



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000514/2023**

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**Held in Glasgow on 11, 12, 13, 16, 17, 18 & 20 September 2024**

**Employment Judge McCluskey  
Members T Lithgow and J Anderson**

10 **Miss A Cracuin**

**Claimant  
In Person**

15 **British Telecommunications plc**

**Respondent  
Represented by:  
Ms R Page -  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The unanimous judgment of the Tribunal is that:

#### **Disability status**

1. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of anxiety, depression and anaemia.
2. At the relevant times the claimant was not a disabled person as defined by  
25 section 6 Equality Act 2010 because of extremely painful periods.

#### **Disability discrimination**

3. The complaint of direct disability discrimination on 7 December 2023 when the claimant was dismissed, is not well founded and is dismissed.
4. The complaints of failure to comply with the duty to make reasonable  
30 adjustments are out of time and the Tribunal has no jurisdiction to consider them.
5. The complaint of harassment related to disability by Mr Masood on 18 May 2023 is out of time and the Tribunal has no jurisdiction to consider it.

6. The complaint of harassment related to disability by Mr Masood on 21 and 22 June 2023 is not well founded and is dismissed.

### **Race discrimination**

- 5 7. The following complaints of direct race discrimination are not well founded and are dismissed: following the respondent's new start policy; Mr Masood's handling of the investigation into the claimant on 22 June 2023; and the claimant's dismissal on 7 December 2023.
8. The remaining complaints of direct race discrimination are out of time and the Tribunal has no jurisdiction to consider them.
- 10 9. The following complaint of harassment related to race is out of time and the Tribunal has no jurisdiction to consider it: on various occasions ending on 16 May 2023 by Mr Sliman showing the claimant the middle finger.
10. The remaining complaints of harassment related to race are not well founded and are dismissed.

### **Sex discrimination**

11. The following complaints of direct sex discrimination are not well founded and are dismissed: following the respondent's new start policy; Mr Masood's handling of the investigation into the claimant on 22 June 2023; and the claimant's dismissal on 7 December 2023.
- 20 12. The remaining complaints of direct sex discrimination are out of time and the Tribunal has no jurisdiction to consider them.
13. The following complaint of harassment related to sex is out of time and the Tribunal has no jurisdiction to consider it: on various occasions ending on 16 May 2023 by Mr Sliman showing the claimant the middle finger.
- 25 14. The remaining complaints of harassment related to sex are not well founded and are dismissed.

## REASONS

### Introduction & issues

1. The claimant brings complaints of direct disability discrimination, failure to comply with the duty to make reasonable adjustments, harassment related to disability, direct race discrimination, harassment related to race, direct sex discrimination and harassment related to sex.  
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2. The claimant presented her claim to the Tribunal on 9 October 2023. ACAS conciliation took place between 23 August 2023 and 28 September 2023.
3. The list of issues to be determined at the final hearing was set out in the note of the case management hearing which took place on 4 July 2024. Both parties agreed at the outset of the final hearing that these were the list of issues for determination by the Tribunal. During the hearing it became apparent from the evidence that the assertion in the list of issues that “About April 2023 Mr Masood not giving the claimant the opportunity to explain” was an assertion said by the claimant to have occurred on 18 May 2023, not April 2023. The list of issues was updated accordingly. During the hearing it also became apparent that the assertion in the list of issues that “on various occasions in June 2023 Mr Sliman showing the middle finger to the claimant” was an assertion said to have occurred on 16 May 2023 and prior to that date.  
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4. The claimant gave evidence on her own behalf. She also called Ms Lucy Phan, having obtained a witness order for her attendance. Mr Harris Ahmad – Team Leader, Mr Robert Wright – Team Leader, Mr Ross Hassan – Contact Centre Manager, Mr Atif Masood – Team Leader, Mr Courtney Black – Team Leader, Ms Angela Hollywood – Contact Centre Manager, Ms Cara Mohammed – Contact Centre Manager, Mr Gary Bejamin – Senior Manager Acquisitions and Mr Darren Slliman – Business Sales Advisor gave evidence on behalf of the respondent.  
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5. There was a joint file of productions extending to 1150 pages. The claimant added documents to the file at the outset of the hearing, pertaining to her asserted disability of “extremely painful periods”. The respondent did not object to these documents being added.

5 **Findings in fact**

*Working arrangements*

6. The claimant commenced employment with the respondent on 6 October 2022. She was engaged in training with the respondent until the end of 2022. During training the claimant worked fixed shifts.
- 10 7. In October 2022, the claimant asked Mr Harris Ahmad to be placed on the outbound team (fixed shifts) once her training was completed. She told Mr Ahmad fixed shifts were helpful because of her “sleeplessness”. The claimant did not tell Mr Ahmad about her anxiety and depression.
- 15 8. The claimant completed her training and ‘went live’ along with other new starts at the beginning of January 2023. Her manager was Mr Robert Wright. She and other new start colleagues were placed in the inbound team which usually has variable shifts, but for about three weeks the claimant and the other new start colleagues were all given fixed shifts.
- 20 9. After around three weeks, in late January 2023, the claimant and others were put onto a variable shift pattern. The start and finish times on a variable shift pattern could vary by about 45 minutes. Staff were given notice of their shift pattern and start/finish times about six weeks in advance. The claimant did not raise this with anyone or ask why she had been put onto a variable shift pattern. She worked a variable shift pattern from late January 2023 until end
- 25 February 2023 (approximately one month). The claimant worked at home for around two weeks in February 2023 as she had a bad cold. This was not an agreement to work a permanent hybrid working pattern.
- 30 10. In January 2023 in a catch-up meeting, the claimant and Mr Wright discussed flexible working – three days in the office and two at home. This was known by the respondent as hybrid working and was available to all staff of the

respondent, if they wished, once staff had completed training and once performance was satisfactory. This was a general discussion. There was no agreement that the claimant commence hybrid working. The claimant asked what might happen if she wanted to work at home for the whole of the week of her period instead of the hybrid working pattern. Mr Wright said the respondent was flexible. If she was working a whole week at home, she would need to be in the office for four days in the other weeks. The claimant replied saying she did not want to work at home. She had a small home. She wanted to keep her working life and personal life separate.

11. The claimant raised a grievance about various pay issues and about working variable shift pattern for around a month (late January 2023 – end February 2023). Mr Wright investigated this grievance. He wrote to the claimant with his grievance outcome which the claimant received on 23 June 2023. In relation to the various pay issues Mr Wright concluded that the claimant received her first month of salary on 1 November 2022, a day late, due to a technical issue. This was rectified as soon as the claimant alerted the respondent. Mr Wright concluded that due to a technical error none of the new starts, including the claimant received their new start bonus on time. This was rectified by the respondent for all new starts, including the claimant, when it was brought to the respondent's attention. Mr Wright concluded that the claimant had asked Mr Ahmad to be on fixed shifts. Due to a breakdown in communication within the respondent, there was around one month when the claimant did not work fixed shifts. On appeal, the findings of Mr Wright were upheld by Ms Kara Mohammed, Contact Centre Manager. In relation to working variable shifts for a month, Ms Mohammed concluded that during that period the claimant's request for fixed shifts had "fallen through the cracks" (page 611).

12. When the claimant worked in Mr Wright's team about 20/30 % of his direct reports were women. This was due to a lower number of women applying for roles at the initial recruitment stage.

13. On around 1 March 2023 the claimant, along with other new starts, were moved to the outbound team. This team has a fixed shift pattern. Her

manager was Mr Courtney Black. Mr Black told the claimant that new starts needed to work in the office each day until their performance was satisfactory. This was the case for all new starts.

14. The claimant did not ask Mr Black if she could work a hybrid working pattern.  
5 She told Mr Black she did not want to work at home as she wanted to keep work and personal life separate.
15. The claimant did not ask Mr Black if she could work at home during her period.
16. On 2 March 2023 that claimant used loud inappropriate language (“fuck”) in  
10 the workplace. Mr Masood overheard this. He had a discussion with the claimant. Mr Masood did not take any further action. The claimant told Mr Masood her language was due to insomnia and lack of sleep, because of a personal family matter. The claimant did not ask Mr Masood to work from home at any time.
17. In around May 2023 the claimant had three periods back-to-back. Following  
15 her return to work on 9 June 2023 the claimant asked Mr Black to work from home on a hybrid working pattern. Mr Black agreed she could do so, as her performance was now satisfactory. This arrangement was to start once the necessary equipment for home working could be obtained. The claimant was suspended shortly thereafter, thus the hybrid working pattern did not  
20 commence.
18. The corridor in the department where the claimant worked was quite narrow. There was no custom or arrangement that staff would walk down the left-hand side of the corridor. Mr Hassan did not know of any time when he had walked down the right-hand side of the corridor causing the claimant to move aside.  
25 The claimant had not raised the matter with the respondent at any time.

### **Showing the middle finger**

19. On 16 May 2023 Mr Darren Sliman showed the claimant the middle finger. He came into the office. The claimant asked “where is your normal greeting”. The claimant meant showing the middle finger. Mr Sliman gave her the middle  
30 finger. The claimant reported this to her manager Mr Black. Mr Sliman had

shown the claimant the middle finger on at least three other occasions before this. Sometimes the claimant would respond by showing Mr Sliman the middle finger back.

20. On 17 May 2023 the claimant emailed Mr Black about Mr Sliman showing her the middle finger the previous day. Mr Black was offline when she sent the email. She forwarded her email to Mr Masood. On 18 May 2023 Mr Masood replied and said that it was sensitive and confidential matter. He was not aware of what had been discussed and that Mr Black would pick this up when he was back online soon.
21. The claimant was absent from work from 18 May 2023. She attended her GP on 25 May 2023. She was signed off with stress from 25 May 2023 to 8 June 2023.
22. The claimant returned to work on 9 June 2023. She met with Mr Black that day. Mr Black said he had investigated what had happened on 16 May 2023. He said his investigation had concluded that the claimant had also shown the middle finger to Mr Sliman in the past. He said he had spoken to Mr Sliman and was satisfied that Mr Sliman's behaviour would not occur again. He proposed that the claimant and Mr Sliman engage in workplace mediation. The claimant declined. The claimant told Mr Black she would not settle for anything less than Mr Sliman's dismissal. The claimant said that Mr Sliman was "a racist" and "a nazi" and that "if he was in a war he would be killing people".
23. On 14 June 2023 Mr Black emailed the claimant (page 642). He summarised the investigation he had carried out with Mr Sliman. He summarised what had been discussed between him and the claimant at their meeting on 9 June 2023. He set out in writing the comments which the claimant had made about Mr Sliman at their meeting on 9 June 2023. The claimant sent several emails to Mr Black, in response to his email, over the next few days. She sent these on 14, 16 and 19 June 2023.
24. The claimant raised a grievance against Mr Sliman for raising the middle finger to her. The claimant requested that Ms Hollywood deal with her

grievance because she was dealing with the disciplinary matter concerning the claimant. The respondent agreed to this request.

25. On 1 November 2023 the claimant was given the outcome of her grievance against Mr Sliman. Ms Hollywood found that Mr Sliman had shown the middle finger to the claimant on various occasions. She found that sometimes the claimant responded by showing the middle finger back at Mr Sliman. She found that on 16 May 2023 the claimant said to Mr Sliman “where is your usual greeting” meaning the middle finger and that Mr Sliman had responded by showing Mr Sliman the middle finger. She found that Mr Sliman had shown the middle finger to several male staff of the respondent and to two female staff, in addition to the claimant. One of these was Ms Phan.
26. The percentage of women in the department where Mr Sliman and the claimant worked at the relevant time was around 20/30%.

*Disciplinary investigation and dismissal*

27. The respondent was concerned about the language used by the claimant in the meeting on 9 June 2023 and in subsequent emails which she had sent on 14, 16 and 19 June 2023. The respondent considered that the language may be in breach of the respondent’s Standards of Behaviour Policy. Mr Atif Masood was appointed to investigate the language used by the claimant. Mr Masood carried out a disciplinary investigation meeting under the respondent’s New Start policy. The claimant was a new start member of staff.
28. Mr Masood held an investigatory meeting with the claimant on 21 and 22 June 2023.
29. On 22 June 2023 Mr Masood suspended the claimant of full pay whilst he carried further investigation. The suspension letter (page 656) set out the following allegations: “- *On 9th June 2023 during conversation with Courtney Black which was to address issues between yourself and your colleague you named him [your colleague] “a racist”, “a nazi” and said that “ if he was in a war, he would be killing people”.* - *Courtney Black addressed use of those words in his email from 14th June 2023 and highlighted this is very*



inappropriate language, and in your responses to this email (14th June 16th June and 19th June 2023) you continue with the inappropriate language by accusing Courtney of “biases”, “lack of emotional intelligence”, accusing [Mr Black] manager for insomnia by stating in the email – “congrats, you have me insomnia and nightmares”, suggesting that your management does have ‘no human traits’. - In your emails sent to Courtney on 16th June 2023– you called your colleagues “ slackers, skyvers”, made opinion that your colleagues come from privileged and ‘wasted them”. - During investigation meeting held with me on 22nd June 2023 when I discussed those comments and asked you if you feel this is appropriate language that can be used – you said yes. If these are proven and confirmed in the investigation - this would mean a Serious Breach of Diversity & Inclusion and Standards of behaviour policies”.

30. By letter dated 15 August 2023 the claimant was invited to a disciplinary hearing to discuss the allegations set out in the suspension letter. The claimant was given the opportunity to be accompanied. The claimant was advised that one outcome of the hearing could be her dismissal for gross misconduct. The hearing was held under the respondent’s New Start policy.

31. On 1 September 2023 the claimant attended the disciplinary hearing. It was chaired by Ms Hollywood. The claimant chose to attend without a companion. Ms Hollywood discussed the allegations with the claimant. Ms Hollywood adjourned the hearing and said she would write to the claimant with an outcome. Ms Hollywood told the claimant she intended to make some further enquiries first, including about the claimant’s grievance which the claimant had asked that she deal with.

32. On 1 November 2023 Ms Hollywood wrote to the claimant with the disciplinary outcome. Ms Hollywood found that the claimant had described Mr Sliman as a “a nazi” “a racist” and said that “ if he was in a war, he would be killing people” on 9 June 2023. The claimant agreed she had used this language. The claimant’s explanation for using the word racist was that somebody who worked in HR had told her that using the middle finger towards her was racist. After investigation, Ms Hollywood concluded that there was no racism towards the claimant in Mr Sliman’s action of showing the claimant the middle finger.

33. Ms Hollywood found that in emails the claimant had accused Mr Black of “biases ”and having a “lack of emotional intelligence”, that she had blamed Mr Black for the insomnia and nightmares she was experiencing “Congrats, you have gave me insomnia and nightmares” and suggested that Mr Black had “absolutely no human traits”. The claimant agreed she had used this language. Ms Hollywood found that these comments were inappropriate language. After investigation, Ms Hollywood concluded that there was no “bias” towards the claimant in the way that that Mr Black had dealt with Mr Sliman showing the claimant the middle finger.
34. Ms Hollywood found that in emails the claimant had referred to colleagues as “slackers, skivers”; that the claimant referred to colleagues as coming from privileged backgrounds and having wasted it “How do you have a colleague who is privileged in each and every way in terms of all socio economic characteristics you can think about (and has obviously wasted these privileges, did nothing with them”; that the claimant had accused Mr Black and colleagues of corrupt behaviour “Or when she defends herself in the same manner, she comes across a corrupt behaviour from her manager and colleagues who team up to further destroy her by showing solidarity to evil and corruption”. Ms Hollywood found that these comments were inappropriate language. Ms Hollywood concluded that there was no “corruption” by Mr Black or colleagues towards the claimant.
35. Ms Hollywood asked the claimant if, looking back with hindsight, the claimant would have done anything differently or said anything differently. The claimant did not give any reassurances that she would do so. Ms Hollywood concluded that the claimant did not show any accountability for her actions or language.
36. On 1 November 2023 the claimant was given notice to terminate her employment. The claimant was dismissed for breach of the BT Standards of Behaviour policy for her statements about Mr Sliman made on 9 June 2023 and for the statements made in subsequent emails to Mr Black on 14, 16 and 19 June 2023. The claimant’s employment ended on 7 December 2023.

37. On 8 November 2023 the claimant appealed against the decision to terminate her employment. The appeal hearing took place on 24 November 2023. The hearing was chaired by Mr Gary Benjamin. The claimant chose to attend without a companion. Mr Benjamin discussed the claimant's appeal with her.
- 5 38. The claimant asserted that she had been treated differently from Mr Sliman, yet he had initiated the showing of the finger. She asserted that she had responded to defend herself. She asserted she had been treated differently due to her sex, nationality and mental health. Mr Benjamin reviewed the documentation, including the investigation and disciplinary hearings notes and outcomes. He concluded that there had been no discriminatory actions towards her. He concluded that the claimant had not been dismissed for showing the middle finger to Mr Sliman. He concluded that she had been dismissed for her inappropriate language on 9 June 2023, and her inappropriate language in emails thereafter. He concluded that the claimant had not shown any accountability for the language she had used.
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39. The claimant asserted that she had asked Mr Black for a hybrid working pattern to help with her mental health and insomnia, but that Mr Black was still looking into this when she was dismissed. She asserted that other employees were allowed to work from home due to a cultural event. She asserted that the respondent was prioritising their needs over her health. She asserted that she had an occupational health report dated 31 March 2023 which said that a set shift pattern and working from home would be beneficial. Mr Benjamin concluded that Mr Black had agreed to the claimant working a hybrid working pattern, as requested by the claimant to Mr Black, and this was being put in place when the claimant was suspended.
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40. On 15 January 2024 Mr Benjamin wrote to the claimant with the appeal outcome. Mr Benjamin decided not to uphold the claimant's appeal.
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### **Observations on the evidence**

41. This judgment does not seek to address every point upon which the parties gave evidence. If we have not mentioned a particular point, it does not mean that we have overlooked it. It is not included simply because it is not relevant
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to the question of whether the claim succeeds or fails. Any references to page numbers are to the paginated bundle of productions.

42. The standard of proof is on a balance of probabilities. This means that if we consider that, on the evidence, an event's occurrence was more likely than not, then we are satisfied that it occurred. Likewise, if we consider that, on the evidence, an event's occurrence was more likely not to have occurred, then we are satisfied that it did not occur.
43. The Tribunal found the respondent's witnesses to be credible and reliable. There were several conflicts in the evidence. The Tribunal has largely resolved these in favour of the respondent, based on documentary evidence. In relation to reliability where there was no or limited documentary evidence, there were some aspects of the claimant's evidence which we found unreliable. For example, in the list of issues she asserted that her request to work from home for the full week during her period had been refused and that this was discriminatory. In putting her questions in cross examination, she appeared to concede that she had said to managers that she did not want to work from home as she wanted to keep her personal and working life separate. Then in submissions she conceded that whilst she may have implied that she wanted to work from home during the week of her period she had not, in fact, said to any managers that she wanted to do so, until the agreement with Mr Black in June 2023 to work a hybrid working pattern.
44. Another example was where the claimant asserted that she had asked Mr Masood to work from home during her period, on an occasion when her usual manager Mr Black was out of the office. The documentary evidence showed that when Mr Black was out of the office she had asked Mr Masood to become involved in relation to the incident with Mr Sliman, not whether she could work from home during her period. Again, this was a difference of recollection, which was resolved by the documentary evidence.
45. Another example was when the claimant put to Mr Ahmad in cross examination that in discussion with him in November 2022 he had said I am not going to have a woman in my team. This was not something which the

claimant had identified in her claim form, in the agreed list of issues or that she had referred to in her evidence in chief. We concluded that Mr Ahmad had not said this. We thought it likely that if he had said this, the claimant would have referred to it in her claim form and in her own evidence and would have identified the allegation in her list of issues. She had done none of those.

46. We did not regard the fact that we preferred the evidence of the respondent as tainting the claimant's overall credibility. These were differences in recollection and differences in perception.

### Relevant law

47. Section 6(1) EqA provides that a person has a disability if they have "a physical or mental impairment; and the impairment has a substantial and long-term adverse effect on the person's ability to carry out normal day to day activities." The burden of proof is on the claimant to show that she satisfies the definition. The statutory definition of 'substantial' in section 212(1) EqA is, 'more than minor or trivial'.

48. Appendix 1 to the EHRC Employment Code states that "there is no need for a person to establish a medically diagnosed cause for their impairment. What is important to consider is the effect of the impairment, not the cause" — para 7.

49. The leading case on the examination of whether a person is disabled is the EAT decision of **Goodwin v Patent Office [1999] ICR 302**. While that case concerned the predecessor legislation to the EqA, the four questions identified in Goodwin remain appropriate: (1) The impairment condition: Does the claimant have an impairment which is either mental or physical? (2) The adverse effect condition: Does the impairment affect the claimant's ability to carry out normal day-to-day activities, and does it have an adverse effect? (3) The substantial condition: Is the adverse effect (upon the claimant's ability) substantial? (4) The long-term condition: Is the adverse effect (upon the claimant's ability) long-term?

50. The time at which to assess the disability (i.e. whether there is an impairment that had a substantial adverse effect on normal day to day activities) is the date of the alleged discriminatory act (**Cruickshank v VAW Motorcast Ltd [2002] ICR 729, EAT**). This is also the material time when determining whether the impairment has a long-term effect.
51. The long-term requirement relates to the effect of the impairment (which must be a substantial adverse effect on the ability to carry out normal day to day activities), rather than merely the impairment itself (**Seccombe v Reed in Partnership Ltd EA-2019-000478-OO**).
52. Section 13 EqA provides: "Direct Discrimination (1) A person (A) discriminates against another (B) if, because of a protected characteristic, (A) treats (B) less favourably than (A) treats or would treat others".
53. Section 26 EqA provides: "Harassment (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".
54. Dismissal can amount to unwanted conduct for the purposes of a section 26 EqA harassment complaint (**Urso v Department for Work and Pensions 2017 IRLR 304, EAT**).
55. Sections 20 and 21 EqA provide: "20 Duty to make adjustments (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.(2)The duty comprises the following three requirements.(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...." and "21 Failure to comply with duty (1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person....”

### *Time limits*

56. Section 123 EqA provides “Time limits (1) Subject to section 140B  
 5 proceedings on a complaint within section 120 may not be brought after the  
 end of—(a) the period of 3 months starting with the date of the act to which  
 the complaint relates, or (b) such other period as the employment tribunal  
 thinks just and equitable. (2) ..... (3) For the purposes of this section—(a)  
 conduct extending over a period is to be treated as done at the end of the  
 10 period;(b) failure to do something is to be treated as occurring when the  
 person in question decided on it.(4) In the absence of evidence to the  
 contrary, a person (P) is to be taken to decide on failure to do something—(a)  
 when P does an act inconsistent with doing it, or (b) if P does no inconsistent  
 act, on the expiry of the period in which P might reasonably have been  
 15 expected to do it.”

### *Burden of proof*

57. Section 136(2) and (3) EqA states: “Burden of proof (2) If there are facts from  
 which the tribunal could decide, in the absence of any other explanation, that  
 a person (A) contravened the provision concerned the tribunal must hold that  
 20 the contravention occurred. (3) But this provision does not apply if A shows  
 that A did not contravene the provision.”

58. The burden of proving the facts referred to in section 136(2) EqA lies with the  
 claimant. If this subsection is satisfied, then the burden shifts to the  
 respondent to satisfy subsection 136(3) EqA.

25 59. This is described in case law as a two-stage process. The claimant must first  
 establish a first base or prima facie case by reference to the facts made out.  
 If she does so, the burden of proof shifts to the respondent at the second  
 stage. If the second stage is reached and the respondent’s explanation is  
 inadequate, it is necessary for the Tribunal to conclude that the claimant’s  
 30 allegation is to be upheld. If the explanation is adequate, that conclusion is

not reached (**Igen v Wong [2005] IRLR 258; Madarassy v Nomura International Plc [2007] IRLR 246**).

60. For there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether “by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work” (**Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL**).
61. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (section 23 EqA). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (see, for example, **Chief Constable of West Yorkshire Police v Vento [2001 IRLR 124]**).
62. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; “something more” is required (**Madarassy v Nomura International [2007] IRLR 246**). The Tribunal needs evidence from which it could draw an inference that the protected characteristic was the reason for the difference in treatment.
63. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in **Igen v Wong [2005] ICR 931** (as approved by the Supreme Court in **Hewage v Grampian Health Board [2012] IRLR 870**). The Igen case was decided before EqA was in force, but the guidance remains authoritative, particularly in light of the Hewage case.
64. Schedule 8 EqA paragraph 20 provides as follows: “Part 3 Limitations on the Duty 20 Lack of knowledge of disability, etc.(1) A is not subject to a duty to make reasonable adjustments if A does not know and could not reasonably



be expected to know—... (b) .... that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.”

### **Submissions**

5 65. The claimant’ made oral submissions. The respondent’s representative provided the Tribunal and the claimant with written submissions in advance and made oral submissions with reference to these. The claimant had an opportunity to read these written submissions before making her oral submissions. We carefully considered the submissions of both parties during  
10 our deliberations. We have dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching our decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

### **Discussion and decision**

#### *Disability status*

66. The respondent accepts that the claimant’s impairments of anxiety, depression and anaemia are disabilities. The respondent accepts that it had knowledge of the claimant’s disabilities of anxiety and depression from the  
20 date when the claimant commenced her employment. The respondent accepts that it had knowledge of the claimant’s disability of anaemia from 31 March 2023. The claimant’s anaemia is referred to in an occupational health report of that date. The claimant accepted in submissions that the respondent had knowledge of her anaemia from 31 March 2023 and not from any earlier  
25 date, consistent with the date of the occupational health report.

67. The respondent does not accept that the claimant’s “extremely painful periods” is a disability under section 6 EqA. The burden of proof is on the claimant.

68. We directed ourselves to the questions in the agreed list of issues, and as  
30 identified in Goodwin, when considering whether the claimant’s extremely

painful periods was a disability under EqA. The relevant times that the disability discrimination complaints are about are: late January 2023 to end February 2023 (working a variable shift pattern); 1 March 2023 – 18 May 2023 (working each day in the office); 18 May 2023 (Mr Masood); 22 June 2023 (Mr Masood investigation).

69. The first question is whether the claimant had an impairment at the time of the events which her claim is about. Her evidence is that she began experiencing extremely painful periods about seven years ago when she was age 27. Her evidence is that they are extremely painful every month. We were satisfied that the claimant's "extremely painful periods" is a physical impairment which she experienced at the relevant times.

70. Next, we asked ourselves whether her extremely painful periods had a substantial adverse effect on her ability to carry out normal day-to-day activities at the time of the events which her claim is about.

71. Appendix 1 to the Equality and Human Rights Commission (EHRC) Code of Practice on Employment (2011) ('the EHRC Employment Code') states that 'normal day-to-day activities' are activities that are carried out by most men or women on a fairly regular and frequent basis, and gives examples such as walking, driving, typing and forming social relationships.

72. In the claimant's impact statement, she says that when she has her period her depression and anxiety and inability to sleep worsens due to being in pain. In response to a specific question in case management orders to set out the effect of each impairment on her ability to carry out day to day activities the claimant's response about her extremely painful periods was "I think that besides the pain what was more infuriating was the fact that I had to smile and perform at a higher rate to keep myself safe despite my colleagues who were not in pain and could cunningly talk their way out of everything". We concluded that the claimant's response to this specific question did not assist us in determining what normal day to day activities the claimant could not do.

73. The claimant had also said that the pain resulted in her inability to sleep worsening. We were satisfied that sleeping is a normal day to day activity.

The difficulty which we had, however, is that the claimant already experienced insomnia on a regular basis. For example, she gave evidence about experiencing insomnia due to a personal family event. She gave evidence about the benefit of a fixed shift pattern for her insomnia. She gave evidence about insomnia being a regular and recurrent condition for her. Whilst we accepted the claimant's evidence that she experienced "extremely painful periods", there was no medical evidence to support her assertion that her extremely painful periods had a substantial adverse effect on her ability to sleep. The medical evidence to which we were referred about her periods was GP records showing that she had consulted her GP in May 2023 about three back-to-back periods and a very recent consultant report (September 2024) giving a potential diagnosis of endometriosis. Neither of these addressed the assertion that her extremely painful periods had a substantial adverse effect on her ability to sleep. Whilst it is not a pre-requisite to have medical evidence to support a claim that an impairment is a disability, we were unable to conclude that her extremely painful periods had a substantial adverse effect on her ability to carry out day to day activities. We concluded that there was simply insufficient evidence before us to draw the necessary conclusions on this part of the definition of disability.

74. Accordingly, whilst at the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of depression and anxiety and anemia, she was not a disabled person because of extremely painful periods.

*Direct disability discrimination complaint*

75. The claimant alleges that her dismissal on 7 December 2023 was an act of direct disability discrimination. She relies on her disabilities of anxiety, depression and anemia. The claimant does not name a comparator. We considered a hypothetical comparator and whether the claimant was treated worse than they would have been treated. This complaint is in time.
76. We considered carefully whether the claimant had proven facts upon which we could conclude that direct disability discrimination had taken place, such

that the burden of proof shifted. We found that she had not. The simply claimant asserted that because she experiences anxiety, depression and anaemia her dismissal must be because of these conditions.

5 77. At the appeal hearing the claimant asserted that her occupational health report dated 31 March 2023 said that a set shift pattern and working from home would be beneficial. The claimant asserted that it followed that her dismissal was less favourable treatment than a hypothetical comparator because of her anxiety and depression. Mr Benjamin concluded that Mr Black had agreed to the claimant working a hybrid working pattern, as requested by the claimant to Mr Black, and this was being put in place when the claimant was suspended. Mr Black concluded that the recommendation in the occupational health report was a separate matter to her dismissal for inappropriate language. We agreed with that conclusion.

15 78. We found that there were no facts proved which could lead us to conclude that direct disability discrimination had taken place. The burden of proof had not shifted to the respondent.

20 79. Further, we were satisfied that prior to dismissal Ms Hollywood had considered carefully the allegations made against the claimant and the investigation carried out and had carried out her own enquiries before reaching her decision to dismiss. There was nothing from the evidence we heard, and the documents to which we were referred, which suggested that Ms Hollywood's decision to dismiss was tainted by disability discrimination. The claimant had admitted using the language on 9 June 2023 and subsequently in emails. Ms Hollywood concluded that there was no racism towards the claimant in Mr Sliman's action of showing the claimant the middle finger. Ms Hollywood concluded that there was no "bias" towards the claimant in the way that that Mr Black had dealt with Mr Sliman showing the claimant the middle finger. Ms Hollywood told the claimant that Mr Sliman had been spoken to and he had assured the respondent he would not do it again. Ms Hollywood concluded that there was no "corruption" by Mr Black or colleagues towards the claimant. Ms Hollywood asked the claimant if, looking back with hindsight, the claimant would have done anything differently or said anything

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differently. The claimant did not give any reassurances that she would do or say anything differently.

80. Accordingly, the complaint of direct disability discrimination by the respondent's dismissal of the claimant is not well founded and is dismissed.

5 ***Reasonable adjustments complaints***

*Requirement to work on inbound (variable) shifts – section 20/21 EqA*

81. The claimant presented her claim to the Tribunal on 9 October 2023. Taking account of the dates of early conciliation, any complaint about something that happened before 24 May 2023 may not have been brought in time. ACAS  
10 conciliation took place between 23 August 2023 and 28 September 2023.

82. In relation to the adjustment proposed of being put on fixed shifts, the claimant asserts that this ought to have been done by late January 2023. That was the time when she was moved to a variable shift pattern for around one month. Taking the date of late January 2023, this complaint is out of time by over  
15 eight months (the claim having been presented on 9 October 2023).

83. We reminded ourselves that a complaint must be presented within the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the we think is "just and equitable". We also reminded ourselves that conduct extending over a period is to be treated as done at the  
20 end of the period; and failure to do something is to be treated as occurring when the person in question decided on it. We were satisfied that the issue of the variable shifts was a one-off decision and not part of a course of conduct extending over a period and ending with a complaint which is in time.

84. There must be material before us on which we could properly exercise our  
25 discretion to extend time. The onus is on the claimant to show that it is just and equitable to extend time. We considered the factors referred to in **British Coal Corporation v Keeble and ors 1997 IRLR 336**, EAT, mindful that these need not be adhered to slavishly (**Southwark London Borough Council v Afolabi 2003 ICR 800, CA**).

85. The length of the delay is over eight months. The reason given for the delay is that the claimant was waiting for internal procedures to be completed. The claimant's evidence was that she consulted the ACAS website which said that she required to wait until all internal procedures had been completed before presenting a claim to the Tribunal. The claimant raised a grievance about not working a fixed shift pattern. She received an outcome to this grievance on 23 June 2023.
86. On 30 June 2023 claimant appealed against the outcome of the grievance. The respondent met with the claimant. The respondent provided an outcome to her grievance appeal on 18 December 2023. The respondent concluded that the fixed shift request had "fallen through the cracks". All internal procedures in relation to the fixed shift pattern were not completed until 18 December 2023. The claimant presented her claim to the Tribunal on 9 October 2023. This included a complaint about a failure to offer her fixed shifts in January / February 2023. The reason given by the claimant about waiting until all internal procedures had been completed did not add up, as she had not waited until then.
87. We next considered the extent to which the cogency of the evidence was likely to be affected by the delay. The claimant's grievance about fixed shifts had been documented by the respondent at each stage and we concluded that the cogency of the evidence was not likely to be affected by the delay.
88. We were mindful that the claimant has disabilities of anxiety and depression. That was not however the reason she gave for why this complaint had not been presented in time. The failure to make the reasonable adjustment of fixed shifts in late January 2023 took place over eight months before the claimant presented a claim to the Tribunal. She could have complained about that, in its own right, within the usual three-month time limit from late January 2023, namely by late April 2023. She did not do so. We were taken to the claimant's sickness absence record. She had two days of sickness absence in that period for a cold. Her later absence for stress/anxiety did not start until 22 May 2023 (page 281), after the three-month limitation period. The sickness

absence records, and the claimant's own evidence did not suggest that her health was the reason why this complaint was presented late.

89. Taking account of all these factors, we concluded that we could not properly exercise our discretion to extend time.

5 90. Accordingly, the complaint of failure to comply with the duty to make reasonable adjustments by offering a fixed shift pattern from late January – end February 2023 is out of time and the Tribunal has no jurisdiction to consider it. The complaint is accordingly dismissed.

10 91. In case we are wrong in relation to time bar, we went on to consider whether there was a breach of the duty to make a reasonable adjustment of offering fixed shifts as pled by the claimant. We concluded that there was no such breach.

15 92. The claimant asserts that the respondent applied a provision, criterion or practice (PCP) of requiring her to work on inbound shifts. By this she meant working on a variable shift pattern. This was from around late-January 2023 until end February 2023 (a period of around one month). We were satisfied that this was a PCP applied to the claimant.

20 93. The claimant asserts that by requiring her to work a variable shift pattern for around one month she was unable to go to sleep at the same time or have the same routine and her sleep pattern is disrupted. She asserts that this is the substantial disadvantage to which she is put by this PCP, compared to someone without her disabilities of anxiety and depression.

25 94. We noted that the start time and corresponding finishing time on an inbound (variable hours) shift pattern was not always the same. It could vary by up to 45 minutes. Although this is not a long period of time, we accepted the claimant's evidence that the difference impacted on her routine and sleep pattern, which was disrupted.

95. We were satisfied, based on the claimant's evidence, that being unable to go to sleep at the same time or have the same routine and having her sleep

pattern disrupted was a substantial disadvantage to which she was put by the PCP, compared to someone without anxiety and depression.

- 5 96. Next, we asked ourselves whether the respondent knew or could reasonably have been expected to know that the claimant was likely to be placed at this disadvantage. The respondent accepts that it knew of the claimant's disabilities of anxiety and depression from the start of employment on 6 October 2022, by reason of a pre-employment medical questionnaire. Did it also know the claimant was likely to be placed at the substantial disadvantage relied upon?
- 10 97. The claimant, in evidence in chief, said that in October 2022 she asked Mr Ahmad to be placed on fixed shifts due to her insomnia. Mr Ahmad's evidence accorded with this. Mr Ahmad said that in October 2022 the claimant had asked him for fixed shifts due to "sleeplessness". The claimant did not say in her evidence that she asked Mr Ahmad to be placed on fixed shifts due to her anxiety and depression or that she made the link to Mr Ahmad between insomnia and anxiety and depression. In cross examination the claimant put to Mr Ahmad that she had said to him in October 2022 that she required to be put on fixed shifts due to anxiety and depression. Mr Ahmad said he did not recall the claimant speaking to him about anxiety and depression, only sleeplessness.
- 15 20 98. We were not taken to any pre-employment questionnaire completed by the claimant. It did not appear to be in the bundle of productions. Whilst the respondent's position was that that it knew about the claimant's disabilities of anxiety and depression from such documentation, there was no evidence that the respondent knew of the substantial disadvantage which she asserts she was put by this PCP, compared to someone without anxiety and depression.
- 25 99. We also had regard to the outcome of the claimant's grievance sent to her on 21 June 2023. Her grievance included a complaint of being allocated to a variable shift pattern in the period late January 2023 – end February 2023. In her grievance, the claimant referred to experiencing insomnia which was
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impacted by a variable shift pattern. She did not refer to anxiety and depression.

100. We were satisfied that the claimant had not told Mr Ahmad about her anxiety and depression or the substantial disadvantage which she asserts she was put by this PCP, compared to someone without anxiety and depression. If she had, this is something which we thought it likely that the claimant would have referred to in her evidence and in the documentation to which were taken. It was not. We concluded that from the information the claimant provided to the respondent, the respondent could not reasonably have been expected to know that that the claimant was likely to be placed at the PCP pled, compared to someone without the claimant's disabilities of anxiety and depression.

101. Accordingly, even if we had concluded that this complaint was part of a course of conduct extending over a period to bring it in time, or it was just and equitable to extend time, we would have concluded that there was no breach of the duty to make the reasonable adjustment pled, for the reasons given.

*Requirement to work in the office*

102. In relation to the PCP of being required to work in the office, the claimant asserts that she ought to have been allowed to work at home for the full week when she was on her period and, separately that she ought to have been allowed to work a hybrid working pattern of three days in the office and two days at home. She asserts that these steps ought to have been taken at the beginning of March 2023. That is when she spoke to Mr Black. Taking the date of 1 March 2023, these complaints are out of time by over seven months.

103. The claimant asserted that the respondent ought to have allowed her to work from home for the full week when she was having her period, from the beginning of March 2023. Unlike the fixed shifts issue, where the claimant had raised a grievance, there was no evidence led that she had raised a grievance about being required to work in the office as she now asserted in her claim. The events of which she complains occurred at the beginning of March 2023. There was no evidence given by the claimant about any explanation for the

delay until 9 October 2023 before she brought her claim, other than a general assertion that she was waiting until internal matters had concluded.

104. For the same reasons given in relation to the complaint about not being give  
a fixed shift pattern, we concluded that the complaints about being required  
5 to work in the office five days per week and to work in the office during the full  
week of her period were out of time, not part of a course of conduct extending  
over a period to bring it in time, and that we could not properly exercise our  
discretion to extend time.
105. Accordingly, the complaints of failure to comply with the duty to make  
10 reasonable adjustments by allowing home working for the full week of her  
period and allowing the claimant to work a hybrid working pattern are out of  
time and the Tribunal has no jurisdiction to consider them. Accordingly, the  
complaints are dismissed.
106. In case we are wrong in relation to time bar, we went on to consider whether  
15 there was a breach of the duty to make a reasonable adjustment of home  
working during the full week of the claimant's period or a weekly hybrid  
working pattern We concluded that there was no such breach.
107. The claimant asserts that the respondent applied a provision, criterion or  
20 practice (PCP) of requiring her to work in the office five days per week from  
around March 2023. The claimant's evidence was that she had worked at  
home for around two weeks at the end of February 2023. She said she had a  
bad cold at that time. We were taken to the occupational health report dated  
31 March 2023. The focus of this report (page 621) was about a fixed shift  
pattern for her insomnia. There was reference in the report to the claimant  
25 having been working from home, which accorded with the claimant's evidence  
which she said was for a short period due to a cold. There was no evidence  
to allow us to conclude that there was an agreement to allow her to work a  
hybrid working pattern on a permanent basis after these two weeks.
108. The respondent's evidence was that all new starts were required to work five  
30 days a week in the office when they "went live". This was to give extra support  
and ensure that they were performing as required. Thereafter, once their

manager was satisfied that performance was as required, all employees were able to work a hybrid work pattern of three days in the office and two at home. Mr Black's evidence was that in March 2023 the claimant was required to be in the office each day. We were satisfied that a requirement to work in the office each day on around 1 March 2023 was a PCP applied to the claimant.

109. The next step in our assessment is to consider the substantial disadvantages (in the agreed list of issues) to which the claimant says she was put by being required to work in the office five days a week (including during her period), compared to someone without her disabilities of anxiety, depression and anaemia. The evidence led about the claimant's health after 1 March 2023 was that she had three back-to-back periods in May 2023 and was absent from work with stress from 18 May 2023, after Mr Sliman had shown her the middle finger. We concluded that this was insufficient evidence to allow us to conclude that the requirement to work in the office five days a week in March 2023 put the claimant to the substantial disadvantages identified in the list of issues or that the respondent knew or could reasonably have been expected to know that the claimant was likely to be placed at those disadvantages.

110. Finally, and in any event the steps relied upon by the claimant to avoid any such disadvantages are not steps the respondent could have been expected to take as the claimant had said in March 2023 that she did not want to work from home.

111. Mr Wright's evidence was that in January 2023 in a discussion about the claimant's periods and potential working patterns the claimant concluded that she did not want to work at home. She said she had a small home and wanted to keep her working life and personal life separate. Mr Black's evidence was that during a discussion about working patterns with the claimant in March 2023 she told him that she did not want to work from home as she wanted to keep her work and personal life separate. Mr Black's evidence was that it was in June 2023, when the claimant returned from a period of sickness absence, that she made a request to work from home. This was being actioned, as the claimant required certain equipment to work from home. She was then suspended.

112. Further, in submissions the claimant said that whilst she had 'implied' in March 2023 that that she wanted to work at home due to her periods and wanted to work a hybrid working pattern, she had not made a request to do so prior to June 2023 when she returned to work and in January and March 2023 she had told the respondent that she wanted to keep her work and personal life separate. We concluded on balance that the claimant had not shown that she was put to the substantial disadvantages pled or that making the reasonable adjustments of home working during her period or a hybrid pattern, in March to June 2023, would have avoided those disadvantages. Put simply, she had told the respondent she did not want to work at home. When the situation changed following her return to work on 9 June 2023 steps were being taken by the respondent to allow home working when she had the correct equipment at home. That was not implemented as she was suspended shortly thereafter on 21 June 2023.
113. Accordingly, even if we had concluded that this complaint was in time, or it was just and equitable to extend time, we would have concluded that there was no breach of the duty to make the reasonable adjustments pled, namely being allowed to work at home for the full week of her period or work a hybrid work pattern.

***Disability related harassment***

*Investigation on 21 & 22 June 2023 - disability harassment*

114. The claimant asserts that in or around 22 June 2023 Mr Masood harassed the claimant, related to her disabilities of anxiety and depression, in his handling of the investigation into the claimant. This complaint is in time.
115. Mr Masood was appointed to carry out an investigation into the claimant's conduct in the period from 9 June – 19 June 2023. Mr Masood met with the claimant on 21 June 2023 and 22 June 2023. He went through the allegations about what she had said on 9 June 2023 in her meeting with Mr Black and in subsequent emails with Mr Black on 14, 16 and 19 June 2023. The claimant agreed that she had made the comments about Mr Sliman in the meeting on 9 June 2023 and that she has sent the later emails. In the meeting on 22 June

2023 Masood asked the claimant if she felt the language used by her was appropriate and she said yes. Mr Masood suspended the claimant on 22 June 2023.

116. We concluded that an investigation and suspension could amount to unwanted conduct. Accordingly, we were satisfied the investigation (and the handling of it) and suspension of the claimant on 22 June 2023 was unwanted conduct.,

117. Next, we asked ourselves whether the unwanted conduct related to disability and if so which disabilities.

118. The claimant asserted that Mr Masood's handling of the investigation was harassment related to her disabilities of anxiety and depression because: he did not address the issue of Mr Sliman having shown the middle finger to her and he ought to have done so; he asked her if she thought her language (which was the subject of the investigation) was appropriate; the questions focussed on her language as actions and not as reactions to a situation which had happened (ie Mr Sliman showing her the middle finger); and it felt to her as if Mr Massod was already giving her a verdict that she was guilty.

119. Mr Masood's evidence was that he had been appointed to investigate the claimant's conduct and was carrying out that role; that he was entitled to ask her as part of the investigation if she thought the language she had used was appropriate (to which she had answered yes); that he recorded in his investigation report that her explanation for her language was because she was reacting to Mr Sliman having shown the middle finger to her; and that there was no predetermined outcome as the matter proceeded to a disciplinary hearing where Ms Hollywood, not Mr Masood, took the decision to dismiss the claimant. This all accorded with the documentation to which we were taken in the bundle and which we accepted.

120. We considered whether the claimant had proven facts upon which we could conclude that harassment related disability had taken place, such that the burden of proof shifted. We found that she had not. Mr Masood was investigating the claimant's language as he had been appointed to do under

the respondent's procedures. He was doing so according to those procedures. We found that there were no facts proved which could lead us to conclude that harassment related disability had taken place. The burden of proof had not shifted to the respondent.

- 5 121. Accordingly, the complaint of disability related harassment by Mr Masood's handling of the investigation into the claimant on 21 and 22 June 2023 is not well founded and is dismissed.

*18 May 2023 – disability harassment*

- 10 122. The claimant asserts that on 18 May 2023 Mr Masood harassed the claimant, related to her disability, by not giving the claimant time to explain and saying she had to wait until Mr Black returned. The claimant had identified this in the issues as taking place in April 2023 but in evidence she said this was the communication from Ms Masood on 18 May 2023 in response to an email which she had forwarded to him as Mr Black was offline for a short period. It was about Mr Sliman showing her the middle finger on 16 May 2023.

123. The complaint of 18 May 2023 is out of time. ACAS conciliation did not start until 23 August 2023. The complaint was presented on 9 October 2023.

124. A complaint must be presented within the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the we think is "just and equitable". We were satisfied that Mr Masood's email on 18 May 2023 was a one-off act and was not conduct extending over a period.

125. As with the explanation given by the claimant in relation to other out of time complaints, the reason given for the delay is that the claimant was waiting for internal procedures to be completed. We concluded as set out below that that communication between the claimant and Mr Mahood on 18 May 2023 was about Mr Sliman showing the middle finger to her. The claimant subsequently raised a grievance about Mr Sliman showing the middle finger to her. Ms Hollywood was appointed to consider her grievance at the same time as the conduct allegations made against the claimant. She reached a decision on the claimant's grievance about Mr Sliman on 1 November 2023.

126. We were satisfied that it could not be said that the claimant was waiting for internal procedures to be completed. She brought her claim on 9 October 2023, which included a complaint of discrimination about Mr Sliman showing her the middle finger and how this had been dealt with. The claimant did not receive the outcome of her grievance against Mr Sliman until 1 November 2023. For the same reasons as we gave in relation to the other out of time complaints, we concluded that we could not properly exercise our discretion to extend time. to allow this complaint.
127. Accordingly, the complaint of disability related harassment by Mr Masood's response to the claimant emailing him about Mr Sliman showing her the middle finger on 18 May 2023 is out of time and the Tribunal has no jurisdiction to consider it. The complaint is accordingly dismissed.
128. In case we are wrong on that, the claimant's evidence was that on 18 May 2023 she asked Mr Masood to go home because of her multiple periods and that Mr Masood said she needed to wait until Mr Black returned. Mr Black's evidence was that she had not made any such request. His evidence was that the claimant had forwarded an email to him, which she had already sent to Mr Black, about Mr Sliman showing the middle finger to her. Mr Masood could see that Mr Black was dealing with the matter and knew that he would be back online soon. This corresponded with the documentary evidence which showed the forwarding of the email and Mr Masood's response. We concluded that it was more likely than not that this is what the claimant had asked Mr Masood about and not about her multiple periods.
129. We considered whether the claimant had proven facts upon which we could conclude that harassment related to disability had taken place, such that the burden of proof shifted. We found that she had not. Mr Masood was responding to an email which he could see Mr Black had been dealing with and where he knew that Mr Black would be back online soon. We found that there were no facts proved which could lead us to conclude that harassment related disability had taken place. The burden of proof had not shifted to the respondent.

130. Accordingly, even if we had concluded that this complaint was in time, or it was just and equitable to extend time, we would have concluded that there was no disability related harassment by Mr Masood on 18 May 2023 and that this complaint was not well founded and dismissed.

5 ***Direct race and sex discrimination complaints***

131. The claimant relies on her Romanian nationality. The claimant is female. She relies on the same allegations for her direct race and direct sex discrimination complaints. We have therefore dealt with them together.

*Allegations about not being allowed to work from home – direct race and sex*

10 132. The first two allegations are about a failure to allow the claimant to work from home for the full week when she was having her period and a failure to allow the claimant to work a hybrid pattern of working in the office and at home (both on around 1 March 2023). These complaints are out of time. they are one off decisions, and not part of conduct extending over a period. For the reasons  
15 already given, under the disability complaints, we concluded that we could not properly exercise our discretion to extend time to allow these complaints.

133. In any event as we have already concluded, the claimant had told the respondent she did not want to work at home in March 2023. It was not until after 9 June 2023, that she told the claimant she wanted to work a hybrid  
20 working pattern and steps were then taken by the respondent to implement this. At no time did she tell the respondent she wanted to work from home for a full week during her period. The claimant conceded in submissions that whilst she “implied” that she wanted to work from home during her period, she had not made a request to do so. There were no facts proved which could  
25 lead us to conclude that direct race or sex discrimination had taken place on or around 1 March 2023. The burden of proof had not shifted to the respondent.

134. Accordingly, even if we had concluded that this complaint was in time, or it was just and equitable to extend time, we would have concluded that there



was no direct race of sex discrimination and that these complaints were not well founded and dismissed.

*Allegations about pay, loan and bonus – direct race and sex*

135. The next allegations are about the claimant receiving payment of her first wages on 1 November 2022, one day late; not being advised on around 31 October 2022 to apply for a loan; and not paying the claimant's bonus correctly. Salary was due to be paid on 31 October 2022. There was no evidence led about what the claimant said ought to have happened about applying for a loan on around 31 October 2022. New start bonus was due to the claimant in December 2022. It was not paid on the due date in December 2022 but was paid later in the month. Each of these allegations was out of time. The claimant's internal grievances about salary and bonus payments were not completed until 18 December 2023. That did not accord with the reason given by the claimant for the delay in presenting her claim about these complaints.
136. For the same reasons already given, we concluded that we could not properly exercise our discretion to extend time to allow these complaints.
137. We also considered whether if we had exercised discretion to allow the complaints on a just and equitable basis, they would have succeeded. We found that they would not. The claimant relied on the fact that she was Romanian and female. We did not hear any evidence about the nationality of other employees of the respondent. We did not hear any evidence about why the claimant asserted that any less favourable treatment was because of her race. The claimant appeared simply to assert that because she is Romanian any treatment which is less favourable is because of her race.
138. In relation to gender we heard evidence from the respondent that the make-up of the department in which the claimant worked was around 20/30% female. The claimant's evidence, which was not disputed, was that the trade union had told the claimant there were fewer women applying for the available roles and this was the reason why there were more men in the department.

139. We were unable to conclude based on recruitment information, that there were facts proved which could lead us to conclude that direct sex or race discrimination had taken place. The first wages were paid late and bonus was paid late, both due to technical errors with the payroll system. This had been established as part of the grievance raised by the claimant. We were satisfied that there were no facts proved which could lead us to conclude that direct race or sex discrimination had taken place, such that the burden shifted.
140. Accordingly, even if we had concluded that these complaints were in time, or it was just and equitable to extend time, we would have concluded that there was no direct race or sex discrimination and that these complaints were not well founded and dismissed.

Allegation about following the new start policy - direct race and sex

141. The claimant alleges that following the new start policy for the claimant in relation to her showing Mr Sliman the middle finger is direct race and sex discrimination. The claimant says she was treated worse than Mr Sliman as the new start policy was not followed for Mr Sliman when he showed the middle finger to her. The new start policy is the disciplinary policy applicable for new starts in the respondent's organisation. It was applied to the claimant as she was a new start. The policy was applied to the claimant from the start of the investigation on 9 June 2023 through to her dismissal and appeal. This complaint is in time.
142. The claimant's complaint was that the new start policy was being followed for her because she had shown Mr Sliman the middle finger. We were satisfied that this was not the case. The evidence of the respondent's witnesses, supported by the documentation, was that the new start policy was being followed for the claimant because of the language she had used on 9 June 2023 and in subsequent emails. We were satisfied that it was clear from the disciplinary documentation throughout the process that the disciplinary allegation was about her language on 9 June 2023 and subsequently. We were satisfied that the new start policy was not being followed in relation to the claimant showing Mr Sliman the middle finger. That was not the

disciplinary allegation. We were satisfied that the claimant had not been treated less favourably as she asserted. We were satisfied that there was no direct race or sex discrimination. Accordingly, these complaints were not well founded and are dismissed.

5 *Allegation 22 June 2023 Mr Masood - direct race and sex*

143. The claimant alleges that on 22 June 2023 Mr Masood's handling of the investigation into the claimant was direct race and sex discrimination. The claimant says she was treated worse than Darren Sliman. This complaint is in time.
- 10 144. Mr Masood was appointed to carry out an investigation into the claimant's conduct in the period from 9 June – 19 June 2023. Mr Masood met with the claimant on 21 June 2023 and 22 June 2023. He went through the allegations about what she had said on 9 June 2023 in her meeting with Mr Black and in subsequent emails with Mr Black on 14, 16 and 19 June 2023. The claimant  
15 agreed that she had made the comments about Mr Sliman in the meeting on 9 June 2023 and that she has sent the later emails. In the meeting on 22 June 2023 Masood asked the claimant if she felt the language used by her was appropriate and she said yes. Mr Masood suspended the claimant on 22 June 2023.
- 20 145. We were not satisfied that Mr Sliman was an appropriate comparator. He was not being investigated for use of inappropriate language in a meeting and in subsequent emails. We were satisfied that there was a material difference between his circumstances and the claimant's. We considered a hypothetical comparator and whether the claimant was treated worse than they would have  
25 been treated.
146. Mr Masood's evidence was that he had been appointed to investigate the claimant's conduct and was carrying out that role; that he was entitled to ask her as part of the investigation if she thought the language she had used was appropriate (to which she had answered yes) and that he was entitled to  
30 suspend the claimant given her responses in order to carry out further investigation.

147. We considered whether the claimant had proven facts upon which we could conclude that direct race or sex discrimination had taken place, such that the burden of proof shifted. We found that she had not. Mr Masood was investigating the claimant's language as he had been appointed to do under the respondent's procedures. He was doing so according to those procedures, and which allowed for a suspension. We found that there were no facts proved which could lead us to conclude that direct race or sex discrimination had taken place. The burden of proof had not shifted to the respondent.
148. Accordingly, the complaints of direct race and sex discrimination by Mr Masood's handling of the investigation into the claimant on 21 and 22 June 2023 are not well founded and are dismissed.

*Allegation 18 May 2023 Mr Masood email – direct race and sex*

149. The claimant alleges that when Mr Masood told the claimant on 18 May 2023 to wait for Mr Black to return that this was direct race and sex discrimination. This complaint is out of time and for reasons already given it is not just and equitable to extend time.
150. We also considered whether if we had exercised discretion to allow the complaint on a just and equitable basis, it would have succeeded. We found that it would not. On 18 May 2023 Mr Masood told the claimant he could not deal with her email, addressed to her line manager Mr Black, about Mr Sliman. He knew that Mr Black would be back online soon and could see that he had been dealing with it. We were satisfied that there were no facts proved which could lead us to conclude that direct race or sex discrimination had taken place, such that the burden shifted. We did not hear any evidence about why the claimant asserted that any less favourable treatment was because of her race. The claimant appeared simply to assert that because she is Romanian any treatment which is less favourable is because of her race. This was not enough to shift the burden of proof. Likewise, we concluded that the gender make-up of the department in which the claimant worked was not enough to shift the burden of proof. In addition, the explanation given by Mr Masood at

the time, that Mr Black would return soon, and he would be best placed to deal with it, appeared to us to be a sensible management decision, which we were satisfied was unrelated to the sex or nationality of the claimant.

*Dismissal 7 December 2023 – direct race and sex*

5 151. The claimant alleges that her dismissal on 7 December 2023 was an act of direct race and sex discrimination. The claimant does not name a comparator. We considered a hypothetical comparator and whether the claimant was treated worse than they would have been treated. This complaint is in time.

10 152. We considered carefully whether the claimant had proven facts upon which we could conclude that direct race or sex discrimination had taken place, such that the burden of proof shifted. We found that she had not. The focus of the claimant's evidence and submissions was that she had the protected characteristics of sex and nationality and that all actions of the respondent, with which she did not agree, must be because of her sex and nationality.  
15 There was no evidence led to support her assertion of race discrimination beyond this. The only evidence to support her assertion of sex discrimination was about the gender make-up of the claimant's team, however, Ms Hollywood was an independent senior manager from another team. We found that there were no facts proved which could lead us to conclude that direct  
20 race or sex discrimination had taken place. The burden of proof had not shifted to the respondent.

153. Further, we were satisfied that Ms Hollywood had considered carefully the allegations made against the claimant and the investigation carried out and had carried out her own enquiries before reaching her decision to dismiss.  
25 There was nothing from the evidence we heard, and the documents to which we were referred, which suggested that Ms Hollywood's decision to dismiss was tainted by race or sex discrimination. The claimant had admitted using the language on 9 June 2023 and subsequently in emails. Ms Hollywood concluded that there was no racism towards the claimant in Mr Sliman's action  
30 of showing the claimant the middle finger. Ms Hollywood concluded that there was no "bias" towards the claimant in the way that that Mr Black had dealt

with Mr Sliman showing the claimant the middle finger. Ms Hollywood told the claimant that Mr Sliman had been spoken to and he had assured the respondent he would not do it again. Ms Hollywood concluded that there was no “corruption” by Mr Black or colleagues towards the claimant. Ms Hollywood asked the claimant if, looking back with hindsight, the claimant would have done anything differently or said anything differently. The claimant did not give any reassurances that she would do or say anything differently.

154. Similarly, we were satisfied that Mr Benjamin had considered carefully the claimant’s appeal. There was nothing from the evidence we heard, and the documents to which we were referred, which suggested that Mr Benjamin’s appeal decision was tainted by race or sex discrimination.

155. Mr Benjamin reviewed the documentation, including the investigation and disciplinary hearings notes and outcomes. He concluded that there had been no discriminatory actions towards the claimant. He concluded that the claimant had not been dismissed for showing the middle finger to Mr Sliman. He concluded that the claimant had been dismissed for her inappropriate language on 9 June 2023, and her inappropriate language in emails thereafter. He concluded that the claimant had not shown accountability for the language she had used. He concluded that Mr Black had agreed to the claimant working a hybrid working pattern, as requested by the claimant to Mr Black, and this was being put in place when the claimant was suspended.

156. Accordingly, the complaints of direct race and sex discrimination by the respondent’s dismissal of the claimant are not well founded and are dismissed.

#### 25 ***Race and sex related harassment complaints***

*Various occasions ending on 16 May 2023 Mr Sliman showing the middle finger – race and sex harassment*

157. The claimant asserts that on various occasions ending on 16 May 2023 Mr Sliman showing the middle finger is harassment related to her race and sex. We concluded that that action of Mr Sliman showing the middle finger to the

claimant was not a continuing act with any later actions after 16 May 2023. Mr Sliman's direct involvement came to an end on 16 May 2023. The complaint is out of time.

158. Next we considered whether it would be just and equitable to extend time.  
5 The reason given for the delay in presenting the complaint was that the claimant was awaiting the outcome of internal procedures before bringing her complaint to the Tribunal. The claimant's grievance about the showing of the middle finger was not completed until 1 November 2023. Yet the claimant had presented her claim to the Tribunal, including the complaint about Mr Sliman  
10 showing her the middle finger on 9 October 2023, before the internal procedures were completed.

159. For the same reasons given in relation to the other out of time complaints we concluded that it would not be just and equitable to extend time to allow these complaints to proceed. Accordingly, the Tribunal has no jurisdiction to  
15 consider the complaints of harassment related to race and sex, by Mr Sliman showing the claimant the middle finger.

160. In case we are wrong in relation to time bar, we went on to consider whether there was harassment related to race or sex by Mr Sliman showing the claimant the middle finger. As before there was no evidence led about the  
20 claimant's race to allow us to conclude that the burden of proof had shifted. In relation to sex, the findings of the disciplinary hearing and the evidence of the claimant's own witness Ms Phan was that Mr Sliman showed the middle finger to both male and female colleagues. Accordingly if we had found that the complaint was in time or that time could be extended, we would have  
25 found that there were no facts found to allow us to conclude that the burden of proof had shifted to the respondent.

*22 June 2023 Mr Masood handling of investigation – race and sex harassment*

161. The claimant asserts that in or around 22 June 2023 Mr Masood harassed the claimant, related to her race and sex, in his handling of the investigation into  
30 the claimant. This complaint is in time.

162. Mr Masood was appointed to carry out an investigation into the claimant's conduct in the period from 9 June – 19 June 2023. Mr Masood met with the claimant on 21 June 2023 and 22 June 2023. He went through the allegations about what she had said on 9 June 2023 in her meeting with Mr Black and in subsequent emails with Mr Black on 14, 16 and 19 June 2023. The claimant agreed that she had made the comments about Mr Sliman in the meeting on 9 June 2023 and that she has sent the later emails. In the meeting on 22 June 2023 Masood asked the claimant if she felt the language used by her was appropriate and she said yes. Mr Masood suspended the claimant on 22 June 2023.
163. We noted that an investigation and suspension can amount to unwanted conduct for the purposes of a section 26 EqA harassment complaint. Accordingly, we were satisfied the investigation (and the handling of it) and suspension of the claimant on 22 June 2023 was unwanted conduct.,
164. Next, we asked ourselves whether the unwanted conduct related to the claimant's race or the claimant's sex.
165. The claimant asserted that Mr Masood's handling of the investigation was harassment related to her race and her sex because: he did not address the issue of Mr Sliman having shown the middle finger to her and he ought to have done so; he asked her if she thought her language (which was the subject of the investigation) was appropriate; the questions focussed on her language as actions and not as reactions to a situation which had happened (ie Mr Sliman showing her the middle finger); and it felt to her as if Mr Massod was already giving her a verdict that she was guilty.
166. Mr Masood's evidence was that had been appointed to investigate the claimant's conduct and was carrying out that role; that he was entitled to ask her as part of the investigation if she thought the language she had used was appropriate (to which she had answered yes); that he recorded in his investigation report that her explanation for her language was because she was reacting to Mr Sliman having shown the middle finger to her; and that there was no predetermined outcome as the matter proceeded to a



disciplinary hearing where Ms Hollywood, not Mr Masood, took the decision to dismiss the claimant. This all accorded with the documentation to which we were taken in the bundle and which we accepted.

167. We considered whether the claimant had proven facts upon which we could  
5 conclude that harassment related to race or sex had taken place, such that the burden of proof shifted. We found that she had not. Mr Masood was investigating the claimant's language as he had been appointed to do under the respondent's procedures. He was doing so according to those procedures. We found that there were no facts proved which could lead us to  
10 conclude that harassment related race or sex had taken place. The burden of proof had not shifted to the respondent.

168. Accordingly, the complaints of race and sex related harassment by Mr Masood's handling of the investigation into the claimant on 22 June 2023 are not well founded and are dismissed.

15 *Choosing to side with Mr Sliman – race and sex harassment*

169. The claimant asserts that the respondent choosing to side with Mr Sliman when investigating both Mr Sliman and the claimant following the showing of the middle finger is harassment related to her race and sex. This complaint is in time.

20 170. For the same reasons as those given about the race and sex harassment complaints about Mr Masood's handling of the investigation on 22 June 2023 we have concluded that the burden of proof does not shift to the respondent.

171. Accordingly, the complaints of race and sex related harassment by the respondent choosing to side with Mr Sliman when investigating the claimant  
25 and Mr Sliman are not well founded and are dismissed.

172. On around 21 June 2023 Mr Hassan walks towards the claimant – race and sex harassment

173. The claimant asserts that on around 21 June 2023 Mr Hassan walking towards the claimant, scaring her and making her step aside is harassment related to her race and sex. This complaint is in time.

5 174. The claimant asserts that it is customary for people in the UK to walk down the left-hand side of a corridor in the same way as in the UK people drive on the left-hand side of the road. The claimant asserts that Mr Hassan walked down the right-hand side of the corridor, which is quite narrow, causing the claimant to move aside. Mr Hassan was not aware that this had happened. The claimant had not raised the matter with the respondent at the time or at  
10 any time prior to bringing this claim. Even if it had happened, we were satisfied that there is no such custom in the UK. There were no facts which allowed us to conclude that the burden of proof had shifted to the respondent.

175. Accordingly, the complaints of race and sex related harassment by the respondent by Mr Hassan walking down the right hand side of the corridor are  
15 not well founded and are dismissed.

### Conclusion

176. Having concluded that each of the complaints is either not well- founded or we do not have jurisdiction to hear them, there is no requirement for us to consider remedy. Accordingly, the claimant's claim is dismissed.

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25

<b>Employment Judge:</b>	<b>J McCluskey</b>
<b>Date of Judgment:</b>	<b>01 November 2024</b>
<b>Entered in register:</b>	<b>05 November 2024</b>
<b>and copied to parties</b>	

30

**Agreed list of issues for final hearing (as set out case management note from hearing on 4 July 2024)**

32. Time bar

- 5 a. Given the date the claim form was presented (9 October 2023) and the dates of early conciliation, any complaint about something that happened before 24 May 2023 may not have been brought on time.
- b. Were the complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
- 10 i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- ii. If not, was there conduct extending over a period?
- iii. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 15 iv. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide: why were the complaints not made to the Tribunal in time? In any event, is it just and equitable in all the circumstances to extend time?

20 ***Disability discrimination complaints***

33. Disability

- a. The respondent accepts that the claimant had the disabilities, as defined in section 6 of the Equality Act 2010, of Anemia and Anxiety and Depression at the time of the events the claim is about.
- 25 b. Did the respondent have knowledge of these disabilities at the time of the events the claim is about?

c. Did the claimant have the disability, as defined in section 6 of the Equality Act 2010, of Extremely Painful Periods at the time of the events the claim is about? The Tribunal will decide:

- 5
- i. Did the claimant have any physical and /or mental impairment of extremely painful periods?
  - ii. Did any such impairment have a substantial adverse effect on her ability to carry out day-to-day activities?
  - 10 iii. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct any of the impairments?
  - iv. Would any of the impairments have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
  - 15 v. Were the effects of any of the impairment long-term? The Tribunal will decide: did they last at least 12 months, or were they likely to last at least 12 months? If not, were they likely to recur?

34. Direct disability discrimination (Equality Act 2010 section 13)

- 20
- a. Did the respondent do the following thing:
    - 20 i. Dismiss the claimant on 7 December 2023.
  - b. Was that less favourable treatment?
  - c. The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated (hypothetical comparator).
  - 25
  - d. If so, was it because of disability?

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

35. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

a. The respondent accepts that it had knowledge of the claimant's disabilities of Anemia and Anxiety and Depression at the time of the events the claim is about.

b. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

i. A requirement to work on inbound shifts (PCP 1) (Event 1);

ii. From around March 2023 a requirement to work in the office (PCP 2) (Events 2 &3);

c. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

i. on inbound shifts the claimant is unable to go to sleep at the same time or have the same routine and her sleep pattern is disrupted (PCP 1);

ii. Her periods became more painful, and her anaemia became worse (PCP 2);

iii. Her anxiety and depression became worse (PCP 2)

iv. The amount of energy required to do her job correctly deeply affected her out of work life as she was unable to switch off (PCP 2);

d. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

e. What steps could have been taken to avoid the disadvantage? The claimant suggests:

i. Being put on outbound shifts (PCP 1);

- ii. Being allowed to work at home for the full week when she was having her period (PCP 2);
  - iii. Being allowed to work a hybrid pattern of 2 days in the office and 3 days at home each week (PCP 2)
- 5 f. Was it reasonable for the respondent to have to take those steps and when?
- g. Did the respondent fail to take those steps?
- 36. Harassment related to disability (Equality Act 2010 section 26)
  - a. Did the respondent do the following things:
    - 10 i. Around 22 June 2023 Attif Masood's handling of the investigation into the claimant (Event 8);
    - ii. About 18 May 2023 (updated at final hearing from April 2023 date) Mr Masood not giving the claimant the opportunity to explain and saying the claimant had to wait until Courtney Black
    - 15 returned (Event 10);
  - b. If so, was that unwanted conduct?
  - c. Did it relate to disability? Which disability?
  - d. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive
  - 20 environment for the claimant?
  - e. 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.

***Race discrimination complaints***

- 25 37. Direct race discrimination (Equality Act 2010 section 13)

a. The claimant is of dual British and Romanian nationality. She relies upon her Romanian nationality. Did the respondent do the following things:

5 i. Failed to allow the claimant to work at home for the full week when she was having her period. The claimant relies on a hypothetical comparator (Event 2).

ii. Failed to allow the claimant to work a hybrid pattern of 2 days in the office and 3 days at home each week. The claimant relies on a hypothetical comparator (Event 3).

10 iii. Failed to pay the claimant's wages on time. The claimant says she was treated worse than Andrew Cleary (Event 4).

15 iv. Failed to advise her to apply for a loan if she did not have enough money as wages were not being paid on time. The option of a loan was made available to other colleagues. The claimant says she was treated worse than Andrew Cleary and also relies on a hypothetical comparator (Event 4).

v. Failed to pay the claimant's bonus correctly. The claimant says she was treated worse than Robert Wright. She also relies on a hypothetical comparator (Event 5).

20 vi. Followed the respondent's new start policy for the claimant in relation to her showing Mr Sliman the middle finger. The claimant says she was treated worse than Mr Sliman as the new start policy was not followed for Mr Sliman when he showed the middle finger to her (Event 6).

25 vii. Around 22 June 2023 Attif Masood's handling of the investigation into the claimant. The claimant says she was treated worse than Darren Sliman (Event 8).

viii. About 18 May 2023 (updated at final hearing from April 2023 date) Mr Masood failed to give the claimant the opportunity to

explain and said the claimant had to wait until Courtney Black returned. The claimant relies on Courtney Black as a comparator and relies on a hypothetical comparator (Event 10).

ix. Dismissed the claimant on 7 December 2023.

- 5                   b. Was that less favourable treatment?
- c. 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
- 10                   whether they were treated worse than someone else would have been treated (hypothetical comparator).
- d. If so, was it because of race?
- e. Did the respondent's treatment amount to a detriment?

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

- 15                   a. The claimant is of dual British and Romanian nationality. She relies upon her Romanian nationality. Did the respondent do the following things:
- i. On various occasions ending on 16 May 2023 Darren Sliman showing the claimant the middle finger (Event 6);
- 20                   ii. The respondent choosing to side with Mr Sliman when investigating both Mr Sliman and the claimant following the showing of the middle finger (Event 7);
- iii. Around 22 June 2023 (Event 8) / July 2023 (Event 11) Attif Masood's handling of the investigation into the claimant (Event
- 25                   8) (Event 11);
- iv. On around 21 June 2023 Ross Hassan walks towards the claimant, scaring her and making her step aside (Event 9)



- b. If so, was that unwanted conduct?
- c. Did it relate to race?
- d. 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?
- e. 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.

***Sex discrimination complaints***

10 39. Direct sex discrimination (Equality Act 2010 section 13)

a. Did the respondent do the following things:

- i. Failed to allow the claimant to work at home for the full week when she was having her period. The claimant relies on a hypothetical comparator (Event 2).
- 15 ii. Failed to allow the claimant to work a hybrid pattern of 2 days in the office and 3 days at home each week. The claimant relies on a hypothetical comparator (Event 3).
- iii. Failed to pay the claimant's wages on time. The claimant says she was treated worse than Andrew Cleary (Event 4).
- 20 iv. Failed to advise her to apply for a loan if she did not have enough money as wages were not being paid on time. The option of a loan was made available to other colleagues. The claimant says she was treated worse than Andrew Cleary and also relies on a hypothetical comparator (Event 4).
- 25 v. Failed to pay the claimant's bonus correctly. The claimant says she was treated worse than Robert Wright. She also relies on a hypothetical comparator (Event 5).

5 vi. Followed the respondent's new start policy for the claimant in relation to her showing Mr Sliman the middle finger. The claimant says she was treated worse than Mr Sliman as the new start policy was not followed for Mf Sliman when he showed the middle finger to her (Event 6).

vii. Around 22 June 2023 Attif Masood's handling of the investigation into the claimant. The claimant says she was treated worse than Darren Sliman (Event 8).

10 viii. About 18 May 2023 (updated at final hearing from April 2023 date) Mr Masood failed to give the claimant the opportunity to explain and said the claimant had to wait until Courtney Black returned. The claimant relies on Courtney Black as a comparator and relies on a hypothetical comparator (Event 10).

ix. Dismissed the claimant on 7 December 2023.

15 b. Was that less favourable treatment?

c. 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  
20 whether they were treated worse than someone else would have been treated.

d. If so, was it because of race?

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

40. Harassment related to sex (Equality Act 2010 section 26)

25 a. Did the respondent do the following things:

i. On various occasions ending on 16 May 2023 Darren Sliman showing the claimant the middle finger (Event 6);

- 5                   ii. The respondent choosing to side with Mr Sliman when investigating both Mr Sliman and the claimant following the showing of the middle finger (Event 7);
- iii. Around 22 June 2023 (Event 8) / July 2023 (Event 11) Attif Masood's handling of the investigation into the claimant (Event 8) (Event 11);
- iv. On around 21 June 2023 Ross Hassan walks towards the claimant, scaring her and making her step aside (Event 9)
- 10               b. If so, was that unwanted conduct?
- c. Did it relate to sex?
- d. 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?
- 15               e. 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.

**J McCluskey**

**Employment Judge**

01 November 2024

**Date of Judgment**

05 November 2024

**Date sent to parties**