



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mrs B Sahota and
Respondent: AFH Independent Financial Services Limited
SITTING AT: Birmingham
ON: 8 – 16 December 2025
BEFORE: Employment Judge G Smart sitting alone

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

On hearing from the Claimant and Mr A Johnston (counsel) for the Respondent:

1. The claim of constructive unfair dismissal is well founded and succeeds.
2. The claim of constructive dismissal in breach of s27 and 39 Equality Act 2010 as an act of victimisation is well founded and succeeds.
3. The claims for victimisation in breach of sections 27 and 39 Equality Act 2010 at paragraphs 6.2.1, 6.2.2, 6.2.7 and 6.2.11 in the list of issues are well founded and succeed. All other victimisation claims fail.
4. All claims of direct race discrimination in breach of sections 13 and 39 Equality Act 2010 listed in paragraphs 4.2.2 – 4.2.6, 4.2.8 – 4.2.12 and 4.2.14 of the list of issues are dismissed upon withdrawal.
5. All remaining claims of direct race discrimination in breach of sections 13 and 39 Equality Act 2010 at paragraphs 4.2.1, 4.2.7 and 4.2.13 are not well founded and are dismissed.
6. The claims of Harassment in breach of sections 26 and 40 Equality Act 2010 are not well founded and are dismissed.

REASONS

7. The Claimant requested written reasons by email dated 29 December 2025 of the oral judgment .
8. This was referred to me the same day. I therefore provide the detailed written reasons below.

THE ISSUES

9. The list of issues for this case is set out in Annex 1 to this Judgment.
10. These were revisited on day one of the hearing and were clarified and narrowed further.
11. The Respondent conceded that the protected act relied upon for the purpose of the victimisation claims was a protected act in accordance with s27 of the Equality Act 2010.
12. The Claims were brought in accordance with sections 39 and 40 of the Equality Act 2010.
13. The Claimant relied only on the breach of the implied term of trust and confidence for her constructive dismissal allegation.
14. I identified that there was an allegation of post termination victimisation, which would mean that s108 of the Equality Act 2010 was triggered. After being asked to take instructions about the Respondent's position about the relevant pre-requisites to bringing a claim for post termination discrimination in s108, the Respondent's conceded these points so I did not need to consider s108 any further.
15. During the start of her evidence, it became clear that the Claimant, being a litigant in person, was not fully sure what claims she was bringing as direct race discrimination and which ones she was bringing as victimisation. I explained the legal tests to her. I am content that she understood the tests after my explanation.
16. I asked the Claimant at the close of day two to email the Tribunal by the start of day three confirming which claims were pursued as race discrimination and which ones were pursued as victimisation. The Claimant complied.
17. At the start of day three, I discussed the email the Claimant sent to the tribunal with the parties. I was very conscious that the Claimant was a litigant in person and wanted to ensure that she understood the effect of clarifying her claims and that after they had been clarified that morning, the other labels that were previously attached to those claims would be abandoned and treated as withdrawn. I am content the Claimant was not subjected to undue pressure by

me or the Respondent about those allegations.

18. The final result of that discussion was that claims 4.2.1, 4.2.7 and 4.2.13 were the only remaining allegations of direct race discrimination.
19. All other allegations at paragraph 4.2 of the list of issues were pursued as victimisation complaints.
20. The only claims at paragraph 4.2 that were pursued as both were 4.2.1 and 4.2.13.
21. During submissions, after all the evidence had been heard, the Respondent conceded that allegation 6.2.1 was an act of victimisation by Mr. Hudson if it is in time. This was where Mr. Hudson swore at the Claimant after he became aware of her race discrimination grievance.
22. The Respondent also conceded that, subject to its other submissions, it would have breached trust and confidence and this act would not have been done with reasonable and proper cause.
23. The second concession made by the respondent was that allegation 6.2.2, where Mr. Handshaw had requested the Claimant to withdraw her grievance and apologise to Ms Hateley for raising it during a meeting on 28 November 2022, was admitted as being unlawful victimisation by Mr Handshaw, but was not admitted as being a breach of trust and confidence, because it was argued that there was reasonable and proper cause for such a request being made.
24. The Respondent did not concede that those victimisation complaints had been brought in time and, it argued, despite those concessions, I did not have jurisdiction to hear them.

THE EVIDENCE

25. I had a bundle of documents of 862 pages in length.
26. On day three, the respondent sought to adduce further documents into the bundle whilst the Claimant was giving her evidence and still under oath.
27. I allowed the Claimant to discuss the documents only with her litigation friend and make submissions about their inclusion in the bundle.
28. I heard from both sides after explaining the relevant test to the Claimant.
29. I allowed all the additional documents to go into evidence. They were relevant, the Claimant would not really be prejudiced by them despite them being late without any explanation, and I also considered them to be necessary for the fair disposal of the proceedings and that including them furthered the overriding objective.
30. The additional documents consisted of a garden leave letter for Mr. Shahzad

dated 3 April 2024, Mr. Shahzad's resignation letter of 2 April 2024, a capability plan for Mr. Shahzad and the resignation email of Mr. Munir dated 2 January 2025.

31. I heard sworn testimony from the following witnesses:

Claimant's evidence

- 31.1. The Claimant
- 31.2. Mr. Mike Kelly
- 31.3. Mr. Diernn Athwal
- 31.4. Mr. Adil Shahzad
- 31.5. Mr. Sarfraz Munir

Respondent's evidence

- 31.6. Mr. Alan Hudson
- 31.7. Mr. Chris Handshaw
- 31.8. Mr. Barry Willis
- 31.9. Ms Alexis Larvin
- 31.10. Mr. Ian Shearman
- 31.11. Miss Claire Spillane

32. I also had the unsworn joint statement for the Claimant's case of a Mr. and Mrs Clossick.

33. Those witnesses could not attend the hearing. Consequently, the Claimant was allowed permission to rely on that statement but as an unsworn evidential document and I would therefore attach the weight that I saw fit to that evidence in light of it being unsworn and untested.

THE LAW

Time limits

34. Section 123 of the Equality Act 2010 provides, so far as relevant:

"123 Time limits

(1) Subject to sections 140A and section 140B, proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment Tribunal thinks just and equitable.

...

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end

of the period;

... “

Conduct extending over a period

35. It is well established that there is a difference between a continuing act for the purposes of s.123(3) and an act that has continuing consequences. An act is considered as extending over a period, and so treated as done at the end of that period, if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant.
36. The Court of Appeal has cautioned the Tribunal against applying the concepts of “*policy, rule, practice, scheme or regime*” too literally, particularly in the context of an alleged continuing act consisting of numerous incidents occurring over a lengthy period per **Hendricks v Metropolitan Police Commissioner (2002) EWCA Civ 1686**.
37. To establish a continuing act, the Claimant must establish:
 - 37.1. the incidents are linked to each other;
 - 37.2. they are discriminatory; and
 - 37.3. the employer is responsible for a continuing state of affairs.
38. There is no general principle that it will be just and equitable to extend the time limit where the Claimant was seeking redress through the employer’s grievance procedure before embarking on legal proceedings. A delay caused by a Claimant awaiting completion of an internal procedure may justify extension of the time limit but it is only one factor to be considered in any particular case (**Apelogun-Gabriels v Lambeth London Borough Council and another 2002 ICR 713**).
39. In **Parr v MSR Partners LLP [2022] EWCA Civ 24**, this case distinguished between a one-off act with lasting effects and a continuing act. The Court of Appeal concluded that a demotion, although it might have ongoing consequences, is a one-time event. This means that the time limit for bringing a claim starts from the date of that event rather than from any subsequent impacts.
40. The case of **Lyons v DWP Jobcentre Plus [2014] UKEAT/0346/13/BA** involved claims of disability discrimination and harassment, where Mr. Lyons alleged that a series of incidents by his employer amounted to a continuing act of discrimination under Section 123 of the Equality Act 2010. The Employment Appeal Tribunal had to determine whether these incidents could be classified as isolated acts or a continuing course of conduct, which would affect the time limits for bringing the claim. The EAT clarified that, for incidents to be considered a continuing act, they must demonstrate a clear connection or common discriminatory purpose. Without such a link, incidents are more likely to be treated as separate acts with individual time limits, rather than as part of a

single ongoing act.

41. In **Lyons**, the EAT emphasised that a continuing act requires a common thread of discrimination, showing a broader pattern rather than disconnected complaints over time. The EAT found that Mr. Lyons' allegations did not demonstrate a cohesive discriminatory motive or policy, and the acts were therefore treated as distinct events. This decision is significant because it reinforces the principle that, unless multiple incidents are linked by a unified discriminatory purpose, each act will have its own time limit, rather than extending the time limit based on an alleged continuing course of conduct.

Just and Equitable Test

42. The Tribunal has a broad discretion in deciding whether it is just and equitable to extend time under s.123(1)(b) (**Southwark London Borough v Afolabi [2003] IRLR 220**).
43. The Tribunal should consider all of the circumstances, and the prejudice faced by either party when considering whether to extend time.
44. The burden is on the Claimant to persuade the Tribunal to exercise its discretion to extend time, this is a burden of persuasion rather than evidence. In **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA 21**, the Court of Appeal described the best approach is to assess all the factors it considers relevant, including in particular "*the length of, and the reasons for, the delay*".
45. The Tribunal should make some finding about the reason for the delay and can draw inferences if it needs to about that. However, in the absence of a good reason for the delay, that does not amount to an automatic rejection of any extension of time. It is simply a fact to take into account like all the others **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640**.
46. It is possible to decide the issues of time limits without evidence **Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0320/15 (18 February 2016, unreported)**.
47. The explanation for the delay must come from the Claimant **Owen v Network Rail Infrastructure Ltd [2023] EAT 106 (1 August 2023, unreported)**, and not from assumptions made by the tribunal on the Claimant's behalf. It is also often unsatisfactory for extensions of time to be decided on submissions alone.
48. However, there must be some evidential basis for the points being made by the Claimant to extend time and explain the reason for the delay after the guidance in **British Transport Police v Norman UKEAT/0348/14 (2 March 2015, unreported)**.
49. However, a tribunal can have regard to the totality of the material before it, which may not be witness evidence, but documents, so long as it draws a

proper conclusion that is open to it on that material **Accurist Watches Ltd v Wadher** **UKEAT/0102/09, [2009] All ER (D) 189 (Apr).**

50. One factor that holds significant weight is where there has been a finding that discrimination has happened, it was simply that the claim for that discrimination is out of time. After the case of **Logo v Payone GMBH and others [2025] EAT 95**, we are reminded of the need to balance the prejudice of allowing a late claim to the respondent and balance that against the “*substantial prejudice*” of allowing a claim that was found to be discrimination, to go without a remedy.

Constructive dismissal

51. For a resignation to amount to a dismissal under section 95 employment rights act 1996, the following must be answered following the case of **Kaur v Leeds Teaching Hospitals [2018] EWCA Civ 978**:

51.1. What was the most recent act on the part of the employer which the Claimant alleges caused her resignation?

51.2. Has the contract been affirmed since that date?

51.3. If not, was it a repudiatory breach of contract?

51.4. If not, was it part of a sequence of events that collectively breached trust and confidence?

51.5. Did the employee resign in response to that breach within a reasonable time?

52. There is an implied term of mutual trust and confidence that exists in every employment contract **Malik v BCCI SA (in Liquidation) [1998] AC 20**.

53. Neither party to the contract of employment should behave in a way that either destroys or seriously damages the implied term **Claridge v Daler Rowney Limited [2008] ICR 1267**.

54. In a case where the breach of the implied term of mutual trust and confidence is alleged, this clause will only be breached where, following the case of **Gogay v Hertfordshire County Council [2000] IRLR 703**:

54.1. A party behaves in a way that has the purpose and/or effect of breaching mutual trust between the parties; and

54.2. That behaviour was without reasonable and proper cause.

55. A series of events, which may amount to minor issues may amount to a cumulative breach of the implied term when looked at as a whole and the employee has resigned in response to the last act or “last straw” **Lewis v Motorworld Garages Limited [1986] ICR 157**.

56. The last straw must be at least part of the reason for the resignation **Omilaju v Waltham Forest London Borough Council [2004] EWCA Civ 1493**.
57. The test about what amounts to a repudiation of the contract is helpfully summarised in a number of cases namely **Briscoe v Lubrizol Limited [2002] EWCA Civ 508**, **Dunn and Davidson v AAH Limited [2010] EWCA Civ 183** and **Palmeri v Charles Stanley & Co Limited [2021] IRLR 563 (HC)**.
58. Those cases were about what can justify summary dismissal by an employer of an employee, but the description of the conduct required in my view goes both ways, when considering whether that conduct is repudiatory, and is transferable to a situation where the employee accepts the repudiation by the employer by resigning.
59. The test is brought together, after reviewing all the authorities, at paragraph 42 in **Palmeri** as follows:

*“42. The test I am required to apply for that is variously formulated in the authorities. It includes considering whether, objectively and from the perspective of a reasonable person in the position of Charles Stanley, Mr Palmeri had “clearly shown an intention to abandon and altogether refuse to perform the contract” by repudiating the relationship of trust and confidence towards Charles Stanley (**Eminence Property Developments v Heaney [2011] 2 All ER (Comm) 223**). In a case like this “the focus is on the damage to the relationship between the parties” (**Adesokan v Sainsbury's Supermarkets Limited [2017] ICR 590 per Elias LJ paragraph 23**).”*
60. Other descriptors were used from other authorities such as the conduct needing to be of a grave and weighty character, or showing a clear disregard for the essential components of the contract or indicating an intention not to be bound by the contract.
61. Therefore, when linking this all together and considering the guidance in **Claridge**, the conduct alleged to breach the implied term of trust and confidence must be conduct that destroys or seriously damages trust and confidence. Minor breaches that might simply damage trust are not enough. They must seriously damage or completely destroy trust.
62. In the case of constructive dismissal, it is for the Claimant to prove they were constructively dismissed.

Unfair dismissal

63. If it is decided that the employer constructively dismissed the employee, then the case falls to be determined under the statutory regime of unfair dismissal and the contractual issues for unfair dismissal purposes fall into the background of the case. The statutory test in section 98 of the Employment Rights Act 1996 needs to be the focus of the enquiry.
64. The burden of proof is with the respondent to prove it had a potentially fair

reason for the dismissal.

65. The Respondent in this case pleads no potentially fair reason for the dismissal. Therefore, if the Claimant was dismissed, then that will be an unfair dismissal.

Burden of proof in the Equality Act 2010

66. Section 136 of the Act provides as follows:

“(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court [which includes employment Tribunals] 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”

67. Direct evidence of discrimination is rare and Tribunals frequently have to consider whether it is possible to infer unlawful conduct from all the material facts. This has led to the adoption of a two-stage test, the workings of which were described in the annex to the Court of Appeal’s judgment in **Wong v Igen Ltd (formerly Leeds Careers Guidance) [2005] ICR 931**, updating and modifying the guidance that had been given by the Employment Appeal Tribunal in **Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205**.
68. The Claimant bears the initial burden of proof.
69. At the first stage, the Tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them.
70. As was held in **Madarassy v Nomura International plc [2007] IRLR 246**, “could conclude” refers to what a reasonable Tribunal could properly conclude from all of the evidence before it, including evidence as to whether the acts complained of occurred at all. In considering what inferences or conclusions can thus be drawn, the Tribunal must assume that there is no adequate explanation for those facts.
71. Unreasonable behaviour of itself is not evidence of discrimination – **Bahl v The Law Society [2004] IRLR 799** – though the Court of Appeal said in **Anya v University of Oxford and anor [2001] ICR 847** that it may be evidence supporting an inference of discrimination if there is nothing else to explain it.
72. In a harassment case, the first stage of the burden of proof is particularly relevant to establishing that the unwanted conduct was related to the protected

characteristic.

73. If the burden of proof moves to the Respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act.
74. 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 prohibited ground. That would require that the explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a Tribunal would normally expect cogent evidence.
75. All of the above having been said, the courts have warned Tribunals against getting bogged down in issues related to the burden of proof – **Hewage v Grampian Health Board [2012] ICR 1054**.
76. In some cases, it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, in the absence of a satisfactory explanation, would have been capable of amounting to a prima facie case of discrimination **Laing v Manchester City Council UKEAT/0128/06/DA**.
82. In multiple allegation cases, the Tribunal must consider the burden of proof about each allegation even though the findings of one allegation may lead to consequential findings about the others.
83. For example, where the Claimant brings multiple allegations of unfavourable treatment, the Tribunal will be expected to consider whether the burden of proof has shifted for each individual allegation. It can consider the impact of its findings on any one allegation to its considerations of any other, but it cannot simply conclude that the burden of proof has shifted in relation to all allegations without considering each in turn: **Essex County Council v Jarrett [2015] UKEAT/0045/15 at para 32**.
84. We are also reminded of the decision of the supreme court in **Efobi v Royal Mail Group Ltd [2021] UKSC 33**. That decision endorsed that there must be something more than simply a difference in treatment or unfavourable treatment or the Claimant has only proven a possibility of discrimination. The requirement is for the Claimant to prove fact where the Tribunal on balance can conclude that discrimination has taken place, not simply that it might have taken place. It said at paragraph 46:

“46. As Sir Patrick Elias pointed out in the judgment of the Court of Appeal (at para 48), even if the recruiters believed that the Claimant was black and of African origin - as they might have inferred from his name whether or not they looked at the fields on his application forms stating his place of birth - that would in any event hardly have got the Claimant’s case off the ground. Even if, in addition, it had been established (or the Tribunal had been willing to infer as a matter of probability) that the person appointed to any particular post was

white - or at any rate neither black nor African - that would still have come nowhere near establishing a prima facie case of discrimination. As Mummery LJ stated in Madarassy at para 56:

“The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal ‘could conclude’ that ... the Respondent had committed an unlawful act of discrimination. That remains the case under section 136(2).”

Direct discrimination

77. The Equality Act 2010 defines direct discrimination as:

“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.

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

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

(4) - (8)...

78. The Employment Appeal Tribunal summarised the proper approach to the facts in cases under the Act in **Talbot v Costain Oil, Gas & Process Ltd and others [2017] I.C.R. D11:**

“(1) It is very unusual to find direct evidence of discrimination;

(2) Normally the Tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question;

(3) It is essential that the Tribunal makes findings about any "primary facts" which are in issue so that it can take them into account as part of the relevant circumstances;

(4) The Tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference;

(5) Assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also reliability, and involves testing the evidence by reference to objective facts

and documents, possible motives and the overall probabilities; and, where there are a number of allegations of discrimination involving one personality, conclusions about that personality are obviously going to be relevant in relation to all the allegations;

(6) The Tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors which point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment;

(7) If it is necessary to resort to the burden of proof in this context, section 136 of the Equality Act 2010 provides in effect that where it would be proper to draw an inference of discrimination in the absence of "any other explanation" the burden lies on the alleged discriminator to prove there was no discrimination."

79. The Claimant is required to provide the Tribunal with 'sufficient' facts upon which to commence its consideration. The Employment Tribunal "cannot draw inferences from thin air": **Chapman v Simon [1994] IRLR 124, SC at para 33(3) and Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL at paragraph 144.**
80. This approach was endorsed by the Supreme Court in **Efobi**. This case also held that before deciding what inferences to draw, the inferences must first be identified and then the tribunal must consider whether those inferences can be drawn by the findings. There are two aspects to direct discrimination that must be considered by the Tribunal. One is less favourable treatment and the other is the reason for the treatment complained about with the associated causal link between the two.
81. Unreasonable behaviour should not give rise to an inference of discrimination **Strathclyde Regional Council v. Zafar [1997] UKHL 54** it is usually an irrelevant factor. However, it has been held by the EAT that unreasonable behaviour can go to the credibility of a witness who is trying to argue that their motives were not motivated by the characteristic in question **Law Society v Bahl [2003] IRLR 640 EAT.**
82. In the same way that less favourable treatment does not mean unreasonable treatment, it also does not mean detrimental treatment or unfavourable treatment **T-System Ltd v Lewis UKEAT/0042/15 (22 May 2015, unreported)** or simply different treatment **Shmidt v Austicks Bookshops Limited [1977] IRLR 360 EAT.** There must be a comparison either actually or hypothetically that shows less favourable treatment.
83. It is the treatment rather than the consequences of the treatment that are the subject of the comparison **Balgobin v Tower Hamlets London Borough Council [1987] ICR 829.**
84. Whether less favourable treatment is proven requires a comparison to a suitable comparator. There is a general requirement that there be no material difference between the people being compared either actually or hypothetically.

85. Section 23 of the 2010 Act says:

“23 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.

(2) - (4)...

86. The comparators need not be identical **Hewage v Grampian Health Board [2012] UKSC 37** because if every single aspect of a comparator was the same between the complainant and comparator, then the less favourable treatment could only be because of the protected characteristic, which would make it almost impossible to defend a direct discrimination claim.
87. Following the case of **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11**, it will often be appropriate to consider the reason for the treatment first and then decide whether that reason meant the treatment was less favourable. Therefore, if the reason for the treatment was because of the protected characteristic, then it might be that the finding of less favourable treatment is inevitable.
88. Whether something is less favourable treatment is an objective test **Burrett v West Birmingham Health Authority [1994] IRLR 7 EAT**, but if a subjective view is being put forward as showing why the complainant says the treatment was less favourable, then such a view can be upheld as evidencing less favourable treatment so long as the view held was reasonable **Birmingham City Council v Equal Opportunities Commission [1989] IRLR 173 HL**.
89. When considering hypothetical comparators, it is necessary for evidence to be put forward about how actual comparators who are in different but not wholly dissimilar situations have been treated to build the neighbourhood from which it can be determined how a hypothetical comparator in the same or similar circumstances would have been treated **Vento v The Chief Constable of West Yorkshire [2001] IRLR 124 EAT**.
90. In all cases, it is irrelevant whether the alleged discriminator has the same protected characteristic as the complainant as per s24 of the 2010 Act.
91. Where there is more than one reason put forward for why the alleged discriminator treated the Complainant how they allegedly did, following the case of **Barton v Investec Henderson Crosthwaite Securities Limited [2003] IRLR 332**, the characteristic should not play any part in the reason(s) for the treatment complained of, but if it does, it must be a significant factor in being more than trivial and following **R v Commission for Racial Equality, ex parte, Westminster City Council [1984] IRLR 230**, the characteristic needs to be a substantial or effective cause of the discriminatory treatment, but doesn't need to be the sole or intended cause of it.

92. In addition, there is no legal causal link as such. Instead, the Tribunal should focus on the “real reason” why the alleged discriminator subjected the complainant to the treatment they allege was direct discrimination **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48**, which is a subjective rather than legal test looking at the mental processes of the alleged discriminator.
93. We are also reminded that it is open to the Tribunal, when considering the real reason why something was done or not done, to find our own reason for why something was done, based of course on the evidence before us, regardless of whether that reason has been put forward by either the Claimant or Respondent. We are not bound to find the reasons for something taking place are either as the Claimant submitted or as the Respondent submitted. What the evidence tells us the actual real reason is, is what matters.
94. Following **R v The Governing Body of JFS and the Admissions Appeal Panel [2009] UKSC 15**, the following approach should be taken:
- 94.1. Where it is self-evident that discrimination is taking place because there is reference made to the protected characteristic, it is not necessary to analyse the motives of the discriminator, they are irrelevant;
- 94.2. Where discrimination is not obvious, it is necessary to analyse the motivation of the alleged discriminator but only for determining whether the characteristic played any part in the alleged discriminatory behaviour;
- 94.3. In all other circumstances, motivation is irrelevant to a direct discrimination claim.
95. Unintentional direct discrimination done with or without good intention is therefore just as unlawful as intentional direct discrimination for example see **Khan v Royal Mail Group [2014] EWCA Civ 1082** and **Ahmed v Amnesty International [2009] IRLR 884**.
96. To sum up the current situation about causation in direct discrimination cases, Underhill LJ said in the case of **CLFIS (UK) Limited [2015] IRLR 562**:
- “As regards direct discrimination, it is now well-established that a person may be less favourably treated “on the grounds of” a protected characteristic either if the act complained of is inherently discriminatory (e.g. the imposition of an age limit) or if the characteristic in question influenced the “mental processes” of the putative discriminator, whether consciously or unconsciously, to any significant extent...”*

Harassment

97. Section 40 of the Act renders harassment of an employee unlawful. Section 26 defines harassment as follows:

- “(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”.*

Victimisation

98. Section 27 of the 2010 Act states where relevant:

“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.”

99. For the burden of proof to shift in a victimisation case, there must not only be evidence of detrimental treatment and a protected act, but there must also be evidence of facts actual or inferred suggesting a causal link between the two after **Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425**.
100. The employee must be subjected to a detriment. The concept of detrimental treatment has long been said to include and/or be interchangeable with being placed at a disadvantage after **Ministry of Defence v Jeremiah [1979] 3 All ER 833** and **Jesudason v Alder Hey Children's NHS Foundation Trust [2020] IRLR 374** albeit that whether something is a detriment or not is to be taken from the subjective view of the alleged victim subject to the test of reasonableness.
101. Similarly, it has been said that unfavourable treatment is analogous with detriment. In a discrimination arising in consequence of disability case, as to what constitutes “unfavourable treatment”, the Supreme Court in **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230** held that little was likely to be gained by differentiating unfavourable treatment from analogous concepts such as “detriment” found elsewhere in the Act, referring to a relatively low threshold of disadvantage being needed. One could answer the question by asking whether the Claimant was in as good a position as others.
102. Less favourable treatment arguments are not in accordance with the correct statutory wording of s27. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL**. Therefore, for detriment to be proven, it is for the Claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.
103. The same causation test set out in **Khan**, applies to victimisation claims. It is pretty much the same test as for direct discrimination. The Tribunal must decide what was the real reason why the alleged discriminator committed the detrimental treatment. If it was because of the protected act, the Claim prohibited conduct is made out.
104. It is also noted what was said by Lord Nicholls in **Khan** at paragraph 16 namely *“the primary object of the victimisation provisions... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights or are intending to do so.”* This holds true under the 2010 Act.
105. In determining if the real reason was because of the protected act, the Tribunal must analyse the mental process of the person to decide whether consciously or subconsciously, the detrimental treatment was because of the protected act in whole or in part and, if in part, whether that was an effective or substantial

cause for the detrimental treatment. Conscious motivation to discriminate is not required **Nagarajan v London Regional Transport [1999] IRLR 572**.

106. What counts as being a substantial or effective cause of the treatment is discussed in **Imperial College Healthcare NHS Trust v Matar [2023] IRLR 264**, as referred to in **Szucs v Greensquare Group Limited [2024] EAT 160**, the causation test for victimisation continues to vex lawyers. In **Matar**, Eady P preferred the *In no sense whatsoever* test for causation.
107. In **Sucz**s, HHJ Auerbach provides the correct test at paragraph 40 when discussing the influence of the protected act on alleged detrimental treatment in victimisation claims: “... *It must be an element which has no influence, is not material or operative on the reason why a decision was made or an employee was treated to their detriment. If that were not the case, the phrase “in no way whatsoever” would have no real force. That phrase is one that tends to sum up all other phrases that have been used in the case law. “In no way whatsoever” implies that the protected act is a material influence or an operative part of the reason why a decision is made.*”
108. The correct causation test is therefore that the detrimental treatment must in no way whatsoever be influenced by the protected act.
109. The person who is accused of the detrimental treatment, must have had knowledge of the protected act as per **IPC Media Limited Millar IRLR [2013] 707**. However, it is sufficient that the alleged perpetrator simply knew of the protected act being done and the protected act happened to be about discrimination.
110. Consequently, if a person would have treated someone in a certain way for any grievance, rather than a discrimination grievance, that does not prove victimisation because the issue influencing the treatment is the grievance but not the fact it is a grievance alleging discrimination. It is the fact that the grievance had discrimination in it that must have caused the discriminator to behave as they did in whole or part. This was decided in a number of cases such as **Cornelius v University of Swansea [1987] IRLR 141** and **Khan** above.
111. Paragraphs 9.8 to 9.9 of the EHRC Code of practice for employment are relevant, which say:

“9.8 ‘Detriment’ in the context of victimisation is not defined by the Act and could take many forms. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards.

9.9 A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no

need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment.”

Interpretative provisions

112. Section 212 (1) of the equality Act 2010 says where relevant:

“detriment” does not, subject to subsection (5), include conduct which amounts to harassment”

113. Subsection 5 does not apply to the Claimant’s case.

114. What this means is that if there is a finding that direct race discrimination has occurred and that was also detrimental treatment, or if there is a finding that victimisation took place, which is defined in part as detrimental treatment, then there cannot be a finding that either the direct race discrimination or victimisation was also an act of harassment by definition. The same incident cannot amount to both harassment and Victimisation or direct discrimination at the same time, but if the incident is not direct discrimination or victimisation and therefore not a detriment, it can be found to be harassment or vice versa.

FINDINGS OF FACT

The first grievance

115. I first discuss the grievance the Claimant made because that is essentially what started the whole saga that was this case.

116. The grievance concerned an employee referral from the Claimant to the Company of a recent graduate who was applying for the job of essentially a trainee IFA. The role was that of Associate IFA through the Respondent’s Associate Adviser Development Programme.

117. The applicant, Mr. Diernn was a contact of the Claimant through his mother with whom the Claimant had once worked at Nationwide Bank.

118. He emailed his CV to the Claimant on 30 August 2022 at page 299.

119. The Claimant immediately forwarded it onto the Respondent’s David James.

120. There was a conversation about the application between the Claimant and Mr James and the applicant was then interviewed.

121. The Interview panel comprised of Mr. David James and a Ms Sue Hateley.

122. I heard evidence from the applicant about how the interview went and what happened thereafter. I find the following happened:

122.1. The application attended the interview and Mr James tended to ask him about his hobbies, interests, social life and educational background etc. Ms Hateley asked him about what he knew about the Respondent, his degree, qualifications and experience.

122.2. The applicant did not get on with Ms Hateley at the interview and stated that she was dismissive of his answers, patronising, rude, had an aggressive tone and he was so taken aback by how he was treated by her, that he felt like he was being discriminated against because of his race.

122.3. He was offered a call centre position as a foot in the door at the Respondent, by Ms Hateley, but he was not interested in that and didn't accept that role.

122.4. He fed this back to his mother who then contacted the Claimant to let her know how her son felt about his experience.

122.5. The Claimant was upset by the way the applicant had described his experience, albeit through his mother, and she contacted Ms Suzanne Cousens from HR by text and that can be seen at page 304 in the bundle.

122.6. The Claimant also spoke to her line manager, Chris Handshaw, about the issue.

122.7. A teams chat between the Claimant and Mr Handshaw then took place at page 101 and 102 in the bundle.

122.8. The Claimant also discussed this with Mr. James via Team chat at page 102 in the bundle. However, that chat had turned heated according to the Claimant.

122.9. Ultimately, the Claimant raised the issue as a grievance and was encouraged by Mr Handshaw to do so. He told the Claimant to “... *take it further fully*”.

122.10. The grievance the Claimant raised, wasn't about the sole issue of the applicant's alleged experience.

122.11. The Claimant stated that when she heard how the applicant said he had been treated, this made her look back on a number of issues involving her and others, that at the time she had found to be a negative experience,

but had not thought was because of or related to her race. She said in evidence that now this had happened with the applicant, she took a different view.

122.12. I believe her evidence and she said as much in texts to Mr Handshaw at pages 312 – 315.

122.13. Those allegations involved Ms Hateley being alleged to have given a negative experience to both the Claimant and other referrals the Claimant had made to the Company, which needed the interventions of others before the Claimant thought they had a fair chance at getting employment.

123. The grievance is in the bundle at pages 327 – 328. The Respondent admitted that it is a protected act under s27 Equality Act 2010.

124. There was a grievance meeting with the Claimant and Ms Claire Spillane who had been assigned to deal with the grievance.

125. It is clear from that meeting at pages 349 onwards that:

125.1. The Claimant and Sue Hateley had a history.

125.2. They did not get on.

125.3. There had been instances where the Claimant perceived Ms Hateley to have been two faced and to have misrepresented what she had said in the past.

125.4. This would explain why the Claimant believed Mr Diernn was telling the truth when he said that Ms Hateley had given him a hard time at the interview.

125.5. The Claimant went through all the concerns she had at the meeting.

126. As part of the grievance process, another member of the HR team, Ms Court, had a phone call with the applicant to get his version of events. The handwritten notes of that meeting are in the bundle at pages 358 – 361.

127. I heard evidence from the applicant and he confirmed that the notes of the call were largely as he remembered it.

128. I also asked him why he felt that Ms Hateley had been racially motivated in giving him a hard time at the interview. Despite asking a number of times, he essentially couldn't tell me. He had simply been spoken to using a dismissive tone and in an unpleasant manner in his view.

129. Mr James was also interviewed to get his view of what happened at the interview.

The events of 23 November 2022 and Mr Hudson's behaviour

130. The came the events of 23 November 2022. They unfolded as follows:

130.1. On 22 November 2022, Ms Court emailed Ms Hateley with a copy of the grievance. The Claimant says that this in itself was an act of victimisation by Ms Court. The key problem with this email, was that the grievance contained confidential information about the Claimant's earnings and that information was now with Sue Hateley without the Claimant's consent. There was insufficient evidence to suggest that this email had been sent for any other reason, other than Ms Court making Ms Hateley aware of the allegations against her, because they were about to be investigated by a formal grievance process.

130.2. On 23 November 2022, there was going to be a festive management meal. The only people that would ordinarily be invited to the meal was the senior management of the Respondent. However, Mr, Hudson said that Ms Hateley was an exception to that practice and out of loyalty to her and her long service, she was always invited to the meal despite her not being a senior manager. He said no one else received this preferential treatment.

130.3. At page 373 in the bundle, Ms Hateley emailed Ms Court back. She was allegedly upset by the grievance and stated that she was unable to attend the meal, instead she would prepare for the meeting with HR to discuss the grievance.

130.4. Mr Willis was informed that Ms Hateley wouldn't be attending the management meal and he informed the Chief Executive Alan Hudson.

130.5. Mr Hudson then rang Ms Hateley and he asked her why wasn't coming to the lunch and he said she burst into tears. Mr Hudson described her as distraught and he said she informed him she was to be interviewed about an allegation of race discrimination the Claimant had submitted.

130.6. Mr Hudson managed to persuade Ms Hateley to go to the meal but became angry about the situation, which he readily admitted.

130.7. In his view, at that time, whilst giving evidence Mr. Hudson described the grievance as vile, abhorrent and false. He said he was particularly

annoyed that the allegation of race discrimination had been made and indeed he still came across to me as annoyed when giving evidence about it when considering his tone and demeanour at the hearing before me.

130.8. I find he knew by this point not only of the fact of the race discrimination allegation, but also had discussed the content of it with Ms Hateley.

130.9. When he put the phone down to Ms Hateley, Mr. Hudson then approached the desk of the Claimant where she was sat.

130.10. He said some words to her, which can only fairly be described as a deliberate, offensive, aggressive and retaliatory response to the Claimant's grievance. He said *"I've just had Suzie on the phone she is in absolute bits, I hope you're fucking proud of yourself"*.

130.11. This was not shouted at the Claimant, but said in a raised voice where others in the office undoubtedly heard him.

130.12. The words used, the reason for them and Mr. Hudson's behaviour during this incident can only be described as classic text book victimisation, which the Equality Act 2010 was designed to outlaw.

130.13. Whilst giving evidence, he stood by the "sentiment" behind his unacceptable behaviour. Essentially, he victimised the Claimant, knew it and was unapologetic for it. He also accepted that he knew the Claimant was upset about his outburst but took no steps to check or organise for the Claimant's welfare to be checked afterwards.

130.14. In answer to questions about the situation from the Claimant, the following evidence summed up Mr. Hudson's enmity towards the Claimant as a result of her raising a race discrimination grievance about Ms Hateley. He said:

"I think that I have more concern for Sue than you, because you are an architect of your own situation, I feel this was about an IFA who had been put on a pedestal and nothing about race and she was told she was important and that she was embarrassed because she wasn't able to do what she felt she was able to do because she couldn't get her friend's son into the business. I felt her ego was bruised and rather than accepting it, her dislike of sue and her poor view of the way in which the trainee advisor programme was being run prompted her to then find another reason."

130.15. I then enquired what he meant by the words another reason. Mr. Hudson answered:

"I don't believe and Mrs Sahota has said in the bundle, that she didn't believe that Sue was a racist and she also stated that she felt that my actions, which I am not proud of, were out of loyalty to Sue and they were. This had nothing to do with race and what I have said to the chief people officer and what should have happened was a grown up conversation with Mrs Sahota. Instead, unfortunately, and I'm not going to get into policies and HR people, but whenever the word race is mentioned, they get in a flap and Suzanne rightly but unnecessarily started a process from which Mrs Sahota has not recovered. I am sorry for that and sorry that Mrs Sahota could have had a long career with us. This didn't come from racism from the start and the subsequent recruiting of others and for Mrs Sahota to support that is abhorrent."

130.16. Mr. Hudson therefore believed that Mrs Sahota was essentially "playing the race card" without saying those words, because she didn't get her way in recruiting her friend's son into the business. He considered the Claimant to have an ego and believed she thought of herself as the best performer.

130.17. Mr. Hudson was also keen to state to the Claimant that he didn't think his behaviour was a big issue given the Claimant had complained to the Financial Conduct Authority about the situation and the FCA had essentially taken no action.

130.18. Whilst I have no doubt he genuinely thought this about the situation and the Claimant, and it was common ground that Mrs Sahota had an excellent performance record, I could see no reasonable basis for Mr Hudson to conclude that Mrs Sahota thought she was on a pedestal and had an overinflated opinion of herself.

130.19. Indeed, those perceptions were disputed by Mr. Willis another of the Respondent's witnesses, when he was asked questions about them. Mr. Willis knew the Claimant better, for longer and worked more closely with Mrs Sahota so had a better idea of her work, manner and personality. He said he did not know the Claimant to be arrogant or have an over-inflated opinion of herself.

130.20. However, it was obvious that there was favouritism towards Ms Hateley. She was clearly well liked by Mr Hudson and he explained that this was because she started in his business when she was 16 and is still working

for him today. He described her as one of the nicest people he had ever met. One example of preferential treatment was the fact she was invited to the festive lunch.

- 130.21. I find from the evidence, that if anyone complained that Ms Hateley had been racist towards them regardless of what race the employee belonged to, Mr. Hudson's reaction would have been the same towards them regardless of the merits of what was being alleged about her.
- 130.22. Mr. Hudson formed views about the Claimant's race discrimination grievance that he was not in any position to make. He could not reasonably have thought or concluded that the grievance was false, because he had no involvement in any of the allegations raised.
- 130.23. He may well know Ms Hateley very well. However, I suspect everyone has had trusted friends, colleagues and/or family members at one time or another, who they think they knew and who have then turned out to have behaved in a surprising way.
- 130.24. It is also the case that discrimination can be conscious or unconscious, meaning that a person may not be aware that they have a racial bias against others. Knowing someone well is therefore not a satisfactory ground, without more, for jumping to the conclusion that workplace allegations of discrimination against Ms Hateley were immediately false simply because the person alleged to have been discriminatory is held in high regard and known well by Mr Hudson.
- 130.25. The real reason why Mr. Hudson behaved in this way towards the Claimant was, therefore, because she complained about race discrimination against Ms Hateley, not because of the Claimant's particular race and not simply because a grievance had been raised.
131. Even though this outburst was obviously offensive and hostile victimisation, and said by a person who was probably the most powerful individual in the business, Mr. Hudson stood by his views to the date of the hearing, which is concerning for any employees who want to raise discrimination concerns at the Respondent in future about anyone Mr. Hudson holds in high regard.
132. It was therefore no surprise to me that during submissions, Counsel for the respondent conceded Mr. Hudson's actions in speaking to the Claimant the way he did as being unlawful victimisation subject to time limits being considered.
133. The Respondent also conceded that the outburst by Mr Hudson, by itself, was a repudiatory breach of the implied term of trust and confidence.

134. The Claimant also argued that it was a breach of trust and confidence for the Claimant's grievance to have been sent to Ms Hateley with the Claimant's salary information in it. It was not in dispute that the email had been sent or what its contents were.
135. On the same day, 23 November 2023, the Claimant's line manager Mr Chris Handshaw, also had a conversation with Mr. Hudson after Mr Hudson had spoken to Sue Hateley but before his outburst at the Claimant.
136. Mr Handshaw's evidence was far from satisfactory about this conversation.
137. He now claims he cannot remember what was said at the meeting with Mr Hudson. I do not believe him to be credible on this point.

Mr Hudson inappropriately interfering in the grievance investigation

138. The Claimant alleges that Mr Handshaw told her that Mr Hudson had said he needed to make her grievance "go away".
139. I believe her for the following reasons:
- 139.1. Mr Hudson admitted in his evidence that, when the Claimant tried to retract her resignation, he wanted the Claimant to apologise to Mr James and Ms Hateley about the content of the grievance, in yet another act of victimisation admitted by the Respondent in submissions (subject to time points).
- 139.2. Mr Hudson denies asking Mr Handshaw to obtain a withdrawal of the grievance from the Claimant and so does Mr. Handshaw. However, if the words used were make the grievance "go away", which I believe they were, I believe Mr Handshaw then took it upon himself to obtain a retraction of the grievance as the Claimant alleges.
- 139.3. This is supported by the fact that when interviewed during the second grievance, Ms Cousens mentions the grievance being withdrawn too. She was not present for the conversations between Mr. Hudson and Mr. Handshaw or the Claimant and Mr. Handshaw. Ms Cousens doesn't simply mention about the grievance being apologised for.
- 139.4. On balance in my judgment, this was most likely as a result of an internal discussion between the management of the business and HR, where the managers who were pulling the strings in the grievance investigation before it was investigated, namely Mr. Hudson and Mr. Handshaw, had instructed Ms Cousens this was what they wanted. Mr Willis also

accepted in his evidence that his view, after investigating the second grievance, was that the Claimant was under pressure to withdraw the grievance as well as apologise for it.

139.5. I find therefore that the Claimant was not only asked to apologise for raising legitimate concerns about discrimination, but also to retract the grievance as a whole, which is what she then later did, I find under duress.

139.6. It is significant here, that the Respondent has admitted that the request of an apology communicated by Mr. Handshaw at the request of Mr. Hudson was admitted as being victimisation.

139.7. The allegation is worded *“on 28 November 2022, Mr Handshaw asked the Claimant to apologise to Mr James and Ms Hateley...”*. Consequently, the respondent has admitted that Mr. Handshaw subjected the Claimant to a detriment where the real reason for the treatment was because of the Claimant’s race discrimination grievance with the necessary discriminatory mental processes needed to found that claim. It has admitted that Mr. Handshaw had the discriminatory mindset to concede that he unlawfully victimised the Claimant.

139.8. As a result, I find that those same mental processes have tainted the request where Mr. Handshaw asked the Claimant to withdraw her grievance to make it go away. One naturally and logically follows on from the other and there is no evidence that Mr Handshaw’s mindset changed at any point during his involvement with the first grievance or afterwards.

140. One other point of note, is the allegation that Mr Hudson instructed Ms Cousens to conclude the grievance without interviewing Ms Hateley.

141. The respondent argued that the conversation took place between Ms Spillane and Mr Hudson and did not involve Ms Cousens.

142. However, in her particulars of claim, the Claimant relies on the statement of Ms Cousens of 12 June 2023 when the second grievance was being investigated.

143. Ms Cousens said as follows, in answer to being questioned about what happened during the grievance process whilst she was being interviewed by Mr. Willis as part of the second grievance investigation:

“Suzanne: I wasn’t involved again until 23 November. I knew Ali was dealing with it.

Barry: What happened then

Suzanne: Alan asked me to join a teams call, he told me what had happened in the office and that sue was upset.

Barry: did he ask you to do anything?

Suzanne: Yes, I believe he asked us to complete the grievance by the end of the week and that we would not be able to interview sue. I can't remember my exact words but I know I did say something like that was not the right thing to do and we should complete the whole process.

Barry: When you gave your view did you get a reason for being asked to do this.

Suzanne: He was upset, felt the process was incorrect and it had gone on too long and a longstanding individual was being investigated.

Barry: what was your response?

Suzanne: we were following the right process and I didn't think that was the right thing to do, to not complete it fully, and that it should be a fair process and the right thing to do for Bobby.

Barry: what happened next?

Suzanne: I was on the train to the senior managers meal. Ali was on the same call. The next thing I remember I had an e-mail from Bobby, she had resigned."

144. Ms Court's grievance notes at page 536 supports that view. We heard no evidence from Ms Cousens who was not called to give evidence by either side.
145. However, what is clear is that Mr Hudson instructed Ms Cousens and Ms Court that Ms Hateley was not to be interviewed at all during the grievance process and he wanted it wrapped up within a week of the call. This entirely fits with Mr Hudson wanting the situation to go away.
146. I am not persuaded the conversation only happened with Ms Spillane as she and Mr Hudson said in their evidence. In my judgment there were clearly two conversations. One between Mr Hudson and HR and one between Mr. Hudson and Ms Spillane. Ms Spillane may only have been aware of the one conversation with her.
147. I also conclude that Mr Hudson was essentially unacceptably interfering with the grievance investigation by giving instructions to both HR and Ms Spillane, instructions they were going to follow given that Mr. Hudson was, in my judgment, prone to jump to arbitrary and unreasonable decisions if a colleague did something he found to be objectionable.

148. The interference began on 23 November 2022, when he had the conversations with Ms Cousens.
149. This is also the reason why Mr Handshaw, despite being supportive of the Claimant to her face, followed Mr. Hudson's instructions and victimised the Claimant. He felt bound to follow Mr. Hudson's instructions and essentially, he was in a difficult position.
150. Given the concessions about victimisation, I find that part of the reason why Mr Hudson wanted Ms Hateley to be spared any interview as part of the grievance investigation, was because the grievance was a grievance about discrimination and that fact guided Mr. Hudson's mindset throughout the period after 23 November 2022.

The Claimant's first resignation and its withdrawal

151. The outburst by Mr. Hudson caused a flurry of text messages to be sent to Mr. Handshaw on the evening of 23 November 2022. The Claimant informed Mr Handshaw that Mr. Hudson had "flipped" at her and she was quitting her job.
152. So by this point, Mr. Hudson had victimised the Claimant by swearing at her about her grievance and orchestrated Mr. Handshaw to victimise the Claimant by instructing Mr. Handshaw to make the grievance go away.
153. On 24 November 2022, the Claimant submitted a formal resignation on one month's notice, which appears in the bundle at pages 380 as an email to Mr. Hudson attaching her resignation letter.
154. The resignation said as follows:

"Alan.

Following on from your words today, you may have already been notified, that I have handed in my one months 'notice.

However, as I did not get the opportunity to speak, I would hope that you take the time to read my side, see below email (sent to Suzanne last month). It has taken a lot of courage for me to speak out and it was not a decision that I took lightly.

I raised this as a concern because I felt that the recruitment process was not fair and so that no one else is ever made to feel the way that the candidate I introduced was. I have nothing to personally gain from this, in any way shape or form.

I have always put the business needs first and tried to be an advocate for AFH, even when there has been instances where I've felt things were not right or people were not treated fairly I maintained professionalism and pushed those thoughts aside.

Anyway, I have made my decision and it is time to move on. In the meantime, I want to reassure you I will remain professional and work with Chris to make it as smooth as possible for clients and cases in pipeline.

*Regards,
Bobby”*

155. Essentially, as admitted by the Respondent, on its own this would have been a constructive dismissal in direct response to a repudiatory breach of the implied term of trust and confidence.
156. However, that is not the end of the story.
157. During questioning, the Claimant stated that she was a single mother and didn't want to leave the organisation. She also gave evidence that she had built up a strong client base and significant earnings.
158. It was common ground that the Claimant then asked to come back to work and retract her resignation.
159. I find that the reasons why she tried to return to work are as she stated, were that she needed the money as a single mother, had no other job to go to at that stage and, in my judgment, she felt she had no option but to try to come back; she had the prospect of not having any income very suddenly and had her son to provide for. All were reasonable concerns.
160. Mr Handshaw then went to discuss the situation with Mr Hudson.
161. Mr Hudson described his conversation with Mr Handshaw about the situation as a commercial no brainer, because the Claimant was a very profitable IFA and well respected by Mr Handhsaw. I find that was a purely commercial decision. Mr Hudson's personal view of the Claimant had not changed.
162. Mr Handshaw was said to have told Mr Hudson that he felt the Claimant had acted in haste and the Company should reconsider the situation. Essentially, Mr Handshaw was seeking Mr Hudson's permission to allow her back into the business and Mr Hudson described it as Mr Handshaw checking what the lay of the land was with Mr Hudson because he knew that he was upset.

163. Mr Hudson admitted whilst giving evidence that, during that conversation he required the Claimant to apologise as a condition of her returning and if she had not apologised, he would have certainly said no to her returning to employment.

The meeting at the Claimant's house on 28 November 2022

164. This then resulted in Mr Handshaw meeting with the claimant at her house on 28 November 2022 just a few days after the resignation.
165. The situation was discussed and Mr. Handshaw informed the Claimant that to enable her return to work, she needed to make the two apologies, withdraw the grievance and then she would be allowed to retract her resignation as per the Claimant's statement at paragraphs 20 and 21.
166. On 5 December, the Claimant withdrew her grievance and undoubtedly did so whilst feeling humiliated as she said in her statement.

The reallocation of a client

167. On or around 7 December 2022, a single client was moved from the Claimant by a Ms Pallante who was the daughter of the client's owner her father.
168. In her interview notes during the second grievance, Ms Pallante had this to say about it at page 574:

"Yes the date of the request to reallocate was the 7 December, primarily off the back of her resignation. This is standard process. Dad wanted his business doing quickly so it was passed to Nic. He knew him. He would have requested a new advisor anyway as Bobby wasn't getting back to him in a timely way so he asked, don't want to make it awkward for you but can you allocate me a new advisor. I said this to Chris as didn't want a conversation with Bobby but she resigned anyway."

169. Having reviewed the notes taken by Mr Willis during the second grievance and taking into account that this could not have been the respondent's usual process to reallocate a single client after a resignation, I am not persuaded that there is sufficient evidence to conclude that the client move was done for any other reason other than what Ms Pallante described, despite this being done informally and in unusual circumstances.

The Christmas party

170. Then we come to 9 December 2022 and a further alleged incident at the Christmas party involving an allegation of a stolen bottle of gin from behind the bar at the venue within which the Christmas party was taking place.

171. The events unfolded as follows:

171.1. A report was made by the venue staff, that a bottle of gin had gone missing from behind the bar, and the venue was of the view that it had been stolen and asked the Respondent's entourage if they knew anything about it because the empty gin bottle had been found under a table occupied by the Respondent's employees. Ms Jenny Read a manager of the respondent, was informed about this when trying to leave the venue. There was also a conversation about alleged drug use at the venue by the respondent's employees.

171.2. Ms Read went to speak to Stacey Costar, Strategy and Changer Director about it for her to handle it.

171.3. Mr Hudson went over to both Ms Costar and Ms Read to enquire what was going on about the situation and, whilst they were speaking, it was suggested by Ms Costar that it was a sackable offence.

171.4. What Mr. Hudson is then alleged to have said is a matter of dispute. Ms Read said in her grievance investigation notes that he said words to the effect of "*Let's hope its Bobby*". Mr Hudson denies saying that.

171.5. Ms Costar stated in her grievance notes, that she couldn't remember the Claimant's name being mentioned about the gin bottle, only that he was querying why the Claimant was at the Christmas party given she had resigned.

171.6. Mr Hudson denies saying anything of the sort reported by Ms Read.

171.7. Mr. Hudson gave evidence that Ms Read had an ulterior motive for providing this information to the Claimant because Ms Read's partner who also worked for the Company had been dismissed by Mr Hudson. He also said that he would not have said about sacking the Claimant when he had already received the withdrawal of the grievance and knew it was likely she would be coming back given his conversation with Mr Handshaw.

172. I heard no evidence at the hearing from Ms Read or Ms Costar.

173. The Claimant doesn't know what was specifically said because she was not present and was told of this incident later, on New Years' eve, by Ms Read. The only evidence that was presented by someone present was Mr Hudson's evidence.
174. On balance, there is insufficient evidence about what was actually said and the way it was said for me to find that the comment was said by Mr Hudson using those precise words.
175. Consequently, allegations 2.1.1.5 and 6.2.4 fail on the facts and are dismissed.
176. On 12 December 2022, the Claimant retracted her resignation and recommenced working for the Respondent. The retraction was accepted.

The annual leave request

177. On 27 January 2023, the Claimant alleges that Mr Handshaw asked the Claimant to take annual leave for a networking event and that was an act of discrimination.
178. That allegation is not proven on the facts. Mr Handshaw had this to say about it in his statement at paragraph 31:

"31 The Claimant text me on 27 January 2023 asking me whether she ought to book annual leave for a networking event she was attending for the day London the following week. I simply replied saying 'yes'. The Claimant did not raise an issue with it at the time and requested the time off on the Respondent's systems, which I approved (albeit she had accidentally requested 21 days instead of one day, as the text messages show). These text messages appear at page 100 of the Bundle. If the Claimant had always been able to attend networking events within working hours, as she says, then I do not understand why, on this occasion, she asked me to book it off as annual leave. When she asked, I did not really give the response too much thought, and there was certainly no malice or ulterior motive behind my response. I understand that the Claimant has alleged that this was an act of discrimination, but my response was in no way related to the Claimant's race, or her grievance; it was simply a quick response to what I thought was a standard request for holiday. I thought at the time that perhaps there was a specific reason for why she would need it off as annual leave and therefore agreed for her to book it off. I simply approved the Claimant's holiday – I did not require or ask her to take this as holiday, as she has alleged."

179. I accept that evidence.

180. The Claimant sent a text to Mr. Handshaw asking whether she should take annual leave for the event and he said yes. He did not request this. He was approached by the Claimant.
181. I am also not persuaded that the Claimant's grievance was in Mr Handshaw's mind when he received what was a general day to day query between the Claimant and her line manager.
182. Consequently, allegations 2.1.1.6 and 6.2.5 fail on the facts and are dismissed.

Alleged exclusion from the advisor forum

183. On 3 February 2023, the Claimant alleges that Mr. Handsaw excluded the Claimant from an advisor forum.
184. The Claimant stated that she had expected to go to the event because she had discussed the event with Sarah Shaw in October 2022.
185. I am not persuaded this is made out on the facts. Mr. Handshaw's evidence about this was in his statement at paragraph 32: and said as follows:

"32 A few days later, on 2 February 2023, the Claimant text me again (page 101 of the Bundle). She was upset that she had not been invited to the Advisor Forum. The Advisor Forum is a half day event where various advisers (a selection from different regional areas, employment status, services, etc. go to a meeting to discuss issues of the advisers they are representing. The output from this meeting can then be used to create best practice going forward. This took place in 2016, 2019, 2022 and 2023, and various of the Respondent's advisers attend. The Claimant's view was that she had been excluded from the event. In the Claimant's own words, she said, "Not that I was going to attend anyway". I responded that I understood she did not want to be on the forum and would have declined it even if she has been asked, these texts appear at page 101 of the Bundle. The Claimant appeared upset that nobody had asked her to attend, and I reminded her that I also had not been asked to attend the Advisor Forum. It was Sarah Shaw (PA to Mr Hudson) who organised the event, so I can only assume that Ms Shaw was responsible for sending out the invites. My involvement only extends as far as asking Advisers if any of them want to attend and then passing that information back to Ms Shaw. My understanding, in any event, is that the Respondent 'cycles' the staff who attend the Advisor Forum and, on the basis that the Claimant had already attended on a number of occasions, other staff members were invited to attend, so that they had a fair opportunity. Having read the Claimant's ET1, I can see

that she is also alleging that the exclusion from the Advisor Forum was an act of discrimination, but I cannot see how that would be the case.”

186. Mr Willis gave similar evidence and said that the attendees for the advisor forum would rotate anyway.
187. The Claimant didn't know who actually made the decision to exclude her and any conversation with Ms Shaw was not in the Claimant's witness statement.
188. I am persuaded Mr. Handshaw made no decisions about who did or did not go on the advisor forum. He simply passed on the forms after gleaning interest about who wanted to attend. I accept his evidence here supported by for example Mr Willis about how the event is rotated and given the absence of any evidence about any actual decision to exclude.
189. Consequently, allegations 2.1.1.7 and 6.2.6, fail on the facts and are dismissed.

The Claimant's second grievance and the advisor meeting

190. In June 2023, the Claimant submitted a second grievance alleging race discrimination. This is in the bundle at pages 397 – 398.
191. The catalyst for that grievance being submitted was because the Claimant felt generally anxious after the way she had been treated in 2022, she had received no apology from Mr Hudson about how he had spoken to her and that, at an IFA consultant meeting on 19 May 2023, Mr Hudson had made what she viewed as some distasteful remarks about HR policy.
192. The Claimant was also unable to move on from what had happened at the end of 2022 and, in particular, took issue with the fact that being asked to withdraw the grievance was immoral.
193. When considering the event that triggered the grievance, it was not in dispute that the meeting was held or that Mr Hudson said some remarks about “HR Malarkey” that may have triggered the Claimant's anxiety because of how she was feeling at the time.
194. However, given there were about 100 people at the event, I am persuaded that Mr Hudson did not know the Claimant was in attendance, which she did not challenge.
195. Additionally, the comments were said generally rather than about or to any particular individuals, I am not persuaded that the Claimant's grievance was on Mr. Hudson's mind when he said the remarks.

196. The grievance was looked into in some detail by Barry Willis. There are no specific allegations about the grievance process per se, but the Claimant does suggest that Mr Hudson instructed the Mr Willis not to uphold the Claimant's grievance.
197. I find there is insufficient evidence that such a conversation took place and I am persuaded that Mr Willis was a reliable witness about that issue.
198. Consequently, allegations 2.1.1.9 and 6.2.8 fail on the facts and are dismissed.
199. We then come to Mr Handshaw's evidence that he gave to Mr Willis during the investigation of the second grievance. His meeting notes are in the bundle at pages 568 onwards.
200. The Claimant alleged that Mr. Hudson instructed Mr. Handshaw to lie to Mr Willis about what happened the day Mr. Handshaw visited her house and that Mr. Handshaw then did lie.
201. What is key about these notes is that Mr Handshaw specifically stated that the conversation with Mr Hudson included a withdrawal of the grievance at page 571. Although there is another part of the meeting notes where he seems to say Mr. Hudson didn't say retract, the evidence suggests to me confusion rather than dishonesty.
202. Similarly, there is insufficient evidence that Mr Hudson instructed Mr Handshaw to lie. Taking the evidence in the round, I am not persuaded there is sufficient evidence to say any such conversation took place.
203. Consequently allegations 2.1.1.10 and 6.2.9 fail on the facts and are dismissed.

Allegation 4.2.11 and 6.2.11 and the ulterior motive comment

204. Then we come to the allegation that Mr. Hudson stated that the Claimant had an ulterior motive in August 2023 as part of the appeal investigation conducted by Ms Alexis Larvin.
205. The part of the notes where this is mentioned appears at page 123 in the bundle. Mr. Hudson doesn't deny making the comment and indeed it is documented.
206. When answering questions, he summarised his views about why he said that at the time. He stated that he thought the Claimant was after a financial benefit and that is why she had complained. This was in the context of discussing the former grievance and the point about whether Mr Hudson had asked for the

Claimant to withdraw the grievance as a condition of coming back to the respondent.

207. Given Mr. Hudson's views about the Claimant's first grievance at the time, in my judgment, when he said that comment, he said it not only because of the current grievance but also because the Claimant's first grievance was in the back of his mind. He did not separate out the first and second grievances.
208. In my view, given it was Mr. Hudson who had said the ulterior motive remark, it was reasonable for the Claimant to view the combined facts that he had also orchestrated her to apologise for raising her grievance as a condition of her return, his outburst at her and her grievances namely that he thought there was an ulterior motive for the grievance with concern and placing her at a disadvantage.
209. Although it was said as a train of thought clearly, given the background, it was reasonable for the Claimant to interpret this ulterior motive comment as her being accused again of making a false statement and, in her view, at paragraph 33 of her statement, as having no future at the respondent.
210. I have considered the Respondent's submissions about what was actually said by Mr Hudson and why he said it, but detriment is taken from the reasonable subjective view of the Claimant and I have found that the reason why Mr Hudson used the words ulterior motive was significantly influenced by his view of the Claimant's first grievance and the Claimant's interpretation of it when she received the meeting notes containing the comment was a reasonable interpretation.

The Claimant's resignation

211. By 6 September 2023, the Claimant had received the grievance appeal investigation notes containing Mr Hudson's comments about ulterior motives and she resigned within 24 hours of receiving them by email at page 717 in the bundle.
212. When considering the resignation, I find the Claimant resigned for a number for a number of reasons:
- 212.1. Mr. Handshaw's perceived behaviour in the second grievance investigation meeting, he had given a different version of events to that which the Claimant knew to be correct.
- 212.2. That although missing expressly from her resignation email, having heard from the Claimant I find that she resigned partly in consequence to the

ulterior motives comment and found out about this comment on 5 September 2023 and is eluded to when she mentioned Mr Hudson's interview notes reaffirming that senior leaders at the Respondent did not nurture a healthy culture where people could speak up and challenge; and

212.3. that she felt generally that the culture of the Respondent was not one where you could raise concerns without poor treatment as a consequence, referring back to prior concerns, which were Mr Hudson's treatment of her before her first resignation and the fact she had to retract her grievance and apologise for it to be able to return.

213. When considering the Claimant's point about the culture of the Respondent, I find she was correct. I find there is a culture of backlash and poor treatment of those who raise concerns about discrimination that runs down from the CEO himself.

214. Ms Spillane rejected the Claimant's first grievance.

215. She had a similar sentiment to Mr. Hudson as per her email at page 378 where she stated as follows when essentially criticising the HR team upsetting Ms Hateley:

"Dear Suzanne and Alison,

Following the recent interviews with Bobby Sahota, Preeti Sehmi and David James, it is quite clear that Sue Hateley has not acted in a racist manner, in any way whatsoever. My finding therefore, is that this allegation is completely unfounded and without merit.

What is more of a concern, to me, is the treatment of a member of staff, with 25 year's service. I do not feel that this investigation has been managed fairly or consistently and my view is that by not informing Sue it has exacerbated this matter.

As you may be aware, I am married to a person of mixed race and have mixed race children; I therefore take such issues very seriously and believe that this conduct undermines real racism.

Please revert should you have any questions.

*Kind regards
Claire"*

216. Consequently, this email is clear evidence, and definitely infers, that Ms Spillane too believed the Claimant's allegation to be knowingly false and that had undermined "real racism" in her view.

217. The culture was that if you complain about perceived race discrimination and there was insufficient evidence to support it, that would be viewed as negative and false rather than simply unproven but genuine concerns.
218. That is regretfully how the evidence has come across to me. There was insufficient evidence that the culture was about any particular race, but there was sufficient evidence that people who complain about discrimination would be stigmatised by some elements of the management team including the CEO himself.
219. I was not persuaded that the evidence of Mr Munir or Mr Shahzad was sufficient to prove or infer a culture of race discrimination.
220. In her appeal against the grievance outcome at page 622 in the bundle, the Claimant explained what she thought about the failure to interview Ms Hateley as follows, *"The initial grievance has been concluded without interviewing Sue Hateley, so I don't agree that my initial grievance was fully investigated. Whilst I am mindful and fully aware of Alans loyalty to Sue, this should not warrant immunity to HR policy and procedures"* and *"Whilst the decision was made that Sue was not fit to be interviewed due to how upset she was, I do not feel the same duty of care was given to me both during and post the grievance procedures."*
221. Clearly, the Claimant thought she was at a disadvantage because of the failure to interview Ms Hateley and because Ms Hateley was getting preferential treatment in the process to her. Both of those are reasonable observations based on the facts presented to me.
222. That said, the culture I have described was not endemic with everyone and Mr. Willis, in particular, gave very genuine evidence that he felt the way Mr Hudson had behaved was unacceptable and he said as much to Mr. Hudson in the investigation meeting he shared with him for the second grievance.
223. Ms Cousens, Head of People, also stated in her investigation notes that she did not approve of the Claimant being asked to apologise or withdraw the grievance and she stood by that.

Informing ex-colleagues the Claimant had become a life coach

224. The Claimant alleged that Mr Handshaw had told two former colleagues who were taking over the Claimant's clients that she had left to become a life coach.
225. In support of this allegations she relied on a few text messages from two ex-clients at pages 742 and 744 and an email at 747 in the bundle sent from an ex-colleague to one of the Claimant's former clients, which stated:

"Hi yes we met Ryan and he sorted passports. He drove to see us within couple of days and seemed nice. Sarah has a different person, can't remember the name. We half way to Australia! He said as far as he know you'd left Financial

services. We'd like to follow you please as although he seemed nice much prefer you and we just don't like the Afh feel, seems like a money making machine, for them not us. We back 8 oct but am sure you busy but if u able to manage would be good to catch up sometime. How are you ?”

“Hi Bobby, the meeting with Naomi went ok. She obviously couldn't guarantee that my pension or portfolio will do anything great in the near or indeed distant future. I asked her for a complete breakdown of fees since the funds aren't growing but the fees are still coming out which is showing a very dismal performance! And, are the fund managers doing such a great job with this discretionary service? I asked "what has happened to Bobby and that it would have only been professional to give clients a heads up since we share our most personal of lives with our advisors and 5 advisors in 12 years is unacceptable". She said that all she knew was that you were on gardening leave and were probably having a change of career. That's about it in a nutshell.”

“Good morning Janet.

I hope you are well.

I have been unsuccessful contacting you via telephone to introduce myself. My name is Holly i am a Financial Planner at AFH , i have taken over from Bobby Sahota who i know you worked with in the past.

Due to Bobby taking a different direction in her career and me being local to you Janet, i live in Derby also. I will continue looking after you and your family trust moving forward...”

226. As can be seen from above, none of these messages or the email confirm that Mr Handshaw said anything. He denies the allegation in his statement and I am consequently not persuaded that there is sufficient evidence to conclude that anything about being a life coach was said.

227. Consequently, allegation 6.2.12 fails on the facts and is dismissed.

The letter about covenants

228. After the Claimant resigned, the respondent, like many other financial services companies would have done, cause a letter to be sent to the Claimant reminding her of her obligations after the termination of her employment that are contained within clause 22 of her contract of employment.

229. Ms Spillane covers this in her witness statement at paragraphs 42 – 46, where she stated:

*“42. When Advisors leave the Respondent, we often send letters via FS Legal to remind them of their ongoing contractual obligations, including the restrictive covenants in their contract of employment. The Claimant’s contract of employment, in particular, included confidentiality obligations (Clause 19), restrictive covenants (Clause 21) and obligations on termination (Clause 22). A copy of that contract appears at **pages 794 to 810 of the Bundle**.*

43. I cannot remember any specific background regarding discussions surrounding sending an FS Legal letter to the Claimant, given that this was commonplace and, therefore, these discussions would simply have been routine.

*44. On 27 November 2023 I emailed FS Legal LLP, in particular Paul Crutchley (External Legal Adviser) and Baljit Ruprah (Legal Director and Solicitor) to ask if they had been instructed on ‘Restrictions’ i.e. the ongoing contractual obligation letter with regards to the Claimant and another previous worker, ... (**page 754 of the Bundle**). Whilst the Claimant has alleged that this letter was sent as an act of discrimination and/or victimisation, ... is Caucasian and was treated no differently to the Claimant in this circumstance.*

*45. Mr Ruprah confirmed he had received instructions with regards to however had not received instructions for the Claimant (**page 753 of the Bundle**). I responded and copied in Amie Pallante (PA to Chief Commercial Officer) to allow her to provide them with the instruction (**page 752 of the Bundle**). Ms Pallante responded, with me in copy, providing the Claimant’s termination date and home address in order for FS Legal to send the restrictive covenant letter to the Claimant (**page 751 of the Bundle**).*

*46. FS Legal then wrote to the Claimant on 29 November 2023 (via email and post) which can be found at **pages 161 to 164 of the Bundle**. These letters are routinely sent to certain departing employees, particularly those who are expected to secure new employment swiftly, held senior positions, or managed a significant client portfolio. In such cases, where there is a reasonable belief that the individual may remain active within the financial services sector and therefore pose a potential risk to the business, these letters serve to ensure clarity around post-employment restrictions and help prevent any inadvertent breaches. “*

230. I entirely accept Ms Spillane’s evidence here. It is very commonplace and standard for such letters to be sent out and the fact that this was also being done for another leaver at the time, where no evidence has been put forward about the other colleague having raised a grievance and the other person was said to be white.

231. Consequently, with or without having raised a grievance, the covenant letter was sent out whether the exiting employee was Asian or white.

232. There is insufficient evidence without something more for me to conclude that the letter sent to the Claimant was sent for any other reason other than it being a standard letter organised upon the exit of an employee done to protect the Respondent's position. There is insufficient evidence that It was anything whatsoever to do with the Claimant's grievances or her race.

The erroneous reference

233. The Claimant complained that a reference had incorrect information on it about client and file concerns. The person who issued the reference was Mr Ian Shearman who gave evidence about it. The Claimant alleged that Mr Hudson had instructed Mr Shearman to send out the reference with the incorrect information in as an act of post termination discrimination.
234. Mr. Shearman was a straightforward witness and, in my judgment, a truthful witness.
235. He admitted that he had included more complaints that were attributable to the Claimant than there should have been and apologised to her at the hearing.
236. He said this about it at paragraph 17 in his statement:

"17 I acknowledge that the reference included information regarding 13 complaints. However, this information was included as the information on the Claimant's files was that there were 13 complaints. At this stage, I had not checked whether the complaints were attributable to the Claimant or her work. I accept that this was an oversight, but there was no discriminatory motive to the inclusion of this information. I deny the Claimant's allegations of discrimination, harassment and victimisation that she has pleaded in her claim.

18 It is also not the case, as the Claimant has alleged, that Alan Hudson (CEO) instructed me to issue the reference, or issue the reference in any particular format. Mr Hudson had no input in the reference, or knowledge of the reference request, as far as I am aware. In fact, I have never had any direct correspondence with Mr Hudson other than a 'good morning' or 'good afternoon' in the office."

237. I entirely accept Mr Shearman's evidence here. There was nothing put forward to really challenge it other than the Claimant's assertions that Mr Shearman and Mr Hudson were working together to discriminate against her.
238. There is also insufficient evidence that the mistake made with the reference by Mr Shearman was in any way related to race. He made a mistake. That is it. However, I fully understand why, given the backdrop to this case, the Claimant

might be seeing mistreatment where it hasn't in fact happened, given the unlawful treatment she has suffered by Mr Hudson's and Mr Handshaw's conduct.

ANALYSIS AND CONCLUSIONS

Direct discrimination

239. All allegations except for allegations 4.2.1, 4.2.7 and 4.2.13 have been dismissed upon withdrawal.
240. When considering allegation 4.2.1, even if I was to accept the Claimant's case shifted the burden of proof to the Respondent after **Hewage** and **Laing**, when applying the guidance in **Khan**, I am not persuaded that the Claimant's case was the reason for the treatment. It was the Claimant's protected act that was the reason for the treatment and that has been admitted to be victimisation subject to time limits.
241. It is not therefore an act of direct race discrimination.
242. Again, for allegation 4.2.7, I find the same is true. Mr Hudson did not instruct Ms Cousens to conclude the original grievance without interviewing Ms Hateley because of the Claimant's race.
243. The real reason why was two fold, first Mr Hudson did not want Ms Hateley to be made any more upset by being interviewed and, secondly, Mr Hudson had formed the belief that the grievance was simply playing the race card meaning there was no need to interview Ms Hateley.
244. Those reasons were not because of race, but were motivated in part because the Claimant had alleged race discrimination against Ms Hateley in her grievance.
245. Again applying **Khan**, the real reason why the covenant letter was sent out was nothing whatsoever to do with the Claimant's race. A white comparator in circumstances not materially different to the Claimant's would have received such a letter too.
246. Consequently, all the direct race discrimination claims fail and are dismissed.

Victimisation

247. After the Respondent's admissions, subject to time limits, the only remaining victimisation claims that have not already been dismissed are allegations 6.2.3, 6.2.7, 6.2.11 and 6.2.13.

248. When considering 6.2.3, assuming the burden of proof had shifted after the cases of **Hewage** and **Laing**, I have found that the real reason why this client was moved was because the client was unhappy about the service that had been provided by the Claimant and she had resigned so the client was reallocated. There was no evidence that the Claimant's grievance was in any way whatsoever part of the motivation for reallocating that work.
249. Turning to 6.2.7, applying the principles in **Jeremiah** and **Williams**, in my judgment the Claimant believed that she was being subjected to a detriment by the respondent not interviewing Ms Hateley and that was a reasonable view for her to have because Mr. Hudson's decision to instruct Ms Cousens that as part of the grievance process, Ms Hateley was not to be interviewed meant the grievance investigation was not impartial or independent and Mr. Hudson was inappropriately interfering with the grievance process to place the Claimant at a disadvantage.
250. The Claimant also reasonably thought that Ms Hateley was being treated more favourably about her welfare than the Claimant was by Mr. Hudson instructing HR not to interview her.
251. The reason why he did that was partly motivated by the fact the Claimant had raised a race discrimination grievance against Ms Hateley. That therefore passes the real reason why test in **Khan**, and the protected act was therefore a substantial and effective cause for Mr. Hudson's instructions after applying the tests in **Matar** and **Szucs**.
252. Consequently, subject to it being in time, this allegation of victimisation is proven.
253. Then we come to allegation 6.2.11. I have already found that Mr Hudson stating that the Claimant had an ulterior motive for submitting her grievance was reasonably viewed by the Claimant as putting her at a disadvantage and caused her to reasonably believe she had no future at the Respondent.
254. The ulterior motive comment was again significantly motivated by the content of the Claimant's first grievance. The protected act was therefore a substantial and effective cause of Mr. Hudson's comment and part of the reason why he said it.
255. Consequently, subject to time limits arguments, that allegation of victimisation is proven.

256. Finally there is allegation 6.2.13, which is more straightforward. The Claimant has failed to prove facts from which it can be inferred that victimisation has taken place here.
257. In any case, the real reason why the convent letter was sent out applying **Khan**, was to protect the Company's position following its standard procedures. It was in no way whatsoever motivated by the Claimant's protected act.
258. Consequently, allegation 6.2.13 fails and is dismissed.

Harassment

259. Given the Respondent has conceded that allegations 6.2.1 and 6.2.2 which are the same allegations as 5.1.1 and 5.1.2 are detriments as part of their concession that they were acts of victimisation, I concur that they were acts of detriment and therefore cannot also be treated at the same time as being harassment in accordance with s212 (1) of the Equality Act 2010.
260. All the harassment claims therefore fail and are dismissed.

Constructive unfair dismissal

261. The Respondent has conceded that it has victimised the Claimant and I have found that there were a further two episodes of victimisation. These are for allegations 2.1.1.2, 2.1.1.3, 2.1.1.8 and 2.1.1.12.
262. The Respondent has conceded on its own that allegation 2.1.1.2 was a repudiatory breach of contract.
263. The factual following allegations I've already found happened, namely, allegations 2.1.1.1 and 2.1.1.4.
264. Consequently, the following allegations took place that were alleged to be either individually or cumulatively a repudiatory breach of the implied term of trust and confidence:
- 264.1. 2.1.1.1 On 22 November 2022, the claimant's grievance email was sent directly to Susan Hateley with personal information that include claimant's salary information to prepare for her interview.
- 264.2. 2.1.1.2 On 23 November 2022, Mr. Hudson shouted at the claimant: "*I've just had Suzie on the phone she is in absolute bits, I hope you're fucking proud of yourself, we will be having words later.*" (Conceded as victimisation and a repudiatory breach of trust and confidence).

- 264.3. 2.1.1.3 On 28 November 2022 Chris Handshaw asked the claimant to apologise to Mr James and Ms Hateley regarding the contents of her grievance and to withdraw her grievance. (Conceded as victimisation)
- 264.4. 2.1.1.4 Chris Handshaw or someone on the Executive Team reallocated Business A to Mr. Lambert. The claimant found out about this around 7 December 2022.
- 264.5. 2.1.1.8 In November 2022 Alan Hudson instructed Suzanne Cousens to conclude the original grievance without interviewing Susan Hateley. C says she found this out in around 6 September 2023. (Found to be an act of victimisation)
- 264.6. 2.1.1.12 In around August 2023 Alan Hudson stated that the claimant had an ulterior motive for the grievance. (Found to be an act of victimisation).
265. I must now consider the first question in **Kaur**, namely what the newest issue was that was alleged to be a cause of the Claimant's resignation. That was the allegation at 2.1.1.8 and was discovered by the Claimant when she received the pack of evidence with her appeal outcome to the grievance on 5 September 2023 as per the email at page 718.
266. Looking at the second question in **Kaur**, the Claimant resigned within 24 hours of receiving the notes of the meeting giving her knowledge of Mr. Hudson accusing he Claimant of having ulterior motives to submit her second grievance. The contract of employment was not affirmed in the intervening period.
267. Looking at the third question in **Kaur**, was the last act a repudiatory breach of contract? In my judgment it clearly was. There was no evidence upon which Mr Hudson could reasonably base his opinion that the Claimant was raising false allegations in her second grievance or otherwise. He therefore had no reasonable or proper cause for making that comment. That caused serious damage to the relationship between the Claimant and the respondent. It also evidenced that Mr Hudson, the most senior person at the Respondent, was completely abandoning his obligation under the contract of employment not to discriminate against the Claimant.
268. Even if I am wrong in that, looking at the fourth question in **Kaur**, and when considering the last straw principle in **Lewis**, the Claimant by this point had been victimised by the Respondent on no less than 4 separate occasions all of which Mr. Hudson the CEO was involved in.

269. After **Omilaju**, those incidents that were in the mind of the Claimant when she resigned I find were allegations 2.1.1.2, 2.1.1.3 and 2.1.1.12. Consequently the last straw alleged was at least in part the reason for her resignation.
270. The Respondent conceded that there was no reasonable or proper cause for 2.1.1.2. However curiously, it argued that despite admitting that 2.1.1.3 was an act of victimisation, that Mr. Handshaw had reasonable and proper cause for victimising the Claimant.
271. I easily reject that submission. There cannot be reasonable and proper cause for victimising the claimant when that amounts to a breach of the Equality Act 2010. Unlawful victimisation by its very nature is improper, hence why it has been outlawed.
272. Consequently, the Claimant resigned as a result of three breaches of the Equality Act 2010 against her. That, I find, was a cumulative repudiatory breach of trust and confidence. It caused serious damage to the employment relationship.
273. Finally looking at the fifth test in **Kaur**, the Claimant resigned within 24 hours of becoming aware of the last straw. She therefore resigned within a reasonable time of the cumulative breach.
274. The Respondent argued that the Claimant should not be allowed to rely upon any breaches of contract alleged to have taken place prior to 12 December 2022.
275. I reject that submission entirely and with ease. That line of erroneous thought stemming from *Addenbrooke v The Princess Alexandra Hospital NHS Trust* UKEAT/0265/14, was effectively overruled by **Kaur** above. When considering a series of acts over time that may have been affirmed after each one, so long as the last straw has not been affirmed, then the past incidents permissibly come back to life to form the elements of a cumulative breach.
276. It is also now well settled that the last straw does not need to be a breach of contract, blameworthy or indeed unreasonable behaviour. It simply needs to contribute to the decision to resign.
277. The Claimant was therefore constructively dismissed.
278. As per paragraph 2.2 of the list of issues, the respondent has pleaded no potentially fair reason for the dismissal and clearly, albeit abstractly and artificially, no procedure before dismissal was followed.

279. The dismissal is therefore both substantively and procedurally unfair. The Unfair dismissal claim succeeds.

Discriminatory Dismissal

280. Given this constructive dismissal finding, the Claimant was therefore entitled to resign and claim to be dismissed in accordance with s39 (7) (b).

281. All of the reasons for the Claimant's resignation were tainted by the respondent victimising the Claimant through Mr Hudson's serious and improper behaviour towards her and Mr. Handshaw's behaviour towards her.

282. Consequently, the Claimant's dismissal was in breach of s39 (4) (c).

283. The victimisation found, significantly influenced the Claimant's decision to resign from her employment and the dismissal was therefore discriminatory.

Time limits

284. All claims about the Claimant's dismissal were brought in time. She resigned with immediate effect on 6 September 2023.

285. Date A was 10 October 2023 starting early conciliation well within the ordinary time limit which would have expired on 5 December 2023.

286. Date B was 17 November 2023. The Claim was presented on 17 December 2023 and the limitation period was extended by one month after date B because of the early conciliation.

287. All claims about dismissal were therefore presented in time.

288. When considering the individual acts of victimisation in allegations 6.2.1, 6.2.2, 6.2.7 and 6.2.11, when considering **Hendricks, Lyons, and Parr**, this is clearly not a discriminatory policy type case. However, it is one where there is a common discriminatory context, thread and deciding mind.

289. Mr Hudson was involved in all the acts of victimisation made out in this case. All of them were done in the context of him disbelieving, with no reasonable basis for doing so, that the Claimant's grievance was genuine and was therefore false, abhorrent and vile.

290. That view then tainted his mindset about the Claimant's second grievance and, consequently, her decision to resign which has been found to be a constructive dismissal.

291. The last link in the series of acts, which I find was a pattern of discrimination by Mr Hudson with some input from Mr. Handshaw and at times under Mr. Hudson's instructions, was therefore the ulterior motive comment made in an investigation meeting that took place on 24 August 2023.
292. Based on that date, the time limit would have ran out on 23 November 2023. Early conciliation was therefore commenced within the normal time limit for that complaint and is therefore subject to the same extension of time from date B as the dismissal claims were. The Claimant therefore presented the claim for the victimisation claims in time.
293. Even if I am wrong to conclude that there was conduct extending over a period in this case, the Respondent has suffered no prejudice. It has been able to argue the point about jurisdiction at this hearing, all the relevant witnesses have recalled the events, provided their evidence and appeared at the hearing. No documentary evidence was argued as being destroyed because of the efflux of time and memories were not adversely affected at the trial to any significant degree by any lateness in my judgment.
294. The contrary is true for the Claimant. When considering the guidance in **Logo**, the Claimant has proven, and indeed some acts were conceded as being, unlawful victimisation. She would be at very substantial prejudice to walk away from the trial knowing she was unlawfully treated but cannot have a remedy simply because some of her claims were submitted late, I find because she needed to try to mend the employment relationship by retracting her grievance and resignation because she needed to provide for her son and was looking at a sudden cessation of her income. She tried to mend the relationship and was then victimised further.
295. I would extend time in those circumstances, when taking everything into account, because it was just and equitable to do so. Either way, the Tribunal has jurisdiction to hear all the successful claims.
296. I therefore declare that the Claimant has been unlawfully victimised in breach of the Equality Act 2010 and she has been unfairly dismissed.
297. A remedy hearing has already been listed with directions by the time these reasons had been completed.

ANNEX 1 LIST OF ISSUES

The Complaints

52. The claimant is making the following complaints:

52.0 Constructive unfair dismissal.

52.1 Direct race discrimination.

52.2 Harassment related to race.

52.3 Victimisation.

The Issues

53. The issues the Tribunal will decide are set out below.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint made in the claim form about something that happened before 11 July 2023 may not have been brought in time.

1.2 The complaints set out at paragraphs 4.2.12 – 4.2.14 and 6.2.12 – 6.2.14 were brought by way of an amendment allowed on 14 November 2024, and the complaints set out at paragraphs 4.2.7, 4.2.8 and 4.2.10, and 6.2.7, 6.2.8 and 6.2.10 were brought by way of amendment allowed on 28 April 2025. Those amendments were allowed subject to time limits being decided at the final hearing.

1.3 Were the discrimination, harassment and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.3.2 If not, was there conduct extending over a period?

1.3.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.3.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.3.4.1 Why were the complaints not made to the Tribunal in time?

1.3.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Constructive Unfair dismissal

2.1.1 Did the respondent do the following things:

2.1.1.1 On 22 November 2022, the claimant's grievance email was sent directly to Susan Hateley with personal information that include claimant's salary information to prepare for her interview.

2.1.1.2 On 23 November 2022, Mr. Hudson shouted at the claimant: *"I've just had Suzie on the phone she is in absolute bits, I hope you're fucking proud of yourself, we will be having words later."*

2.1.1.3 On 28 November 2022 Chris Handshaw asked the claimant to apologise to Mr James and Ms Hateley regarding the contents of her grievance and to withdraw her grievance.

2.1.1.4 Chris Handshaw or someone on the Executive Team reallocated Business A to Mr. Lambert. The claimant found out about this around 7 December 2022.

2.1.1.5 On 9 Dec 2022 Alan Hudson stated that he hoped the Claimant had stolen a bottle of gin so that he could 'sack her'.

2.1.1.6 On 27 January 2023 Chris Handshaw asked the claimant to take annual leave to attend a networking event.

2.1.1.7 On the 3 February 2023 Chris Handshaw excluded the claimant from the advisor forum.

2.1.1.8 In November 2022 Alan Hudson instructed Suzanne Cousens to conclude the original grievance without interviewing Susan Hateley. C says she found this out in around 6 September 2023.

2.1.1.9 In or around June 2023 Alan Hudson instructed Barry Willis to conclude the second grievance not in the claimant's favour.

2.1.1.10 In or around June 2023 Chris Handshaw lied to Barry Willis when he denied having told the claimant in November 2022 that it was a condition of her being able to retract resignation in November 2022 that she apologise and formally withdraw her grievance by sending an email to HR.

2.1.1.11 In or around June 2023 Alan Hudson instructed Chris Handshaw to lie about having told the claimant in November 2022 that it was a condition of her being able to retract her resignation that she apologise and formally withdraw her grievance by sending an email to HR.

2.1.1.12 In around August 2023 Alan Hudson stated that the claimant had an ulterior motive for the grievance.

2.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

2.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.1.2.2 whether it had reasonable and proper cause for doing so.

2.1.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

2.1.4 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

2.1.5 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

2.2 If the claimant was dismissed, the respondent will not suggest there was a fair reason for that.

3. Remedy for unfair dismissal

3.1 If there is a compensatory award, how much should it be? The Tribunal will decide:

3.1.1 What financial losses has the dismissal caused the claimant?

3.1.2 Has the claimant taken reasonable steps to replace her lost earnings, for example by looking for another job? 3.1.3 If not, for what period of loss should the claimant be compensated?

3.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

3.1.5 If so, should the claimant's compensation be reduced? By how much?

3.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.1.7 Did the respondent or the claimant unreasonably fail to comply with it?

3.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%? 3.1.9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?

3.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

3.1.11 Does the statutory cap of fifty-two weeks' pay or £105,707 apply?

3.2 What basic award is payable to the claimant, if any?

3.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

4. Direct race discrimination (Equality Act 2010 section 13)

4.1 The claimant is Asian.

4.2 Did the respondent do the following things:

4.2.1 On 23 November 2022, Mr. Hudson shouted at the claimant: *"I've just had Suzie on the phone she is in absolute bits, I hope you're fucking proud of yourself, we will be having words later."* 4.2.2 On 28 November 2022 Chris Handshaw asked the claimant to apologise to Mr James and Ms Hateley regarding the contents of her grievance and to withdraw her grievance.

4.2.3 Chris Handshaw or someone on the Executive Team reallocated Business A to Mr. Lambert. The claimant found out about this around 7 December 2022.

4.2.4 On 9 Dec 2022 Alan Hudson stated that he hoped the Claimant had stolen a bottle of gin so that he could 'sack her'.

4.2.5 On 27 January 2023 Chris Handshaw asked the claimant to take annual leave to attend a networking event.

4.2.6 On the 3 February 2023 Chris Handshaw excluded the claimant from the advisor forum.

4.2.7 In November 2022 Alan Hudson instructed Suzanne Cousens to conclude the original grievance without interviewing Susan Hateley. C says she found this out in around 6 September 2023.

4.2.8 In or around June 2023 Alan Hudson instructed Barry Willis to conclude the second grievance not in the claimant's favour.

4.2.9 In or around June 2023 Chris Handshaw lied to Barry Willis when he denied having told the claimant in November 2022 that it was a condition of her being able to retract resignation in November 2022 that she apologise and formally withdraw her grievance by sending an email to HR.

4.2.10 In or around June 2023 Alan Hudson instructed Chris Handshaw to lie about having told the claimant in November 2022 that it was a condition of her being able to retract her resignation that she apologise and formally withdraw her grievance by sending an email to HR.

4.2.11 In around August 2023 Alan Hudson stated that the claimant had an ulterior motive for the grievance.

4.2.12 In or around September 2023 Chris Handshaw told former colleagues who were taking over the claimant's clients that the claimant had left the industry to become a life coach, when in fact the respondent knew that was not the case.

4.2.13 The respondent instructed FS Legal to send the claimant a letter dated 6 December 2023 regarding her restrictive covenants and what the position would be if she were to breach them.

4.2.14 Alan Hudson instructed Ian Sherman to provide a reference to the claimant's new employer, Attivo, that was in an unusual format and contained details of 13 complaints from clients in respect of the claimant, when in fact only 4 of those complaints made any reference to the claimant and providing such information was not usual.

4.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Suzanne Hateley in relation to the allegations about the handling of the grievance.

The claimant says she was treated worse than Amanda Holden and Vanessa Armstrong in relation to the allegation about the letter from FS Legal.

Alternatively the claimant will rely on a hypothetical comparator.

4.4 If so, was it because of race?

4.5 Did the respondent's treatment amount to a detriment?

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

5.1 Did the respondent do the following things:

5.1.1 On 23 November 2022, Mr. Hudson shouted at the claimant: *"I've just had Suzie on the phone she is in absolute bits, I hope you're fucking proud of yourself, we will be having words later."*

5.1.2 On 28 November 2022 Chris Handshaw asked the claimant to apologise to Mr James and Ms Hateley regarding the contents of her grievance and to withdraw her grievance.

5.2 If so, was that unwanted conduct?

5.3 Did it relate to race?

5.4 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?

5.5 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.

6. Victimisation (Equality Act 2010 section 27)

6.1 Did the claimant do a protected act as follows:

6.1.1 On 23 October 2022 the claimant submitted a formal grievance with Suzanne Cousens.

6.2 Did the respondent do the following things:

6.2.1 On 23 November 2022, Mr. Hudson shouted at the claimant: *"I've just had Suzie on the phone she is in absolute bits, I hope you're fucking proud of yourself, we will be having words later."* 6.2.2 On 28 November 2022 Chris Handshaw asked the claimant to apologise to Mr James and Ms Hateley regarding the contents of her grievance and to withdraw her grievance.

6.2.3 Chris Handshaw or someone on the Executive Team reallocated Business A to Mr. Lambert. The claimant found out about this around 7 December 2022.

6.2.4 On 9 Dec 2022 Alan Hudson stated that he hoped the Claimant had stolen a bottle of wine so that he could 'sack her'.

6.2.5 On 27 January 2023 Chris Handshaw asked the claimant to take annual leave to attend a networking event.

6.2.6 On the 3 February 2023 Chris Handshaw excluded the claimant from the advisor forum.

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6.2.9 In or around June 2023 Chris Handshaw lied to Barry Willis when he denied having told the claimant in November 2022 that it was a condition of her being able to retract resignation in November 2022 that she apologise and formally withdraw her grievance by sending an email to HR.

6.2.10 In or around June 2023 Alan Hudson instructed Chris Handshaw to lie about having told the claimant in November 2022 that it was a condition of her being able to retract her resignation that she apologise and formally withdraw her grievance by sending an email to HR.

6.2.11 In around August 2023 Alan Hudson stated that the claimant had an ulterior motive for the grievance.

6.2.12 In or around September 2023 Chris Handshaw told former colleagues who were taking over the claimant's clients that the claimant had left the industry to become a life coach, when in fact the respondent knew that was not the case.

6.2.13 The respondent instructed FS Legal to send the claimant a letter dated 6 December 2023 regarding her restrictive covenants and what the position would be if she were to breach them.

6.2.14 Alan Hudson instructed Ian Sherman to provide a reference to the claimant's new employer, Attivo, that was in an unusual format and contained details of 13 complaints from clients in respect of the claimant, when in fact only 4 of those complaints made any reference to the claimant and providing such information was not usual.

6.3 By doing so, did it subject the claimant to detriment?

6.4 If so, was it because the claimant did a protected act?

7. Discriminatory constructive dismissal

7.1 Did the respondent discriminate against, harass or victimise the claimant (as alleged at paragraphs 4.2.1 – 4.2.11, 5.1.1 -5.1.2 and / or 6.2.1 – 6.2.11)?

7.2 Did the respondent constructively dismiss the claimant (see issue 2 above)?

7.3 If so, did the act(s) (or omission(s)) or discrimination, harassment or victimisation sufficiently influence the constructive dismissal such that the constructive dismissal was itself unlawful discrimination or victimisation?

8. Remedy for discrimination or victimisation

8.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

8.2 What financial losses has the discrimination caused the claimant?

8.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

8.4 If not, for what period of loss should the claimant be compensated?

8.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

8.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

8.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

8.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.9 Did the respondent or the claimant unreasonably fail to comply with it?

8.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

8.11 By what proportion, up to 25%?

8.12 Should interest be awarded? How much?

END