



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Laoise Foley

v

Smart Impact Limited

Heard at: London Central

On: 9 – 12 December 2025 and chambers 29 January 2026

Before: Employment Judge Hodgson

Representation

For the claimant: in person

For the respondent: Mr Alex Leonhardt, counsel

JUDGMENT

- 1. The claim of unfair dismissal is dismissed on withdrawal.**
- 2. All claims of direct discrimination fail and are dismissed.**
- 3. All claims of harassment fail and are dismissed.**
- 4. All claims of victimisation fail and are dismissed.**

REASONS

Introduction

- 1.1 The claim was submitted on 19 June 2024. The claimant brought allegations of unfair dismissal, direct discrimination, and harassment.
- 1.2 Later, by amendment, she alleged the dismissal was an act of victimisation.

The Issues

- 2.1 The claimant alleges the following acts of detrimental treatment.

- 2.1.1 Allegation 1 - being falsely accused of shouting at Mr Bostjan Podborsek by Mr Steve Sydee during the winter of 2022. (sex and race)
- 2.1.2 Allegation 2 - on a date or dates not specified, being ignored and having contributions in meetings dismissed by Mr Ahmed Eltohamy and Mr Johan Kustner. (sex and race)
- 2.1.3 Allegation 3 - on a date not specified being excluded by Mr Ahmed Eltohamy when he poured champagne for colleagues in the office. (sex and race)
- 2.1.4 Allegation 4 - on a date not specified by Mr Ahmed Eltohamy jumping out of the way as if pushed and shouting "bye" at the claimant. (sex and race)
- 2.1.5 Allegation 5 - on a date or dates not specified by Mr Steve Sysdee making remarks about her appearance such as whether she was wearing makeup or not and asking whether the claimant had been going to the gym. (sex)
- 2.1.6 Allegation 6 – on a date or dates not specified by a person or persons not specified, being physically towered over; and intimidated by men in the office. (sex)
- 2.1.7 allegation 7 - on a date or dates not specified by a person or persons not specified, being excluded from social events, not specified. (sex and race)
- 2.1.8 allegation 8 – on a date or dates not specified by a person or persons not specified, in a manner not specified, not having an opportunity to succeed in her role due to her sex. (sex)
- 2.1.9 allegation 9 - on a date or dates not specified by a person or persons not specified, not being set incentives. (unclear what characteristic is engaged or dates)
- 2.1.10 allegation 10 - on a date not specified by being sent WhatsApp messages by Mr Jeremy Jalie when the claimant was on annual leave (sex)
- 2.1.11 allegation 11 - on 20 September 2023 by being sent Teams messages at 5.59am precisely on non-urgent issues by Mr Dominic Mackie. (sex)
- 2.1.12 Allegation 12 – on a date not specified by being sent a video by Steve Sydee of an Irish child asking to go to the pub and asking if she grew up like that in Ireland. (race)

- 2.1.13 Allegation 13 – on a date not specified by Mr Steve Sydee making comments on the claimant’s accent. (race)
- 2.1.14 Allegation 14 – by dismissing the claimant on 24 April 2024 by notice of 13 March 2024 given by Mr Ahmed Eltohamy. (victimisation)
- 2.1.15 Allegations 1, 8, and 9 are said to be claims of direct discrimination. The protected characteristics relied on, if any, are identified for each allegation.
- 2.1.16 Allegations 2, 3, 4, 5, 6, 7, 10, 11, ,12, 13 are said to be claims of harassment. The protected characteristics relied on are identified for each allegation.
- 2.1.17 Allegation 14 is put as an allegation of victimisation. The claimant relies on one protected acts being as follows:

An alleged protected act timed at 29:57 in the transcript of the grievance meeting when the Claimant was asked what had been happening in the office that made her feel uncomfortable, and she replied:

“Yeah. I guess it’s just more so a feeling that I have in the office. I just don’t feel very welcomed there, like it is mostly men. I am pretty much the only female and there are other females there but like I’m just I guess a little bit younger and stuff and so I can just find that I’m a little bit more of a target or something.”

- 2.2 Are all or any of the claims out of time and should time be extended?

Evidence

- 3.1 The claimant gave evidence.
- 3.2 For the respondent, I heard from Mr Ahmed Eltohamy, the managing director; Mr Steve Sydee, head of sales; and Ms Catherine Dixon, human resources consultant.
- 3.3 I received a bundle of documents, and a video which had been sent to the claimant.
- 3.4 I received written submissions from both sides.

Concessions/Applications

- 4.1 On day one, I noted the claim had been amended, by order of EJ Glennie on 13 January 2025, to include an allegation that the dismissal was an act of victimisation. There had been no order for an amended grounds of resistance. I ordered that an amended grounds of resistance must be filed by 08:00 on day two.

- 4.2 I considered with the parties whether the respondent's position was sufficiently clear to allow the claim to continue, or whether the hearing should be adjourned. There was no application for adjournment. I was satisfied the claimant understood the respondent's position, which was set out in its statements. I was satisfied the claimant would have sufficient time to consider any amended response, provided it was filed before she commenced any cross-examination of the respondent's witnesses.
- 4.3 On day one, we discussed the issues. There had been a number of attempts to define the issues. The parties had been ordered to agree the issues. I considered the draft list of issues in the original claim. I agreed with the parties those matters which were pleaded in the claim form and which should be reflected in the list of issues. I provided the parties with the final list of issues on the morning of day two.
- 4.4 The issues were considered. Some amendments were made during the hearing and issue 13 was added flowing written representations.

The Facts

- 5.1 The respondent is a company which specialises in providing digital solutions for the non-profit sector. This product revolves around software which can manage membership and other relevant matters.
- 5.2 The respondent employed the claimant from 12 September 2022 as a pre-sales consultant on an initial basic salary of £75,000 per annum with a discretionary OTE bonus of £20,000 per annum.
- 5.3 Her role involved interaction with staff and potential customers. It included preparation and delivery of presentations. The claimant was not responsible for concluding sales.
- 5.4 The claimant was given notice of termination of employment on 13 March 2024 with her final day being 24 April 2024. The dismissal letter stated "As you were informed on March 13th, 2024, this decision is based on your ability to work effectively as part of the team."
- 5.5 The detail of the relevant events will be considered in relation to each of the allegations. When considering each decision, relating to each allegation, I have had regard to the totality of the evidence, albeit the key circumstances most directly relevant to each allegation can be conveniently set out when the allegation is considered.
- 5.6 I should set out some of the relevant background.
- 5.7 The claimant's line manager was Mr Steve Sydee; the Managing director was Mr Ahmed Eltohamy.
- 5.8 The claimant brought a grievance during her employment, albeit her grievance was not set out in writing. The grievance was dealt with by Ms

Catherine Dixon, who was a consultant employed by Warner Goodman LLP. As part of the grievance, Ms Dixon interviewed relevant individuals, including the claimant, her line manager, Mr Steve Sydee, and an individual, Mr Bostjan Podborsek, who was said to have raised a complaint that the claimant had shouted at him.

5.9 Ms Dixon dealt with the four grievance points she had identified and then agreed with the claimant. Those grievance points were as follows:

1. You did not receive sufficient induction, in particular in relation to IP, which you believe impacted on your ability to do your job and ultimately impacted on sales.
2. You have received conflicting instructions from Steve in relation to an internal configuration you believe that he asked you to complete, and then retracted.
3. You were accused of shouting at Bostjan which you deny, but there has been no further discussion or closure for you following this allegation.
4. You believe that points 2 and 3 have impacted how you are perceived by others in the Company, this in turn has caused you to feel isolated from your colleagues, judged and vulnerable to criticism; you fear for your reputation and career as a result.

5.10 Ms Dixon upheld the first complaint, which concerned the failure to provide a sufficient induction. She did not uphold the remaining grievances. The claimant has not alleged that the conduct of, or the outcome of, the grievance was in itself harassment or direct discrimination.

5.11 The claimant was dismissed after the grievance had concluded. Before proceeding with the dismissal, Mr Ahmed Eltohamy sought advice from Ms Dixon.

The law

6.1 Direct discrimination is defined in section 13 of the Equality Act 2010.

Section 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.

6.2 **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 is authority for the proposition that the question of whether the claimant has received less favourable treatment is often inextricably linked with the question why the claimant was treated as he was. Accordingly:

employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. (para 10)

6.3 **Anya v University of Oxford** CA 2001 IRLR 377 is authority for the proposition that we must consider whether the act complained of actually

occurred (see Sedley LJ at paragraph 9). If the tribunal does not accept there is proof on the balance of probabilities that the act complained of in fact occurred, the case will fail at that point.

6.4 Harassment is defined in section 26 of the Equality Act 2010.

Section 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--
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (3) ...
- (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.

6.5 In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT (Underhill P presiding) in the context of a race discrimination case, made it clear that the approach to be taken to harassment claims should be broadly the same. The EAT observed that 'harassment' is now defined in a way that focuses on three elements. First, there is the question of unwanted conduct. Second, the tribunal should consider whether the conduct has the purpose or effect of either violating the claimant's dignity or creating an adverse environment for him or her. Third, was the conduct on the prohibited grounds?

6.6 In **Nazir and Aslam v Asim and Nottinghamshire Black Partnership UKEAT/0332/09/RN, [2010] EqLR 142**, the EAT emphasised the importance of the question of whether the conduct related to one of the prohibited grounds. The EAT in **Nazir** found that when a tribunal is considering whether facts have been proved from which a tribunal could conclude that harassment was on a prohibited ground, it was always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on that ground. That context may in fact point strongly towards or against a conclusion that it was related to any protected characteristic and should not be left for consideration only as part of the explanation at the second stage.

6.7 In **Dhaliwal** the EAT noted harassment does have its boundaries:

We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase. We accept that the facts here may have been close to the borderline, as the Tribunal indeed indicated by the size of its award.

- 6.8 Harassment may be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- 6.9 A claim based on 'purpose' requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the Employment Tribunal to draw inferences as to what that true motive or intent actually was: the person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift, as it does in other areas of discrimination law.
- 6.10 Where the claimant simply relies on the 'effect' of the conduct in question, the perpetrator's motive or intention even if entirely innocent does not in itself afford a defence. The test in this regard has both subjective and objective elements to it. The assessment requires the tribunal to consider the effect of the conduct from the complainant's point of view: the subjective element. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that effect: the objective element. The fact that the claimant is peculiarly sensitive to the treatment does not necessarily mean that harassment will be shown to exist.
- 6.11 The requirement to take into account the complainant's perception in deciding whether what has taken place could reasonably be considered to have caused offence reflects guidance given by the EAT in **Driskel v Peninsula Business Services Ltd [2000] IRLR 151**, which concerned the approach to be taken by employment tribunals in determining whether alleged harassment constituted discrimination on grounds of sex. In **Driskel** the EAT held that although the ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the tribunal of all the facts, the claimant's subjective perception of the conduct in question must also be considered.
- 6.12 Victimisation is defined in section 27 of the Equality Act 2010.

Section 27 - Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

6.13 Prior to the Equality Act 2010 the language of victimisation referred to less favourable treatment by reason of the protected act. Under the Equality Act 2010, victimisation occurs when the claimant is subject to a detriment because the claimant has done a protected act or the respondent believes that he has done or may do the protected act.

6.14 We have to exercise some caution in considering the cases decided before the Equality Act 2010. However, those cases may still be helpful. It is not in our view necessary to consider the second question, as posed in Derbyshire below, which focuses on how others were or would be treated. It is not necessary to construct a comparator at all because one is focusing on the reason for the treatment.

6.15 When considering victimisation, it may be appropriate to consider the questions derived from Baroness Hale's analysis in **Derbyshire and Others v St Helens Metropolitan Borough Council and others 2007 ICR 841**. However as noted above there is no requirement now to specifically consider the treatment of others.

"37. The first question concentrates upon the effect of what the employer has done upon the alleged victim. Is it a 'detriment' or, in the terms of the Directive, 'adverse treatment'? But this has to be treatment which a reasonable employee would or might consider detrimental... Lord Hope of Craighead, observed in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 at 292, paragraph 35, 'An unjustified sense of grievance cannot amount to "detriment"'. "

40. The second question focuses upon how the employer treats other people...

41. The third question focuses upon the employers' reasons for their behaviour. Why did they do it? Was it, in the terms of the Directives, a 'reaction

to' the women's claims? As Lord Nicholls of Birkenhead explained in *Khan's* case [2001] IRLR 830, 833, paragraph 29, this

'does not raise a question of causation as that expression is usually understood ... The phrases "on racial grounds" and "by reason that" denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'

- 6.16 Detriment can take many forms. It could simply be general hostility. It may be dismissal or some other detriment. Omissions to act may constitute unfavourable treatment. It is, however, not enough for the employee to say he or she has suffered a disadvantage. We note an unjustified sense of grievance is not a detriment.
- 6.17 The need to show that any alleged detriment must be capable of being objectively regarded as such was emphasised in **St Helens Metropolitan Borough Council v Derbyshire 2007 IRLR 540**. **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 IRLR 285** was cited and it was confirmed an unjustified sense of grievance cannot amount to detriment. That in our view remains good law. In **Derbyshire**, Lord Neuberger confirmed the detriment should be viewed from the point of view of the alleged victim. Rather than considering the 'honest and reasonable test as suggested in *Khan*' the focus should be on what constitutes a detriment. It is arguable therefore that whether an action amounts to victimisation will depend at least partly on the perception of the employee provided that perception is reasonable. It is this reasonable perception that the employer must have regard to when taking action and when considering whether that action could be construed as victimisation. Detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment. The detriment cannot be made out simply by an individual exhibiting mental distress, it would also have to be objectively reasonable in all the circumstances. The stress and worry induced by the employer's honest and reasonable conduct in the course of his defence cannot, except in the most unusual circumstances, constitute a detriment. The focus should be on the question of detriment.

Reasons for unfavourable treatment.

- 6.18 When the protected act and detriment have been established, the tribunal must still examine the reason for that treatment. Of course, the questions of reason and detriment are often linked. It must be shown that the unfavourable treatment of a person alleging victimisation was because of the protected act. A simple 'but for' test is not appropriate.
- 6.19 It is not necessary to show conscious motivation. However, there must be a necessary link in the mind of the discriminator between the doing of the protected act and the treatment. If the treatment was due to another reason such as absenteeism or misconduct the victimisation claim will fail.

The protected act must be a reason for the treatment complained. It is a question of fact for the tribunal. **Chief Constable of West Yorkshire police v Khan 2001 IRLR 830 HL** is authority for the proposition that the language used in the Sex Discrimination Act 1975 is not the language of strict causation. The words by reason that suggest that what is to be considered, as Lord Scott put it, is "the real reason, the core reason, the causa causans, the motive, for the treatment complained of that must be identified." This in our view remains good law.

- 6.20 It is not necessary for a person claiming victimisation to show that unfavourable treatment was meted out solely by reason of his or her having done a protected act.
- 6.21 Lord Nicholls found in **Najarajan v London Regional Transport 1999 ICR 877**, HL, that if the protected act has a significant influence on the outcome of an employer's decision, discrimination will be made out. It was clarified by Lord Justice Gibson in Court of Appeal in **Igen and others v Wong and others 2005 ICR 931** that in order to be significant it does not have to be of great importance. A significant influence is an influence which is more than trivial.

Subconscious motivation

- 6.22 The House of Lords in **Nagarajan** rejected the notion that there must be a conscious motivation in order to establish victimisation claims. Victimisation may be by reason of an earlier protected act if the discriminator consciously used that act to determine or influences the treatment of the complainant. Equally the influence may be unconscious. The key question is why the complainant received the treatment.
- 6.23 Section 23 refers to comparators in the case of direct discrimination.

Section 23 Equality Act 2010 - Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

- 6.24 Section 136 Equality Act 2010 refers to the reverse burden of proof.

Section 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.

(6) A reference to the court includes a reference to--

- (a) an employment tribunal;
- (b) ...

6.25 In considering the burden of proof the suggested approach to this shifting burden is set out initially in **Barton v Investec Securities Ltd [2003] IRLR 323** which was approved and slightly modified by the Court of Appeal in **Igen Ltd & Others v Wong [2005] IRLR 258**. We have particular regard to the amended guidance which is set out at the Appendix of **Igen**. We also have regard to the Court of Appeal decision in **Madarassy v Nomura International plc [2007] IRLR 246**. The approach in **Igen** has been affirmed in **Hewage v Grampian Health Board 2012 UKSC 37**

Appendix

(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

Conclusions

Allegation 1 - being falsely accused of shouting at Mr Bostjan Podborsek by Mr Steve Sydee during the winter of 2022. (sex and race)

- 7.1 In November 2022, Mr Bostjan Podborsek raised an issue concerning the claimant allegedly shouting at him. This was not a formal grievance. It was not put in writing. Mr Ahmed Eltohamy was alerted by Mr Bostjan Podborsek's line manager. Mr Ahmed Eltohamy spoke with Mr Steve Sydee, and asked him to deal with it.
- 7.2 Mr Steve Sydee met with the claimant, but he was not convinced by the allegations, as he considered the claimant to be mild-mannered. He wanted her side of the story. The claimant denied shouting. He reported the claimant's denial to Mr Bostjan Podborsek's line manager, who in turn confirmed that Mr Bostjan Podborsek did not intend to pursue the matter. The complaint proceeded no further.
- 7.3 There was no formal investigation. There was no finding of fact. There was no disciplinary action.
- 7.4 The claimant did not raise the matter further until it became part of her grievance.
- 7.5 In the grievance investigation, Ms Catherine Dixon interviewed Mr Bostjan Podborsek who gave his account. He gave his recollection of the relevant

interaction and the transcript of the discussion records he said the following:

...I'm here for like 10 years in this company so I know what our support is doing and I said to her like why are you explaining this to me? I know what support is, but she was really like shouting and stuff like this, and then, you know, I'm not five years old, that somebody will shout at me and then I just hang up and I said I didn't say anything to her.

- 7.6 Allegation 1 is put as an act of direct sex and race discrimination.
- 7.7 The allegation is against Mr Steve Sydee. It is said he made a false accusation. The allegation is not against Mr Bostjan Podborsek.
- 7.8 It is unclear whether the claimant shouted at Mr Bostjan Podborsek. The evidence received is inconclusive. I have not heard from Mr Bostjan Podborsek; the allegation was not against him. The transcript from the grievance investigation provides evidence that he believed the claimant acted inappropriately to him.
- 7.9 This allegation fails factually. Mr Steve Sydee did not accuse the claimant. He reported an accusation and asked for the claimant's account. He did not come to any final conclusions because Mr Bostjan Podborsek did not maintain the allegation at the time. He suggested there had been some form of misunderstanding which he did not need to resolve further. For Mr Sydee, the issue had been resolved. As he did not make an allegation, the claimant's allegation fails.
- 7.10 In any event, the claimant points no facts from which I could find that the reason was either the claimant's sex or the claimant's race.
- 7.11 Finally, I accept Mr Steve Sydee's explanation, which is to the effect that an allegation had been raised. It was appropriate to seek the claimant's account. He sought the claimant's account. He accepted the matter was resolved, and believe there may be some misunderstanding and communication difficulty.
- 7.12 It may be possible to argue, if Mr Bostjan Podborsek had been motivated by the claimant's race or sex, that in some manner his motivation should be deemed the motivation of Mr Steve Sydee. But that is not an argument pursued by the claimant. The claimant has not pursued this matter on the basis that Mr Bostjan Podborsek made the allegation because of the claimant's race or sex. In any event, there are no facts from which I could conclude that Mr Bostjan Podborsek's conscious or subconscious motivation was either the claimant's race or sex.

Allegation 2 - on a date or dates not specified, being ignored and having contributions in meetings dismissed by Mr Ahmed Eltohamy and Mr Johan Kustner. (sex and race)

- 7.13 The claimant fails to identify in the allegation any specific occasion when she attended a meeting. She fails to identify what comments she made. She fails to identify in what manner any comment was said to be ignored.
- 7.14 The respondent's position is that the claimant was not ignored in meetings. It is accepted that many meetings involved "brainstorming," when ideas were evaluated, and some may be used and others not.
- 7.15 It was part of the claimant's role to attend meetings and to contribute. Her role required her to contribute, and to have the confidence to deal with junior and senior people inside and outside the business. Mr Steve Sydee formed the view that she rarely contributed to meetings, and as her employment continued, the claimant became more withdrawn and contributed less, with her lack of engagement becoming noticeable. He reports that other managers held similar views.
- 7.16 In her statement, the claimant does refer to Mr Ahmed Eltohamy ignoring her in meetings, but she gives no specifics. She alleges this happened throughout her employment, starting in September 2022. The claimant's submissions identify no specific alleged contribution or meeting.
- 7.17 The claimant's submissions refer to unwanted treatment on the 24 November 2022, when she alleges that Mr Ahmed Eltohamy stared at the claimant with anger, shooed her away with his hand, and stood over her at her desk. She alleges he shouted at she left the office and jumped out of her way in the corridor, as if he had been pushed.
- 7.18 This issue is put as an put as an allegation of harassment.
- 7.19 This allegation fails. First, the claimant fails to prove that any contribution was ignored in a meeting.
- 7.20 There are no facts from which I could conclude that the purpose of any conduct was to harass.
- 7.21 The claimant has identified no conduct which could have the effect of harassing. She has established there were meetings. The fact that she alleges she was uncomfortable, in some manner, is not sufficient. It is necessary to understand what is said to be the behaviour, and then to consider intention and effect. If there are not fact from which I could conclude the intention was to harass, I must consider the matter from the claimant's perspective and consider whether it is reasonable to have the effect of harassment. However, the claimant simply fails to identify the relevant conduct. Finally, there is no evidence any of the conduct which related to either a sex or race.

Allegation 3 - on a date not specified being excluded by Mr Ahmed Eltohamy when he poured champagne for colleagues in the office. (sex and race)

- 7.22 In evidence, the claimant was unclear as to when this happened. Her written statement would suggest that it occurred in December 2022, albeit the written statement is drafted in unclear terms. Ultimately, in oral evidence, the claimant said it happened on 24 November 2022, which was a client day followed by Christmas gathering.
- 7.23 The respondent accepted on 24 November 2022 there was some form of customer day, with clients, when staff were presenting new products. Mr Ahmed Eltohamy attended as the managing director and host. He accepts that he did pour glasses of prosecco. His evidence is that he was not handing glasses to people individually. He was pouring glasses and placing them on the table. People helped themselves, and everyone was welcome to take a glass. He accepts that he may have handed some glasses to people, as and when they approached.
- 7.24 It was the claimant's evidence that there was some form of gathering around the table and that Mr Ahmed Eltohamy was pouring individual glasses and handing them over to each in turn, but in some manner skipped her.
- 7.25 Whatever the claimant's perception, I must consider Mr Ahmed Eltohamy's action and his conscious or subconscious motivation. I find it is more probable that Mr Ahmed Eltohamy was pouring glasses of champagne. Some were put on the table. Some were handed to individuals, as and when they indicated they wanted one. I find the claimant could have taken the glass, or requested one.
- 7.26 It is possible that the claimant felt awkward, or felt overlooked. However, I do not accept that there is evidence which would demonstrate, on the balance of probability, that there was some form of deliberate action calculated to exclude her, as she alleges.
- 7.27 This is put as an allegation of harassment related to sex and race.
- 7.28 This claim fails. The claimant fails to establish, on the balance of probability, that the alleged conduct occurred at all. It is an essential part of the allegation that there was some form of deliberate exclusion. I find that she fails to prove this.
- 7.29 I have no reason to doubt that she did not have a glass of champagne.¹ However, she had the same opportunity as everyone else. She chose not to take a glass.
- 7.30 There is no fact from which I could conclude that Mr Ahmed Eltohamy's purpose was to harass.

¹ I understand it was prosecco rather than champagne, but it is clear the term as been used generically.

7.31 The claimant may have felt, subjectively, harassed. As she was not treated differently to others, it is not reasonable for the conduct to have had that effect. In any event, none of the conduct related to her sex or race.

Allegation 4 - on a date not specified by Mr Ahmed Eltohamy jumping out of the way as if pushed and shouting "bye" at the claimant. (sex and race)

7.32 In her submissions, the claimant states that this happened in 2022, when she was leaving an event.

7.33 In her oral evidence, the claimant was inconsistent and confusing. She was unclear as to when the event happened and she gave several dates. Ultimately, she alleged that this occurred on the same day she was not offered champagne. This would suggest 24 November 2022.

7.34 In her oral evidence, she stated that Mr Ahmed Eltohamy was in the corridor talking to another manager and that she passed between them.

7.35 Mr Ahmed Eltohamy had no specific memory, but accepts that he may have stepped back and moved out of the way, if he was blocking the corridor. The claimant alleges that he jumped back as if pushed. She stated she formed the view that he was attempting to humiliate her by making out, implying in some manner, that she was an aggressive Irishwoman who tried to push people out of the way.

7.36 There is no suggestion at all that he referred to the claimant being Irish.

7.37 Mr Ahmed Eltohamy accepts that he may have said goodbye to the claimant, as he would to other staff or customers. He has no recollection of shouting "bye."

7.38 Neither the claimant, nor the respondent, has called the evidence of anyone else to confirm their accounts. In her submissions, and in oral evidence, the claimant identified the relevant manager as Mr John Prescott. However, he is not identified in the particulars of claim. The claimant does refer to Mr Prescott in her statement. The claimant criticises the respondent for not producing more evidence. The criticism is harsh given her failure to identify the event or the date adequately, or at all. Further, it was open to the claimant to seek a witness summons.

7.39 It is for the claimant to prove that the alleged circumstances occurred. She must do so on the balance of probability. She fails to discharge that burden. I cannot find that Mr Ahmed Eltohamy jumped out of the way or shouted at the claimant in the manner alleged.

7.40 It is not the claimant's case that he said goodbye, or that he moved out of the way. Both actions were said to be exaggerated in a way designed to upset her.

- 7.41 On the balance of probability, I find it is likely that at some point the claimant walked past Mr Ahmed Eltohamy in a corridor. It is evident she walked between him and the manager. This would imply that the corridor may have been partly blocked, and in those circumstances it is natural, and generally considered polite, for the person blocking the corridor to move to create space.
- 7.42 At the time, it is possible that the claimant was feeling unhappy and in some manner anxious. It would be possible for her to misinterpret a deliberate, but polite, movement as one with ill intent. The evidence I have, tells me something about the claimant's state of mind, but I am not satisfied that her perception at time, given her overarching anxiety, was reliable.
- 7.43 In the circumstances, I find, on the balance of probability, that the action of Mr Ahmed Eltohamy in moving to one side and thereafter saying goodbye cannot reasonably be said of have had the effect. Of harassing.
- 7.44 Finally, there is no evidence from which I could conclude that the conduct related either to the claimant's race or sex.

Allegation 5 - on a date or dates not specified by Mr Steve Sysdee making remarks about her appearance such as whether she was wearing makeup or not and asking whether the claimant had been going to the gym. (sex)

- 7.45 The particulars of claim do not adequately identify what the remarks were, when the remarks were made, or what was the context. She refers to Mr Steve Sydee as making remarks about her appearance "such as whether I am wearing make-up or not and whether I have [been] going to the gym."
- 7.46 In her statement, she refers to a Teams call in September 2022 when she says Mr Steve Sydee "made a comment on whether or not I was wearing make-up." Again, the claimant fails to identify the words used, the context, and the exact date. The statement goes on to say that she felt "harassed and self-conscious about my appearance, and as though my manager was eyeballing me."
- 7.47 Her submissions refer to Mr Steve Sydee raising "the topic of using a make-up filter on teams." That is evidence he gave. She does not appear to dispute that evidence.
- 7.48 Mr Steve Sydee accepts that they talked about the gym "quite often." He states the claimant would tell him about the gym when he asked what she had been up to recently. He says this was conversational, and part of their weekly meetings, and at other times when they met.
- 7.49 He denies suggesting that the claimant should use a make-up filter on Teams. He denies discussing make-up with the claimant. He states that he may have had a general chat, from a technical and functional perspective, about the use of filters. One of those filter features concerns

make-up and is a relevant feature to understand having regard to the business and the need to understand technical and functional matters. He does not accept any such discussion was about the claimant.

- 7.50 The accusation concerns Mr Steve Sydee making remarks about the claimant's appearance. The claimant's evidence is not supportive of that accusation. Her submissions appear to accept Mr Steve Sydee's account. In cross examination, she did not put to him any specific occasion when he allegedly commented on her appearance.
- 7.51 At no time did the claimant identify a specific discussion about her going to the gym which she considered inappropriate. Ultimately, she did not challenge the evidence of Mr Steve Sydee on this point.
- 7.52 The claimant's allegation is that Mr Steve Sydee made remarks about going to the gym and I have regard to her submissions, where she appears to interpret these as commenting on her appearance. It was open to the claimant to challenge Mr Steve Sydee on the basis that the conversations about the gym were not instigated by her and were, in some manner, inappropriate. She could have identified the wording of circumstances which made them inappropriate. She did not attempt to do that.
- 7.53 I find that the claimant fails to establish that Mr Steve Sydee made remarks. I find there was a discussion about the use of make-up filters. I find that there were conversations in which the claimant referred to going to the gym.
- 7.54 This is put as an allegation of harassment. The basic allegation is about making unwanted remarks. The claimant fails to identify any specific remark which was said to be unwanted.
- 7.55 I am not satisfied that there were conversations about the claimant's make-up, or make-up in general. A discussion about a make-up filter was an appropriate workplace discussion as it related to the product and its functionality.
- 7.56 I am satisfied that there were conversations about the claimant's attendance at the gym. I am also satisfied that those conversations were initially instigated by the claimant and at no time did she suggest that such conversations were inappropriate.
- 7.57 The allegation fails because the claimant fails to establish any relevant facts which would support her characterisation of the interactions.
- 7.58 There are no facts from which I could conclude that it was the purpose to harass.

- 7.59 As for the conversations about the gym, they were not unwelcome. Conversations about the make-up filter were part of her work and appropriate.
- 7.60 Whether the claimant felt uncomfortable at any time is unclear to me. However, it was not reasonable for the conduct to have the effect of harassing her.
- 7.61 In any event, none of the conduct related to her race or sex.

Allegation 6 – on a date or dates not specified by a person or persons not specified, being physically towered over; and intimidated by men in the office. (sex)

- 7.62 The allegation fails to identify what were the alleged acts of intimidation. It is unclear what is meant by “towered over.” The allegation fails to identify which individuals were involved, when the treatment occurred, or what the treatment was.
- 7.63 The claimant’s statement fails to clarify the matter further. She refers to male colleagues mistreating her in the office by towering over her and dismissing her contributions in meetings. She refers to this happening throughout her employment.
- 7.64 During her oral evidence, she referred to incidents when she felt intimidated when at her desk and Mr Ahmed Eltohamy was in the kitchen drinking water. She alleges he was staring at in a way she believed was meant to intimidate.
- 7.65 The claimant made reference to individuals standing behind her desk and having conversations in a way which was intimidating.
- 7.66 The claimant’s submissions are as follows:

The respondent denies the allegations of towering over the claimant in their amended response (paragraph 18.6). Ahmed Eltohamy describes during cross-examination how Johan’s office was behind her desk and it was for that reason they stood directly behind her to have a conversation. The respondent does not recall staring at the claimant from the kitchen whilst drinking water from a pint glass as she was sitting at her desk. Steve Sydee admits during the claimant’s cross-examination that he is taller than she is but denies he and Dominic Mackie were using their height difference to intimidate the claimant in the office.

The men in the office towering over the claimant was part of the sustained harassment she received in the office whilst working for Smart Impact. She felt as though the men were trying to put her in her place as a young Irish woman and make her feel like less than them. She felt belittled and degraded. It caused her to have low self-esteem. This treatment by my male colleagues was unwanted and she did not do anything to deserve to be treated in such a way. It offended her as a young Irish woman trying to make her way in the workplace, get along with people, and ultimately trying

to contribute to business success. Overall, her confidence was shattered, and she felt a sense of worthlessness.

- 7.67 The allegation is unclear.
- 7.68 A claimant is not permitted to develop an allegation or put it in a way which may best suit a claimant's purpose from time to time. A claimant should identify the conduct in issue. When a claimant fails to do so, there may be fundamental unfairness to the respondent. The respondent does not know the case is to answer. The respondent does not have an opportunity to produce evidence to confirm whether the conduct happened at all. The respondent is denied the opportunity to produce a cogent evidence relevant to an explanation.
- 7.69 I find the claimant fails to establish the conduct occurred at all and so the claim fails.
- 7.70 There may be occasions when there were conversations in the office. That is not uncommon. Mr Ahmed Eltohamy did visit the kitchen. He did drink water. The claimant may have been anxious. This may have affected her perception of the conduct of others, including something simple as an individual drinking water in a kitchen and looking back towards the office. However, it was not reasonable for that conduct have the effect of harassing.
- 7.71 Moreover, to the extent the claimant has identified any conduct at all, there is no fact from which I could find it related to her sex, as pleaded, or her race, which does not appear to be explicitly relied on, albeit her submissions attempt to put in issues by referring to her being Irish.

Allegation 7 - on a date or dates not specified by a person or persons not specified, being excluded from social events, not specified. (sex and race)

- 7.72 The claimant's pleading fails to identify the relevant social events. Her statement does little, if anything, to clarify the matter. She refers to being excluded when Mr Ahmed Eltohamy poured champagne. Her statement says "Further to this I felt excluded from afterwork events such as going to the pub as it was all the male colleagues and they were mistreating me in the office by towering over me in dismissing my contribution to meetings which happen throughout my employment starting from September 2022 until my dismissal in March 2024."
- 7.73 The claimant's statement, in several place, refers to a feelings of being excluded. Her statement fails to identify any social event from which she was excluded, or specify who excluded her, or how.
- 7.74 In her submissions, she refers to Mr Ahmed Eltohamy organising social events monthly in office meeting, and including all the male employees, but not the claimant. However, none of that was raised in evidence. The

claimant did not explore how the events were organised, or the manner in which that excluded her.

- 7.75 Mr Steve Sydee's evidence was to the effect that he encouraged the claimant to participate in social events. He was concerned that the claimant was withdrawn and not engaging. He sought to include her. He wanted her to go to the social events.
- 7.76 It may be that the claimant did not understand Mr Steve Sydee's efforts to reach out to her and or how he sought to encourage her to engage.
- 7.77 I find there is no credible evidence that she was actively excluded from any social events.

Allegation 8 – on a date or dates not specified by a person or persons not specified, in a manner not specified, not having an opportunity to succeed in her role due to her sex. (sex)

Allegation 9 - on a date or dates not specified by a person or persons not specified, not being set incentives. (unclear what characteristic is engaged or dates)

- 7.78 It is convenient to consider both these allegations together. Both are put as allegations of direct discrimination. I will consider them from the perspective of both sex and race, albeit she may not expressly rely on race.
- 7.79 The pleaded case is unclear. It is unclear why she says she was not given an opportunity to succeed in her role. This appears to be tied up with allegation nine, which refers to not being set incentives.
- 7.80 In her submissions, in relation to allegations eight, the claimant says the following.

The respondent denies this allegation (amended response paragraph 18.8) but has failed to provide documentation and proof on how the claimant was provided with the same level of opportunity as male colleagues by being given targets and performance reviews.

- 7.81 She goes on to refer to her bonus payment, and the failure to be given information as to how she should achieve the full bonus. She compares herself to Mr Jalie who had specific sales targets. She refers to not having the same opportunities.
- 7.82 In relation to allegation nine, the submissions state that she had a financial incentive of £5,000 quarterly bonus, but did not receive information on how she should achieve it.
- 7.83 The claimant's contract refers to benefits at section 12. It stated she may be provided with a number of benefits, albeit that is subject to change. It refers to "£20,000 OTE." It is not a contractual right. It was a

discretionary payment. The contract does not specify how it will be calculated, or what, if any, targets would be set.

- 7.84 In her first months of employment, the claimant was expected to become familiar with the product and the requirements of her role. During that time, and throughout her employment, Mr Steve Sydee engaged with the claimant and discussed the business's requirements and expectations. Increasingly, he became concerned by the lack of engagement and the claimant's withdrawal, and ultimately her refusal to undertake basic duties of the role.
- 7.85 The claimant did not have a sales target; she was involved in pre-sales.
- 7.86 Mr Jalie was a salesman involved in closing deals. He had a specific sales target. He was paid on the basis of a percentage of the value of the deals he completed. This position was not comparable to the claimant's position or role.
- 7.87 Mr Steve Sydee did make clear to the claimant what he expected her to achieve by way of knowledge, contribution, and engagement. She was not given monetary targets because they were not consistent with her role.
- 7.88 Before receiving any bonus, there was discussion. The claimant did not express dissatisfaction with the bonus decisions made. For each quarter, throughout her employment, she received £3,000 against a possible £5000. The bonuses continued to be paid, even though there was increasing concern about her performance.
- 7.89 Throughout her employment, the claimant was encouraged to perform and Mr Steve Sydee engaged with the claimant and sought to assist her by both explaining the role and explaining what was needed from her.
- 7.90 These allegations are poorly identified. The claimant was told what she needed to do in order to achieve a bonus. The targets was not set out in financial terms, as that was not applicable to her role.
- 7.91 I cannot find that, in some manner, the respondent's actions prevented the claimant from achieving. I accept Mr Steve Sydee's evidence that he had numerous conversations with the claimant and was clear as to what was expected. Moreover, the claimant was given time. She was given encouragement. She was given specific training which was particularly relevant to her presentation skills. In short, the respondent did nothing to prevent the claimant from achieving in her role.
- 7.92 There are no facts from which I could conclude that any of the treatment was because of her sex or because of her race.
- 7.93 To the extent any explanation is called for, I accept the respondent's explanation. The explanation revolves around all the respondent did to encourage her to succeed. It also revolves around identifying sufficiently

what was expected of her in order to be paid her bonus. Payment of the bonus was discussed with her and not objected to.

Allegation 10 - on a date not specified by being sent WhatsApp messages by Mr Jeremy Jalie when the claimant was on annual leave. (sex)

- 7.94 In her pleadings, the claimant refers to Mr Jalie sending the claimant WhatsApp messages when she was on annual leave. She failed to set out the date.
- 7.95 The claimant's statement alleges that Mr Jalie contacted her, when she was annual leave, on 20 February 2024.
- 7.96 It is accepted that Mr Jalie contacted her at 15:39. His initial contact was as follows:

Jeremy: Laoise - I'm so sorry to contact you when you're off, but I'm struggling to find the CQI Reqs spreadsheet you were working on. Is there any chance this has been.

- 7.97 There is then a friendly exchange. The claimant sends the spreadsheet. It was blank. She indicated it must be on a laptop, and could be found in Teams. She confirmed that she was not near her laptop but it would be sent the next day, when she was back.

- 7.98 At 15:58, Mr Jalie sent the following:

Thinking ahead to when you are (will that be next week) can you make sure you act swiftly to save as and then send it to me separately as I'm nervous that me opening up the spreadsheet in between might add a potential gremlin, so we need to do everything we can to not lose your work!! [:-)]² Have an amazing time away and sorry for picking this up this week.

- 7.99 The claimant responded with the following:

Sure np, I will be home tomorrow evening and send it then.

- 7.100 Thereafter, the exchange concluded 16:02 by Mr Jalie saying that it was brilliant and very helpful. He said thank you and sent a smiley emoji.

- 7.101 This is put as an act of harassment. I accept the conduct occurred.

- 7.102 There is no fact from which I could conclude that the purpose was to harass the claimant.

- 7.103 I doubt that the claimant, at the time, felt harassed by receiving this message. Her engagement was brief and does not demonstrate any discomfort. Nevertheless it is possible that she felt harassed.

² As an emoji.

7.104 Receiving work-related texts or enquiries whilst on annual leave may be unwelcome to anyone. For it to be harassment, it must go beyond being unwelcome, it must violate dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. These are strong terms. This conduct falls well short of that. It was not reasonable for it to have that effect.

7.105 In any event, it did not relate either to race or sex. It related to a need to have information about a document.

Allegation 11 - on 20 September 2023 by being sent Teams messages at 5.59am precisely on non-urgent issues by Mr Dominic Mackie. (sex)

7.106 This refers to a Teams message sent 26 July 2023.

7.107 The claimant was not obliged to have Teams downloaded to her phone, but she did. It follows that she received notification at that time, and outside office hours. She was not obliged to respond outside work hours. She was not asked to respond outside working hours. The claimant refers to it occurring again on 20 September 2023, when she reported the matter to his manager, Mr Hardy.

7.108 The Teams messages are set out in the bundle. Mr Mackie did send a message on 26 July 2023 at 05:59. The message refers to a digital and transformation demo to take place on Friday. It refers to the requirements to be considered that day. It refers to discussing some technical points and states he will send an updated list at the end of the day.

7.109 The claimant's submissions refer to other messages between July and September, albeit that is not in her evidence.

7.110 The next relevant Teams message in the bundle is on 20 September 2023. Mr Mackay sent a Teams message, about a work related matter, at 07:41.

7.111 The next messages from Mr Mackay is at 10:06. He says he had just spoken to his manager and offered his apologies for sending out of office hours Teams messages. He states "Didn't expect you to pick up or respond during then..." He stated anything out of hours will be sent by email.

7.112 This is put as an allegation of harassment.

7.113 It is clear the pleaded conduct occurred.

7.114 I find no facts from which I could conclude that the purpose was to harass. The matters raised concerned work-related issues and are essentially routine. The claimant's complaint is not about the content, but about the time they were sent. There is nothing in the messages which suggest that

she must respond immediately. There is nothing offensive or oppressive about the messages.

- 7.115 There is some evidence the claimant was not happy. On 20 September she raised the issue. This led to an immediate apology and a confirmation that any out of hours messages will be sent by email. I presume that this would mean the claimant would not view them until she was ready to view them. Albeit that has not been specifically addressed by evidence. Whatever the position, the claimant has not raised to me, as a complaint, that the alternative, being sending messages by emails, was problematic.
- 7.116 It follows that the messages may have been unwelcome. There is some evidence the claimant felt upset, at least in September. However, I find it is not reasonable for the messages of have had that effect. They were routine messages, about routine work matters, which did not require immediate response. It may have been convenient for the sender to deal with it that particular time. There was no expectation for the claimant to deal with any response out of hours.
- 7.117 Finally, there is no fact from which I could conclude that the conduct related to either race or sex.

Allegation 12 – on a date not specified by being sent a video by Steve Sydee of an Irish child asking to go to the pub and asking if she grew up like that in Ireland. (race)

- 7.118 This refers to a video of a six-year-old girl. The video was uploaded, by the girl's father, to YouTube. It lasts approximately three minutes. The young girl is telling her mother that she wants to go to the pub. She wishes to see her father and aunts. She is trying to persuade her mother, who tells her that she is too little, to which the child replies that she is six. The video shows the child seeking to persuade her mother, and expressing the view that it is unfair. At the end, her mother is laughing.
- 7.119 I understand the video has now received approximately 8 million views.
- 7.120 Mr Steve Sydee sent the claimant the video, by WhatsApp, on her personal phone at 12:20, 20 December 2023. Both used WhatsApp messages, occasionally, for work-related matters, such as making arrangements to meet. He had received the video from someone else. He forwarded it to a number of people, including the claimant. He could not recall if he sent it to any other work colleagues, but thought it unlikely.
- 7.121 His evidence is he sent it because the claimant had appeared to be withdrawn. He was concerned about her. He wished to cheer her up. He was reaching out to her an attempt to build and preserve a friendly working relationship. He considered the video to be "harmless, charming and funny." The young girl had an Irish accent. As the claimant was Irish, he thought of the claimant, and thought she may may find it amusing. He

did not believe the claimant had any specific sensitivity about her Irish background.

- 7.122 Mr Steve Sydee sent two further comments at 12:21. The first said, "Is this a typical Irish kid;)" the second said, "Can't wait till she's a teenager..."
- 7.123 The claimant responded with a crying laughing emoji and said "Pretty much!"
- 7.124 Mr Steve Sydee sent a further message at 12:28, "She is very funny. Where you like that? #SecretLaoise."
- 7.125 The claimant responded with a further message, "That I remember" and attached two emoji's one being a monkey covering its eyes and the other, a crying with laughter face.
- 7.126 The claimant made no complaint about this at the time.
- 7.127 The claimant did not raise it in her grievance.
- 7.128 Her evidence to the tribunal was that she was offended at the time, and remained offended throughout. However, as she feared reprisal, she was inhibited from raising it at any time during your employment.
- 7.129 This is put as an act of harassment.
- 7.130 There are no facts from which I could find it was the purpose to harass her.
- 7.131 I also accept Mr Steve Sydee's explanation. He was concerned about the claimant. He was concerned that she was unhappy and withdrawn. He was reaching out to her, trying to cheer her up. He thought she would find it amusing. He did not believe she would find it unwelcome.
- 7.132 I am not satisfied that the conduct was unwelcome to the claimant. I acknowledge there is no specific history of the exchanging similar videos. However I am not satisfied that there is sufficient credible evidence that it was unwanted at the time. The claimant's reaction was positive. I am not satisfied that there is any credible evidence that she was so intimidated at the time that she would feel the need to fake positive engagement.
- 7.133 The forwarding of or exchange of videos and the like from the internet is relatively common. I accept that in a work's context care is needed when sending such content, as there is always a risk of offence.
- 7.134 The contemporary evidence is inconsistent with the claimant being offended. On the contrary, it would suggest engagement and acceptance. Her response indicates she found it funny, and there is nothing in any response which suggests that she was offended. I do not accept her

evidence that she behaved in that way because she felt intimidated and feared reprisals. The grievance she raised demonstrated an ability to raise complaints and hold the respondent's managers to account. Some grievance allegations would suggest accusations of hostility and she appears to engage with that robustly. The failure to include this allegation is not explained, save by the assertion of reticence, and the assertion of reticence as a result of feeling intimidated is entirely inconsistent with the grievance itself.

- 7.135 The characterisation of the video put forward by the claimant is extreme. She characterises the video as feeding into a negative stereotype of Irish people. The alleged stereotype encompasses pub culture and alcohol drinking. She suggests that the child being encouraged to drink alcohol, or expressing a desire to drink alcohol, is not amusing.
- 7.136 It is necessary to have regard to whether it is reasonable for the conduct to have a particular effect. In considering that, it is necessary to take a view as to the nature of this video.
- 7.137 Mr Steve Sydee sees it as essentially harmless, charming, and funny. He views it as focusing on a charming young girl who was arguing, amusingly, and cogently, to be given an opportunity to spend time with her father and aunts. The fact that the setting is a pub is coincidental. It raises no suggestion of the child drinking alcohol.
- 7.138 I am not satisfied that the claimant's current view of the video was a view that she had at the time. Her characterisation of the video now is extreme and I doubt that it is one which would be shared commonly.
- 7.139 Ultimately, it is not reasonable for the conduct of have had the effect of harassment.
- 7.140 I do accept that sending the video to the claimant was related to race, but not sex. Mr Sydee thought of the claimant because the claimant was Irish and the girl was Irish. That much is reiterated in the messages, when he asked whether she was like that as a girl.
- 7.141 However, it is not everything that relates to race, or other protected characteristic which will be deemed to be harassment.
- 7.142 All individuals have specific interests and characteristics and some may which may encompass race and gender. They may be interested in videos which relate to those characteristics.
- 7.143 I do accept the care must be taken, particularly in the work's context, when sending videos, designed to amuse, that may reference a protected characteristic. It would be an extreme response to expect that such communication should never occur. Setting the bar for imposing legal liability under the law of harassment should not be set too low. The concept envisages offensive, humiliating and intimidating environments. It

is appropriate for a manager to exercise sound judgement. Equally, poor judgment may not be enough to engage legal liability. Each case must be considered on its own facts. Not every reference to a protected characteristics with lead to liability. Here, there is no contemporaneous evidence to suggest that Mr Steve Sydee made a serious error of judgement.

7.144 For the reasons I have given I do not uphold this complaint.

Allegation 13 – on a date not specified by Mr Steve Sydee making comments on the claimant’s accent. (race)

7.145 The claimant’s pleadings failed to set out what comments were made, when they were made, or what the context was. Her pleadings referred to being told she needed to change it.

7.146 The claimant’s statement refers to “constant racial slurs about my Irish accent.” She alleges that during 2023, Mr Ahmed Eltohamy set up free coaching sessions “to help me change my Irish accent and communicate more clearly.” She alleges that the consultant, Kate, during the three sessions “taught me how to speak properly and lose my Irish accent.” The claimant states, “I understood my accent was an issue when I first joined the company and Steve Sydee said on a Teams call to me “you have an accent.” This was at the beginning of September 22. She refers to the training being “forced accent training.”

7.147 The claimant refers to a report from the consultant at page 100 of the bundle. This is an email from Ms Kate Renna of Vermilion Coaching. It refers to her second session with the claimant and described her as a “quick learner” who “picked up the technique of emphasising and pausing well.” It says, we also talked about her need to set a clear intention before she speaks.” As a final point, she says “I gave her some exercises to help her relax her jaw and open her mouth more.”

7.148 There is no reference in the email to the claimant’s accent, or the need to change it.

7.149 Mr Ahmed Eltohamy and Mr Steve Sydee also received training from the claimant.

7.150 Mr Steve Sydee accepts that there were some casual conversations in which reference was made to the claimant’s Irish heritage. However, his evidence is that he did not consider her Irish accent to be an issue of any form. On the contrary, he was of the view an Irish accent is usually seen as a positive differentiator and typically comes over as friendly and engaging, and is good for building rapport with customers. The respondent was aware of the claimant’s accent when hiring her.

7.151 Both Mr Steve Sydee and Mr Ahmed Eltohamy deny that any part of the claimant’s training by Vermilion Consulting was concerned with the

claimant's accent, or or modifying it. It was general training to help in presentation skills.

7.152 This is put as an act of harassment.

7.153 The allegations fails because the claimant fails to prove that the conduct occurred at all. There were no comments about her accent in the manner suggest by the claimant. She fails to identify any specific comment on which she relies.

7.154 This allegation is based heavily on the presentation training she received. In particular, she refers the training she received on relaxing her jaw when speaking.

7.155 I accept she received her training. I do not accept that any evidence the purpose of that was a change of accent. Changing her accent is not referenced expressly, and it is not an obvious consequence of the training. There is no evidence it was the purpose of the training.

7.156 To the extent the claimant has established any conduct at all, it is clear it was not the purpose to harass. Moreover it was not reasonable for it have the effect. The training itself was not unwanted.

7.157 Finally, there is no fact from which I conclude it was related to race, or sex.

7.158 This allegation fails.

Allegation 14 – by dismissing the claimant on 24 April 2024 by notice of 13 March 2024 given by Mr Ahmed Eltohamy. (victimisation)

7.159 This allegation was not originally included in the claim, albeit the claimant had already been dismissed. The claimant did allege unfair dismissal, but that claim was withdrawn.

7.160 EJ Glennie set out the protected act relied on as follows:

2.1 An alleged protected act timed at 29:57 in the transcript of the grievance meeting when the Claimant was asked what had been happening in the office that made her feel uncomfortable, and she replied:

“Yeah. I guess it’s just more so a feeling that I have in the office. I just don t feel very welcomed there, like it is mostly men. I am pretty much the only female and there are other females there but like I m just I guess a little bit younger and stuff and so I can just find that I'm a little bit more of a target oi something.”

7.161 The alleged protected act was a statement made to an external HR consultant who was commissioned, as an independent person, to identify and assess the claimant's grievance. The claimant relies on the words said during the interview.

- 7.162 During that interview, no employee of the respondent was present. The outcome of the grievance was sent to the respondent. It made no reference to the transcript for the claimant refers to being “pretty much the only female” or “her feeling she was “a little bit more the target or something.”
- 7.163 The outcome of the grievance didn’t reference any form of sex discrimination, allegations of sex discrimination, or discrimination based on any other protected characteristic, including race and age.
- 7.164 Neither Mr Ahmed Eltohamy nor Mr Steve Sydee read the transcript before dismissing the claimant, because it was not sent to them at the time.
- 7.165 It was Mr Ahmed Eltohamy who decided to dismiss the claimant. In his statement, he give the following reason for dismissal
- 43. By March 2024 Steve Sydee, Laoise ‘s line manager, and myself as Managing Director, reached a settled view that Laoise was no longer adequately engaging with her colleagues, excluding herself from the business, not doing what she was asked and that her skill set was such that she was not fully performing in the highly visible role for which she was employed.**
- 7.166 He was conscious that the claimant did not have two years’ employment, and could not qualify for unfair dismissal. He did contact the HR consultant, Ms Catherine Dixon, prior to dismissing the claimant, as he was concerned to ensure that he was acting lawfully. He did not discuss with her, in that context, the grievance, or any potential protected act.
- 7.167 The letter of dismissal gives the reason as follows: “As you were informed on March 13th, 2024, this decision is based on your ability to work effectively as part of the team.”
- 7.168 In submissions the claimant asserts that Mr Ahmed Eltohamy “would have asked Kath about the protected characteristics mentioned during the claimant’s grievance procedure.” Ms Dixon stated she had no recollection of discussing any protected characteristics. They were not part of the grievance, and she had no reason to raise them. Mr Ahmed Eltohamy denied discussing either any protected characteristic, or having any knowledge of the alleged protected act.
- 7.169 It is not unusual for an employer to take advice of some form before dismissing. The fact that Ms Dixon had been involved in the grievance does not provide evidence that she discussed the alleged protected act with Mr Ahmed Eltohamy.
- 7.170 The first question is whether there was a protected act.
- 7.171 In submissions, the claimant made it clear that she was relying on section 27 (2)(d) Equality Act 2010. It is her case that there was an allegation of

contravention of the act. This had not be made explicit previously. It is not recorded in the amendment itself. It was not addressed in any statement, during any cross examination, or in her written submissions.

- 7.172 The claimant was unable to say whether she was suggesting there was an express allegation, and if so, what it was.
- 7.173 Whether this was a protected act will depend upon all the circumstances, which may include consideration of how the claimant normally expresses matters, or may be expected to express matters.
- 7.174 It is not every reference to a protected characteristic which will constitute an allegation. There must be some sort of quality which suggests an allegation of some form of conduct covered by the Equality Act 2010. It may be that making a bare allegation is sufficient. It may be enough to say I was discriminated against because I am a woman, or I was discriminated against because of my race. Equally, if an individual refers to some conduct, like being excluded from a specific meeting, and says that was because of my race or sex, that will suffice. It is clear. Technical wording is not needed.
- 7.175 Equally, there may be reference to a protected characteristic where there is no clear allegation, whether viewed as a specific allegation or as a bare general allegation.
- 7.176 In this case, I do not think it is sufficient to simply refer to being the only female in the office. The closest the claimant comes to making allegations is when she says “I’m just I guess a little bit younger and stuff and so I can just find that I am a little bit more the target or something.” This is equivocal. Ms Dixon gave the claimant an opportunity to expand. The claimant is critical of her approach, but I think that is harsh criticism. Ms Dixon was giving the claimant an opportunity to state her case, and exercising caution not to lead the claimant.
- 7.177 The claimant comes no closer, than the wording identified, to making a specific allegation of discrimination. Referring to being female and referring to being younger references characteristics which are protected. It follows that it moves towards the territory of the Equality Act 2010. However, I find that this falls short of making any form of allegation, whether a general allegation, or a specific allegation. It follows it is not protected.
- 7.178 In any event, to the extent it could be protected, it never came to the attention of Mr Ahmed Eltohamy or any of respondent’s other employees. It did not impinge on their thought processes either consciously or subconsciously. It played no part in the decision to dismiss.
- 7.179 The claimant has not pursued the case on the alternative basis that the relevant decision makers believed that she had or might do protected act.

In any event, I find that there is no evidence that they had any belief that she had or may do a protected act.

- 7.180 I have considered the explanation. The explanation does not have to be reasonable.
- 7.181 If this were a unfair dismissal case, it is possible that fairness may have required some form of performance improvement. However, that is not invariably the case, particularly when clear information has been given to an employee, and that employee is not responding.
- 7.182 Discrimination, and this includes victimisation, cannot be inferred from unreasonable treatment. It may be inferred from failure to explain unreasonable treatment. However, to the extent that the treatment of the claimant might be seen as unreasonable, it is not unexplained.
- 7.183 The claimant's own evidence confirms her lack of engagement and her withdrawal. I am satisfied that there is clear evidence that at the time the claimant was withdrawn. She was not undertaking her duties adequately. There were specific duties she was refusing to do, even though she should be expected to do them. I am satisfied the respondent had reached a point where it was satisfied that the claimant was not engaging adequately, and there was no reasonable prospect of her improving. It was for that reason that she was dismissed. That is an explanation which in no way whatsoever is because of a protected act, or a belief that they may be a protected act.
- 7.184 This allegation fails.
- 7.185 Finally I should consider the time points.
- 7.186 The claimant has failed to set out adequately at all any reason why she delayed in bringing any claim. She does not deal with this adequately in her claim form, or in her witness evidence.
- 7.187 Her oral submissions state she was intimidated during the course of her employment and therefore could not bring claims at that time. For the reasons I have already given I do not accept that evidence. The claimant's approach to the respondent was robust and I am not satisfied that she felt intimidated, such that she was inhibited from raising matters at any time, or bringing proceedings.
- 7.188 I am satisfied that the delay in bringing the claims has made it materially more difficult for the respondent to deal with them. The passage of time has affected the quality of the evidence and recollection. This has been compounded by the claimant's failure to set out clearly and adequately many of the allegations. I do not find it is just and equitable to extend time for those allegations that are out of time.

- 7.189 The position is slightly different for the dismissal claim. There is no reason at all why that claim could not been brought initially. The claimant was able to obtain advice. She is an intelligent individual with a degree and a postgraduate degree. She is capable of research. I do not credit the claimant's assertion that in some manner she was confused about whether she could bring a claim relating to the dismissal. There is no good reason why she could not have, in the original claim, said that the dismissal was some form of discrimination.
- 7.190 The amendment was granted in October 2024. By that time it was three months out of date when the application was made and six when granted. I do not find it to be just and equitable to extend time in any event.
- 7.191 Given the claims fail in any event on their merits. I do not need to go through each individually.

Employment Judge Hodgson

Dated: 29 January 2026

Sent to the parties on:

16 February 2026

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For the Tribunal Office