EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
X	**v**	(1) Mrs Chinneye Williams; and (2) Mr Ike Williams

Heard at: Cambridge

On: 16, 17, 22, 23 and 24 April 2025
In Chambers: 27 May 2025

Before: Employment Judge Tynan

Members: Ms L Durrant and Mr R Allan

Appearances
For the Claimant: Mr H Lyons, Solicitor
Interpreter: Ms E Anuoluwapo Ogunkolade, Yoruba speaking
For the Respondent: Mr D Adebayo, Solicitor

X

RESERVED JUDGMENT

Illegality

1. The Respondents' defence of the claim on grounds of illegality does not succeed.

Wages

2. The complaint of unauthorised deductions from wages is well-founded. The Respondent made unauthorised deductions from the Claimant's wages in the period 14 November 2022 to 20 March 2023.

3. The Respondents are not entitled to count a notional amount for providing accommodation to the Claimant towards discharging their liability to pay her the national minimum wage.

Notice Pay

4. The complaint of breach of contract in relation to notice pay is well-founded.

Unfair Dismissal

5. The Claimant's complaint pursuant to section 104 of the Employment Rights Act 1996, that she was unfairly constructively dismissed because she alleged that the Respondents had infringed a right of hers which is a relevant statutory right is well-founded. The Claimant was automatically unfairly dismissed.

Holiday Pay

6. The complaint in respect of holiday pay is well-founded. The Respondent failed to pay the Claimant in accordance with regulation 14(2) and/or 16(1) of the Working Time Regulations 1998.

7. Whilst the Claimant's further complaints that between 14 November 2022 and 20 March 2023 the Respondent refused to permit her to exercise her rights to a daily rest break of at least eleven consecutive hours and an uninterrupted rest period of not less than 24 hours in each seven-day period under the Working Time Regulations 1998 are potentially well-founded, the complaints were not presented within the primary time limit in regulation 30(2) of the Working Time Regulations 1998 and she has failed to establish that it was not reasonably practicable for her to do so. The Tribunal therefore has no further jurisdiction to determine the complaints.

Failure to provide a written statement of employment particulars

8. When the proceedings were begun the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars. In accordance with section 38 of the Employment Act 2002, it is just and equitable to make an award of an amount equal to four weeks' gross pay.

Written Itemised Pay Statements

9. The Respondent failed to give the Claimant written itemised pay statements as required by section 8 of the Employment Rights Act 1996 in the period 14 November 2022 to 20 March 2023.

Harassment

10. The complaint of harassment related to sex and/or sexual harassment is not well-founded and is dismissed.

Employer's contract claim

11. The Respondents' employer's contract claim against the Claimant is dismissed following its withdrawal.

RESERVED REASONS

Introduction

1. On 31 August 2023, the Claimant presented a claim to the Employment Tribunals. This followed acas early conciliation between 19 June 2023 and 31 July 2023. The claim was accordingly presented within one month of the early conciliation certificate having been issued. The Claimant pursues complaints as follows:

    a. That she was automatically unfairly dismissed contrary to §.104 and 104A of the Employment Rights Act 1996;

    b. That the Respondents contravened regulations 10, 11 and 12 of the Working Time Regulations 1998, and that she is entitled to compensation for accrued but untaken annual leave pursuant to regulation 14;

    c. That unlawful deductions were made from her wages;

    d. In respect of the Respondents' alleged failure to provide her with a written statement of terms and conditions of employment;

    e. In respect of the Respondents' further alleged failure to provide her with itemised pay statements;

    f. For harassment related to sex and / or sexual harassment contrary to s.26 of the Equality Act 2010; and

    g. That she was wrongfully dismissed, that is to say constructively dismissed without notice or payment in lieu of notice.

2. The Claimant's claims are resisted in their entirety by the Respondents, albeit primarily on grounds of alleged illegality rather than necessarily in all respects on their substantive merits.

3. There is an agreed List of Issues at pages 103 – 105 of the final hearing bundle ("the Bundle"). The Bundle itself runs to 343 numbered pages; any further page references in these Reasons correspond to the Bundle.

4. There was a supplementary bundle comprising of a few Tribunal related documents and a two-volume authorities bundle. There was also a trial witness statement bundle comprising the Claimant's third and fourth witness statements and the First and Second Respondent's second witness statements. Any earlier witness statements are in the Bundle.

5. At a preliminary hearing on 13 March 2024, Employment Judge L Brown made various orders pursuant to Rules 50(1) and 3(b) of the Employment Tribunals Rules of Procedure 2013, Article 8 of the ECHR and s.11 of the Employment Tribunals Act 1996, including an anonymisation order to

prevent the Claimant's identity and address being disclosed to the public. In accordance with Employment Judge L Brown's orders, the final hearing was held in private.

6. The case came before Employment Judge S Moore on 18 and 30 July 2024 and 18 September 2024, when she determined that the Employment Tribunal had territorial jurisdiction to determine the claim and that the applicable law was English law. She dismissed the Respondents' applications to strike out some or all of the claims, alternatively for deposit orders, but left this Tribunal to determine whether the Claimant's claims, or any of them, are unenforceable by reason of illegality.

7. The Claimant's employment status was identified as a potential issue in the List of Issues. However, the Respondents now accept that the Claimant was an employee within the meaning of s.230(1) of the Employment Rights Act 1996 and further, that she was employed by both of them. Whilst the Respondents continue to assert that the Claimant left her employment with them without cause and without giving notice as she was required to do, Mr Adebayo confirmed that they were withdrawing their employer's contract claim against her. It will be dismissed following its withdrawal.

The Law

8. Mr Lyons and Mr Adebayo each made oral submissions in closing. However, skeleton arguments had been submitted on each side ahead of the final hearing; in the case of the Respondents, the skeleton argument is relatively brief, though makes reference to the Court of Appeal's decision in Okedina v Chikale [2019] EWCA Civ 1393, the full judgment for which is in the authorities bundle (Page 471 – 490). The applicable law and relevant legal principles are set out more fully in the Claimant's skeleton argument and were developed further by Mr Lyons in closing, as well as confirmed in his notes for closing submissions which were filed with the Tribunal on the evening of 28 April 2025 to assist in the Tribunal's further deliberations. We have re-read the parties' written submissions and our notes of their oral submissions in coming to this judgment.

9. Mr Adebayo's closing submissions were almost entirely focused on the question of whether the Claimant's various complaints should be dismissed for illegality because the visa pursuant to which she entered and worked in the UK was secured in reliance upon fabricated documentation and / or because she allegedly breached the conditions of her visa after she came to the UK. In this regard, there seems to be no dispute between the parties as to the applicable law and relevant legal principles, which are summarised at paragraphs 32 – 34 of the Claimant's skeleton argument. In particular,

> "When determining whether it would be contrary to the public interest for an illegal contract to be enforced, the following factors will be relevant:
>
> a. The underlying purpose of the prohibition that is transgressed;

b. Any other relevant public policies that may be rendered ineffective or less effective by denial of the claim; and

c. The possibility of "overkill" if the law is not applied with a due sense of proportionality."

10. In Okedina, the appeal was largely concerned with whether, when enacting the Immigration, Asylum and Nationality Act 2006, it was Parliament's intention that a contract entered into in contravention of sections 15 and 21 of the Act should be unenforceable; the Court of Appeal answered that question in the negative, before going on to briefly consider the common law illegality issue (see paragraphs 59 to 62 of Underhill LJ's leading judgment). With respect to Mr Adebayo, we think Okedina broke little, if indeed any, new ground on the common law illegality issue, rather it serves to direct tribunals back to the "well-established approach" in Hall v Woolston Hall Leisure Ltd [2001] ICR 99, namely that a tribunal should consider whether a claimant's claim arises out of or is so clearly connected to or inextricably bound up or linked with any illegal conduct on their part that the tribunal should not permit them to recover compensation without appearing to condone that conduct.

11. In the course of his judgment in Hall, Mance LJ said that it would require "quite extreme circumstances" before the test of illegality would exclude a claim in tort. He referred to the underlying principles as having been identified over two hundred years earlier by Lord Mansfield in Holman v. Johnson (1775) 1 Cowp 341:

> "The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say.

It is a reminder to this tribunal that however 'ill' the defence of illegality may sound in the mouths of the Respondents, they are perfectly entitled to raise it. We have not allowed ourselves to be distracted by considerations of the perceived 'real justice' of the matter, rather we have remained focused on whether the claim should be denied as a matter of public policy.

12. The approach in Hall was considered by the Supreme Court in Hounga v Allen and another (Anti-Slavery International intervening) [2014] 1 WLR. Lord Wilson noted that the illegality provided no more than the context for the First Respondent's discriminatory acts, so that the connection was insufficient to bar the claim (see paragraph 40 of the judgment). Whilst the approach in Hall provides an important starting point, other public policy considerations may weigh in the overall balance, as Lord Wilson explored in the remainder of his leading judgment in Hounga (and with which Baroness Hale and Lord Kerr agreed).

13. By the time the case had come before the Supreme Court, the illegality appeal was limited to Miss Hounga's sex discrimination claim. Nevertheless, Lord Wilson suggested that the considerations of public policy to which he referred in the course of his judgement might conceivably have yielded a different conclusion as regards other aspects of her claim that had been rejected for illegality but were not within the ambit of the appeal.

14. We shall return to Hounga in our conclusions below.

15. Otherwise, the only legal issues we have thought it relevant to highlight in addition to those set out in the Claimant's skeleton argument are as follows:

    a. Regulation 30(2) of the Working Time Regulations 1998 provides that any complaint by a worker, inter alia, that their employer refused to permit them to exercise their rights to breaks and rest periods in contravention of regulations 10, 11 and 12 of the Working Time Regulations 1998, shall not be considered by a tribunal unless it is presented before the end of the period of three months beginning with the date on which it is alleged the exercise of the right should have been permitted or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented at the end of that period of three months. There is no provision in regulation 30(2) for time to run from the last in a series of refusals. The Claimant notified her potential claims to acas under early conciliation on 19 June 2023, with the relevant certificate being issued on 31 July 2023. Any complaint by her in respect of alleged refusals prior to 20 March 2023 are potentially out of time.

    b. Where an employer provides accommodation to its worker, it is entitled to count a notional amount for providing this benefit, known as the 'accommodation offset', towards discharging its liability to pay the worker the national minimum wage – regulation 14(1) of the National Minimum Wage Regulations 2015. Guidance issued by the Department for Business and Trade states that 'living accommodation',

        > "…has to provide the worker with unrestricted access to accommodation suitable for day to day living,".

        The meaning of the phrase 'living accommodation' was considered by an Employment Tribunal at first instance in Green King Services Limited v Commissioners for HM Revenue and Customs (ET Case Number: 3332111/18), but otherwise there is no appellate authority in the matter.

        The applicable offset rate for 1 April 2022 to 30 March 2023 was £8.70 per day, or £60.90 per week.

c. Where an employer fails to pay its worker the national minimum wage, the worker is entitled to payment of any arrears of pay calculated in accordance with the formula in s.17 of the National Minimum Wage Act 1998.

d. For the purposes of an unauthorised deduction from wages claim, there is a statutory presumption that the worker qualified for the national minimum wage and that they were paid less than the national minimum wage, unless in each case the contrary is shown - see s.28(1) & (2) of the National Minimum Wage Act 1998.

Findings

16. The Claimant is 35 years old. She was 32 at the time of the events in question. We do not have any significant information as to her background, including for example her education and qualifications, if any. She is Nigerian. Her first language is Yoruba, though she says that she is more comfortable reading and writing in English. She gave her evidence at Tribunal through an interpreter.

17. From May 2017 to October 2020 the Claimant worked in Saudi Arabia as a domestic worker. Although she was questioned by Mr Adebayo about her experiences in Saudi Arabia, it was not suggested that she was mistaken in her account or indeed that it was untrue. We accept that at times the Claimant was treated badly, including by being beaten on occasion, verbally abused and sexually harassed by different employers.

18. During her time in Saudi Arabia the Claimant had worked for a time for Mrs Williams' sister-in-law, 'Nicki'. It was through Nicki that she was subsequently introduced to the Respondents.

19. After the Claimant returned to Nigeria in October 2020, she spent some time collecting palm oil to support herself, her two children and her elderly, infirm mother. It was physically demanding, poorly paid work and it suggests to us that, even if she is reasonably proficient in English, the Claimant is not educated to a high level, in contrast to the Respondents, both of whom are educated to Degree level (Mr Williams additionally holds an MA and MBA).

20. After the Claimant had been back in Nigeria for approaching two years she was contacted by Nicki who asked her whether she would be interested to work for the Respondents. Given her experiences in Saudi Arabia the Claimant was initially slightly hesitant in the matter but was ultimately persuaded by Nicki's assurances that she would be treated well by the Respondents.

21. The principal contemporaneous evidence available to us in the case is WhatsApp, or similar, messages passing between the Claimant and Mrs Williams, albeit which evidence that they were also in contact by phone. On 21 September 2022, the Claimant provided Mrs Williams with a copy of her passport and, at Mrs Williams' request, a number of stamped pages

from within the passport. The following day Mrs Williams messaged the Claimant,

> "Let's just pray it works out".

22. We find not only that they had by then agreed in principle that the Claimant would work for the Respondents in the UK but that it had been discussed at some level between them that the Claimant would require a visa, hence why copies of her passport had (as we find) been requested by Mrs Williams, in order that she might give further consideration to the matter. In the course of her evidence, Mrs Williams confirmed that she specialises in global mobility. Whilst we find therefore that she has experience of global visa issues, the need for a visa would not have come as a surprise to the Claimant since she had required a visa to work in Saudi Arabia and it seems she may also have been exploring the potential to secure a visa to work in Iraq.

The visa application

23. In paragraph 6 of her witness statement, Mrs Williams states that she discussed the visa application process and its requirements with the Claimant and that they agreed to find a way to work around the requirements. Her account in that regard was not put to the Claimant at Tribunal. Nevertheless, messages between the Claimant and Mrs Williams in September 2022 confirm that they were in discussion about submitting a visa application. We find that when Mrs Williams messaged the Claimant on 29 September 2022,

> "So by God's grace we will start your application over the weekend …" (page 166)

she was referring to them completing the application together over the weekend of 1/2 October 2022, even if they were then respectively in the UK and Nigeria. It is consistent with other evidence, which we shall come back to, which confirms that the Claimant was involved in the visa application process notwithstanding her assertion within these proceedings that she was entirely in the dark in the matter. However, for the reasons we shall also come back to, we find that Mrs Williams was the architect of the plan to secure a visa for the Claimant in circumstances where it was identified by Mrs Williams that the Claimant did not meet the eligibility criteria for admission as a domestic worker to the UK.

24. It is clear from the messages in the Bundle that the Claimant was keen to progress the opportunity to work for the Respondents; given the work she was then doing and her difficult financial situation, that is perhaps unsurprising. Over a period of two weeks or more in late September/early October 2022 the Claimant messaged Mrs Williams on almost a daily basis (pages 166 and 167). There was some suggestion by Mrs Williams in the course of her evidence at Tribunal that she felt pressured by the Claimant and began to have second thoughts. On 14 October 2022 she messaged the Claimant to say that she had been speaking with Nicki,

> "I have just spoken to Nkeiru
>
> We are thinking that if you still have the opportunity for Saudi and you want to go ahead, please go ahead.
>
> I don't want it to be like I am cheating you and asking you to wait for longer in Nigeria to enable me to facilitate the visa for you."

The message evidences to us that Mrs Williams saw it as her responsibility to facilitate a visa for the Claimant. It seems that she had some reservations about going ahead; although she expressed some concern that the Claimant should not be kept out of other opportunities, we find that she was weighing in her mind whether it was sensible to go ahead if the Claimant did not meet the relevant visa eligibility criteria and a way would therefore need to be found around them.

25. Whatever Mrs Williams' reservations in the matter, the following morning she messaged the Claimant saying,

> "Ok so we will continue ad as planned". (page 167)

We conclude that Mrs Williams had by then shared with the Claimant that the Claimant did not meet the eligibility criteria for a visa but that Mrs Williams intended to find a way around them.

26. Mrs Williams seemingly remained conflicted in the matter because a few minutes later she messaged the Claimant saying,

> "Can you make the decision as to whether you think we should take the risk and just apply now, or whether we should wait till December?" (page 168)

The Claimant responded,

> "I can't tell you to take the risk ma.
>
> Because u will spend a lot of money of the visa
>
> Don't worry i will go and work in ur house in lagos now and will u come to Nigeria of Xmas will can go together ma."
>
> (page 168)

27. These messages are the only material exchange in an otherwise essentially unremarkable series of messages passing between them at this time; they evidence to us that Mrs Williams had explained to the Claimant that there was a real risk that she might be unable to secure entry to the UK and, in light of this, that she was weighing up whether they should put off any application, even if it is unclear from the messages why a delay of several weeks might have made a difference; this aspect was not explored further with the Claimant or Mrs Williams in cross examination.

28. When Mrs Williams messaged the Claimant on 15 October 2022 and said,

> "I am praying it all works out"

the Claimant responded,

> "Amin ma".

29. In summary, we find that by 15 October 2022 the Claimant knew that Mrs Williams was looking to find a way to secure her entry to the UK in circumstances where she was believed not to meet the relevant eligibility criteria for a visa. However, it is equally clear from even these limited exchanges that Mrs Williams was driving the matter forward, and that any final decision in the matter would rest with her, even if she had briefly looked to the Claimant to make a decision for her. Nevertheless, the fact that, in a moment of indecision or uncertainty, Mrs Williams had looked to the Claimant to make a decision, evidences to us that Mrs Williams had brought the Claimant into her confidence and shared her thinking with her even if this was only at a basic level or in general terms.

30. An hour or so later Mrs Williams confirmed that she would transfer funds to the Claimant's account to cover the Claimant's children's school fees. On or around 19 October 2022 she transferred ₦50,000 (approximately £24 at current exchange rates) to the Claimant. She transferred a further ₦20,000 two days later to cover the Claimant's travel costs to Lagos and her subsistence. Notwithstanding they had yet to meet in person, Mrs Williams made arrangements for the Claimant to stay at the Respondents' family home in Lagos. The Claimant arrived in Lagos on 24 October 2022. It seems that Mrs Williams' own travel plans were delayed due to health issues so that she did not arrive back in Nigeria until 28 October 2022, when she and the Claimant would have met for the first time.

<u>The documents submitted in support of the visa application</u>

31. A limited number of documents were submitted to UKVI in support of the Claimant's visa application. It is not in dispute between the parties that two of those documents were fabricated (though they do not agree when they were created or who created them) and that Mr Williams additionally made certain statements that he knew to be untrue when he signed a statement in support of the application. It is also indisputably the case that Mr Williams transferred ₦722,000 to the Claimant on 2 November 2022 and that she transferred these monies back to him over the following 24 hours or so.

32. The specific documents with which are concerned are as follows:

    a) Contract of Employment governing the Claimant's claimed employment in Nigeria as a domestic worker by Mr Williams with effect from 15 October 2021 (pages 298 and 299);

    b) Mr Williams' signed statement dated 28 October 2022 submitted in support of the visa application (pages 300 and 301);

c) A signed schedule of claimed salary payments to the Claimant covering the period October 2021 to October 2022 (pages 302 and 303 – seemingly duplicated at pages 304 and 305);

d) The Claimant's bank account statements for the period April to November 2022 (pages 306 - 317); and

e) A Domestic Worker Statement in respect of the Claimant's proposed work in the UK (pages 318 – 325).

33. Whilst the visa application had been started at some point over the weekend of 1/2 October 2022, we find that documents a), c) and e) above were created by Mrs Williams following her return to Nigeria on 28 October 2022. In particular, the messages at pages 168 – 170 of the Hearing Bundle do not support that Mrs Williams did any further work on the visa application after 15 October 2022 until she was back in Nigeria. That may partly be explained by the fact that she experienced a period of ill health.

34. Mrs Williams' first task on returning to Nigeria was to prepare a statement for Mr Williams to sign. The statement is dated 28 October 2022 (pages 300 and 301) and we find was prepared by Mrs Williams on the same day she arrived back in Lagos.

35. Mr Lyons invites us to find that the Contract of Employment (pages 298 and 299) was created on 15 October 2021; there is no basis for us infer this, rather, as we say, the messages between the Claimant and Mrs Williams point to no further work having been undertaken on the visa application until Mrs Williams was in Nigeria.

36. We share Mr Lyons' disquiet as to the way in which the Respondents' evidence regarding the schedule of claimed salary payments (pages 302 and 303) emerged at Tribunal; as he put it, 'on the hoof'. The Respondents' case now is that the schedule was created by the Claimant on 3 November 2022 with assistance from TLS, an organisation operating out of a business centre close to the British Embassy in Lagos. They claim that the Claimant was assisted in the matter by someone called Ayo who affixed Mr Williams' signature to the document. How the Claimant or Ayo might have come to be in possession of an electronic copy of Mr Williams' signature was not explained. In the course of their respective closing submissions, Mr Adebayo and Mr Lyons disagreed as to whether TLS is an official agent of the British Home Office in Nigeria. Since we have not been provided with any evidence in the matter, it is not something about which we are in a position to make any findings. However, nothing turns on this. Whether or not TLS is an approved agent of the British Home Office or UKVI, the suggestion that TLS or Ayo conspired with the Claimant to fabricate a document in support of her visa application is a particularly serious allegation; given that it strikes at the heart of the Claimant's alleged culpability, it is inexplicable that the Respondents did not address the matter in their witness statements. Moreover, the Claimant was not cross examined by Mr Adebayo on the basis that this is what had happened. On the contrary, an entirely different

case was put to the Claimant in cross examination, namely that at some point between 29 October 2022 and 2 November 2022 she had sat with Mrs Williams and signed the schedule of payments in 23 different places (in fact it is signed in 16 places). In the course of his cross examination of the Claimant, Mr Adebayo emphasised a number of times that there would have been no need for Mrs Williams to have forged the Claimant's signature, as the Claimant alleges happened, because Mrs Williams and the Claimant were under the same roof when the schedule was created and, on the Claimant's case, Mrs Williams was a sufficiently forceful character that she would simply have directed the Claimant to sign whatever documents were required. Accordingly, the Respondents' respective novel assertions at Tribunal that the Claimant and Ayo had conspired between themselves to create the schedule of payments, run entirely contrary to the case they had instructed Mr Adebayo to put to the Claimant in her earlier cross examination.

37. In the course of the final hearing, it seems to have been identified for the first time that Mr Williams' electronic signature on the schedule of claimed payments is inverted (see for example his signature at page 303). We find that this realisation prompted Mrs Williams whilst on oath to offer the explanation that the schedule had been created by the Claimant with the help of Ayo, something that was taken up by Mr Williams in the course of his evidence. We agree with Mr Lyons that it is an inherently unlikely explanation, not least given the time it would have taken TLS to have crafted the schedule and to have secured and affixed Mr Williams' signature to it. We are certain that the Claimant would not have acted unilaterally in the matter and that if the schedule of payments had indeed been overlooked the Claimant would have looked to Mrs Williams for guidance, even instruction, in the matter. There is no mention in the limited messages passing between the Claimant and Mrs Williams on 3 November 2022 that TLS had identified a need to prepare a schedule of payments, that it had been overlooked or that it would need to be signed by Mr Williams. On the contrary, the messages confirm that the only matter that had potentially been overlooked was the provision of copies of the Claimant's bank account statements; we shall come back to this in a moment.

38. The emails at page 192 of the Hearing Bundle evidence that Mrs Williams forwarded a visa document checklist to the Claimant on 31 October 2022. We find that she did so ahead of the Claimant's scheduled appointment with TLS on 3 November 2022. The checklist itself is at pages 187 and 188 of the Hearing Bundle, and identifies just six documents or categories of document that would need to be provided, one of which is evidence that the applicant has worked for the employer in the same role for at least the last 12 months. Mrs Williams may have been recently unwell and possibly even feeling the effects of a long haul flight, but we do not think she overlooked the six pieces of evidence that needed to be submitted in support of the visa application; she is an able, intelligent, organised individual who specialises in global mobility and she was able to set to and prepare Mr Williams' supporting statement on the same day she arrived

back in Lagos. We find that, with the exception of the Claimant's bank statements, the additional need for which was identified by TLS at the appointment on 3 November 2022 (but the need for which was not indicated by the checklist at pages 187 and 188 of the Hearing Bundle), all relevant supporting documentation, including the schedule of claimed salary payments, was in place by 31 October 2022.

39. The Respondents' respective credibility is undermined by what we consider to have been a hasty and ill-conceived attempt by Mrs Williams, in the pressure of the moment, to try to lever some advantage from her realisation in the course of cross examination that Mr Williams' signature is inverted on the schedule of payments. Notwithstanding what we have just said regarding Mrs Williams' organisational skills, we agree with Mr Lyons that the most likely explanation for the inverted signature is instead that Mrs Williams affixed it in error and failed to notice her own error. It also seemingly went unnoticed by UKVI.

<u>The Claimant's involvement and the Respondents'' deception and exploitation of her</u>

40. We have given careful thought to the extent to which the Claimant was involved in the deception of UKVI. There are almost no messages between the Claimant and Mrs Williams between 29 October and 2 November 2022 that shed any further light on the matter. Nevertheless, in view of our various findings above, we conclude that the Claimant was aware in broad terms that documents had been created by Mrs Williams to overcome the eligibility criteria difficulty. Whilst we find that the Claimant did not have the opportunity to study the documents in any detail or familiarise herself with them, we find that she did sign the Contract of Employment, schedule of payments and Domestic Worker Statement. Whilst she was emphatic at Tribunal that she had not done so, we note that she was a little more equivocal on this issue in her witness statement (and at the hearing in July 2020) in which she states that she could not recall signing any documents. We are reinforced in our conclusion by the presence of the Claimant's new signature (adopted by her in or around 2020 or 2021) as well as her former signature on the Domestic Worker Statement (see page 325). Mr Lyons sought to make comparisons between that new signature and the electronic signature on the Claimant's various witness statements, but in reality neither he nor we are handwriting or document analysis experts. We do not know, nor do we speculate as to, what level of variance one might expect to see between two signatures, whether done at the same time or over a year or more apart. In any event, the Claimant could not explain during cross examination how it was that the Respondents might have come to be in possession of her new signature, since her 2022 passport, a copy of which she had provided to Mrs Williams, bears her old signature. She confirmed during cross examination that this was the only identity document she had provided to the Respondents.

41. Whilst we recognise that legal proceedings can be stressful and difficult to navigate, with the result that the parties may not present the best version

of themselves at any hearing, nevertheless Mrs Williams came across at Tribunal as a particularly strong-willed individual who is not receptive to other points of view. We have already said that she drove the arrangements to bring the Claimant to the UK. It is clear from the messages between herself and the Claimant, that the Claimant was deferential in their interactions and, as Mr Lyons put it, that she was at Mrs Williams' beck and call. Notwithstanding Mrs Williams' repeated protestations at Tribunal that the Claimant had been welcomed into her home and treated as one of the family, the largely business like tone of her messages evidences to us that when it came to the visa application, the Claimant would have been expected to sign the relevant documents and that Mrs Williams would not have been receptive to questions being raised by the Claimant. It likely explains why the Claimant does not recollect signing them, even if there may be some element of the Claimant not wanting to get into trouble and perhaps some realisation now on her part that this issue may have some bearing upon her future immigration status.

42. We agree with Mr Lyons that the Respondents' deception in this matter extended to the Claimant herself, in that they effectively kept her in the dark as to her rights as a worker in the UK, even if the Domestic Worker Statement had been made available to her ahead of her meeting with TLS on 3 November 2022. If the Respondents did indeed agree to pay the Claimant ₦200,000 per month for what we conclude below was effectively a ten hour working day (and therefore at a rate of approximately £97.50 per month, or £22.50 per week, or 32 pence per hour at current exchange rates), we find that they were not in fact unequivocally committed to paying the Claimant this agreed sum. We consider that they did not act in good faith in their negotiations with the Claimant, even if they funded her children's school fees in advance. One of the least edifying moments during the final hearing was when Mrs Williams defended their failure to pay the Claimant even the relatively paltry wages that had been agreed, on the grounds that they could not afford to do so; this was shortly after Mrs Williams had confirmed that her two younger children were being privately educated at a cost of over £10,000 per child per annum. She was entirely untroubled by the fact the Claimant had not been paid her agreed wages, whilst emphasising more than once that the Claimant had been welcomed into their home as if she were family.

43. We have referred to the Claimant's provision of her personal bank account statements in support of the visa application. On 3 November 2022, Mr Williams transferred ₦722,000 into the Claimant's account. Within 24 hours or so the monies had been transferred back to him. We infer that this was done either to evidence an existing and ongoing employment relationship or that the Claimant needed to be able to demonstrate some prescribed level of savings. Whatever the explanation, it reinforces that the Claimant understood that steps were being taken to secure her admission to the UK and that she was privy to some of the detail.

<u>The Claimant's working arrangements in the UK</u>

44. The Claimant travelled to the UK with Mrs Williams overnight on 13 November 2022 and immediately started working for the Respondents as a domestic worker at their home in Bedford. In her witness statements, the Claimant claims that she worked 19 hours per day, seven days per week, something the Respondents dispute. Perhaps in recognition that the evidence that emerged during the final hearing did not support that the Claimant had worked the number of hours claimed, Mr Lyons submitted instead in closing that the Claimant had worked upwards of 14 hours per day. The Respondents did not keep a record of the hours worked by the Claimant.

45. The Domestic Worker Statement submitted to UKVI in support of the Claimant's visa application provides that the Claimant would work 6 hours per day over six days (36 hours per week in total), with every Sunday off. In response to questions from the Tribunal, Mrs Williams acknowledged that the Claimant worked more hours than was suggested by the Domestic Worker Statement and that she did not get Sundays or every Sunday off.

46. The Respondents have not put forward any calculations or estimates as to the total number of hours worked by the Claimant on average per week. It is not just that the Respondents failed to keep a record of her hours, we find that they were not concerned what hours she worked. The messages evidence, as Mr Lyons says, that Mrs Williams regarded the Claimant as being essentially at her beck and call. What is clear is that the Respondents never intended that the Claimant's hours or days of work should be limited as set out in the Domestic Worker Statement.

47. At Tribunal, Mrs Williams said that the Claimant completed her work during the week by approximately 8pm each day. She did not dispute that the Claimant was on duty by approximately 6:30am each day, which in any event is evidenced by regular messages from the Claimant to Mrs Williams first thing in the morning, generally enquiring after her and, for example, asking if she had slept well. We conclude that these messages were the Claimant's way of letting Mrs Williams know that she was awake, on duty and attending or ready to attend to the children's needs, including by making them breakfast before they left for school some time after 7:00am. We accept Mrs Williams' evidence that, when the Claimant returned home after taking the children to school in the morning, her time was then her own until she needed to leave the property again sometime after 2pm to collect them. This is borne out by the messages between the Claimant and Mrs Williams at page 199 onwards of the Hearing Bundle. There are few, if indeed any, messages between them between the hours of 11am and 2pm or after 8pm each day. For example, on 22 November 2022 Mrs Williams messaged the Claimant at 10:42am asking whether she had returned from the school run. Their messages resumed just before 3pm, with Mrs William's final message to the Claimant being sent at 8.02pm. A similar pattern of communication can be observed over the following weeks with some limited exceptions over the Christmas holiday period, for example on 28 December 2022 when Mrs Williams messaged the Claimant during the early afternoon to ask that she bring her some pain

relief medication and a hot towel because she was unwell. There are very few messages between them after 8pm, other than late on 22 January 2023 when Mrs Williams asked the Claimant to arrange a taxi to collect her from their local station and on 22 January and 4 February 2023 albeit the messages do not indicate any specific work being requested of the Claimant, or undertaken by her.

48. There were significantly fewer messages between the Claimant and Mrs Williams at the weekends, indeed very few messages between them at the weekend during the initial weeks after the Claimant came to the UK. That may partly reflect that Mrs Williams would not have been working at the weekend and was more likely therefore to have spoken directly to the Claimant rather than message her with requests or instructions. As we have indicated already, over the weekend of 21 and 22 January 2023, the Claimant and Mrs Williams were in contact late evening on both days, including after 10pm on Sunday 22 January 2023 regarding arrangements for a taxi to pick up the children at 8am the following day. However, we do not consider this to be evidence of the Claimant working extended hours at the weekend as she claims, rather that the Claimant was asked to do the occasional task over the course of a weekend. Whilst we find that the total time commitment never exceeded 6 hours in total, it is clear to us that the Claimant was not given Sundays off, but instead was expected to be on call seven days per week. The messages on 22 January 2023 provide just one example: at 8:41am on Sunday 29 January 2023, Mrs Williams asked the Claimant to prepare her some porridge; the following Sunday, 5 February 2023, she messaged her regarding various foodstuffs that needed to be bought in; and the Sunday after that, 12 February 2023 the Claimant messaged Mrs Williams at 11:37am to say that the children were asking to go to their aunt's house – Mrs Williams responded to confirm this was okay, albeit the children were not to be left alone whilst they were there i.e. they were to remain in the Claimant's charge.

49. In conclusion and in summary, we find that the Claimant was required to be available to perform the duties of her job between 6:30am and 11am, and 2pm and 8pm on weekdays (including all public holidays), and for up to six hours per day at weekends. Accordingly, we find that the Claimant worked a total of 70.5 hours per week. There was no opt-out in place under regulation 5 of the Working Time Regulations 1998.

The Claimant's work for others

50. The Claimant says that the Respondents arranged for her to work for other families, a number of whom were friends or relatives of Mrs Williams. With the exception of a three-week arrangement towards the end of the Claimant's employment with the Respondents, there is relatively limited evidence of such matters. However, one such arrangement seems to be indicated by an exchange of messages between the Claimant and Mrs Williams commencing at 20:49 on 14 February 2023 when Mrs Williams asked the Claimant whether she had heard "from those your work people". When the Claimant replied to say that she had not, Mrs Williams chided

her and asked her to contact the woman concerned, since she said the woman would otherwise think that the Claimant "was not serious".

51. We accept the Claimant's evidence that she occasionally cooked and cleaned for Mrs Williams' brother and family who lived nearby and that she had also undertaken washing and laundry tasks for a South African family, again in the local area. We also accept the Claimant's evidence that she was promised extra pay from Mrs Williams for this work but in the event had not been paid for it. However, it is unclear when the Claimant performed this additional work, specifically whether it was outside her core hours for the Respondents and whether anything further was agreed as to the amount of any extra pay. It is not in dispute that over several weekends the Claimant also worked in a pub which was owned or managed by Mrs Williams' brother, for which she was paid. These monies were paid through the Respondents, which evidences to us again that Mrs Williams was instrumental in the arrangements. In the course of her evidence at Tribunal, Mrs Williams said that she did not regard the Claimant's work for her brother as employment "as it's not regular", but instead "an opportunity for adventure". We doubt that is how the Claimant perceived the matter or, as Mrs Williams asserts, that the Claimant had the choice to say no.

52. Towards the end of her time working for the Respondents, the Claimant was sent by Mrs Williams to work for a Nigerian family in Watford. It is perhaps an unusual description in the circumstances, but it was in the nature of a secondment. It is unclear whether Mrs Williams remained in the UK whilst the Claimant worked for the Watford family. The arrangement in question is evidenced in messages passing between Mrs Williams and a woman, whom we shall refer to as 'E' – see pages 226 to 233 of the Bundle. The arrangements were evidently negotiated by Mrs Williams without any obvious input from the Claimant, including that the Claimant would be paid £600 per week whilst with the family in Watford. In fact, whatever the family may have believed, it was Mrs Williams who was expecting to receive £600 per week from the family; we find that she had no intention of accounting for this money to the Claimant, rather she would pay the Claimant at most her previously agreed wages of ₦200,000 per month. The Claimant went to work for the family in Watford on 25 February 2023. It seems that E travelled abroad for medical treatment and that in her absence the Claimant was responsible for looking after her children. It evidences how confident Mrs Williams was in the Claimant's abilities that she felt able to recommend her services to a friend/acquaintance. After a couple of weeks E returned to the UK. She transferred monies to Mr Williams' bank account on 17 March 2023. On 19 March 2023 E emailed Mrs Williams as follows,

> "Thank you so much for sending [X]. She is an amazing soul. Very reserved, calm and collected. She took care of the house so well and the girls were all well looked after."

She went on to say that she had given the Claimant, "…the balance of her pay in cash", before going on to provide the following summary,

> "Three weeks childcare @ £600 / wk – £1800 in total
>
> – £200 bank transfer on 22/02/2023
>
> – £100 paid to [X] in cash on 15/03/2023
>
> – £1,000 bank transferred on 17/03/2023
>
> – Balance of £500 paid to [X] in cash on 18/03/2023."

53. On 21 March 2023, E messaged Mrs Williams to confirm once again that the Claimant had been paid two sums of £100 and £500. Mrs Williams responded the same day,

> "Ok thanks. She lied."

It remains unclear what the Claimant was alleged to have been lying about.

The events of 20/21 March 2023

54. The Claimant left the Respondents' home in the night on 20 / 21 March 2023. She did not tell them she was leaving. Mrs Williams states that the Claimant had returned from the family in Watford in high spirits, and that Mrs Williams had informed the Claimant on her return that she would travel back to Nigeria with Mrs Williams' cousins in a couple of weeks' time as Mrs Willimas did not want her ruining future visa applications by overstaying her current visa. She alleges that the Claimant responded by running away from their home and suggests that this was in fact part of a plan by the Claimant to remain in the UK and bring her children to the country. We reject her evidence in the matter and the suggestion that the Claimant had some ulterior motive. The Claimant's visa was valid until 8 May 2023 (page 198), in which case there was no pressing need for her to return to Nigeria. Whilst we are not persuaded that Mrs Williams actively locked the Claimant in the house overnight on 20 March 2023 with a view to preventing her from leaving, as the Claimant believes, we otherwise prefer the Claimant's account of what happened at section J of her third witness statement. In particular, we find that a disagreement arose between the Claimant and Mrs Williams about money. We find that Mrs Williams was unhappy that E had paid monies directly to the Claimant rather than to her or her husband, but that it was not something she could take up with E without thereby revealing that they were potentially profiting from the Claimant's labour or, at the very least, withholding her wages. We find that for her part the Claimant had become concerned by the Respondents' failure to pay her what she was then owed in spite of more than one request by her for payment of her wages and that she was also a little resentful of what she had begun to understand was the Respondents' exploitation of her. In our judgement, she was understandably suspicious

how things might work out if she was sent back to Nigeria and began to feel afraid and trapped. As regards Mrs Williams, we find that she did not take at all kindly to the Claimant asserting herself, indeed that she thought her impudent and that in suggesting to the Claimant that she might be sent back to Nigeria, Mrs Williams was seeking to bring pressure to bear and to re-assert control over her. It is unsurprising then that the Claimant concluded that she could no longer continue to work for the Respondents. We find that she left the Respondents' home in the night without any clear plan as to what she might do next.

55. It is telling that Mrs William's messages with E on 21 March 2023 (page 232) evidence not the slightest concern for the Claimant's whereabouts or wellbeing, notwithstanding on Mrs Williams' account the Claimant was a valued member of the family who had disappeared in the night without explanation. If the Claimant's disappearance really was inexplicable, as Mrs Williams suggests, it rather begs the question why Mrs Williams messaged E on the afternoon of the day she had disappeared, when her whereabouts were unknown and she could not be contacted, and said,

> "It was best she left. Very scary to stay with someone that lies like that badly." (page 232)

56. Mrs Williams emailed the Claimant on 23 March 2023 – the full email is at page 238 of the Bundle. It was not only self-serving, in the sense of seeking to lay down a paper trail that would suggest if necessary to the immigration authorities that Mrs Williams had acted responsibly in the matter, but in our judgement it was also intended to bring further unconscionable pressure to bear upon the Claimant by suggesting adverse consequences should she cause any difficulties for the Respondents with the relevant UK authorities. Given Mrs Williams' own conduct in securing the Claimant's entry to the UK with false statements and fabricated documents, it was entirely disingenuous, even dishonest, of her to write as she did to the Claimant,

> "I… will not be a part of any lies or fake schemes to keep you back in the UK by asylum or any tricks you may have been ill advised about…"

Mrs Williams had, of course, been the architect of lies and a fake scheme to secure the Claimant's entry to the UK a few months earlier.

<u>The Claimant's leave entitlement</u>

57. It is not suggested by the Respondents that the Claimant took any leave whilst employed by them. For the avoidance of doubt, we find that she did not do so and effectively was not permitted to do so by the Respondents. Their failure to issue her with a written statement of terms and conditions of employment meant that she was not alerted to her right to paid annual leave, when and how it accrued, or how she might take it. Again, it is not suggested by the Respondents that they made a payment in respect of the Claimant's accrued but untaken leave or any accrued but unpaid wages calculated up to the date she left their employment. Whilst we are troubled

by their failure in this regard, we shall say nothing more on the subject in case of any further claim by the Claimant should the award remain unpaid. We simply observe that having brought proceedings under the Equality Act 2010 and accordingly done a protected act for the purposes of s.26(2) of the Act, the Claimant has the right not to be subjected to any detriment because she did that protected act.

The claimed 'accommodation offset'

58. One issue we must determine is whether the Respondents are entitled to claim the 'accommodation offset' as counting towards discharging their liability to pay the Claimant the national minimum wage. We find that the Claimant did not have settled, predictable accommodation arrangements at the Respondent's home, specifically she was not allocated a bedroom that she could call her own and which was her own private space. We are unpersuaded by Mrs Williams' evidence that her three children, the eldest of whom was in her early twenties at the time and working (including frequently from home), shared a bedroom and indeed frequently slept together in the same bed. We simply do not accept that the oldest, adult child slept in the same bed as her much younger sister and brother. Instead, we find that the children each had their own room and that particularly when there were visitors to the Williams' home, which we find was not infrequently the case, the Claimant was expected to sleep on the sofa in the living room.

The harassment complaints

59. The harassment complaints are summarised within the List of Issues as follows:

59.1 Mr Williams told the Claimant she was beautiful;

59.2 Mr Williams touched the Claimant's cheek; and

59.3 Mr Williams wore inappropriate tight fitting clothing around the Claimant on a number of occasions.

60. In the Particulars of Claim these matters were said to be illustrative of sexual harassment that took place,

> "…throughout the course of [the Claimant's] employment."

61. It is perhaps regrettable that the complaints were not the subject of an order for the provision of further and better particulars, because Mr Williams has been required to address the Claimant's allegations without essential basic information as to when, or approximately when, the acts complained of allegedly occurred. This was not entirely clarified at Tribunal.

62. The Claimant did not address the harassment complaints in her first witness statement in support of her application for orders under Rule 50 of

the 2013 Rules of Procedure, notwithstanding they would have supported the making of anonymity and other related orders. In her second witness statement, the Claimant referred to a complaint of "sexual touching" having been made of to the police but no further details were provided, nor are the details indicated in the document at page 340 of the Bundle, seemingly the only documentary evidence touching upon the complaint. The allegations are addressed for the first time in paragraphs 41 – 46 of the Claimant's third witness statement. Although she refers to there having been four incidents of unwanted conduct, she in fact suggests up to five such incidents: three occasions when Mr Williams allegedly approached her in the kitchen; a separate incident when he allegedly touched her back and bra (which on the Claimant's account would have occurred in some other part of the property, as she says she moved away from Mr Williams and went to the kitchen on that occasion); and a further incident, on an unspecified date, when he allegedly wore tight fitting clothes so that the outline of his genitals was visible and sought the Claimant's assistance in moving boxes to the garage. If we assume this fifth matter is not one of the three alleged incidents when Mr Williams approached the Claimant in the kitchen, then we essentially have no information regarding two of the three alleged kitchen incidents.

63. The Claimant attempted to put a date to the alleged incidents in the course of her cross examination. Her evidence was initially that there had been three incidents in December 2022 and January 2023, but she then clarified that the third incident in fact occurred on 20 March 2023, being the same day that she left the Respondents' home and did not return. The dates are important as Mr Williams was in Nigeria during much of the Claimant's employment, so he would be better placed to address the Claimant's allegations if he knew precisely when he is alleged to have done the acts in question. However, the Claimant could not be more precise other than in relation to this last incident. The Claimant additionally clarified that Mrs Williams had been at home when Mr Williams allegedly harassed her in December 2022 and March 2023, but that she had not witnessed what had happened. The Claimant said she had decided against telling Mrs Williams what had happened as she did not know how she might react.

64. As regards the Claimant's complaint that Mr Williams had worn tight fitting clothes so that the outline of his genitals was visible, this was said by the Claimant to have been the first in time of the three specific incidents relied upon by her, in which case it was said to have occurred in December 2022. The Claimant said it happened in the garage. However, in paragraph 45 of her third witness statement the Claimant refers to Mr Williams asking her to help him move boxes to the garage, implying that she was not in the garage at the relevant time.

65. The Claimant gave seemingly new evidence at Tribunal that Mr Williams had touched her inappropriately in December 2022. In paragraph 45 of her third witness statement, there is no allegation of unwanted touching on this occasion. She also said at Tribunal that she had told Mr Williams that he was a married man. Again, there is no reference to this in her third

witness statement, instead she refers to having told Mr Williams that he was a married man when he allegedly harassed her in January 2023. She also clarified at Tribunal that Mr Williams had been wearing a tightly fitting top and trousers in December 2022, rather than a vest and long johns as she said in her third witness statement.

66. As regards Mr Williams' alleged harassment of the Claimant in the kitchen, the only specific matter complained of is said to have occurred in January 2023. As we say, in her third witness statement the Claimant states that she went back to the kitchen in response to Mr Williams' harassment of her on that occasion.

67. In the course of her evidence at Tribunal, the Claimant provided potentially important further detail in respect of the last of the three incidents which she said had occurred on 20 March 2023. She claimed that she hit her chin on the kitchen work top and that Mr Williams responded by asking her, "What is your problem?" before then walking away. None of this detail features in the claim form or the Claimant's witness statements.

68. Ultimately, it is for the Claimant to establish the essential primary facts in support of her complaints. We are cognisant that people who have experienced traumatic events may have difficulty in providing a detailed, chronological and consistent account of events. Equally, however, there is no evidence before us, for example, that the Claimant has been diagnosed with PTSD or a similar disorder that might provide an obvious explanation for the above inconsistencies and the Claimant's lack of detail. Even allowing for any difficulties in recall, not least given the passage of time, ultimately we cannot relieve the Claimant of her burden of proof in the matter. In our judgement she has failed to discharge the burden upon her to establish the necessary primary facts in support of her complaint that she was harassed by Mr Williams. It is not a question of her honesty or credibility, simply that on the very limited and sometimes contradictory evidence put forward by her, we are not in a position to make findings of specific unwanted conduct on the part of Mr Williams.

69. In the circumstances, we do not uphold the Claimant's s.26 Equality Act 2010 complaints.

Conclusions in relation to the illegality defence

70. The Claimant's primary case is that her claims cannot be defeated by illegality because she was not aware of and did not participate in the illegality, specifically she did not see the visa application or the documents filed in support of it and did not sign the documents. Mr Lyons submits that the Claimant was the victim of a scheme by the Respondents to bring her to the UK to exploit her by forcing her to work extraordinary hours for little pay and collecting money from others to whom she was sent to work without accounting to the Claimant for these. In the alternative, if the Tribunal finds that she did have knowledge of the illegality, then Mr Lyon submits that it would be contrary to public policy, or "overkill" to prevent her from enforcing her rights. The Respondents' case is that the Claimant

was aware of and actively participated in the illegality. Mr Adebayo readily acknowledges that the Respondents have a credibility problem because they lied to UKVI, but questions whether the Claimant is any more credible. In his closing submissions, he focused upon what he says was the parties' respective culpability in the matter.

71. We note that in Hounga the Tribunal had found that Miss Hounga:

(a) knew the difference between right and wrong;

(b) knew that assertions in her affidavit about her name and date of birth had been false;

(c) knew that she had secured the right to enter the UK on false pretences;

(d) knew that it was illegal for her to remain in the UK beyond 28 July 2007; and

(e) knew that it was illegal for her to take employment in the UK.

72. Lord Wilson identified that in cases such as this it is necessary, first, to ask, what is the aspect of public policy which founds the defence, and second, whether there is another aspect of public policy to which application of the defence would run counter. On the first question, he went on to propose and answer a series of questions before observing that the considerations of public policy which militated in favour of applying the defence of illegality to defeat Miss Hounga's complaint "scarcely existed". This was notwithstanding the Tribunal's findings just referred to.

73. Whilst the facts in this case are not on all fours with those in Hounga, there are some shared features. Having regard to the reported facts in Hounga, the Claimant was no more culpable than Ms Hounga, possibly less so in certain respects, though Miss Hounga's young age was evidently a material factor. Even if the Claimant did not work 'exceptional' hours, we agree with Mr Lyons that the Claimant was the victim of a scheme by the Respondents to bring her to the UK to exploit her by forcing her to work long hours for little pay and collecting money from others to whom she was sent to work without accounting for these to the Claimant. In our judgement, an award in the Claimant's favour would not permit the evasion of any penalty imposed by the criminal law nor, it seems to us, in any way tie the hands of UKVI or the FtIAC in determining the Claimant's immigration status and rights. As in Hounga, we think it fanciful to suppose that an award in the Claimant's favour might encourage others in her situation to come to the UK, indeed on the contrary we think the application of the defence of illegality to defeat the Claimant's claim might instead encourage others in the Respondents' situation to enter into similar arrangements in the belief they can do so with impunity. This judgment and other similar judgments may instead encourage others in the Respondents' situation to reflect on the potentially significant financial, legal and reputational consequences of their actions.

74. As we have noted, the second question posed by Lord Wilson was whether there was another aspect of public policy to which application of the defence of illegality would run counter. As in Hounga, it requires us to consider whether the Respondents were guilty of trafficking in bringing the Claimant from Nigeria to the UK. Lord Wilson referred to the six indicators of forced labour published by the International Labour Organisation ("ILO"). If we understand correctly, these have since been expanded. A number of the indicators were present here: the Respondents took advantage of the Claimant's lack of education, knowledge and sophistication, her limited livelihood options and her dependency upon them to fund both her children's education and her mother's medical treatment; they made false promises to her about wages and working and living conditions; they deployed subtle but nevertheless clear intimidation and threats should the Claimant quit her job; they withheld her wages, as indeed they had done throughout her employment; they had required her to live in conditions which, if not overcrowded, certainly did not afford the Claimant appropriate privacy; they had required her to work at a notional rate very significantly below the national minimum wage as well as hours in excess of the statutory limit on average weekly working hours, without rest periods, rest days or holidays. Whether or not the Claimant can be said to have been trafficked to the UK, these considerations are weighty matters when balancing the competing public policy considerations. The NRM competent authority was of the view that there were reasonable grounds to conclude that the Claimant was a victim of modern slavery. Even putting aside its views in the matter and the ILO's indicators, the Respondents withheld the Claimant's wages, required the Claimant to work long hours, at times expected her to sleep on a sofa without any real privacy, and failed to ensure that she had daily and weekly rest periods or an opportunity to take holidays.

75. We are not altered in our view of the matter because the Claimant worked for others potentially in breach of the conditions of her visa. The UK entry clearance in her passport was marked,

> "No recourse to public funds. Domestic worker in a private household."

It did not state in terms that the Claimant might only work for the Respondents. In any event, possibly with the exception of Mrs Williams' brother, any work she may have done for others was of a domestic nature and arranged by Mrs Williams, indeed we find undertaken at her instruction, effectively under the umbrella of her employment with the Respondents. As we have noted in our findings, the Respondents profited from work she did for the Watford family, a further aspect of their financial exploitation of her.

76. Borrowing from Lord Wilson in Hounga, public policy in support of the application of the defence of illegality, to the extent that it exists at all in relation to the Claimant, should give way to the public policy to which its application is an afront. None of the current claims should be barred by reason of illegality.

Remaining Conclusions

Automatically Unfair Constructive Dismissal

77. The Claimant claims that she was constructively dismissed because she asserted her statutory rights, alternatively because she asserted her right to be paid the national minimum wage. Given that the reasons proscribed by sections 104 and 104A must be the sole or principal reason for the dismissal in order for a complaint in relation to the dismissal to succeed, it is a moot point whether a claim for unfair dismissal can be upheld under both sections. Be that as it may, we uphold the complaint under section 104. When the Claimant was not paid the wages then due to her and implicitly threatened with adverse consequences should she persist with her requests, she understandably concluded that she could no longer continue to work for the Respondents. Regardless of whether she understood her legal rights in the matter, the Claimant was asserting her statutory right not to have unauthorised deductions made from her wages, namely to be paid that which was properly due to her under the terms of the arrangements discussed and agreed with Mrs Willaims. In withholding her wages, Mrs Williams acted without reasonable and proper cause in the matter, and in so doing she not only breached their express agreement that the Claimant would be paid an agreed rate for her work, but also destroyed essential trust and confidence. In leaving the Respondents' home and thereafter not returning, the Claimant was demonstrating her belief that she had been released from any further performance of the contract by reason of the Respondents' breach of contract; she did not delay in the matter or affirm the contract. Her complaints that she was constructively dismissed and that her dismissal was automatically unfair pursuant to section 104 of the Employment Rights Act 1996 are well founded and succeed. The sole or principal reason why the Respondents breached her contract, thereby entitling her to resign her employment, was that she had alleged that the Respondents had infringed a right of hers which was a relevant statutory right, namely the right to be paid that which was properly due to her. The compensation to which she is entitled will need to be determined at a remedy hearing, if it cannot be agreed before then between the parties.

Working Time Regulations 1998

78. Given our findings in relation to the Claimant's working hours, her complaints that she was not afforded a daily rest break of at least eleven consecutive hours (regulation 10) and an uninterrupted rest period of not less than 24 hours in each seven-day period (regulation 11) are potentially well founded. In the case of regulation 10, when she was working at the Respondents' home she was afforded daily rest periods of 10.5 hours and, in the case of regulation 11, she had no uninterrupted rest periods of not less than 24 hours. We have no evidence as to what daily rest breaks and uninterrupted rest periods she was afforded when she was seconded to the family in Watford. Any complaint that the Respondents denied her a daily twenty minute break after six hours of work (regulation 12) is not well

founded since she had a three hour break during the week and did not work more than six hours at the weekend.

79. The only complaint that has potentially been brought within the primary time limit in regulation 30(2)(a) of the 1998 Regulations is the Claimant's complaint, if indeed she pursues one, that the Respondents refused to permit her to exercise her regulation 10 rights on 20 March 2023 following her return from Watford. However, she left the Respondents' home at some point during the night before she had been required by them to resume working on 21 March 2023 without having taken the requisite daily rest break mandated by regulation 10. As this issue was not canvassed with the parties, assuming it is still pursued by the Claimant, we propose to hear their further submissions on the point before we come to any final judgment in the matter.

80. As regards the Claimant's other complaints, she has not addressed in any of her witness statements why she says it was not reasonably practicable for her to notify her complaints to acas within three months of the relevant refusal by the Respondents. Whilst we might speculate for ourselves as to the likely reason(s) for this, certainly whilst the Claimant was working for the Respondents and essentially entirely dependent upon them, it is for the Claimant, rather than this Tribunal, to advance her case in this regard. She has the burden of proof in terms of what may or may not have been reasonably practicable and, further, to at least provide some explanation as to why the claim might be said to have been brought within such further period as was reasonable. She has failed to address either issue and specifically has failed to discharge her burden of proof as to the reasonable practicability of notifying each of her claims to acas within the relevant three month period. In which case, regrettably, her claims in respect of any contraventions prior to 20 March 2023 are out of time and we have no jurisdiction to determine them.

81. Given that she was not afforded any opportunity to take periods of leave during her employment, the Claimant is plainly entitled to pay in lieu of accrued but untaken annual leave pursuant to regulation 14. Her complaint is in time as she notified it to acas within three months of the termination of her employment. The amount of that accrued leave and the sums to which she is entitled will be determined at a remedy hearing, assuming it cannot be agreed before then between the parties.

Unlawful deductions from wages

82. The total amount of payments to the Claimant will be finally determined at a remedy hearing, assuming it cannot be agreed before then between the parties. One question for the Tribunal will be whether the Respondents are to be given credit for two payments to the Claimant on 3 and 16 March 2023 in respect of her work for the Watford family. Otherwise, on Mrs Williams' evidence at Tribunal, there were just three payments of wages to the Claimant on 1 and 26 December 2022 and 11 January 2023 totalling ₦436,500, or approximately £212 at current exchange rates. For the avoidance of doubt, there is no evidence whatsoever that Mrs Williams

made cash payments to the Claimant in respect of her wages, as she claims. The payments to the Claimant represent a small fraction of what the Claimant should have been paid. As noted already, the total amount of the unauthorised deductions from the Claimant's wages will be calculated in accordance with the formula in s.17 of the National Minimum Wage Act 1998 and, of course, on the basis of our finding that the Claimant worked 70.5 hours per week.

83. Given our findings at paragraph 58 above, the Respondents are not entitled to claim the 'accommodation offset' as counting towards discharging their liability to pay the Claimant the national minimum wage. In our judgement, during her employment the Claimant was not provided by the Respondents with unrestricted access to accommodation suitable for day to day living.

Failure to provide the Claimant with a written statement of terms and conditions of employment

84. It is not suggested by the Respondents that they discharged their legal obligations to the Claimant under s.1(1) of the Employment Rights Act 1996. When these proceedings were begun the Respondents were in breach of s.1(1). She has succeeded in various of her other complaints, all of which are proceedings to which s.38 of the Employment Act 2002 applies (see in this regard Schedule 5 to the Act). In our judgement, it is just and equitable to increase the award to the Claimant in respect of those complaints by the higher amount referred to in s.38(4) of the Act, namely by four weeks' pay. We consider that the Respondents were unconcerned for the Claimant's rights as an employee and indeed that she was not provided with a written statement of terms and conditions at least partly because they did not wish to alert her to her legal rights as an employee in the UK. Their egregious conduct in the matter should be reflected in the higher amount increase. The final amount of the increase will be determined at a remedy hearing, assuming it cannot be agreed before then between the parties.

Failure to provide the Claimant with itemised pay statements

85. Again, it is not suggested by the Respondents that the Claimant was provided with itemised pay statements in compliance with s.8 of the Employment Rights Act 1996. However, we have no power to award the Claimant compensation in respect of the Respondents' breach in the matter.

86. The parties will be notified separately of the date for a remedy hearing and of any case management orders in relation to remedy.

Approved by:

Employment Judge Tynan

Date: 15 July 2025

Sent to the parties on: 16 July 2025

For the Tribunal Office

Public access to Employment Tribunal decisions

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

Recording and Transcription

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

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