



EMPLOYMENT TRIBUNALS

Claimant: Ms Diana Petcu

Respondent: Sportsdirect.com Retail Limited

Heard at: Nottingham

On: 10th – 14th August 2026

Before: Employment Judge B Chapman
Mr K Chester
Mrs L Lowe

REPRESENTATION:

Claimant: In Person

Respondent: Mrs Twomey-Calder (Counsel)

REASONS

1. The Claimant, Diana Petcu, was represented by her friend and former colleague Mr Lucian Neagu. She brought her claim against the Respondent, Sportsdirect.com Retail Limited, represented by Mrs Twomey-Calder of counsel. The hearing took place in person and lasted 5 days.
2. The Claimant and Mr Neagu were assisted by a Romanian interpreter throughout the hearing. It was their individual preference to deal with the hearing in English and use the interpreter as and when required. It became apparent, upon further exploration in evidence, that the Claimant and Mr Neagu had used English words in written witness statements and in oral evidence that did not accurately reflect what they were actually trying to say. There were also times when answers were given by the Claimant in evidence to questions about the case she was pursuing that did not actually reflect her case. As an example, at one stage the Claimant seemed to suggest in her oral evidence that she was not pursuing part of her 4th allegation about an individual called Ms Holland. Nevertheless, when it came to Mr Neagu cross examining Ms Holland, he spent some considerable time on that part of the

allegation. The Tribunal was therefore mindful that, where arguments or issues have arisen about the use of particular terminology, there was a risk that matters and concepts may not have translated well between these languages.

3. This is not a criticism of the interpreter, but rather a comment on a wider conceptual issue. The Tribunal was indebted to the interpreter and the considerable assistance she has provided throughout the hearing.
4. At the outset of the hearing, the Tribunal clarified with the Claimant whether she needed any reasonable adjustments. She explained that she would benefit from breaks, which were accommodated.

The Claims and the Law

5. ACAS early conciliation started on 27 March 2024. Early conciliation ended on 08 May 2024. The Employment Tribunal received the claim on 25 May 2024.
6. The claims were for:
 - a. Direct discrimination under **s. 13 Equality Act 2010**, in that the Claimant alleged she had been discriminated against on the grounds of:
 - i. Her age as a (then) 34-35 year old;
 - ii. Her race as a Romanian national; and
 - iii. Her sex as a woman.
 - b. Constructive unfair dismissal under **ss. 94, 95(1)(c) and 98 Employment Rights Act 1996**; and
 - c. Unlawful deduction from wages under **s. 13(1) Employment Rights Act 1996**.

Direct Discrimination

7. In respect of the discrimination claim, the Tribunal had to consider whether the Claimant was treated less favourably **because of** one of these protected characteristics. The protected characteristic does not have to be the main reason for the treatment, but the treatment needs to be significantly influenced by it (**Nagarajan v London Regional Transport [2000] 1 AC 501**).
8. The Claimant made 4 discrimination allegations which are outlined in the Annex to this document. In respect of her first 3 allegations, she had identified a colleague called Benjamin as a comparator. He was a Ghanaian man in his 50s. In respect of her 4th allegation, she had not identified anyone as an actual comparator to her. The Tribunal would need to look at matters

hypothetically, and ask itself whether she would have been treated in the same way had she been:

- a. Not Romanian;
- b. Not a woman; or
- c. Not aged 34-35.

9. As per **s. 136 Equality Act 2010** and the relevant case law, there are two stages to the exercise:
- a. The Tribunal had to make findings about what had happened. The burden of proving those facts was on the Claimant. The Tribunal had to ask itself whether there were facts from which a reasonable Tribunal could properly conclude on the balance of probabilities, in the absence of any other explanation, that there was a breach of s. 13 Equality Act 2010 (**Madarassy v Nomura International Plc [2007] EWCA Civ 33**).
 - b. If so, the burden would then be on the Respondent to show that the treatment was in no sense whatsoever because of the protected characteristic.
10. The case of **Igen Ltd v Wong [2005] EWCA Civ 142** contains guidance about this two-stage approach. Whilst it relates to discrimination law as it was before the Equality Act 2010, it has been restated by the Employment Appeal Tribunal in **Field v Steve Pye and Co Limited [2022] EAT 68** as important guidance for direct discrimination cases (although it does not replace the language of the **Equality Act 2010**). References to 'sex discrimination' and its associated legislation should be read as 'direct discrimination' and its associated legislation in applying the guidance to the present case:

(1) Pursuant to section 63A of the 1975 Act, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of discrimination against the claimant which is unlawful by virtue of Part 2, or which, by virtue of section 41 or section 42 of the 1975 Act, is to be treated as having been committed against the claimant. These are referred to below as "such facts".

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

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

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

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

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

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with section 74(2)(b) of the 1975 Act from an evasive or equivocal reply to a questionnaire or any other questions that fall within section 74(2) of the 1975 Act.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and, if so, take it into account in determining such facts pursuant to section 56A(10) of the 1975 Act. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

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

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

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

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

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

11. As per the **Madarassy** case, there has to be 'something more' than a difference of status or treatment to shift the burden of proof to the Respondent.
12. The Employment Appeal Tribunal in **Field** went on to explain that there may be some cases where there is no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims.

Constructive Dismissal

13. As per **s. 95(1)(c) Employment Rights Act 1996**, an employee is dismissed by their employer if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct.
14. As per **Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978 at [55]**, the Tribunal should ask itself:
 - a. What was the most recent act or omission by the employer that is said to have triggered the resignation?
 - b. Has the Claimant affirmed the contract since that act?
 - c. If not, was the act or omission by itself a repudiatory breach?
 - d. If not, was it nevertheless part of a course of conduct which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence (see below)?
 - e. Did the Claimant resign in response to the breach?
15. As per **Western Excavating v Sharp [1978] ICR 221**, these are questions of contract:
 - a. The test is objective. Perspective and reasonableness are tools that can be used to help determine that. It is not, however, a 'range of reasonable responses' test.
 - b. The Respondent must be guilty of a breach going to the root of the contract of employment, or one which shows that they no longer intend to be bound by one or more of the essential terms of the contract.

- c. If so, the Claimant is entitled to leave without giving any notice, or may give notice and say they are leaving at the end of the notice. The conduct must be sufficiently serious to entitle the Claimant to leave at once.
 - d. The Claimant must make up their mind soon after the conduct of which they complain. If they continue for any length of time without leaving, they will lose their right to treat their self as discharged and will be regarded as having elected to affirm the contract
16. There is an implied term of trust and confidence in a contract of employment. An employer must not, "without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee" (**Malik & Mahmud v BCCI [1998] AC 20**).
17. This is an objective test to be considered in all the circumstances. Acting in an unreasonable manner is not sufficient. It is only breached if an employer demonstrates, objectively by its behaviour, that it is abandoning and altogether refusing to perform the contract.
18. In this case, a number of acts were relied upon by the Claimant as having a cumulative effect, and so they were relying upon the 'last straw' doctrine as outlined in **London Borough of Waltham Forest v Omilaju [2005] IRLR 35**:
- a. A last act may not itself necessarily be a breach of contract, but it may result in a breach of the implied term of trust and confidence as an act in a series whose cumulative effect is to amount to a breach of the implied term;
 - b. It must contribute something to the breach, even though what it adds may be relatively insignificant;
 - c. The final straw must not be utterly trivial;
 - d. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective;
 - e. The Tribunal would still need to look back earlier to see whether there was an earlier last straw which had not been affirmed.

Unlawful Deduction from Wages

19. An employer is not permitted to make a deduction from a worker's wages unless it is required or authorised by a statutory provision or a relevant provision of the worker's contract, or unless the worker has previously signified their agreement or consent in writing (**s. 13 Employment Rights Act**)

1996). This does not apply if the purpose of the deduction is to reimburse the employer in respect of an overpayment of wages or of expenses incurred by the worker in carrying out their employment (**s. 14 Employment Rights Act 1996**).

Previous Case Management

20. It is not necessary for the purpose of these Reasons to recite the entire procedural background to the claim, but it is important to note that the case had been heavily case managed. 3 preliminary hearings have taken place:
- a. At the 1st hearing before EJ Millns on 16 September 2024, the Judge had not had enough time to go through the detail required to set out a final list of issues. The Claimant confirmed she was pursuing complaints of: direct discrimination and harassment based upon age, sex and race; constructive unfair dismissal; and unauthorised deduction from wages concerning holiday pay. The Judge had explained the importance of detail in the claim form, and was satisfied Mr Neagu understood the need to clarify the issues and the need to provide the further necessary information. Accordingly, the Judge listed a further preliminary hearing to finalise a list of issues. The Judge also set out in a schedule the further information that would be required of the Claimant.
 - b. At the 2nd hearing before EJ Heap on 02 April 2025, the Judge went through the issues in detail. They did not have the time to consider an application to amend the claim to include a complaint of disability discrimination (which the Judge explained, in any event, required a proper written application as the basis of the claim was unclear). The complaint of harassment was withdrawn, and the Claimant's 5 factual complaints were set out in the Case Summary (inclusive of the 'last straw' complaint). Those allegations were also said to be relied upon for the constructive dismissal complaint. The Judge made clear that the claim could not evolve on shifting sands. A further preliminary hearing was listed to consider the application to amend the claim to include the complaint of disability discrimination.
 - c. At the 3rd hearing before EJ Shore on 06 June 2025, the Judge dismissed the application to amend. The Claimant did not attend. The hearing had initially been listed as a telephone hearing, but was converted to an in person hearing on the application of the Respondent. The Claimant objected and applied for it to be converted back to a telephone hearing. EJ McTigue refused this on 02 June 2025. The hearing proceeded in the Claimant's absence for reasons given at the time. The list of issues was finalised, and final case management orders were made to move the hearing to the Final Hearing.

Parameters of the Final Hearing

21. The Tribunal clarified the parameters of the hearing with the parties at the outset of this final hearing.
22. The parties confirmed the alleged events that the Tribunal needed to consider, and the type of direct discrimination alleged in respect of each of those events. These are outlined in a table appended to these Reasons. The 'X' mark in each of the columns confirms whether that type of discrimination was being alleged in respect of each event. As above, the Claimant relied upon the allegations laid out in the table to support her claim for constructive dismissal.
23. On Day 3, there was a discussion about the extent of allegation 3. For the reasons given at the time of that discussion, the Tribunal found the allegation was limited to the issue of the exchange about the Claimant being a Super User and the assertion about what she should know.
24. The Judgment of EJ Shore dated 06 June 2025 suggested that the claim for age discrimination had been dismissed. That appeared to the Tribunal to be an error as the Reasons accompanying that Judgment made no reference to age discrimination (and instead dismissed the Claimant's application to amend her claim to include one of disability discrimination). The Respondent agreed this was an error and confirmed that it had written to the Tribunal at the time to point this out and ask that it be corrected. The Tribunal has considered the claim for age discrimination.
25. Throughout the hearing, there were submissions by the Claimant that her case should not have been limited in the way that it had been. Those decisions had not been appealed or otherwise successfully challenged, and the Tribunal was clear that it would be considering the claim that the Tribunal had previously listed for 5 days.
26. The Tribunal heard oral evidence from the following people in the following order:
 - a. On behalf of the Claimant:
 - i. The Claimant;
 - ii. Mr Neagu;
 - b. On behalf of the Respondent:
 - i. Ms Mairi Holland (Junior People Business Partner);
 - ii. Ms Patrycja Panek (Supervisor);
 - iii. Mr Matthew Fairhurst (Shift Manager).
27. The Tribunal also read their witness statements. The Tribunal had the benefit of a bundle of documents running to 647 pages, and a chronology prepared

by the Respondent, and a version of the chronology that the Claimant had amended in red font.

28. In addition, the Claimant made 3 applications relating to documents:
 - a. To add to the bundle a document from Onebright Mental Health containing notes from the time period 04 July 2023 – 25 July 2023;
 - b. To add to the bundle an email dated 17 July 2024 sent by Mr Neagu to the Respondent's former solicitor attaching a Schedule of Loss and seeking various documents;
 - c. To require the Respondent to procure and disclose the Claimant's performance reviews from 2024.
29. The Tribunal admitted the first two documents, to which the Respondent did not object. The Tribunal did not allow the final application for reasons given orally at the time.
30. A great number of procedural matters arose in this case, such that a great proportion of the beginning of each day of the hearing was spent dealing with them. Reasons were given for each of those decisions as they were made, and where they are relevant they are referred to in the Reasons below.
31. The Tribunal at the outset had sought to provide an outline timetable in light of the time estimates provided by the parties for each witness, so that an oral decision could be given on the last day of the hearing. This ultimately proved impossible due to the various procedural matters that arose. The Tribunal heard oral submissions on the topic of unlawful deduction from wages claim only on the final day of the hearing. The parties agreed that this issue would be dealt with in submissions without the need for oral evidence about it.
32. The parties agreed to exchange written submissions on the remaining issues that evening, and to exchange any supplementary submissions in response to the other party by 3:00pm on 17 August 2026. The Respondent's solicitor agreed to send copies of both parties' submissions and supplementary submissions directly to the Judge by 4:00pm on 17 August 2026. Those were received and read by the Tribunal. The Tribunal reconvened to deliberate on Wednesday 19 August 2026. The parties were made aware at the hearing that there could be delay with providing these Reasons, and there has been delay due to the amount of material the Tribunal needed to review and cover. The Tribunal has endeavoured to produce these Reasons as soon as possible and apologises for the delay.

Findings

33. The findings of the Tribunal are set out below. They do not address every last dispute between the parties. They are limited to those matters relevant to the claims that the Tribunal had to decide. They focus upon the evidence the Tribunal has found to be the most persuasive in making its findings.
34. Findings are made on the balance of probabilities. This means that, on the evidence that the Tribunal read and heard, it considered the below findings were more likely than not to have happened.
35. Where there have been factual disputes and the Tribunal has preferred what one witness has said over another, these Reasons will explain why the Tribunal has preferred that witness. It does not mean that the Tribunal thought the non-preferred witness was lying. The Tribunal recognised that memories are fallible and that all of the witnesses were trying to think back to events happening 2 years before the hearing.

Witnesses

36. The Claimant explained that her witness statement was physically typed by Mr Neagu, and she told him what to write. He had then used Google Translate and AI to assist with the wording in English. She confirmed that she understood all of her statement, explaining she could read English fairly well.
37. The Tribunal considered that the Claimant was doing her best to tell the Tribunal what she remembered. She was clearly a conscientious and hard-working employee. There are some issues, however, where the Tribunal has preferred the evidence of another witness.
38. Mr Neagu could not provide the Tribunal with much evidence that was relevant to what the Tribunal had to decide. He was not working for the Respondent at the time of the relevant events and so did not see what was alleged. The Tribunal did wish to comment, however, that it considered he had represented the Claimant well. This was all the more impressive given he was doing so in a second language. The Tribunal was grateful to him for his assistance.
39. Much of Ms Holland's evidence was second hand, in that she told the Tribunal about things others had told her or about things that she had read in the documents. The Tribunal found her to be credible on the allegation that she could speak directly to (about what the Claimant was told about meeting notes on 16 November 2023) for reasons that will be explained below.

40. The Tribunal found Ms Panek to be a credible witness who was straightforward in her evidence. One of the key inconsistencies between her evidence and that of the Claimant was on the topic of the cleaning rota. This will be addressed below, however it did reinforce Ms Panek's credibility on other issues where there was dispute between her and the Claimant.
41. The Tribunal also found Mr Fairhurst to be a credible witness. He was straightforward and clear. The Claimant had been very complimentary of the management team, inclusive of Mr Fairhurst and Donna Burkinshaw (an Operations & Logistics Manager). The Claimant described Mr Fairhurst in particular as 'good and respectful'. When the Claimant asserted to him that she had been having difficulties in her own department, she had requested a transfer to his department. He had encouraged her to apply for a promotion, and she was clear that he had never treated her any differently to her comparator. The Tribunal was a little troubled by the strength of wording in Mr Fairhurst's statement where he had made negative comments about the Claimant's work. His oral evidence did not suggest he felt quite so strongly. The Tribunal preferred Mr Fairhurst's oral evidence on this point.

Relevant Background

42. The Claimant is a Romanian woman aged 38. She initially started working for the Respondent as a Warehouse Operator via an agency in 2019.
43. Warehouse Operators are on the first rung of the management structure. New Warehouse Operators were trained by staff with the job role 'Super User'. When Super Users were not training staff, they would undertake the work of a Warehouse Operative. Super Users reported to a Supervisor, and Supervisors reported to a Section Manager.
44. At that time, the Claimant was working alongside Mr Neagu and was doing so for around 4 months. He would assist her with interpretation into English as his standard of English was better than hers at that time. Mr Neagu left in October 2019. There was nobody else interpreting for the Claimant and she explained that she was not doing her job as well as before. She also explained that her level of English improved thereafter. She felt able to effectively communicate in English a few months after Mr Neagu left. The Tribunal had no reason to disbelieve those assertions and accepted them.
45. The Claimant suggested that she observed a practice of the Respondent grouping employees who spoke the same language. She suggested that she was put into a group of people who spoke Polish, and that during her period working via the agency she was being spoken to in Polish. The Respondent disputed this, and it was seemingly agreed between the parties that

employees of the Respondent generally spoke English. The Tribunal has not made findings about this issue because it fell outside of what the Tribunal needed to consider.

46. On 01 December 2021, the Claimant was employed by the Respondent on a permanent basis as a Warehouse Operative. A copy of her Employment Contract was in the bundle.
47. There was some dispute about whether the Claimant was supervised, and by whom, between December 2021 – June 2022. The Claimant was unclear about this. At times she appeared to be saying that she reported directly to Mr Fairhurst only, and at other times she appeared to be saying there were periods where she did have a supervisor. Either way, Mr Fairhurst denied the Claimant was ever reporting directly to him, and explained there was always a Supervisor delegating at that time. This was because there was a move of warehouse taking place which required a lot of work. We preferred the evidence of Mr Fairhurst. Apart from being the more reliable historian of the two, his position meant he would have a greater knowledge of rotas and operations than the Claimant.
48. In June 2022, the Claimant was promoted to Super User. She was assigned to the GTP1 Department. Around 15 members of staff were assigned to that Department, including 'Benjamin' who was also a Super User. There was another Super User, Mr Getov, who did not work as closely with the Claimant and Benjamin, but occasionally worked with them.

Allegation 1: Complaints against Ms Panek for the period July-August 2022

49. Ms Panek is a 36 year old Polish female who speaks good English. She joined the GTP1 Department as a Supervisor a few weeks after the Claimant started as a Super User.

The Evidence

50. These Reasons shall first outline the most relevant evidence the Tribunal heard and read, before going on to consider this in the round to draw conclusions.
51. The Claimant's complaints about Ms Panek begin at paragraph [52] of her Witness Statement. Paragraphs [52 – 58] are complaints about the way Ms Panek undertook her role as a Supervisor and are ultimately complaints about her competence. The Claimant alleged that there were effects on her individually and on the wider team of staff.

52. At paragraph [61] of her witness statement, she asserted that Ms Panek had commented that there were 'too many people in charge' and the Claimant took that as a dismissive attitude towards her role. From paragraph [62], she complained of later being totally excluded from work process communications, and that such communications only took place with Benjamin.
53. In her oral evidence, the Claimant asserted that she tried to speak to Ms Panek before seeking help from a Manager. That is not readily reflected in her Witness Statement where she has not described any such attempts to discuss matters with Ms Panek. The closest her statement comes to this is at paragraph [59] where she asserts she sought help from a manager because communication with Ms Panek was difficult.
54. There is a copy of the Claimant's grievance dated 16 November 2022 in the bundle. Her complaints were, in the main, complaints about Ms Panek's competence. She briefly mentioned that she felt discriminated against, but did not explain why. She then went on to make further complaints about Ms Panek's competence before asserting she thought racism must be the only reason.
55. That grievance was followed by a discussion about the complaint between Mr Fairhurst and the Claimant on 21 November 2022. The note of the discussion is in the bundle. The focus is upon competence and attitude.
56. The Tribunal accepted the evidence of Mr Fairhurst and Ms Panek that, following this discussion, an informal meeting took place on a bridge between departments at the warehouse. The Respondent referred to this as a mediation. Mr Fairhurst explained that the attendees were: himself, the Claimant, Ms Panek, and Mr Getov.
57. The Claimant, in her closing submissions at paragraph [42], appeared to question whether the meeting took place and suggested Mr Fairhurst had been influenced into confirming the meeting took place because he heard Ms Panek's evidence first. The Tribunal did not accept that submission. It conflicted with the Claimant's own witness statement at paragraph [60] where she talked of a discussion 'with all of us regarding the lack of communication and the issues that had arisen'. As referred to above, the Tribunal found Mr Fairhurst to be credible. The submission undermined the Claimant's credibility, and fed into the concern raised later in these Reasons that the Claimant was building a case rather than telling the Tribunal what had happened.

58. The Tribunal was satisfied that the meeting took place and this was the Respondent's attempt to address matters informally. The Respondent thought it had resolved matters by clearing the air and moving everybody forward.
59. Ms Panek denied many of the assertions made against her. In broad terms, she explained that she would undertake morning briefings with all Department workers. She denied ever excluding anyone. She did not remember the Claimant ever raising complaints directly with her that were about her. She said she would not simply turn and walk away from people, and she respects the people she works with. To allocate tasks between Super Users, she would ask which of them wanted to do the task that was required. Where information needed passing on, she would do it according to how urgent it was as not all information needed passing on immediately. She explained she had encouraged the Claimant to apply for a promotion, and had explained the process of sending a CV that would be followed by an interview. She commented that she had helped in adjusting the Claimant's shifts to help with travel after raising it with Mr Fairhurst. She had no issue with the Claimant's work and denied any discrimination. Because everyone had shaken hands following the mediation on the bridge, she thought any grievances had been dealt with there.
60. The Claimant asked the Tribunal to distinguish between a lack of recollection and a positive memory about something. This was in an effort to undermine what Ms Panek had said about the Claimant not raising complaints directly with her. The Tribunal did not accept this submission. An individual cannot fail to remember something if it did not happen.
61. The Claimant, from paragraph [64] of her statement, drew on a particular example of a cleaning rota introduced by Ms Panek as an example of her being excluded from communication. The Claimant contended the Respondent placed too much emphasis on this, but the Tribunal did not accept this criticism. It is the only particular example raised within the Claimant's witness statement. Whilst the Claimant did raise an issue about a pallet in her oral evidence, and how there had been a mistake because the Claimant had not received the relevant information, it did not really assist. The Claimant's evidence was that she had assumed Benjamin had received the information rather than being able to tell us he had actually received it.
62. The Claimant complained that Ms Panek informed her and Benjamin that she wanted to change the way cleaning would be undertaken in the Department and that it would be discussed with them the next day, but instead they arrived to find a 'cleaning table' had already been put in place. It required that the Claimant clean the inducting area and clean after staff, and Benjamin clean

the stock area. The Claimant's statement seemed to suggest the issue was that she was required to clean up after staff, whereas Benjamin was not. Her closing submissions suggested the issue was that she did not want to clean.

63. In her oral evidence, the Claimant was clear that only she and Benjamin were required to clean. She was also clear that she could not recall raising the issue about a cleaning rota with Mr Fairhurst at her meeting with him. Notably, on her case, she and Benjamin received the same information at the same time.
64. The Tribunal heard from Ms Panek on this topic. She explained that 'cleaning' was misleading. The issue instead was the area being left untidy. Ms Panek herself had been required to clear up after staff, and so she sought to introduce a rota to ensure the Department was left tidy. She had around 15 members of staff and there were 3 areas to clear. She randomly assigned members of staff over the 5 days of the week to clear an area, with the effect that each member of staff would end up cleaning an area once a week. The random allocations would then change the next week. She put that into a table, raised it with staff at a morning briefing, and put it up on a pillar so staff could have access to it. Her evidence was supported by Mr Fairhurst, who explained this was a matter discussed with him and fell within Ms Panek's management discretion.
65. The Tribunal also noted from the record of the Claimant's discussion with Mr Fairhurst on 21 November 2022 that the Claimant had commented to Mr Fairhurst about Ms Panek's 'professional attitude' at the outset of working with her (i.e. in or around June-July 2022) when she had 'made a good first impression'. Her grievance gives the impression issues started shortly thereafter. Despite this, her grievance was not submitted until November 2022.

The Conclusions

66. The Tribunal reminded itself that the Claimant took no issue with Mr Fairhurst. The Tribunal queried why Mr Fairhurst would insert into meeting notes discussion of a topic that apparently never arose, or make up the discussion he had with Ms Panek about the cleaning. It was not satisfied that he would.
67. The thrust of the Claimant's complaints to Mr Fairhurst at the time were around Ms Panek's competence, and how the Claimant thought there were better ways of doing things. Cross examination of Mr Fairhurst focussed upon assertions that Ms Panek was inexperienced, which was used to suggest Ms

Panek was making mistakes and the Claimant was trying to help. Mr Neagu asked rhetorically if it was better that the Claimant did not intervene.

68. The cleaning system (or, rather, tidying rota) and Ms Panek's reasons for introducing it were well explained and made sense. The document she described was very much a 'cleaning table' which is how the Claimant referred to the document in her witness statement. We found Ms Panek in her manner to be friendly and open. We did not find it credible that she would simply turn and walk away if she was being asked about an issue, particularly where the Claimant was clear that there were other times where she either addressed the issue or explained she could not at that time because she was busy. We did not find it credible that there would be such a change in Ms Panek's approach so soon after starting in circumstances where the Claimant did not raise matters until November. The Claimant suggested in her witness statement that Ms Panek began excluding her after the mediation meeting referred to above, but that was in November which was well beyond the period of July – August which allegation 1 was concerned with.
69. The Tribunal was not satisfied that Ms Panek refused to collaborate with the Claimant by excluding her from updates on tasks, stock management and workflow priorities. The Tribunal instead found that Ms Panek was not liaising with the Claimant, or indeed Benjamin, on matters that properly fell within Ms Panek's supervisory discretion. She was a new supervisor coming in with new ideas and was not seeking approval from Super Users. She was inexperienced in the process for that Department and will at times have made mistakes. That is understandable. The Claimant saw the mistakes and thought that if Ms Panek had consulted with the Super Users, she could have avoided those as the Super Users could have had input.
70. In respect of Allegation 1, the Tribunal was not satisfied a reasonable Tribunal could properly draw from its findings that, in the absence of any other explanation, the conduct complained of was undertaken because of the Claimant's age, sex or race. There was not 'something more' that the Claimant had been able to show. Even if the Tribunal was wrong about this, it found that the conduct complained of was properly within Ms Panek's supervisory discretion and the Claimant's real issue was that she felt she should have had more input into those decisions than she did.

Allegation 2: Incident on 26 November 2022

71. Ms Kornacka was a Polish woman who also went by the name of Ola.
72. This allegation concerned an incident which took place on the warehouse floor next to a scanner cage by 'Sorter 4'.

73. On Day 3, the Respondent sought to introduce (and the Tribunal admitted for reasons given at the time) a video which was said to show the layout of the relevant area and the noise. The Tribunal was not able to place very much weight on that video. When examined in evidence, it transpired it had been taken at the other end of the warehouse floor next to a noisy conveyor. The desk where the incident took place was at the other end of a yellow line on the floor. It was so far away, it could not be seen in the video. Because it was taken so far away, it did not actually help with the noise levels in the area of the incident. Even then, voices and laughter could be heard over and above the noise of the conveyor. The Tribunal was told by Mr Fairhurst that earplugs were available, but not mandatory. The Tribunal accepted there would have been noise on the warehouse floor, but was not satisfied that it was so loud that shouting would be required in order to be heard.
74. There was a minor dispute between the parties about how far Ms Kornacka's desk was from the scanner cage: the Claimant indicated around 2 meters and Mr Fairhurst indicated about 4 meters. The difference was negligible in the circumstances of what was being described.
75. The Claimant in her witness statement at paragraphs [107-110] described how she had attended on a Saturday to do overtime. She went to Sorter 4 to collect her scanner. Benjamin picked one up first. He 'was not challenged, there was no raised voice and no reaction in the same way as to the Claimant'. She asserted that when Ms Kornacka saw her pick the scanner up, she shouted immediately which was sudden and aggressive. She raised her voice and addressed the Claimant loudly. She was told she was not allowed to pick up a scanner from there. When the Claimant attempted to explain that she had picked a scanner up from there before and was not aware of any rule change, she asserted she was cut off and Ms Kornacka continued to shout.
76. In her oral evidence, the Claimant explained that Benjamin had been in front of her. When he picked up the scanner, Ms Kornacka calmly said he was not supposed to take it, and so Benji moved over.
77. There was no evidence to challenge what the Claimant had said, but she was challenged in cross examination.
78. The Respondent queried why the Claimant had asserted Benjamin had not been challenged in her statement. The Tribunal was satisfied this was a language issue with the definition of the word 'challenge' in particular. The remainder of the relevant sentence was consistent with what the Claimant was asserting.

79. She was asked why she had picked up the scanner after Ms Kornacka had just told Benjamin, in front of her, not to do so. The Claimant explained that it all happened very quickly and she had not processed what had just happened.
80. The Claimant had sought to raise a grievance about it at the time by emailing Mr Fairhurst on 27 November 2022. The complaint is broadly consistent with what is contained in her witness statement, albeit there is no mention of Benjamin. Mr Fairhurst has explained that the email, inexplicably, was never received and that the IT Department had attempted to find and recover it without success. The Claimant had not followed it up.
81. The Tribunal found that it was more likely than not that Ms Kornacka had shouted at the Claimant that she was not allowed to take the scanner from there. Ms Kornacka had just observed the Claimant pick up the scanner after Benjamin had been told not to take the scanner from there. At best, she may have assumed the Claimant had not heard her. At worst, it was raised in frustration at the Claimant doing something Ms Kornacka had just told Benjamin not to do.
82. Either way, the Tribunal was not satisfied that a reasonable Tribunal could properly draw from its findings that this was a discriminatory act. There was nothing that could indicate this was done due to age, race or sex. Even if the Tribunal was wrong about that, it was satisfied that the act was done either out of frustration or to ensure the Claimant had heard the instruction.

Allegation 3: June 2023 Complaint

83. Anija Belicka was a 39 year old Latvian female who spoke good English.
84. The alleged conduct took place in a period when Benjamin was on holiday. The Claimant was covering Benjamin's role whilst he was away. There was some confusion in the Claimant's evidence as she thought it was being suggested she had replaced Benjamin. She did appear to agree, and the Tribunal found, she was covering for him.
85. The Claimant explained she had asked Ms Belicka a question about which items to put into a plastic box. This was information a Super User would ordinarily know, but the Claimant did not because she had not been told. Ms Belicka said to her 'you are a Super User, why don't you know?'.

86. When asked about this in evidence, the Claimant explained that she did not think it had anything to do with age or race, but did think it was motivated by her sex because Ms Belicka preferred working with Benjamin. She accepted there was nothing inherently about the phrase that was linked to her being a woman.
87. The Tribunal had very limited evidence about this allegation. It had not been addressed in the Claimant's witness statement. The Claimant had not raised it in her internal grievance. She was asked in a meeting on 19 June 2023 set up in response to the complaint if Ms Belicka had ever raised her voice or shouted at her. She denied this, but went on to complain about being ignored (without raising this instance).
88. The Respondent made the point that the Claimant did not cross examine any of the Respondent's witnesses on this issue. This is not a fair criticism. None of the Respondent's witnesses saw the incident, and Ms Belicka had not been called to give evidence.
89. The Tribunal accepted that the comment had been made. A question had been asked that a Super User would ordinarily know. It made sense that Ms Belicka would ask the question.
90. The Tribunal was not satisfied that a reasonable tribunal could draw from its findings that this was a discriminatory act. There was no evidence of 'something more' that such a Tribunal could point to in order to draw that conclusion.
91. Even if this was wrong, the Tribunal was satisfied that it was asked because a Super User would ordinarily know the information, and not because of the Claimant's age, race or sex.

Allegation 4: 16 November 2023 Welfare Meeting

92. As with allegation 3, the Claimant's witness statement did not address this allegation.
93. In her oral evidence, she was clear that she only took issue with Ms Burkinshaw at this meeting. The Tribunal took this to mean that she had no issue with the way Ms Holland and Mr Fairhurst conducted themselves at this meeting.

The Notes

94. The Claimant alleges that she was told at the beginning of the meeting that there would not be any notes. She explained in her oral evidence that she

thought this amounted to race discrimination. Because she was not British, she did not have enough knowledge of procedure.

95. Ms Holland, in evidence, explained that she had told the Claimant there would be notes. She explained to us that she took light notes. In welfare meetings, HR needed to be focussed upon the person they were speaking to rather than having their head down taking notes. Ms Holland was not challenged about this in cross examination.

96. We preferred Ms Holland's evidence. We had a typed copy of the notes in the bundle. These had been taken from her handwritten notes. Having compared them to the notes of the earlier meeting in June 2023, which were more akin to a transcript, it was clear these were lighter notes. There was a convincing level of detail within the notes, such as the reference to the Claimant's brother which was then corroborated by the Claimant's follow up email on 20 November 2023, that made it more likely than not the notes were taken. Given they were taken, the Tribunal did not find it credible that the Claimant would be told that there would be no notes.

97. Ms Holland accepted that the notes were not sent to the Claimant at the time. She explained this was because the meeting had in some ways been adjourned and notes would have been sent after a follow up meeting with a plan of action. She also commented that HR did not generally send such things out over the Christmas period as they are concerned about how individuals who were in a difficult mental or emotional place might be over Christmas. Whilst the Tribunal questioned the decision not to send any sort of follow up at all, it did not mean that the notes were not taken or that the Claimant was told there would be no notes.

98. We have not found that the Claimant has proven the facts of her case on this issue.

Investigation

99. The Claimant said in evidence that she thought the meeting had been treated as an investigation meeting because Ms Burkinshaw would not let her finish sentences, she did not feel understood, and she was not allowed to give further details. In her closing submissions, she asserted the meeting had moved beyond welfare and into evaluating and re-determining previous complaints.

100. The Claimant has, elsewhere, been particularly complimentary of Ms Burkinshaw. In the follow up email of 20 November 2023 referred to above, she spoke of her admiration of Ms Burkinshaw (amongst others) and how she

had nothing to reproach her. In her evidence, she became emotional when describing her managers (inclusive of Ms Burkinshaw). She explained *'the managers were people I admired and will admire all my life. I have learnt a lot from them; how to do my job, how to speak to other people. I have looked at them and tried to behave in the way they have behaved. I do regret having lost the opportunity to work with them going forwards. They have always been an inspiration, been supportive, answered my questions. I will always remember them and things they taught me, all their support, respect. I will respect them all my life and they are a model to me. The only thing I would have wished from them was for them to believe me and look into my complaints a bit better. [There is] nothing to reproach to them. [They were] perfect people. The work they do is exemplary, and the way they treat and speak to people.'* Ms Burkinshaw was described as supportive when she was previously involved at the time of the June 2023 complaint. This is evidenced by an email in the bundle dated 16 June 2023 from Ms Burkinshaw to the Claimant. It reads as a supportive email. In it, she had allowed the Claimant to convert 2 days holiday into sick leave because the Claimant had explained she had taken time off due to mental health. The Claimant sought to describe this as something going to her own credibility as she was able to distinguish between positive and negative conduct. The manner in which she has described Ms Burkinshaw, however, makes the conduct alleged against her during the meeting much less likely.

101. The Claimant struggled to commit to the note of the meeting. She said it was not accurate, but could not tell the Tribunal what was inaccurate as she had not recently read it. She did not recognise the part of the note where she was said to have revisited issues about Anija and other supervisors. In her submissions, she asserted the notes were a summary and should not be treated as a transcript. That does not mean the contents are not an accurate summary.
102. She asserted that the meeting was not all about welfare because some parts were about what happened to her and why she was sick. This appeared to be a misunderstanding of what welfare meant. The Tribunal would consider a discussion about what happened to her and why she went off sick to be about her welfare.
103. Whilst the Claimant took issue with Ms Burkinshaw saying that the Claimant had made complaints about every supervisor she had had, that did appear to be true. The specific complaint about Ms Burkinshaw asking if every supervisor had to change for her to come back was taken somewhat out of context. From the wider discussion in the note of the meeting, it is clear that Ms Burkinshaw was not asking if the supervisors needed to be replaced, but

rather whether there needed to be a change in the approach of the specific supervisors the Claimant was complaining about.

104. The Tribunal was not satisfied that the Claimant had proven the meeting was treated as an investigation meeting, or that Ms Burkinshaw had asked if the Claimant expected her to change all of the supervisors. On the facts the Tribunal did find, it was not satisfied that there was anything that could indicate Ms Burkinshaw acted in a discriminatory way so that the burden of proof would shift to the Respondent. Even if the burden of proof did shift, the Tribunal found that this was a welfare meeting rather than an investigation meeting, and that the Claimant was being asked about what needed to change in the approach of the supervisors.

Discrimination Claims

105. The direct discrimination claims were not well founded.

Constructive Dismissal / Last Straw

106. The Claimant has been inconsistent about what amounted to her last straw:
- a. In the Final List of Issues, she explained she resigned because of an email dated 10 January 2024 which included the following paragraph: *“As per the below and attached Mairi has contacted you to arrange a welfare meeting with myself which was scheduled for today @ 12.00 noon. Unfortunately we have not received a response from you and you have failed to attend the meeting. I just want to take this opportunity to reach out to you and check in with you to make sure that everything is ok”.*
 - b. In her claim and at the time of the case management hearing before EJ Millns in 2024, she said the welfare meeting in November 2023 referred to above was the reason for her resignation.
107. When asked about the discrepancy, she said she had not remembered her contact with the Respondent after the welfare meeting. That was not an impressive answer. The Claimant ought to know the reason why she resigned. It undermined her credibility and suggested she was trying to build a case rather than genuinely telling the Tribunal why she resigned. The Tribunal considered whether the welfare meeting might have been the last straw instead, but found it to be unlikely given the resignation letter came significantly later. The Respondent’s conduct at that meeting would not, in any event, have amounted to a repudiatory breach of the contract given the findings we have made above.

108. There was some exploration by the Respondent about alternative reasons why the Claimant might have resigned via Ms Holland's evidence, such as whether she was pursuing outside ventures or whether the commute was too lengthy. That was in itself second hand information from Ms Burkinshaw who was not in attendance to give evidence.
109. The Tribunal was not satisfied that the Claimant was constructively dismissed.
110. The Claimant took issue with the use of the phrase 'failure to attend' in the email she relied upon, and inferred it was a criticism of her. When read in the context of the wider email, it is not. The content of the email is an expression of concern about her. It was an entirely innocuous act on the part of the Respondent and cannot be a final straw, even if the Claimant interpreted it in a different way. It also follows that it cannot possibly be an act which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the Claimant and Respondent.
111. Even if the Tribunal was wrong about that, it noted that all of the contemporaneous emails from the Claimant from this time that appear in the bundle express gratitude, and that the Claimant appears to have affirmed the contract by sending her last straw email 2 weeks before the date she was actually resigning.
112. The claim for constructive dismissal is not well-founded.

Extension of Time

113. It follows there was no continuing act bringing any ostensibly out of time discrimination claims in time. In circumstances where the claims are not well founded, the Tribunal did not consider it just and equitable to extend time to hear them. Consequently, the discrimination claims are also beyond the jurisdiction of the Tribunal and fail for that reason.

Unlawful Deduction from Wages

114. The claim was not well founded.
115. The Claimant essentially put the Respondent to proof.
116. There is a letter at page 624 of the bundle explaining how the overpayment has been calculated. The Claimant's monthly salary was £1906.67 and she had a day rate of £88. She was only entitled to Statutory Sick Pay during her sickness absences. Each month, the Claimant would be

paid as normal and then the overpayment would be clawed back the next month. This is evident from the payslips in the bundle for the months of July 2023 – November 2023.

117. Come December 2023, the Claimant was not paid and so there was no income from which the overpayment for November 2023 could be recovered. The Claimant had been paid for 19 days that she had not worked in November because she had been on sick. It had to be recovered in February 2024 when the Claimant was paid her final salary. The £1672 deducted represented 19 days paid at £88/day.

118. The overpayment of wages to the Claimant by the Respondent was recoverable by the Respondent under s. 14 Employment Rights Act 1996.

Final Note: Editing Evidence

119. On the final day of the hearing, it became apparent that there was real concern the Respondent had edited evidence in the bundle. This related to messages sent between the Claimant and Mr Fairhurst on Facebook Messenger. The way messages had been presented by the Respondent did not match the screenshots of conversations provided by the Claimant. Mr Fairhurst gave evidence that he had provided his messages in full to the Respondent's solicitors and had not deleted any of his messages. This put the Respondent's counsel in a difficult position and the Tribunal was grateful to her for the efforts she made to get to the bottom of the issue. Having taken instructions, she explained that a junior member of staff working for the Respondent's solicitor had been trying to reduce the size of the bundle. That member of staff had therefore put together the messages that it was thought might be relevant. The way in which they had done this made it appear as if the messages formed one chain. The cut out selections of exchanges had been put together rather than being put onto their own individual pages.

120. The Tribunal accepted that explanation. The messages did not have any great relevance or bearing upon the issues that the Tribunal had to decide. That could be seen when compared against the screenshots showing the wider exchanges that had been provided by the Claimant. Little, if anything, was gained by it.

121. Be that as it may, this should be a salutary warning against presenting evidence in the way that the Respondent did. The way the messages appeared on the page was very misleading and it was fortunate that the messages had no real bearing on the case.

Approved by:

Employment Judge B Chapman

04 October 2026

Judgment sent to the parties on:

19/10/2026

For the Tribunal:

J. Woolley

Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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/

Appendix: The Claimant's Allegations

Date	Description	Age	Race	Sex
July-Aug 2022	Complaint 1: Supervisor Patrycia Panek refused to collaborate with the Claimant by excluding from updates on tasks, stock management and workflow priorities.	X	X	X
26.11.2022	Complaint 2: Supervisor Alexandra Kornacka yelled at the Claimant for no reason in front of colleagues. When the Claimant went to pick up a scanner, she yelled 'you're not allowed to take the scanner from there anymore'.	X	X	X
June 2023	Complaint 3: The Claimant replaced Benjamin, who was on holiday, and was helping Supervisor Anija to sort stock to send to stores: - The Claimant requested help from Anija, who refused and said: 'you are a SuperUser, why don't you know?'	X	X	X
16.11.2023	Complaint 4: Welfare meeting with Donna Burkinshaw, Matthew Fairhurst and Mairi Holland of HR: a. HR told the Claimant there would not be meeting notes or minutes so there could be no challenge by the Claimant as to what was said. b. The Claimant was not supported or listened to, and it was treated like an investigation meeting. c. Donna Burkinshaw said 'what do you expect from me now, just to change all the supervisors for you?'	X	X	
10.01.2024	Last Straw: Donna Burkinshaw sent an email to the Claimant saying she had failed to attend a meeting when: - It was universally accepted by all parties that they must agree to attend and to the terms of the meeting; and - She was too ill to attend or check emails, and so did not know about the meeting.	CONSTRUCTIVE DISMISSAL		
NA	Holiday Pay: £1672 deducted	UNLAWFUL DEDUCTION		