

EMPLOYMENT TRIBUNALS

Claimant: Miss H Gendi

Respondent: Endeavour Automotive Limited

Heard at: London Central

On:
**17,18,19,,23,24,25 26 and
27 September 2024**

Before: Employment Judge Forde
Mrs L Moreton
Mr P Lewis

REPRESENTATION:

Claimant: In person

Respondent: Miss K Swann (Solicitor)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of being subjected to detriment for making a protected disclosure is not well-founded and the tribunal does not have jurisdiction due to the claim being presented out of time and is dismissed.
2. The complaint of direct sex discrimination is not well-founded and is dismissed.
3. The complaint of direct race discrimination is not well-founded and is dismissed.
4. The complaint of harassment related to sex is not well-founded and is dismissed.

5. The complaint of harassment related to race is not well-founded and is dismissed.
6. The complaint of victimisation is dismissed on withdrawal by the claimant.

Reasons

1. The claimant pursues claims of direct sex discrimination and sex related harassment, direct race discrimination and or race related harassment, unlawful deductions from wages and/or detriments arising from a number of protected disclosures.
2. The procedural history of this matter is recorded briefly in a case management order following a hearing before Employment Judge Norris on 4 December 2023. At that time, the case summary recorded that the claimant pursued aims of direct sex discrimination and or sex related harassment, direct race discrimination and or race related harassment, direct race discrimination by association, victimisation although there was a discussion at the case management hearing as to whether or not that allegation was one of whistleblowing, unlawful deductions from wages claim and/or breach of contract.
3. The claim form was presented to the tribunal on 24 September 2023.

Background

The claimant was dismissed from her employment as a general sales manager or "GSM" by Mr Andy Gore (hereinafter referred to as "Mr Gore") on the 14th of April 2023. At paragraph 43 of EJ Norris's case management order she identifies early conciliation started on 14th July 2023 and ended on 25 August 2023. Specifically, and as a result of the date of presentation EJ Norris stated that on the face of it, the claim may well be out of time insofar as it concerns conduct said to have taken place before 15 April 2023 unless the claimant can show such conduct was part of a continuing act and/or that it would be just and equitable for the tribunal to extend time as it can under s.123 Equality Act 2010 ("EqA 2010").

4. Pausing there, there is a minor misstatement in what EJ Norris says here because the jurisdiction for the tribunal to extend time in respect of an unlawful deductions or breach of contract claim and in respect of a protected disclosure claim is different to the one that applies in respect of discrimination claims. Specifically, in respect of discrimination claims, the tribunal has a *just and equitable* jurisdiction to extend time whereas in relation to breach of contract and unlawful deductions, the jurisdiction is *reasonably practicable*. This difference was discussed with the parties during the course of the hearing and it was made

clear that the tribunal has to apply a different legal formulation when considering an application to extend time under the two different jurisdictions.

The hearing

5. Housekeeping was undertaken at the start of the hearing. The tribunal considered 2 applications from the claimant. First, the claimant applied to strike out the respondent's response relying on two grounds set out within rule 37 of the tribunal's Rules of Procedure 2013 ("The Rules"). Specifically, the claimant relied upon rule 37(1) and asserted that the respondent's conduct in the proceedings prior to the hearing justified sanction in the form of strike out.
6. Alternatively, the claimant asserted that the respondent's response should be struck out on the rule 37(2) on the basis that the response disclosed no reasonable grounds and therefore did not satisfy the realistic reasonable prospects of success test.
7. The application failed on both grounds because in the view of the tribunal, the bar for the claimant to meet under both limbs of her application is a high one. In respect of the application under rule 37(1), it was pointed out to the claimant that the bundle and witness statements for the hearing had been prepared and that the parties were fully prepared to go ahead with the hearing. In other words, it was impossible to say that the defaults alleged against the respondent were such that they had impeded the progress of the matter to a trial which could no longer be effective due to those defaults. In other words, while it is the case that the tribunal looks dimly upon parties who do not comply with its directions, the tribunal was unable to detect within the claimant's application a level of default that merited the sanction she was pursuing.
8. Secondly, the application on the second limb of the claimant's application, namely of having no reasonable prospect of success had no merit whatsoever given that the respondent had set out a robust rebuttal of each and every aspect of the claimant's case and had witnesses prepared to provide the evidence it required to support its response. Moreover, and without reaching any finding, it appeared to the tribunal that the respondent had presented a basis to defend the claim which appeared to the tribunal to have merit. Given these views, this aspect of the claimant's application was bound to fail.
9. In summary, to have given the claimant the sanction she was seeking, would have amounted to a windfall to her, one which was not capable of being justified on the evidence presented to the tribunal and particularly so in light of what EJ Norris had observed in her case management order as regards time.

Rule 50

10. The claimant requested anonymity of the proceedings. Specifically, she was looking to anonymize her name and any information that could identify her. She

asserted her rights under Article 8 ECHR, namely her right to privacy and family life. She said in her application:

“I found a stable job to minimise losses and should not have to experience further detriment than I already have. This case involves violence at work, whistle blowing, stereotyping and going far and beyond to ensure my rights are breached and I’m applying for anonymity in order to ensure I do not suffer further detriment, by not granting this order I will suffer ongoing harm or prejudice.”

11. In further support of her application, the claimant stated orally that she is a Muslim and, as a consequence, would be harmed by evidence from the respondent’s witnesses which contained information that was culturally embarrassing - and said by the claimant to have been untrue - namely by alleging that she had been in her words promiscuous, flirtatious, having a romantic interest in her boss, and that she had drunk to excess during the course of her work function. The tribunal found that the claimant’s oral development of her argument in support of this application did not expand significantly beyond what she had written in her application.
12. The tribunal evaluated the extent to which the claimant’s rights under Article 8 would be compromised against the competing interests of the presumption of open justice as well as Article 10 ECHR. In the round, the tribunal considered that the claimant’s concerns were ones that are shared by a significant number of parties who appear before the tribunal.
13. When the tribunal applied the relevant law it determined that the application fell short; the tribunal found that it was in the interests of justice to not grant the order on the basis that the presumption of open justice prevailed and because it was found that, on the facts of the claimant’s application, Articles 6 and 10 prevailed over the claimant’s Article 8 rights. The claimant had failed to show that the matters that she wished to remain private were anything more than matters that were embarrassing to her as opposed to matters that could reasonably and sensibly be described as infringing her Article 8 rights. The tribunal found that the application here fell well short of what was required in order to justify the claimant’s application.

Protected disclosure

14. After some debate between the parties and the tribunal, the claimant was permitted to amend her claim to include claims of protected disclosure. The claimant had made several allegations and issues which she had labelled as victimisation claims. The tribunal considered what was effectively an application to amend and recognised that, at the time of entering her claim form, the claimant stated that she wished to pursue a protected disclosure or whistleblowing claim. This had been discussed at the case management hearing before EJ Norris although it is not set out in the issues that the respondent had

prepared for the hearing on the basis that the claim would form part of the issues to be determined. Furthermore, the respondent had not prepared its response or its witnesses to address the issue of the claimant's protected disclosure allegations.

15. What the claimant told the tribunal is that she had attempted to amend her claim to include whistleblowing and not victimisation as discussed with EJ Norris.
16. In the round, the tribunal found this a difficult matter to resolve and determine. When considering the balance of prejudice, the tribunal found that this lay in favour of the claimant who would lose a cause of action. In doing so, the tribunal noted the respondent's position has been to deny all claims and that was unlikely to change. Further, that the new claims had been recycled from the claimant's claims of victimisation which were withdrawn because of the claimant's successful application. It was the claimant's position that she had been in contact with the tribunal with a view to amending her claim but had received no response. The Judge reviewed the tribunal's file and could see no record of the correspondence that the claimant referred to but it was confirmed by Miss Swann for the respondent that the claimant had been in contact as she had asserted.
17. Given this, it was the tribunal's view that, narrowly, the balance of prejudice lay in favour of the claimant in granting the amendment. Furthermore, it was the tribunal's view that the respondent's main witness, Mr Gore, could address the whistleblowing claims in his oral evidence and therefore the tribunal allowed the claimant to include the allegations of protected disclosures.
18. The disclosures were confined to four discrete issues, namely two allegations arising out of the discussion between the claimant and Mr Gore that took place on 9/3/23; a disclosure made during a concerns meeting to Mr Mark Brown on 10/3/23; and in her grievance on 13/3/23.
19. In respect of each and every allegation, the claimant was required to provide details of what was said, to whom it was said, how it was said, how it meets the statutory test with regards to a qualifying disclosure and to provide details of the detriment relevant to each disclosure. The Judge explained to the claimant that further information was required from her in terms of what type of obligation breach she was relying upon for each disclosure and why it was said to have been in the public interest. The claimant was required to provide this information by the start of the following day. and she produced a document which set out the nature of her complaint, when it was done, how it was communicated, identified a public interest test, and the detriment she says that she suffered.
20. The rest of day one was allocated to the reading time for the tribunal in the absence of the parties.

Limitation

21. At the end of the hearing of evidence, the tribunal brought to the parties' attentions and specifically the claimant's attention that upon considering the evidence it had become clear that the claimant had presented her claim form on 24/9/2023. The last act that the claimant complained of with respect to her protected disclosure claim was 13/3/2023, namely her grievance. If one travels forward three months less one day after this date, we arrive at 12/6/2023. The claimant commenced early conciliation 14/7/2023 and the conciliation period ended 25 August 2023.
22. The law is clear that not only must a claimant begin early conciliation before a claim is started but also that early conciliation must commence before the expiry of the primary limitation period of "within three months" as required by **section 48(3) ERA 1996**. As the primary limitation period expired on 12/6/2023, the claim is out of time. Consequently, the tribunal invited submissions from the parties on whether the tribunal should or could extend time in the knowledge that the relevant jurisdiction, namely "reasonably practicable" (see above) would be applied.
23. In submission, the claimant relied on what she says are ongoing acts about which she says she made her qualifying disclosures. The tribunal found no continuing acts that extended beyond 13 March 2023 and that the claimant's grievance was the last act that she can rely upon as a qualifying disclosure. Accordingly, the tribunal must go on to consider whether it was reasonably practicable for the claimant to have commenced her claim earlier than she did.
24. The tribunal had regard to the guidance of the Court of Appeal said in the case of **Palmer and another v Southend-on-Sea Borough Council 1984 ICR 372, Court of Appeal** and what it had to say about the meaning of "reasonably practicable." It is clear that there are a number of definitions, including "not reasonably feasible". This is the standard that the claimant's reason for not starting the claim must be measured against. The claimant had been given the opportunity to make submissions, but she was unable to provide a cogent, relevant reason why it was not possible for her to have started the claim earlier. She sought to argue that there are a number of continuing acts that allow an extension of time. However, she failed to identify any acts of relevance to her whistleblowing claim to the tribunal. The tribunal found that the whistleblowing claims had been presented to the tribunal out of time and that there was no reasonable excuse for the claimant's failure here. It follows that her claim of detriment consequent to whistleblowing has been presented to the tribunal out of time and that the tribunal does not have the jurisdiction to hear these claims.
25. While the claimant said that she was in significant distress following the termination of her employment, this is not of itself enough of a reason, (and in the absence of any evidence in support such as GP records), to grant an extension

out of time within the confines of the “reasonably practicable” jurisdiction and so is not open to the tribunal. Accordingly, this claim must be dismissed because the tribunal does not have jurisdiction to hear the whistleblowing claim because it is out of time.

Breach of contract/ unlawful deductions

26. The claimant claims breach of contract and/or unlawful deductions from her wages on the basis that she worked an additional day for each month of her employment with the respondent and contrary to the terms of employment which can be found at page 118 of the bundle.
27. At Section 4 of the contract it provides that she would be required to work both weekend days with one in three weekends off. The claimant’s evidence was that she had been asked to work an additional day at the behest of Mr Mark Brown who did not provide any evidence to the tribunal in either written or oral form. Therefore, and in the absence of an overtime provision or an express provision to deal with additional hours worked, the tribunal found this to be a contractual provision that is in dispute between the parties and one that had not been contemplated by the parties at the time of the formation of the agreement.
28. The tribunal find on the claimant's evidence that she did work the additional days and further finds that the parties did not contemplate the payment of days worked in this circumstance. Given this, the tribunal finds that the respondent did breach the claimant's contract on the first occasion that this happened but that the claimant, by way of conduct, accepted the respondent's breach on successive months thereby acquiescing to the settled state of affairs that occurred between the parties throughout the remainder of the agreement until the termination of her employment on 17/4/2023. Accordingly, this claim must fail also.

Law

ERA 1996 43B.— Disclosures qualifying for protection.

- (1) In this Part a “*qualifying disclosure*” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—
- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) that the health or safety of any individual has been, is being or is likely to be endangered,
 - (e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "*the relevant failure*", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

Direct Discrimination s.13 EqA 2010

(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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex—

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy[, childbirth or maternity].

(7) ...

(8) This section is subject to sections 17(6) and 18(7).

Harassment s. 26 EqA 2010

- (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.
- (2) A also harasses B if—
 - (a) A engages in unwanted conduct of a sexual nature, and
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—
 - (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
 - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (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—
 - age;
 - disability;
 - gender reassignment;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.

Burden of Proof for EqA 2010 claims

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.

- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.

Time limits s.123 EqA 2010

- (1) [Subject to [[section] 140B],] proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
 - (a) the period of 6 months starting with the date of the act to which the proceedings relate, 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.

111 Complaints to [employment tribunal]

- (1) A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.
- (2) [Subject to the following provisions of this section], an [employment tribunal] shall not consider a complaint under this section unless it is presented to the tribunal—
 - (a) before the end of the period of three months beginning with the effective date of termination, or
 - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Witness Evidence

29. The tribunal had witness statements from the claimant, Miss Maryam Raja, Mr Barnaby Wood, Mr Andrew Gore, Mrs Catriona Cawthorne, Mr Christopher Wall, Mr Andrew Shackleton Mrs Karen Hodgins, Mrs Julie Knight. All of the above witnesses except for Mr Wood attended tribunal to give up live evidence with Mr Wood's evidence being agreed.
30. The claimant gave evidence first. The tribunal found that the claimant's conduct in giving evidence before us mirrored some of the criticisms that the respondent made of her during her employment. This included talking over, a refusal to take responsibility for matters, being at times argumentative when receiving guidance, hypersensitive, a tendency to take a headline and run with it without details and sometimes misconstrue instructions as a result.
31. An example of the claimant's propensity to state headlines can be seen within her witness statement. The first page of her witness statement contains a number of headline assertions which although irrelevant to the issues that the tribunal has to consider had to consider, are nonetheless made and unsupported by any evidence whatsoever. These include obtaining a bachelor's degree in business management and organisational studies from one of Canada's top business schools, working for a major financial institution, breaking records for her performance for a well-known brand in the automotive industry in 2015, obtaining #1 records nationally and gaining the attention of international c-executives, her ability to positively impact sales and performance, having a positive reputation for her ability to influence market share and positively influence company culture and performance, being a top performer in all sales and management related roles, and of the teams that she managed *all herself* hitting records and achieving top rankings for sales/ profits/ customer experience results.
32. Another example was given in the claimant's closing submissions. Here, the claimant chose to set out or repeat the broad contentions of her criticisms levelled at the respondent namely that throughout the hearing, the respondent had repeated the behaviours that she criticised it off, namely being racist and sexist but in doing so, the claimant failed to provide a single example of the behaviours she was relying on. In fact, the claimant closing submissions were significant because she chose not to rely on any evidence heard in the hearing to support her case this point having been provided clear guidance by the Judge that this is something that she should consider doing.
33. In respect of her propensity to exaggerate, the tribunal's attention was drawn to the following among others as examples of that propensity and of her propensity to make allegations or assertions in the complete absence of any evidence in support and do so repeatedly.
34. At paragraph 57 of her statement, the claimant states that staff and customers were "*terrified*".

35. At paragraph 126, the claimant states *"1 March was the beginning of constant aggressive shouting in front of staff and customers"*.
36. At paragraph 127 the claimant says, *"I was constantly left out of forecast meetings that were a crucial part of my role"*.
37. At paragraph 184 the claimant explains that service customers are being treated *"unethically and being used as punch bags when they are not white and British"*.
38. The tribunal highlights the quoted sections above because the observations that the claimant relies upon are supported by the evidence contained within the claimant's witness statement only and nowhere else within the evidence before the tribunal, or there was evidence to counteract what the claimant says, for example there was evidence within the bundle that the claimant was not constantly left out of forecast meetings as she asserted at paragraph 127 of her witness statement. The tribunal was able to reach this finding on the basis of evidence provided by the claimant herself, namely from her own notebook which demonstrated that she had attended forecast meetings beyond the point at which she says she had been excluded from them.
39. The claimant was found by the tribunal to be at times an unreliable historian and was prone to allowing her claim to evolve as evidence presented itself within the hearing. An example of this was during her cross examination when she asserted that customer reviews as posted to platforms such as Google and Trustpilot were not used for marketing purposes but, on the other hand, cross examined Mr Gore extensively in respect of the potential misuse of fabricated reviews in the context of them being relied upon by prospective customers of the respondent to inform them in making a purchase decision with the inevitable inference that the reviews were used for marketing purposes.
40. When considering all of the above factors in the round, the tribunal regarded the claimant as an unreliable witness whose evidence had to be regarded with a degree of care and caution. There were many occasions when her evidence was manifestly inconsistent with the contemporaneous documentary evidence and others where she was unwilling to make factual concessions, however implausible her evidence. The consequent effect of these features is that it inevitably affects the tribunal's assessment of her credibility. In reaching this assessment, the tribunal has had regard to the fact that the claimant gave evidence over a long period and that she was representing herself in a long hearing. Notwithstanding, the claims were brought against the respondent by the claimant and it was clear to the tribunal that the claimant fully appreciated the importance of evidence in all of its forms. The tribunal's view in this regard is reinforced by the claimant's reliance on Whatsapp exchanges between herself and her partner which the claimant relied upon as evidence to support her evidence. The tribunal found that those messages were not helpful in general as they rarely addressed the facts.

Miss Raja

41. The tribunal found Miss Raja to be honest and straightforward but one whose evidence was limited in terms of its relevance to the issues that the tribunal had to consider in this case.

Mr Wood

42. As we have said, he did not attend the tribunal and his evidence was effectively admitted by the respondent. The tribunal found that the key element of his evidence was that he confirms that he did not make a complaint, and on that basis, the tribunal accepts what he has to say.

Mr Gore

43. While the tribunal was surprised by his lack of preparation, we nonetheless found him to be a straightforward, honest and knowledgeable witness of the matters he could recall or in respect of the respondent's commercial activities generally.

Mr Wall

44. Despite not working for the respondent, he did his utmost to assist the tribunal and was found to be a consistent, reliable and direct witness in terms of his answering. The tribunal had no cause for concern as to the accuracy or veracity of his evidence.

Mr Shackleton

45. He provided a short witness statement and gave evidence for a very short period in which he gave the tribunal no cause for concern as regards to the accuracy and veracity of his evidence.

Mrs Hodgins

46. Mrs Hodgins was clearly either discomforted by her attendance before us or annoyed. Either way, her demeanour was that of a mildly intemperate person who at times was short but clear with her answers. That said, the tribunal found her to be a largely credible witness and a reliable one at that and particularly so around the issue of altered platform reviews although the tribunal notes and records that the claimant did not ask this witness whether or not Trustpilot rather than Google reviews could be altered by employees of the respondent.

47. That said, the tribunal did not accept Mrs Hodgins' evidence that the claimant had no interaction with the team that she managed, an assertion undermined by evidence within the bundle that says something completely different. However, this was not an evidential issue that fell within one of the issues to be determined

by the tribunal and was therefore irrelevant to the tribunal's considerations and that in the round, the tribunal was able to find her to be a credible witness.

Mrs Cawthorne

48. the tribunal found Mrs Cawthorne to be a straightforward, credible, reliable and honest witness.

Mrs Knight

49. The tribunal found Mrs Knight to be a straightforward, resolute, credible, and reliable witness and the tribunal accepted the entirety of her evidence, around the allegations of what was said during the phone call between her and the claimant on 12 April 2023.

Findings of fact

50. The claimant was employed by the respondent as a general sales manager from 3 October 2022 until her dismissal with immediate effect on 17 April 2023.

51. At all relevant times the claimant was based at the respondents W London Volvo site.

52. There is little dispute that the vast majority of the allegations that the claimant makes in this claim concern the conduct of her direct line manager Mr Mark Brown who was employed at all material times as the respondent's head of business at the West London site. The claimant reported directly to him.

53. During the claimant's employment there were concerns regarding her performance and conduct. It was the respondent's case that there were performance concerns and specifically at paragraph seven of the respondent's grounds of resistance:

"... Her team would consistently miss targets set, the claimant was unable or unwilling to price up used cars and there were significant concerns over the claimants people management skills, an important element of the general sales manager's role. These issues were raised contemporaneously and informally during the course of her employment. This eventually culminated in a concerns meeting, the respondent's informal but recorded means of dealing with such issues when ad hoc contemporaneous discussions have failed to yield the required improvements, and ultimately in the claimant's dismissal..."

54. It is the tribunal's finding that the concerns meeting which occurred 10 March 2023 was the pivotal event in terms of the chronology of this claim. The claimant says that she was subjected to this meeting because of matters related to her sex and race.

55. Mr Brown's handwritten notes of that meeting are at pages 244 and 245. Typed meeting notes, which are described as not being a verbatim account but a summary of the main points of discussion are at pages 246 and 247 of the bundle. The typed notes set out a series of headings for discussion and the tribunal observe and find that those discussions are clearly relevant to the role that the claimant was performing. In other words, the tribunal rejects the contention that there was some ulterior, unlawful motive or intention behind the purpose of the meeting as alleged. For example, there are references to not hitting used car numbers in January; a failure to hit the respondent's used car budget number for January, February, and March; steps to be taken in respect of inquiry reviews; a discussion to ensure that every used car was photographed within 48 hours of it arriving on site; and the swapping of weekends with unauthorised people.

56. The typed notes are signed off with the following passage:

"During the meeting you were from the start very argumentative and confrontational when the purpose of this meeting was to help you focus on action area to fulfil your role as a GSM. While you have an assistant sales manager you hold full responsibility for the running of the department.

We went over the above points and you did not want the pre prepared how to sheet that I made for you and also did not want myself to show you how to lock the LEVC compound.

To be very clear these tasks are what we expect you as a GSM to be able to complete."

57. The following day, the claimant raised a grievance. The grievance, sent by e-mail, is entitled "concern letter meeting/ attempt at constructive dismissal". Summarising the claimant's lengthy grievance, the claimant puts forward a number of concerns and allegations of her own, including an attempt by Mr. Brown to add new responsibilities to her job role and misogyny on the part of Mr. Brown (for example, in describing her as argumentative and confrontational in his note). She also includes counterpoints to the contentions raised by Mr. Brown during the course of the concerns meeting, the majority of which are considered by the tribunal to be related to the claimant's conduct or performance and where the claimant makes a counter allegation against Mr. Brown where she alleges that Mr. Brown had become aggressive towards a customer.

58. The grievance was investigated by the respondent and the tribunal finds that that investigation was properly conducted and not susceptible to the criticisms that the claimant raises of it in her claim. The grievance outcome was communicated

to the claimant on 24 April 2023. The allegations are distilled into headings namely fabricating customer complaint, public embarrassment/ bullying behaviour/ gossiping/ rumours, event flags, sales meeting, loss of temper on the part of Mark Brown, equal pay, concerns meeting, forecast meeting. In respect of all aspects of the grievance, the claimant allegations were not upheld.

59. The claimant appealed her grievance, and the appeal is contained at pages 339-343 of the bundle.
60. It is important to bear in mind that following the communication of the grievance outcome to her by Mr Gore in a meeting attended by Mrs Cawthorne, on the 17th of April 2023, the claimant was subsequently informed that her employment was terminated at a further meeting on the same day, the fact of which was communicated to her by way of letter sent by e-mail on 18 April 2023. In the letter, Mr Gore explains that during the meeting held the day before, he had raised concerns regarding the claimant's ability to build and maintain effective work relationships. He explains that the position of general sales manager was pivotal within the respondent's business at Volvo West and that a GSM must form effective and positive working relationships with colleagues. He goes on to say that there were historic concerns regarding her attitude and the way in which she communicated with colleagues.
61. More contemporaneously recent concerns had been raised by a number of colleagues where some had said that they had felt targeted by the claimant; another felt that they were being pushed out by the claimant, including one by Grant Jenkins (a direct report to the claimant and who the claimant described in evidence as being a very good salesperson); that the claimant's communication style both in writing and verbally was interpreted as being rude and abrupt; the breakdown of fundamental work relationships such as the relationship with the administration manager; and Mr Gore's own experience of the claimant that she had a confrontational and abrasive manner. This in turn led him to the decision that it was untenable for the claimant to continue to work for the respondent given her position and the need for her to be able to effectively communicate with colleagues. In evidence and under cross examination from the claimant, Mr Gore repeated his position and made clear that the decision to dismiss was rooted entirely in the findings that he had reached and had absolutely nothing to do with the claimant's protected characteristics of sex and race. Specifically, He had reached his view having evaluated the evidence before him, including the claimant's response to the criticisms raised of her conduct and interactions with others. It was his view that the respondent simply could not thrive if the claimant continued to perform as she had done. He considered that the claimant was unsuited for role of GSM.
62. The claimant was informed that she would be paid in lieu of notice which amounted to three months' pay which would be paid in the next pay run. Mr Gore

confirmed that the claimant would be paid an element of her bonus payment due and in respect of any accrued but untaken holidays.

Grievance and Appeal

63. At the start of her grievance, which was addressed to HR Operations and Mr Gore and sent at 22:06 hours on 13 March 2023, the claimant details that she would like to set out a series of events which she describes as her having witnessed "...*bullying, scare tactics and hostile behaviour from Mark Brown*".
64. The claimant then goes on to set out several allegations. First, she alleges that Mr. Brown fabricated a customer complaint concerning her. The customer concerned is Mr Wood. This allegation is said to have occurred over the 3rd and 4th of March 2023.
65. The second allegation concerns the circulation of embarrassing or gossiping rumours about the claimant emanating from the Volvo awards event on 25 February 2023, when the claimant says that she began to notice a difference in Mr Brown's behaviour towards her.
66. The third allegation concerns the claimant's lack of preparation for a forecast meeting where the claimant alleges unreasonable and unfair treatment at the hands of Mr. Brown on 1 March 2023.
67. The fourth allegation concerns a promotional event which is described for the purposes of this judgement as the events flag on Saturday 4 March 2023 where the claimant details Mr Brown's behaviour towards her identifying it as aggressive and hostile.
68. The 5th allegation concerns the claimant raising a concern that Mr. Brown was encouraging insubordination within her team and emanates from Thursday 2 March 2023 and Tuesday 7 March 2023.
69. The sixth allegation concerns an incident within the showroom where the claimant alleged but Mr. Brown had lost his temper and had become violent within the dealership and thereafter and consequently sought to blame the claimant for his own misbehaviour. Here, the claimant alleges that Mr. Brown was ready to physically confront the customer in the car park and that the customer was "absolutely shocked" and was alleging that Mr Brown had engaged in "scare tactics".
70. The seventh allegation concerns the claimant's contention that Mr. Brown had manually amended her contract of employment with the intention of placing her on terms relating to her bonus at a rate lower than her peers. It was her contention that this was done deliberately.

71. The claimant's grievance was acknowledged by Mrs Cawthorne by way of letter dated 20 March 2023. An investigation began. Mr Wall, Mr Sahal Sabri, and Mr. Brown, were interviewed. During those interviews, all bar the claimant gave responses that were consistent with the findings reached by Mr Gore in support of his decision to dismiss the claimant and therefore inconsistent with the claimant's allegations and factual assertions underpinning her allegations.
72. For example, Mr Wall, who was interviewed on 23 March 2023 by Mrs Cawthorne, and in response to a question around the forecast meeting on one March 2023, explained that the claimant had attended for around 5 minutes and then left. In response to the question as to whether he heard Mr. Brown shout at the claimant, he responded: *"No. He said quite calmly it's the 1st of the month and you're not ready."* The claimant said that she hadn't received an invite to which Mr. Brown is said to have said in response *"it's the 1st of the month, you should know where your department is up to."* Mr Wall went on to say, *"I had everything with me, because I know that there will be a forecast meeting at the beginning of the month."* He went on to say: *"HG the claimant asked for more time to get everything together and we left the meeting as there was no point in being there."*
73. During this interview, Mr Wall was clear that Mr. Brown had not acted in an aggressive way and confirmed that no invites had been sent out to any of the meeting participants in advance of this meeting.
74. Mr. Sahal Sabri, who didn't give evidence to the tribunal, said in his interview with Mrs. Cawthorne on 23 March 2023 that he was unaware of Mr. Brown circulating rumours about the claimant emanating from the Volvo awards event on 24 February 2023; that he had called Mr. Brown into the office on Saturday 4 March 2023 regarding event flags,; and was clear that Mr. Brown did not raise his voice or swear in the showroom and denied a number of other factual allegations that the claimant makes of Mr. Brown. On a separate subject, Mr. Sabri confirmed that it was his understanding that the end of year bonus was for sales managers and would be paid at a level of 5%. In response to a question as to whether he understood that he and the claimant would receive 5% each, he responded: *"the pay plan says 5%. I have had a conversation with HG about this"*.
75. Mr Brown's interview is more extensive than the others as he must address far more concerns that Messrs. Wall and Sabri were witness to and took place on 24 March 2023. Suffice to say, he denied all the factual allegations of misconduct levelled against him by the claimant providing an explanation as to why he did so largely based on the factual dispute between the two.
76. The grievance outcome was communicated to the claimant during the meeting between Mrs Cawthorne, Mr Gore and the claimant that took place on 17 April 2023. The investigation did not uphold any of the claimant's concerns, despite

the claimants' vehement protestations to the contrary which are recorded at the end of the meeting that concluded at 12:04 PM.

77. As part of her grievance appeal outcome, the claimant asserted at the outset that the way in which: *"the entire grievance was handled was a form of bullying in itself"* without explaining why that was the case. She went on to say: *"I also mentioned in the grievance meeting, by me putting the business first and not including the sales team in interview, I ended up by digging my own grave. Which was confirmed when I was dismissed for questioning the poor investigation process and unfair outcome of the grievance"*.
78. At the end of the grievance appeal, the claimant makes mention of her demonstrating numerous instances of why she felt she was being harassed and pushed out of the company by the respondent. She goes on to mention that this was clearly a case of constructive dismissal and that the outcome of the grievance was skewed in a way to protect Mr. Brown.
79. She noted she had stated at the end of the meeting that that she did not agree with the way in which the investigations were held, commenting that they were biased without explaining why she thought that to be the case, and that she was: *"the impression if I needed more people to be interviewed as we expected the interviewees would be biased, I would be able to do that"*.
80. Pausing here, the tribunal notes that, despite the extensive nature of both the grievance and the appeal, at no point does the claimant assert or allege that the conduct directed at her by Mr. Brown or any others was on the basis of her sex or her race nor did she raise any disclosures during the course of her employment.
81. The appeal response is provided by Mr Shackleton by way of letter dated 5 June 2023. Mr Shackleton addresses every aspect of her grievance and provides an outcome that is consistent with the investigations that preceded it.

Findings of fact-issues

82. Below are all the findings of facts reached by the tribunal. Not all of the facts presented to the tribunal find their way into this judgement. What are recorded are those findings of fact that the tribunal find relevant to the issues that it was called upon to determine.
83. The tribunal records its fact findings by reference to the issues that had to be determined in the case on the basis that the evidence prepared by the parties addressed those issues save in the case of the whistle blowing claims which were admitted late.

Mr. Brown amending the claimant's contract in respect of bonus payments on 19 August 2022 resulting in an unequal pay

84. The claimant describes herself as brown skinned and female. She was clear in evidence and in submissions that she compares herself to white males which would be appropriate in this case as we heard and accepted the evidence presented by both the claimant and respondent that the respondent's business was populated by a majority of men. The tribunal accepts the evidence heard from the respondent's witnesses that the respondent's employees are ethnically diverse.
85. The claimant's case here is that Mr. Brown manually amended her contract so as to place her on terms which were less favourable than white men at a similar level to her. In evidence, the claimant accepted that in 2022 no bonus was paid to either her or Mr Sabri, the assistant general manager. The claimant described in evidence that Mister Sabri was white and of Asian heritage.
86. Both Mrs Knight and Mr Gore addressed the issue of the bonus payment. Their evidence was consistent with their written evidence namely that the bonus would be paid centrally as opposed to being determined by the written document amended by Mr. Brown. Further, it was Mr Gore's evidence that Mr. Brown had made a mistake in terms of how the bonus system worked and that error was clear because of the way in which the bonus was agreed and paid centrally- the manual amendment to the claimant's contract was of no relevance. The tribunal notes that the amendment in question was not contained within the bundle before it.
87. It is the tribunal's finding that Mr. Brown fell into error and that his error was irrelevant in that it was inconsequential as far as the claimant's contractual terms were concerned. It is therefore the tribunal's finding that this allegation fails to meet the evidential test set out in section 136(2) EqA 2010, in other words that we find it unconnected to a protected characteristic.

Mr. Brown reducing the claimant to her looks and referring to her as woman on 17 October 2022, 19 October 2022, 28 November 2022, 7 February 2023, 10 February 2023 and 19 February 2023

88. This concerns allegations spanning dates from 17 October 2022 to 19 February 2023 when the claimant says that Mr. Brown reduced her to her looks and gender. It is the tribunal's finding that there was no evidence to support this allegation save what is contained in the claimant's witness statement. It follows that on the balance of probabilities, we find it unproven that the words and language attributed to Mr Brown were ever used by him.
89. The claimant was unable to establish the facts of her allegation, her statement is uncorroborated, and it is noted that none of these allegations are contained in in her diary or in her WhatsApp's to her partner. Accordingly, we find that this

allegation fails to meet the test within Section 136(2) EqA 2010 in respect of each and every allegation that claimant makes in this regard.

Mr. Brown referring to the claimant as beauty and himself as the beast during a general manager meeting on 14 October 2022

90. The claimant accepted in oral evidence that she did not include this in her grievance, expressing her view that it was not her biggest concern at the time. The claimant also accepted in evidence that she had no corroborating evidence of this allegation.
91. The tribunal finds this allegation unproven on the balance of probabilities. In other words, the claimant has not proven to the required standard of proof that Mr Brown referred to her as beauty and himself as beast. Accordingly, it fails to pass the evidential test set out in s.136(2) EqA 2010 meaning that we do not find it to be an allegation that could be considered to be discriminatory.

Mr. Brown pressuring the claimant into participating in public press activity and claiming she was better looking in front of staff on 4 January 2023

92. Another allegation not raised by the claimant in her grievance, The claimant's oral evidence was that she declined the opportunity presented to her. This constitutes an inconsistency with her pleaded case and her written statement. She went on to say that she did not like social media and was steadfast in her position that she felt that she had been pressured into doing something that she did not want to do. She was clear that it was Mr. Brown that had forced her to do this.
93. The claimant cross examined Mr Shackleton on this issue. Her position was that Mr Shackleton was solely responsible for media affairs and therefore it would not have fallen to Mr. Brown to impose this responsibility upon the claimant. When asked by the Judge whether such responsibilities were ever delegated to other managers, Mr Shackleton confirmed that they were. The tribunal accepted Mr Shackleton's evidence, and it was unchallenged by the claimant.
94. Further, based upon what we heard from Mr Gore, we find it likely that the claimant would have been a willing and capable participant in the media activity that she was tasked with. Further, we do not find on the balance of probabilities that Mr. Brown described the claimant in the way that she says he did. Accordingly, this allegation is not proven.

Mr. Brown claiming that Nicole Melilia Shaw was having an affair with Andy Gore on 17 January 2023

95. This is an allegation of intimidation of racial biases and concerns an allegation of Mr Gore having an affair with another woman employed by the respondent. It is the tribunal's finding that there is no evidence that Mr. Brown said these words at all and had he said this that it is unlikely to have amounted to sex and race discrimination. Accordingly, this allegation fails to be proven for same reasons given before. The claimant claims that several other colleagues told her of this rumour. The tribunal could not reach a finding on whether this did happen. This would amount to hearsay, and it is impossible for the tribunal to evaluate whether Mr. Brown circulated this rumour or indeed whether he was the only person doing it.

96. Moreover, it was an allegation that the tribunal simply struggled to understand the way in which it was positioned. The claimant's position was because Ms Shaw was a woman of colour and alleged to have been in an affair with Mr Gore (which Mr Gore vehemently disputed) that this was overt racism and sexism on the part of Mr Brown in that he was relying on a trope that characterised black women as being promiscuous, and unfaithful and by doing so, Mr Brown was being effectively transmitting his views to the claimant. The tribunal finds that this allegation is not only not made out on the facts but even if the facts had been found in the claimant's favour that it would not of been possible for the allegation to have met the test in s.136(2) EqA 2010 because in the tribunal's view, the allegation lacks any tangible link to the protected characteristics the claimant relies upon. Moreover, the tribunals finds that even if the facts were true, the rumour would have had an equally damaging effect on Mr Gore's character and reputation.

Mr. Brown responding to a report by the claimant of issues with her direct report, Mr Jenkins by shouting, cursing and putting a large visible hole in his office wall on 18 January 2023

97. The tribunal's finding is that the claimant and Mr Jenkins were acting unprofessionally in the office on this day including arguing in front of Mr. Brown who was called upon to intervene.

98. This issue involved the claimant, Mr Jenkins and Miss Williams, a black female. It is another of the claimant's allegations which did not feature in her grievance or appeal. Oral evidence on what happened was heard from Miss Raja, Mr Wall, and the claimant.

99. Miss Raja's evidence focused on the outburst of anger that she witnessed from Mr. Brown.

100. Mr Wall confirmed in oral evidence that Mr. Brown had called both Mr Jenkins and Miss Williams into his office and reprimanded them based on the comments that the claimant had told him. To Mr Wall it seemed that the claimant had made Miss Williams a scapegoat for issues that arisen between the sales and the service department in which Miss Williams worked. The claimant's

complaint is that as a consequence of conduct on the part of Mr. Brown, Miss Williams refused to communicate with her. She says that her treatment was discriminatory as Mr Jenkins, who she described as a very good salesperson who they wanted to keep and the claimant were a victim of Mr Brown's aggression. The tribunal accepted the respondent's evidence that Mr Jenkins resigned because of the poor treatment directed at him by the claimant and note that Mr Jenkins has since rejoined the respondent following the claimant's departure.

101. We find that Mr. Brown was justified in being angered by the behaviour that confronted him. The tribunal finds Mr. Brown did have an outburst that resulted in damage to his office wall. However, and crucially, the tribunal finds that his behaviour was directed at both the claimant and Mr Jenkins and that as such it falls to be unproven on the basis that the claimant sets out and in any event, it fails to meet the evidential threshold (s,136(2) EqA 2010) because the claimant was unable to demonstrate that Mr Brown's conduct as found or alleged was related to her protected characteristics.

Mr. Brown fabricating a customer complaint against the claimant on 20 January

102. This allegation concerns one of the respondents' customers who shall be referred to as Mr. D. In short, the claimant describes this as an attempt by Mr. Brown to cover up his wrongdoing and in so doing, Mr. Brown discriminated against the claimant on the basis of her sex and race as pleaded. The claimant puts this allegation this way: *"Mr. Brown publicly reprimanded the claimant by circulating false rumours to justify his violence or victimise the claimant by painting her as an aggressor"*.
103. This occurred on 20 January 2023 when the claimant says she was offended by the harassments and bullying she received from Mr. Brown towards Mr D she says that Mr. Brown fabricated a customer complaint at her expense to justify acts of discrimination she alleges took place while Mr Brown and Mr D had an argument over car parts which is said to have resulted in Mr D obtaining a refund or no sale taking place.
104. Put simply, it is difficult for the tribunal to understand how these facts could constitute discrimination of the claimant. The same applies in respect of the second limb of the claimant's critical attack here namely that she fabricated a customer complaint. Not only do the tribunal find both limbs unproven on the basis that there is no evidence that the events in occurred in the way that the claimant complains but we go on to question how this allegation could become an act of discrimination as the claimant asserts. For the avoidance of doubt, the tribunal finds the facts of this allegation unproven.

Mr. Brown stating that the claimant gate crashed the Volvo awards event, lost the award and suggesting the claimant did something inappropriate to get invited

105. This allegation concerns an event that happened on 25 February 2023. Mr. Brown is said to have ignored the claimant at an event.

106. The tribunal could find no evidence, apart from that contained within the claimant's witness statement, to reach a finding. Accordingly, and on the balance of probabilities, this allegation falls to be unproven. The tribunal reaches the same findings in relation to the rumours the claimant alleges were circulated by Mr. Brown and in so doing, the tribunal relies on the evidence of Mr Wall who said that he had not heard a rumour that the claimant had lost the trophy nor had he seen or heard Mr. Brown accused the claimant of this.

107. The tribunal does not find it proven on the balance of probabilities that Mr. Brown said to the claimant that she had done something inappropriate in order to be invited to the event. It was Mr Gore's evidence that he had instigated the steps, together with Mr Brown that led to the claimant's invitation to the event, evidence that the tribunal accepted in its entirety.

Mr. Brown excluding the claimant from sales executive interviews and forecast meetings from 1 March to 17 April 2023

108. The claimant alleges that she had not been invited to an important forecast meeting held every first Monday in the month, and that she was publicly reprimanded for not being aware of the meeting. Thereafter, she said that she had been excluded from similar meetings going forward and that that act of exclusion amounted to discrimination by Mr Brown based on her protected characteristics.

109. It was the claimant's evidence that she had not been sent an invite via outlook for the March 2023 meeting. Mr Sabri's investigation notes showed that he did not receive an invite and therefore he could not have sent her an invite. However, the claimant relies on the notes contained within her diary as evidence of the position which supports her case. Mr Wall's evidence confirmed that he did not receive an invite. It is the respondent's case that given that neither Mr Wall who is a white male or the claimant received an invite and therefore it is not possible for there to have been direct discrimination against the claimant based on her protected characteristics of race and or sex.

110. The tribunal heard further from Mr Wall and Mr Gore and finds that there was a standing invitation to the forecast meeting at the same time every month. The claimant was not only expected to know this, but appreciate its importance and attend prepared. The tribunal finds on the balance of probabilities, that the claimant had failed to prepare as she should have for the March 2023 meeting

and that it was not unreasonable of the respondent to reprimand the claimant for her lack of preparation. Lastly, the tribunal finds that there was no evidence that the claimant was excluded; on the contrary, and on the claimant's evidence, the tribunal finds that she attended a further meeting later in the month and this can be seen at pages 348 and 349 of the bundle where she where she has provided notes in her own handwriting that show that she attended a meeting. The tribunal finds that the reason the claimant was not invited is that it was the respondent's practice not to circulate Outlook invites to such meetings.

Mr. Brown dismissing a sales executive without input from the claimant who was the sale executives line manager

111. The tribunal's finding is that there was no evidence to support this allegation save content that is contained within the claimant's witness statement. The tribunal finds that the evidence within the bundle that concerned "Vincent" is at page 308 of the bundle and comprises of a note from Vincent indicating his intention to resign. However, there are also Mr Brown's handwritten notes of the meeting with Vincent which details an exit and one month's notice. The tribunal prefers to rely on the respondent's evidence that Vincent resigned because of a series of management failures that are detailed in Mr Brown's notes of his meeting with him and, accordingly, we find that those failures are not ones referable to the claimant's protected characteristics. Moreover, the claimant complains of conduct towards another employee and not herself which of itself means that this allegation of discrimination based on the claimant's protected characteristics is not only unproved on the facts but without merit in any event.

Mr. Brown stating during the morning meeting that the claimant isn't capable and things can only get sorted when he was present here on 2 March 2023

112. This is an allegation where the claimant alleges that she was undermined as sales manager in front of her sales team.
113. In short, the tribunal finds that this allegation is too vague to be understood. In addition, the claimant was unable to point to any cogent, credible corroborating evidence that could explain the basis of this allegation and support the point that she makes here. Accordingly, it must fail as unproven on the balance of probabilities.

Mr. Brown berating the claimant publicly in respect of a customer complaint that he had fabricated against the claimant

114. This is said to have occurred on 3 March 2023 when it is said by the claimant that Mr. Brown stormed into the office aggressively and berated her in relation to a customer complaint he had fabricated. The claimant stated in oral evidence that she relied on the testimony of her two witnesses. However, the

tribunal finds that the two witnesses the claimant relies upon did not witness Mr. Brown berate or even address the claimant in respect of this customer.

115. The tribunal heard from Mr Wall and he explained that a difficulty had arisen with regards to a customer who was returning his vehicle for repair. He said that the difficulty centred on the claimant's unwillingness to engage with the respondent's procedure for the return of vehicles which required the sales team to involve itself as the customer's first port of call.

116. It is the tribunal's finding that Mr Wall was correct to say that after an initial contact with the sales team, the matter would be passed on to histeam. The difficulty in respect of this client arose because the claimant was not prepared to engage with the customer in accordance with the respondent's policy and consequently, the tribunal prefers the evidence of Mr Wall over that of the claimant.

117. Further, the tribunal does not find that the claimant was treated in the way that she complains of by Mr. Brown and that it was right for Mr. Brown to raise the issue of the claimant's non-compliance with the respondent's rules as far as they relate to customer complaints. Accordingly, this allegation falls to be unproven.

Mr. Brown ignoring the claimant then shouting at her in relation to sales flags on 4 March 2023

118. This allegation is set out at paragraph 81 to 85 of the amended claim. The claim that alleges that Mr. Brown was continuing to ignore her but later responds to her after she sent him a message about flags required for a sales event being held at the dealership. At paragraph 83 of the amended claim, the following is said:

*"I then say "hey Mark do you think I could get your attention for a minute?" And he shouted back "what the **** was that!?". I put my hand up in an effort to set a boundary and stop Mark from shouting, again please bear in mind I have been working in a hostile environment for weeks and now that Mark is starting to show his aggression by shouting and yelling at me, was terrifying. I was in a state of panic and thought I needed to set a boundary with him right away- I told him not to raise his voice at me like that, while my hand was up as if I'm holding my hand up to say stop that I understand he's my boss but there needs to be a level of respect and how unprofessional him shouting is at me is and he responded "don't bring that **** in here" and continued to shout & eventually stormed off"*

119. The claimant alleges that this event was used by the respondent to label her as aggressive and abrasive by Mr Gore although there is no evidence contained within the bundle to support this contention.

120. Mr Sabri was asked about this incident by Mrs Cawthorne on 23 March 2023 on that occasion he said:

"No. I called him the office. He was walking past in the showroom. I wasn't in on Friday afternoon. HG said that she couldn't find the flags for the sales event and asked if I could speak to MB about it. I called him into the office and asked him if he knew about the flags. He looked at me and said no."

121. Mr Sabri made a point of saying that Mr. Brown didn't shout and that he didn't recall Mr. Brown swearing. The tribunal finds that the Mr. Brown did not act in the way that the claimant alleges. The tribunal finds this allegation unproven on the balance of probabilities and therefore the allegation of discrimination is not made out for the reasons provided previously in this judgment.

122. **Mr. Brown subjecting the claimant to a concerns meeting on 10 March 2023**

123. The tribunal finds that the respondent had received a number of concerns about the claimant's performance and conduct by her colleagues which it was fully entitled to raise with the claimant. Further, it is clear that the claimant accepted that colleagues had raised concerns about her and in reaching this finding the tribunal relies upon what she says in her grievance appeal:

"I have made a large impact on many areas of the business, specifically profit and units and have developed great relationships with external and internal partner (some) which should have at the very least given me the benefit of the doubt when it comes to my management style. Especially when you have other managers with proven problematic relationships with numerous people."

124. Apart from providing a further example of the claimant's propensity to make headline statements without substance, the tribunal finds that the claimant is clearly urging the respondent to give her the benefit of the doubt in terms of her management style which the tribunal finds is a clear reference to the concerns raised about the claimant by colleagues and the degree to which the claimant accepts the complaints had been raised about her.

125. The claimant says that the meeting was hostile and discriminatory with the concerns raised in an intimidatory, threatening, sexist and discriminatory manner but does so without reference to any dialogue, words or actions on the part of Mr. Brown during the meeting. Further, the claimant has not expressed her observations to her partner in the way that she has in other instances that she has sought to rely upon, simply describing herself as "angry".

126. The tribunal considered this head of claim to be inherently weak and almost devoid of any evidence to support it. The tribunal notes that Mr Brown's

handwritten note says (see p.244 of the bundle and quoted) where he described the claimant as being confrontational and aggressive and that she said:

“she thought that I had no integrity she did not trust me and can see what this was she said that she did not trust me or the company.”

127. The tribunal finds this to be a sign of the claimant’s belligerence in the face of a reasonable request from the respondent to review her work and work style. The tribunal notes that at the end of the meeting the claimant is reported to have said:

“she said she had to go she asked if we were done got up and left, 17.45” .

128. The tribunal finds Mr Brown’s record to be the most accurate record of the concerns meeting. It is clear to the tribunal that the claimant is contemptuous of the issues and concerns raised with her during the course of the meeting. It is the tribunal’s finding that it is the level of the claimant’s contempt that led to the fundamental breakdown in the working relationship as identified by Mr Gore when dismissing the claimant.

129. It is also noteworthy the claimant would not have been aware of the concerns meeting the day before when she was discussing other matters with Mr Gore who was by then aware that Mr Brown intended to speak to the claimant.

130. The tribunal notes that the claimant did not raise her concerns regarding race and sex in either meeting and yet seeks to rely on them.

Labelling the claimant an angry woman of colour and used the racist/ sexist stereo type of argumentative and confrontational during the concerns meeting on 10 March 2023

131. It is the tribunal's finding that Mr. Brown was reporting what he was seeing when he described the claimant as being argumentative and confrontational. The tribunal's finding in this regard is based upon the evidence of other witnesses and notably Mr Gore.

132. Perhaps more troublingly, when the claimant was asked by the judge to explain how it was a stereotype, her response was: “it just is, you can Google it.” When presented with a Google definition, which did not support the stereotype, the claimant did not accept the Google definition.

- 133.

134. It follows that it is the tribunal's finding that this allegation is not proven. The tribunal finds that Mr Brown's labelling of the claimant as argumentative and confrontational was likely to be consistent with her presentation in the meeting and was consistent with the perception of her by her colleagues.

Mr Gore removing the claimant as an attendee for the roundtable event on 15 March 2023

135. The claimant claims that she was removed from being an attendee at a prestigious event on the basis of her protected characteristics.
- 136.
137. Mr Gore gave evidence and we accept what he told us. He said that the claimant had reported to work sick 2 days before the event was happening. Mr Gore told us that at this time, it was unclear as to whether the claimant would attend work and attend the event.

138. While the claimant was critical of Mr Gore for not having made direct enquiry of her as to whether she was going to be able to attend the event we nonetheless find that the removal of the invitation to the roundtable event was one grounded in sensible, commercial reasoning and therefore this allegation was not one where the tribunal finds that the claimant has established a set of facts from which discrimination could be inferred.

Mrs Knight stating "I have fired people for this regarding the claimant taking a lieu day on Tuesday 11th April and using an aggressive tone during a call on Wednesday 12th April 2023.

139. This is an allegation made against Mrs Knight and, as we have already said we accept her evidence in its entirety. Further, the tribunal finds that it was the claimant who was hostile and confrontational in this meeting. Accordingly, the allegation is unproven as the tribunal prefers Mrs Knight's evidence.
140. The tribunal finds that Mrs Knight called the claimant out of concern for her and that the concerns that Mrs Knight harboured were reasonable and the contact was reasonable. The claimant had taken time off in circumstances that contravened the respondent's reporting of absence policy and in such circumstances, it was entirely proper for the respondent's HR to contact the claimant on 17th April 2023.

Grievance outcome meeting (allegation XX)

141. The details of this allegation are set out in paragraphs 271-279 of the claimant's witness statement and points 168-182 of her claim. Essentially, the claimant's complaint is that her grievance was not upheld and that subsequently, she was dismissed. It is the tribunal's finding that the grievance outcome as communicated to the claimant during the course of the meeting on the 17th April 2023 by Mr Gore and Mrs Cawthorne was the result of a reasonable

investigation whose findings were reasonable to have reached in all of the circumstances and in terms of the information available to the respondent at the time of its investigation.

142. Save for an obtuse reference to racial biases and stereotypes which are unrelated to any specific act or action, the claimant does not actually articulate what it is she complains of here. Accordingly, it is clear this allegation must stand unproven.

Mr Gore and Mrs Cawthorne dismissing the claimant on 17th April 2023

143. In relation to the act of dismissal the claimant makes a series of descriptive allegations devoid of any factual narrative save for alleging that Mister Gore adopted a style in this meeting which she found to be consistent with the culture of bullying throughout the organisation - an allegation that the tribunal does not accept. The tribunal prefers the evidence of Mr Gore who set out in oral evidence the nature of the conversation that he had with the claimant who he explained adopted a combative and at times aggressive approach to the meeting which, as a result, ran for longer than he expected. It follows that this allegation is not proven.

Mr Gore and Mrs Cawthorne allegedly bullying the claimant by listing names of people who don't like her and using stereotypical biases to define claimant during the concerns meeting, aggressive abrasive difficult to manage on 17 April 2023

144. The claimant alleges that there was a breach of care at the time of her dismissal. This allegation arises from the claimant alleging that the respondent treated her differently to white males who had left the respondents employment.
- 145.
146. The tribunal finds that the claimant has been unable to demonstrate that in failing to allow her to travel home by taxi after being dismissed is a viable reason to allege discrimination on the basis of sex or race when compared, for example, to others who do not share her protected characteristics and who have been dismissed and have been allowed to travel home by taxi. The tribunal accepts Mr Gore's evidence that the claimant voluntarily and pre-emptively surrendered the keys to her work vehicle, an offer which was accepted by Mr Gore. The claimant departed the respondent's trading address and gave no indication that she was incapable of caring for herself in terms of her travel home.
- 147.
148. The tribunal finds this allegation to be inherently weak not only in terms of its substance but also in relation to its lack of connection to a protected characteristic. This allegation is not proven.

Protected Disclosures

149. Turning to the protected disclosures, whilst these have been struck out we nonetheless make these findings of fact.
150. In respect of the first allegation where the claimant alleges that she is raising issues relating to what she alleges to be the unethical implications around financial reporting and performance results, the tribunal prefers Mr Gore's evidence that the claimant did not raise this in the meeting of the 9th of March 2023 and therefore made no qualifying disclosure.
151. In any event, the tribunal finds that the conduct complained of by the claimant was something that would not qualify as a disclosure of any kind under section 43B ERA 1996. Lastly the claimant belatedly seeks to rely on a reasonable belief that the respondent had fallen foul of section 378 of the of the Financial Services and Markets Act ("FSMA"). The tribunal finds that the totality of FSMA relates to the regulation of finance professionals in conducting finance business and this is a matter which relates to the internal management of the respondent's resources and therefore it falls entirely outside of the ambit of fiscal FSMA. The tribunal finds that the claimant was making a series of misconceived allegations of impropriety against the respondent which were in fact legitimate business decisions and actions.
152. Second, in relation to the allegation arising out of the 9th of March 2023, the claimant alleges provided the respondent with examples of violence and aggression in the presence of and directed at customers.
153. Here, the evidence of Mr Gore is accepted and preferred over the claimant's. He told us that the claimant made a reference to an argument with the customer but did not mention violence and aggression as has since alleged. It is the tribunal's view that this does not amount to a disclosure and further that the legal framework that the claim seeks to rely on here is again inappropriate for the purposes of the claimant's concerns.
154. The third allegation relates to the allocation of staff working for Polestar. The tribunal finds that these allegations are misconceived in their entirety. The tribunal finds Mr Gore's evidence, that this was a legitimate business decision to deploy group assets in order to fulfil a commercial contract, and that holding back profit as alleged was something that most likely benefited the claimant as opposed to adversely affecting her, as being entirely credible, authoritative and cogent. Evidence in support of this can be seen at page 185 of the bundle.
155. The last whistleblowing claim is in relation to her grievance where it is said that she was reporting "a tense bullying environment that proves scare tactic tactics and hostile behaviour". The tribunal finds there to have been no disclosure and therefore this claim fails to be proven on its facts.

Jurisdiction

156. Finding: the tribunal finds that the bulk of the claimant's allegations of sex and race discrimination were not pursued in time. The tribunal considers that the claimant's claims that arise in relation to her grievance meeting, her dismissal and the appeal and related matters were raised in time with all others being out of time.

157. Although the tribunal reached findings in respect of each and every allegation set out in the list of issues as detailed in the body of this judgment, it concluded that it would not be just and equitable to extend time because it considers that the claims lack sufficient merit as to justify their continuation.

Employment Judge Forde
25 October 2024

Judgment sent to the parties on:

31 October 2024

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For the Tribunal:

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