



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 8000199/2024 Hearing Held at Edinburgh on 2 and 3 July and 30  
September 2024**

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**Employment Judge: M A Macleod  
Tribunal Member: L Brown  
Tribunal Member: A Matheson**

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**Katarzyna Lech**

**Claimant  
In Person**

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**GT Diagnostics (UK) Ltd**

**Respondent  
Represented by  
Mr A Sutherland  
Solicitor**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**The unanimous Judgment of the Employment Tribunal is that the claimant's  
claims fail and are dismissed.**

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### REASONS

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1. The claimant presented a claim to the Employment Tribunal on 23 February 2024, in which she complained that she had been unfairly dismissed and discriminated against on the grounds of race by the respondent.
2. The respondent submitted an ET3 response in which they resisted all claims made by the claimant.

3. A Hearing was listed to take place on 2 and 3 July 2024 in the Edinburgh Employment Tribunal, but was unable to conclude in that time. A further date was listed on 30 September, when the Hearing did conclude.
4. The claimant appeared on her own behalf, and Mr Sutherland, solicitor,  
5 appeared for the respondent.
5. The parties submitted a Joint Bundle of Documents, to which reference was made throughout the Hearing.
6. The claimant gave evidence on her own account. The respondent called as witnesses Professor Bjoern Schelter and Linda Sommerlade.

## 10 **List of Issues**

7. The List of Issues agreed between the parties was as follows:

### **Constructive Dismissal**

1. **Whether, contrary to section 94(1)(a) of the Employment Rights Act 1996 (ERA), the claimant's resignation of 29 September 2023 amounted to a constructive unfair dismissal within the meaning of section 95(1)(c) of ERA and section 98 of ERA, having regard to the following:**

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a. **Were Compliance Path and Lindsey Howard agents for the respondent?**

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b. **Did the respondent commit a repudiatory breach of the claimant's contract of employment? The claimant relies upon the following as breaches of the implied term of mutual trust and confidence between the parties:**

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i. **Failing to address, resolve and draw any consequences regarding discriminatory comments towards the claimant by Blazej from Compliance Path (April/May 2021);**

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- ii. **Failing to resolve any complaint and concern raised by the claimant about difficulties regarding working with Compliance Path (23 September 2021; 8 October 2021; 2 May 2022; 8 July 2022; 14 July 2022; 15 May 2023; 30 June 2023; 12 July 2023; 4 August 2023; 14 August 2023; 13 October 2023; 13 November 2023 and 21 November 2023)**
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- iii. **Making inappropriate comments and asking inappropriate questions about the claimant's private life (25 April 2022, 22 December 2022)**
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- iv. **Suggesting to the claimant to "find something before you resign", a comment allegedly made by the HR department in answer to the claimant's complaint (19 January 2023)**
- v. **Using and forcing the claimant to act above her responsibilities (29 August 2023)**
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- vi. **Questioning the claimant's judgement by rephrasing her words in the official report (13 November 2023)**
- vii. **Degrading the claimant by telling her what words she could and could not use during the meeting with Compliance Path (25 August 2023)**
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- viii. **Not acting while witnessing the claimant being discriminated against, verbally attacked and laughed at by Compliance Path (29 August 2023)**
- ix. **Accusing the claimant of not wanting to try again and trying to blame her for leaving the company after witnessing her being harassed by Compliance Path (25 September 2023).**

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- c. **If so, was the claimant's resignation submitted in response to and/or because of any such repudiatory breach or breaches?**
  - d. **Did the claimant affirm the breach or breaches or the contract of employment by delaying her resignation, or by resigning with notice, or by requesting to work further days?**

### **Race Discrimination**

#### **Direct Discrimination (section 13, Equality Act 2010)**

10 **2. The claimant is Polish.**

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- a. **Did the following things happen?**
    - i. **Failing to address, resolve and draw any consequences regarding the complaint raised by the claimant about discriminatory comments towards her by Blazej from Compliance Path. After the claimant asked Blazej a question regarding the part of the procedure he wrote, he said rudely "Do you want to Google translate that for you?" – questioning the claimant's ability to understand English. (April/May 2021)**
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    - ii. **Letting Compliance Path question the claimant's ability to learn, understand and speak English during a face-to-face meeting. Compliance Path pretended not to understand a single word coming from the claimant's mouth. She had to rephrase every sentence multiple times to the point where she said: "I know you know what I mean, you just don't want to admit it". During that meeting, being a witness, the respondent refused to support the claimant and did nothing to**
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**protect her from the above-mentioned (25 August 2023)**

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- b. **Were Compliance Path and Lindsey Howard acting as agents for the respondent?**
- c. **Did Compliance Path discriminate against the claimant, and did they do so in the course of carrying out authorised functions?**
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- d. **Was that less favourable treatment? The Tribunal will decide whether the claimant was treated less favourably than someone else not sharing her race was treated. There must be no material difference between the comparator's circumstances and the claimant's. The comparator is Professor Bjoern Schelter.**
- e. **If so, was that because of race?**

15 **Harassment on the grounds of race (section 27, Equality Act 2010)**

**3. Did the respondent do the following things?**

- a. **Harass the claimant by letting Compliance Path harass her in the presence of Professor Schelter during the meeting of 29 August 2023.**
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- b. **Harass the claimant by Compliance Path, during the meeting on 29 August 2023, laughing at her, talking over her, accusing her of being aggressive, twisting her words and pretending not to understand her.**

**4. If so, was that unwanted conduct?**

25 **5. Did that relate to race?**

6. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5 7. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

### Remedy

8. What financial losses have the dismissal caused the claimant?

9. Has the claimant taken reasonable steps to mitigate her losses?

10 10. Should any award be increased or decreased in respect of any failures under the ACAS Code of Practice on Disciplinary and Grievance Procedure?

8. Based on the evidence led and information presented, the Tribunal was able to find the following facts admitted or proved. It should be noted that we have approached this task by making findings on the evidence in relation to the particular issues raised, in the order set out in the List of Issues.

### Findings in Fact

9. The claimant, whose date of birth is 9 April 1984, commenced employment with the respondent on 18 January 2021 as a Quality Management Systems (QMS) Specialist, developing and maintaining for the respondent a quality management system. She is a qualified Quality Engineer, with a Masters Degree in Quality Management.

10. The respondent is a company which develops tools for the diagnosis and monitoring of dementia.

11. The respondent's base is in Aberdeen, but the claimant worked from home, in Edinburgh. Her line manager was Dr Linda Sommerlade. She worked 5 days per week, 9am to 5pm each day, Monday to Friday.
- 5 12. The respondent employed the claimant to work with external consultants, CompliancePath. Their intention was that the claimant would benefit from the experience which the consultants had, and which she lacked, in designing quality management systems.
- 10 13. The claimant's contract of employment with the respondent (73ff) set out her duties, including *"With support of external QMS consultants, establish a robust QMS, act as the interface between product leads and developers and the external consultants."*
- 15 14. The claimant dealt with 5 people at CompliancePath, namely Hugh Devine, Lindsey Howard, Tracy Small, Janice (surname unknown) and Blazej (surname unknown). Initially her contact was mainly with Blazej and Hugh Devine (the Managing Director of CompliancePath), though soon Mr Devine stopped involving himself in discussions and the claimant dealt with Blazej alone.
- 20 15. The relationship between the respondent and CompliancePath was an important one, though not intended to be permanent. CompliancePath's role was to assist the respondent to set up a quality management system, of which the respondent had no experience, once the claimant was recruited to bring her quality management knowledge to the business. It was anticipated that once the quality management system was in place, the involvement of CompliancePath would no longer be required.
- 25 16. One of the priorities for the respondent was to have its product regulated in the United States of America, one of their largest markets and on the priority list to have the product available. The product, which requires to be used on patients, had to be listed with the Food and Drug Administration (FDA) in the USA, following a high level of scrutiny. In

order to achieve this, the respondent needed a spokesperson in the USA to be available to communicate with the FDA as and when required.

5 17. The registration confirmation was produced (184ff). The registration, which took effect on 5 July 2023, confirmed the facility information to be the respondent's details and address, the owner/operator information to be that of Genting Taurx Diagnostic Centre (GTD), and the United States Agent to be Lindsey Howard. The device was noted to be a "Computerized cognitive assessment aid", of which the respondent was the manufacturer.

10 18. The respondent entered into an agreement with GTD to provide services to them (89ff). At paragraph 5 of that agreement, it was provided that:

15 *"With respect to the requirements stipulated by the US Food and Drug Administration ("FDA") of which requires any foreign establishment engaged in the manufacture, preparation, propagation, compounding or processing of a device imported into the US to identify a US agent ("US Agent") for the foreign establishment, CompliancePath and GTD agreed that Lindsey Howard of CompliancePath ("Lindsey") will be named as GTD's US Agent during the Service Period."*

### **1.2.1**

20 19. In April or May 2021, some communication difficulties arose between the claimant and Blazej, of CompliancePath. The claimant's evidence was that, despite being Polish, as was the claimant, Blazej reacted very badly to her asking him to explain part of the procedure to her. She said that he became angry, and asked if she wanted him to Google translate for her.  
25 The claimant felt that he was questioning her ability to understand English.

20. There was a divergence of evidence between the claimant and Professor Schelter on this matter. The claimant's evidence was that she raised this matter with Professor Schelter, who then advised that she did not have to



deal with Blazej on his own and that another person would always be on a call with the claimant and Blazej. She expressed considerable disappointment that nothing was said to CompliancePath about Blazej's comments and attitude. Professor Schelter, by contrast, said that he had no recollection that it had ever been drawn to his attention that Blazej had made such comments, and that the reason why Blazej was ultimately removed from the project was because of a dispute over the wording of a document.

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21. It is difficult to know what to make of this exchange. It appears that the claimant did not feel it necessary to set down her concerns about Blazej in writing, but that the respondent was aware that there were communication difficulties between them, and took steps to have Blazej removed from the project. It is not entirely clear why that decision was taken, other than the more general communication issues, but the claimant's evidence was that she did continue to deal with Blazej after he made the alleged comments. He was removed from the project in summer 2021. The respondent operates a grievance procedure, referred to in the claimant's contract of employment, but the claimant did not raise a grievance about the matter. Professor Schelter did not recall any complaint being raised specifically about the comment relating to Google translate. It is clear that nothing formal was raised by the claimant with the respondent, nor by the respondent with CompliancePath. Dr Sommerlade, who was in attendance on a number of the calls, maintained that she never heard Blazej making any discriminatory comments to the claimant.

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22. We have not concluded that the claimant has proved on the balance of probabilities that she raised any discriminatory comments by Blazej with the respondent, nor that they therefore failed to deal with such a complaint raised by the claimant.

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**1.2.2**

23. On 23 September 2021, Dr Sommerlade wrote to Professor Schelter (81):

*“Hi Bjoern*

*From the meeting with Lindsey today, Kasia and I have taken away a few  
5 points that we need to make decisions on regarding the QMS. Some of  
them will require your input.*

*We also thought it might be good to share our feedback from working with  
Lindsey and Compliance Path and hear from you about the plans for their  
engagement going forward.*

*10 Would you have time to meet with us tomorrow or maybe on Monday (not  
sure if Kasia would be available if she is well enough to travel)?*

*Thank you*

*Linda”*

24. There was a subsequent meeting between the claimant and Professor  
15 Schelter. The claimant considered that the matter was ignored by him  
after that meeting. Professor Schelter was aware that the concern raised  
by the claimant was that CompliancePath had altered the terms of  
documents, and that there was a difference of understanding as to why  
certain paragraphs were included within documents. He recognised that  
20 this was unhelpful, and his position was that he did raise this with  
CompliancePath. He insisted that he did not ignore concerns raised by  
the claimant, but brought them up and monitored the situation closely  
thereafter. His purpose, he said, was to seek to keep the relationship  
going, over a period of time, and have the claimant work effectively with  
25 CompliancePath.

25. We did not conclude that Professor Schelter ignored the concerns being raised by the claimant, though it was clear that he did not act in precisely the way the claimant wished.

5 26. On 8 October 2021, the claimant had an exchange of emails with Dr Sommerlade (82). Dr Sommerlade wrote to the claimant at 12.29pm *“Hi Kasia, I have just spoken to Bjoern about the continued CompliancePath engagement. He will share the proposal with us before signing. He is currently waiting for feedback from KL to see what they think about the price tag (apparently around [redacted]). Not sure when we will get to see it but he said we would prior to it being signed.”*

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27. The claimant responded at 1.33pm:

*“Thanks for info.*

*That price sounds insane. Doing a very quick and rough math – 1 meeting with them cost around [redacted] (seeing them twice a week) so at the moment I don’t think we get best value for money. Don’t know what’s in the proposal, but if we are going to look at power point presentations for [redacted] meeting/hearing ‘yes, but no kinda answers’, etc – I think we could spend those money better ;)”*

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28. The claimant’s complaint was that she raised a concern about the ongoing relationship with CompliancePath, and indeed the respondent’s intention to renew that relationship, but that that was ignored. Dr Sommerlade maintained that when the claimant raised a concern she would discuss it with her. Professor Schelter confirmed that he had taken the draft contract and discussed it with the claimant and Dr Sommerlade, before signing it, and accordingly that they had input to that discussion.

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29. On 31 October 2021, (87) Professor Schelter emailed Wei Shin Chen of Genting to advise that he was sending the draft CompliancePath agreement to Dr Sommerlade and the claimant for urgent comments. Dr

Sommerlade responded to advise that she and the claimant had reviewed the agreement and added further comments for consideration.

- 5 30. We have not concluded that the claimant's concerns were ignored at that stage; indeed, it is our finding that she was involved in the discussion about the nature of the ongoing relationship with CompliancePath, and in particular to make sure that there was nothing in the contract which was not required to be done by them.
- 10 31. On 2 May 2022, the claimant sent to Professor Schelter an email (101) in which she attached a document (102ff) setting out a "fee notes/comments we made re work with Compliance Path for you to have a look". The attachment sets out a number of criticisms made by the claimant about the CompliancePath staff with whom she had to work, including comments about being unprepared for a meeting, delays in actions which were promised, failure to attend a meeting and others.
- 15 32. Professor Schelter addressed this in a meeting with Hugh Devine, Lindsey Howard and Dr Sommerlade, and Dr Sommerlade shared her concerns in that meeting. It was suggested that Mr Howard should spend time with the claimant to help her resolve these issues. Professor Schelter understood that that was what then happened.
- 20 33. It is not our conclusion that the respondent ignored the claimant's concerns when they were raised with them.
- 25 34. On 8 July 2022, the claimant had some concerns about the manner in which Janice, one of the people employed by CompliancePath with whom she had contact, was not sharing documents with her when she was supposed to do so.
35. She maintained that she raised this concern with the respondent, and that no action was taken. Professor Schelter had little recollection of this, as did Dr Sommerlade, but they were aware that at some point after this

Janice was moved into a background role where no direct contact was required with her.

- 5 36. There is insufficient evidence before us to demonstrate that the claimant's concerns were ignored by the respondent, but the fact that Janice was moved into a different role at least suggests that a change was brought about in the arrangements after this.
- 10 37. On 14 July 2022, there was a further issue raised by the claimant about the manner in which CompliancePath were dealing with her, and in particular she spoke to Dr Sommerlade about the version of the document which Janice had been working on in exchanging drafts. She considered that CompliancePath were lying to them in this matter. Dr Sommerlade did not consider that that was correct but recognised that Janice was using a local version of the document, rather than the copy of the document held on Sharepoint, which would show the changes sought or amendments made by either party. As a result, conflicting versions of the document was circulating. Dr Sommerlade acted to ensure that both CompliancePath and the respondent's staff would only use the Sharepoint version in order to avoid confusion.
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- 20 38. The Tribunal does not therefore conclude that the claimant's concern was ignored on this occasion.
- 25 39. On 10 May 2023, the claimant emailed Professor Schelter and Dr Sommerlade (135) to enclose a draft of the Management Review Report (136ff), which would be prepared every 3 months. The claimant would prepare the draft, then send it to the others to add anything they considered relevant, and then they would meet together to discuss it.
40. The final report was produced following the meeting (140ff).
41. At point 4.4 of the minutes of the meeting (141), under "Review and evaluation of subcontractors", it was noted:

5 *“The concerns with the quality of work delivered by some of the team members of CompliancePath raised during the last Management Review, are still valid. The lack of attention to details from their side is alarming. The learning process does not go as smooth as expected due to visible lack of expertise from CompliancePath side...”*

*Work of CompliancePath and Sonya Miller to be reviewed in Nov 2023...”*

10 42. At the conclusion of the report, a table of follow up actions noted that the final action was “CompliancePath ongoing monitoring”, with responsibility for that action assigned to “Bjoern/Linda/Kasia”. No target date was allocated to the action.

15 43. The claimant’s position was that no action was taken as a result of this matter. We concluded that this review was part of the respondent’s regular and ongoing process of monitoring the work carried out under the contract with CompliancePath, as well as a number of other matters, and that the responsibility for continuing to monitor the performance was laid on the claimant as well as Professor Schelter and Dr Sommerlade.

44. The claimant asserted that “nothing happened” as a result of this meeting. It is clear to us that the process of reviewing the performance of CompliancePath was an ongoing one, of which the claimant was a part.

20 45. Following the meeting, there were a series of emails between the respondent and Tracy (Small). On 12 July 2023, Professor Schelter wrote to Ms Small (148):

*“Hi Tracy,*

25 *I just learned from Linda that we do not have the final audit outcome and report. I understand we are on this since April. HiPAL Pro for commercial reasons needs to be listed now, as far as I understand at minor risk.*

*Can I please understand what is holding this up? I would have hoped that we would have a final report weeks ago. I will also need to update the MC.*

*Best wishes*

5 *Bjoern”*

46. Ms Small replied that day (147):

*“Hi Bjoern*

*Thank you for your email and I completely understand your concerns and disappointment with regards to the audit report.*

10 *I started the audit on the 17<sup>th</sup> May, where I was auditing in parallel to the software files being completed to ensure that they were captured as part of the audit. I submitted the audit mid-June whilst S-SOP-05 process was still in progress, I had put in some wording at the time that the software testing documents were still in progress for completion and were not*  
15 *available for review at this stage. On the w/c 26<sup>th</sup> June I learned that the scope had changed, and Design Control was to be included. My original understanding was that 62304 was to be audited with the relevant design control processes in mind that touch the 62304 processes. Of course, I went back to the audit report to include all the elements of the Design*  
20 *Control and submitted within the same week.*

*I am currently working my way through the comments from the feedback received and I requested the S-SOP-05 documents, now they are available to be included in this report. I am planning to wrap up this document today and upload to Sharepoint for final review.*

25 *Kind regards,*

*Tracy”*

47. The claimant had prepared a timeline of the work being carried out by Ms Small for the respondent and emailed it to Professor Schelter (144-146)
48. When Professor Schelter read these emails and Ms Small's response, he understood better Ms Small's point of view. He recognised that the claimant still had concerns about the progress made, and decided that a meeting should take place with CompliancePath in order to sort out any ongoing difficulties, and to allow the claimant to speak to Ms Small to express her concerns and find a way to resolve the issues.
49. In addition, a meeting had been scheduled for 30 June 2023, at which Ms Small did not attend, following a late cancellation. The respondent did note that Ms Small did not always follow up on a point when she said she would. As a result, it was felt that a meeting should be conducted in order to resolve the differences between the individuals concerned. That meeting took place on 29 August 2023.
50. The Tribunal concludes that this issue, when raised by the claimant, was not ignored by the respondent, but that Professor Schelter in particular contacted CompliancePath to challenge the delay in completing the audit, and arranged a meeting in order to allow the claimant to speak with Ms Small to resolve the ongoing difficulties.
51. Further, the evidence of Dr Sommerlade before us was that since meeting with her and raising concerns about the delays in the auditing process, Ms Small is now reporting on time or emailing to explain why any delays are taking place, a position which the respondent considers satisfactory.
52. Further concerns were expressed by the claimant on 4 August 2023 with regard to the slow progress of the audit. Again, we did not find that these concerns were ignored.
53. The claimant was becoming increasingly frustrated by the failure of CompliancePath to provide the information required of them by the



respondent, and by the delays which were ongoing. In addition, she felt strongly that the respondent was not listening to nor acting upon her concerns when she raised them with them.

54. A further Management Review took place on 14 August 2023. The report (156) recorded that, under follow up actions from the previous meeting, the internal audit in relation to 62304 and design controls had been “Significantly delayed due to report not yet delivered by responsible member of staff from CompliancePath.” Similarly, under the ongoing monitoring action, it was noted that the report had not yet been delivered by CompliancePath.
55. The minute went on, under 4.4, to state *“The concerns with the quality of work delivered by some of the team members of CompliancePath raised during the last 2 Management Reviews are still valid. The lack of attention to detail from their side is visible. The learning process does not go as smoothly as expected due to perceived lack of expertise from one of their employees. Also, previously drafted Post-market surveillance SOP that we spent time on reviewing is not valid anymore so CompliancePath had to produce a new report.”*
56. Again, under follow up actions, the report recorded that there would be ongoing monitoring of CompliancePath, with no target date, to be carried out by Professor Schelter, Dr Sommerlade and the claimant.
57. The original draft produced by the claimant (151ff) had some amendments made to it by Professor Schelter.
58. In particular, he removed the reference (152) to “unprofessional approach from CompliancePath”, and attributed the delay to the report not having been delivered by the responsible member of CompliancePath staff; and he also amended the sentence “The lack of attention to detail from their side is alarming” to “The lack of attention to detail from their side is visible.”

59. Both Professor Schelter and Dr Sommerlade were uncomfortable with the use of the terms “unprofessional” and “alarming”, on the basis that they were broad concepts being applied to an entire company, but were not purely factual statements.
- 5 60. Following the amendments made to the minute, the claimant signed the amended version on 18 August 2023 (159).
61. The respondent’s position with regard to CompliancePath was essentially that despite frustrations, they were still carrying out some work for them and they wanted to see that process through to gain some benefit from that work. The question of how long to give them to complete the work was, as Dr Sommerlade made clear, a difficult one.
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62. A meeting took place on 29 August 2023, at which the claimant, reluctantly, was in attendance, along with Professor Schelter. For CompliancePath, Hugh Devine and Tracy Small attended the meeting. The claimant was very anxious about attending the meeting in advance of it, though she understood that the purpose of the meeting was to try to resolve the issues with CompliancePath, and especially between the claimant and Ms Small.
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63. The evidence we heard about this meeting came from the perspective of the claimant and Professor Schelter. The claimant said that she had asked Ms Small whether she had any experience with audits, to which Ms Small was unable to answer. She then asked Mr Devine why he had sent them people who had no experience of doing audits, to which Mr Devine responded “very aggressively and misogynistically”, asking the claimant why she had been so aggressive to Ms Small. She said that Mr Devine constantly interrupted her during the meeting, and laughed at her. By contrast, she said, his attitude and behaviour towards Professor Schelter was polite and respectful. Mr Devine, she asserted, pretended not to understand what she was saying. She felt very strongly that Professor Schelter simply sat and watched as she was bullied for 75 minutes, and
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did nothing to intervene and assist or protect her. She felt like she had 3 people against her.

- 5 64. Professor Schelter's evidence was quite different in tone and content. He said that the purpose of the meeting was to resolve what he speculated were largely communication difficulties. He had conducted a Teams call with the claimant in advance of the meeting, to ensure that she was willing to participate and comfortable to do so, which she said she was. He advised her to compile a list of specific facts and events to take to the meeting so that her concerns could be based on concrete examples.
- 10 Professor Schelter was concerned that the claimant, when asked what outcome she was seeking from the meeting, said that she wanted Ms Small to be fired by CompliancePath. He was slightly shocked by this and told her that this was an unlikely outcome, but that they were really looking to resolve a way forward.
- 15 65. His evidence about the meeting was that it was essentially led by Mr Devine initially, then by himself, then he asked the claimant to go through the issues which she wanted to see resolved. He considered that the meeting began unfortunately when the claimant asked Ms Small if she had done an audit before (to which Ms Small replied that she had not);
- 20 and when the claimant then asked Mr Devine why he could put someone so incompetent on this job, and accused Mr Devine of being unprofessional.
66. Mr Devine replied that Ms Small had in fact done several audits, had the necessary training and was perfectly capable of carrying out the audit.
- 25 67. As to laughing. Professor Schelter stated that Mr Devine laughed on one occasion, which he interpreted as a nervous laugh, after he had been accused of being unprofessional. Professor Schelter's view was that Mr Devine laughed in response to such an accusation "in order not to explode". The claimant challenged Mr Devine about laughing, and this
- 30 was the response which he gave.

- 5 68. The meeting continued, and Ms Small admitted that she had too many conflicting tasks, and apologised to the claimant for not applying the necessary detail which caused the issue. Indeed, Professor Schelter confirmed that Ms Small had apologised several times during the meeting. He formed the impression that Mr Devine only became truly aware of the situation during that meeting. He reassured the claimant that they were there to support her.
- 10 69. Professor Schelter emphasized that the timelines laid down for the work were crucial, and insisted that CompliancePath had to report to him, and that delays were to be avoided due to the potential impact on revenue for the company. He stressed that there needed to be more communication from CompliancePath, a more realistic approach to what could be done and more attention to detail so that the claimant would not be further frustrated, for example, by receiving the wrong version of a form.
- 15 70. It was agreed by all at the meeting that there would be a new plan for the way forward, but that it would be put on hold until after the respondent's meeting with the FDA.
- 20 71. Professor Schelter made some handwritten notes on the train back to Aberdeen (the meeting took place in Edinburgh) (160). He noted therein that Ms Small had apologised several times during the meeting, after the claimant had brought up the challenges which she faced; that Mr Devine stated, specifically, "Kasia, we are here to support you"; that the joint plan forward (clear, realistic deliverables and timeline, honest communication with heads-up if deadline could not be met and involve Mr Devine and Professor Schelter early if issues were to arise) was agreed; and that things would be put on hold pending the FDA meeting. It was also noted that when the claimant returned from annual leave, the plan would be made.
- 25 72. He noted that the meeting was "very positive, all are happy with the plan".

73. He also recorded: “but need to speak to Kasia after A/L as quite aggressive in meeting → not helpful”.
74. Professor Schelter’s conclusion was that the meeting was a success, and he was “extremely happy”.
- 5 75. We considered that the evidence of Professor Schelter was to be preferred to that of the claimant in relation to this meeting. Professor Schelter we found, overall, to be a calm and straightforward witness, who described clearly how this meeting went and was supported in his evidence by his contemporaneous notes taken immediately thereafter.
- 10 The claimant was not only aggressive in the meeting, which as Professor Schelter pointed out was unhelpful, and contrary to his instructions in advance, but was very keen to stress how unfairly she felt the meeting had treated her, despite there being a constructive purpose and outcome to it. We felt that the claimant ignored all the positive aspects of the meeting in order to advance the point she was trying to make before us.
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76. We also considered that the claimant’s credibility was adversely affected by her complaint about the changes to the Management Review minutes in August when she had in fact signed the amended minutes to confirm her agreement to them. She was clearly unwilling to concede that the respondent could ever act reasonably or fairly towards her.
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77. Accordingly, we have concluded that the meeting did not operate in the manner suggested by the claimant, with the effect that she was bullied or laughed at. We accepted that Mr Devine did laugh at one point but that was a reaction to a hostile accusation of unprofessionalism and incompetence, and that it was a reaction of surprise which attempted to avoid a similar response. However, it is clear that both Mr Devine and Ms Small acted in a manner which was conciliatory and apologetic, and discussed the matter constructively so as to secure a positive way forward. We did not accept that there was any bullying on the part of any participant in the meeting towards the claimant.
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78. The claimant remained unconvinced after the meeting that the relationship between the respondent and CompliancePath could improve. She spoke with Dr Sommerlade after the meeting, complaining that CompliancePath rather than Professor Schelter ran the company. Dr Sommerlade had no recollection of this conversation, other than that it happened, but did not accept that she agreed with the claimant in what she was saying.

79. The claimant then went on holiday from 1 to 22 September 2023, returning to work on 25 September. During the course of that week, the claimant spoke to Professor Schelter and advised him of her intention to resign. Professor Schelter was shocked. He did not want to lose the claimant. He felt that she had done good work on the QMS system and saw her as the person to take it over from CompliancePath. He asked if she would be prepared to allow CompliancePath another chance to speak to her, in the hope that they might be able to change her mind. The claimant affirmed her wish to resign.

80. On 29 September 2023, the claimant submitted her resignation (162):

*“Dear Bjoern,*

*Please accept this letter as formal notification that I am resigning from my position as QMS Specialist with GT Diagnostcs. Since I still have a week of holidays to take, my last day of work will be 15 December 2023.*

*The reason I am leaving the company is stress caused by repeated issues and disrespect from external consultants, hired by the company, as well as lack of support from management when I raised these issues on multiple occasions.*

*I will do everything possible to wrap up my duties and train other members over the remaining weeks. Please let me know if there is anything else I can do to help during this transition.*

*Yours sincerely,*

*Katarzyna Lech*”

81. Professor Schelter was advised to sign the letter to acknowledge receipt, which he did, on 2 October 2023.
82. The claimant offered to work her full notice (which would expire at 28 December 2023). There was an exchange of emails between Professor Schelter and Goh Jing Xian of the Human Resources department (163ff) in which it was understood that the claimant had requested to work until 31 December, but was advised that this was not possible. Her last working day was 18 December, taking into account the balance of her annual leave entitlement up to 28 December. In evidence, slightly confusingly, the claimant said that she never requested to work until the end of the year, but that she offered 3 months’ notice, and to finish at the end of the year. When she was told that this was not possible, she let the matter rest.
83. A meeting with CompliancePath which the claimant had set up for 13 October 2023 was cancelled. When the claimant asked Dr Sommerlade about this, she said that the claimant was no longer to work with CompliancePath during her notice period, but would be asked to carry out other duties. Dr Sommerlade was of the view that since the claimant had indicated that she had resigned due to frustrations with working with CompliancePath, it would not be appropriate to require her to continue to work with them after her resignation.
84. In the Management Review which took place on 13 November 2023 (173ff), it was noted, under paragraph 4.4:
- “The concerns with the quality of work delivered by individual members of the CompliancePath team raised during the last 3 Management Reviews continues to be monitored; a face-to-face meeting was held that devised a clear strategy to address these issues. Most importantly, clear communication between the two teams is key for successful collaboration.”*

85. These were not the claimant's original words, in her draft (193ff). She had written:

5                   *"The QMS Specialist updates the meeting on the status of action items from the previous meeting. Actions which are not completed may be extended with a new due date, reassigned to another person, changed or dropped. Reasons for the failure to implement the action and any decisions regarding continuation or otherwise, are recorded in these Management Review meeting minutes. Target date for previous actions and the number of how youmany of them were completed on time, should be documented for tracking purposes."*

10

86. The claimant signed the final version on 28 November 2023 (176).

87. On 7 December 2023, the respondent wrote to the claimant (179):

*"Dear Ms Lech*

*ACCEPTANCE OF RESIGNATION*

15                   *We accept with regret your resignation letter dated 29 September 2023 and this is to confirm that your last working day will be on 18 December 2023. Your employment with the Company will officially cease with effect from 29 December 2023.*

20                   *You are required to return all items belong (sic) to the Company, which may be in your possession or still in your custody to the respective Departments, and complete the Exit Checklist, signed and returned it to Human Resources Department on your last working day.*

*With respect to your balance of remuneration, kindly contact Ms Natasha Ng at [natasha.ng@genting.com](mailto:natasha.ng@genting.com) from Human Resources Department.*

25                   *We thank you for your services rendered to the Company and wish you all the best in your future undertakings.*

*Yours faithfully,*



*GT DIAGNOSTICS (UK) LIMITED*

5 88. On 21 November 2023, the claimant reported another matter to Dr Sommerlade, advising that an employee of CompliancePath was due to have conducted a further audit, but had not done so, and was misleading the respondent about it. Dr Sommerlade was aware of the situation but conducted conversations directly with that employee, and resolved the matter. Given that the claimant had resigned, her involvement with CompliancePath had been reduced, and Dr Sommerlade did not consider it necessary to inform the claimant of such conversations in those  
10 circumstances.

**1.2.3**

89. The claimant complained that there were two occasions on which inappropriate comments were made to her.

15 90. On 25 April 2022, the claimant was in a meeting with Dr Sommerlade and an individual named Peter, discussing marketing. During a conversation which the claimant described as “light”, about a 4 day working week, Peter made a comment about working longer hours so he could work a half day on a Friday, to which Dr Sommerlade said that the claimant had the hours of a person who does not have children.

20 91. Dr Sommerlade did not recall making such a comment, though she accepted that in these conversations she tended to try to keep the discussion informal, and that she would discuss her own private circumstances quite openly.

25 92. We found that it was likely that this comment was made. The claimant felt that it should never have been made in a workplace conversation, and insisted that she kept her private circumstances private in the workplace. She took the view that Dr Sommerlade should not have made any assumptions about her private life, about whether or not she had children, and if not, why not.

93. On 22 December 2022, there was a Teams meeting involving the whole team. There was a discussion about the Christmas holidays, in which different individuals spoke about their plans for Christmas. Although Dr Sommerlade had been told by the claimant that she did not celebrate Christmas, she then asked the claimant about her plans for Christmas (along the lines of checking whether or not the claimant would be spending Christmas on her own). The claimant was taken aback to be asked such a question, given it was known that she did not celebrate Christmas, in front of her colleagues. Dr Sommerlade, while unable to recall the exact words she used, insisted that she simply wanted to involve the claimant in the conversation to make her feel included.

94. Dr Sommerlade was, she said, unaware that she may have caused the claimant any hurt or offence at that time. The claimant believed that she was trying to make her feel uncomfortable at that time. The claimant's position in evidence was that Dr Sommerlade, a churchgoer, was acting in a discriminatory way towards her, on the grounds of religion or belief (albeit that the claimant does not have a claim of discrimination on the grounds of religion or belief before this Tribunal).

#### **1.2.4**

95. The claimant communicated with Human Resources in January 2023, asking for a copy of the respondent's Grievance Procedure (131) to Janice Teng Chai Hoon. Thereafter, she had a Teams meeting with Janice, in which she complained about the comments made to her by Dr Sommerlade in December 2022. The claimant's evidence, which was unchallenged as Janice did not give evidence before us, was that Janice had said to her that she should find something before she resigned. The claimant felt that Janice was trying to stop her from going any further, and that she was suggesting that the claimant wanted to resign, when she had not said that she did. The claimant did say in evidence that she could probably have resigned at that point, but that she did not tell the respondent that.

96. It is again difficult to know what to make of such an exchange. The claimant's evidence, at its highest, does not suggest that Janice told her not to submit a grievance, nor that Janice told her she should resign. It is clear that the claimant was speaking to Janice to convey her unhappiness about what had been said before Christmas 2022, and that Janice received the impression that she was intending to resign. It appears that Janice may have been telling the claimant that before she resigned it would be wise to have another job lined up.

### **1.2.5**

97. The claimant complained that she was forced to act above her responsibilities on 29 August 2023, at the meeting with CompliancePath. We were entirely unclear as to what this meant, but it appears that she was unhappy with being asked to lead the meeting and speak first. Given that the meeting was convened to try to resolve differences which had been raised by the claimant, it appeared to us that the respondent was not acting unreasonably by giving her the opportunity to speak directly and clearly to their contractor about the issues which concerned her. In any event, she did so.

### **1.2.6**

98. The claimant's complaint here was that her judgement was questioned by Professor Schelter rephrasing her words in the Management Review report on 13 November 2023.

99. Professor Schelter did rephrase the claimant's words in that report, and had done so before.

### **1.2.7**

100. The claimant's complaint under this heading was that she had been degraded by Professor Schelter telling her what words she could or could not use in the meeting due to come with CompliancePath on 29 August 2023.

101. Professor Schelter did tell the claimant to be careful in her use of language in the forthcoming meeting, and in particular instructed her not to call CompliancePath “unprofessional” or something similar. He had noted the terms of her draft reports in which she had used such language and wanted to avoid unnecessary dispute in the meeting through the use of such terms.

### **1.2.8**

102. The claimant complained that Professor Schelter failed to act while witnessing the claimant being discriminated against, verbally attacked and laughed at during the meeting of 29 August.

103. The Tribunal has not found that the claimant’s version of events in relation to this meeting is accurate.

### **1.2.9**

104. The claimant complained that the respondent (and in this case it is understood to be Professor Schelter) accused her of not wanting to try again, and trying to blame her for leaving the company after witnessing her being harassed by CompliancePath.

105. We have made findings above about that conversation, on or around 25 September 2023, following the claimant’s resignation, and do not find that Professor Schelter accused the claimant of having done anything wrong, nor tried to blame her for leaving the company.

106. The Tribunal’s findings as above relate to the remaining issues raised by the claimant under the headings of Direct Discrimination on the grounds of Race, and of Harassment.

### **Remedy**

107. Following the claimant’s resignation, she has been unable to secure alternative employment to the date of the Tribunal Hearing.

108. In January 2024, the claimant registered for Job Seekers' Allowance, in respect of which she received £88 per week, rising in May 2024 to £90.50 per week. The claimant applied for a job with Burton's Biscuits, and was interviewed, but found the interview very unhelpful (the interviewer, she said, asked her no questions but talked at length about the company) and was not offered any job with them.

109. The claimant attended her GP in December 2022, and was diagnosed with anxiety. She has not been prescribed any medication nor treatment, though she has attempted to secure psychological help and has been on a waiting list since April 2024. She complained that during her employment she was constantly dealing with the symptoms of anxiety, namely constant sleep difficulties, stomach problems, concentration and memory loss, though she did not have any health-related absences from her employment.

## 15 **Submissions**

110. Both parties made submissions to the Tribunal at the conclusion of the evidence. It is not necessary to set out those submissions at this stage, but they have been taken into account and where appropriate are referred to in the decision section below.

## 20 **The Relevant Law**

111. Section 95 of the Employment Rights Act 1996 ("ERA") sets out the circumstances in which an employee is treated as dismissed. This provides, inter alia

25           “(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—

...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he

is entitled to terminate it without notice by reason of the employer's conduct.”

5 112. Where a claimant argues that there has been constructive dismissal a Tribunal requires to consider whether or not they had discharged the onus on them to show they fall within section 95(1)(c). The principal authority for claims of constructive dismissal is **Western Excavating -v- Sharp [1978] ICR 221**.

10 113. In considering the issues the Tribunal had regard to the guidance given in **Western Excavating** and in particular to the speech of Lord Denning which gives the “classic” definition:

15 “An employee is entitled to treat himself as constructively dismissed 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. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in  
20 either case must be sufficiently serious to entitle him to leave at once. Moreover, the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as  
25 discharged.”

114. The Western Excavating test was considered by the NICA in **Brown v Merchant Ferries Ltd [1998] IRLR 682** where it was formulated as:

30 “...whether the employer’s conduct so impacted on the employee that, viewed objectively, the employee could properly conclude that the employer was repudiating the contract. Although the correct approach to constructive dismissal is to ask whether the employer

was in breach of contract and not did the employer act unreasonably, if the employer's conduct is seriously unreasonable that may provide sufficient evidence that there has been a breach of contract."

5 115. What the Tribunal required to consider was whether or not there was evidence that the actions of the respondents, viewed objectively, were such that they were calculated or likely to destroy or seriously damage the employment relationship.

10 116. The Tribunal also took account of, the well-known decision in **Malik v Bank of Credit & Commerce International SA [1997] IRLR 462**, in which Lord Steyn stated that "The employer shall not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence  
15 between employer and employee."

117. It is also helpful to consider the judgment of the High Court in **BCCI v Ali (No 3) [1999] IRLR 508 HC**, in which it is stressed that the test (of  
20 whether a breach of contract amounts to a breach of the implied term of trust and confidence) is "whether that conduct is such that the employee cannot reasonably be expected to tolerate it a moment longer after discovering it and can walk out of his job without prior notice."

118. The Tribunal also took into account the Employment Appeal Tribunal  
25 decision in **Wright v North Ayrshire Council UKEATS/0017/13/BS** from June 2013. In that case, having examined the line of authorities relating to claimants who resign for more than one reason, Langstaff J cautioned against seeking to find the "effective cause" of the claimant's resignation, but found that Tribunals should ask whether the repudiatory breach  
30 played a part in the dismissal.

119. Section 13(1) of the Equality Act 2010 provides:

*“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.”*

5 120. We had regard to **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**, and in particular to the requirement that the Tribunal must ask “why did the alleged discriminator act as he or she did? What, consciously or unconsciously, was his or her reason?”

10 121. The Tribunal also had reference to section 26(1) of the 2010 Act:

*“A person (A) harasses another (B) if –*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of-*

15 *(i) violating B’s dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...”*

## **Discussion and Decision**

20

122. The Tribunal considered the List of Issues which was helpfully prepared for this Hearing, and took the different heads of claim together as follows.

### **Constructive Dismissal**

25

**1. Whether, contrary to section 94(1)(a) of the Employment Rights Act 1996 (ERA), the claimant’s resignation of 29 September 2023 amounted to a constructive unfair dismissal within the meaning of section 95(1)(c) of ERA and section 98 of ERA, having regard to the following:**

30

**a. Were Compliance Path and Lindsey Howard agents for the respondent?**



**b. Did the respondent commit a repudiatory breach of the claimant's contract of employment? The claimant relies upon the following as breaches of the implied term of mutual trust and confidence between the parties:**

5

**i. Failing to address, resolve and draw any consequences regarding discriminatory comments towards the claimant by Blazej from Compliance Path (April/May 2021);**

10

**ii. Failing to resolve any complaint and concern raised by the claimant about difficulties regarding working with Compliance Path (23 September 2021; 8 October 2021; 2 May 2022; 8 July 2022; 14 July 2022; 15 May 2023; 30 June 2023; 12 July 2023; 4 August 2023; 14 August 2023; 13 October 2023; 13 November 2023 and 21 November 2023)**

15

**iii. Making inappropriate comments and asking inappropriate questions about the claimant's private life (25 April 2022, 22 December 2022)**

20

**iv. Suggesting to the claimant to "find something before you resign", a comment allegedly made by the HR department in answer to the claimant's complaint (19 January 2023)**

**v. Using and forcing the claimant to act above her responsibilities (29 August 2023)**

25

**vi. Questioning the claimant's judgement by rephrasing her words in the official report (13 November 2023)**

**vii. Degrading the claimant by telling her what words she could and could not use during the meeting with Compliance Path (25 August 2023)**

viii. **Not acting while witnessing the claimant being discriminated against, verbally attacked and laughed at by Compliance Path (29 August 2023)**

5

ix. **Accusing the claimant of not wanting to try again and trying to blame her for leaving the company after witnessing her being harassed by Compliance Path (25 September 2023).**

10

c. **If so, was the claimant's resignation submitted in response to and/or because of any such repudiatory breach or breaches?**

d. **Did the claimant affirm the breach or breaches or the contract of employment by delaying her resignation, or by resigning with notice, or by requesting to work further days?**

15

123. The first issue to determine is whether CompliancePath and Lindsey Howard were agents of the respondent.

20

124. It is important to understand that the claimant is seeking to impugn the respondent by the actions of a company and an individual, neither of whom were employees or directly part of their business. The relationship which the respondent had with CompliancePath was one of contractor to client. The respondent entered into an arrangement with CompliancePath in which the latter carried out some paid work on behalf of the respondent. At no stage were any of the CompliancePath staff employed, or intended to be employed, by the respondent. The staff of CompliancePath were working to assist the respondent (whether effectively or not is not the issue here) in order to achieve the contracted outcome.

25

125. No evidence has been provided to the Tribunal to demonstrate that CompliancePath have been agents for the respondent in their dealings

with the claimant, and we have found it impossible to conclude that any act by CompliancePath could amount to a breach of the claimant's contract of employment with the respondent. The claimant has clearly understood this, in that she has framed her claim by reference to complaints that the respondent failed to deal with or act upon her complaints about the actions of CompliancePath towards her, rather than complaining about the actions of CompliancePath themselves amounting to a repudiatory breach of her contract of employment. The contract of employment is clearly between the claimant and the respondent, and no convincing argument has been placed before us to the effect that any third party could intrude upon that contractual relationship.

126. Similarly, the word "agent" has been applied to Lindsey Howard, but only in relation to his position as their US agent for FDA purposes. There is no evidence that Lindsey Howard was an employee of the respondent, nor that he ever employed the claimant. The reference to agency here plainly relates not to the claimant's employment relationship, but to the requirement that the respondent have a US-based individual who can act as an acceptable point of contact to the FDA in the application for approval of their device in the USA. Again, we are not persuaded that Mr Howard was an agent on behalf of the respondent in relation to his dealings with the claimant.

127. Having addressed that point, we then considered the allegations that the claimant made, to the effect that the respondent committed a number of breaches of contract, over an extended period of time, which amounted to a cumulative and repudiatory breach of the claimant's contract of employment.

- i. Failing to address, resolve and draw any consequences regarding discriminatory comments towards the claimant by Blazej from Compliance Path (April/May 2021);**

- ii. **Failing to resolve any complaint and concern raised by the claimant about difficulties regarding working with Compliance Path (23 September 2021; 8 October 2021; 2 May 2022; 8 July 2022; 14 July 2022; 15 May 2023; 30 June 2023; 12 July 2023; 4 August 2023; 14 August 2023; 13 October 2023; 13 November 2023 and 21 November 2023)**

5  
10  
128. In our findings in fact, we have reached conclusions upon each of these allegations, and have not concluded at any stage that the respondent failed to resolve any complaint or concern in such a way as to amount to a breach of the claimant's contract of employment. We have concluded that the respondent did, on an ongoing basis, raise concerns with CompliancePath about the manner in which the work was being carried out, and from time to time brought about changes in the personnel with whom the claimant had to deal.

15  
20  
129. The allegation that the respondent failed to resolve any complaints as raised by the claimant should be considered in light of the fact that it was not entirely within the respondent's power to resolve any concerns on the part of the claimant, in the sense that staff at CompliancePath were not employed by the respondent. We do not find that the claimant's concerns when raised were ignored by the respondent, nor do we find that the claimant's allegations were vindicated by the evidence which we heard, at least partly because we did not hear evidence from any staff at CompliancePath.

25  
130. The claimant's position throughout these proceedings appeared to be that the respondent required to take the steps which she thought were appropriate, whereas the respondent had the responsibility not only of supervising and managing the claimant in her work but also of ensuring that the purposes set out in their contract with CompliancePath were to be achieved, over an extended period of time.

131. We do not consider that the claimant suffered any breach, far less any material breach, of her contract of employment, in the manner in which the respondent dealt with her complaints about CompliancePath. We would also note that any issues arising after 29 September 2023 cannot have played a part in the claimant's decision to resign, and accordingly cannot have been the reason why she resigned.

- iii. **Making inappropriate comments and asking inappropriate questions about the claimant's private life (25 April 2022, 22 December 2022)**
- iv. **Suggesting to the claimant to "find something before you resign", a comment allegedly made by the HR department in answer to the claimant's complaint (19 January 2023)**
- v. **Using and forcing the claimant to act above her responsibilities (29 August 2023)**

132. There were two comments referred to by the claimant, both made by Dr Sommerlade, which she considered to be inappropriate.

133. In April 2022, there was a conversation in which Dr Sommerlade, on the balance of probabilities, made a comment in conversation with the claimant and a marketing employee called Peter about the claimant's hours relating to someone who did not have children. The claimant was clearly upset and offended by this, and we accepted that it was inappropriate to make such a comment. Dr Sommerlade was unaware at the time that any offence had been caused, though clearly it was unfortunate that she referred to the claimant's personal circumstances.

134. As to whether it rose to the level of a comment which undermined the trust and confidence of the claimant, we find that it did not. Firstly, the comment, while inappropriate, was relatively minor, and passing in nature; secondly, the claimant did not raise a complaint about it at the time with the respondent, and certainly did not raise a grievance about it;

thirdly, the claimant remained in employment with the respondent, and under the line management of Dr Sommerlade, for more than a year afterwards; and fourthly, we are unpersuaded that it was a factor in the claimant's resignation, which was clearly brought about at the time it was  
5 by frustrations she had with CompliancePath. Accordingly, we do not consider that this comment had any relation to her resignation, and that even if it had, and even if it had amounted to a breach of contract, the claimant delayed so long in resigning thereafter that she must be taken to have affirmed any breach of contract.

10 135. The second issue arose in December 2022, when, again in a Teams meeting involving several members of the team, Dr Sommerlade asked the claimant what her plans for Christmas were. The claimant, again, appears to have taken great offence to this, on the basis that she had previously made clear that she did not celebrate Christmas. Dr  
15 Sommerlade was aware of this, but wanted to involve the claimant in what appeared to be a friendly discussion about plans over the holiday period. We regarded this as a minor matter which did not rise to the level of inappropriateness, and certainly not to the level of a breach of contract.

20 136. Again, however, even if this had amounted to a breach of contract, the claimant delayed for so long in resigning as a result, that she must be taken to have waived any breach. Her resignation was clearly unrelated to this matter.

25 137. Moving then to the HR department suggesting that "you should find something before you resign" at a point when the claimant's position was that she had no intention of resigning, we were unpersuaded that this amounted to a breach of contract. While we have not heard from the HR officer who allegedly made the comment, it is not at all clear what  
30 compliant the claimant is seeking to make here. She does not appear to suggest – nor, in our view, could she – that the HR department was telling her to resign. In our judgment, the likeliest explanation is that when she raised a concern about her working circumstances, and complained that it

5 had been going on for some time, the HR department may have had the impression that she was sufficiently unhappy to consider resigning. All that can be taken from the alleged comment is that they were offering words of wisdom as may be proffered to any employee considering their position, not to leave without attempting to obtain secure employment elsewhere. There is no evidence that the claimant was somehow being pressured into resigning, and since this conversation took place in January 2023 and no complaint followed, it is plain that the claimant did not consider it to be sufficiently serious as to justify her resignation at that time.

10 138. We do not find that this amounted to a breach of contract, but again she left it so long before resigning that it is both a matter of doubt that this played any part in her decision and also an indication that she waived any breach of contract.

15 139. With regard to the suggestion that the claimant was forced to act above her responsibilities at the meeting of 29 August 2023, we consider this to be entirely unfounded. The claimant herself was very unclear as to what she meant by this, but it appears that she was complaining that Professor Schelter had invited her to take a prominent role in the meeting by raising the issues she had had with CompliancePath. Since this was precisely why the meeting had been called, and the claimant had been very critical of CompliancePath, it was entirely reasonable for the respondent to ask her, a senior employee with a specialist understanding of QMS systems, to speak up. Professor Schelter had asked her to prepare for the meeting, and she did so.

25 140. We do not find that she was asked to do anything other than fulfil her role in an entirely appropriate manner during a meeting in which she had an active part to take. We have found that the meeting was ultimately very constructive and that agreement was reached, and accordingly it appears that the claimant's input did help in bringing about that positive outcome.

30

- vi. **Questioning the claimant's judgement by rephrasing her words in the official report (13 November 2023)**
- vii. **Degrading the claimant by telling her what words she could and could not use during the meeting with Compliance Path (25 August 2023)**
- viii. **Not acting while witnessing the claimant being discriminated against, verbally attacked and laughed at by Compliance Path (29 August 2023)**

141. With regard to the allegation that her judgement had been questioned by rephrasing her language in the report in November 2023, we would firstly observe that this could not have played any role in her resignation, since she had already resigned at the end of September. However, secondly, we were unimpressed by the claimant's allegation here. There is no doubt that Professor Schelter altered the wording of the Management Review report to amend the draft produced by the claimant, but he did so following a further discussion about the draft, involving Dr Sommerlade and the claimant. The claimant signed the final version, thus signalling her acceptance of the amended version.

142. It appears that the claimant is suggesting, in this complaint, that it would amount to some form of breach of contract to alter a draft written by her, when language which was used by her went further than Professor Schelter, her most senior manager, was comfortable to accept. We find that it was entirely legitimate for Professor Schelter, bearing a heavier responsibility for the report and the ongoing relationship with CompliancePath, to amend a draft report so that its terms were acceptable to him. It cannot reasonably be suggested that amending a draft report prepared by the claimant amounts to a serious questioning of her judgement in a manner amounting to a breach of contract. In any working relationship, the claimant, who was junior to Professor Schelter, must accept – and of course in this case did accept – amendments to her



draft following discussion as part of the normal discourse in the workplace. Her draft cannot be regarded as untouchable and we cannot sustain the suggestion that she was entitled to be offended by the actions of Professor Schelter here.

5 143. Similarly, it cannot be found that the claimant was degraded when Professor Schelter told her what words she could and should not say during the meeting with CompliancePath. Frankly, Professor Schelter was quite entitled to advise her in advance of that meeting to moderate the language which she was using privately so as to avoid unnecessary  
10 conflict with a contractor with whom an ongoing relationship existed. It is astonishing that the claimant should have the boldness to suggest that she could just go into a meeting and say whatever came to mind without regard to the consequences for the respondent, of which Professor Schelter was the senior manager.

15 144. In any event, we can hardly find that she was degraded when she proceeded, contrary to Professor Schelter's advice, to denigrate CompliancePath's representatives at that meeting on 29 August by calling them unprofessional and questioning their judgement, but following which no action was taken against her. In our judgment, the claimant's conduct  
20 at this meeting was quite inappropriate, and yet Professor Schelter took no steps to criticise or discipline her for contradicting his advice.

145. This did not amount to a breach of contract by the respondent, on any view, in our judgment.

25 146. We have not concluded that the claimant was discriminated against, verbally attacked or laughed at by CompliancePath in that meeting of 29 August. We have not found that she was verbally attacked at the meeting at all; it is not clear to us on what basis the claimant says she was being discriminated against by them during the meeting; and we have not found that CompliancePath's Mr Devine laughed at the claimant, but simply

reacted with astonishment to the strong criticism which the claimant directed at him and his colleague at the start of the meeting.

5 147. The claimant's version of events at that meeting was contradicted by both Professor Schelter and his contemporaneous notes, which confirmed that not only did Ms Small apologise several times to the claimant, and Mr Devine expressed his support for the claimant, but also that the entire meeting and its outcome was considerably more positive than the impression that the claimant sought to give.

10 148. We do not find that Professor Schelter was in any way at fault for not having taken any action during or after the meeting as the claimant proposes here.

15 **ix. Accusing the claimant of not wanting to try again and trying to blame her for leaving the company after witnessing her being harassed by Compliance Path (25 September 2023).**

20 149. It is our conclusion that the conversation which the claimant described did not happen in the way she alleged. Professor Schelter's evidence, which we accepted, was that when the claimant said to him in advance of resigning that she intended to do so, he asked her if she was not prepared to give CompliancePath a chance to implement the plan which had been agreed, including by the claimant, following the meeting of 29 August. In our judgment, that amounted to an attempt by Professor Schelter to persuade the claimant that she should stay and help move matters forward. Professor Schelter gave evidence to us that he did not wish to lose the claimant, who had provided some valuable service in her time with the respondent, and this was his attempt to persuade her to stay. We do not accept that he sought to blame her for leaving the company, nor that he had witnessed harassment by CompliancePath.

30 150. Given that the claimant's purpose in speaking to Professor Schelter at this point was to advise him that she intended to resign, it is not in any

event clear that this conversation formed part of her reason for resignation when she did submit it.

151. However, we did not consider that this amounted to a breach of contract in any event.

5           c. **If so, was the claimant's resignation submitted in response to and/or because of any such repudiatory breach or breaches?**

          d. **Did the claimant affirm the breach or breaches or the contract of employment by delaying her resignation, or by resigning with notice, or by requesting to work further days?**

10       152. We have not found that the respondent has been guilty of any repudiatory breach or breaches of contract. It is our conclusion that the respondent sought to assist the claimant on a regular basis and to support her in her dealings with CompliancePath, and that indeed the respondent found this a frustrating and difficult relationship to manage with their contractor.

15       153. Further, we consider that the claimant has waived a number of breaches, if they were breaches (and we have found that they were not). Resigning with notice is not, of itself, an act which affirms a breach of contract, though it does call into question whether the claimant was simply unable to work with CompliancePath as she was saying. We also found the  
20       claimant's evidence about requesting further days to be very confusing and unclear, but not so significant as to allow us to draw the conclusion that that act of itself affirmed any breach of contract.

154. It is therefore our judgment that the claimant's claim for constructive unfair dismissal fails, and is dismissed.

25       **Race Discrimination**

**Direct Discrimination (section 13, Equality Act 2010)**

**2. The claimant is Polish.**

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- a. **Did the following things happen?**
    - i. **Failing to address, resolve and draw any consequences regarding the complaint raised by the claimant about discriminatory comments towards her by Blazej from Compliance Path. After the claimant asked Blazej a question regarding the part of the procedure he wrote, he said rudely “Do you want to Google translate that for you?” – questioning the claimant’s ability to understand English. (April/May 2021)**
    - ii. **Letting Compliance Path question the claimant’s ability to learn, understand and speak English during a face-to-face meeting. Compliance Path pretended not to understand a single word coming from the claimant’s mouth. She had to rephrase every sentence multiple times to the point where she said: “I know you know what I mean, you just don’t want to admit it”. During that meeting, being a witness, the respondent refused to support the claimant and did nothing to protect her from the above-mentioned (25 August 2023)**
  - b. **Were Compliance Path and Lindsey Howard acting as agents for the respondent?**
  - c. **Did Compliance Path discriminate against the claimant, and did they do so in the course of carrying out authorised functions?**
  - d. **Was that less favourable treatment? The Tribunal will decide whether the claimant was treated less favourably than someone else not sharing her race was treated. There must be no material difference between the comparator’s circumstances and the claimant’s. The comparator is Professor Bjoern Schelter.**

**e. If so, was that because of race?**

**Harassment on the grounds of race (section 27, Equality Act 2010)**

**3. Did the respondent do the following things?**

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- a. Harass the claimant by letting Compliance Path harass her in the presence of Professor Schelter during the meeting of 29 August 2023.
- b. Harass the claimant by Compliance Path, during the meeting on 29 August 2023, laughing at her, talking over her, accusing her of being aggressive, twisting her words and pretending not to understand her.
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**4. If so, was that unwanted conduct?**

**5. Did that relate to race?**

6. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
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**7. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.**

155. Dealing firstly with the claimant's claim that she was directly discriminated against by the respondent on the grounds of race, that is her Polish nationality, we considered the specific issues before us.

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156. We considered that the respondent did not fail to address, resolve or draw any consequences from what the claimant alleged was discriminatory treatment by Blazej of CompliancePath.

25 157. It is not clear to what extent the claimant brought these matters to the respondent's attention at the time; nor is it at all clear what it is that the

claimant wanted the respondent to do about this. Further, while it is not impossible that a Polish person would discriminate against another on the grounds of race, it is inherently unlikely and we have heard no evidence from Blazej which would entitle us to draw any factual conclusions about whether or not his comments about Google Translate, if made, were in face based on the claimant's race.

158. In any event, we do know that Blazej was removed from the project at a point not distant from the claimant's allegations, and accordingly, action was ultimately taken.

159. It is important to establish that the respondent was not responsible for the actions of Blazej, who was employed by CompliancePath. The respondent was only responsible for their own actions. The claimant did not put her complaints, to the extent that that was what they were, in writing to the respondent nor did she take advantage of the grievance procedure. It is not therefore clear to what extent the claimant was seeking to raise these as a serious matter at the time, and as a result what obligation the respondent truly had at that time.

160. In any event, we do not conclude that the claimant was treated less favourably than any other employee in this regard.

161. Further, this issue arose in April/May 2021, almost 3 years before the claimant presented her claim to the Tribunal. In order to allow such a claim to proceed, we would require to be persuaded that it would be just and equitable to do so. It was plain to us that the respondent struggled to deal with these matters in any detail due to the passage of an extensive period of time. No good reason was given by the claimant for her failure to raise Tribunal proceedings about this matter for such a long period of time, and in the circumstances, we find that the Tribunal does not have jurisdiction to hear this claim owing to the excessive delay in bringing these proceedings on this claim.

162. The second complaint relates to the alleged failure to assist the claimant and support her in a meeting in August 2023 when, it is said, the individuals from CompliancePath regularly, and deliberately, told the claimant that they did not understand her and that she had to repeat herself. We were unpersuaded that this took place at that meeting, and certainly there was nothing said by Professor Schelter to this effect. He regarded it as a much more positive meeting than the claimant did, but he did not give any indication that there was inappropriate behaviour by Mr Devine and Ms Small at that meeting; indeed, it is clear that both of them took considerable efforts to be conciliatory to the claimant.
163. We do not consider that the claimant has proved that that meeting was one in which she was questioned about speaking in a comprehensible manner, nor that there was any discriminatory conduct by the respondent in the course of that meeting by failing to address these issues or failing to support the claimant.
164. We have already found that CompliancePath and Lindsey Howard were not acting as agents for the respondent.
165. In our judgment, the respondent did not treat the claimant less favourably in these regards, nor did they do so on the grounds of race, than any comparator, actual or hypothetical, for which there is simply no basis in the evidence before us.
166. Accordingly, the claimant's claim of direct discrimination fails, and is dismissed.
167. So far as the claimant's complaint of harassment on the grounds of race are concerned, we have not concluded that the respondent harassed the claimant on the grounds of race by failing to protect her from harassment at the meeting of 29 August 2023. We have not found that the claimant was in fact harassed or subjected to any detrimental treatment at that meeting by CompliancePath, nor by the respondent in their handling of

the meeting, which was a positive meeting at which the claimant was treated in a conciliatory and apologetic manner by CompliancePath.

5 168. Further we have not found that the claimant was harassed at that meeting by being laughed at. Mr Devine may have laughed, but we did not consider that to be conduct on the grounds of race, and there was no evidence to that effect, and in addition, we have found that he did not laugh at the claimant. His reaction was, in our judgment, an understandable one given the hostility of the claimant in her opening statements to the meeting, but he was not laughing at, or mocking, the claimant by his reaction. His subsequent reassurance to the claimant that they were there to support and help her, and Ms Small's apologies to her, contradict entirely the claimant's assertions in this regard.

15 169. Accordingly, we have found that allegations were not upheld and that the respondent did not subject the claimant to harassment on the grounds of race, for which there is simply no evidence in any event.

170. The claimant's claim of harassment on the grounds of race is therefore dismissed.

### **Remedy**

20 **8. What financial losses have the dismissal caused the claimant?**

**9. Has the claimant taken reasonable steps to mitigate her losses?**

**10. Should any award be increased or decreased in respect of any failures under the ACAS Code of Practice on Disciplinary and Grievance Procedure?**



171. In light of the Tribunal's findings above, no remedy is applicable in this case.

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**Employment Judge: M A Macleod**  
**Date of Judgment: 14 November 2024**

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Date sent to parties

14/11/2024-----

15 I confirm that this is my Judgment in the case of Lech v GT Diagnostics (UK) Ltd and that I have signed the Judgment by electronic means.