



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Z. Shaheen  
**Respondent:** Joyalukkas Ltd  
**Heard at:** East London Hearing Centre  
**On:** 18-20 February, 23 April 2025  
24 April 2025 (in chambers)  
8 May 2025 (for oral judgment)  
**Before:** Employment Judge Massarella  
Mrs G. Forrest

## Representation

**Claimant:** Mr M. Khan (lay representative)  
**Respondent:** Miss R. Omar (Counsel)  
**Urdu interpreter:** Mr Ahmad  
**Bengali interpreter:** Mr Hasan

# REASONS

JUDGMENT having been sent to the parties on 15 May 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

## Procedural history

1. The claim form was issued on 7 March 2024 after an ACAS early conciliation period between 25 and 27 February 2024.
2. There was a preliminary hearing for case management on 1 August 2024 before EJ Palmer. At the hearing the judge dismissed on withdrawal the Claimant claims of wrongful dismissal (notice pay), breach of contract/unauthorised deduction from wages (arrears of pay) and breach of contract/unauthorised deduction from wages in relation to holiday pay.
3. The judge also clarified the issues in the case and produced a list of issues.

## The hearing

4. We had a bundle of documents of 309 pages. With the Tribunal's permission, the Respondent also relied on two groups of documents, showing the

incentive payments made to the Claimant, by comparison with her colleagues, for the months of September and November 2023.

5. At the beginning of the hearing, I took the parties to EJ Palmer's preliminary hearing summary, and they confirmed that it contained the agreed, final list of the matters which the Tribunal would be determining at the final hearing.
6. We heard evidence from:
  - 6.1. the Claimant; and on her behalf from
  - 6.2. Ms Rizwana Shaheen (the Claimant's sister);and on behalf of the Respondent from:
  - 6.3. Mr Jojan Thomas (regional manager);
  - 6.4. Mr Mrunal Dilip (branch manager at the store on Green St, London);
  - 6.5. Ms Shikha Debnath (sales executive, Green St.);
  - 6.6. Mr Wajid Ali (security team member, a Pakistani national);
  - 6.7. Mr Bashir Khan (security team member, a Pakistani national);
7. The Claimant also relied on two letters from individuals, who did not attend to give evidence but who commented on the Claimant's skills and experience; we took these into account.
8. At the preliminary hearing in August 2024, Mr Khan (the Claimant's lay representative) said he did not think that the Claimant would need an interpreter; no application for one was made before the hearing. On the morning of the first day of the hearing, we began to hear evidence from the Claimant. She said several times that she did not understand the question she was being asked by Counsel. The Tribunal decided that her evidence should not continue without an interpreter. We were able to engage an Urdu interpreter by 3.15 p.m. in the afternoon and for the rest of the hearing.
9. Because we lost this time, and because the evidence then progressed at a slower pace, the case went part-heard. Mr Dilip was not available in March. One of the original Tribunal nonlegal members, Prof Ukemenam, was not available in April. With the parties' consent – and with the agreement of the Regional Employment Judge - the Tribunal completed the hearing and deliberated as a panel of two to avoid further delay.
10. The Tribunal listed a further two days. We set a timetable of 30 minutes to complete Mr Thomas's evidence, one hour to hear Mr Dilip's evidence, and 30 minutes each for oral submissions (supplementing the written submissions, which we ordered to be provided in advance of the hearing). We anticipated this would leave us with the afternoon of the first day in the morning of the second day to deliberate, with the aim of giving oral judgment on the afternoon of the second day. In the event, the evidence and submissions took up the whole of the first day; the Tribunal then took the whole of the second day for deliberations. We gave the parties the option of receiving a written judgment or attending on another day for an oral judgment; they chose the latter option; a further short hearing was listed on 8 May 2025.

## Findings of fact

11. The Claimant is a British citizen of Pakistani origin.
12. The Respondent is a UK company under an international parent company, which operates in 11 countries. The Respondent has two jewellery stores in London, one in Green Street in Bethnal Green and one in Southall. The shops sell Indian jewellery to an ethnically diverse customer base. The value of the items ranges from relatively low-priced items (£50) to high-priced items (£25,000 and above). The Respondent's Head Office is in Dubai, where its HR function is based.
13. The Claimant commenced employment on 17 July 2023 as a sales executive. The interview was conducted online by Mr Thomas and Mr Sagar of HR who was based in head office. None of the other managers or assistant managers against whom the Claimant makes allegation of discrimination were involved in hiring her.
14. The Claimant's sister, Ms Rizwana Shaheen, who is also a British citizen of Pakistani national origin and who is two years younger than the Claimant, was hired at the same time; they started on the same day. Both had considerable experience working in sales in the jewellery business.
15. On 8 November 2023, the Respondent opened a new shop, also in Green Street, but it kept the old premises, where the manager's office was based. The Claimant worked in the old shop then moved to the new shop when it opened; the new shop was in bigger premises and additional staff were recruited.

## The probationary period party what next listed afterwards

16. In the Claimant's contract, there was provision for a probationary period.

'The first three months of your employment are your probationary period. Your probationary period may be extended at the discretion of Joyalukkas, if Joyalukkas deems it necessary. You will be notified of any extension before the expiry of the initial probationary period. The company reserves the right not to apply its full capability and disciplinary procedures during your probationary period.'
17. The Tribunal observes that this term is unusual. The Claimant's evidence about it was contradictory. She agreed in cross-examination that she had a three-month probationary period. She later said that she was told it did not apply to her. It was put to her that her probationary period was extended beyond the three months and that, therefore, the terms set out above applied. The Claimant said that it was not extended, either in writing or orally.
18. Mr Thomas' evidence was that her probationary period was extended orally on his instructions by Mr Anto John (an assistant manager). We heard no evidence from Mr John. There was no record of any conversation between Mr John and the Claimant.
19. On the balance of probabilities, we accept the Respondent's evidence that the Claimant had a probationary period, which applied to her, but we accept the Claimant's evidence that it was not extended, either formally or informally.

The other policies

20. The Respondent has a staff handbook, which is referred to in the Claimant's contract. It contains both disciplinary and capability procedures, which are conventional in their terms.
21. The disciplinary policy sets out the various sanctions which are available in disciplinary cases, up to and including summary dismissal. It also sets out a disciplinary procedure, including inviting the employee to a disciplinary hearing, permitting her to be accompanied and so forth. It contains a right of appeal.
22. The policy also sets out matters which will be regarded as gross misconduct. Mr Thomas (the dismissing officer) identified the following headings which applied in dismissing the Claimant: 'serious professional misconduct [...] repeated misconduct related to less serious offences listed here'.
23. There is a capability policy which is similarly detailed and conventional.

The lack of complaints during employment

24. The Claimant did not raise any complaints of discrimination, either because of race or age, at any point during her employment.
25. She raised them for the first time in two emails after her dismissal, the first on 31 January 2024, which she sent to HR, and which HR then forwarded to Mr Thomas; the second on 3 February 2024, which she also sent to HR and which adds a certain amount of further detail, which was not forwarded to Mr Thomas.
26. We turn now to the first of the Claimant's claims of discrimination in these proceedings.

*Issue 4.1.1 (harassment related to race) – 'Tell the Claimant on 29 July 2023 that the company had a policy of not employing persons of Pakistani origin, and that they were only employing her as she had considerable experience as a sales executive. The Claimant says that this was said by a manager, but she is unable to recall which of the two managers who were at the company at the time'*

27. The Claimant gave two different accounts in the claim form and her witness statement.
28. In the claim form, it was said that the conversation took place on 29 July 2023 (on the day she was given the contract); the content was that she would be the only Pakistani employed by the Respondent; she could not remember the name of the manager who said it.
29. In her witness statement, the Claimant stated that the conversation took place in August 2023, the content of the conversation was directed at both the Claimant and her sister, and the Claimant was now able to identify the manager who said it as 'Benson', identified at the hearing as being Mr Binson Lonnepan, an assistant manager.

30. The Claimant withdrew this allegation through her representative on the third day of hearing. We consider that she was right to do so; the inconsistencies in her accounts undermined their plausibility.
31. We observe at this point that any allegation of discrimination is a serious allegation; moreover, in our experience of hearing discrimination cases, employees who have been discriminated against on a particular occasion have a clear recollection of when it happened, who did it and what was said or done; this is because being discriminated against is an inherently memorable event in a person's life; that is all the more so when the allegation is one of harassment, which necessarily involves an allegation that a person's dignity has been violated and/or that the an intimidating, hostile, degrading, humiliating, or offensive environment has been created by the conduct in question. An employee who is unable to remember basic facts about the incident may have difficulty in persuading a Tribunal to find, as a matter of fact, that the conduct alleged occurred, let alone that it amounted to harassment.

*Issue 4.1.2 (harassment related to race) – ‘Tell the Claimant on a date in November 2023 that “you are the first and last Pakistani we will employ. We do not employ Pakistanis”. The Claimant says that this was said by a manager who she knew as “Benson”’*

32. This was an allegation against Mr Binson Lonappan. The Claimant was unable to give a specific date on which the conversation occurred, other than that it happened in the month of November 2023.
33. The Claimant's sister, Ms Rizwana Sheheen, dealt with this allegation in her witness statement. Unlike the Claimant, she said that it occurred in August 2023. She was taken to this passage in cross-examination and said that she could not remember the date, but she thought it was when she and her sister started; that would put it in July 2023.
34. The Claimant's sister then gave contradictory evidence as to whether Mr Lonnepan said ‘you are the first Pakistani we have employed’ or ‘you are the first and last Pakistanis’.
35. If Mr Lonnepan had said ‘first and last’, it would have been an extraordinarily memorable thing for both sisters and we would have expected them to remember precisely when it happened; they gave very different dates for the alleged incident and contradicted each other and, in Ms Shaheen's case, herself.
36. The Claimant acknowledged that Mr Lonnepan had no part in hiring employees; he was not in a position to say what the Respondent would or would not do in terms of hiring; it would have been a remarkable thing for anyone to say in circumstances when these two Pakistani employees had just been taken on (if we accept Ms Shaheen's date). Finally, this allegation is similar in nature to the previous allegation, which the Claimant withdrew.
37. The Claimant's evidence on this issue - and that of her sister - is contradictory and implausible. She has not proved to our satisfaction, on the balance of probabilities, that the conduct occurred as alleged.

*Issue 4.1.3 (harassment related to race) – ‘Tell the Claimant on a date in late December 2023, “It is difficult to deal with Pakistanis I came to manage 150 people”. The Claimant says that this was said by a manager who she knew as “Mrunan”’*

38. No name was given for the alleged discriminator in the ET1. At the preliminary hearing, it was clarified that the allegation was made against Mr Dilip; the Claimant also named him in her witness statement. The totality of the Claimant’s evidence about this incident in her witness statement was as follows:

‘In late December 2023 one of the managers Mrunal Dleep [sic] said to me it is difficult to deal with Pakistanis. I came to manage 150 people.’

39. Thus, the Claimant simply repeated the bare allegation with no context and no explanation.
40. The connection between the two halves of the sentence is unclear. If indeed Mr Dilip said that he ‘came to manage 150 people’, what did that have to do with a statement that it was ‘difficult to deal with Pakistanis’?
41. The Claimant was asked about this in cross-examination. She said ‘he said that it is very difficult to deal with Pakistanis, same like you two sisters are... He said I have dealt with 150 people in India, not here... One more thing, which I have not mentioned here, he has also said I will deal with you in my own way... He had plans to take me out of work.’ She clarified that he said he meant to dismiss her (but not the Claimant’s sister) and described this as ‘planned harassment.’
42. By saying this, the Claimant greatly expanded the allegation for the first time in oral evidence: to add that he was going to dismiss the Claimant; and to allege that this harassment was ‘planned’; these were more serious allegations than she included in her ET1 or in her witness statement. Those more serious allegations were not then put to Mr Dilip in cross-examination.
43. The Claimant’s sister did not corroborate the original allegation or the expanded allegation in her statement.
44. We found the Claimant’s evidence as to the original allegation unconvincing. In our judgment, she then embellished the original allegation to assist her case, further undermining her credibility. Mr Dilip denied saying anything of the sort.
45. On the balance of probabilities we find that Mr Dilip did not make the comments alleged, whether in their original form or in the expanded version.

*Issue 4.1.4 (harassment related to race) – ‘Make comments to the Claimant on one or more occasions in January 2024 to the effect that they did not employ Pakistanis and wanted to get rid of them. The Claimant says that these comments were made by both managers, “Benson” and “Mrunan”’*

46. ‘Benson’ was Mr Lonnepan; ‘Mrunan’ was Mr Dilip. The Claimant explained that she did not give specific dates because she could not remember precisely when it occurred.

47. The allegation is framed as 'one or more occasions'; so the allegation starts with a lack of clarity as to whether this was a single remark or repeated. In the list of issues the Claimant makes the allegation, in general terms, against Mr Lonpan and Mr Dillip; if the same remark was made on one occasion only, but by both of them at the same time on the same day, that would be memorable. If each of the two alleged discriminators had made the same statement, but on different occasions, that too would be memorable and the allegation would have been framed in different language (something like: 'on two separate occasions').
48. In any event, in her witness statement the Claimant only mentioned Mr Lonpan in relation to this allegation and did not say anything about Mr Dillip; that is a further inconsistency. Mr Lonpan had no involvement whatsoever in hiring or firing employees.
49. The Claimant's sister makes no mention of this allegation in her evidence.
50. In all the circumstances, and having regard to the lack of clarity in the allegation and the inconsistency in the evidence, we are not satisfied that the Claimant has proved, on the balance probabilities, that this incident (or incidents) occurred as alleged.

The Claimant's sister

51. The Claimant relies on all these allegations of hostility by Respondent employees towards her and her sister as evidence supporting her allegation that her dismissal later the same month was because she was Pakistani and because of her age.
52. We pause at this point to record some findings about the Claimant's sister, Ms Rizwana Shaheen.
  - 52.1. Ms Shaheen, who is also Pakistani and is two years younger than the Claimant, was not dismissed;
  - 52.2. on the contrary, she was later promoted to team leader;
  - 52.3. in July 2024, the Respondent carried out a survey seeking feedback from employees: Ms Shaheen rated her overall experience of working at the store as excellent; she was satisfied with the work environment, management support and career development opportunities; she said that her contributions were always valued by management and that communications with her team and with management were excellent;
  - 52.4. in July 2024, she was commended for her excellent performance by an award circulated internationally throughout the company; although the award is primarily based on sales, we find that it also required a recommendation from the employee's local management (the very people against whom the Claimant's allegations of discrimination are made);
  - 52.5. Ms Shaheen remains employed by the Respondent.
53. Ms Rizwana Shaheen sought to distance herself from these facts by suggesting that the Respondent was favouring her in an attempt to show that it

was not 'against Pakistanis'. If that were true, it might explain the Respondent's favourable treatment of Ms Shaheen; it would not explain her favourable assessment of the Respondent. We regard the theory as fanciful and we reject it.

54. We note that, in the Claimant's ET1, there was no mention at all of her sister's simultaneous employment with the Respondent. We think that was deliberate: the fact that the Ms Rizwana Shaheen, as a Pakistani woman of a similar age to the Claimant, thrived in the Respondent's employment, is plainly unhelpful to the Claimant's underlying case that the Respondent, as an organisation, was hostile to, and biased in its treatment of, employees of Pakistani origin and of the Claimant's age.
55. There was a further, and very significant, difference between the Claimant and Ms Shaheen: the Claimant's sister was not the subject of complaints by colleagues or by customers; the Claimant was (see below). All the evidence suggests that the Claimant's sister was, by her own conduct and performance, a model employee.
56. Finally, we record an incident in relation to which the Claimant alleged that the Respondent was acting in bad faith so as to present itself in a good light in these proceedings.
57. It is clear from documents in the bundle that the Claimant tried to initiate discussions with the Respondent about returning to work for them. It was put to her that this was surprising in view of her allegation that the Respondent subjected her to multiple instances of racial and ageist harassment. The Claimant stated that she planned to return to the Respondent, work for them while she looked for another job, when she would resign with a reference.
58. The Claimant attended a party at Mr Dilip's house sometime after her dismissal. There was a photograph of her at the party. She told the Tribunal that she believed that she was invited so that the Respondent could take photographs of her and make it look as if she had nothing against the Respondent.
59. The Claimant stated in her witness statement that her sister told her that Mr Thomas and Mr Dilip had said they wanted to offer her her job back, and that was why she attended.
60. In her oral evidence the Claimant initially said that, contrary to expectation, they did not say anything about reinstating her at the party; she then said that she was asked to be in the photograph because she was told that she was 'part of the team' and would be returning to work. I read back these two statements to the Claimant and commented that one or other of them could be true, but not both of them; she insisted that both were true.
61. Even more damagingly, the Claimant's sister denied that she had told the Claimant that the Respondent wanted to reinstate her; she confirmed that the relevant passage in the Claimant's witness statement saying that she had was wrong.
62. The fact that the Claimant contradicted herself, could not acknowledge the contradiction and was then contradicted by her sister's evidence, further called



into question the extent to which we could rely on her evidence as to this and other matters.

63. We turn now to the Claimant's allegations of harassment related to age.

The alleged comments about the Claimant's age (harassment related to age)

*Issue 5.1.1 (harassment related to age) – 'On a number of occasions during the period from November 2023 until the Claimant's dismissal on 29 January 2024, refer to her using words such as: "Mum"; "Madam"; "Mamta-Je", which is a Hindu word meaning "old woman". The Claimant says that these words were said by managers and co-workers. These included a manager known to her as "Joseph" and a number of junior members of staff whose names the Claimant does not know. The Claimant alleges that "Joseph" encouraged the use of this language by junior members of staff.'*

64. In the claim form the Claimant alleged that these comments were made by 'management and co-workers'; no individuals were named, and no specific dates were given. At the preliminary hearing (and in the list of issues), the Claimant identified Mr Paul as the ringleader, allegedly encouraging junior staff to make these comments.

65. In her witness statement, the Claimant says this:

'During the period from November 2023 to the date of my dismissal management and co-workers used words such as mum madam manta jee mamta jee [sic] is a hindu word meaning old woman. I was constantly harassed by these remarks.'

66. There is no mention of Mr Paul. In her oral evidence, she said that 'Mr Paul, Mr Dilip and many other colleagues used to say it to me.'

67. The Claimant's sister, in her witness statement, says this:

'on several occasions during the period my sister joined me in the main shop I have heard management and staff refer to my sister as mamta jee which is an Indian word for old woman mum and madam.'

68. The Claimant's sister gave no names and no specific dates.

69. The Claimant was 50 at the relevant time. Her sister was 48 at the time, is now 50 and still works for the Respondent. Mr Thomas is older than the Claimant. Mr Paul is around 40; Mr Dilip is under 40.

70. We were given some extracts from Wikipedia which clarified that 'mamta' is a Hindi word for maternal love, and '-je' is an honorific used to show respect. That evidence was not challenged by any of the witnesses who gave evidence. 'Mamta-je' is not an Indian word for 'old woman'.

71. After this evidence had been produced, the Claimant said that she 'had not checked its meaning'; she then said that she was 'never addressed as -je', even though she said in her sworn witness statement that she *had* been addressed as '-je'.

72. The Claimant's sister said that it was not so much what was said, but the way in which it was said.

73. Because of them changed their accounts, faced with evidence that the term does not mean what they said it means in their sworn witness evidence.

74. Given the failure to identify any specific occasion, the inconsistency as to whom the allegation was made against and the fact that the Claimant and her sister wrong about the meaning of the expression, we are not satisfied that the Claimant has proved, on the balance on probabilities, that this term was used about her by any of the Respondent's employees.
75. As for Madam and Mum, there are similar evidential difficulties: neither the Claimant nor her sister can identify specific occasions on which these terms are said to have been used; the Claimant's sister accepted that Madam was 'a good word' but then suggested (for the first time) that it was said 'in a degrading way'; and the Claimant changed her position as to whom the allegation was made against. For these reasons alone, we are not satisfied that the Claimant has proved that these incidents occurred as alleged.

*Issue 5.1.2 (harassment related to age) – 'Say to the Claimant on a date in late December 2023 words to the effect of "Why work six days, you have worked long enough, have a rest you are too old". The Claimant says that this comment was made by a manager known to her as "Joseph"'*

*Issue 5.1.3 (harassment related to age) – 'On one or more occasions in January 2024, make comments to the effect of "Retire, stay at home, you are too old". The Claimant says that these comments were made by a manager known to her as "Joseph"'*

76. We deal with these two allegations together.
77. In her claim form, the Claimant said this:
- 'In late December 2023 one of the managers told me why work six days you have worked long enough, have a rest you are too old. In January 2024 comments were made by manager saying retire, stay at home you are too old.'
78. In relation to the first incident, the Claimant does not name a manager; it is striking that in relation to the second incident she does not say 'the same manager', merely 'a manager', which would suggest a different person.
79. At the preliminary hearing, it was clarified that both these allegations were made against Mr Paul.
80. In her witness statement, the Claimant simply repeats both allegations, using the same words as appear in the list of issues; again, she names Mr Paul.
81. In relation to Issue 5.1.2, no specific date was given. The Claimant initially said that it had been said once to her; she then changed her evidence and said that it had been said 'many times, I can't remember how many times, I cannot count'.
82. In relation to Issue 5.1.3, the Claimant was asked when in January this occurred; she could not remember.
83. She said she could not remember the context because she was 'in so much stress'; she was at work but she 'used to ignore' (which suggests that it occurred on more than one occasion).
84. The Claimant was asked if she had a clear memory of the incident; she replied yes. She was then asked again to describe the circumstances, to which she

replied: 'no I cannot remember exactly, but in general context, it was said why do you come so many days, why don't you retire, why do you work so much'.

85. The Claimant was asked how Mr Paul knew her age. She replied that he had seen her passport on a computer in August 2023. Asked why he had waited until December before making these remarks, the Claimant said for the first time that Mr Paul started making the remarks in August 2023. That shift in her evidence further undermined its plausibility.
86. We find that, if these remarks, as the Claimant said, took place many times between August 2023 and January 2024, it is inconceivable that she would not have told her sister, who makes no mention of them in her witness statement. By contrast, the Claimant's sister does mention in her statement another incident (relating to the tucking in of the Claimant's shirt), which was not one of the pleaded allegations of age discrimination (nor the subject of an application to amend) and which does not fall to be determined.
87. At no point in her oral evidence did the Claimant repeat the allegation that Mr Paul said to her 'you are too old'.
88. We found the Claimant's account of these incidents inconsistent, contradictory and implausible. Against the background of the concerns about the Claimant's credibility we have already raised in relation to the earlier claims, we are not satisfied on the balance of probabilities that these incidents occurred as alleged.

#### Conduct and warnings

89. We turn now to the issues relating to the termination of the Claimant's employment and the subsequent events.
90. The Respondent contends that the Claimant was dismissed for reasons of conduct and capability. The Respondent relies on a number of matters in support of that case.

#### *Google review*

91. Early in the Claimant's employment, a customer left a bad review about her on Google:

'Yesterday I went to the store and had a bad experience with the service. The lady Zarqa Shaheed was very rude and impatient. She was unable to do the billing almost took half an hour just to find out my details as I am old customer of Joyalukkas. The behaviour towards the customer needs to be changed.'
92. The Respondent posted an online apology to the customer.
93. The Claimant gave contradictory evidence about this incident. She first denied that any incident took place. She then went on to explain the circumstances of it, which (self-evidently) suggests that an incident did take place. In doing so, she acknowledged that she had had difficulties with the billing system, and had had to ask colleagues to help her, but she alleged that this was because the Respondent had not trained her properly.

*The warning on 27 September 2023*

94. On 27 September the Claimant was issued with a verbal warning for shouting at a customer whom she had spent a lot of time serving but who then did not make a purchase. Mr Thomas reprimanded her, told her to be patient and gave her a warning, which was recorded in writing.

*The warning on 11 October 2023*

95. On 11 October 2023, the Claimant was issued with another verbal warning by Mr Anto (recorded in writing) for failing to obey an instruction to serve a customer. In oral evidence the Claimant denied that there had been such an incident and said that the document was fabricated.
96. In her witness statement the Claimant stated that 'the incident never happened. I never fail to attend a customer when free' but then said: 'it is likely I was busy on another task.' Of course, if the incident never happened, no explanation was necessary.

*The warning on 4 December 2023*

97. On 4 December 2023, the Claimant was given another verbal warning (recorded in writing) for grabbing a calculator from a colleague who was using it in front of a customer. The colleague asked for it back; the Claimant replied rudely.
98. The Claimant again alleged in oral evidence that the document was fabricated and denied that there had been such an incident at all. This, despite the fact that she had described the incident in her witness statement, giving a different account of it. She then denied that she had been given a warning. She then said that she might have forgotten that she had been given a warning.

*The warning on 15 December 2023*

99. On 15 December 2023, the Claimant was given another verbal warning for scolding a colleague for tidying the displays. Again, the Claimant denied that there was any such incident, and alleged fabrication.

*The warning on 21 December 2023*

100. The Claimant was given another verbal warning (recorded in writing) on 21 December 2023 for refusing to serve a customer. The Claimant said that she was doing a stock-check and the policy was that an employee doing a stock check must not be interrupted. The Respondent's evidence was that customers take priority.

*The warning on 13 January 2024*

101. On 13 January 2024 the Claimant was given another verbal warning (also recorded) for telling a colleague, Ms Debnath, who was cleaning a counter, not to do so; Ms Debnath was upset. The Claimant said that nothing of this sort occurred. Ms Debnath attended to give evidence. We found her to be a thoughtful and credible witness.

102. Mr Khan for the Claimant pointed to the fact that, when these incidents were summarised in a later 'inquiry' document, there were some additional facts which did not appear in the original warning forms. We accept Mr Thomas's evidence that he was told this additional information by the individuals when he asked them about the incidents when preparing his later report.
103. The Claimant did not challenge any of the warnings at the time. On the balance of probabilities, we accept that these incidents took place and that the Claimant was given six verbal warnings between September 2023 and January 2024 and that the written records were accurate.
104. We agree that each incident, in itself, would not amount to gross misconduct. However, repeated rude behaviour to colleagues and customer and refusing to obey a management instruction could amount to gross misconduct. The Respondent's disciplinary policy provides that repeated, less serious misconduct could lead to summary dismissal.
105. We turn now to the claims of direct race and age discrimination.

Issue 2.2.4 (direct race discrimination) and 3.2.4 (direct age discrimination): '[The Respondent] failed to provide the Claimant with a copy of the staff handbook when she requested it in July 2023.'

106. The Claimant clarified in her witness statement that her allegation related only to two pages of the disciplinary policy, of which she was not given copies.
107. Mr Thomas's evidence was that none of the Respondent's employees were given copies of any parts of the staff handbook, which was a large document. All staff, including the Claimant, were told when they started that the store manager kept the staff handbook and that they could consult it at any time. We accept his evidence.

Issue 2.2.1 (direct race discrimination) and 3.2.1 (direct age discrimination): '[The Respondent] failed to carry out a proper investigation and/or disciplinary procedure prior to dismissing the Claimant on 29 January 2024'

Issue 2.2.2 (direct race discrimination) and 3.2.2 (direct age discrimination): '[The Respondent] dismissed the Claimant on 29 January 2024'.

Issue 2.2.3 (direct race discrimination) and 3.2.3 (direct age discrimination): '[The Respondent] failed to offer the Claimant the right to appeal against the decision to dismiss her.'

108. On 27 January 2024, Mr Thomas drafted an 'Inquiry report', in which he summarised the incidents described above. Some of the incidents were witnessed by him; some were accounts by other employees which had been relayed to him. The report recommended summary dismissal; the termination date was 29 January 2024.
109. Both the Claimant and Mr Thomas agree that a meeting took place on 28 January 2024, at which he informed her that her employment was going to be terminated.
110. The reasons given were performance, specifically 'lack of computer and billing software knowledge in the shop system' and conduct, specifically 'issues with

the fellow staff and your behaviour towards the staff and the customers.’ Her employment would end on 29 January 2024.

111. The performance concerns related to that fact that, despite being given additional training, the Claimant had still not mastered the Respondent’s billing system and depended on colleagues to help her with it, which took them away from their own work. In December 2023, Mr Paul, on Mr Thomas’s instruction, carried out some further training on the billing system and then asked the Claimant to undertake a test. She did not pass the test: she was unable to search for existing customer details or create a new customer record. She said that she could always ask a colleague to carry out these tasks for her.

Events after the dismissal

112. There was a further meeting on 29 January 2024. Later the same day, the Claimant emailed Mr Thomas, seeking the Respondent’s ‘reconsideration’ of its decision to dismiss her; in it she acknowledged that what she calls ‘mistakes and missteps’ had taken place and she resolved to learn from them; she undertook to ‘enhance my computer and billing software knowledge’ and acknowledged that improvement could be made.
113. In her oral evidence the Claimant said that she was pressurised by Mr Thomas and Mr Dilip to write this email, with the suggestion that if she did the Respondent might change its mind about terminating her employment; she did not say this in her witness statement.
114. We do not accept that she was pressurised into writing that email; we regard that as a further, implausible narrative. We prefer the more straightforward explanation that she knew that she had been warned numerous times, and had not mastered the billing system, and hoped that an email showing contrition might cause the Respondent to change its mind.
115. The Claimant also said in oral evidence that they told her at the meeting that she had ‘the best performance in the company, it is the head office which has terminated you, not us’.
116. We do not accept that evidence. We are satisfied that the decision to dismiss was taken by Mr Thomas. He probably took advice from Head Office, but Head Office would not have decided to dismiss, not having had any direct contact with the Claimant; it could was not in a position to assess her.
117. We accept that the Claimant’s sales figures were relatively good (although not the best, as she asserted). That may have reflected the fact that she worked long hours, while some of her colleagues were part-time. The Respondent did not rely on poor sales as a reason for dismissal. We are satisfied that the Respondent considered that her relatively good sales figures could not offset the disruption to the business (what Mr Thomas referred to as the ‘harmony’ in the workplace) which the Claimant was causing by her poor interactions with colleagues and customers and her inability to master the billing system.
118. The Claimant sent two emails to HR (on 31 January and 3 February 2024) in which she stated that allegations against her were malicious. She mentioned for the first time ‘age related comments’ and mentioned that she was told that ‘no Pakistani would be hired in the company’. She asked for a ‘full and

impartial review into these problems'. She provided no particulars of the allegations.

## The law

### Harassment related to race and/or age

119. Harassment related to race and/or age is defined by s.26 EqA, which provides, so far as relevant:

(1) A person (A) harasses another (B) if-

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

...

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

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

...

Race

...

Age

...

120. The Court of Appeal in *Pemberton v Inwood* [2018] ICR 1291 gave guidance on the correct approach to these provisions (*per* Underhill LJ at [88]):

'In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.'

121. The test for whether conduct achieved the requisite degree of seriousness to amount to harassment was considered (in the context of the formulation in s.3A Race Relations Act 1976) by the EAT in *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 *per* Underhill P. at [22]:

'We accept that not every racially slanted adverse comment or conduct may 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. While it is very important that employers, and Tribunals, are sensitive to the hurt that can be caused by racially

offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

122. Elias LJ in *Land Registry v Grant* [2011] ICR 1390 at [47] held that sufficient seriousness should be accorded to the terms 'violation of dignity' and 'intimidating, hostile, degrading, humiliating or offensive environment'.

'Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.'

123. He further held (at [13]):

'When assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable.'

124. The EAT in *Betsi Cadwaladr University Health Board v Hughes* [2014] UKEAT/0179/13/JOJ at [12], referring to Elias LJ's observations in *Grant*, stated:

'We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.'

125. Guidance as to the construction of the wording 'related to a relevant protected characteristic' was given by the Court of Appeal in *UNITE the Union v Nailard* [2018] IRLR 730. It imports a broader test than that which applies in a claim of direct discrimination. It was intended to ensure that the definition covered cases where the acts complained of were associated with the prescribed factor as well as those where they were caused by it.

#### Direct discrimination

126. S.13(1) EqA provides:

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

127. The question whether the alleged discriminator acted 'because of' a protected characteristic is a question as to their reasons for acting as they did; the test is subjective (*Nagarajan v London Regional Transport* [1999] ICR 877, per Lord Nicholls at 884). Lord Nicholls considered the distinction between the 'reason why' question from the ordinary test of causation in *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065 at [29]:

'Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach...The phrases "on racial grounds" and "by reason that" denote a different exercise: why did the alleged discriminator act as



he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.’

128. It is sufficient that the protected characteristic had a ‘significant influence’ on the decision to act in the manner complained of; it need not be the sole ground for the decision (*Nagarajan* at 886).
129. The conventional approach to considering whether there has been direct discrimination is a two-stage approach: considering first whether there has been less favourable treatment by reference to a real or hypothetical comparator; and secondly going on to consider whether that treatment is because of the protected characteristic, here race/religion.
130. More recently, the appellate courts have encouraged Tribunals to address both stages by considering a single question: the ‘reason why’ the employer did the act or acts alleged to be discriminatory. Was it on the prohibited ground or was it for some other reason? This approach does not require the construction of a hypothetical comparator: see, for example, the comments of Underhill J in *Martin v Devonshires Solicitors* [2011] ICR 352 at [30].
131. In *Reynolds v CLFIS (UK) Ltd* [2015] ICR 1010 at [36], the Court of Appeal confirmed that a ‘composite approach’ to an allegation of discrimination is unacceptable in principle: the employee who did the act complained of must himself have been motivated by the protected characteristic.
132. It is an essential element of a direct discrimination claim that the less favourable treatment must give rise to a detriment (s.39(2)(d) EqA). There is a detriment if ‘a reasonable worker would or might take the view that [the treatment was] in all the circumstances to his detriment’ (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 at [35]). An unjustified sense of grievance does not fall into that category.

#### The burden of proof in discrimination cases

133. The burden of proof provisions are contained in s.136 EqA:
  - (1) This section applies to any proceedings relating to a contravention of this Act.
  - (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
  - (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
134. The operation of the burden of proof provisions was summarised by Underhill LJ in *Base Childrenswear Ltd v Otshudi* [2020] IRLR 118 at [18]:

‘It is unnecessary that I reproduce here the entirety of the guidance given by Mummery LJ in *Madarassy*.<sup>1</sup> He explained the two stages of the process required by the statute as follows:

  - (1) At the first stage the Claimant must prove “a *prima facie* case”. That does not, as he says at para. 56 of his judgment (p. 878H), mean simply proving “facts

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<sup>1</sup> *Madarassy v Nomura International plc* [2007] ICR 867, CA

from which the Tribunal could conclude that the Respondent 'could have' committed an unlawful act of discrimination". As he continued (pp. 878-9):

"56. ... The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal 'could conclude' that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.

57. 'Could conclude' in section 63A(2) [of the Sex Discrimination Act 1975] must mean that 'a reasonable Tribunal could properly conclude' from all the evidence before it. ..."

(2) If the Claimant proves a *prima facie* case the burden shifts to the Respondent to prove that he has not committed an act of unlawful discrimination – para. 58 (p. 879D). As Mummery LJ continues:

"He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the Tribunal must uphold the discrimination claim."

He goes on to explain that it is legitimate to take into account at the first stage all evidence which is potentially relevant to the complaint of discrimination, save only the absence of an adequate explanation.'

### **Conclusions: the pre-dismissal claims of race discrimination**

135. The Claimant withdrew the allegation of harassment related to race at Issue 4.1.1 (para 27 onwards above). It is dismissed.
136. We have found as a fact that the conduct alleged in the following issues did not occur: Issues 4.1.2 (para 32 onwards), 4.1.3 (para 38 onwards) and 4.1.4 (para 46 onwards). Accordingly, those claims of harassment related to race fail and are dismissed.
137. In relation to Issue 2.2.4, we have found (para 106 onwards) that the Claimant was not treated less favourably than any other employee of a different and the claim of direct race discrimination must fail.

### **Conclusions: the pre-dismissal claims of age discrimination**

138. In relation to Issue 5.1.1, we found (para 64 onwards) that the term 'mamta-je' was not used by any of the Respondent's employees.
139. If we are wrong about that, we are satisfied that the term is not in any way insulting or derogatory. It is a term of endearment and respect. It is not inherently related to age because women become mothers at many ages. If it was used, and if the Claimant had a sense of grievance about it, we find that that sense of grievance was unjustified and there was therefore no detriment. It certainly would not cross the threshold for harassment. Accordingly, the claim would also be dismissed for those reasons.
140. Similarly, in relation to the other terms, we have found that they were not used, and the claims fail for that reason alone.
141. If we are wrong about that, and the terms were used, Madam is a term of respect and deference, and Mum is a term of affection.

142. We reminded ourselves of the authorities in this area (*Dhaliwal, Grant and Hughes* above), all of which stress that the threshold for harassment is high, and that Tribunal's must be alert not to allow trivial acts causing minor upsets to be caught by the concept of harassment.
143. The highest the Claimant put it when the Judge asked her how it made her feel was 'it felt bad, I did not like it, it used to hurt me'.
144. In the circumstances, and if these terms were used, we would have concluded that, having regard to the Claimant's own perception this conduct, although it may have created some upset, it did not cross the threshold into violating her dignity or creating the proscribed environment; nor, in our judgment would it have been reasonable to have that effect; the claims would have failed for those reasons as well.
145. We have already found that the comments alleged in Issues 5.1.2 and 5.1.3 were not made (para 76 onwards). The claims fail for that reason alone.
146. Further, asked what effect the comments had on her, the Claimant replied: 'I felt very bad, I got very upset, why saying this to me?'
147. As we have already observed, the threshold for harassment is a high one. The Claimant made no complaint to anybody about them, nor did she challenge them in any way, even though she is a forthright person. Finally, her own evidence is that she wished to be reinstated to the Respondent's employment which is difficult to reconcile with her case that she was subjected to harassment related to age while in the Respondent's employment.
148. In the circumstances, we would have concluded that, having regard to the Claimant's own perception this conduct, if it occurred, did not have the effect of violating her dignity or creating the proscribed environment; nor would it have been reasonable to have that effect; the claims would have failed for those reasons as well.
149. We considered the fact that neither Mr Paul nor Mr Lonnepan were called to give evidence on behalf of the Respondent. If the Claimant had discharged the initial burden on her to prove that the incidents occurred as alleged, the burden of proof would have shifted to the Respondent; the Tribunal may have drawn an inference from their absence. But because the Claimant did not prove to the Tribunal's satisfaction that the incidents occurred, the burden of proof did not shift; in the circumstances, we declined to draw any inference from their absence.
150. In relation to Issue 3.2.4, we have found (para 106 onwards) that the Claimant was not treated less favourably than any other employee of a different age and the claim must fail.

**Conclusions: the claims of race and age discrimination relating to dismissal**

151. In relation to Issues 2.2.1 and 3.2.1 (not carrying out a proper investigation/disciplinary procedure), 2.2.2 and 3.2.2 (the dismissal) and 2.2.3 and 3.2.3 (the failure to offer an appeal), our findings of fact are at para 108 onwards.

152. There can be no doubt that the Respondent did not follow a fair procedure in dismissing the Claimant: the investigation did not involve her or consult her before the decision was taken; there was no proper disciplinary meeting; she was not offered the chance to be accompanied; she was not offered a right of appeal. If the Claimant had had two years' continuous service and had the right to bring a claim of unfair dismissal, we would have found that the dismissal was procedurally unfair. There would then have been the question as to whether, had there been no procedural flaws, she would have been dismissed in any event.
153. However, the Claimant did not have the qualifying period of service to bring such a claim; this is a claim of discriminatory dismissal only. The only question is why the Respondent acted as it did in not following a formal investigatory/disciplinary procedure and why it dismissed her.
154. The initial burden is on the Claimant to prove facts from which a Tribunal could reasonably conclude that the dismissal was tainted by considerations of race or age, at which point the burden would shift to the Respondent to prove that it was not.
155. We have rejected her evidence that she was subjected to acts of race and age discrimination during her employment. None of those matters can assist her.
156. We acknowledge that, historically, the Respondent had not employed Pakistani employees in sales roles, although it did engage Pakistani contractors in security roles, who gave evidence that they neither experienced nor witnessed any discrimination against Pakistanis. The Respondent has subsequently employed two further Pakistani members of staff, one at the Green Street store and one in Southall.
157. We balanced this against the fact that the Claimant's sister, as we have already found, thrived and was promoted and rewarded in the Respondent's employment: they share the same race and the two-year difference in age is, in our judgment, so small as to be immaterial.
158. The material difference between them is that the Claimant's sister had not been given warnings in relation to her conduct; nor was there any suggestion that she had any performance issues when it came to the Respondent's systems.
159. We have concluded that Claimant has not discharged the burden on her to show that her age or race were a factor in her dismissal or in the procedure which was followed. The burden does not shift to the Respondent.
160. If it had, we would have concluded that the sole reason for dismissal was, as Mr Thomas said, the Claimant's conduct and capability.
161. As for the procedure, there is nothing whatsoever from which we could reasonably conclude that the Respondent was influenced in any way by the Claimant's race or age in adopting the procedure it did. The burden did not shift.
162. If it had shifted, we would have concluded that the procedural failures were because, in our judgment, Mr Thomas had a poor understanding of what

would constitute a fair procedure, probably because of a lack of experience on his part of conducting such processes, possibly also because of poor advice from HR. He appeared entirely ignorant of any requirement for due process and believed that he was entitled to dismiss the Claimant summarily because he had concluded she was guilty of repeated misconduct and was not capable of mastering the Respondent's systems. The process he adopted was wrong, it was unfair but, in our judgment, it was not discriminatory, either because of race or age.

163. In light of our conclusions above, we accept the Respondent's submission that the allegations of age and race discrimination which the Claimant raised for the first time after her dismissal, and which we have found in these proceedings to be without merit, were a response to the fact that she had been dismissed; the dismissal was not influenced in any way by the Claimant's age or race.
164. Consequently, these claims of direct race and age discrimination are not well-founded and are dismissed.

**Employment Judge Massarella**  
**Date: 12 June 2025**

### **APPENDIX: LIST OF ISSUES**

#### **1. Time limits**

- 1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 26 November 2023 may not have been brought in time.
- 1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
  - 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
  - 1.2.2 If not, was there conduct extending over a period?
  - 1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
  - 1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    - 1.2.4.1 Why were the complaints not made to the Tribunal in time?

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

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

2.1 The Claimant identifies as a British citizen of Pakistani origin.

2.2 Did the Respondent do the following things:

2.2.1 Fail to carry out a proper investigation and/or disciplinary procedure prior to dismissing the Claimant on 29 January 2024;

2.2.2 Dismiss the Claimant on 29 January 2024;

2.2.3 Fail to offer the Claimant the right to appeal against the decision to dismiss her taken on 29 January 2024;

2.2.4 Fail to provide the Claimant with a copy staff handbook when she requested it in July 2023.

2.3 Was that less favourable treatment?

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

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who she says was treated better than she was.

2.4 If so, was it because of race?

**3. Direct age discrimination (Equality Act 2010 section 13)**

3.1 The Claimant is 51 years old. She compares her treatment with that of a hypothetical member of the workforce who is significantly younger than her.

3.2 Did the Respondent do the following things:

3.2.1 Fail to carry out a proper investigation and/or disciplinary procedure prior to dismissing the Claimant on 29 January 2024;

3.2.2 Dismiss the Claimant on 29 January 2024;

3.2.3 Fail to offer the Claimant the right to appeal against the decision to dismiss her taken on 29 January 2024;

3.2.4 Fail to provide the Claimant with a copy staff handbook when she requested it in July 2023

3.3 Was that less favourable treatment?

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

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who she says was treated better than she was.

3.4 If so, was it because of age?

3.5 The Respondent is not seeking to advance any argument that the treatment alleged, if it were to be found to be done because of age, was a proportionate means of achieving a legitimate aim.

#### 4. Harassment related to race (Equality Act 2010 section 26)

4.1 Did the Respondent do the following things:

4.1.1 Tell the Claimant on 29 July 2023 that the company had a policy of not employing persons of Pakistani origin, and that they were only employing her as she had considerable experience as a sales executive. The Claimant says that this was said by a manager, but she is unable to recall which of the two managers who were at the company at the time.

4.1.2 Tell the Claimant on a date in November 2023 that "*you are the first and last Pakistani we will employ. We do not employ Pakistanis*". The Claimant says that this was said by a manager who she knew as "Benson".

4.1.3 Tell the Claimant on a date in late December 2023, "*It is difficult to deal with Pakistanis I came to manage 150 people*". The Claimant says that this was said by a manager who she knew as "Mrunan".

4.1.4 Make comments to the Claimant on one or more occasions in January 2024 to the effect that they did not employ Pakistanis and wanted to get rid of them. The Claimant says that these comments were made by both managers, "Benson" and "Mrunan".

4.2 If so, was that unwanted conduct?

4.3 Did it relate to race?

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

## 5. Harassment related to age (Equality Act 2010 section 26)

5.1 Did the Respondent do the following things:

5.1.1 On a number of occasions during the period from November 2023 until the Claimant's dismissal on 29 January 2024, refer to her using words such as:

5.1.1.1 "Mum";

5.1.1.2 "Madam";

5.1.1.3 "Mamta-Je", which is a Hindu word meaning "old woman".

The Claimant says that these words were said by managers and co-workers. These included a manager known to her as "Joseph" and a number of junior members of staff whose names the Claimant does not know. The Claimant alleges that "Joseph" encouraged the use of this language by junior members of staff.

5.1.2 Say to the Claimant on a date in late December 2023 words to the effect of "*Why work six days, you have worked long enough, have a rest you are too old*". The Claimant says that this comment was made by a manager known to her as "Joseph".

5.1.3 On one or more occasions in January 2024, make comments to the effect of "*Retire, stay at home, you are too old*". The Claimant says that these comments were made by a manager known to her as "Joseph".

5.2 If so, was that unwanted conduct?

5.3 Did it relate to age?

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

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

## 6. Remedy for discrimination



- 6.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?
- 6.2 What financial losses has the discrimination caused the Claimant?
- 6.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 6.4 If not, for what period of loss should the Claimant be compensated?
- 6.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 6.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
- 6.7 Is there a chance that the Claimant's employment would have ended in any event? Should her compensation be reduced as a result?
- 6.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 6.9 Did the Respondent or the Claimant unreasonably fail to comply with it?
- 6.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?
- 6.11 By what proportion, up to 25%?
- 6.12 Should interest be awarded? How much?