



# EMPLOYMENT TRIBUNALS

**Claimant**  
S Ndlovu

v

**Respondent**  
Hales Group Limited

**Heard at:** Bury St Edmunds by CVP

**On:** 30 September, 1, 2, 3 October  
2025 and 19 and 20 November  
2025 (in chambers)

**Before:** Employment Judge W Anderson  
L Davies  
K Rose

## Appearances

**For the claimant:** In Person

**For the respondent:** A Bibia (litigation consultant – Peninsula)

## RESERVED JUDGMENT

1. The claimant's claim of victimisation is upheld in part.
2. The claimant's claims of direct discrimination and harassment are dismissed.
3. Remedy will be decided at a hearing on a date to be notified to the parties.

## REASONS

### Background

1. The claimant is employed by the respondent as a live in carer. Her employment with the respondent commenced on 24 April 2017 and is continuing. The claimant, a woman of Black African descent, brings a claim of direct race discrimination, harassment related to the protected characteristic of race, and victimisation. The claim was filed on 15 February 2024 following a period of early conciliation from 15 December 2023 until 19 January 2024.

### **The Hearing**

2. The parties filed a joint bundle of 1015 documents. The claimant filed a supplemental bundle. After some discussion all of the documents in the supplemental bundle were admitted with the exception of a job advert. The respondent filed further documents in relation to some of the claimant's supplemental documents. The tribunal accepted a further document from the respondent during the hearing which was about the evidence provided by the respondent to a request for information from HMRC. In addition, the respondent filed a bundle containing all witness statements and a chronology. All of the witnesses gave oral evidence on oath. The witnesses were Nicola Mewse, Lucy Dimon, Deanna Burgoyne and Phoebe Logan for the respondent, and the claimant.

### **The Issues**

3. The list of issues was agreed at a hearing in front of EJ Kight on 8 August 2024 and set out in the order of the same date. An amendment to add two further allegations of victimisation was accepted by EJ Brown at a hearing on 25 March 2025. The agreed list is as follows:

- 1. Direct race discrimination about the following:**

- 1.1. *9 May 2017: The claimant, the only black member of the care staff employed by the respondent, agreed a domiciliary care staff contract and paid £7.50 per hour while white colleagues were likely paid more, as she later discovered multiple discrepancies in pay.*
    - 1.2. *In the financial year April 2018 to March 2019 – The claimant was not paid the National Minimum Wage of £7.83 per hour which was paid to white colleagues until she raised an informal grievance with Julia Scotton.*
    - 1.3. *In the financial year April 2018 to March 2019 – The claimant was paid £7.83 per hour when white colleagues were paid £8.50 per hour.*
    - 1.4. *In the financial year April 2019 March 2020 The claimant was not paid the National Minimum Wage of £8.21 per hour which was paid to white colleagues until she raised an informal grievance with Debbie Dennis.*
    - 1.5. *In the financial year April 2020 to March 2021: Despite receiving a letter promising a pay raise to £9.12 per hour, the claimant had to invoke the grievance process to obtain any rise despite white colleagues receiving £9.12 per hour. The claimant was initially awarded £8.72 per hour, increased to £9.12 per hours. White colleagues received pay raises automatically.*
    - 1.6. *In the financial year April 2020 to March 2021: Despite being paid the £9.12 per hour, the claimant had to raise a formal grievance to obtain the correct hourly pay for holiday pay paid to white colleagues.*
    - 1.7. *In the financial year April 2021 to March 2022: The National Living Wage increased to £8.91, The claimant did not receive a raise, unlike her white colleagues who received £9.36, even though she raised an informal grievance with Lyndsey Ryan and James King.*
    - 1.8. *In the financial year April 2021 to March 2022: Despite previously having had to raise a formal grievance of underpayment of holiday which was upheld, the claimant had to raise informal grievance to have holiday pay*

*corrected while white colleagues were automatically paid the correct hourly rate for their holiday pay.*

- 1.9. *In the financial year April 2022 to March 2023: The claimant had to submit another formal grievance to get her pay corrected to the National Living Wage rate of £9.50 per hour, while other white care staff were paid £10.50 without having to submit an internal grievance.*
- 1.10. *In the financial year April 2022 to March 2023: The claimant had to raise another informal grievance to Kathy Taylor and Nathaniel Foster about the underpayment of holiday to obtain the correct hourly holiday pay which was paid automatically to white colleagues.*
- 1.11. *In April 2023: The claimant had to submit another formal grievance to get her holiday pay corrected to the National Living Wage rate of £10.42 per hour for holiday pay while other white colleagues were paid £11.00 per hour.*
- 1.12. *In September 2023: The claimant discovered that the Respondent sent an email in July 2023 to white colleagues which included the correct discharge date for the service user and the claimant was excluded in that correspondence, instead, the claimant was sent a forward date by the Respondent.*
- 1.13. *In September 2023: The claimant discovered that the white colleague was paid £11 per hour while the claimant received £10.42 per hour for week commencing 24th April 2023 which was a changeover week.*
- 1.14. *In September 2023: The claimant discovered that the white colleagues within care staff team at the Wickford branch received Christmas presents, flowers, and certificates of appreciation, certificate of long service which the claimant has never received.*
- 1.15. *Between April 2018 and April 2024: The respondent failed to increase the claimant's hourly rate of pay unless she complained or raised a grievance which was not an approach or practice applied to her colleagues of white ethnic origin.*

2. *The claimant identifies herself as black African.*
3. *Did the respondent do the things set out in paragraphs 1.1-1.15 above?*
4. *Was that less favourable treatment?*
5. *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.*
6. *If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.*

7. *The claimant says they were treated worse than Lisa Osbourne, Lindsay Lake, Marilyn Lazell, Joanne Hartfree, Sue Eves, Charlotte Thurley and Rebecca Bremer, as well as a hypothetical white person.*
8. *2.4 If so, was it because of race?*
9. *Harassment related to race*
  - 9.1. *Did the respondent do the things set out in paragraphs 1.1-1.15 above?*
  - 9.2. *If so, was that unwanted conduct?*
  - 9.3. *Did it relate to race?*
  - 9.4. *Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?*
  - 9.5. *If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*
10. *Victimisation*
  - 10.1. *The protected act relied upon is bringing this claim on 15 February 2024 and the detrimental treatment allegedly suffered is:*
    - 10.1.1. *In June 2024 the respondent's Meet the Team board at its Wickford Branch did not include the claimant's name or job title though it did include the claimant's photograph*
    - 10.1.2. *In June 2024 the claimant discovered that the respondent had reduced the daily average agreement hours for KS without completing an assessment to take into account the actual needs of KS*
    - 10.1.3. *From the w/c 8 July 2024, the respondent said that the claimant was able to access a breakdown of her pay from the app, but the information did not correspond to what was contained in her payslip.*
    - 10.1.4. *On the 31 January 2025 did the Respondents victimise the Claimant by cancelling her e-learning?*
    - 10.1.5. *Did the Respondents victimise the Claimant by reducing the payment on her completed e-learning modules from 1 hour to 45 minutes on seven modules?*
  - 10.2. *By doing these acts did the respondent subject the claimant to detriment?*
  - 10.3. *If so, was it because the claimant did a protected act?*
11. *Time limits*
  - 11.1. *Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 16 September 2023 may not have been brought in time.*

- 11.2. *Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*
  - 11.2.1. *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?*
  - 11.2.2. *If not, was there conduct extending over a period?*
  - 11.2.3. *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*
  - 11.2.4. *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:*
    - 11.2.4.1. *Why were the complaints not made to the Tribunal in time?*
    - 11.2.4.2. *In any event, is it just and equitable in all the circumstances to extend time?*

## **12. Remedy for discrimination or victimisation**

- 12.1. *Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?*
- 12.2. *What financial losses has the discrimination caused the claimant?*
- 12.3. *What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that? Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?*
- 12.4. *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
- 12.5. *Did the respondent or the claimant unreasonably fail to comply with it?*
- 12.6. *If so, is it just and equitable to increase or decrease any award payable to the claimant?*
- 12.7. *By what proportion, up to 25%?*
- 12.8. *Should interest be awarded? How much?*

## **Relevant Findings of Fact**

4. The respondent is a nationwide company providing care services to people in their own home.
5. The claimant commenced employment with the respondent on 28 April 2017 following completion of a five day induction course. At this time, she had already been providing care to a client, KS, for a number of years through her employment with other care companies. The respondent became the care package provider for KS in May 2017 and employed the claimant as a live in carer for KS. Her employment did not arise through a TUPE transfer.
6. The nearest branch office of the respondent was the Wickford branch in Essex and this was the branch to which management of the claimant was allocated. All other carers who worked from the Wickford branch at the time the claimant's employment commenced, provided care to clients in their homes by way of visits. The claimant was the only live in carer.

7. KS had a 24 hour care package. The claimant was paid 16 hours per day. The claimant's pay terms are set out in an email from Julia Scotton dated 18 April. The rate of pay is £120 per day. As the claimant worked a 16 hour day this equates to an hourly rate of £7.50. £7.50 was the National Living Wage (NLW) for the financial year 2017 to 2018.
8. Margaret Brown was employed shortly after the claimant as the cover carer for KS, i.e. Ms Brown worked when the claimant did not. Her employment commenced on 15 May 2017. Both the claimant and Ms Brown are of Black African descent.
9. It is the claimant's position that she was the only black person employed by the respondent on 9 May 2017. The respondent had understood this to be a claim that she was the only black person in the organisation and had provided evidence that it employs people of diverse ethnicity. Ms Mewse (Group Managing Director) said the figures provided represented the position at around the time she wrote her witness statement, which would have been in 2024, the case first being listed to be heard in January 2025. The evidence provided shows the respondent's employees, across the UK, to be of in excess of 25 different nationalities. In cross examination the claimant said that she was referring to being the only black person on 9 May 2017 at the Wickford branch, Margaret Brown having not joined at that point. The tribunal was provided with a document showing a 'Meet the Team' Board from Wickford branch. This was in the form of a photograph taken by the claimant on 14 June 2024. The photo is not very clear. The staff members appear to be predominantly white. There is at least one person in addition to the claimant who is not white. In the photograph provided by the respondent taken in April 2025 there are clearly three black members of staff including the claimant. While the tribunal accepts the claimant's evidence that she meant the Wickford branch particularly, the tribunal takes no issue with the fact that the respondent has not provided an ethnic breakdown for Wickford staff in May 2017. The claimant's allegation as set out in the list of issues is not clear, and nor is it clear from her witness statement that she is saying that she is the only black person working from Wickford on 9 May 2017.
10. The respondent's evidence is that it has a diverse workforce, and it has provided statistics to prove that. The claimant has provided no documentary evidence to support her claim that on 9 May 2017 she was the only black person attached to the Wickford group. On balance the tribunal do not find that there is evidence from which it could conclude that the claimant was the only black employee of the respondent at the Wickford branch on 9 May 2017.
11. The claimant claims that white colleagues were paid more than she was. She was in receipt of £7.50 an hour. No evidence was provided on this point by the respondent in relation to 9 May 2017, but it is clear that the respondent does not dispute in general that the other staff working out of Wickford were paid a higher hourly rate than the claimant. Its explanation for that is set out below but in relation to 9 May 2017, the tribunal finds that carers other than the claimant who worked out of Wickford were paid more than £7.50.

12. On 10 April 2018 the claimant emailed the then Group HR Manager Kate Parkington as the National Living Wage (NLW) had increased from £7.50 to £7.83, and this was not reflected in her pay. After two further emails from the claimant, the adjustment was made on or around 25 April 2018.
13. The claimant claims that the increased NLW rate was paid to white workers at Wickford but there was no evidence before the tribunal on this matter and at the same time the claimant claims that white workers were paid £8.50 an hour. If the claimant's meaning is that the wages of the white workers were automatically uplifted without them having to raise this with the respondent in 2018, the tribunal has no evidence on this, and it was not a point put to the respondent's witnesses.
14. The claimant claims that in the financial year April 2018 to March 2019 she was paid £7.83 per hour, and white colleagues were paid £8.50. The respondent has not confirmed what the rate of pay was for the other carers working from Wickford in any given year but admits that those who were not live in carers but carers who visited people in their homes were paid a higher hourly rate. The claimant took issue with the use of the word 'domiciliary' to differentiate between these carers and herself, noting that domiciliary merely meant to do with the home, and she worked in KS' home. With that in mind, for the purposes of clarity in this judgment, carers who pay visits to people in their home will be referred to as 'visiting carers', and those who live in the client's home while caring for them, as 'live in' carers.
15. On 10 April 2019 the claimant raised with Jane Saunders and Debbie Dennis that her wage had not been uplifted to the new NLW rate. Ms Saunders replied that this was because the respondent paid two weeks in arrears. The tribunal finds that there is no evidence that the respondent had failed to uplift the claimant's hourly rate in April 2019.
16. On 1 April 2020 the claimant received a letter from James King, then branch manager at Wickford, setting out that the hourly rate of pay for care and support workers was increasing to £9.12. The NLW for that financial year was £8.72. The claimant noted on receipt of her payslip dated 22 April 2020 that she had not received a raise. On querying this with the Mr King he contacted payroll who confirmed there had been an error in that the new NLW had not been paid, and a back payment would be made. He notified this to the claimant on 4 May 2020.
17. In answer to a separate question about the higher rate of £9.12 notified by way of the letter of 1 April Mr King told the claimant on 22 April 2020 that this had been sent to her in error and applied only to visiting carers. The claimant escalated the matter and was told by Debbie Horne (Regional Director of Operations) in an email on 27 April 2020 that the pay for visiting carers and live in care workers was calculated differently and she would not be receiving the increase to £9.12 an hour. The claimant raised an informal grievance about this matter on 28 April 2020 to Lucy Dimon in HR (then HR Manager) and a formal grievance on 6 May 2020.

18. The issue about the difference in hourly rates paid to visiting carers and live in carers is at the heart of the claimant's claim. It was when she received the letter from Mr King on 1 April 2020 that she became aware that there was a difference in the hourly rate. An explanation was first given to the claimant by Debbie Horne on 27 April 2020 as follows:

*The hourly rate payable to community workers is calculated based on a number of factors including but not limited to:*

*The hourly rate paid for the packages as commissioned by the funding authority.*

*The mechanics of pay by the visit.*

*The nature of the round of care delivered.*

*The costs to staff of attending multiple clients in a day.*

*The living care contracts are commissioned on a flat weekly rate and usually paid to staff on a flat weekly rate of £550. Your circumstances and the historic agreement for remuneration already far exceeds that and you are receiving pay in line with statutory minimum despite an average daily work agreement being in place which does not require that. We are unable to increase your salary any further however will keep it under review should an increase in funding be made for the package of care you deliver.*

19. This is the explanation that was put to the claimant on a number of occasions in the following years and which was maintained by the respondent's witness in written and oral evidence to the tribunal. In short, the respondent's position was that the claimant's work was different to that of the visiting carers who had extra travel costs, and even though it was not required to pay the NLW across 16 hours by statute, as the 16 hours was the subject of a daily average agreement, it did so as contractually agreed. The tribunal had copies of the claimant's daily average allowance agreement before it, though there were no figures included for the actual availability and actual hours. The claimant was offered terms of employment on 18 April 2017 which clearly equated to 16 hours paid work a day at a rate of £7.50 (then the NLW) per hour, which she accepted. Although she raised with the respondent that she should be paid for 24 hours not 16, that is not a claim before this tribunal and not reflective of the terms she accepted on 18 April 2017. The tribunal finds that the reference to 24 hours at clause 2 of the daily average agreement displayed at page 74 of the hearing bundle is an annotation by the claimant and not a figure agreed by the respondent.
20. The tribunal finds that there was a difference in the in hourly pay rates between live in and visiting carers throughout the period relevant to this claim, and the difference in rates was due to the difference in the two roles, as set out by the respondent's Debbie Horne in paragraph 18 above.
21. The claimant drew the tribunal's attention to the fact that she had a generic contract which was for 'Domiciliary Care Staff' and referred to the job role as 'Care Worker'. Also, that on her ET1 she had described herself as live in carer, but the respondent has on its ET3 described her as a 'Care and Support Worker'.

22. The tribunal accepts the respondent's explanation of the reasons why visiting and live in carers were paid different rates, as first set out in the email of Debbie Horne dated 27 April 2020.
23. The outcome of the claimant's formal grievance was that the respondent did not uphold her claim that she should be paid the equivalent hourly rate to visiting carers but decided that as a gesture of goodwill it would increase her hourly rate to the same amount as that received by visiting carers for that year. This was set out in the outcome letter as follows:

*You claimed to not have been receiving your intended pay rise from April 1st to April 22<sup>nd</sup> 2020 as per a letter indicating this would be paid to you.*

*You provided me with the letter you had been sent by Manager, James King. The letter stated that with effect from April 1st, 2020, the new standard rate for Care/Support workers will be £9.12 per hour. You claimed to have acknowledged receipt of your letter by joking to James hoping it was not an 'April fools' joke and that you appreciated the increase. You then stated that when you realised you had not received the pay rise on 15th April you emailed James querying this, he allegedly failed to respond. You then raised this with Payroll who passed it onto James, who then responded to you directly allegedly telling you that Senior Management were discussing the increase of the live-in rate.*

*Live in packages are assessed on the basis of the care needs of the individual on an "unmeasured work basis". Staff who deliver Live in services are remunerated on the basis of a weekly rate for the package. Therefore, Live in rates are not automatically adjusted based on an hourly rate however an automatic NMW check is made to live in wages based on the average daily hours of "contact time" recorded by the workers.*

*However, I have reviewed the circumstances that you have described, and it is clear that a letter outlining an increase in your pay was sent to you in error. Therefore, despite not being entitled to this increase I have determined that it is appropriate that we apply this increase to you as a gesture of goodwill. However, this does not set a precedent for increases to come and your package will not necessarily be considered for an uplift in the coming years as other rates are considered nor will other staff who support live in packages receive the same rate. This decision is being made purely in the interests of good employee relations and is confidential and unique to you. Therefore, in conclusion whilst I do not agree that this increase is applicable to Live in packages, we will be processing an increase for you with effect 1st July 2020.*

24. The claimant appealed this decision. Again, the respondent did not uphold the grievance but made a further goodwill decision to backdate the pay increase to 1 April 2020. The decision is set out in the grievance appeal outcome as follows:

*National rates for live in care packages across Hales Group and all other providers of whom we have made inquiries range from £400 to £600 per week. The rate being received by you at £8.72 x 16 x 7 = £976.64 is significantly higher than any other comparable roles. Therefore, on the matter*

*of pay not being equal to your community colleagues I cannot substantiate your grievance. It is for this reason that any future pay awards will be made in line with the market rates for live in care packages and any amendments made to the funding received by the commissioning body at the time.*

*It is accepted that a letter was sent in error to you, as a live in carer, confirming the rate of pay to be made to community care workers with effect from 1st April. There is no suggestion that the role you perform in the service user's home is not as a care worker. However it is accepted that the role of live in care worker does not incur the same expenses or costs as a community care worker might, by virtue of their need to maintain a vehicle for travel between each visit, some of which may only last 15 minutes, for fuel, for insurances and by way of recompense for additional disadvantages within the working day - namely that there rota may contain a number of breaks which are unpaid such as between a breakfast and a lunch time shift for which this should be adequately compensated. Notwithstanding this reasonable justification for a variance in pay rate between all varieties of staff - including community care, supported living and live care workers - I accept that by receiving this letter you reasonably believed that you were to receive this rate of pay and it is for this reason that I uphold your grievance and confirm the previous acceptance that your rate of pay will be £9.12 per working hour of care at 16 hours per day. Whilst I do not accept, on the basis of item one, that we have any obligation to backdate this pay award, as your grievance was brought about by an administration on error on our part I have decided to uphold your grievance in relation to the timing of the award and backdate this pay to be effective 1 April 2020. This means that an under payment is due to you of £505.60 which will be made to you at the next available opportunity. Please allow up to 14 days from receipt of this payment as it sits outside of our normal payroll process.*

25. The claimant raised a second grievance in the same year about underpaid holiday. In an outcome letter dated 30 November 2020 Tracey McDonald, Regional Operations Manager, found that holiday pay had been calculated correctly as it was based on 'approved HMRC methodology of an average of the previous 52 weeks earnings, this is in line with employment law.' She went on to say:

*Despite this, and in view of our review of your live in package, we acknowledge that the methodology for holiday pay calculations can be complex for workers to accurately understand themselves and have made the decision to adjust all of your holiday pay already processed in 2020, despite it not being necessary, to reflect your current daily average agreement of £9.12 x 16 hours per day. This means you will shortly receive an additional payment of £163.20 showing on your payslip as "additional holiday pay". This represents the difference between the holiday pay received and the calculation below, where it's been paid at your current daily rate of £145.92, which it was not entitled to be.'*

26. Ms McDonald made clear in the letter that the respondent did not accept the claimant's claim of underpayment but had agreed to calculate her holiday on

an hourly rate '*as a gesture of goodwill and to avoid any further pay queries*'. The claimant did not appeal the decision.

27. In April 2021 the claimant did not receive an increase in her hourly rate. In an email exchange on 4 June 2021 Lyndsey Ryan referred the claimant to the outcome of the 2020 hourly rate grievance. She noted that the £9.12 hourly rate was upheld in 2020 '*due to the error on the part of the organisation and as a gesture of goodwill, however it was explained to you in your outcome letter there is justifiable reason for the variation of pay rates between all varieties of staff.*' The claimant continued to argue for an hourly rate equal to domiciliary workers, but Ms Ryan maintained her position.
28. In October 2021 the claimant queried an underpayment of holiday pay with Tracey McDonald. Ms McDonald responded on 21 October 2021 noting '*You are correct you have been paid for 15 days and requested 22, the remaining 7 days will be processed and paid to you next Friday 29<sup>th</sup> October.*'
29. In April 2022 the respondent once again failed to automatically uplift the claimant's hourly rate to the NLW, which that year was £9.50. The claimant contacted Kathy Taylor on 21 April 2022. Ms Taylor responded that there would be no increase that year. The claimant escalated the matter to Joanne Broderick, Director of the East and Southern Region in May 2022 and Ms Broderick began investigating. The matter was resolved in the claimant's favour on 2 June 2022 when Ms Broderick emailed the claimant to say the hourly rate would be increased and backdated to 1 April in the next pay run. No apology or explanation was offered. There was no increase showing in the claimant's pay slip dated 8 June 2022 which led her to raise a formal grievance on 22 June 2022. The claimant's grievance on underpayment was upheld on 3 August 2022 and it is noted in that decision letter that a back payment has been made.
30. The tribunal noted that in her witness statement Ms Dimon, Head of People Services, stated that in the financial year of April 2022 to March 2023 there was a fault in the respondent's systems which did not automatically increase the claimant's hourly rate in line with the NMW but '*this was rectified immediately*'. This is clearly wrong as noted in the paragraph above. The claimant had to pursue the respondent for four months, including after being told on 2 June 2022 by the Director of the East and Southern Region that she was right and the problem would be rectified, before she was paid the correct wage for that year. The respondent's error was not '*rectified immediately*'.
31. On 19 October 2022 the claimant raised with Nathaniel Foster in the accounts department and Kathy Taylor, her line manager, that she had been underpaid for holiday. She said that she had not been paid the correct hourly rate for her holiday, and that the correct hourly rate was the NLW.
32. The holiday pay matter raised in October 2022 was not resolved and continued into the next financial year leading the claimant to raise a further grievance on 4 April 2023. This grievance also concerned untaxable

expenses and pension contributions which are not the subject of complaints to this tribunal.

33. On 12 April 2023 when the claimant received her first pay slip of the new financial year, she noted that she had not received an increase in line with the increase in the NLW and raised this with payroll, copying in Kathy Taylor and Joanne Broderick.
34. The outcome of the claimant's grievance on holiday pay was issued on 16 June 2023 by Tayla Clarke on behalf of the grievance manager Sue Hamilton. Ms Hamilton found that although the claimant had an agreement whereby holiday was paid at the claimant's hourly rate, the agreed calculation was not simply hours of holiday multiplied by the daily rate. She concluded that the claimant had provided no evidence of underpayment.
35. The claimant pursued an appeal against the decision of 16 June 2023 but not specifically about the finding referred to in the paragraph above. Her complaint was that 'the explanation provided in relation to not being paid for the 24 hours commissioned for KS, being that Hales use the remaining monies for ongoing costs such as holiday pay, is an incorrect statement as you feel that you are continually being underpaid for holiday', however in responding to this separate point in the appeal outcome on 7 August 2023 the respondent concluded that the claimant had been overpaid for holiday in the financial year 2022 to 2023:

*'During your meeting with Linda, you mentioned that you felt you had been underpaid holiday in the months of October 2022, November 2022 and pay slips and breakdowns were provided. During an internal investigation alongside the Finance department, it was concluded the contrary and instead your annual leave is evidenced as having been overpaid to you in the previous holiday year; specifically, it would appear £636.52 was overpaid to you. This is broken down as follows:*

*In the 2022 holiday year you worked a total of 44 weeks out of a possible 52 weeks (including holiday weeks). However, as per your outcome issued in November 2020 your holiday entitlement should be 28 days X 85% = 24 days (this number has been rounded up) - Total holidays pay due for holiday year 2022 = £3,591.36*

*In that period, you were paid a total of £4,227.88 in annual leave.*

*However, given this overpayment occurred due to an error with our systems not reflecting the agreed pro-rata holiday (within your November 2020 outcome of grievance), we do not intend to recoup the monies overpaid to you. However, we will ensure your annual leave is monitored and reflective of the appropriate amount to ensure that you are receiving the correct annual leave payments as per the above method for calculating your holiday.*

36. The claimant asked Tayla Clarke for a breakdown of the respondent's calculation, arguing that it was not in line with government guidelines on 8

August 2023. No response to that request is included in the bundle and there is no document showing that the claimant pursued the matter further.

37. On 15 July 2023 KS was hospitalised. The hospital determined on 21 July 2023 that she was ready for discharge and Lindsay Lake, the respondent's Care Coordinator emailed Lisa Osborne and Rebecca Bremmer at 16:26 to tell them that KS would be returning home from hospital the next day as follows:

*Good afternoon Ladies,*

*Just to let you know KS will be returning home tomorrow from hospital.*

38. Lisa Osborne and Rebecca Bremmer provided care for KS when the claimant was not working. They were both white women. Ms Lake emailed the claimant at 16:43 as follows:

*Good afternoon Sheron,*

*I hope you are well.*

*I have had a call from Chantelle to say that KS is being discharged from hospital tomorrow.*

*I have contacted the hospital now as we will need a full medical review and discharge for KS before we can start care.*

*We are in contact with the hospital will arrange transport for Monday morning when Marilyn can get out and assess KS and complete a full review.*

*We will come back to you as soon as we have some news. 😊*

39. It is the claimant's claim that she was excluded from the first email which gave the correct date for discharge and instead sent a forward date. Ms Lake did not give evidence at the hearing. The tribunal finds that the claimant was not included in the first email which was to the two cover carers who were not, on that date, caring for the claimant. The tribunal finds that the claimant, who was at the time providing care, as set out in her witness statement, and intended to accompany the claimant home from hospital, was provided with updated and fuller information in an email sent only to her, approximately fifteen minutes later, with a promise of further updates.
40. The claimant claims that she found out in September 2023 that Lisa Osborne was paid £11 per hour for the week of 24 April 2023, whereas the claimant was on an hourly rate of £10.42. Lisa Osborne was a white woman and provided care for KS when the claimant was not working. Some of Lisa Osborne's pay slips have been disclosed. Pay for the week commencing 1 May 2023 shows Ms Osborne to have been paid £11 per hour, 24 hours a

day for seven days. Another pay slip, for the week of 24 April 2023 shows a payment of £1387.00 for live in care. No hours or rate break down is shown. Ms Osborne worked five days that week, according to the rota supplied by the claimant and dividing the daily figure by 24 would give an hourly rate in excess of £11.00. The claimant was paid 10.42 an hour for 16 hours a day on 23 and 24 April 2023.

41. The respondent has provided other pay slips for Ms Osborne which show she was paid for 16 hours at a rate of £9.50 (then NLW) in the week commencing 16 January 2023 and 13 hours at a rate of £10.42 in the week commencing 26 July 2023. The claimant makes the point that Ms Osborne was not working in the week of 26 July 2023 and the tribunal accepts that this is correct, however this was because Ms Osborne became ill and although scheduled to work, could not. Ms Osborne could have been paid in her absence or a pay slip generated and an overpayment later reclaimed. The tribunal has no knowledge of Ms Osborne's terms and conditions of employment beyond her hourly rate and daily hours.
42. In oral evidence Ms Burgoyne (Finance Director) said that there were problems in bedding in a new recording and payroll system in April 2023. The claimant worked on the only live in care package and it took some time to work out how to record the live in carers hours and pay in the system. As it was the only such package, problems with it were not prioritised when fixing the system. Ms Burgoyne said that Lisa Osborne's pay in the pay slips for April and May 2023 was incorrect and she was overpaid. It took the respondent a while to sort it out and it did not claim back the overpayment.
43. As it is clear from the documents in the bundle that the respondent was of the view that a 16 hour day paid at the NLW was generous and in excess of the going rate for such work (for example Debbie Horne wrote to the claimant in April 2020 stating that the going rate was £550 per week) the tribunal finds that the payments made to Lisa Osborne as detailed in the statements for the weeks commencing 24 April and 1 May 2023 were incorrect and made in error by the respondent. It finds that Ms Osborne was not being paid more than the claimant generally, only that she was paid more for those two weeks. Earlier and later pay slips show Ms Osborne to have been paid the same or less than the claimant.
44. The claimant claims that in September 2023 she discovered that white colleagues at Wickford had received Christmas presents, flowers and certificates of appreciation and certificates of long-standing which she had not received. In support of this claim she provided the following evidence: a screenshot from Facebook showing two white Wickford staff members receiving flowers in June 2022; screen shots from Facebook in December 2022 showing staff receiving gifts, and a Christmas tree with gifts underneath it for staff; a screen shot from Facebook in December 2023 where in the background to a Christmas tree two certificates of appreciation can be seen on a notice board.
45. The claimant raised some of these matters in a grievance brought on 11 November 2023 in which she claimed that she was discriminated against

because of her race. The part of her grievance in relation to the Wickford branch favouring white colleagues in its rewards and appreciation schemes was not upheld by Ms Dimon, the grievance manager. She stated:

*In relation to your point made concerning the 'favoring of white colleagues', our internal investigation and thresholds within branch. I can confirm that you are entered into the Hales Heroes draw each month, as you fit the outlined requirements. Also, at present the Wickford branch follows a system of positive feedback. If positive feedback is received from service users or next of kin then appreciation certificates in recognition are given to the carer in question. As the evidence provided by yourself following your grievance hearing suggests you regularly receive positive feedback and appreciation from your service user and their next of kin, perhaps this is not being passed on to your branch, and they therefore cannot recognise positive feedback they are not aware of. Therefore, I cannot uphold this point of your grievance, as our internal investigation suggests that there is no favour based on ethnicity, but in fact, based on evidential feedback of performance.*

Ms Dimon also said that some of the Facebook photographs were marketing exercises, the company is multi-ethnic, and it sponsors out of country applicants from multiple ethnicities to come to the UK to work for it.

46. The respondent's Nicola Mewse (Group Managing Director) gave the following written evidence in response to this allegation:

*...the ethnicity of the individuals receiving any recognition is not a factor. All staff that visit the branch during periods of celebration (be it Christmas or our recent 25th birthday) are offered nominal value gifts to take away – some staff choose not to take them; some staff don't visit the office. All staff are entered into the monthly Hales heroes draw subject to criteria, and Sheron has been entered into the draw on more than one occasion – unfortunately as it is a national draw, an Essex based worker does not always win the award in the month. In addition, the criteria for entry into the Heroes draw includes criteria that is system generated – the % of visit notes and diary entries within certain parameters – and for a number of years Sheron refused to complete the digital system, meaning that her name wouldn't have been included in digital reports evidencing eligibility for the draw and ethnicity is not a factor in these recognition schemes.*

47. There is no dispute that up to December 2023 the claimant did not receive flowers or a gift from the Wickford branch, did not receive a certificate of appreciation or long service and was not selected in the Hales Heroes draws.
48. On 23 October 2023 the claimant raised with the respondent a discrepancy between her hourly rate and the rate paid to Chanel Clarke who was a white woman who worked with KS when the claimant was not working. She emailed Joanne Broderick about this and Ms Broderick replied that Chanel was not a live in carer and was paid at the visiting carer rate, the claimant was a live in carer on different terms and conditions. Ms Dimon's evidence on this matter was that Ms Clarke was a visiting care worker who had 'picked up live-in

duties as a temporary agreement. She was then entitled to be paid her contractual rate of pay'. The tribunal accepts the respondent's evidence on this matter and finds that Chanel Clarke was paid at a higher hourly rate as she was a visiting carer.

49. The claimant claims that every year between April 2018 and April 2024 the respondent failed to increase her hourly rate in line with the NLW unless she complained or raised a grievance, which white colleagues did not need to do. The tribunal finds, for the reasons set out above, that the respondent failed to increase the claimant's hourly rate in line with the NLW until she complained or pursued a grievance in 2018, 2020, 2022 and 2023. The tribunal makes no findings on whether or not white employees had to raise grievances or complaints about increases in their hourly rates as there was no evidence before the tribunal on that matter.
50. The claimant commenced early conciliation with ACAS on 15 December 2023 and a certificate was issued on 19 January 2024.
51. The claimant appealed the outcome of her grievance on race discrimination, and an appeal hearing took place on 6 February 2024.
52. On 14 February 2024 Kerry Harding, the claimant's line manager, asked the claimant to supply a photograph for the staff notice board, which she did by return.
53. The claimant issued this claim on 15 February 2024.
54. The outcome of the grievance appeal was issued on 21 February 2024. It was largely dismissed with the exception of a point about the inclusion of hourly rates on job adverts.
55. In June 2024 the claimant visited the Wickford Branch. This was the first time she had visited since supplying her photograph to Ms Harding. She photographed a noticeboard showing photographs of all the care staff. Each member of staff had a photograph which was laminated and showed their name and job title, except for the claimant. Her photograph was unlaminated and did not show her name.
56. The claimant raised this with respondent, who rectified it. Ms Dimon's evidence on this matter was that the purpose of the board was to show the staff names and roles to other staff and clients. This was not necessary for the claimant who did not work from the Wickford premises, but that her feedback on the matter was taken on board.
57. Also in June 2024, the claimant discovered that Joanne Brown, who at that time cared for KS when the claimant was not working, had a contract for 13 hours a day, which the claimant took to indicate that the respondent had reduced the daily average agreement hours for KS without completing an assessment. The claimant raised this with her then manager Kerry Harding on 14 June 2024. Tayla Clarke responded on 3 July 2024 that this was a matter for Joanne Brown to raise and the claimant could only raise issues

about her own working hours. The claimant replied that Joanne had raised it and had been told that an assessment had been completed. Included in the bundle is a long email from Chanel Clarke (predecessor to Joanne Brown) to the respondent dated 18 November 2024 complaining that she had only been paid for a 12 hour day when working with KS. Chanel was employed from November 2023. Ms Mewse and Ms Dimon both provided written evidence that it was a matter for the respondent as to how and when care packages should be reviewed. Ms Mewse's evidence was that a review had taken place and the claimant had been consulted. The claimant said when being cross-examined by Ms Bibia that she was not part of the review. The claimant did not challenge Ms Mewse on her evidence on this point when cross-examining her. The tribunal finds that a review did take place. It makes no finding on whether the claimant was consulted.

58. The claimant regularly requested breakdowns of her pay. She was told in July 2024 that she should access a breakdown via the respondent's One Touch app. She told Lindsay Lake that the breakdown on the app did not correspond with her payslip. The claimant provided in the bundle an example for the week of 24 July 2024. There are three entries. Two of them are the same as shown on the corresponding pay slip. One of them is not. Ms Burgoyne, the respondent's finance director, said in oral evidence that pay slips and the pay breakdown should be the same but that in reality this was not always the case, for example SSP does not appear in One Touch and where a branch asked for a duty that was not rostered to be included in the pay slip, this might not show in the breakdown.
59. The respondent's employees who worked as carers had to undertake various e-learning modules throughout the year. The claimant was assigned 21 modules in January 2025. She discovered on 31 January 2025 that those modules had been deleted and sought an explanation from the respondent. The documentation before the tribunal is incomplete and there is no email in which a clear answer is given. The respondent's witnesses, Phoebe Logan (HR Specialist) and Lucy Dimon (HR Director) gave evidence that the modules had been assigned in error. They were deleted and replaced by seven modules which were the correct modules that needed to be completed by the claimant. There is evidence that the seven modules were assigned following the deletion of the 21 modules.
60. The claimant claims that the respondent reduced payment for e-learning modules from an hour per module to 45 minutes in February 2025. She said that she was previously paid an hour for training modules and provided evidence in the form of screen shots for various modules that many were expected to take longer than one hour to complete. The respondent said at first to the claimant that as she had completed the modules in February when on duty with KS that she would not be paid extra at all for them. The claimant protested and Lindsay Lake confirmed on 10 February 2025 that she would be paid. This was reconfirmed by Phoebe Logan on 12 February 2025 and she states that the claimant will be paid 45 minutes for each module completed, because of her particular circumstances as a live in carer for KS.

61. The claimant provided an email exchange between Joanne Brown and Bradley Clerk, a trainer in June 2025 in which he confirms that she should be paid an hour for the two modules she had completed that month. She provided a pay breakdown for the week commencing 14 October 2024 in which it is shown that she was paid two hours for training, indicating that an hour was paid per module. Also in the bundle is a pay breakdown for the week commencing 28 November 2022 showing that she was paid 8 hours and 15 minutes for training. This indicates a payment rate of 45 minutes per module. The respondent's evidence was that the usual payment for modules was 45 minutes as recommended by the training provider Care Skills Academy, but it provided no documentary evidence to support that. Ms Logan also said in evidence that if a module took longer than 45 minutes then an employee could bring that to their attention.
62. The tribunal finds that although the respondent had a policy of paying 45 minutes per module for training this was not always applied and there were a number of exceptions.

## **The Law**

63. The discrimination claims are brought under sections 13, 26 and 27 of the Equality Act 2010. Those sections are reproduced below.

### **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.

### **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;
  - ...

### **27 Victimation**

- (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.

64. For all the Equality Act 2010 claims the burden of proof provisions as set out in section 136 apply. Section 136 reads:

**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.

65. The tribunal must make findings of fact and apply the legal tests to those facts. The tests for direct discrimination were discussed in *Igen v Wong and Others [2005] IRLR 258* and *Madarrassy v Nomura International PLC [2007] IRLR 246*. The employment tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the claimant had established a *prima facie* case, the tribunal is to examine all the evidence provided by the respondent and the claimant.

66. Further, in *Madarrassy* it was held that the bare facts of the difference in protected characteristic and less favourable treatment are not “without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent committed an act of unlawful discrimination”. There must be “something more”.

**Submissions**

67. Ms Bibia, for the respondent, filed written closing submissions and made oral submissions. The oral submissions in summary are that many allegations were significantly out of time, and no reason had been given for late presentation. The claimant did not raise any allegations of race at the time the incidents complained of took place. The claimant has not shifted the burden of proof in relation to the allegations of direct discrimination. If the tribunal disagrees, the respondent has provided evidence of non-discriminatory reasons for its actions.

68. The claimant said that she relied on the content of her witness statement by way of a closing submission.

## Decision and Reasons

### Direct Discrimination and Harassment

69. The claimant relies on 16 allegations of discrimination which she says are both harassment, and directly discriminatory. For the purposes of comparators, the comparators are white people who are employed as visiting carers based at the Wickford branch for allegations 1 to 11, 14 and 15. For allegation 12 it is Lisa Osborne and Rebecca Bremmer. For allegation 13 it is Lisa Osborne.

*Allegation 1: 9 May 2017: The claimant, the only black member of the care staff employed by the respondent, agreed a domiciliary care staff contract and paid £7.50 per hour while white colleagues were likely paid more, as she later discovered multiple discrepancies in pay.*

70. The tribunal found that there is no evidence from which it could conclude that the claimant was the only black member of staff employed by the respondent at the respondent's Wickford branch on 9 May 2017. It found that visiting carers were paid a higher hourly rate than live in carers as they had a different role. The claimant clearly accepted specific payment terms for a live in contract which was different to the way in which payment was calculated for visiting carers. The tribunal finds that the difference in pay relates to different jobs and there is no evidence that the difference was based on race. On a consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the pay differential was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 2: In the financial year April 2018 to March 2019 – The claimant was not paid the National Minimum Wage of £7.83 per hour which was paid to white colleagues until she raised an informal grievance with Julia Scotton.*

71. The tribunal has found that the claimant was not paid the NLW from 1 to 25 April 2018 until she raised this matter with Ms Scotton but also there was no evidence before the tribunal about what other workers were paid at that time or that they were paid £8.50 an hour, or whether they needed to raise a grievance in order to obtain a pay rise. Furthermore, there was no evidence that the colleagues with whom she compares herself (visiting carers based at Wickford) were all white. Taking the claimant's allegation at its highest and supposing that the wages of the employees at Wickford were automatically uplifted in April 2018, the respondent has explained why there was a pay differential between live in and visiting carers which the tribunal has accepted. On a consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the pay differential was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 3: In the financial year April 2018 to March 2019 the claimant was paid £7.83 per hour when white colleagues were paid £8.50 per hour.*

72. There was no evidence before the tribunal about what other workers were paid at that time. Furthermore, there was no evidence that the colleagues with whom she compares herself (visiting carers based at Wickford) were all white. Taking the claimant's allegation at its highest and supposing that the wages of the employees at Wickford were automatically uplifted in April 2018 to £8.50, the respondent has explained why there was a pay differential between live in and visiting carers which the tribunal has accepted. On a consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the pay differential was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 4: In the financial year April 2019 to March 2020 the claimant was not paid the National Minimum Wage of £8.21 per hour which was paid to white colleagues until she raised an informal grievance with Debbie Dennis.*

73. The tribunal has found that the claimant was paid the NLW for that financial year and that she was advised on contacting the respondent on 10 April that she was paid two weeks in arrears, so that her pay slip reflected that pre 6 April 2019 pay rate. It therefore concludes that no claim of discrimination can be supported by this allegation.

*Allegation 5: In the financial year April 2020 to March 2021: Despite receiving a letter promising a pay raise to £9.12 per hour, the claimant had to invoke the grievance process to obtain any rise despite white colleagues receiving £9.12 per hour. The claimant was initially awarded £8.72 per hour, increased to £9.12 per hour. White colleagues received pay raises automatically.*

74. The tribunal found that the letter sent to the claimant awarding a pay rise to £9.12 was sent to her by mistake. The letter was intended for visiting carers only. It accepts that she raised a grievance about this matter but not that she had to invoke the grievance process to receive the NLW uplift. This was rectified by James King on 4 May 2020. The respondent set out reasons, which the tribunal accepted, as to why the claimant was not entitled to an increase to £9.12. These were about the different roles of live in and visiting carers. The tribunal accepts that the letter from James King shows that visiting carers received a pay rise automatically in April 2020. The tribunal has no evidence from which it could conclude that all visiting carers at Wickford in 2020 were white. On consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the pay differential was related to the protected characteristic of race and there is evidence that the automatic uplift was role related and not race related. Nor does the tribunal find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 6: In the financial year April 2020 to March 2021: Despite being paid £9.12 per hour, the claimant had to raise a formal grievance to obtain the correct hourly pay for holiday pay paid to white colleagues.*

75. The claimant raised a formal grievance about holiday pay, but this was not upheld by the respondent at first instance or on appeal who found that the calculation was correct but accepted that it may be confusing to the claimant. It decided to simplify the way it calculated the claimant's holiday pay, which was to her financial advantage, stipulating this was a gesture of goodwill. It is clear from the respondent's decision that the differential between what the claimant thought she was due and what she was paid was not about the hourly rate. As the tribunal does not accept that the claimant had to raise a grievance in order to obtain the correct hourly pay for holiday it concludes that no claim of discrimination can be supported by this allegation.

*Allegation 7: In the financial year April 2021 to March 2022: The National Living Wage increased to £8.91, The claimant did not receive a raise, unlike her white colleagues who received £9.36, even though she raised an informal grievance with Lyndsey Ryan and James King.*

76. The tribunal accepts that the claimant did not receive a raise from £9.12 to £9.36. The reason for this was that her rate of £9.12 was in excess of the NLW for April 2021 to April 2022. There is no evidence before the tribunal that only white colleagues received an uplift and the tribunal accepts the respondent's evidence on why there was a pay difference between live in and visiting carers. On a consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the pay differential was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 8: In the financial year April 2021 to March 2022: Despite previously having had to raise a formal grievance of underpayment of holiday which was upheld, the claimant had to raise informal grievance to have holiday pay corrected while white colleagues were automatically paid the correct hourly rate for their holiday pay.*

77. The tribunal accepts that the respondent underpaid the claimant's holiday pay in October 2021 and this was resolved after she raised it with Tracey McDonald. The error was about the number of days paid and not about the hourly rate and therefore no claim of discrimination, as described, can be supported by this allegation

78. Taking the claimant's allegation at its highest, noting she is a litigant in person, and assuming the complaint is simply that an error was made in her case and no errors were made in relation to the payment of other employees, the tribunal notes that there is no evidence before it that white employees were automatically paid the correct holiday pay in the financial year April to March 2022 and that the claimant was treated differently in this respect. The tribunal does not accept that this was an act of harassment as there is no evidence that the error was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of

another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 9: In the financial year April 2022 to March 2023 the claimant had to submit another formal grievance to get her pay corrected to the National Living Wage rate of £9.50 per hour, while other white care staff were paid £10.50 without having to submit an internal grievance.*

79. The tribunal accepts that the claimant had to submit another formal grievance in order to get her pay corrected to the current NLW rate in the financial year April 2022 to March 2023. It has no evidence before it about what visiting carers were paid during that time but accepts from the evidence provided by the respondent about the pay differential between visiting and live in carers that they would have had a higher hourly rate than the claimant. There is no evidence before the tribunal that all Wickford visiting carers were white at that time or about whether anyone had to raise a grievance to get a pay rise, though it accepts that it is likely that the uplift for visiting carers was automatic. There was a catalogue of errors on the part of the respondent in relation to the uplift during this year. Firstly, the claimant had to raise the fact that the uplift had not been calculated once again, then she was told incorrectly that she was not entitled to a raise. It was then determined that she was, and she was told it would be rectified. It was not rectified and then she had to raise a formal grievance which was upheld. She received a back payment in August 2022. The tribunal's view is that the respondent behaved very poorly and caused the claimant unnecessary distress by its inability to simply red flag the fact that the claimant was on different terms and conditions to the other employees at Wickford and a manual adjustment to her pay needed to be made annually. However, it is evident that the problem arises due to the fact that her terms and conditions are different to those of the live in carers, and the respondent's administrative processes were inept. The claimant is in a different position to those she compares herself with as she is a live in career and the other employees at Wickford are not. The tribunal does not accept that this was an act of harassment as there is no evidence that the respondent's actions were related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 10: In the financial year April 2022 to March 2023 the claimant had to raise another informal grievance to Kathy Taylor and Nathaniel Foster about the underpayment of holiday to obtain the correct hourly holiday pay which was paid automatically to white colleagues.*

*Allegation 11: In April 2023 the claimant had to submit another formal grievance to get her holiday pay corrected to the National Living Wage rate of £10.42 per hour for holiday pay while other white colleagues were paid £11.00 per hour.*

80. The allegations are considered together as they concern the same alleged underpayment. While the tribunal accepts that the claimant did raise a

grievance about holiday pay, firstly, informally, in October 2022 and then, formally, in April 2023, it does not accept that she had to do so because she was not receiving holiday pay calculated on the basis of the NLW. The respondent investigated her complaint and found that she had not been underpaid and had in fact been overpaid. This was nothing to do with the hourly rate but was about how holiday pay was calculated.

81. The tribunal concludes no claim of discrimination can be supported by Allegation 10 where the claimant did not have to raise an informal grievance to obtain the correct hourly pay rate.
82. The tribunal concludes no claim of discrimination can be supported by Allegation 11 where the claimant did not have to raise a formal grievance to obtain the correct hourly pay rate.
83. In respect of Allegation 11 the claimant also states that white colleagues were paid £11 an hour for holiday pay. There is no evidence before the tribunal about what the holiday pay rate of Wickford visiting carers was, though they may have had an hourly pay rate higher than the claimant during that year, for the reasons provided by the respondent about the roles being different and being remunerated differently. There is no evidence before the tribunal that all visiting carers at Wickford at this time were white, and as noted, reasons have been provided for pay differentials between live in and visiting carers. On a consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that any pay differential was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

*Allegation 12: In September 2023: The claimant discovered that the Respondent sent an email in July 2023 to white colleagues which included the correct discharge date for the service user and the claimant was excluded in that correspondence, instead, the claimant was sent a forward date by the Respondent.*

84. The tribunal has found that the two cover carers, who were not on duty, were sent a brief update email approximately fifteen minutes before the claimant, who was caring for KS, was emailed by Lindsay Lake, setting out the same discharge date but providing an update that the respondent had asked for a delayed discharge and noting that further information would be provided as it was obtained. The claimant was not excluded from communications but was provided with fuller information and told updates would be provided, at a time when she was overseeing the discharge care of KS, less than 20 minutes after the email to KS's cover carers.
85. The statutory test for whether treatment is less favourable for the purpose of a direct discrimination claim is an objective one, and the tribunal finds that the claimant was not treated less favourably by being sent a separate email containing more detailed information, shortly after the one-line update email was sent to her colleagues. It therefore concludes that no claim of direct discrimination can be supported by this allegation.

86. The tribunal finds that there is no evidence that Ms Lake's actions on 21 July 2023 were related to a protected characteristic. Furthermore, where the claimant believes that the conduct complained of falls within the definition at s26(1)(b), the tribunal finds that it was not reasonable for her to do so, even taking into account the other circumstances of the case.

*Allegation 13: In September 2023 the claimant discovered that the white colleague was paid £11 per hour while the claimant received £10.42 per hour for week commencing 24th April 2023 which was a changeover week.*

87. The tribunal has found, and the respondent has agreed, that Lisa Osborne was paid £11 an hour that week and the claimant was paid less. The tribunal has also found that this was an error on the part of the respondent and that it made an overpayment to Ms Osborne. Pay slips before and after that date show her to have been the same or less than the claimant. On consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the pay differential was related to the protected characteristic of race. Nor does the tribunal find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race. Even had the tribunal accepted that the burden of proof had turned so that the respondent needed to prove a non-discriminatory reason for its actions, it has clearly provided that explanation as set out above.

*Allegation 14: In September 2023: The claimant discovered that the white colleagues within care staff team at the Wickford branch received Christmas presents, flowers, and certificates of appreciation, certificate of long service which the claimant has never received.*

88. The tribunal accepts that the claimant did not receive Christmas presents, flowers, and certificates of appreciation or long service. It accepts that some of the employees at the Wickford branch did receive some of those things but can make no finding on whether it was only the white staff at Wickford who received them. No evidence was provided to the tribunal about whether the white care coverers, for example Lisa Osborne and Chanel Clarke, received such gestures of appreciation, and the tribunal has found that it does not have evidence from which it can conclude that all staff at Wickford were white at the relevant time. On consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the fact that the claimant did not receive gestures of appreciation was related to the protected characteristic of race. Nor does the tribunal find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race, as it has not been shown that only white visiting staff received gifts or recognition. All that has been shown is that the claimant, who did not work out of the Wickford branch and rarely visited it, did not.

*Allegation 15: Between April 2018 and April 2024: The respondent failed to increase the claimant's hourly rate of pay unless she complained or raised a*

*grievance which was not an approach or practice applied to her colleagues of white ethnic origin.*

89. The tribunal has found that the respondent failed to increase the claimant's hourly rate in line with the NLW until she complained or pursued a grievance in 2018, 2020, 2022 and 2023. The white colleagues to whom the claimant compares herself are the visiting carers who worked out of the Wickford branch. The tribunal has no evidence that all of the visiting carers were white during the period complained of and can make no findings on whether or not white employees had to raise grievances or complaints about increases in their hourly rates as there was also no evidence before the tribunal on that matter. It accepts that the likelihood is that in general they did not, for the very reason given by the respondent as to why the claimant did. She worked on different terms and conditions to them, which included a daily average agreement. These were not the terms and conditions on which the respondent usually operated. This meant that its pay systems needed to be specifically updated annually in relation to the claimant.
90. The tribunal has considered carefully the evidence about each year this happened and the lengths the claimant had to go to in order to have matters rectified. Particularly painful, and entirely unacceptable, is the chronology of steps she was forced to pursue in April to August 2023 to receive the correct pay. While it understands the claimant's mounting frustration and despair, the tribunal finds that there is no evidence from which it could conclude that this ongoing failure was due to discrimination. It is quite clearly due to ineptitude on the part of the respondent in the operation of its administrative processes, likely compounded by regular changes of management staff whose job it should have been to ensure that the error was not repeated annually. The claimant's treatment was different to that of the visiting carers at Wickford because her pay was determined and calculated on a different basis. On a consideration of the evidence the tribunal does not accept that this was an act of harassment as there is no evidence that the pay differential was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that the respondent's actions were discriminatory on the grounds of race.

#### Victimisation

91. The claimant states that the issuing of this claim on 15 February 2024 was a protected act for the purposes of s27 Equality Act 2010 and that is accepted by the respondent.

*Allegation 1: In June 2024 the respondent's Meet the Team board at its Wickford Branch did not include the claimant's name or job title though it did include the claimant's photograph.*

92. The tribunal finds that the inclusion of the claimant's photograph on the noticeboard without the photograph showing her name and role, where all other staff photographs included this information, was detrimental treatment. The explanation provided by Ms Dimon is that the board was for clients and staff to know who was who, on the premises. It was not necessary to have that information about the claimant as she did not work there. It is the

tribunals' view that this reasoning does not hold up when the email from Ms Harding on 14 February is considered. In that email she is clearly requesting the photograph for the purpose of including information about the claimant on the board, i.e. for the purposes of identifying her as part of the team. The next day the claimant issued a claim, thereafter four months elapsed when the claimant's photograph was in the possession of the respondent and no effort was made to produce an identification photograph in line with the other such photographs. It was simply printed off as it was and pinned to the board. The tribunal upholds this allegation of victimisation.

*Allegation 2: In June 2024 the claimant discovered that the respondent had reduced the daily average agreement hours for KS without completing an assessment to take into account the actual needs of KS.*

93. It is the respondent's position that an assessment, referred to by the respondent as a review, did take place, and that the claimant was consulted. This is set out in the witness statement of Nicola Mewse and was not challenged by the claimant when she questioned Ms Mewse. The claimant's evidence on this point is the discovery that Joanne Brown was being paid 13 hours a day and not 16. Ms Bibia put it to the claimant in cross examination that this allegation could not amount to victimisation. The claimant said that the respondent had previously made comments about her pay package being generous and she took that as a threat.
94. The allegation is that no assessment took place. The tribunal has found that it did. Even had it not, the tribunal finds that the allegation would not have been upheld as the detriment alleged would be to KS and not the claimant. The claimant suffered no detriment. She retained her 16 hour a day payment term.

*Allegation 3: From the w/c 8 July 2024, the respondent said that the claimant was able to access a breakdown of her pay from the app, but the information did not correspond to what was contained in her pay slip.*

95. The tribunal accepts that the pay details shown on the payslip provided for July 2024 do not correspond exactly with the pay breakdown provided through the One Touch app. It accepts that this is detrimental. It does not accept that the detriment arose because the claimant issued a claim in this tribunal. The example given shows that the daily wage was paid correctly, and an expenses figure differs. The pay slip shows £34.32 and the breakdown shows £11.44. The allegation is not that the claimant was underpaid. Ms Burgoyne said in oral evidence that the two did not always correspond. There is no evidence from which the tribunal could conclude that there is a link between the protected act and the alleged detriment.

*Allegation 4: On the 31 January 2025 did the Respondents victimise the Claimant by cancelling her e-learning?*

96. The tribunal has found that the respondent did not cancel the claimant's e-learning. It had incorrectly allocated her 21 modules. It removed these

replaced them with the seven modules she needed to complete. It finds that there was no detriment.

*Allegation 5: Did the Respondents victimise the Claimant by reducing the payment on her completed e-learning modules from 1 hour to 45 minutes on seven modules?*

97. The tribunal accepts that to be paid 45 minutes for completing an online training module rather than to be paid for an hour, is a detriment. However, it found that the evidence indicated that there was a policy of paying 45 minutes but that this was sometimes departed from. Pay slips included in the bundle showed the claimant had been paid 45 minutes and an hour at different times, prior to the protected act. The tribunal finds that there is no link between the payment of modules at 45 minutes per module in February 2024 and the protected act.
98. In conclusion, the tribunal upholds the claimant's claim that the failure to add her name and role to her photograph on the notice board at Wickford was an act of victimisation. All other claims are dismissed.

Approved by:

Employment Judge W Anderson

Date: 3 December 2025

Sent to the parties on:

4 December 2025

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For the Tribunal Office