



EMPLOYMENT TRIBUNALS

Claimant: Miss L Roldan Clavijo

Respondent: Sodexho Ltd

Heard at: Croydon (via CVP) **On:** 15, 16, 17,18 and 19 July 2024,
and 26 July 2024 (in chambers)

Before: Employment Judge Leith
Mrs S Dengate
Mr M Cann

Representation

Claimant: In person

Respondent: Miss Smeaton (Counsel)

JUDGMENT

1. The complaint of direct race discrimination fails and is dismissed.
2. The complaint of discriminatory constructive dismissal fails and is dismissed
3. The complaint of wrongful dismissal fails and is dismissed.
4. By consent, the complaint of unauthorised deduction from wages in respect of failure to pay accrued but untaken holiday pay succeeds, in that the Claimant was underpaid by three days accrued but untaken annual leave on termination of her employment. The Respondent must pay the Claimant three days pay in respect of accrued but untaken annual leave.
5. The complaint of unauthorised deduction from wages otherwise fails and is dismissed.
6. The complaint of failure to give a written statement of employment particulars fails and is dismissed.

REASONS

Claims and issues

1. The claimant claims direct race discrimination, discriminatory constructive dismissal, wrongful dismissal, and failure to pay for accrued but untaken holiday pay.

2. The issues were clarified at a preliminary hearing before Employment Judge Evans. Regarding the claims of notice pay, holiday pay and arrears of wages, Employment Judge Evans said this:

“35. Notice pay, holiday pay, arrears of wages: the discussion of these claims during the hearing today suggested that it might well be the case that there was no real dispute between the parties, but rather confusion, arising possibly from the fact that the claimant was off work sick for a number of months during which time a pay rise was applied to her wages. The claimant will set out what she says she is owed in her schedule of loss. The respondent will then engage with her, explaining whether it does or does not accept that her schedule is in these respects accurate. Doubtless the respondent will pay any amount which in light of this exercise it accepts remains due to her.

36. The claimant confirmed during the hearing today that she does not pursue a freestanding claim for “other payments”. Rather she ticked this box on the basis that she believes she is entitled to compensation.”

3. The Claimant’s schedule of loss included a claim for loss of basic salary and pension benefit while in employment, impliedly on the basis that her losses flowed from the alleged discrimination. In essence, the Claimant’s case was that she should be paid for all of the time that she was absent, because the Respondent caused the ill health which led to her absence. The schedule of loss did not contain any separate assertion that the Claimant had been paid less than she was contractually entitled to for any specific period.
4. The Claimant explained at the start of the hearing that she considered she had been underpaid by three days in respect of accrued but untaken annual leave on termination. After a short break, the Respondent accepted that the Claimant had been underpaid by three days annual leave on termination (rounded up). The parties agreed that we would record that part of our judgment by consent. We proceeded on the basis that that dealt with the complaints of failure to pay accrued but untaken annual leave and unauthorised deduction from wages.
5. We discussed the list of issues with the parties. The parties agreed that the substantive issues were as captured by EJ Evans, with the Claimant providing some further clarification regarding the race of the hypothetical comparator relied upon. The final list of issues was therefore as follows (excluding question of remedy, as this hearing was listed to deal with liability only):

1. Time limits

- 1.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 23 December 2022 may not have been brought in time.

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

1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2. If not, was there conduct extending over a period?

1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1. Why were the complaints not made to the Tribunal in time?

1.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

1.3. Was the unauthorised deductions complaint made within the time limit in 23 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?

1.3.2. If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.3.3. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.3.4. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Constructive discriminatory dismissal

2.1. Did the respondent do the following things:

2.1.1. Did the claimant's manager, Ms Begum, take no action when the claimant complained to her in February 2022 that her colleague, Mr Hassan, had behaved aggressively to her, had started talking about strange things, and had made her feel unsafe?

2.1.2. Did Ms Begum incorrectly follow the procedure for a grievance meeting when arranging and conducting the meeting held to discuss the end of the claimant's initial probationary period?

2.1.3. Did Ms Begum punish the claimant for raising a grievance about Mr Hassan's behaviour to her on or around 9 March 2022 by extending the claimant's probationary period and freezing her pay?

2.1.4. Did Ms Begum "abuse her power" and "control and manipulate the claimant" by:

2.1.4.1. Telling her she could not go to birthday parties or any parties with her colleagues from other departments after work?

2.1.4.2. Telling her in around June 2022 to email the Site Director, Mr Gareth Cuthbert, to complain about other managers on site in relation to how they had changed their behaviour towards the claimant and how they had been rude and interfered with the setting up of the Pride event, when the claimant did not wish to make any such complaint.

2.1.5. Did Ms Begum from 6 June 2022 when the claimant passed her probationary period fail to arrange for her to be paid the correct rate of pay but rather permit her to be paid at a lower rate than a new employee, Ms Swabey-Harrison?

2.1.6. Did Ms Begum fail to provide the claimant with a new contract of employment following her completing her probationary period?

2.1.7. Did Ms Begum fail to tell the claimant when she had a period of sickness during annual leave that she could keep her annual leave days for another occasions?

2.1.8. Did the respondent fail to deal appropriately with the complaint that the claimant made to Miss Condon about Ms Begum first verbally on 29 July 2022 and then subsequently by email on 3 October 2022 but rather protected Ms Begum? The claimant says that the complaint was dealt with inappropriately because: although Miss Condon took notes during the initial meeting on 29 July 2022 she subsequently said that she had not done so, no action was taken against Ms Begum and no action was taken in relation to the claimant's complaint that she had been discriminated against.

2.1.9. Did the respondent fail to deal appropriately with the grievance that the claimant raised with the respondent's People Centre in October 2022? The claimants says that the respondent dealt with it inappropriately because they never replied to this grievance, but rather told her that they could not find it when she chased it up.

2.1.10. Having told the claimant that they could not find the grievance she had submitted to the respondent's People Centre in October 2022, did the respondent then tell the claimant she would have to attend a meeting in relation to the grievance to explain it despite medical advice that she should not attend?

2.1.11. Did the respondent fail to provide the claimant with appropriate support during her period of sickness absence which began on 1 August 2022? In particular, they did not pay attention to her complaints about Ms Begum, they did not consider moving her to another job so that she no longer had to work with Ms Begum, and they did not ensure that her sick pay was paid on time.

2.1.12. Did the respondent fail to organise an appointment for the claimant with a company doctor in a timely manner, waiting instead until she had been absent from work for six months?

2.2. Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

2.2.1. whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.2.2. whether it had reasonable and proper cause for doing so.

2.3. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

2.4. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

2.5. If not, and so there was a constructive dismissal, did any discriminatory conduct sufficiently influence the overall repudiatory breach such that the constructive dismissal was discriminatory?

3. Wrongful dismissal / Notice pay

3.1. What was the claimant's notice period?

3.2. Was the claimant paid for that notice period?

3.3. If the claimant was constructively dismissed, and was not paid for their notice period, how much should they be paid in damages for breach of contract?

4. Direct race discrimination (Equality Act 2010 section 13)

4.1. The claimant is a dual national of Colombia/Spain.

4.2. Did the respondent do the following things:

4.2.1. Did the claimant's manager, Ms Begum, take no action when the claimant complained to her in February 2022 that her colleague, Mr Hassan, had behaved aggressively to her, had started talking about strange things, and had made her feel unsafe? Comparator relied on: hypothetical comparator.

4.2.2. Did Ms Begum incorrectly follow the procedure for a grievance meeting when arranging and conducting the meeting held to discuss the end of the claimant's initial probationary period? Comparator relied on: hypothetical comparator.

4.2.3. Did Ms Begum punish the claimant for raising a grievance about Mr Hassan's behaviour to her on or around 9 March 2022 by extending the claimant's probationary period and freezing her pay? Comparator relied on: hypothetical comparator.

4.2.4. Did Ms Begum "abuse her power" and "control and manipulate the claimant" by:

4.2.4.1. Telling her she could not go to birthday parties or any parties with her colleagues from other departments after work?

4.2.4.2. Telling her in around June 2022 to email the Site Director, Mr Gareth Cuthbert, to complain about other managers on site in relation to how they had changed their behaviour towards the claimant and how they had been rude and interfered with the setting up of the Pride event, when the

claimant did not wish to make any such complaint.

Comparator relied on: hypothetical comparator.

4.2.5. Did Ms Begum from 6 June 2022 when the claimant passed her probationary period fail to arrange for her to be paid the correct rate of pay but rather permit her to be paid at a lower rate than a new employee, Ms Swabey-Harrison? Comparator relied on: Ms Swabey-Harrison.

4.2.6. Did Ms Begum fail to provide the claimant with a new contract of employment following her completing her probationary period? Comparator relied on: Ms Swabey-Harrison.

4.2.7. Did Ms Begum fail to tell the claimant when she had a period of sickness during annual leave that she could keep her annual leave days for another occasions? Comparator relied on: hypothetical comparator.

4.2.8. Did the respondent fail to deal appropriately with the complaint that the claimant made to Miss Condon about Ms Begum first verbally on 29 July 2022 and then subsequently by email on 3 October 2022 but rather protected Ms Begum? The claimant says that the complaint was dealt with inappropriately because: although Miss Condon took notes during the initial meeting on 29 July 2022 she subsequently said that she had not done so, no action was taken against Ms Begum and no action was taken in relation to the claimant's complaint that she had been discriminated against. Comparator relied on: hypothetical comparator and/or Ms Swabey-Harrison.

4.2.9. Did the respondent fail to deal appropriately with the grievance that the claimant raised with the respondent's People Centre in October 2022? The claimants says that the respondent dealt with it inappropriately because they never replied to this grievance, but rather told her that they could not find it when she chased it up. Comparator relied on: hypothetical comparator and/or Ms Swabey-Harrison.

4.2.10. Having told the claimant that they could not find the grievance she had submitted to the respondent's People Centre in October 2022, did the respondent then tell the claimant she would have to attend a meeting in relation to the grievance to explain it despite medical advice that she should not attend? Comparator relied on: hypothetical comparator and/or Ms Swabey-Harrison.

4.2.11. Did the respondent fail to provide the claimant with appropriate support during her period of sickness absence which began on 1 August 2022? In particular, they did not pay attention to her complaints about Ms Begum, they did not consider moving her to another job so that she no longer had to work with Ms Begum, and they did not ensure that her sick pay was paid on time. Comparator relied on: hypothetical comparator.

4.2.12. Did the respondent fail to organise an appointment for the claimant with a company doctor in a timely manner, waiting instead until she had been absent from work for six months? Comparator relied on: hypothetical comparator.

4.3. 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 they were treated worse than someone else would have been treated.

The claimant relies on a hypothetical and/or actual comparator as set out above in bold text after each allegation.

4.4. If so, was it because of race?

4.5. Did the respondent's treatment amount to a detriment?

[section 5 deals with remedy]

6. Holiday Pay

6.1. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

7. Unauthorised deductions

7.1. Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

8. Statement of employment particulars/statement of change

8.1. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

8.2. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

8.3. Would it be just and equitable to award four weeks' pay?

Procedure, documents and evidence heard

6. We heard evidence from the Claimant.

7. On behalf of the Respondent we heard evidence from:

7.1. Tracey Condon, General Services Manager at the Shell London Campus;

- 7.2. Claire Morrice, HR Business Partner; and
 - 7.3. Mark Poole, who at the relevant time was the General Services Manager for the Respondent's northern region.
8. Each of the witnesses gave their evidence by way of a pre-prepared witness statement, on which they were cross-examined.
 9. The Claimant has been diagnosed with a functional neurological disorder. At the Preliminary Hearing before EJ Evans, she had indicated that she may need regular and longer breaks. At the start of the hearing, we outlined the normal Tribunal day to the Claimant. She indicated that her condition was unpredictable, and that she would ask for additional breaks if she needed them. We reminded her during the hearing that she could do so.
 10. It is a symptom of the Claimant's condition that she is subject to spasmodic movements (to use the terminology in the medical evidence before the Tribunal). These are usually single but can be repeated and last for up to a minute. Towards the end of the first day of the hearing, the Claimant had an extended episode. We took a break of around 10 minutes. We then ended slightly early for the day.
 11. For the remainder of the hearing, we agreed with the Claimant that we would ask her how she felt approximately every 15 minutes. We continued to do that throughout the hearing. We also agreed that, if the Claimant suffered another extended episode, we would promptly disconnect her from the hearing to give her privacy (as she would not be able to turn her camera off). We agreed that we would then pause the hearing and return every 10 minutes until the Claimant reconnected. This happened several times during the hearing.
 12. Throughout the hearing, we took breaks as and when required by the Claimant. At some times we took short breaks as frequently as every 15 minutes. We were guided by the Claimant, while at times seeking to ensure she did not let her (entirely understandable) desire to conclude the hearing exceed her capacity to engage in it.
 13. We had before us a bundle of 1118 pages. References in this judgment in [square brackets] are to pages within that bundle. The bundle contained a number of WhatsApp message exchanges between the claimant and members of her family (and her partner) in Spanish (over 100 pages worth in total). There were no formal translations of those documents. The Claimant explained that she had been told by the Respondent that they would arrange translations, but that they had not done so. This was not accepted by the Respondent.
 14. The Respondent indicated that they had informal translations of some of the exchanges. At our request, those translations were shared with the Claimant to see if they could be agreed, but they could not be. The unagreed informal transcriptions were not put before the Tribunal.

15. After hearing from both parties, we decided to proceed with the hearing on the basis that the Respondent would put its case regarding what was said in the relevant part of the exchanges to the Claimant, and she would have the opportunity to say whether she agreed. Similarly, the Claimant could then put any relevant parts of the exchanges to the Respondent's witnesses for them to answer. We indicated that if there was any material disagreement about what the relevant parts of the WhatsApp messages said, we would then hear submissions on whether to adjourn the hearing to allow for formal translations to be obtained of those parts only. We explained to the Claimant that if she needed additional time during the hearing to consider and translate the relevant parts of the WhatsApp exchanges while giving evidence or while cross-examining the Respondent's witnesses, she could have that time. We assured her that she would not be pressured to give quick answers when asked questions about the meaning of the WhatsApp exchanges.
16. That was the course of action which both parties agreed we should take. We were mindful of the potential for significant delays if we had to adjourn the hearing for formal translations to be obtained, particularly in circumstances where it was not clear how directly relevant the evidence in the WhatsApp exchanges would be. In the event, there was no real dispute about the parts of the WhatsApp message exchanges to which we were referred.
17. We concluded hearing evidence at around 12:25pm on the fifth day of the hearing. Miss Smeaton on behalf of the Respondent had produced written submissions, which were circulated shortly after the evidence was concluded. Initially we had intended that we would give the Claimant some time to read them before hearing oral submissions from both parties. In the event, it became apparent that there would not be sufficient time to allow the Claimant to properly consider the Respondent's written closing submissions and to formulate her own oral response. We therefore gave her the option to either return on another day for oral submissions, or to provide written submissions. The Claimant chose to provide written submissions. We therefore heard brief oral submissions from Miss Smeaton, then adjourned the hearing. We made directions for the Claimant to provide written submissions (having discussed the timescale with her) and for the Respondent to respond if so advised.
18. The Claimant submitted her written submissions as directed. With her submissions, she provided further evidence in the form of further WhatsApp exchanges with her partner, and an exchange of messages with a former colleague. In the latter case, the messages in question had been exchanged after the final day of the hearing. The WhatsApp exchanges with the Claimant's partner were in Spanish; they were intended to evidence that the Claimant also called her partner as well as messaging him on 29 July 2022. They were in large part already in the bundle of evidence before us. They appeared to show two missed calls, but no completed calls.

19. The WhatsApp messages between the Claimant and her former colleague related to an Employment Tribunal claim apparently brought against the Respondent by Ruksana Begum, and to the colleague's recollection of what had been told to her by the Claimant about what transpired on 29 July 2022. We bear in mind that they are not contemporaneous documents. The former colleague concerned did not produce a formal witness statement within these proceedings or attend Tribunal to be cross-examined. Because the exchange took place after we heard evidence, it could be influenced by the evidence we had heard. We bear in mind also that it is evidence that the Respondent could not address with the Claimant in the course of cross-examination. Those factors limit the weight that we could properly give to it. We do not, in any event, consider that the content of those WhatsApp messages on their own were of any real assistance.
20. We received brief written submissions in response from Miss Smeaton on behalf of the Respondent.
21. The Claimant clearly (and understandably) found the process of the hearing extremely challenging. Her condition is, as we understand it, exacerbated by stress; we took care to bear that in mind during particularly upsetting parts of the evidence. Throughout the hearing, we could not fail to be impressed by the Claimant's considerable resilience. We should note also that she represented herself with commendable skill throughout the hearing.
22. As set out above, we are given to understand that Ruksana Begum has brought an Employment Tribunal claim against the Respondent. We have not taken any steps to verify that, not to consider the ambit of any such litigation. Ms Begum was not a party to these proceedings; nor did she give evidence. For the avoidance of doubt, none of our factual findings or conclusions impinge on the decision to be made by the Tribunal hearing Ms Begum's claim (if in fact there is any such litigation before the Tribunal).

Factual findings

23. We make the following findings on balance of probabilities. We have not dealt with every area canvassed before us; rather, we have focused on those necessary to reach a conclusion on the issues in the claim.
24. The Respondent is a facilities management company. It employs over 35,000 people in the UK and Ireland.
25. The Respondent has a contract to provide facilities management services to the Shell Business Centre in London. The Claimant was employed by the Respondent as a Community Associate in the Communities Department at the Shell Business Centre. The Communities Department was a new initiative. The manager of the Communities Department at the relevant time was Ruksana Begum. She was tasked with setting up the department and hiring two Community Associates. The first Community Associate she hired was Mr Galip Hassan. The second was the Claimant. At the start of the

Claimant's employment, those three individuals formed the entirety of the Community Department.

26. The Claimant is of Columbian and Spanish national origin. Mr Hassan is British.
27. The Respondent's employees are split into two groups, who have different contracts of employment. Staff on a "frontline" contract are hourly paid. They received very limited sick pay. Staff on a "banded" contract are salaried. They receive more generous sick pay entitlements. The role of Community Associate was a frontline role; the Claimant was employed on a frontline contract.
28. The Claimant's employment commenced on 12 January 2022. The Claimant was a student at the time. She was studying an undergraduate degree in business management at Anglia Ruskin University. Her degree course included a module in Managing Human Resources [458]. She was initially employed to work 24 hours per week on Mondays, Wednesday and Fridays. Her offer letter provided that from 1 August 2022 her hours would increase to 40 hours per week [198].
29. The Claimant's offer letter provide that she would be paid £13 per hour. Her employment was subject to a 12-week probationary period, after which her pay would increase to £13.50 per hour.
30. The Claimant's contract of employment provided that she would receive no company sick pay until she had 6 months service. Between 6 months and 1 year's service she would receive 1 week company sick pay, and between 1 and 3 years service she would receive 2 weeks company sick pay [203].
31. Mr Hassan's contract was in the same terms as that of the Claimant, except that he worked full time from the outset of his employment.
32. The Claimant's relationship with Mr Hassan was not good. Her evidence was that Mr Hassan used to attend work smelling of alcohol, and that on 25 January 2022 it was particularly bad and she reported the matter to Ms Begum. Her evidence was that after that, Mr Hassan's attitude towards her became strange and sinister, and that she was frightened of him.
33. The Claimant attended a probationary review with Ms Begum on 18 February 2022 [217]. The review was a positive one. It noted that Ms Begum had been pleased with the Claimant's performance in the role. Under the heading "Improvements or further action required" it said this:

"Continuing communicating and working with a team member, learning how to deal with difficult situations and how to manage positively without impacting the service."

34. It was common ground that this was a reference to the Claimant's relationship with Mr Hassan.
35. The Claimant's evidence was she raised Mr Hassan's behaviour with Ms Begum, but that Ms Begum did not take her concerns seriously. Her evidence was that Ms Begum told her not to be so sensitive and to learn to handle the issues alone. Her evidence in her witness statement was that this was because Ms Begum was too focused on the Shell executives (the Respondent's clients).
36. On 2 March 2022, the Claimant emailed Ms Begum regarding Mr Hassan [222]. The email said this:

"I am sending you this email to let you know some things that are happening with the team. As I have mentioned to you before, lately I haven't felt comfortable working with Galip because of his attitude. When I started to work with him, I noticed things that he did that weren't nice or professional but I didn't pay attention to them because he was supportive and I am the kind of person that tries to focus on the good things. However, I feel that he is not working as a team anymore, I can't communicate with him because when I tried he had a defensive attitude, and sometimes the way he speaks to me or addresses me is not polite. I tried to say to him that you can say "please", "thank you" or ask things in a polite way but I feel that he does not listen to me or maybe that he is not aware of this.

The thing that concerns me more is that he sometimes is in a good mood and suddenly he changes and is uncomfortable when this happens in front of the people around us.

I have been trying to be patient and considerate but I also feel that this is demotivating me because I come to work every day with a positive attitude but it is difficult to keep it and smile working in this condition.

Today for example he came and he was in a good mood, suddenly he was upset about something and was being rude to me when I asked him things. Then he asked me to write down the names of the people for the side tour, I don't mind doing it but he tends to ask the things being bossy and I asked him why he couldn't do it himself, he said that he didn't have the battery in his laptop. Then I wrote down the names and he didn't even say thank you, he opened this laptop and left the paper there. This is just an example of the weird behaviour that he has, and similar things have happened before.

Also, people from other departments have told me that the way how he addresses them sometimes is arrogant and rude and I don't feel comfortable hearing that.

In resume, I am very sorry to bother you with this but I truly think that we need to solve this problem with him because I really like to work here and am very thankful for the opportunity that you gave to me but I prefer to be honest and this is starting to demotivate me and I don't want this because I consider myself professional and always try to do my best but sometimes is difficult to avoid it affects me.”

37. On the same day, Mr Hassan's probationary review meeting took place. His probationary period was extended. The reason given was “timekeeping” [223].

38. The Claimant's next probationary review meeting took place on 9 March 2022 [235]. Under the heading “Manager comments” the notes said this:

“So far Luisa's timekeeping and performance are good, with exception of one day of sickness. I have noticed a slight dip in Luisa, which may be due to an incident with another team member, however, hope to see this improve and feel confident that the role is right.”

39. Under the heading “Full details of Employee comments” the notes said this:

“I was feeling demotivated because of the atmosphere and tension between another team member and me. The work environment and situation weren't the most appropriate and I was feeling uncomfortable, however after raising a formal complaint and speaking about it with my manager I have seen a change in the attitude of my work colleague, and I feel that there is an improvement in the situation.

Also, I feel very excited and optimistic about the new functions that my role as a community experience host will have.”

40. Under the heading “Improvements of further action required”, the notes said this:

“Continue talking if things you are feeling uncomfortable with.”

41. The Claimant's evidence was that the situation with Mr Hassan had improved for a short time after she had emailed Ms Begum, but that very shortly after that meeting things got worse again. On the same day as her probationary review, 9 March 2022, the Claimant emailed Ms Begum raising a further complaint about Mr Hassan shouting at her in front of a customer [237]. She said this:

“I want to raise a formal complaint about Galip, before he was shouting at me in front of one customer (Scallop and Nassa Host) it was extremely rude and uncomfortable for the other person and myself. I told him to please don't shout and he continued doing it saying things in front of the people while the lounge was very busy as well. I had to run from the desk with the Host and tell him to not

speak to me. It seems that he told Kezi because she immediately came to the floor and she did so few times after the incident. That's not professional at all because the fact that they are friends outside she shouldn't get involved. After that, the floor got very busy and he was at the desk on his personal phone all the time without helping at all. I was running everywhere assisting the Scallop meeting host and the catering team. The main thing that concerns me is his changing mood and his behavior scares me sometimes. Is not possible to work in these conditions with someone like this. I try to be professional and just talk to him about work-related things but it seems that it does not work either.

I please ask you to take serious action on this, because it can keep happening. It is not good for the Community Department and neither for my well-being.

Also, would be useful if you can check the cameras and the audio to make sure you see what happened and his behavior after the incident. And if you want (wouldn't be ideal) you can ask the host directly.”

42. The Claimant's complaint about Mr Hassan was investigated as a grievance by Ms Begum. Mr Hassan raised a counter-grievance against the Claimant, which was also investigated by Ms Begum. Ms Begum upheld the Claimant's grievance, but did not uphold Mr Hassan's. In upholding the Claimant's grievance, Ms Begum thanked the Claimant for bringing the concerns to her attention [303].
43. The Claimant's evidence was that she felt that Ms Begum had focused on the incident where Mr Hassan shouted at her, and had not dealt with the allegation that she felt unsafe working with Mr Hassan. The Claimant did not, however, appeal Ms Begum's grievance outcome. Nor did she at the time say anything to Ms Begum to suggest that she had failed to address her concerns
44. It was put to the Claimant in cross-examination that Mr Hassan also raised a grievance, and his grievance was dismissed. Her evidence was that this was because the evidence supporting her grievance was stronger than Mr Hassan's.
45. In the interim, Ms Begum had been in discussions about changing the makeup of the Community Department. On 17 February 2022 she emailed Mrs Morrice, HR Business Partner, to ask about benchmarking salaries for roles as Community Experience Manager, Community Experience Lead (supervisor) and Community Host. She noted that the Community Experience Host job description had been updated to match “client expectations and vision” [313].
46. On 7 March 2022, Mrs Morrice emailed Ms Begum regarding the banding of the roles. She noted that the Community Experience Host role was

benchmarked as a K1 grade, with a salary range of £26,400 to £29,200. She explained that because the Respondent did not have a specific London weighting, the indicative banding may need to be adjusted upwards to be competitive in London.

47. The Claimant's next probationary review took place on 11 April 2022 [304]. On the review form, Ms Begum gave the Claimant's position as Community Experience Host (rather than Community Associate). Under "Manager's comments", the form said this:

"Overall, Luisa has settled well within the role in the Business Centre, as we start moving forward into the Community Experience team and establishing the role, it is now time to step up in the role, share your vibrant happy self, engage with the Community, and be a role model as a Community Ambassador.

As it has been quite difficult to see Luisa's full competency as a Community Experience host, following discussion with HR, have decided to extend Luisa's probation for a further 2 months, to really get the opportunity to see Luisa's full potential within the Community Department and allow a fresh start."

48. Under the heading "Employee comments", the form said this:

"I am looking forward to starting with the new role as a Community Experience Host, I am very grateful for the opportunity to be part of this new stage and I am committed to doing everything possible to fit into the role and bring out the best of me to help the team and department to develop and succeed."

49. The form was signed by both Ms Begum (on 29 April 2022) and the Claimant (on 6 May 2022). The outcome was that the Claimant's probationary period was extended.

50. The Claimant's evidence was that she felt that the reason her probationary period was extended was to punish her for raising a grievance about Mr Hassan. Her evidence was that the role of Community Experience Host was functionally the same as that of Community Associate.

51. On 14 April 2022, Ms Begum completed a Right to Hire form for the role of Community Experience Host [316]. The form was approved by Mrs Morrice.

52. The Claimant attended another Probation Review Meeting with Ms Begum on 27 April 2022. At that meeting, there was a note taker, Mandy Crockett [335]. The notes set out that Ms Begum explained to the Claimant that the situation had knocked her confidence, and that the purpose of extending the Claimant's probation was to give her a fresh start. She noted that the probationary extension would probably be for two months, but that she would check with HR. The notes indicated that the Claimant asked about

her salary, and was told it would stay the same until her probation was over. The notes were signed by the Claimant.

53. The Claimant's evidence was that she was later told by Tracey Condon that Ms Begum had incorrectly treated the probationary review meeting as a grievance meeting. That allegation was not put to Miss Condon in cross-examination.

54. In the meantime, on 21 March 2022 the Respondent advertised for a Community Experience Host at salary of £29,000 - £30,000. Morrigan Swabey-Harrison was successfully appointed to the post. Her offer letter was dated 12 May 2022. She was offered the job on a banded contract at Grade K1. Her salary was £30,000 per annum. Her start date was 6 June 2022 [346]. Ms Swabey-Harrison is British. The Claimant provided some training to Ms Swabey-Harrison in how to undertake the role.

55. Also on 6 June 2022, the Claimant passed her probationary period.

56. On 10 June 2022, Mr Hassan was dismissed [374].

57. There was an email in evidence on 21 June 2022 from People Centre, the respondent's HR service, to Ms Begum [386]. The subject line was "Luisa Roldan – Passed Probation". The email said this

"Thank you for your email.

Actions taken: What you would need to do is ensure there is a position available in SAP for Luisa to go into, if there is not, complete a Create a Position form and send into PeopleCentre. Once there is a position available, you can then complete a Change of Position form to move Luisa into that new position.

All of these forms can be found on SodexoNet under HR Home, and then Position and Organisational Changes.

Your HR Business Partner of the site should be able to advise you further on this and help you."

58. The email from Ms Begum to People Centre which had led to that response from People Centre, was not in evidence before the Tribunal.

59. On 27 June 2022, the Claimant emailed Ms Begum [376]. The subject line of the email was "Management Behaviour". With the email, the Claimant raised concerns about the way that other managers and colleagues were treating Ms Begum, and the effect it was having on the Community team.

60. Ms Begum forwarded that email to Julie Douglas, a senior manager within the Respondent. The Claimant's evidence was that she felt pressured to send the email by Ms Begum and that she was uncomfortable doing it. Her evidence was that she thought the email would be forwarded to Gareth

Cuthbert, Miss Condon's line manager, and did not become aware until receiving the Respondent's disclosure in these proceedings that it was actually sent to Julie Douglas.

61. On 11 July 2022, the Claimant was unwell. She sent a WhatsApp message to Ms Begum to inform her that she would not be at work as she had a very strong headache, and she was going to hospital [378]. The Claimant and Ms Begum exchanged WhatsApp messages. At 23:58 that night, the Claimant messaged Ms Begum as follows [379]:

“Hello Ruksana, I'm sorry to text you late but I just arrived home. Thanks God is vertigo and nothing more serious but I have to observe myself and take medication for 10 days to see if it goes away. I need to book an appointment with my gp tomorrow and I will let you know after I heard back from them but I am sorry I don't think I will be able to go to work this week because the doctor said that I need to rest and be careful to prevent it from getting worse. I hope that the medication helps because the symptoms are horrible.”

62. Further messages were exchanged, and 13 July 2022 Ms Begum asked the Claimant to send in a hospital letter to confirm the absence when she felt better.

63. On the following week, the Claimant was due to be on pre-booked annual leave. She returned to work on 25 July 2022.

64. The Claimant attended a return to work meeting with Ms Begum on 25 July 2022. Her evidence was that the meeting was intense. Her evidence was that she told Ms Begum that she was tired of Ms Begum trying to control her, and also complained about the delay in increasing her salary.

65. Her evidence was also that she mentioned in that meeting that Ms Begum would ask her to say certain things in English to test her level of English, which made her feel discriminated against. This was not an allegation that was contained in the Claimant's claim form. Nor was it set out in the notes of her subsequent grievance meeting (which we deal with later). The Claimant also accepted that it was not referred to in any of the WhatsApp messages she had disclosed, although her evidence was that she did not have access to all of her message history as she had changed phones.

66. To the extent that the Ms Begum did ask the Claimant to repeat phrases, we consider that it is more likely than not that Ms Begum was simply asking the Claimant to repeat something because she had not heard it or understood it. We reach that finding because:

66.1. The Claimant's evidence on the point was vague. She did not give direct evidence about the occasions when it was said to have happened, or what it was that she was said to have been asked to repeat. Indeed, the only evidence she gave about it in her witness statement was that she had mentioned it in the meeting with Ms

Begum. Nor did she say, in her witness statement, what Ms Begum said in response.

66.2. If it had happened in the way that the Claimant suggested in her evidence, we consider it is implausible that she would not have raised it in terms either in the copious messages she sent about her employment situation to her family members, or indeed within her claim form in these proceedings.

66.3. We consider that the most likely explanation is that, with the passage of time and her increasing mistrust of the Respondent (and of Ms Begum in particular), she has come to retrospectively reinterpret what may have been entirely innocuous requests.

67. That evening, Ms Begum sent the Claimant a WhatsApp message [395]:

“Hi Luisa,
Just wanted to send a separate message, I was sad to see how you were today and I'm sorry how you're feeling.

Just want you to know I care for my teams wellbeing and will do all I can to make things better and brighter.

Enjoy your evening and your day tomorrow, switch off and let's focus on positives as a team.

Always here if you need a chat and I hope your grandad is doing okay, which we never got to touch on. Take Care”

68. The Claimant relied as follows:

“Hello Ruksana, thank you for your message. To be honest I'm very sorry about how our meeting turned out today because it wasn't my intention of saying anything about how I feel because I'm just realizing now that all the stress I've been through during these months is coming out now but I'm trying to let it go and not affect me anymore. I honestly feel better and more understood by you and by myself after our conversation and after that I really enjoyed work today.

Thank you for asking about my grandad he had surgery during the weekend and he is recovering now [praying hands emoji]”

69. The Claimant's evidence was that both she and Ms Begum had cried during the meeting, and that she felt she felt empathetic towards Ms Begum as Ms Begum had told her that she didn't know if her own position was in danger.

70. In the interim, on 18 July 2022, Ms Begum emailed Mrs Morrice as follows [386]:

“Would you help me on this, did reach out to Tracey, she said to speak to you.

As below, Luisa started on a Part-Time contract, until she completes her studies. She is due to complete end of the month and has agreed to go full-Time from 15th August.

As we have benchmarked the role salaried now, and I have Morrigan on Salaried, I think it is best to have them both on the same contract to avoid confusion? PeopleCentre has advised that a new role needs to be created, in order to process her Full-Time contract, I have completed the attached form, if you could take a look and let me know if I have done this right.

Would you mind looking at this, I think I need to also find a change of employment form, which I will have a look at today.”

29 July 2022

71. On 29 July 2022, the Claimant received her monthly payslip. The payslip showed that her salary had increased by 50p per hour, to £13.50 per hour [725]. The Claimant's evidence was that she spoke to Ms Begum on the telephone, and Ms Begum told her that she had instructed Mandy Crockett, the administrator at the Shell site, to increase the Claimant's salary by 50p per hour to help her buy a house with her boyfriend. The Claimant's evidence was that Ms Begum then backtracked told her that the increase had been done by HR, and that she would talk to her about it later.
72. The Claimant's evidence was that after the telephone call with Ms Begum, she was upset. She spoke to Ms Swabey-Harrison, who confirmed that she was receiving a salary of £30,000 per annum. Her evidence was that Ms Swabey-Harrison told her that the only reason she could think why the Claimant may be earning less than her was that Ms Begum had once told her that while the Claimant's English was good, due to the environment they were working in she preferred someone from the UK.
73. After the conversation with Ms Swabey-Harrison, the Claimant went to the bathroom and had a WhatsApp conversation with her boyfriend. The exchange was in Spanish, but the Claimant accepted in cross-examination that the extracts in the bundle did not mention the allegation about Ms Begum preferring to have someone from the UK. Nor was it in any of the messages in the bundle to her mother and grandmother. Her evidence was once again that she did not have all of the messages as she had changed phones. Her evidence was also that some of the messages she sent to her boyfriend would have been audio messages, and that she would also have mentioned other details on calls to her boyfriend. The WhatsApp records before us showed that on that morning there were several pages of WhatsApp text messages, but no completed calls.
74. We deal with this in our conclusions.

75. After discussing with another colleague, the Claimant then messaged Tracey Condon, Ms Begum's manager, to ask for a meeting.
76. The Claimant's evidence was that Miss Condon took notes of the meeting. Miss Condon's evidence was that she did not. The recollections of both Miss Condon and the Claimant were diametrically opposed. We accept that both were giving their genuine recollection. We accept also that no notes are not in existence; of course that does not mean that notes were taken at the time. We do not need to reach a positive finding on whether Miss Condon did take notes.
77. It is common ground that the Claimant raised concerns regarding Ms Begum's management, and the disparity in pay. The Claimant's evidence was that she referred to discrimination. Miss Condon's evidence was that she could not recall the Claimant mentioning discrimination. We find that the Claimant told Miss Condon that she felt that she was being discriminated against, although she did not mention race or nationality. That is consistent with how she communicated her concerns in writing.
78. At the end of the conversation, Miss Condon told the Claimant that she would speak to Gareth Cuthbert on the following Monday about the issues the Claimant raised. The Claimant's evidence was that Miss Condon told her not to raise her concerns with HR that day. Miss Condon's evidence was that she did not tell the Claimant not to raise the matter with HR. We prefer the Claimant's evidence. It is consistent with the fact that Miss Condon was going to pass the matter on to Mr Cuthbert to take forward. We find that Miss Condon was not, however, seeking to prevent the Claimant from raising her concerns with HR in the future; merely to give her time to talk to Mr Cuthbert.
79. Later that day, the Claimant had a 1:1 meeting with Ms Begum, via Zoom [403]. The Claimant told Ms Begum that she felt discriminated against regarding her pay (although the notes did not mention race or nationality). Ms Begum explained that she was processing the change in the Claimant's contract. The notes recorded that Ms Begum asked the Claimant to put her concern about feeling discriminated in writing, so that it could be looked at further.
80. During the meeting, the Claimant explained that she felt that Ms Begum had taken advantage of her by not telling her that she could have had the week when she had pre-booked annual leave treated as sick leave instead as she was unwell. The notes indicated that Ms Begum told the Claimant that it had not been raised previously, and that the Claimant would need to provide a medical note to show that she had been signed off. The notes also recorded she asked the Claimant to provide GP sign off so that she could share it with HR to process. The Claimant's evidence (albeit given for the first time in the course of cross-examination) was that that aspect of the notes was inaccurate and that what Ms Begum had in fact told her was that she did not want staff to abuse the company.

81. We deal with this in our conclusions.

82. The Claimant's evidence in her witness statement was that during the meeting she began to feel unwell, and she could not concentrate to listen to Ms Begum or respond to what she was saying.

83. Following the one-to-one meeting with Ms Begum, the Claimant became increasingly unwell. She had a strange pain that spread across the left side of her body, and she realised that she could not move her arm and her leg. An ambulance was called, and she was taken to hospital with a suspected stroke. The Claimant was thereafter absent from work; she was never well enough to return to work for the Respondent. There were fit notes covering absence in evidence before the Tribunal. Each of them said that the Claimant was not fit for work (that is, the GP did not suggest that the Claimant may be fit for work with adjustments such as amended duties).

84. Ms Begum was also absent from work following that day. Miss Condon took over the management of the Claimant in Ms Begum's absence. In the summer of 2022 Ms Begum was put on a Performance Improvement Plan, although the details of that were not in evidence before us.

85. On 15 August 2022, Miss Condon emailed the Claimant. She informed the Claimant that Mr Cuthbert wanted to speak to her regarding an investigation he was carrying out, and that he would make contact with her. She informed the Claimant that she was reaching out to HR to see where Ms Begum had got to with the contract change. She informed her that in the interim, she had changed the Claimant's pay rate, which she was able to do. Her evidence was that Ms Begum would not have been able to do that.

86. On 16 August 2022, Mr Cuthbert sent the Claimant a text message [437]:

"Hi Luisa. Its Gareth Cuthbert. Following your chat with Tracey are you able to pop in to site on Monday. Please don't worry about anything and i appreciate you are off currently, therefore only accept if you are up to it. You can come straight to a meeting room and leave after if this helps. Thanks"

87. The Claimant replied the following day:

"Hello Gareth, I hope you are well. To be honest, these investigation meetings stress me, so if you think it's strictly necessary for me to go, then I will go. Otherwise, I prefer not to. If it is the case, please let me know at what time I have to go. Thank you.

88. Mr Cuthbert then responded:

"Hi Lusua. I understand these things are never nice. I would like at least a chat if you are able. Doesn't have to be formal and certainly nothing for you to worry about. Its purely insight. Ill leave you to discuss with Tracey at your regular connects, no rush and when you

are fit and able to come back in we can catch up then. Hope you are feeling better.

Thanks Gareth”

89. The Claimant responded to Mr Cuthbert:

“Hello Gareth, thank you for your understanding. I’m getting better and I hope to be able to go back to work soon and have the chat with you. Best Regards. Luisa”

90. On 18 August 2022, the Claimant emailed Miss Condon. Regarding Mr Cuthbert’s investigation, she said this [439]:

“As I told you that day when I exposed everything that was happening with Ruksana, I did not make any formal complaint to HR about the treatment and discrimination that I was suffering because all this affects my mental health and I hope I do not have to go through that process. For that reason, I don't feel ready to talk to Gareth or participate in any investigation yet.”

91. The Claimant’s August pay was paid on 31 August 2022, at the rate of £13.50 per hour [446]. The Claimant emailed Miss Condon and Mr Cuthbert on 6 September 2022 to inform them that her pay had not changed, and that he was still feeling that that was discrimination (although she did not say in terms that she felt she was being discriminated against based on her nationality) [444]. She also explained that she had not yet had confirmation that her contract had been changed to full time hours from August, as it was supposed to have been.

92. Miss Condon replied around half an hour later. She said this:

“I have followed up with HR who need to sign off on form. I was not aware that you were moving to full time in august so have not done anything on this.

I do not understand why the pay rate has not changed and will follow up with admin tomorrow.”

93. The Claimant responded to explain that her original agreement with Ruksana was that she would work full time from August. She indicated that she was surprised that Miss Condon was not aware. She asked for clarification about the points she had raised about her pay. Miss Condon emailed the Claimant again on 7 September 2022. She said this [448]:

“Hi Luisa,

With such a large team on site I cannot remember every detail re team members but rely on managers to run there departments and update me as required with what is there focus. I probably was told when you started that you would go full time in august but not kept that as a detail I would need to know/action in future. Having picked

up community in the absence of Ruksana I am doing my best to resolve situations as I am made aware.

The rate for a full time Community is £30k and this is £14.42 per hour which is what your pay has changed to per hour. This was changed but was not processed before cut off , and will be backdated and come as part of your September pay.

As managers we follow our knowledge and experience we have with managing team , and when we get asked a question that may not be simple we have to seek advice hence we ask HR for guidance which can delay a response. Hence I cannot confirm your sick pay question, but we follow terms and conditions.

Hopefully I can update you before end of week.

Tracey”

94. On 9 September 2022, Miss Condon wrote the Claimant as follows [450]:

“Following my conversation with HR I can confirm as of 1st August you will move to a banded contract, on full time hours and that will mean change to T & C. Sickness entitlement will change and upto 1 month will be paid within the 1st year.

Salary will be as discussed in previous email and once people centre complete paperwork they will ensure all monies owed will be included as part of the September pay. Letters/contract will be generated by them and sent to you for signature and return.

Apologies that this has taken longer than expected but I wanted to be sure to give you the right information.

If you need anything else please ask, have a nice weekend”

95. On 16 September 2022, Claire Morrice emailed Miss Condon to inform her that she had been assured by People Centre that the requisite changes had been put in place, and that the Claimant’s sick pay with effect from 1 September 2022 would be paid at the new rate [504].

96. On 29 September 2022, when the Claimant’s September payslip was available, Miss Condon emailed People Centre as follows [503]:

“Looks like the changes to Luisa Roldan 10208915 contract etc have not been actioned in time for this month despite assurance this would happen.

I have attached a copy of the pay slip

We were expecting as of 1st Aug to be full time, moving to banded would have changed her sickness allowance.

Can this be looked into as a matter of urgency and a back payment started for the additional monies?

Any questions let me know”

97. This was a reference to the fact that, having moved to a banded contract, the Claimant would be entitled to one month's sick pay.
98. On 3 October 2022, the Claimant emailed Miss Condon. She queried the pay she had received for September, and asked Miss Condon to take the matter up with HR. She informed Miss Condon that she had contacted People Centre herself to report the issues. She did not make a separate complaint about her treatment by Ms Begum within that email [457].
99. What the Claimant had in fact done on 3 October 2022 was to raise a concern with the Respondent's Speak Up service. The Respondent's Speak Up service is a corporate ethics line, run by an outsourced company called Convercent. The Claimant's evidence was that she had telephoned a number she had understood to be the number for People Centre. The notes of the call taken by Convercent were in evidence before the Tribunal – they said this:

Language: English

Interpreter: No

Everything started on February 2022 a month after being hired.

My colleague working in the same position started to misbehave with me and be verbally aggressive.

I reported to my manager not feeling safe and feeling uncomfortable at work but I was blamed for being too emotional and that I need to deal with it by myself. When I spoke up to my manager she extended my probation period and froze my salary. I passed my probation period in June instead of April.

The agreement was to work part-time being also a University student, but she never told me what would be my salary or benefits, later I found out my colleague is paid a higher salary per hour, which is discrimination in the UK. I reported this issue to my first manager but also no reply.

This stress caused me to get paralyzed and they took me in an ambulance from work.

I am on sick leave since the 29th of July, I sent a lot of emails one week after the accident but no reply from them or just postponing my request.

Around the 20th of September, they called me to inform me that they can pay me the same amount as my colleague starting from June and one-month sick leave for August - I also have an email with this agreement, but I was paid only 1400 GBP which is way less than it should be.

I request to be paid the full sick leave not only for August

My question is if I am entitled to my salaries since July and the compensation for my recovery period since I am not able to go back to work due to the brain damage caused by bad management.

This issue affected my life a lot as an employee and as a student and I need to know if human resources will support me during my recovery period.”

100. A little later that evening, Mrs Morrice emailed People Centre as follows [502]:

“Further to the e-mail below, this change of contract was committed to before the employee went off sick therefore the Manager wants to honour the change.

Please can this be actioned effective from 1st August as per the original request.

As we were assured on calling People Centre that this would be actioned for September salary this has also been committed to the employee and the employee was expecting sick pay as per her new terms and conditions. **The employee is experiencing financial hardship by not receiving this sick pay that was committed to her therefore her Manager would like an advance to be approved for the employee.**

The request for an advance has been approved by the HR Director, Duncan Palmer as well as myself.

Please can you advise how soon the employee will receive this money?”

101. Miss Condon replied to the Claimant’s email as follows [456]:

“People Centre assured myself and Claire before our holidays that this was all sorted and they had everything they needed. There was obvious a issue that was not communicated to us and when this was spotted we flagged this and requested immediate solution. We are now waiting for a confirm of a 2nd BACS payment, As soon as I have this date will share, it should be this week.

I have cc Claire Morrice our HR contact who has been involved the hole way through.”

102. The Claimant replied to Miss Condon to explained that she had not received a further payment. Miss Condon emailed Gareth Cuthbert and Claire Morrice to ask what the problem was [461]. Mrs Morrice informed Miss Condon that she had already chased twice, and that she would call People Centre on the following Monday and ask them to escalate it as a complaint if it could not be resolved that day [461].

103. Miss Condon and Mrs Morrice continued to follow the matter up. On 7 October 2022, Mrs Morrice emailed People Centre asking for her email to be actioned urgently.

104. On 14 October 2022, Miss Condon emailed the Claimant as follows:
- “Thank you for below , and I will respond in more detail later in more detail.
We were expecting your payment to be sorted by now and have been work with People Change on the delay , as soon as I have a update will let you know. I know this is not how it should be and we are all working to get this resolved asap.”
105. On 17 October 2022, the Claimant was sent a copy of her new contract of employment, which was a banded contract for 40 hours per week, with a salary of £30,000 per annum [472]. The contract provided that between 3 months and one years service, she would receive 4 weeks full sick pay. Her contractual notice period was four weeks on either side (or statutory minimum if greater).
106. The Claimant’s evidence was that she did not receive the contract.
107. On 21 October 2022, Mrs Morrice emailed People Centre asking for an update on the payment to the Claimant of her back pay (which was supposed to have been made by way of a BACS payment between the normal payroll runs) [501]. Payroll responded on 24 October 2022 that an advance could not be made, and the payment had been run in October’s pay.
108. On 27 October 2022, the Claimant emailed Mrs Morrice, Miss Condon and Mr Cuthbert as follows [507]:
- “I hope that you are well. I have been trying to be patient but I can’t wait longer. At least I need to know how HR is handling this situation because this is worrying me too much.
- I hope you can give me an update about all the points that have raised in all my previous emails and the complaint that I raised through People Centre about the discrimination I suffered from Ruksana, her abuse of power and the stress she caused to me, because I haven’t heard from them. “
109. Mrs Morrice’s evidence was that she asked People Centre, who told her that the Claimant had not spoken to them on 3 October 2022. In cross-examination she explained that she had first spoken to a People Centre Adviser, then when she did not receive a satisfactory response she had spoken to an Employee Relations adviser within the team who she knew to be very thorough. Her evidence was that she then spoke to the Employee Relations Manager. Each of them informed her that there was no record of a call from the Claimant on 3 October 2022, and indeed that People Centre would not take a grievance from an employee verbally over the telephone.
110. On 28 October 2022, Mrs Morrice emailed the Claimant as follows [518]:

“People Centre have now corrected your sick pay entitlement to your entitlement for your new contract so that your pay is correct this month and you receive the back-dated pay correction.

A change is not normally made to someone’s sick pay entitlement while they are off sick, but as Tracey had requested the contractual change prior you going off she challenged this with People Centre for you and requested that they proceed with the change to your terms and conditions.

Apologies that it took people centre so long to process the change but Tracey and chased them regularly and made them aware of the urgency of your situation.

If you wish your complaint about Ruksana to be treated as a formal grievance then Tracey will arrange for you to be invited to a formal meeting so that your grievance this can be heard.”

111. The Claimant was back paid the higher salary (of £14.42 per hour) to 6 June 2022. Her new sick pay entitlement on the banded contract was back-paid in line with her increase to full-time hours.

112. On 10 November 2022 the Claimant emailed Mrs Morrice [517]. She explained that she did not understand her pay, and would like some clarification of what she had been paid. She also indicated that she did not consider that she needed to go through her grievance about Ms Begum, as she had already explained it to Miss Condon again.

113. Mrs Morrice responded on 14 November 2022 [516]:

“I am sorry to hear that you are still unwell and we would like to make sure that you are properly supported. We are aware that you became unwell at work and feel that things that were happening at work were the cause of this.

You have alleged that your Manager, Ruksana discrimination against you and abused her power and that this caused you stress and that you have tolerated things that are not fair and not right. These are very serious allegation and we would like to formally investigate it but you have not provided details as to what specifically she did that you consider to have been abuse of her power and discriminate against you and what specifically what was not ‘right or fair’.

The meeting you had with Tracey Condon was an informal meeting and Tracey does not have information from this to be able to investigate the allegations. Tracey did not take any notes as this was an informal conversation.

Gareth Cuthbert asked to speak to you about your allegations but you declined. I fully understand that this may have been because of your health.

As an alternative to attending a formal meeting regarding your grievance you could provide a written submission but we would need the following details.

What specifically did Ruksana say or do that you considered to be discrimination? When did she do this? Are there any witnesses and if so who?

What specifically did Ruksana say or do that you considered to be an abuse of power? When did she do this? Are there any witnesses and if so who?

What specifically happened that was not right or fair? When did this happen? Are there any witnesses and if so who?

Please can you also provide full and specific details of any other allegation that you would like formally investigated.

We certainly don't want to put any pressure on you and would not expect you to do anything that impacts your health, but we do need to make sure that you are aware that without you attending a formal grievance hearing or providing full details of your allegation in writing we are not able to investigate your allegations properly or to take any action that may be required.

Occupational health referral

We would like you to participate in a conference call with occupational health to allow us to get an understanding of how long you are likely to be off work and what we can do to support you. When would you be available to do this?

Salary and sick pay

I need to clarify that despite the fact that you feel that stress and work caused your illness we will not be in a position to pay you any more sick pay than what you are contractually entitled to. As per your new contract which is attached you are entitled to 4 weeks full pay and then statutory sick pay which is paid at a rate of £99.35 per week.

On your previous contract you would have only been entitled to the statutory sick pay.

114. A copy of the Claimant's updated contract was attached to that email. The Claimant's evidence was that she did not read the email at the time, as she was very unwell during that period and often unable to look at her laptop.

115. On 30 November 2021, Mrs Morrice emailed the Claimant. She explained that the Respondent would like to refer the Claimant to

Occupational Health, and asked the Claimant when would be suitable for an appointment to be booked [529]. The Claimant's evidence was that she did not respond because she did not understand the purpose of the Occupational Health referral, because she did not feel that it had been adequately explained to her.

116. On the same day, Miss Condon also emailed the Claimant explaining that she would like to catch up about referring the Claimant to Occupational Health. She also forwarded some information she had received from payroll about the Claimant's pay [531].
117. On 30 January 2022, Miss Condon emailed the Claimant. She explained that she had tried to telephone the Claimant without success, and asked the Claimant to keep in contact with her. She also explained that, as the Claimant had been off sick for 6 months, she would be referred to Occupational Health [539].
118. The Claimant was then referred to Occupational Health. She also agreed to attend a grievance meeting with her Trade Union representative. In the event, her Trade Union was unable to assist her.
119. The Claimant was assessed by Occupational Health on 14 February 2022. The report set out the background. It then said this [557]:

"I am happy that with the right support and guidance she will make a good recovery, but this is likely to take longer if a return to her current role is planned.

She has now been off work for 7 months and it is likely that it will be several more months before she regains the psychological resilience necessary to return to work in her previous role.

We would be more than happy to support her in this and help to guide her back towards good health, but it may be that a more pragmatic approach would be a consideration of mutually agreeing a termination of contract on the basis of ill health, if this is an avenue that is available. Ms Roldan is happy to discuss this as an option.

If this is an avenue you would like to explore then it should be remembered that she remains psychologically vulnerable and I would recommend that the process is handled very carefully.

Initial correspondence should be by email as much as possible, rather than by phone, to ensure that misunderstandings are minimised and to allow her time to compose a response.

If she feels well enough to do so, then face to face or video meetings could be arranged. If the meetings are face to face I would recommend that they are carried out at a mutually acceptable location, away from her place of work.

Meetings, whether face to face or virtual, should be conducted in a non-confrontational manner and kept to a maximum of 1 hour with a break of at least 30 minutes before continuing. She should be able to pause or stop the meeting at any stage if she feels uncomfortable.

The process should not be unduly drawn out, but equally the pace should also not be so rapid that she feels overwhelmed or unable to comprehensively respond in the time allowed.”

If the decision is made for her employment to continue, then I would recommend that we review her in three weeks and we can continue to give her advice regarding her health and help to advise her on how to source suitable help.”

120. On 27 February 2023, following receipt of the Occupational Health report, Mrs Morrice emailed the Claimant. She explained that the Claimant’s notice pay entitlement would be four weeks, but that they would prefer to support her to return to work if that was what she wanted. She also explained that she was waiting for the Claimant’s Trade Union representative’s availability in order to organise a grievance meeting [567].

121. The Claimant responded that she needed to terminate her relationship with the Respondent [566]. She explained that she wanted to be paid for all of her sickness absence. Mrs Morrice responded. She indicated that she was very sad that the Claimant did not feel able to return, but that the Respondent could not pay her more than her sick pay entitlement. She explained that the Claimant’s grievance could be investigated even though she was leaving the company. She also explained that as the Claimant was unfit to work, she could be paid in lieu for her one month’s notice. There was a further exchange of emails, during which Mrs Morrice said this:

“Further to our conversation today, please can you confirm whether or not I should process your resignation?
As discussed we can still address your grievance even if we process you resignation if you are sure it is not viable for you to return even to a different role.”

122. That was the first time there had been reference to the possibility of the Claimant moving to a different role. In the event, the Claimant did progress with her resignation. She was paid four weeks’ pay in lieu of notice.

123. In the interim, on 18 October 2022 Ms Swabey-Roberts resigned from her employment with the Respondent [490]. Within her resignation letter, she set out a number of issues which had led to her decision, including:

“- Being told constantly I was hired for my 'personality' and that I did not have the skills for this position

- Appearance being constantly insulted (You look tired, standards need to be higher, need to be neater)
[...]
- When being given 'feedback' that has upset me told I am not allowed to discuss this with anyone
- My conversations with people being monitored; Speaking with Gabor and told it makes Ruksana uncomfortable, questioned why I am speaking to Janet
[...]
- Intimidated constantly by the threat of HR and End of probation.”

124. Ms Swabey-Harrison’s resignation letter was treated as a grievance. She was invited to a grievance meeting to discuss it.

125. Although Ms Swabey-Harrison did not give evidence before the Tribunal, she did provide a statement to the Claimant (via WhatsApp). It was dated Monday 10 June 2024. It said this (we bear in mind of course that as Ms Swabey-Harrison did not give evidence, her statement was not tested by way of cross-examination):

“My statement of my time with at Sodexo,

My name is Morigan Swabey-Harrison and I was with sodexo roughly from the month of June 2022 - October 2022. During my time with sodexo I found it to be stressful, non positive and overall not a pleasant experience due to my manager Ruksana. Who constantly put me down, emotional discouraged me and was constantly rude and degrading.

I often bring this up to further management who were in the process of discussing it to be officially reported but I left before this happened as I just couldn't take it anymore.

One working day which was rather bad was when Luisa discovered she was being paid less than I was. When I joined sodexo my job add stated a salary between £28k-£30k, Ruksana explained to me she would give me £30k due to my experience before. The start of that day we jumped on a community group call with myself, Luisa and Ruksana where she said what she wants us to do for the day. I then jumped off the call as Ruksana wished to speak with Luisa. When I next saw Luisa she was upset and asked if she could talk to me about my salary. At the time I was concerned as I did not know if this was something we were allowed to do. Luisa mentioned the job advert and asked about the bracket of salary which was £28k-£30k I believe. I stated I was on the higher end of that scale as Ruksana had stated this was due to my experience. I was unaware I was being paid significantly more than Luisa. After this Luisa left the desk to go discuss this with either Tracey or Gareth who were higher up managers from Ruksana. When she returned she still seemed rather upset and had another one to one call with Ruksana. After this she

was extremely stressed and her health started to deteriorate rather rapidly until she could barely move or speak, I stayed with her as long as I could until I knew I had to find someone to call us an ambulance which fellow sodexo members did. I went to the hospital with Luisa and Ruksana was texting me asking me to keep her update which I did. I stayed at the hospital until luisa family came and then I went back to the office to get my things and go home.

The following day Luisa was understandable not at work. Ruksana and I had a call first thing in the morning as she was working from home and she started off the call explaining to me how I could be at fault for luisa stress and her ending up in hospital because I told her about my salary. I explained this was not the case and how it was all still on the job advert and with a quick search she could find it.

Over my the last few weeks after this incident my relationship with Ruksana declined significantly. I ended several one to one meetings with her where she had threatened my job role numerous times and made unprofessional comments about my character. I was always accused of recording meetings (because my Apple Watch lit up from a message) and she constantly attempted to make me feel guilty about this even though it was not true.

I do believe luisa was treated unfairly and I do believe as a team we were treated poorly and horribly by Ruksana herself.”

126. The Claimant’s evidence was that during her employment, Ms Begum told her that it would not be appropriate for her (the Claimant) to go out for drinks with colleagues in other departments. This was apparently because of Ms Begum’s poor relationship with other managers and teams in the Respondent. The Claimant’s evidence was that Ms Swabey-Harrison did go out for drinks with other colleagues, although the Claimant was unable to say how Ms Begum reacted to that.

127. The Claimant’s evidence was that she believed that Ms Begum treated her differently in that she took advantage of naivety on the part of the Claimant. Her case was that as a Spanish national, whose immediate support circle were Columbian/Spanish, she lacked knowledge of British workplace norms, and that that made her particularly vulnerable. In her closing submissions she went a little further than her evidence, stating that she had never heard the word “grievance” before she filed her complaint against Mr Hassan. Her case was that Ms Begum took advantage of that vulnerability in the way that she treated her.

128. Ms Begum was dismissed by the Respondent in August or September 2023. The Respondent’s closing submissions gave the date as August 2022. We are satisfied that that was a typographical error, because the date that was put to the Claimant in cross-examination was September 2023.

129. The claimant notified ACAS under the early conciliation process of a potential claim on 22 March 2023 and the ACAS Early Conciliation Certificate was issued on 3 May 2023. The claim was presented on 1 June 2023.

Law

130. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee:

- 130.1. In the terms of employment;
- 130.2. In the provision of opportunities for promotion, training, or other benefits;
- 130.3. By dismissing the employee;
- 130.4. By subjecting the employee to any other detriment.

131. In order to be subjected to a detriment, an employee must reasonably understand that they had been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11).

Protected characteristics

132. Race is a protected characteristic (section 9 Equality Act 2010)

Direct discrimination

133. The definition of direct discrimination is contained in section 13(1) of the Equality Act 2010:

“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

134. The comparison may be to an actual or a hypothetical comparator. In either case, there must be no material difference between the circumstances relating to each case (s.23(1)). That is, the comparator must be in the same position in all material respects save only that he or she is not a member of the protected class (*Shamoon v Chief Constable of the RUC* [2003] ICR 337).

135. Where considering the treatment of a claimant compared to that of a hypothetical comparator, the Tribunal may draw inferences from the treatment of other people whose circumstances are not sufficiently similar for them to be treated as an actual comparator (*Chief Constable of West Yorkshire Police v Vento* [2001] IRLR 124). Tribunals may not, however, draw an inference of discrimination from the mere fact that the employee has been treated unreasonably (*Bahl v Law Society* [2003] IRLR 640).

136. In considering whether a claimant was treated less favourably because of a protected characteristic, the tribunal generally have to look at

the “mental processes” of the alleged discriminator (*Nagarajan v London Regional Transport* [1999] IRLR 572). The protected characteristic need not be the only reason for the less favourable treatment. However the decision in question must be significantly (that is, more than trivially) influenced by the protected characteristic.

Discriminatory constructive dismissal

137. Section 39(2)(b) of the Equality Act 2010 provides that an employee is dismissed if the employee terminates the contract under which he is employed in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.

138. Guidance was given by the Court of Appeal in the case of *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 211:

“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.”

139. A constructive dismissal may be founded on the breach of an express term or an implied term. There is implied into all contracts of employment a duty of mutual trust and confidence. That duty was described by the House of Lords in the case of *Malik and Mahmud v BCCI* [1997] ICR 606 as being an obligation that the employer must not:

“Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

The test is an objective one.

140. The employer does not have to act unreasonably in order to be in repudiatory breach of contract. In the words of Sedley LJ in the case of *Buckland v Bournemouth University* [2010] EWCA Civ 121:

“It is nevertheless arguable, I would accept, that reasonableness is one of the tools in the employment tribunal’s factual analysis kit for deciding whether there has been a fundamental breach. There are likely to be cases in which it is useful. But it cannot be a legal requirement. Take the simplest and commonest of fundamental breaches on an employer’s part, a failure to pay wages. If the failure is due, as it not infrequently is, to a major customer defaulting on payment, not paying the staff’s wages is arguably the most, indeed the only, reasonable response to the situation. But to hold that it is not a fundamental breach would drive a coach and four through the

law of contract, of which this aspect of employment law is an integral part.”

141. A breach may be made up of a sequence of events which meet the test cumulatively, even if none of those events would have done so individually. In such a case, the employee may rely on a “last straw” which does not in itself have to be so serious as to constitute a repudiatory breach (*Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978). However, the last straw must not be entirely innocuous or trivial.
142. In order to succeed in a claim of constructive dismissal, the employee must resign in response to the breach. However, the breach need not be the only reason for the resignation (*Wright v North Ayrshire Council* [2014] IRLR 4).
143. If after a breach of contract the employee behaves in a way that shows he or she intends the contract to continue, they will have affirmed the contract. Once the contract has been affirmed, the breach is waived and the employee can no longer rely on it to found a claim of constructive dismissal unless there is a last straw which adds something new and revives the earlier issues.
144. In order for a constructive dismissal to be discriminatory, the conduct relied upon as leading to the fundamental breach of contract must itself be discriminatory.

Burden of proof

145. Section 136 of the Equality Act deals with the burden of proof:
- “(2) If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene that provision”
146. Section 136 of the Equality Act prescribes a two-stage process. At the first stage, there must be primary facts from which the tribunal could decide, in the absence of any other explanation, the discrimination took place. All that is required to shift the burden of proof is at primary facts from which “a reasonable tribunal could properly conclude” on balance of probabilities that there was discrimination. It must, however, be something more than merely a difference in protected characteristic and the difference in treatment (*Madarassy v Nomura International PLC* [2007] EWCA Civ 33).
147. The burden of proof at that stage is on the Claimant (*Royal Mail Group v Efofi* [2021] UKSC 22). The employer’s explanation is disregarded.

148. If the claimant satisfies that initial burden, the burden shifts to the employer at stage two to prove on a balance of probabilities that the treatment was not for the proscribed reason.

Unauthorised deduction from wages

149. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

150. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

Holiday pay

151. Regulation 13 of the Working Time Regulations 1998 provides that workers are entitled to four weeks of paid annual leave per year. Regulation 13A provides for an additional entitlement of 1.6 weeks of paid annual leave per year.

152. For the purpose of both regulations 13 and 13A, the leave year starts on the anniversary of the first day of the worker's employment, unless a relevant agreement provides otherwise.

153. Regulation 14 applies where a worker's employment terminates during the course of his leave year. Regulation 14(2) provides that, where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave. The method for calculating the payment is set out in regulation 14(3).

154. Regulation 16 sets out the calculation of the payment due in respect of a period of leave. It provides that a week's pay is calculated in accordance with the provisions in sections 221-224 Employment Rights Act 1996, with some modifications. There is no statutory cap on a week's pay for this purpose.

Breach of contract

155. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that Employment Tribunals have jurisdiction to consider certain complaints of breach of contract. The Tribunal only has jurisdiction where the claim is brought by an employee, and where the claim arises or is outstanding on the termination of the employee's employment.
156. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of termination. This must not be less than the statutory minimum period of notice set out in section 86 ERA. For someone who has been employed at least one month but less than two years, this is one week's notice.
157. An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. This will be the case if the employee commits an act of gross misconduct. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.
158. A claim of breach of contract must be presented within 3 months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation) unless it was not reasonable practicable to do so, in which case it must be submitted within what the Tribunal considers to be a reasonable period thereafter.

Statement of Employment Particulars

159. Where a Tribunal finds in favour of an employee in a complaint set out in the Schedule 5 to the Employment Act 2002, and the Tribunal finds that the employer has failed to provide the employee with a written statement of employment particulars, the Tribunal must award the employee an additional two weeks' pay, unless there are exceptional circumstances which would make that unjust or inequitable. The Tribunal may, if it considers it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay.

Conclusions

160. We start by making two overarching findings which are relevant to the reason why the Claimant claims that she was discriminated against.
161. The first relates to the Claimant's evidence that she was vulnerable, or at a disadvantage, as a Spanish/Columbian national, and that Ms Begum (effectively) took advantage of that. We accept that the Claimant felt that she was at a disadvantage in that way.
162. The Claimant's evidence was that her English had improved significantly since the time of the event at the heart of these proceedings. We are careful to draw no inference from the standard of the Claimant's

English during the hearing before us. But the quality of the Claimant's written English in the contemporaneous documents was very good, and at the time of the events this claim is about she was nearing the end of a degree which had been taught in English.

163. The Claimant's degree was in Business Management, and it included a module in HR management. We infer from that that she had at least some knowledge of how businesses and workplaces operate. We infer also that she had the experience of researching and collating information that one would expect of someone who was undertaking an undergraduate degree.

164. We bear in mind that the Claimant's support network were largely Spanish and/or Columbian. Set against that, there were WhatsApp messages in the bundle which demonstrated that she had quickly formed good relationships within the workplace while working for the Respondent.

165. Overall, we do not consider that the Claimant was particularly vulnerable in the workplace by reason of her nationality.

166. The complaints raised by Morrigan Swabey-Harrison in her resignation letter (and in the WhatsApp statement) strongly suggested that the way Ms Begum treated her was not dissimilar to the way she treated the Claimant. In her resignation letter, Ms Swabey-Harrison referred to her interactions with colleagues outside the Community team being monitored and actively discouraged by Ms Begum. And in the her WhatsApp statement she descried the whole team (that is, both herself and the Claimant) as having been treated "poorly and horribly" by Ms Begum.

167. The Respondent had broader issues with Ms Begum's management. She was placed on a Performance Improvement Plan, and subsequently dismissed.

168. We infer from all of that that Ms Begum did not single the Claimant out for poor treatment because she perceived her to be particularly vulnerable as a non-British national. On the evidence as a whole, we find that Ms Begum's management style was consistent, in that her treatment of the Claimant was broadly similar to her treatment of Ms Swabey-Harrison.

169. The second overarching finding relates to the allegation that Ms Begum told Ms Swabey-Harrison that while the Claimant's English was good, due to the environment they were working in she preferred someone from the UK. On balance of probabilities, based on the evidence before us, we do not find that Ms Begum made any such comment to Ms Swabey-Harrison. We reach that conclusion for the following reasons:

169.1. We have not heard direct evidence from either Ms Swabey-Harrison or from Ms Begum. At best, therefore, this was third-hand.

169.2. Ms Begum hired the Claimant.

169.3. Ms Swabey-Harrison did not mention it in the statement she made for the Claimant via WhatsApp.

- 169.4. There was no contemporaneous record of the Claimant mentioning it to her family within the WhatsApp messages in evidence before us. Given the level of detail the Claimant put into those messages, that is surprising.
- 169.5. Nor was it recorded in notes of the Claimant's call to the Speak Up ethics line. If the Claimant had mentioned it to them we consider it implausible that they would not have recorded it. It was a serious allegation, and the purpose of the Speak Up line was to record serious disclosures made about the Respondent. If it had been mentioned to them, we consider that it would have been recorded. So we find that the Claimant did not make that allegation to the Speak Up hotline.
- 169.6. The comment was alleged to have been relayed to the Claimant on a day on which the Claimant was very upset, and on her own evidence she was (by later that day) struggling to concentrate on what she was being told.

Direct discrimination

170. The Claimant relies upon twelve allegations of direct race discrimination:

4.2.1. Did the claimant's manager, Ms Begum, take no action when the claimant complained to her in February 2022 that her colleague, Mr Hassan, had behaved aggressively to her, had started talking about strange things, and had made her feel unsafe? Comparator relied on: hypothetical comparator.

171. It is important to look at the chronology of the Claimant's concerns about Mr Hassan. We accept that the Claimant did raise some concerns informally with Ms Begum in February 2022. She then made a written complaint on 2 March 2022. That complaint did not refer to Mr Hassan behaving aggressively for making her feel unsafe. She said in her probationary review meeting on 9 March 2022 that the situation had improved; so it could not be said that Ms Begum had taken no action.
172. The first reference the Claimant made to Mr Hassan behaving aggressively towards her and to her feeling unsafe was in her email of 9 March 2022. That was the first time she referred in terms to feeling unsafe and to Mr Hassan being aggressive. That was treated as a grievance by Ms Begum. Ms Begum investigated it and found it to be upheld.
173. We find that the 9 March 2022 was the Claimant's first reference to Mr Hassan behaving aggressively towards her and making her feel unsafe. If the Claimant had complained about Mr Hassan doing those things prior to 2 March 2022, we consider that she would have reiterated it in the email of that date. Her complaints about Mr Hassan prior to 9 March 2022 were of a different and much less serious nature.
174. Strictly speaking, therefore, the allegation was not made out, since it was that no action was taken in respect of a complaint in February 2022.

Construing the allegation more broadly, we do not in any event think it could fairly be said that Ms Begum ignored the Claimant's complaints about Mr Hassan. When the Claimant complained about Mr Hassan, Ms Begum dealt with the matter; the situation improved. When the situation worsened again, and the Claimant complained again, Ms Begum investigated it as a grievance. She upheld the grievance.

175. In any event, the Claimant's own evidence was that the reason Ms Begum took no action was that she was too focused on the Shell executives. We would therefore have found, to the extent that the complaints were not dealt with as quickly as they ought to have been, that was not because of the Claimant's race. There was nothing to link it to the Claimant's race. We would have found that it was because Ms Begum was overly focused on the service she and her team were providing to their client, rather than on the interpersonal dynamics within her team.

176. It follows that this allegations fails.

4.2.2. Did Ms Begum incorrectly follow the procedure for a grievance meeting when arranging and conducting the meeting held to discuss the end of the claimant's initial probationary period? Comparator relied on: hypothetical comparator.

177. This appeared to be based on a comment that the Claimant said that Miss Condon made during their meeting on 29 July 2022. We cannot see any reason why the probationary review meeting should have followed the procedure for a grievance meeting. It was not a grievance meeting. It was a probationary review meeting.

178. It follows that this allegation is not made out on the facts, and it fails.

4.2.3. Did Ms Begum punish the claimant for raising a grievance about Mr Hassan's behaviour to her on or around 9 March 2022 by extending the claimant's probationary period and freezing her pay? Comparator relied on: hypothetical comparator.

179. Ms Begum did extend the Claimant's probationary period. The effect of extending her probationary period was that her pay remained frozen (in that under her original contract of employment, her pay would rise by 50p per hour when she completed her probationary period).

180. We can see no evidence that the extension of the Claimant's probationary period was done in order to "punish" her for raising a grievance. The contemporaneous records demonstrate that the probationary period was extended because she had not been performing to her capability because of the ongoing difficulties she had with Mr Hassan. That is, it was not done to punish her because she raised a grievance. Rather, it was done because she had not reached the standard expected of her, albeit that the reason for her not doing so was because of her difficult relationship with Mr Hassan.

181. We do have considerable sympathy for the position the Claimant found herself in. Her probationary period was extended (with the consequent lack of uplift to her pay) because she had found herself unable to perform to her potential as a result of the difficulties she had had with a colleague; difficulties which Ms Begum herself had concluded were not of the Claimant's making. But that was not "punishing" her for raising a grievance. There was nothing to suggest that her performance would have been any better had she not raised a grievance.

182. So in that respect, the allegation is not made out.

183. In any event, we can see no evidence to suggest that the extension of the Claimant's probation was in any way related to her race. It was because in Ms Begum's view, however harshly, the Claimant had not reached the standard required of her. It was also apparent from that Ms Begum applied a high threshold to the probationary process, since Ms Swabey-Harrison's probationary period was also extended (as was Mr Hassan's). Nor, for the same reason, is there anything to suggest that a hypothetical British employee in the Claimant's position would have been treated any differently.

184. It follows that the allegation fails.

4.2.4. Did Ms Begum "abuse her power" and "control and manipulate the claimant" by:

4.2.4.1. Telling her she could not go to birthday parties or any parties with her colleagues from other departments after work?

185. The Claimant's own evidence was that Ms Begum told her that it would not be appropriate for her to go. That is, that she was told she shouldn't go rather than that she couldn't go. We find that that happened. It is broadly consistent with the type of instruction of which Ms Swabey-Harrison complained in her resignation letter. It is also consistent with the evidence about the way Ms Begum spoke to the Claimant about her own insecurity about her role within the Respondent.

186. For the same reason, however, we can see nothing to suggest that it was done because of the Claimant's race. Rather, it was done because of a degree of insecurity on the part of Ms Begum about what her staff would say if they socialised and interacted freely with colleagues in other teams. Nor can we see any evidence to suggest that a British employee would have been treated any differently. Ms Swabey-Harrison was, according to her resignation letter, subject to similar instructions.

187. It follows that the allegation fails.

4.2.4.2. Telling her in around June 2022 to email the Site Director, Mr Gareth Cuthbert, to complain about other managers on site in relation to how they had changed their behaviour towards the claimant and how they had been rude and

interfered with the setting up of the Pride event, when the claimant did not wish to make any such complaint. Comparator relied on: hypothetical comparator.

188. As set out in the list of issues, this allegation is not made out on the facts. The Claimant did not email Mr Cuthbert. What the Claimant was asked to do, and did, was drafted an email which she sent to Ms Begum, on the understanding that Ms Begum would forward it to a senior manager or senior managers.

189. We consider that any employee in the Claimant's position would have been asked to send that email. At the point that the email was sent, Mr Hassan had been dismissed and Ms Swabey-Harrison had only been in post for two weeks. There was no evidence before us regarding whether Ms Swabey-Harrison was asked to send a similar email, or whether she did so; But in any event she would not have been in the same position as the Claimant given her short service at that time.

190. We find that the request was again triggered Ms Begum's insecurity about her own position in the Respondent's organisation. We can see nothing at all to suggest that it was because of the Claimant's race.

191. It follows again that this allegation fails.

4.2.5. Did Ms Begum from 6 June 2022 when the claimant passed her probationary period fail to arrange for her to be paid the correct rate of pay but rather permit her to be paid at a lower rate than a new employee, Ms Swabey-Harrison? Comparator relied on: Ms Swabey-Harrison.

192. We consider that there are two parts to this allegation.

193. The Claimant's contract entitled her to be paid £13.50 per hour once she passed her probation. Ms Begum did ensure that her pay was increased (albeit that it took a month to be actioned, so that the increase did not take effect until her July pay with back pay also being paid in that month). So we consider that the first part of the allegation was not made out on the facts. Ms Begum did arrange for the change to be made once the Claimant passed her probation.

194. The second part of the allegation is that Ms Begum permitted the Claimant to be paid less than Ms Swabey-Harrison for doing the same job. We find that Ms Begum did start taking steps to try to arrange for the Claimant to be moved onto the new role of Community Experience Host, with the associated pay increase. We find that she had started doing so before 21 June 2022, because the email from People Centre must have been a response to an email from Ms Begum asking how to effect the change. Importantly, that was before the Claimant complained that she was being paid less than Ms Swabey-Harrison.

195. Ms Begum did not move as swiftly as might have been expected to action the change. It took her another month to fill the requisite forms out

and send them to Mrs Morrice. After Ms Begum went on sick leave, Miss Condon (and more so Mrs Morrice) did make diligent efforts to resolve the situation, in the face of what could only be described as lamentable delays on the part of the Respondent's People Centre and payroll functions. When the change in pay was eventually actioned, the Claimant was given back pay back to 6 June 2021. But it could not be said that Ms Begum, or the Respondent more generally, permitted the Claimant to be paid at a lower rate of pay than Ms Swabey-Harrison.

196. For those reasons, we find that the allegation is not made out on the facts.

197. Even if we had found that the allegation was made out on the facts, Ms Swabey-Harrison would not have been an apt comparator. She was not in materially the same circumstances as the Claimant. The Claimant had started out as a Community Associate, on a front line contract. Consequently, her contract had to be changed to that of a banded contract. That is an important difference between her situation and that of Ms Swabey-Harrison.

198. We can see absolutely nothing to suggest that a comparable employee in the Claimant's position, but who was British, would have been treated any differently. The reason it took longer than it ought to have for the Claimant's pay to be increased was a combination of the Respondent's bureaucratic processes, and a series of significant delays on the part of the Respondent's central functions. It was nothing to do with the Claimant's race.

199. It follows the allegation fails.

4.2.6. Did Ms Begum fail to provide the claimant with a new contract of employment following her completing her probationary period? Comparator relied on: Ms Swabey-Harrison.

200. The Claimant did not require a new contract on completing her probation period. Her initial frontline contract provided that her pay would increase automatically when she completed her probationary period. So there was no need for a new contract to be issued. Ms Begum could not be said to have failed to issue a new contract to her.

201. The Respondent chose (sensibly and properly) to move the Claimant onto a banded contact to bring her in line with Ms Swabey-Harrison. Once again, it took an inordinately long time for the new contact of employment to be issued to the Claimant – it was not issued until 17 October 2021 (and apparently not received by her when posted on that day). There were some factors which had led to the delay, including the absence of the Claimant, the absence of Ms Begum, and the fact that the Claimant's hours of work increased with effect from 1 August 2021. The latter was a change which the Respondent honoured notwithstanding the fact that their normal practice

was not to change an employee's contract of employment while they were on sick leave.

202. Once again however, the predominant reason for the delay appeared to be on the part of the Respondent's People Centre. And for similar reasons, we can see nothing to suggest that this was in any way related to the Claimant's race, or that a comparable employee who did not share her race would have been treated any differently.

203. It follows that the allegation fails.

4.2.7. Did Ms Begum fail to tell the claimant when she had a period of sickness during annual leave that she could keep her annual leave days for another occasions? Comparator relied on: hypothetical comparator.

204. Ms Begum did not proactively tell the Claimant that her annual leave could be converted retrospectively to sick leave as she had been unwell. We can see no basis to suggest that Ms Begum was under a duty to do so; nor would we regard it as normal industrial practice for an employer to proactively draw that to employees' attention. That is particularly so in the case of an employee whose contract did not provide for paid sick leave, as was the case for the Claimant at that time. When the Claimant raised the issue, Ms Begum asked her for a fit note so that she could arrange for HR to make the requisite changes.

205. In any event, we have seen nothing to suggest that any other employee would have been treated any differently in the circumstances.

206. It follows that the allegation fails.

4.2.8. Did the respondent fail to deal appropriately with the complaint that the claimant made to Miss Condon about Ms Begum first verbally on 29 July 2022 and then subsequently by email on 3 October 2022 but rather protected Ms Begum? The claimant says that the complaint was dealt with inappropriately because: although Miss Condon took notes during the initial meeting on 29 July 2022 she subsequently said that she had not done so, no action was taken against Ms Begum and no action was taken in relation to the claimant's complaint that she had been discriminated against. Comparator relied on: hypothetical comparator and/or Ms Swabey-Harrison.

207. We find that, in respect of the complaint made on 29 July 2022, Miss Condon acted entirely appropriately. She escalated the matter to Mr Cuthbert to investigate. She told the Claimant that was what she would do, and she did it. Mr Cuthbert then followed up by attempting to meet with the Claimant. He did not put the Claimant under pressure to meet, and she informed him that she would meet with him on her return to work.

208. The meeting between the Claimant and Miss Condon was unplanned and relatively informal. We find that in order to take the Claimant's concerns forward as a grievance, the Respondent would have needed to either sit

down with the Claimant for a more formal grievance or at the very least to least to have the concerns set out in writing in some detail.

209. In respect of the complaint made on 3 October 2022, in her email to Miss Condon the Claimant did not say anything more than that she had made a report to People Centre. In actual fact, as we have found, she had spoken to Convercent rather than People Centre.

210. Taken as a whole, the Respondent continued to try to follow up on the Claimant's complaints. Mrs Morrice explained to her that if she was unable to meet, she could set the complaints in writing, and provided her with some questions to prompt her in terms of the information required.

211. The Claimant initially appeared content to engage with Mr Cuthbert once she felt well enough. Her position then appeared to shift. She took the position that she had told the Respondent enough to investigate. It was, we find, entirely reasonable for the Respondent to want to hear the Claimant's grievance in a formal setting rather than merely rely on what she had told Miss Condon in an informal meeting – particularly given the seriousness of the allegations she was making and the importance of investigating them robustly.

212. In the circumstances, we find that the allegation is not made out on the facts. It follows that it fails.

4.2.9. Did the respondent fail to deal appropriately with the grievance that the claimant raised with the respondent's People Centre in October 2022? The claimants says that the respondent dealt with it inappropriately because they never replied to this grievance, but rather told her that they could not find it when she chased it up. Comparator relied on: hypothetical comparator and/or Ms Swabey-Harrison.

213. The Claimant did not raise a grievance with the Respondent's People Centre in October 2022. She raised a complaint to the Respondent's Speak Up service - Convercent.

214. There can be no criticism of the Respondent for not being able to locate a complaint made to People Centre, given that the Claimant had not spoken to People Centre (although of course we accept that she genuinely believed that was what she had done).

215. We were surprised that there was limited evidence before us about both what happened to the Claimant's complaint to Convercent, and what would ordinarily be expected to happen when such a complaint was made. Of course we bear in mind that the Respondent only came to understand that the complaint had in fact been made to Convercent when they received the Claimant's witness statement, relatively late in the litigation.

216. Nonetheless, and importantly, we can see nothing to suggest that the failure to deal with the complaint made to Convercent was in any way

connected to the Claimant's race. Convercent, an external company, would not have known anything about the Claimant's race (save for any inference they may have drawn from her accent and name). It is fanciful to suggest, without some evidential foundation, that they would have been motivated by the Claimant's race. And of course we bear in mind that when the Claimant made the allegation, she firmly believed that she had made the complaint to People Centre.

217. What appears to have happened is that the Claimant and the Respondent were talking entirely at cross purposes when trying to get to the bottom of the 3 October 2022 verbal disclosure. That is unfortunate. But we can see nothing to suggest that it was related to the Claimant's race in any way, or that anyone else in the Claimant's position would have been treated differently to the way that the Claimant was.

218. It follows that the allegation fails.

4.2.10. Having told the claimant that they could not find the grievance she had submitted to the respondent's People Centre in October 2022, did the respondent then tell the claimant she would have to attend a meeting in relation to the grievance to explain it despite medical advice that she should not attend? Comparator relied on: hypothetical comparator and/or Ms Swabey-Harrison.

219. We have dealt with the point about the 3 October 2022 verbal disclosure. The Respondent did not tell the Claimant she had to attend a meeting. Claire Morrice, in the email of 14 November 2022, told the Claimant that she could submit her complaint in writing if she did not feel able to attend a meeting. She provided the Claimant with some questions to prompt her if she was going to submit her complaint in writing.

220. The allegation is therefore not made out on the facts. It follows that it fails.

4.2.11. Did the respondent fail to provide the claimant with appropriate support during her period of sickness absence which began on 1 August 2022? In particular, they did not pay attention to her complaints about Ms Begum, they did not consider moving her to another job so that she no longer had to work with Ms Begum, and they did not ensure that her sick pay was paid on time. Comparator relied on: hypothetical comparator.

221. We have already dealt with the complaints regarding Ms Begum. For the reasons we have already set out, we have found that it could not be said that the Respondent did not pay attention to the Claimant's complaints about Ms Begum. This element of the allegation is not made out on the facts.

222. There was nothing in the medical evidence before us to suggest that the Claimant would have been well enough to return to another job. Her fit notes did not suggest that she would be well enough to return in another role. She did not take up the offer of Occupational Health, which may have

prompted a discussion about alternative work (if the Claimant was well enough to do so). We should say that that is not a criticism of the Claimant. We accept that she was very unwell at the time, and was consequently not always able to engage with the emails she was sent. But that in itself implies that the Claimant was not realistically in a position to consider an alternative role with the Respondent. So in the circumstances, the fact that alternative work was not discussed could not be characterised as a failure to provide the Claimant with appropriate support. This element of the allegation is not made out on the facts.

223. In respect of sick pay, we have already dealt with the issues regarding the Claimant's pay. The Respondent did not ensure that the Claimant's sick pay was paid in time. But for the reasons we have already set out, we have concluded that that was not because of the Claimant's race.

224. It follows that this allegation fails.

4.2.12. Did the respondent fail to organise an appointment for the claimant with a company doctor in a timely manner, waiting instead until she had been absent from work for six months? Comparator relied on: hypothetical comparator.

225. The Respondent first asked the Claimant to agree to be referred to Occupational Health on 14 November 2022. At that point she had been absent from work for around three and a half months. Two further emails were sent to the Claimant in the latter part of 2022. We do not consider that raising the question of an occupational health referral after three and a half months could be described as a failure to refer her in a timely manner. Ultimately, the reason the Claimant was not seen by Occupational Health until she had been absent for six months was because she did not take up the offer of an earlier referral.

226. The Claimant's evidence was that the reason she did not agree to an earlier referral was because she did not understand the purpose of the appointment. We consider that the explanation that was given to her in Mrs Morrice's email was an adequate one. We bear in mind of course that on the Claimant's own evidence she was struggling to read emails at that time. We entirely accept that she was not have been in a position to take the explanation on board; but that does not mean that the Respondent did not offer one.

227. It follows that the allegation is not made out on the facts.

228. In any event, for completeness there was no evidence before us to suggest that a comparable British employee would have been treated any differently, must less that the timing of the Claimant's referral to Occupational Health was in any way related to her race.

229. It follows that the allegation fails.

230. The complaint of direct race discrimination therefore fails and is dismissed.

Discriminatory constructive dismissal

231. The Claimant relies upon the same factual allegations for her complaint of discriminatory constructive dismissal. We have found that a number of allegations were not made out on the facts. Of those which we have found were made out on the facts, we have found that they were not discriminatory.

232. It follows that the complaint of discriminatory constructive dismissal cannot succeed.

233. We should stress that in reaching the conclusions that we have, we are not saying that the Claimant was well treated by the Respondent. She was not. To a degree, the Respondent accepted as much in internal correspondence, as did the Respondent's witnesses in their oral evidence to the Tribunal. The time taken to increasing the Claimant's pay, to make the necessary back payments and to bringing her contact in line with that of Ms Swabey-Harrison was far longer than it should have been. This self-evidently caused considerable stress to the Claimant while she was already unwell.

234. Furthermore, on the evidence we have heard, Ms Begum did a poor job of managing both the Claimant and her colleagues within the Community Team.

235. But poor treatment is not the same as discrimination. While we have criticised aspects of the Respondent's treatment of the Claimant, we are entirely satisfied that there was no discrimination on the basis of the Claimant's race.

Breach of contract (wrongful dismissal)

236. The Claimant claims that she was constructively wrongfully dismissed.

237. The Claimant was paid four weeks pay in lieu of notice. Her notice period was the same on either side – four weeks. Her complaint of wrongful dismissal cannot succeed. It is therefore not necessary for us to decide whether she was constructively dismissed.

Unauthorised deduction from wages/holiday pay

238. The holiday pay element of the claim was dealt with by consent.

239. For the avoidance of doubt, the Claimant's contract contained no provision for sick pay to be extended if her absence was caused by the Respondent. We do not need to reach any conclusion regarding the cause of the Claimant's ill health. We recognise that it is a matter in respect of which the Claimant has (understandably) strong feelings. Had the Claimant succeeded in her complaint of race discrimination, we would have needed to reach conclusions on the cause of her ill health. Those conclusions would necessarily have had to have been made with the benefit of expert medical evidence. We had no such evidence before us. We cannot, in the circumstances, express any view on the point; and we do not need to do so. The cause of her ill health could not have affected the Claimant's entitlement to payment under her contract of employment. She was paid the sick pay she was entitled to.

Failure to give statement of employment particulars

240. We have found that the Claimant was provided with a set of written particulars. Even if she did not receive the contract sent to her on 17 October 2022, it was attached to Mrs Morrice's email of November 2022. The fact that the Claimant was too unwell to engage with the email at that time does not change the fact that the contract was sent to her. So the complaint of failure to give a statement of employment particulars fails and is dismissed.

Postscript

241. We have expressed our judgment in respect of the holiday pay claim in terms of a number of days. That is what the parties agreed. The hearing before us was listed for liability only. The parties ought to be able to agree the value of three days holiday pay between themselves. It is a purely arithmetical exercise, based on the Claimant's salary of £30,000 per annum. That will render a gross sum, from which any tax and national insurance contributions due will have to be deducted before it is paid to the Claimant.

242. We have not listed the matter for a remedy hearing; it would be disproportionate to do so. If the parties cannot agree the correct figure for three days' pay, they may write to the Tribunal to ask for assistance. That should not, however, be necessary.

Employment Judge Leith
02 August 2024

Public access to employment tribunal decisions

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

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/>