



# EMPLOYMENT TRIBUNALS

**Heard at:** Croydon (by video) **On:** 1 to 4 July 2024

**Claimant:** Ms Elizabeth Benassi

**Respondent:** Maximus UK Services Limited

**Before:** Employment Judge E Fowell

Ms L Atkinson

Mr J Sharma

**Representation:**

**Claimant** Mr Sunday Ikie, Father

**Respondent** Ms Julie Duane of counsel, instructed by BDB Pitmans LLP

## JUDGMENT ON LIABILITY

The unanimous decision of the Tribunal is as follows:

1. The complaint of victimisation is upheld.
2. The complaint of harassment on grounds of age is dismissed.
3. The question of compensation will be resolved at a remedy hearing at 10 am on 15 October 2024 by video. A link to the hearing will be sent to the parties in advance but no separate notice of hearing will be provided. Directions have been given for that hearing.

## REASONS

### Introduction

1. These written reasons are provided at the request of the respondent. As usual some editing has occurred to avoid repetition and these written reasons stand as the final version.

2. By way of background, the company delivers a service to the Department of Work and Pensions, helping to get people back into work and off benefits. That involves working with job-seekers on their CVs, helping them prepare for interviews and generally to reintegrate them into the workforce. Ms Benassi was one of their Employment Advisors.
3. Her colleagues were a young group of employees, mainly in their early twenties, but she was the youngest of all, being only 18 when she started in August 2022. Her case is that being the youngest made life difficult for her, that she was excluded from the group and micromanaged, and that her grievance about this treatment was not taken seriously. The company says that there were in fact concerns about her performance and so her contract was terminated after three months at a probationary review stage.
4. At the outset her claims included disability discrimination and whistleblowing but the only claims remaining at this hearing were harassment on grounds of age and victimisation.
5. The issues to be decided are set out in an agreed list and we will work through it in due course.

### **Procedure and evidence**

6. The company was of course professionally and expertly represented by Ms Duane. Ms Benassi was represented by her father, Mr Ikie, who approached the task very forensically, taking each witness in detail through their account and putting her case to them very effectively, and also making detailed legal submissions. He also made helpful submissions on the relevant law, showing that he had prepared very professionally for the hearing.
7. We heard evidence from Ms Benassi, and on behalf of the company from:
  - (a) Ms Ishrat Ashraf (Business Manager), who was the main subject of the grievance;
  - (b) Mr Alvaro de la Camara (another Business Manager), who took the decision to dismiss Ms Benassi;
  - (c) Ms Sarah Clamp (Service Delivery Director, previously Regional Director), to whom the grievance was sent; and
  - (d) Ms Sharon Baker (Coaching Manager) who heard the grievance.
8. There was also a witness statement from Ms Claire Fiore (Head of Operations) who was to have heard an appeal against the grievance outcome, but in the event the appeal was not pursued. Her evidence was not challenged.

9. It was put to us that Ms Benassi was not a reliable witness, that she had made outlandish claims about a conspiracy on the part of all her colleagues and that she was unwilling or unable to accept any criticism about her own performance. However, although we did not accept her interpretation of events in all respects, we found that her factual account was detailed and reliable and that in fact in some respects the evidence presented by the respondents' witnesses was less so.
10. There was also a bundle of about 380 pages plus tribunal paperwork. Having considered that evidence and the submissions on each side, we make the following findings of fact. As usual, not every point can be dealt with, only those necessary to deal with the issues in the agreed list and to support our conclusions. Where other members of staff are mentioned, those who are not witnesses or closely involved in the case, we will generally just give their first name.

### **Findings of Fact**

11. Ms Benassi joined the company, Maximus, on 15 August 2022. (Unless otherwise stated, all of the dates are in 2022.) She reported to Ms Ashraf and worked in their Greenwich office. It was a responsible, full-time position, with a salary of £26,500. There was an induction programme involving various learning modules followed by a further period of on-the-job training, which involved shadowing others.
12. The Employment Advisers (EAs) worked in a large, open-plan office. There were about ten of them, plus two supervisors or Business Managers, the other being Mr Alvaro de la Camara. Everyone had a reporting line to one of these managers, for booking holidays and the like, but for the most part the two of them worked together, managing the office and issuing instructions to any of the EAs as appropriate. The only other person in the office was the Operations Manager, Mr Abdul Ali. There were three new joiners at the same time, and they spent the first two weeks at home, completing training modules, so Ms Benassi's time in the office began at the end of August.

### *Incident with Yasmin*

13. In her first few days she came across a colleague, Yasmin, at the train station. She saw that Yasmin was crying and went over to her. Yasmin told her she was leaving, and blamed this on being bullied by Ms Ashraf. That disclosure led to a brief conversation. The conversation was apparently observed or reported back to Ms Ashraf because the next day she called Ms Benassi into a meeting room to ask her about it. She wanted to find out what Yasmin had been saying about her. This episode was raised by Ms Benassi in her grievance shortly afterwards [138]. The first line begins

"I believe the issue started when Ishrat saw me and Yasmin talking."

14. It was also referred to by the respondents themselves in the grounds of resistance. Nevertheless it was not addressed by Ms Ashraf in her witness statement and so we have to conclude that there was some such incident and that Ms Ashraf was not happy that Ms Benassi had been talking to Yasmin.

### *Bowling*

15. On the afternoon or evening of 9 September there was a team-building event which involved going to a bowling alley after work. It was Ms Benassi's first chance to meet her new colleagues socially. As the youngest one she was self-conscious about her age. She felt that she would not be taken seriously if they knew she was only 18. So, before they went out, she told Ms Ashraf that she wanted to keep it quiet. But somehow it became known. Ms Ashraf's explanation is that Ms Benassi became intoxicated at the event and so probably told people then. We prefer the view that Ms Ashraf herself passed it on that evening. The bowling event was on a Friday, and the following Monday, 12 September, Ms Benassi emailed Ms Ashraf as follows [301]:

"I was told by colleagues that you had told them I am 18 years old. I was shocked and disheartened to hear it. As you know, I mentioned to you prior that I was hesitant to tell anybody my age because I didn't want to be treated differently or as I had put it "as the baby of the group"; now they know it makes me extremely uncomfortable, which is exactly what I was trying to avoid in the first place. We spoke about it and you promised me you wouldn't say anything. Nevertheless you told them, breaching not only confidentiality but the trust that I put in you to tell you in the first place. I do not want to take this further and do not intend on speaking about this with anybody but yourself. I would appreciate if you could do the same. I'd like for you and I to speak about this and would greatly value your support so that we can continue to build a good work rapport and get past this."

16. This is a mature communication but also a clear accusation. We were not shown any substantive reply from Ms Ashraf to dispute it, just an email to say they would discuss it when they were both in the office. But there was no further meeting. Later on, as we shall see, in the course of her grievance investigation, Ms Benassi named the three colleagues who had told her what Ms Ashraf had said. In those circumstances we have to accept that the charge is true, that Ms Ashraf did tell other people at that event that Ms Benassi was only 18.

### *Change of line manager*

17. As a result of that issue being raised, it was decided that Mr de la Camara should take over as Ms Benassi's line manager. He sent her an email on 15 September [133] confirming that change. However, from the outset the tone was firm and it was copied to Ms Ashraf. He stressed, for example, the need for her to complete all her training modules on time, and to work between appointments or it might affect

her probationary outcome. (We note at this point his own evidence that 95% of new EAs successfully complete their probationary period.)

18. After a few days of shadowing colleagues, Ms Benassi had a further meeting with Mr de la Camara on 21 September. Afterwards he emailed her to summarise the points from their discussion [137]. It is a mixed bag. The feedback from her shadowing was that she was very comfortable speaking to participants and had already completed her mandatory induction training; however, she should take more notes during her shadowing, remain professional and not greet the participants by waving at them, must not slouch at her desk or yell across the room, should be cordial towards colleagues and participants, not be having breakfast after 9 am in the kitchen and stick to the 40-minute lunch break. Again, this was all copied to Ms Ashraf.

### *The grievance*

19. That feedback was sent on a Thursday. The following Tuesday, 20 September, there was another source of disagreement. Ms Benassi felt that one of her colleagues, Roberta, had been looking on her laptop. She was so annoyed by this that she raised a grievance. It was not confined to this issue over the laptop but mentioned the earlier events. All this was set out in an email the next day to HR. We have already quoted the first line, but since it is the basis of her victimisation claim we will set it out in full:

Dear Sir/ Madam,

I have been feeling targeted by Ishrat ever since I started work at this office and I would like the issues to be addressed as follows:

- I believe the issue started when Ishrat saw me and Yasmin talking.
- Ishrat called me into a meeting to which she did not provide me with a meeting minute and queried what discussions was being heard and claimed that she was told I said something to Yasmin.
- I explained about the conversation to Ishrat just to show to her that the allegation made against me was not true. It appeared to me that Ishrat may have had some sort of issue with Yasmin which I am particularly not concerned about.
- I told Ishrat from the onset that I do not want her to disclose of my age to my colleagues as I am not comfortable with the treatment, I get in a work environment due to being young.
- She told me that I should lie about my age, and say I was "24" as that was around the age of the rest of my colleagues.

- Ishrat assured me that it is confidential but later disclosed my age to my colleagues. They revealed this to me. Breach of confidentiality.
- When I brought the above to Ishrat she claimed she never did this despite my colleagues making it very clear that she did.
- I would not just tell anyone of my age at work in fear of being discriminated against on the grounds of my age but in the event, I tried to disguise my age to my colleagues due to my fears. I feel it is still breach of confidentiality and not in her place to expose my personal details to my colleagues to make me feel uncomfortable at work.
- As per my complaint about the above I was put under another manager (Alvaro De La Camara).
- Yesterday, I was having my breakfast as I had nothing arranged at the time in an area that everyone uses for the same purpose or even catch up with other colleagues when they have nothing arranged for work. Ishrat came up to me and told me "This isn't breakfast, time to get to work."
- At about 3.30pm yesterday I was having a meeting away from my personal work laptop and Roberta went to my laptop and appeared to take pictures of my screen unknown to me what exactly she was doing.
- When I returned to my laptop, I noticed Roberta was having a chat with Ishrat, with Ishrat asking her to "send over sending a screenshot of ICONI on my laptop to see if it is working" to which Roberta responded to say, 'it is not working, when you click on it, it takes you to the login page'. It was done in a way to impersonate me and make it look like I was the one chatting with Ishrat when I was not on my laptop at the time.
- This is a serious breach of security and I kindly asked that this is investigated using the organisation formal procedures.
- I believe that the request for Roberta to check if my ICONI is working is a guise for whatever they were doing inside of my laptop.
- Ishrat is already aware that I do not have ICONI, both had to wait for me to be in a meeting before they decided to breach the security of my laptop
- After reviewing my laptop this morning, I can see that Roberta had a few searches using my browser including my personal cascade account on several occasions between the times of 3:36- 3:38 which I want IT to investigate as well as to what had happened between those times, she had unauthorised access into my personal work laptop and without my permission.

- I am particularly concerned over the level of impersonation. They could have used my name to do anything that could put me in trouble without my knowledge.

***I believe that Ishrat's continuous targeting stems from my age as I do not believe she would do this to me had I been older. [Emphasis added]***

I kindly request that action is taken over the above issues as all I want to do is come to work, have a friendly working environment, work in peace, and go home. Ishrat is particularly making my work environment highly uncondusive for me, and I want the matters addressed as soon as possible in accordance with your grievance procedures as I am raising this matter [as] a formal grievance from today."

20. Maximus uses an external HR company referred to throughout as PM which presumably means People Management or similar. PM then advised on the grievance process and made records of their interactions with the managers in question.
21. While that grievance process was underway Ms Benassi continued her training. After each day spent shadowing a colleague it seems that they would send report on her to Ms Ashraf and Mr de la Camera, although these were never shared with Ms Benassi. So, we see, for example a detailed account from her colleague Rita on the 22 September [141] about Ms Benassi's performance the previous day. It is an email of about a page in length. Some good points are mentioned, to the effect that Ms Benassi was quick and confident but Rita went on to say that there were things she really needed to work on, such as paying attention to her interactions with participants, not using her personal phone and her attention to detail. Her conclusion was that she needed more training as she was not yet ready to work unsupervised.
22. Later that morning Mr de la Camera had a meeting with Ms Benassi to discuss this feedback. Afterwards he recorded the points he made in an email [151]. He must have acted very promptly as his email was sent within half an hour of the email from Rita. In it he set out a list of points for improvement, mirroring those made by Rita. It is difficult for us to assess how usual this sort of scrutiny is. We were not given any evidence to suggest that other new starters were treated in the same way or that this was to be expected. Ms Benassi and Mr de la Camera had another such discussion the following day, 23 September. The outcome email is at page 154 and again Mr de la Camera set out some good feedback and then some things to work on.
23. On the following Monday, 26 September, Ms Benassi came to work in trainers. This was a breach of the dress code, although she was not aware of it. Ms Ashraf spoke to her about it straight away and Ms Benassi apologised. But she wasn't happy at

the way she was spoken to and on this occasion she emailed Ms Ashraf to say so [159].

“This morning you mentioned that I am not allowed to wear trainers to work. Despite not being aware of this, as I have never worn trainers to work before, I apologised for this, and you rolled your eyes. I have now realised am not the only one wearing trainers today and I have not seen anyone receive the same chat that I have. In addition to this, I have not seen you respond in a similar manner the numerous occasions that I have seen my other colleagues wear trainers to the office.

24. Ms Ashraf replied that day [158], again copying Mr de la Camera and Mr Ali, stating:

“In regards to other colleagues, this is down to management to address this. We will not be disclosing this with yourself.”

25. Mr Ali then sent his own email rebuke at 11:25

“I want to see a professional dress code at all times. This is totally unacceptable coming to work in trainers.

Please adhere to a professional dress code”

26. Given that this was a specific, immediate complaint by Ms Benassi, and that Ms Ashraf made no real response to the accusation of double standards, we accept that Ms Benassi’s complaint about wearing trainers was valid.

27. While this dispute was in course it seems that Mr de la Camera contacted PM for advice. They opened a case report at 11:24 that morning [302]. The case handler was Amy Matthews and her first report is on page 311. She noted that according to Mr de la Camera there were three concerns about Ms Benassi:

- (a) with her dress code
- (b) about arriving late and
- (c) eating breakfast when she was due to start work.

28. The last two points appear to relate to the same incident. The grievance itself states that Mr de la Camera had recently told Ms Benassi off for having her breakfast when it was time to start work. The main concern that morning was therefore over her wearing trainers. Having obtained this list of shortcomings however, the guidance given by Ms Matthews focussed on the lateness. She advised that Mr de la Camera should hold a further discussion to find out why Ms Benassi was late. There was no such further discussion, which reinforces our view that lateness was not in fact his main concern.

29. Later that day (26<sup>th</sup>) there were two further email reports about Ms Benassi sent by colleagues - Daniel and Louise. They are at pages 155 and 156 respectively. Both



of them were Employment Advisors like Ms Benassi and both emails are in very similar terms, sent to Ms Ashraf. The gist was that Ms Benassi had asked them in front of a participant if it was ok if she could go to the toilet. It is not clear why they made so much of this but the language is quite striking. Louise in particular said that this left her too stunned to speak and made her so 'extremely embarrassed' that she went bright red. Both of them put the words "Is it OK if I go to the toilet?" in capitals to emphasise the point.

30. Ms Benassi was of course 18 at the time and was being closely monitored by her colleagues, so it does not seem to us at all remarkable that she should ask such a question. Perhaps what was embarrassing was what it said about her working environment. The incident sheds some further light on that environment however, since it shows that her colleagues felt free to email their manager about her in such negative terms.
31. Towards close of play that day Mr de la Camera and Ms Ashraf called Ms Benassi into a meeting to have a further discussion with her about her performance. This was the fourth day in a row when such a thing had happened. It had in fact happened every day since she had submitted her grievance. By then Ms Benassi had become concerned and secretly recorded it. We have the transcript. The two managers emphasised that she was on probation and cautioned her in rather elliptical terms about having playground conversations. When she asked what that meant she was told that there had been feedback from two colleagues – clearly Daniel and Louise - which they couldn't disclose.
32. This discussion prompted a further complaint from Ms Benassi [163]. It was sent the following day (27<sup>th</sup>) the day on which she was late in to work. She complained that she had been denied a rest break the day before, that she had asked Mr de la Camera about this and he told her he did not believe her. She was then summoned into the meeting with him and Ms Ashraf. All this, she said, meant that she could not breathe at work without it being an issue, referred to systematic bullying and said the working environment was affecting her mental health. She also felt that colleagues were being encouraged to report things about her.
33. This email was then referred to PM and the advisor there - not Ms Mathews, who was advising in connection with the performance issues – said that these points were outside the scope of the grievance and so did not have to be considered. That meant of course that Ms Benassi was simply unable to raise any further allegations of bullying while her grievance was being dealt with.
34. On 28 September Ms Benassi had a further meeting with her managers to discuss her performance. The outcome email [165] records that Ms Benassi wanted to start conducting meetings on her own but Mr de la Camera did not think she was ready and would have to continue with further shadowing. Ms Ashraf sent her own email about that discussion the following day, setting out some rather minor criticisms of

Ms Benassi such as that she had been seen swinging on her chair and looking around the office.

35. After that meeting Ms Benassi had a panic attack at work. It happened while she was in a meeting with a participant. She called 111 and was advised to take some time off work, but she did not feel able to do that given that she was on probation.
36. On 30 September, having received the follow-up email from Ms Ashraf, Ms Benassi set out a further complaint about this episode [169] addressed directly to Ms Ashraf and to the HR inbox:

“I am shocked to read this email as it is clear to me that what was discussed yesterday with you and Alvaro has either been left out or written incorrectly in an attempt to vilify me and my attitude towards work.

Before correcting the points, you have written in this email, I think it's very important to mention that on Wednesday 28th September 2022, the same day you have referred to, I suffered from a panic attack during my meeting, an attack as a result of all the pressure that you and Alvaro continue to unnecessarily mount on me because of the grievance I raised against you. You knew this as I excused myself from my meeting to let you know that I couldn't breathe and felt like I would faint and was extremely worried for my health. You tried talking to me and I walked away from you confused. This has been confirmed by both health assessors and my GP as a panic attack and I am currently seeking help for it. The doctors asked that I should stay away from work for a period of 1 week to address my health, but I fear doing that as both you and Alvaro have threatened me about me being on probation.

Though you were aware that I couldn't breathe, I left a customer and went outside. You waited for me to return to continue my meeting with the customer which I did complete. And it is in this same meeting performance you are using to criticise me in your report. I took time off to call 111 and my GP to which both of you were aware of and you did not ask me for feedback as to how my calls with the health professionals had gone.

37. Clearly relations between Ms Benassi and her managers had become very strained by that point.

#### *The grievance investigation*

38. From then on, the daily meetings stopped. We conclude that this was done on advice, either to avoid aggravating matters further or because of the grievance, which was now underway.
39. Ms Baker, the Coaching Manager, was appointed to investigate the grievance but it was first reviewed by Ms Clamp, the Regional Director. She made various comments on the grievance in red writing [315] and it is worth looking at them. In response to the point about having breakfast Ms Clamp noted

“Frankly, I would expect nothing less from a manager, any manager, if you are sat eating breakfast after 9am and not at your desk working. And there should always be plenty to do in order to manage your caseload appropriately, if you cannot find things to do, I would suggest you speak to your line manager, Alvaro, who I am sure will make sure he points out what you can and should be doing to support your participants to get into work.

40. Her annoyance was even more evident in relation to the laptop incident. First:

“Your personal laptop or your work laptop? If this is your personal laptop, then why do you have it at work?”

41. Then:

“If you had left your desk, why was your laptop screen not locked? This is a serious breach of data security.”

42. Later:

This is a breach of data security, by failing to lock your laptop screen you have provided a third party with access to your own and other people’s data. This is a serious breach of company policy.

43. Finally, and rather grudgingly:

I will identify someone to investigate what and why someone else was accessing your laptop, but your own actions are a serious breach of data security.

44. She sent these comments directly to Ms Benassi, adding:

On reviewing your email below, I have made comments in red – including elements which I will ensure are investigated, this will also include your own breach of Maximus Data Security, which I will notify your line manager about.

45. Those points were then forwarded to Ms Baker, the grievance investigator, with some additional comments [312]:

There are only some elements of this we should even investigate to be honest, which I have outlined in the message back to her, so if you could focus on those elements only please?

Could you raise a People Manager case please and they will advise with regards to invites to hear the grievance etc.

The main concerns for me are:

- \* Claims about breaking confidentiality about age
- \* What the other EA was doing looking at the laptop and why they were accessing it (data breach aside from the complainant...)

46. So, Ms Baker undertook the investigation on that rather limited basis. We will describe that investigation more briefly since it covers the points which have already discussed, but she contacted Ms Benassi and they agreed to meet by Teams on 4 October. To do that Ms Benassi had to use the workplace kitchen because there was no other room available.
47. Given her concerns, Ms Benassi recorded that meeting. It is clear from the transcript that there were several interruptions, with people coming in and out from the main office where Ms Ashraf and Mr de la Camera were working.
48. Ms Benassi was initially reluctant to name the colleagues who had been told her age by Ms Ashraf but the next day she sent an email naming them: Amy, Janet and Pearl. Ms Baker did not interview any of them to check things. She did however have a meeting with Ms Ashraf on 11 October [242]. Ms Ashraf told her that she thought it was highly likely that Ms Benassi had revealed her age that evening as she was intoxicated.
49. Ms Baker then interviewed Roberta about the laptop incident on 13 October. Roberta had already been apprised of the investigation and was ready with a written statement. With regard to the incident with the computer, she said that Ms Benassi had been shadowing her that day, they were sitting together with a participant in between them, Ms Benassi was taking over the second part of the meeting and needed a piece of software on her laptop called ICONI, which records the participant's journey, so they swapped laptops because the software was on Roberta's laptop. That left Roberta holding Ms Benassi's laptop. While she was using Ms Benassi's laptop, she saw a message come in from Ms Ashraf. It was about access to ICONI. She responded to that message.
50. It is certainly clear from the screenshots that Ms Benassi took at the time that there was such a conversation with Ms Ashraf on Ms Benassi's laptop, and at no point did Roberta make clear that she was replying rather than Ms Benassi.
51. Roberta's explanation was accepted however and forms part of the grievance outcome [237]. Ms Baker also concluded that it was more likely that Ms Benassi had been the one to reveal her age, either at the bowling event or later, in a discussion with Roberta about car insurance. It does not seem that she was provided with the email from Ms Benassi the Monday after the bowling event, accusing Ms Ashraf directly of telling people.
52. The conclusions about the computer state that Ms Benassi was there when Roberta looked at her laptop. Also, it was her responsibility to lock the laptop when it was not in use and that the searches were carried out at a time when Ms Benassi was in a meeting, when she would have had her laptop with her, and so must have done them herself.

53. The implication must be that Ms Benassi made the searches herself and then presumably forgot about them, or made up this allegation. Those alternatives seem to us unlikely. We note that Roberta was not asked if she carried out these searches, or whether she had taken any photographs of the laptop, so much of the detail of the grievance was simply not explored.
54. We have already made our finding that Ms Ashraf told colleagues that Ms Benassi was only 18, so we do not accept that the grievance investigation came to the right conclusion on that point. We have to say that Ms Baker should have dug deeper, by asking the other members of staff named. The allegations about the misuse of Ms Benassi's computer were contemporaneous, specific and detailed. They also fit with what we know of the prevailing circumstances, in that members of the team were reporting criticisms of Ms Benassi to Ms Ashraf. In all the circumstances we prefer the view that both complaints were valid.
55. Ms Benassi was naturally unhappy with the outcome of her grievance. She did originally submit an appeal but decided that it was not worth pursuing as, by then, she had been dismissed.
56. Another development at that time was her referral to Occupational Health. Ms Benassi has polycystic ovary syndrome, which led to abdominal pain and other symptoms. The Occupational Health report [233] noted that Ms Benassi also had symptoms with anxiety and was waiting for inputs from specialists and that work issues were a trigger. The advice was that she was likely to meet the definition of disability under the Equality Act 2010. Since then, at a preliminary hearing, the tribunal has found that that is not the case, but that was the employer's understanding, or at least the advice they had, at the time.
57. The report also mentioned her sickness absence. At the time of her dismissal she had been off for four days, either with gastrointestinal disorder or other infections, the first time on 14 September. The rest of the days were in October. There were also two days of lateness, the first of which was on 27 September, the day after the incident with the trainers and the negative feedback from Daniel and Louise, and she was late a second time on 21 October. Again, we think it likely that anxiety played in a part in her difficulty getting into work on those days.

### *Dismissal*

58. In her last week at work Ms Benassi had her workload reduced. She was given just five participants, rather than the usual twenty, and all five were in employment, so were on the brink of leaving the scheme. As a result there was little or nothing for her to do. She was mainly employed on reception. The company says that she wasn't the only one on reception, that there was a rota, and that they needed people to cover that role because the previous receptionist had left, but there was no real dispute about the reduction in her caseload and it makes sense that she would be

used there if she had little else to do. Her probationary review was a matter of days away, so the implication of reducing her caseload is clear.

59. As already mentioned, Mr de la Camera had first contacted HR about her on 26 September and his exchanges with Ms Mathews from then on are all recorded. There was little contact between them after that first day, until we come to an entry where Ms Mathews records him telling her that a probationary review meeting had been arranged for the next day. The dates on these records have all been overwritten. All of them now say that they happened on 17 November, which is clearly not correct, so it is not possible to know exactly when everything happened, but that last entry must have been the day before her performance review meeting which was on 31 October.
60. The contract provides for a six-month period of probation, with a probationary review after three months and then again after six months. There is a right to extend the probationary period and also a right to dismiss at the three-month stage. Ms Benassi's absence level, with her four days off, meant that she met the threshold for dismissal to be considered.
61. The Probation Review Meeting took place with Mr de la Camera on 31 October and the discussion is summarised in his outcome letter [282]:

“During our meeting, we discussed your performance fully and that unfortunately you did not pass Attendance, behaviour and conduct, time keeping during working hours including lateness, refusing to follow reasonable managers request (this includes using your personal phone during shadowing sessions, having/making breakfast after the start of your shift or refusing to take notes during your training to avoid making mistakes), and dress code (failing to wear appropriate office attire). As a result, I have decided to terminate your employment due to your unsatisfactory performance in probation period.”
62. This is therefore a collection of all the previous points that had been mentioned in her time with the company. The minutes are at page 265 and show that each of these points was discussed and that in each respect she gave explanations for the alleged shortcoming in question, for example that she had four days off with her polycystic ovary syndrome but that was an underlying health condition which she had been to see Occupational Health about; that she had only worn trainers once; that on another occasion her dress was seen as too short and she had gone out and bought trousers and not worn a skirt or dress since; and that all this related to events in September – she had not been having breakfast after 9 am since then, and had only used her phone at work once, for an important reason.
63. It appears that he then drafted the dismissal letter and sent it with his notes of the meeting to Ms Matthews. She had concerns about his approach, noting that Ms Benassi had given detailed answers to each point, that he had not challenged her

about any of those explanations and the issues in question did not seem severe enough for a dismissal. She felt that they should be extending her probation.

64. Mr de la Camera then sent her some further evidence. It is not clear to us exactly what he sent - presumably earlier emails critical of her performance – and they had a further discussion. He told her that after the meeting Ms Benassi was seen doodling on a piece of paper and he had to ask her to do her work. Having had that discussion, Ms Matthews told him that the outcome letter was fit for delivery but that is the extent of her endorsement. It does not appear that she was made aware of the Occupational Health advice.

## **Applicable Law**

### *Harassment*

65. Turning to the applicable law, the test under section 26 Equality Act is as follows:

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

66. The first question therefore is whether the conduct in question was unwanted, then whether it related to a protected characteristic – age – and then whether it met the threshold for violating Ms Benassi's dignity or creating an intimidating et cetera environment for her.

### *Victimisation*

67. The test under section 27 Equality Act is as follows:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act— ...
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

*Burden of Proof*

68. There is a particular provision at section 136 Equality Act 2010 dealing with the burden of proof in discrimination cases. It provides that:
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
  - (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
69. In **Ayodele v CityLink Limited** [2017] EWCA Civ 1913, the Court of Appeal explained that the first stage required the claimant to prove facts from which the tribunal *could* conclude, in the absence of an explanation from the respondent, that discrimination had occurred; and if so, there is a second stage, when the respondent has the burden of proving that this was not the case. That first stage involves hearing all the evidence, not just the claimant's case, and then making appropriate findings. If those findings suggest that there might have been some discrimination involved, if some explanation is called for from the respondent, the burden shifts to them to prove otherwise.
70. That is in keeping with the previous guidance in **Madarrassy v Nomura** [2007] ICR 867 that it is not enough a claimant to show that she had a protected characteristic and was dismissed - "something more" is required.
71. So the starting point is to consider whether the treatment in question in this case was at all unexpected in the circumstances or out of the ordinary – whether something more is needed to explain it. If that further explanation is called for, it is then necessary for the employer to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of (in this case) age: per **Barton v Investec Securities Ltd.** [2003] ICR 1205, approved by the Court of Appeal in **Igen v Wong**, [2005] ICR 931. Further, the expectation in those guidelines is that cogent evidence is required.
72. It has to be borne in mind that to establish discrimination, the protected characteristic need only have had a significant influence in the detrimental treatment. In **Nagarajan v London Regional Transport** [2000] 1 AC 501 at 512H to 513B, a case that concerned race discrimination, the Court of Appeal observed that:
- “Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in



the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out.”

## Conclusions

### *Harassment*

73. Without setting out the list of issues in full, there are two allegations of harassment which briefly involve:
  - (a) the incident with the trainers on 26 September, and
  - (b) another incident, in late August, when Ms Ashraf said to her ‘are you sure you are only 18?’ when Ms Benassi told her that she knew about GDPR.
74. This second point was mentioned in Ms Benassi’s witness statement but was not referred to again during the hearing. Ms Ashraf was not asked about it, even though it is one of the few factual allegations in the list of issues. As a result we cannot be satisfied on balance that it was said, or said in the way suggested, i.e. as an example of being patronised.
75. In any event, it seems a fairly innocuous remark, not one which seems likely to have violated her dignity etc. That view is supported by the fact that it was not mentioned in her grievance, or indeed in her particulars of claim. It was first mentioned in the Further Information she supplied before the first preliminary hearing.
76. As to the trainers incident, we have already made our findings that this did occur. Also, other people such as Roberta and Janet wore trainers without being spoken to in the same way, or at all. That would have been obvious to Ms Benassi. It is not, we conclude, just a case of Roberta happening that very day to have come in with a sore foot and being given permission to wear trainers, as was suggested to us. Had that been the case, Ms Ashraf would no doubt have mentioned it at the time in her email in response. So, Ms Benassi was immediately and unfairly tackled about this on arrival at the office. No allowance was made for the fact that she was new and may not have been familiar with the dress code. It was therefore a clear unfairness, and indicates a desire to find fault. She was literally being scrutinised from the moment of her arrival. It was then escalated to Mr Ali. Any difference in treatment of this sort is bound to make the recipient feel unwanted, to feel that it has become a hostile working environment. That is reinforced by the fact that the following day she was late in to work. Accordingly we find that the threshold test for harassment is met.
77. The bigger question however is whether her treatment that day was because of her age or, as seems more likely, because of the existing disagreements that had arisen. They began with the issue over Yasmin, then the incident at the bowling

alley when Ms Ashraf told her colleagues that she was only 18. That in turn led to the email disagreement and a nominal change of line manager.

78. So, there were a number of reasons for Ms Benassi and Ms Ashraf to have fallen out before the trainer incident. Relations were clearly strained by that stage. The fact that the incident at the bowling alley involved disclosure of her age does not mean that that incident was motivated by her age. (That is not in fact one of the allegations of harassment but it may be thought that age played a factor in that case and so was also a factor on 26 September.) However, looking at that earlier incident, although Ms Benassi was sensitive about people knowing her age, it does not follow that Ms Ashraf was averse to her because she was younger, or that Ms Ashraf would be more likely to betray a confidence in the case of a younger colleague than anyone else. The very fact that Ms Benassi asked her not to tell others, and that she then did so, indicates that there was some ill-will at work, or at least a lack of regard, but that itself does not indicate that any prejudice on grounds of age motivated her.
79. Ms Benassi has put forward some points connecting this with her age, mainly that she was treated like a child over the trainers incident, and that in one of the undisclosed reports on her by Louise she was described as “very child-like.” That email does not however shed any real light on Ms Ashraf’s motives. Accordingly, we see no reason for the burden to pass to the respondent to disprove any connection with her age, and hence no basis to conclude that this treatment was related to her age.

### *Victimisation*

80. The allegations of victimisation are as follows:
- (a) the failure to investigate the allegation of age discrimination set out in the grievance;
  - (b) the decision to demote (or effectively to demote) Ms Benassi to the role of a receptionist on 24 October 2022; and
  - (c) her dismissal
81. The first question is whether the grievance was a protected act. Section 27(2)(d) provides that a protected act includes:
- “making an allegation (whether or not express) that A [the alleged victimiser] or another person has contravened this Act.”
82. Unlawful discrimination or harassment are clear breaches of the Act, so the question is simply whether any such allegation was made. And again, it does not have to be explicit, it can even be implied.

83. The grievance email itself has already been quoted, in particular the words emphasised:

“I believe that Ishrat’s continuous targeting stems from my age as I do not believe she would do this to me had I been older.”

84. Coming as that did after a long list of complaints about the way she was treated, it seems to us a clear allegation of harassment or discrimination on grounds of age.
85. So we have three allegations of victimisation, all of which occurred after she put in her formal grievance. On the other hand, there were existing causes of tension, so could those earlier issues explain the later events? Alternatively, what changed after the submission of the grievance?
86. It seems to us that a few things did change. Firstly there was an increase in the level of scrutiny. For about a week afterwards there were daily meetings. These were not comfortable for Miss Benassi. They were followed by emails to all of the management, listing her perceived shortcomings. Some of the emails are distinctly frosty, for example the exchanges about the trainers. We know too that HR were contacted, and we conclude that this was done with a view to dismissal or to disciplinary action. These are all points which seem to us to call for an explanation.
87. We note in particular that HR were reluctant, for perfectly understandable reasons, to sanction the dismissal. The case for dismissal appears to have been based largely on historic, minor or one-off incidents. It was essentially forced through against advice. There were clear alternatives available, such as to extend her probation period for another three months to the normal six-month stage, and then extend it further if need be. We bear in mind too Mr de la Camera’s evidence that 95% of people passed their probation with no difficulty, so Ms Benassi appears to have been in a very small group.
88. Another curious feature is that Occupational Health had concluded that Ms Benassi met the test of disability, so a dismissal in those circumstances was an unusual step to take. It does not seem to us that the earlier disagreements over Yasmin and events at the bowling evening are sufficient to explain the respondent’s approach.
89. So, we conclude that the burden has to shift to the respondents, certainly in respect of the dismissal. The decision to demote Miss Benassi to receptionist is closely tied to that decision. It indicates that dismissal was very much on the cards by that stage. There is some circularity about the first allegation, that the failure to investigate the grievance was because of the grievance, but having a complaint ignored is still a detriment, and we recall the approach taken by Ms Clamp in writing over it in red pen, showing that it had a cool reception from the outset.
90. Once the burden of proof shifts then cogent evidence is required to disprove any link with the grievance. We certainly see no basis to discount it. Indeed, it seems

the most obvious cause of Ms Benassi's subsequent treatment and only a significant influence has to be shown. We can see that there were some performance issues, but a great deal was made of them and made more quickly than, we conclude, would normally be the case. The fact is that to fail the probationary period at all is highly unusual, and there is no satisfactory explanation as to why Ms Benassi only lasted three months. In those circumstances it is clear that the respondent cannot discharge the burden on them.

91. For all those reasons the claim of victimisation is upheld. Time did not permit for an assessment of compensation at the hearing and so a further remedy hearing has been arranged for 15 October 2024.

Employment Judge **Fowell**  
Date **19 July 2024**

JUDGMENT & REASONS SENT TO THE PARTIES ON  
**30 July 2024**

FOR THE TRIBUNAL OFFICE:

.....

**Public access to employment tribunal decisions**

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

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>