



EMPLOYMENT TRIBUNALS

Claimant: Cecilia Canha

Respondent: ZVC UK Ltd

Heard at: Southampton

On: 30 January and 2,3,4,5,6,7 and 9 and 10 February 2026

Before: Employment Judge Rayner

Mrs M Metcalf

Mr M Richardson

Representation

Claimant: in person

Respondent: Ms Berry , Counsel

JUDGMENT

1. The Claimant's claims that she was discriminated against on grounds of sex in that
 - a. The Respondent failed to give the Claimant a fair opportunity to be appointed to the role of lead of the contact centre specialist team in May 2023 and
 - b. By the Respondent failing to appoint the Claimant to the role to which it appointed Mr. Khan in October, which the Claimant asserts was a managerial role

are well founded and succeed.

2. All other claims of direct sex discrimination **are not well founded and are dismissed.**
3. The Claimant's claim that she was unfairly dismissed **is well founded and succeeds.**
4. The Claimant's claim that she was discriminated against on grounds of race **is not well founded and is dismissed**
5. The Claimant's claims that she was harassed for reasons relating to sex and/or race **are not well founded and are dismissed.**
6. The Claimant's claim that she was automatically unfairly dismissed while having made a public interest disclosure **is not well founded and is**

dismissed

7. The Claimant's claim that she was subject to a detriment for having made a protected disclosure **are not well founded and are dismissed.**
8. The Claimant's claim that she was wrongfully dismissed **is not well founded and is dismissed.**
9. The Claimant's claim that she was subject to victimisation for having done a protected act **is not well founded and is dismissed.**
10. The Claimant's claims that the Respondent breached her contract by failing to pay
 - a. A referral fee of £4500.00
 - b. a sum of £200,000.00 in respect of Commission

are not well founded and is dismissed

11. The Claimant's claim that the Respondent made unlawful deductions from her wages **are not well founded and are dismissed.**
12. The matter will now be listed for a remedy hearing the details of which will be sent to the parties in due course.

REASONS

Introduction and background

1. The claimant was employed by the Respondent from the 1 February 2021 until the 5 January as a contact centre and customer experience specialist.
2. The Claimant's contract was terminated by the Respondent and the Respondent says the reason for termination was gross misconduct by the claimant.
3. The Claimant approached ACAS on the 22 January 2024 and was issued with a certificate on the 15 February 2024.
4. She filed a claim to the ET on 19 February 2024, in which she alleged she had been discriminated against on grounds of race and sex; that she had been subject to a detriment for having raised a public interest disclosure including having been dismissed; that she had been victimised and that she had been

unfairly dismissed.

5. In addition, she claimed wrongful dismissal.
6. The Claimant was allowed to amend her sex discrimination claim to include the allegations that had been identified under the heading equal pay. She did not pursue an equal pay claim.
7. The Respondent filed its response to claim on 11 April 2024.
8. The case has been subject to two case management hearings and one preliminary hearing, and there are therefore three case management orders.
9. The issues as amended, were set out in the case management order of 11 November 2024
10. The issues are set out in the appendix to this judgment.

The hearing

11. The hearing was listed for eight days with the first day being a reading day for the employment tribunal.
12. The tribunal were provided with an agreed final hearing bundle of 1136 pages.
13. The claimant gave evidence on her own behalf and called Hannah Siddiqui, Sam Tayan and Adeel Dayo to give evidence on her behalf. Mr Dayo did not attend but provided a witness statement which the tribunal read and took into account.
14. The Respondent called Amy Roberge, Angela Wong, Ben Neo, Beth Ann Andrews and Helen Watson to give evidence on their behalf.
15. All witnesses provided the tribunal with a written and signed witness statements.

Findings of fact

16. The Respondent, Zoom, provides a platform for businesses and individuals to hold virtual meetings within organisations and with third parties. The claimant and the other individuals identified within this hearing were all involved in the sales side of the business.
17. In common with many commercial sales operations, Zoom divides the global sales team into regions or areas. One such area was Europe Middle East and Africa or EMEA.
18. The claimant worked as a sales executive in the EMEA region, which was split into north, which was UK and Benelux Nordics; EMEA South which was France Italy Spain Portugal and Israel, DACH which was Germany Austria Switzerland and central Europe and the Middle East and Africa which covered all Middle East countries, and then Turkey Pakistan and Africa.
19. The claimant covered Middle East countries but was focused primarily on sales in Pakistan. Within each regional account executive sales team, there were further splits into upmarket; mass market and small and medium sized businesses, based on the number of employees each company had.
20. Upmarket refers to the largest organisations and those with more complex needs. The mass markets were organisations in the broad mainstream market and the small and medium sized businesses were those with fewer employees and smaller budgets.
21. We understand that sales made in the upmarket and mass markets were likely to be more valuable and therefore earn higher commission for the sales representative doing the particular business.
22. At the time the chronology in this case starts, we understand that Scott Brown was global head of Zoom contact centre. Mr Neo told us in his evidence that the contact centre is a cloud based customer service platform which is integrated into Zoom's unified communications ecosystem. He said the sales specialists acted as an overlay team within each region, to promote Zoom

contact centre partners and customers, as well as driving sales strategies to achieve contact centre sales quotas.

23. The primary role of the sales team was to sell licenses for the use of the zoom products to companies. A large commercial company would be likely to require a very large number of licenses and therefore would be a more profitable sales deal to the company than the sale of a few individual licenses to a relatively small company.
24. The employees making the sales, such as Miss Canha, earned a basic wage but also earned commission.
25. The Respondent company dealt with its sales by the use of sales reps representation letters. Examples were provided to the tribunal (see page 154 and 157) and we accept that the use of such letters is standard in the tech sector. We also accept that this was an integral part of Zoom's commitment to transparent trustful business practices.
26. Sales individuals were required to sign such letters as part of internal sales compliance commitments, under the personal commitment not to enter into side agreements with customers or partners to secure orders. In effect this was to prevent sales people from offering or accepting discounts, bribes or kickbacks.
27. Not all of the sales made by Zoom sales executives were directly to the companies, because Zoom entered into agreements to resell licenses with various partners. The agreement with the partners would allow them to resell Zoom products.
28. The claimant was responsible for sales of Zoom contact centre within Middle East and North Africa MENA, region and she worked with a number of resellers. One of these was a company called Dtech which helped promote and sell contract centre licenses to their prospects and customers.
29. Ben Neo joined the company on the 1 February 2021. Initially he worked as a Zoom phone sales specialist/ zoom phone enterprise sales manager for EMEA

and then became UCaaS advisor.

30. By March 2023 the claimant was working as a Zoom phones specialist in the upmarket team for MENA. Her role was to work with new and existing customers to meet their telephony and video needs.
31. In early 2023 zoom carried out a global restructure. The restructure included the removal of the entire zoom phone team and all associated roles. This meant that all Zoom phone employees were offered enhanced severance packages or alternatively an opportunity to apply for new vacancies within the new structure.
32. The claimant was given the opportunity of applying for a role of a Contact Centre Specialist – Upmarket, as well as being provided with details of a severance package and a settlement agreement to be signed by 30 March 2023, if she chose not to apply for a new role in the new structure.
33. At the point of the redundancy programme the claimant was interested in stepping up to manage a team. She considered this to be the natural next step in her career progression and had discussions with the executive leadership team at zoom about this.
34. The claimant was not offered a management role during the redundancy exercise but instead was given the choice of applying for two roles, one as a contact centre specialist, The other as an account executive.
35. The claimant was not offered the role of UCaaS advisers which was a slightly higher ranking job, and understood that they had been earmarked for Ben Neo and Salman Khan as managers.
36. The claimant says that she asked Soumia Abdellah from human resources whether or not any managerial roles would be coming up that she could be considered for, and SA told her that she was not aware of any managerial roles coming up. She told the claimant that, given the claimant's tenure, her desire to move into management and her successful track record, that she would be one of the people to be considered when the time arose.

37. On that basis the claimant applied for and secured the new role of Zoom Contact Centre Specialist on the 26 March 2023 and was appointed to the role with confirmation on the 30 March 2023.

38. Her pay or compensation was 50% basic salary and 50% variable Commission.

39. Mr Ben Neo was also at risk of redundancy because his role was eliminated. He was offered the position of UCaaS advisor which he accepted.

40. The claimant says and we find that a male colleague, Salman Khan, who was worked in the same Zoom Phone team, was in the same position as she was. He was offered a redundancy package, which he accepted. The Respondent says his employment was terminated in May 2023, and we have seen part of the severance package that he accepted, on top of the redundancy.

41. The Respondent asserts and we find as fact, that he signed and accepted that severance package on the 17 April 2023.

The rehire of Mr Khan

42. The Claimant says that Mr Kahn was engaged in talks with senior management expressing an interest in managing the sales team based in Dubai, at the same time that the claimant was told that there were no managerial positions available.

43. Mr Tayan, who gave evidence for the claimant, stated that in June 2023 he was made aware that he would be able to hire to a UCaaS advisor role, working for him in Dubai. He said the claimant's old job was based in the UAE and that he knew that Cecilia was very interested in the job. However, he said he was informed only to consider Salman Khan for the role and not to consider Cecilia. He said he was instructed by the respondent not to even run a selection process. We accept his evidence and find as fact that this is what was said to him.

44. Mr Tayan said that subsequently Salman Khan had informed him that he did

not pay back the severance package he had received, even though his rehiring was less than six months after he left, having taken a redundancy package.

45. The Respondent says that Mr. Khan was rehired by Zoom in October 2023. The claimant points to a contract of employment signed by Mr Khan on 31 August 2023. We find that there must have been negotiations going on prior to that date.
46. The Respondent accepts that there was no clawback from Mr Khan's severance pay, or, the Respondent says from any other employee's severance pay following the 2023 restructure.
47. We find as fact that Mr Khan was not required to pay back his severance pay, and we accept that claimant's evidence that it was the practice to require it, although we also accept the respondent's evidence that there was managerial discretion .
48. We have heard no evidence from anyone on the respondents staff as to how this discretion was exercised for Mr Khan, or why.
49. The claimant referred in her witness statement to an exchange with Soumia Abdullah (SA) from human resources about the role.
50. (SA) was asked about this by Ms Andrews (BA), when Ms Andrews conducted the investigation as part of the claimant's grievance . We find and remind ourselves that this was a grievance process in which SA and BA refused to allow the claimant permission to call Mr Tayan as a witness .
51. SA says that the role was available and that the claimant was eligible to apply and said the claimant had reached out to her at one point expressing interest in a role in the Mid East. SA told BA that the claimant had not applied for it.
52. We prefer the sworn evidence of ST, who says that he was told not to interview anyone except SK and not to advertise, to the comments made by SA in

response the claimants grievance.

53. We have seen no documentation about the advertisement for this role , and it does not look as if BA saw any, despite her assertion that she would have looked at any documents which were relevant. We have heard no sworn evidence from SA, but on the basis of the documents we have seen, we conclude that she was not truthful about the conversations she had with the claimant , and the sequence of events. This may have been deliberately or because she did not remember.

54. We find as fact that the claimant was not given any opportunity to apply for the role, and that was because Mr Tayan was told not to advertise it.

55. We find that the claimant had been told that there would be a recruitment process for the post of UCaaS advisor, and that she would be able to apply, but subsequently she had found out that Mr Khan had been appointed without any process.

56. We have no explanation as to why Mr Tayan was told to recruit to this position without a fair recruitment process or why the claimant was not given the opportunity to apply for it.

57. The claimant says and we agree, that she should have been given the opportunity to apply for the role, and should have been considered for the role. We accept her evidence that this was the region in which she had grown her network; built relationships with account executives over the years and been successful in building a healthy pipeline. She believed she would have been a good fit for the role. She contrasted her experience with that of Mr. Khan who did not know anything about the region.

58. Further , she remained an employee of the respondent, whilst Mr Khan had been allowed to take a severance package, return at a managerial position and suffer no clawback.

59. We find as fact that the claimant was treated differently to Mr. Khan both by being prevented from having an opportunity to apply and by not being appointed.
60. We have no evidence to suggest that Mr Khan was a far better candidate than the claimant, or that there was some reason for recruiting him after he had taken a generous redundancy package.
61. We accept that he signed his contract on the 31 August 2023, to start in October, but we find that the discussion over the role started much earlier, and since the role was available from June 2023, and since we accept Mr Tayan's evidence on this point, we find that, on balance of probabilities, the discussion about re hiring Mr Khan started sometime in June 2023.
62. We find that this was in a context of the claimant having expressly told human resources that she would be interested in a management role. Further the circumstances raise the question as to why someone senior did not want the claimant but did want Mr. Khan. In particular the question is whether or not this was anything to do with sex?
63. We all agree that the circumstances of this case on their own are sufficient to shift the burden of proof, because there is a difference of treatment, a difference of sex, and we have found facts from which we could find discrimination, in the absence of an explanation. This includes our findings of fact about the evidence of Mr Tayan about the conversations he had with people about the claimant.
64. We have also taken into account the treatment of the claimant in other recruitment exercises and the findings of fact we have made in respect of them, as set out elsewhere in this judgment.
65. We all agree that in the absence of an explanation the tribunal would be entitled to consider that the treatment of the claimant was direct sex discrimination.
66. We have not had any explanation which explains in non discriminatory terms the rehire of Mr Khan, or the express exclusion of the claimant from this

opportunity for the Respondent and conclude therefore that this was an act of direct discrimination.

The allegation of an agreement to rehire Mr Khan

67. We turn next to the allegation that the Respondent had made an agreement to rehire Mr Khan before he was made redundant.

68. The Claimant does not know, and produces no evidence of whether any such decision was made or if it was, who might have made it. This is for the simple reason that she was not party to the decision making of the respondent.

69. What she does know and what we find as fact is that Mr Khan was the only person considered for a role and that the Respondent has not been wholly transparent about either the reason for this or the timing of the consideration.

70. We accept the claimant was genuinely concerned and that she had good reason to be concerned when she became aware not only that he had been appointed to a role that she had expressed an interest in, but that he had been appointed, although he did not start the role, within a relatively short period of having been made redundant and in circumstances where he was not required to repay his severance package.

71. Whilst we are satisfied the appointment process itself is an act of sex discrimination, and despite the circumstantial evidence, we are not able to make any findings that there was a specific agreement at an early stage to deal with Mr. Khan in this way and not to make the same offer to the claimant. In particular we have no evidence that there was an agreement before Mr Khan was made redundant, that he would be rehired.

72. The Claimant bears the burden of proof and she cannot show that this is factually correct. It is not for the Respondent to disprove. Specifically, we do not infer from the fact that Mr Tayan was told to re hire Mr Khan, that there had been an agreement made at an earlier stage with him .

73. Whilst we share the claimants concerns about the process, and the timing, we dismiss this claim of sex discrimination.

The New Role and appointment of Ben Neo

74. In May 2023 the Respondent created a new role of Zoom contact centre customer experiences sales leader, as part of the new structure. The claimant and Mr Ben Neo both applied for the role. The claimant was unsuccessful and Mr Neo was appointed. The claimant complains that the process was discriminatory on grounds of sex.

The May Promotion

75. In May 2023, an opportunity also arose for a promotion within the team, of a Zoom Contact centre customer experiences sales leader. The post had been promoted as part of the new structure.

76. The claimant expressed an interest in this role, and was interviewed but was not successful.

77. The claimant contacted Mr Andrew Howatson (AH) in May 2023, by zoom. We understand he was the recruiting manager. She asked him whether she was being considered for the role and he said that she was and that Scott had reached out to her to make sure they were setting up the interviews.

78. On May 11 2023 , the claimant was interviewed by Scott Brown and he scored her 2/5. We have no evidence of any interview Scott Brown did with Ben (BN) who was the successful candidate, and do not know if or how he therefore scored BN.

79. The claimant refers us to an e-mail on the 11 May 2023 between Frederick Maris and Andrew Howatson.

80. Frederick Maris expressed the view that he didn't think Cecilia (The Claimant) had management experience and stated he didn't have the time to interview multiple people and that he had understood that Ben was taking the role.

81. In reply he was told that Cecilia did have similar leadership experience to Ben, although there was a difference in their experience, and that there was a request for both candidates to go through the process. It was said that a decision would be made once both had been interviewed.
82. On 15 May (see page 1043) F Maris and Scott Brown had a zoom chat the text of which we have been referred to.
83. We find that the exchange was about a request that FM interview the claimant for the ZCC role,. He said , *I was under the impression that Ben is taking the role? I also don't have time to meet or interview multiple candidates, so I would just like to interview your preferred candidate . let me know your thoughts.*
84. He then said *how do you want me to proceed with both candidates.*
85. SB says he had spoken to Colby (a more senior manager) about both candidates, and that he, Colby was a fan of both, but he would view Ben as having *immediate impact and helping to settle the team, plus Ben has a great relationship with your leaders across EMEA. Cecilia would be a candidate for the team leader role in the near term. We can land on Ben*
86. FM says *I am good with that , can you let the recruitment team know that BN is the preferred candidate and I will only interview him then.*
87. The claimant was interviewed by Mr Maris, on the 18 May 2023.
88. The claimant describes the interview with Frederick Maris as a perfunctory 15-minute interview and she felt it was dismissive patronising and derogatory.
89. We remind ourselves that there had been a conversation with Colby, who had said he did know Ben.
90. Mr Maris subsequently told Beth Ann Andrews, during the course of the claimant's grievance hearing in November 2023, that he did a normal interview with the claimant. He said that he spent an hour with her, and she

had fire, but he said she had not read the book he recommended on Spin Selling.

91. We prefer the Claimant's evidence about the interview, which we have heard under oath, to the comments made by Mr Maris in an interview during the internal grievance meeting.

92. We find that in the interview Mr Maris (FM) was dismissive of the claimant's attempts to show him a presentation she had prepared, and that he was patronizing and derogatory to the claimant.

93. We find that he offered her another opportunity to interview, for experience, but the claimant did not take this up.

94. We find that FM was not interested in giving the claimant any real chance, despite being told that she had similar experience, and that in reality, he had made up his mind, that as Ben was the preferred candidate, and would be getting the role, it was pointless to interview the claimant, despite being told he should do so.

95. Further we find from these exchanges, that there must have been discussion about Ben Neo between senior male managers, prior to the claimant expressing an interest in the vacancy. We infer that discussion between senior staff as to who might be suitable, at an early stage, was indicative of the recruitment process usually followed by the respondents, and that this is supported both by the appointment of Mr Khan, and by the evidence of Mr Tayan.

96. We find that because of the earlier discussions and preferences expressed, the claimant had no real chance of appointment because, despite what Scott had said, there was a clear pre determination about who would get the role, regardless of the claimant's ability or performance in any process.

97. We find that in reality, a decision had already been made to promote Ben Neo.

98. We have been referred to documents showing how the claimant was scored by two people who interviewed her, one of whom was Ms Roberge. Ms Roberge interviewed the claimant with Mr knight on 17 May 2023.
99. Ms Roberge scored the claimant at 3/5 and the person she interviewed with did likewise.
100. Ms Roberge also interviewed Ben Neo, but did not give any evidence as to what she or her colleague scored Mr Neo. She produced notes from her interview with both, but does not show what she scored either on. Ms Roberge said she and Mr Knight did not ask the same questions of the claimant, because the claimant did a presentation.
101. BN gave evidence to the tribunal and says at para 20 of his ws that he had an interview with AH, Scott Brown, Amy Roberge, Brandon Knight; Phil Perry and Fred Maris.
102. We have the notes of scores of the claimant at interview from AR, SB and FK. Both FK and AR scored her higher than SC did. We have no notes of any interviews about BN, and no similar scores.
103. No one has suggested to us that the claimant was ever interviewed by AH or Phil Perry. We find that she was not. The claimant did reach out to AH, on 22 May, to ask if she could speak to him. We have no evidence that he responded or that she was able to speak with him and find that she did not.
104. We have no other evidence from anyone about the process by which the choice was made.
105. We have no evidence from FM or SB or AH about the process, or why they acted as they did.
106. We find that the claimant and Ben Neo were treated differently and were different sexes.
107. Sam Tayan gave evidence to the ET, which we accept, about a time when he was employed as the senior manager running the emerging markets out of

Dubai. In his Witness statement he said he became aware that the position of the EMEA leader for ZP and ZCC had become available and that he took the initiative to propose the claimant for the role. He said and we find, that Zoom was looking for internal candidates. We accept evidence that it was made clear to him by Frederick Maris, who was his, STs newly appointed manager, that the claimant would not be considered. He says and we accept that FM repeatedly used expletives and referred to the fictional character Harvey Spectre from the Drama Suits as his role model. This is a reference to a male role model and is evidence we find, not just of the sorts of qualities that FM valued and wanted, but is evidence of his preference for a man in the role rather than a woman.

108. We find on balance of probabilities, that in that case, Mr Maris had a preference or bias, whether conscious or unconscious to recruit a man to the role, and tht he had a preference or bias towards a man that he knew rather than a female employee who he did not know. We infer that this was not an isolated incident but that , from the evidence we have and the facts we find, that he had a preference for promoting and appointing men rather than women.

109. We find that the process for recruitment was not a fair and open one, it was a process in which several male mangers had predetermined the outcome, to select the male candidate, over the female candidate.

110. These are facts from which we could conclude in the absence of an explanation , that sex discrimination has taken place.

111. We have heard no evidence under oath about the process, or the reason for the choice. If Ben Neo was the better candidate, and he suggests in his evidence that he had more relevant experience than the claimant , we would have expected it to be clear from interview notes.

112. We have no objective evidence about what was being looked for , or how different attributes may have been scored, or how BN was in fact scored, to support such a conclusion .

113. In those circumstances we are satisfied that there is no valid and complete

explanation and conclude that the claimant was discriminated against on ground of sex in the selection process.

114. Following that recruitment exercise, Mr Neo became the claimant's manager, taking over from Scott.

Complaint of sexual harassment by Mr Maris in the interview.

115. The claimant alleges that Mr Maris subjected her to sexual harassment during the course of the interview for the role of lead of the contact centre specialists team in May 2023, in that he

115.1. dismissed the plan that she had put together for the interview conversation

115.2. did not take her seriously as a candidate for the role

115.3. told her to read the book spin selling

115.4. offered her an interview practise

115.5. and said let's see what you've put together yeah send me this slide OK not that one yeah yeah yeah etc. further she says Mr Maris failed to give her a fair chance in the set interview for that role.

116. Firstly, we have considered what happened at that meeting. We find that Mr Maris did not take her seriously as a candidate for the role, based on the evidence set out above regarding the conversations he had about the interviewing for the role.

117. Secondly we find that he did dismiss the plan that she had made for an interview conversation and that he didn't give her any fair opportunity to make her presentation during the course of that interview. On the basis of the evidence set out above on the findings of fact we have made we find further that he did not take her seriously as a candidate for the role.

118. We also find that he did tell her to read a book on spin selling; that he did offer her a further interview as practise and that he did tell her that he would see what she put together and suggest that he sent her some slides but not others.

119. We find that the things the claimant has relied upon as treatment for the purposes of her harassment claim took place and we also find that the treatment was unwanted.
120. We accept the claimant's evidence, and the evidence of Mr Tayan, that the book he referred her to was out of date, and old fashioned; that she wanted a fair chance in the interview and that she felt that the tone he used to talk to her was patronising and derogatory.
121. We find that he did not want to interview her because he thought it was a waste of time . We find that Mr Tayans description of him as being a bit out dates, and rude and aggressive, is probably right.
122. However, we also find on the basis of the evidence of Mr Tayan , and the claimant herself, in respect of other conversations , that Mr Maris was rude and dismissive of lots of people, male and female. We have no evidence that he would have treated another person differently , if he felt it was not appropriate to interview them .
123. Whilst harassment does not depend on different treatment , we find that the unwanted conduct, and in particular the words used, do not suggest that his comments or his behavior was related to sex. We find that his behavior to her was, on the basis of the evidence we have and on balance of probabilities, not related to sex, but related to the fact that he did not want to spend time interviewing someone where he considered it to be unnecessary.
124. Whilst we are concerned about the discrimination in the process, the claimant bears the burden of proving the treatment was related to sex, and we all agree that the facts we have found, in particular the facts we find subsequently about his behavior being equally bad to men and women, are not ones from which we could conclude that the things he said were related to sex. We find that the claimant has not proved those facts, and that the burden of proof does not shift to the respondent. We therefore dismiss this claim.

The Claimants Commission

125. As set out above 50% of the claimant's remuneration package was based on variable Commission. We understand that until August 2023, the Commission payable to contact centre specialist team was awarded based on the team meeting specific KPIs , and not on individual performance.
126. The relevant KPIs were bookings and pipeline individual activity within the region to demonstrate promotion of contact centre with zoom sales teams partners and customers. There were no sales targets for either individuals or for teams.
127. Mr Neo said and we accept that the reason for this was that the team was a new function and the pipeline for business opportunities had not yet been fully established. We heard evidence from Mr Neo and accept that this decision was made by Scott before Mr Neo took over as manager. We also accept that the claimant was treated in the same way as everybody else in the team by being subject to this process for working out Commission.
128. Mr Neo was told in July 2023 that there was a plan to move his team to a team target in August 2023, and the team targets were introduced by Scott on the 1 August 2023.
129. The claimant was unhappy with team quotas, because she considered that she was a particularly high earner and therefore she contacted Ben Neo on the 29 August 2023 asking him to consider incentivizing her on individual quota number as well as the team number.
130. She had previously raised this verbally with him. Mr Neo told us that he took advice from Sumaya Abdullah, the HR business partner, and decided against introducing individual quotas at that time. His view was that the team was at an early stage of growth and that he wanted everybody to have equal opportunity to earn.
131. He decided that the team would remain on a team target for quarter three, but that this would be reviewed for subsequent quarters. Most individual members had soft booking targets, these were not formal targets. Rather, the

aim was to ensure some level of personal accountability within the team. We assume that this was to ensure that everybody was pulling their weight and bringing in roughly the same number of deals and contributing therefore equally to the team Commission. Nonetheless, Commission was only based on the achievement percentage of the team target and every team member was paid the same amount, depending on the achievement percentage of the target regardless of what they contributed.

132. The claimant alleges that this was an act of sex discrimination.

133. We find that the claimant was treated in the same way as every other member of the team. We find that there were reasons for that treatment which were nothing to do with the claimant being a woman. We find the claimant does not demonstrate a prima facie case in respect of direct discrimination. She cannot prove any difference in treatment and difference in sex but even, were she able to do so we accept that there was a reason for the treatment which was nothing to do with sex. In those circumstances we dismiss the claimant's claim of sex discrimination in respect of team Commission.

The appointment of Mr Mathur

134. In September 2023 a new sales representative, Mr Vaibhav Mathur was appointed as a ZCC sales specialist to the mass market team based in Dubai.

135. At this point the claimant was working in the upmarket section.

136. When Mr Mathur introduced himself to the team he stated that he would be working closely with the claimant. The claimant was unhappy about his appointment because she considered he was being brought in to work on her territory, rather than focusing on mass market opportunities.

137. There was a discussion about his role and the claimant's role and Mr Neo set out his views. Mr Mathur was based in Dubai. The claimant was based in the UK, but her customer base was mostly in Pakistan at the time.

138. There is no dispute that the claimant was asked to talk to Mr Mathur and to discuss with him ways of splitting the territory within which she was primarily working. The claimant asserts that this was an act of sex discrimination. This is denied by the Respondent and by Mr Neo.

Misleading the claimant by hire of Mr Mathur

139. The claimant alleges that she was misled over the reason for the hire of Mr Mathur and claims that this an act of direct sex discrimination. She alleges that it was presented to her that he would be looking after the mass market, but was instead slipped into do upmarket customers directly. The Claimant considered that he was being brought in to encroach on her patch, and that this would have an impact on the commission she was able to earn.

140. We find that the Claimant did raise a concern about the work Mr Mathur would be doing (P 486) , because when he was introduced ot the team , he introduced himself to the upmarket team, not to other teams. The claimant had understood and what she thought what had been agreed, was that he would be brought in to help and support the mass market teams.

141. BN replied stating that VM was *coming into the region to positively contribute and provide another pair of hands, could be in upmarket or mass markets.*

142. Then said, *trust you will work together to ensure you are splitting the region fairly.*

143. We find that there had been a change in the emphasis. In response to a question from the Judge about the role, BN confirmed that it was a role in ZCC specialist sales for Mass market in Dubai. We accept however that the reason for the change was that Mr Neo considered there had been a change in the markets and the claimant was focused on Pakistan, which had large opportunities.

144. We refer back to our findings about the recruitment processes used in this organization , and query why, if there was a wider opportunity, it was not advertised or recruited as such. We do not find it likely that this was something just thought of after the person was in post.
145. Whilst we accept that this was not explained to the claimant, the question for us is whether or not the claimant was treated differently to the way a man would have been treated. We have not made any findings of fact from which we could infer this, and we have no evidence of how a hypothetical other region might have been treated. We have no evidence that BN would have acted differently had the claimant's job been done by a man.
146. We do not think the oddity of recruitment alone, is sufficient to shift the burden of proof in this case.
147. We also find that there was an explanation for the change. First the region was a large one, second it was an emerging market with lots of opportunities which ZCC wanted to exploit, for obvious reasons ,
148. The claimant was working hard and doing well in Pakistan, but there was a need for someone to work in the areas outside her focus. This is what he was subsequently asked to do.
149. We find that BN did not discuss the possible hire of Mr Mathur with the claimant or the team , but do not find it surprising that he wanted to bring in someone else. This was an emerging market, and we accept his evidence that the claimant had raised issues about the work and the amount of work.
150. Although we accept the claimant's evidence that her concern was about the mass markets work, not her large deals work, we all agree that the decision to bring in another person to work on the growing area was a reasonable one, and one which it was appropriate for the manager to make.
151. The claimant puts this as a claim of direct sex discrimination claim and we remind ourselves, as we reminded the claimant , that she bears the burden of

proving that she has been treated differently to a hypothetical male comparator.

152. She has not been able to point to other occasions when a team was consulted over the hire of an additional team member, although we accept her evidence that this was discussed in general terms at meetings of the team. We find that the way Mr Neo acted was not different treatment of the claimant, and was not different to a usual way of determining where to hire people. There is on evidence that he did this because it was the claimants area, expect that he was taking into account her comments about the workload more generally.

153. We accept that the claimant was concerned about a future impact on her commission and that she had a genuine concern that her commission would be affected, if he was involved in the team, despite the lack of individual commission. We find that she did not, in fact, lose out on the commission. We accept that she wanted to keep doing her deals and not share the leads she was making, and that she thought this would impact on her share of the commission. However, we accept the evidence of the Respondent that in fact, where another team member was added in, the calculation of team commission changed, in line with a calculator, so that each team member gained a higher percentage

154. We have no evidence that the claimant did ever suffer any loss of commissions as a result of his appointment, and we find that she did not.

155. We find that the claimant has not proved of balance of probabilities that there was any different treatment her, despite the evidence of Mr S Tayan, that we broadly accept. No one has suggested that Ben Neo, who was responsible for the hire, and who explained it as primarily arising from the claimant's own concerns about her workload, was discriminating against the claimant, or that he would have done things differently if the claimant had been a man, and we find he would not have done

156. The process of bringing Mr Mathur in to work in the claimant's area is not as transparent as it could have been, but in the absence of anything that points to it being on grounds of sex, and given the respondent's explanation

which we accept , we find that the decision was nothing to do with sex and dismiss this claim.

157. We therefore dismiss this claim

The Awards issue and events leading up to dismissal

158. In September/ October 2023 zoom held an annual event at which they gave awards to some partners and to those the business wanted to recognise.

159. There had been an understanding that the CEO of Dtech, the partner with whom the claimant did a great deal of business, would be receiving an award. In the event he did not receive the award, and there was a significant amount of bad feeling, which the claimant attempted to manage, fearing a loss of business.

160. Around this time the claimant makes a number of allegations about meetings that she attended with colleagues including Dave Grant and Dion, and Harry Sundaram who was head of channel for the Middle East, in which she alleges that remarks were made about her working and about Hannah's working which were harassment related to race and or sex and which were detrimental treatment of her.

161. The claimant says that during the course of various calls about Dtech and the award, that Dave Grant and Dion spoke to her and Hannah in a derogatory manner.

162. There was an issue between the claimant and Dave and his team over who was responsible for driving the adoption for accounts that had been sold via Dtech.

163. Part of the issue was that the licenses which had been sold did not necessarily generate any income, unless they were specifically taken up. This required further work from the company, and the claimant considered that

Dave Grant and his team, CSM, needed to do work to deploy the licenses, and do the relevant configuration. Dave Grant considered that they were doing what was required and that the failures lay with the claimant and her team. He considered that his team only became responsible for customers once they were live, and that it was the responsibility of PSO to deploy the licenses and do the configuration. PSO was a different section who provided services on customer license sales.

164. In June 2023, the claimant was working on a deal with a company called Technolexia . The deal was to sell a large number of licenses for use of Zoom into the companies, and was a very valuable deal. The CEO of Technolexia asked for a quote from Zoom partner, D tech, to secure a budget for the new year. (see page 385-6.) This was on the 27 June 2023.

165. We find that the claimant then did some urgent work to create quotes and got them approved. The customer was happy with them and signed the options.

166. At that point the claimant prepared a contract to reflect the terms agreed with the customer and partner. We have been referred to it at page 385.

167. The claimant says in her letter to the client that the deal was doable in terms of budgetary pricing and licensing, but also said that *our solution cannot be deployed without our professional services team being involved so as to ensure successful delivery of our solution.*

168. The claimant made some further enquiries about the scope of the requirement and sent out two quotes on 28 June 2023. She asked for a signature on the one that they preferred.

169. The offers are set out at pages 411-21.

170. The CEO, Mr Naumen (?may have wrong name), replied signing up to quote #2 , which was for 500 concurrent licenses.
171. The quote was approved internally by Mark Parry on 28 June 2023, and the claimant was told to generate the PDF for the customer signature.
172. The claimant says, and we accept her evidence , that as a specialist she does not own the customer relationship, but that she provided support where it was necessary.
173. We accept that at this time the customer was on Eid holiday and that the claimant therefore attempted to assist in getting the deal done quickly, by taking steps to submit the order form in the requested PDF format required by the deals desk.
174. The claimant says that there was a technical issue and that the system did not generate the document she required as a PDF and instead displayed an error message, stating that Adobe Acrobat was not installed. She said that in an attempt to resolve the issue quickly, she tried to convert it and send the file from her mobile phone, which was an authorised device under zoom's policy.
175. The claimant's evidence was that this was a valuable deal, and that she believed that she was acting to facilitate it as speedily as possible.
176. When trying to do this, she says the document was automatically routed via her Gmail account. She denies any suggestion that she sent the document to her Gmail with the purposes of editing or altering its contents and says that in any event she could not do this as the changes could only be made within the Zoom platform. It was her actions in respect of this deal, and in particular the actions she took in sending it via her phone, which formed the basis of the subsequent misconduct investigation and disciplinary actions against her, which lead to her dismissal.
177. The claimant sent the contract and at the time , it appeared that the deal

had been done to everyone's satisfaction.

178. Around the 5 July 2023, Dtech, the company which the claimant worked closely with, was told it would be awarded a Zoom EMEA marketing innovation partner award for 2023. This was a prestigious award and was due to be presented at Zoom's flagship global conference due to be held in San Jose CA. The CEO Adeel Dayo (AD) was to attend at the event and receive the award in person.

179. Unfortunately , in the lead up to the event, AD let Zoom know that he was not going to be able to attend in person , but would be able to accept the award by attending remotely.

180. At some point a decision was made not to go ahead with the award to AD, as he would not be present in person, and instead to make an award to a company that would be represented in person. We understand that this was in part because of the optics, and Zoom wanting to stream the event, and show people personally attending to receive awards.

181. The change over the award did not go down well with Adeel Dayo of Dtech.

182. The claimant discovered shortly before the award ceremony, that as AD was unable to attend in person the award was to be presented to Charterhouse a UK based partner with whom Ben Neo, the claimant's manager and the leadership team were personal friends.

183. The decision about who to make the awards to, was made by several people , and in addition to the change to the award being given to AD, there was a change to something called a rising star award.

184. Dave Fisher and Dion Smith (DF and DS) had an exchange and Dave Fisher suggested swapping out one of the rising star awards and awarding instead to Charterhouse in the UK. This was agreed. (see page 1022) .

185. Subsequently, on 1 October 2023, Joan Morales states that they are pulling Dtech from the awards as instructed by someone called Todd.
186. The claimant raised concerns about this over a video call with Dion Smith. And between the 6-9 October the claimant raised concerns about contact with AD, who she realised was very upset by not being given the award. Various approaches were made to him, apologising and seeking to explain the issue as a last minute change of format, and promising the award would be given at a future date.
187. The Claimant says that she raised that the Respondent needed to address the issue of the CEO prize and Dtech.
188. There is a dispute about when she raised this matter. We all agree that she could not have raised this on the 16 September 2023, because the Zoomtopia event did not take place until the 3 or 4 October 2023 and the claimant had been in correspondence with Adeel Dayo about when he would be arriving in San Jose on the 29 September 2023 . It was not clear that he would not be attending the conference until late in the day. AD sent his email apologies in an email on 2 October at page 857.
189. AD then said that he was no longer interested in continuing the partnership with Zoom (p 855)
190. On 5 October the Claimant contacted Dion Smith, HS, Ben Neo and Sam Tayan, saying that she had had a long chat with Adeel , and asking them to act quickly to find a resolution to rescue the relationship On 6 October an e mail exchange refers to Dtech, saying Dion had asked for a meeting [with Adeel] , and asking CC to keep speaking to him.
191. On Tuesday 10 October, Ben Neo sent an email to Claimant, asking, could she get him (Adeel) to talk to Dion and Fred? He also asked her who had leaked the facts about Charterhouse winning an award even though they were not attending in person.

192. Mr Neo agreed when asked by his Counsel, giving evidence in chief, that there was a meeting called by CC at which the issue of Dtech and the award was discussed.
193. The Claimant says that at this meeting, she said that the reason why Adeel and Dtech did not get the award, was because Dion Smith had a preferred partner, which was Charterhouse.
194. P 1022, in a chat between Dion Smith and Dave Fisher, DF asks if it was possible to swap out one of the rising star awards for Charterhouse in the UK. Neither of the two rising stars were Dtech, and on 11 September 2023 he agreed to add in Charterhouse to have two rising star awards. We find that this would not have impacted on Dtech, as Dtech award was not receiving a rising star award.
195. The claimant does not say in her witness statement that she made this statement in a meeting to Dion Smith . What she does say, is that she raised a concern about the award being presented to Charterhouse and was told that this was due to a last-minute change of allocation, purportedly by Eric Yuan, to only reward those who were physically attending.
196. She does not suggest she made the comment alleged.
197. Because the claimant does not refer to it in her Ws, and because no one else who has given evidence remembers this, we find on balance that she did not make this comment and that therefore there is no question that she made a PID at this meeting, by making such a statement .
198. We do find that the claimant was clear that she felt there needed to be some work done to salvage the valuable relationship.
199. The email from Dion did not land well. Adeel (CEO and founder of Dtech), remained unconvinced and noted that an award was given to Charterhouse who were not in attendance either. He asked them not to add insult to injury, and asked them not to take their partners for granted.

200. On 10 October CC said to Frederick that Adeel's wish not to talk should be respected.

201. The claimant also suggested that Dion should not be included in a call with Adeel. She suggested that the management needed to humbly accept the mismanagement of communication and to make a commitment to EMEA partnership recognition

202. On 10 October Dion Smith made a complaint to Sipoura Barzideh, about the claimant on speak up, which records as follows

that he suspected that Cecilia Canha had shared with D tech Eric Youns e-mail address. Smith also suspects that around 9th 2023 Canha and Hannah saddique may have shared with Dtech that partner Charterhouse was not present at the Zoomtopia, but still received award which Dtech complained about in an October 9 email to Smith and others. Smith believes that Canha and Hannah shared this information with D tech, because they raised the same point during an October 9 internal meeting with Smith and others p 558

203. The claimant denies the allegation that she had leaked an email from Eric Yuan on 10 October 2023. She reminded us that a subsequent report of 17 October 2023, stated that they (the Respondent investigators) could find no evidence that she had shared Yuan's email or inappropriately shared other internal information with DTech.

204. On 12 October FM reached out to Adeel Dayo, inviting him to meet the following week at GITEX.

205. On 13 October Ben Neo was interviewed by the compliance team. The issue was the way that the deal had been done with Dtech by Cecilia and the speed of the deal.

206. In this meeting he was asked about CC and commented that she and

Hannah were close, and said, they know each other from zoom , some social circs, both single mums. Hanna lives in Dubai. (537)

207. The claimant had meanwhile contacted Graeme Geddes to tell him about the issue with DTech, and the partner not receiving his award. She stated that her integrity was being questioned.

208. The claimant and Miss Siddique both consider that no one took the damage that the change of the award had caused to the business relationships seriously. The claimant understood that the award had been reallocated at the last minute apparently due to a decision made by Eric Yuan (Zoom CEO) to recognise only those who attended in person.

209. The claimant attended at the GITEX event on 18 October 2023.

The Meeting about the Dtech deals

210. The claimant's allegations in respect of public interest disclosure, discrimination and victimisation are predicated upon the allegation in the list of issues, that Mr Grant made derogatory comments to the claimant in a meeting on the 16th of September, in response to the claimant raising concerns about perceived failures by Mr Grant's team.

211. The claimant alleges that at a meeting on 16 September 2023, she raised an informal grievance with Mr Neo, and made protected disclosures by making the following statements:

211.1. that Dave Grant and Dion Smith spoke to her and Hana Siddiqui in a derogatory manner referring to "this region" and "these people" because of their race and/or sex.

211.2. that Dave Grant needed to take the sales of "these accounts" and needed to drive the adoption of "these customers" [the accounts being those for which D Tech was the partner reseller]

211.3. that the respondent needed to address the issues raised by the CEO of D Tech Consultancy regarding his prize winning award and why he wasn't given the prize, which was because Dion Smith had a preferential

partner who he preferred to give the award to (being Charterhouse).

212. She also alleges that at that meeting on 16 September 2023, she was harassed on grounds of sex and / or race, when Dave Grant spoke to her and Hana Siddique in an allegedly condescending manner stating "it is only this region, you people, where we have these issues"; "do these customers even exist?" and "will these customers even pay us?"
213. It is certainly right that the claimant invited Mr Grant and others to a meeting and it is right that Mr Grant initially declined and was then persuaded by Mr Neo to attend the meeting.
214. It is right that a meeting did take place with the number of people attending and that there was a discussion about whose responsibility the licensing and on boarding was. The claimant considered that Mr Grant and his team should be making contact with the customers who had signed the contracts, even before license's and onboarding had taken place, because there was a years' period during which the customer did not have to do anything, and she felt it was important that they were therefore contacted and given support at the earliest opportunity. The claimant said that she called a meeting with him because of her concerns that this was not always happening.
215. According to the Respondent, Mr Grant considered that there was little point in contacting customers until the licensing and onboarding had been completed. He raised a concern that the PSO had not been done for certain clients.
216. There appears to have been a miscommunication about this matter, but at the centre of it is an assertion by the claimant that at this meeting she raised concerns that were in the nature of whistle blowing. She says her comments amounted to protected disclosures because she was making allegations about a senior manager not doing his job properly.

217. She also says that it was at this meeting that comments were made by Mr Grant to the effect that *it's always you people who are causing the problems and that he only had problems with you people*.

218. The claimant accepts that following her suspension, a few weeks after this meeting, she did not suggest in any of the subsequent complaints she made, that this was race discrimination or a protected disclosure. She did however suggest in her correspondence that Mr Grant had been very derogatory in a meeting and did suggest that she had been treated or discriminated against as a woman.

219. The claimant suggested in her ET1 that this meeting took place on the 16 September 2023, and this has been set out in the list of issues. However Respondent counsel pointed out to the claimant in cross examination that the 16 September was a Saturday, and the claimant agreed that therefore the date of the meeting must be wrong because they do not work on a Saturday.

220. Having considered all the evidence, we find that the Claimant , who did not have access to her diary, or any of the relevant emails until she got her SARS disclosure some time into the process of litigation, made a mistake about the date of the meeting when she filed her claim . That error is understandable and does not affect her evidence about what she recollects being said at a meeting, which both she and Hanna Siddique say took place, or her evidence about what was said.

221. We find there were two meetings, the first one, which took place sometime in September 2023 , was a meeting to talk about the deals the claimant and HS were working on , and which DG says there were no licenses being taken up. It was referred to as a PSO meeting , and a number of people attended.

222. We find that there was a meeting at about that time, at which the claimant was asked questions by Dave Grant about a range of deals which they had completed, but which were not leading to any further use of licenses, and were not therefore bringing in any revenue. We have understood that the implied suggestion was that there was something wrong with the deals, and

the Claimant and Hanna Siddique thought that Dave Grant was making the allegations because of the regions he thought the problems were in, and that he was making implied allegations about the honesty or integrity of the people in those regions.

223. Both Hanna and the Claimant have given evidence that at that meeting that Dave Grant made the alleged comments.

224. Ben Neo was at the meeting and said he did not recollect the comments being made.

225. The Claimant had raised a grievance about the meeting and the comments, which she also relies on as being a protected disclosure.

226. In Cross examination she was taken to her grievance and what she said about it there, and Hanna Siddique was taken to her interview and what she had said.

227. We accept that there were variations in the exact words they each reported on different occasions, but we find that something along the lines of the comments they both report were said. We make finding as to what was said , as follows.

228. We find that Hanna did ask if it was *all regions* and Dave Grant replied *no, its your region*.

229. HS was challenged as to whether the words “you people” had been said, and was referred to an earlier witness statement, in which she made no reference to those words, and had not described the comments in the same terms.

230. She said had not included the word “you people” because she was in a distressed state and not very clear. She was adamant it had been said.

231. She said that the words were about another region, being Africa, and her region
232. We did not have any evidence under oath from David Grant, and have no explanation of why he used the words or what he was trying to say to the claimant and HS that day. We do have is both interview notes of the claimant HS and Dave Grant's interview notes. The Claimant was first interviewed on the 30 November 2023, before DG whose interview was 11 December (page 647)
233. The Claimant said in that interview that (613) that DG said that it was YOUR regions, yes we are seeing the problem across Europe, and she did not suggest at that point that it was anything to do with race, although she says the notes were not correct. Also at this point the clamant made not reference to him saying *you people*, and her take on it at the time , was that the criticism was of all the regions .
234. The claimant did say that “ *he was derogatory, it was all like, its your customers, are these customers even real, are they going to pay? Are these customers even real?*”
235. She says that she spoke to Ben Neo subsequently, and complained about the way DG had spoken to her. She says that she asked him about it, and said, if that had been two gentlemen, he would not have spoken to me like this . She does not mention race.
236. We find that DG did make some derogatory comments , about the regions, and the deals and whether the deals were real, but cannot find, given the absence of the comments in earlier statements from HS and the evidence of C to BA, that the comment *You people* was made.
237. Dave Grant says he raised the flags because there were too many deals in one area that did not look right, but that did not mean they could not work together. He said to Beth Andrews that discussions did take place.

238. On balance of probabilities we find that comments were made by DG about the regions and the nature of the deals made. We accept that the comments may have been offensive, because Hannah thought they were about people in the regions , but we find on balance of probabilities that the comments *you people* were not made.
239. Further, the claimant did not, at the time of the interview about her grievance, make any reference to race, only to sex.
240. The claimant bears the burden of proving that the comments she relies upon for the purposes of her harassment claim were in fact made, and that they were related to race or sex.
241. We have considered whether or not comments were made which were unwanted by the claimant and which had the effect of creating a hostile or offensive environment. We find that the comments were unwanted and the manner in which the discussion took place, which seems to have made things overly and unnecessarily personal and the way the comments were understood, were capable and did create a hostile environment and an offensive one for the claimant .
242. However, from the facts we have found, both about this conversation and meeting , but also taking into account facts we have found about Dave Grant's behavior and comments elsewhere, we do not conclude that the comments were related to race or sex. Instead, we find that the comments were about the work that the claimant was doing and the deals she was concluding. The fact that they were complaints about a particular regions , was because that was the regions the claimant was working in. None of the evidence we have heard or the facts we find , point to the comments being made because of the regions or the people in that regions , but rather were because of the concerns DG had about how the claimant and HAS were doing business.

243. We find that although the meeting was heated and did create a hostile work environment , and that comments were made that the claimant and Hannah found offensive, that the comments we have found proven , were not, on the facts we have found, related to either sex or race. We therefore dismiss this allegation of harassment.
244. Did the claimant make protected disclosures at that meeting , or in her Grievance?
245. Again, although the claimant refers to a meeting of the 16 September 2023 we accept that the meeting did take place but not on the 16 September 2024 .
246. We have made findings of fact as set out above, that Dave Grant made a number of comments to her about whether or not the customers were real and referred to the regions. The question we consider for the purposes of her PID claim, is whether or not the claimant disclosed information at that meeting, or after, which she reasonably believed amounted to a breach of legal obligation ? did she reasonably believe it to be in the public interest?
247. In her Witness statement she says that she raised concerns about the shortcomings of the customer success team.
248. We accept that there was a heated conversation about the lack of take up of licenses, and the claimant blamed Dave Grant's team , and he blamed her. The claimant told BA that she raised this with Ben Neo after the meeting, in a 121.
249. In her second interview with BA she says that she told her manager Ben, after the meeting that she thought would not have spoken to her in that was if it was gentlemen , rather than her and Hanna. She relies on this as a protected act for the purposes of her victimization claim , but not as a disclosure for her PID Claim.

250. She has given no evidence to us and did not suggest to BA during the course of the grievance that she made a PID during that meeting.
251. During the grievance There was a discussion about what had happened and not happened, and she blamed DG's team , and he blamed her. She did suggest that he and his team needed to take the information and drive the process.
252. We find that during the meetings she was challenging DG about the way that his team was doing the work, and saying that the team needed to pick up and do the work.
253. We cannot find on the evidence that the claimant ever disclosed any information , beyond stating her view that it was Dave Grant's team that had failed to do as required. Whilst the claimant may have made comments about what DG needed to do, to drive adoption of the customers, this was not a disclosure of information , but a statement of her opinion of what the team needed to do. We accept that there was a discussion about the responsibility for a step in moving the sales process forward.
254. We find that not only was this not a disclosure of information, it was not in any event , about a legal obligation. Further we find that the claimant did not consider that it was. We find that this was a heated discussion about the professional responsibilities of the different sections in a sales process, and a discussion and disagreement about whose responsibility it was to follow up the sale of license's, in order to ensure that the agreement to enter into a license agreement was translated into an actual license agreement after the first year. This is matter of the business processes and distribution of responsibility internally at zooms sales team. It is not about any legal obligations.
255. We accept that there were legal requirements at various stages of the process, as a result of financial regulations , and contractual processes, as well as internal rules that reflected standard business dealings regarding sales in this sort of industry. At no time has the claimant been able to identify

any legal obligation that was breached, or that she thought had been breached and we find that this is because none was. She has also not suggested that she believed there to have been a breach of an obligation which she thought was legal. The breach she believed had occurred was of Dave Grant's team not doing their job properly.

256. Whilst a failure to pick up on work may be in the interests of the group of the public who were doing the deals, in reality this was a meeting to discuss a failure to convert the sales of license's into actual licenses being used and generating revenue, and which of the parties was responsible for taking that forward.

257. Further and in any event, the discussion was not about a matter which was in the public interest, unless the claimant suggests public means those people who worked for Zoom in the different teams. The claimant has given no evidence to that effect, and we have no evidence from the claimant at all to suggest she believed her complaints and concerns to be in the public interest. We find it was not.

258. We therefore conclude that there was no public interest disclosure at all.

Victimisation:

259. The Claimant alleges that she raised the things said to her in the meeting with BN after the meeting call, and suggested that the way she had been spoken to could amount to sex and race discrimination . This was the comment about the regions and the people. She relies on this as a protected act.

260. Ben Neo had no recollection of the meeting or of the claimant raising a matter of potential discriminant with him after this call, although he did recollect a 121 after the second call. That we find, was the call on 26 September about the awards.

261. He did say that she had raised the issue about adoption of customers, and he gave his view that it was for her or Hanna to request PSI services on any customer license sales and not the expect PSO to do it. He had no recollection of her raising concerns about the way that DG or DS had spoken to her.

262. On balance we prefer the claimant's recollection of what she said to Ben Neo in a meeting after the meeting of the 26 September 2023. We accept that he did not remember it being said.

263. This was therefore a protected act, because she was raising a concern about discrimination in good faith.

264. Was it also a PID? It was information about a potential breach of legal obligation , and we accept that she reasonably believed it to be in the public interest, although she does not specifically say why. We accept that sexism and racism by managers, when taking about deals and customer licenses could be a matter of wider interest that the claimant and her colleagues.

265. We find that she did make a public interest disclosure at that point.

Fred Maris and the Call of 10 October allegation of harassment

266. The Claimant alleges that she was harassed for reasons related to sex, by the way Mr Maris spoke to her when he rang her up on the evening of 10 October 2023.

267. The Claimant's evidence about the conversation is set out in her witness statement , at para 8.1. We have no direct evidence about this conversation from Mr Maris.

268. We find that on the 10 October 2023 Mr Maris called the claimant and we accept the claimant's evidence that it was late in the evening and that the claimant was out for dinner with her children.

269. The Claimant says that she was subjected to aggressive and profane

language including Mr Maris saying *what the fuck are you doing, are these customers even real, will they pay us.*

270. Mr Maris was interviewed by BA about this during the Claimant's subsequent grievance investigation.

271. He was asked to comment on what the claimant had complained of him saying. His answer to the question in the interview is to say *Bullshit*. This language is unprofessional in any circumstances, but as a response to a question but as a response to a question about an allegation that he had used profane language to the claimant, it is even more surprising.

272. We prefer the sworn the evidence of the claimant , to the unsworn comments made by him in an interview with Mrs Andrews and find that he did swear at the claimant when he rang her up, and that he was abusive and derogatory, We find that he was not honest with BA about what was said in the interview.

273. We find that this was unwanted conduct,

274. We have therefore considered whether or not the conduct had the purpose or effect of creating a hostile or intimidating environment for the claimant . Whilst it was not inappropriate for the concerns to be raised with the claimant , we find that the manner and timing in which they were raised created an offensive or hostile working environment for the claimant .

275. We find that he used inappropriate language and spoke in an unprofessional way to the claimant in this call, and that he denied it when challenged by BA. We find that the treatment was unwanted and created a hostile environment for the claimant. We cannot find that it was or was not the intention , but it did have that effect.

276. We note that Ms Andrews upheld this part of the claimant's grievance in part, considering that the way he spoke was inappropriate. In her evidence she excused it however, by saying that FM was *rough about the edges* regardless of whether speaking to men or women.

277. Is this related to sex? The Claimants evidence was that he talked to everyone in this way. Sam Tayan described him as frequently using expletives. Whilst this does not mean that his behavior was not related to sex, since there is no requirement for a comparator in a harassment claim, we do need to make some findings of fact which point to a link between the language and manner of speaking and the claimant's sex.

278. Here we also find that since the language itself was not sexist, and we have no other relevant facts from which we could conclude that this was sex related, other than the fact that the was man speaking rudely to a women.

279. Taking this evidence together, whilst we find the treatment was unwanted, inappropriate and caused an adverse environment, we cannot find that it was related to sex. We have made no finding that the language was sex specific, and we have found that the perpetrator had behaved in a similar way to others employees, both male and female. The language was not of itself, sexist. It is possible that his use of language with men and women was different and that it had a different impact , but the evidence we have, and our finding is that he was rude and aggressive to everyone, and that this was not related to sex.

280. The claimant also alleges (9.1.5) that Mr Maris attempted to scape goat her for the channel award when he called her on the 10 October 2023

281. The Claimant did not give any evidence in chief in her witness statement, that Mr Maris said anything to her in the phone call about the award. It is right that in his interview with BA, Mr Maris does refer to the award, but says that he did not know about that until 15 minutes before. The point is that there is no evidence before us that he tried to scapegoat the claimant and make it her fault. We therefore dismiss this claim as the claimant has not proved that alleged event had occurred.

GIREX and the Claimants Suspension

282. On 18 October 2023, the Claimant attended at a trade fair in Dubai called GITEX.

283. The claimant alleges that at the fair, Hari Sundram, Channel Leader, told the claimant's customers and partners at the Gitex stand at an event in Dubai on 13 October 2023 that "the whole lot of them in that region have been fired" She says that this was race discrimination.

284. The claimant asserts the comment was made and we have no evidence from Mr Sundram, to deny that it was said. We find on balance of probabilities that this comment was made.

285. We find that it was a reference to matters of concern in a particular region, but without more, we cannot find that the claimant was treated differently to any hypothetical comparator. All the claimant says in her witness statement is that this was a derogatory reference to her and her team, who are people of colour, and which covers the middle east, Turkey and Africa.

286. In so far as she was referenced, she was spoken of in the same way as others. The claimant had not been fired.

We find that the comment was about a region, and about actions taken by the company, but can make no findings , and draw no inferences from other findings, that this comment was less favourable treatment , or that it was on grounds of race.

287. The claimant spent the day on the stand and at the end of the day, was called and asked to attend a meeting with the compliance and ethics team. She says the meeting lasted 3 hours. We find it was 2 hours 22 minutes, but accept it was a long meeting at the end of a tiring day. We accept her evidence that she had been on her feet and had not eaten all day. She was not offered a break, and the meeting went into the evening.

288. The C was told it was a follow up meeting to the issue she was interviewed about earlier. The claimant had not, as far as we are aware been interviewed earlier, and also says she was not given an upjohn warning .

289. The Claimant says that she told the team that she needed to end the call, as the venue was being closed by security. Everyone else had left the venue and security were waiting to close up and escort her out. Mr Tayan, who was also there said this was at about 8pm, because the exhibition hall was being closed down and every one had left, and he waited with the Claimant, because he wanted to make sure she got out ok, and that he was later for a dinner he was supposed to be attending with the Claimant. She did not attend the dinner.
290. She said she was asked questions for the duration of the meeting, with no break. We accept that this was true. We also find that she was asked questions about deals that had taken place two years ago.
291. The team agreed to the termination of the meeting for a short break, but required the claimant to call back once she got back to her hotel.
292. The claimant had not eaten all day, and had been on her feet and said she needed to eat and rest. She did not call the team back and when they tried to call her, she did not answer.
293. Following her failure to contact the compliance and ethics team, her access was denied to her to all internal systems, including her phone, leaving her unable to contact anyone, including her children.
294. The claimant had not been informed of any investigation or allegations about her, and was not provided with any details of any allegations after the event or at the point she raised her concerns. She was then placed on a flight out of Dubai the following day.
295. The claimant was then suspended by letter. This was pending an investigation about her altering a contractual document after execution and failing to reasonably cooperate with a company investigation (by leaving and not rejoining a meeting) and other misconduct in violation of the Zoom policy and procedures.
296. The claimant was really concerned about both the investigation but in particular about how she had been treated, by the removal of her phone access,

whilst she was alone in a foreign country on company business. She raised her concerns about her treatment in a letter of 21 October 2023 to Ms Abdullah, of Zoom HR. This was , in reality a grievance.

297. She asked for details of the allegations against her, and said she was willing to co-operate with a fair process.

298. On 8 November the claimant contacted Graeme Geddes, reporting what had happened at the meeting in September with Dave Grant. She said she had subsequently been called into a compliance meeting whilst at Gitex which went on into the evening, and that she was then expected to rejoin a call with Compliance team after getting back to her hotel room late in the evening after a full days work. She said, I am now ambushed with unsubstantiated allegations. She said *this looks like a deflection and victimization to bring down a top performer.*

299. The claimant says that the allegations were trumped up charges against her.

300. She also raised concerns about the way she had been contacted by Frederick Maris on 10 October 2023, late in the evening whilst she was having dinner with her children.

301. She referred to her offer from Zoom in April 2023, and said that Mr khan had been offered a higher severance package , and compared their treatment to hers.

302. On 20 November 2023 the claimant sent an e-mail to Ms Abdullah in human resources about her travel expenses.

303. This followed the recruitment of VM (See above) who she had understood was going to join the team as a mass market specialist but who she considered was encroaching upon her own work engaging with her account executives her accounts on her customers reducing her opportunity to earn Commission and impacting upon her income.

304. In her e-mail to SA she stated that she had consistently performed in her

role, contributing to the financial and continued success of the team. She says that when she asked to go onto an individual target quota, instead of accepting it, the request was rejected and instead another colleague, VM was hired and was now sharing her pipeline opportunities.

305. She said this is heightened the stress levels she was facing and asked them to expedite the reimbursement of her travel Claims.

306. The claimant raised a formal grievance on 21 October 2023. The Claimant's grievance was investigated but there was not further investigation by the compliance team. Instead, the claimant was informed that she would be subject to disciplinary . A hearing took place and that lead to the claimant's subsequent dismissal.

307. The Claimant complains about the process and fairness of the dismissal. She alleges that it was unfair, a of unfair dismissal, automatically unfair for whistleblowing and an act of victimisation.

308. We make the following findings about the investigation, the claimant's grievance and the disciplinary process.

309. The Respondent compliance and ethics team were alerted to a possible issue needing investigation, by a speak out report. This is the company mechanism for allowing people to raise concerns anonymously or otherwise.

310. The concern was raised by Dion Smith. The form states that the date of the report is 10 October 2023, and stated as set out in paragraphs above.

311. Ben Neo was interviewed on 13 October 2023, 5 days before the interview with the claimant. This interview has been referred ot above, briefly, in the context of the claimant's sex discrimination claims.

312. He was asked questions about the Claimant and the new team, which he confirmed was set up in April 2023. He described the process teams followed when making sales. He referred to something called a Quip document, and said the link is at the bottom of the OPP, and that it was a high level document used globally.

The sheet for Technolexia was filled out on 28 June 2023 and Ben explained that he would expect AE to send the quote to customer. He thought it was unusual to have a Quip sheet filled out on the same day, and was asked why the deal had been closed so quickly. He thought this was unusual, and had not been aware of the deal being in the pipeline. He would have expected the claimant to have raised it with him earlier. He needed to know the deals coming up for budgeting and forecasting.

313. He was asked about the Dtech deal and why Adeel was upset and how he had got the email address.

314. BN was asked if he has any concerns about CC. He commented that she was driven and had a big relationship streak. He had no real concerns.

315. He also confirmed that she had raised some issues with him, that she may be going to take further, but had not explained them to him. He thought they may be about Dave Grant. He thought this might be about her performance being questioned.

316. He said that she was upset because of the email from Adeel, and the anger directed at her , when he had not got the award. He commented that Hanna and the claimant were very close, both being single mothers , and had been planning to see each other at Gitex. Hanna lives in Dubai.

317. In advance of the compliance team meeting with the claimant , they invited Ms S Abdullah, from HR, to the end of the meeting they were to have with the claimant on the 18 October 2023.

318. Whilst the invite to the claimant was set to be at 9.55 am – 10.10, the claimant was in a different time zone.

319. She told us that she had received the notes but had not thought that it was worth challenging them, as did not think it would get her anywhere.

320. She was asked when she first met Dtech and could not remember . Regarding why customers she sold to are not using the product, she said that IBEX

had purchased 2k licenses, but not deployed because the PSO team had not engaged yet. She said deployment of licenses depended on PSO on-selling services.

321. She was asked about a whole range of deals, including ones that had been raised with her before – but these are not the issues on the speak out form. They are the issues raised by DS in his and his team in email.

322. The claimant explained her dealings with Technolexia and told the compliance team that she had prepared the quote to the customer she was asked why she had sent it to her Gmail account. She said she did this because it had been completed on a DocuSign and she needed to print it out because there was an issue with the e-mail address. She said this had been flagged to her that what had been sent back to her zoom account was different both in the terms and conditions and the payment period.

323. She said the process kept giving her an error message and that Ravzan from the help desk had suggested to her that she changed the payment term. This is what she did.

324. She said she thought that account executives could change

325. C explains her dealings with Technolexia, and says she prepared the quote to customer and says sent to Gmail because it was completed on DocuSign and she needed to print it out because there was an issue with the email address, It was flagged to her that what was sent back to her zoom acc was different – both the terms and conditions and the payment period, and that Ravzan suggested changing the payment term, because she recalled it kept giving her an error message,

326. The compliance and ethics team also interviewed Lynsey Ricketts a member of the EMEA desk. She explained that *due on receipt* deals mean that they required the credit card immediately, whilst a net 30 deal did not. She said she thought that account executives such as the claimant, could change a deal to due on receipt. If an AE needs to change the billing terms, then they would need to adjust the quote and get customers to sign.

327. She looked at the Technolexia, quote which had no DST, it was net 30 with no discount, and she said it raised no red flags. She also suggested that Cecilia always got mixed up on free periods vs paid term . She said that the claimant had called her on 2.58pm on 29 June 2023, sending her a guru card, but that she , Lyndsey, didn't know which customer she was calling about.

328. Lindsey was asked about changing a payment term after the customer had signed, if it was a quote due on receipt. She would say to the AE if asked, that they should go back and update the quote in system and have customer resign it. Any other work around could only come from higher management.

329. Looking at the quote, Lynsey said that the quote the claimant had dealt with, was initially due on request, and then the claimant had the payment terms updated and signed the form to say due on receipt, and that if an account executive needed to change the billing terms they would need to adjust the quote and get the customs to sign.

330. When she looked at the Technolexia quote by the customer, she said looked as if it was then approved. She says she (the claimant) had obviously had it re-signed by the customer , then sent quote in at 01.50 on 28th June . It was then approved by Frederick on behalf of Sam Tayan. That came to her and she approved it.

331. Razvan, who the claimant says she spoke to was also interviewed. we understand that he worked on the Deals desk, giving support to sales reps and account executives like the claimant.

332. He explained that the net 30 is a standard for deals over \$250 MMR . The system is set to flag up these to the deals desk. A *Due upon receipt* means the credit card is charged automatically. For net 30 there is no need for a credit card, instead the system generates an automatic invoice to the customer. The customer then needs to make a transfer.

333. He also said that if you enter it into sales force, there is as default setting. If enter products that bring quote below \$250MMR there is an error, message, and

the sales account exec can then change the *due upon receipt* to *net 30* themselves. If there was an issue for the E+AE on-payment terms, he would tell the AE to go back and recreate the quote

334. He does not recall the claimant having asked him about this . He thought she had a good memory. He saw that she called on 28 June but said, looks like he spoke to her on that date but no exchange on Zoom chat, this deal does not stick out.

335. Following the interviews, the claimant was invited to a disciplinary meeting on 8 November 2023. The invite was dated 2 November 2023.

336. The claimant was told that she must let the respondent know of any witnesses she wanted to call and also provide any documents she wanted to rely upon by the 7 November 2023.

337. The claimant then received documents from the respondent on the 3 November 2023. These did not include any documents of the claimants and could not have done, given the dates she had been provided with.

338. The claimant did contact Ben Neo ask him for access to documents but also commented that she was unable to communicate with colleagues or prepare the case to defend herself. On receipt of the documents from the respondent on the 3 November, she contacted Miss Abdullah, noting that her access to documents had been cut off and asking to be sent a variety of documents including code of conduct policy; the compliance policy; the employee handbooks; order forms for customers and various emails between the referral partner and of Detech customers. She also asked for proof of WhatsApp messages proof of direct e-mail communication with techno alexia CEO partner as well as variety of other classes of documents including a number of documents about deals she had done with techno lexia.

339. She asked for the information by 7 November 2023 and asked for the hearing to be moved to the 15 November.

340. SA agreed that the meeting would need to be moved ,but would not delay

until the 15 November and instead moved it to the 10 November at 2:00 PM. She said in addition *we would need to see any witness statements by 5:00 PM on Thursday the 9th November*, and that the claimant needed to confirm if she was bringing companion by the same time. The claimant pointed out that this would give her only two days in the morning to adequately prepare and asked to reconsider so that she could have at least 5 days, given the seriousness of the allegations. She pointed out that she had no access to her laptop to gather all the correspondence and she needed to have a fair hearing.

341. On 7 November the claimants sent a list of people who she wished to contact as potential witnesses including Sam Tayan, Frederik Maris and Dave Grant to be called as witnesses, and also asked for Mr Adeel Dayo and Dion Smith and Mounir Rachi. The claimant asked that Frederick Maris be called as a witness because she believed he had all the details on why the investigation took place . This was a reference to her belief that he had made untrue allegations in response to her complaining about his team.

342. She also asked for a range of documents.

343. SA Replied on the 10th of November stating that the disciplinary hearing would take place on the 16 November 2023. SA refused the claimant permission to call all the witnesses. She said, *the purpose of you calling witnesses is for you to have people who may have information to support your case, it is not about asking questions yourself so we do not consider Frederick relevant and also the reason you state is not appropriate.*

344. A number of other witnesses the claimant wanted to call, including Sam Tayan, were also rejected by the respondent. The Claimant was told that the disciplinary did not need examples of what other teams did, but they could pass his name or the name of others to the chair as someone she might wish to speak with, if she needed additional information. The claimant was told that Sam Tayan was not currently working and was therefore not available in the time frame.

345. On 8 November 2023 the claimant wrote to Graham Geddes, raising a further grievance. She said she was writing to express her deep concerns regarding a series of distressing events.

346. She complained that the blame for the shortcomings of the CSM team had been placed on her and Hannah, whilst ignoring the fact that Dave Grant neglected to assign CSMS to the high touch accounts. She said *My role as a specialist is to position the value of zed CC and deal closure. The CSM's role is to harness the day one enthusiasm of the customer and drive adoption. Unfortunately, the attempt to pick this up eight months later was a little too late. Leaving the customer for eight months with no engagement the outcome cannot be successful Dave grant insinuated that the low adoption was unique to my , however we know this is not true as we're seeing this across Europe.*

347. She also complained about the incident on 10 October , when Frederick Maris had called her in the evening whilst she was out having dinner with her children. She said she was subject to a torrent of abusive and profane language for several . She said that although he went erratically from one subject to another, the main conversation was around the debacle of the Zoomtopia channel awards, which the claimant said she had nothing to do with. She alleged that Mr Maris was trying to make her a scapegoat. She said she felt intimidated and thoroughly shaken and wanted to end the call because she was out with her family.

348. She also raised the issue of the redundancy, and the promises made to her of a chance of a management role, the redundancy and subsequent rehire of Salman Khan , complaining that she had not been given the same opportunities that he had been give, despite the promise to her of opportunities when the next management position became available.

349. She complained about being subject to a three hour compliance meeting at Gitex and copied her letter to Mathew Saxon . Both Men were senior within Zoom.

350. Despite the claimant's earlier complaints, no grievance meeting had been set up, and the Respondent has taken no steps to deal with the claimants complaints.

351. We find that the complaints were, from the claimant's point of view, of direct relevant to the allegations being made against her.

352. In response to her letter about the disciplinary hearing , the claimant received a further letter from SA. SA told the claimant that she could contact Ahmed Yousef in order for him to provide a witness statement for her.
353. In the letter SA said that witnesses would not be joining the meeting with the claimant and apologised if that had not been clear. She said witnesses would provide a statement relevant to her responses to the specific allegations, and that any such statements would then be considered by the chair as part of the overall decision process. Witnesses will not be questioned or cross examined in the hearing and calling them was not an opportunity for her to request information.
354. She said internal witnesses , should be focused on people who had knowledge of the specific allegations or were able to provide some character comments on the claimant personally. She said did not need witnesses to explain the sale mechanisms of what other teams do.
355. On Monday 13November 2023, the claimant replied, stating that she was not going to accept a rigged kangaroo court-like disciplinary hearing, where all her witnesses were rejected or her access to evidence was blocked and said *keeping me from talking with anybody from the business is excessive*.
356. She went on to say the trumped up allegations were being used as a diversion from the harassment and discriminatory behaviour towards her, for raising real concerns within the business in the past and evading her formal grievance, which includes the manner in which the compliance and ethics team treated her during an interview process.
357. She said it was about an atmosphere of retaliation and derogatory comments from Dave Grant when she raised concerns within the business, and in her attempts to help and support for the shortcomings. She said it was about misogyny and discrimination that she had experienced from Frederick Maris, who had questioned her integrity to the business; she referred to her showing an interest in career advancement, but not being given opportunities, whilst others like Salman Khan who exited the business

with a severance package, were . This was the then were rehired to lead an upmarket team the same team she had been working closely with for the past three years. She said, *He stepped into a role that Frederick Maris thought a female like me was unfit for.*

358. The claimant does not rely upon this letter either as a protected act or as a public interest disclosure but we find the Respondent could be in no doubt by this point, that the claimant was making allegations of sex discrimination, both about her treatment within recruitment processes, but also more widely by the organisation and that she was saying that this, and her complaining about the treatment and behavior, was a reason why she thought she had been investigated and targeted for disciplinary action.

359. We all agree that from the respondent's point of view there were clear allegations that needed to be investigated and , which, if proven, may well have had an impact on the disciplinary process.

360. We agree with the claimant , that given her response to the disciplinary allegations was in part that this was a result of her raising concerns about her treatment by men, who she said were scapegoating her and retaliating against her for criticising them, and flagging up her concerns about discriminatory recruitment and progression procedures, the refusal to allow her access to documents , or to witnesses , severely hampered her in her preparation for the disciplinary hearing . Had it proceeded in November 2023, we cannot see how there could have been any fairness in the proceedings.

361. However it did not proceed at that point , because the respondent decided to deal with the claimant's grievance first.

362. On the 14 November 2023 Bethan Andrews contacted the claimant to say that the claimant's concerns as reported to Graham Geddis, had been referred to her. She wanted to speak to the claimant so that she could gain insight and information that would assist in her review of the matter. She said *please know that zoom takes these matters seriously and prohibits any retaliation against employees who speak up and report concerns in good*

faith. We find that when she started her process, BA was well aware that the claimant was making some sort of whistleblowing or victimisation claim.

363. Bethan Andrews was satisfied that one of the issues being raised by the claimant was a concern that the reason why she was being investigated and pursued through a disciplinary hearing was that she had raised complaints or made public interest disclosures about other managers.

364. Further, in her correspondence with Bethan Andrews the claimant was clear that she was making allegations of sex discrimination and financial discrimination and we find that the BA was well aware of this as well.

365. Bethan Andrews did conduct an investigation. She spoke to the claimant and then she interviewed Ben Neo; Frederick Maris and Dave Grant. She then spoke to the claimant again.

366. In respect of the claimants concerns that the reason for the disciplinary action and investigation was that she was a whistleblower or that she had made complaints of discrimination or that that this was retaliation for her discrimination complaints, Whilst we find that BA did make enquiries, she did not resolve the matter. We accept her evidence that she had not been able to gain any information from compliance and ethics about the reason for the investigation because, they said that that was confidential and refused to give her access to documents.

367. We find that this was matter that SA had specifically told the claimant, in correspondence, would be dealt with as part of the grievance and therefore the claimant did not need access to documentation about it for the purposes of her disciplinary. This was never addressed by the Respondent, and there was no change in the approach of the disciplinary hearing to remedy this particular issue.

368. Whilst we have concluded on the findings we have made (see following paragraphs) that the reason for the claimant being investigated by compliance was nothing to do with any of the complaints that she raised, this

was an important part of the claimant's grievance and a matter about which she genuinely felt aggrieved. If she had been right about the motivation of DG, then the Respondents' own policy would have viewed that as a serious matter, even if it was not the reason for the disciplinary action.

369. A Fundamental part of a fair process is that the claimant's concerns are fully investigated and answered. This did not happen either during the course of the grievance or during the course of the disciplinary hearing.

370. We all agree that this raises a serious question about the fairness of the process.

371. During the course of the grievance process, the claimant made a request for various documents to be provided for her, so that she could support her grievance. Mrs Andrews wrote back to her refusing to provide the documents, and stating that the purpose of the grievance was not for the claimant to get documents, but was for the claimant to explain her complaints. Mrs Andrews said that if there were documents the claimant wanted her to look at, then Mrs Andrews would look at them if they were relevant. She did not accept the proposition put to her by the judge, that it was necessary for the claimant to have sight of documents so that the claimant could explain why she thought they might show discrimination or detrimental treatment or the other things about which she was complaining.

372. Miss Andrews considered that her role was to look at all the relevant documentation and then this whether or not any of the claimant's complaints were upheld not for the claimant to seek to prove her case by referral to document for example.

373. Mrs Andrews did not accept that the claimant was in any different position to somebody who was not suspended. We find this is simply wrong. Someone who was not suspended could access their own documents, speak to other colleagues and ask them for documents or statements. The claimant had no access to her own documents and was not allowed to contact others without

express permission. We accept that the process would be the same, but the access to information, and the ability to support the grievance being made, would be different.

374. The claimant wanted to be accompanied to the grievance meetings and had several people who were prepared to accompany her. One of them expressed concerns about what would happen to her and Mrs Andrews said a letter was sent reassuring her that she could support the claimant and would be paid for doing so.

375. Unfortunately, the claimant's preferred companion worked in Dubai. Ms Andrews worked in America and the claimant was in the UK. The times for a hearing which suited Mrs Andrews time zone did not fit with the companion's time zone.

376. Mrs Andrews did not wish to adjourn the agreed date for the grievance hearing, and the claimant reluctantly agree to proceed without her companion present.

377. Whilst we appreciate that it is difficult for a Respondent working across several time zones to facilitate and accommodate everybody, that is the nature of the Respondent's business, and we do not understand why it could not have been possible to find an alternative date that suited the claimant Mrs Andrews and the claimant's companion. We find that there was little attempt to do so, and that the priority was to deal with the grievance sooner, not to ensure that the claimant had a companion with her.

378. The grievance hearing was a lengthy discussion between the claimant and Mrs Andrews. We have been referred to the notes of this meeting.

379. Mrs Andrews also interviewed Dave Grant and Frederick Maris

380. FM denied that he had been derogatory to the claimant, saying that was not who he was. We have recorded that he responded saying Bullshit, in our findings about sex discrimination above and do not repeat them here.

381. Regarding the interview for Ben Neos role , and him being derogatory and telling her to read a book on SPIN selling , CC had complained that he already knew he was going to appoint Ben and was just going through the motions with her.
382. FM said that CC did a poor job in the interview, but he did offer her the chance to come back and do a second interview
383. We have been referred to various documents about this process. We have already set out our findings in respect of them. There was, we find clear evidence of a preferred candidate, and a reluctance on the part of FM to interview the claimant at all.
384. BA had said she would review documentation , but she did not look at or ask for any evidence about the fairness of the process, that we are aware of.
385. These documents were provided ot the claimant as part of DSAR, and could therefore have been accessed at the time of the grievance.
386. We also had the evidence of Mr Tayan, who suggested that FM had wanted someone like Harvy Spectre from TV series Suits. This was not challenged. He also gave evidence in respect of the appointment of Mr Khan, which we have made finding about as set out above.
387. Whether Mr Neo is anything like that character is beyond the remit of this ET, but we have no doubt that , if he had been interviewed, as the claimant had asked, that Mr Tayan would have expressed the same view internally, and would have given his evidence about the appointment of Mr Khan.
388. It is not surprising that Mrs Andrews did not uphold the majority of the grievance on the basis of the information she had. What is troubling is that the information about the lead up to the process, and the scoring of the two candidates, was well as the information about the appointment of Mr Khan, which we have also looked at, was not available to her. Instead, she relied on witness evidence alone, and then only of a small number of witnesses.

389. We find that FM was not honest with BA, and unsurprisingly he did not tell her that he knew there was a preferred candidate or that he had said that he did not want to waste time interviewing another candidate, but had agreed to do so.

The disciplinary

390. The disciplinary allegations against the claimant were serious and potentially career ending. It was really important to ensure that adequate investigation had taken place and that the claimant had been given every opportunity herself to address the issues she needed to address.

391. We find that the claimant was severely hampered by the terms of the suspension, and the restrictions placed on her by SA of HR, in that she could not contact people to ask for their assistance or indeed access any of the documents she might need.

392. Whilst we understand that it's not unusual for somebody to be locked out of systems and not allowed to contact people because it may prejudice an investigation, the claimant named a number of specific people who she thought might be able to assist her and also requested access to various documentation.

393. In this case the claimant was not allowed to contact Mr Tayan and therefore was prevented from having him as a witness at her disciplinary hearing. She was not able to talk to him.

394. We have had the benefit of a witness statement from him and we have heard evidence under oath from him.

395. He told the tribunal that he did not consider that the contract possible was that he believed that what she had done was no different to what was done by other people in the department on various accounts. In particular he made reference to a glitch in the system for drawing up contracts ,which meant that it would automatically default to a certain payment term that would require the

client to provide payment by credit card. Since this was not usually the mechanism agreed by the customer, he considered it was reasonable practice for the operative to simply change the payment method to the one that had been agreed. He accepted that this might mean a change being made after a customer had signed a contract, but considered that the correction was simply a correction to reflect the true agreement and was not inappropriate.

396. We all agree that Mr Tayan genuinely believed the evidence he gave to the tribunal and felt strongly that the claimant had been treated unfairly for doing something which he considered was not uncommon practice.

397. We find that had he been allowed to speak to the claimant and had he been allowed to write a witness statement for the claimant on this matter that this is what he would have said.

398. We find that this was a relevant matter for Helen Watson to consider. If Mr Tayan was right that the claimant was only doing what other people did regularly, then the question of why she was being disciplined for it would perhaps need further consideration. His suggestion that this was retaliation may require further investigation for example.

399. Further if she was only doing what others did, there would be a question about whether or not it was appropriate to dismiss her or not, because of that context.

400. Ms Watson told us that she did not consider it would have been a relevant matter for her to consider at all. We disagree, but we do find that if she had considered it, it is highly probable that it would have made no difference to her conclusions, because we accept that her view, which was a reasonable view that any change to a contract already signed by a client was wrong and capable of being misconduct.

401. In any event it was not the claimant's argument that what she was doing was simply what everyone else was doing, her argument was that she had

done nothing wrong but that there had been various errors and difficulties she had to contend with

402. However we all agree that the failure to allow the claimed to speak to a potential witness and obtain a witness statement from him which was likely to be supportive of her generally and may well have been relevant to what she did or did not do, is a further pointer towards an unfair process.

403. The decision not to allow the claimant to access the witnesses was taken by human resources but Helen Watson who chaired the disciplinary hearing was not concerned. When asked in evidence whether or not she considered that the evidence given by Mr Tayan to the employment tribunal in respect of his views about the way that contracts were drafted by members of the team and in particular his view that it was common for team members when closing a deal to alter the payment method because of what he described as a glitch in the system

404. The failure to adjourn the disciplinary hearing. The claimant asked for an adjournment of the disciplinary hearing so that she could ensure that she had a companion with her. The claimant had had some difficulties getting someone to assist her, and since she had first been told of the date of the disciplinary she had been unwell herself had dealt with a grievance hearing and had to deal with the Christmas shutdown.

405. She had asked for a adjournment so that she could arrange for a companion. The respondent's view and the view of Helen Watson was that she had had sufficient time to do this.

406. This was a very important meeting for the claimant we can see no good reason for not adjourning the hearing. The claimant was not in any position to endanger the Respondents clients or its customers since she was suspended. There was no particular need to push through the hearing on that date and we have heard no evidence from anybody as to why it was necessary for the hearing to go ahead on that occasion. there is no suggestion for example that Mrs Watson was not available at any other time, all that there was some

reason why this particular disciplinary hearing had to proceed on that day. We find that Mrs Watson had a discretion and that she simply declined to exercise it.

407. We all agree that it was highly prejudicial to the claimant for her to be required to attend this hearing without a companion to assist her. We find that it was unreasonable for this employer in this context to refuse to adjourn the hearing for short period of time to enable the claimant to secure a companion.

408. To the extent that we have found the claimant did do protected acts, and make protected disclosures, the claimant cannot point to any evidence which suggests that those who wrote the compliance report were aware of those things, or that they had any influence on the report and its findings and recommendations at all.

409. We remind ourselves that it is for the claimant to prove a prima facie case for a victimisation claim. Here, the claimant is right that she raised concerns with her manager about things said at a meeting by Dave Grant, and then Dave Grant then made a speak up report which led to an investigation. She is also right that aspects of the investigation, in particular the interview with her late in the evening ,was unfair. We accept that she was subjected ot unfavourable treatment.

410. However, we all agree that the reason why the investigation had looked at the wider issues, and the potential issues of gross misconduct arising from the claimant apparently changing a contract after it had been signed by the customer, was because that issue was brought to light when they were looking at the wider range of emails.

411. We have considered whether or not there was a fishing expedition and an attempt to find something to discipline the claimant with, or whether there was any knowledge of the claimant more widely, but we ha can make no such finding of fact such that the burden of proof would move to the respondent.

412. In any event , we accept the evidence of the respondent witnesses, that the contracts would have been looked at in the course of investigating the issues raised

by DG, and that, once identified as a potential issue, Compliance and ethics were bound to investigate.

413. Further we have no evidence that the claimant's grievance, which was made after the investigation had begun, influenced those who decided that the matter should proceed to a disciplinary hearing. Given the conclusions of the compliance and ethics report, we all agree that this was inevitable. There was a genuine concern about gross misconduct, and it would have been extraordinary not to have proceeded to a disciplinary hearing.
414. In respect of the whistleblowing claims, we accept that the claimant was subject to detriment by the nature of the investigation, and the restrictions placed on her and by being required to attend at a disciplinary hearing, and by the decision to dismiss her.
415. The question for us is whether or not the reason or principal reason for that decision was any protected disclosure made by the Claimant.
416. First, we find that the compliance and ethics team were not aware of the claimant's complaints, or her grievance. Whilst both Ms Andrews and Ms Watson were aware that the claimant had raised concerns, Ms Andrews investigated in as full and fair a manner as she was able, given the constraints placed on her by Zoom managers and the compliance and ethics team. Her failings were not because of the claimant's complaints, but because of Zoom policies and practices.
417. Ms Watson had a report from the compliance and ethics team and the notes of interviews with various individuals, and a hearing with the claimant. We find that she based her decision to recommend dismissal on those factors, and not any disclosure made by the claimant.
418. The claimant has not proved that the fact that she made disclosures was any part of the reasoning on Helen Watson, and we find it was not.

419. We find that Ms Watson formed a genuine belief that the claimant had committed misconduct.
420. We have seen the documents that she had Infront of her and we al agree that she had reasonable grounds for forming the belief, based on those documents .
421. However, we also find that there had not been as much investigation as was reasonable , because the respondent did not hear evidence from the claimant's witness Mr Tayan.
422. However, we also find that even had that further investigation been carried out, it would not have affected Ms. Watsons decision. Ms Watson was adamant that the misconduct, which we all agree would have been found to have been committed with or without Mr Tayan, was so serious that dismissal was within the range of reasonable responses.
423. We also find that Ms. Watson did not consider the claimant's employment record when recommending dismissal for gross misconduct. Nor did she take into account the evidence that Mr Tayan would have given , that there were glitches in the system , and Ms Canha was only doing what others did.
424. We find that whilst this was an important consideration , again , it would have made no difference to Ms Watsons recommendation. She was satisfied that the misconduct she found to have occurred was so serious, that regardless of how others may have behaved, it was grounds for instant dismissal.

The Appeal

425. The claimant did file and appeal, and there was an appeal hearing .
426. Whilst the Respondent did deal with the claimant's appeal , we do not consider that the appeal hearing itself, even though it was conducted by an external person, Mr Cullen, addressed each and every one of the claimants concerns as raised in her appeal notice. Nor did it remedy the disadvantage to the claimant in respect of witnesses or documents . A report was produced

following the appeal and sent to Miss Wong, who was responsible for the final decision .

427. We heard evidence from Ms Wong by CVP.

428. She was the person who made the final decision and told the tribunal that she believed the claimant had been provided with all the documents that were appropriate. She had not been aware of the claimant's correspondence requesting additional documentation nor was she aware that the claimant had not been able to provide any additional documentation to Mr Cullen.

429. We accept the claimant had wished to present additional documentation about emails; chat exchanges about Charterhouse and whistle blowing and that these were not provided to him.

430. Miss Wong said that if whistle blowing was not part of the original appeal, then documents would not have been included. However, we find that the claimant had said in her letter that she thought it was retaliation. Miss Wong considered that that had been dealt with separately. Further she considered that the focus had been on the alleged misconduct rather than the claimant's suggestion that there had been retaliation.

431. We find that the information the claimant had raised as part of her grievance was not provided to Mr Cullen, and that he was not provided with the information about the Charterhouse and did not have page 588 which was the speak up report that led to the claimant being investigated.

432. He recommended that the appeal be dismissed.

433. Miss Wong confirmed that the claimant would be dismissed for gross misconduct without notice.

434. Before making her decision we find that , Miss Wong considered the appeal

and the recommendations made and we accept that Miss Wong had considered whether a lesser sanction would be appropriate and decided it would not be.

435. We find that she had looked at how other offences of a similar nature had been dealt with by the company in order to ensure some parity of penalty.

436. She sent the dismissal letter to the claimant and we accept that the reason for the claimant's dismissal was as set out in the dismissal letter.

The rereferral of Jaques Smith

437. Zoom has an employee referral policy that when referring employees will receive payment of a referral fee if referred employee completes 120 days of employment within zoom the policy also states that the referring employee must be in employment with zoom at the time the referral payment is due to be paid.

438. The claimant says that whilst she was employed she referred a candidate Mr. Smith for the role within the contact centre team she recommended Jacques Ben highlighting suitability she says that following her recommendation he was interviewed successfully and was hired she says that under the zoom referral programme she would have been eligible for a referral bonus but during her suspension her line manager altered the recruitment record reclassifying the role as no longer being filled and instead attributing the referral to himself she says that this was a direct action which was taken to redirect the referral bonus to Mr neo and depriving the claimant of an element that she had earned.

439. Mr Neo gave evidence that Mr. Smith had applied for two different roles one in October 2023 for which he was referred by the claimant but for which he was unsuccessful and a later application for a contact centre specialist in Africa for which he was successful Mr neo says that he understood that he made the application via job site and that it was not a referral. For this reason he says the claimant was not entitled to a referral fee.

440. In any event Mr Neo says that Mr. Smith started his employment on the 19th of February 2024. He says and we accept that therefore at the point Mr Smith completed the 120 days she was not employed

441. We accept the evidence of Mr neo in this respect we accept that although the claimant did make an initial referral that it was not as a result of that referral that he was employed and that in any event she herself was no longer employed at the point that the referral fee would have been due.

Key legal principles

442. The claimant makes allegations that she was unfairly dismissed and that she was automatically unfairly dismissed for having made protected disclosures, and that she was subjected to detriment for having made a protected disclosure. She alleges direct sex discrimination, direct race discrimination, harassment related to sex and race and victimisation. She alleges that the Respondent made unlawful deductions from her wages and she alleges that the Respondent breached her contract by failing to pay a referral fee and by failing to Pay Commission for a particular period.

443. We remind ourselves that in an unfair dismissal case it is for the Respondent to show the reason for the dismissal and that it is one of the potentially fair reasons set out in the Employment Rights Act 1996.

444. Once an employer has shown a potentially fair reason for dismissal, the tribunal must go on to decide whether the dismissal for that reason was fair or unfair. This involves deciding whether the employer acted reasonably or unreasonably in dismissing for the reason given in accordance with S.98(4) of the Employment Rights Act 1996 (ERA).

445. That provision states that ‘the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case'.

446. We reminded ourselves that it is not enough that an employer has a reason that is capable of justifying dismissal, rather we must be satisfied in all the circumstances that this employer was justified in dismissing this employee for that reason. The burden of proof is neutral in this respect

447. When considering whether an employer has acted reasonably or not, we remind ourselves that this is a question of fact and that we as the tribunal must have regard to equity and the substantial merits of the case. We must look at the question in the round. See for example *Union of Construction, Allied Trades and Technicians v Brain* 1981 ICR 542, CA

448. We remind ourselves that we may assess this by considering whether or not the decision to dismiss was, broadly speaking, within a band of reasonable responses. We remind ourselves that we must not put ourselves in the position of employer and consider how we would have responded to the established reason for dismissal, what we must do is assess whether what the employer has done is for that employer reasonable.

449. Where the dismissal is said to be for misconduct as in this case, we remind ourselves that the employer must show that they believed the employee guilty of the misconduct. The tribunal must then determine whether or not the Respondent had in mind reasonable grounds upon which to sustain that belief and at the stage at which the belief was formed on those grounds, whether it had carried out as much investigation into the matter as was reasonable in the circumstances. See *British Home Stores Ltd v Burchell* 1980 ICR 303, EAT and *. Singh v DHL Services Ltd* EAT 0462/12.

450. We remind ourselves that the employer does not need conclusive direct

proof of an employee's conduct only a genuine and reasonable belief reasonably tested.

Public interest disclosure and whistle blowing

451. In order for a whistleblowing disclosure to be considered as a protected disclosure three requirements need to be satisfied. First of all, there needs to be a 'disclosure' within the meaning of the Act. Secondly, that disclosure must be a 'qualifying disclosure', and thirdly it must be made by the worker in a manner that accords with the scheme set out at sections 43C–43H ERA 1996.

452. To amount to a 'qualifying disclosure' the worker must believe that the disclosure is made in the public interest. If the worker does hold such a belief, it must be reasonably held. The worker must also believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f) of section 43B(1). If the worker does hold such a belief, it must be reasonably held.

453. In respect of the requirement that the worker reasonably believe that the disclosure is made in the public interest, we reminded ourselves of the fourfold classification of relevant factors that may useful as a tool to assist in the analysis:

453.1. the numbers in the group whose interests the disclosure served

453.2. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed

453.3. the nature of the wrongdoing disclosed

453.4. the identity of the alleged wrongdoer

454. As regards the requirement that the worker reasonably believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs

(a) to (f) of section 43B(1), we remind ourselves of the guidance in *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, EAT, a complex case of multiple claims for whistleblowing protection by a medical practitioner alleging that a colleague was unqualified for his post. Judge McMullen not only affirmed the subjective nature of the test generally, but stated:

“This emphasis on the personal position of the claimant in general may look like a watering down of the 'reasonable belief' test but it can in fact have the opposite effect—many whistleblowers (especially in the medical area) will be insiders with a high level of knowledge, so that (paradoxically perhaps) that factor may increase the level of reasonableness required by the legislation; there may be things that might be reasonable for a lay person to have believed (however mistakenly) that certainly would not be reasonable for a trained professional to have believed. On a broad level, this could be seen as analogous to the *imperitia culpa adnumeratur* rule in the Law of Tort (ie that culpability increases with skill).”

Automatic unfair dismissal claim

455. Section 103A ERA 1996 provides that: "An employee who is dismissed shall be regarded ... as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure'."

456. The Respondent counsel directed the Tribunal to the following commentary on the “more stringent” test to be applied to automatic unfair dismissal claims in comparison to protected disclosure detriment claims (taken from paragraph 124 of Harvey on Industrial Relations and Employment Law (emphasis added)):

“In a dismissal case, however, test is more stringent, namely whether the whistleblowing was *'the reason (or, if more than one, the principal reason) for the dismissal'* (emphasis added). The importance of this distinction can be seen in *Secure Care Ltd v Mott* EA-2019-000977 (previously UKEAT/0122/20) (23 February 2021, unreported) where, although the ET had referred to the dismissal section, it had held for the claimant on the basis that the disclosures had *'had a more than trivial impact on the*

decision to provisionally select him for redundancy'; the EAT held that this was to apply the lower detriment test of 'material influence' and remitted the case for a rehearing to apply the proper dismissal test."

Burden of proof in respect of the s. 13 claims

457. S. 13 of the Equality Act 2010 provides that a person is subject to direct discrimination if :

"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."

458. The Equality Act 2010 defines direct discrimination generally as less favorable treatment 'because of a protected characteristic', s 13.

459. It has been held that there are in effect two elements in direct discrimination: (1) the less favourable treatment; and (2) the reason for that treatment. In *Glasgow City Council v Zafar* [1998] ICR 120 at [123], Lord Browne-Wilkinson held:

"Although at the end of the day, s 1(1) of the Act of 1976 requires an answer to be given to a single question (viz has the complainant been treated less favourably than others on [the ground of that protected characteristic]?) ... it is convenient for the purposes of analysis to split that question into two parts—(a) less favourable treatment; and
(b) [on grounds of that protected characteristic]."

460. It may be advisable to adopt such a structured approach in most circumstances, but it is not necessary that this should occur in all cases (see e.g. *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, HL).

461. We must determine the reason why the claimant was treated as she was in each and every case. As Lord Nicholls put it in *Nagarajan v London*

Regional Transport [1999] IRLR 572 at [575] —“this is the crucial question”. He also observed that in most cases this will call for some consideration of the mental processes of the alleged discriminator.

462. In respect of comparators, direct discrimination assumes a comparison as between the treatment of different individuals. To make that comparison, the cases of complainant and comparator must be such that the relevant circumstances in the one case are the same, or not materially different, in the other. Direct discrimination occurs if the complainant is treated less favourably than the employer treats or 'would treat' another person. The comparator may be real or hypothetical. It is for the claimant to show that the hypothetical comparator would have been treated more favourably.

463. In this case the claimant relies in part on hypothetical comparators. It is for the claimant to show that the hypothetical comparator would have been treated more favourably than she was. In so doing the claimant may invite the tribunal to draw inferences from all relevant circumstances, but it is still a matter for the claimant to ensure that the tribunal is given the primary evidence from which the necessary inferences may be drawn.

464. We bear in mind that in cases where there is prime facie evidence of discrimination, we should consider how a hypothetical comparator would have been treated, even if the claimant has identified real comparators. In this case the claim has been put as a hypothetical comparator case.
(cf *Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting* [2001] EWCA Civ 2097, [2002] IRLR 288, [2002] ICR 646).

465. We remind ourselves that in constructing a hypothetical comparator it is permissible to consider and compare how individuals in non identical but not wholly dissimilar cases have in fact been treated.
(See for example *Chief Constable of West Yorkshire v Vento* [2001] IRLR 124, EAT, per Lindsay J at [7].

466. When considering direct discrimination claims, the reverse burden of proof, and the guidance of the Courts in *Igen Ltd v Wong* [2005] ICR 931 and

Madarassy v Nomura International Plc [2007] ICR 867, as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 876, is well known. Respondentcounsel Reminded the tribunal that it will be insufficient for a claimant to merely assert a difference in status and a difference in treatment something more will be required. See for example *Madarassy* at [56] – [57].

467. We remind ourselves that we cannot infer from unreasonable treatment alone that there was less favourable treatment on grounds of a protected characteristic (*Glasgow City Council v Zafar* [1998] IRLR 36), nor is unreasonable treatment sufficient to establish a prima facie case of discrimination (*Bahl v Law Society* [2003] IRLR 640, approved on appeal to the Court of Appeal at [2004] IRLR 799).

468. We were referred to the judgment of Elias P in *London Borough of Islington v Ladele* [2009] IRLR 154 at [40]:

“The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one.”

469. We also remind ourselves that unreasonable treatment can be indicative of discrimination , or may be a fact w from which discrimination might be inferred, if the Respondent does not treat everyone in the same or similar unreasonable manner.

470. The Supreme Court in *Hewage* said that a Tribunal should not make too much of the role of the burden of proof provisions, and rather than working through the reverse burden of proof, might simply satisfy itself as to why the alleged discriminator acted in the way it did (at [32] per Lord Hope).

471. It is important to note that s. 13 EqA does not oblige employers to treat

every employee in exactly the same way. Different treatment does not necessarily amount to less favourable treatment. The test posed by s. 13 is an objective one. Correct approach to the overlapping complaints of direct discrimination and harassment. The tribunal will note from the List of Issues at [p. 90 - 99] that certain allegations are pleaded as both direct sex or race discrimination and harassment. In respect of those allegations, the tribunal should take the following approach:

472. In the first place the allegations will be considered as allegations of harassment. If any specific factual allegation is not proven, then it will be dismissed as an allegation of both harassment and direct discrimination.
473. If the factual allegation is proven, then the tribunal will apply the statutory test for harassment under s. 26 Equality Act. If that allegation of harassment is made out, then it will be dismissed as an allegation of direct discrimination because under s. 212 (1) Equality Act the definition of detriment does not include conduct which amounts to harassment.
474. If the factual allegation is proven, but the statutory test for harassment is not made out, the tribunal will then consider whether that allegation amounts to direct discrimination under the relevant statutory test.

Harassment

475. When considering whether or not the claimant has proved a claim of harassment contrary to section 26, not only did the conduct have to have been 'unwanted', but it also had to have been 'related to' a protected characteristic, which was a broader test than the 'because of' or the 'on the grounds of' tests in other parts of the Act (Bakkali-v-Greater Manchester Buses [2018] UKEAT/0176/17).
476. As to causation, we reminded ourselves of the test set out most recently in the case of Pemberton-v-Inwood [2018] EWCA Civ 564. In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the prescribed effects under sub-paragraph (1) (b), a tribunal must consider both whether the victim perceived the conduct as having had the relevant effect (the

subjective question) and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as[3] having that effect (the objective question). A tribunal also had to take into account all of the other circumstances (s. 26 (4)(b)). The relevance of the subjective question was that, if the Claimant had not perceived his/her the conduct to have had the relevant effect, then the conduct should not be found to have had that effect. The relevance of the objective question was that, if it was not reasonable for the conduct to have been regarded as having had that effect, then it should not be found to have done so.

477. It was important to remember that the words in the statute imported treatment of a particularly bad nature; it was said in *Grant-v-HM Land Registry* [2011] IRLR 748, CA that “Tribunals must not cheapen the significance of these words. They are important to prevent less trivial acts causing minor upset being caught by the concept of harassment.” See, also, similar dicta from the EAT in *Betsi Cadwaladr Health Board-v-Hughes* UKEAT/0179/13/JOJ.

Victimisation

478. In order to succeed under s. 27, a claimant needs to show two things; that he was subjected to a detriment and, secondly, that it was because of the protected act(s). We have applied the ‘shifting’ burden of proof s. 136 to that test as well.

479. Section 27(2)(c), which is the relevant section in this case, covers all acts done ‘for the purposes of or in connection with’ the EqA . In *Aziz v Trinity Street Taxis Ltd and ors* 1988 ICR 534, CA, the Court of Appeal stated that an act could properly be said to be done ‘by reference to’ the RRA (Now the EqA) if it were done by reference to the legislation ‘in the broad sense, even though the doer does not focus his mind specifically on any provision of the Act’.

Time limits

480. The Respondent asserts that the claimant’s claims were made outside the

statutory time limit and that the tribunal may not have jurisdiction to consider them.

481. We accept that the claim form was presented on 19 February 2024, and as the claimant commenced the Early Conciliation process with ACAS on 22 January 2024 (Day A) and the Early Conciliation Certificate was issued on 15 February (Day B), that any act or omission of the Respondent which took place before 23 October 2023 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

482. We were reminded by the Respondent that time limits have been set by Parliament as a precondition of the right to bring a claim. It remains for the claimant to satisfy the Tribunal that they should be disapplied in any specific case, and extensions of time limits will be the exception rather than the rule (*Robertson v Bexley Community Centre* [2003] IRLR 434 (at [25] per Auld LJ) and *Chief Constable of Lincolnshire v Caston* [2011] IRLR 327 at [26] per Wall LJ).

483. The Respondent asserts that C's evidence in this regard is limited to non-existent. She does not give an explanation for the timing of her claim anywhere in her witness statement. She referred in emails from December 2023 to R to her "lawyer" (e.g. at [p. 738]) however, Early Conciliation was not commenced.

484. It is common for claimants to allege that separate historic incidents or matters are part of the same act/conduct as an incident or matter which is in time. However, merely asserting a continuing act is insufficient to bring a claim within time. The EAT and Court of Appeal have upheld decisions of first instance tribunals to classify inter-related incidents by reference to the nature of the act; treating acts of a different character as separate (see *Lyfar v Brighton and Sussex UHT* [2006] EWCA Civ 1548 and *Aziz v FDA* [2010] EWCA Civ 304). In *Lyfar*, for example, the Tribunal was entitled to conclude that a discriminatory investigation and treatment at a disciplinary hearing were not part of a continuing act with discriminatory communications over and in

light of the outcome and a discriminatory failure to deal with the ensuing grievance, even though the earlier matters could be seen to lead to the later matters. As the List of Issues demonstrates, C's complaints are dated to the period from 2022 - 2023 and contain an array of different types of acts and omissions and actors.

485. Further, the authorities demonstrate that certain incidents such as failures to appoint or promote are one off acts with lasting consequences, rather than continuing acts or ongoing states of affairs (*Barclays Bank plc v Kapur* [1991] ICR 208). These acts therefore do not even fall to be amalgamated with one another. This is important to note given, for example, allegations 7.1.1 of the List of Issues [p. 90 - 99].

Conclusions

486. Because of the number of allegation and the length of the judgment ,we have set out our conclusions in the body of the judgment , were it makes sense to do so. We do not repeat the detail of the reasons for our conclusions here.

487. As set out above, and for the reasons set out in the narrative, we conclude that the claimant was discriminated against on grounds of sex, both when the Respondent failed to give the her a fair opportunity to be appointed to the role of lead of the contact centre specialist team in May 2023 and secondly by the Respondent failing to appoint the Claimant to the role to which it appointed Mr. Khan in October, which the Claimant asserts was a managerial role. These are issues.

488. As set out above and for the reasons set out , we conclude that although the respondents treatment of the claimant, by Fred Maris and Dave Grant in particular was often unfavourable and unwanted, it did not amount to either direct race or sex discrimination , nor did it amount to harassment.

489. We therefore dismiss those claims. was not related to sex or race.

490. Whilst we find that the claimant did make protected disclosures, and did do

protected acts, we concluded that neither were causative of the treatment she relies upon. Although we accept that she was treated unfavourable and in a detrimental way by compliance and ethics, as set out above, we conclude that this was nothing to do with any disclosures or protected acts of the claimant. We therefore dismiss those claims.

491. We also conclude that the protected acts were nothing to do with the way the grievance was conducted or the outcome of the grievance, or the decision to pursue disciplinary action against the claimant we dismiss those claims.

492. we conclude as follows in respect of the disciplinary related claims, and the claims of unfair dismissal.

493. We have considered whether or not the decision to investigate the claimant was anything to do with the claimant having made a public interest disclosure or anything to do with the claimant having done a protected act.

494. On the basis of the facts we have found both about the chronology but also in respect of the matters we have found to be a public interest disclosure and a protected act, we find that the investigation was nothing to do with the claimant having made a protected disclosure or having done a protected act.

495. We accept that the compliance and ethics team investigated the claimant because of a concern raised about her, and we also find as fact that having looked at the various e-mail correspondence between the claimant and D tech in order to determine whether or not she had leaked information or informed D Tech about Charterhouse not having been in attendance at the conference, compliance and ethics of necessity were looking at the e-mail correspondence which included the emails about a particular deal which she appeared to have changed following that deal being signed by the customer.

496. We find that having identified a particular issue and a potential conduct issue it was entirely appropriate for compliance and ethics to continue to investigate.

497. What we cannot say is whether or not the original allegation was made in the hope or expectation that compliance and ethics, having looked through all of the claimants deals would find something that they could use against her.

498. We accept that there had been a great deal of dissatisfaction between the teams and that there had been some suspicion about the way the claimant and Ms Siddique were doing their deals.

499. We have also taken into account the evidence Mr Tayan gave to us in answer to questions from the employment judge, to the effect that it was not uncommon for operatives to change minor aspects of the contract, even after they had been signed. His evidence was that there was a glitch in the system and that the default led to an error which needed to be corrected. It is possible that this practise was known to others.

500. Nonetheless we have no evidence at all that the compliance and ethics team and in particular the two individuals who carried out the initial investigation were motivated to do so by anything other than what they considered to be a genuine concern having been raised.

501. We have no evidence at all that their continuance of the investigation once they discovered potential wrongdoing by the claimant, was motivated by anything other than that genuine concern.

502. Nor do we have any evidence that anybody who subsequently had involvement in the investigation disciplinary action or determination of the decision to dismiss the claimant, was motivated by anything other than a the recommendations of the report and their own findings and conclusions that the claimant had committed gross misconduct.

503. For these reasons we dismiss the claimant's claims that her dismissal was anything to do with a protected interest disclosure. It was not. we therefore dismiss her claim of automatic unfair dismissal.

504. We also dismiss her claim of victimisation for the same reasons.

505. The Claimant suggested that she was dismissed on grounds of sex and we dismiss this claim. There is no evidence that the claimant was treated any differently than a man would have been treated in similar circumstances and we have made no findings of fact from which we could infer the claimant's sex was the reason for her treatment.

506. We conclude that the real reason why the claimant was subject to a disciplinary investigation; a disciplinary hearing and summary dismissal for gross misconduct, was that those involved genuinely believed, on the evidence before them that the claimant had committed an act of gross misconduct.

507. We have considered whether or not the process which led to the claimant's dismissal was a fair process. We conclude that it was not.

508. Whilst the investigation that preceded the claimant's interview and suspension appears to have been fair and thorough, the interview of the claimant herself was conducted in the circumstances which we consider were not fair.

509. We have set out above our concerns about the initial meeting with the claimant, which we consider was lengthy, ill timed and took no account of the claimants circumstances, her need for a break, the fact that she had been at work all day or the fact that she was a woman alone in a foreign country. We consider that her treatment in that respect was wholly inappropriate.

510. The claimant was not subject to any further investigation, and the next stage of the process, was to suspend her, an event which we all agree had been predetermined, thereby denying her access to any of the documentation including her emails or conversations which might have assisted her in answering any of the allegations. Whilst she was permitted access to some specific documents, she was denied access to others that she requested and was also denied the opportunity of speaking to those who she thought might be capable of giving evidence on her behalf.

511. Our findings about the grievance and its shortcomings are also set out above. The effect of those shortcomings was that the claimant was denied the

opportunity to put forward to anybody during the course of either grievance or the disciplinary process, evidence from those who she considered might be supportive of her, or who might be able to explain the context within which she was working.

512. We find that the failure to adjourn the disciplinary hearing so that the claimant could be represented was wholly inappropriate and unexplained by the respondent.

513. Whilst we accept that Miss Watson formed a genuine belief that the claimant had committed misconduct and whilst it was her view that the misconduct was so serious as to be capable of gross misconduct, she accepted that at no time did she consider the claimant's previous clean disciplinary record and nor did she consider whether there was any other mitigating circumstances. She did not have the evidence, for example from Mr Tayan, that we have had, in front of her.

514. Whilst we all agree that the claimant's conduct in respect of the contract was capable of being considered gross misconduct and whilst we all agree that the decision of the Respondent to dismiss her was within the range of reasonable responses, we conclude that the process by which that decision was made was not a fully fair process and that the appeal did not resolve a number of the criticisms we have made of it.

515. We therefore find that the claimant's dismissal was unfair

516. However we all agree that the claimant's conduct was considered so serious by the Respondent that notwithstanding her former clean disciplinary record and notwithstanding what Mr Tayan has said about the practise within the team that both Mrs Watson and Mrs Wong would still have come to the conclusion, even had a fully fair process being followed that the correct outcome was summary dismissal.

517. We find therefore that a fair process would have made no difference to the outcome and that the claimant could have been fairly dismissed and would have been fairly dismissed.

518. We consider that a short adjournment of the final hearing which would have been necessary to remedy the unfairness and allow the claimant to be accompanied, would only have delayed matters by two weeks at the most.

519. In respect of the remaining claims we find as follows

520. First in respect of the claimants claim that she ought to have been awarded Commission for the recruitment of another colleague Jack Smith, we have found that the recruitment was not the result of a referral by the claimant, and that the claimant was not employed at the time that the referral fee would have been payable. In those circumstances, we conclude that the claimant was not eligible for the fee, and dismiss this claim.

The claimant's claims wrongful dismissal.

521. We have considered whether we find that the claimant's actions amount to gross misconduct so that she could be dismissed without notice.

522. We conclude that in any organisation, and particularly in sales, there is a requirement for all partners to behave scrupulously when entering into contracts with their customers. Whatever the glitches of a computer the claimant must have known that by changing a contract which had already been signed without reverting to the customer, she was doing something which was wrong and unacceptable. We all agree that not only were her actions a breach of the company policies; rules and procedures, but that they were also an obvious breach of any fair business dealing.

523. We have no hesitation in considering that the claimant did indeed commit an act of gross misconduct and that therefore it was one for which she could be dismissed summarily and that therefore she has no claim for notice pay and we dismiss the claim

Claim for unpaid commission.

524. In respect of allegation 11 point 1.2 that the claimant is owed £200,000.00

in respect of Commission, which is put as an unlawful deduction from wages claim, we have heard no evidence from the claimant to support her assertion that this is the Commission that she would have earned, had she not been dismissed. She bears the burden of proof and she has not discharged it. We are unable to make any relevant findings of fact in this respect. In the absence of evidence, we are unable to determine whether a deduction has been made from the claimant's wages or not, and we therefore dismissed this claim.

Time Points

525. We have made findings of sex discrimination in respect of the interview process which took place in May 2023. The Claimant's claim to the ET was not made until 19 February 2024.

526. This act of discrimination was not part of a continuing act, and we find that the claim was a one-off act, and was made out of time. We have therefore considered whether or not it would be just and equitable to extend time in respect of this issue.

527. Whilst the claimant did not specifically address the time point in her witness statement, she did give evidence relevant to the issue.

528. Her evidence was that she thought and was told that there would be possibilities for her to be considered for a management role in the future, and she expected that to happen. Although she thought there was harassment in the meeting, she had no particular reason to think it was a discriminatory appointment at that stage.

529. However, two things subsequently happened, firstly that Mr Khan was re-recruited into what she considered to be a management role, and secondly, MV was recruited into another role and she considered he started to take over her work areas.

530. We accept that it was not unreasonable for the claimant not to bring a claim at an earlier stage, partly because of the way the chronology developed, and her lack of good basis for a sex discrimination claim at an early stage, but also because

as things developed the claimant did bring an internal grievance and did make allegations of sex discrimination. Further, we have made a finding about sex discrimination, showing that the claim did have merit, but which the claimant did not have evidence to support until she received disclosure.

531. Sex discrimination in appointments is unlawful and has been for many years. It is difficult to prove and bringing a claim which cannot be supported is rarely a good career decision.

532. The claimant was not necessarily aware at the time , that there was discrimination, and she brought the claim within reasonable time after her termination. She did go through an internal process, which , had they had access to the same documents we have had, and had they interviewed Mr Tayan, and had Mr Maris been honest, must have found that there was a possibility of sex discrimination in the process. The claimant was sensible to try to resolve this internally.

533. This was not a case where the delay caused any real prejudice to the respondents. Whilst we are told Mr Maris had left the company, we are not told when. He was able to give information to the internal investigation , and we have no explanation as to why he could not have been approached for a witness statement for these proceedings.

534. In any event , the respondent's had the same documents we have seen.

535. In all these circumstances, we consider that it is just and equitable to extend time and do so.

536. This case has been listed for a remedies hearing in respect of the matters found proven.

Employment Judge Rayner
Date: 7 July 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
9 July 2026

Jade Lobb
FOR THE TRIBUNAL OFFICE

