467 to 474 and page 485).

20 May 2022. The claimant raised the second part of her grievance (pages 475 to 482).

23 May 2022. The claimant returned to work, reporting to her new line manager who was Mrs Baguley (pages 488 and 489. The claimant was buddied with Mr Shergold that day (page 492). Mrs Graham, who had dealt with the first part of the claimant's grievance, emailed her with the grievance outcome (page 518).

24 May 2022. The claimant was buddied with Sarah Todd (page 527).

25 May 2022. The claimant attended a meeting with Mrs McLean. It is the respondent's case that on that day the claimant was suspended from work (pages 559 and 560). The claimant resigned from her post with immediate effect (page 565).

26 May 2022. Mr Pennant circulated an email notifying staff of the claimant's resignation "with immediate effect today." This is at page 575.

27 May 2022. The claimant attended a grievance meeting with Helen Graham (pages 592 to 595).

6 June 2022. The claimant submitted the third part of her grievance. This is at pages 616 to 621.

23 June 2022. Mrs Graham sent to the claimant the outcome to all three parts of her grievance. This is at pages 657 to 663.

28 June 2022. The claimant appealed Mrs Graham's decision. Her appeal letter is at pages 669 to 681.

11 July 2022. The claimant attended a grievance appeal meeting before Mrs Jaques. The appeal meeting notes are at pages 716 to 720.

22 July 2022. The claimant attended a grievance appeal outcome with Mrs Jaques. These notes are at pages 864 to 890.

25 October 2022. The claimant submitted a data subject access request. This is at pages 903 and 904. There was also a further subject access request on 3 November 2023 (page 902).

59. It is to be hoped that the neutral chronology of events will be of assistance to the reader and aid an understanding of the somewhat complex sequence of events to which the Tribunal will now turn. Before doing so, the Tribunal wishes to make several general observations.

General observations about the parties

60. The Tribunal found the respondent's witnesses to be (without exception) impressive. As will be seen when we look at the individual allegations, their explanations for their actions are in no way tainted by the claimant's sex or race or by her doing any of the six protected acts. They were measured in their approach and made concessions where appropriate.

61. Although not an exhaustive list, it is helpful, we think, to record some of the concessions made by the respondent's witnesses:

    61.1. Mr Shaw and Mrs Jaques both accepted that communication around the IDD issue could have been better.

    61.2. Miss Pitcher accepted that she had mixed up 16-digit bank numbers such that this led to claimant making an error when speaking to a customer.

    61.3. Mr Shergold accepted that the claimant was an interested participant when she was buddied with him on 23 May 2022.

    61.4. Mrs Jaques and Mrs Graham both accepted that the grievance hearing notes had not been sent to the claimant by Mrs Graham within the timescales prescribed in the respondent's grievance procedures.

    61.5. Mrs Jaques accepted that Mrs Graham had failed to follow procedure by not holding a grievance outcome meeting with the claimant. While not accepting the claimant's complaints about locker allocation she did concede that the claimant had a fair point about the policy.

    61.6. Mrs Jaques accepted that she had overlooked to consider, at appeal stage, an issue raised by the claimant about soreness being experienced by her (the claimant) when wearing a headset provided to her by the respondent.

    61.7. Mr McIntosh accepted that he did on 13 May 2022 say words to the effect, that the claimant's presence within the organisation was *"compounding matters on a daily basis".*

62. In contrast, the claimant remained obdurate even when faced with overwhelming evidence against her on certain points. For example:

    62.1. As will be seen, she refused to accept there to be no evidence that she had made a specific request of Mrs Jaques to interview Miss Pitcher even when faced with grievance appeal meeting notes (at pages 716 to 720) which had been approved by her and in which this request is not recorded.

    62.2. She refused to accept that she had received a letter from Helen Graham on 25 May 2022 inviting her to attend a formal resolution meeting on

27 May even when faced with an email from the claimant herself addressed to Mrs Graham acknowledging receipt of her (Mrs Graham's) email to that effect. (We refer to page 1109).

62.3. She refused to accept that the rota shown on the *"Verint"* chart at page 887 showed her working hours as from 9.30am to 17.00 during week commencing 23 May 2022 when the chart plainly shows just that.

62.4. She refused to accept the assurances of the Tribunal that Mr Fields' lateness in joining the hearing on 16 January 2024 was attributable to IT issues and that IT issues also beset Mr Benjamin that morning.

63. Even more seriously perhaps, she levelled very serious (and as we find) unmeritorious allegations against the respondent's witnesses. Regrettably, during the hearing there were many such instances. It should therefore suffice to set out now some examples upon the below hearing dates:

63.1. 15 September 2023. The claimant said that the respondent was *"planning stuff against me to halt my progression."* She accused those within the respondent of "*collusion", "concocting",* and *"a plan".*

63.2. 16 September 2023. The claimant alleged the respondent was placing "*stumbling blocks"* in her way. She accused the respondent of a *"plot"* and *"tampering with evidence."* She accused Mrs Graham of *"fabricating evidence"* and conducting a *"sham"* process.

63.3. 20 November 2023. She alleged that the respondent was engaged in a *"character assassination"* of her.

63.4. 21 November 2023. The claimant accused the respondent of *"cooking up issues*", of *"collusion",* of a *"plan to oust me"* and *"retaliation".*

63.5. 23 November 2023. The claimant said that the respondent was *"camouflaging its conduct"*, was engaged in an *"orchestrated plan"* and a *"plan to prevent my DSAR".* She also said that *"there would be evidence tying this all up which may take some time."* No such evidence was produced. The Tribunal forms the view that the claimant was being less than honest about the evidence held by her as a result.

63.6. 16 January 2024. The claimant accused the respondent and the Employment Tribunal of *"retaliatory treatment".*

63.7. 17 January 2024. The claimant alleged there to be a *"plot"* and *"collusion"* against her, and the respondent had orchestrated a *"staged grievance by Christopher Shaw and Jessica Pitcher."* She alleged the grievances were a *"charade".* (The claimant repeated these allegations in the submissions which she made on 23 May 2024).

63.8. 15 May 2024. The claimant alleged that Mrs McLean was engaged in a *"planned destruction"* of her career by way of *"fabrication and concoction."* She said the respondents conduct was a "*set up"* and a "*conspiracy"* intended to sabotage the career of the "*coloured girl".*

63.9. 23 May 2024. In addition to making the allegations around Jessica Pitcher and Christopher Shaw's grievances, the claimant alleged that the respondent was out to *"destroy my career".* She contended that matters were *"staged".*

64. The claimant frequently misconstrued what was said to her by the Tribunal. Several examples will suffice:

    64.1. On 15 and 16 September 2023 and on 23 November 2023 (when issues of late disclosed documents arose) it was explained to the claimant by the Tribunal that the respondent had a continuing disclosure obligation, and that counsel and solicitors' primary duty was to the court as they were Officers of the Court. This was interpreted by the claimant as tantamount to solicitor and counsel being work colleagues of the Tribunal.

    64.2. The claimant's reaction to the Tribunal's concern for her welfare expressed on 19 September 2023 and 21 May 2024 was construed by the claimant as attempt by the Tribunal to delay the resolution of the case when the Tribunal's actions were motivated by concern for her welfare.

    64.3. The claimant's protestations when Mr Benjamin assisted the Tribunal by drawing witnesses' attention to relevant references within their witness statements or during their evidence given in cross-examination. This occurred on several occasions: on 22 November with Ross Pennant, on 23 November 2023 with Carly McCafferty, on 17 January 2024 with Ross McIntosh, and on 15 May 2024 with Vicki McLean. The claimant was reluctant to accept that as an Officer of the Court it was perfectly proper for counsel to assist witnesses in locating documents to which they wished to refer. Such was in furtherance of the overriding objective to deal with cases proportionately.

    64.4. She misconstrued the Tribunal's summation of Ross McIntosh's evidence as a factual finding that the respondent had followed their grievance procedure.

    64.5. She misconstrued the direction given on 18 January 2024 for the strike out application to focus on the claimant's conduct on 16 and 18 January by then criticising the Tribunal for referring to what occurred on 19 January when the claimant delivered her submissions. (These should have been given on 18 January, as was said above in paragraph 112 of the 14 March 2024 reserved judgment, in the event were delivered on 19 January).

    64.6. The issue of the claimant wanting to read out the text from a letter when cross-examining Vicki McLean. The Tribunal directed that in the interests of proportionality there was no need for her to read significant passages of text. All of those present were able to read the text for themselves as would have any member of the public present. This was misconstrued as an attempt to shut down the claimant's cross examination. A similar issue arose during the cross-examination of Lani Jaques.

65. The claimant also had to be directed on a number of occasions during the cross-examination of the respondent's witnesses. There was defiance of the Tribunal's directions. Again, several examples will suffice:

    65.1. When cross-examining Amanda Baguley on 21 November 2023, the claimant was directed to not ask questions which should more properly be directed to Vicki McLean.

    65.2. The claimant was directed to move on after asking repetitive questions of James Shergold on 22 November 2023. She was seeking to ask questions about points which she had covered with him the previous day.

She also sought to ask him questions on remedy which he was in no position to answer.

65.3. When cross-examining Mr Pennant on 22 November 2023, the claimant was directed to ask questions and not make speeches. The following day, she was directed not to ask him questions which were more appropriate to ask of Helen Graham about her investigation of matters involving Mr Pennant.

65.4. When cross-examining Mr McIntosh on 17 January 2024, she sought to ask questions of him about Carly McCafferty's handling of her DSAR request upon which Mrs McCafferty had already been questioned. The claimant was told to move on after repetitive questioning concerning grievances raised by Jessica Pitcher and Christopher Shaw. She was directed that it was inappropriate to ask Mr McIntosh for his opinion on the outcome of her grievance. This was a matter for Helen Graham. There was a need to remind the claimant during this cross-examination to focus on the list of issues. She was also instructed not to cross-examine him about the Verint system in which he had no involvement.

65.5. The claimant continually protested that the Tribunal was not letting her put her points to the witnesses. This is not the case. The dates upon which the witnesses attended the Tribunal for cross-examination are set out in paragraph 6 above. The claimant had ample time to ask her questions of them.

66. It is regrettable that the claimant continued in this vein even after the promulgation of the reserved judgment on 14 March 2024. There, the Tribunal had referred (in paragraph 96 cited in the passage in paragraph 9 above) to authorities from the Employment Appeal Tribunal and the Court of Appeal to the effect that the Tribunal, in the exercise of proper case management in accordance with the overriding objective, should stop lines of questioning and submissions which do not assist, and should not hesitate to use case management powers to present irrelevant cross-examination and need to take a firm grip on matters if the parties fail to assist to further the overriding objective.

67. Several times during the May 2024 hearing, the Tribunal reminded the parties (and the claimant particularly) of this case law and also cited from **Harvey on Industrial Relations and Employment Law** Part P1 (at [1614.01] and [1614.02]). (The Employment Judge declared an interest in citing these passages as he is one of the joint contributing editors of Part P1 of **Harvey)**. There, it is said that *"There is a balance to be struck to prevent or curtail irrelevant cross-examination and evidence. A Judge may be interventionist without crossing over into unfairness."* These passages from **Harvey** mention that HHJ Taylor acknowledged in **Werner v University of Southampton EA 2019 000973** that Employment Tribunal litigation presents challenges around the control of cross-examination given the prevalence of unrepresented parties. HHJ Taylor also referred to the guidance in the *Equal Treatment Bench Book* concerning litigants in person and that the Tribunal is entitled to ensure that there is not undue repetition in cross-examination, the questions are focused on the issues and that witnesses are not harassed by cross-examination of undue length and unnecessary hostility. HHJ Taylor also made similar remarks in **Leasy v Building Craft College [2002] EAT 59** where he commented that the

Employment Judge in that case had to intervene to prevent irrelevant cross-examination and maintain control over the hearing.

68. Unfortunately, the claimant was unreceptive. On 15 May 2024, the claimant had to be directed to ask questions rather than making speeches. There was repetitive questioning over the issue of the recording of (what the respondent claims and which we find was) a suspension meeting held on 25 May 2024. Such were the gravity of the allegations and hostility towards her (albeit displayed in measured tones) that Mrs McLean became upset necessitating the Tribunal taking a 10-minute break. When questioning Lani Jaques, the claimant had to be repeatedly reminded to focus on the issue of why she said that Mrs Jaques' conduct of the appeal was improper.

69. Regrettably, the claimant was disrespectful of and resistant to the authority of the Tribunal. Interlocutory rulings by the Tribunal were invariably met with resistance and argument such that the Tribunal had to resort to informing her that after hearing each parties' submissions on any interlocutory issue which arose, the Tribunal's rulings must be respected and were not a matter for further debate (absent a change in circumstance).

70. In her recusal application of 20 February 2024 (which was refused, and which forms part of the reserved judgment of 14 March 2024) the claimant raised what were frankly absurd allegations against the Tribunal. These included an insinuation that the Employment Judge had invented the fact that there was a flood at the Sheffield Combined Court Centre in January 2024, that he had instructed the cleaners there not to speak to the claimant (presumably to thwart the claimant's efforts to find out the truth as to whether there was a flood or not), and that the Employment Judge had somehow procured or concocted the service of a jury summons upon the claimant to somehow aid a costs application by the respondent. During the May 2024 hearing, the claimant sought to dispute the Tribunal's findings of fact about what had happened in January 2024 accusing the Tribunal of lying and telling untruths.

71. The claimant also raised several times the concern that the public had been excluded from the hearing by the Employment Tribunal. It was patiently explained several times that this was not the case. The public had been excluded for a brief time on 20 November 2024 (and the hearing converted to one in private for case management purposes - paragraphs 62 and 63 of the 14 March 2024 reserved judgment) to discuss how to deal with the CCTV footage of the Court 15 waiting area. Part of the proceedings held in the afternoon of 23 November 2023 was conducted in private pursuant to Rule 50 of the 2013 Rules. The hearing was then converted back to a public hearing. This was explained in paragraph 65 of the reserved judgment of 14 March 2024.

72. The claimant's dealings with the Tribunal may be characterised as having been tainted by undue suspicion, misconstruction, confrontation, defiance, and baseless allegations. The claimant displayed before the Tribunal the very same behaviours which, on the findings of facts to come, affected her relationship with the respondent. These features weigh heavily in the Tribunal's assessment of the respective credibility of the claimant on the one hand, and the respondent's witnesses on the other. It is right to say that the claimant spent much of the hearing demonstrating to the Tribunal the very behaviours of which the respondent's witnesses complain. This gave much credence to the respondent's evidence.

73. For the reasons given in paragraphs 60 to 72 of these reasons, generally, where there is a conflict of evidence the respondent's account is to be preferred. The Tribunal will now go through each of the 32 allegations raised by the claimant one by one. We shall then look at the constructive dismissal claim. We have already given a neutral chronology of events. Before descending into each of the individual allegations, it is necessary to give some further background.

Background to the claimant's role

74. For this, the Tribunal turns to the statement of Mr Shaw. Very fairly, he compliments the claimant upon her performance in interview. He says in paragraph 2 of his witness statements that *"she was one of the best candidates at interview we have ever had."* He then explains the new starter training process in paragraphs 5 to 8 of his witness statement as follows.

> *"(5) Customer experts within the healthcare business undertake training when they first start in the role, working towards an internal accreditation meaning that they are competent to handle calls by themselves. There is generally a split in accreditation between regulated and non-regulated tasks, with non-regulated work being achieved first before moving up to the regulated review tasks. To achieve this level of competency, all new starters go through a mix of classroom training, call shadowing/listening and then taking their own calls alongside a training buddy. The buddies are fully accredited customer experts who can support the new starters with any queries they have in implementing the customer requests. The buddy will listen to every call side by side until the new starter is competent, once this is achieved the buddy will start to listen to each call remotely leaving the new starter to handle the calls independently with minimal support. If the new starter can demonstrate they can competently handle the calls without buddy support, they will then move to regulated calls. Once the new starter is comfortable that they can take regulated calls without a buddy, the buddy takes a back seat and then listens into five calls and gives them a formal pass/fail rating. If all five calls are passed, the buddy asks the team leader (ie me for my team members) to listen to another five calls and do the same pass/fail exercise. If all calls are passed, the person will be deemed as accredited.*
>
> *(6) The accreditation process takes some time. It is really common for new starters not to pass all of the calls the first time around as we want to make sure the calls will stand up to scrutiny by our internal quality assurance teams. It is typical for new starters to take between 3 and 6 months to be fully signed off, but to become fully competent on the phones it is more like 18 months. If someone doesn't pass the course the first time round, we simply support them to try again. Everyone learns at different rates and it is not an easy job to do. As a team leader, I want everyone to be successful at their role and I do tend to take it quite personally if someone doesn't pass their calls or otherwise struggles, because I consider it my job to make sure someone is succeeding.*
>
> *(7) I always approach new starters in the same way. For their first day on the job, I will meet them in the office and get them set up with their laptop. The first day is usually taken up with getting logged on and emails set up, updating their personal details on Workday, our HR system, and then undertaking some of the "essential learning" modules that all employees*

have to do. I also tend to do a tour of the building in Sheffield, showing the colleague the kitchenette, toilets, fire exits and will also sit down to have a chat about what their next few weeks will look like. During this chat, I will also let new starters know about when they can take their breaks before they are fully set up on our systems which will allocate breaks automatically once they are trained and taking calls.

(8) The remainder of the first week will typically be spent meeting the team, joining team huddles and call listening to experienced customer experts. The new starter will then go into a period of classroom training to learn about the systems and their role from a specialist trainer."

The specific allegations and factual findings upon them

75. Against this background, we turn to the first specific allegation raised by the claimant. This is that Christopher Shaw did not provide the claimant with details of how to log on to relevant computer systems on 21 March 2022.

76. Mr Shaw's account is that the claimant was given access to those parts of the respondent's systems which she required on her first day. He accepted (in paragraph 16 of his witness statement) that she did not have access to all the systems from day one. The claimant accepted that she did not need access to all the systems on her first day at work. She had sufficient access to enable her to do what she needed to do that day. There was no evidence that Lizzie Walker (whom the claimant cites as her comparator) was given any better access to the systems on her first day than was the claimant.

77. The second allegation is that Mr Shaw did not provide the claimant with a locker on 21 March 2022. The system operated by the respondent is that lockers are allocated on a day-by-day basis. This is because there are insufficient lockers to go round. When informed of this by Mr Shaw on 30 March 2022, the claimant objected and said to him in a Teams message that, *"With all due respect, this is not something I am accustomed to. If one is employed with a company, particularly in a contact centre environment, a locker is essential. Having to apply for a locker each time I come in is very inconvenient. In all previous jobs, my manager has issued me a locker. The absence of a personal locker poses a security risk for me, creates unnecessary anxiety and promotes poor mental health."* We refer to page 1110. In the event, the claimant resolved the locker issue herself by speaking to John Foyle on reception. Mr Shaw had volunteered to do this, but the claimant got there first. The claimant complains about her treatment in comparison with Chloe Pullen. Mr Shaw's account (which the Tribunal accepts) is that Chloe Pullen never had an individual locker allocated to her. There was simply no evidence to the contrary. The evidence was that all employees were treated the same for locker allocation. This was the evidence of Mr Shaw corroborated by Mrs Graham (see paragraph 61.5 above). That this was the respondent's policy is corroborated by the fact of the claimant having to make special arrangements with Mr Foyle. This need arose from all being treated the same.

78. The third allegation is that *"Christopher Shaw did not inform the claimant about taking breaks on or around the claimant's first few days*." It is convenient to take this allegation along with the fourth one which is that *"Christopher Shaw informed the claimant that breaks will be factored in as and when you start your training"*

which the claimant contended to be a *"false claim on or around the claimant's first few days."*

79. Mr Shaw said in paragraph 21 of his witness statement about new starters breaks that on induction he *will "always say the same thing on the first day about breaks, which is for new starters to take a 10-minute break in the morning and a 10-minute break in the afternoon, with 30 minutes for lunch. I ask everyone to use their common sense and take the breaks at sensible times, and that they will later be given a timetable for their breaks in accordance with the adherence system."* The *'adherence system'* is that which operates for fully trained customer experts.

80. Miss Pullen, whom the claimant names as a comparator, was a fully trained customer expert. Therefore, her breaks would have been allocated on the adherence system.

81. In cross-examination, the claimant accepted that she had taken a 30-minute lunch break as suggested by Mr Shaw. She said that her complaint was not being informed of the 10 minutes breaks in the mornings and afternoons. She said that Mr Shaw had discussed breaks with her *"eventually, not when I first started."*

82. The Tribunal prefers the respondent's evidence given that generally, as was said above, where there is a conflict of evidence that of the respondent is preferred. In the Tribunal's judgment, it is against the probabilities that Mr Shaw would have departed from his usual practice when inducting the claimant and it is more likely than not that he would follow his usual routine, there being no reason to depart from it.

83. The fifth allegation is that Mr Shaw informed the claimant that IDD hours were not applicable to her. The claimant alleged that this happened on either 15 or 22 April 2022. While there was an issue about IDD hours, this in fact occurred a few days later. Mr Shaw fairly accepts that this issue was not well handled by him. On 25 April 2022 he emailed all his team reminding them to ensure that their IDD hours were up to date before the end of the week (page 360). This was mistakenly sent to the claimant and Lizzie Walker. The claimant approached Mr Shaw to ask what she needed to do. He told her rather abruptly (as he was heading to a meeting) that the email at page 360 was not applicable to her.

84. Mr Shaw says in paragraph 27 of his witness statement that the IDD training hours for the claimant and Miss Walker were filled just by her doing her new starter training.

85. Logging IDD training hours became applicable to the claimant and Miss Walker towards the end of April 2022. Mr Shaw messaged them both so that he could show them how to log their training. This is at page 361.

86. On checking the logs, Mr Shaw discovered on 26 April 2022 that the claimant's records were not "*pulling through for some strange reason".* He messaged the claimant to this effect that day (page 364). The claimant replied (page 365) expressing *"great concern that everyone has their completed training visible, except me. This is very strange and distressing. Can you please give me the email address of the team responsible for this?"* Mr Shaw says in paragraph 29 of his witness statement that *he "found it odd that she assumed it was only her affected (I had not said this) and I informed her that the same issue had occurred for Lizzie Walker as well (page 366). The issue was sorted a few days later and I informed Sabrina as such (page 373)."*

87. There was then a Teams call with the claimant and Lizzie Walker as explained by Mr Shaw in paragraphs 30 to 33 of his witness statement. He says that the claimant became upset about the issue and "*said she wasn't sure if it was because of her characteristics or the colour of her skin."* Mr Shaw said that he was "*completely taken aback at this statement."*

88. Mr Shaw's evidence about the claimant's reaction to the IDD issues is entirely credible. It is in keeping with the way in which the claimant presented throughout the Tribunal hearing and summarised in paragraph 72. There is no evidence that Lizzie Walker was treated in any way differently to the claimant about the IDD hours issue. We find that she was not and that the claimant entertained a wholly unreasonable perception about a matter explicable simply by a technical problem.

89. The sixth allegation is that Mr Shaw abruptly cancelled the claimant's one-to-one meeting that had been booked for 22 April 2022. Mr Shaw accepts that he did cancel the meeting. He informed her on 22 April 2022 that the one-to-one would be rebooked later (page 376). The reason for the cancellation was that there would be little to discuss given that the claimant was a new starter.

90. The claimant's account is that Lizzie Walker benefited from a one-to-one. Mr Shaw said that her one-to-one was also cancelled. The claimant says that she saw Miss Walker going into a *'bubble'* (presumably a pod of some kind) or booth with Mr Shaw. Mrs Jaques, when she gave evidence, confirmed that she had verified, as part of her grievance investigation, that Miss Walker had not had a one-to-one by checking on the respondent's systems. The claimant's observation of Miss Walker meeting with Mr Shaw in a booth or pod could of course have been about anything and is consistent with the claimant's propensity to misconstrue events. We find as a fact that Miss Walker did not benefit from a one-to-one in April 2022.

91. The seventh and eighth issues concern Mr Shaw's alleged refusal to give the claimant a new headset on 6 May 2022. At around this time, the respondent was in the processing of changing over to a new telephony system known as *"Five9"*. Mr Shaw explains in paragraph 38 of his witness statement that Five9 runs entirely through software as opposed to a physical phone handset. Accordingly, those working on the Five9 system need headsets which connect to their laptops by a USB port. Mr Shaw explains that *"For those customer experts who have been with Aviva for some time, many of them still had a headset which connected through a physical phone handset and would not work with the Five9 system."* Mr Shaw goes on to say in paragraph 39 of his witness statement that as the claimant *"had recently joined the team, she had been given a USB headset from the start which meant that she did not require anything new in order to work on the Five9 system."*

92. Mr Shaw created a spreadsheet of those who needed and those who did not need the new headsets. This is at page 399. In cross-examination, the claimant said that the spreadsheet *"cannot be relied upon, it's not official."* However, page 400 shows the properties of the spreadsheet and that it was created and modified by Mr Shaw at the relevant time. The Tribunal accepts it to be a genuine document.

93. The claimant named Gary Sharp as her comparator upon this issue. However, the spreadsheet at page 399 shows that he too did not require a new headset.

When this was put to her in cross-examination, the claimant replied that the respondent "*is capable of anything."*

94. On 4 May 2022, Mr Pennant had informed the claimant that she was able to collect a new USB headset. His email to this effect is at page 389. There was of course no issue that Mr Pennant had written to the claimant in these terms. However, his evidence was that he left it to Mr Shaw as the line manager to distribute the new headsets to those who needed them. The claimant complained in her second grievance of 20 May 2022 (at page 480) that she was experiencing redness on her ears when using the old headset. Mr Pennant was unaware of this. He said that the first time he had seen this grievance was in the hearing bundle. It was not put to Mr Shaw by the claimant that she had complained to him about experiencing discomfort with the old headset.

95. Lani Jaques' evidence was that had the claimant complained about discomfort from the old headset, a new one would have been given to her. This is entirely credible. It is against the probabilities that an employer with the resources of the respondent and with the quality of managers who gave evidence to the Tribunal would ignore such an issue. That the point was not put by her to Christopher Shaw tells against the claimant having experienced any such difficulties. We therefore find that the claimant had no need of a new headset (whether for reasons of comfort or need) and was treated the same as was Mr Sharp.

96. The ninth allegation is that Ross Pennant and Ross McIntosh asked the claimant to leave her workplace following a disagreement with Jessica Pitcher on 13 May 2022. The background to this in fact arises out of the IDD training hours issue and the claimant raising the suspicion (referred to in paragraph 87 of these reasons) that the discrepancy in the IDD training hours report was *"because of her characteristics or the colour of her skin"* (per the evidence of Mr Shaw in paragraph 31 of his witness statement).

97. Mr Shaw said that he was (understandably) bewildered by the allegation. He decided to escalate the matter to Mr Pennant who was his line manager.

98. As it happened, Mr Pennant called Mr Shaw about something else before Mr Shaw had chance to contact Mr Pennant. This gave Mr Shaw the opportunity of explaining what had happened. Mr Pennant takes up the story in paragraph 6 of his witness statement. He said that this was a serious allegation such that he decided to arrange a fact-finding meeting. This was arranged for 27 April 2022 which in the event continued into the next day. The notes of the meeting are at pages 1136 to 1144. Mr Pennant was accompanied by Anita Walters, HR support. The following matters were raised by the claimant:

    98.1. That her buddy Mr Curry was *"hanging up the calls because of my race and gender".* It was noted that Mr Pennant suggested there may be a system issue. The claimant replied that Mr Pennant was seeking to defend Mr Curry (and Claire Eade who was a coach).

    98.2. The issue with Mr Shaw about the IDD hours.

    98.3. That she was being subjected to unfavourable treatment as a result of her race and was suffering victimisation. At page 1144, the claimant referred to section 27 of the 2010 Act. It is accepted by the respondent that for the purposes of the claimant's victimisation claims in these proceedings, what was said by her at the meeting of 27 and 28 April 2022 is a protected act. (It was in fact, the first of six protected acts made by the claimant).

99. Mr Pennant said in paragraph 15 of his witness statement that Mr Curry and Mr Shaw were upset at having been accused of treating the claimant differently because of race. He therefore decided to move her away from Mr Shaw's team and find her a new buddy. He arranged for her to be buddied by Jessica Pitcher. This account is corroborated by the contemporaneous notes at pages 1136 to 1144 and by the fact that this step was in fact taken. His evidence is therefore accepted.

100. On 5 May 2022, the claimant raised a grievance. This is at pages 392 to 394. This is accepted by the respondent to be the second protected act. The claimant raised in the grievance her complaints against Mr Curry and Mr Shaw. She also raised issues of concern around Claire Eade whom she claimed had unfavourably treated both her and another new starter, Ajibola Saunders (who is, relevantly, black). The claimant asked for an investigation into the race and ethnicity of Miss Saunders and whether Miss Saunders had experienced any racism at Aviva.

101. Before being buddied with Jessica Pitcher, the claimant had buddied with Daniel Cave (on 3 May 2022) and then on 5 May 2022 with Elizabeth Harding. That day, the claimant messaged Elizabeth Harding. The exchanges are recorded at page 395. The messages (which took place over three minutes between 09:00 and 09:03 that day) are as follows:

"Claimant: Hi Lizzie… Chris [Shaw] has said that I am buddying with you today. Is that okay?

Elizabeth Harding: Hi [smiley face emoji] I am buddying you today.

Claimant: My name is Sabrina. Nice to meet you.

Elizabeth Harding: Let me know when you are ready to go and call me so you can share your screen with me [smiley face emoji].

Claimant: I'm ready."

102. There were some further exchanges at page 396. It is unnecessary to set these out here. Although not raised as a specific complaint of discrimination or victimisation, the exchanges between the claimant and Elizabeth Harding did feature in the claimant's grievances. They were investigated by Mrs Graham and Mrs Jaques. Neither saw anything wrong with the interactions and determined that Elizabeth Harding was friendly and receptive. Mrs Jaques, in fact, in evidence during cross-examination went so far as to say that she considered the claimant's allegation that Miss Harding was unfriendly to be *"bonkers".* While the Tribunal would not have expressed themselves in such trenchant terms, we agree that the allegation that Elizabeth Harding was unfriendly towards the claimant is unmeritorious and is of a keeping with the heightened sense of suspicion and confrontation with which the claimant appears to approach matters (as experienced by the Tribunal during the hearing). Smiley emojis are a shorthand way of conveying friendliness.

103. The grievance of 5 May 2022 was, as has been said, heard by Helen Graham. On 6 May 2022 Benita from the Aviva Resolution Team emailed the claimant to confirm that her grievance would be investigated by Mrs Graham (page 398). On 8 May 2022, the claimant emailed Benita to say that she was preparing a second part of her grievance. This was acknowledged by Mrs Graham on 12 May 2022.

Mrs Graham said, *"Once you have everything ready, please send over to the Resolution Team and we can schedule an initial meeting for you and I."*

104. On 16 May 2022 the claimant emailed Mrs Graham to say that she had intended to send the second part of the grievance that day but *"something rather upsetting and unwarranted occurred on Friday 13 May 2022. The details and offenders need to be included in my grievance."* We refer to page 463. Mrs Graham responded on 18 May 2022 to say, *"I'd like to make a start on investigating the first part of the resolution request you submitted on 5 May. Would you be happy for me to go ahead and do this ahead of our first meeting which will take place once you have finished your paperwork for the second part?"* The claimant agreed with Mrs Graham's suggestion (page 462).

105. The incident of 13 May 2022 to which the claimant referred at page 463 will now be considered. Mr Pennant says, in paragraph 18 of his witness statement, that *"On 13 May 2022 I became aware of some messages in an MS team chat where Sabrina had advised that she was having some issues with her softphone (pages 421 to 424 of the bundle). She kept mentioning that she was waiting for Jess [Pitcher] to return as she wasn't at her desk. The MS team chat that Sabrina was using was designated for the discussion of any issues with new Five9 system, so I asked Sabrina to message me directly about anything that wasn't Five9 related. The Five9 chat was visible to around 70 people as it was seen by everyone on the call centre call so I was trying to keep discussion on topic."* He goes on to say in paragraph 19 that*, "I'm not sure whether she saw my message or not but she continued to write in the Five9 chat about other issues she was having, including not being given a new headset. Sabrina went on to talk about her grievance and that she was going to be submitting a "Part 2". Both Chris and I were asking Sabrina to message me directly rather than using the Five9 chat but by this point she had sent several messages that the entire team could read."* At page 423, the claimant refers to *"submitting part 2 of my Formal Grievance over the weekend" and (after Mr Pennant directed her a second time to message him directly)* the claimant then said a minute later at page 424 that *"she is fully aware that I have a second part of my FORMAL grievance to submit." ('She'* is presumably a reference to Mrs Graham).

106. Mr Pennant then goes on to say in paragraph 20 that the claimant then started to message him directly (pages 425 to 429). She said that "*I STRONGLY believe that because I have raised a formal grievance in which I have referred to and relied upon my protected characteristics of race and sex, I am being punished. Permit me to explain …. Initially, Jessica appeared to be helpful with buddying me. When I reported to duty this morning, she said she was logging a complaint and asked me to review video and notes during Five9 training. I am conscious that I have a team briefing at 11 o'clock, so may have to resume my messages upon completion of huddle. Meeting has started, Ross. I am VERY worried about being punished. Will send an email upon completion as I am not supported. I have not had a response from you, but hope I can share my views on what's happening."* Mr Pennant sought to assure the claimant that this was not the case, and she was not being punished.

107. The Tribunal accepts Mr Pennant's evidence that the claimant had seen his messages in pages 421 to 424 asking her to desist from raising issues in the Teams chat other than those related to the Five9 system. In evidence before the Tribunal, the claimant did not dispute that she had seen the messages but claimed that she was messaging on the wrong system because of the position of

her cursor. This is simply not credible. She was able to redirect the messages to the correct portal per pages 425 to 429 minutes later. Her defiance of a reasonable management instruction is, regrettably, consistent with the claimant's resistance to the instructions and directions of the Tribunal observed through the proceedings. It is credible therefore that she continued to type in the Teams chat in defiance of Mr Pennant's instruction not to do so.

108. Mr Pennant says in paragraph 21 of his witness statement that he, *"then became aware that Jess was in fact sat in one of the pods in floods of tears, having asked one of her colleagues, Chloe to bring her some tissues. I spoke to Jess by telephone and took the decision to send her home for her own wellbeing."*

109. We should say that it is convenient, we think, to deal with the ninth allegation (that Ross Pennant and Ross McIntosh asked the claimant to leave her workplace following a disagreement with Jessica Pitcher on 13 May 2022) alongside the eleventh, twelfth, thirteenth, fourteenth and fifteenth allegations which are:

(11) *That Ross Pennant and Ross McIntosh asked the claimant to leave following a disagreement with Jessica Pitcher on 13 May 2022 - direct race discrimination.*

(12) – Ditto – victimisation.

(13) That Ross McIntosh told the claimant words to the effect of "by remaining in the organisation, things had been compounded daily" on 13 May 2022 - victimisation.

(14) That Jessica Pitcher had tried to get the claimant to give a customer (Iris) incorrect information in respect of a bank card number on 12 May 2022 - victimisation.

(15) That Jessica Pitcher denied the claimant the opportunity to take live calls on 13 May 2022 - victimisation.

110. As was said in paragraph 61.2 above, Miss Pitcher accepted having mixed up two 16-digit numbers shown on the system. This led the claimant to read out the incorrect final four numbers to a customer (named Iris) in a call on 12 May 2022. Miss Pitcher was listening to the call. She said that in evidence that the customer was not concerned by the mix up. However, she goes on to say in paragraph 7 of her witness statement that when the claimant *"came off the call she seemed to be annoyed with me and accused me of telling her to say the wrong thing, as though I had intentionally done it. I said to her that if it was me taking the call, I would have made the same mistake as I had just mixed up the numbers."* In evidence given under cross-examination the claimant recognised there to be *"human error"* but went on to say, *"I know it was a calculated attempt to give wrong information out, there was a plan to make me lose my job."*

111. Miss Pitcher was asked by the Employment Judge whether she was aware of the claimant's grievance of 5 May 2022 at this stage. She said not and that she only became aware of it when she saw the Tribunal bundle. There was no suggestion that Miss Pitcher was aware of the meetings with Ross Pennant and Anita Walters of 27 and 28 April 2022. (In fact, Miss Pitcher did become aware of the fact of the grievance of 5 May 2022 but not its contents when she read the messages at pages 421 to 424 on the morning of 13 May 2022- see paragraph 115 below).

112. As Miss Pitcher was unaware of either of the two protected acts as of 12 May 2022, the Tribunal finds that she was not motivated by them to mislead the claimant over the 16-digit number issue with the customer Iris. The probability is that this was simply an error on Miss Pitcher's part which led in turn to the claimant making a very minor mistake. It is credible, for the reasons given as summarised in paragraph 72, that the claimant would take a suspicious and unjustified view of Miss Pitcher's conduct and become confrontational about it.

113. The incident over the bank card numbers took place on 12 May 2022. The next day, Miss Pitcher says, in paragraph 10 of her witness statement, that she had started work half an hour before the claimant. Her first task was to deal with a complaint which she had logged on 12 May about another matter, this time involving a data breach. Miss Pitcher therefore instructed the claimant, when she arrived at work, to continue *"with her training packs so that she would be ready to take payments when we started doing calls."*

114. It then transpired that the claimant was working on an out-of-date training pack. Miss Pitcher says in paragraph 11 of her witness statement that she *"had not been kept in the loop about the training packs."* When she informed the claimant of this she says that the claimant *"seemed to be very angry and upset and accused me of deliberately stalling her time on the phones; actually I had just been trying to utilise her time effectively, so that rather than her sitting with nothing to do whilst I dealt with the data breach, she got ahead with some training so we could hit the ground running with calls."* Again, Miss Pitcher's evidence is entirely credible for the same reasons as in paragraph 112.

115. When the claimant started to handle calls that day, on Miss Pitcher's evidence there were technical issues which led to there being background noise and a call being dropped. On Miss Pitcher's account in paragraph 12 of her witness statement she was berated by the claimant who implied that she was not buddying her or assisting her properly. Miss Pitcher then took some time to compose herself. She was in tears and called her manager while crying. She then returned to her desk to find that the claimant had posted messages naming her on the Five9 Teams messaging service. We have referred to these messages already in paragraph 105 (in particular, those at pages 421-424). Miss Pitcher says, "*I broke down and took my things to another room and was completely inconsolable. I did not feel that I wanted to be in work anymore and I left very upset."* We accept Miss Pitcher's account as credible for the same reasons, arising out of the claimant's heightened but unwarranted suspicion about the respondent's acts which led to baseless accusations about innocuous matters. The explanation was simply that (perhaps due to mismanagement) Miss Pitcher had not been informed of the changes to the training pack, coupled with technical issues.

116. In paragraph 16 of her witness statement, Miss Pitcher says that *"During the time I was Sabrina's buddy, there were several days where I simply did not want to go to work; I'd never felt like this before and usually love my job. Ultimately I took the decision to raise a grievance against Sabrina (pages 432 to 436) as her actions were making my time at work unbearable. I briefly logged back online on 13 May 2022 to write my grievance and so that I could occupy myself with my usual job (taking calls) to take my mind off the events earlier on in the day."*

117. When asked about the events of 13 May 2022, the claimant gave evidence in cross-examination that Miss Pitcher had spilled coffee on the keyboard as *"part*

of a plan." The Employment Judge asked the claimant whether it was her case that Miss Pitcher had done this deliberately to cause a malfunction. The claimant replied *"yes, she let me sit where she had been the previous day. They didn't want me to contact IT, as they were not part of the collusion. They wanted me out because I had done the protected acts."* The claimant did not accept that Miss Pitcher was unaware of the claimant's protected act of 27 and 28 April 2022 at all, or of the fact of but not the contents of her protected act of 5 May 2022 until later in the morning of 13 May 2022, after the direction to do work on the training pack and the technical issues had arisen. The Tribunal finds it against the probabilities that Miss Pitcher would jeopardise her hard-won position with the respondent by deliberately damaging their property. This would be out of character, there being nothing to suggest that she was anything other than a diligent and conscientious employee. Had she done so then she would have been liable to dismissal. Further, she was in any case unaware of the protected acts at the time of the alleged sabotage of the keyboard on 12 May 2022 and when the technical issues occurred on 13 May.

118. We shall come back to the issue of Miss Pitcher's grievance in due course. Mr Pennant now takes up the story of the events of 13 May 2022. He says in paragraph 22 that the events had left him *"in a bit of a tricky situation as I did not have anyone else who was readily available to buddy Sabrina. Sabrina had already had some issues with some of her previous buddies and I couldn't think of anyone I could immediately allocate as being Sabrina's buddy."* Mr Pennant therefore sought advice from Vicki McLean and Ross McIntosh. Mr McIntosh and Mr Pennant agreed to send the claimant home in order that the respondent could come up with *"a new plan of action."*

119. Mr McIntosh and Mr Pennant then met with the claimant on 13 May 2022. The Teams meeting notification is at page 430 (which was been accepted by Mr Pennant, Mr McIntosh and the claimant).

120. Notes of the meeting are at pages 445 and 446. The meeting was followed up in a letter addressed to the claimant by Mr McIntosh which is at page 431. The letter confirmed that, *"Whilst not at work you will continue to be in receipt of full pay and benefits. When you return to work your leader will talk to you about whether your training should begin again or whether it can be picked up from the stage where it is today. Please accept my assurances that no detriment will arise in terms of your training due to the time away from work."*

121. Mr Pennant says about the meeting of 13 May 2022 (in paragraph 28 of his witness statement) that the claimant, *"was very annoyed that Ross McIntosh had not formally introduced himself on the call and alleged that Ross' actions in not doing so were in themselves discriminatory*." This is recorded in the notes at page 445.

122. This may be thought to be a surprising contention to raise by the claimant given that Mr Pennant had introduced Mr McIntosh as being from HR and explained his role. The claimant complained in the meeting that being sent home was victimisation and was unprecedented.

123. On 14 May 2022 the claimant emailed Mr Pennant (pages 442 and 443). She said, *"I am writing to confirm that I AM NOT in agreement with your decision to send me away from my place of work."* She said that it was inappropriate for Mr Pennant to have been involved in the matter upon the basis that he was Mr Shaw's line manager and he (Mr Shaw) had been referred to in the claimant's

grievance. She said that she proposed to "go into GREAT detail via Part 2 of the grievance." She intimated that Mr McIntosh and Mr Pennant would both now feature in the second part of her grievance.

124. As was said in paragraph 116, Miss Pitcher undertook some work from home on 13 May 2022 and then returned to the workplace on 16 May 2022. (14 and 15 May were the weekend).

125. Mr McIntosh does accept, in paragraph 40 of his witness statement, saying words along the lines that by the claimant remaining in the workplace matters were being compounded on a daily basis. Mr McIntosh seeks to explain this remark in paragraph 40 of his witness statement. He did so to explain the decision to the claimant and in any case, he says that he *"truly did believe that the situation, namely the tension between Sabrina and her colleagues, was being "compounded daily" in that matters seemed to be escalating and I believed that temporarily removing her from the situation was the best course of action as it would give everyone involved some breathing space."*

126. Both Mr Pennant and Mr McIntosh comment in their witness statements that the claimant appeared to have an issue with Miss Pitcher and lacked any empathy with her as to the impact of the claimant's actions on her.

127. On 19 May 2022, the claimant attended a meeting with Mrs McLean. The background to this was that Mr Pennant had emailed the claimant on 17 May 2022 to arrange a call to discuss her return to work (page 458). The claimant declined to meet with him because he was named in the second part of her grievance. She said in her reply to him (at pages 457 and 458) that, "*Jessica [Pitcher] displayed extremely childish and unprofessional behaviour in storming off when I simply sent a message to the Five9 floor walk for assistance with a technical issue on 13 May 2022."* She said that the decision to send her home had put her in the position that she was *"FORCED TO REGRESS"* and said that the decision to send her away was because she had raised the grievance of 5 May 2022. She accused Mr Pennant of siding with "*a white work colleague called Jessica."* The comment about Miss Pitcher's conduct corroborates the perceptions of Mr Pennant and Mr McIntosh mentioned in paragraph 126. On any view, the claimant's postings at pages 421 to 424 went beyond merely asking for technical assistance with Five9. The complaint about regression was hyperbolic given that she was absent from work for only a short time.

128. It is right to say, of course, that Mr Pennant was aware of the first protected act as he chaired the meeting of 27 and 28 April 2022. There was no evidence that he was aware of the contents (as opposed to the fact of) the grievance of 5 May 2022. The suggestion that he was aware of the content was not put to him by the claimant.

129. Mr McIntosh was aware of the claimant's grievances of 5 May 2022 and 20 May 2022 at that time. The Employment Judge asked him if he had read the grievances and he confirmed that he had. (The latter of course post-dated the decision to send the claimant home taken on 13 May 2022 and the claimant's intimation of 14 May 2022 that a further grievance was to follow).

130. A decision was therefore taken by the respondent that the claimant should not deal with Mr Pennant or Mr McIntosh leading up to or during the investigation of the claimant's grievances. Mrs McLean, who is Mr Pennant's team leader,

emailed the claimant to this effect on 18 May 2022 (pages 456 and 457). She suggested speaking to the claimant on 19 May about her return to work.

131. The claimant replied on 19 May 2022 (page 456). She said, "*Thanks for your email. We have met in the break area on the first floor previously. You may recall telling me that Christopher Shaw is a nice guy. Please note that I will attend the meeting via Teams at 15:30 today. Can you kindly confirm that you are happy for me to record the meeting via audio? I have had unfortunate experiences thus far where what I've said was misconstrued. If it is not possible, I would respectfully prefer you to relay the information via email."*

132. With reference to the claimant's comment about meeting in the break area, Mrs McLean recounts, in paragraph 11 of her witness statement, that she is in the Sheffield office occasionally as part of her role. She is not based there. She travels around the respondent's various offices. When in Sheffield, she went into the kitchenette at the end of the day (on a date she did not specify) to wash her cup. It was there that she met the claimant who was cleaning her jewellery and had it all laid out over one of the surfaces. They spoke but did not introduce one another by name. The probability is that that was the encounter being referred to in the claimant's email of 19 May 2022 at page 456. Plainly, the meeting must have taken place between the claimant's commencement on 21 March 2022 and 13 May 2022.

133. When asked about this encounter in cross-examination, Mrs McLean accepted that she (Mrs McLean) had said that Mr Shaw is *"a nice guy".* This is because she asked the claimant by whom she was being line managed. It is perfectly plausible that Mrs McLean would have asked the claimant this as part of the brief conversation.

134. The suggestion was then made by the claimant during cross-examination that Mrs McLean had gone into the kitchenette as part of a plan to *"destroy her career"* as Mr Pennant had been named by her in her grievance. (The claimant's second grievance was in fact submitted on 20 May 2022, but it was clear from the email from the claimant of 18 May 2022 (pages 457 and 458) that Mr Pennant was going to feature within it). At all events, this rules out the possibility of Vicky McLean's actions in meeting the claimant in the break area as being motivated by a grievance or potential grievance against Ross Pennant as he was not named in the first grievance of 5 May 2022 and the claimant was out of the workplace from 13 May 2022, five days before the intimation to Mrs McLean that Mr Pennant would feature in a grievance to be raised. There was no suggestion that Mrs McLean met the claimant in the kitchenette between 19 and 25 May 2022. It is the case, as was said in paragraph 104, that the claimant said that she was going to raise a second grievance arising out of the events of 13 May 2022, but there was no suggestion at that stage that it would feature Mr Pennant. There was no evidence of Mrs Graham and Mrs McLean discussing matters between 16 May and 19 May 2022.

135. In her closing submissions, the claimant again referred to the meeting in the kitchenette. She contended that it was *"not by chance"* that Mrs McLean had gone into the kitchenette while the claimant was there and that she (Vicki McLean) would *"magically appear when I went into the kitchen."* This is an entirely unmeritorious allegation.

136. The notes of the Teams meeting of 19 May 2022 are at pages 467 to 474 of the bundle. Mrs McLean was accompanied by Sian Daubney of the respondent's

People Function section. The claimant protested that she was not being permitted to record the meeting. Ms Daubney explained that it was the respondent's policy not to allow recording but that she would be making notes of the meeting.

137. The claimant then went over the events involving Christopher Shaw and Jessica Pitcher. She said that "*this has to stop. It is against the Equality Act. It is making me ill. I am asking for help."*

138. Mrs McLean then suggested that the claimant be assigned to Amanda Baguley's team based in Sheffield. The claimant was also told that the training would start where matters had been left off as at 13 May 2022. The claimant said that she had missed out on making calls between 13 and 19 May 2022. Mrs McLean assured her that, "*we have no concern with you picking up where you left off. People have holiday and absence, so we don't have a concern*." As Mr Shaw explained in the passages referred to in paragraph 74 of these reasons, there is no timescale within which new starters must complete their training. Mrs Mclean's lack of concern is therefore credible and in keeping with that ethos.

139. The claimant returned to work on 23 May 2022. A buddying timetable was then drawn up. We can see that Mr Shergold was to buddy the claimant on Monday 23 May. He was to buddy her on the morning of Tuesday 24 May with Sarah Todd taking over the buddying duties on the Tuesday afternoon. Mr Shergold was then to return buddying her on Wednesday 25 May. We refer to page 484.

140. Before moving on to the events of week commencing 23 May 2022, the Tribunal needs to deal with several other issues arising from the claimant's time in Mr Shaw's team.

141. The tenth allegation is that the claimant was "*not put on a level playing field with her white colleague, Lizzie Walker, who was able to do her training uninterrupted. Lizzie had the privilege of remaining in her workplace, while the claimant was unreasonably sent away from her place of duty at a crucial stage in her new role. The claimant says that these were acts of Ross McIntosh and Ross Pennant on 13 May 2022. The claimant returned to work on 23 May 2022."*

142. The straightforward point here, of course, is that Lizzie Walker had not been involved in an altercation with her buddy. There was therefore no reason for Lizzie Walker to be sent home and she was not.

143. The sixteenth allegation is that Miss Pitcher failed to mark the claimant's calls during the time that she was her assigned buddy. Miss Pitcher explains that the claimant is correct to say that her calls were not marked. However, this was because (as she says in paragraph 5 of her witness statement) the claimant "*did not ever complete a call completely independently; all of her calls were prompted or guided. Therefore, all the spreadsheets [of calls] would have recorded would have been a list of calls marked as fails. I therefore did not think that this would be beneficial to Sabrina."* She goes on to say that "*For the avoidance of doubt, I took the same approach for other people I trained prior to Sabrina. Until trainees were able to do valuable, unassisted calls (not all calls being unassisted but at least some) I would not log them. Post Sabrina, Chris Shaw advised me that it would be best to ensure all calls were logged moving forwards."*

144. On this issue, the claimant was taken to page 546. This is a spreadsheet upon which Miss Pitcher appears to have made some comments about the claimant's performances albeit that they do not appear to be shown as passes or fails. The

claimant contended that Miss Pitcher had marked all the calls as fails "*to cover up her actions."* On this issue, we prefer the account of Miss Pitcher. Her explanation for not marking the calls is logical. There are no actions on her part to '*cover up.'* She was not aware of the protected acts while she buddied the claimant until she saw the messages on 13 May 2022 referred to in paragraph 105 which allude to the claimant having raised a grievance (being that of 5 May 2022). By this stage, the buddying arrangement between the claimant and Miss Pitcher had effectively ended anyway.

145. The seventeenth allegation is that Miss Pitcher took an hour for lunch when the claimant took half an hour, causing the claimant to miss out on taking live calls each time Miss Pitcher was the claimant's buddy.

146. Miss Pitcher explains in paragraphs 8 and 9 of her witness statement that she had agreed with her line manager that she may take an hour for lunch whereas the claimant, of course, had a 30 minutes' lunch break. She says that the claimant did not wish to work an additional half an hour a day to marry up with Miss Pitcher's lunchbreaks. In any case, on Miss Pitcher's evidence, the claimant was able to occupy herself usefully while Miss Pitcher was away for the extra half an hour *"by self-learning, going through systems or updating her one note as she liked to make notes."*

147. There is some merit in the claimant's complaint that this arrangement meant that when buddied with Jessica Pitcher she was losing two and a half hours of potentially listening time each week as Miss Pitcher was away from the office at lunch for five hours of the claimant's 35 hours working week – (the claimant was at lunch for 30 minutes each day anyway, hence a loss of two and a half hours a week). Against that, Mr Shaw gave unchallenged evidence that there was no time pressure for new starters to attain full competence within a given timescale. Further, the claimant was not buddied with Jessica Pitcher all the time in any case.

148. The eighteenth allegation is that Mr Pennant held the claimant back from progression following the fact-finding meeting on 27 and 28 April 2022 and the grievance submitted by her on 5 May 2022. This is a difficult allegation to understand. The claimant does not expand upon how she was held back between these dates by Mr Pennant in her witness statement nor is it addressed in her closing submissions. This point was not put to Mr Pennant in cross examination. The claimant was not sent away from work until 13 May 2022. In any case, there was no fixed timeframe within which to complete the training in any case. The period in question here is only a week and in that respect is no different to a period of short sick leave or annual leave as Mrs Mclean observed in paragraph 138. This contention, therefore, must fail on the facts.

149. We now turn to a consideration of the events during week commencing 23 May 2022. The claimant had by this point submitted the second part of her grievance to Helen Graham. This is dated 20 May 2022 and is at pages 475 to 482. This is accepted by the respondent to be the third protected act.

150. The claimant complained about the conduct of Jessica Pitcher, Ross Pennant, Ross McIntosh, Elizabeth Harding, Daniel Cave, and another of her buddies Luke Kitchener. She also complained about Mr Kitchener's manager Mark Shearing. She said that there was *"a definite plan to oust me from Aviva, following the protected act made."* She requested Mrs Graham to investigate, in particular:

- Why Mr Shaw gave Mr Sharp a new USB headset and had failed to provide her with one.
- Why Elizabeth Harding and Jessica Pitcher did not sign off any tasks while buddying her.
- Why Mark Shearing told Elizabeth Harding *"ill things about me during our buddying session."*
- While Luke Kitchener told Daniel Cave *"ill things about me during our buddying sessions."*
- The names of the persons who leaked details of her initial grievance to the offenders.
- If Lizzie Walker has been told that she has been signed off tasks and if so, on what had she been signed off.

151. On 23 May 2022 Mrs Graham wrote to the claimant attaching the outcome letter to the first part of her grievance. This was password protected. The email is at page 518. Mrs Graham also acknowledged the second part of her grievance. She explained that she was now unfortunately unwell due to Covid. She said that she would be in touch about the second part of the grievance when she feels better.

152. The claimant replied the same day (page 517). She protested that Mrs Graham had referred to an outcome letter whereas the claimant was expecting a report. She said *"A simple letter will not suffice! I've spoken to an advisor at ACAS on Friday to seek guidance about the grievance process. It was explained to me that if a person conducting the investigation lacks impartiality or does not do a thorough investigation, I can submit a grievance on the way the original grievance was handled. I am grateful for her advice, which will be followed, if necessary."*

153. The claimant chose not to open the letter or report as she preferred to deal with the issues all at once to manage her anxiety. That is, of course, the claimant's prerogative. Had the claimant opened the attachment to Helen Graham's email of 27 May 2022, she would have seen that the points raised in her first grievance had been addressed by Mrs Graham within a three-page document. Whether described as a report or a letter is a matter of form over substance. The claimant's complaint accordingly was unreasonable. The fact remains that Mrs Graham sought to comprehensively deal with the claimant's points in her first grievance. Subsequently, Mrs Graham effectively copied and pasted the contents of the report of 23 May 2022 into the grievance outcome report of 23 June 2022 which is at pages 657 to 663. A comparison of the document sent on 23 May 2022 shows that, aside from necessary tailoring for the way in which the claimant wished the grievance outcome to be presented in one document, what Mrs Graham describes as "*Part 1"* (being the first grievance outcome) is identical in substance to that of 23 June 2023.

154. It is fair to say 23 May 2022 was not a successful day. The events of that day give rise to the nineteenth, twentieth and twenty first allegations which are:

(19) *That the claimant was unable to take live calls on 23 May 2022 and believes that she was removed on the system.*

(20) That James Shergold was not supportive and hung up during live listening with the claimant on 23 May 2022.

(21) The claimant's first day back was 23 May 2022. Yet none of the managers discussed giving her the time back in relation to being sent away. The claimant says it was Ross McIntosh's decision not to give her time/benefits back.

155. The twenty first allegation can be quickly disposed of. This was difficult to understand. The claimant received full pay during her absence between 13 and 23 May 2022. As Mr McIntosh says in paragraph 41 of his witness statement, *"I'm not really sure what Sabrina means by this, and my guess would be that it relates to some training time that she missed. There is no other time that we could "give back" really – Sabrina was not using holiday or sickness time when we asked her to stay away."* He goes on to say in paragraph 42 that he *"accepts that having time away from her training would mean that her training period would likely to be extended ie if she was away for a week she would need to add this week on to the end of her training. However, I completely deny that this was in any way discriminatory. It doesn't even make sense as it would be in Aviva's interest to get Sabrina fully trained and taking calls as soon as possible. Sabrina (and others) were recruited to meet a customer need and we wanted to get her through the training so she could be left to get on with the job without side by side support. There is no reason for us to delay matters and no benefit to Aviva or me personally in doing so. The same "delay" in training would apply to a colleague who took a weeks' annual leave or had time off sick shortly after starting.*

156. There appears to be no merit to this allegation. The claimant does not address it in her witness statement or in her closing submissions (other than simply to raise it as an allegation).

157. Mr Shergold explains that Mr Shearing, his line manager, told him that he would be the claimant's buddy on 23 May 2022 and that he was asked to keep a note of their interactions. Mr Shergold says that this was an unusual but not unheard-of request. In our judgment, this was a reasonable management instruction given the difficulties caused to the respondent by the claimant up to this point.

158. On 23 May 2022 (at 17:56) Mr Shergold emailed Mrs Baguley. Mr Shergold said, *"I had systems issues all morning being unable to live listen because of new phone systems. So Sabrina had Luke [Kitchener] sat with her for a couple of calls."*

159. Mr Shergold explains in paragraph 6 of his witness statement that there were system issues that day. This was compounded by difficulties with his home internet that had been going on for months and in respect of which he received some compensation from his internet provider.

160. Mr Shergold says in the email at page 523 that calls were dropped which the claimant attributed to Mr Shergold as his fault. He also had to disconnect a Teams call because of echoing on the line.

161. Mrs McLean emailed the claimant on 23 May 2022 at 12:37 to explain to her that, *"we have a number of buddies who are unable to listen into live calls. The error has been reported into Five9 and is being looked into. This issue is not isolated to you and is affecting others. I can assure you this is a widespread issue across the team."* The claimant complained that she was not visible on the system whereas others (including another new starter, Anna Krol) was. Messages between the claimant and Anna Krol are at pages 512 to 516.

162. The messages between staff members at pages 1161 to 1189 illustrate widespread system problems on 23 May. The Tribunal is satisfied from this contemporaneous evidence that this was due to a system error and not due to any targeting of the claimant.

163. There was no dispute that the claimant was that day not visible in that she could not be seen by Mr Shergold (or anyone else for that matter). We refer to page 1164. The claimant maintained that she was the only one who was not visible on the system although it does appear that another member of staff could not log on and was also not be visible (page 1161).

164. Unfortunately, IT issues continued to beset the claimant the next day, 24 May 2022. Mrs Baguley asked the claimant if she was available for a catch up. The claimant was on the telephone with IT. Mrs Baguley asked her to make contact once that call was concluded. The claimant then said, *"Amanda, I'm being punished for making a protected act."* Mrs Baguley replied, *"I'm sorry, I don't understand. Let me know when you are finished with IT and we can talk."* We refer to page 1115. The claimant said, at page 1116, that, *"They have done something so I couldn't log on yesterday. The same thing has been done today AGAIN."* The claimant said to Mrs Baguley, *"as my alternative lead, I am respectfully requesting you to take ownership and do something to help."*

165. Mrs Baguley says that she was aware that the claimant had raised a grievance at this stage but did not know the contents of the protected acts- by this stage, there had been three protected acts.

166. Mrs Baguley emailed Vicki McLean on 24 May 2022 at 10:32 (pages 524 and 525). She reported to Mrs McLean the events of 23 May and 24 May. Mrs Baguley explained that the claimant was unhappy with Mr Shergold as he allegedly kept hanging up on her. Mrs Baguley said, *"I explained that the issue was due to her not muting the Teams chat and Jay [Shergold] could hear the call echoing so he hung up the Teams chat to stop the audible noise, but he could still hear the call and give support. Sabrina believed it was to speak to Mark Shearing about her and Mark was telling him not to help. She believes the only reason Jay was her buddy was because Mark had control of him. I explained that I arranged the buddy and Mark was not involved in it in any way. Sabrina seemed happier about this."*

167. Mrs Baguley said to Mrs McLean that Mr Shergold did not wish to buddy the claimant anymore. Therefore, she was placed with Sarah Todd.

168. Mrs Baguley emailed the claimant later in the morning of 24 May 2022 (page 540). She had noted that the claimant had been *'away'* on Teams for 16 hours indicating that she had not shut it down from the day before. Mrs Baguley advised the claimant to ensure that she closes all systems at the end of the day *as "this will enable the systems to close correctly and will prevent some of the issues we are seeing across the team*.

169. The claimant replied (539) to say that *"with reference to being away on Teams for 16 hours, this has NEVER been the case. I will be doing my investigations into this as something does not seem right."* She then referred to having been removed from the workplace on 13 May 2022 because of a protected act. We should observe that this is a further example of innocuous suggestions being greeted with suspicion by the claimant which behaviour was on occasions demonstrated before the Tribunal.

170. On 25 May 2022 Sarah Todd emailed Mrs Baguley (page 542). She reported that the claimant had suggested that "*one of her previous buddies was lying to her like 'my buddy said they have worked here for years but expected me to believe they've never taken a payment on [one of the respondent's systems] in all of that time and so couldn't show me how to use this.'"*

171. Mrs Baguley's account in paragraph 17 of her witness statement is that she then spoke to Ms Todd. She [Ms Todd] became upset to the point of tears and said she could not work with the claimant anymore. Ms Todd relayed that there had been a data breach committed by the claimant which resulted in Ms Todd having to step in and take over the call.

172. Mrs Baguley telephoned Mrs McLean. Mrs Baguley was concerned that Mr Shergold and Ms Todd did not wish to buddy the claimant and there were therefore no free buddies left to assist her. It was agreed that the claimant could do some training through the Aviva University while the respondent came up with a plan to move her core training forwards.

173. Mrs Baguley says that she instructed the claimant to put herself onto *'meeting code'* (page 534). The claimant questioned this instruction (page 555). The email at page 555 was sent to Mrs Baguley after she (Mrs Baguley) had finished her shift and therefore she did not respond to the claimant. Mrs Baguley explained in evidence that the meeting code was that which she had instructed should be used.

174. This narrative segues to the twenty second allegation which is that Mrs Baguley told the claimant to do training via the Aviva University rather than take live calls on 25 May 2022. That this is the case is accepted by the respondent. It is convenient that the twenty second allegation is read in conjunction with the twenty fourth which is that the claimant was taken off live calls by Amanda Baguley on 25 May 2022. This is the case.

175. The twenty third allegation is that the claimant was never given a one-to-one by Amanda Baguley. Mrs Baguley accept this to be the position. She explains in paragraph 18 of her witness statement that the claimant was only in her team for three days. She did have three meetings with her albeit perhaps not formal one-to-one training as wished for by the claimant.

176. The twenty fifth allegation is that the claimant's schedule on the Verint system had been altered to show incorrect working hours on 25 May 2022. This allegation can be quickly disposed of. It is misconceived. The Verint schedule shows her working hours as from 9.30 to 17.00 on each day during week commencing 23 May 2022. The different shade of blue coincides with the period when she was instructed by Amanda Baguley to go into the Aviva University by use of the '*meeting code.'* The schedule therefore correctly shows the claimant's working hours.

177. Mrs McLean received reports from James Shergold (page 523), Mrs Baguley (pages 524 to 526), Ross Pennant and Matthew Revell (pages 533 and 536), Sarah Todd (pages 541 and 542) and Luke Kitchener (pages 543 and 544) on their experiences with the claimant after she had joined Amanda Baguley's team on 23 May 2022.

178. Mrs McLean says in paragraph 27 of her witness statement that*, "I felt that we needed to consider possible disciplinary action against Sabrina, as her approach to dealing with concerns was accusatory, disruptive and proving upsetting to*

colleagues who were trying to support her." She sent her a calendar invite to meet with her and Sian Daubney on 25 May 2022. The invite is at page 557. Ms Daubney was there in the capacity of note taker.

179. The attendance report for the Teams meeting is at page 1228. This shows that all participants joined at 16:15 and left at 16:36. The meeting therefore lasted for a little over 20 minutes.

180. Following the meeting, Mrs McLean sent the claimant two letters. The one at pages 558 to 560 confirmed that she was suspended from duties. The one at pages 561 to 563 invited her to a disciplinary meeting.

181. There are no notes of the meeting. However, Mrs McLean and Sian Daubney both emailed Joanne Clifton, an in-house chartered legal executive, with their summary of the meeting. These emails are at pages 580 to 583.

182. Mrs McLean says in page 580 that the call was particularly difficult as the claimant *"was angry and upset from the outset and would not let me or Sian speak very easily to explain anything. Her voice was raised and she said 'ladies you should be ashamed of yourselves.' This was in response to me trying to explain the first sentence below."* This presumably was a reference to an explanation as to the reason for the meeting and that the behaviour demonstrated towards Amanda Baguley's team could not continue.

183. She then said in her email that the claimant "*became quite angry raising her voice and asking "what behaviours". She said that she had not had any warnings or disciplinary messages before so I could not do this and we must explain which was repeated several times."* Mrs McLean said that she informed the claimant that she was going to invite her to a formal disciplinary hearing to take place on 27 May 2022. At this, the claimant said that she had *"never been made aware of any issues with her behaviour and she should have details of these – it was difficult to speak again as the claimant was repeating about her protected act and how she has been targeted and this was all about her raising her grievance."*

184. Mrs McLean then recounted in the email that she explained in a little further detail the issues of concern. She then informed the claimant that she was suspended with immediate effect. Mrs McLean said that the claimant *"had also expressed that unless she could have this meeting recorded she would leave. We explained that she was unable to record it. She then said that Sian should stop taking any notes and repeatedly should be ashamed of ourselves and this was disgusting and against her protected act and we cannot do this. She said in a raised voice that we are breaking the law."*

185. It is then recorded that Ms Daubney offered a five minutes' break which the claimant declined, saying that she was going to be leaving. Ms Daubney also offered the claimant the benefit of the respondent's employee assistance programme. Mrs McLean says that she found the meeting "*quite upsetting as I just wanted to help her and the impacted colleagues. I then spoke to Sian afterwards and I did break down in tears as I found the meeting upsetting particularly to think that Sabrina was referring to us being ashamed of ourselves."* Mrs McLean said that both she and Ms Daubney had been shaken by the experience. Ms Daubney's email at pages 582 and 583 is corroborative of Mrs McLean's account.

186. Given the Tribunal's experience during these proceedings, Mrs McLean's account of the events of 25 May 2022 is entirely credible. On a number of

occasions throughout the proceedings before the Tribunal, the claimant has become angry and has raised her voice, speaking over the Employment Judge. That she did so very early on in the suspension meeting (as such we accept it to be) is resonant of the claimant's conduct on the morning of 18 January 2024 (at paragraph 94 of the reserved judgment of 14 March 2024 cited in paragraph 9 above). Further, Mrs McLean's and Mrs Daubney's accounts in their emails were contemporaneous with events when their memories would be at their freshest. This makes them all the more reliable.

187. The letter of 25 May 2022 confirming the suspension is at pages 559 and 560. The claimant was told that during the suspension meeting that Mrs McLean would be investigating the following allegations of misconduct:

- *Accusatory and unreasonable responses towards your leader when reporting and overcoming perceived IT issues (week commencing 23 May 2022).*
- *Unreasonably resisting support, coaching and feedback which has been delivered to you by your buddies and is a requirement of your training. This has led to a possible customer detriment (week commencing 23 May 2022).*
- *Derogatory comments about a number of colleagues and leaders in your department, including directly accusing Matt Revell of being a liar (24 May 2022). [The latter allegation arises out of the exchange between Mr Revell and the claimant on 23 May 2022 recorded at pages 535 and 536. Again, it is credible that the claimant accused Mr Revell of lying. She has, after all, made the same unfounded allegation against the Tribunal].*

188. On the same day, 25 May 2022, Mrs McLean emailed the claimant the letter at pages 562 and 563. She was informed that there was to be a disciplinary meeting on 27 May 2022 via Teams to consider the allegations of misconduct set out in the suspension letter. These are in fact repeated in the disciplinary hearing invitation letter as well. The claimant was informed of her right to be accompanied at the meeting by a work colleague or trade union representative. Mrs McLean said that she did not intend to call any witnesses. The claimant was reminded of the availability of the employee assistance programme.

189. The claimant resigned with immediate effect on 25 May 2022. Her resignation letter was sent by email to Karin Fisher, HR administrator, at 7:06 pm that day.

190. The claimant sought to maintain during the cross-examination of Lani Jaques that she had not in fact opened the suspension letter. Hence, she was unaware of the restriction upon her contacting fellow employees in the suspension letter. The claimant may have chosen not to open the email containing the letter of suspension. This cannot detract from the fact that she was clearly informed of her suspension on 25 May 2022.

191. Even if the claimant is correct (which we hold she is not) to say she had not been suspended on 25 May, she had no reason to contact Thomas Weeks, HR adviser and Karin Fisher anyway on 26 May as by then she had left her employment with the respondent. The matters about which she contacted them were issues in which they had no involvement.

192. The grievance resolution meeting with Helen Graham went ahead on 27 May 2022. Isabell Schneider attended as note taker. The notes are at pages 592 to

595. By this stage, of course, the claimant had not read Mrs Graham's conclusions as to the first part of the grievance. Having had the resolution meeting with the claimant, Mrs Graham then set about making her enquiries.

193. She spoke to Jessica Pitcher, Mark Shearing, Claire Eade, Stephen Curry, and Christopher Shaw. Notes of those meetings are at pages 598 to 605. She also reviewed the Teams messages at pages 343 to 350 between the claimant and Mr Curry.

194. The grievance outcome in relation to parts one and two of the claimant's grievances is at pages 657 to 662 (being part of the letter of 23 June 2022). She did not uphold the claimant's allegations against Mr Curry, Mr Shaw and Claire Eade.

195. Mrs Graham said that she would not investigate any of the claimant's complaints concerning Miss Saunders and Miss Walker. This was upon the basis of advice received from HR that such would be an infringement of Miss Saunders' and Miss Walker's personal data.

196. In relation to the allegations in the grievance of 20 May 2022, it was Mrs Graham's conclusion that: -

196.1. It was appropriate for Mr Pennant to have dealt with matters on 27 and 28 April 2022. There was no conflict of interest between him and Mr Shaw.

196.2. It was appropriate for Mr Pennant and Mr McIntosh to suggest the claimant go home after the altercation with Jessica Pitcher.

196.3. The complaint raised by the claimant of her treatment by Jessica Pitcher was not upheld.

196.4. The complaint about her interaction with Elizabeth Harding was not upheld.

196.5. She did not uphold the claimant's complaint about Daniel Cave. This appeared to involve the use of the word *"soz".* The claimant thought this was reference to her. It is, in fact, a Yorkshire colloquialism for the word *"sorry".*

196.6. Mrs Graham did not uphold the complaint about being buddied with Mr Curry on 29 April 2022 as Mr Pennant was not aware at that stage of the issues between Mr Curry and the claimant.

196.7. Mrs Graham accepted Mr Pennant's explanation as to why the claimant had not been signed off tasks as she had not done a sufficient number of calls to demonstrate her competence.

196.8. The claimant's complaint about the allocation of a new headset was not upheld.

196.9. Mrs Graham found there to be nothing wrong with the cancellation of the one-to-one which had been scheduled for 22 April 2022.

196.10. Mrs Graham was satisfied there was no leak about the claimant's grievance of 5 May 2022. The claimant had informed others of it when she posted on the Five9 Teams chat on 13 May 2022.

197. These conclusions were communicated to the claimant in the report at pages 657 to 662.

198. It was accepted by the respondent that Mrs Graham had not held an outcome meeting. The claimant expected such to have taken place pursuant to the respondent's resolution procedure which is in the bundle starting at page 194. The introduction says that *"This procedure applies to current employees of Aviva Employment Services Limited."* At the point at which Mrs Graham was able to reach her conclusions, the claimant was no longer an Aviva employee.

199. On 1 June 2022 Mr McIntosh said, by reference to the claimant's intimation of a wish to submit a third part of her grievance, that "*If someone has left Aviva, any further issues raised regarding your employment with us would be handled as a complaint. However, as you started your request for formal resolution (grievance) when you were still employed with us, we will allow part 3 paperwork to be submitted as part of your overall formal grievance/resolution".* We refer to Mr McIntosh's email to the claimant of 1 June 2022 at page 614.

200. In the Tribunal's judgment, the respondent is correct to say that the resolution procedure only applies to current employees. However, there is merit in the claimant's contention that she was expecting an outcome meeting given the contents of Mr McIntosh's email of 1 June 2022. He certainly gives the impression, on a reasonable interpretation, that there would be a continuation of the resolution procedure notwithstanding that the claimant had left the respondent's employment.

201. Mrs Graham also accepted that the notes of the grievance meeting of 27 May 2022 were sent to the claimant outside of the five-days' timescale within the policy at page 200. This failure was fairly acknowledged by Mrs Graham and Mrs Jaques.

202. The third part of the claimant's grievance was submitted on 6 June 2022. This is at pages 616 to 621. Mrs Graham's conclusions upon it are at pages 662 to 663.

203. The first allegation raised in this part of the grievance was about the Verint schedule. Mrs Graham said that she had a look at the schedule and confirmed that it correctly shows her shift time of 9:30 to 17:00. She says that *"If the block starting at 17:00 was shaded, this would have meant you worked until 18:00."*

204. The next fresh matter raised in the third part of the claimant's grievance was that the resolution meeting notes of 27 May 2022 were not provided. Mrs Graham investigated this and confirmed that they were sent to the claimant on 15 June 2022. As has been said, Mrs Graham accepts that this was outside the resolution policy timescales.

205. The third new matter raised by the claimant in the third part of her grievance was that she was removed from the respondent's systems on 23 May 2022. Mrs Graham said that this was attributable to technical issues that day.

206. In the third part of the grievance, the claimant complains about Mrs Baguley's instruction for her to do some training via the Aviva university on 25 May 2022. She says that the summons to the meeting with Mrs McLean that day was the *"last straw."*

207. The claimant then alleges serious fraudulent activity around the Verint schedule and complains that Mr Pennant let the department know on 26 May 2022 of the claimant's resignation.

208. Mrs Graham did not investigate the dealings between Mrs McLean and the claimant. However, she was not asked to as the claimant asked her only to

investigate the issue around Verint, what the code "*HC – Development Time – 119647"* means, whether there was any instruction to alter the claimant's schedule and if so, who gave the instructions. She concluded there to be nothing untoward.

209. The twenty seventh issue in the list of issues is that Mrs Graham did not conduct a thorough investigation of the claimant's grievance resulting in her not dealing with the grievance properly. The claimant was encouraged during her cross-examination of Mrs Graham to focus upon why she contended the grievance not to be thorough. With this guidance, the claimant focused upon the omission to investigate the claimant's complaints about Lizzie Walker and Ajibola Saunders. The claimant struggled to articulate in what respect otherwise there was a lack of thoroughness upon the part of Mrs Graham.

210. The claimant appealed the outcome of the grievances. Her appeal is at pages 669 to 681. This was dealt with by Mrs Jaques.

211. A Teams meeting was arranged for 11 July 2022 to enable the claimant to meet with Mrs Jaques. The claimant was accompanied by a trade union representative. Mrs Jaques was accompanied by a note taker. The notes are at pages 716 to 720. The claimant's appeal was comprehensive. There were 11 issues raised by her with several sub points. The appeal points were:

- Non-compliance with procedural guidance on grievance resolution.
- Breach of the ACAS Code of Practice.
- Breach of the employment contract.
- Lack of impartiality when conducting investigations.
- A refusal to address the following complaint points:
    - Race and ethnicity of Ajibola Saunders.
    - If Ajibola has experienced any racism at Aviva.
    - If Lizzie Walker had her one-to-one.
- Omission of references to race so as to cover up discriminatory conduct.
- Refusal to consider tangible evidence which shows that Jessica Pitcher was treated more favourably than the claimant because of her race.
- Refusal to consider tangible evidence that Anna Krol was visible on the system the same day that the claimant was not (that being 23 May 2022).
- Insufficient explanations as to how conclusions were reached in relation to:
    - Jessica Pitcher treating the claimant fairly.
    - Elizabeth Harding being friendly, helpful, and receptive to the claimant.
    - Details of the claimant's grievance being leaked to Luke Kitchener and Matthew Revell.
- No explanation as to why Mark Shearing and Luke Kitchener were seemingly telling colleagues bad things about the claimant to prevent her progression.

- Failure to address the following complaint points:
    - Why Gary Sharp was given a new USB headset and the claimant was not.
    - Why Rebekah Gore and Chloe Pullen got new USB headsets and the claimant did not.
    - Who fraudulently tampered with the claimant's schedule on Verint.
    - What does HC Development Time 119647 mean.
    - Was Rebecca Johnson and/or Simon Lawrence instructed to alter her schedule.
    - Who gave the instructions.
    - The claimant's claim of being underpaid.

212. Mrs Jaques says in paragraph 15 of her witness statement that the call of 11 July 2022 "*went quite well and Sabrina was cordial. Her union representative was also very pleasant and helpful."* That said, she says in paragraph 17 of her witness statement that the claimant became quite heated at one point and said that Anna Cipriani (the note taker) and Mrs Jaques *"should be aware she would be bringing a claim against us personally if we did not essentially find in her favour with the appeal."*

213. The notes of the meeting were typed by Miss Cipriani. They were sent to the claimant on 14 July 2022 (page 737). The claimant was suspicious that Miss Cipriani could have typed the notes as she was looking straight at the camera. She alleged that the respondent was recording the meeting. She commented that to record without permission is "*intrusive, morally wrong and a form of entrapment to record without one's permission."*

214. In the Tribunal's judgment, there is no basis to the claimant's contention that the appeal hearing notes were being recorded mechanically. It is plain from the evidence of several of the witnesses that it is against the respondent's policy to allow audio recording. Skilled typists can take a detailed note without looking down at a keyboard. Further, if the proceedings were being recorded then the laptop would display a banner alerting participants to the recording. There is no evidence that such a banner was being displayed.

215. On 18 July 2022, the claimant wrote to Mrs Jaques (page 819). The attachment included amendments to the draft of the meeting minutes. An issue before the Tribunal arose as to whether the claimant had requested Mrs Jaques to interview Jessica Pitcher. This does not feature in the notes taken by Miss Cipriani and was not included as an amendment by the claimant. Upon this basis, we find that Mrs Jaques was not requested to interview Miss Pitcher.

216. On 22 July 2022, Mrs Jaques emailed the claimant with the outcome of the grievance. This is at pages 864 to 890. Beforehand, the parties had met at an appeal outcome meeting. Mrs Jaques says in paragraph 67 of her witness statement that *"During the meeting it became increasingly difficult to discuss matters with Sabrina as we were going round in circles. I can understand that she was disappointed with my findings but we were unable to make any progress. We only made it to point 2b."* This left points 3 to 11(f) to deal with. Mrs Jaques says in the same paragraph that, "*Sabrina began making accusatory comments of Arriva fabricating evidence and I felt there was nothing further to be gained."*

217. Given the way in which the claimant presented before the Employment Tribunal, the evidence given by Mrs Jaques in paragraph 67 of her witness statement is credible. We have commented already upon the claimant's propensity not to accept decisions which go against her and to seek to argue points after those vested with making decisions have communicated their rulings.

218. Mrs Jaques upheld the claimant's appeal to the extent that Helen Graham had omitted to hold a grievance outcome meeting. Otherwise, all of the claimant's points of appeal were dismissed.

219. On any view, Mrs Jaques' appeal report is extremely thorough. It is not necessary for the Tribunal to go into any great detail about her conclusions. Much of the ground covered by her is before the Employment Tribunal and Mrs Jaques considered much the same evidence. Her findings of fact accord with those of the Tribunal upon those issues.

220. Mrs Jaques faced cross-examination for two days. At the conclusion of this, she said that she was not inclined to get involved in any grievances or grievance appeals in future. In the Tribunal's judgment, this would be unfortunate. The thoroughness of her approach can only be of benefit to the respondent and the respondent's employees who may find themselves having to bring a grievance.

221. Mrs Graham and Mrs Jaques both said that this was the only second grievance that they had dealt with. That being the case, their efforts to conscientiously investigate the claimant's grievances are even more impressive given their inexperience.

222. The one issue raised by the claimant in the appeal which is not before the Tribunal is that of the respondent's compliance with the ACAS Code of Practice. That is not raised as an act of discrimination or victimisation by the claimant. There is therefore no need to consider this issue in any detail. Suffice it to say that Mrs Jaques' conclusion that there was no such breach was a reasonable one which it was open to her to take.

223. In paragraph 16 of her witness statement, Miss Pitcher says that she raised a grievance against the claimant. She refers to pages 432 to 436. Mr Shaw submitted a grievance against the claimant also on 25 May 2022. This is at pages 548 to 553. Mr Shaw says that after the claimant's resignation he did not feel there was any benefit in pursuing the complaint. Likewise, Miss Pitcher's grievance was not pursued following the claimant's departure for the same reason.

224. Mr McIntosh said that no one was assigned to deal with Miss Pitcher's and Mr Shaw's grievances. The claimant contrasted the position with her own grievance. Helen Graham was assigned to deal with it the day after her first grievance was submitted on 5 May 2022. This formed the basis of the claimant's case as it was put to Mr McIntosh and in closing submissions that Mr Shaw's and Miss Pitcher's grievances were not genuine and had been staged. Mr McIntosh said, in evidence given under cross-examination, that*, "it's unbelievable to say they're not genuine. They [Christopher Shaw and Jessica Pitcher] were distraught. I'm almost lost for words. How can you say that? I spoke to both of them. I followed the process to the point you left."*

225. The Employment Judge asked the claimant if it was her case that Miss Pitcher and Mr Shaw were put up to raise grievances. The claimant confirmed it was and that *"it was a plot, collusion, and [Ross McIntosh] was involved because of the*

protected acts to stage a grievance so it looks like I had a poor record to tarnish me, linked to sending me away on 13 May." Mr McIntosh replied, *"I absolutely refute that. You have to accept that they were so upset by your treatment of them."*

226. To corroborate that there was a genuine grievance, the respondent disclosed documentation during the hearing. Amongst this was a message from Mr Shaw to Ross McIntosh of 16 May 2022 (page 1236). Mr Shaw said, *"Hi Ross, hope you're well. Jessica Pitcher has emailed me to raise a grievance against Sabrina Bailey.*" Mr McIntosh refuted the suggestion that the documentation generated by Mr Shaw and Miss Pitcher's grievance had been concocted.

227. The claimant then cross-examined Mr McIntosh to the effect that the grievances were not authentic given that the respondent had not followed the resolution procedure. Mr McIntosh's answer for this was that there is flexibility within the process. Mr McIntosh's account was that an initial discussion would be held with the complainants to discuss their desired resolution.

228. Again, the respondent's evidence is credible. It is a real stretch for the Tribunal to accept that Mr McIntosh cajoled Mr Shaw and Miss Pitcher into staging grievances to cover up matters. This was, regrettably, another instance of the claimant baselessly impugning the professional credibility of the respondent's senior management and other employees.

229. The next allegation which we shall consider is that which is numbered twenty nine. This is that the claimant *"was falsely accused by the respondent of opening an email from someone who claimed to be from the Aviva Data Protection Team which was not the case as the email accessed was a genuine email from the Data Protection Unit in Perth."*

230. Mr Shaw deals with this issue in paragraph 47 and 48 of his witness statement. He refers to the relevant emails at pages 401 to 408 of the bundle. He explains that *"These emails are generated automatically by our internal teams and Sabrina would not acknowledge that she had clicked on it. Phishing exercises are sent on a monthly basis at Aviva to ensure that staff remain vigilant to the dangers of phishing and other cyber security risks. The exercise phishing email will look real, but with a few tell-tale signs that it is not legitimate. Sabrina was then asked to complete further cyber security training and to sign an attestation confirming that she understood the risks of phishing emails. I remember asking Sabrina to complete a task set for her by IT, namely completing some training after she incorrectly clicked on a "phishing test" email from IT. She would ignore my request to do this and I had to chase her."*

231. He goes on to say in paragraph 49 that, *"I dispute Sabrina's suggestion that she was "falsely accused" of opening an email and that she was victimised as a result. This exercise was carried out across all employees of Aviva as per the monthly tests and any person who had incorrectly clicked on a link would have received the exact same response."*

232. The claimant was suspicious because the phishing awareness email of 28 April 2022 (page 381) was sent on the same day as the claimant had her discussion with Mr McIntosh and Mr Pennant. The claimant contended that this was no coincidence. During Mr Pennant's cross-examination she suggested that there was *"a plot against me orchestrated, involving Ross Pennant."*

233. Again, the respondent's explanation is credible. There was nothing to suggest other than that the phishing emails are sent routinely to test employees for their cyber awareness. Mr Pennant said that the claimant clicking on the phishing email did not lead to her being in any kind of trouble. The idea was for employees to be alert to the risks. There was no suggestion that any action was taken against the claimant other than for her to engage with the process to support her in her role. Had it been the case that the respondent was orchestrating the phishing email with a view to entrapping the claimant, one may have expected some disciplinary action to be taken against her prior to 25 May 2022. That no action was taken other than requiring her to engage with the process per the email at page 391 tells against this being any kind of collusion.

234. The thirtieth allegation is that the respondent attempted to deny the claimant the opportunity to submit a Subject Access Request in or around October 2022. The claimant submitted Data Subject Access Requests on 25 October and 3 November 2022 (pages 902 to 904). The allegation appears to be that there was a delay in dealing with the request. The claimant had made a DSAR request on 27 April 2022 (page 377). This was responded to by the respondent on 28 April 2022 (page 380). Sharon Spencer asked the claimant to forward further details of her request. Nothing was heard and so on 5 May 2022 Mrs McCafferty emailed the claimant to chase the claimant for a response. Nothing was heard from her until October 2022. The claimant's inaction therefore delayed matters by six months.

235. Mrs McCafferty describes in some detail how the Data Subject Access requests were handled. The Tribunal does not consider it necessary to go into great detail about these matters. Suffice it to say that Mrs McCafferty presented the claimant with a variety of options as to how she would like the data to be delivered. The claimant said on 6 November 2022 that she would agree to the data being sent password protected but not for it to be encrypted (page 911). Mrs McCafferty was at a loss to understand why she would not consent to encryption, there being no difference from an end user perspective in accessing documents that are just password protected or are password protected and encrypted.

236. On 8 November 2022, Mrs McCafferty wrote to the claimant to explain that due to the extreme volume of data and the initiation of Employment Tribunal proceedings the requests were too complex to be dealt with within a month, but such would be dealt with utilising an extension of two months (pages 913 and 914). Mrs McCafferty then wrote to the claimant on 30 November 2022 providing a summary of the data information (pages 919 and 920). This information was sent with password protection. She acknowledged that the claimant had been mistakenly informed that contrary to her wishes, the information was sent in an encrypted form. The information was then re-sent on 13 December 2022 without a password or encryption (pages 928 and 929). Information was sent again on 25 January 2023 in password protected form.

237. The final two allegations concern issues around unused holiday pay and arrears of salary. These matters are explained by Mr McIntosh in paragraphs 45 to 53 of his witness statement. The Tribunal can do no better than set these out here:

"(45) Sabrina has alleged that she is owed £369.23 in accrued but unused holiday pay. I believe this allegation is incorrect.

(46) Aviva's holiday year runs from 1 July to 30 June each year. When Sabrina's employment commenced in March 2022, she was allocated a

pro-rated holiday entitlement of 57 hours, equivalent to just over eight days. Had Sabrina remained in employment, her holiday allowance would have been reset on 1 July 2022 to 29 days plus bank holidays.

(47) Sabrina's employment terminated with immediate effect on her resignation on 26 May 2022. Her entitlement of 57 hours was therefore reduced to 49 hours.

(48) During her employment, the Verint schedule at page 957 shows that Sabrina took annual leave on 6, 7 and 8 April 2022. Each full day's holiday uses seven hours of annual leave entitlement, meaning that Sabrina used 21 hours of annual leave.

(49) Aviva's pay day is the 27th day of each month, but the pay period is for the entire month. For example, a colleague paid on 27 April will receive salary for 1 to 30 April in the pay received on the 27th.

(50) Sabrina resigned with immediate effect on 26 May 2022. However, as the payroll cut-off date had passed, on 27 May, she received a payment for salary for the entire month, meaning that she received an overpayment for the period 27 to 31 May.

(51) On termination of employment, Sabrina had 28 hours of annual leave outstanding. This meant a total payment of £369.23 was due to Sabrina in respect of accrued but untaken holiday pay.

(52) This amount was offset against the overpayment of salary made to Sabrina and she was paid a net amount of £61.97 in June 2022.

(53) I do not understand on what basis Sabrina asserts that she is owed arrears of one months' pay to the amount of £1626.96. Sabrina worked for Aviva from 21 March 2022 to 26 May 2022. She was paid in respect of all work undertaken in this time period. Payslips for this time are at pages 948 to 950 of the bundle."

238. There was no challenge from the claimant to Mr McIntosh's evidence upon the issue of holiday pay and arrears of pay. As the claimant resigned from her employment with effect from 25 May 2022 (and it appears was treated as having worked for the respondent until 26 May 2022) she is not entitled to payment of any salary after 26 May 2022. The payslip demonstrated that she has been paid for all of the work undertaken by her. Mr McIntosh's explanation about the holiday pay is logical and legally correct.

239. This concludes our findings of fact.

The issues in the case

240. We now turn to the issues in the case. These are recorded in the case management order of Employment Judge Miller dated 12 May 2023. The issues are in paragraph 49 of the case management order which (together with the Appendix) is now set out, (subject to the annotations in square brackets in paragraphs 1.1.4.2 and 3.1.1).

The Issues

1. *The issues the Tribunal will decide are set out below.*

1. *Time limits*

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

1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
1.1.2 If not, was there conduct extending over a period?
1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.1.4.1 Why were the complaints not made to the Tribunal in time?
1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time? [The Tribunal interposes to say that no issue of jurisdiction arises in the case. The claimant went to early conciliation on 22 July 2022 and presented the claim on 3 August 2022. The former was the date of the grievance appeal outcome per the chronology of events in paragraph 58. There was no argument by the respondent that the events culminating in the grievance appeal outcome was not part of a continuing course of conduct nor realistically could there be on our findings. Accordingly, we shall say nothing further on the issue of jurisdiction].

2. *Direct race and sex discrimination (Equality Act 2010 section 13)*

2.1 The claimant describes her race as a black British person of Caribbean descent, and her sex as a woman.

2.2 Did the respondent do the following things:

2.2.1 Constructively dismiss the claimant (as set out in the Case Management orders of EJ Jones made at the hearing on 13 December 2022 at paragraph 9)
2.2.2 The allegations set out in the table appended to these orders.

2.3 Was that less favourable treatment?

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

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

The claimant says she was treated worse than the comparators set out in the appended table in respect of each allegation.

2.4 If so, was it because of race and/or sex (constructive discriminatory dismissal) and as set out in the table appended.

2.5 Did the respondent's treatment amount to a detriment?

3. *Victimisation (Equality Act 2010 section 27)*

3.1 Did the claimant do a protected act as follows:

3.1.1 Make a complaint of race and sex discrimination in her grievance on 5 May 2022? (The respondent accepts that the claimant did do a protected act in the course of making this grievance). [The Tribunal interposes to say that there are in fact six protected acts: the meeting of 27 and 28 April 2022, the grievance of 5 May 2022, the grievance of 20 May 2022, the grievance of 6 June 2023, the appeal of 28 June 2022, and the Tribunal proceedings presented on 3 August 2022].

3.2 Did the respondent do the following things:

3.2.1 The list of alleged detriments is set out in the appended table.

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

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

3.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

4. *Remedy for discrimination or victimisation*

4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

4.2 What financial losses has the discrimination caused the claimant?

4.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.4 If not, for what period of loss should the claimant be compensated?

4.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

4.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

4.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.9 Did the respondent or the claimant unreasonably fail to comply with it?

4.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

4.11 By what proportion, up to 25%?

4.12 Should interest be awarded? How much?

APPENDIX – specific allegations

	Allegation	***Legal claim***
1	*That Christopher Shaw did not provide the Claimant with the details to log onto relevant computer systems on 21 March 2022* *Comparator: Lizzie Walker*	*Direct race discrimination*
2	*That Christopher Shaw did not provide the Claimant with a locker on 21 March 2022* *Comparator: Chloe Pullan*	*Direct race discrimination*

3	*That Christopher Shaw did not inform the Claimant about taking breaks on or around the Claimant's first few days.* *Comparator: Chloe Pullan*	*Direct race discrimination*
4	*That Christopher Shaw informed the Claimant that "breaks will be factored in as and when you start your training" which was a 'false' claim on or around the Claimant's first few days.* *Comparator: Chloe Pullan*	*Direct race discrimination*
5	*That Christopher Shaw informed the Claimant that IDD hours were not applicable to her on either 15 or 22 April 2022.* *Comparator: Lizzie Walker*	*Direct race discrimination*
6	*That Christopher Shaw abruptly cancelled the Claimants 1-2-1 meeting that had been booked for 22 April 2022.* *Comparator: Lizzie Walker*	*Direct race discrimination*
7	*That Christopher Shaw refused to give the Claimant a new headset on 6 May 2022* *Comparator: Gary Sharp*	*Direct race discrimination*
8	*That Christopher Shaw refused to give the Claimant a new headset on 6 May 2022* *Comparator: Gary Sharp*	*Direct sex discrimination*
9	*That Ross Pennant and Ross McIntosh asked the Claimant to leave her workplace following a disagreement with Jessica Pitcher on 13* *May 2022.* *Comparator: Jessica Pitcher*	*Direct race discrimination*
10	*The claimant was not put on a level playing field with her white colleague, Lizzie Walker, who was able to do her training uninterrupted. Lizzy had the privilege of remaining in her workplace, whilst the Claimant was unreasonably sent away from her place of duty at a crucial stage in her new role. The claimant says that these were acts of Ross McIntosh and Ross Pennant on 13 May 2022. The claimant returned to work on 23 May 2022* *Comparator: Lizzie Walker*	*Direct race discrimination.*

11	*That Ross Pennant and Ross McIntosh asked the Claimant to leave following a disagreement with Jessica Pitcher on 13 May 2022.* *Comparator: Jessica Pitcher*	*Direct race discrimination*
12	*That Ross Pennant and Ross McIntosh asked the Claimant to leave following a disagreement with Jessica Pitcher on 13 May 2022.*	*Victimisation*
13	*That Ross McIntosh told the Claimant words to the effect of "By remaining in the organisation, things are being compounded daily" on 13 May 2022.*	*Victimisation*
14	*That Jessica Pitcher tried to get the Claimant to give a customer (Iris) incorrect information in respect of a bank card number on 12 May 2022.*	*Victimisation*
15	*That Jessica Pitcher denied the Claimant the opportunity to take live calls on 13 May 2022*	*Victimisation*
16	*That Jessica Pitcher failed to mark the Claimant's calls during the time she was her assigned buddy.*	*Victimisation*
17	*That Jessica Pitcher took an hour for lunch when the Claimant took half an hour, causing the Claimant to miss out on half an hour of taking live calls each time Jessica was the Claimant's 'buddy'.*	*Victimisation*
18	*That the Respondent (Ross Pennant) held the Claimant back from progression following the fact find meeting on 27-28 April and the grievance being submitted on 5 May 2022.*	*Victimisation*
19	*That the Claimant was unable to take live calls on 23 May 2022 and believes that she was removed on the system.*	*Victimisation*
20	*That James Shergold was not supportive and hung up during live listening with the Claimant on 23 May 2022.*	*Victimisation*
21	*The Claimant's first day back was 23 May 2022. Yet none of the managers discussed giving her the time back in relation to being sent away. This, despite the HR People Advice Partner, Ross McIntosh saying, "Whilst not at work you will continue to be in receipt of full pay and*	*Victimisation*

	benefits. When you return to work your leader will talk to you about whether your training should begin again or whether it can be picked up from the stage where it is today. Please accept my assurances that no detriment will arise in terms of your training due to the time away from work". *The claimant says it was Ross McIntosh's decision not to give her her time/benefits back.*	
22	*That Amanda Baguley told the Claimant to do training via Aviva University rather than take live calls on 25 May 2022*	*Victimisation*
23	*That the Claimant was never given a 1-2-1 by Amanda Baguley*	*Victimisation*
24	*That the Claimant was taken off live calls by Amanda Baguley on 25 May 2022.*	*Victimisation*
25	*That the Claimant's schedule on Verint had been altered to show incorrect working hours on 25 May 2022*	*Victimisation*
26	*That Ross Pennant informed all the departments that the Claimant had resigned on 26 May 2022. (Her notice to end employment was submitted on 25 May 2022)*	*Victimisation*
27	*That Helen Graham did not conduct a thorough investigation of the Claimant's grievance resulting in her not dealing with the grievance properly.*	*Victimisation*
28	*That Lani Jaques-Hoare did not deal with the grievance appeal properly.*	*Victimisation*
29	*That the Claimant was falsely accused by the Respondent of opening an email from someone who claimed to be from the Aviva Data Protection team at some time during her employment. This was no the case as the email accessed was a genuine email from the actual Data Protection Unit in Pitheavlis, Perth.*	*Victimisation*
30	*That the Respondents attempted to deny the Claimant the opportunity to submit a subject access request in or around October 2022.*	*Victimisation*
31	*That the Claimant has not been paid for unused holiday pay of £369.23*	*Victimisation*

32	*That the Claimant is owed arrears of one month's salary of £1,626.95*	*Victimisation*

The relevant law

241. We now turn to a consideration of the relevant law.

242. The claimant's complaints are of direct race discrimination, direct sex discrimination and victimisation. By section 13 of the 2010 Act, 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.

243. By section 23 of the 2010 Act, on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

244. By section 39(2) of the 2010 Act, an employer (A) must not discriminate against an employee of A's (B) by (amongst other things) dismissing B or subjecting B to any other detriment. By section 39(7), the reference to a dismissal of B includes a reference to the termination of B's employment by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice. In other words, the concept of a discriminatory dismissal encompasses a constructive discriminatory dismissal.

245. There is no statutory definition of the word *"detriment" per* section 39(2)(d) of the 2010 Act. In **Ministry of Defence v Jeremiah [1980] ICR 13**, Brightman LJ said that *"A detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment."* An unjustified sense of grievance cannot amount to detriment: **Barclays Bank Plc v Kapur (No 2) [1995] IRLR 87**.

246. Direct discrimination is based upon the concept of less favourable treatment and therefore envisages a comparative exercise and consideration of appropriate comparators. In **Earl Shilton Town Council v Miller [2023] EAT 5** HHJ Tayler commented that it is helpful to consider the issues by looking at the treatment, whether it was less favourable than that of an actual or hypothetical comparator and then the detriment (or dismissal as the case may be).

247. It is not always necessary to take a comparator approach. In **Hewage v Grampian Health Board [2012] ICR 1054**, Lord Hope suggested that it is appropriate to go straight to the question of the reason why a complainant was treated as they were unless there is room for doubt. He said that *"… it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other. That was the position that the Tribunal found itself in in this case."*

248. Similarly, in **Shamoon v Chief Constable of The Royal Ulster Constabulary [2003] ICR 337**, HL, Lord Nicholls stated*, "No doubt there are cases where it is convenient and helpful to adopt this two-step approach [to be found in section 136 of the 2010 Act] to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But,*

especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined." He went on to say that *"The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less favourable treatment issue first. But, for the reason set out above, when formulating their decisions Employment Tribunals may find it helpful to consider whether they should postpone determining the less favourable treatment issue until after they have decided why the treatment was afforded to the claimant. Adopting this course would have simplified the issues, and assisted in their resolution, in the present case."* Lord Hope in **Shamoon** said at [54] that, "*The vital question to which I now turn is whether this is truly the reason why she was treated as she was by her employer or whether, as the applicant alleges, the difference in treatment was on the grounds of her sex."*

249. Where the reason why cannot be determined on the evidence, the initial burden is on the claimant to prove, on a balance of probabilities a *prima facie* case of discrimination. If the complainant succeeds in doing so, then the burden will shift to the employer to explain the reason for the treatment. By section 136(2) of the 2010 Act, *"If there are facts from which the court could, in the absence of any other explanation, decide that a person (A) contravened the provision concerned, the court must hold that contravention occurred."* By section 136(3) *"Sub-section (2) does not apply if A shows that A did not contravene the provision."* (By section 136(6) a reference to a court includes a reference to an Employment Tribunal).

250. In **Madarassy v Nomura International Plc [2007] EWCA Civ 33**, Mummery LJ said at [56] that, *"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

251. No comparator is required where the treatment is inherently discriminatory. An example of this would be a shop displaying a sign excluding a particular racial group or specifying different ages for women and men being allowed free admission to a swimming pool. These examples were given by Underhill P (as he then was) in **Amnesty International v Ahmed [2009] ICR 1450**.

252. If a comparator is required, then there must be no material difference between the circumstances relating to the comparator and the complainant. Where there is a material difference, then the comparator cannot stand as a statutory comparator. However, it may well be that the comparator has an evidential value in enabling the Tribunal to draw inferences that the complainant was treated less favourably than they would have been if the evidential comparator could stand as a statutory comparator. This observation was made by Lord Scott in **Shamoon** at [109 to 110].

253. In **De'Silva v NATFHE [2008] IRLR 412**, Underhill P (as he then was) deprecated the use of a hypothetical comparator in circumstances where the reason why the complainant was treated as they were is clear. He commented that, *"It might reasonably have been hoped that the Frankensteinian figure of the badly constructed hypothetical comparator would have been clumping his way rather*

less often into discrimination appeals since the observation of Lord Nicholls in ***Shamoon v Chief Constable of The Royal Ulster Constabulary"*** [to which this Tribunal referred above].

254. One of the most difficult tasks which the Employment Tribunal faces is determining whether the treatment is because of a protected characteristic. That requires an examination of the mental processes of the alleged discriminator. In **Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830** Lord Nicholls said that the question which arises is *"why did the alleged discriminator act as he did? What, consciously or unconsciously was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."* However, mental processes need not be considered where the factors which influence the alleged discriminator are clear (per HHJ Tayler in **Miller**). This could arise where discrimination in relation to a protected characteristic is inherent in the treatment.

255. By section 27 of the 2010 Act, a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act or A believes that B has done, or may do, a protected act. Section 27(2) then sets out those matters which constitute protected acts.

256. There is no issue in this case that the claimant did six protected acts. These are:

- What was said by her at the meeting with Mr Pennant and Anita Walters on 27 and 28 April 2022.
- The first grievance of 5 May 2022.
- The second grievance of 20 May 2022.
- The third grievance of 6 June 2022.
- The appeal against the grievance outcome of 28 June 2022.
- These Employment Tribunal proceedings.

257. By section 39(4) of the 2010 Act, an employer (A) must not victimise an employee of A's (B) by (amongst other things) dismissing B or subjecting B to any other detriment. As has been said, dismissal in this context encompasses a constructive dismissal.

258. The respondent accepts the claimant to have done the protected acts. They do not contend that the protection given to some or all of those listed in paragraph 256 is lost pursuant to section 27(3) of the 2010 Act because they were raised in bad faith. The Tribunal shall therefore not deal with that as an issue. The question which does arise, therefore, is whether the claimant was subjected to a detriment or was constructively dismissed because the claimant did protected acts. This gives rise to the same question as for direct discrimination per **Khan**. The protected act must have a significant influence upon the detrimental treatment or upon the constructive dismissal. However, it need not be the primary cause of detriment or constructive dismissal so long as it is a significant factor.

259. Detriment cannot because of a protected act in circumstances where there is no evidence that the person who allegedly inflicted the detriment knew about the protected act.

260. The same burden of proof provisions apply to victimisation complaints as they do to complaints of direct discrimination. The initial burden therefore is on the

claimant to prove facts from which the Tribunal could decide, in the absence of another explanation, that the respondent has contravened a provision of the 2010 Act. The burden will then pass or shift to the respondent to prove that the victimisation did not occur. If the respondent cannot do so, then the Tribunal is obliged to uphold the victimisation complaint.

261. As with direct discrimination, the burden of proof provisions do not come into play where the Tribunal is able to make positive findings on the evidence one way or the other per **Hewage**.

262. We now turn to a consideration of constructive dismissal. A resignation may amount to a constructive dismissal if it is in response to a fundamental breach of contract by the employer. To found a claim of constructive dismissal, there must be a causal link between the employer's breach and the employee's resignation. That is to say, the employee must have resigned because of the employer's breach and not for some other reason, such as the offer of another job.

263. In **Western Excavating (ECC) Limited v Sharp [1978] ICR 221, CA** Lord Denning MR said 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."*

264. To claim constructive dismissal, the employee must establish firstly that there was a fundamental breach of the contract on the part of the employer that repudiated the contract of employment, that the employer's breach caused the employee to resign, and that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

265. The relevant term engaged in this case is the implied term of trust and confidence. Implied into every contract of employment is a term that the parties will not without reasonable and proper cause act in a manner calculated or likely to destroy or seriously damage mutual trust and confidence. A breach of the implied term of trust and confidence is a fundamental breach. The question is whether the employer's conduct as a whole is such that the employee cannot be expected to put up with it.

266. The employer's conduct must be an effective cause of the resignation but need not be the sole cause. Authority for this proposition may be found in **Wright v North Ayrshire Council [2014] ICR 77, EAT** and **Meikle v Nottinghamshire County Council [2004] EWCA Civ 859**.

267. In this case, it is not enough for the claimant to establish that she was constructively dismissed because of a breach by the respondent of the implied term of trust and confidence in and of itself. The claimant does not have sufficient service to pursue a complaint of constructive unfair dismissal under the Employment Rights Act 1996. She must therefore establish a breach of the implied term of trust and confidence by reason of conduct made unlawful by the 2010 Act.

Discussion and conclusions

268. We now turn to our conclusions. We shall deal with the 32 allegations in the appendix in paragraph 240 and then what is effectively the thirty third allegation of a constructive dismissal by reason of direct discrimination and/or victimisation. Taking each in turn and in the order which they appear in the appendix to Employment Judge Miller's Order (reproduced in paragraph 240 of these reasons).

(1) The factual findings on this issue are in paragraphs 75 to 76. This allegation fails on the facts as there is no evidence that Lizzie Walker was treated more favourably than was the claimant in the provision of login details. Ms Walker is an appropriate comparator as she was in the same or similar circumstances as the claimant as a new starter. However, she was not more favourably treated. In any case, the claimant was given sufficient login details to enable her to undertake her work on her first day in employment. Even if (which is not the case) Lizzie Walker was given access to more of the system than was the claimant, such would in the context of her being a new starter be an unjustified sense of grievance on the part of the claimant as she did not need such extensive access.

(2) This fails on the facts. There is no evidence that Chloe Pullen was allocated a locker whereas the claimant was not. In any case, again, even if she was this is an unjustified sense of grievance on the claimant's part given that she managed to arrange her own locker in any case by dealing directly with reception. The relevant findings of fact are at paragraphs 77 above.

(3) & (4) It is convenient to take these together. These allegations fail on the facts. We refer to paragraphs 78 to 82 above. In any case, Chloe Pullen is not an appropriate comparator as she was a fully trained customer expert and therefore was allocated her breaks on the adherence system which was not applicable to the claimant as a new starter.

(5) Our finding is that the claimant and Lizzie Walker were treated the same in respect of IDD hours. This complaint therefore fails. We refer to paragraphs 83 to 88 above.

(6) Our finding is that the claimant and Lizzie Walker were treated the same in respect of the cancellation of the one-to-one meetings. There is no evidence that Lizzie Walker got the benefit of a one-to-one meeting whereas the claimant did not. This therefore fails on the facts. The relevant findings are at paragraph 89 and 90 above.

(7) & (8) It is convenient to take these together. This is the same allegation but pleaded in the alternative as a complaint of direct race and/or direct sex discrimination. These allegations fail on the facts. There is no evidence that the claimant needed a new headset. In any case, she was treated the same as Mr Sharp who is of a different race and sex to her. The factual findings are in paragraphs 91 to 95.

(9) (11) (12) & (13) It is convenient to take these together.

Upon allegation (9) the evidence is that the claimant was treated the same as Jessica Pitcher as both were required to leave the workplace. Therefore, there is no discriminatory treatment. The same conclusion

arises upon allegation (11) which is couched in very similar terms. The relevant factual findings are in paragraphs 105 to 108 and 118 to 122.

Upon allegation (12), Mr Pennant was of course aware of the protected act of 27 and 28 April 2022 (paragraph 98). He was aware of the protected act of 5 May 2022 on 13 May 2022 (see paragraph 106). He was not aware of the content of the grievance but knew enough that a protected act had been done by the claimant. However, there is no evidence that his knowledge of these protected acts caused him to require the claimant to leave following the disagreement with Miss Pitcher on 13 May 2022. His reason for requiring both to leave work was because of the disagreement and the upset caused to Miss Pitcher and to work out how to progress with the claimant's employment.

There is no evidence to suggest that Mr McIntosh knew of the claimant's protected act of 27 and 28 April 2022. He knew of the protected act of 5 May 2022 (paragraph 129).

(The other four protected acts all post-date 13 May 2022 and therefore cannot be causative of Mr Pennant's and Mr McIntosh's actions on 13 May).

The Tribunal is satisfied from the evidence that Mr Pennant and Mr McIntosh were consciously influenced by the disagreement between the claimant and Miss Pitcher of 13 May 2022 to act as they did. The claimant's race and the fact that she had done protected acts were not the reasons why Mr Pennant and Mr McIntosh acted as they did.

Upon allegation (13), Mr McIntosh's comment that the claimant remaining in the organisation was compounding matters was again uninfluenced by any protected act. What consciously influenced him was his concerns about the rising tensions within the team caused by the claimant's conduct. Our factual findings are in paragraph 125.

It is the case that Miss Pitcher was allowed to return to work sooner than the claimant. Miss Pitcher is not a statutory comparator. She is not in the same or similar circumstances as the claimant as she was at the material time an experienced customer expert whereas the claimant was a new starter. The reason why Miss Pitcher was allowed to return to work whereas the claimant was not is that Miss Pitcher was able to give effective service as an experienced employee whereas the claimant was in training for which arrangements needed to be made. That was the reason why the claimant was not allowed to return to work whereas Miss Pitcher was.

There is nothing to suggest that a new starter of a different race or sex who was asked to leave the workplace in similar circumstances was or would have been treated any better than was the claimant.

(Broadly upon all of these issues, the relevant findings of fact are at paragraphs 96 to 126).

(10) The relevant findings are at paragraphs 141 and 142. The reason why Lizzie Walker's training was not interrupted is because she had not become involved in a disagreement or dispute with her buddy or any

other work colleague. The reason why Lizzie Walker benefitted from uninterrupted training whereas the claimant did not was nothing to do with the claimant's race but rather because the claimant had become embroiled in a dispute with a colleague whereas Miss Walker had not.

(14) There is no evidence that Miss Pitcher was aware of the claimant's protected acts of 27 and 28 April 2022. She was aware of the one of 5 May 2022 (see paragraph 115) but only on 13 May, the day after the incident with the customer. The reason why Miss Pitcher gave the claimant a direction to pass incorrect information on to the customer (Iris) was due to Miss Pitcher's error. That was what consciously motivated Miss Pitcher to act as she did that day. This was nothing to do with the claimant's protected acts. The relevant factual findings are at paragraphs 110 to 112 above.

(15) This fails on the facts. The relevant factual findings are at paragraphs 113 to 117 above. The reason why the claimant was not able to take live calls on 13 May 2022 was simply because Miss Pitcher had an urgent data protection complaint to deal with and then the claimant levelled unwarranted allegations towards her over the training pack issue, causing Miss Pitcher to become very upset. Matters were not helped by the technical issues which arose that morning. None of this was anything to do with the claimant's protected acts of which Miss Pitcher was unaware in any case. (Miss Pitcher did not read the message at page 423 referring to part two of the grievance until after the disagreement which caused Miss Pitcher to become upset).

(16) The relevant findings of fact are at paragraphs 143 and 144 above. The reason why Miss Pitcher failed to mark the claimant's calls is that she was not sufficiently advanced for this to be a worthwhile exercise. Again, this was unconnected to the claimant's protected acts.

(17) This fails on the facts. The reason why the claimant missed out on half an hour a day of taking live calls was attributable to Miss Pitcher's and her (the claimant's) lunchbreak arrangements. Miss Pitcher's hours had been organised before the claimant joined the respondent and were nothing to do with the protected acts or the claimant at all. The relevant findings of fact are at paragraphs 145-147 above.

(18) This allegation fails on the facts. There was simply no evidence of Mr Pennant somehow holding the claimant back from progression. The factual finding is at paragraph 148.

(19) & (20) It is convenient to take these two together.

The factual findings are at paragraphs 154 to 163 above. The reason why the claimant was unable to take live calls on 23 May 2022 was because of a widespread IT issue which beset the respondent. The reason why Mr Shergold hung up during live listening to try to resolve the IT issues which was attributable to the claimant not operating the system properly per paragraph 168. There is no evidence that Mr Shergold was aware of the claimant's protected acts. (By this stage there had been three).

(21) This fails on the facts. It is difficult to see how the respondent was able to somehow give the claimant her time/benefits back, the claimant

having been sent home from work on 13 May 2022, being paid in full, and not required to use annual leave to cover the absence. This is an unjustified sense of grievance on the claimant's part, given that there was in any case no requirement to complete the training by a given date. The relevant findings are at paragraphs 74, 155 and 156.

(22) & (24) It is convenient to take these together.

The relevant findings of facts are at paragraphs 170 to 174. It is the case that Mrs Baguley told the claimant to do training via Aviva University rather than take live calls on 25 May 2022. This was because of the IT issues which beset the respondent that day and the problems being created by the claimant within her team. There is no evidence that Mrs Baguley was aware of the claimant's protected acts at this stage in any case. What caused her to direct the claimant to attend the Aviva University was the IT issues and the reports coming into her about the claimant's conduct and its impact on her team and her wish to consider how to deal with matters.

(23) The factual findings upon this issue are at paragraph 175. The claimant was never given a one-to-one assessment by Mrs Baguley simply because she had worked with her for only three days. There was therefore not enough developed experience to make a one-to-one worthwhile. This was nothing to do with the protected acts which had been raised by this stage of which she was unaware anyway.

(25) This fails on the facts. There is simply no evidence that the Verint schedule was in any way altered. The Tribunal refers to paragraph 176 above.

(26) It is the case that Mr Pennant informed all departments of the claimant's resignation (page 575). This was nothing to do with the claimant's protected acts. Mr Pennant was consciously influenced to take this action because fellow employees needed to know that the claimant was no longer in employment. This was so that they themselves were informed and would know of that fact should a customer telephone and ask to speak to the claimant. There can be nothing improper in Mr Pennant's actions. Indeed, it would have been remiss of him not to inform others of the claimant's departure.

(27) Mrs Graham was of course aware of the claimant's protected acts at the at the material time when she became involved. Indeed, two of them were the grievance addressed to her (dated 20 May 2022 and 6 June 2022). The relevant factual findings are at paragraphs 102 to 104, 149, and 192 to 209. The Tribunal has found as a fact that Mrs Graham conducted a thorough investigation.

The respondent has accepted deficiencies in that Mrs Graham neglected to send the meeting notes of 27 May 2022 within the grievance procedure timescales or hold an outcome meeting. The Tribunal is satisfied that the reason why these steps were not taken was not in any way influenced by the claimant's protected acts. These omissions were by way of oversight, confusion, and interpretation of the grievance policy.

Mrs Graham did not investigate the claimant's allegations involving Miss Saunders and Miss Walker on advice. This was not because of the protected acts.

Not holding the outcome meeting was based upon Mrs Graham's interpretation that the resolutions procedure did not apply to the claimant as a former employee. This was a reasonable interpretation of the terms of the policy.

The reason why the meeting notes of 27 May 2022 were not sent to the claimant was, on Mrs Graham's account, because of confusion in the process caused by the claimant requesting one outcome for all her grievances. The Tribunal is satisfied that this was the reason why the claimant was not supplied with the notes within the timescale in the respondent's internal resolutions procedure.

That Mrs Graham conducted such a thorough investigation with knowledge of four of the claimant's six protected acts is at odds with an allegation that she deliberately withheld a set of notes while undertaking an otherwise thorough process. This is against the probabilities. There is no logic to the claimant's allegation which stands dismissed.

(28) The Tribunal is satisfied that Mrs Jaques conducted a very thorough grievance appeal. The factual findings are in paragraphs 210 to 222. This allegation therefore fails on the facts. Of course, by this stage, Mrs Jaques was aware of all five protected acts made at this stage.

The claimant had some difficulty articulating where the appeal was improperly dealt with. Mrs Jaques rectified the omissions of Mrs Graham by seeking information about Lizzie Walker and determined that she had never had a one-to-one. She also sought to elicit by open questioning whether Miss Saunders had any issues with the respondent. This was, in the Tribunal's judgment, a clever way of investigating matters without placing Miss Saunders in an embarrassing position. Nothing was ascertained by Mrs Jaques supportive of the claimant's position.

Mrs Jaques acknowledged that Mrs Graham had neglected to forward the notes of the meeting of 27 May 2022 within the necessary timescales and also agreed to hold an outcome meeting with the claimant (albeit this had to be aborted due to the claimant's conduct).

It is difficult, frankly, to see how much more Mrs Jaques could have done. The Tribunal is satisfied that notwithstanding her being on notice of the protected acts she was motivated solely by a wish to conduct a thorough investigation. We agree with Mrs Jaques that what lies behind the allegations against her and Mrs Graham is that the claimant simply did not like the outcomes.

(29) This fails on the facts. There is no evidence that the sender of the phishing email was aware of the meeting which the claimant had had with Mr Pennant on 28 April 2022. Our finding is that this was simply a routine phishing email. The relevant findings of fact are at paragraphs 229 to 233 above.

(30) The relevant findings of fact are at paragraphs 234 to 236 above. There is nothing to suggest that Mrs McCafferty did anything other than a conscientious job in replying to the claimant's extensive Data Subject Access Request. She did of course come across the protected acts as part of the data protection exercise. However, there is nothing to suggest that it was dealt with other than in accordance with the necessary statutory timescales. There was no detriment to the claimant. She has an unjustified sense of grievance upon this issue.

(31) & (32) It is convenient to deal with these together.

They fail on the facts. The claimant was paid the proper amounts for the work undertaken and for her accrued holiday pay. We refer to paragraph 237.

269. We now turn to the complaint of constructive dismissal. The claimant said that the *"final straw"* was Amanda Baguley's decision to ask her to carry out training rather than taking live calls on the afternoon of 25 May 2022. The claimant was suspended by Mrs McLean the same day and notified that she was facing disciplinary action.

270. The Tribunal accepts that from the claimant's perspective that it was an unwelcome instruction to undertake work within the Aviva University. It was not disputed that the claimant had accrued the second highest number of training hours. The reason why she was requested to do the training through the Aviva University was because the respondent had run out of buddies for her at that stage.

271. The Tribunal can accept that from the claimant's perspective, this would be damaging of mutual trust and confidence. However, the respondent was acting with reasonable and proper cause. The respondent needed to work out what to do with the claimant given that there was no one willing to buddy with her that afternoon. There was therefore no breach of the implied term of trust and confidence given that the respondent had reasonable and proper cause for taking the action that they did on 25 May 2022.

272. The Tribunal also accepts that it will have been damaging if not destructive of mutual trust and confidence for the claimant to face suspension and disciplinary allegations. Again, however, this is not a breach of the implied term as the respondent plainly had reasonable and proper cause to act as they did. Mrs McLean had received complaints from no fewer than five members of staff about the claimant's conduct on 23 and 24 May 2022. It is difficult to see what action realistically was open to the respondent in the circumstances other than to act as they did.

273. More generally, there was no conduct on the part of the respondent contrary to the 2010 Act. Therefore, even if the Tribunal is wrong to reach these conclusions, the claimant's claim will fail anyway as the cause of the impugned acts on the part of the respondent behind the constructive dismissal claims were not on our findings acts contrary to the 2010 Act and there can be no discriminatory constructive dismissal.

274. More generally, the respondent had reasonable and proper cause for all the impugned acts save for those at allegations 14 *(Miss Pitcher giving the wrong information leading to the issue with the customer Iris),* the IT failures *(in*

allegations 19, 20, 22 and 24), and the failure to send the meeting notes of 27 May 2022 and hold a grievance outcome meeting *(allegation 27).*

275. The latter was post-resignation and therefore cannot be causative of the claimant's resignation. The same applies to the impugned acts in allegations 26 and 30.

276. The IT issue beset all employees and was not demonstrative of any intention by the respondent not to be bound by any of the essential terms of the contract *per* **Western Excavating**.

277. Miss Pitcher's conduct on 12 May 2022 was a product of human error. It was a minor mistake. It does not come close to showing an intention by the respondent not to be bound by the contractual terms.

278. There were no breaches of the implied term of trust and confidence over the course of the claimant's employment. Amanda Baguley's actions on 25 May 2022 were not a fundamental breach. There being no earlier fundamental breaches which had been affirmed by the claimant, there can be no issue that her actions that day served to revive any affirmed breaches by the respondent, there being none. It follows therefore that all the claimant's complaints fail and stand dismissed.

279. The claimant's claim is essentially one based upon there being wide-ranging collusion amongst members of staff at the respondent, including numerous senior individuals within the respondent conspiring to end her career because she made a series of protected acts. The claimant has made serious, unfounded, and hurtful allegations against the respondent's witnesses of conspiracy, collusion, and racism. Mrs Jaques, we think, put matters rather well when she commented that were she to have embarked upon such a course of action and be found out, she would lose her job. She said that the purpose of undertaking such thorough investigations as were carried out by her and Mrs Graham is in order that the respondent may learn if things have gone wrong to improve systems for the benefit of staff and customers alike. This is a far more credible explanation for their approach to maters than that the respondent was seeking to cover up victimisation and discrimination.

280. The Employment Judge suggested to the claimant (during her cross-examination of Mrs McLean) that she may wish to reflect as to how realistic is an allegation that several senior members of the respondent would spend a great deal of time and effort conspiring to procure the dismissal of a junior employee who was a new starter and whom they barely knew. They would be risking their careers to do so. This is all more the case where the respondent works as part of a regulated profession. Why, it may be asked rhetorically, would so many risk their careers for such negligible gain? This is all the more the case where there is no credible evidence of any victimisation or discrimination having occurred.

281. Mrs Jaques said in the concluding paragraphs of her grievance appeal outcome letter (page 889) that while there had been a breakdown of trust, this was led to a large extent by the claimant's own behaviour. Given the behaviours displayed by the claimant before the Employment Tribunal, the respondent's evidence about that behaviour and the impact which it had upon so many individuals within the respondent is entirely credible.

282. The Tribunal can only hope that the claimant will now reflect that her failure in this role was down to her own shortcomings, approach, and attitude, that she will

take responsibility for these, and not seek to excuse that failure upon the basis of a solipsistic belief this was the doing of others.

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Employment Judge Brain

_____

Date 12 July 2024

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