



EMPLOYMENT TRIBUNALS

Claimant: Miss D Woldu

Respondent: Da'aro Youth Project

Heard at: Croydon **On:** 16, 17 and 19 February (in person),
20 February (via CVP), 23 February (hybrid),
24 February (in chambers) and 27 April 2026
(for judgment, hybrid)

Before: Employment Judge Leith

Representation

Claimant: In person

Respondent: Mr Zaman (Counsel) (days 1 to 6), Ms Oxley (Solicitor) (day
7, for judgment)

JUDGMENT

1. The complaints of direct age discrimination, harassment related to age, victimisation, failure to provide a written statement of terms, constructive unfair dismissal, constructive discriminatory dismissal and constructive wrongful dismissal all fail and are dismissed.
2. The Respondent's applications for costs and wasted costs are dismissed upon withdrawal.

REASONS

Claims and issues

1. The Claimant claims direct age discrimination, harassment related to age, victimisation, constructive unfair (and discriminatory) dismissal, constructive wrongful dismissal, and failure to provide a written statement of terms.
2. The issues were discussed at a preliminary hearing before EJ Tueje on 1 July 2025. Both parties agreed at the start of the hearing that the issues remained as captured in EJ Tueje's Case Management Orders, as follows:

1 The Complaints

- 1.1 Direct age discrimination;
- 1.2 harassment related to age;
- 1.3 victimisation;
- 1.4 failure to provide a written statement of terms of employment;
- 1.5 constructive unfair dismissal;
- 1.6 constructive discriminatory dismissal;
- 1.7 breach of contract/wrongful dismissal;

2 Jurisdiction – EqA claims

2.1 Were the Claimant's discrimination complaints presented in the First Claim and the Second Claim within the time limits set out in section 123 EqA? The Tribunal will decide:

- 2.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the acts complained of?
- 2.1.2 In relation to any complaints which are out of time, do they form part of a continuing act extending over a period of time?
- 2.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 2.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - (i) Why the complaints were not made to the Tribunal in time;
 - (ii) In any event, whether it would be just and equitable in all the circumstances to extend time.

2.2 The Respondent's position is that any allegations in the First Claim that are based upon acts or omissions said to have taken place on or before 3 January 2024 and any allegations in the Second Claim that are based upon acts or omissions said to have taken place on or before 7 August 2024, have been brought out of time and it would not be just and equitable to extend time. The Respondent does not consider any of the events alleged to constitute a continuing act.

2.3 The Claimant's position is that the Respondent's actions amounted to a continuing course of conduct extending up to the date of her resignation.

3 Direct age discrimination (EqA: section 13)

3.1 The Claimant's age was 73 at the date of issuing the First Claim and Second Claim.

3.2 Did the Respondent do the alleged acts the Claimant complains of? The Claimant says they were subjected to the following treatment:

- 3.2.1 Failing to provide the Claimant with an updated employment contract;

- 3.2.2 Engineering a situation where the Claimant was removed from her role and forced into a new role with more limited scope of duties;
- 3.2.3 Failing to consult the Claimant on the restructuring of her role;
- 3.2.4 Failing to consult the Claimant on the recruitment of a Youth Services Lead;
- 3.2.5 In the grievance outcome letter dated 17 May 2024 and the Chairman's report dated 19 November 2023 referring to alleged weaknesses, inadequacy and underperformance of the Claimant without proper grounds to do so and without having previously notified the Claimant of any concerns about her adequacy for, or performance, in her role;
- 3.2.6 Ignoring the Claimant's perspective and not taking her perspective seriously during the grievance appeal outcome process;
- 3.2.7 Planning to oust the Claimant from her post in the way the grievance appeal process was conducted, and the grievance appeal outcome was decided, as revealed by data subject access request ("DSAR") documents disclosed following a DSAR made by the Claimant on 2 April 2024; and/or oust the claimant generally;
- 3.2.8 Ignoring the Claimant's requests made on 5 July 2024 by email to put her in touch with someone who could explain to her how her payslip was calculated, and her requests for information as to which third parties the Respondent had shared her personal data with which should be set out in a privacy notice.

3.3 If so, was that less favourable treatment?

- 3.3.1 The Tribunal will decide whether the Claimant was treated less favourably than the Respondent treats or would treat an actual or hypothetical comparator (there being no material difference between the relevant circumstances of the comparator).
- 3.3.2 The Claimant will rely on a hypothetical comparator.
- 3.3.3 Has the Claimant shown facts from which, without further explanation, the Tribunal could conclude the less favourable treatment was because of the Claimant's age?
- 3.3.4 If so, has the Respondent shown that the less favourable treatment was not related to the Claimant's age?

4 Harassment (EqA: section 26)

4.1 The Claimant alleges that they were subjected to harassment related to the protected characteristic of age. The Claimant relies on the following alleged conduct:

- 4.1.1 Dr Bahru telling the Claimant that her role was "too much" for her in a meeting dated 2 October 2023;
- 4.1.2 Dr Bahru writing that the Claimant had "weaknesses" and that her "inability" to access emails was "problematic" in his email of 3 January 2024;

4.1.3 References in the grievance outcome letter dated 17 May 2024 to the Claimant's "weaknesses" and "the inadequacy of her skills and management abilities";

4.1.4 References in the Chairman's report dated 19 November 2023 to "underperformance" by the Claimant and to the Claimant's "sense of ownership and entitlement".

4.2 Did the conduct set out at paragraph 4.1 above occur?

4.3 If so, did that conduct amount to unwanted conduct that had the purpose or effect of:

4.3.1 violating the Claimant's dignity? or

4.3.2 creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

4.4 If so, was such conduct related to the protected characteristic of age?

4.5 In deciding whether the conduct had the relevant purpose or effect, account should be taken of:

4.5.1 the Claimant's perception;

4.5.2 the other circumstances of the case;

4.5.3 whether or not it was reasonable for the conduct to have that effect.

5 Victimisation (EqA: section 27)

5.1 Did the Claimant do something that constituted a protected act, or did the Respondent think the Claimant may do a protected act?

5.1.1 The Claimant relies upon her email of 15 July 2023 in which she complained that Ms. Robson had discriminated against her as constituting a protected act. ('First Act'). The Claimant alleges that the First Act was a protected act under section 27(2)(c) and/or section 27(2)(d) EqA.

5.1.2 The Claimant relies upon her grievance dated 22 February 2024 in which she denounced age-related harassment and victimisation ("Second Act"). The Claimant alleges that the Second Act amounted to a protected act under section 27(2)(c) and/or section 27(2)(d) EqA .

5.1.3 The Claimant relies upon the Claimant's DSAR dated 2 April 2024 ("Third Act"). The Claimant alleges that because of the Third Act, the Respondent thought the Claimant might bring proceedings under the EqA and therefore do a protected act under section 27(2)(a) and/or section 27(2)(d) EqA;

5.1.4 The Claimant relies upon issuing proceedings against the Respondent in the First Claim against the Respondent dated 14 June 2024 ("Fourth Act"). The Claimant alleges that the Fourth Act

amounted to a protected act under section 27(2)(a) and/or section 27(2)(d) EqA;

5.1.5 The Claimant relies upon the appeal she raised against the grievance outcome on 14 June 2024 ("Fifth Act"). The Claimant alleges that the Fifth Act amounted to a protected act under section 27(2)(c) and/or section 27(2)(d) EqA.

5.2 Did the Respondent do the following things:

5.2.1 With regards to the First Act:

- (i) Fail to inform the Claimant of next steps after a meeting of the Board dated 10 August 2023 where the Claimant's 15 July 2023 email of complaint was discussed;
- (ii) Fail to send the Claimant the minutes of the meeting of the Board dated 10 August 2023 where the Claimant's 15 July 2023 email of complaint was discussed;
- (iii) Engineer a situation where the Claimant was removed from her role and forced to choose between a new role with more limited scope of duties or redundancy;
- (iv) Fail to consult the Claimant on the restructuring of her role;
- (v) Fail to consult the Claimant on the recruitment of a Youth Services Lead;
- (vi) Dr Bahru writing in his email dated 3 January 2024 that the Claimant had "weaknesses" and that her "inability to access emails" was "problematic";
- (vii) Dr Bahru in his email dated 5 February 2024 expressing doubt as to the validity of the reasons why the Claimant was signed off sick;
- (viii) Accusations, found in Dr Bahru's email dated 3 January 2024, in the grievance outcome letter dated 17 May 2024 and the Chairman's report dated 19 November 2023 of the Claimant having "weaknesses" having inadequate skills and underperforming.

5.2.2 With regards to the Second Act:

- (i) Fail to invite the Claimant to participate in the grievance or investigation process further to a request from the Claimant dated 2 April 2024 to participate in writing by way of written representations;
- (ii) Prefer Ms. Robson's version of events over the Claimant's on the points raised within the Claimant's grievance dated 22 February 2024;
- (iii) Fail to come to fair and impartial conclusions on the points within the Claimant's grievance dated 22 February 2024;
- (iv) Fail to inform the Claimant of the witnesses who may have been interviewed as part of the grievance investigation; and
- (v) Fail to provide the Claimant with the evidence referred to or relied upon in the grievance investigation.

5.2.3 With regards to the Third Act:

(i) Fail to respond to the Claimant's DSAR in a reasonable timeframe or at all.

5.2.4 With regards to the Fourth Act and/or the Second Act and/or the Fifth Act:

- (i) Fail to provide any underlying evidence relating to the Claimant's grievance or the grievance appeal;
- (ii) Preferring Ms. Robson's version of events over the Claimant's in the grievance appeal outcome;
- (iii) Ignoring the evidence of the plan to oust the Claimant from her position (and instead upholding the untrue narrative about the reasons for the restructuring);
- (iv) Failing to come to fair and impartial conclusions on the points raised within the Claimant's grievance appeal;
- (v) Failing to provide disclosable documents and applying unwarranted heavy redactions to the documents disclosed in the DSAR;
- (vi) Constructively unfairly dismissing the Claimant on 24 September 2024 (when the Claimant resigned immediately in response to the Respondent's repudiatory breach(es) of her contract of employment.

5.3 If so, was the Claimant subjected to a detriment?

5.3.1 The Claimant alleges that the allegations in 5.2.1-5.2.4 above (inclusive) each amounted to a detriment.

5.4 If so, was the Claimant subjected to the alleged detriment(s) because the Claimant did a protected act?

5.5 Was the Claimant subjected to the alleged detriment(s) because the Respondent believed the Claimant had done, or may do, a protected act?

6 Failure to provide written statement of terms (ERA: section 1)

6.1 Was the Respondent required to provide the Claimant with a written statement of terms from 1 August 2023? Is so, did the Respondent fail to do so?

7 Constructive unfair dismissal (ERA: section 95(1))

7.1 The Respondent denies that it dismissed the Claimant and says that the Claimant resigned voluntarily with effect from 24 September 2024.

7.2 The Claimant alleges that the Respondent breached the implied term of mutual trust and confidence in the Claimant's contract of employment. The Respondent denies that there was any breach of the implied term of mutual trust and confidence, as alleged or at all.

7.3 Did the Respondent fundamentally breach the implied term identified in paragraph 7.2 above, so as to entitle the Claimant to resign ? If so, with or without notice. The Claimant relies upon the following alleged breaches:

7.3.1 The forced restructure of the Claimant's role with the intention to use the restructure as a covert way to oust her from the organisation;

7.3.2 The handling of the Claimant's grievance (failing to provide any underlying evidence relating to the Claimant's grievance and its outcome unfairly dismissing her grievance);

7.3.3 The DSAR response (both in terms of the very limited, incomplete and over-redacted disclosure, but also the intention to oust the Claimant revealed in the limited document disclosed);

7.3.4 The discriminatory conduct alleged in 3.2, 4.1 and 5.1 above;

7.3.5 The ignoring of her request on 12 August 2024 to not have contact with Ms. Robson due to the impact on her health;

7.3.6 The handling of her grievance appeal through ignoring the Claimant's perspective / not taking it seriously during the process, planning to oust the Claimant from her post in the way the grievance appeal process was conducted and the grievance appeal outcome was decided, failing to provide underlying evidence relating to the grievance appeal ("the last straw") and its outcome unfairly dismissing her grievance appeal and/or failing to come to impartial conclusions on the points raised within the grievance appeal.

7.4 Did the Respondent do the alleged acts the Claimant complains of at 7.3 above?

7.5 If so, did the Claimant resign in response to the alleged breaches identified at paragraph 7.3 above? The Respondent submits that the resignation was because the Claimant was not prepared to work with Ms. Robson.

7.6 If so, did the Claimant resign sufficiently promptly or should the Claimant be regarded as having waived or affirmed the alleged breaches identified at paragraph 7.3 above? The Respondent submits that the Claimant did not resign promptly, the resignation taking place over five weeks since the Claimant was in receipt of the grievance appeal outcome and after meeting with Occupational Health following the grievance appeal outcome demonstrating a continued intention to remain employed and seek to move past the concerns raised in the grievance process.

8 Constructive discriminatory dismissal (section 39 EqA)

8.1 If the Claimant was constructively dismissed, did she resign in response to any fundamental breach of contract which also constituted discrimination on the basis of the heads of claim set out at paragraphs 4, 5 and 6 above? If so, the Claimant will be regarded as having been constructively discriminatorily dismissed under section 39 EqA.

9 Wrongful dismissal/breach of contract

9.1 The Claimant's notice period is eight weeks. The Claimant resigned with immediate effect on 24 September 2024. The Claimant did not work and was not paid for any part of her notice period. Did the Claimant resign because of a fundamental breach of contract by the Respondent entitling the Claimant to resign without notice?

10 Remedy for EqA claims

10.1 What declarations, if any, as to the rights of the Claimant and Respondent would be appropriate?

10.2 What compensation, if any, should the Respondent be ordered to pay to the Claimant? In particular:

10.2.1 What financial losses has the discrimination caused the Claimant?

10.2.2 Has the Claimant taken reasonable steps to mitigate loss and reduce their lost earnings (for example, by looking for another job)? If not, for what period of loss should the Claimant be compensated?

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

10.2.4 Has the discrimination caused the Claimant personal injury? How much compensation should be awarded for that?

10.2.5 Did the ACAS Code of Practice on Discipline and Grievance Procedures apply? Did the Respondent or the Claimant unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant?

(i) The Claimant considers the Respondent unreasonably breached the Code by:

(A) Failing to invite the Claimant to participate in the investigation or grievance process in writing further to her request to do so, prior to delivering its outcome;

(B) Failing to come to fair and impartial conclusions on the points within the Claimant's grievance;

(C) Failing to communicate to the Claimant a grievance outcome within a reasonable timeframe;

(D) Failing to inform the Claimant of the witnesses who may have been interviewed as part of the grievance investigation; and

(E) Refusing to provide the Claimant with the evidence referred to or relied upon in the grievance investigation.

10.2.6 Is there a chance that the Claimant would have been fairly dismissed in any event, or for some other reason? If so, should the Claimant's compensation be reduced? By how much?

10.2.7 What interest, if any, should be added to the Compensatory Award?

10.2.8 Does the Compensatory Award need to be grossed up to take into account the impact of taxation?

11 Remedy for constructive unfair dismissal

11.1 What Basic Award is payable to the Claimant, if any?

11.2 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?

11.3 If there is a Compensatory Award, how much should it be? The Tribunal will decide:

11.3.1 What financial losses (both past and future) has the dismissal caused the Claimant?

11.3.2 Has the Claimant taken reasonable steps to mitigate loss and reduce their lost earnings (for example, by looking for another job)? If not, for what period of loss should the Claimant be compensated?

11.3.3 Is there a chance that the Claimant would have been fairly dismissed in any event had a fair procedure had been followed, or for some other reason? If so, should the Claimant's compensation be reduced? By how much? The Respondent submits that it would have dismissed the Claimant for some other substantial reason because the Claimant had communicated that she would not return to work without a change in line manager, which was not possible for the Respondent to accommodate.

11.3.4 Did the Claimant to any extent cause or contribute to their dismissal by their own actions and, if so, would it be just and equitable to reduce the Claimant's compensation? By what proportion? The Respondent submits that the Claimant contributed through refusing to be managed by the only manager within the Respondent.

11.3.5 Did the ACAS Code of Practice on Discipline and Grievance Procedures apply? Did the Respondent or the Claimant unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant?

11.3.6 Should any sums be deducted to reflect payments already received by the Claimant (e.g. a redundancy or ex gratia payment)?

11.3.7 Does the Compensatory Award need to be grossed up to take into account the impact of taxation?

11.3.8 What is the statutory cap on the maximum Compensatory Award in this case?

11.4 Has the dismissal caused the Claimant personal injury? What compensation should be awarded for that?

12 Remedy for failure to provide written statement of terms

12.1 Would it be just and equitable to make an award of compensation?

12.2 If so, what amount should be awarded (capped at four week's wages)?

Procedure, documents and evidence heard

3. On behalf of the Claimant I heard evidence from the Claimant herself and from Sky Ghebrelul, a volunteer with the Respondent (who is also the Claimant's granddaughter).
4. On behalf of the Respondent there was evidence before the Tribunal from:
 - 4.1. Sarah Robson, who was the Project Lead for the Respondent during the latter part of the Claimant's employment;
 - 4.2. Benjamin Hunter, who was one of the co-founders of the Respondent;
 - 4.3. Yohannes Bahru, who was the Chair of Trustees during the latter part of the Claimant's employment;
 - 4.4. Futsum Kahsa, a Trustee of the Respondent;
 - 4.5. Adonay Berhe, a Trustee of the Respondent who was part of the panel who considered the Claimant's grievance;
 - 4.6. Mikal Woldu, a Trustee of the Respondent who heard the Claimant's grievance appeal.
5. Each of the witnesses gave their evidence by way of a pre-prepared witness statement, on which they were cross-examined (with the exception of Mr Kahsa, who was not subjected to cross-examination because the Claimant ran out of time). Mr Hunter had to be recalled briefly because of a document which came to light after his evidence had concluded.
6. I had before me a bundle of 1194 pages, and a supplementary bundle of 23 pages. References in this judgment in [square brackets] are to page numbers in the main bundle. I additionally had before me an agreed cast list, and a chronology (which was not agreed, but on which the Claimant had added her comments). Additional documents disclosed by the Respondent were admitted during the course of the hearing, for the reasons given orally at the time.
7. At the start of the hearing I agreed a timetable with the parties as follows. The first two days would be for the evidence of the Claimant and her witness. The Respondent's evidence would then be on the third, fourth and if necessary the morning of the fifth day, with submissions on the afternoon of the fifth day. That would allow the Tribunal the sixth day to deliberate, before delivering an oral judgment on the seventh day. I reminded the parties of the timetable as the hearing went along. I also explained to the Claimant that I would not manage her time as between the various witnesses, as she would know which witnesses she would have more questions for than others. I reminded the Claimant at various points during her cross examination of the Respondent's witnesses to keep her questions

focused on the issues for the Tribunal, and I assisted her to phrase or clarify a number of the points she wanted to put to the Respondent's witnesses. The Claimant spent a lot of time in cross-examination focusing on irrelevant matters, and had to be reminded several times to focus her questions on the issues for the Tribunal to decide. The Tribunal also sat late on day 5 to give the Claimant additional time, and allowed the cross-examination of Dr Bahru to go on until approximately 2pm on day 6 (despite the timetable having been to be finished by lunchtime, i.e. 1pm). In the event, there was insufficient time for the Claimant to ask any questions of Mr Kahsa, who would have been the final witness.

8. The first two days of the hearing consisted of the Claimant's evidence. They took place in person at the Tribunal in Croydon. We took regular breaks as required by the Claimant. I allowed the Claimant to give long and at times discursive answers to questions, to ensure that she had had the opportunity to properly explain her evidence.
9. At the end of day 2 the Claimant suggested that she may not be well enough to attend the Tribunal on the morning of day 3, and that she may only be able to attend in the afternoon. The Claimant also explained that she had a long journey to the Tribunal, and that she may find it easier to attend by video. She explained that she was worried about her ability to engage with a video hearing. The Respondent had no objection to the hearing taking place by video. I therefore suggested that the Claimant take her laptop with her to Tribunal on the next day of the hearing, and the Tribunal staff could assist her to connect and give her some assurance about the possibility of connection by video – then if she felt comfortable doing so, we could convert the remainder of the hearing to take place by video.
10. Prior to the third day of the hearing, the Claimant emailed the Tribunal to indicate that she was unwell and would not be attending the Tribunal. She was asked to confirm whether she would be attending in the afternoon, as she had suggested the previous day. She explained that she would not, and that she was seeking medical advice. The hearing therefore did not proceed on day 3.
11. The Claimant attended the Tribunal on the fourth day of the hearing. She explained that she was not feeling entirely well, but wanted to finish the hearing. I reminded her that she must tell me if she was not feeling well enough to proceed with the hearing or if she needed a break. Once again, we took more frequent breaks. The Claimant also explained that her GP would be telephoning her for a telephone appointment during the day at some point, although she could not say when. She had not been able to obtain an appointment on the previous day. I allowed her to leave her phone on during the hearing, and she ensured that she would have somewhere private to go if the phone rang.

12. As it was, the Claimant's phone rang shortly before the Tribunal would have stopped for lunch in any event. She took the call then we went straight to the lunch break. When the Claimant returned after lunch, she explained that her GP had told her that she should go to hospital, but she did not want to do so. I explained to the Claimant that it was a matter for her, and that the Tribunal would not say anything to suggest that she should not follow her GP's advice. The Claimant explained that if she went to hospital she would be there for 8 or 9 hours, and that she would rather wait and see how things went, and take extra breaks if necessary. I reminded the Claimant that she must tell me immediately if she was feeling unwell or needed a break.
13. The Claimant explained that she would prefer to connect to the remainder of the hearing by video. The Tribunal staff (and Mr Zaman) spent some time during breaks in the Tribunal day assisting the Claimant to access the CVP platform from her laptop, and ensure that she was confident navigating it. The Claimant then confirmed that she was comfortable accessing the CVP platform, so the remainder of the hearing was converted to take place by video.
14. The fifth day of the hearing then took place by video. Barring a couple of moments when the video froze, which is not uncommon in video hearings, the day ran very smoothly.
15. Between the fifth and sixth day of the hearing, the Claimant emailed the Tribunal to indicate that she would be attending the sixth day in person and that she wanted the hearing to take place in person. The Respondent's solicitor responded to indicate that the hearing was by video, and that the Respondent's Counsel and witnesses would not be attending the Tribunal. The Tribunal saw the emails for the first time on the morning of the sixth day of the hearing (by which point the Claimant was already in the Tribunal building). The Tribunal staff made a room available so that the Claimant could join the video hearing via the large screen. All other parties attended by video.
16. The evidence ended at lunchtime on the sixth day of the hearing. On the afternoon of the sixth day I heard closing submissions from Mr Zaman and from the Claimant.
17. Because a day of the hearing had been lost, I indicated to the parties that that I would no longer be in a position to deliver an oral judgment on the final listed day of the hearing. I therefore gave the parties the option of a reserved written judgment, or returning to have an oral judgment on another day (alongside dealing with the Respondent's outstanding costs application). Both parties indicated their preference would be for an oral judgment. The case was therefore listed for the first available dates, taking into account the availability of the parties and the Tribunal. The case was listed to be by CVP, with the agreement of both parties.

18. A few days before the parties were due to attend for judgment, the Claimant emailed the Tribunal to indicate that she wished the hearing to take place in person. The hearing was therefore converted to a hybrid one, with the Claimant attending the Tribunal in person and the Tribunal and the Respondent attending by video. After I had delivered the Tribunal's reasons orally, the Claimant requested written reasons. The Respondent indicated that the costs application was withdrawn, and I have dismissed it upon withdrawal.

Factual findings

19. I make the following findings on balance of probabilities. I have not dealt with every area canvassed before me; rather, I have focused on those necessary to reach a conclusion on the issues in the claim.
20. The Respondent is a charity, which was set up to assist young refugees from the Horn of Africa. The Respondent grew out of the Injera Club, a weekly safe space for asylum-seeking young people from Eritrea. The Injera Club was formed following the death by suicide of a number of unaccompanied asylum-seeking minors from Eritrea in 2017 and 2018. The Claimant was one of the founders of the Injera Club, along with Mr Hunter. She was herself a former Eritrean refugee.
21. The Respondent was formally registered with the Charity Commission as a Charitable Incorporated Organisation in April 2020. A board of Trustees was then ultimately responsible for the management and oversight of the Respondent.
22. The Claimant was employed by the Respondent as Operational Manager from 22 October 2020. She worked 0.5 FTE (compressed into two days, worked on a Tuesday from 9am to 9pm including attendance at the Injera Club, and Wednesday normal business hours). Prior to taking up her employed role with the Respondent she had worked full-time for the Refugee Council. She reduced her working hours with the Refugee Council in order to take up her position with the Respondent, and continued to work both jobs in parallel.
23. There was some dispute before me regarding how the Claimant came to take up her role with the Respondent. Her evidence was that the role was advertised externally and that she applied for it and was appointed. Mr Hunter's evidence was that his recollection was that the Claimant had been appointed without any interview. The contemporaneous documents showed that the Respondent had asked the Charity Commission for permission to appoint the Claimant without a full recruitment process, and that permission had not been granted. Mr Hunter's evidence when he was referred to that document was that he still believed that the Claimant had been appointed without a formal interview, and that the job had been advertised on a charity

jobs website for 13 days, but that the result was always going to be the same, and that it would never have gone to anyone other than the Claimant.

24. I prefer the Claimant's evidence. That is consistent with the contemporaneous documents. It was evident during Mr Hunter's evidence that he held a degree of animosity towards the Claimant. In particular, he believed that she had acted inappropriately by bringing these proceedings against the Respondent as a charity. Mr Hunter's evidence came close to suggesting that the Respondent effectively conducted a sham recruitment process simply in order to satisfy the Charity Commission. It would be surprising if that had been the case. I bear in mind, of course, that on his own evidence Mr Hunter was not directly involved with the recruitment process. I find that the Claimant was subject to an open recruitment process for the role, notwithstanding her position as a founder.
25. The Claimant was employed on a fixed term contract from 22 November 2021 to 23 May 2022 [211]. She was then given a further fixed term contract from 1 August 2022 to 31 July 2023 [222].
26. Initially the structure of the Respondent had two roles of equal seniority – the Claimant's role, and the role of Project Co-Ordinator, which was held by Mr Hunter. Both roles reported directly to the Trustees.
27. On 28 August 2021, the Mr Hunter and the Claimant had what was described as a "strategy meeting". At that meeting, they took stock of what had been accomplished and what had not been accomplished yet, and what had gone wrong and how it could be fixed. Mr Hunter kept notes of the meeting. The notes recorded that there had been a breakdown in communication between the Claimant and Mr Hunter. They referred also to the Claimant not replying to emails and texts, not filing important documents correctly, not managing the volunteer schedule, and not managing the Casework. The notes recorded that the Claimant and Mr Hunter would speak more frequently and deal with any issues that arose in private first before taking them to the Trustee Board, and that the Claimant would manage the volunteer schedule and the casework.
28. It was put to the Claimant in cross-examination that from August 2021 onwards, she had had some difficulties in her working relationship with Mr Hunter. The Claimant denied that characterisation (although her evidence was that there may have been one or two "hiccups", as would be the case in a normal working environment). Bearing in mind the contemporaneous notes of the "strategy meeting", and the fact that such a meeting was needed at all, I find that the Claimant's evidence underplayed the extent of the difficulties between her and Mr Hunter.
29. Mr Hunter's evidence was that during the meeting on 28 August 2021, he informed the Claimant that he planned to resign in the coming months, and she said that she was also looking to resign. That was not recorded in the

notes. The Claimant's evidence was that she had never told Mr Hunter she was thinking about retiring or resigning.

30. I prefer the evidence of the Claimant in that regard. I consider that if that had been something the Claimant had said as any more than a throw-away remark, it would have been recorded in the notes of the strategy meeting, since it would have been important for future planning purpose. Given that the Respondent was a very small organisation, if both founder-employees were planning to leave within a short space of time then that would have been a notable matter requiring action to future-proof the charity.
31. Other staff had been recruited by the Respondent including Krista Toivonen, a Youth Caseworker. Ms Toivonen resigned from her role on 25 November 2021, at the end of her probationary period. In her resignation email, she referred to the management style of "certain managers" as being "punitive and micromanagerial". The examples she gave to support that characterisation were of actions of the Claimant (and to a lesser degree, Mr Hunte). In cross-examination, the Claimant did not accept that this was a valid criticism of her management style. Her evidence was, in essence, that she was never taken to task for those alleged behaviour (and by implication, they therefore could not have been a problem). I deal with this in my conclusions.
32. In January 2022, MR Hunter announced his resignation, giving 6 months notice. His evidence was that the main reason he resigned was due to the issues he had with the Claimant, although he did not say that in his resignation letter as he did not want to create unnecessary conflict.
33. The Trustees met on 31 March 2022 to discuss replacing Mr Hunter. Celia Sands, from the South London Refugee Association, joined the meeting to provide advice. She advised moving to a management structure with a single overall manager. The Trustees decided to recruit for an overall lead manager who would oversee the Respondent's other staff [273]. The job description that was produced was for the role of "Project Lead", which could be done either 5 days or 4 days per week. The job description noted that the role would be responsible to the Board of Trustees, and would lead the Senior Management Team.
34. The Claimant was on the interview panel for the new role. Sarah Robson, who at that time was employed as a Caseworker, applied for the role, but was unsuccessful. Dr Nataliya Paszkiewicz was appointed and took up the post in July 2022.
35. Given that the Claimant was on the interview panel for the role, I find that she must have been well aware that the role was to be the senior manager responsible for the operation of the Respondent (and consequently would be the Claimant's manager).

36. Sarah Robson shadowed Dr Paszkiewicz one day per week to broaden her experience. The Claimant's evidence was that that had been her idea.
37. On 12 November 2022, the Respondent had a strategy away day, which was attended by the Trustees and senior staff (including the Claimant) [287]. The notes of the meeting reorder under "Challenges/areas for development" – "Structure of the organisation" and "Part-time work and the need for more full-time work / increasing capacity".
38. Dr Paszkiewicz tendered her resignation on 1 March 2023. She did not give her reasons for resigning in her resignation letter, but on 26 June 2023 she emailed three of the Trustees to explain her reasons for resigning [360]. She described the organisation as suffering from "Founders Syndrome" – in reference to both the Claimant and Mr Hunter. She referred to the fact that the Claimant had never had an appraisal (it is common ground that the Claimant was never appraised – her evidence was that no one ever asked her to attend an appraisal). She also referred to what she described as the Claimant's "underperformance", and in particular referred the fact that the Claimant had not conducted a probationary meeting with a Youth Activities Coordinator she managed, who then went on extended sick leave. The Claimant's evidence to the Tribunal was that while she had not had a formal probationary meeting with the individual in question, she had met with her regularly and had no problems with her performance.
39. On 3 March 2023, two days after Dr Paszkiewicz had tendered her resignation, the Claimant had a conversation with Dr Bahru, the Chair of the Trustees. Dr Bahru followed that conversation up with an email later the same day [308]. In that email, he referred to the fact that the Claimant had suggested that Mr Hunter return on a temporary basis, but that he considered that that would muddy the waters. He then noted that the plan was that Ms Robson would take over the role of Project Lead. He asked the Claimant to provide her with her "unreserved support".
40. On 16 March 2023, the Claimant emailed the Trustees (And Ms Robson) as follows [312]:
- "I am pleased to hear that you have made a decision to replace Natalia and to bring stability to the project.
- I think it was the right decision to hire Sara. I am pleased that I invited Sara to join Daaro when Seare the (acid attack) young person was injured and she was helping him. I want you to know I want to support Sara as much as possible in her role.
- However, I also want to raise how unhappy I am about the procedure as how decisions were made. As part of the senior management team I should have been at the trustee meeting.

I also worry that you have made a decision to hire someone who is inexperienced for case work without a proper plan in place for how they will be supported. Sara is being left in the deep end, we are short staffed, short of funds and struggling-how will Sara be supported during the difficult first weeks and months?

I understand you have also made a decision to hire yorsalem for three months before holding an open recruitment. This decision should not have been made without input from senior management. The trustee board should not make recruitment decisions for junior staff members.

In my opinion it is very wrong to excluded senior management in a meeting as important as this.”

41. The Claimant's evidence was that she didn't have a problem with Ms Robson becoming Project Lead, and that her problem was the procedure – that is, that senior management (impliedly, the Claimant herself) were not involved in the decision-making process about what would happen after Dr Paszkiewicz's resignation, and that there was no internal or external recruitment process for the role.
42. After Ms Robson's appointment as Project Lead, the Claimant and Ms Robson met every Tuesday afternoon, before the Injera Club (which was on a Tuesday evening).
43. On 23 June 2023, the Respondent held a fundraising event. The Claimant's evidence was that she was excluded from the organisation of the event. The evidence of Ms Robson was that the Claimant was given opportunities to be involved.
44. A number of speakers were to address the attendees during the event, including a young person who had travelled from Milton Keynes to read a poem.
45. The Claimant's evidence was that she was not asked to speak at all. The evidence of Ms Robson was that the Claimant was given a 10 minute slot, which was to be after the young person had spoken. The evening was compered by Yordanos Feseha, a volunteer.
46. The first speaker was Dr Bahru. After Dr Bahru had spoken, when Ms Feseha was about to introduce the next speaker, the Claimant took the microphone from Ms Feseha. She proceeded to speak for approximately 40 minutes. The Claimant agreed in evidence that she had taken it from Ms Feseha (although she did not accept the characterisation that she had snatched it).

47. On 28 June 2023, Ms Feseha emailed the Trustees to complain about the Claimant's behaviour [364]. Within the email she said this:

"Firstly, while I was addressing our guests, a crowd of approximately 200 people, Dehab unexpectedly came on stage, took the microphone from me, and proceeded to speak for 30-40 minutes.

While I have no objections to her speaking about the creation of Da'aro, it is worth noting that I and several others involved in planning this event had asked Dehab prior to the event if she wanted to contribute in any way.

This type of unscheduled interruption is not an isolated incident, and it is disheartening to witness such unprofessional conduct by one person after many of us have put in tremendous effort to make the event successful. We had set an agenda for the evening and showed it to Dehab in advance, only for her to disregard it on the night without notifying any of us in advance. I believe it is crucial for the board to address these recurring issues.

Further, during the event, Dehab took it upon herself to distribute certificates to individuals who had participated in a half marathon in March. Despite my repeated requests that she wait until the end to do this (as time was running short) Dehab proceeded to take the microphone again and spent another 30-40 minutes talking and distributing certificates.

This not only meant our mental health panel's talk which was scheduled to run for about 40 minutes was significantly curtailed, but also meant that attendees, at least one of whom suffers from anxiety were suddenly forced to stand in front of a large crowd of people for an extended period without their consent being sought.

Given that we had reached out to Dehab on multiple occasions prior to the event to involve her or offer assistance, it is disheartening that we received no response until the day of the event. I genuinely believe these actions were not carried out with good intentions. It is essential that the board addresses the behaviour Dehab has demonstrated, as it is not my responsibility to hold her accountable."

48. She concluded her email by asking that the matter be looked into by the Board, and indicating that as a result of it, she had decided to take a step back from volunteering for the next few months.

49. Ms Robson's evidence was that on 11 July 2023, she had a meeting with the Claimant about her behaviour at the AGM/fundraising event. Her evidence was that she explained that the content of the Claimant's speech was inappropriate for some of the younger attendees, as she spoke about the

suicide of young people. Her evidence was that she then went on in the meeting to discuss the proposals to restructure the Respondent, and that she showed her a draft organogram which did not include the Claimant's role of Operational Manager, but instead had two roles reporting to the Project Lead – Youth Service Manager, and Community Engagement Lead [373]. Her evidence was that she told the Claimant that both she and Mr Hunter considered that the Youth Activities Coordinator role would be a perfect fit for the Claimant, although she was welcome to be considered for either role. The Claimant's evidence was that the restructure was not mentioned at that point, and that the first time she became aware of it was in the lead-up to a meeting which took place on 2 October 2023. I deal with this in my conclusions

50. Also on 11 July 2023 there was a meeting between the Claimant, Ms Robson and Yorsalem Feseha, a Caseworker. The meeting was to discuss an issue that had arisen where Ms Feseha had arranged for a photographer to attend the Injera club to take photographs of the club. The Claimant had not been told that the photographer would be attending until Ms Robson sent her a text message at 5:30pm, half an hour before the club started. Ms Robson was on leave at the time.

51. On 12 July 2023, Ms Robson emailed the Claimant (copied to Dr Bahru) [378]. She took issue with the Claimant's management of Ms Feseha, and specifically with the way that the Claimant had spoken to Ms Feseha in the meeting the previous day. Among other things, she said this:

“During the course of the meeting you displayed an alarming lack of professionalism by utilizing a tone that was condescending and belittling. Moreover you failed to provide any constructive feedback or support, opting instead to engage in a personal attack on Yorsalem. Such behavior not only undermines the morale and wellbeing of our workforce but also contravene the principles of mutual respect and dignity that our organisation should uphold.”

52. On 13 July 2023, Ms Feseha emailed the Claimant and Ms Robson [1120]. The email followed on from a meeting which had taken place on 11 July 2023. In her email, she described her work ethic and character being questioned, and the Claimant not making any attempts to reach out to her and enquire about her progress or well-being in the three months she had been employed by the Respondent.

53. The Claimant replied to Ms Feseha's email. She explained that she had not intended to cause any upset apologised if she had come across strongly [1192].

54. On 15 July 2023, the Claimant emailed Dr Bahru and Elaine Chase (another Trustee), to raise concerns about Ms Robson's "leadership skills and

competencies as a team lead” [380]. She concluded her email by saying this:

“For the past three months I have been made to feel isolated and discriminated against and this has impacted my mental well-being.

I urge the board of trustees, for the benefit of Daaro and the service users, to review our policies and procedures and ensure we are complying with the Discrimination and Equality Act 2010.

I am requesting an urgent meeting with the trustees to further discuss these serious matters. Also I would like clarification of the roles and responsibilities of the project lead and the operational manager.”

55. The email did not indicate the basis on which the Claimant was alleging she had been discriminated against. Her evidence was that what she had in mind at the time was her age, because she was older than the other employees and volunteers.
56. On 25 July 2023, the Claimant had a meeting with Ms Robson. Their Google calendars showed that the meeting was scheduled for two hours. On the Claimant’s calendar it was described as “meeting with Sara to discuss SAR partnership” [414]. Ms Robson’s evidence was that the meeting had originally been scheduled to meet Celia Sands, the CEO of the South London Refugee Association, but she had cancelled at short notice. Her evidence was that they therefore used the time to talk about the new roles that were proposed within the restructure. The Claimant’s evidence was that she could not remember what the meeting was about, but there was no discussion of the restructure and she remained unaware of it. I deal with this in my conclusions.
57. On 10 August 2023, Elaine Chase and Futsum Kahsa had a meeting with the Claimant to discuss her email of 15 July 2023. Ms Chase emailed Dr Bahru a summary of the meeting, although she did not send it to the Claimant [415]. The email noted that the discussion had lasted over an hour. It referred to a breakdown of communication between the Claimant and Ms Robson. IT said this:

“Dehab feels very strongly that she does not want to be line managed by Sarah and feels this would be inappropriate – this is something for Trustees to discuss.

[...]

Dehab proposed that she is directly supervised by someone that understands her role. She suggested this could be Celia [Sands] or a colleague of Celia’s as SLRA. Futsum and I said that we would take this suggestion back to the trustee board.”

58. The email also referred to Dr Chase and Mr Kahsa having discussed a broader need to think about the structure and organisation of the Respondent as a whole, although it did not suggest that the Claimant had been present for that part of the discussion.

59. The Claimant's evidence was that she had not said that she strongly did not want to be managed by Ms Robson, although she had suggested that someone like Ms Sands should mentor both her and Ms Robson and to supervise her. Mr Kahsa's evidence was that the email was an accurate summary of the meeting. I deal with this in my conclusions.

60. On 28 August 2023, Ms Robson wrote to the Trustees regarding the long-term strategic plan for the Respondent [419]. Within that letter, she said this regarding the Claimant's role:

"The crux of the problem is the Operations Manager. There is job description for this role, attached to the contract dated 1 August 2022. It is an adequate job description setting out clearly the tasks which need to be carried out by the Operations Manager. (It's worth noting that the contract expired on 31 July 2023 and that it has not yet been renewed)."

61. She then went on to refer to the fact that the Claimant had not been appraised, and said this:

"Dehab has made it clear that she does not accept that I am her line manager and therefore she would not accept any appraisal process led by me. One of two things must happen to resolve this unsustainable situation: either the Trustees must appraise Dehab, formally; or the Trustees must inform Dehab that she must accept that her line manager (me) must complete her appraisal every three months."

62. She referred to a number of areas of the Claimant's role of Operations Manager which she did not consider the Claimant was carrying out, before concluding as follows:

"Given that Dehab has demonstrated consistently that she is not able to deliver adequately the role as defined in the job description, we need to employ someone else, full-time, to do the required work. The job title would be something along the lines of "Administration Manager" and it would include certain additional areas of responsibility such as HR."

63. The Claimant's evidence was that no one had ever formally asked her to attend or complete an appraisal.

64. On 4 September 2023, the Claimant met with Dr Bahru, Mr Kahsa and Ms Robson to try to resolve the communication issues. During the meeting, the Claimant alleged that Ms Robson had taken holiday without telling the Claimant. After she made that allegation, the Claimant was taken to emails Ms Robson had sent her informing her about the annual leave. The Claimant then acknowledged in the meeting that she had, in fact, been sent those emails and that Ms Robson had told her about her holiday. She did not apologise for the accusation she had made.

65. A further meeting took place between the Claimant and Ms Robson on 5 September 2023. Ms Robson's evidence was that the restructure was discussed during the meeting. The Claimant's evidence was that it was not discussed.

66. On 12 September 2023, the Claimant emailed Ms Robson, Dr Bahru and Mr Kahsa, saying this [476]:

"I am emailing you to find out how long I have to wait to have my contract and clear role and job description."

67. Dr Bahru replied as follows on the same day:

"We are acute aware of the need to address the Issues raised in your email. It is an issue we (the trustees) need to collectively discuss and address soon.

Thank you again for bringing it to our attention."

68. On 15 September 2023, Dr Chase emailed Dr Bahru following a meeting she had had with Ms Robson. Within that email, she said this [483]:

"Sarah and I then spoke at length about the organisation more generally. I understand that with Benny she has proposed a strategy for moving forward (including a staffing plan) – it would be great to discuss this with all trustees soon – and again this is an exciting development.

HOWEVER – we are still stuck with this real impasse in terms of line management of the Operations Manager role at Da'aro. I am deeply concerned about this and feel that it is stopping the organisation moving forward. I think as trustees we need to come up with a rapid solution and execute it. At the moment there seems to be an endless number of meetings which appear not to be going anywhere – or perhaps the progress has not been communicated."

69. On 18 September 2023, the Claimant emailed MS Robson to say that she would take TOIL on 10, 11, 17 and 18 October (two working weeks), then annual leave carried over from the previous year on 24, 25 and 31 October

and 1 November, returning to work on 7 November [488]. Ms Robson replied that she would check with the Trustees whether the Claimant was able to take holiday carried over from the previous year. Ms Robson was then absent from work due to ill health.

70. On 21 September 2023, Mr Hunter emailed Dr Bahru and Dr Chase [491]. In that email, he said this:

"I spoke to Sarah yesterday who was feeling better and we talked through the options. I think she will have sent you draft job descriptions for the three roles -- Head of Youth Services, Youth Activities Coordinator and Community Engagement Lead -- as well as a staff structure diagram. We haven't yet budgeted it -- but I would be very surprised if 1 year contracts of those three roles were not already covered by the fundraising that has been done this year alone. Perhaps the board can agree this plan pending a full budget, which can be forthcoming once Sarah has recovered from Covid ? I think there should also be room for minor changes to the job descriptions before they are advertised. Presumably the Community Engagement Lead wouldn't be advertised -- and the trustee board or/and Project Lead would sit down to discuss the offer with Dehab."

71. He additionally expressed his surprise that all of the Trustees had not been involved in a discussion about the restructure.

72. Dr Bahru responded as follows [491]:

"Dear Benny - I do agree with a lot of what you have said - I have worked until after 1AM and have sent back with the amendments I thought necessary. As for the community engagement lead - I am truly looking beyond Dehab - as a serious senior post. Happy to talk to you this afternoon if you have time.

As not involving the new trustees in the decision making is misinformation - we will do the ground work - all the external consultation - the final discussion and discussion with the input of all the trustees will make the final decision. As you may well appreciate it will need a delicate sensitive balancing work, not to make people happy but in serving the best interest of DYP until we have got a solid structure that can withstand bad weather- I honestly, we are nearly there."

73. Also on 21 September 2023, Dr Bahru met with Dr Chase, Mr Kahsa and Ms Nardos Yemane to discuss the proposed new structure.

74. On 24 September 2023, Dr Bahru emailed the Claimant as follows [475]:

"Few weeks back Futsum Nardos and I have been asked by the trustees to look in to the management structure taking into account the implementations of the action plans we jointly set out November 12, 2022, our finance. As part of this we are keen to have a virtual meeting with you with the objective of

1. Appraising your performance in line with your job description and
2. Discuss your future role in the proposed restructured management structure

Given the urgency of the matter may I suggest a meeting in the coming week in one of the evenings 25 to 27 alternatively on the week end of 28 and 29 September."

75. In the event, the meeting could not take place on 28 or 29 September. Nardos Yemane emailed the Claimant on 29 September to ask if the meeting could take place instead on 2 October 2023 [471].

76. The Claimant replied as follows, on 2 October 2023 [470]:

"I appreciate your email, although I would have appreciated an earlier notification regarding the cancellation of the meeting on 29th September at 7 p.m.

I have been unwell for the past five days. However, I am willing to engage in a brief discussion for one hour about the renewal of my job contract before I proceed on my annual leave. I am also keen to address my role and responsibilities as outlined in my job description as the operational manager.

Given the circumstances, I believe it would be more appropriate to conduct the appraisal upon my return from holiday for several reasons:

1. I expect to receive a month's notice for any appraisal meetings. Additionally, I should have received the appraisal form that I am required to complete beforehand to prepare adequately.

Fulfilling my job roles and responsibilities, as in my job description, remains my utmost priority. Let's briefly discuss these responsibilities in our planned meeting."

77. The meeting took place that evening. It is common ground that at that meeting, Dr Bahru told the Claimant there would be a restructure. The Claimant's evidence was that Dr Bahru told her that the job was too big for one person, and would be split into two.

78. On 4 October 2023, the Claimant email Ms Robson as follows:

“Hi Sara.

I am going to take Toil on 7 and 8 of November. Also as you said I am going to clear my annual leave of 2023 before the new year, I already booked from 14th of November till 20th of December. Diary has been updated.”

79. Ms Robson replied as follows:

I am now confused, have you not booked next month until 7 November as a holiday? Have you changed your mind or is this on top of it?

80. The Claimant then responded:

“You don't need to be confused, the November holiday and toils booking are on top of my October toils and holidays.”

81. Ms Robson's evidence was that she was aware that the Claimant had accrued around 60 hours TOIL, and she had asked her on a number of occasions not to accrue such a large amount. Her evidence was also that she would have expected and required more notice of the Claimant's was planning to take (effectively) three months off work.

82. On 5 October 2023, Dr Bahru emailed the Claimant to summarise the meeting they had had on 2 October [530]. Within that email, he noted as follows:

82.1. The purpose of the meeting was to discuss the restructuring consultation for the Respondent.

82.2. The Respondent was in receipt of a relatively large amount of funding to be used within the next year, which would require restructuring the management structure and workforce.

82.3. Ms Yemane, Mr Kahsa and Dr Bahru had been discussing the matter for a number of weeks, and had set out the structure which had been discussed in the meeting of 2 October (and was also attached to that email). That showed that the Claimant's role of Operational Manager had been removed, and replaced with two other roles – Youth Services Manager, and Community Engagement Lead. Job descriptions for both roles were attached to the email.

82.4. There would be a period of consultation, and the Claimant could apply for either role. Taking into account the Claimant's experience and skills, the Trustees recommended the role of Community Engagement Lead.

82.5. The Claimant should have been appraised by the Project Lead, but that she had made it clear that she was not willing to be appraised in that way.

83. Dr Bahru concluded the email by wishing the Claimant a happy and relaxed holiday, and noting that he looked forward to hearing from her on her return.

84. In November 2023, Dr Bahru produced the Chairman's Report [578]. Of particular relevance he said this:

When referring to the introduction of the role of Project Lead:

"By nature of how DYP was founded, they [the Claimant and Mr Hunter] both assumed the job without the need for a selection process."

When referring to the challenges faced by Ms Robson in taking up the role of Project Lead:

"More importantly she was able to do this in the midst of intractable and difficult challenges from within. Top of her challenges was the refusal of Dehab to accept her leadership role. This had a serious impact on bringing an orderly working relationship as well as dealing with regular confrontations to maintain management discipline and order at work."

Regarding the Claimant:

"As one of the founding members of DYP, she has played a vital role in its foundation. She has made an unparalleled contribution in galvanising community support. She has been working as Operational Manager of DYP from the time of its foundation as a charitable organisation. The operational manager's role included managing Injera Club and youth services with the scope of managing case workers, activities lead and volunteers as well as the day-to-day management of Injera Club. She worked as a lead on Safeguarding too. This job's responsibilities were large for one person. During our review (July to September 2023) of the management structure of DYP we felt that it needed to be divided in to two posts.

This was especially necessary in the light of the urgent need for service expansion requirements in order to make use of the current funding we have secured.

[...]

Contract Renewal: The Operational manager Role will be replaced as discussed above. Since last July Dehab is in on a month-by-month rolling contract until the YSM is in place. This is similar to what we have done in the past with many of the people who worked under her supervision. Dehab is well aware of this situation.

[...]

Problems and challenges: There have been recurrent working relationship problems with Benny which required several interventions from the trustees. She also had several complaints from the people she managed as well as from Natalia and Sarah. These are predominantly poor performance and communication related. There is serious issue of management ability as well as serious and damaging interpersonal relationship as reflected in the letters of complaints from other staff. There are also several indications of matters related to conflict of interest.

While it does not diminish her key role in the history of DYP, Dehab's claim that "I am the founder of DYP" should not go unchallenged. Futsum and many others have been part of this movement from day one. On an overall assessment it appears that Dehab's actions project a sense of ownership and entitlement.

[...]

In the case of her own appraisal, which should have been done by the project lead was not possible to conduct one. Unfortunately, to many of us (Futsum, Elaine and I) and to the project lead, Dehab has made it clear that she would not want to be lead or managed by Sarah by stating "She {Sarah} is my Junior I do not want to be managed by her". This has made it difficult for all of us and is a serious challenge to the structure we have worked hard to build and a great challenge to the board of trustees. It has also seriously and adversely compromised the position of the project leader.

Invoicing and conflict of interest: The key issue was the source and safety of food supply to injera club. From January to June of 2023, Dehab has been invoicing injera club weekly. This was made in the name of her son at her home address.

Despite an agreed and settled supply from a certified and legal provider, this was breached on 2 separate occasions at later dates. The resulting disharmony and arguments led to multiple emergency meetings in addition to several email communications at trustees' board level.

[...]

What is more challenging is now despite knowing that she is on a monthly rolling contract, Dehab has taken nearly 3 months of annual leave; 62 hours of TOIL and 6 days of annual leave from last year.

There was no authorisation from any one. The only way we knew about this was via out of office automated email reply "I am on leave 7 of October to 20 of December". We will need to discuss if this can be considered as a breach of contract?

Such sense of ownership and entitlement if left unchecked and not addressed early rather worryingly could have a chilling effect as was the case on one large and significant charity with National appeal [the footnote here referred to Camilla Batmangelij of the charity Kids Company]. What should be done? Let us ask ourselves what would I do if she was my employee?

[...]

However collectively we have not paid due attention to her underperformances early enough. There were too many competing challenges then is the main reason for this failure. Moreover, the notion that she is the founder, and the fact that all the trustees except Elaine have been brought to DYP through her nomination is a significant draw back in not questioning her ability and her performance more closely. For example, when Dehab requested for a salary increase in July 2022, we did not use the opportune time to ask for appraisal or performance review prior to the salary increase. This was not right or proper given the benefit of the hind side.

However, more information came to light following the appointment of Sarah. Her questioning of multiple management practices as detailed earlier has brought to light much of what we know now. Sarah's implementation of financial discipline and management order on how things should be run has unearthed multiple issues of concerns highlighted above. Since this has come to the trustees' attention we have conducted the restructuring process of the management structure with a clear job specification and line management. This will greatly address any such future problems."

85. The Claimant's evidence was that she had never said that she didn't want to be managed by Ms Robson because she was her junior. She disputed Dr Bahru's characterisation of her as having a sense of "ownership and entitlement". Her evidence was that she regarded the comment as being related to age, because she was the oldest member of staff and no one else was treated as she was treated.
86. The Trustees met on 4 December 2023. Minutes of the meeting were kept [595]. The minutes noted that the Respondent had already started recruiting for the roles of Activity Lead and Youth Service Manager in the new structure. During the meeting, the Trustees also discussed the Claimant, and complaints about her by other members of staff. The minutes recorded that Dr Bahru informed the Trustees that the Claimant was on a monthly

contract which could be terminated without notice, and that she was currently on two months leave. After some discussion, the minutes said this "As all has been tried, it was informed the decision is how best to manage Dahab's Exit". There was then a vote. Five of the nine Trustee present voted in favour of an Exit Plan with legal advice (including Tigist Kinfu, Adonay Berhe and Dr Mikal Woldu). Four voted against (including Amel Hamilton). Dr Chase was not at the meeting, although the minutes recorded that Dr Bahru had subsequently canvassed her view by telephone, and she extended her support to the Exit Plan. The evidence of the Trustees I heard from was that what they had voted for was to take HR and legal advice regarding a possible way forward, rather than making a definite decision to oust the Claimant.

87. On 29 December 2023, Dr Bahru emailed the Claimant (at her Respondent email address). Within that email, he said this [705]:

"As was discussed when we met (Futsum, Nardos, you and I) on the evening of 02/10/2023, the role of the operational manager has been replaced with two new positions, Youth Service Manager and Community Engagement Lead. Both positions accountable to the Project Lead.

We have appointed a new person for the job of Youth Services Manager, due to start in the new year.

We have as yet not advertised the Community Engagement Lead awaiting to hear from you. This is based on our conversation of 02/10/2023. The job specification and the new organisational structure of Da'aro Youth Project was included in my email of 05/10/2023.

Therefore, I wanted to clarify that your old job does not exist anymore.

Given the passage of time since we last discussed this matter on 02/10/2023, I would like to hear from you by the latest of 05/01/2024 if you are interested in the new role of Community Engagement Lead or if you would rather prefer to follow your redundancy rights based on your job specification for the operational manager role."

88. On 3 January 2024, the Claimant replied to Dr Bahru. She said this

"As you know yesterday was my first day back at work after my annual break.

My last working day was on Wednesday 4 of October, after which I had no access to my work email.

Yesterday was the first opportunity I had to read your email for the meeting summary and job description which you sent on the 5th of October whilst I was on leave.

On this respect I require 10 working days instead of just 4 working days (yesterday to Friday) to carefully consider your proposal and my options.”

89. Dr Bahru responded on the same day [703]. He described the contents of the Claimant's email as “problematic”, and said this:

1. Our meeting was on the 2nd of October - my email of 5/10/2023 was a summary of the meeting and nothing else. In our meeting of 2/10/2023 Nardos Futsum and I actively choose to stress on your positive qualities and tried our hardest to get an answer by the end of the meeting. That does not mean we were not aware of several of your weaknesses which will need to be addressed in due course so that lessons can be learnt, and appropriate measures can be taken to safeguard the best interest of DYP. You preferred to reply on your return from holiday. It would have been right and proper to reply on your arrival and not to wait for such email.

2. Your automated reply email on 5/10/2023 says "I am sorry I cannot respond to your email. I am on annual leave from 7 October until 20 December". This reflects the 7/10/2023 as the start and 20/12/2023 as the end of your annual leave. I am informed that you sent an email to Sarah on 27/12/2023 stating that you were not well to come to work for that date. All these predates the 5th of October.

3. The email I have sent you was last Friday giving you one week to reply. When you have known from 02/10/2023 formally from the trustees and I verbally on your meeting with Sarah on 9/8/023, it does not stand well to ask to extend it any further.

4. Your inability to access emails as you stated is problematic to state the list. If you have no access to your emails, when not at work, how could you and how were you able to discharge your Safeguarding Lead Role for a Youth Service Organisation, a very important and key function . .

I deeply feel sad that it has to come to this level. You do not need more time you were given several months to think about it when in actual fact you should be the one leading these changes. I will expect your final decision by 5 PM on 5/12/2023.”

90. The Claimant replied on 5 January 2024 [702]. She indicated that she accepted the role of Community Engagement Lead. She additionally explained to Dr Bahru that she did not access her work emails while on

leave. She noted that she had logged in for a few moments on 27 December 2023, the day she was due to return from leave, to email Ms Robson to inform her that she was unwell, but she had not read Dr Bahru's email of 5 October 2023 at that time.

91. Dr Bahru emailed the Claimant on the same day. He thanked her for agreeing to take up the role of Community Engagement Lead, and noted that she would be managed and accountable to the Project Lead.

92. On 8 January 2024, Ms Robson emailed the Claimant as follows [723]:

"I hope you are well, I am containing you to let you know that I am still working on your new contract. I would like you to start working after we agree and you sign the new employment contract. Can I suggest that you come into the office at 3pm on 23/01/24?"

93. The Claimant replied confirmed that she would see Ms Robson on 23 January. As it was, the Claimant was unwell and was unable to return to work on 23 January. She asked for a copy of the contract of employment and job description, which Ms Robson provided on 1 February 2024 [727].

94. The Claimant sent Ms Robson a fit note, which signed her as unfit for work from 5 February 2024 to 9 February 2024, by reason of "chest pain". The fit note was signed by a pharmacist. It overlapped with the Claimant's previous fit note, from 23 January 2024 to 6 February 2024, which was by reason of shoulder pain. The second fit note was also sent to Dr Bahru. Dr Bahru emailed the Claimant on 5 February 2024 as follows (it appeared that the email had been intended for Ms Robson rather than the Claimant) [750]:

"Good Evening Sarah

Thank you for sharing the information - it does not make sense to give 4d sick note for a chest pain.

It is unfortunately a difficult case which will require an HR advise if goes on like this for much longer.

KR

Yohannes"

95. Dr Bahru's evidence was that his professional view as a GP was that it was unusual to give a four day sick note for chest pain, and that he was therefore concerned about the Claimant's wellbeing.

96. On 6 February 2024, Dr Bahru emailed Ms Robson as follows, in light of the Claimant's continuing absence [733]:

"It is possible Dehab is in hospital.

Given your role in DYP, it would be a good if you can try and be seen to try to check on her well being.

We all have a duty of responsibility to our staff. With out success I have tried to ask her yesterday. That is how I know she might be admitted to a hospital. As is expected, I have sent her a message of get well soon.

It is right and proper that you check on her well being. It will reflect well on you and DYP."

97. On 22 February 2024, the Claimant (via her solicitors) raised a grievance [761]. The grievance complained of age discrimination (and whistleblowing detriment). The grievance letter ran to a little over three pages, and was relatively detailed. It accused Ms Robson of avoiding, alienating, excluding, circumventing and undermining the Claimant, and of taking over parts of the Claimant's role. Ms Robson acknowledged receipt of the grievance on the following day [766].

98. On 4 March 2024, Ms Robson emailed the Claimant's solicitor attaching a copy of the Respondent's Grievance Procedure, and asking for some suitable dates and times for a grievance meeting [765].

99. On 2 April 2024, the Claimant's solicitor replied as follows [774]:

"I do apologise for my delay, it appears I mislaid my client's email with her instructions confirming she would like to conduct the process in writing as she is very unwell and too unwell to engage in any interviews.

Should you have questions for her, please send them to me in writing and I can revert with her response.

100. Ms Robson replied asking if the Claimant could attend an online meeting; her solicitor indicated that she could not.

101. Also on 2 April 2024, the Claimant (via her solicitor) made a DSAR [816]. The DSAR required the disclosure of all personal data regarding the Claimant from 1 October 2020 to the date of request, and specifically requested that the correspondence of the following be searched:

- "1. Yohannes Bahru
2. Sara Robson
3. Elaine Chase
4. Futsum Kahasi
5. Nardos Yemane"

102. Ms Robson acknowledged receipt of the DSAR on the following day. On 23 April 2024, she emailed the Claimant's solicitor as follows:

"I hope you are well. As we are a relatively small organisation, we have sought specialist external legal advice in relation to the request of DSAR from your client. As you may be aware, guidance provided by the Information Commissioner's Office ("ICO") states that the time to respond to a request can be extended by a further two months if the request is complex. The guidance states that whether a request is complex will depend upon the specific circumstances of each case, but the size and resources of an organisation are likely to be relevant factors. In addition, the ICO lists 'needing to obtain specialist legal advice' as an example of a complex request. [Technological difficulties in gathering the data are also relevant in this case.] As such, this letter is an official notification, within the original one-month time, that we will require the two-month extension period in order to respond to your request. Disclosure will be completed on or before 2 July 2024."

103. A panel of Trustees was appointed to consider the Claimant's grievance. The Trustees on the panel were Adonay Berhe, Amel Hamilton and Tigist Kinfu. Dr Bahru, Ms Robson and Dr Chase wrote their response to the points raised by the Claimant in her grievance. The grievance panel also met with Ms Robson and Dr Bahru on 17 April 2024. Having done so, they decided that they had no questions for the Claimant.

104. On 1 May 2024, the panel met to discuss and agree their conclusions. Mr Berhe wrote up the panel's conclusions in the form of a table [875]. The panel concluded that the grievance was not upheld. Some of the issues raised by the Claimant (and by Ms Robson in response) related to safeguarding. One of the panel, Ms Kinfu, had expertise in safeguarding. The panel concluded that none of the purported safeguarding issues were, in actual fact, a safeguarding concern. The panel noted that Dr Paszkiewicz had described the Claimant as performing poorly in her role based on poor line management and administrative skills.

105. The panel concluded by making the following recommendations [886]:

"From our reading of the supporting evidence, there are five learnings/recommendations that we would like to part with. One; it is crucial that DYP continues to develop more robust policies and processes with regards to disciplinaries and performance reviews. This is crucial to ensure that preferential treatment does not occur on the basis of pre-existing relationships and instead remain objective. Two; the introduction of a third and impartial party sooner, for example an HR resource. Whilst we understand the desire to try and

resolve issues amicably in house, a third party being brought in at the first sign of stubborn tensions may increase the chances of resolve before a formal grievance is taken out. Three; increased clarity and transparency with staff members around structural changes where appropriate. It is important that major changes are communicated on branded, dated and PDF'd documents to ensure that they are understood to be officiated by all. Four; all emails should be sent from personal email addresses and/or copy in a DYP email address. This is to ensure that key evidence is not at the behest of work organisations and all information is accessible regardless of when it is being unarchived. Five; work should be done to develop a code of conduct that looks at the idiosyncrasies of staff members, the board and trustees to better understand how to successfully, clearly and respectfully communicate with one another to avoid unnecessary heightened tensions.”

106. The Panel's table was sent to Dr Bahru, Ms Robson and Dr Chase. Ms Robson indicated that she would send it to the Claimant's solicitor. However Dr Chase suggested some amendments (largely grammatical), and the Respondent's solicitors then provided advice on formatting the outcome. Further drafting was apparently carried out by Dr Bahru and Dr Chase, converting the document into a letter form. The letter contained a lot of information which was not in the original table produced by Mr Berhe, although his evidence was that the panel had reviewed and were content with the final outcome letter. The outcome letter said this, regarding the Claimant: "The inadequacy of her skills and therefore challenges due to inadequacy of her skills and management abilities are noted during her working relationship with our senior and junior staffs...". In the context of an allegation regarding the restructure, it said this "The trustees at that point were fully aware of [the Claimant's] weakness as evidenced through several email communications but were keen to engage positively as noted on the above dated email". The outcome letter did not contain the Panel's five recommendations in terms. It did, however, conclude with a section entitled "Further Clarification DYP requires from Dehab Woldu" [929].

107. On 17 May 2024, Ms Robson sent the grievance outcome to the Claimant's solicitor [784].

108. On 22 May 2024, the Claimant's solicitor asked Ms Robson for the evidence relied upon in order to reach the outcome. Nothing was separately provide in response to that request.

109. On 13 June 2024, the Claimant's solicitor wrote to the Respondent appealing the grievance outcome [940]. The letter was four and a half pages long, and set out the grounds of appeal under four headings – delay, procedural flaws, inclusion of allegations against the Claimant, and restructure and alleged redundancy.

110. On 14 June 2024, the Claimant issued her first claim against the Respondent.
111. The Claimant's appeal was considered Dr Mikal Woldu. Dr Woldu wrote to the Claimant's solicitor (as they had presented the appeal on her behalf). She noted that the Claimant had not been well enough to meet during the grievance process, and noted that proceeding by way of written representations from the Claimant would delay the resolution of the appeal. On 9 July 2024 the Claimant responded directly to Dr Woldu asking for any emails to be sent directly to her. She explained that she was willing to meet with Dr Woldu if required [971]. Dr Woldu responded to say that she would make contact with the Claimant if she had any specific questions or if she felt a meeting was necessary. She also said this:
- “Of course, if you have any evidence or additional comments you'd like to share, feel free to share them with me.”
112. On 15 July 2024, Ms Robson sent the DSAR documents to the Claimant's solicitor [973]. The Claimant's evidence was that the disclosure was incomplete and heavily redacted. I was not referred to any specific examples of documents that it was said ought to have been in the DSAR but which were excluded or improperly redacted.
113. On 8 August 2024, the Claimant emailed Dr Woldu asking for an update regarding the grievance appeal. Dr Woldu responded that she had reviewed all of the documentation and carried out a thorough process, and that the Claimant should receive the outcome letter by the following week at the latest.
114. As part of investigating the grievance appeal, Dr Woldu met with the original grievance panel, and with Dr Bahru and Ms Robson. She did not, in the event, meet with the Claimant or request any further submissions from the Claimant (and the Claimant did not volunteer any further information in response to Dr Woldu's email).
115. Dr Woldu did not uphold the Claimant's appeal. She wrote the Claimant a lengthy and detailed letter explaining why she had reached that conclusion.
116. In the interim, on 27 June 2024, the Claimant emailed Ms Robson raising an issue with the rates of Statutory Sick Pay she had been receiving. She asked who she should contact at the Respondent's payroll provider to query the payments [955]. The Claimant and Ms Robson exchanged a number of emails, and Ms Robson sought clarification from the payroll company which she provided to the Claimant. The Claimant asked for the contact details of the payroll provider so that she could deal with them directly. Ms Robson replied that the payroll provider would only deal with

one designated contact person, which was Ms Robson herself, but that she would be happy to contact them on the Claimant's behalf (as she had already done).

117. The Claimant's evidence was that she considered that if she had been younger or a second-generation migrant, Ms Robson would have handled the matter differently and allowed her to contact the payroll company directly. She did not give any particular reason for that belief.

118. On 8 August 2024, Ms Robson sent the Claimant a further email regarding the calculation of her SSP [991]. On 12 August 2024, the Claimant responded to Dr Bahru and the rest of the Trustees, rather than to Ms Robson. Within that email she said this:

"I am replying to you on this email as I explained in previous email, communication between Sara and myself is not good and I cannot get resolution on this matter.

I am attaching an email from Sara dated 21 Mar 2024 to which I will refer to."

119. Dr Bahru referred the matter back to Ms Robson [990].

120. On 19 August 2024, Ms Mikal Woldu's grievance appeal outcome letter was sent to the Claimant [1000]. The outcome letter was some 7 pages long. It went through each of the Claimant's appeal points in turn, describing the evidence Ms Woldu had considered and the conclusion she had reached. The outcome was that the Claimant's appeal was not upheld.

121. On 24 September 2024, the Claimant resigned from the Respondent [1056]. That was the date on which her SSP was due to run out. Within her resignation, she explained that she considered she had been constructively dismissed.

122. The Claimant presented her second claim on 11 December 2024.

Law

123. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee:

123.1. In the terms of employment;

123.2. In the provision of opportunities for promotion, training, or other benefits;

123.3. By dismissing the employee;

123.4. By subjecting the employee to any other detriment.

124. In order to be subjected to a detriment, an employee must reasonably understand that they had been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11).

Protected characteristics

125. Age is a protected characteristic (s.5)

Direct discrimination

126. The definition of direct discrimination is contained in section 13(1) of the Equality Act 2010:

“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

127. The comparison may be to an actual or a hypothetical comparator. In either case, there must be no material difference between the circumstances relating to each case (s.23(1)). That is, the comparator must be in the same position in all material respects save only that he or she is not a member of the protected class (*Shamoon v Chief Constable of the RUC* [2003] ICR 337).

128. Where considering the treatment of a claimant compared to that of a hypothetical comparator, the Tribunal may draw inferences from the treatment of other people whose circumstances are not sufficiently similar for them to be treated as an actual comparator (*Chief Constable of West Yorkshire Police v Vento* [2001] IRLR 124).

129. In considering whether a claimant was treated less favourably because of a protected characteristic, the tribunal generally have to look at the “mental processes” of the alleged discriminator (*Nagarajan v London Regional Transport* [1999] IRLR 572). The protected characteristic need not be the only reason for the less favourable treatment. However the decision in question must be significantly (that is, more than trivially) influenced by the protected characteristic.

Harassment

130. Harassment is defined in section 26 of the Equality Act 2010 as follows:

Harassment

(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

[...]

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

- 131. General harassment (section 26(1)) therefore has three elements:
 - a. Unwanted conduct
 - b. That has the proscribed purpose or effect
 - c. Which relates to the relevant protected characteristic
- 132. “Unwanted” is essentially the same as “unwelcome” or “uninvited”. Where conduct is offensive or obviously violates claimant’s dignity, that will automatically be regarded as unwanted (*Reed and anor v Stedman* [1999] IRLR 299). A failure to complain at the time is unlikely to undermine a claim based on inherently unwanted conduct. Comments and behaviour must be looked at in context in order to determine whether they were unwanted (*Evans v Xactly Corporation Ltd* (EAT 0128/18)).
- 133. The test for whether the treatment had the proscribed effect has both a subjective and an objective element. That is, the Tribunal must consider the subject effect the conduct had on the Claimant, and must also consider whether it was objectively reasonable for the conduct to have had that effect.
- 134. When considering whether treatment had the proscribed effect, we must look at the effect of the incidents in the round (*Reed*). Tribunals must not “cheapen the significance” of the meaning of the words used in the statute (*Grant v Land Registry* [2011] ICR 1390).

135. In considering whether conduct is “related to” the relevant protected characteristic, a finding about the motivation of the putative harasser is not the necessary or only possible route to the conclusion that the conduct related to the characteristic in question. However, there must be some feature or features of the factual matrix which leads the Tribunal to the conclusion that the conduct in question is related to the particular characteristic in question (*Tees Esk and Wear Valleys NHS Foundation Trust v Aslam & Heads* (UKEAT/0039/19)).

Victimisation

136. Section 27 of the Equality Act 2010 provides as follows:

“27 Victimisation

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

137. The claimant must have done a protected act (or the employer must believe that the claimant has done, or may do, a protected act).

138. A detriment means being put under a disadvantage. In order to be subjected to a detriment, an employee must reasonably understand that they have been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11). It is not, however, necessary to establish any physical or economic consequence (*Warburton v Chief Constable of Northamptonshire Police* [2022] ICR 925).

139. The test in terms of causation is “reason why”, rather than “but for”. That requires the Tribunal to consider the alleged victimiser’s reasons (whether conscious or subconscious) for acting as he or she did.
140. It is not necessary for the protected act to be the main motivation for the detriment, as long as it was a significant factor (*Pathan v South London Islamic Centre* [2014] 5 WLUK 441).
141. Self-evidently, the reason for the conduct must be that the claimant had made a complaint which was a protected act for the purposes of section 27 of the 2010 Act; not merely that a complaint had been made in general terms.
142. The method of making the complaint may be properly separable from the fact that a complaint has been made (*Martin v Devonshires Solicitors* [2010] 12 WLUK 305).

Burden of proof

143. Section 136 of the Equality Act deals with the burden of proof:
- “(2) If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene that provision”
144. The Act therefore prescribes a two-stage process. At the first stage, there must be primary facts from which the tribunal could decide, in the absence of any other explanation, the discrimination took place. All that is required to shift the burden of proof is at primary facts from which “a reasonable tribunal could properly conclude” on balance of probabilities that there was discrimination. It must, however, be something more than merely a difference in protected characteristic and the difference in treatment (*Madarassy v Nomura International PLC* [2007] EWCA Civ 33).
145. The burden of proof at that stage is on the claimant (*Royal Mail Group v Efofi* [2021] UKSC 22). The employer’s explanation is disregarded.
146. If the claimant satisfies that initial burden, the burden shifts to the employer at stage 2 to prove on balance of probabilities that the treatment was in no sense whatsoever for the prescribed reason.

Constructive unfair dismissal

147. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111.

148. The employee must show that they were dismissed by the respondent under section 95. Section 95(1)(c) provides that an employee is dismissed if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

149. Guidance was given by the Court of Appeal in the case of *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 211:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

150. A constructive dismissal may be founded on the breach of an express term or an implied term. There is implied into all contracts of employment a duty of mutual trust and confidence. That duty was described by the House of Lord in the case of *Malik and Mahmud v BCCI* [1997] ICR 606 as being an obligation that the employer must not:

"Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

The test is an objective one.

151. A breach may be made up of a sequence of events which meet the test cumulatively, even if none of those events would have done so individually. In such a case, the employee may rely on a "last straw" which does not in itself have to be so serious as to constitute a repudiatory breach (*Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978). However, the last straw must not be entirely innocuous or trivial.

152. In order to succeed in a claim of constructive dismissal, the employee must resign in response to the breach. However, the breach need not be the only reason for the resignation (*Wright v North Ayrshire Council* [2014] IRLR 4).

153. If after a breach of contract the employee behaves in a way that shows he or she intends the contract to continue, they will have affirmed the

contract. Once the contract has been affirmed, the breach is waived and the employee can no longer rely on it to found a claim of constructive dismissal unless there is a last straw which adds something new and revives the earlier issues.

Conclusions

154. I start with some overarching findings:

155. Firstly, I find that the first time the Claimant was shown the proposed new structure and the proposed job description was in the meeting on 2 October 2023. They had only been agreed by the Trustees in mid-September, after which Dr Bahru sought to set up a meeting with the Claimant. So I find that they cannot have been shown to the Claimant before that. I find also, however, that the Claimant was well aware of the possibility of a restructure before that. It was mentioned in the 2022 Away Day meeting, and recoded in the notes, that the structure needed to be reviewed. I find that Ms Robson also mentioned it in general terms during meetings with the Claimant in July and August 2023, as she was discussing it with Mr Hunter during that period; although she could not have told the Claimant the granular detail of what was being proposed – not least because as of 28 August 2023, Ms Robson was emailing the Trustees about Claimant's then-current Job Description, and referring to the possibility of hiring an "Administration Manager" to it. That is also consistent with the Claimant chasing for a copy of a new contract and Job Description. She was well aware that it was proposed that there would be changes, and if she was only concerned about the fact that her fixed term contract had expired then she would not have needed to ask about a new job description.

156. I find that the Claimant was consulted on the organisation of the fundraising event in June 2023, but that she chose not to engage with it. That is consistent with the contemporaneous correspondence, which all suggested that attempts had been made to engage with the Claimant.

157. I find also that the Claimant was told that she would have a 10 minute slot during the event, and was told shortly before the event started when her slot would be. I find that she was stung by hearing Dr Bahru talk first about the genesis of the Respondent, because she felt a sense of ownership of the Respondent as one of the co-founders, and felt that that should rightly have been her position (although Dr Bahru was Chair of Trustees). I find that she therefore took the microphone when it was not her turn to speak, and proceeded to talk for some 40 minutes.

Direct Age Discrimination

158. I start by considering the appropriate hypothetical comparator. The Claimant alleges a number of ways in which she says she was treated differently to colleagues. Of course, in constructing a hypothetical

comparator, it must be someone in materially the same circumstances as the Claimant. Taking into account all of the evidence I have heard, that is:

- 158.1. Someone in the Claimant's role.
- 158.2. Someone who had co-founded the Charity (since that was an important factor in the dynamics of the relationship between the Claimant and the Trustees).
- 158.3. Someone who was a respected member of the Eritrean expatriate community, to whom others from within that community would naturally defer. Mr Hunter used the phrase "Community Elder" – while that inevitably gives the impression of being tinged with age, it seems to me that it would be wholly artificial to consider as a comparator someone without the Claimant's standing within the community; because that was inevitably material to the way the Trustees and colleagues from within that community interacted with the Claimant.
- 158.4. Someone about whom a number of concerns had been raised, both from above and below, regarding their performance in role.

3.2.1 Failing to provide the Claimant with an updated employment contract;

159. I understand this to be a reference to the expiry of the Claimant's second fixed term contract on 31 July 2023. Of course it is right that from the point where her second fixed term contract expired, the Claimant was not then given a new contract until she accepted the role of Community Engagement Lead in the restructure.
160. In substance, I am not sure that that was a detriment to the Claimant. There was no suggestion her employment had been ended upon the expiry of her fixed term contract. On the contrary, she had continued to be employed. The evidence before me was that the Trustees regarded the Claimant (and other staff who found themselves in the same position when fixed term contracts expired) as being employed on a rolling monthly contract. Of course as a matter of employment law, that is simply incorrect. The effect of the Claimant continuing to be employed without being given a new fixed term contract was that her employment became permanent.
161. In any event, I can see nothing to suggest that it was motivated by the Claimant's age. The Respondent had been through a period of some uncertainty and upheaval, and was considering its structure. Of course it would make sense not to issue a further time-limited contract to the Claimant when it was not sure (a) whether a fixed term contract would be appropriate, and if so for what period of time and (b) more importantly, what the new structure would look like and what role within it would exist for the Claimant. That had nothing to do with the Claimant's age. And I can see nothing at all to suggest that a younger hypothetical comparator in Claimant's position at that time would have been treated any differently.

162. This fails as an allegation of direct discrimination.

3.2.2 Engineering a situation where the Claimant was removed from her role and forced into a new role with more limited scope of duties;

163. I do not consider that this allegation is made out on the facts. The situation was not “engineered” – it reflected the growth of the charity following a period of uncertainty and lack of funding. It also reflected the fact that the Trustees had decided that they needed 1.5 FTE to do the work that the Claimant had been doing.

164. In any event, I can once again see nothing to suggest that a younger employee in the Claimant’s position would have been treated any differently.

3.2.3 Failing to consult the Claimant on the restructuring of her role;

165. In order to consider this allegation, it is necessary to look at what consultation took place.

166. The Claimant’s evidence was that she was unaware of any restructure proposal until the meeting on 2 October. I do not think that can be right. It is inconsistent with her email asking for a new contract and job description– clearly she was aware that some changes were proposed, or she simply would not have asked that question.

167. Equally, the Claimant cannot have been consulted with on the detail of the proposal until 2 October, because that was the first time that the details of the new proposed structure had been agreed by the Trustees. Before that, there was nothing concrete to consult with.

168. Thereafter, the Claimant went on leave for three months (the latter month and a half of which she had not sought agreement on in advance, and she only indicated she was taking after the meeting on 2 October). She effectively became incommunicado for a quarter of a year immediately after the proposals were laid out.

169. I bear in mind also the size of the Respondent, as a very small charity, and the Claimant’s senior role within it. The Claimant was consulted with on the proposals by way of the meeting on 2 October and by thereafter being emailed the proposed new job descriptions. I find that by taking annual leave and TOIL in the way that she did, the Claimant deliberately avoided engaging with the Respondent regarding the restructure.

170. So in all of the circumstances, I do not consider the allegation that the Respondent failed to consult with the Claimant is made out. The Respondent consulted as much as they could given the nature of the Claimant’s role and the Claimant’s non-engagement with the process.

171. In any event, I can see nothing else at all to suggest that a comparable employee who was younger than the Claimant would have been treated any differently.

3.2.4 Failing to consult the Claimant on the recruitment of a Youth Services Lead;

172. It is right that the Respondent failed to specifically consult the Claimant before they appointed someone to the role of Youth Services Lead. But that must be seen in context, in that:

172.1. The role was, of the new roles being created, the less obviously suited to the Claimant

172.2. It was a full time role, whereas the Claimant was only employed by the Respondent part time (and she had another job in the time she was not working for Respondent)

172.3. The Claimant had taken three months off work at short notice, and the Respondent needed to fill the role so as to use funding that it had acquired and extend the services it provided.

173. In the circumstances, I can see nothing at all to suggest that a comparable employee who was younger than the Claimant would have been treated any differently.

3.2.5 In the grievance outcome letter dated 17 May 2024 and the Chairman's report dated 19 November 2023 referring to alleged weaknesses, inadequacy and underperformance of the Claimant without proper grounds to do so and without having previously notified the Claimant of any concerns about her adequacy for, or performance, in her role;

174. It is right that those matters were referred to in the grievance outcome letter, and also in the Chairman's report. The context of the remarks in the Chairman's report was that the Claimant had proved herself resistant to being managed – and in particular, to being managed by Ms Robson. That was a matter of note as far as the Chairman's Report for the year went. And concerns about the Claimant's performance and conduct had been raised by a number of people from both above and below the Claimant – including Ms Toivonen, Ms Feseha and Dr Paszkiewicz. The concerns about the Claimant's performance were also relevant to the matters the Claimant had raised within her grievance, as they formed part of the context of the matters about which the Claimant complained.

175. Once again, I can therefore see nothing to suggest that a comparable employee who was younger than the Claimant would have been treated any differently in that regard.

3.2.6 Ignoring the Claimant's perspective and not taking her perspective seriously during the grievance appeal outcome process;

176. I do not consider that the allegation is made out on the facts. Dr Woldu carefully considered the points raised by the Claimant. She gave the Claimant the opportunity to raise anything else she wanted to raise, on top of her (lengthy) grievance appeal letter. She produced a detailed outcome. That is not “ignoring” the Claimant, nor is it “not taking the Claimant’s perspective seriously”. In substance, this amounts to a disagreement with the outcome reached by Dr Woldu. And again, I can see nothing at all in the evidence to suggest that a comparable but younger employee would have been treated any differently in terms of the way Dr Woldu approached the grievance appeal and the outcome she reached.

3.2.7 Planning to oust the Claimant from her post in the way the grievance appeal process was conducted, and the grievance appeal outcome was decided, as revealed by data subject access request (“DSAR”) documents disclosed following a DSAR made by the Claimant on 2 April 2024; and/or oust the claimant generally;

177. I do not consider that the way that the grievance and the appeal were handled was in calculated way to oust the Claimant, as the allegation suggests. The way they were handled was not a counsel of perfection. Of course, in saying that I bear in mind that the Respondent is a small charity. The grievance and appeal were, of necessity, heard by Trustees, who were (in essence) volunteers giving up their time for no remuneration, and without having any particular expertise in HR or employment matters. But importantly, I can see absolutely nothing to suggest that it was a planned attempt to force the Claimant out of employment.

178. The list of issues were settled when the Claimant was legally represented, which she no longer was by the time of the trial before me. It appeared from the way the Claimant advanced her case during the hearing that the reference to documents disclosed in response to the DSAR was to the minutes of the Trustee meeting where Trustees voted to investigate a possible exit for the Claimant. Of course, two of the three Trustees on the grievance panel voted in favour of the motion (the third, Amel Hamilton, voted against). Dr Woldu, who heard the appeal, also voted for the motion. But I accept their evidence that they were voting to take professional advice on the matter. It is implausible that the advice they would have been given would be to attempt to use the grievance as a means to oust the Claimant. It is also inconsistent with the careful and detailed consideration they gave to the Claimant’s grievance.

179. Nor do I consider that there was any attempt to oust the Claimant more generally, as the allegation somewhat vaguely suggests.

180. It follows that the allegation is not made out. I would in any event have concluded that there was nothing to suggest that a comparable but younger employee would have had their grievance treated any differently.

3.2.8 Ignoring the Claimant's requests made on 5 July 2024 by email to put her in touch with someone who could explain to her how her payslip was calculated, and her requests for information as to which third parties the Respondent had shared her personal data with which should be set out in a privacy notice.

181. Firstly, I do not consider that the characterisation of "ignoring" the Claimant's request is apt or fair. It is right that Ms Robson did not put the Claimant in touch with anyone at the Respondent's payroll provider, but she did not ignore the request. She responded to it with a detailed and reasoned explanation of why she was not going to do so, and continued to liaise with the payroll provider on the Claimant's behalf.
182. Insofar as the allegation is about the actual failure to put the Claimant in touch with someone from the Respondent's payroll provider, I can see nothing at all to suggest that decision was influenced by the Claimant's age, or that a younger employee would have been treated differently. And even if the Claimant had put forward some evidence which shifted the burden, I would in any event have been entirely satisfied that Ms Robson's reasoning for not putting the Claimant in touch with anyone from the payroll provider was nothing to do with her age.
183. It follows therefore that the claim of direct age discrimination fails and is dismissed.

Harassment

4.1.1 Dr Bahru telling the Claimant that her role was "too much" for her in a meeting dated 2 October 2023;

184. Firstly, I find that Claimant mischaracterised what Dr Bahru told her. I find that what Dr Bahru was saying was that what the charity required was too much for any one person. That was the Claimant's evidence in cross-examination regarding what Dr Bahru told her in the meeting. The charity was at that point proposing to have 1.5 FTE doing the combined roles. Of course that would self-evidently be too much for the Claimant to do along on her existing 0.5 FTE contract. It was also consistent with what the Trustees had noted in the 2022 away day, namely that the Respondent required more staff capacity, and more full-time staff.
185. In the context, I do not consider that Dr Bahru's comment could properly be regarded as "unwanted", in the context of a discussion about a restructure. Nor was it objectively capable of having the prescribed effect.
186. For the avoidance of doubt, I am additionally satisfied that the comment was in no way connected to the Claimant's age. Dr Bahru was not suggesting that the Claimant was incapable of the job because of her age.

Rather, he was saying that the work the Trustees required was too much for any one person to carry out.

4.1.2 Dr Bahru writing that the Claimant had “weaknesses” and that her “inability” to access emails was “problematic” in his email of 3 January 2024;

187. It is important to start by noting that the reference to an inability to access emails was not about technical facility. Technical facility, or lack thereof, can of course sometimes be taken as a proxy for age. But reference to inability to access emails was about the fact that the Claimant had, at very short notice, unilaterally taken herself away from work and away from any access to her work emails for a period of three months. Of course it is right that in general terms, annual leave should be time away from any pressure to check work emails. But the Claimant was the Safeguarding Lead for a small charity working with extremely vulnerable young people. The very genesis of the charity had been a number of tragic deaths by suicide of young people from within the community. In that context, I can entirely understand why taking herself away from any access to emails for 3 months, without seeking permission first or allowing the Respondent time to put alternative arrangements in place, would be regarded as “problematic”. It was frankly a surprising way for someone who professed to be committed to the welfare of the young people the charity served to behave.

188. The references to weaknesses was, in context, a reference to the fact that there were issues with the Claimant’s performance which would need to be managed, notwithstanding the fact that she had been offered a role in the new structure. That was in the context of the fact that the Claimant had never been appraised.

189. I consider that having those remarks levelled at the Claimant was objectively unwanted conduct; no one wants to be told by a senior figure that they are “problematic” or have “weaknesses”. But I do not consider, in the context outlined above, that the remarks were objectively capable of having the prescribed effect. And I am also satisfied that they were in no way connected to the Claimant’s age. They were about the way she had conducted herself, and a recognition of the fact that her performance would need to be managed going forward.

4.1.3 References in the grievance outcome letter dated 17 May 2024 to the Claimant’s “weaknesses” and “the inadequacy of her skills and management abilities”;

190. The apparent issues with the Claimant’s performance were relevant to the matters she had raised in her grievance, because they went to the

way she had been managed. They were matters about which the Respondent was concerned (with some foundation).

191. In the circumstances, I do not consider that referring to them within the grievance outcome could properly be regarded as “unwanted”. When an employee raises a grievance, they are asking the employer to consider it and give them an outcome. Sometimes that will be an outcome with which they are unhappy, or which will make points about them which they would rather not hear. If they had gone far beyond the scope of addressing the matters the Claimant raised in her grievance then I can see that the comments could be unwanted. But they did not. So I conclude that the comments could not properly be characterised as unwanted conduct.

192. I would in any event also have concluded that the comments relied upon were not capable objectively of having the prescribed effect, and were in no way connected to the Claimant’s age.

4.1.4 References in the Chairman’s report dated 19 November 2023 to “underperformance” by the Claimant and to the Claimant’s “sense of ownership and entitlement”.

193. Again, for similar reasons, to allegation 4.1.2, while I accept that this was unwanted conduct (coming in the Chairman’s report), I do not consider they could be capable, objectively speaking, of having the prescribed effect. I consider that the comment regarding the Claimant’s “sense of ownership and entitlement” was objectively reasonable bearing in mind the way the Claimant had conducted herself towards the Respondent – for example, by:

193.1. Taking 3 months leave at very short notice and without agreement; and

193.2. Taking the microphone at the fundraising event when it was not her turn to speak, and speaking for 40 minutes rather than the 10 she had been allocated.

194. Dr Bahru also noted, in the report, that the Claimant was describing herself as being “the founder” of the Respondent, which he considered (with some justification) overplayed her role and underplayed that of the other individuals, such as Mr Kahsa, who had been involved from the outset. Taken as a whole, the Claimant’s behaviour projected a strong sense of entitlement.

195. I have deal already with the references to underperformance, and to Dr Bahru’s concerns about the Claimant’s performance. That was plainly a matter of relevance for the Chairman’s Report, given the Claimant’s role within a relatively small organisation. Again, it was therefore not capable, objectively speaking, of having the prescribed effect.

196. I would in any event also have concluded that the comments were in no way connected to the Claimant’s age. They were about the way she had

behaved and the apparent issues with her performance; nothing more and nothing less.

Victimisation
Protected acts

5.1.1 The Claimant relies upon her email of 15 July 2023 in which she complained that Ms. Robson had discriminated against her as constituting a protected act. ('First Act'). The Claimant alleges that the First Act was a protected act under section 27(2)(C) and/or section 27(2)(d) EqA.

197. The email referenced discrimination and the Equality Act. It was not specific about the basis on which the Claimant was alleging she had been discriminated against, but it is clear she was alleging a breach of the Equality Act 2010 (she referred to the statute by name). I therefore have no difficulty in concluding that it was a protected act.

5.1.2 The Claimant relies upon her grievance dated 22 February 2024 in which she denounced age-related harassment and victimisation ("Second Act"). The Claimant alleges that the Second Act amounted to a protected act under section 27(2)(c) and/or section 27(2)(d) EqA .

198. The grievance (Which was drafted by the Claimant's then-solicitors) made express reference to age discrimination. I therefore have no difficulty in concluding that it was a protected act.

5.1.3 The Claimant relies upon the Claimant's DSAR dated 2 April 2024 ("Third Act"). The Claimant alleges that because of the Third Act, the Respondent thought the Claimant might bring proceedings under the EqA and therefore do a protected act under section 27(2)(a) and/or section 27(2)(d) EqA;

199. The point was not put to Ms Robson (or indeed any of the Respondent's witnesses) in turn. The Tribunal asked Ms Robson what she thought when the Claimant submitted the DSAR, and in particular whether she thought that the Claimant may bring a Tribunal claim. Her evidence was that she did not think it would get to that level.

200. In the circumstances, I cannot conclude from the fact that a DSAR was made by a solicitor on the Claimant's behalf led the Respondent to believe that the Claimant may bring a claim alleging a breach of the Equality Act 2010.

5.1.4 The Claimant relies upon issuing proceedings against the Respondent in the First Claim against the Respondent dated 14 June 2024 ("Fourth Act"). The Claimant alleges that the Fourth Act amounted to a protected act under section 27(2)(a) and/or section 27(2)(d) EqA;

201. This is self- evidently a protected act.

5.1.5 The Claimant relies upon the appeal she raised against the grievance outcome on 14 June 2024 ("Fifth Act"). The Claimant alleges that the Fifth Act amounted to a protected act under section 27(2)(c) and/or section 27(2)(d) EqA.

202. The grievance appeal referred to "the discrimination complained of", which must be a reference to the discrimination complained of within the original grievance. It additionally referred to the Claimant having suffered a detriment because of delays in dealing with the grievance, and alleged that that had happened because the Claimant raised complaints about discrimination. That is clearly in itself an allegation of victimisation in breach of the Equality Act 2010. It follows that I conclude that this was also a protected act.

Detriments

With regards to the First Act:

(i) Fail to inform the Claimant of next steps after a meeting of the Board dated 10 August 2023 where the Claimant's 15 July 2023 email of complaint was discussed;

203. This allegation is, in my judgment, misconceived. The meeting on 10 August 2023 was not a meeting of the Board. It was a meeting between the Claimant and two Trustees, to discuss the concerns she had raised and the relationship issues. The summary emailed by Dr Chase to Dr Bahru following the meeting noted that there were some possible ways forward that had been agreed. There were also some matters that were to be taken back to the Trustee Board, such as the Claimant's request that she be supervised by someone from the South London Refugee Association. However in the event, the management structure was taken forward separately, and the Claimant was notified of that work the following month (September) and consulted on it less than two months later, in the meeting on 2 October. The other main point to be taken forward was the possibility of a meeting arranged between the Claimant and Ms Robson along with a small group of Trustees. That meeting took place on 4 September 2023 – and of course the Claimant cannot say she was not informed about it, because she was there. So the allegation is simply not made out.

(ii) Fail to send the Claimant the minutes of the meeting of the Board dated 10 August 2023 where the Claimant's 15 July 2023 email of complaint was discussed;

204. This allegation is also misconceived. Firstly, the meeting on 10 August 2023 was not a meeting of the Board. Furthermore, no minutes were kept. The reference to minutes appears to be a reference to Dr Chase's email to Dr Bahru, as Chair of Trustees, updating him about what had happened in the meeting. That is a very different thing. There was no suggestion that it was agreed that the meeting would be minuted. The Claimant had been allowed to bring a companion to the meeting with her. And there could be no detriment in not sending the Claimant a copy of Dr Chase's email updating Dr Bahru, which was clearly intended for him as Chair of the Trustees.

205. I consider that this allegations is symptomatic of the entirely unrealistic way that the Claimant (along with her then-solicitors) sought to scrutinise the actions of the Respondent, and to unfairly apply to a very small charity the level of administrative formality that might be expect from a large public sector organisation.

(iii) Engineer a situation where the Claimant was removed from her role and forced to choose between a new role with more limited scope of duties or redundancy;

206. I have already explained why this allegation is not made out on the facts – the situation was not “engineered”. And in any event, I can see nothing at all to suggest that the way that restructure was in any way causally linked to the Claimant’s email of 15 July 2023.

(iv) Fail to consult the Claimant on the restructuring of her role;

207. Again, I have already explained why this allegation is not made out on the facts. In any event, I can see nothing at all to suggest that the way that the consultation was carried out was in any way causally linked to the Claimant’s email of 15 July 2023.

(v) Fail to consult the Claimant on the recruitment of a Youth Services Lead;

208. Bearing in mind the context I have already set out, I can see nothing at all to suggest that the timing of the recruitment of the Youth Services Lead was in any way causally linked to the Claimant’s email of 15 July 2023.

(vi) Dr Bahru writing in his email dated 3 January 2024 that the Claimant had “weaknesses” and that her “inability to access emails” was “problematic”;

209. Similarly, in the context I have already set out, I cannot see anything to suggest that Dr Bahru’s comment, in an email some 6 months later, was in any way causally linked to the Claimant having sent the email of 15 July 2023.

(vii) Dr Bahru in his email dated 5 February 2024 expressing doubt as to the validity of the reasons why the Claimant was signed off sick;

210. Dr Bahru’s comment in the email of 5 February 2024 was based on his experience, as a GP of long standing, that a patient with chest pains would not normally be given such a short fit note. Raed in context, I consider that his comments suggested concern about the Claimant’s health and wellbeing, and what he perceived as a mismatch between the reason given on the fit note and the relatively short duration of it. I can see nothing at all to suggest that it was in any way causally linked to the email sent by the Claimant in July 2023.

(viii) Accusations, found in Dr Bahru's email dated 3 January 2024, in the grievance outcome letter dated 17 May 2024 and the Chairman's report dated 19 November 2023 of the Claimant having "weaknesses" having inadequate skills and underperforming.

211. The evidence before the Tribunal was that the concerns regarding the Claimant's conduct were genuinely held, over a period of time.

212. The Claimant's position appeared to be that if the concerns were genuine, they would have been raised with her at the time. That ignores the status of the Respondent, as a very small charity with limited staff, volunteer Trustees, and no in-house professional HR or similar expertise. It also ignores the status of the Claimant, as a respected figure within the Eritrean expatriate community and a co-founder of the Respondent (and who it would therefore necessarily be more difficult to challenge). It ignores the fact that there had been various changes of leadership, leading to a lack of continuity. And most crucially, it ignores the fact that the Claimant herself had proved to be highly resistant to being managed, particularly by Ms Robson. The Claimant's evidence was that no one had ever formally asked her to attend an appraisal. That is correct. But I am in absolutely no doubt that the Claimant had, through her words and deeds, created an aura of unapproachability around herself when it came to management. She had said, in precisely so many words and on more than one occasion, that she did not want to report managerially to Ms Robson (even though Ms Robson held the most senior role within the Respondent's staff).

213. I am therefore satisfied that the concerns were genuine, and that the real reason for referring to them in the email of 3 January 2024 and the Chairman's report was that Dr Bahru was aware that they had not been dealt with and needed to be dealt with. I am satisfied also that the reason they were referred to in the grievance outcome letter was because they touched on the matters the Claimant raised in her grievance. And for the avoidance of doubt, I am satisfied that the Claimant's email of 15 July 2023 was in no way causally linked to the performance issues being raised in any of those ways.

5.2.2 With regards to the Second Act:

(i) Fail to invite the Claimant to participate in the grievance or investigation process further to a request from the Claimant dated 2 April 2024 to participate in writing by way of written representations;

214. The Claimant's grievance letter was clear and detailed. The grievance panel decided that they had nothing more they wished the Claimant to clarify. Of course, the final grievance outcome letter did refer to matters that the Claimant was requested to clarify. But in context, I consider that that was really more of a rhetorical device regarding the grievance not being upheld. I am satisfied that the real reason the grievance panel did not

require the Claimant to provide any further clarity was because they understood her grievance and had nothing more they wished her to clarify. It was not because the grievance raised concerns of discrimination.

215. Putting it another way, I can see nothing at all to suggest that if the grievance had not raised discrimination issues, it would have been dealt with any differently or the Claimant would have been invited to participate.

(ii) Prefer Ms. Robson's version of events over the Claimant's on the points raised within the Claimant's grievance dated 22 February 2024;

216. What this amounts to is an allegation that because the Claimant was complaining of discrimination, the panel chose to prefer Ms Robson's version of events. I can see nothing at all to suggest that Ms Robson's version of events was preferred because the grievance raised complaints of discrimination.

(iii) Fail to come to fair and impartial conclusions on the points within the Claimant's grievance dated 22 February 2024;

217. The basis of the allegation is not made out. As I have already explained, I am satisfied that the panel reached fair and impartial conclusions. The Claimant simply disagreed with the conclusion that they reached. But again, I can see nothing at all to suggest that the decision to dismiss the grievance was influenced by the fact that the Claimant was complaining of discrimination, or that they would have reached a different conclusion if the Claimant had not alleged a breach of the Equality Act within her grievance.

(iv) Fail to inform the Claimant of the witnesses who may have been interviewed as part of the grievance investigation; and

218. This needs to be seen in the context of the Respondent as a very small charity. I can see nothing at all to suggest that if the Claimant's grievance had not raised an Equality Act complaint, that she would have been told which witnesses had been interviewed. The fact that her grievance constituted a protected act had no bearing on the information she was provided.

(v) Fail to provide the Claimant with the evidence referred to or relied upon in the grievance investigation.

219. This must again be seen in context. The Claimant had made a wide-ranging DSAR, which she received shortly after receiving the grievance outcome. And in any event, I can see nothing at all to suggest that the failure to provide the Claimant the evidence was in any way connected to the fact that she had made a complaint of discrimination within the grievance.

5.2.3 With regards to the Third Act:

(i) Fail to respond to the Claimant's DSAR in a reasonable timeframe or at all.

220. Of course, I have found that the Third Act was not a protected act. But in any event, I cannot see anything to suggest that Respondent dragged its feet. Rather, once again, the Claimant (or perhaps her then-solicitors) were being wholly unrealistic about what could be expected from a very small charity with limited administrative resources.

5.2.4 With regards to the Fourth Act and/or the Second Act and/or the Fifth Act:

(i) Fail to provide any underlying evidence relating to the Claimant's grievance or the grievance appeal;

221. Once again, for the reason I have already explained I can see nothing to suggest that the failure to provide the Claimant with the underlying evidence was because the grievance, appeal and Tribunal claim all referred to discrimination.

(ii) Preferring Ms. Robson's version of events over the Claimant's in the grievance appeal outcome;

222. I can see nothing to suggest that the fact that Dr Woldu preferred Ms Robson's version of events was related to the fact that C had complained of discrimination or brought an Employment Tribunal claim. Dr Woldu fairly considered the points the Claimant had raised in her grievance appeal.

(iii) Ignoring the evidence of the plan to oust the Claimant from her position (and instead upholding the untrue narrative about the reasons for the restructuring);

223. For the reason already amply explained, this is simply not made out on the facts. At the time that the restructure was commenced, there was no plan to "oust" the Claimant, and the restructure had been on the cards for some time.

224. While the Trustees did later, in Dec 2023, vote to investigate removing the Claimant, that was after what appeared to be the final straw – her unilaterally extending her period of leave to 3 months with little notice. And in any event, the Respondent still offered the Claimant the role in the new structure.

(iv) Failing to come to fair and impartial conclusions on the points raised within the Claimant's grievance appeal;

225. As already explained, this is not made out – I am satisfied that Dr Woldu reached fair and impartial conclusions on the grievance appeal points.

(v) Failing to provide disclosable documents and applying unwarranted heavy redactions to the documents disclosed in the DSAR;

226. I was not referred to any specific documents which were not disclosed within the DSAR. I can see nothing to suggest that any issues with the DSAR were because the Claimant had complained of discrimination or was bringing an Employment Tribunal claim. Rather, I consider that it reflected the usual balancing act an organisation must perform when responding to a DSAR, weighing up its data protection obligations towards others whose names appear in documents, as well as the very small size of the Respondent. I can see nothing at all to suggest that the approach towards the DSAR was influenced by the grievance, appeal, or Employment Tribunal claim.

(vi) Constructively unfairly dismissing the Claimant on 24 September 2024 (when the Claimant resigned immediately in response to the Respondent's repudiatory breach(es) of her contract of employment.

227. For the reason I will come on to explain, I have concluded that the Claimant was not constructively dismissed.

228. It follows therefore that the complaint of victimisation fails and is dismissed.

Failure to provide written statement of terms

229. I do not consider that there was a failure to provide a written statement of terms when the Claimant's fixed term contract expired, because there was nothing there that required a fresh written statement of terms – her employment merely continued on the same terms.

230. The point at which a new statement of terms was required was when the Claimant accepted the role of Community Engagement Lead. The contract for that position was emailed to the Claimant on 1 February 2024. So the complaint of failure to provide a written statement of terms fails.

Constructive unfair dismissal

231. The Claimant relies upon the following alleged conduct as breaching the implied duty of mutual trust and confidence:

1) The forced restructuring of the Claimant's role with the intention to use the restructure as a covert way to oust her from the organisation;

232. For the reason already explained, I do not think that it could be said that the restructure was "forced" or intended to oust the Claimant from the organisation. The way it was dealt with was not perfect, of course. But the Claimant contributed to that by taking 3 months leave, half of it unilaterally and at very short notice, immediately after she was formally informed about the proposal. She had been aware that a restructure was in the pipeline for

some time prior that. And taken as a whole, I do not consider that the way the restructure was handled could be said to be calculated or likely to destroy or seriously damage the relationship of trust and confidence. The Respondent is a very small charity – it could not wait forever before moving forward with the new structure.

(2) The handing of the Claimant's Grievance (as set out above) and its outcome unfairly dismissing her Grievance;

233. Once again, while the way the grievance was handled was not a counsel of perfection, I do not consider that it could be said to have been calculated or likely to destroy or seriously damage the relationship of trust and confidence. Nor was dismissing the grievance “unfair” – it was the decision the panel reached on the evidence.

(3) The DSAR response (both in terms of the very limited, incomplete and over-redacted disclosure, but also the intention to oust the Claimant revealed in the limited documents disclosed);

234. Again, I was not taken to any specific documents that the Claimant said ought to have been but were not disclosed. I would struggle to see that an imperfect response by a small charity to a large DSAR could meet the test of being calculated or likely to destroy or damage the duty of mutual trust and confidence without something more.

235. The reference to the intention to oust the Claimant must be to the Trustee meeting in December 2023. I can see that Trustees voting to consider an exit might be capable of doing harm to the implied duty of mutual trust and confidence. But of course, by the time the Claimant received the minutes via the DSAR some 6 months had passed. She remained employed, and had in fact been offered and accepted a post in the new structure. So in that context, I do not think that a discussion in a Trustee meeting some six months previously, where the Trustees had voted to take advice regarding exploring an exit, could in that context destroy or seriously damage the relationship of mutual trust and confidence. Had the Trustees really wanted to exit the Claimant at that point they could have simply filled the post rather than offering it to Claimant. The fact that they had offered it to the Claimant and continued to attempt to support the Claimant back to work through a period of extended ill health in my judgment showed that they did intend to be bound by the terms of the contract.

(4) The discriminatory conduct relied on in this claim and in her First Claim;

236. I have found there was no discrimination. So this cannot have been a breach of the implied duty.

(5) The ignoring of her request on 12 August 2024 to not have contact with Ms Robson due to the impact on her health;

237. This is a significant mischaracterisation of what the Claimant said in her email of 12 August 2024. The Claimant did not say she did not want to have contact with Ms Robson due to the impact it was having on her health. What she said was that her communication with Ms Robson was not good, and that she could not get a resolution. What she meant, in reality, was that she did not like the answer she had been given by Ms Robson regarding the payroll matter. That is a very different thing to what is presented in the list of issues. In the circumstances, I find it was entirely reasonable (and in no way a breach of the implied duty of mutual trust and confidence) for Dr Bahru to have referred the matter back to Ms Robson. To have acted otherwise in the circumstances would have significantly undermined Ms Robson as the chief officer of the charity. An employee who does not get their own way cannot simply go over their manager's head to the Chair of Trustees.

(6) The handing of her Grievance Appeal ("the last straw") and its outcome unfairly dismissing her Grievance Appeal.

238. I have found that the handling of the grievance appeal was not unfair or unreasonable, and it follows that it was not a breach of the implied duty of mutual trust and confidence.

239. Stepping back, of course, I must consider whether the conduct was cumulatively capable of constituting a breach of the implied term of mutual trust and confidence. I consider that it was not. Bearing in mind the context, while the management of the Claimant was not a model of perfection throughout, the conduct relied on cumulatively was in my judgment neither calculated nor likely to destroy or seriously damage the relationship of mutual trust and confidence.

240. It follows that the complaint of constructive unfair dismissal fails.

Approved by:
Employment Judge Leith
Date: 27 May 2026

Sent to the parties on:
Date: 3 June 2026

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