EMPLOYMENT TRIBUNALS

Claimant: **Ms Sekin Altun**

Respondents: **(1) Staffline Recruitment Ltd, (2) Magdalena Stasiewicz, (3) Zeina Haddad, (4) Agnieska Fertykowska, and (5) Matthew Snow**

Heard at: **Southampton Employment Tribunal**

On: **17,18,19,20, 21 February 2025 and 6 and 7 March 2025.**

Before: **Employment Judge Hay,**

Representation
Claimant: **In person**
Respondents: **Ms Cashell – Counsel for Staffline Recruitment Limited, Magdalena Stasiewicz, and Zeina Haddad**
Mr MacDonald – Counsel for Agneiska Fertykowska and Matthew Snow

JUDGMENT having been sent to the parties on 21 March 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. By ET/1 claim form presented on 30 May 2023 Ms Altun brought claims of unfair dismissal, discrimination because of race and religion involving harassment, direct discrimination, and victimisation, and a claim of unauthorised deductions from wages.

2. The first respondent, Staffline Recruitment Limited, provided agency workers to Rolls Royce Motor Cars at their factory in Sussex. Ms Altun was employed by Staffline Recruitment Limited to work at that factory doing highly skilled work in the interior trim department. Some of the staff in her department were employed by the first respondent and some were employed directly by Rolls Royce. It was an international workforce with staff of various nationalities and cultures.

3. The second and third respondents were Staffline colleagues from the factory who worked in the same interior trim department as Ms Altun and whom she accused of discrimination.

4. The fourth and fifth respondents were employees of Rolls Royce Motor Cars. Ms Fertykowska provided absence cover in the interior trim department and worked directly with Ms Altun. Matthew Snow was a Production Manager in the interior trim department. Ms Altun accused Ms Fertykowska of harassment and discrimination. Matthew Snow was accused of discrimination by failing to act or to move Ms Altun to a different department at her request.

5. In 2022 and early 2023 there were a series of incidents at or connected to the workplace they all shared. As a result of those incidents Ms Altun was investigated and subjected to two disciplinary procedures. The first resulted in a verbal warning. The second was paused when she raised a grievance about the behaviour of her colleagues. Her grievance was considered and concluded. The second disciplinary process resumed and concluded with her dismissal.

6. A summary of the relevant events is as follows:
   i. An incident at work on 30 September 2022 when Ms Haddad (respondent no.3) used a heatgun which was on Ms Altun's workbench ("the heatgun incident").
   ii. A confrontation between Ms Altun and Ms Haddad which took place outside Ms Haddad's home address at about 11pm that same night. It was reported to Sussex Police, and Ms Altun received a "community resolution" notice about it. She later accused Ms Haddad of using racist language during that incident.
   iii. An investigation and disciplinary process because of the heatgun incident commenced on 1 October and concluded on 11 November 2022, with Ms Altun being given a written warning, reduced to a verbal warning on appeal ("the first disciplinary").
   iv. 16 November 2022 Ms Altun accepted and signed a Police "Community Resolution Notice" in connection with the incident outside Ms Haddad's home.
   v. A conversation at some undated point in November or December between Ms Altun and Agneiska Fertykowska in which Ms Fertykowska allegedly laughed at Ms Altun and told her "let it be" when Ms Altun made a comment about the quality of Ms Fertykowska's work.
   vi. A conversation in December 2022 which did not involve Ms Altun, but in which she says she heard Magdalena Stasiewicz say "Polish people hate religions".
   vii. An incident at work between Ms Altun and Magdalena Stasiewicz in early January about which Ms Altun later sent a message to Ms

Stasiewicz via Facebook. Ms Stasiewicz complained about both of these things.

viii. Later in January 2023 Ms Stasiewicz sent an email about Ms Altun to Martyn Elliott a manager at Rolls Royce Motor Cars. That email was forwarded to Staffline as Ms Altun's actual employer and resulted in a second disciplinary process being started on 23 January 2023.

ix. On 23 January 2023 Ms Altun raised a grievance. An amended version was sent by David Elson, Ms Altun's Union Representative which included allegations of discrimination, bullying and victimisation.

x. A complaint was made on behalf of Zeina Haddad on 26 January 2023 when Ms Altun followed her to the toilet in circumstances where Ms Haddad was concerned for her own personal safety.

xi. A complaint was made by Agneiska Fertykowska to Rolls Royce Motor Cars on 31 January 2023 about Ms Altun and concerns Ms Fertykowska and other staff had about working with her.

xii. Ms Altun was suspended from work on 31 January 2023.

xiii. Ms Altun asked Matthew Snow (respondent 5) to move her to a different department, but he did not do so.

xiv. There were a series of investigatory and disciplinary meetings held with Ms Altun between October 2022 and February 2023. Some were in person and some online. Ms Altun described one of them as being held "in the servants room" and complained she was not permitted into Staffline's office.

xv. A disciplinary meeting and dismissal on 20 February 2023. Immediately after this meeting Ms Altun emailed her resignation to Staffline, and the chair of the meeting "accepted" it.

7. The issues for the Tribunal to decide were:
   i. Were her allegations of discrimination brought within the time limits of s123 of the Equality Act
   ii. Whether any of the allegedly discriminatory events Ms Altun described had occurred.
   iii. If they did, whether any of those amounted to harassment or direct discrimination.
   iv. Whether Ms Altun had done a "protected act" within the meaning of S27 of the Equality Act.
   v. If she had, whether she experienced any detriment as a result.
   vi. What was the reason for her dismissal?
   vii. Was that a fair dismissal?

The claim for unauthorised deductions from wages

8. Ms Altun confirmed at the start of the hearing that she had now been paid all the outstanding monies which were owed to her. The panel confirmed that this was demonstrated by the documents which had been

served and so the claim for unauthorised deductions from wages was dismissed.

Disclosure order

9. At the start of the hearing there was an outstanding order for third party disclosure which had been made against Sussex police, in which Ms Altun wanted documents the police had about the incident outside Ms Haddad's home on 30 September. The panel heard and refused an application made by Ms Altun to adjourn the hearing to allow further time for that information to be provided. Ms Altun thought it would be important or even decisive to her claim because she thought it would prove she had been the victim of a racist attack on 30 September 2022.

10. The panel did not agree that the expected records were likely to show that, because of the community resolution document that Ms Altun had signed, and because the panel understood their role was to hear the evidence about that incident and come to their own decision about it. The panel also noted that the order requiring disclosure was granted by the Tribunal at an earlier hearing but was not pursued by Ms Altun until the days immediately before the hearing.

11. Ultimately that decision did not matter because as the panel were making and delivering their decision on Ms Altun's request to delay the hearing the information from Sussex Police arrived. That information was included in the evidence.

Adaptations to the hearing

12. The Tribunal made various adjustments to the procedure to assist Ms Altun who was representing herself. We recognised that she felt very strongly about her claim and this meant sometimes she would become overwhelmed. She said it had caused her mental anxiety and had badly affected her mental health. Although she spoke reasonable English, an interpreter was provided so that she did not have to express or explain herself in her second or third language. We ensured that the same interpreter attended for every day of evidence so that a rapport and understanding could be established between them, which assisted Ms Altun to give her evidence, to question the respondent witnesses, and to present her submissions.

13. When Ms Altun was questioning the respondent and their witnesses, we allowed Ms Altun to write her questions down and have the interpreter ask them for her. We also permitted the interpreter some leeway in asking follow up questions which were obvious from the witnesses' answers, even though they were not specifically written down by the claimant. We were careful to ensure that the interpreter did not inadvertently start to ask her own questions or to act as if she was "representing" Ms Altun. This meant sometimes we queried why a question was being asked. On any

such occasion the interpreter explained how it had arisen and we were satisfied it was an appropriate question.

14. Sometimes we asked questions of the respondent witnesses ourselves, not on behalf of Ms Altun but to further explore or clarify answers given on topics she had raised.

15. We gave Ms Altun extended breaks between each respondent witness so she could focus on one witness at a time. We also provided sticky notes and flags for her to mark up her papers to help her find documents relevant to questions she wanted to ask.

Evidence at the hearing

16. The panel were provided with a bundle extending over two lever arch files, and heard from 7 live witnesses over 5 days.

Findings of fact

"The heatgun incident"

19. Staff used heatguns to warm glue and leather that was being prepared and fitted to interiors of the cars Rolls Royce manufacture. There were different styles of heatgun available to workers, and some had preferences over which style they used.

20. Zeina Haddad was a colleague of Ms Altun's who also works in the interior trim department. On 30 September 2022 Ms Haddad was swapping the heat gun she was going to use and Ms Altun objected. Staffline heard about the incident and on 3 October, Ben Ambrose Moore, a manager for Staffline, spoke to various members of staff about it.

21. Ms Haddad described Ms Altun reacting strongly and her account was supported by other witnesses spoken to by Ben Ambrose. Dora Simon said Ms Altun "went crazy" and told Ms Haddad "it's not yours, you don't own this heatgun". Agneska Nowak said Ms Altun had refused Zeina's request "because it was hers" and that as a result Ms Altun was "angry all day".

22. In contrast, Matthew Snow described that usually there was a relatively relaxed attitude on the factory floor to the swapping of tools which was supported by the evidence of staff in that dept and recorded in the investigation meeting notes. Ms Altun did not share that attitude and considered that if a tool was on her workbench it was "hers" and no-one should touch or use it without her permission.

23. Ms Altun referred several times to what she calls the Rolls Royce "business rules" which she believed do not permit staff to swap or change tools freely. These were not given to the Tribunal and appeared to contrast with what the manager, Mr Snow told the Tribunal. Ms Altun's belief that the rules applied made it inherently more likely that she would have objected in the way others describe that she did.

24. The panel concluded that when it came to the *quality* of her work Ms Altun is particularly conscientious (detailed and careful) and would not want her work to be the cause of any delay. On this occasion we concluded that resulted in her reacting inappropriately towards Ms Haddad in the way her colleagues described, and that such a reaction was unnecessary and caused alarm and discomfort.

25. Later that day Ms Altun bumped, barged, or shoved Zeina Haddad with her shoulder. Although Ms Altun denied this had happened, it was behaviour several witnesses described Ms Altun doing and is consistent with her remaining angry all day about the earlier heatgun incident.

26. Various staff members working on the factory floor were spoken to by Ben Ambrose Moore about this heat gun incident and although most of them were aware of it they hadn't seen it directly. But many of them, men as well as women, made comments or observations about Ms Altun's conduct at work, her unpredictability and even paranoia. These comments were made independently and spontaneously by the people spoken to and the panel concluded those observations were genuine and reflected Ms Altun's conduct when at work.

<u>Incident outside Zeina Haddad's home</u>

27. After the shift on 30 September had finished, Ms Altun went to the home address of Ms Haddad. She knew where Ms Haddad lived as they had previously travelled to work together, and it was not far from Ms Altun's own address. Ms Altun claimed in her ET/1 that Ms Haddad had called her a "stupid Turkish person" and said "all Turkish people are stupid", and that this was an act of direct discrimination.

28. When asked about this incident in the days immediately afterwards Ms Altun claimed that Zeina Haddad had asked to speak to her and so after work she had waited for Zeina and when she did not appear Ms Altun went home. Ms Altun suggested that it was coincidence that as she was approaching Zeina Haddad's home Ms Haddad arrived back from work. We did not accept that and concluded that Ms Altun had gone to Ms Haddad's home address to wait for and confront her.

29. In the investigation meeting on 3 October Ms Altun tried to make it sound as though Ms Haddad had "invited" her. Ms Altun said to Ben Ambrose Moore that Zeina had said "I can come and we can talk outside". This was contradicted by Ms Haddad's evidence which was that she did not know who it was who was approaching her until Ms Altun was "right in front of her". The panel concluded Ms Altun had made that comment to Mr

Ambrose Moore because she knew she had to explain why she had appeared uninvited at her colleague's house at 11pm at night.

30. The two women exchanged words in the street outside Ms Haddad's home and at one point Ms Altun pushed Ms Haddad who fell back with her bicycle and then kicked out at Ms Altun. The claimant described Ms Haddad as the aggressor which Ms Haddad denied. Zeina Haddad said that she was approached and confronted by Ms Altun who threatened her and her sister, and pushed her, in response to which she kicked out to keep Ms Altun away from her.

31. The panel preferred the evidence of Zeina Haddad about this incident because;
    i. she made an immediate report to the police about it in which she mentioned the threat to her sister and the push,
    ii. she immediately told others about it including colleagues Magdalena and Dora as recorded in the investigation notes[1],
    iii. she sent message to Ms Altun about it the next day in which she said "what you did last night was not okay" and referenced Ms Altun "hiding in a corner",
    iv. she was consistent in her description of what happened on each occasion she talked about it, including in the phone call to the police of which we have a record, the investigation interview conducted by Ben Ambrose Moore on 3 October, and in the s9 Criminal Evidence Act statement she signed on 4 October which contained a legal declaration of truth and exposed her to the possibility of prosecution if she had lied in it.

32. Ms Haddad's account of this incident was not challenged by Ms Altun despite the panel telling her that if there was something a witness said that she disagreed with she should ask them about it.

33. Ms Altun accepted and signed a police community resolution document on 16 November 2022. That document listed the "offence" as one of common assault against Zeina Haddad and included the following declaration: "I accept responsibility for involvement in this offence". That document is an admission made and signed by Ms Altun in November, that she had been involved in an assault on Zeina.

34. Ms Altun tried to give a different account to the Tribunal and tried to maintain that she was the victim. She said in her witness statement to the Tribunal that when she approached Zeina Haddad she was rude to Ms Altun and called her "a stupid Turkish person, and that all Turkish people are stupid" and then pushed Ms Altun with her bike. Ms Altun said that was the only reason that she pushed Zeina Haddad back and was kicked as a result.

35. The panel rejected that version from Ms Altun because the details she now alleges, specifically the comment re Turkish people, was not

[1] Pg 125

mentioned when she was asked about it by Mr Ambrose Moore on 3 October, and instead was something she has added later.

36. In her oral evidence Ms Altun claimed she had been to the hospital three times as a result of potential injury but this does not match either the documentary evidence of her hospital attendance which she supplied[2] or her witness statement in which she says she went twice and gives the dates. Although possible someone might attend A&E and not have any record of it if they were not seen, Ms Altun's own evidence contradicts her claim that she went three times. This is an example of her adding detail or embellishing which undermined her overall credibility.

37. Another such detail is the comment about Turkish people. The panel did not accept that Ms Haddad said those words or anything like them. That comment is significant enough that if Ms Haddad had said it and that is why Ms Altun pushed her then Ms Altun would have mentioned it in the meeting with Ben Ambrose Moore on 3 October, but she did not. She didn't mention it at all to her employer until she was in her grievance meeting on 31 January 23.

38. Ms Altun did tell the Police about this alleged comment although it is not clear when. But the fact that they recorded that comment is not proof that it was said. Ms Altun may not know or understand that the police are obliged / required to write down what someone says if that person makes a complaint. The fact that the Police made a record of what she told them does not mean that the Police agreed that it had happened.

39. The records from Sussex police which came following the disclosure order do not prove that Ms Altun was the victim. They merely record that at some point, which may have been as late as February 2023[3] she claimed that those words had been said. This is not a contemporaneous record made at the time, it is not an account given under caution in an interview, or in a witness statement with a declaration of truth. Crucially it is not an allegation which has been investigated by the Police. The documents provided by Sussex Police do not show any investigation into Ms Altun's claim. Ms Altun said the decision was under review and that she had been sent a letter but none of this had been provided. Further none of this was noted at the time Ms Altun signed the community resolution in which she accepted responsibility for an assault on Zeina Haddad.

40. The panel therefore concluded that Ms Altun had assaulted Ms Haddad on the evening of 30 September 2022, and that Ms Haddad had not used any racist language at the time of their confrontation.

41. This incident was not something which occurred "in the course of employment" because
    i. Physical or geographical location was not "on site" at the factory or in any location associated with or managed by either Staffline or Rolls Royce Motor Cars. It was in a public street outside a private address.

[2] Pgs 224 and 225

[3] According to an undated SCARF report

ii. It was after their shift for that day had finished and so was separate in time from the working day, although it was shortly after it.
iii. It wasn't at any social event connected to the parties employment.
iv. Apart from the fact it was relating to an incident at work there is no link to their employment.
v. Ms Altun herself often and in her closing submissions referred to it as an "argument in our private lives".

Staffline's "indifference" October 2022

42. Ms Altun claimed that her employer, and specifically Ben Ambrose Moore, was indifferent to her claim of racism against Ms Haddad and failed to "warn" Zeina about her conduct. That was not accurate.

43. It was not clear how the argument came to attention of management at Staffline but Mr Ambrose Moore immediately held investigation meetings with the only two people he could speak to about that incident: Ms Altun and Zeina Haddad, as they were the only two people who were there. Both were spoken to on the same morning (3 October 2022) and for a similar amount of time which is indicative of neutrality and equal treatment of them both. It therefore cannot be said Mr Ambrose Moore or the first respondent "was completely indifferent" or did not care about the issue.

44. The first investigation meeting lasted 48 mins and was more than merely cursory. Ms Altun was asked to give her account and asked twice if there was anything she wanted to add. She was told the situation, which included the incident with the heatgun, would be investigated. The argument outside Zeina Haddad's home was being dealt with by the Police and so Ms Altun was told that was not something which her employer would deal with. She was told the heatgun incident would be investigated, which it was. Ben Ambrose Moore concluded at the end of that investigation that there was nothing to warn Ms Haddad about. That was a reasonable conclusion because the only thing that Ms Altun had complained about to him by then was the argument outside Ms Haddad's house, and that had been left with the police and not the employer.

45. Ms Altun had not made any allegation of discrimination by Ms Haddad during that investigation by Mr Ambrose Moore, despite having the opportunity to do so, and so no one could have "warned" Ms Haddad about discrimination which Ms Altun had not at that time alleged.

46. The contemporaneous records show that on 4 October 2022 Mr Ambrose Moore conducted a whole series of interviews with staff who worked with Ms Altun and Zeina Haddad including Magda Gilmore, Phil Bennett, Rafial Zawada, Karzan Mohammed, Gabija Makauskaite, Dora Simon, and Angeska Nowak. These people described Ms Altun variously as "challenging", having a temper, even being "paranoid", particularly if she thinks people may be laughing at her. From the notes of those meetings the first respondent, Staffline, was entitled to conclude that Ms Altun could be difficult to work with, easily offended, and even paranoid[4].

[4] Bundle pages 123-145

47. It was those comments in part which lead first respondent to commence a disciplinary process against Ms Altun in relation to the heat gun incident at work. That process started on 19 October 2022 with a disciplinary hearing conducted by Peter Walsh[5] which lead to a written warning. The letter sent to Ms Altun on 19 October 2022 told her "the company expects there will be an immediate and sustained improvement and any further occasions may lead to further disciplinary action[6]".

48. Ms Altun appealed and her appeal was heard by Jamie Baugh on 10 November 2022 which resulted in the disciplinary sanction being downgraded to a verbal warning effective for 12 weeks from 19 Oct 2022, the date of the original decision[7].

49. Ms Altun interpreted that as meaning she was "under observation" by the first respondent. This was a phrase Ms Altun used repeatedly in her written correspondence with Staffline and in her evidence as a reason why she would not behave in the various ways subsequently alleged against her. When complaints were made about her in January and February 2023 part of her response was to say that she would not have behaved in that manner whilst she was "under observation". This demonstrates that she altered her behaviour and was deliberately controlling herself which supports an inference that she could be difficult, easily angered, and confrontational, when she was not being so careful. The panel therefore concluded that the descriptions given of Ms Altun by the staff spoken to by Mr Ambrose Moore were accurate.

Did the fourth respondent Agneiska Fertykowska laugh at Ms Altun and say "let it be?"

50. This did happen. Ms Fertykowska had no specific memory of such an incident whereas Ms Altun has a particular memory of it and was clearly upset by it.

Did the second respondent Magdalena Stasiewicz say "Polish people hate religions"

51. By the time of the hearing there was a specific allegation against Ms Stasiewicz that she had said this within the hearing of the claimant. This allegation was not detailed in Ms Altun's ET/1 claim nor the attachment which was submitted with it[8], and was not covered in her witness statement either. The only "evidence" about it from the claimant is in the grievance meeting notes[9] where she told Ben Ambrose Moore "*they didn't say to my face, (David and Magdalena) were talking about religion at work, they say they hate religion"*.

52. There was no evidence from Ms Altun about it, and Ms Stasiewicz in her written and oral evidence denied saying it. Ms Stasiewicz was asked about

[5] Pg 159
[6] Pg 160
[7] Pg 168
[8] Pg 14 onwards
[9] Pg 313

this comment in one of the investigation meetings when she did observed "polish people are very religious" and she recalled a conversation with another employee (David) in which she had made a comment about the older generation in Poland, her home country. Neither of these involved or were directed to Ms Altun, who simply overheard part of Magdalena's conversation with David.

53. Ms Stasiewicz was a clear and confident witness who was willing to accept she had a conversation which might have been misunderstood or misheard. She consistently denied she would have said "Polish people hate religions'. The panel concluded that Ms Altun overheard part of a conversation between other people and misheard or misunderstood what was said, but that whatever the precise words Ms Stasiewicz used she did not say "all Polish people hate religion".

Magdalena Stasiewicz's email dated 12 Jan 23

54. Ms Altun claimed this was a malicious complaint made to cause her to lose her job. There was no evidence to support that contention.

55. On 9 January 2023 Ms Stasiewicz did send an email to Mr Ambrose Moore about an incident which occurred on 6 January 2023, in which she said Ms Altun had repeatedly struck, bumped, or barged into her, and was possibly recording Ms Stasiewicz. Ms Stasiewicz also described Ms Altun raising her voice at others in the team, staring at Magdalena, jumping in front of her, and making her uncomfortable. Ms Stasiewicz wrote that although she had tried to ignore this the possible recording was final thing which led her to email.

56. Ms Altun denied ever recording Ms Stasiewicz and insisted she should "prove" this, even though Ms Stasiewicz had made it clear from the outset that she couldn't. It was not necessary for us to decide if Ms Altun was actually recording her co-workers but only whether Ms Stasiewicz sent that email in order to harm Ms Altun at work.

57. Deciding whether Ms Altun was recording is not possible on the available evidence. Ms Altun suggested various ways that her employer or Rolls Royce Motor Cars could and should have sought to "prove" it, including seizing staff phones and examining personal devices, none of which either Staffline nor Rolls Royce had any legal power to do.

58. Whilst the panel acknowledge that this suggestion she was recording might be important to Ms Altun it is not but part of the factual and legal issues we have to decide. It is example of how Ms Altun appears to have misunderstood the role of the Tribunal, the decisions we have to make, and the matters of fact which are important to those decisions. It is also an example of how Ms Altun thinks that if she says something we are obliged to accept it is true unless it can be proved to her satisfaction that it is not.

59. The panel were not satisfied that Ms Stasiewicz's motivation for sending that email was to harm Ms Altun, quite the opposite. It was sent to raise some real concerns amongst staff in the interior trim department about Ms

Altun's conduct at work and towards them. Ms Stasiewicz says as much in the email itself, and when asked about it at an investigation meeting on 12 January 2023 she made it clear that she did not want it treated as a formal complaint. Her observation that sometimes the claimant is talkative and sometimes she is not is not something which was likely to harm the claimant's reputation at work and it is something other witness say about themselves, particularly on occasions when their work needs closer concentration, including Zeina Haddad as an example.

60. When asked about this in oral evidence Magdalena Stasiewicz said she was "*scared of her Ms Altun and her attitude at work and how she blow up and react to certain situations"* but also "*if the situation at work was bad for her I felt sorry for her, and she needed help with her anger issues".* Far from evidence that Ms Stasiewicz wanted to cause harm to Ms Altun these were genuine reasons for her email. It was significant Ms Stasiewicz did not want to make Ms Altun's situation at work "bad" but also that was not able to continue to ignore these issues. There was no evidence that it was related to or motivated by any reference to race or religion; this was a genuine complaint. It was also one consistent with observations from other workers which had been gathered in the earlier meetings about the September heatgun incident. It was not intended or designed to harm Ms Altun.

61. On 18 January 2023 Magdalena Stasiewicz received a facebook message[10] from Ms Altun. It referred to Ms Altun's status as a British citizen and a member of the Trade Union "Unite". It was interpreted by Ms Stasiewicz as threatening and potentially racist, given the reference to British citizenship, which Ms Stasiewicz does not have. When she forwarded it to her employer she said she felt that Ms Altun was trying to tell her Ms Stasiewicz wouldn't stand a chance (in making a complaint) against Ms Altun. Ms Stasiewicz explained the message had left her in tears and she had no idea what to expect from Ms Altun, especially given this appeared to be a situation which had escalated quickly.

62. The next day Ms Stasiewicz did not come into work and when calling in to explain to why not, she became emotional and was in tears[11]. She emailed Rolls Royce Motor Cars on 19 January 2023 to make them aware of the situation in her department.

Ms Altun's grievance

63. On the same day, Ms Altun sent her own email to Rolls Royce Motor Cars, and then went off sick with stress. She emailed Matthew Snow, not her employer, on 22 January 2023 to complain about her situation and that she was unhappy at work. She did not raise any suggestion of discrimination in that email. On 23 January her Union Representative David Elson sent a formal notification of grievance in which he relayed allegations of workplace discrimination, bullying and victimisation.

[10] Pg 185
[11] Pg 188

64. The allegation contained in Mr Elson's email was an assertion of Ms Altun's right not to experience discrimination at work, and so was capable of being a protected act within the definition of s27 of the Equality Act 2010.

65. Those emails were forwarded to Ben Ambrose Moore on 23 January. On that same day Ms Altun had an investigation meeting with Martyn Elliott as a result on which he decided Ms Altun should face further disciplinary proceedings because of her own bullying and harassment of others, including Magdalena Staseiwicz.

66. Those disciplinary proceedings were paused to allow Ben Ambrose Moore to conduct a grievance procedure. On 26 January he had a meeting with Ms Altun and a few days later he held a series of investigation meetings with various staff from the factory floor.

67. The respondents argue that these two grievances were not protected acts because they were made in "bad faith", which means they were false and were made dishonestly. In fact there was only one grievance in the email from Ms Altun on 22 January which was repeated in email from David Elson Union Rep the next day.

68. The Panel did not accept that this grievance was raised in bad faith. There was no doubt that by the time Ms Altun raised it she was unhappy about her situation at work and the grievance process exists for employees to raise the issues which have not been resolved informally. Whilst we acknowledge that the addition of the claim it was discriminatory conduct initially came from Union representative and not Ms Altun it was still "her" grievance.

69. We also acknowledge that the things she complained about have not been upheld by her employer, but that does not mean they were made in bad faith. If it did, then any grievance which was raised but not upheld could be considered false and that would be too wide an interpretation of the word. It would also undermine the purpose in having grievance procedures at all.

70. The panel did not find that Ms Altun had acted dishonestly in raising her grievance because she was not an employment professional and may not have appreciated relevance of race / religion to any legal employment rights she was expressing in her own email. Although the allegation of discrimination was added subsequently by the Union representative there was no evidence to suggest it was done deliberately to deceive, or that it did not reflect Ms Altun's position or understanding of her position following consultation with the union. The Panel therefore rejected the suggestion that this was a dishonest assertion made by Ms Altun.

<u>Ms Altun followed Zeina Haddad to the toilet</u>

71. Following the grievance meeting with Ben Ambrose Moore, Ms Altun returned to the factory floor. Ms Haddad was also working that day. At one point Zeina wanted to go to the toilet and she asked two colleagues to watch because she thought Ms Altun might follow her. She was sensible

to do that because as soon as she left Ms Altun went after her. It was not only Zeina Haddad who said Ms Altun followed her, two other witnesses confirmed it happened. Dora Purucski said in an investigation meeting on 30 January 23 "*few seconds after Zeina went Ms Altun grabbed her key and went out there. She looked back and saw we were following her so she just stayed at her locker*[12]". This was confirmed by Agneiska Nowak[13].

72. Jamie Seil was a process support worker who works for Rolls Royce, and Ms Haddad told him what had happened. It was Mr Seil who was sufficiently concerned about it that he recorded this as a "Notification of Incident" because he concluded Ms Haddad had a genuine concern for her own safety at work. Ms Haddad did not make any specific complaint against Ms Altun because of it.

73. In contrast Ms Altun has been inconsistent about whether it happened, and if it did why she went to the locker / toilet area. In an investigation meeting on 1st February she said she would only go to her locker at breaktimes for food or to collect a jumper[14], and she said she used the toilets on the other side of the office. That meant she would have had little or no reason to go to her locker at the exact same time as Ms Haddad left the factory floor to go there.

74. Ms Altun did not address this incident in her written witness statement.

75. In oral evidence about it she said *"this is a lie and I can prove it".* She then provided inconsistent answers which contradicted herself and her previous answers. She said she didn't "do it" (go to the locker / toilet area). Then she said "*I took my locker keys because the locker and toilets are in the same place"*. Then she said "*I don't remember if I go to locker room or not – sometimes I go there on break times and sometimes during working times".*

76. On balance of probabilities the panel were satisfied Ms Altun did follow Zeina Haddad to the locker and toilet area and that it was understandable Ms Haddad would ask colleagues to keep watch, especially given their history. Zeina Haddad also explained in her witness statement that she didn't feel safe because of the tools available at work which could have been used as weapons which the panel concluded was a reasonable concern.

<u>Complaint made by Agneiska Fertykowska on 31 January 2023</u>

77. Ms Fertykowska did send an email complaint about Ms Altun on 31 January 2023. It was sent not to Staffline, but to Rolls Royce Motor Cars, Ms Fertykowska's own employer. It was reasonable for Ms Fertykowska to think that her complaint would be acted upon, even though she didn't send it to Ms Altun's employer. This is because Rolls Royce Motor Car are

[12] Pg 238
[13] Pg 247
[14] Pg 262

responsible for Ms Fertykowska's health and safety at work and so it is appropriate for her to complain to them.

78. The panel have the email and could see the content which related to the attack on ZH after work, people not wanting to sit near to Ms Altun at work, people wanting to leave the team, Ms Altun threatening another employee (Magdalena Stasiewicz), and the team not feeling safe at work because of the claimant's unpredictability, even saying it was so bad that some staff were taking medication before coming to work.

79. Ms Altun was asked questions by Ms Fertykowska's lawyer and Ms Altun agreed that Ms Fertykowska believed the things that she had written about in the email, even if Ms Altun did not agree they were all true. So although Ms Altun maintained that she had not "attacked" Ms Haddad, she agreed that Ms Fertykowska believed that she had. Ms Altun also agreed that this was why Ms Fertykowska sent that email.

80. The logical conclusion from that evidence is that the email was sent because Ms Fertykowska believed what she was saying and not because she wanted to attack Ms Altun.

81. That appears to be the conclusion Ms Altun accepted, and it is the conclusion the panel reached. There was no malice in Ms Fertkwoska's email, just genuine concern about the situation in her workplace.

Suspension on the basis of the police report

82. On the same day that Ms Fertykowska sent that email, Ben Ambrose Moore suspended Ms Altun from work. She claims this was because of the police report from November.

83. Mr Ambrose Moore explained his decision in his letter telling Ms Altun that he had gathered further information as part of his investigations, there had been a further incident notification (presumably the bathroom incident with Zeina Haddad on 26 Jan 23) and there were increasing concerns about staff safety and that associates felt uncomfortable and unsafe at work. He also said that the investigations into Ms Altun's own grievance might be impacted if remained at work and that the suspension was to allow "a full and unhindered investigation into the issues of concern[15]".

84. There was no evidence that the suspension was because of the police report. There was no evidence when Ben Ambrose Moore first received that report, which was in fact the single page "Community Resolution Notice". He did have it by the time of an investigation meeting held with Ms Altun on 1 February because he showed it to her in the meeting. But that time he also had all the other information referred to.

85. The panel concluded that the police document was no more than one piece of information on which he based his decision so did not accept that Ms Altun was suspended "on the basis of the police report of the incident on 30 Sept".

[15] Pg 253

Matthew Snow's "refusal" to transfer Ms Altun

86. In an email sent by Ms Altun she requested that Matthew Snow move her to another department. That did not happen.

87. The panel concluded that was not a "refusal" because Mr Snow simply did not have authority to do what Ms Altun wanted. Ms Altun was not the only person potentially affected by such a change, but more fundamentally, she was not Mr Snow's employee, so it was not in his power to simply move her as she requested. Mr Snow might have had some influence over where she was placed, but he could not control where she was placed. He told her this in response to her email.

88. It was Mr Snow's choice whether to use that influence or not, and he had to consider the needs of his department and not just Ms Altun. The panel concluded that Mr Snow choosing not to use any influence to move her was not a refusal to do so.

Did Staffline (Respondent 1) believe the people who complained about Ms Altun, and not her?

89. The panel found that the first respondent did believe the people who complained about her. We noted that they spoke to everyone she had mentioned in her meetings save Jack Dee. We note that she admitted key parts of the allegations against her, for example she accepted sending the Facebook message to Magdalena Stasiewicz. Other allegations against Ms Altun were supported by independent evidence including text messages produced by Zeina Haddad and eyewitnesses to the heatgun and bathroom incidents. There were people who were not complaining about her but who nevertheless described her behaviour as difficult, erratic, even paranoid.

90. The panel therefore concluded it was reasonable of the first respondent not to believe Ms Altun.

Staffline did not accept the claimant into their offices when she attended disciplinary meetings

91. Ms Altun had not specified which meeting or meetings she was referring to when making this allegation. The notes of those meetings were provided and;
    i. Investigation meetings on 3 and 5 October 2022 was not complained about.
    ii. Disciplinary meetings on 19 October and 10 November 2022 were held in person and Ms Altun agreed and approved the notes[16] without raising any issue about the manner or location in which the meetings were held.
    iii. Investigatory meeting on 16 January re the incident with Ms Stasiewicz on 6 January was in person and when Ms Altun asked

[16] See pgs 154, 160 and 160-164, and 168

for the report about that 3 days later on 20 January she made no mention of complaint about way that was conducted[17]

iv. Investigation meeting on 23 January with Martyn Elloitt was in person again and although Ms Altun asked the amend the notes of the meeting she raised no complaint about it[18].

v. Throughout this period she had not been suspended and was attending the workplace.

vi. The location for the 26January 23 grievance meeting has the location recorded as Rolls Royce Motor Cars[19] and although these notes are not signed there does not seem to be any complaint about this meeting[20].

vii. There was a further grievance meeting on 1 February 23 again held at the factory and the notes for which were signed in person. The invite letter to that meeting informed her she would be met and escorted to the meeting. The meeting notes themselves show that was in person and no issue was raised[21].

viii. 13 February 2023 was the date of her grievance appeal meeting. In her witness statement[22] Ms Altun described this as "meeting held in the servants room".

ix. There was also the disciplinary meeting on 20 February 2023 at which she was dismissed. The invite letter to that meeting said it would be via Teams.

92. Having reviewed notes of all the meetings held with the claimant the panel concluded that this complaint relates to two meetings: 13 February 2023 grievance appeal and 20 February 2023 disciplinary at which she was dismissed.

93. Ms Altun says on these occasions she was not permitted into the Staffline office and one took place with her in a housekeeping room and the other with her in the Unite offices across the street. The first respondent, through their witness Ben Ambrose Moore says it would not have been appropriate to conduct a meeting in the Staffline office which was open plan, and he assumed it took place in a meeting space downstairs. However the first respondent called no evidence from the person/s who conducted that meeting to displace Ms Altun's claim that it was done in or from a housekeeping room.

94. However, the meeting notes record that she was accompanied by a union representative, Jason Field, and no objection was raised by him regarding the location of the meeting. The panel concluded that if the location was inappropriate he would have raised it and objected. The meeting on 20 February 2023 was held over Teams, as she had been informed it would be. Whilst the panel accept Ms Altun might have found both meetings uncomfortable we did not consider this any more than the inherent discomfort in having to attend a disciplinary meeting. The panel therefore did not accept that this was humiliating or that it was done deliberately.

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[17] Pg 178-180, pg 194
[18] Pg 202
[19] Pg 211
[20] See pg 212
[21] See pgs 257,257, and 268.
[22] Para 107

Did the first respondent listen to Jack Dee

95. Jack Dee was a person Ms Altun had identified as potentially having witnessed a conversation between two other staff, Brigida and Magdalena, which was overheard by a third staff member Mariana Muschei. Ms Altun claimed Mariana had shouted at Brigida and Magdalena "I understand your language and know what you are talking about behind everyone's back". She felt that this would show that there were a group of women at work who would talk about colleagues behind their backs, and she felt she was one of their victims. Ms Altun thought that if Mr Dee had witnessed this exchange that would support her complaints of discrimination and bullying with the first respondent. She therefore complained that the first respondent did not consult Mr Dee.

96. Staffline agree Mr Dee was not interviewed but says this was justified. Ben Ambrose Moore said in his written statement that because Mr Dee didn't actually witness the conversation but was simply walking passed he did not think it was relevant to take a statement from him. He confirmed this in oral evidence and said "*I spoken with Brigita and Mariana separately which is what Jack had witnessed, and they both said it was a work related conversation and didn't feel I needed to speak with Jack Dee to understand any further".*

97. The panel found Mr Ambrose Moore to be a credible witness who had considered whether it would help to speak to Mr Dee, and he explained why he did not. He did speak to the people directly involved in the *conversation* and on the basis of that concluded Mr Dee could add little. In earlier investigations Mr Ambrose Moore had spoken to numerous people, so the panel concluded that his view Dee wouldn't add anything was genuine because if he thought otherwise that he would have also spoken to him.

98. The panel found that the reason Mr Dee was not spoken to was because he would not have been able to add any information which would have assisted.

The dismissal

99. Ms Altun was dismissed. The dismissal occurred during her final disciplinary meeting on 20 February 2023 when Jamie Baugh dismissed her with immediate effect[23]. Mr Baugh had paused that meeting to consider his decision before he made it, and he told Ms Altun, that it was still open to her to resign. She did not do so, and when the meeting recommenced Mr Baugh formally dismissed her for gross misconduct.

100. Ms Altun then almost immediately submitted an email resigning. As a matter of both fact and law she no longer had a job to resign from. Mr Baugh responded to her email and "accepting" her resignation.

[23] See pg 335

101. There was some confusion in the evidence because the documents show these emails were exchanged at 12.02 and 12.09 and notes of meeting suggest it did not start until 3pm. The meeting notes also made clear that in that meeting Ms Altun was told "you will be dismissed with an immediate effect"[24]. Mr Baugh was asked in oral evidence about whether Ms Altun was dismissed or resigned: She asked "*am I still someone who resigned or someone who was dismissed due to gross misconduct?".* He confirmed "*Dismissed due to gross misconduct".*

102. The confusion means that either Ms Altun had resigned by 12.09pm and should never have been subjected to the disciplinary meeting, or that the meeting notes which record a start time of 3pm are wrong. That confusion was resolved by reference to a letter sent by David Alson, the Union representative who had accompanied Ms Altun, to Grace Dent in the Human Resources Department of Rolls Royce Motor Cars. In that letter Mr Alson noted his surprise that Ms Altun's resignation had been accepted after she had been dismissed. That was referred to Staffline, since it was Staffline who had both dismissed Ms Altun and accepted her resignation. A manager Richard Brookes apparently raised it with Jamie Baugh and acknowledged "*this was purely an error on his (Jamie Baugh) part and something he is now aware he should not be doing once a decision has been given"*. That email also states that Ms Altun's email came at 12.02 on the day of the disciplinary meeting "shortly after the hearing had been concluded"[25]. This exchange, coupled with Mr Baugh's written and oral evidence in which he consistently says that he dismissed Ms Altun and then accepted her resignation led the panel to conclude that the time on the meeting notes is likely to be an error.

103. Neither Mr Brookes, nor anyone else at Staffline, ever told Ms Altun that her resignation could not be accepted because she had already been dismissed, and crucially, that because she had been dismissed she had certain appeal rights.

104. Because Ms Altun was wrongly allowed to believe she had resigned she had no way of understanding that she could in fact seek an appeal from someone unconnected with her and the dept at Rolls Royce, and who was independent. Staffline understood that Ms Altun had been denied this important safeguard. They could and should have written back to Ms Altun and explained that her resignation had been accepted in error because by the time she sent it she had already been dismissed, and that therefore she was entitled to appeal her dismissal. This was Important because Ms Altun said that had she been told about it she would have exercised her right to appeal.

105. Jamie Baugh was asked about this and his response was "*the reason for accepting the resignation, I wasn't comfortable that we had the infrastructure to get someone down to hear your appeal within a reasonable time, if there would have been an appeal submitted it would have been hard to source an impartial person to hear the appeal. So there could have been someone we pulled, most probably from up north. The time had elapsed for you to submit your appeal by the time I learned*

[24] See pg 340
[25] See exchanges at pages 341 -343

this…" Mr Baugh is wrong about that because he learned of his error in accepting her resignation the next day or the day after and still within a reasonable period to correct it and offer Ms Altun her appeal rights. By failing to correct this Staffline denied her that right.

106. This was important because Ms Altun understood that because she had "resigned" the Union could not represent her or offer her legal support. She says this is why she could not have a lawyer to help her present her case.

107. Ms Altun may not be correct about that because in an email she sent to David Elson[26] she said "*before Jamie announced his final decision I asked you to help me with lawyer and legal support …to go to court if a dismissal decision is made when the meeting is given a 10 min break. But I am very sorry for your harsh attitude and for saying that you can't help me with providing lawyers and support. After we talked about this Jamies Baugh announced that he had made a dismissal decision for me when the break was over*". Ms Altun also said in that email that because the Union would not support her she had no choice but to resign. From that email it sounds as though the Union already had indicated that it would not support Ms Altun even if she was dismissed. And if that is right, then the fact that Staffline did not confirm her dismissal did not affect her having legal representation.

108. Ms Altun said that she had tried to find a lawyer to help her but because she had resigned and not been dismissed, no solicitor would help her. The panel concluded that Ms Altun would have sought legal representation if she thought she was entitled to it, either through the Union or from a solicitor however, it was and remained the job of the Tribunal to make sure that she had a fair hearing, and the adaptations provided ensured that she did.

The Law

Discrimination: who must prove what (the burden of proof)

109. Section 136of the Equality Act 2010 states:

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

110. In the circumstances of this case that means it is for Ms Altun to show that there was some conduct towards her which, without any other explanation for it, proves she was discriminated against. If she can show that the conduct occurred then the respondent(s) must show that the

[26] Pg 344

reason for the conduct occuring was not discriminatory. This is a two stage analytical process: *Igen v Wong* [2005] ICR 931.

111. The law requires Ms Altun to do more than show that she was different to her colleagues, because of her race or religion, and she was treated differently from them. Such bare facts may indicate the possibility of discrimination but they are not enough for the Tribunal to conclude that it is more likely than not that the respondent(s) have committed acts of discrimination: *Madarassy v Nomura International plc* [2007] ICR 867 at §56 and endorsed by the Supreme Court in *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, at §46. Ms Altun must show that her race or religion was or might be the reason for any difference in treatment.

112. If Ms Altun is able to do that then the respondent(s) should show that the reason for any different treatment is not because of Ms Altun's race or religion. Any such reason need not be reasonable or sensible but it must be sufficient to satisfy the Tribunal that the reason for any difference in treatment had nothing to do with the protected characteristic: *Royal Mail Group Ltd v Efobi* at §28.

Who is responsible (liable)?

113. The employer is liable for their own actions, and also the actions of their employees if the actions of the employee are done "in the course of their employment". That does not mean *any* act committed by an employee is the responsibility of the employer, only such acts as are part of their employment.

114. Although this can extend to acts which occur away from the workplace, such as a staff party, not every act between employees is "in the course of employment". It is a question of fact for the Tribunal to decide: *Jones v Tower Boot Co Ltd* [1997] ICR 254.

115. The Supreme Court in *Mohammed v WM Morrison Supermarkets plc* [2016] ICR 485 has said it is necessary to ask two questions

i. what was the nature of the job or the "field of activities" given by the employer to the employee?
ii. Was there a sufficient connection between that job and the (alleged) wrongful conduct to make it right, as a matter of social justice, for the employer to be held liable?

Harassment

116. S.26(1) EqA 2010 provides as follows:

i. "(1) A person (A) harasses another (B) if—

i. A engages in unwanted conduct related to a relevant protected characteristic, and

ii. the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

iv. …

ii. (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

i. the perception of B;

ii. the other circumstances of the case;

iii. whether it is reasonable for the conduct to have that effect."

117. The three elements to a harassment claim are therefore: (i) unwanted conduct; (ii) that has the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment and (iii) which relates to a relevant protected characteristic.

Unwanted conduct

118. Unwanted conduct can include "a wide range of behaviour including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes" (see ECHR Code: §7.7). An omission or failure to act can also constitute unwanted conduct.

119. Whether a single act of unwanted conduct is sufficiently serious to found a complaint of harassment is a question of fact and degree *General Municipal and Boilermakers Union v Henderson* [2015] IRLR 451, at §99. The EAT has stressed the importance of context in determining whether remarks constituted harassment: *Evans v Xactly Corporation Ltd* EAT 0128/18, §8.

Violation of dignity or offensive environment

120. Not every adverse comment or conduct will constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done "*which are trivial or transitory, particularly if it should have been clear that any offence was unintended"*: *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 at §22. The fact that a claimant is slightly upset or mildly offended by the conduct in question may not be enough to bring about a violation of dignity or offensive environment. The senior courts have also warned who warned that *"tribunals must not cheapen the significance"* of the statutory language in relation to harassment and reminded that the words used are significant and that *"[t]hey are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment"*: *Grant v HM Land Registry* [2011] ICR 1390, at §47,

121. Some of the factors a Tribunal may consider when deciding whether an adverse environment had been created were noted in *Weeks v Newham College of Further Education* EAT 0630/11, at §20-21. In that case the Tribunal considered that: (i) the relevant conduct was not directed at the claimant; (ii) the claimant had made no immediate complaint, and

(iii) the words objected to were used only occasionally, and so that did not amount to harassment.

Effect

122. This requires a Tribunal to consider both whether the claimant perceives themselves to have suffered the effect in question *and* whether it was reasonable for the conduct to have had that effect: *Pemberton v Inwood* [2018] ICR 1291, at §88.

123. In considering that second of those questions, the Employment Appeal Tribunal observed in *Dhaliwal* (at §22) that it was important "*not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"*. The EAT explained (at §15):

> *"if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question."*

124. This approach is particularly relevant in the case because of the findings the Tribunal made about Ms Altun's attitude and sensitivity at work.

Related to protected characteristic

125. Whether conduct is 'related to' a protected characteristic is a matter for the fact for the tribunal.

126. The law which applies to this claim means that even if Ms Altun feels harassed or upset by conduct towards her at or related to her work, that does not mean she has established that she has been the victim of discrimination. She would have to show, not only that the conduct was unwanted by her, but also that someone neutral examining the circumstances of it would conclude she was justified in feeling that way, and that the conduct which upset her was related to her race or religion. Her strength of feeling is no substitute for that legal analysis.

Direct discrimination (s.13 EqA 2010)

127. S.13(1) EqA 2010 defines direct discrimination as follows:

i. "*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."*

128. S.23(1) EqA 2010 provides: "*on a comparison of cases for the purposes of section 13… there must be no material difference between the circumstances relating to each case"*.

129. To establish direct discrimination, a claimant must show that: (1) R must have treated C less favourably than it did or would have treated others; and (2) that less favourable treatment must be because of a protected characteristic – in the present case, Ms Altun's race and / or religion.

'Less favourable treatment'

130. A claimant that only shows they were treated differently from how others in comparable situations were or would have been treated will not succeed with a complaint of unlawful direct discrimination. The treatment the claimant complains of must be "less favourable" treatment, not "different treatment: *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065, §76.

131. Usually a claimant will identify someone in the workplace with whom the Tribunal should compare them. Where there is no actual comparator (as is the case here), the question of less favourable treatment needs to be determined by reference to a hypothetical comparator. This is a fictional person whose circumstances are materially the same as those of the complainant except that they don't share the relevant protected characteristics, in this case of race or religion. The Tribunal then consider whether such a person would have been treated more favourably than the claimant in the same circumstances. If the answer to this question is no, that the comparator would not have been treated more favourably, this also points to the conclusion that the reason for the treatment complained of was not the fact that the claimant had the protected characteristic*." Gould v St John's Downshire Hill* [2021] ICR 1, at §81.

132. That hypothetical comparison can be challenging, but it essentially comes to the Tribunal asking a single question: did the claimant, because of a protected characteristic, receive less favourable treatment than others? *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337

'Because of' a protected characteristic

133. If the answer to the question of less favourable treatment is "yes" the the Tribunal must consider if that was "because of" a protected characteristic. This involves deciding why anyone alleged to have discriminated against the claimant acted as they did. A tribunal must ask: why did the alleged discriminator act as he or she did? What consciously or unconsciously, was his or her reason?: *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065. It can be enough that the protected characteristic has a "significant influence" on the decision to act in the way complained of: *Gould v St John's Downshire Hill* [2021] ICR 1.

Victimisation (s.27 EqA 2010)

134. S.27 EqA 2010 provides:

i. *"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*

i. B does a protected act ...

ii. *(2) Each of the following is a protected act—*

iii. *(b) giving evidence or information in connection with proceedings under this Act;*

iv. *… (d) making an allegation (whether or not express) that A or another person has contravened this Act.*

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

135. The Tribunal must decide:

i. Was the claimant Ms Altun subjected to a detriment?
ii. If so, by the time she was subjected to that detriment, had she done a protected act?
iii. Was the fact that she had done a protected act the reason for subjecting her to the detriment, or did it have a significant influence on the decision to subject her to the detriment?

Detriment

136. There is no statutory definition of what amounts to a "detriment". The EHRC Employment Code contains a useful summary:

'*Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards…There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment*' — paras 9.8 and 9.9

137. The key test is "*whether the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment*": *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337. This is to be interpreted widely and it is enough that a reasonable worker *might* take the view that the conduct was detrimental: *Warburton v The Chief Constable of Northamptonshire Police* [2022] EAT 42.

138. This means the issue of "detriment" includes both subjective (from the claimant's point of view) and objective (from a neutral point of view) elements. However the claimant's perception must be reasonable. If a claimant's perception of their employer's action is unreasonable then it will not amount to a detriment: *Fanutti v University of East Anglia* EAT 0182/17.

139. A refusal to act can amount to a detriment: *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065 (failure to provide a reference).

Protected act

140. In cases such as this involving the making of a complaint, there must be something about the complaint to show it is one to which the Equality Act 2010 at least potentially applies: *Durrani v London Borough of Ealing* UKEAT/0454/2012.

"bad faith"

141. Victimisation provisions are designed to protect bona fide claims only and so making a false allegation will not be protected if it is done in bad faith: *HM Prison Service and ors v Ibimidun* [2008] IRLR 940.

142. The central concept of "bad faith" is dishonesty: *Saad v Southampton University Hospitals NHS Trust* [2019] ICR 311 para 47:

> *"The tribunal is simply required to find whether that evidence, information or allegation is true or false; if false, it must then determine whether it was given or made by the employee in bad faith. And that must mean that it has to determine whether the employee has given the evidence or information or made the allegation honestly: to paraphrase Auld LJ in Street (see para 41), absent other context, bad faith has a core meaning of dishonesty".*

143. So the Tribunal must decide if the allegation is true or false, and if false, was it made dishonestly?

Protected act had 'significant influence' on the decision-making

144. If the claimant's protected act has a "significant influence" of the decision which amounts to a detriment, then victimisation would be made out: *Nagarajan v London Regional Transport* [1999] 3 WLR 425, at 434A. The word "*significant"* means "*more than trivial*": *Igen v Wong*, at §37.

145. For a claim of victimisation to succeed the person who is alleged to have caused the detriment must have known about the protected act. This is simple common sense; a person cannot be influenced by something they do not know about.

Time limits

146. The relevant provisions of s.123 EqA 2010 state:

> *"(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *i. the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> *ii. such other period as the employment tribunal thinks just and equitable.*

(3) For the purposes of this section—

iii. conduct extending over a period is to be treated as done at the end of the period;

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

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

v. when P does an act inconsistent with doing it, or

vi. if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

147. Time limits are a jurisdictional issue in a discrimination claim. That means if the claim has been brought after the time limit has passed and if it is not just and equitable to extend the time limit, the Employment Tribunal has no legal power or authority to hear the case.

148. Each individual act of alleged discrimination will attract its own separate time limit unless the claimant can show they are all part of one continuing act, or that in relation to any individual act, it would be just and equitable to extend the time limit for bringing the discrimination claim.

149. It is the claimant's responsibility to show that it would be just and equitable to extend time: see *Rathakrishnan v Pizza Express (Restaurants) Ltd* [2016] IRLR 278 at §9, "*if the Claimant advances no case to support an extension of time, plainly, he is not entitled to one."*

Continuing act

150. A claimant can argue that the conduct they are complaining about is a single continuing act made up of a series of individual acts, the last of which was within the three-month time limit. The individual acts complained of must constitute one continuing state of affairs and not unconnected or isolated acts: *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, at §52.

151. When considering whether acts are *"so linked as to be continuing acts or to constitute an ongoing state of affairs,"* one relevant factor will be whether the same or different individuals were involved: *Aziz v FDA* [2010] EWCA Civ 304, §33.

152. Only acts which are found to be discriminatory can be part of any continuing act. If any of the acts relied on by the Claimant (as part of a continuing discriminatory state of affairs) are not found to be discriminatory, they cannot form part of the continuing act: *South Western Ambulance Service NHS Foundation Trust v King* [2020] IRLR 168, at §36.

Just and Equitable Extension

153. There is no presumption that an extension will be granted. A Tribunal cannot hear a complaint unless the applicant (the person seeking the extension, in this case Ms Altun) convinces the Tribunal that it should

extend time. The exercise of their discretion and choosing to do so, is the exception: *Robertson v Bexley Community Centre, T/As Leisure Link* [2003] EWCA Civ 576[27], at §25. This sometimes means that an otherwise valid claim will not be heard because the claimant cannot persuade a Tribunal to extend the time limit to the claimant's advantage: *Chief Constable of Lincolnshire Police v Caston* [2009] EWCA Civ 1298.

154. The following guidance applies: *"The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay" Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23.

155. S33 of the Limitation Act 1980 provides a checklist of things to consider when deciding whether to extend the time for bringing personal injury claims in the civil courts. Senior Judges have said that the Employment tribunal may find this checklist helpful. In the circumstances of this case the relevant factors include the length and reasons for the delay in bringing the claim, the extent to which that will have affected the evidence which can be called, the conduct of the respondent after the acts complained of, the extent to which the claimant acted promptly or reasonably after she knew she may have a case, and any steps taken by her to obtain advice. The Tribunal does not have to apply this checklist and a tribunal will only make a legal mistake if it ignores something significant: *Miller and ors v Ministry of Justice and ors and another case* EAT 0003/15.

Unfair dismissal

156. S94 of the Employment Rights Act 1998 states "An employee has the right not be unfairly dismissed by his employer".

157. S98 of that act states
In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
i. (a)the reason (or, if more than one, the principal reason) for the dismissal, and
ii. (b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2)A reason falls within this subsection if it—

[27] In ***Jones v Secretary for Health and Social Care*** **[2024] EAT 2,** at §31, HHJ Tayler warned that comments in ***Robertson*** have to be viewed in context (namely, that this was that employment tribunals have wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere).

iii. *(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
iv. *(b)relates to the conduct of the employee,*
v. *(c)is that the employee was redundant, or*
vi. *(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment*.

158. Therefore conduct is one of the potentially fair reasons for dismissal: s98 (2) (b).

159. The fairness of the dismissal is then to be determined in accordance with s.98(4) which says:

(4) The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —

i. depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
ii. shall be determined in accordance with equity and the substantial merits of the case."

160. This means it is for the employer, in this case Staffline Recruitment Limited, to show that the reason for Ms Altun's dismissal was her conduct, and that that was a fair reason for dismissing her.

Reason

161. A reason for dismissal has been described as "*a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee*": *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, 329. It is for the employer to provide evidence of the reason why they dismissed the employee.

Fairness

162. This is a neutral issue and neither side has to "prove" anything. After the case of *British Home Stores Ltd v Burchell* [1980] ICR 303 in conduct cases the Tribunal has to consider three things:

i. did the employer believe that the employee was guilty of misconduct;
ii. did the employer have in mind reasonable grounds upon which to sustain that belief; and
iii. at the stage at which that belief was formed on those grounds, had the employer carried out as much investigation into the matter as was reasonable in the circumstances.

163. Senior courts have also said there is no point in having an investigation (by the employer) where the misconduct is admitted *Boys and Girls Welfare Society*, 700H, that an employer does not have to prove

the offence of misconduct with which the employee is accused, *Alidair Ltd v Taylor* [1978] ICR 445, and that there are limits to what an employer should be expected to do to investigate an employee's alleged misconduct: *Miller v William Hill Organisation Ltd EAT* 0336/12.

Range/band reasonable response test

164. The Tribunal must decide whether in the circumstances of the case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted: *Iceland Frozen Foods Limited v Jones* [1983] ICR 17, at 25A. This does not involve the Tribunal deciding whether they would have done the same thing as the employer. Even if the Tribunal thinks they would have done something different, that does not mean the dismissal was unfair. A dismissal will be fair, even if the Tribunal disagrees with it, provided it is one of a range of options which the employer could have chosen when dealing with their employee.

165. Dismissal does not have to be the last resort before it can fall within the range of reasonable responses: *Quadrant Catering Ltd v Smith* EAT 0362/10, at §15-16. Nor can a Tribunal substitute its own decision as to what was the right thing was to do: *Foley v Post Office* [2000] ICR 1283, 1292H – 1293B.

Flaws in the process

166. Just because the disciplinary procedure which lead to dismissal was flawed that does not mean the dismissal itself will be "unfair". The Employment Appeal Tribunal has recognised that in almost every unfair dismissal case a claimant will be able to identify some flaw in the process by which the employer dismissed them. The Tribunal must evaluate whether any such defect is so significant as to make it unfair, and to consider the reasonableness of the whole procedure including the decision to dismiss: *Sharkey v Lloyds Bank plc* UKEATS/0005/15/SM.

167. An appeal is normally part of a fair procedure but s.98(4) ERA 1996 requires all the circumstances to be taken into account. There are cases where an appeal would have been futile and in such circumstances the absence of an appeal did not mean the dismissal was unfair: *Moore v Phoenix Product Development Ltd* EAT/0070/20.

The Tribunal's decisions

Time limits:

168. Ms Altun's claim of unfair dismissal was brought in time. Her discrimination claims may not have been. The decision on time limits was listed as part of the final hearing and so was only determined after the Panel had heard the evidence. This part of the Panel's decision was given

at the end of the oral judgment by which time all Ms Altun's claims had been dismissed. However, the time limit point was included in the list of issues for determination and is addressed.

169. Of the allegedly discriminatory acts listed four occurred before 23 December 2022 and so were out of time unless Ms Altun could show either they are all conduct extending over a period, or that it would be just and equitable to extend the time limit. These issues were not addressed in Ms Altun's evidence at all.

170. Ms Altun claimed that her colleagues were "mobbing" her, and it was apparent she was claiming there was a collective action against her, and so the Panel could infer an argument that Ms Altun was asserting this was "conduct extending over a period of time" rather than a series of individual acts. We did not agree with that because all acts before 23 December 2022 were done by different individual people, some were at work and some were not, they were different in nature (specific racist comment by Zeina Haddad, an omission or inaction by Ben Ambrose-Moore, laughing by Agneiska Fertykowska, and a comment to someone else and not to claimant by Magdalena Stasiewicz), and not all were directed to her, one was in front of her. In context of this case these were too different to be considered one "conduct" extending over time so there can be no extension on that basis.

171. Any "just and equitable" extension that would need to be addressed by Ms Altun in evidence and she has said nothing about it. Although we note her comments about the effect on her health that these experiences have had on her she does not say that they prevented her from bringing those claims in time, or say why the statutory time limit should not apply. Although we appreciate that she is a litigant in person it is not for the tribunal to find or elicit (which in these circumstances would mean asking her questions until she gives a helpful answer) that from her. It was identified as an issue in the List of Issues and this gave Ms Altun a fair opportunity to understand what she needed to address in her evidence, but she did not do so.

172. That means she has provided no reason for the delay. There is nothing in the evidence to suggest that any delay in bringing those parts of her claim was because of the conduct of any of the respondents. We know she had some contact with her Union, and she told us she had contacted a number of lawyers who said they could not help her because she had resigned instead of being dismissed and that indicates she was aware that she had a potential claim, but she has not told us why she did not pursue those parts of her claim straight away.

173. Ms Altun commented at various times about the impact of these experiences on her mental health, but she did not claim that this was the reason why she could not bring all parts of her claim in time. She has just simply failed to address it, and so there is no real evidence upon which the Panel could conclude it would be just and equitable to extend the time limit in s123 of the Equality Act.

174. That means any allegations of discrimination which occurred prior to 22 December 2022 are out of time and the Tribunal has no jurisdiction to hear them. However, by the time that determination was made the evidence had been called and the Panel had made the decisions listed below.

Harassment and Direct discrimination:

175. In the first place the allegations were considered as allegations of harassment. Where any specific factual allegation was not proven it was dismissed as an allegation of both harassment and direct discrimination.

176. If the factual allegation was proven, then the tribunal applied the statutory test for harassment under s. 26 Equality Act. If that allegation of harassment was made out, then it was dismissed as an allegation of direct discrimination because under s. 212 (1) Equality Act the definition of detriment does not include conduct which amounts to harassment.

177. If the factual allegation was proven, but the statutory test for harassment was not made out, the tribunal then considered whether that allegation amounts to direct discrimination under the relevant statutory test.

178. The numbering which follows is adopted from that in the list of issues presented at the hearing.

179. [3.2.1] Zeina Haddad calling Ms Altun “stupid Turkish person” and saying “all Turkish people are stupid” was not proven. The Tribunal concluded it was more likely than not that Ms Haddad had not said this but that it was a detail Ms Altun had added to her own account after the incident had happened.

180. [3.2.2] Ms Altun’s allegation of indifference shown by Staffline Recruitment Limited through Ben Ambrose Moore to Ms Altun’s allegation of racism by Ms Haddad was not proven. The evidence showed that Staffline, through Ben Ambrose Moore, investigated incidents between Ms Altuna and Ms Haddad, but that at the time of the first investigation Ms Altun made no complaint of racism against Ms Haddad, and so there was nothing for Staffline to be indifferent to. By the time of the second investigation Staffline had conducted an investigation as part of Ms Altun’s grievance procedure, and concluded that Ms Haddad was not at fault, and so there was nothing to warn her about at that stage either.

181. [3.2.3] The Panel accepted that Mr Fertykowska had laughed at Ms Altun and said “let it be”. We further accepted that this might have been “unwanted conduct” because nobody likes to feel disrespected or laughed at in the workplace. The panel concluded this was a one-off casual comment between work colleagues, the equivalent to “don’t worry about it”, and not a comment intended or likely to hurt anyone’s feelings or cause more than momentary annoyance. It therefore did not have the purpose or effect of violating Ms Altun’s dignity or creating an offensive environment. Further there was nothing to suggest it related to Ms Altun’s race or

religion as opposed to her fastidiousness (insistence on detail and perfection) in her work. In addition Ms Altun accepted in cross examination that none of Ms Fertykowska's actions towards her were because of Ms Altun's (Turkish) race or the fact she was Muslim. Therefore although Ms Altun has shown this incident occurred, it was not proven as an incident of harassment.

182. Given Ms Altun's own evidence that Ms Fertykowska's actions were not because of Ms Altun race or religion, the allegation also fails as an claim of direct discrimination as it was not "because of" a protected characteristic.

183. [3.2.4] It was not proven that Magdalena Stasiewicz had said "Polish people hate religions" or anything in similar terms. The panel accepted that Ms Stasiewicz may have made a comment to David about people from her own nationality and culture but not that she used the words Ms Altun said that she did. Nor do we accept that any comment about Polish people was directed to Ms Altun, or was said with any awareness that she could hear it. It was said to another employee with whom Ms Stasiewicz was in a personal conversation, albeit one which could be partly overheard. The Panel concluded there is nothing in Ms Stasiewicz making an observation about her own nationality and culture which would violate the dignity of someone who happened to be nearby. Therefore this does not amount to an incident of harassment.

184. [3.2.5] It was accepted that Ms Stasiewicz did send an email complaining that Ms Altun had "accidentally" hit her and possibly recorded her in January 2023. There was no evidence that this email was sent in order to harm Ms Altun's position with her employer and so this allegation is <u>not proven.</u> Further, the observation that sometimes Ms Altun is talkative and sometimes she is not was unlikely to affect her reputation at work, and was something other witnesses said about themselves. We did not accept that Ms Stasiewicz had any negative motivation for sending that email because Ms Stasiewicz made clear she did not want to make a formal complaint about Ms Altun. The Panel concluded Ms Stasiewicz had genuine reasons for sending that email.

185. Although the Panel acknowledge that Ms Altun was upset by email, that is not the legal test to be applied. Whilst it may have been unwanted by Ms Altun, and she may have found it offensive, that was not the purpose behind Ms Stasiewicz sending it. Further there was nothing in the email or the reasons for sending it, which could be shown to relate to Ms Altun's protected characteristics. That means the sending of that email does not meet the legal test for discrimination by harassment or direct discrimination.

186. [3.2.6[] The Panel concluded that the complaint made on behalf of Zeina Haddad following an incident at work on 26 January 2024 was not an act of harassment because it was a reasonable complaint given the history between Ms Altun and Ms Haddad. It also fails as an allegation of direct discrimination because the reason for making the complaint were

not "because of" Ms Altun's race or religion but were because of genuine concerns about her behaviour.

187. [3.2.7] The same observations apply to the complaint made by Ageneiska Fertykowska in January. The Panel concluded this was a justified communication and was not an act of harassment or direct discrimination.

188. [3.2.8] Ms Altun produced no evidence to show that her suspension was because of the police report and so this allegation of harassment is unproven. Even if the Tribunal had concluded that Ben Ambrose Moore had taken the Police community resolution document into account and that was part of his reason for suspending Ms Altun, that would have been an objectively reasonable decision, and not one which had the purpose or effect of violating her dignity or creating an offensive environment for her. Nor would it have been related to her race or religion.

189. [3.2.9] For the reasons given above the panel did not accept Mr Snow "refused" Ms Altun request to move to a different department this allegation was not proved. In addition, Ms Altun was specifically asked whether any of Mr Snow's conduct towards her was because of her race and / or her religion and she said it was not. Instead she said Mr Snow did not want to lose her from his department because she was a good worker. That evidence shows it was not because of any protected characteristic.

190. [3.2.10] Although the Panel accepted that Staffline believed other people and not Ms Altun, that was not because of her race or religion, it was because of the weight of the evidence to support that conclusion. We therefore accept there was a non-discriminatory reason for Staffline's decision.

191. Further it did not have the purpose of violating Ms Altun's dignity or creating an offensive environment for her, and it was not reasonable for it to have that effect. Feeling uncomfortable when facing disciplinary proceedings is typical and part of an employment relationship. That discomfort is not itself sufficient to show the conduct was discriminatory.

192. [3.2.11] Whilst the Panel acknowledge there was a single occasion on which Ms Altun attended site and the planned disciplinary meeting did not take place in the Staffline office, we accepted the reasons that Staffline gave for that, and those were understandable and not related to her race or religion. Staffline have therefore shown that there was a non-discriminatory reason for that decision.

193. [3.2.12] The decision not to consult Jack Dee was a reasonable and objective one based on Ben Ambrose-Moore's investigation methodology and practice. It did not have the effect of violating Ms Altun's dignity or creating an offensive environment for her because it did not change her environment at work. It therefore fails as an allegation of harassment.

194. Ms Altun has not shown that this was less favourable treatment than anyone else would have received. This allegation therefore fails as an allegation of direct discrimination.

195. [3.2.13] It is agreed that Ms Altun was dismissed, which was unwanted, but the reason for it was her conduct in the workplace, much of which she admitted.

196. Whilst the dismissal understandably upset Ms Altun, the purpose of it was not to violate her dignity or create an offensive environment for her. Although she might argue it had that effect, once she was dismissed she was no longer in that environment, and to the extent that the dismissal violated her dignity, we do not consider that objectively viewed that alone can amount to harassment otherwise every dismissal could be argued as such. The decision to dismiss was taken following an investigation and an opportunity for her to respond. Ms Altun's own Union representative said of her that Ms Altun "arrogantly dismissed all the allegations and 9 witness statements against her" which is a powerful indication of an objective view formed by her own union rep, notably formed after he was aware of her grievance of discrimination. It is a view the Panel shared.

197. Ms Altun has provided no additional evidence to show that the dismissal was related to her protected characteristics of race and religion. This allegation therefore fails as a claim of harassment.

198. Ms Altun has also failed to provide any evidence that her dismissal was less favourable treatment than anyone else would have received. She did not identify anyone we should compare her to so we adopt a hypothetical comparator of an employee who was not Turkish and not Muslim. The Panel considered the way that Staffline responded to Ziena Haddad, who was not Turkish and not Muslim, but was a woman employed in the same role as Ms Altun, and about whom Staffline as employer were aware of involvement in the late night incident on 30 September. It was significant that the respondent spoke to both women, in investigation interviews, and for an equal amount of time, which was indicative as an example of equal treatment which was not "less favourable" towards Ms Altun as Turkish Muslim.

199. Whilst the Panel acknowledge that other people were not disciplined when Ms Altun was that was because they were not being complained about (from a disciplinary perspective) whereas she was. When Ms Altun raised a grievance and named those people it was investigated. That involved speaking not only to the people she named and complained about but also others from the same department. Looking objectively at what the employer actually did there was no evidence on which the Panel could conclude Ms Altun received less favourable treatment than anyone. This is because when complaints were made about her they were fully investigated, when she named people they were all, or almost all, spoken to and even some people she didn't name were spoken to as part of the employer's investigations. Such an approach is not less favourable treatment. Ms Altun's claim of direct discrimination therefore fails.

200. It follows that none of Ms Altun's claims of harassment or direct discrimination are well founded, and all of them are dismissed.

Victimisation

201. There was in fact only one protected act, which was the bringing of a grievance by email on 22 January which was repeated by Ms Altun's union rep, on 23 January. That is one act. By way of that email Ms Altun was asserting her employment right, including the right not to be discriminated against, and so that is a "protected act" within the meaning of S27 of the Equality Act 2010.

202. The Panel did not uphold Ms Altun's allegations of discrimination but that does not mean as a matter of fact or law that they must be false. Nor for the reasons given did the Panel find they were made dishonestly. The suggestion this was an allegation made by Ms Altun in bad faith is therefore rejected.

203. Ms Altun set out a series of detriments and the numbering which follows is adopted from that in the list of issues presented at the hearing.

204. [5.2.1] A complaint about Ms Altun following Ms Haddad to the toilet was raised and it arguably subjected the claimant to a detriment because it was considered as part of the disciplinary process which ultimately lead to her dismissal. But that complaint was not raised because Ms Altun had raised the grievance. There was no evidence that Ms Haddad was aware of Ms Altun's grievance at the time of the toilet incident. Further it was not Zeina Haddad who made the "complaint", it was her supervising colleague, and so there is no evidence of Ms Haddad "retaliating" against Ms Altun because of the grievance.

205. [5.2.2] Ms Fertykowska also made a complaint against Ms Altun, which did have some adverse or detrimental effect on Ms Altun's position. But Ms Fertykowska did not know of Ms Altun's complaint, and Ms Altun accepted that Ms Fertykowska did not know about it. Therefore Ms Fertykowska's complaint was not retaliatory nor any response to the protected act, but rather a genuine expression of concern.

206. [5.2.3] For the reasons already explained, Ms Altun's suspension from work was a reasonable response by an employer to the allegations made against her. Even if it did amount to a detriment, it was not an act of retaliation or victimisation.

207. [5.2.4] The Panel found that Mr Snow did not "refuse" to transfer Ms Altun at her request, and so this does not amount to a detriment, nor any act of victimisation.

208. [5.2.5] The Panel accepted Staffline did believe others and not Ms Altun and that had a detrimental effect on her because it was taken into account as part of the disciplinary process which ultimately lead to her dismissal. However, that belief arose on the evidence gathered during the course of the investigation and not because she had raised a grievance.

209. That was demonstrated by the notes of the various meetings Ben Ambrose-Moore held with staff from the department and also because the investigation was paused whilst the grievance was considered in a separate set of interviews with staff on 30 Jan and 2 Feb. Only once the grievance investigation had been concluded did the disciplinary process re-start.

210. The conclusion is that the reason the respondent believed the other witnesses and not claimant was the weight and consistency of the evidence gathered from a significant number of witness to which they were entitled to have regard. There is no evidence of a causal link between that decision and her raising a grievance so this allegation of victimisation fails.

211. [5.2.6] The locations in which the respondent held the disciplinary hearings with the claimant were not a detriment. The Panel concluded that anyone facing disciplinary proceedings would likely have been treated as the claimant was, and that the respondent sought a corrective measure to avoid the open plan office, rather than a coercive one designed to be a detriment to her. The Panel also concluded there was nothing unusual about that otherwise there would have been a complaint about it by Ms Altun's accompanying Union representative (Jason Fields).

212. [5.2.7] The respondent explored or considered speaking to Jack Dee but made a reasoned and reasonable decision not to. That did not expose Ms Altun to a detriment.

213. [5.2.8] Pursuant to s47B (2) of the Employment Rights Act 1996 a dismissal cannot be a detriment or form the basis of a claim for victimisation.

214. It follows that none of the claims of victimisation are well-founded and all of them are dismissed.

<u>Unfair dismissal</u>

215. The reason for the dismissal was gross misconduct. This was described in the invitation letter as "intimidating and threatening behaviours towards other colleagues and alleged bullying and harassment". The Panel was satisfied that would meet any definition of gross misconduct and is a potentially fair reason for dismissal under ERA s98 (2).

216. That was a genuine belief and one which the Respondent Staffline was entitled to hold having carried out a thorough investigation which involved interviewing at least 9 witnesses (that being the number cited by David Elson as Cl's rep) as well as the claimant herself. It also included specifically speaking to people Ms Altun had named, none of whom particularly supported her or contradicted other evidence of her misconduct.

217. At the end of that investigation Staffline were entitled to conclude Ms Altun was guilty of gross misconduct because of how close in proximity these employees work, their access to tools, the volume of complaints about Ms Altun, the nature of those complaints which included physical contact and communications capable of amounting to threats, some of which were independently verified including texts and FaceBook messages, and the police document. In the circumstances dismissal was a fair sanction and well within the range of reasonable responses.

218. The dismissal followed a fair procedure in which a number of witness were interviewed, Ms Altun was given opportunities to explain herself, she was allowed to be accompanied and / or represented, and she was provided information and documents in advance. The meetings were conducted in environments which were not objectionable (although we acknowledge she did not like it) and the dismissing officer Jamie Baugh took time out of the meeting to reflect and consider his decision before concluding she should be dismissed.

219. Although Ms Altun complains the respondent did not listen to her "witnesses" the only one she mentioned who was not spoken to was Jack Dee, and he was only peripherally relevant to a single conversation. However Ms Altun was dismissed for a pattern of behaviour and there was nothing to suggest that Jack Dee could or would comment on that pattern. This means the fact that he was not spoken to does not make the procedure unfair.

220. Ms Altun was dismissed in the meeting and that brought her contract to an end. At that point she was entitled to an appeal and to be told of that fact but she was not. Although this was an error it was not one the respondent ever corrected. As a company which provides outsourced employees as agency staff to 3rd parties, managing human resources and employment relationships and employees is their only or main function. Yet Staffline could not get this most basic aspect of procedure right. The Panel found it difficult to fairly articulate how disappointing and distasteful it was to read the casual tone and attitude of emails between Staffline and Rolls Royce in which Staffline expressed absolutely no concern or acknowledgment of the rights of their former employee. Their only concern was to placate the client. That denied Ms Altun her right to appeal.

221. Whilst the Panel acknowledged that this aspect of the dismissal process was not specifically pleaded by Ms Altun, we consider it so fundamental a right that it had to be included in any consideration of whether a dismissal was fair. The consequence of Staffline's attitude is that they have denied Ms Altun an important right as an employee and so the dismissal did not follow a fair process.

222. However, the Panel concluded that even if Ms Altun had been given her right to appeal she would have been dismissed anyway. This is because of the number, nature, and seriousness of the allegations against her, and the number of colleagues who described how difficult she was to work with, even colleagues who had not "complained" about her. Ms Altun had contributed to her dismissal by her own culpable conduct and the

Respondent did show it was more likely than not that she had exhibited a pattern of erratic, hostile, unwanted and even threatening behaviours which are not acceptable in the workplace.

223. That means even though the Panel disapproved of one element of the procedure, overall the dismissal was fair. Ms Altun's claim of unfair dismissal is not well-founded and is dismissed.

224. These decisions on each individual aspect of Ms Altun's claim mean that none of her claims are well-founded, and all of them are dismissed.

Employment Judge Hay

Date: 6 May 2025

REASONS SENT TO THE PARTIES
ON 19 May 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE