



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Joanna Robinson  
**Respondent:** Conde Nast Publications Ltd

## RECORD OF A PRELIMINARY HEARING

**Heard at:** London Central Employment Tribunal

<b>On:</b>	2 <sup>nd</sup> to 5 <sup>th</sup> June 2025	In person
	9 <sup>th</sup> to 10 <sup>th</sup> June 2025	In Person
	16 <sup>th</sup> to 17 <sup>th</sup> June 2025	In Person
	23 <sup>rd</sup> to 24 <sup>th</sup> June 2025	In Person
	27 <sup>th</sup> June 2025	In Person
	1 <sup>st</sup> to 2 <sup>nd</sup> September 2025	Deliberations (no parties)
	3 <sup>rd</sup> to 4 <sup>th</sup> September 2025	Judge alone
	5 <sup>th</sup> September 2025	Judgment (By Cloud Video Platform)

**Before:** Employment Judge Jonathan Gidney  
Tribunal Member Derian Keyms

### Appearances

For the Claimant: Miss Joanna Robinson (In person)  
For the Respondent: Mr Orlando Holloway (Counsel)

# JUDGMENT

It is the Judgment of the Tribunal that:

1. The Claimant's claims of direct race discrimination are dismissed.
2. The Claimant's claims of direct sex discrimination are dismissed.
3. The Claimant's claims of harassment related to race are dismissed.
4. The Claimant's claims of harassment related to sex are dismissed.
5. The Claimant's claims of victimisation are dismissed.

# REASONS

## [1] Introduction

1. The Claimant is female and describes her ethnicity as Black British. She commenced employment with the Respondent in the role of Acting Photo Editor for WIRED magazine on 31<sup>st</sup> January 2023 pursuant to the terms of an offer letter **[447]**<sup>1</sup> and a fixed term 6 month contract **[449]** both dated 24<sup>th</sup> January 2023. The contract stated that the Claimant's appointment was '*to provide maternity cover during the maternity leave absence of Catherine Gargan*'.

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<sup>1</sup> Numbers in bold refer to pages with the main hearing bundle.

2. Upon Ms Gargan's return from maternity leave, pursuant to terms of the fixed term contract, the Claimant's employment was terminated on 31<sup>st</sup> July 2023.
3. On 28<sup>th</sup> July 2023 the Claimant notified ACAS of a dispute with the Respondent. She received her Early Conciliation Certificate on 31<sup>st</sup> July 2023 [1]. By a Claim Form dated 28<sup>th</sup> August 2023 [2] the Claimant presented the following claims:
  - 3.1. Harassment Related to race or sex (s26 EqA);
  - 3.2. Direct Discrimination because of race or sex (s13 EqA);
  - 3.3. Victimisation (s27 EqA).
4. On 9<sup>th</sup> October 2023 the Respondent submitted an ET3 Response Form [27] and Grounds of Resistance [36] which denied all of the Claimant's claims. The matter was case managed by Employment Judge Issacs on 8<sup>th</sup> November 2023 [55] and Employment Judge Peer on 26<sup>th</sup> February 2024 [78] without either Judge being able to finalise the List of Issues. The matter was listed before Employment Judge Goodman for further case management on 6<sup>th</sup> June 2024 [138] and it was at this hearing that a List of Issues was drafted [144]. There was some continuing debate regarding the issues. The Claimant sought to add a number of protected acts and two more acts of detriment. On 3<sup>rd</sup> February 2025 Employment Judge Goodman wrote to the parties, directing them to agree the List of Issues.

## **[2] The List of Liability Issues**

5. By the time the case got to us, the parties had agreed the List of Issues [Sup Bundle 173]. It set out 39 separate acts of alleged detrimental treatment relied on by the Claimant. For each act, we were tasked with determining whether it occurred, or occurred as the Claimant asserts. For those that did, we then had to considered whether they amounted to harassment, ie whether the acts were related to either her sex (female) or her race (black), pursuant to s26 Equality Act 2010.

6. For those that did not, we were then tasked with determining whether the remaining acts were acts of direct discrimination, pursuant to s13 **Equality Act 2010**, ie whether they were done on the grounds of either her race or her sex. This is because the same act cannot be both an act of harassment and an act of discrimination, pursuant to s212(5) **Equality Act 2010**.
7. We had to determine whether 18 complaints relied on by the Claimant qualified as protected acts, for the purposes of s27(2) **Equality Act 2010**. For those complaints that qualified we then had to determine whether any of the 39 detrimental acts which occurred, occurred because the Claimant had made any of the 18 complaints that she relied on.
8. Given that 5 different legal claims (harassment related to sex and race, direct discrimination because of sex or race and victimisation) were being considered in the context of 39 different acts, some 195 separate pieces of analysis was required. A number of issues raised two or more factual allegations, causing the total to rise further. In addition, we needed to consider the issue of 'time' and how that affected the 39 acts relied on. The full list of issues is recited in Annex 1 to this Judgment and is not repeated here.
9. We note that for a period of employment covering just 6 months, the Claimant has raised 39 separate allegations, involving 13 different people, being said to have engaged 5 different types of legal claim. We think that this does suggest that the Claimant has had difficulty in dispassionately identifying discriminatory treatment. We do not doubt her strength of feeling and we consider she has presented her claims in good faith. For a claim to succeed more is needed than simply the Claimant's belief that discrimination has occurred.
10. For ease of use in this Judgment, we have dropped the '2.2.' prefacing each issue in the List of Issues and also dropped the '4.4.' prefacing each protected act. By way of example we have referred to 'Issue 2.2.1' simply as 'Issue 1' and 'protected act 4.4.1' simply as 'protected act 1'.

**[3] The Evidence**

11. We were provided with an agreed joint trial bundle which ran to 1819 pages and a supplementary bundle which ran to 196 pages. A further document was added, being an extract from a Diversity and Inclusion Zoom meeting held on 5<sup>th</sup> May 2023. We were also provided with the following audio and video files:
  - 11.1. 1<sup>st</sup> WIRED team meeting on 2<sup>nd</sup> March 2023;
  - 11.2. Partial record of zoom meeting with Sophie Palmer on 20<sup>th</sup> March 2023;
  - 11.3. Meeting with Oliver Hazelwood and Mike Dent on 23<sup>rd</sup> March 2023;
  - 11.4. Meeting with Emilie Sutcliffe on 25<sup>th</sup> May 2023;
  - 11.5. The Claimant's last team meeting on 6<sup>th</sup> June 2023;
  - 11.6. Formal Grievance meeting on 15<sup>th</sup> June 2023;
  - 11.7. Exit interview on 27<sup>th</sup> July 2023.
12. We were provided with the following witness statements:
  - 12.1. Joanna Robinson;
  - 12.2. Oliver Hazelwood;
  - 12.3. Ben Hicks;
  - 12.4. Catherine Gargan Hall;
  - 12.5. Jeremy White;
  - 12.6. Mike Dent;
  - 12.7. Sophie Palmer;
  - 12.8. Ryan Patrick Riddle;
  - 12.9. Emilie Sutcliffe;
  - 12.10. Helen Placito;
  - 12.11. Rosamund Bradley; and,
  - 12.12. India Ashmore.
13. All of the witnesses attended Tribunal, gave their evidence under Oath and were subject to cross examination on their evidence.

14. In addition the parties provided us with a number of written submissions, namely:
  - 14.1. Two versions of a written opening statement, from the Claimant;
  - 14.2. A Chronology and Reading List prepared by the Respondent and a further version with the Claimant's added entries;
  - 14.3. A cast list;
  - 14.4. Closing written submissions from both parties;
  - 14.5. A Time Limits submission prepared by the Claimant;
  - 14.6. A list of Transcript corrections provided by the Claimant;
  - 14.7. A list of audio extracts for which tone was relied on by the Claimant.
15. We wish to express our gratitude to both the Claimant and Counsel for the documents they provided and for their hard work in presenting the case and for the manner in which they conducted themselves at the hearing. We are very grateful for that work.

#### **[4] Procedural Issues.**

16. On 17<sup>th</sup> January 2025 Employment Judge Goodman made an Order pursuant to Rule 49 of the Tribunal's Rules of Procedure that the address, telephone number and emails of the Claimant, her next of kin and medical records and details of employees other than Conde Nast may be redacted from the trial bundle.
17. Unfortunately upon the commencement of the hearing, it became apparent to Tribunal Member Stephen Godcharle that he was not available to sit for every day that this case had been listed for. The following options were identified:
  - 17.1. Vacate the hearing and relist for the next available trial window for a 12 day case. This was estimated to be between 6 months and 1 year away;

- 17.2. Proceed as a panel of two, namely Employment Judge Gidney and Tribunal Member Keyms. Ms Keyms confirmed that she had been appointed to sit as a member with experience of management, but also had had experience as a Trade Union representative;
- 17.3. Proceed on a 'Judge alone' basis.
18. By agreement between the parties, option 2 was chosen and the hearing continued with a panel consisting of Employment Judge Gidney and Tribunal Member Keyms.
19. The hearing was held in person, with witnesses to attend in person to give their evidence. A Cloud Video Platform ('CVP') was arranged for witnesses awaiting their turn to give evidence and observers to follow the case remotely. A news reporter, Lucia Osborne-Crowley from 360 Law, observed the proceedings. During the course of the hearing Ms Osborne-Crowley applied for a copy of the parties opening statements to be provided to her, so that she could better understand the case. The Claimant had provided one, the Respondent had not. The parties consented to a copy of the Claimant's opening statement to be made available in Tribunal for Ms Osborne-Crowley to view it. Ms Osborne-Crowley then applied for a copy to be emailed to her, citing a disability that would place her at a disadvantage in getting to the building.
20. For reasons given orally at the time, the Tribunal, upon an undertaking being given by Ms Osborne-Crowley that the opening statement would not be published, shared or re-produced, shared the document via the 'CVP' screen, for such time as was necessary for Ms Osborne-Crowley to read it. This was then confirmed by an Order sent to the parties and Ms Osborne-Crowley on 6<sup>th</sup> June 2025.
21. A large number of covertly obtained audio recordings were made available to the Tribunal. All had been transcribed and were in the bundle. The Claimant asked us to listen to them all. Added together, the transcripts would have lasted for many hours. Given that transcripts of those meetings were

available, we asked the Claimant to identify specific parts where she felt the transcript had been mis-transcribed and/or where the tone of a discussion was relevant. The Claimant provided us with a list of mis-transcriptions which we noted. Some passages were played in Court where the Claimant requested it as part of her cross examination. Otherwise, we based our analysis on the transcripts of those covertly recorded meetings.

## **[5] Findings of Fact**

22. We have not recited every fact in this case or sought to resolve every dispute between the parties. We have limited our analysis to the facts that were relevant to the Issues that we were tasked to resolve. We made the following findings of fact on the basis of the material before us, taking into account contemporaneous documents, where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities, taking into account its assessment of the credibility of the witnesses and the consistency of their evidence with the surrounding facts. Findings of fact related to a specific issue that we have been tasked to resolve are set out in our Conclusions section below. This is an overview of the relevant timeline and not a definitive statement of every single thing that occurred.
23. The key findings of fact, all bar the Edward Enniful incident and the initial job advert, occurred in 2023. They are as follows:
  - 23.1. The Respondent is a global mass media company operating in 32 countries, with 37 brands, including Vogue, The New Yorker, GQ and WIRED magazines.
  - 23.2. On 4<sup>th</sup> August 2020 the then Editor in Chief of British Vogue, Edward Enniful OBE, who is Black British, gave a Sky Television interview in which he described an occasion when he attended at the Respondent's premises at Vogue House, 1-2 Hanover Square,



London, W15 1JU (hereinafter referred to as 'Vogue House') but was told by a security officer (not Tony Batalha) as he entered the main entrance that he should take deliveries to a different entrance. Mr Enninfu considered that he had been racially profiled by the security officer, who had assumed he was a delivery man, and not Vogue's Editor in Chief.

- 23.3. In late 2022 WIRED posted an advert for an Acting Photo Editor [420]. It identified the key duties and responsibilities for the role and set out the essential skills and requirements. The position was 'Acting' and was intended to provide cover during the maternity leave of WIRED's existing Photo Editor, Catherine Gargan. The Claimant applied for the temporary position. Ms Gargan reviewed the applications prior to her departure and by email dated 15<sup>th</sup> December 2022 to Mike Dent and Oliver Hazelwood, indicated that she thought the Claimant '*looked the best*' for the role [421].
- 23.4. The Claimant was sent an offer letter for the role on 24<sup>th</sup> January 2023, which identified a start date of 31<sup>st</sup> January 2023 [447]. Her Statement of Terms and Conditions [449] confirmed that from 31<sup>st</sup> January 2023 she would be the Acting Photo Editor in the WIRED department of the Respondent. At clause 1.4 the terms stated, '*Your appointment is to provide maternity cover during the maternity leave absence of Catherine Gargan. The appointment shall commence on 31<sup>st</sup> January 2023 and it shall continue ... until 31<sup>st</sup> July 2023, which is the date on which the maternity leave of Catherine Gargan is currently anticipated to expire.*'
- 23.5. The Claimant arrived at Vogue House in the morning of 31<sup>st</sup> January 2023. After an induction at the Respondent's other London premises, The Adelphi, the Claimant arrived at Vogue House. Vogue House was accessed via glass revolving doors, which opened into a reception area. Facing the doors from across the room was a reception / security desk, with a large wall or pillar behind it, with

television monitors mounted on that wall above the reception desk. A visitor could walk left or right around the desk and wall to a back area containing lifts and stairs to the buildings' other floors. A security guard called John greeted the Claimant without incident. During her induction the Claimant had been given a key entry fob for her office on the 1<sup>st</sup> floor. That was the first physical security in the building.

- 23.6. On her return to Vogue House after lunch there had been a change of security guards. Tony Batalha had taken over. He had not met the Claimant before. The Claimant describes how she entered the building and walked past the reception desk to the stairwell behind and walked 'at pace' up the stairs to her first floor office **[JR11]**<sup>2</sup>.
- 23.7. The Claimant describes a man, Tony Batalha, chasing her up the stairs, calling out '*do you work here*'. She produced her entry card and he responded by mentioning '*... something about me being a new face as a justification for the chase and stop. And I kept smiling and asked for his name. Tony*' **[JR11]**. In her statement the Claimant observed '*I knew I had been racially profiled by Tony Batalha*'.
- 23.8. The Claimant's first floor office was open plan **[1522]**. Two desks were next to each other, with the users' backs facing the rest of the room. Three desks were positioned together forming a rectangle. The users of those desks (Oliver Hazelwood, Ben Hicks and the Claimant) faced each other in close proximity. The 6<sup>th</sup> desk was set apart.
- 23.9. On 10<sup>th</sup> February the Claimant booked the photographer Wilson Hennessy for a photo shoot.
- 23.10. In February the Claimant reported the 31<sup>st</sup> January incident to Oliver Hazelwood, stating that she had been stopped by Tony Batalha after she had entered Vogue House and as she was climbing the stairs to

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<sup>2</sup> Refers to a paragraph number within a witness statement.

the 1<sup>st</sup> floor. She said that being stopped made her feel uncomfortable and like a criminal. She did not suggest that she had been a victim of racial profiling.

- 23.11. On 2<sup>nd</sup> March there was a WIRED team meeting, attended by the Claimant, Oliver Hazelwood (Art Director), Mike Dent (Managing Editor) and Ben Hicks (Designer) **[1653]**.
- 23.12. On 16<sup>th</sup> March 2023 the Claimant entered Vogue House and walked through reception to the lift / stair area behind it, approaching it from the left of the reception desk. Tony Batalha went to stair / lift area from the right of the security desk to check the identity of a person that he had seen enter. On realising that it was the Claimant, he raised his hands in apology. He was some distance, probably 6 to 8 feet from the Claimant when he did this.
- 23.13. On 17<sup>th</sup> March 2023 the Claimant raised a grievance about Tony Batalha **[668]**. The Claimant described the 2<sup>nd</sup> incident on 16<sup>th</sup> March 2023 and said '*I've never been overtly racially profiled by security in 10 plus years in this industry*'. This complaint qualified as a protected act for the purposes of s27(2) **EqA**.
- 23.14. On 18<sup>th</sup> March the Claimant agreed with Sophie Palmer that her grievance should be handled informally **[1697]**.
- 23.15. On 20<sup>th</sup> March the Claimant felt that Oliver Hazelwood had duplicated one of the Claimant's tasks, essentially redoing her work **[670]**.
- 23.16. On 23<sup>rd</sup> March a meeting was arranged by Oliver Hazelwood, that, at the last minute, he asked Mike Dent (the Managing Editor) to attend, to discuss a concern raised by the Claimant that Mr Hazelwood was micro-managing her **[1699]**.
- 23.17. Following an investigation into the January and March incidents involving Mr Batalha, on 24<sup>th</sup> March, Patrick Riddell sent an apology

to the Claimant **[702]**. Mr Batalha himself sent a further apology on 27<sup>th</sup> April **[857]**. Both apologised to the Claimant for how she might have felt. Neither accepted racial profiling had occurred, nor apologised for it.

- 23.18. On 5<sup>th</sup> May 2023 the Claimant attended D&I zoom call at which she raised concerns of racial profiling and how such concerns can be raised **[Sup Bundle 51]** and **[776]**. This qualified as a protected act.
- 23.19. On 18<sup>th</sup> May 2023 the Claimant entered Vogue House via the revolving doors. Tony Batalha was side on, to her right. He did not move his body, but he did turn his head to track the Claimant's movement as she walked to the right of the reception desk. After the Claimant had moved out of sight Tony crossed reception and as he did so three women entered Vogue House. Tony can be seen twisting his body to turn and track them as they walked across the room.
- 23.20. On 22<sup>nd</sup> May 2023 the Claimant submitted a formal grievance **[818]**.
- 23.21. On 25<sup>th</sup> May the Claimant attended an initial meeting to discuss her formal grievance with Emilie Sutcliffe **[1715]**. A grievance investigation meeting was arranged.
- 23.22. On 6<sup>th</sup> June the Claimant attended a WIRED team meeting attended by Mike Dent, Oliver Hazelwood and Ben Hicks **[1732]**. The meeting had been called so that the Claimant could raise a number of issues with the management of the team and her roll that had occurred over the previous months. The meeting was not easy. It was described by Mike Dent as 'combative'.
- 23.23. On 15<sup>th</sup> June the Claimant's pension provider, Aviva, stopped the Claimant's employer contributions prematurely. This was a mistake by Aviva and not the Respondent.

- 23.24. On the same day, 15<sup>th</sup> June 2023, the Claimant attended a grievance interview. Emilie Sutcliffe (HR) and Yashica Olden (Global Chief Diversity & Inclusion Officer) attended, along with a notetaker [1760]. Ms Sutcliffe was the grievance hearing manager. Ms Olden attended to support the Claimant.
- 23.25. Of the first incident, on 31<sup>st</sup> January 2023, the Claimant said 'Walking up the stairs, chased into the hallway, into the stairwell, after the lifts. Asked 'do you work here?' Several questions like that. Got my badge out and said, 'sorry, do you need to see my badge?' The Claimant continued, 'Well, I was up the stairs kind of jogging or whatever. Chase me up. Did I mention it was my first day? I don't even think I mentioned it was my first day, but I answered the question like, 'yes, I work here' [1771].
- 23.26. Of the second incident, on 18<sup>th</sup> March 2023, the Claimant said '*So I had my earphones in because I was listening to a podcast. Tony was to my right. I heard a grunting noise. .... but just for clarity, kind of squaring of the body and a grunting noise. .... Several grunting noises. I was in disbelief. ... I'm taking out my earphones, I say to him something along the lines paraphrasing of. Not again. Like seriously, not again*' [1767].
- 23.27. Of the third incident the Claimant said [1782], '*I mentioned the third time. It wasn't a specific moment like the first two. ... he was to my right. I'm walking in. ... now when I walk in I just straight ahead, straight ahead and his eyes were following me and I could feel that in my peripheral and then as I walked forward, he turned around ... and I'm just like, this shouldn't be my normal now. .... I see the next ladies, white ladies coming through and you know, he could be familiar with them, could have a friendly relationship with them, but you know they got a warm greeting of hello*' [1782]. She added '*I know it's going to sound harsh, but I personally don't want him to be here. I don't want him to be in that front facing position anymore*'.

- 23.28. On 18<sup>th</sup> June the Claimant had mooted meeting up with Yashica Olden for coffee. No definitive meeting was arranged, and in the event they did not meet up.
- 23.29. Between 19<sup>th</sup> and 27<sup>th</sup> June Emilie Sutcliffe conducted grievance investigation interviews with Oliver Hazelwood **[884]** Tony Batalha **[886]** and Patrick Riddell **[890]**.
- 23.30. On 28<sup>th</sup> June Emilie Sutcliffe wrote to the Claimant, dismissing her grievance **[925]**. On the same day the Claimant requested the opportunity to view CCTV footage of the May incident **[930]**, which she watched the following day, on 29<sup>th</sup> June.
- 23.31. On 1<sup>st</sup> July the Claimant submitted an appeal against the dismissal of her grievance **[958]**.
- 23.32. On 11<sup>th</sup> July, as the Claimant passed through the reception of Vogue House, Tony Batalha said 'good morning' to the Claimant. The Claimant said good morning in reply, and then that she had nothing else to say to him. The Claimant reported the exchange to Rosamund Bradley, accepting that it was a trivial matter, but that she was reporting it anyway. Ms Bradley acknowledged the update. She did not take any active steps to ensure the Claimant's safety following this exchange.
- 23.33. On 17<sup>th</sup> July the Claimant was sent an exit interview from a provider used by the US office **[1055]**. It was sent to her in error. Her UK exit interview was sent to her two days later.
- 23.34. On 20<sup>th</sup> July Tony Batalha again tried to greet the Claimant as she entered. Upon receiving short shrift from the Claimant he bemoaned '*Why can't I say hello to you?*'. The Claimant replied '*not now*'.
- 23.35. On the same day, 20<sup>th</sup> July, the Claimant attended the grievance appeal meeting, which was chaired by Helen Placito. Between 21<sup>st</sup> and 24<sup>th</sup> July Ms Placito interviewed Patrick Riddell **[1055]**, Mike

Dent **[1063]**, Sophie Palmer **[1067]** and Emilie Sutcliffe **[1081]** as part of her grievance appeal investigations.

- 23.36. On 27<sup>th</sup> July, the Claimant's last physical day in the office, Ms Placito wrote to the Claimant dismissing her grievance appeal **[1109]**. The Claimant attended her exit interview at Adelphi House **[1186]** and **[Sup Bundle 123]**. On 28<sup>th</sup> July the Claimant sent a farewell message via the Slack messaging app and thanked those that made contributions to a women's shelter that she supported.
- 23.37. On 31<sup>st</sup> July the Claimant's fixed term acting photo-editor contract terminated, in anticipation of the maternity returner, Catherine Gargan-Hall, returning to work. That day Greg Williams emailed the WIRED team to thank the Claimant for her time and efforts and to wish her the best in the future **[1122]**.

## **[6] The Law**

24. The law that is relevant to the Claimant's claims and that has guided us, is as follows:
25. **Time.** All of the Claimant's claims are Equality Act claims. Section 123 **EqA** sets out the position on the applicable time limits, as follows:

### **123 Time limits**

- (1) *... 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.*
- (3) *For the purposes of this section—*
  - (a) *conduct extending over a period is to be treated as done at the end of the 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 expected to do it.*

26. The statutory time limit test in discrimination cases is whether it would be just and equitable to extend the time limit to allow the claims to proceed. The onus lies on the Claimant to seek the exercise of the Tribunal's discretion to extend the time limit. The Tribunal should consider all relevant factors including the balance of convenience and the chance of success: **Rathakrishnan v Pizza Express (Restaurants) Ltd** [2016] ICR 283, EAT.
27. The list of factors set out in s33 **Limitation Act 1980** may be of some use, as long as it is not used formulaically as a check list: **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 27. Those factors are:
- 27.1. the length of, and the reasons for, the delay on the part of the Claimant;
  - 27.2. the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the Claimant or the Respondent is or is likely to be less cogent than if the action had been brought within the time limit;
  - 27.3. the conduct of the Respondent after the cause of action arose, including the extent of responses to requests reasonably made by the Claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant to the case;
  - 27.4. the duration of any disability of the Claimant arising after the date of the accrual of the cause of action;
  - 27.5. the extent to which the Claimant acted promptly and reasonably once he knew of the act or omission of the Respondent;
  - 27.6. the steps, if any, taken by the Claimant to obtain legal or other expert advice and the nature of any such advice he may have received.
28. It is possible to run together acts constituting different types of discrimination



in order to establish conduct extending over a period, provided that as a matter of fact there is a connection between them: **Robinson v Royal Surrey County Hospital NHS Foundation Trust** [2014] UKEAT/0311/14. However, a Claimant may not run together discriminatory acts with others which are not discriminatory **South Western Ambulance Service NHS Foundation Trust v King** [2020] IRLR 168, EAT.

29. The Claimant did refer to the decisions of **Hendon v Chief Constable of Strathclyde Police** [2002] IRLR 288, EAT and **Kandola v Mirza Solicitors LLP** [2015] UKEAT 01816/14 in her submissions, however those decisions do not appear to exist.
30. **Harassment.** The Equality Act directs Tribunals to determine whether unwanted conduct is capable of amounting to harassment, and if so, uphold that claim. If not, the Tribunal can then consider whether the same conduct was detrimental, for the purposes of a direct discrimination claim. This means that any single act cannot be both an act of harassment and an act of discrimination.

## **212 General Interpretation**

- (5) *Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic.*

31. The Claimant asserts that she was subject to conduct that was related to her race and her sex which she found harassing. She has not asserted that she was subject to unwanted conduct of a sexual nature, so, in this case, sub-sections 26(2) and 26(3) do not apply. Turning to the statutory test for harassment that does apply, s26 **EgA** states:

## **26 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.*
- (4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
  - (a) *the perception of B;*
  - (b) *the other circumstances of the case;*
  - (c) *whether it is reasonable for the conduct to have that effect.*
- (5) *The relevant protected characteristics are ... race, sex;*

32. Harassment claims require 3 elements, namely (i) unwanted conduct; (ii) having the purpose or effect of either (a) violating the claimant's dignity; or (b) creating an adverse environment; (iii) which are related to the Claimant's race or sex (**Richmond Pharmacology v Dhaliwal** [2009] IRLR 336).
33. In order to decide whether the conduct has either of the proscribed effects under sub-paragraph (1)(b) a Tribunal must consider *both* whether the putative victim perceives themselves to have suffered the effect in question *and* whether it was reasonable for the conduct to be regarded as having that effect (**Reverend Canon Pemberton v Right Reverend Inwood, former acting Bishop of Southwell and Nottingham** [2018] IRLR 542, CA).
34. The requirement for the conduct to be 'related to' race or sex for harassment needs a broader enquiry than whether conduct is "because of race or religion" as is required for direct discrimination (**Bakkali v Greater Manchester Buses (South) Limited** UKEAT/0176/17).
35. To constitute unlawful harassment the unwanted and offensive conduct must be 'related to a relevant protected characteristic'. However offensive the conduct, it will not constitute harassment unless it is so related, and a tribunal that fails to engage with this point will err: **London Borough of Haringey v O'Brien** [2016] EAT 0004/16.

36. In **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam** [2020] IRLR 495, the EAT held that the question of whether conduct is ‘related to’ a protected characteristic is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it. The fact that the complainant considers that the conduct related to a particular characteristic is not necessarily determinative, nor is a finding about the motivation of the alleged harasser. Nevertheless, in any given case there must still be some feature or features of the factual matrix identified by the Tribunal which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged in the claim. Section 26 **EqA** does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the protected characteristic relied upon.
37. As to whether the conduct had harassing effect, there are subjective considerations, the Claimant’s perception, and also objective considerations, whether it was reasonable for it to have that effect. The words of section 26(1)(b) must be carefully considered. Conduct which is trivial or transitory is unlikely to be sufficient. In **Richmond Pharmacology Ltd v Dhaliwal** [2009] ICR 724) Mr. Justice Underhill noted:
- “...We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person’s dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase...”*
38. In **HM Land Registry v Grant** [2011] EWCA Civ 769, Lord Justice Elias considered the statutory expressions ‘*violating dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment*’ and concluded:

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

39. For harassment to have occurred, the person must have been aware that it had happened in order to perceive that it was harassment (**Greasley-Adams v Royal Mail** [2023] EAT 86). Therefore, if comments are made behind an employee’s back that they become aware of later on, for example because of an investigation into their grievances about other matters, to determine whether harassment has taken place, the correct approach is to look at Claimant’s perception of the situation at the date time the alleged harassing incident took place. Consequently, if the Claimant was not aware of the harassment at the time, they could not perceive that they had been harassed at the time.
40. **Discrimination.** For those acts that are not harassment, the Claimant asserts that they were acts of discrimination because of either her race or sex. Most acts relied on are self-evidently said to be because of her race (for example the racial profiling allegations) but they are also relied on as acts of sex discrimination as well. The Claimant accepts that s14 **EqA** which deals with ‘combined discrimination: dual characteristics’ (ie sex and race together) remains prospective, in other words the section has never come into force and cannot be relied on now.
41. Where there is more than one reason put forward for the alleged treatment it must be a significant factor, being more than trivial (**Barton v Investec Henderson Crosthwaite Securities limited** [2003] IRLR 332). The characteristic needs to be a substantial or effective cause of the discriminatory treatment, but doesn’t need to be the sole or intended cause of it (**R v Commission for Racial Equality, ex parte, Westminster City Council** [1984] IRLR 230). We have to determine, if there was more than one reason for the treatment, what the predominant reason was. Only the predominant reason can sustain a claim. The Tribunal did ask the Claimant to work through her complaints and say whether she considered the predominant reason for

each act to have been her race or sex. The Claimant did attempt this exercise, but abandoned it, asking the Tribunal to make its own Judgment on the predominant reason for each act.

42. Sections 13 and 39 of the **EgA** deals with direct discrimination. It states:

**13 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.*

**39 Employees and Applicants**

- (2) *An employer (A) must not discriminate against an employee of A's (B)—*  
 (a) *as to B's terms of employment;*  
 (b) *in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*  
 (c) *by dismissing B;*  
 (d) *by subjecting B to any other detriment.*

43. The Claimant bears the initial burden of proof (**Ayodele v Citylink Limited** [2017] EWCA Civ. 1913). Unreasonable behaviour of itself is not evidence of discrimination (**Bahl v The Law Society** [2004] IRLR 799).

44. The **Equality Act 2010** sets out how Tribunals should approach the burden of proof when assessing whether complaints of detrimental treatment amount to acts of discrimination. S136 **EgA** states:

**136 Burden of proof**

- (1) *This section applies to any proceedings relating to a contravention of this Act.*  
 (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*  
 (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

45. The burden of proof does not shift to the Respondent simply on the Claimant establishing a protected act and unfavourable treatment. Those bare facts

only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that the Respondent had committed an unlawful act of discrimination (**Madarassy v Nomura International Plc** [2007] IRLR 246 CA). 'Could conclude' must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the Claimant in support of the allegations of discrimination. It would also include evidence adduced by the Respondent contesting the complaint. The tribunal needs to consider all the evidence relevant to the discrimination complaint, ie whether the detrimental acts complained of occurred at all, and any available evidence of the reasons for the unfavourable treatment. If the tribunal 'are satisfied that the reason given by an employer is a genuine one and does not disclose either conscious or unconscious discrimination then that is an end to the matter.' **Laing v Manchester City Council** 2006 ICR 1519.

46. The comparison in direct discrimination cases must be a comparison focusing on the individual claiming to have been discriminated against (**Her Majesty's Chief Inspector of Education, Children's Services and Skills v Interim Executive Board of C School** [2017] EWCA Civ 1426). There are two aspects to direct discrimination that must be considered by the Tribunal. One is less favourable treatment and the other is the reason for it. Whether less favourable treatment is proven requires a comparison to a suitable comparator. There is a general requirement that there be no material difference between the people being compared either actually or hypothetically.
47. In every case the tribunal has to determine the reason why the Claimant was discriminated against. **Nagarajan v London Regional Transport** [1999] IRLR 572 at 575, HL. Lord Nicholls stated '*this is the crucial question*'. It is for the Claimant to prove the facts from which the Tribunal could conclude an unlawful act of discrimination, ie that the alleged discriminator has treated them unfavourably and did so on grounds of the protected act (**Igen Ltd & Others v Wong** [2005] IRLR 258 CA).

48. The explanation for the unfavourable treatment does not have to be a reasonable one; it may be that the employer has treated the Claimant unreasonably. The mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination (**London Borough of Islington v Ladele** [2009] IRLR 154). The Tribunal is to assess not merely whether the Respondent has proved an explanation but that it is adequate to discharge the burden of proof on the balance of probabilities that the protected act was not a ground for the treatment in question. For direct discrimination to have occurred the protected characteristic must have had at least a 'significant influence' (in the sense that it is more than trivial) on the decision to act in the manner complained of **Gould v St John's Downshire Hill** 2021 ICR, EAT.

49. **Victimisation.** The **Equality Act 2010** sets out the law in respect of victimisation in s27 **EgA**, as follows:

**27 Victimisation**

- (1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*
  - (a) *B does a protected act, or*
  - (b) *A believes that B has done, or may do, a protected act.*
- (2) *Each of the following is a protected act—*
  - (a) *bringing proceedings under this Act;*
  - (b) *giving evidence or information in connection with proceedings under this Act;*
  - (c) *doing any other thing for the purposes of or in connection with this Act;*
  - (d) *making an allegation (whether or not express) that A or another person has contravened this Act.*
- (3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

50. The starting point is that there must be a clear allegation amounting to a protected act. The employee must be subjected to a detriment, ie placed at a disadvantage. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment (**Shamoon v Chief Constable of the Royal Ulster**

**Constabulary** [2003] ICR 337 HL). The detriment relied upon by the Claimant, must be linked to the protected act.

51. A protected act must be a complaint that the **EqA** has been contravened, in other words a complaint of discrimination (in this case race and sex discrimination)( **Khan v Trident Safeguards Ltd** [2003] EWCA Civ 1239 CA). The primary object of the victimisation provision is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights or are intending to do so (Lord Nicholls in **Chief Constable of the West Yorkshire Police v Khan** [2001] IRLR 830 at paragraph 16).
52. It is for the Claimant to prove the fact of the incidents of unfavourable or detrimental treatment said to have occurred. It is for the Claimant to prove that the reason for the incidents or unfavourable or detrimental treatment was because she had raised a discrimination complaint. Causation is central to this determination. Lord Justice Slade held in **Aziz v Trinity Street Taxis Ltd** [1988] IRLR 204: *"If the necessary causal link is to be established, it must be shown that the very fact that the protected act was done by the complainant 'under or by reference to' that legislation [the EqA], influenced the alleged discriminator in his unfavourable treatment of the complainant"*.
53. It is necessary for the Claimant to prove that the alleged victimiser knew of the protected act (**South London Healthcare NHS Trust v Al-Rubeyi** [2010] UKEAT/0269/09).

## **[7] Our Conclusions**

54. We now turn to our conclusions on the various claims and the List of Issues that we have been tasked to resolve.



**Protected Acts s27 EqA**

55. We elected to determine at the outset which of the alleged protected acts the Claimant relied qualified for the protection offered by s27 **EqA**. In every case the Claimant relied on s27(d) **EqA**, that she had made an allegation (whether or not express) that a person had contravened the **EqA**, in other words she had made an allegation of discriminatory conduct. We did this in two stages. For each of the 18 alleged complaints we:

55.1. determined whether the complaint occurred, or occurred in the way the Claimant asserts; then,

55.2. determined whether the complaint made an allegation of discrimination (ie had contravened the **EqA**).

56. I invited Mr Holloway to confirm whether the Respondent accepted that any of the alleged acts qualified for protection and to identify those acts which the Respondent disputed. He did that on the morning of 4<sup>th</sup> June 2025, being day 3 of the hearing. Taking into consideration the concessions made by the Respondent (but not in every case, adopting them) we determined that the following alleged protected acts did happen as the Claimant asserts and did qualify for the protection of s27(2)(d) **EqA**:

56.1. **PA3**. The Respondent accepts that this complaint made to Mike Dent on 16<sup>th</sup> March 2023 qualifies under s27(2)(d) **EqA**. Mike Dent confirmed that the Claimant had told him that Tony Batalha had racially profiled her as she entered Vogue House **[MD30]**. This act is in effect from 16<sup>th</sup> March 2023.

56.2. **PA4**. On 17<sup>th</sup> March 2023 the Claimant emailed People Support to say that Tony Batalha had racially profiled her again **[668]**. This is a complaint about discrimination and it qualifies under s27(2)(d) **EqA**. Sophie Palmer replied on behalf of People Support.

56.3. **PA7**. There was a D&I meeting held over Zoom on 5<sup>th</sup> May 2023 attended by the Claimant **[774-776]**. We have listened to a clip from

D&I zoom call in which the Claimant asks how employees can raise race concerns regarding being racially profiled by security guard and how they can raise this without repercussions. This qualifies for the protection offered by s27(2)(d) **EqA**.

- 56.4. **PA15iii** The Respondent disputed that this qualified, however we consider that it does qualify as a protected act. This is the report 20<sup>th</sup> July 2023 to Ross Bradley **[1030]**. It refers to racial profiling and we consider that it does raise a complaint of conduct that contravenes the **EqA**. **PA15iii** qualifies.
- 56.5. **PA16**. The Claimant raised a formal appeal against the dismissal of her grievance on 1<sup>st</sup> July 2023 **[958-960]**. It raised concerns over the mishandling of the investigation. This plainly raises a race complaint and qualifies under the Act.
57. The earliest protected act occurred on **16<sup>th</sup> March 2023**. This means that any detriment said to have occurred prior to that date must fail and be dismissed as a victimisation claim.
58. We determined that the following alleged protected acts relied on by the Claimant did not qualify for protection under the Act:
- 58.1. **PA1**. The Claimant asserts that she told Oliver Hazelwood about Tony Batalha's conduct after his return from annual leave in February **[JR15-16]**. The Claimant could not be specific on dates. She asserted that she spoke to him and said that she had been racially profiled. Mr Hazelwood recalls the conversation. He said that the Claimant had felt uncomfortable and '*like a criminal*' **[OH21]**. He says there was no reference to race. On balance, we accept Mr Hazelwood's account that race was not mentioned. Simply because a black person reports that they felt like a criminal cannot be a protected act. That is not a complaint about discrimination. A recipient of it would be making a discriminatory assumption if they assumed that it was. **PA1** fails.

- 58.2. **PA2.** The Claimant relies on a Team meeting which occurred on 2<sup>nd</sup> March 2023, involving herself, Oliver Hazelwood, Mike Dent and Jeremy White [1653]. We have had the benefit of a covert recording made of that meeting by the Claimant. Having listened to that recording it is clear that there is no complaint about discrimination raised by the Claimant. **PA2** fails.
- 58.3. **PA5** The Claimant relies on a Team meeting which occurred on 23<sup>rd</sup> March 2023, involving herself, Oliver Hazelwood and Mike Dent [1699]. We have had the benefit of a covert recording made of that meeting by the Claimant. Having listened to that recording it is clear that there is no complaint about discrimination raised by the Claimant. A complaint about micromanaging. **PA5** fails.
- 58.4. **PA6** This is the formal grievance 22<sup>nd</sup> May 2023 to Sophie Palmer. The Respondent accepted this as a qualifying Protected Act, however, we can find nothing within it that can fairly be described as a complaint or allegation that Tony Batalha has contravened the **EqA**. She described how Mr Batalha *'squared up, his face was stern, angry looking, head rotating following my every step'*. In our Judgment **PA6** does not qualify as a protected act.
- 58.5. **PA8** This is the grievance interview with Emilie Sutcliffe on 25<sup>th</sup> May 2023 [1715]. We have had the benefit of another covert recording taken of this meeting. The Claimant did not raise a complaint about discrimination. **PA8** fails.
- 58.6. **PA9** This is the Claimant's request for CCTV footage of the Tony Batalha incidents. The requests themselves did not amount to a complaint or allegation that a person has contravened the **EqA**. **PA9** fails.
- 58.7. **PA10** The List of Issues describes this as an email, but it is in fact a

Slack messaging app exchange [1437]. JR complains about 'infantilising' (treating someone as a child or in a way that denies their maturity) which would be detrimental treatment, however there is nothing within the exchange suggests a discriminatory motive or reason for it. **PA10** fails.

58.8. **PA11** This refers to the last Team Meeting attended by the Claimant on 6<sup>th</sup> June with Ben Hicks and Mike Dent [1723]. We have had the benefit of a covert recording. There was no complaint about discrimination raised by the Claimant. **PA11** fails.

58.9. **PA12** This is the Claimant's request for misogynoir literature from Emilie Sutcliffe on 19<sup>th</sup> June 2023, which Ms Sutcliffe recalled in her statement [ES35]. The request is not a complaint about discrimination. **PA12** fails.

58.10. **PA13** In making her case for PA13, the Claimant refers to concerns raised with both Emilie Sutcliffe [806] and Rosamund Bradley [1029]. The list of issues did not provide adequate detail of the actual complaints made. In the concerns identified above the Claimant asks for an acceptable apology and bemoans that she has not had one. These emails do not raise a complaint about discrimination and **PA13** fails.

58.11. **PA14** In making her case for PA14, the Claimant refers to concerns raised with Emilie Sutcliffe, Rosamund Bradley, Sophie Palmer and Yashica Olden about the mishandling of her grievance investigation on 8 separate dates. No actual details are provided about any complaint. [1029]. The Tribunal cannot be asked to look at communications with 4 separate people over 8 separate dates, read each one and look to see if it is the conversation that the Claimant refers to in this alleged protected act. We consider that the Claimant has failed to establish that a race complaint was made on any of those possible communications. **PA14** fails.

58.12. **PA 15i** This relates to the Claimant's email dated 22<sup>nd</sup> May 2023 to Sophie Palmer [804]. The Respondent conceded that this email qualified, however we do not consider that this email, as read, raises an allegation that a person has contravened the **EgA**. It talks of a person feeling intimidated by the actions of a security guard, but this is not sufficient to qualify. **PA15i** fails.

58.13. **PA15ii** This relates to a report made to Ross Bradley on 11<sup>th</sup> July 2023 in which the Claimant reports that Tony Batalha said 'good morning' to her, adding '*I have to report every encounter with Tony, no matter how trivial*'. [1029]. This discloses no complaint of discrimination. **PA15ii** fails.

59. Having established the qualifying protected acts, we have considered each of the 39 factual complaints relied by the Claimant. We have structured our analysis in the following way:

59.1. To determine as a matter of fact which of the 39 acts of detriment/conduct relied on by the Claimant occurred and/or occurred in the way that she said they did, dismissing those that we rejected;

59.2. To determine for all remaining acts whether they were related to the Claimant's race, and if so then consider whether they satisfied the test for harassment set out in s26 **Equality Act 2020**;

59.3. To determine for all remaining acts whether they were related to the Claimant's sex, and if so, then consider whether they satisfied the test for harassment set out in s26 **Equality Act 2020**;

59.4. To determine for all remaining acts whether they were because of the Claimant's race and/or her sex, and if so consider how an appropriate comparator either was or would have been treated and then whether those facts satisfied the test for direct discrimination set out in s13 **Equality Act 2020**;

59.5. To determine which of the Claimant's complaints took place and qualified as protected acts, as defined in s27(2) **Equality Act 2020**;

- 59.6. To determine which of the 39 alleged acts of detriment occurred because of the identified protected acts.
60. **Time.** The parties agreed that the 'out of time' date is 28<sup>th</sup> April 2023 [**Sup Bundle 173**]. The Claimant notified ACAS of a dispute on 28<sup>th</sup> July 2023 and received her Early Conciliation certificate on 31<sup>st</sup> July 2023 [**1**]. She presented her Claim Form within a month, on 22<sup>nd</sup> August 2023 [**2**]. To calculate the 'out of time' date it is necessary to go back three months, less one day, from the ACAS notification. Accordingly the correct 'out of time' date is **29<sup>th</sup> April 2023**, being three months, less one day, from the ACAS notification on 28<sup>th</sup> July 2023.
61. In the circumstances, the alleged acts of unwanted or detrimental conduct that occurred prior to **29<sup>th</sup> April 2023** are out of time unless we consider them to be part of the same single act of discrimination that ended after that date, or unless we extended the relevant time limit having concluded that it was just and equitable to do so. As such the following complaints are out of time unless part of a single act or extended on just and equitable grounds:
- 61.1. Issue 1 (31<sup>st</sup> January 2023);
  - 61.2. Issue 2 (16<sup>th</sup> March 2023);
  - 61.3. Issue 5 (February 2023);
  - 61.4. Issue 6 (March 2023);
  - 61.5. Issue 7 (27<sup>th</sup> March 2023);
  - 61.6. Issue 10 (17<sup>th</sup> March 2023);
  - 61.7. Issue 12 (25<sup>th</sup> April 2023);
  - 61.8. Issue 16 (March 2023);
  - 61.9. Issue 32 (19<sup>th</sup> April 2023).
62. All of the other detriments / unwanted conduct allegations were presented in time (namely Issues 3, 4, 8, 9, 11, 13 to 15, 17 to 31 and 33 to 39). For those issues that are out of time, we have considered the 'single act' and 'just and equitable extension' points at the same time as our overall conclusions on those matters.

63. Broadly (and this is subject to our conclusions on each individual issue) we identified the following two sets of issues to be part of a single act of discrimination:
- 63.1. Issues 1 and 2: these were complaints against Tony Batahla, which we considered to be part of the same single act of discrimination as later complaints against Tony Batahla which were presented in time;
  - 63.2. Issues 6, 7: these were complaints against Mr Dent, Mr Hazelwood and Mr Hicks about their management of the Claimant in her role as acting photo-editor, which we considered to be part of the same single act of discrimination as later complaints against Mr Dent, Mr Hazelwood and Mr Hicks about their management of the Claimant in her role as acting photo-editor which were presented in time.
  - 63.3. Issue 32: the two apologies made by Tony Batahla.
64. Before turning to the specific allegations relied on, it is necessary to set out our position on the Claimant's chosen actual comparators. For the most part the actual comparators chosen were misconceived and accordingly must fail. The Claimant's comparator can be actual or hypothetical. In either case the identified comparator must be in the 'same or not materially different circumstances' to the Claimant, save for not being black and not being female. In many cases the Claimant's chosen actual comparator was either black or female, thus they shared the same characteristic as the Claimant (and therefore cannot be a comparator for that characteristic) or they were plainly in different circumstances to the Claimant. By way of example, for issues 1 and 2 the Claimant asked that we consider Anna Wintour as a comparator for her claims of racial profiling against Tony Batalha. However, we consider that it is nonsense to suggest that, in terms of being recognised, an acting Photo Editor providing maternity cover, could ever be said to be in the same circumstances as arguably the most famous magazine Editor in the world.
65. Wherever we dismissed the actual comparator relied on we went on to consider whether a hypothetical comparator would have been treated more favourably. We consider that the correct definition of the hypothetical

comparator would be *'an acting Photo Editor at WIRED magazine, providing 6 months maternity cover, who was not black or female'* (as the case may be).

66. It is also necessary to observe that we asked the Claimant to work through her list of 39 allegations and identify any that she asserted were either related to or because of either her race or sex. The Claimant began this process but then declined to continue it. She asserted that her treatment was because she was black *and* female, in other words a combined characteristic of the type anticipated by s14 **EqA**. The Claimant was told that s14 was prospective, ie not in force. At that point she asked the Tribunal to determine the predominant purpose for each act was race or sex. Very little was put forward by the Claimant to support the assertion that she was either harassed or discriminated against for being female. This was compounded in that, in most cases, the Claimant relied on a female comparator.
67. Finally, before turning to our conclusions, we consider it necessary to state out position on the 7 separate transcripts of meetings that the Claimant covertly recorded. We concluded that they were an accurate record of the meetings, and to that extent we were grateful for their inclusion in the bundle. However we do note that the honest thing to have done at the beginning of the meeting would have been to say that the Claimant intended to record the meeting. Every participant would then have proceeded on an equal footing. The Claimant did not do that. All of the meeting recordings were covertly taken. We consider that covertly recording a meeting is tainted by dishonesty. The Claimant may well have considered that the Respondent would not have allowed a recording if they had been told about, and that it is easier to ask forgiveness than it is to ask for permission. For this reason we have not concluded that the Claimant was inherently dishonest, either at the time or when giving evidence before us, but on occasions where we had to determine who had the better recollection of an event, we did consider the Claimant's strength of feeling and that covertly recording a meeting is evidence, at the very least, of a capacity to deceive others.



68. Turning to the allegations of unwanted conduct / detrimental treatment, our analysis is as follows:
69. **[Issue 1] By Tony Batalha on 31 January 2023, stopped the Claimant from entering Vogue House on her way to the office. Comparators: Edward Enninfu (sex), Anna Wintour (race), Peter Guest (contract worker hired shortly before the Claimant, race or sex), Oliver Hazelwood, Claimant's manager (race or sex).**
- 69.1. Did it happen? This incident did happen. We accept the Claimant's account that as she moved quickly through reception and upstairs, Tony Batalha followed after, at speed to ask if the Claimant worked in the building. The Claimant showed her pass and Tony Batalha allowed her to continue. We consider that being stopped by a security guard on entering a building is capable of being both unwanted conduct and detrimental treatment.
- 69.2. Was it related to the Claimant's race? We do not consider that a new employee, on their first day, being asked to confirm that they worked in the building by a security guard that had not seen them before was in any way related to the Claimant's race. We consider it to be exactly the conduct an organisation would expect from its security guards. We cannot discern any feature or features of the factual matrix which could properly lead us to the conclusion that the conduct in question is related to the Claimant's race.
- 69.3. Was it related to the Claimant's sex? There was no basis at all for concluding that the conduct was related to sex.
- 69.4. Was it because of the Claimant's sex or race? We do not consider that the Claimant has proved facts from which we could conclude that the treatment was because of the Claimant's sex or race. We accept that a security guard would challenge an employee not seen before, who, on the Claimant's own evidence, passed quickly through reception. Not because of race. Not because of sex. The Claimant relies on Edward Enninfu as an actual comparator for her sex discrimination claim, but

he had also been stopped on entering the building and Anna Wintour as an actual comparator for her race discrimination claim. Ms Wintour is a very well known Fashion Editor and to suggest that she is in the same circumstances as an acting Photo Editor attending work on her first day is misconceived.

69.5. Was it because the Claimant did a protected act? No. This incident predated the 1<sup>st</sup> qualifying protected act. It could not have been caused by it.

69.6. This allegation was presented out of time. It occurred prior to 29<sup>th</sup> April 2023. We would have considered the Tony Batalha complaints to have been part of a single act of discrimination. As the last incident involving him occurred after 29<sup>th</sup> April 2023 we would have considered the complaint to have been presented in time, had we upheld it.

69.7. Issue 1 fails and is dismissed.

**70. [Issue 2] By Tony Batalha on 16th March 2023, stopped the Claimant from entering Vogue House on her way to the office. Same comparators.**

70.1. Did it happen? We accept the Claimant's broad account of this incident, but not the detail that Tony Batalha had squared up to the Claimant (suggesting a prelude to a physical confrontation). On the balance of probabilities we also reject the Claimant's evidence that Mr Batalha grunted at her, in the aggressive way that she described. In her statement the Claimant says **[JR61]**:

*'Tony, appeared to the right. He made a grunting noise to stop me and adjusted his stance to square his shoulders and stand taller. It felt like a hostile stance of intimidation used to scare people, like a man getting ready to fight.'*

70.2. The Claimant then described a scene from a Netflix drama called Adolescence in which a boy, accused of murder, suddenly lunges towards a seated woman interviewing him and emits a loud and sharp 'Ahh' sound, which made the woman flinch back in surprise and

intimidation. She provided a video of that scene to the Tribunal. She asserted that the sound Mr Batalha made was similar in its volume and intimidatory intent. In her statement she compared the sound made in the Netflix drama to the sound she says was made by Tony. She continued:

*'In an effort to show dominance and elicit a fear response [the character] squares up and grunts at the woman in front of him. Only Tony's grunts were more gorilla like and more drawn out in a lower tone. ... This was clearly an insecure power move trope I was unfamiliar with.'*

70.3. We can't be sure that no sound was made at all, but having watched the Adolsence clip provided by the Claimant, and noting the distance between Tony Batalha and the Claimant and the raising of his hands in apology upon recognition, we consider it very unlikely that Tony acted in the same intimidatory way as the boy did in the drama, or made a similarly intimidatory sound. We are driven to conclude that the Claimant has sought to exaggerate this incident in an impermissible way. We prefer the description of it given by Patrick Riddell after he had viewed the CCTV of this incident **[PR21]**. He describes how Tony Batalha, on the right of reception, caught sight of someone walking at pace to the left of reception and that he went to the right to check who they were. Mr Riddell describes what he saw on the CCTV:

*'I could always see Tony. He said something to [the Claimant] and put his hand to his face. The interaction lasted only seconds. He remained in shot on camera throughout. He did not physically block her, stop her, or square up to her and although I could not see her, I could see enough of a gap in front of him to know that there was some distance between them'.*

70.4. Mr Riddell surmised that when Mr Batalha recognised the Claimant he held up his hands in apology.

70.5. Was it related to the Claimant's race or sex? We do not consider that this incident was related to the Claimant's race or sex. There is no evidential basis for making that conclusion. We conclude that it was

related to a security concern and ensuring that all visitors to Vogue House had a legitimate reason to be there. Even had it been related to either race or sex, we consider, taking all of the relevant factors into account including the security concerns that it had neither the purpose of effect of harassing the Claimant.

- 70.6. Was it because of the Claimant's sex or race? We do not consider that it was. We consider that it was because Mr Batalha had seen someone pass at speed but not who, he had walked around to see that person, and then held his hands up in apology when he saw that the person was the Claimant. For the reasons stated in Issue 1 the comparators of Mr Enniful and Ms Wintour are misconceived and we consider a hypothetical comparator would have been treated in exactly the same way.
- 70.7. Was it because the Claimant did a protected act? No. This incident predated the 1<sup>st</sup> qualifying protected act. It could not have been caused by it.
- 70.8. This allegation was presented out of time. It occurred prior to 29<sup>th</sup> April 2023, however, for the reasons stated in Issue 1 we would have considered it be part of the same continuing act that continued until May, and thus in time.
- 70.9. Issue 2 fails and is dismissed.

**71. [Issue 3] By Tony Batalha on 18th May 2023, harassed or intimidated the Claimant. Comparator: Edward Enniful (sex), hypothetical (race).**

- 71.1. Did it happen? For this incident, CCTV was available at the time and available for us in Tribunal. This incident refers to an occasion when, from at least 3 different camera angles, the Claimant can be seen entering the building with Mr Batalha to her right, side on. As is her style, the Claimant was walking at pace. It is clear that for the whole of the time that it took the Claimant to walk from the revolving doors to the stairs behind reception, that Mr Batalha did not move or turn his shoulders or square up to the Claimant, but he did watch her as she

passed him, turning his head to do so. His expression was neutral. He did not smile or otherwise express friendship. At the point that the Claimant reached the back of the reception desk she turned and stared back at Mr Batalha, before disappearing from view. All most immediately after the Claimant had passed, Mr Batalha crossed over to the other side of the reception. As he did so three women entered via the revolving doors and Tony can be seen twisting his head to follow their progression across the room. Right at the end of the video Tony can be seen breaking into a smile, suggesting some sort of recognition with one of the women.

- 71.2. Was it related to the Claimant's race or her sex? There is absolutely nothing before us to indicate or support a finding that turning to track a new arrival's progression across reception was related to the Claimant's race or her sex. It is exactly what we would expect a security guard to do as part of the proper fulfilment of his duties.
- 71.3. Was it because of the Claimant's sex or race? We reject the assertion that Tony's turning of his head to watch the Claimant was because of her sex. We say this with confidence because he did exactly the same thing to the three women that followed immediately afterwards. The Claimant relies on Edward Enniful, being a man that she says was treated better than she was, but Mr Enniful was stopped and asked to use the delivery entrance, which on any analysis is worse treatment. As a comparator he fails. We do not consider that the Claimant has adduced facts from which we could conclude that Tony Batalha's act of turning his head to watch the Claimant as she walked across reception was because of her race.
- 71.4. Was it because the Claimant did a protected act? Protected Acts 3 (the complaint to Mike Dent on 16<sup>th</sup> March), 4 (the complaint to people support on 17<sup>th</sup> March about racial profiling) and 7 (the D&I meeting on 5<sup>th</sup> May) had all occurred by the date of this incident. We determine that Tony Batalha, as at 18<sup>th</sup> May, would have known of the protected acts 3 and 7 (Oliver Hazelwood had spoken to Tony about 3, and Peter Riddell had spoken to Tony about protected act 7). We have no evidence to conclude that he was aware of the D&I zoom call. Mr

Batalha was watching people as they came in; this was not due to any prior protected act. On balance we do not accept that the act of Tony Batalha turning his watch to the Claimant as she crossed reception was done because of protected acts 3 and 4. It was exactly what we would expect a security guard to do. We do not consider that it was unfavourable treatment. There was no squaring up or turning of the body or anything to suggest he made a sound.

71.5. Issue 3 was presented in time.

71.6. Issue 3 fails and is dismissed.

**72. [Issue 4] By Tony Batalha on 11 July and on 20th July 2023, harassed and intimidated the Claimant. Same comparators.**

72.1. Did it happen? This allegation refers to two incidents. The first happened on 11<sup>th</sup> July. Tony Batalha said 'hello' to the Claimant. In her witness statement the Claimant **[JR289]** says that she said 'good morning' and then '*That's all I have to say to you. Have a good morning*'. We consider that for the Claimant to describe this incident, in which Tony Batalha said 'hello' to her as she entered Vogue House, as harassing and intimidatory does her very little credit indeed. At the time she put it to Rosamund Bradley in the following way **[1030]** '*This may seem trivial, but Tony now says hello. ... I do not feel comfortable engaging with him in any way.*' There is no suggestion to Ms Bradley that she found being greeted with 'hello' as harassing and intimidatory, she simply said that it was her preference not to have to engage with Mr Batalha at all.

72.2. Was it related to the Claimant's race or sex? There is absolutely nothing before us that could lead us to conclude that Mr Batalha saying hello to the Claimant was related to either her sex or race. We consider it more likely that Mr Batalha, having by that point apologised to the Claimant in writing **[857]** was simply trying to build bridges or move on. We consider that saying hello did not have the purpose of harassing the Claimant and taking into account all of the circumstances, including

the Claimant's account of the incident to Ms Bradley, it did not have that effect either.

- 72.3. Was it because of the Claimant's sex or race? The Claimant has failed to adduce any facts from which we could conclude that Mr Batalha said hello because the Claimant was black or female. This allegation is simply misconceived as an incidence of discrimination. There was nothing remotely unfavourable about it. There is no basis for asserting that this was worse treatment than any comparator relied on, either actual or hypothetical.
- 72.4. Was it because the Claimant did a protected act? We conclude that Tony Batalha probably was trying to rebuild his relationship with the Claimant, and to that extent saying 'hello' may have been because he had been aware that the Claimant had raised concerns, for which he had apologised. However there was nothing detrimental or less favourable about it.
- 72.5. Issue 4 was presented in time.
- 72.6. The 11<sup>th</sup> July incident within **Issue 4** fails and is dismissed.
- 72.7. Turning to the second part of this issue: the incident on 20<sup>th</sup> July. On this occasion, having been given short shrift by the Claimant for saying hello, Tony Batalha tried again and said hello. The Claimant told us **[JR295]** that she replied '*not now*'. We consider this to be a curt and unfriendly reply. It caused Tony to ask '*why can't I say hello to you?*' We consider this to be a direct response to the Claimant somewhat bluntly telling Tony that she had nothing else to say to him. We consider that the Claimant was being hostile in her reply. Tony did reply in those terms, but we consider that it was related to how the Claimant was treating him and was not related to her race or her sex. We do not consider Tony's, we think exasperated question, to have had the purpose of being harassing in nature, nor do we think, given the surrounding circumstances, did it have that effect. If anything the Claimant was showing hostility which he may well have found intimidating.
- 72.8. The comment was not because of the Claimant's sex or race and we

do not consider it to have amounted to less favourable treatment. We think any hypothetical comparator, treating Tony as the Claimant was at that time, would have had the same question asked of them.

72.9. We consider that Tony said ‘good morning’ in an attempt to repair the relationship, and this was as a result of the protected acts 3 and 7. After his attempts were rebuffed he asked the question. The comment on 20th July was not said because of any protected act, it was said because of the Claimant’s hostility to Mr Batalha.

72.10. The 20<sup>th</sup> July incident part of **Issue 4** fails and is dismissed.

73. **[Issue 5] Oliver Hazelwood giving a false account of how the Claimant reported Tony Batalha’s treatment of her on 31st January 2023 and how he responded in (a) February 2023 and on (b) 19th June 2023. Comparison with his treatment of the accounts given by Ben Hinks and Tony Batalha.**

73.1. Did it happen? The Claimant accuses Oliver Hazelwood of giving a false version of the events involving Mr Batalha in a grievance interview with Emilie Sutcliffe on 19<sup>th</sup> June 2023 [884]. He confirmed that the Claimant had told him that Tony had approached her and asked if she worked there and that had made her feel uncomfortable. Mr Hazelwood apologised for that and said he would speak to Mike Dent and Tony. He then did speak to Tony and recounted to Ms Sutcliffe what he said ‘*Did you meet Joanna the other day? She’s new and working with me*’. There is nothing about that account which is false.

73.2. In his witness statement Mr Hazelwood provides more detail of the account given to him by the Claimant. He recalled that she said she had been made to feel like a criminal. This detail had not been provided to Ms Sutcliffe, but there is a difference between the level of detail a person might be expected to include when asked if he could recall in incident when an employee was stopped by security and a witness statement for Tribunal litigation. We consider that the account given to Ms Sutcliffe was an honest account which contained no falsehoods.



This allegation fails on its facts.

73.3. We consider Mr Hazelwood's response to being told of the January incident by the Claimant in February to be appropriate. We find that the Claimant did say that she felt like a criminal (as anyone stopped by security might feel) but that she did not mention race or racial profiling. It would be discriminatory to assume that if a black person says they felt like a criminal that it must be a race complaint that they are making. Given that this was not a race complaint, Mr Hazelwood's reaction of apologising to the Claimant that she felt that way and saying he would raise it with Mike Dent and Tony, and then doing so, was appropriate. This part of the allegation fails on its facts.

73.4. There is no evidential basis to support the contention that Mr Hazelwood's reaction in February was related to the Claimant's race or sex. The incident was not so described by the Claimant. Mr Hazelwood apologised and told Tony that the Claimant worked with him. Neither act was because of the Claimant's sex or race and neither act amounted to a detriment.

73.5. The allegations of an inappropriate response in February was presented two months out of time (occurring prior to 29<sup>th</sup> April 2023). We do not consider this incident to be part of a continuing single act. It is standalone. It is not part of the day to day management of the Claimant. Had we upheld this complaint, we would not have extended time by the necessary two months to include it. Our rationale for not doing so is as follows:

73.5.1. The delay on this issue is two months. The Claimant is extremely capable with a good understanding of her rights and the means of enforcing them;

73.5.2. It is her case that race was a factor in Tony's treatment of her, such that she knew of a potential race claim since her first day in employment. There is no or no adequate explanation for the delay in presenting his claim.

73.5.3. This was a memory sensitive allegation. Whilst it is difficult to conclude that memories would have been adversely affected,

we take general note that any person's recollection of an event that was not noteworthy at the time would be or would be likely to be diminished or degraded over time, including a two month delay.

73.5.4. There is no allegation of suggestion that the Respondent has refused requests for information or acted in any way once the litigation had been commenced to justify an extension of time on just and equitable grounds.

73.5.5. There is no suggestion of any disability which impaired the Claimant's ability to pursue her claim. As we have found the Claimant struck as intelligent, determined, live to the possibility of discrimination and well informed, throughout.

73.5.6. The Claimant did not act as promptly as she could have done. This particular issue was not raised as a claim until 5 months after the event.

73.5.7. There is no suggestion that the Claimant was unable to research the legal position. Her written submissions do demonstrate some skill in this area. There is no suggestion that she was misled by any incorrect advice received.

73.6. Issue 5 fails and is dismissed.

**74. [Issue 6] Ben Hinks and Oliver Hazelwood and Mike Dent providing the Claimant with misleading information about Respondent's procedures such as photo credits and photographers contracts, matters the Claimant discussed with Mike Dent, Oliver Hazelwood and Ben Hinks at meeting on 2nd March 2023 was preferred to hers.**

74.1. Did it happen? This allegation relates to the process of checking whether a photographer is credited with taking a photograph that is published. The process was explained to the Claimant and she was given access to Journal Browser to check. It is not clear how the Claimant was misled in the explanation of this process and/or how Ben

Hicks' account was preferred over hers. The Claimant's closing submissions does not make this clear. This allegation has not been made out on its facts.

- 74.2. The Claimant was new to the Respondent and it is to be expected that its processes would require some time to understand and adopt. This was not an easy process and the Claimant did not seamlessly adopt them. This lead to discussions between the Claimant, Oliver Hazelwood and Ben Hicks as to the best way forward, for example the Slack exchange between the Claimant and Ben Hicks on 10<sup>th</sup> February [514]. We reject the characterization now that these discussions were related in any way to the Claimant's race or her sex, and/or that they amounted to detrimental treatment because of either her sex or race. No actual comparators are relied on for this issue. We consider that a hypothetical acting photo-editor being new to the Respondent's processes, that was male and/or white, would have encountered the same issues and they would have been dealt with in the same way.
- 74.3. Was it because the Claimant did a protected act? No. This incident predated the 1<sup>st</sup> qualifying protected act. It could not have been caused by it.
- 74.4. This allegation was presented out of time. It occurred prior to 29<sup>th</sup> April 2023. We consider this allegation to be the first of a number of allegations relating to how Mr Dent, Mr Hazelwood and Mr Hicks had managed the Claimant in her role as acting photo-editor. Had we upheld this issue, and others of the same 'management' type, ie concerns over how the job was done and the resolution of those concerns, we would have considered those concerns to be part of a single act of discrimination and allowed them to proceed.
- 74.5. Issue 6 fails and is dismissed.

75. **[Issue 7] On 23rd March 2023, Oliver Hazelwood calling a meeting to discuss the Claimant's accusation of micromanagement. The Claimant was not notified of Mike Dent's attendance. Compare Ben Hinks.**

- 75.1. Did it happen? The allegation is made out on its facts, as Oliver Hazelwood did call a meeting to discuss an accusation made by the Claimant that he was micro-managing her. The accusation had been made after Mr Hazelwood had assisted in putting together a call sheet for a photo shoot. By this point the Claimant had only worked for the Respondent for less than two months and we consider it appropriate and reasonable for Mr Hazelwood to arrange a meeting to discuss this matter.
- 75.2. The second aspect of this allegation, that Mr Hazelwood did not give the Claimant prior notice that Mike Dent would attend is also made out on its facts. Mr Hazelwood accepted in hindsight that he should have done this. He explained that he had not given the Claimant notice because he himself only thought to ask Mike Dent to attend at the last moment. Whilst we agree that giving the Claimant notice that Mr Hazelwood's line manager (the Claimant's boss's boss) would also attend the meeting to discuss the Claimant's micro-management concerns would have been better and more appropriate industrial relations practise, we have no reason to doubt the explanation for it given by Mr Hazelwood.
- 75.3. In the circumstances we do not consider that there was any decision to keep Mr Dent's involvement a secret and to hijack her with his attendance. We accept that it was a last minute decision. It was not related to the Claimant's race or sex. There is no basis for reaching this conclusion.
- 75.4. For the same reasons we do not accept that the treatment was because of the Claimant's sex or race. The Claimant relies on Ben Hicks as a comparator, however there is no evidence that he complained about micro-management or was hijacked at the meeting to discuss it by his bosses' boss also attending. Given the short duration of the Claimant's engagement and the seriousness of the allegation, we conclude that a hypothetical comparator, making the same complaint, would have been treated in the same way.
- 75.5. Was it because the Claimant did a protected act? The Claimant had made a protected act about Tony Batalha by the time of this meeting,

however the subject matter of that complaint and this meeting were so far removed we reject any suggestion that the two matters are linked.

75.6. This allegation appears to have been presented out of time. It occurred some 5 weeks prior to 29<sup>th</sup> April 2023. We consider this to be part of the 'management of the Claimant' issues, and thus part of that single act. Thus, had it succeeded, we would have considered it to have been presented in time.

75.7. Issue 7 fails and is dismissed.

**76. [Issue 8] Mike Dent giving a false account of how the Claimant reported Tony Batalha's treatment of her on 16th of March 2023. Comparator: treatment of Tony Batalha's account.**

76.1. Did it happen? Mike Dent gave an interview as part of the investigation into the Claimant's appeal of the grievance decision on 21<sup>st</sup> July 2023 [1063]. The Claimant asserts that the account at [1064] is false. He told Helen Placito '*Tony explained to me that his job was to query people in the office that he didn't recognise. Joanne Robinson had mentioned that she was wearing sunglasses and had whizzed past*'. It is clear that the Claimant disagrees with Tony Batalha's account, but this is not the same as asserting Mike Dent gave a false account of what Tony had told him. The second alleged falsehood related to how Mike Dent summarised how the Claimant had originally described the incident to him on 16<sup>th</sup> March. Mike Dent told Helen Placito '*Tony approached her in the area behind the TV wall, asking are you supposed to be here or something like that? She replied saying I work here. He then said sorry I didn't recognise you*'. The Claimant disputes that is what she told him. She does not say in her own statement what she did tell him [JR59]. The Claimant did give an account to People Services the next day [668] stating '*I had sunglasses on and my earphones. He then made a noise and stopped me again. I informed him this is the second time and he said something about it being due to my facial expression, I informed him I was listening to something. ... I informed our manager*

*Mike*'. In the absence of a definitive statement by the Claimant of what she told Mike Dent on 16<sup>th</sup> March, we do not consider the account given 4 months later in July to be at such variance that Mike Dent can fairly be accused of giving a false account. We consider that the Claimant has failed to establish that Mike Dent gave a false account. We reject the contention that Mr Dent's recollection of what the Claimant told him contains falsehoods, ie things that he knew to be false. This factual allegation is not made out.

- 76.2. In the circumstances it is not necessary to consider whether harassment or discrimination tainted this exchange.
- 76.3. It was not part of the 'management of the Claimant' issues, and as such we consider that it was not part of a single act of discrimination. For the reasons given in Issue 5, we would not have extended time of just and equitable grounds.
- 76.4. Issue 8 fails and is dismissed.

**77. [Issue 9] Withholding investigation evidence (16th of March 2023 onward). Comparators: Tony Batalha, Edward Enniful.**

- 77.1. Did it happen? This issue again raises two separate factual allegations. The first relates to the missing CCTV evidence. The Respondent routinely kept CCTV for 1 month. After that point footage was overwritten. By the time the Claimant first raised a grievance about Tony in March any footage of the first incident had been overwritten **[PR34-35]**. The allegation that such footage was withheld therefore fails on its facts. At the time of the investigation into the second incident in March, CCTV of it was available. Both Emilie Sutcliffe and Patrick Riddell considered the complaint to be informal. For this reason Patrick Riddell considered that it would be sufficient to view the footage, so that he could see what happened, but he did not think to save it, in case the complaint progressed to a more formal stage **[PR18-21 & 29-30]**. We consider both Patrick Riddell and Emilie Sutcliffe to be at fault for not

either thinking of securing the footage or requesting that it be secured. Had the Claimant asserted that Mr Riddell and Ms Sutcliffe failed to preserve the footage, that allegation would have been made out on its facts. But it is an exaggeration to assert that they withheld investigation evidence, as there is simply no evidence of any intention to do so, or actual withholding. We cannot change the allegation to suit our findings, so this allegation, as recorded, also fails on its facts. It is not necessary to consider it further.

- 77.2. The Claimant confirmed in her written submissions that the second aspect of this issue relates to a redacted line from Tony Batalha's interview at **[1554]**. The redacted line said '*I would also like a bit of respect when she goes past me. I deserve a bit of respect too*'. This was provided to the Claimant during the grievance investigation. As we have observed elsewhere, the Claimant had become quite curt in her replies to Tony. We have seen the unredacted version of that interview line **[889]**. This was first seen by the Claimant as part of a subject access request. The unredacted part said '*she was always like that, not just since the incidents*'. This second allegation of a redaction is made out on its facts.
- 77.3. The difficulty for the Tribunal is that this factual allegation was not set out by the Claimant in her Particulars of Claim or her Amended Particulars of Claim. The factual case now made out is not recorded in the List of Issues. The Claimant makes no reference to it in her witness statement **[JR309-310]**. The first time that the Claimant made this argument is in her written submissions. It is for this reason, we conclude, that Mr Holloway made no reference to it in his written submissions. As a result, and not surprisingly, there is no evidence or submission provided by the Respondent as to who made the redaction, when or why. We consider that it would be unfair to uphold this claim against the Respondent on the grounds of any inference being drawn from a lack of an explanation as to who redacted the statement and why. The Respondent postulates that as the redacted section was comment or opinion, rather than fact, it was not relevant for the investigation, but this is an assumption.

- 77.4. We also do not consider the redacted section '*she was always like that, not just since the incidents*' to make much sense, as the Claimant and Mr Batalha had no prior engagement before the first incident, which occurred, as we have found, on the Claimant's first day.
- 77.5. Was the redaction related to the Claimant's race or sex? The Claimant has given no evidence on this point and has failed to give us any basis for reaching that conclusion.
- 77.6. Similarly, we are unable to conclude that the Claimant has proven facts from which we could conclude that the Claimant's race or sex was a factor. On this the burden has not passed to the Respondent and we consider that in all of the circumstances it would have been unfair to pass it. The comparators make no sense for this allegation, which supports our view that this point only really evolved for the Claimant during the preparation of her submissions. Tony Batalha cannot be a comparator for the redaction of part of his own investigation interview. We have seen no evidence that the 2020 investigation interview of the security guard that told Mr Enniful to use the delivery entrance had his interview redacted or provided clean of redactions.
- 77.7. Was it because the Claimant did a protected act? There is no factual basis upon which we could reach this conclusion.
- 77.8. This issue was not part of the Claimant's general management issues. It is not part of a continuing act. For the reasons given in Issue 5, we would not have extended time on just and equitable grounds.
- 77.9. Issue 9 fails and is dismissed.

**78. [Issue 10] Sophie Palmer's investigation of the Claimant's informal complaint (17th March 2023) being mishandled and subject to bias. Comparators: Tony Batalha, Edward Enniful.**

- 78.1. Did it happen? There are two components to this. That the investigation was mishandled and that it was subject to bias. Whilst we note that the complaint made no reference to any grunting [668] we consider that the investigation could have been better. An obvious example of an



improvement would have been to instruct Patrick Riddell to secure the footage of the March incident and to make the same available to the Claimant. Ms Palmer told us that she and the Claimant had agreed that the concerns would be investigated informally to find a resolution, and that the Claimant did not want a formal investigation **[SP12]**. Ms Palmer stated that she asked Patrick to view the footage and that he told her what he saw **[SP17]**. She did not think that she needed to view it, or that the Claimant should be able to see or comment on it, or that it should be secured against being overwritten. She asked for an apology to be written by Patrick, which she edited upon receipt to make it more informal, being consistent with what she considered to be an informal investigation **[SP20]**. We think that in all of these respects Ms Palmer did mishandle the investigation such that this part of the issue is established on its facts. It is not sufficient to deflect that point by asserting that the investigation was informal. Whilst the belief that the investigation was informal does not excuse the failings we observed, it does explain them, and we accept that explanation for the failings. In so doing we reject that the allegation that the investigation was biased.

- 78.2. Was it related to the Claimant's race or sex? Having accepted Ms Palmer's explanation for her poor quality investigation we do not consider that it was related to either the Claimant's sex or race, or that the decision to investigate in that way was because of the Claimant's race or sex. It was undertaken 'with a light touch' because Ms Palmer believed that was all that was required given the agreement on informality. For this reason we also consider that the deficiencies in the investigation was not because the Claimant had done a protected act.
- 78.3. This allegation was presented out of time. It occurred in or around 23<sup>rd</sup> March, being 1 month prior to 29<sup>th</sup> April 2023. We consider this allegation against Ms Palmer to be a single event and not part of a single act extending over a period. For the reasons set out in Issue 5 we would not have extended time on just and equitable grounds. The Claimant was quite capable of understanding her case and her rights. She believed her experiences had been tainted by race. We cannot see a satisfactory reason for delaying in presenting this complaint.

78.4. Issue 10 fails and is dismissed.

79. **[Issue 11] Emilie Sutcliffe's investigation into the Claimant's formal grievance (15<sup>th</sup> June 2023) being mishandled and subject to bias. Comparators: Tony Batalha, Edward Enniful.**

79.1. Did it happen? We do not consider that this allegation has been established on its facts. Emilie Sutcliffe interviewed everybody with direct knowledge of the incidents, including Oliver Hazelwood who could only offer hearsay evidence of what he had been told had occurred. She prepared questions for each interview [1200-1206]. She requested all CCTV footage, and viewed such footage as was still available. She considered Ms Palmer's informal process and requested pass key data [887]. She prepared a detailed and reasoned outcome report [925]. The Claimant did not agree with the outcome, but we do not consider that it was mishandled or subject to bias. Ms Sutcliffe's account of the CCTV footage of the May incident is set out at [927]. Having viewed the CCTV footage of this incident, and considered the account at [927] we reject the assertion that Ms Sutcliffe gave a false account of what transpired. She said:

*'I was able to review the CCTV footage of this particular incident and evidence seems to suggest that as you entered reception, the security guard looks in your direction and their head moves in correlation with the direction in which you are walking. Based on this footage, I do not see the security guard's facial expression or stance changing in reaction to your entrance and therefore I deem his behaviour as normal'.*

79.2. As this allegation fails on its facts, it is not necessary to consider it further.

79.3. Issue 11 fails and is dismissed.

80. **[Issue 12] On 25 April 2023, Mike Dent suggesting another magazine's**

**picture editor find a photographer in India, rather than the claimant.**

**Comparators: Catherine Gargan.**

- 80.1. Did it happen? There is a rather fine dispute on the facts as to what occurred in relation to this issue. The Claimant asserts that Mike Dent told her that he would ask Vogue's visual editor if they could recommend a photographer for a photoshoot in India. Mike Dent's evidence is not quite the same. He recalls suggesting that the Claimant could reach out to colleagues with connections in India using Indian contacts, not unfavourable conduct. Taken at its highest the Claimant's account might be suggestive of Mike Dent stepping on the Claimant's toes, whilst Mr Dent's account could be taken as a simple offer of advice. We note that Mr Dent did not then contact Vogue's visual editor. This leads us to conclude that he was simply giving advice and not stepping on the Claimant's toes.
- 80.2. There is simply no evidential basis to support the conclusion that this intervention was related to the Claimant's race or sex.
- 80.3. We reject the contention that Mr Dent acted as he did because the Claimant's a woman or that she was black, or had raised a complaint about discrimination. The Claimant's actual comparator was Ms Gargan-Hall who shared the Claimant's characteristic of being female. There is no evidence to suggest that Mike Dent would have responded to Ms Gargan-Hall any differently if she had an Indian photoshoot.
- 80.4. This allegation was presented out of time. It occurred prior to 29<sup>th</sup> April 2023. Given the extent of the delay, being some 4 days, we should have extended time on just and equitable grounds to include this allegation, had we upheld it.
- 80.5. Issue 12 fails and is dismissed.

81. **[Issue 13] Ben Hinks demanding that the claimant provide information already given and asking for details of her correspondence with contributors (February to July 2023). Comparators: Oliver Hazelwood, Catherine Gargan.**

- 81.1. Did it happen? This allegation is said to span the period between February and July 2023. It has been difficult to assess because the Claimant has not provided specific occasions when this is said to have occurred. The Claimant does refer to an occasion in her statement **[JR32]**. She cannot say when it occurred. She mentions that having realized Ben was discussing something she was working on, she confirmed that she had contacted the photographer concerned. She goes on *'I said 'done' and wheeled back and carried on chatting to them about the same project. At the end Ben looked at me and said something along the lines of, so if you could contact them and get that done asap. Asking me to do what I had just informed them I'd done'*. It appears that the Claimant also relies on an occasion Ben Hicks asked her whether there were high resolution images when he should have known that there were not. The complaint of asking the Claimant for details of contributors appears to be related to Ben Hicks enquiring about Wilson Hennessy. On balance we conclude that these exchanges happened as the Claimant asserts
- 81.2. However, we consider that they are exactly the type of exchanges that one might expect to encounter in a magazine publishing environment. There is no evidential basis to suggest that these exchanges were in any way related to the Claimant's sex or her race. We do not consider them to have been said with the purpose of harassing her, or given the nature of the work done, could they have had that effect.
- 81.3. Was it because of the Claimant's sex or race? The Claimant relies on Oliver Hazelwood and Ms Gargan-Hall as comparators. Neither had the Claimant's very short employment history with the Respondent. We consider that similar queries would have been raised with them as would have been raised with any hypothetical comparator.
- 81.4. Was it because the Claimant did a protected act? For the reasons stated, no. These exchanges were entirely unrelated.
- 81.5. Issue 13 fails and is dismissed.

82. **[Issue 14] By Mike Dent, Oliver Hazelwood and Jeremy White, largely in May 2023, excluding the Claimant from unscheduled photograph discussions and other tasks within her remit, such as photo shoots, budgets, use of photographer Benedict Redgrove. Failing to involve the Claimant had negative consequences on the Benedict Redgrove photo shoot, such as over ordering and lack of coordination with design team on layout. Referring queries to Ben Hinks rather than the Claimant. Comparators: Catherine Gargan. Samantha Cooper.**

- 82.1. Did it happen? Whilst this issue refers to negative consequences of failing to involve the Claimant in the Bendict Redgrove photoshoot, we are only concerned with determining whether the Claimant was excluded and if so, the reasons why. We are not concerned with the consequences for the shoot.
- 82.2. There were logistical issue with the Wilson Hennessy shoot, which Ben Hicks was due to attend and had items to be photographed at Mike Dent's house. The photographer was late and a courier arrived at the location when no-one else was there. He had not been given the Claimant's number. A new Slack group was set up to assist in communications going forward **[1654]**.
- 82.3. The Claimant's normal duties would be to identify a photographer, agree the fee and then arrange the shoot. Benedict Redgrove did not operate this way. He did his shoots first and then would offer his images for sale. The Claimant asserts that she should have been involved in fee negotiations at an earlier stage, however she was not excluded from any such discussions, as this was not how the photographer worked. The Claimant appeared to accept this in a Slack message sent to Mike Dent on 22<sup>nd</sup> June, saying '*Update: Seems nothing was arranged. I've agreed rights for UK print and online usage. Other WIRED variants will have to arrange separate licence terms and fees with Benedict*'. Mike replies, '*Thanks Joanna. That's usually the case with BR. We'll get him one day*' **[919]**.
- 82.4. The Claimant asserts that she was excluded by Jeremy White in a discussion about a possible story suggested by the freelance writer

Chris Hall. Mr White replied to the writer about the suggested story [1647] *'I like this, Sir! Consider Commission. Copying in Anna (video) and Ben (art) for possible snapper and vivid capture for this'*. It is correct that he did not copy in the Claimant, however at that stage, the decision to use a photographer had not been taken. The Claimant would become engaged once a decision to use a photographer had been taken. Mr White's use of the expression 'possible snapper' makes it clear that a decision on that had not been taken. The Claimant complained to Mr White and he apologised, stating *'Apologies Joanna, an honest mistake. Before you joined we work like this. I would inform the art desk and then the art director would brief the photo editor. But that was the old regime. I've been here 10 years and I'm little stuck in that way. I'll get it soon, I'm sure'* [803].

- 82.5. It was the Claimant's responsibility to choose and book photographers and oversee their photo shoots. She did not choose photographs for publication. As such she was not excluded from a discussion with Samantha Cooper, a US photo editor, about which photographs to use on the US site [666].
- 82.6. As stated for the previous issue, we are at a loss to understand how any of these, we consider perfectly normal publisher interactions, were related to the Claimant's race or sex. There is nothing about them to give us a basis for concluding that.
- 82.7. Likewise we consider that the Claimant has failed to prove facts from which we could conclude that there had been a contravention of the Equality Act. The Claimant relies on Ms Gargan-Hall, who she was providing maternity cover for, and Samantha Cooper, the US photo-editor. Both comparators are female. We have no basis for concluding that either were in the same position as the Claimant or that they (or indeed a hypothetical comparator) would have been treated any differently.
- 82.8. These matters arise out of the normal day to day workings of a magazine publisher and, in our Judgment, had nothing whatsoever to do with any protected act that the Claimant may have raised.
- 82.9. Issue 14 fails and is dismissed.

**83. [Issue 15] Mike Dent undermining the Claimant by directing queries about her work to Oliver Hazelwood, in her presence. Others speaking for her in meetings. Compare Ben Hinks, Oliver Hazelwood, Amit Katwala.**

83.1. Did it happen? The factual basis for this issue is vague. No actual query has been identified or relied on by the Claimant. Mike Dent was the Managing Editor and Oliver Hazelwood was his Art Director. We consider that it is entirely appropriate for a Managing Editor to ask his Art Director questions relating to his team, rather than asking individuals within that team. We do not consider such an approach to be undermining of any team member and we do not consider such queries to be detrimental or unwanted.

83.2. For reasons given on other team management issues we have no basis for concluding that Mr Dent's queries of his Art Director were in any way related to the Claimant's sex or race.

83.3. The assertion that such questions were asked was detrimental and because the Claimant was either female of black is also not made out. Oliver Hazelwood is named as a comparator. This is misconceived. A comparator in the same circumstances as the Claimant would have had to have been someone else in Oliver's team that was not questioned by Mr Dent. Amit Katwala was not on the Art desk at all and not part of Mr Hazelwood's team.

83.4. Was it because the Claimant did a protected act? For the reasons stated above, there is no evidence to suggest Mr Dent asked questions of Oliver Hazelwood because the Claimant had made a protected act.

83.5. In the circumstances, Issue 15 fails and is dismissed.

**84. [Issue 16] Oliver Hazelwood duplicating her work arranging and supplying shoot production and timings schedule (March 2023, Wired Health).**

- 84.1. Did it happen? Oliver Hazelwood did produce information for a call sheet for the Claimant [670]. The factual basis for this was covered in Issue 7 and is not recited here. It led the Claimant to accuse Mr Hazelwood of micro-managing her. Mr Hazelwood did put together a call sheet and this allegation that he assisted in putting a call sheet together is made out on its facts.
  - 84.2. There is, however, no factual basis that this was related to the Claimant's race or her sex.
  - 84.3. The Claimant has not identified an actual comparator for this issue. We consider that a hypothetical white / male acting photo-editor, with the Claimant's time in the role (about 7 weeks) would have been treated in the same way. We also reject the contention that what Mr Hazelwood did was in any way unfavourable.
  - 84.4. For the reasons stated we do not consider that Oliver Hazelwood did what he did because the Claimant did a protected act. Such would have only just occurred and there is no evidence that Mr Hazelwood would have been aware of it.
  - 84.5. This allegation was presented out of time. It occurred prior to 29<sup>th</sup> April 2023. This incident was raised over a month out of time. However, we consider it to be part of the 'general photo-editor management' issues and as such we would have considered it to be part of a single act of discrimination with the others, had we upheld it.
  - 84.6. Issue 16 fails and is dismissed.
- 
85. **[Issue 17] Claimant given false information about procedures (including use of a software programme) and failing to address her complaints that queries about photo credits and photographer contract procedures had not been addressed. Matters discussed at a meeting on 6th June 2023. Oliver Hazelwood and Mike Dent praising the claimant's performance, while she expressed concerns regarding unequal treatment: that she had repeatedly been questioned about a photographer for a Ukraine photo shoot after confirming details, Ben Hinks was defended for his**



**actions unjustly demanding work that had already been supplied, and that Oliver Hazelwood duplicated her task of arranging supplying shoot production timing schedule for an event photo shoot. See APOC 32-39. Comparators: Ben Hinks, Oliver Hazelwood, Catherine Gargan.**

85.1. Did it happen? This issue captures the matters raised by the Claimant in the team meeting of 6<sup>th</sup> June 2023 [1723]. Some of the matters raised here are covered as issues in their own right. As discussed in our analysis of other issues, this meeting was not an easy one. The Claimant describes the normal way in which a publication will arrange its articles and photo-shoots. She reacted to appropriate questions and queries asked by concluding they denoted a lack of confidence (for example the Ukraine shoot [1734-1735]. If she was praised she considered such praise to be infantilisation.

85.2. We can discern no basis for asserting that these day to day management issues were in any way related to the Claimant's race or sex, or that they could have been capable of harassing her, pursuant to s26 EqA.

85.3. Was it because of the Claimant's sex or race? No. The Claimant has failed to establish facts from which we could reach that conclusion. None of her actual comparators were in the same circumstances as she was, namely calling meetings to discuss a range of minor management matters. We consider that a hypothetical comparator would have been treated in the same way. We consider that Oliver Hazelwood and Mike Dent were doing their best to manage an employee who just did not agree with the workplace communications within the team, which we think were appropriate,.

85.4. For the reasons stated these management issues had nothing to do with any protected act raised by the Claimant. There is no evidential basis for us to reach that conclusion.

85.5. Issue 17 fails and is dismissed.

86. **[Issue 18] By Mike Dent, on 6th June 2023, asking the Claimant not to call meetings, but to address concerns in the moment. Comparators:**

**Ben Hinks, Oliver Hazelwood, Catherine Gargan.**

86.1. Did it happen? On its facts this allegation is established. On 6<sup>th</sup> June 2023 the Claimant attended a meeting to discuss various concerns that she had with Oliver Hazelwood, Mike Dent and Ben Hicks [1723]. The Claimant's covert recording of that meeting records Mike Dent stating:

*'But let's just deal when stuff happens, let's just deal with it rather than let it build up for five weeks and then we'll have a meeting'. [1744]*

*'I think personally I would prefer if these kinds of issues, when they arise, you just kind of like talk to us in the moment. Rather than sort of letting them stew ... and kind of sort of percolate for a couple of weeks. .... You know, we're very capable of taking criticism'. [1746]*

*'I would rather hear, like you said, tell me something in the moment' [1754].*

86.2. This plea from Mike Dent was a direct response to the Claimant's practice to store up minor grievances and then seek to raise them weeks after the event in what would then prove to be a difficult meeting. The Claimant defended the stance of storing minor grievances by stating *'I just wanted to highlight a few things. I know some things can be mentioned in the moment, but I think some things ... aren't appropriate to mention in the moment, you know, because they're so minuscule. But then little minuscule things can add up'*.

86.3. Was it related to the Claimant's race or her sex? There is no evidential basis for reaching that conclusion. This is a straight forward issue without nuance. The Claimant stored up minor things over weeks to complain about and Mike Dent asked that she raise minor things as they happened. This is a perfectly sensible suggestion which was not in any way related to the Claimant's sex or race. We do not consider it to be an unwanted comment and we do not consider that it could have had the purpose or the effect of harassing the Claimant.

86.4. Was it because of the Claimant's sex or race? There is absolutely no facts from which we could conclude that it was. None of the Claimant's

comparators had the same practice of storing up minor concerns and then calling for lengthy meetings to work through them. A hypothetical comparator who was white or male that had the same practice would have been treated in exactly the same way.

- 86.5. Was it because the Claimant did a protected act? We do not consider that this question by Mike Dent had anything whatsoever to do with any prior protected act. Mr Dent was doing no more than ask the Claimant if she would raise her concerns as they occurred to her, rather than storing them up for a big meeting.
- 86.6. **Issue 18** fails and is dismissed.

87. **[Issue 19] Mike Dent misrepresenting what the Claimant had said at this meeting and describing her as combative, an offensive racial stereotype. Comparators: Ben Hinks, Oliver Hazelwood.**

- 87.1. Did it happen? This issue raises two distinct matters. The first relates to the Claimant being misrepresented by Mr Dent. Two examples are relied on. The first is Mike Dent quoting the Claimant saying ‘don’t treat me like that’ [1752] and the second ‘I already told you this’ [1753]. The first relates to a complaint of infantilisation (in other words the Claimant was being treated like a child). The Claimant objected to this by Slack message on 1<sup>st</sup> June [1437]. Mike Dent recorded that the Claimant, in terms, did not appreciate such treatment. The words are ‘and then you are like, you know, don’t treat me like that. We don’t consider that this is a misrepresentation, it is a paraphrase of the Claimant’s objection. The 2<sup>nd</sup> alleged misquote is Mike Dent telling the Claimant ‘I’ve already told you this’. Again, Mike Dent is referring to the Claimant’s practice of pointing out when she has already said a thing, not that she actually used those words. This is demonstrated by the Claimant’s observations at [1735-1736] ‘*I’ve already relayed this*’ and ‘*the send query came after clarification*’. We do not consider that either comment can be fairly described as a misrepresentation. These allegations fail on their facts.
- 87.2. The second matter is the allegation that Mike Dent called the Claimant

combative. As a matter of fact (and we so find) Mike Dent did *not* describe the Claimant as combative. He was describing the meeting of 6<sup>th</sup> June, which he (fairly in our opinion) felt had become combative. The Claimant had called for the meeting to discuss a large number of issues that she had elected not to raise as they occurred, but to save up for this meeting. Mike Dent is recorded as saying [1753] *'It doesn't need to be sort of quite so combative as that. ... I'm trying to sort of get everyone back, talk everyone down.'* When challenged by the Claimant in the meeting about the use of the word, Mr Dent continued [1755] *'It's not of you, it's just the atmosphere that feels a little combative and I would like to cool that down'*. This is clearly a reference to the meeting. In the circumstances this second aspect of this issue fails on its facts.

87.3. For the reasons stated the word combative was not related to the Claimant's race or her sex. It was related to how the meeting had become. For the same reasons we do not consider that it was said because of the Claimant's race or sex, or indeed, any protected act. It was a description of the meeting, and therefor applied as equally to both Ben Hicks and Oliver Hazelwood, who are relied on by the Claimant as her actual comparators.

87.4. Issue 19 fails and is dismissed.

**88. [Issue 20] June 2023. HR failing to provide literature on misogynoir and microaggressions for the Claimant to send to Mike Dent.**

88.1. Did it happen? The Claimant confirmed that this allegation, although stated as relating to 'HR' is in fact an allegation against Emilie Sutcliffe. This allegation is made out on its facts, in so far as the Claimant considered that what was sent to her by Ms Sutcliffe amounted to a failure to provide literature on misogynoir and microaggressions. By an email of 19<sup>th</sup> June 2023, and in the context of discussing the Claimant's grievance of being racially profiled by Tony Batalha, the Claimant asked for such literature [902]. The email exchange with Emilie Sutcliffe is instructive:

[JR] *'Could you please send me company literature or links to subjects of workplace racism, misogynoir, microaggressions and implicit bias. Thank you'.*

[ES] *'With regards to the literature requested, please can I check if you are referring to Condenast policies or any features or articles we have published?'.*

[JR] *'Either, I thought there may be some literature or links that are used in your training here. If not, articles are fine. Just anything that you use to educate or inform on these topics'.*

[ES] *'Yes, of course. Apologies. I wanted to clarify exactly what would be most useful before sending any materials across. I've included a list of some of our key resources below.'* [901] Ms Sutcliffe then sent links to Conde Nast's business principles, the Conde Code [284] and D&I report page on Conde Nast Home.

[JR] *'Thanks, Emilie'.*

- 88.2. There is absolutely nothing in that exchange to suggest that the Claimant considered Emilie had failed to provide the appropriate literature, let alone that any such failure could fairly be considered an act of harassment or discrimination.
- 88.3. Given the nature of the request, we consider that this was related to the Claimant's race. There is no basis whatsoever for suggesting it was related to her sex. Ms Sutcliffe sent what she had and was thanked for doing so. What she did was not unwanted (nor was there any suggestion that the failure to send more was unwanted) and we do not consider it had the purpose, or given the thanks received for sending it, the effect of harassing the Claimant.
- 88.4. Was the failure to send more literature because of the Claimant's sex or race? We do not consider that it was. No actual comparator is relied on for this allegation. We consider that the appropriate hypothetical comparator, asking for the same information, would also have been sent all that Ms Sutcliffe had.

88.5. Was it because the Claimant did a protected act? The grievance arose out of the protected act, but the sending of literature that Ms Sutcliffe had was because of the request for it. There is certainly no suggestion or evidence that literature was withheld because the Claimant had made any qualifying protected act.

88.6. **Issue 20** fails and is dismissed.

89. **[Issue 21] Mike Dent claiming just before an impromptu meeting about the Ukraine magazine issue that the Claimant worked different hours and left earlier than others. Comparators: Ben Hinks, Oliver Hazelwood.**

89.1. Did it happen? The Claimant asserts **[JR152]** that in June 2023 '*I was called to the desk for an impromptu meeting to discuss some upcoming Ukraine stories. Mike Dent randomly singled me out saying I leave earlier than everybody else.*'

89.2. Mike Dent told us **[MD88]** '*I don't recall commenting on her hours to her or anyone else. We were all good with her avoiding rush hour as she requested. I don't remember telling people it was her arrangement.*'

The Claimant did not cross-examine Mike Dent on this issue. On balance, given that the Claimant has a clear recollection on this and Mike Dent does not, we consider it more likely than not that the words, or words to that effect, were said.

89.3. Was the comment related to the Claimant's race or her sex? There is no basis whatsoever for asserting this comment was in any way related to race. Whether it was related to sex is a much closer call. It was plainly related to the Claimant's hours, in the context of flexible working hours being available. There was considerable flexible working at the Respondent. The Claimant worked two days in the office and 3 days at home. It was not put to Mr Dent in cross examination that this comment was related to the Claimant being black or female or based on any stereotype that either black people or women worked shorter hours. Whilst we recognise that making comments on shorter hours to a woman could be a comment that is related to her sex, we do not think we can make that finding in the absence of that point being put to Mr

Dent. Had we found that the comment was related to sex, we would have found that it was unwanted. Did the words trigger s26 **EgA**? We were guided by **HM Land Registry v Grant** [2011] EWCA Civ 769, in Elias LJ said: *‘Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment’*. We consider that the comment made was trivial and should fall outside the concept of harassment.

89.4. Was it because of the Claimant’s sex or race? We find that there was flexibility with start times. The Claimant’s comparators, Ben Hicks and Oliver Hazelwood both started later and left later than the Claimant, with similar flexibility. We consider this to be an off the cuff comment about hours that was not intended to convey any criticism of the Claimant. Given the general flexibility on hours and the locations that work was undertaken, and the failure to explore the reasons for the comment, we consider that the Claimant has not established facts from which we could conclude a contravention of the **EgA** had occurred.

89.5. Was it because the Claimant did a protected act? Given the nature of this comment we do not consider that it was made because any protected act had been made. The Claimant has failed to prove facts from which we could conclude that this comment was made because of any protected act.

89.6. Issue 21 fails and is dismissed.

90. **[Issue 22] Mike Dent answering non-urgent emails at weekends on behalf of the claimant, June 2023. Comparators: Ben Hinks, Oliver Hazelwood, Catherine Gargan.**

90.1. Did it happen? This allegation is made out on its facts **[1466]**. On Friday 17<sup>th</sup> February 2023 Toni Boyd messaged the Claimant to confirm that a photographer, Wilson Hennessy, would not agree to a copyright assignment. On Sunday 19<sup>th</sup> February Mike Dent responded to that message to confirm that the work was for editorial. On 20<sup>th</sup> February the Claimant confirmed the same thing.



- 90.2. Was it related to the Claimant's race or sex? There is absolutely nothing before us upon which we could conclude that Mike Dent's picking up on this email on the Sunday was related to the Claimant's sex or race. In his witness statement, Mike Dent said **[MD24-25]** *'We also have a culture of open sharing and information where positions in the organisation or territoriality don't come into it. If I have information I will share it. This is how I worked with Catherine as well and how I worked with Ben, Olly and others in the WIRED team. ... The e-mail was addressed to both me and Joanna, so when I read it, I replied to share my views'*. We do not consider Mike Dent's actions to be unwanted, nor having the purpose, or when considering the wider context of opening sharing, the effect of harassing the Claimant.
- 90.3. Was it because of the Claimant's sex or race? The Claimant has failed to establish facts from which we could conclude the **EqA** had been contravened. There is no evidence that the Claimant's named comparators had Mike Dent chip in on emails (or refrain from doing so) that he had also been copied in on.
- 90.4. Was it because the Claimant did a protected act? We consider that it was entirely appropriate for Mike Dent to respond to the email, which he did because he saw nothing wrong with doing so and that he was assisting on the issue. This had nothing to do with any prior protected act.
- 90.5. Issue 22 fails and is dismissed.
91. **[Issue 23] Oliver Hazelwood showing the Claimant a video of his black or mixed- heritage niece when he did not otherwise share personal matters with her. Comparator: Ben Hinks, Catherine Gargan.**
- 91.1. Did it happen? Mr Hazelwood did indeed show the Claimant a video of his niece doing a backflip. This allegation is made out on its facts, to that extent. In her statement the Claimant, whilst discussing events of 25<sup>th</sup> May recalls **[JR143]** *'One day Oliver came to me with his phone showing me a video of his niece for no reason stating 'this is my niece'. I tried to assess what was going on in the video and why it was being*



*shown to me as Oliver had not said anything else while showing the video. It contained children doing cartwheels in the school gym hall. I quickly realised he was showing me because his niece is black or mixed heritage.'* She later added in her personal diary on 6<sup>th</sup> June [1469] *'This is a manager calls NA Indians and showed me a video of his niece just because she is a mixed race'*. Oliver Hazelwood told us about the incident [OH77] *'I was sent a message by my sister who attached a video of my niece doing a backflip. I was really proud of my niece. So in that moment, I showed it to Joanna because she was sitting right there at the table with me. We all show pictures of our family, which I think is normal in the office environment. I absolutely did not use my niece as a cultural passport and I think it's disgusting to suggest that'*. Jeremy White confirmed that Oliver Hazelwood would share information about his family [JW16].

- 91.2. We consider such personal sharing among work colleagues to be perfectly normal. We reject any suggestion Oliver Hazelwood shared the video with Joanne to build a cultural passport or establish his black credentials with the Claimant. We doubt that he even considered for one second that his niece was mixed race when he handed over his phone. He was just pleased she had managed a backflip in gym class.
- 91.3. Was it related to the Claimant's sex or race? Absolutely not. This was related to being a proud uncle. The Claimant has not suggested that she found this incident harassing, she simply attributes a 'cultural passport building' motive for doing so, which we reject.
- 91.4. Was it because of the Claimant's sex or race? The Claimant has failed to establish Oliver Hazelwood would not have shared family videos with the named comparators. Jeremy White's evidence contradicts that assertion. Ms Gargan-Hall was on maternity leave so she was not in the office to have seen it, when it was sent. She was plainly not in the same circumstances as the Claimant. She also shared the Claimant's characteristic of being female. Showing the video was not an act of detrimental treatment or less favourable treatment.
- 91.5. Was it because the Claimant did a protected act? No. Oliver Hazelwood did not know of any race complaint or protected act until

early 2024, after the Claimant had left the Respondent. He had no need to establish a cultural passport and he did not show the video because the Claimant had made any protected act.

91.6. Issue 23 fails and is dismissed.

92. **[Issue 24] Ignoring the Claimant's diversity goals discussed at the probation meeting, in particular not arranging meetings to take them further. Comparators: Ben Hinks, Oliver Hazelwood, Catherine Gargan.**

92.1. Did it happen? The Claimant did attend a probation review meeting, two months after starting and 4 months before the expiry of her fixed term contract [OH54]. Goal setting was completed by the employees and it was agreed that the Claimant would submit her own goals on Workday [1217]. Such goals were not linked to bonus. The Claimant submitted goals headed 'contributor variation' photo shoot environment' and building relationships'. Within 'contributor variation' she stated '*our contributor list should be as diverse as our content. My goal is to widen the photographic contributor demographic.*' Goals on Workday were reviewed annually. At the point that the Claimant posted them, she only had 4 or her 6 months left. This places her in a materially different position to all of her comparators who are all full time employees. The fact that the Claimant's goals were not revisited during those 4 months is not evidence that they were ignored and we do not consider there was any culpability in not arranging a review meeting again during what was left of the Claimant's fixed term contract. They were goals set by the Claimant in areas of her responsibility. This allegation fails on its facts.

92.2. Was it related to the Claimant's race or sex? There is no evidential basis for reaching this conclusion.

92.3. Was it because of the Claimant's sex or race? The Claimant has failed to prove facts from which we could conclude a contravention of the **EqA**.

92.4. Was it because the Claimant did a protected act? This had nothing

whatsoever to do with the raising of any protected act.

92.5. Issue 24 is dismissed.

93. **[Issue 25] On 16 June 2023 Yashica Olden failing to meet the Claimant at the Adelphi office as arranged.**

93.1. Did it happen? The Claimant met with Ms Olden on 12<sup>th</sup> June 2023 and shared all of her concerns with her [JR210]. She considered that Ms Olden had been sincere in her response. The Claimant ended the meeting feeling hopeful. Yashica Olden accompanied the Claimant at her grievance meeting as her support [JR217]. The Claimant does not refer in her witness statement to any planned meeting with Ms Olden on 16<sup>th</sup> June, which Ms Olden failed to attend. She sets out what she says about 16<sup>th</sup> June at [JR251-253]. At 3.50pm on 16<sup>th</sup> June the Claimant emailed Natalia Gochez to say that she was in the Adelphi on 8<sup>th</sup> floor if Yashica wanted to meet for lunch, stating that if she was busy *'that is no problem at all'* [880]. This is not a settled agreement to meet. The Claimant says that she did meet Ms Olden on 18<sup>th</sup> June [JR254] and that they had mentioned the possibility of meeting for a coffee later that day, but no venue or time had been arranged. Again, this is not a settled agreement to meet. The Claimant refers to sending messages about the later meeting and not getting a reply or a further meeting. On 22<sup>nd</sup> June the Claimant emailed Yashica to say [913] *'Unfortunately, we didn't get the chance to meet on Friday. .... I didn't want to come up and interrupt any meetings in person. Do not think you were forgotten. I was just aware that your trip has been most likely very busy to say the least'*. The allegation that Ms Olden failed to attend an arranged meeting for 16<sup>th</sup> or 18<sup>th</sup> June fails on its facts.

93.2. Was it related to the Claimant's race or sex, or because of the Claimant's race or sex? There is no basis for either assertion. No such meeting was arranged. At its highest, a possibility of meeting was mooted. The Claimant, in her email of 22<sup>nd</sup> June sets out what we consider the most likely explanation for not meeting on 16<sup>th</sup> June or for

a second time on 18<sup>th</sup> June, and indeed for not picking up any Slack messages, namely that '*I was just aware that your trip has been most likely very busy to say the least*'. This explanation, which we accept, has nothing whatsoever to do with the Claimant's race or sex, or indeed any protected act.

93.3. Issue 25 fails and is dismissed.

94. **[Issue 26] Patrick Riddell, director of facilities, deleting CCTV footage of the Claimant with Tony Batalha on 16th March 2023. Then on 19<sup>th</sup> June 2023, giving a false account of what he had seen. Comparators: Tony Batalha, Edward Enniful.**

94.1. Did it happen? This issue raises two separate factual allegations. The first, relating to the deletion of CCTV footage fails on its facts. Patrick Riddell did not delete any CCTV footage. We were told, and we accept, that CCTV footage is overwritten after 30 days, unless active steps have been taken to save and secure it. By the time Mr Riddell was involved the January footage had been overwritten. He viewed the March incident and described what he had seen to Ms Sutcliffe **[PR19-21]**. The May incident was secured and saved. It is correct to say that Mr Riddell did not take active steps to save the March incident footage, or preserve it from deletion, but he had not been asked to. He gave a consistent account in cross-examination **[Morning day 10]**. We consider the Claimant's allegation that he deleted footage (with the implication of an intended cover up) to be more serious and we reject that it happened. We consider that best practice would have been to secure the March incident footage when he viewed it, but we accept his explanation that he had simply been asked to view it in an informal investigation and had not been asked to save it.

94.2. In respect of the 2<sup>nd</sup> allegation within this issue, Mr Riddell gave his account of what he had seen on the March incident CCTV footage during a meeting with Ms Sutcliffe on 19<sup>th</sup> June **[893]**:

*'the Claimant walked in the front door wearing a hat, beret style hat, big dark sunglasses, her winter coat with a hood with fur around the edge, coat quite long past the knee, Tony was out of position on the side of the bench by one of the portrait TV's getting something out of his bag. JR was on the phone and looking straight down and walking through'.*

- 94.3. There is no reference in that account to the Claimant having big hair showing underneath the beret, which the Claimant relies on as Mr Riddell's false account in her submissions. This allegation is not made out on its facts.
- 94.4. Mr Riddell's viewing (but not saving) the CCTV and then describing what he saw was not related to the Claimant's race or sex.
- 94.5. Was it because of the Claimant's sex or race? The Claimant has failed to prove facts from which we could conclude a contravention of the EqA. The Claimant's choice of actual comparators makes no sense. There is no suggestion that Mr Riddell watched and saved CCTV of any incident involving either actual comparator relied on and we conclude he would have done exactly the same thing had a white or male acting photo-editor raised an issue about something captured by CCTV.
- 94.6. Was it because the Claimant did a protected act? There is nothing to suggest that Patrick Riddell was acting in anything other than good faith and we reject the assertion that he acted detrimentally because of any prior protected act.
- 94.7. Issue 26 fails and is dismissed.
95. **[Issue 27] Emily Sutcliffe and Sophie Palmer ignoring several requests from the Claimant to view the CCTV footage of 31st January, 16th March footage and 18th May 2024 of interactions with Tony Batalha.**
- 95.1. Did it happen? The Claimant asserts in her submissions that she made her first requests to view CCTV on 20<sup>th</sup> March 2023. There is no evidence of any such request. It is clear that Emilie Sutcliffe asked

Patrick Riddell to check the CCTV for the March incident which he did. There is no evidence that the Claimant asked to view the footage at that time. We conclude on the balance of probabilities that the Claimant made no such request in March.

- 95.2. On 22<sup>nd</sup> May 2023 the Claimant only asked that the CCTV footage be viewed, not that it be made available for her to view [819] *'I would like to request security footage of all three instances be viewed'*. The CCTV footage is referred to by Emilie at the meeting with the Claimant on 25<sup>th</sup> May [1718], which notes that she (Emilie) will view it. There is no evidence of a request made by the Claimant in that meeting. The Claimant did make a request to Emilie on 16<sup>th</sup> June [904-905]. Ms Sutcliffe confirmed that it will be looked for manually [903].
- 95.3. Ms Sutcliffe asked Patrick Riddell for footage on 7<sup>th</sup> June [841]. On June 7<sup>th</sup> Derek Coulton confirmed to Patrick Riddell that the only footage is from May [840].
- 95.4. The Claimant did make a request to Sophie Palmer on 28<sup>th</sup> June to view CCTV footage before it was deleted [930]. Ms Palmer replied the next day to say that she would make arrangements for the Claimant to view the footage [930]. At appeal the Claimant referred to making two requests for CCTV [958]. We consider that the two requests that she is referring to are the June requests. By that time only the 18<sup>th</sup> May incident remained (with the earlier footage now overwritten) and this footage was provided to the Claimant (and is the only footage seen by us). In the circumstances this allegation fails on its facts.
- 95.5. Issue 27 fails and is dismissed.

96. **[Issue 28] Jesse Ingram-Johnson making incomplete minutes of the Claimants grievance investigation interview with Emily Sutcliffe on 15th June 2023. Compare complete notes made of evidence of Tony Batalha and Oliver Hazelwood.**

- 96.1. Did it happen? The notes taken by Ms Ingram-Johnson appear at [858-867]. Those minutes were sent to the Claimant by Emilie Sutcliffe

**[905]**, stating *'As discussed in our meeting, please find the minutes from our conversation attached. Whilst they won't be verbatim, please do let me know if there's anything you feel we haven't captured accurately'*. The Claimant responded **[903]** with amends to the notes. Ms Sutcliffe then confirmed that she has added the Claimant's proposed amends **[903]** (as can be seen at **[878-879]**). The process of approving minutes with all participants to a meeting is common place. When the Claimant made her amends she did not suggest that any perceived inaccuracies by Ms Ingram-Johnson had been motivated by the Claimant's sex or race. There is absolutely no suggestion race / sex played a part in any inaccuracies. It is impossible to establish that notes of Batalha's interview **[887]** and Oliver Hazelwood's were fuller or more accurate. The Claimant has failed to establish any difference in treatment.

- 96.2. Was it related to the Claimant's race or sex? There is no basis for making this case against Jessie Ingram-Johnson. Given that the Claimant was given the minutes to approve, which she did with some amendments (as is normal) there is no basis for asserting Jessie's notes amounted to unwanted conduct, which had the purpose, or given the type of amendments proposed by the Claimant, and the points taken by the Claimant at the time, the effect of harassing her.
- 96.3. Was it because of the Claimant's sex or race? The Claimant failed to establish facts from which we could conclude Jessie provided inadequate notes and/or that this was because the Claimant was black or female or that any inadequate notes were related to her race or sex.
- 96.4. Was it because the Claimant did a protected act? There is no evidence Ms Ingram-Johnson was aware the nature of the meeting she was note-taking or had in mind that any protected act had occurred.
- 96.5. Issue 28 fails and is dismissed.

- 97. **[Issue 29] Emilie Sutcliffe and Sophie Palmer using 'criminalised language' to describe the claimant's appearance (wording the Claimant wearing sunglasses as having her face 'concealed') throughout the**



**grievance investigations and in the grievance outcome letter 28 June 2023. Compare Anna Wintour and Edward Enniful wearing dark glasses in the office.**

- 97.1. Did it happen? It is factually correct that Emilie Sutcliffe [926] and Sophie Palmer [1067] used the word 'concealed' to describe effect on the ability of a person to recognise someone wearing dark sunglasses. We do not accept that the use of the word was 'criminalised language'. In considering this issue context is important. The context was a consideration as to why security guard would elect to stop and question an individual entering a building. A concealed or partly concealed face is a security red flag for stopping someone [1062]. It is also correct to note that Helen Placito described the use of the word concealed (rather than covering) as 'pejorative' (ie expressing contempt or disapproval). This is because concealed connotes and intention to hide, whilst covered does not. However, the context is how a security guard would react to someone with a partially covered or concealed face. We find that word was used in the context of security red flags and why a person might be challenged. Anything obscuring or covering the face may be a red flag. Whilst we accept that the use of the word could have been considered by the Claimant to have the effect of harassing her, we consider that when other circumstances of case are considered (being security red flags) that when the expression was used by Ms Sutcliffe and Ms Palmer it was not related to her sex or race.
- 97.2. Was it because of the Claimant's sex or race? The Claimant's actual comparators are misconceived. Edward Enniful was also stopped, so men were not treated more favourably. There is also no evidence he was wearing dark glasses when he was stopped, so he cannot be reliably said to have been in the same circumstances as the Claimant. As stated before, when it comes to recognition the Claimant is not in the same circumstances as Anna Wintour, the most famous editor in chief in fashion industry and also famous for her 'bob' style haircut and her dark glasses. We find that a hypothetical person, being white or male, not immediately recognised and wearing dark glasses which



partially covered the face would have been treated in exactly the same way.

97.3. Was it because the Claimant did a protected act? There is no evidential basis for linking this incident to any protected act.

97.4. Issue 29 fails and is dismissed.

98. **[Issue 30] Between May and July 2023 Greg Williams and other staff promoting Tony Batalha's petition on Conde Nast platforms and in Wired staff meetings. The claimant was unsupported during this time, by contrast. Comparator: Tony Batalha.**

98.1. Did it happen? Prior to working on security as Vogue House Tony Batalha had run a café called the Hatch at Vogue House. Reference to it was made in the Claimant's on-boarding guide **[464]** '*the Hatch Canteen (aka Tony's) is a Vogue House staple! It is located on the third floor. .... Tony serves tea, coffee, snacks, breakfast and lunch.*' During the pandemic the Hatch had no customers. Mr Riddell was able to get him some work on security **[890]**. There was a planned move and the café was not included in the move. Tony Batalha began a petition to be able to operate a new Hatch café from the new site. On 19<sup>th</sup> June 2023 Jeremy White sent round a message **[1652]** saying 'Please do all sign Tony's petition for a new hatch. It's his livelihood'. In response to a request for a link he added, '*I think Greg [Williams] said we had to go up & sign in the Hatch*'. In other words that it was a physical petition in the existing café.

98.2. The first part of this allegation (that Mr Batalha's petition was supported) is made out on its facts. The second part, that the Claimant was unsupported, is not. The Claimant had Ms Olden support her in her grievance and the Claimant had access to support / counselling services had she wanted to engage them.

98.3. Was it related to the Claimant's race or sex? It is quite impossible to see how supporting a petition to keep a café open could be in any way or at all related to the Claimant's race or her sex.

98.4. Was it because of the Claimant's sex or race? We consider this to be misconceived. In our Judgment the Claimant had so demonized Tony Batalha that she would not engage him with any conversation when he was on security. The Claimant told us in evidence [JR289] that she said 'good morning' and then '*That's all I have to say to you. Have a good morning*'. The Claimant stated that her preferred resolution of her grievance was for Tony to be removed from his security roll [1782] saying '*I know it's going to sound harsh but I personally don't want him to be there. I don't want him to be in that front facing position anymore*'. We conclude that her preference was for the Hatch to close and for Tony's Batalha's means of earning a living to be removed. The Claimant went further than this: she considered that anyone who supported the continuation of the café run by Mr Batalha to be racist. We conclude that the reason why staff supported the petition was because they wanted the Hatch to stay open. It was, as the on-boarding letter stated, a Vogue House staple.

98.5. The use of Mr Batalha has an actual comparator is misconceived. It is impossible to construe a scenario in which they were in materially the same circumstances. The Claimant was not fighting to keep a café open.

98.6. Was it because the Claimant did a protected act? There is no evidence that staff who supported the café considered any protected act in any way or at all.

98.7. Issue 30 fails and is dismissed.

99. **[Issue 31] Tony Batalha on 18th May 2023 stalking the claimant with his eyes as she entered the building, by contrast to his treatment of other women.**

99.1. Did it happen? We have seen CCTV footage of this incident from two angles. It is clear that Tony Batalha does turn his head to track the Claimant as she crossed reception. We do not recognise '*stalking the Claimant with his eyes*': this is a pejorative description of what

happened, which implies a sinister motive. We do not consider that there was. We consider it to be exactly the thing a security guard would be expected to do.

- 99.2. Tony Batalha also turned his head to track the next group of women as they entered. We don't agree with the Claimant's account given to Ms Palmer on 22<sup>nd</sup> May 2023 **[818]** that Tony '*squared up*' to her. The CCTV reveals that TB did not move or square up. He just turned his head to look at who was entering the building, which was his job. It seems to us that a security guard has to make an assessment of everybody that enters the building, and watching them enter is a key part of that process. The Claimant asserts that his treatment of her is in contrast to how he treated 3 women that entered afterwards. On the CCTV we see him crossing reception from one side to the other, and, as he did so, twist to look at and follow the three women that enter afterwards. It does appear that there was some recognition of at least the last person to enter, as he did smile at the end of the CCTV footage. We find that TB did turn his head to track the Claimant as she walked across reception and that he did the same things for the women that entered after the Claimant.
- 99.3. Was it related to the Claimant's race or sex? We can see no basis for concluding that Tony's viewing of the Claimant was related to her race or sex. Despite the use of the word 'stalking' in how this issue has been drafted, there is no suggestion of a sexual motive or conduct of a sexual nature, so that he turned his head to follow her across the room because she was female.
- 99.4. Was it because of the Claimant's sex or race? We do not consider that this incident (which we have viewed on CCTV) reveals any unfavourable treatment. It is entirely appropriate. No different to the treatment of the women that entered after him. The Claimant relies on the next women to enter as her comparators, so this must fail as an incidence of sex discrimination as they shared her characteristic of being female.
- 99.5. Was it because the Claimant did a protected act? There was no difference in treatment, observing entrants to the building was Tony's

job, and we reject any suggestion that any protected act by the Claimant played any part in this issue.

99.6. Issue 31 was presented in time.

99.7. Issue 31 fails and is dismissed.

100. **[Issue 32] Tony Batalha failing to apologise to the Claimant while offering a non-apology to Sophie Palmer 19th April 2023. Tony Batalha switching to greeting the Claimant when she arrived for work and complaining if she did not respond - 20 July 2023. Comparator: Sophie Palmer.**

100.1. Did it happen? Two factual matters are raised by this issue. The 1<sup>st</sup> relates to apologies. There are two to consider. On 27<sup>th</sup> April Tony emailed the Claimant directly [857] stating *'Hi, Joanna. I wanted to say that I'm sorry for your experience when coming into the office. It wasn't my intention to make you feel this way and I'm sorry for that, Tony.'* On its facts this allegation (that Tony failed to apologise to the Claimant) is dismissed. There plainly was an apology. It may not have gone as far as the Claimant wanted, and it did not admit racism on his part, but this issue is more simply stated: that Tony failed to apologise. The allegation fails on its facts as he did. The 2<sup>nd</sup> allegation is the offering a non-apology to Sophie Palmer. On 24<sup>th</sup> March 2023 Patrick Riddell, who had spoken to Tony about the March incident, passed on his apology [702]:

*'As the head of the department, I wanted to apologise for your experience. I spoke to Tony about the situation and he feels terribly that you had this experience and it was certainly not his intention. He wanted me to pass on his apologies to you'.*

100.2. It is this that the Claimant asserts was a non-apology given to Ms Palmer on 19<sup>th</sup> April [747]. Whilst this did not admit that racism played any part in his treatment of the Claimant it was an apology about the situation and the Claimant's experience, stating that he had no such

intention. We do not agree that the 2<sup>nd</sup> apology could fairly be described as a 'non-apology'. It is hard to see what else Tony could have said, if he believed that the Claimant's race played no part in how he had interacted with her. In the circumstances the apology allegations within this issue are dismissed on their facts.

100.3. There were two apology issues, one raised in time and the other out of time. We would have considered them to be part of the same single act of discrimination (the lack of any adequate apology from Tony) and as the second was presented in time, had we upheld the first apology allegations on its merits, we would have considered it to be part of the same continuing act, and thus in time.

100.4. The 2nd part of this issue is a repeat of issue 4 (Tony saying hello to the Claimant and complaining if she did not respond). It has been dealt with at [Issue 4] above and is not repeated here.

100.5. Issue 32 was presented in time.

100.6. Issue 32 fails and is dismissed.

101. **[Issue 33] Failing to uphold the Claimant's appeal against the grievance outcome. On appeal against the grievance outcome, the Claimant was re-interviewed by Helen Placito, but Tony Batalha was not.**  
**Comparators: Edward Enniful, Tony Batalha.**

101.1. Did it happen? Helen Placito did fail to uphold JR's appeal against the dismissal of her grievance on 27<sup>th</sup> July 2023 **[1109]**, so the first part of this issue is established on its facts.

101.2. Was it related to the Claimant's race? Simply because the grievance raised a race complaint does not mean that Ms Placito's conclusion on the appeal was related to the Claimant's race or her sex. We accept Helen's account that the conclusion was reached after her investigation into the complaint, and that her conclusion was related to that investigation. We accept that a rejection of the appeal would be unwanted. There is no basis for asserting that Helen Placito, who had been called on to undertake the appeal had the intention or purpose to

harass the Claimant with her outcome. Ms Placito's rationale is set out in her statement **[HP41]**. A decision rejecting a race grievance on reasoned grounds cannot reasonably be said to have had, when considering all circumstances, the effect of harassing the Claimant. The process for conducting the appeal was agreed with the Claimant **[1037]** and Helen's summary of the Claimant's grounds of appeal were agreed **[1040]**.

101.3. Helen asked the Claimant if anyone else should be re-interviewed. The Claimant did not suggest Tony should be. There was agreement for Helen speak to Mike Dent, Sophie Palmer, Patrick Riddell and Emilie Sutcliffe. Helen did consider interviewing Tony again, but decided no **[HP25]**.

101.4. Was it related to the Claimant's sex? The Claimant's grievance **[818]** did not expressly raise an allegation of sex discrimination or harassment, however it say that the incidents made the Claimant feel unsafe. In the very broadest terms the grievance appeal conclusion was therefore related to sex. However, it is not the law that someone who raises an oblique sex grievance which is dismissed on appeal automatically can claim harassment on the grounds of sex, simply by reason of the appeal dismissal. Such a dismissal did not have the purpose, or we think, taking into account all of the circumstances of the appeal, the effect of harassing the Claimant.

101.5. Was it because of the Claimant's sex or race? The rejection of the Claimant's appeal was an act of detriment. We consider that it was a well-reasoned decision which accepted some aspects of the Claimant's complaint **[HP31-32]**. We are not satisfied that the Claimant has provide facts from we could conclude a contravention of the **EgA** had occurred. In any event we accept Ms Placito's explanation of the process she followed and the decision she reached.

101.6. The Claimant's actual comparators, Tony Batalha and Edward Enniful are misconceived. Neither raised a grievance or a grievance appeal so they are not in the same circumstances as the Claimant for this issue.

101.7. Was it because the Claimant did a protected act? Whilst the appeal process had begun with a protected act, which Ms Placito had

knowledge of, we accept her explanation as to the probity of the task she undertook and we reject the contention that she pre-decided to reject the grievance appeal, because a protected act had occurred.

101.8. Issue 33 fails and is dismissed.

**102. [Issue 34] Prematurely stopping payment of the Claimant's pension contributions, 19<sup>th</sup> June 2023.**

102.1. Did it happen? Yes. It is accepted that the Claimant's pension was stopped prematurely (ie while the Claimant's fixed term contract was still continuing), so this allegation is made out on its facts.

102.2. Was it related to the Claimant's race or sex and/or was it because of the Claimant's race or sex and/or any protected act? The premature stopping of the Claimant's pension contributions was not undertaken by the Respondent or anyone working for it. The pension provider, Arriva, accepted responsibility for the mistake [950]. The Claimant accepted during course of evidence that this allegation must fail.

102.3. Issue 34 fails on its facts and is dismissed.

**103. [Issue 35] Failing to include the claimant in the UK Wired Slack message group: she was told by IT to ask Mike Dent to admit her to the group and by Mike Dent that IT must do it. On her penultimate day she was admitted by Peter Guest, who had joined Wired shortly before she had. Comparator Peter Guest.**

103.1. Did it happen? It is clear that the Respondent was beset with IT issues when it came to adding the Claimant to its Slack messaging system, which the Respondent attempted to resolve (for example [543-544]. Mike Dent intervened on the Claimant's first day to try and solve an issue with the Claimant's email [462] and [MD22]. On 1<sup>st</sup> February the Claimant confirmed to Mike that they (IT) were looking into reinstating her Slack account [473] which was approved on 8<sup>th</sup> February [499]. It is

also clear that the Claimant did have some access to slack and could send slack messages. She appeared to have been put in the US Slack network and not the WIRED UK General Slack Channel [1088]. We have seen evidence that Mike Dent was trying to add the Claimant and that he was asking IT to assist in solving this issue [1102] and [MD81]. Whilst it is clear that there were IT issues (to that extent this allegation is made out on its facts) there was plainly no intention to exclude the Claimant from the Slack messaging system and we conclude that Mike Dent did all that could be reasonably expected of him to resolve the issue. We note that on 15<sup>th</sup> February 2023 the Claimant messaged Oliver Hazelwood to say '*Alas, it is not your fault. My beef is with the developers or Workday*' [546]. She has not indicated a problem with Mike Dent. We have heard no evidence that Mike added Peter Guest without issue.

103.2. Was this related to the Claimant's sex or race? We think Mike Dent did what he could to ensure the Claimant's access. There is no basis for suggesting that there was an intentional failure and/or that such a failure was related to the Claimant's sex or race.

103.3. Was it because of the Claimant's sex or race? The Claimant has failed to establish facts from which we could conclude a contravention of the **EqA** has occurred.

103.4. Was it because the Claimant did a protected act? The original access issues occurred during the Claimant's first few weeks. This pre-dated any protected act. There is no evidence to suggest that the later issues or Mike Dent's attempts to solve them had anything whatsoever to do with any protected act.

103.5. Issue 35 fails and is dismissed.

104. **[Issue 36] On the Claimant leaving, failing to send a message to all staff to that effect. Compare treatment of a woman staff member who left 2-3 days later than her.**

104.1. Did it happen? The Claimant confirmed that the alleged harasser / discriminator for this issue is Oliver Hazelwood and Mike Dent. The



Claimant was due to leave the Respondent's employment on 31<sup>st</sup> July, on the day of a weekly WIRED meeting. We accept that it was the Respondent's intention to thank the Claimant for all of her work and to inform staff of her departure at that meeting [OH72] and [MD84]. Ultimately, that WIRED meeting was cancelled [1120].

- 104.2. Greg Williams sent a message at 3.23pm [1122] *'Today is Joanna's last day at WIRED, so I wanted to take this opportunity to thank her for all her hard work. WIRED's visual standards are exacting, but Joanna has consistently risen to the challenge ensuring that our photography remains at the highest levels, by delivering fresh, original arresting. Imagery that's distinctly, distinctively wired. Thank you, Joanna. We wish you all the best in whatever comes next'*.
- 104.3. In so far as it is asserted that Mike Dent and Oliver Hazelwood failed to send a message to all staff, this allegation is established.
- 104.4. Was it related to the Claimant's race or sex or because of the Claimant's race or sex? We have no basis for reaching either conclusion. We accept the evidence that the WIRED meeting on the Claimant's last day was intended to include an announcement, but that the meeting was cancelled. This was the reason why Mr Dent and Mr Hazelwood did not make the appointment. Mr Williams made the announcement after the WIRED meeting had been cancelled.
- 104.5. The Claimant relies on an unnamed woman that was said to have left 2-3 days after her, but she has never identified that individual. As has been said already, a female comparator negates discrimination on the grounds of sex. It is possible that she was referring to Chelsea Hughes, a Senior Visual Editor, who emailed her team to confirm that it was her final day at British Glamour [778]. If this is who the Claimant referred to, then the comparison fails for sex discrimination. We note that this individual sent her own email, so her treatment appears to have been the same, or less favourable, than the Claimant's treatment.
- 104.6. Was it because the Claimant did a protected act? We reject this allegation. The principle reason was the cancellation of the WIRED meeting that had been due to happen on the Claimant's last day.

104.7. Issue 36 fails and is dismissed.

105. **[Issue 37] Oliver Hazelwood failing to conduct a handover arranged for 31st July. Ignoring her handover notes so that contributors she had involved did not receive their copies of the magazine. Compare Catherine Gargan Hall's maternity leave.**

105.1. Did it happen? This issue is in two parts. The first part (regarding a handover) is made out on its facts, subject to the observation that no handover could have taken place with Ms Gargan-Hall on the Claimant's last day. There was a short gap between the Claimant leaving and Ms Gargan-Hall returning. The Claimant asserts that she messaged an individual to say a handover had been arranged for Monday **[1115]**. This statement, if accurate, suggests that Oliver Hazelwood asked if there should be a handover. We conclude more likely that an emailed handover was agreed, rather than a meeting **[1120]** given the short delay in Ms Gargan-Hall returning. We conclude that Mr Hazelwood asks for a handover document which he could pass to Ms Gargan-Hall. The Claimant agreed to send on a written handover for him to pass to her.

105.2. The second part asserts that Ms Gargan-Hall ignored her handover notes, with the consequence that photographers that had featured in WIRED's magazines under the Claimant's time as acting photo editor, did not get a copy of the magazine that featured their photographs. Ms Gargan-Hall told us that she could not recall if the handover notes she received suggested that any WIRED issues be sent to photographers. She said that this was a very small part of her role and not necessarily anything she would do.

105.3. Was it related to the Claimant's race or sex. The first was related to the gap between the Claimant leaving and Ms Gargan-Hall returning and the second to Ms Gargan-Hall not recalling if a recommendation had been made to send magazine copies to contributors, and that it was not her normal practice.

- 105.4. Was it because of the Claimant's sex or race? For the same reasons we conclude that it was not. Ms Gargan-Hall is relied on as the Claimant's comparator, thereby negating the sex discrimination case. She cannot be an actual comparator for the Claimant's race claim, as she was not handing her role over to anybody. Further, she did not perform an actual or emailed handover to the Claimant when she departed on maternity leave. We conclude that a hypothetical comparator, making the same suggestion, would have been treated in exactly the same reason.
- 105.5. Was it because the Claimant did a protected act? The first incident was caused because of the cancelled WIRED meeting. There is no evidence that Ms Gargan-Hall, a maternity returner, was even aware of the Claimant's protected act and certainly nothing that could lead us to conclude any act was the reason why she did not follow the Claimant's handover suggestions.
- 105.6. Issue 37 fails and is dismissed.
106. **[Issue 38] The Claimant being sent her exit interview early ahead of schedule by HR during the investigation.**
- 106.1. Did it happen? Yes, this allegation is made out on its facts. It was sent to the Claimant on 17<sup>th</sup> July (just under two weeks before the end of her fixed term contract) in error by Gartner, a survey provider used the US People Team **[1014-1015]**. This was confirmed to us in evidence by India Ashmore **[IA19]**. The correct exit interview email was sent from UK, 2 days later on 19<sup>th</sup> July **[1012]**
- 106.2. Was it related to the Claimant's race or sex? Whilst there has been no explanation for why the Gartner US survey was sent to the Claimant, we accept that it was sent by mistake, which the Respondent then investigated. There is no basis for asserting that this was related to the Claimant's sex and race.
- 106.3. Was it because of the Claimant's sex or race? The Claimant was about to leave. She was sent an exit interview, within two weeks of

her departure. We do not consider that this amounted to a detriment. No actual comparator is relied on and we conclude that the same mistake could have happen to any hypothetical comparator.

106.4. Was it because the Claimant did a protected act? There is no evidential basis for asserting that the US system mistake had anything to do with any protected act.

106.5. Issue 38 fails and is dismissed.

107. **[Issue 39] In Rosamund Bradley Senior HR/ People Director not taking active steps to ensure the Claimant's safety after the Claimant expressed concerns about being approached by Tony Batalha on 11 July 2023.**

107.1. Did it happen? The Claimant did email Ms Bradley 11<sup>th</sup> July **[1029]**. The Claimant said she felt she needed to report everything involving Tony, no matter how trivial. She gave an account of what had happened to her: namely Tony Batalha had said '*good morning*' to her. Ms Bradley replied by saying, "*thank you for letting me know*" before going on to discuss who she had appointed to hear the grievance appeal. It is factually correct to say that Rosamund Bradley did not take active steps to ensure the Claimant's safety in response to the Claimant's email. To that extent this allegation is made out on its facts. However, what possible security risk could Ms Bradley have anticipated after being informed that Mr Batalha had said '*good morning*'. The Claimant herself prefaced her update by saying that this was a trivial matter, raised for completeness, without any suggestion that additional steps were necessary to secure the Claimant's safety or that any further steps should be taken. There was no suggestion by the Claimant that her safety was at risk, or any request for additional safety steps to be taken. Given how trivial this update was, we do not think that Ms Bradley could have replied in any other way other than by saying '*thank you for letting me know*'.

107.2. Was it related to the Claimant's race or sex? We reject the assertion

that Ms Bradley's failure to take active steps to ensure the Claimant's safety was in anyway related to the Claimant's sex or race. It was related to the fact that the latest update from the Claimant revealed absolutely no additional safety concern.

- 107.3. Was it because of the Claimant's sex or race? In this allegation the Claimant is asserting that there was a safety risk which required additional action and Ms Bradley did not act on it because the Claimant was either black or female. The Claimant has failed to prove facts from which we could conclude a contravention of the **EgA** has occurred. No actual comparators have been identified. We are satisfied that any hypothetical comparator that had reported that Tony had said 'good morning' would also not have had any active security measures put in place.
- 107.4. Was it because the Claimant did a protected act? For the reasons stated there is no basis for asserting that Ms Bradley chosen not to put in place active safety measures because the Claimant had raised a prior protected act.
- 107.5. Issue 39 fails and is dismissed.

## **[8] Our Judgment (in summary)**

108. It is the Judgment of the Tribunal that:

108.1. The Claimant's claims of direct race discrimination are dismissed.

108.2. The Claimant's claims of direct sex discrimination are dismissed.

108.3. The Claimant's claims of harassment related to race are dismissed.

108.4. The Claimant's claims of harassment related to sex are dismissed.

108.5. The Claimant's claims of victimisation are dismissed.

**Judgment delivered orally on 5<sup>th</sup> September 2025**

**Employment Judge Gidney**

**Tribunal Member Keyms**

**Judgement and Reasons approved on 15<sup>th</sup> September 2025**

**Sent to the Parties on:**

**22 September 2025**

.....

**For the Tribunal:**

## **Annex 1 List of Liability Issues**

### **Time limits**

1. Given the date the Claim Form was presented and the dates of early conciliation, any complaint about something that happened before 28 April 2023 may not have been brought in time.
2. Were the discrimination and victimisation complaints made within the time limit in s123 EqA? The Tribunal will decide:
  - 2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
  - 2.2. If not, was there conduct extending over a period?
  - 2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
3. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
  - 3.1. Why were the complaints not made to the Tribunal in time?
  - 3.2. In any event, is it just and equitable in all the circumstances to extend time?

### **Direct race or sex discrimination (s13 EqA)**

4. The claimant is black and compares her treatment with people who are not black for the race claim, and with men for the sex discrimination claim. Except where noted, the claimant relies on the treatment listed below as either sex or race discrimination or both.
5. The claimant will rely on hypothetical comparators' where no comparator is named and in addition to any named actual comparators. Did the respondent do the following things:

- 5.1. By Tony Batalha on 31 January 2023, stopped the claimant from entering Vogue House on her way to the office. Comparators: Edward Enniful (sex), Anna Wintour (race), Peter Guest (contract worker hired shortly before the claimant, race or sex), Oliver Hazelwood, claimant's manager (race or sex).
- 5.2. By Tony Batalha on 16th March 2023, stopped the claimant from entering Vogue House on her way to the office. Same comparators.
- 5.3. By Tony Batalha on 18th May 2023, harassed or intimidated the claimant. Comparator: Edward Enniful (sex), hypothetical (race)
- 5.4. By Tony Batalha on 11 July and on 20th July 2023, harassed and intimidated the Claimant. Same comparators.
- 5.5. Oliver Hazelwood giving a false account of how the claimant reported Tony Batalha's treatment of her on 31st of January 2023 and how he responded in (a) February 2023 and on (b) 19th June 2023.  
Comparison with his treatment of the accounts given by Ben Hinks and Tony Batalha.
- 5.6. Ben Hinks and Oliver Hazelwood and Mike Dent providing the claimant with misleading information about respondent's procedures such as photo credits and photographers contracts, matters the claimant discussed with Mike Dent, Oliver Hazelwood and Ben Hinks at meetings on 2nd of March, 23 was preferred to hers.
- 5.7. On 23rd March 2023, Oliver Hazelwood calling a meeting to discuss the Claimant's accusation of micromanagement. The Claimant was not notified of Mike Dent's attendance. Compare Ben Hinks.
- 5.8. Mike Dent giving a false account of how the claimant reported Tony Batalha's treatment of her on 16th of March 2023. Comparator: treatment of Tony Batalha's account.
- 5.9. Withholding investigation evidence (16th of March 2023 onward).  
Comparators: Tony Batalha, Edward Enniful.
- 5.10. Sophie Palmer's investigation of the Claimant's informal complaint (17th March 2023) being mishandled and subject to bias. Comparators: Tony Batalha, Edward Enniful.
- 5.11. Emilie Sutcliffe's investigation into the Claimant's formal grievance (15



June 2023) being mishandled and subject to bias. Comparators: Tony Batalha, Edward Enninfu.

- 5.12. On 25 April 2023, Mike Dent suggesting another magazine's picture editor find a photographer in India, rather than the claimant.  
Comparators: Catherine Gargan.
- 5.13. Ben Hinks demanding that the claimant provide information already given and asking for details of her correspondence with contributors (February to July 2023). Comparators: Oliver Hazelwood, Catherine Gargan.
- 5.14. By Mike Dent, Oliver Hazelwood and Jeremy White, largely in May 2023, excluding the Claimant from unscheduled photograph discussions and other tasks within her remit, such as photo shoots, budgets, use of photographer Benedict Redgrove. Failing to involve the claimant had negative consequences on the Benedict Redgrove photo shoot, such as over ordering and lack of coordination with design team on layout. Referring queries to Ben Hinks rather than the Claimant.  
Comparators: Catherine Gargan. Samantha Cooper.
- 5.15. Mike Dent undermining the Claimant by directing queries about her work to Oliver Hazelwood, in her presence. Others speaking for her in meetings. Compare Ben Hinks, Oliver Hazelwood, Amit Katwala.
- 5.16. Oliver Hazelwood duplicating her work arranging and supplying shoot production, timings schedule (March 2023, Wired Health).
- 5.17. Claimant given false information about procedures (including use of a software programme) and failing to address her complaints that queries about photo credits and photographer contract procedures had not been addressed. Matters discussed at a meeting on 6th June 2023. Oliver Hazelwood and Mike Dent praising the claimant's performance, while she expressed concerns regarding unequal treatment: that she had repeatedly been questioned about a photographer for a Ukraine photo shoot after confirming details, Ben Hinks was defended for his actions unjustly demanding work that had already been supplied, and that Oliver Hazelwood duplicated her task of arranging supplying shoot production timing schedule for an event photo shoot. See APOC 32-39.  
Comparators: Ben Hinks, Oliver Hazelwood, Catherine Gargan.

- 5.18. By Mike Dent, on 6th June 2023, asking the Claimant not to call meetings, but to address concerns in the moment. Comparators: Ben Hinks, Oliver Hazelwood, Catherine Gargan.
- 5.19. Mike Dent misrepresenting what the Claimant had said at this meeting and describing her as combative, an offensive racial stereotype. Comparators: Ben Hinks, Oliver Hazelwood
- 5.20. June 2023. HR failing to provide literature on misogynoir and microaggressions for the Claimant to send to Mike Dent.
- 5.21. Mike Dent claiming just before an impromptu meeting about the Ukraine magazine issue that the claimant worked different hours and left earlier than others. Comparators: Ben Hinks, Oliver Hazelwood.
- 5.22. Mike Dent answering non-urgent emails at weekends on behalf of the claimant, June 2023. Comparators: Ben Hinks, Oliver Hazelwood, Catherine Gargan.
- 5.23. Oliver Hazelwood showing the Claimant a video of his black or mixed-heritage niece when he did not otherwise share personal matters with her. Comparator: Ben Hinks, Catherine Gargan.
- 5.24. Ignoring the Claimant's diversity goals discussed at the probation meeting, in particular not arranging meeting to take them further. Comparators: Ben Hinks, Oliver Hazelwood, Catherine Gargan.
- 5.25. On 16 June 2023 Yashica Olden failing to meet the claimant at the Adelphi office as arranged.
- 5.26. Patrick Riddel, director of facilities, deleting CCTV footage of the Claimant with Tony Batalha on 16th March 2023. Then on 19<sup>th</sup> June 2023, giving a false account of what he had seen. Comparators: Tony Batalha, Edward Enniful.
- 5.27. Emily Sutcliffe and Sophie Palmer ignoring several requests from the Claimant to view the CCTV footage of 31st January, 16th March footage and 18th May 2024 of interactions with Tony Batalha.
- 5.28. Jesse Ingram making an incomplete minutes of the Claimants grievance investigation interview with Emily Sutcliffe on 15th June 2023. Compare complete notes made of evidence of Tony but Allah and Oliver Hazelwood.
- 5.29. Emilie Sutcliffe and Sophie Palmer using 'criminalised language' to

describe the claimant's appearance (wording the claimant wearing sunglasses as having her face 'concealed') throughout the grievance investigations and in the grievance outcome letter 28 June 2023.

Compare Anna Wintour and Edward Enninfu wearing dark glasses in the office.

- 5.30. Between May and July 2023 Greg Williams and other staff promoting Tony Batalha's petition on Conde Nast platforms and in Wired staff meetings. The claimant was unsupported during this time, by contrast. Comparator: Tony Batalha.
- 5.31. Tony Batalha on 18th May 2023 stalking the claimant with his eyes as she entered the building, by contrast to his treatment of other women.
- 5.32. Tony Batalha failing to apologise to the Claimant while offering a non-apology to Sophie Palmer 19th April 2023. Tony Batalha switching to greeting the Claimant when she arrived for work and complaining if she did not respond - 20 July 2023. Comparator: Sophie Palmer.
- 5.33. Failing to uphold the Claimant's appeal against the grievance outcome. On appeal against the grievance outcome, the Claimant was re-interviewed by Helen Placito, but Tony Batalha was not. Comparators: Edward Enninfu, Tony Batalha.
- 5.34. Prematurely stopping payment of the Claimant's pension contributions, 19<sup>th</sup> June 2023.
- 5.35. Failing to include the claimant in the UK Wired Slack message group: she was told by IT to ask Mike Dent to admit her to the group and by Mike Dent that IT must do it. On her penultimate day she was admitted by Peter Guest, who had joined Wired shortly before she had. Comparator Peter Guest.
- 5.36. On the claimant leaving, failing to send a message to all staff to that effect. Compare treatment of a woman staff member who 2-3 days later than her.
- 5.37. Oliver Hazelwood failing to conduct a handover arranged for 31st July. Ignoring her handover notes so that contributors she had had involved did not receive their copies of the magazine. Compare Catherine Gargan Hall's maternity leave.
- 5.38. In the Claimant being sent her exit interview early ahead of schedule by

HR during the investigation.

5.39. In Rosamund Bradley Senior HR/ People Director not taking active steps to ensure the Claimant's safety after the Claimant expressed concerns about being approached by Tony Batalha on 11 July 2023.

Comparators: Edward Enniful, Tony Batalha.

6. Is that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.
7. If so, was it because of (a) race or (b) sex?
8. Did the respondent's treatment amount to a detriment?

### **Harassment related to race or sex (s26 EqA)**

9. Did the Respondent do the things set out at (5.1) to (5.39) above?
10. If so, was that unwanted conduct?
11. Did it relate to race or sex?
12. 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?
13. 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.

### **Victimisation (s27 EqA)**

14. Did the claimant do protected acts as follows:

- 14.1. February 2023 Claimant reported 31st January 2023 Incident with Tony Batalha to Oliver Hazelwood on his return to work the following week.
- 14.2. Meeting 2 March 2023. Claimant reported concerns about her treatment by the team to Oliver Hazelwood and Ben Hinks.
- 14.3. 16 March 2023. Claimant reported concern about Tony Batalha's racial profiling to Mike Dent.
- 14.4. 17 March 2023 claimant emailed a grievance about Tony Batalha.
- 14.5. Claimant reported micromanagement concern at meeting with Mike Dent 23 March 2023.
- 14.6. 22 May 2023. Formal grievance.
- 14.7. Claimant cited her concerns to the chief people officer Stan Duncan and global chief of diversity and inclusion, Yashica Olden on 5th May 2023 during a company DNI zoom call.
- 14.8. 25th of May 2023 the claimant attended a grievance investigation meeting and was interviewed on 15th June 2023 about being a black woman who was racially profiled by Tony Batalha. The claimant also querying were there any black members? Of the people team would be available to attend said interview due to the likelihood of bias.
- 14.9. Requesting to seek TV footage of the reported grievances and incidents from Sophie Palmer on 20th March 2023, 28th June 2023, and Emily Sutcliffe on 16th June 2024, and from Helen Placito on 19<sup>th</sup>, 20th and 26th July 2023.
- 14.10. The Claimant sent an e-mail to Mike Dent on 1st June 2023 requesting a meeting regarding unusual actions and differences in treatment between her and the team, which took place on 6th June 2023. Mike Dent Oliver Hazlewood and Ben Hicks in attendance.
- 14.11. On 6th June 2023, the Claimants address Might Dent regarding her concerns about his earlier false account with the group meeting and misogynoir fuelled, offensive false description of the Claimant's conversation. This was also addressed by the Claimant via Slack message on 7th June 2023 and 23 June 2023.
- 14.12. June 23 Claimant requested Conde Nast, misogynoir and micro aggression literature from Emily Smith, HR.
- 14.13. Raising concerns to Emily Smith, Rosamund Bradley about possible

retaliation. 5<sup>th</sup>, 25<sup>th</sup> May 2023, 19 April 2023, 11<sup>th</sup>, 20<sup>th</sup> July 2023.

14.14. Raising concerns to Sophie Palmer, Roseman Bradley, Emily Sutcliffe, Yashica Olden. Over grievance investigation mishandling on 19 April 2023. 25<sup>th</sup> May 2023. 1<sup>st</sup>, 12<sup>th</sup>, 15<sup>th</sup> June. 2023, 6<sup>th</sup>, 11<sup>th</sup>, 27<sup>th</sup> July 2023.

14.15. Claimants informing HR of Tony Batalha subsequent 18<sup>th</sup> May, 11<sup>th</sup> July, 20<sup>th</sup> July Actions. Specifically:

14.15.1. 22<sup>nd</sup> May 23 Claimant informed Sophie Palmer of Tony Batalha's subsequent 18<sup>th</sup> of May actions;

14.15.2. 11<sup>th</sup> July 2023, Claimant informed Roseman Bradley of Tony Batalha's subsequent 11<sup>th</sup> of July 2023 actions;

14.15.3. 20<sup>th</sup> July 2023 Claimants subsequently informed Ross and Bradley of Tony Batalha's subsequent 20<sup>th</sup> of July 2023 actions.

14.16. July 2023. Claimant appealing the grievance outcome.

15. Did the Respondent do the things set out at (5.1) to (5.39) above?
16. By doing so, did it subject the Claimant to detriment?
17. If so, was it because the Claimant did a protected act?