EMPLOYMENT TRIBUNALS

Claimant: **Ms G Costanzo**

Respondent: **London Clubs Management Ltd**

Heard at: **Manchester** **On: 9 to 13 March 2026**

Before: **Employment Judge Eeley**
Ms C Gallagher
Mr Q Colborn

REPRESENTATION:

Claimant: **In person**
Respondent: **Mr M Todd, counsel**

WRITTEN SUMMARY REASONS having been issued on 8 May 2026 and written full reasons having been requested on the same date in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following written full reasons are provided:

WRITTEN FULL REASONS

Background

1. By a claim form presented to the Employment Tribunal on 26 June 2024, the claimant pursued claims of unfair dismissal, harassment related to sex, direct sex discrimination and victimisation. Submission of the Tribunal claim followed a period of ACAS Early Conciliation between 16 April 2024 and 28 May 2024.

2. The claimant's claims were set out in the List of Issues at page 55 of the final hearing bundle together with the amendment to the claim which was permitted by Employment Judge Allen on 8 October 2025. The protected act for the purposes of the victimisation claim was the Employment Tribunal claim.

3. The Tribunal received witness evidence from the following individuals:

a. The claimant, Giulia Costanzo;
b. Maxine Gibbons, Venue Director of the respondent's Manchester 235 Casino;
c. James Milligan, Assistant Casino Manager at the respondent's Manchester 235 Casino;
d. Gugliemo Davi, Gaming Supervisor at the casino;
e. Ester Amato, Cashier for the respondent;
f. Ivan Urso, Assistant Casino Manager at the respondent's Manchester 235 Casino

Prior to the start of the final hearing the claimant had not identified which written witness statement she wished to rely upon for the purposes of giving evidence to the Tribunal. At the start of the hearing the claimant clarified that she intended to rely on a number of documents contained within the hearing bundle as her witness evidence. These were contained at pages 199-210 of the hearing bundle. The Tribunal read those documents and treated them as the claimant's written witness statements. All of the witnesses provided written statements and attended the hearing to be cross examined. The claimant had assistance from an Italian interpreter throughout the hearing.

4. In addition to the above, the Tribunal had access to agreed hearing bundle containing 223 numbered pages. We read those pages to which we were referred by the parties. Numbers in square brackets below are references to page numbers within that bundle, unless otherwise indicated. In addition, the Tribunal received written and oral closing submissions from both parties.

Findings of Fact

5. The claimant was employed as a Croupier in a casino from 23 May 2022 to 2 June 2024. The claimant worked at the respondent's 235 Casino in Manchester (Great Northern Warehouse).

6. The casino employs about 140 people across the whole premises. This includes not only croupiers but also managers and those engaged in the provision of catering and bar services. There are three different floors within the building. The gaming room on the main floor of the building (i.e. the room which is relevant to this case) was about five times the size of the Employment Tribunal hearing room. On the floor in question there are different areas. They include the gaming area and the bar and seating areas. There is also a restaurant, slot machines and other seating areas throughout the building.

7. The gaming area on the main floor is referred to as the 'pit' area. On the main floor the pit was roughly twice the size of the Employment Tribunal hearing room. During the relevant period of time there were a maximum of 14 games tables available in this pit but they would not always be open and all being used at any given time. Which tables are open and in use at any given time, which

games are running and how many games of a particular type are running depends on demand and also gaming trends. The business is open 24 hours a day. It has quieter and busier hours. From 6am to 2pm is particularly quiet.

8. Maxine Gibbons is the Venue Director for the Casino. She has oversight of the entire business at the Manchester location. Depending on the duties she is carrying out, she spends her working time either in her office or out on the gaming floor at the premises.

9. Various layers of management report to Ms Gibbons. The other witnesses in this case were all 'gaming employees', which is to say they worked within the gaming portion of the business. Esta Amato is a Cashier and operates the cash desk at the premises. The claimant was initially employed as a trainee Dealer and was subsequently promoted to "Dealer 1" and then to "Dealer 2". Above this level, there were Dealers employed as "Dealer 3". Above Dealer 3s in the business structure are the "Pit Supervisors." They supervise and have oversight over the gaming pit. They oversee multiple gaming tables. They are also referred to as a Gaming Supervisors. The Pit Supervisors report to the Assistant Casino Managers. The Assistant Casino Managers, in turn, report to the Casino Manager. Ms Gibbons, the Venue Director, was the direct line manager for the Casino Manager.

10. The number of customers present at the venue (and the amount of business it was able to transact) would determine how many floors of the premises were open to customers at any given time. It would also govern how many games were running on the premises and on which tables. The level of activity would also determine how many Assistant Casino Managers would be required to work the shift. If more than one Assistant Casino Manager was present, they would divide the work between them. For example, they might each supervise a different floor at the premises. For licensing purposes there had to be a minimum of one 'responsible' or 'authorised' person on the premises at all times. There could be two to three Assistant Managers on a floor or on the premises overseeing the work jointly.

11. James Milligan is an Assistant Casino Manager at the casino. He was also the claimant's line manager. Guglielmo Davi is a Gaming Supervisor. He runs inspection of games and coaches Dealers. Ivan Urso was another of the Assistant Managers. The Dealers actually 'run' the games, and the various supervisors have supervisory oversight of the gaming tables.

12. The Tribunal heard much evidence about "Inspectors" or "inspecting" work at the casino. In fact, there is no such job title or job role of "Inspector" within the respondent's business. References to "Inspector" are old terminology within the business and refer to a previous business structure which pre-dates the Covid 19 pandemic. After the pandemic the respondent restructured the business using the Dealer 1, Dealer 2 and Dealer 3 structure. An Inspector was similar to a supervisor. An employee in the Dealer 3 role has some supervisory responsibilities, as do the employees at higher levels within the structure (e.g. Gaming Supervisors and Assistant Managers.)

13. “Inspecting” or “Supervising” involves checking the integrity of the game and ensuring that the game is not ‘too big.’ At the start, a particular game will have been assigned to a particular level of dealer based on the nature of the game and the number of players. Essentially, the busier or more difficult to manage games will merit a higher level of dealer. A given game may grow over time (e.g. when new players join). The particular game may be manageable for a lower ranked dealer at the start but may need to be assigned to a higher level of dealer part way through because it has become more complex or challenging to manage. Part of the supervisory skill is knowing when to assign and reassign a game to a particular dealer or level of dealer. Whether this is done by a Dealer 3 or a Gaming Supervisor or an Assistant Casino Manager, the task is to identify if any changes are needed for the employee or customers or the overall management of the game and the gaming experience.

14. Normal practice within the business is for a Dealer 2 to be coached and for them to develop new skills during quieter times on the gaming floor. Those performing a supervisory role ensure that the games do not ‘go out of control.’ In essence, they need to make sure that the game in question is kept within the competence levels of the dealer who is running it. The supervisor can also open new tables on the gaming floor in order to manage demand etc. Coaching a dealer can involve telling/reminding the dealer to speak up and/or announce bets more clearly.

15. The Tribunal heard that the respondent has a “Gaming Manual” which is to be followed when dealing games on the gaming floor. It sets out the procedures which dealers should follow and sets out how the dealers should deal the different games.

16. The Tribunal also noted that the respondent is running a licensed premises. It needs both a gaming licence and a premises licence. The respondent is required to have CCTV on site as part of the regulatory/licensing requirements. There is one CCTV camera on every gaming table. The cameras record the audio as well as the visual footage. The CCTV microphones and sound system are focused in on the tables so that the dealer and the players can be heard at the table so that the game can be properly monitored. The respondent has a surveillance team which operates 24 hours a day and which reviews the footage ‘in real time.’ Recordings are kept routinely for 31 days and may be retained for longer, particularly if there is a known dispute or the police need to view or retain the footage. There are a large number of CCTV cameras in other parts of the premises, for example in the hospitality areas and common seating areas.

17. A dealer’s ability to progress through the ‘ranks’ and achieve promotion depends on a number of different factors. Sometimes they will progress through the ranks as a result of their individual competence and efficiency at running the games in question. Alternatively, they may be seen to possess supervisory skills or a particular willingness to learn or flexibility in carrying out other tasks (e.g. a count.) Attendance and timekeeping will also be relevant.

18. When a job applicant is interviewed for a dealer role, they do a “table test” as part of the interview process in order to assess their skill levels on the gaming

tables. Although the claimant had worked for another casino, she was taken on as a trainee when she joined the respondent's business. This is not altogether uncommon. Often, if a job applicant has less than one year's prior experience as a dealer, they will be counted as a trainee, at least initially.

19. Promotion in the casino can be internal or external. The respondent may have difficulties in recruiting sufficient suitable dealers. Consequently, in order to retain the current workforce, the respondent may want to promote dealers internally, where appropriate.

20. The respondent has an HR department but they are not present on site at the Manchester Casino. They are based at the respondent's head office. The respondent has access to an occupational health provider but they are not internal to the business. Occupational Health often become involved when an employee is absent on long term sick leave (e.g. 3-6 months) or where an employee asks for reasonable adjustments at work. The respondent can also give employees access to welfare services provided by Plumm.

21. The claimant started work for respondent on 23 May 2022 as a Trainee Dealer [115- 116]. The Tribunal was referred to the job description for dealers at all levels of seniority [125]. The document indicates that dealers at level 3 had additional duties compared to those at levels 1 and 2 [127.] Those additional duties included being able to support and/or supervise the 'pit' of table games and being able to undertake the probationary reviews of entry level dealers. There was also an expectation that they would be able to competently cover other job roles in other departments (e.g. Cash Desk, Reception.) They were also expected to have more complete knowledge, understanding and application of AML/SG policy and regularly guide others and provide direction on this.

22. On 15 May 2023 the claimant became a Dealer at Level 1. The promotion letter was within the hearing bundle [131].

23. The claimant had some absence from work on sick leave. It is recorded that she was paid full sick pay from 16 to 26 September 2023 and 10 December 2023. Thereafter, any sick leave was paid at statutory sick pay rates only.

24. The claimant's entitlement to sick pay was set out in her contract of employment at section 10 [117-118]. It set out that an employee may be paid discretionary sick pay linked to their length of service. 12 months' service was linked to 2 weeks' full pay and 24 months' service was linked to 4 weeks' full pay. The entitlement to company sick pay was available in any 12-month rolling period. If the employee exhausted their discretionary company sick pay and remained absent, or returned to work shortly after their anniversary date, then they would not be considered for any further or enhanced discretionary company sick pay until they had returned to work for at least 30 working days without further absence or sickness. In order to be eligible to receive discretionary company sick pay, the employee had to fully comply with the respondent's rules and procedures in relation to notifying the respondent that they will be absent because of sickness or injury. The contract stated that if the employee failed to

comply with these rules, they would only be paid statutory sick pay for their period of absence.

25. The relevant sections of the respondent's sickness absence reporting procedure were contained within the hearing bundle [88]. This imposed an obligation on the employee to report any absence in accordance with the standing instructions at the place of work. This included contacting the line manager on the first day of absence and giving an indication as to the nature of the absence and a likely return date so that the manager can arrange cover for the absent employee. The procedure states that if the absence is not reported in line with the process above, the employee risks it being recorded as unauthorised absence and this may result in them not being paid. All absences must be supported by a Certification of Absence form. During any period of absence, the employee must contact their manager on a regular basis to keep them informed of the employee's current situation and expected return date. If there is an absence of more than 7 days, the employee must provide a fit note as soon as possible. In order to receive any sick pay entitlement after 7 days it is normally a requirement that a fit note is submitted in a timely manner. The procedure also makes provision for meetings on the employee's return to work. The written procedure also refers to "keeping in contact during sickness absence." It notes that if an employee is absent from work on sick leave, they should expect to be contacted from time to time by their line manager and/or the HR department in order to discuss their wellbeing, expected length of continued absence from work and any of their work that requires attention. Such contact is stated to be intended to provide reassurance and will be kept to a reasonable minimum.

26. The claimant also drew the Tribunal's attention to section 17 of her contract of employment [120]. The title of the section is "Disciplinary and Grievances". The last paragraph of the section states, *"We reserve the right to suspend you (with the continued payment of your salary and any other contractual benefits) pending any investigation into potential dishonesty, gross misconduct or other circumstances which might lead to dismissal for such period as we think fit."*

27. The claimant alleged that, between November and December 2023, Mr Urso shouted at the claimant when she was working on a roulette table. She alleges that he shouted at her that she had to 'spin the wheel as he said.' She alleges that when the customer won and the claimant paid out the money to the customer, he shouted out, "you have to spin as I say."

28. On balance of probabilities, the Tribunal preferred the respondent's evidence in relation to this allegation. Given the layout of the gaming area and the number of people and managers likely to have been present, we are satisfied that the alleged behaviour or event would have been noticed at the time if it had happened. We also noted that the claimant made no complaint or report about this incident at the time that it is said to have happened. None of the managers noticed any shouting by Mr Urso. On balance, we conclude that someone would have heard it and noticed this sort of behaviour if it had happened. This is particularly so given that it was alleged to have happened near to Christmas when the casino was busier. In such circumstances there would be more

witnesses in the area who would be able to see and hear what was going on. The claimant was unable to name or indicate any witness who did overhear or witness this alleged event. In the course of answering questions during the hearing, the claimant had the opportunity to explain the context of this incident and to explain the meaning of the comments that Mr Urso allegedly made. Unfortunately, the claimant was unable to do that. The comments that Mr Urso is said to have made, about spinning in a particular way, are something that the Tribunal has been unable to understand. We were unable to understand what such a comment would have meant if it had been said. What could Mr Urso have meant by shouting at the claimant, “you have to spin as I say”? The claimant could not explain that clearly to us. Mr Urso denied making the comment and the witness Maxine Gibbons was also unable to explain what it could have meant (and she is someone who knows the business well and could reasonably be expected to understand the meaning of such a comment.) Furthermore, the respondent’s gaming manual existed to set out how games should be run by the Dealers.

29. The claimant made an allegation about Mr Davi in January 2024. She alleged that she had been moved to work as an inspector. She alleged that whilst she was working in this capacity, Mr Davi said that he had not, in fact, moved her to be an inspector but rather so she could learn from a more experienced dealer. The claimant said that she felt ready to be an inspector and then Mr Davi shouted at her and told her to get back to BJ1 table.

30. The claimant’s allegation was that this incident happened at the end of January 2024, during a day shift, whilst the claimant was working on blackjack one (“BJ1”), and Mr Davi told the claimant to be an Inspector. She alleges that she did so and whilst she was concentrating on checking two tables and watching an experienced dealer on roulette, Mr Davi said, “I didn’t put you here as Inspector, you are here to learn from an experienced dealer.” The claimant said that she felt ready to be an Inspector. At which point, Mr Davi started shouting at her and said, “you know what, go back to BJ1.”

31. The claimant was taken through this allegation and the evidence on this in detail during cross examination. She was taken to the contemporaneous reports, investigations and observations of the managers Mr Iley and Mr Hibbs. Those investigations were completed close in time to the alleged incident. Mr Iley and Mr Hibbs found no evidence of problematic behaviour by Mr Davi. They had no reason to lie about that, and the claimant could not suggest why they would not tell the truth about this.

32. There were other sources of evidence which did not support the claimant’s case. These included: CCTV footage, Mr Davi’s account when Mr Hibbs and Mr Iley spoke to him, and the absence of any other witnesses who said they heard or saw something which matched the claimant’s version of events. The Tribunal concluded that Mr Davi’s evidence was consistent. In summary, he saw an opportunity to let the claimant observe a roulette game which had lots of ‘action,’ and which would be useful for her development in the job. When this was offered to the claimant, she did not react as he would expect. She was rude

about it. In those circumstances, he concluded that there was no point in Ms Costanzo going onto the roulette game in question as no purpose would be served by this. Consequently, the claimant could go back to the table where she had originally been situated (Blackjack One.) This is what he communicated to the claimant. The Tribunal is satisfied that there was nothing wrong with this or Mr Davi's overall actions and behaviour in the circumstances. The claimant had rejected a development/coaching opportunity (whether through a misunderstanding or otherwise) and had been quite rude and so Mr Davi had stepped back and told her to return to what she was doing beforehand. This was a legitimate managerial intervention and there was no evidence that it was done in an inappropriate or aggressive way.

33. On 5 February 2024 the claimant became a Level 2 Dealer. The promotion letter was within the bundle [132]. It appears that Mr Hibbs put her forward for this promotion following a conversation in January where he explained what she needed to focus on in order to get the promotion. The claimant had apparently mentioned that she had been working with the respondent for two years and wondered what she had to do in order to get the Level 2 position. Mr Hibbs looked at her abilities and recognised that she was always available to help the team and stayed behind when needed, in order to help out. She had learned how to do the count as a cashier so that she could help the afternoon shift. She had learned how to cover reception in order to help with shortfalls. Her dealing standards had improved since joining the business and she had shown progression. The claimant had learnt Punto and, although the training was not complete, she was close to being signed off. Hence, he felt she should be considered for the promotion. Once the promotion was signed off, he told her about it and the reasons that she had got it. During the Tribunal hearing there was a query about how the claimant was informed of the promotion as she suggested that she had not seen the letter at the time. On balance, the Tribunal was satisfied that the claimant was informed of the promotion at the time, given that it was good news and good news does tend to be shared as soon as possible. The Tribunal was of the view that Mr Hibbs' contemporaneous notes about this in the bundle were quite specific and were credible.

34. On 20 February 2024 the claimant had a panic attack at work and paramedics took her straight to hospital from work. This marked the start of the claimant's period of continuous sick leave. The claimant did not return to work prior to her resignation.

35. The claimant was kept in hospital for three days. The discharge note suggests that she was discharged from hospital on 22 February [138]. At the time the respondent did not know whether the claimant had been admitted to hospital or sent home the same day. There is no evidence before the Tribunal to indicate that anyone told the respondent when or if she returned home from the hospital.

36. After the ambulance took the claimant away from the workplace, Mr Milligan tried to make contact with the claimant via text message. The record of the text messages was in the Tribunal hearing bundle [153A]:

20 February 2024 at 22:23: *"Hi Giulia, how are you? Are you home?"* [The claimant did not reply.]

21 February 2024 at 10:07: *"You ok Giulia?"* [No reply from the claimant.]

24 February 2024 at 09:30: *"Hi Giulia, we didn't have any contact from you yesterday. Are you ok?"* [No reply from the claimant.]

27 February 2024 at 14:00: *"Hi Giulia, can you please contact us. If you are going to be off sick, that's fine. Don't worry about it. You'll get paid if you make contact."*

In relation to the 24 and 27 February messages, the respondent's witnesses explained that the claimant was rostered to work on 23 February, so she had not turned up to work as expected. This explains the content of the message. She did not reply to that message. Thus, the respondent sent the message on 27 February as a way of reminding the claimant of the content of the sickness policy and the need to inform her employer of sickness absence. The claimant responded by sending in a fit note later that day [144-145]. The respondent's message had therefore had the desired effect and triggered the necessary sickness notification. The fit note signed the claimant off with "anxiety" and covered the period from 27 February to 27 April.

37. On 29 March 2024 the claimant raised a formal grievance [167-168.] The grievance alleged that her panic attack had been triggered by the discriminatory behaviour of Mr Urso and Mr Davi. She alleged that the respondent had not respected her entitlement to be off work on sick leave and had not paid her the correct level of sick pay.

38. On 19 April 2024 the Head of HR, Hardip Basi, wrote to claimant offering a meeting the following week and asking for more details of what had happened so that respondent could investigate the grievance [p165-166].

39. The first grievance meeting between the claimant and Mr Basi took place on 23 April 2024. It was an online meeting which was conducted via MS Teams. By this stage, the claimant had raised a grievance but it was not very clear what the specific allegations were or what the claimant's desired outcome from the grievance was. The respondent needed to understand what the claimant's complaint actually was. Having looked at the relevant documents, the respondent was not clear what allegations it was supposed to be investigating. In many organisations and businesses, it is perfectly standard procedure to have a meeting as a way of getting clarification and information. The claimant may not have realised what a written grievance needed to contain in order for the respondent to be able to address it and investigate it. It is possible that she did not understand the level of detail that was required. The claimant did not suggest at the time that she was not fit enough or well enough to attend an online meeting. She did not resist having the meeting. Indeed, the respondent had attempted to get the required information and details from the claimant in various other ways.

40. It appears that Mr Basi did not obtain sufficient detail or specifics about the claimant's allegations as a result of that meeting. As a result, he emailed her later the same day (i.e. 23 April) so that she could provide further detail to enable him to investigate properly. He also asked for screen shots or copies of messages etc. [164-165]. As part of the 23 April email, Mr Basi reminded the claimant of the option of accessing the Employee Assistance Programme system via Plumm. The claimant did not take up the offer of assistance through Plumm [162.]

41. The claimant responded to the email later the same day (23 April) alleging that Mr Davi and Mr Urso caused her "psycho-physical damage" and displayed "non-gratitude." However, she gave no further material details of the specific allegations [164.]

42. A further email from Mr Basi on 24 April repeated the request for further information. The claimant was asked to detail each incident concerning Urso and Davi with dates, times and witnesses so that the respondent could investigate further. The claimant had also referred to unlawful dismissal. This was queried as the claimant had not been dismissed from her employment. The email enclosed a copy of the sick pay policy and explained that sick pay entitlement was based on the employee's length of service.

43. The claimant sent a further email on 24 April. She stated that she was afraid to go back to work because Davi and Urso could repeat the behaviour and this could cause a panic attack. However, she did not provide any additional information to enable the respondent to take further steps to investigate the grievance. About 15 minutes later, the claimant sent another email suggesting that she would be forced to resign because she did not want to go back. She said that this was called a forced or unfair dismissal. She said she would talk about the episodes in question at conciliation as she felt stressed about remembering the episodes at that time. She maintained that she had said what she had to say and indicated that she would not say anything further in order to avoid further stress.

44. In response to this, the respondent tried to invite claimant to a further meeting to discuss the grievance but claimant declined. An email was sent on 25 April [159] stating that the meeting could be conducted via MS Teams if that was preferable. They wanted to discuss the grounds for the claimant's grievance. The email emphasised that there was no 'enforcing of resignation' and the respondent would very much like to meet with the claimant in order to discuss her concerns along with her general wellbeing and her current sickness absence. The respondent proposed a meeting on 29 April with Jason Evans (Group HR director). The claimant refused the invitation to a meeting. She stated that she had nothing to add. She concluded *"If you intend to close, make me a financial proposal for the damages suffered by these managers. Others move forward. At least I have nothing to add to you."*

45. On 26 April Mr Basi sent the claimant an invitation to a grievance hearing together with a copy of the grievance policy. The claimant's email response was "You keep stressing me out. See you in court. I said what I had to say."

46. The offer of a meeting was repeated and the claimant responded on 14 May to indicate that she had not been ready to attend a meeting the last time it was offered but she was now ready to attend. There were further emails between the parties and on 20 May the claimant indicated that her solicitor was available to talk on Friday [173]. This indicated that the claimant wanted to be accompanied at any meeting by a solicitor. The respondent replied on 22 May [172] and explained that the purpose of the meeting was to understand the exact details of the claimant's grievance in order for the respondent to complete a full and thorough investigation. To that end, the respondent confirmed that the claimant was entitled to be accompanied by a colleague or trade union representative at the hearing, in line with the respondent's grievance process. The respondent asked for details of who would be attending the meeting with the claimant. The claimant responded, *"As I said yesterday that my solicitor is available on Friday from 12pm to 15pm. Let me know. Thank you.*" The claimant seems to have ignored what the respondent said about who could accompany her to a grievance hearing. Her desire to have a solicitor was not in line with the respondent's grievance policy.

47. Mr Basi sent the claimant a further email on 22 May. He reiterated that a solicitor was not permitted and that a trade union representative or work colleague was acceptable. He continued, *"Your solicitor is **not** permitted to attend the meeting. If your solicitor comes to the meeting, they will be asked to wait outside or the meeting will be cancelled. The purpose of this meeting is to hear the details of your grievance from you. I have emailed you on previous occasions asking you to provide the details of specific incidents in writing, which you have not done. We want to provide you with the opportunity to discuss your grievance so we can investigate and provide you with an outcome."*

48. The claimant subsequently accepted this and said she would attend alone [170]. The claimant did not make any reference to needing a companion to help with English language or translation during this correspondence with the respondent. The reference to needing assistance with the language arose in the List of Issues for the Employment Tribunal proceedings.

49. The claimant had her grievance meeting with Maxine Gibbons on 24 May 2024. No notes were taken at the meeting. At the start of the meeting the respondent made general welfare enquiries of the claimant but there was no in-depth discussion of the need for occupational health advice or assistance. However, it was a grievance meeting rather than a welfare or health related meeting. The respondent was not prompted to take the case further down the occupational health route. Ms Gibbons' understanding was that this was a grievance meeting and that the claimant was fit enough to participate in it.

50. By the time the meeting took place the claimant had been absent from work for three months with anxiety. The Tribunal is satisfied that, during the meeting, the claimant gave the respondent the impression that she might leave her job rather than return to work. There was a preliminary request for compensation or some form of financial payment. In any event, Ms Gibbons intended to go away after

the meeting and investigate the grievance as best she could and then provide a grievance outcome.

51. Later that same day (at 10.01pm) the claimant sent a further email saying that she wanted a financial deal in order to leave her employment [169]. She wrote, *"Thank you again for the meeting of this afternoon I hope we can reach a friendly agreement, avoiding unnecessary litigation and costs. I look forward to hearing from you."* The claimant then sent a further email at 10.03pm [177] confirming her decision to resign. She stated, *"According to article 15 of my employment contract, I am writing to communicate that I intend to quit my position starting today, the written notice."*

52. Ms Gibbons replied to the claimant on 28 May [176]. She confirmed again that, following the meeting, she would be carrying out an investigation before providing an outcome to the grievance. She continued, "*Regarding your email below that you sent on Friday, I have a couple of queries re-resignation that I will need clarifying before I can process. Can you please confirm your intention to resign from your position as Dealer 2 at Manchester 235 therefore ending your contract with Metropolitan Gaming. Can you also confirm if your intention was to resign with immediate effect from the date you sent the email Friday 24th May or other? Once confirmed I shall process the resignation."* The claimant confirmed her intention to resign later that day. She confirmed that the 7-day notice period started from 24 May.

53. Notwithstanding the resignation, Ms Gibbons went ahead with the grievance investigation and produced an outcome letter dated 14 June [179]. She summarised the key points discussed during the grievance meeting and gave her conclusion in relation to each of them. She explained the process she had used and who she had spoken to about the allegations.

54. The first allegation was that Mr Urso and Mr Davi behaved in a hostile manner towards the claimant after an employee named Valerio D A'rtibale resigned from his position in September 2023. The claimant had stated that both Mr Urso and Mr Davi were convinced that Valerio resigned because of the claimant, due to an incident that occurred in September 2023 prior to his resignation. The claimant claimed that Valerio was behaving in an insubordinate manner and had an intimidating attitude towards her whilst she was positioned as the inspector responsible for the table that he (Valerio) was placed at. Additionally, the claimant claimed that his attitude became aggressive after the duty manager intervened and that she (the claimant) witnessed him aggressively kicking the rope. This led to further management intervention by Mr Milligan and Anna Walkowiak (both Assistant Casino Managers) who spoke with the claimant at length in the office.

55. Ms Gibbons' findings following interviews with relevant witnesses, were that Anna spoke to the claimant first and took details of the claimant's claim. The claimant had alleged that Valerio was rude and told her what to do. Anna had explained to the claimant that Valerio was an experienced member of staff (Dealer 3) and that claimant should listen to him as he wanted to help her. Anna then spoke with Valerio who confirmed that he was trying to help the claimant

to progress and that the claimant had told him she was not interested in his help. The incident was then followed up by another Assistant Casino Manager, Mr Milligan. The claimant had told Mr Milligan that Valerio had been rude and horrible to her. Mr Milligan also addressed her claims with Valerio who told Mr Milligan that he did not have a problem with the claimant and was trying to help her but she took his feedback as criticism and refused his help. As a result, Mr Milligan told Valerio that it would be best to refrain from giving helpful feedback to the claimant as Gaming Supervisors and Assistant Managers would conduct the training. Mr Milligan followed this up with the claimant over the following weeks to ask if everything was okay and Mr Milligan's evidence was that the claimant confirmed that all was well. Ms Gibbons concluded that there were no further incidents and no action necessary given that both managers assessed, evaluated and agreed that the incident had been addressed appropriately.

56. Valerio resigned at the end of September 2023 in order to return to Italy. During the investigation Mr Davi stated that he saw a change in the claimant after Valerio resigned, stating that it was difficult to give the claimant positive or constructive feedback. Mr Davi suggested that he tried to improve the claimant's skills with coaching and training which included assigning the claimant to inspect games. Mr Davi's account was that he remained professional in his approach and treated all dealers in the same manner.

57. In light of the above Ms Gibbons did not uphold this allegation as there was no evidence found during the investigation to support the claimant's claim. The reason for Valerio leaving was well known amongst team and was documented. His reason for leaving was not connected to the claimant. Given that both Mr Urso and Mr Davi were aware of this, Ms Gibbons found it reasonable to conclude that they had no reason to behave in a hostile way towards the claimant.

58. The claimant made an allegation of inappropriate conduct and bullying behaviour towards her by Mr Urso. She claimed that he wanted to scare her whilst dealing. The claimant claimed that he did this by: continually shouting at her about turning the wheel during her game; shouting at her in front of customers whilst trying to calculate bets; and speaking to the claimant continuously whilst she was dealing to prevent her from carrying out her duties thus putting her at risk of making mistakes whilst calculating bets. The claimant claims that this led to her feeling "stomach fear" and pressure whenever she started a shift with him. She claimed that she had notified her managers about this but no action was taken.

59. In response to this allegation Ms Gibbons interviewed all seven managers. They stated that they had not received any complaints from the claimant relating to Mr Urso's behaviour towards the claimant or other employees. They stated that they had not witnessed or recalled any incidents involving inappropriate behaviour by Mr Urso (that the claimant alleged took place from October 2023.) Ms Gibbons noted that the claimant had given a generalised account without any tangible evidence or witnesses to corroborate her allegations. Ms Gibbons noted that there was no evidence to investigate which would support the claimant's claims that Mr Urso shouted at her whilst dealing

in front of customers and continued to talk at the claimant whilst she was calculating bets. She also noted that such behaviour would negatively impact Mr Urso's core objectives, therefore damaging his own targets and behavioural goals. She noted that there are many other managers and senior personnel present during the shifts that Mr Urso was assigned to, these being night shifts which are peak business hours. She noted that Mr Urso held a key role in ensuring that dealer placement and technical ability are correctly matched. This includes ensuring that games are conducted efficiently and securely. She recorded that, should a table game increase to a level that exceeds the current dealer's level of experience and capabilities, changing dealer or a higher level of coaching/inspection is the correct course of action.

60. Ms Gibbons concluded that there was no evidence or incidents recalled or noted that demonstrated the behaviours that the claimant claims were inflicted on her by Mr Urso. She also noted that evidence suggested that the claimant was capable of reporting incidents to management and yet there was no evidence to suggest that she had reported the incidents involving Mr Urso which she now complained about. As a consequence of the above, Ms Gibbons did not uphold this allegation, as there was no evidence found during the investigation to support the claimant's claims.

61. The claimant made an allegation of hostile behaviour towards her by Mr Davi. She claimed that in January 2023 she was taken off a roulette game by Mr Davi and placed on blackjack. She was subsequently asked to inspect the roulette game and watch another colleague deal roulette because Mr Davi said she was "not good". She responded to contradict the comment and claims that she was yelled at so loudly that she felt intimidated. She alleged that she immediately reported this to the manager and claimed that she told the manager to check the CCTV footage. She stated that she had to contact the casino on her day off as she had not received a response to her complaint from the manager

62. Ms Gibbons recorded that Graham Iley (Casino manager) was within the vicinity when the claimant reported that Mr Davi had said the claimant was no good and had yelled at her. Mr Iley addressed the incident at the time by speaking to Mr Davi to get his account of the incident. Once satisfied, Mr Iley followed up with the claimant the same day and explained the reason that she was taken off the table and placed watching another dealer. He explained that this was done to give the claimant coaching and to help advance her skills and not because she was "no good." Mr Iley clarified to the claimant that coaching is part of the advanced dealer training and is conducted with other Dealers who are graded 1 or 2. Ms Gibbons noted that there was no evidence to support the claimant's claims that Mr Davi had yelled at her causing her to feel intimidated. Mr Iley was in the vicinity at the time and did not witness or hear Mr Davi loudly yelling at the claimant and this could not be heard via CCTV. Ms Gibbons found that Mr Iley did give the claimant a response to her complaint on the same day, after he had investigated the alleged incident. Ms Gibbons also discovered that the claimant had also expressed her unhappiness at being taken off the table to Chris Hibbs, the Casino Manager, who was responsible for the gaming operation. Mr Hibbs had explained the reasons for Mr Davi's actions to the claimant and told her to focus on herself and the areas that she needed to

improve upon. Mr Hibbs investigated why claimant was taken off the table. He questioned the Gaming Supervisor and viewed the CCTV footage, which confirmed that the decision which was taken in relation to the claimant was correct. He noted that the claimant struggled to control the game that she was dealing.

63. In light of the above, Ms Gibbons did not uphold this allegation as there was no evidence to support the claimant's claims. The manager on duty addressed the incident at the time and followed up with the claimant and Mr Hibbs also investigated the incident and confirmed that the decisions that had been made were correct.

64. The claimant's fourth allegation was of hostile behaviour towards her by Mr Davi and Mr Urso. She claimed that in December 2023, whilst she was acting in the capacity of an inspector, Mr Davi and Mr Urso (together with another colleague), made fun of her by comparing her to another inspector who she believed wasn't positively rated by them. This had a negative impact on her working conditions.

65. Ms Gibbons noted that both Mr Davi and Mr Urso categorically denied the allegation that they would make fun of any colleague. They stated that they often discuss which dealer they intend to place on the games. This may have been what the claimant witnessed as they discussed the dealers they had on shift at the time. This was normal practice and involved going through the dealer choices to ensure that they agreed. Ms Gibbons did not uphold this allegation. She noted that there was no evidence to substantiate the content of the discussion and that it may, therefore, have been misinterpreted by the claimant. Discussing dealer placement was part of the Assistant Casino Manager and Gaming Supervisor role.

66. The fifth allegation of hostile behaviour was in relation to Mr Davi. The claimant alleged that on one occasion Mr Davi forced her to do the count with a person who had previously shouted at her in the staff canteen. She additionally claimed that Ester Amato shouted at her because she didn't respond to her (Ester) contacting the claimant in a social capacity. The claimant said that she did not want to have any social relationships with work colleagues outside the workplace which she believed was the reason for Ester behaving in this way. This ultimately led to a "fall out."

67. Ms Gibbons recorded that Mr Davi recalled the claimant telling him that she did not want to do the count but he said that the reason she gave at the time was that it was cold in the count room. Mr Davi was not aware of any instruction to separate the claimant and another employee. Ms Gibbons recorded that there was no information or incidents reported to corroborate any grievance between the claimant and Ester that would prevent such task allocation. She noted that supervisors and ACMs can make the best choices for the business needs including assigning the count crew. She noted that the count was not an unreasonable request and was a task that formed part of the job role. Should there be a reason to separate two employees for any work-related tasks, this would be clearly communicated by senior management in advance. As this

wasn't the case, it was not the dealer's decision to choose who conducts the count.

68. Ms Gibbons also noted that Mr Milligan had observed an incident that occurred whilst the claimant was inspecting. He gave an account of Ester Amato pointing out an error which she could see on the claimant's table (from where she was placed.) Ester did this with good intentions, to prevent a chip being incorrectly valued, thereby costing the company. The claimant dismissed her help as interference and interpreted this to be Ester not valuing the claimant's capabilities. This was witnessed by Mr Milligan, who said that Ester's intervention was to prevent any loss from overpayment and ultimately prevent action against the claimant. He witnessed the claimant order Ester to face her table dismissively.

69. In light of the above, Ms Gibbons did not uphold the allegation, due to the fact that the task allocated was not an unreasonable request and there was no evidence to support the claimant's claim.

70. The claimant made an allegation of discrimination regarding a promotion. She said that she was overlooked for a promotion and claimed that she was not considered for a Dealer 2 position.

71. Ms Gibbons' investigation confirmed that the claimant was recommended for consideration in January 2024 by Casino Manager Chris Hibbs who submitted the request in writing. This was accepted on 5 February 2024 and the claimant was promoted to Dealer 2. When the claimant was promoted, Mr Hibbs stayed on after the end of his work hours and waited for the claimant so that he could personally tell her the good news. This took place in the Vega bar area. Consequently, Ms Gibbons did not uphold this allegation due to the evidence provided during her investigation.

72. The seventh allegation was of hostile behaviour towards the claimant. Ms Gibbons had asked if there were any specific incidents that occurred on or around the time of the medical incident (the panic attack which resulted in the ambulance taking the claimant to hospital.) The claimant described an incident which occurred the previous day, 19 February 2024. The claimant said that she was placed on the count in the capacity of cashier with another dealer (Alvaro Ortega) who was also qualified for this task. The claimant stated that she had recently been trained to perform this function, therefore expected to be slower. During the count, an error interrupted the process which the claimant attempted to resolve for herself. This led to an incident between the claimant and Alvaro which the claimant claimed resulted in Alvaro behaving aggressively towards her after she prevented him from intervening to find the error more quickly. The claimant proceeded with the count and reported the incident to management once the count was completed. Alvaro also reported his version of the events to the manager on duty, Mr Milligan. The next day, 20 February, the claimant was placed on the blackjack table and Alvaro was placed inspecting her table. This is the point at which the claimant became unwell and was taken to hospital. The claimant stated that during her immediate absence from work she was repeatedly contacted by management and various employees by several forms

of communication. She alleged that this caused her additional anxiety as she was in hospital receiving treatment. She claimed that managers did not respect her sickness and that it was harassing and stressful.

73. Ms Gibbons recorded that Mr Milligan gave an account of the incident. He stated that it was Mr Ortega who immediately approached him to complain about the claimant's behaviour during the count. He complained that the claimant was 'talking down to him', behaving rudely towards him whilst he was trying to help her find the error. He stated that the claimant 'ordered' him to do things in a manner and tone that was highly inappropriate. Mr Milligan approached the claimant to address the complaint and asked for her account of the incident. The claimant told Mr Milligan that she did tell Mr Ortega what to do as he was not doing things right and she (the claimant) was "in charge". Mr Milligan told the claimant to be aware of how she was speaking to others when in a senior capacity during tasks and that the role was not to be used to address colleagues inappropriately. When Mr Milligan asked her about the incident, the claimant did not raise or report any of the allegations that she made during the grievance in relation to Alvaro being aggressive towards her. The next day (20 February) the claimant was placed on the blackjack table and Alvaro was placed inspecting her table. At this point the claimant became unwell and had to be taken off the table to seek first aid and she was subsequently taken to hospital by paramedics. Ms Gibbons noted that the claimant stated in her grievance that she did not blame Alvaro, the incident that occurred with him was incidental and did not form part of the reason for her becoming unwell. Ms Gibbons recorded that managers and other personnel were contacting the claimant out of concern for her wellbeing as the claimant had not contacted the workplace and didn't attend her next shift. Having been aware of the medical incident earlier that week, concerns about the claimant's welfare ensued. This resulted in various attempts to contact the claimant to make sure that she was okay. Ms Gibbons recorded that the respondent was not notified that the claimant was kept in hospital and, therefore, was not aware that she was indeed safe and receiving medical attention. Had this been known, attempts to contact the claimant would not have been made. Ms Gibbons was satisfied that the actions taken were ones with good intent and within reasonable management parameters to check on the claimant's welfare and make sure that she was safe. Ms Gibbons did not uphold this allegation. Given the circumstances, she found that the correct action was taken by management.

74. In conclusion, Ms Gibbons summarised training methods for advanced dealer training, which included asking dealers to watch other experienced and technically advanced dealers from an inspecting position. She recorded that this was a widespread practice and often applied to dealers who require a diverse approach to help them advance to the next level. She recorded that the business encouraged supervisors and managers to fill unexpected quieter periods with training and coaching, for the benefit of the employee and the business. She noted that the claimant had given accounts of several incidents and encounters that occurred with colleagues and management. She noted that each of these incidents appeared to follow a similar pattern, which involved others trying to help the claimant. She recorded that all employees who were directly or indirectly connected to the incidents, have given similar accounts and

views which are opposing to the claimant's account of events. She also noted that employees investigated and interviewed had pointed out the claimant's inability to accept constructive feedback or help from others. Each of them stated that they had attempted to help or highlight an error by the claimant with good intentions, which had been interpreted by the claimant as the opposite. Ms Gibbons referred to this as the common denominator within the investigation: that the claimant struggled to accept all forms of feedback and failed to appreciate the help that was being offered to her from multiple managers and colleagues. She also noted that there were no other incidents involving mistreatment, bullying or discrimination alleged by other employees against Mr Urso, Mr Davi or any of the others connected to the grievance. In summary, based on the evidence obtained, Ms Gibbons concluded that the claimant's allegations were unfounded due to a lack of evidence to support them. Therefore, the claimant's grievance was not upheld. The claimant was offered the right to appeal against the grievance outcome and given details of how to do this.

75. The claimant presented her claim form to the Tribunal on 26 June 2024. There was a subsequent amendment to the claim in October 2025 to add a claim of victimisation. The claimant alleged that on at least three occasions (including 3 March and 7 July 2025), Mr Urso and Ester Amato had attended at the claimant's place of work (Gentings Casino), without prior notice or legitimate business reason. The claimant alleged that this was victimisation. There was one other unidentified date on which this is said to have happened. Mr Urso said that one of the times that he attended the casino in question was New Year's Eve 2024/2025. The protected act was the claimant's Employment Tribunal claim.

76. The claimant has been working in a Gentings Casino since she left the respondent's employment. The claimant's former colleagues Ms Amato and Mr Urso both visited that casino. However, the Tribunal is not satisfied that the claimant was subjected to detrimental treatment as a result of these individuals going to the casino. There is no evidence that there was any interaction between the claimant's former colleagues and the claimant when they visited her workplace. Nor is there evidence of any sort of intimidation.

77. Ms Amato did not even know about the claimant's Tribunal claim at the time that she visited the casino. Logically, her visit to Gentings Casino cannot have been caused by the claimant's protected act. Legal causation is not established. Mr Urso did know about the Tribunal claim but did not actually see the claimant when he visited the Gentings Casino. It is hard to see how he was subjecting her to detrimental treatment in those circumstances. There was no real interaction between the parties during the visits which could be described as detrimental to the claimant.

78. Both of the claimant's former colleagues were entitled to visit this casino for gaming purposes. Indeed, Ms Amato gave evidence that she had been visiting that casino for a number of years before the claimant started to work there. Her behaviour did not change because the claimant brought a Tribunal claim. Nor should Ms Amato's behaviour have to change because of the claimant's

claim. She had the right to carry on as before using the casino as she had previously. There is no evidence to suggest that these two individuals visited the casino for any purpose other than to play games at the casino. The Tribunal also notes that, because both of these individuals were employed at the respondent's casino, they were not permitted to play at the respondent's casino themselves. If they wanted to go to a casino they could not go to the casino that they worked at. This further explains why they turned up at the claimant's new place of work. It undermines any suggestion that they had gone to that casino because the claimant worked there or because they wanted to intimidate or upset the claimant. The fact that the claimant had started work there was, we are satisfied, no more than an unfortunate coincidence (when all the surrounding circumstances are considered.)

The Law

Section 26: harassment

79. Section 26 states:

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

….

(4) In deciding whether conduct has the effect referred to in subsection (1) (b), each of the following must be taken into account-
  (a) the perception of B;
  (b) the other circumstances of the case;
  (c) whether it is reasonable for the conduct to have that effect.

80. 'Unwanted' conduct is essentially the same as 'unwelcome' or 'uninvited' conduct.

81. Harassment will be unlawful pursuant to section 26 if the unwanted conduct related to a relevant protected characteristic had *either* the purpose *or* the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

82. The harassment has to be "related to" a particular protected characteristic. The tribunal is required to identify the reason for the harassment with a particular

focus on the context of the particular case. In Unite v Naillard [2017] ICR 121 the EAT indicated that section 26 requires the tribunal to focus upon the conduct of the individual(s) concerned and ask whether their conduct is associated with the protected characteristic. In that case it was not enough that an individual had failed to deal with sexual harassment by a third party unless there was something about the individual's own conduct which was related to sex. The focus will be on the person against whom the allegation of harassment is made and his conduct or inaction. So long as the tribunal focuses on the conduct of the alleged perpetrator himself it will be a matter of fact whether the conduct is related to the protected characteristic. As stated in Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, "there must still … be some feature or features of the factual matrix identified by the tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied the tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found have led to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the tribunal may consider it to be."

83. The test as to the effect of the unwanted conduct has both subjective and objective elements to it. The subjective element involves looking at the effect of the conduct on the particular complainant. The objective part requires the tribunal to ask itself whether it was reasonable for the complainant to claim that the conduct had that effect. Whilst the ultimate judgement as to whether conduct amounts to unlawful harassment involves an objective assessment by the tribunal of all the facts, the claimant's subjective perception of the conduct in question must also be considered. So, whilst the victim must have felt or perceived her dignity to have been violated or an adverse environment to have been created, it is only if it was reasonable for the victim to hold this feeling or perception that the conduct will amount to harassment. Much depends on context. See the guidance Richmond Pharmacology v Dhaliwal [2009] ICR 724 revisited in Pemberton v Inwood [2018] IRLR where Underhill LJ stated:

> In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider *both* (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) *and* (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

The context of the conduct and whether it was intended to produce the proscribed consequences are material to the tribunal's decision as to whether it was reasonable for the conduct to have the effect relied upon. Chawla v Hewlett Packard Ltd [2015] IRLR 356.)

As stated in Dhaliwal:

'If, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question.

Section 13: Direct discrimination

84. Section 13 Equality Act 2010 states:
    (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

85. Section 23 of the Equality Act 2010 provides:

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

86. In some cases, it may be appropriate to postpone consideration of whether there has been less favourable treatment than of a comparator and decide the reason for the treatment first. Was it because of the protected characteristic? (*Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL; Stockton on Tees Borough Council v Aylott)*

87. The claimant must show that they received the less favourable treatment 'because of' the protected characteristic. In *Nagarajan v London Regional Transport 1999 ICR 877, HL Lord Nicholls stated:* "*a variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle*

distinctions, are better avoided so far as possible. If racial grounds… had a significant influence on the outcome, discrimination is made out'."

88. The judgment in R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors 2010 IRLR 136, SC summarised the principles that apply in cases of direct discrimination and gave guidance on how to determine the reason for the claimant's treatment. Lord Phillips emphasised that in deciding what were the 'grounds' for discrimination, a court or tribunal is simply required to identify the factual criteria applied by the respondent as the basis for the alleged discrimination. Depending on the form of discrimination at issue, there are two different routes by which to arrive at an answer to this factual inquiry. In some cases, there is no dispute at all about the factual criterion applied by the respondent. It will be obvious why the complainant received the less favourable treatment. If the criterion, or reason, is based on a prohibited ground, direct discrimination will be made out. The decision in such a case is taken on a ground which is inherently discriminatory. The second type of case is one where the reason for the decision or act is not immediately apparent and the act complained of is not inherently discriminatory. The reason for the decision/act may be subjectively discriminatory. In such cases it is necessary to explore the mental processes, conscious or subconscious, of the alleged discriminator to discover what facts operated on his or her mind.

89. The relevant comparator must not share the claimant's protected characteristic. There must be no material difference between the circumstances relating to each case. The circumstances of the claimant and the comparator need not be identical in every way. Rather, what matters is that the circumstances which are relevant to the claimant's treatment are the same or nearly the same for the claimant and the comparator (paragraph 3.23 EHRC Employment Code.) With the exception of the prohibited factor (the protected characteristic) all characteristics of the complainant which are relevant to the way his case was dealt with must be found also in the comparator. They do not have to be precisely the same but they must not be materially different. (Macdonald v Ministry of Defence, Pearce v Governing Body of Mayfield Secondary School [2003] ICR 937). Whether the situations are comparable is a matter of fact and degree (Hewage v Grampian Health Board [2012] ICR 1054.)

Victimisation

90. Section 27 Equality Act 2010, so far as relevant, provides that:

> (1) A person (A) victimises another person (B) if A subjects B to a detriment because –
>
> > (a) B does a protected act…
>
> (2) Each of the following is a protected act –
>
> > (a) bringing proceedings under this Act.

...

91. A protected act requires that an allegation is raised which, if proved, would amount to a contravention of the Equality Act 2010. No protected act arises merely by making reference to a criticism, grievance or complaint without suggesting that it was in some sense an allegation of discrimination or otherwise a contravention of the Equality Act 2010: Beneviste v Kingston University UKEAT/0393/05/DA [29].

92. The test for detriment has both subjective and objective elements. The situation must be looked at from the claimant's point of view but his perception must be 'reasonable' in the circumstances.

93. The employee must be subjected to the detriment 'because of' the protected act. The same principles apply in considering causation in a victimisation claim as apply in consideration of direct discrimination (see above). The protected act need not be the sole cause of the detriment as long as it has a significant influence in a Nagarajan sense. It need not even have to be the primary cause of the detriment so long as it is a significant factor. Detriment cannot be because of a protected act in circumstances where there is no evidence that the person who allegedly inflicted the detriment knew about the protected act. In the absence of clear circumstances from which such knowledge can be inferred, the claim for victimisation will fail Essex County Council v Jarrett EAT 0045/15.

Burden of Proof

94. Section 136 of the Equality Act 2010 provides that, once there are facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof "shifts" to the respondent to prove any non-discriminatory explanation. The two-stage shifting burden of proof applies to all forms of discrimination under the Equality Act including direct discrimination, harassment, indirect discrimination, discrimination arising from disability under section 15 and the failure to make reasonable adjustments under section 20. Although similar principles apply, what needs to be proved depends, to a certain extent, on the nature of the legal test set out in the respective statutory sections.

95. The wording of section 136 of the act should remain the touchstone.

96. The relevant principles to be considered have been established in the key cases: Igen Ltd v Wong 2005 ICR 931; Laing v Manchester City Council and another ICR 1519; Madarassy v Nomura International Plc 2007 ICR 867; and Hewage v Grampian Health Board 2012 ICR 1054.

97. The correct approach requires a two-stage analysis. At the first stage the claimant must prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out on the balance of probabilities is the second stage engaged, whereby the burden then "shifts" to

the respondent to prove (on the balance of probabilities) that the treatment in question was "in no sense whatsoever" on the protected ground.

98. The approved guidance in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205 (as adjusted) can be summarised as:

a) It is for the claimant to prove, on the balance of probabilities, facts from which the employment tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.
b) In deciding whether there are such facts it is important to bear in mind that it is unusual to find direct evidence of discrimination. In many cases the discrimination will not be intentional.
c) The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the tribunal. The tribunal does not have to reach a definitive determination that such facts would lead it to conclude that there was discrimination, it merely has to decide what inferences could be drawn.
d) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts. These inferences could include any that it is just and equitable to draw from an evasive or equivocal reply to a request for information. Inferences may also be drawn from any failure to comply with the relevant Code of Practice.
e) When there are facts from which inferences could be drawn that the respondent has treated the claimant less favourably on a protected ground, the burden of proof moves to the respondent. It is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever on the protected ground.
f) Not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, but that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment. Since the respondent would generally be in possession of the facts necessary to provide an explanation, the tribunal would normally expect cogent evidence to discharge that burden.

99. The shifting burden of proof rule only applies to the discriminatory element of any claim. The burden remains on the claimant to prove that the alleged discriminatory treatment actually happened and that the respondent was responsible. The statutory burden of proof provisions only play a role where there is room for doubt as to the facts necessary to establish discrimination. In a case where the tribunal is in a position to make positive findings on the

evidence one way or another as to whether the claimant was discriminated against on the alleged protected ground, they have no relevance (Hewage). If a tribunal cannot make a positive finding of fact as to whether or not discrimination has taken place it must apply the shifting burden of proof.

100. Where it is alleged that the treatment is inherently discriminatory, an employment tribunal is simply required to identify the factual criterion applied by the respondent and there is no need to inquire into the employer’s mental processes. If the reason is clear or the tribunal is able to identify the criteria or reason on the evidence before it, there will be no question of inferring discrimination and thus no need to apply the burden of proof rule. Where the act complained of is not in itself discriminatory and the reason for the less favourable treatment is not immediately apparent, it is necessary to explore the employer’s mental processes (conscious or unconscious) to discover the ground or reason behind the act. In this type of case, the tribunal may well need to have recourse to the shifting burden of proof rules to establish an employer's motivation

101. The claimant bears the initial burden of proving a prima facie case of discrimination on the balance of probabilities. The requirement on the claimant is to prove on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination. The employer’s explanation (if any) for the alleged discriminatory treatment should be left out of the equation at the first stage. The tribunal must assume that there is no adequate explanation. The tribunal is required to make an assumption at the first stage which may in fact be contrary to reality. In certain circumstances evidence that is material to the question whether or not a prima facie case has been established may also be relevant to the question whether or not the employer has rebutted that prima facie case.

102. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, with more, sufficient material from which tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination (see Madarassy).

103. If the claimant establishes a prima facie case of discrimination the second stage of the burden of proof is reached and the burden of proof shifts onto the respondent. The respondent must at this stage prove, on balance of probabilities that its treatment of the claimant was in no sense whatsoever based on the protected characteristic.

104. In some instances, it may be appropriate to dispense with the first stage altogether and proceed straight to the second stage (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337.) The employment tribunal should examine whether or not the issue of less favourable treatment is inextricably linked with the reason why such treatment has been meted out to the claimant. If such a link is apparent, the tribunal might first consider whether or not it can make a positive finding as to the reason, in which case it

will not need to apply the shifting burden of proof rule. If the tribunal is unable to make a positive finding and finds itself in the situation of being unable to decide the issue of less favourable treatment without examining the reason, it must examine the reason (i.e. conduct the two-stage inquiry) and it should be for the employer to prove that the reason is not discriminatory, failing which the claimant must succeed in the claim.

105. In a case of harassment under section 26 of the Equality Act the shifting burden of proof in section 136 will still be of use in establishing that the unwanted conduct in question was "related to a relevant protected characteristic" for the purposes of section 26(1)(a). Where the conduct complained of is clearly related to protected characteristic then the employment tribunal will not need to revert to the shifting burden of proof rules at all. Where the conduct complained of is ostensibly indiscriminate the shifting burden of proof may be applicable to establish whether or not the reason for the treatment was the protected characteristic. Before the burden can shift to the respondent the claimant will need to establish on the balance of probabilities that she was subjected to the unwanted conduct which had the relevant purpose or effect of violating dignity, creating an intimidating etc environment for her. The claimant may also need to adduce some evidence to suggest that the conduct could be related to the protected characteristic, although she clearly does not need to prove that the conduct *is* related to the protected characteristic as that would be no different to the normal burden of proof.

106. In a victimisation claim where there is clear evidence of the reason for the treatment (which forms the detriment) there is no need for recourse to the shifting burden of proof in section 136. However, where the shifting burden of proof does come into play it is for the claimant to establish that he/she has done a protected act and has suffered a detriment at the hands of the employer. Applying the approach in Madarassy would suggest that there needs to be some evidence from which the tribunal could infer a causal link between the protected act and the detriment. One of the essential elements of the prima facie case that the claimant must establish appears to be that the employer actually knows about the protected act (Scott v London Borough of Hillingdon [2001] EWCA Civ 2005).

Unfair dismissal

107. Employees with qualifying service have a right not to be unfairly dismissed. Section 95 Employment Rights Act 1996 deals with the concept of dismissal. A dismissal includes where (section 95(1)(c):

> *"the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

108. An employee alleging constructive dismissal must show that the employer committed a serious or repudiatory breach of contract (serious enough to justify the employee resigning), that she resigned in response to that breach (not for

some other unconnected reason), that she did not delay too long or acquiesce in relation to the beach or affirm the contract notwithstanding the breach.

109. The employee is only entitled to treat herself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The fundamental (or repudiatory) breach of contract may be based on an express or an implied term of the contract of employment.

110. One of the central implied terms of any contract of employment is the 'implied term of mutual trust and confidence.' This is the implied term that the parties will not, without reasonable and proper cause, conduct themselves in a manner which is calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee (see Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606). Any breach of the implied term of mutual trust and confidence will be considered to be a fundamental breach of contract given the central and fundamental nature of this implied term to the existence of the contract of employment.

111. As stated in Woods v WM Car Services (Peterborough) [1981] ICR 666:

> *"To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

112. Reasonableness of the respondent's actions may be evidence as to whether there is a fundamental breach (and a constructive dismissal) but the test nevertheless remains contractual (Lewis v Motorworld Garages Ltd [1985] IRLR 465, also Western Excavating (ECC) Ltd v Sharp [1978] ICR 221). It is not enough for the employee to leave merely because the employer has acted unreasonably; its conduct must amount to a breach of the contract of employment.

113. Where it is alleged that an employee resigned in response to a 'last straw' event London Borough of Waltham Forrest v Omilaju [2005] IRLR 35 reminds us (per Dyson LJ):

> *"14 The following basic propositions of law can be derived from the authorities:*
>
> 1. *The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment.*
> 2. *It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee: see, for example, Malik v Bank of Credit and Commerce International …*

3. *Any breach of the implied term of mutual trust and confidence will amount to a repudiation of the contract…The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.*
4. *The test of whether there has been a breach of the implied term of mutual trust and confidence is objective. As Lord Nicholls said in Mahmud at page 610H, the conduct relied on as constituting the breach must 'impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer.'*
5. *A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para [480] in Harvey on Industrial Relations and Employment Law:*

   'Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the "last straw" which causes the employee to terminate a deteriorating relationship."

…

15.The last straw principle has been explained in a number of cases, perhaps most clearly in Lewis v Motorworld Garages Ltd [1986] ICR 157. Neill LJ said (p167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p169F: '(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular, in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?...This is the "last straw" situation.

16.Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "de minimis non curat lex") is of general application.

…

19. ….The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

20. I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

21. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle."

114. When resigning and claiming to have been constructively dismissed, an employee who is a victim of a continuing cumulative breach of the implied term of trust and confidence is entitled to rely on the totality of the employer's acts, notwithstanding a prior affirmation, provided the later act forms part of the series (Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1.)

115. If the employer does commit a fundamental or repudiatory breach of contract, the employee must resign in response to that breach. The breach of contract need not be the sole cause of the resignation but it must be an effective cause of the resignation.

116. The employee must not affirm the contract, whether by prolonged delay before resigning or, by implication, by an equivocal election or by conduct that is consistent only with the continued existence of the contract.

117. Where there is a constructive dismissal which is not for an automatically unfair reason (such as a protected disclosure), the dismissal may nevertheless be found to be a fair dismissal if the respondent can show that the reason for dismissal was one of the potentially fair reasons permitted by the Employment Rights Act 1996. In the context of a constructive dismissal, the Tribunal will be concerned with the reason, or principal reason, for the fundamental breach of contract. If a potentially fair reason for dismissal is established, then the Tribunal will go on to consider whether the dismissal was fair, applying the range of

reasonable responses test to both the substance of the dismissal and the procedure adopted by the respondent. The Tribunal will consider whether, applying the test of fairness in section 98(4), the respondent acted reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant. The respondent in this case did not seek to argue that there was a fair reason for any dismissal, rather that there was no constructive dismissal in the first place.

<u>Discriminatory constructive dismissal</u>

118. A constructive dismissal can be an act of discrimination in the form of harassment as per Ellenbogen J at paragraph 73 <u>Driscoll v V&P Global Ltd [2021] IRLR 891:</u>

> *"…In my judgment, as a matter of law, where an employee (as defined by the EqA) resigns in response to repudiatory conduct which constitutes or includes unlawful harassment, his or her constructive dismissal is itself capable of constituting 'unwanted conduct' and, hence, an act of harassment, contrary to ss 26 and 40 of the EqA. Whether or not it does so in the particular case will be a matter for the tribunal to determine."*

119. Where the reasons for a claimant's dismissal are a series of bad acts of the employer, some of which are discriminatory and some of which are not, it is only if the discriminatory matters "sufficiently influenced" the overall breach that the claim is made out. (<u>De Lacey v Wechseln Limited t/a the Andrew Hill Salon, EAT [2021] IRLR 547.</u>

> *"68. I agree with Mr Cook that, in principle, a "last straw" constructive dismissal may amount to unlawful discrimination if some of the matters relied upon, though not the last straw itself, are acts of discrimination. There is very limited authority on this point. However, in Williams v Governing Body of Alderman Davies Church in Wales Primary School [2020] IRLR 589, at paragraph 89 , HHJ Auerbach said that a constructive dismissal should be held to be discriminatory "if it is found that discriminatory conduct materially influenced the conduct that amounted to a repudiatory breach." At paragraph 90, HHJ Auerbach said that the question was whether "the discrimination thus far found sufficiently influenced the overall repudiatory breach, such that the constructive dismissal should be found to be discriminatory." (my emphasis)*
>
> *69. I respectfully agree with the test as it is set out in paragraph 90 of the Williams judgment. Where there is a range of matters that, taken together, amount to a constructive dismissal, some of which matters consist of discrimination and some of which do not, the question is whether the discriminatory matters sufficiently influenced the overall repudiatory breach so as to render the constructive dismissal discriminatory. In other words, it is a matter of degree whether discriminatory contributing factors render the constructive dismissal discriminatory. ….*

> *71. First, I do not accept the submission, made by Mr Allsop on behalf of the Respondent, that a "last straw" constructive dismissal can only be unlawful discrimination if the last straw itself was an act of discrimination…In my judgment there can be cases in which the constructive dismissal is, overall, discriminatory, even though the last straw was not. The very essence of the "last straw" doctrine is that the last straw need not be something of major significance in itself. It need not even amount to a breach of contract, when looked at on its own. It need not have the same character as the other incidents that preceded it: see Omilaju v Waltham Forest London Borough Council [2004] EWCA Civ 1493; [2005] ICR 481, at paragraphs 15-16 . Rather, the significance of the last straw is that it tips things over the edge so that the entirety of the treatment suffered by the employee amounts to a repudiatory breach of contract. It follows by parity of reasoning, in my view, that a constructive dismissal may be unlawful discrimination even if the incident which tipped things over the edge was not itself discriminatory. Another metaphor that is sometimes used for a "last straw" constructive dismissal is the "death of a thousand cuts." If some of the deepest cuts were acts of discrimination, it should not matter that the final glancing blow, though painful, was not itself discriminatory."*

CONCLUSIONS

120. Much of Ms Costanzo's evidence was particularly focused on how she felt and how her health and wellbeing was impacted by the respondent during the time that she was employed by the respondent. It was, of course, legitimate for Ms Costanzo to give that evidence about the impact of the events upon her. However, the task for this Tribunal is to make findings of fact based on the evidence that we have heard and then to apply the appropriate legal principles to those findings to see if the claims of unfair dismissal, discrimination and victimisation succeed. With that in mind, I shall go through the list of issues using the same numbering system as is used in the hearing bundle.

Paragraph 1.1.1.1.1

121. This is the allegation that Mr Urso and Mr Davi were supposed to train the claimant as an Inspector from July 2023 and that they did not do so.

122. Our conclusions are, firstly, that there was no specific "Inspector" role or job description within the respondent's business structure. Instead, there were Inspector or supervisory type duties/tasks which formed part of the wider job role at some levels within business. Thus, in the respondent's business the 'Dealer' role existed at different levels within the organisational structure, including Trainee Dealer, Dealer 1, Dealer 2 and Dealer 3. Inspector tasks and responsibilities are a type of supervisory task which formed part of the Dealer 2 and Dealer 3 job roles. 'Inspecting' involved checking the integrity of a game and checking that the game did not become too big. That means that, at the start of a game, a dealer of a particular level will be assigned to that game. The decision as to the appropriate level of dealer is based on a number of factors,

including the nature of the game, the number of players in the game and how demanding it would be to manage that particular game. Effectively, the busier, or more difficult a game was to manage, the higher the level of dealer that it would merit. It was possible for a game to grow and develop over time as new players joined the game, for example. So, a game that was manageable for a lower level of dealer at the start (Dealer 1, for example) may need to be reassigned to a higher-level dealer later on in the game because of changes to the game and the players. Part of the supervisory skill set is to know when to assign or reassign a game to a particular dealer of a particular level. Whether that inspection or supervisory task is done by a level 3 Dealer or a Gaming Supervisor or the Assistant Casino Manager, the task is to identify any changes to the management of the game that are needed, whether for the benefit of the employees or for the benefit of the customers. The inspector-type tasks are to manage the game and the experience.

123. The Tribunal was satisfied that it was normal for a Dealer to be coached to develop new or additional skills during quieter times within the business. It was important that anybody carrying out supervisory/inspector duties was able to keep the game in question within the competence levels of the Dealer who was dealing that game. Further, someone carrying out inspection tasks could also decide to open up new tables and additional gaming tables in order to manage and meet demand.

124. Inspector tasks/duties were only assigned to Dealers at levels 2 or 3. Dealers at lower levels (e.g. a Level 1 Dealer) could be asked to observe other gaming tables and other dealers at work. This was not so that the Level 1 Dealer could inspect the Level 2 or 3 Dealers. Rather, it was part of the Level 1 Dealer's career development and coaching. It was one way to help the Dealer develop their skills so that they could progress upwards through the levels of Dealer in the respondent's business.

125. Ms Costanzo was promoted to 'Dealer 1' level in May 2023. The claimant asserts that the respondent should have trained her up to a supervisory role or to an inspector-type role from July 2023. The Tribunal concludes that this is unlikely. Any legitimate or reasonable expectation that the claimant would start further training with a view to further promotion is only likely to have arisen once the claimant had been in post as a Level 1 Dealer for a number of months.

126. In her evidence, the claimant accepted that, in fact, she did receive some coaching and training on inspector level tasks. During the course of the Tribunal case her complaint altered from being an assertion that <u>no</u> training was provided to an assertion that there was <u>some</u> training but that it was not of an appropriate quality or standard and was not provided by Mr Urso and Mr Davi. She accepted that she did get some guidance and assistance in developing from other managers including Anya, Jimmy and Chris. However, she maintained that it was not of the standard that she expected. It was unclear to the Tribunal what the difficulty or criticism of the standard of training actually was in specific terms. The business had no specific or pre-existing training course to train employees to progress to inspector-type roles or tasks. There was no document by which the Tribunal could assess whether the training

provided to the claimant was up to the required level or the expected standard. The claimant could only really give evidence of her impressions or her personal views on the subject. Whilst she says that the training was below her personal expectations, the Tribunal was not sure in what way (or ways) the training fell short of what was required. Nor do we have the evidence on which to assess whether the claimant's expectations were realistic or reasonable. We have come to the conclusion that Ms Costanzo's perception of what career development would look like within this business did not match the respondent's actual general practices and procedures. Nor could we see that the identity of the people providing the training made any particular difference in this case. Whether coaching or training was provided by Mr Davi, Mr Urso or another manager should not make any difference.

127. The claimant was never actually told that she would be trained as an inspector. Nor was she given any reasonable expectation that she would receive training, that it would be of a particular type or standard, or that she would get it at a particular time. In light of the above, the Tribunal is not satisfied that the claimant was supposed to be trained as alleged or that this was supposed to happen in July 2023. Further, we are not satisfied that the training had to be provided by the two managers that the claimant names. In short, there was no agreement between the parties (and no obligation on the respondent) that the claimant would be trained in the manner that she asserts or over the time period that she asserts.

128. Our finding is that the factual allegation at paragraph 1.1.1.1.1 is not proved or established in this case. In those circumstances, it cannot form part of the basis for the claim of unfair dismissal or that of discrimination. The respondent was not in breach of any obligations, and the claimant had not been 'let down' or disappointed in the way that she alleges. We do not find that the respondent acted without reasonable or proper cause or that it acted in a way which was calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties.

129. Furthermore, there is also nothing about these events to establish a link between the respondent's actions and the claimant's sex. We have no evidence on which to base a conclusion that the claimant was treated in this way because of her sex or that the treatment was 'related to' her sex. The furthest the claimant was able to take this (even in her own evidence) was to say that she saw others get training that she herself did not receive. However, she did not say <u>what</u> that missing training was or who received the training that she did not receive. Whilst the claimant had every opportunity to clarify her allegation and evidence on this issue, she was unable to give us something more concrete on which to base a finding of discrimination. In the absence of the necessary evidence, the Tribunal was unable to conclude that other employees were treated more favourably or that a hypothetical male comparator would have been treated more favourably than the claimant. We had no material on which to base a conclusion that the claimant's sex has anything to do with the way that she was treated in relation to training. There was nothing to shift the burden of proof from the claimant to the respondent in this part of the discrimination claim.

Paragraph 1.1.1.1.2

130. The claimant alleges that, in November/December 2023 Mr Urso shouted at the claimant whilst the claimant was working on a roulette table. When the customer won and the claimant paid out the money to the customer, she alleges that he shouted out, “you have to spin as I say.”

131. On balance of probabilities, the Tribunal preferred the respondent’s evidence in relation to this allegation. Given the layout of the gaming area and the number of people and managers likely to have been present, we are satisfied that the alleged behaviour or event would have been noticed at the time if it had happened. We also noted that the claimant made no complaint or report about this incident at the time that it is said to have happened. None of the managers noticed any shouting by Mr Urso. On balance, we conclude that someone would have heard it and noticed this sort of behaviour if it had happened. This is particularly so given that it was alleged to have happened near to Christmas when the casino was busier. In such circumstances there would be more witnesses in the area who would be able to see and hear what was going on. The claimant was unable to name or indicate any witness who did overhear or witness this alleged event. In the course of answering questions during the hearing, the claimant had the opportunity to explain the context of this incident and to explain the meaning of the comments that Mr Urso allegedly made. Unfortunately, the claimant was unable to do that. The comments that Mr Urso is said to have made, about spinning in a particular way, are something that the Tribunal has been unable to understand. We were unable to understand what such a comment would have meant if it had been said. What could Mr Urso have meant by shouting at the claimant, “you have to spin as I say.” The claimant could not explain that clearly to us. Mr Urso denied making the comment and the witness Maxine Gibbons was also unable to explain what it could have meant (and she is someone who knows the business well and could reasonably be expected to understand the meaning of such a comment.) Furthermore, the respondent’s gaming manual existed to set out how games should be run by the Dealers.

132. The burden of proof is on the claimant to prove her factual allegation before we can conclude that this part of the claim succeeds. She has not managed to prove the allegation. In those circumstances we are unable to conclude that there was a repudiatory breach of contract, as alleged. Further, we are unable to conclude that this formed part of a course of conduct which, cumulatively, which amounted to a breach of the implied term of mutual trust and confidence. In addition, there was nothing to indicate a link between this and the fact that the claimant is female. Nor did we have evidence to suggest that a male comparator would have been treated more favourably. The burden of proof pursuant to section 136 did not shift from the claimant to the respondent in relation to this part of the case.

Paragraph 1.1.1.1.3

133. The claimant alleged that at the end of January 2024, during a day shift, whilst the claimant was working on blackjack one ("BJ1"), Mr Davi told the claimant to be an Inspector. She alleges that she did so and whilst she was concentrating on checking two tables and watching an experienced dealer on roulette, Mr Davi said, "I didn't put you here as Inspector, you are here to learn from an experienced dealer." The claimant said that she felt ready to be an Inspector. At which point, Mr Davi started shouting at her and said, "you know what, go back to BJ1."

134. The claimant was taken through this allegation and the evidence on this in detail during cross examination. She was taken to the contemporaneous reports, investigations and observations of the managers Mr Iley and Mr Hibbs. Those investigations were completed close in time to the alleged incident. Mr Iley and Mr Hibbs found no evidence of problematic behaviour by Mr Davi. They had no reason to lie about that, and the claimant could not suggest why they would not tell the truth about this.

135. There were other sources of evidence which did not support the claimant's case. These included: CCTV footage, Mr Davi's account when Mr Hibbs and Mr Iley spoke to him, and the absence of any other witnesses who said they heard or saw something which matched the claimant's version of events. The Tribunal concluded that Mr Davi's evidence was consistent. In summary, he saw an opportunity to let the claimant observe a roulette game which had lots of 'action,' and which would be useful for her development in the job. When this was offered to the claimant, she did not react as he would expect. She was rude about it. In those circumstances, he concluded that there was no point in Ms Costanzo going onto the roulette game in question as no purpose would be served by this. Consequently, the claimant could go back to the table where she had originally been situated (Blackjack One.) This is what he communicated to the claimant. The Tribunal is satisfied there was nothing wrong with this or Mr Davi's overall actions and behaviour in the circumstances. The claimant had rejected a development/coaching opportunity (whether through a misunderstanding or otherwise) and had been quite rude and so Mr Davi had stepped back and told her to return to what she was doing beforehand. This was a legitimate managerial intervention and there was no evidence that it was done in an inappropriate or aggressive way.

136. In those circumstances, this event could form no part of a breach of mutual trust and confidence, whether in isolation or when considered as part of a course of conduct. There is also nothing to suggest that it had anything to do with the fact that the claimant is female. In fact, the claimant herself provided another reason for the alleged behaviour which was nothing to do with the fact that she is a woman. In part of her evidence to the Tribunal, Ms Costanzo said that when another employee called Valerio left his employment in September 2023, her relationship with Mr Davi or Mr Urso deteriorated. She said that this was because they blamed her for the fact that Valerio had left the job. In short, there was no evidential basis for us to conclude that Ms Costanzo was treated less favourably than a male comparator or that the treatment was related to her sex.

Paragraph 1.1.1.2.1

137. The next group of allegations relate to the period after the claimant went off on sick leave until her resignation. The first of these allegations is that the claimant was required by HR (on 23 March 2024 during a meeting by video call) to set out the detail of her complaint against Mr Davi and Mr Urso as they wanted more information from the claimant.

138. This meeting took place on Microsoft Teams with Hardip Basi on 23 April 2024. By this stage, the claimant had raised a grievance but it was not very clear what the specific allegations were or what the claimant's desired outcome from the grievance was. The respondent needed to understand what the claimant's complaint actually was. Having looked at the relevant documents, the respondent was not clear what allegations it was supposed to be investigating. In many organisations and businesses it is perfectly standard procedure to have a meeting as a way of getting clarification and information. The claimant may not have realised what a written grievance needed to contain in order for the respondent to be able to address it and investigate it. It is possible that she did not understand the level of detail that was required. If Ms Costanzo perceived this request or this meeting as being in some way unreasonable, that may well have been her personal perception, but it was not a legitimate or objectively justifiable characterisation of the meeting itself.

139. In addition, the claimant did not suggest at the time that she was not fit enough or well enough to attend an online meeting. She did not resist having the meeting. Indeed, the respondent had attempted to get the required information and details from the claimant in various other ways (for example, by email correspondence or requesting a screenshot of information.) They were not prescriptive about how the claimant could or should provide the relevant information. The respondent just wanted to make sure that they had everything necessary in order to be able to investigate the grievance appropriately.

140. The Tribunal was unable to find any basis on which to conclude that the way that this meeting was conducted was capable of being a repudiatory or fundamental breach of contract. Nor did it form part of a course of conduct which cumulatively amounted to a fundamental breach of contract.

Paragraph 1.1.1.2.2

141. The next allegation is that HR did not arrange a face-to-face in person meeting between the claimant and HR to discuss her complaint against Mr Davi and Mr Urso. The claimant says that such a meeting was necessary because her English was poor.

142. The evidence shows that there was a face-to-face, in person meeting but it was attended by Maxine Gibbons rather than someone from HR. The claimant did not complain at the time that the meeting was not with HR rather than with Ms Gibbons. In any case, the claimant had already had an online meeting with HR and had also been offered a further meeting with the Group HR Director (which she did not accept). So, the only missing combination of attendees and formats

is an ‘in person’ meeting between the claimant and someone from HR. However, there is nothing particularly remarkable or unusual about this. There is nothing in the contemporaneous documentation to suggest that the claimant needed the meeting to be in person and with someone from HR because of her language barrier. The language issue does not seem to have been raised by the claimant at the time but has become an issue during the course of the Tribunal claim.

143. Viewed objectively, there was nothing objectionable about the way that the respondent proceeded in all the circumstances. It was a neutral event. The absence of an in-person meeting with someone from HR did not make any real difference. The claimant did not say that she needed to have a meeting with HR and that it needed to be ‘in person.’ The only issue she raised in correspondence at the time was about being accompanied by a solicitor at the meeting. Even so she did not suggest that the solicitor was required because of any language barrier. In any event, she was offered the right to be accompanied and then decided to attend alone if she could not have her solicitor with her. The Tribunal noted that the respondent was flexible and adapted to get the information from the claimant by whatever method she felt able to give it. This was a reasonable way to handle a grievance issue in the circumstances. The Tribunal is not satisfied that it could have contributed in any way to a breach of mutual trust and confidence (either in isolation or as part of a course of conduct.)

<u>Paragraph 1.1.1.2.3</u>

144. The claimant asserted that a manager, Jimmy, repeatedly contacted the claimant during her first week of illness. The claimant says that he should not have done so. This refers to the amount of contact between employee and manager during the first few days of sickness absence in circumstances where the claimant had been taken away from the workplace by ambulance.

145. The text messages were reproduced within the hearing bundle. Their content is as follows:

20 Feb 2024 (at 22.23):

“Hi Giulia, how are you?

Are you home?”

21 Feb 2024 (at 10.07)

“you ok Giulia?”

24 Feb 2024 (at 0930)

“Hi Giulia, we didn’t have any contact from you yesterday. Are you ok?”

27 Feb 2024 (at 14.00)

"Hi Giulia, can you please contact us. If you are going to be off sick, that's fine. Don't worry about it. You'll get paid if you make contact."

146. The content of the messages is, on the face of it, entirely unobjectionable. The first messages are merely asking the claimant if she is ok and enquiring after her welfare. The claimant did not reply or respond to the messages in any way. The respondent had no reason to know that further texts would be unwelcome. The respondent's manager was making enquiries about things that they needed to know in line with the sickness policy. In addition, the claimant had been scheduled to work during the period in question but did not attend work as planned. This gave the respondent an additional reason to contact the claimant to see what the situation was.

147. These messages were sent over a short period of time, a number of days. The respondent's manager had good reasons for doing what he did. Mr Milligan did not want to be too intrusive. The respondent's managers did not know the claimant's situation at that time. They did not know whether she was still in hospital or not.

148. The Tribunal does not criticise the respondent for taking the less intrusive option of communicating with the claimant by text. The respondent's manager did not want to send formal letters or deploy a more formal approach. In the circumstances, the respondent could not be expected to refrain from contacting the claimant altogether. The messages that were sent were the least intrusive or formal way of doing what was necessary from management's perspective. Indeed, the respondent's management is likely to have been criticised if it did not at least attempt to make some contact with the claimant. This is particularly so when the managers last saw her being taken away by ambulance.

149. The Tribunal is satisfied that this batch of text communication does not amount to a breach of mutual trust and confidence and cannot be said to contribute to a breach of the implied term of mutual trust and confidence.

<u>Paragraph 1.1.1.2.4</u>

150. The claimant alleges that whilst she was absent, she was informed by Jimmy that if she did not contact the respondent she would not be paid. This is a reference to the text message sent on 27 February 2024 as set out above. To some extent, the content of the message speaks for itself. It is not a threat or a negative message in any way. All the message does, in effect, is to state (or restate) the contractual requirements that needed to be complied with for the employee to keep in touch with the employer in order to receive sick pay. The message does that in a positive, non-threatening and non-critical way. It provides the incentive for the claimant to make contact with her employer during her absence. The text message was a minimal intervention by the respondent. The consequence of the respondent sending the message was that the claimant actually received the pay that she was entitled to because she subsequently complied with the requirements to receive sick pay. The claimant sent a doctor's note later on 27 February and, as a result, she received sick

pay. If the respondent had not sent this message, there is a possibility that the claimant would not have sent the necessary information and she may not have received the sick pay.

151. There is nothing in the text which should have been offensive to the claimant. The message did not amount to a fundamental breach of contract. It did not contribute to a fundamental breach of contract when taken together with the rest of the conduct relied upon by the claimant.

Paragraph 1.1.1.2.5

152. The claimant relies on the fact that after she was admitted to hospital on 20 February, managers did not visit her.

153. In the circumstances of this case the claimant can have had no legitimate expectation that her employer would visit her in hospital. There was no reasonable basis for expecting that the respondent's managers would visit any of their employees in hospital. The contract documents and other documents associated with the employment do not suggest that the respondent's managers would visit employees in hospital. There was no custom or practice that the respondent's managers would do this either.

154. Furthermore, in circumstances where the claimant had not really responded to the respondent's texts (except the request for a doctor's note) the respondent was clearly trying not to be intrusive with the claimant or to invade her privacy. In such circumstances it would be odd for them to visit her whilst she was in hospital. Importantly, the respondent's managers did not know (and had no reason to know) that she had been admitted to hospital and had stayed there for three days. The Tribunal notes that the claimant's stated desire for a hospital visit from managers is somewhat inconsistent with her reaction to the text messages sent by Mr Milligan. If she objected to the respondent contacting her via text message, surely she would also object to them coming to see her in person whilst she was in hospital.

155. The Tribunal is satisfied that the failure of respondent managers to visit the claimant in hospital did not constitute a fundamental breach of contract and did not contribute to a fundamental breach of contract when viewed alongside the other matters relied upon by the claimant.

Paragraph 1.1.1.2.6

156. The claimant relies on the fact that, whilst she was absent from work due to sickness, the claimant did not receive her full salary.

157. The payments that the respondent made to the claimant during her sick leave were made in accordance with her contractual entitlement. The Tribunal has concluded that the claimant's interpretation of the relevant clauses of the contract is mistaken or incorrect. She relied on clause 17 of the contract to assert that she should have been paid in full during her absence. However, this is the section dealing with disciplinary and grievance processes and, in particular, payment during suspension from work pending any investigation into

disciplinary allegations. However, the claimant was *not suspended* from work. Rather, she was absent from work on sick leave. Consequently, the applicable rules are the rules for sick leave rather than suspension. Section 17 of the contract does not apply in the circumstances of the claimant's case and does not give her an entitlement to pay during her absence. She was absent on sick leave, she was *not* absent whilst suspended pending disciplinary investigation.

158. In addition, there was no evidence that the respondent had a residual discretion to pay extra or additional company sick pay. The claimant had no reasonable expectation of receiving anything in excess of statutory sick pay during this period of absence. By this time, the claimant had already exhausted her entitlement to two weeks of full sick pay (when she was off work in September and December 2023.) Her remaining entitlement (from February 2024 onwards) was to statutory sick pay only. The Tribunal also notes that the claimant did not make a complaint about the absence of full sick pay prior to submitting her resignation.

159. The Tribunal was satisfied that the decision to pay statutory sick pay only (rather than a higher rate of company sick pay) did not amount to a fundamental breach of contract. Furthermore, when viewed alongside the whole course of conduct, it did not contribute to a fundamental breach of contract based on the cumulative conduct.

<u>Unfair dismissal</u>

160. In order to be successful in her claim, the claimant must show that she was constructively dismissed. The first element of a constructive dismissal is a fundamental (or repudiatory) breach of contract by the respondent. The Tribunal can examine the respondent's conduct to see if any one element of the matters relied upon amounts to a fundamental breach of contract. Alternatively, the respondent's actions can be considered cumulatively to see whether, when viewed altogether, they add up to a fundamental breach of contract.

161. The Tribunal has considered the events relied upon both individually and cumulatively. Either way, we have been unable to find that the respondent committed a fundamental breach of contract. We have considered whether the respondent breached the implied term of mutual trust and confidence (which would be a fundamental breach of contract) and have concluded that it did not.

162. As the claimant has failed to establish the first element of a constructive dismissal, the Tribunal was not, strictly speaking, required to consider the remaining elements of the test for constructive dismissal. However, for completeness, we state that the Tribunal was prepared to accept that the claimant actually resigned in response to the way she personally perceived she had been treated by the respondent. Further, if the Tribunal had found in favour of the claimant in relation to the first parts of the test for constructive dismissal, we would not have concluded that the claimant delayed too long before resigning. She did not affirm the contract or waive what she considered to be a breach of contract by the respondent. The respondent points to the claimant's correspondence from about a month before the resignation and says that she should not have waited until the 24 May to resign. However, viewed in its proper

context, this was not an unreasonable delay. The claimant was not required to resign immediately in order to preserve her claim of unfair dismissal. Nor was she required to resign without having obtained alternative employment. (We are satisfied that she was looking for a job before she resigned but that is not the same as concluding that she did not resign in response to the respondent's actions, which she considered to be a breach of contract. Rather, the Tribunal is not satisfied that there was a breach of contract by the respondent.)

163. In this context, the one-month delay is not too long. The fundamental problem for the claimant in this case is not the timing of the resignation but the *absence of a fundamental breach of contract by the respondent.* In light of all of this, the unfair dismissal claim fails and is dismissed.

<u>Harassment</u>

164. The claimant relied upon the allegations of bullying by Mr Urso and Mr Davi at paragraphs 1.1.1.1.1 to 1.1.1.1.3. The Tribunal was not satisfied that the respondent's conduct was 'related to' sex. In addition, section 26 of the Equality Act requires the conduct to have either the purpose or the effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The Tribunal was not satisfied that the conduct had either this purpose or this effect. If the claimant subjectively experienced the acts as having that effect, the Tribunal also has to consider the other circumstances of the case, including whether it was reasonable for them to have that effect (section 26(4).) We were satisfied that it was <u>not</u> reasonable for the conduct to have that effect on the claimant. Consequently, the test for harassment in section 26 of the Equality Act is not satisfied in this case. The claims of harassment must fail and be dismissed.

<u>Direct sex discrimination</u>

165. In light of our other conclusions (as set out above), the Tribunal was not satisfied that the claimant was treated less favourably than a hypothetical male comparator would have been. Nor were we satisfied that any less favourable treatment was 'because of' sex. Thus, the claim of direct discrimination fails and is dismissed.

<u>Discriminatory dismissal</u>

166. Any assertion of discriminatory constructive dismissal must also fail given our findings in this case. There was no constructive dismissal and the respondent's actions were not tainted by sex discrimination.

<u>Victimisation</u>

167. The final complaint for us to consider is that of victimisation. The protected act relied on by the claimant in this case is the current claim that she presented to the Employment Tribunal. The respondent has conceded that this was a protected act within the meaning of section 27 of the Equality Act.

168. The question for us is whether the respondent subjected the claimant to a detriment because she did the protected act. The detrimental treatment relied on here are the visits to the claimant's new place of work by her former colleagues.

169. The claimant has been working in a Gentings Casino since she left the respondent's employment. The claimant's former colleagues Ms Amato and Mr Urso both visited that casino. However, the Tribunal is not satisfied that the claimant was subjected to detrimental treatment as a result of these individuals going to the casino. There is no evidence that there was any interaction between the claimant's former colleagues and the claimant when they visited her workplace. Nor is there evidence of any sort of intimidation.

170. Ms Amato did not even know about the claimant's Tribunal claim at the time that she visited the casino. Logically, her visit to Gentings Casino cannot have been caused by the claimant's protected act. Legal causation is not established. Mr Urso did know about the Tribunal claim but did not actually see the claimant when he visited the Gentings Casino. It is hard to see how he was subjecting her to detrimental treatment in those circumstances. There was no real interaction between the parties during the visits which could be described as detrimental to the claimant.

171. Both of the claimant's former colleagues were entitled to visit this casino for gaming purposes. Indeed, Ms Amato gave evidence that she had been visiting that casino for a number of years before the claimant started to work there. Her behaviour did not change because the claimant brought a Tribunal claim. Nor should Ms Amato's behaviour have to change because of the claimant's claim. She had the right to carry on as before, using the casino as she had previously. There is no evidence to suggest that these two individuals visited the casino for any purpose other than to play games at the casino. The Tribunal also notes that, because both of these individuals were employed at the respondent's casino, they were not permitted to play at the respondent's casino. If they wanted to go to a casino they could not go to the casino that they worked at. This further explains why they turned up at the claimant's new place of work. It undermines any suggestion that they had gone to that casino because the claimant worked there or because they wanted to intimidate or upset the claimant. The fact that the claimant had started work there was, we are satisfied, no more than an unfortunate coincidence (when all the surrounding circumstances are considered.)

172. In summary, the victimisation claim must also fail. Causation is not established and the Tribunal does not accept that the claimant was subjected to a detriment as a result of the respondent's employees visiting the premises.

Approved by:

Employment Judge Eeley

Date: 21 August 2026

Summary written reasons sent to the parties on:

10 September 2026

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For the Tribunal:

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

Written summary reasons will not be placed online. If written full reasons are provided, they will be placed online.

Written full reasons will not be provided unless requested by any party with a written request received by the Tribunal within 14 days of the sending of the written summary reasons.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/