



EMPLOYMENT TRIBUNALS

Claimant: Miss Z Yassin

Respondents: (1) Human Appeal
(2) Mr K Kamel

Heard at: London Central **On:** 4, 5, 6, 7, 11, 12, and 13 and 15 October 2021
(in chambers)

Before: Employment Judge Joffe
Mr D Clay
Mr D Kendall

Appearances

For the claimant: In person

For the respondent: Dr M Ahmad, counsel

RESERVED JUDGMENT

1. The claimant's claims of direct sex discrimination are not upheld and are dismissed.
2. The claimant's claims of harassment related to sex are not upheld and are dismissed.
3. The claimant's claims of victimisation are not upheld and are dismissed.
4. The claimant's claims for unpaid holiday pay, unauthorised deductions from wages and breach of contract are dismissed on withdrawal by the claimant.

REASONS

Claims and issues

1. The issues in the case were agreed between the parties and were as follows. The references to paragraph numbers appear in the agreed list and are references to the particulars in the claim form.

EQA, section 13: direct discrimination because of sex

- (i) Have the respondents subjected the claimant to the following treatment:
 - a. Dismissal (paragraphs 24 — 40);
 - b. Dismissing the claimant late at night and away from home/office;
 - c. Making comments at the pre interview and interview stage as set out in paragraphs 1 — 7;
 - d. Failing to provide an induction (paragraph 9, 14);
 - e. Failing to allocate the claimant a desk;
 - f Threatening to award a lower salary (£24k as opposed £25k — the claimant states Mr Malik was awarded £25k from outset of his employment) (paragraph 8);
 - g. Delaying the provision of an employment contract (paragraph 10);
 - h. Requesting that the claimant set up a bank account (paragraph 11);
 - i. Making comments at a meeting on 28 February 2018 as set out in paragraphs 12 and 13;
 - j. Making comments on the claimant’s performance and work, micro-managing the claimant (paragraph 16, 17, 20 and 21), not allowing the claimant freedom of ideas and the assignment of projects and events (paragraph 14);
 - k. Making it difficult for the claimant to perform her role effectively (paragraphs 17, 18, 19); and
 - l. Not booking a hotel for the claimant for the away day (paragraph 22).
- (ii) Was that treatment “less favourable treatment”, i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies on the following comparators: Mr Hamza (the claimant’s case is he did not attend away day at all as he was ill); Abdul Malik (the claimant’s case is he received an induction as opposed to claimant who did not and that he was allowed his own projects and not micromanaged); Mr Gamal and Mr Jamal El-Turk (the claimant’s case is they had allocated desks and the claimant did not) and/or hypothetical comparators.
- (iii) if so, was this because of the claimant’s sex and/or because of the protected characteristic of sex more generally?

EQA, section 26: harassment related to sex

(iv) Did the respondents engage in conduct as follows:

- a. Dismissing the claimant when it was late at night and she was away from home/office;
- b. Making comments at pre interview and interview stage as set out in paragraphs 1 - 7;
- c. Threatening to award a lower salary (£24k as opposed £25k) (paragraph 8)
- d. Delaying the production of an employment contract (paragraph 10)
- e. Requesting the claimant set up a bank account (paragraph 11)
- f. Making comments at a meeting on 28 February 2018 as set out in paragraphs 12 and 13;
- g. Making comments on the claimant's performance and work, micro-managing the claimant (paragraph 16, 17, 20 and 21), not allowing the claimant freedom of ideas and the assignment of projects and events (paragraph 14);
- h. Making it difficult for the claimant to perform her role effectively (paragraphs 17, 18, 19); and
- i. Not booking a hotel for the claimant for the away day (paragraph 22).

(v) If so was that conduct unwanted?

(vi) if so, did it relate to the protected characteristic of sex?

(vii) Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Equality Act, section 27: victimisation

(viii) Did the respondents believe that the claimant had done or might do a protected act? The claimant's case is that she raised complaints to Mr Khan, as per paragraph 20 of her particulars of claim, on 7 March 2018 and that she had said to Mr Khan she would be raising the issues she had in more detail, as a result the respondents believed she would do a protected act.

(ix) Did the respondents subject the claimant to any detriments as follows:

- a. By the second respondent making comments about the claimant's performance on the train on the way home on 7 March 2018, leading the claimant to think she would be dismissed.

b. Assigning one of the claimant's events (a volunteer training event due to be held in April 2018) to Mr Malik on 12 March 2018, who was yet to commence employment (paragraph 21).

c. Requiring the claimant to book her own hotel room

d. Dismissing the claimant when it was late at night and she was away from home/office

e. Dismissal

(x) If so, was this because the respondents believed the claimant had done, or might do, a protected act?

Unpaid annual leave

(xi) When the claimant's employment came to an end, was she paid all of the compensation she was entitled to in respect of accrued but untaken annual leave? The first respondent states she was entitled to 22 annual leave plus bank holidays p.a

Unauthorised deductions

(xii) Did the respondent make unauthorised deductions from the claimant's wages in accordance with ERA section 13 by failing to pay her salary for the entire period of her employment (26 Feb ~ 13 March 2018). The first respondent accepts the claimant has not been paid but states they need her to complete a P46 in order to pay her. The Respondent states that 21442.30 (gross) is due to the claimant in respect of salary, notice pay, accrued holiday.

Breach of contract

(xiii) To how much notice was the claimant entitled? It is not in dispute that the claimant's contractual entitlement was to 1 weeks' notice and that this has not yet been paid.

(xiv) The claimant states the respondent has failed to reimburse her for the following expenses: the sum of £70 in respect of petrol and £54 in respect her hotel for the away day.

The hearing

2. We were provided with an electronic bundle running to 517 pages. The claimant provided a witness statement and gave oral evidence on her own behalf. For the respondents we were provided with a witness statement and heard oral evidence from Mr K Kamel, at times referred to in the documents as Mr Gamal, former fundraising manager at the first respondent. We refer to Mr Kamel by his name in these Reasons for ease of understanding. We also had witness statements from Mr Z Khan, head of fundraising, Ms P Raja, people and culture business partner, Ms R Khatib, formerly a fundraising coordinator for the first respondent, Ms Sibbat E-Noor, campaigns and strategic partnerships manager, Mr M Abdel-Rahman, director of people and culture

and Mr T Al-Lameh. We did not ultimately hear oral evidence from Ms E-Noor. Mr Al-Lameh attempted to attend the hearing but it became apparent he was seeking to do so from a hospital where he appeared to be an in-patient. The parties agreed that his attendance was not necessary as his evidence was of peripheral relevance.

Adjustments

3. At the outset of the hearing the claimant provided the Tribunal with medical evidence showing that she had a recent diagnosis of ADHD from a consultant psychiatrist and was taking medication. She told us that she had undiagnosed dyslexia and suspected Asperger's and that she experienced high levels of anxiety.
4. Adjustments for the claimant's ADHD and anxiety were discussed at the outset and throughout the hearing.
5. We noted from the claimant's medical evidence and her own account to us that she might suffer from some or all of the following
 - a) A tendency to zone out
 - b) Organisational difficulties
 - c) Disruptive behaviour, impulsivity
 - d) Tendency to interrupt others
 - e) Frustration intolerance
 - f) Rapid speech
 - g) Distractibility
 - h) Persistent difficulties in focussing and sustaining attention.
6. The Tribunal consulted and provided the parties with guidance from the Equal Treatment Bench Book on ADHD. In particular we noted:

Where appropriate, adjustments for the hearing may include:

- *Speaking, asking questions and giving information in short sentences.*
- *Allowing pauses for the person to process what has been said and respond.*
- *Readiness to calmly repeat instructions and questions.*
- *For a litigant in person, frequent summing up of the current stage of court process and what is expected.*
- *Choosing a room with minimal outside noise and reducing distractions within the room.*
- *Increased short breaks to refocus.*
- *In severe cases, allow the person to provide written answers to written questions*

7. The following adjustments were put in place:
 - The claimant had injured her hand and wanted to record audio notes on her phone from time to time. She did not have a companion attending with her to take notes and this adjustment was agreed.
 - Dr Ahmed and the Tribunal all had regard to the guidance in the ETBB over the course of the hearing. The claimant asked if she could answer question in writing. That was a possible adjustment in the ETBB for severe ADHD. It was not evident to the Tribunal that the claimant had severe ADHD. Her medical evidence did not characterise her impairment in that way; she was on medication and had been diagnosed as an adult. Allowing questions to be answered in writing would have been very disruptive of the process; it would take a disproportionate amount of time and there was a real risk that the evidence could not be fairly tested in that way. We were satisfied that the claimant was able to cope with answering question orally in the usual way and that Dr Ahmad had tailored his questioning by reference to the ETBB guidelines.
 - We made it clear to the claimant that she could ask for a break at any time and the Tribunal were careful to watch for signs that she might require one.
8. The claimant was concerned that her body language, rapid speaking and other symptoms of her impairment would cause the Tribunal to form an adverse view of her evidence. We explained to the claimant that we were aware of the manifestations of ADHD and we have taken care to recognise the aspects of her presentation which were caused by her impairment. The claimant apologised at the end of every day and we acknowledged that we recognised that at times when her behaviour may have otherwise appeared to be challenging, she was affected by her impairment.
9. A further adjustment we made as time went on was to allow the claimant a greatly expanded time to cross examine the respondent's witnesses.
10. On the first day, we heard no evidence as the claimant said her medication was not working and we agreed to postpone until the following day. On Tuesday 5 October 2021, we heard the claimant's evidence.
11. We had agreed estimates with the claimant as to how long particular witnesses would take. Mr Kamel was due to take three hours. The claimant cross examined Mr Kamel all day on 6 October and had not completed her questioning by the end of the Tribunal day. We reiterated to the claimant the need to focus on the issues in the claim and pointed out when questioning appeared to be irrelevant to the issues which we had to decide. We had to strike a balance between trying to focus the questioning and not interrupting the claimant so much that it exacerbated the effects of her impairment.

12. We extended the time the claimant was allowed to cross examine all witnesses including Mr Kamel. Ultimately we spent one day hearing the claimant's evidence and three days hearing the respondent's evidence. On 7 October, we agreed a revised timetable for the remaining evidence. The claimant wanted to spend a great deal of time questioning Mr Kamel and we explained that we considered that three days was a fair allocation of time for questioning the respondents' witnesses, inclusive of adjustments, and that if she wished to spend the bulk of the time questioning Mr Kamel, she would have less time with other witnesses.
13. The Tribunal did not sit on 8 October 2021.
14. On Monday 11 October, the following events took place:
 - At 9:47 am the claimant emailed the Tribunal to say she could not attend before 11 am. Her medication was not working and she was trying to get hold of her doctor to ask if it was safe for her to take an additional dose.
 - The Tribunal convened at 10 am and informed the respondent that there would be an 11 am start.
 - The claimant emailed at 11:01 saying that she was on the phone. She was asked to join at 11:15.
 - At 11:25 the claimant emailed the Tribunal to say that she was on the phone to emergency services.
 - The claimant joined the hearing at 11:27. She said that she had spoken to two people on the phone and had then hung up as she had to join the hearing.
 - The Tribunal then went into a private session which is not recorded in these Reasons so that we could preserve the confidentiality of matters relating to the claimant's medical position. The effect of that hearing was that we postponed the hearing until 12 October with an expectation that there would be medical evidence provided. We proposed a possible adjustment whereby the Tribunal put the issues to the respondent's remaining witnesses and the claimant then asked supplementary questions. The claimant was happy with that adjustment and it was agreed.
15. On 12 October, the claimant attended the Tribunal. She had not obtained medical evidence which explained the need for a postponement the previous day or obtained advice about her medication. The claimant told the Tribunal that she had been unable to get an appointment with her psychiatrist to discuss her medication but that she was not unfit to continue with the hearing. She said that she was waiting for a medical report. We asked her what medical report she was waiting for and she said it was to support her amendment application and that she had not asked her GP to look at the Tribunal's questions with which we had provided her the previous day. She said the GP did not have knowledge of her ADHD and could not comment on the questions the Tribunal had asked the claimant to present to her doctor.

16. We carried on with the remaining evidence, making the adjustment proposed by the Tribunal. Dr Ahmad provided written submissions at lunch time and we gave the claimant a number of breaks before and after his oral submissions to consider what she wanted to say. We explained the purpose of submissions at the outset of the hearing and again before the claimant's submissions.

Claimant's applications to amend

First application

17. This application was made at the outset of the hearing. There was no written application or draft amendment. The claimant said she wished to add two new causes of action: religious discrimination and disability discrimination. The Tribunal asked the claimant what the factual basis of these claims was.
18. The claimant said that her disability discrimination complaint related to her impairment of ADHD. She produced the report from a psychiatrist we have referred to above which diagnosed this condition for the first time in June 2021. She said that she had ADHD and anxiety and the respondents had constructive knowledge of these conditions as a result of Mr Kamel's knowledge of her problem with lateness. The discrimination took the form of dismissing her because of her lateness and not taking into account medical information.
19. The religious discrimination related to Mr Kamel's questions to the claimant in interview. The claimant said that Mr Kamel asked the questions he did because she was a Muslim woman.
20. The claimant's explanations for why she was making these applications at the outset of the hearing in circumstances where proceedings had been issued more than three years before were:
- a) The disability claim: she had initially instructed lawyers (Slater and Gordon) and she had trusted them. They had not prepared her claim form for her. She had not been able to instruct a Legal Aid solicitor as no one had capacity. She said that an ELIPS volunteer who assisted her with a preliminary hearing had 'missed' the claim¹. Although she had a law degree and was studying for a GDL, she had never studied employment law and was not aware of disability discrimination until she read an article on 26 September 2021. She had not previously

¹ It was difficult to see how the ELIPS volunteer could have spotted a claim related to an as yet undiagnosed impairment.

considered herself disabled and was just coming to terms with her diagnosis.

- b) The religious discrimination claim: she said first that the ELIPS volunteer 'missed' the claim and then that the volunteer advised her not to put it in.²

21. The claimant said that there was no prejudice to the respondents as her claims related to exactly the same facts and evidence already adduced.
22. The respondents said in response that the claimant's ignorance of the law was no excuse. She had been represented at the outset. The claimant had made no written application so the respondents could not understand the basics of the case they had to meet. It could not be in the interests of justice to allow this exceptionally late application. The respondents had not had the opportunity to adduce evidence about these claims. There would be significant prejudice to the respondents and a postponement would be required. It was not proportionate to postpone the case again and not in the interests of the parties or the Tribunal.
23. We considered the authorities on amendment set out below. We rejected the claimant's applications because we considered that the balance of hardship and injustice was overwhelmingly in favour of refusing the amendments:
- The respondents had not had an opportunity to prepare documents and witness statements on the basis of these new claims. Either an adjournment would have to be allowed of these claims which relate to matters now some 3.5 years in the past or they would be prejudiced in having to defend them without having prepared. Postponement of the claims was not in anyone's interests.
 - So far as the religious discrimination claims were concerned, the claimant already had claims of sex discrimination before the Tribunal covering the same factual ground. It was reasonable to infer that those were the claims she herself had considered to be stronger when she first consulted a solicitor and submitted her claim form.
 - The merits of the disability claim in any event seemed hopeless. It seemed vanishingly unlikely that the Tribunal would be persuaded that the respondents had constructive knowledge of the claimant's then undiagnosed ADHD because Mr Kamel was aware of the claimant's issues with punctuality.
24. It was also relevant to our decision that the claimant had had skilled legal advice prior to submitting her proceedings and that she herself has legal training. We could see no good reason why she would not have explored the possibility of these claims and made the application to amend far earlier in the proceedings.

² We could not be satisfied on the basis of this account by the claimant that she had raised such a claim with the ELIPS volunteer.

Second application

25. The claimant's second application was made on the final day of the hearing. It was an application in writing to add different disability discrimination claims from those she had sought to add at the start of the hearing and whistleblowing claims.
26. The disability discrimination claims the claimant sought to pursue were as follows. The disability in each case, she explained to us, was allergic rhinitis (although not seasonal allergic rhinitis AKA hay fever). She said that the references to ADHD and anxiety in the written application were an error. She told the Tribunal that she had had allergic rhinitis all her life. Her nose ran in cold weather and when she was anxious. On the last day of the hearing, the claimant produced a letter from her GP which said:
- The claimant had allergic rhinitis which appeared to be a long term issue as the claimant said the problem started in childhood. Her records showed that it was worse when she was outside / cold.
 - The claimant told him that the symptoms impaired her ability to carry out day to day activities.
 - The claimant told him that her condition had a 'substantial impact on her anxiety and ADHD symptoms.'
 - Since one of the main triggers appeared to be cold weather, working in a warm office space and commuting in a warm car might assist.

EQA, section 20-21: Duty to make reasonable adjustments:

Did the respondent fail to make reasonable adjustments by:

- i) Not allowing the claimant to use her car instead of public transport.*
- ii) Making the claimant use public transport, instead of providing alternatives.*
- iii) Not allowing flexible arriving times.*
- iv) Not enquiring or suggesting any other reasonable adjustments.*

EQA, section 15: Discrimination arising from a disability:

Was the claimant subjected to unfavourable treatment because of something arising in consequence of the disability:

- i) Job was threatened because nose was running.*
- ii) Dismissed because punctuality, as a result of anxiety and ADHD symptoms triggered by the disability.*

- iii) *Dismissed because I took my car because I could not ride public transport.*
- iv) *Dismissed because I did not inform line manager of lateness earlier. Despite line manager having knowledge of my condition debilitating me and ignoring my requests for reasonable adjustments.*

27. The whistleblowing claims the claimant sought to introduce were:

The public interest disclosure act 1998: Whistleblowing:

Employment Rights Act 1996, section 103 A & B:

- i) *Automatic unfair dismissal because of making a protected disclosure by raising concerns about criminal offense, and*
- ii) *Failure to comply with legal obligations*

Employment Rights Act 1996, section 47 B:

- i) *Being subjected to a detriment as an employee because I have made a protected disclosure.*

Equality Act, section 27: Victimisation related to whistleblowing.

- i) *Dismissal*
- ii) *Aggravated dismissal, in the middle of the night, in the middle of nowhere.*

Equality Act, section 26: harassment related to whistleblowing.

- i) *Bullied and insulted.*
- ii) *Aggravated dismissal.*

Equality Act, section 27: Victimisation related to disability.

- i) *Dismissal*
- ii) *Aggravated dismissal, in the middle of the night, in the middle of nowhere.*

Equality Act, section 26: harassment related to disability.

- i) *Bullied and insulted.*
- ii) *Aggravated dismissal.*

28. The Tribunal sought to clarify what factually these proposed claims related to. Some of them made no sense in law, as we explained to the claimant. It appeared that the alleged protected disclosure was the claimant's objection (on her evidence) to setting up a bank account to receive ticket monies for an event.
29. The claimant said in support of these applications that her health had deteriorated after her dismissal. She had only been able to instruct Slater and Gordon for the period of Early Conciliation. She had tried Legal Aid firms and pro bono organisations but none had had capacity to take on her case. She had struggled to do her own independent research. Towards the end of the period she had bought some employment law books but had not really been able to read them.
30. She relied on the following reference to her nose running in further information she provided:

Please find below the request for further information regarding Section 1.1 of the court order on 14th February 2019.

On 7th of March 2019 the respondent, Mr Gamal subjected me to a series of unnecessary and unprompted comments along the lines of, I was a "weak fundraiser", "I was going to fail", "I was never going to be good", "this isn't going to work" (in reference to my employment), "you can't continue", "your allergies (my nose running) look like they will hinder you from doing your job properly".

This was said on the train, and after Mr Khan told me he would raise the issue of my complaint with Mr Gamal. Mr Gamal was very aware I did not go into detail in my complaint due to time restrictions, as a result of me and Mr Gamal having to catch a train back to London.

31. The claimant said when that when she cross examined Mr Kamel, there was new information which emerged causing her to realise she had a disability claim and a whistleblowing claim. The claimant was not able to identify the new information during submissions as she said that she was feeling overwhelmed.
32. We rejected this application. Again, we considered that the balance of prejudice was overwhelmingly against allowing this amendment. The respondent had not had any opportunity to respond to the claims which were still not properly formulated and capable of being understood. In a disability discrimination claim, there is a whole process by which a respondent has the opportunity to consider whether it contests whether the pleaded impairment is a disability, request appropriate medical evidence, consider issues such as knowledge and adduce its own appropriate evidence. None of that had happened. Similarly in a whistleblowing claim, the component parts of the

alleged disclosures are usually identified early in the process so that both parties can adduce evidence and challenge the other parties' evidence.

33. It would be impossible to hear the claimant's new claims without adjourning the hearing to another date to allow further evidence to be adduced, having first properly clarified what the claims were. The prejudice to the respondents in respect of loss of cogency of evidence, given the age of the claims, was considerable. There would be further costs and a disproportionate use of Tribunal resources. Given how long the proceedings had been hanging over the parties, the effect on all concerned of further delay was also a highly relevant factor.
34. The fact that the claimant had not identified these claims until shortly before the end of the hearing seemed to us material from which we could draw at least cautious inferences about the likely lack of merits of these claims.
35. Although this was not the main reason for rejecting the amendment application, we did not consider the claimant's explanation for the delay was satisfactory. She provided no evidence as to the state of her health throughout the years since the claim went in and nor did she provide any detailed account of her efforts to obtain legal assistance. She was unable to point to the 'new evidence' which had caused her to think she might have these new claims.

Findings of fact

36. It is relevant background to these claims that the claimant and Mr Kamel knew one another for the better part of a decade prior to the claimant's employment by the respondent. They had worked together as part of a youth organisation called Young Planners and Mr Kamel had also been involved in events at the claimant's father's Saturday school. Mr Kamel described them as friends or family friends but the claimant rejected that description and said that he was friends with her sister. What was clear to us was that both were heavily involved in the Muslim charity sector in London and they had community ties, whether those could be described as a personal friendship or not.
37. The claimant did freelance event planning and helped organise some events for the first respondent prior to her period of employment. She and Mr Kamel worked together on boat dinners in 2015 and 2016 and Mr Kamel suggested some clients to the claimant in her role as a freelance event planner. The claimant asked Mr Kamel to be a referee when she applied for a Graduate Diploma in Law course in December 2017 and he agreed to do so. On one

occasion the claimant present Mr Kamel with a CD of his recitations at charity events over the years.

38. We considered that the relationship between Mr Kamel and the claimant prior to her appointment by the respondent was a very cordial and professionally supportive one and that the claimant had underplayed the friendliness of the relationship in her own evidence.
39. Mr Kamel was employed by the respondent from 6 January 2014 as a fundraiser. He was responsible for North London. Ms Khatib from 1 March 2016 was in a similar role for West London.
40. In January 2018, Mr Kamel was promoted to the role of fundraising manager. Ms Khatib told the Tribunal that she did not apply for or want such a role at that stage. She told us in evidence that Mr Kamel had been a very supportive manager to her and gave examples of ways in which he had provided such support. He had supported her through a period of ill health and had helped her gain confidence to appear in stage at events.
41. There was a reorganisation of the fundraising team at that point which left vacancies in South, East and North London. The first respondent advertised to fill those roles.
42. On 5 February 2018, Mr Kamel was in touch with HR to plan interviews with applicants for the fundraising roles.
43. On 6 February 2018, the claimant telephoned Mr Kamel and asked if the fundraising job was still available. The claimant's evidence was that Mr Kamel said, 'Yes, but it's a man's job'.
44. Mr Kamel's evidence was that the claimant phoned and asked if the first respondent was still hiring. He asked which post (as there was also an administrative role on offer at the time) and she sent him a link to the fundraising officer post. We saw the series of messages. The claimant sent a message to ask if the job was still open and Mr Kamel said yes and asked her to send her CV.
45. The claimant then called again. Mr Kamel said that he explained the requirement for flexible working hours and unsociable hours. During busy periods, that could result in a fundraiser missing family meals during Ramadan. He said that he explained the challenges and the claimant asked what did he think. Mr Kamel said that he said honestly it's a very tough role and said he would not recommend it to his sister or wife but if she thought she could commit to the job description he was confident she would do well.

46. In cross examination about this discussion. Mr Kamel made reference to his cultural habit of referring to others in his community as 'brothers and 'sisters':

When I speak to a brother – I say brothers find it difficult. I have seen so many brothers leaving the job and dropping out in some cases within a few weeks especially if they join just before a busy period. I have seen many people, men and women, dropping out especially during very busy periods because pressure and demands are too high. I try to say to people not from a fundraising background – highlight difficulties of job – sisters and brothers.

47. Mr Kamel said that this was how he spoke to people he knew in the Muslim community. When he spoke to a 'sister', he would refer to 'sisters' and when he spoke to a 'brother' he referred to 'brothers'. He was trying to tailor what he said to the audience and make it relevant to the person he was speaking to. He would have provided examples of men who found it difficult to a male candidate.
48. Another important piece of evidence for the Tribunal when assessing which account of this conversation to accept was the covertly recorded conversation which we refer to in more detail below. In that conversation, the claimant accused Mr Kamel of saying that the job was a man's job, Mr Kamel gave an account of what he said he did say and the claimant responded that he had just said it was a man's job,
49. It seemed to us that that gave us a good steer as to what had occurred in the 6 February 2018 telephone conversation. Mr Kamel said something along the lines of what he reported to the Tribunal. The claimant's interpretation was that he had said it was a man's job and she has subsequently remembered that that was what he actually said.
50. We were further influenced by the undisputed facts that Mr Kamel asked for the claimant's CV and then appointed her to the role. We were also influenced by Ms Khatib's evidence about how she found Mr Kamel as a manager which we found straight forward and entirely credible.
51. On 9 February 2018, Mr Kamel contacted HR to ask if he could add some interviewees. He was told he could add two. We note that Mr Kamel was progressing the claimant's candidacy despite the fact that the interviews for the role had already been arranged.
52. On 11 February 2018, Mr Kamel contacted the claimant and a further candidate to ask them for interviews. The claimant telephoned Mr Kamel. Mr Kamel said that she asked what types of question to expect and he gave her some insight and told her not to worry and be confident as her record especially with boat events was good and that she could point to her access to volunteers and other fundraising avenues such as schools. The claimant

said that Mr Kamel tried to persuade her to apply for an administrator role instead.

53. We did not accept the claimant's account which did not seem to fit with the timeline. Mr Kamel had scheduled her in for a fundraiser interview. We concluded that she was remembering the initial conversation when he asked which role it was that she was applying for.
54. On 12 February 2018, the candidates were interviewed by Mr Kamel, Mr Khan and Ms K Abuabdouh, HR coordinator. Ms Abuabdouh had travelled from Manchester to support the interviews.
55. There were no notes of any interviews and Ms Raja was questioned about the matter. She said at the time she had been promoted to HR business partner but the title was perhaps fancier than the reality. She was overworked at the time. They hired a recruitment business partner shortly after this. The first respondent did have a process at the time to retain interview notes for six months in hard copy. Mr Khan said he had made notes but had not retained them.
56. Ms Raja said that Ms Abuabdouh had printed out the interview 'packs' and taken them to London but she had not filed the notes properly when she returned to Manchester. When Ms Raja had looked for them for the purposes of disclosure in the proceedings she had been unable to locate them. She had not asked Ms Abuabdouh at the time of her return to Manchester if she had filed the notes because Ms Abuabdouh was not her direct report but on a similar level to herself.
57. We note that the respondent's systems at the time seem to have been somewhat shambolic and we could understand why the claimant felt concerned about documents which would have been expected to have been retained and which were not made available. It was poor practice.
58. At the interview, the claimant asserted that Mr Kamel said the following things:
 - What will you do when men refuse to deal with you because you are a woman?
 - What will you do when no men in the community want to work or speak with you?
 - Will you be able to do the job properly considering you are a woman?
59. The second question appeared for the first time in the claimant's witness statement. The claimant said that she replied to the second question: 'Then I will work with the women in the communities' and Mr Kamel said 'that is a good answer'.

60. In respect of the last question, the claimant said that Mr Kamel gave the example of working late to deliver events.
61. Mr Kamel denied asking those questions. He said that he asked questions to test candidates' understanding of the Muslim charity sector. He said that he did ask what would her response be if she contacted a mosque and they refused to work with her. He said that the claimant said she would ask her male volunteers to approach those mosques and that this was a good answer.
62. Mr Khan said that Mr Kamel did not ask the questions the claimant described but did ask questions about how the claimant would overcome difficulties a woman might face in relation to mosques for example.
63. The claimant also said that Mr Kamel asked if she would be able to attend the first respondent's away day, implying she would not because she is a woman. Mr Kamel said that he did ask about the away day. He said he asked all of the candidates about whether they could attend away days.
64. Ms Khatib gave some evidence as to how, as a female fundraiser, she might have to approach some of the mosques. In some instances she would have to ask male volunteers or her manager to approach the men in particular mosques:
- I am there to generate income. I know they prefer to deal with a male. I sometimes use a colleague who is male to deal with the iman He would sit with the brothers. I let them meet with men and then when they finished I sealed the deal. Some mosques they prefer to deal with males, that school of Islam, I can't recall how many. I deal with over 100 mosques. When have a collection especially in Ramadan on Friday – males coming out, I won't stand there as a female when brothers are leaving, I bring male volunteers or a manager. We cover the sisters' area. I have to find a solution.*
65. We accepted Mr Kamel's account of the interview. We were conscious that these were the first interviews he had undertaken in his new role, in the presence of an HR representative and his own line manager, and that Mr Kamel would have been taking care to conduct the interviews properly. He had worked with Ms Khatib and knew it was relevant to ask the claimant how she would deal with some challenges she might face in respect of some mosques where the responsible men would not wish to deal directly with a woman in the fundraising role. We did not accept that he would have asked his questions in the very unprofessional form the claimant alleged. It was inconsistent with the context and it was inconsistent with the actual result of the interview.

66. What we concluded is that the questions the claimant has alleged were asked are the interpretation the claimant has put on the questions around the mosque issue which Mr Kamel actually asked.
67. We accepted that all candidates were asked about the awayday – the away day was imminent at the time of the interviews.
68. The claimant told the Tribunal that Mr Kamel rang her after the interview and asked her repeatedly if she really wanted the job. She said that he asked what kind of event ideas she proposed and asked for her to send them through the next day.
69. Mr Kamel said that the claimant asked how the interview had gone and he said that it had gone very well and was one of the best interviews but that he was not able to advise her whether or not she would be offered the job yet. He said that he asked her once if she was still interested in the job.
70. Bearing in mind that the claimant was subsequently offered the job, again we accepted Mr Kamel's account. It made sense to the Tribunal that he would check with the claimant whether she was still interested in the job after the interview, because he needed people in post and it would not make sense to offer the role to the claimant if she was no longer interested.
71. Mr Kamel told the tribunal that the claimant was the best performing candidate they saw and he offered one fundraiser post to her and one to Mr Malik.
72. On 19 February 2018, Ms I Ahmed, people and culture assistant, wrote to the claimant offering her the role of fundraising officer on a salary of £25,000. The contract was a one year fixed term contract.
73. Mr Kamel telephoned the claimant the same day to say the salary was £24,000 and that the £25,000 in Ms Ahmed's email was an error. The claimant tried to negotiate the salary up.
74. Mr Kamel then discussed the error with Mr Khan and Mr Khan agreed that the claimant should be offered the £25,000 rather than reissuing the offer with the lower salary.
75. We heard evidence as to why Mr Malik was always going to be offered £25,000. Mr Kamel said that Mr Malik had more experience of a variety of fundraising events and grassroots activities whereas the claimant's experience lay in organising events. Mr Malik had been a volunteer for the respondent for many years; he had led on the smaller grassroots activities which were important to engage with the community and had also led on big

events. Mr Kamel said that, although he was a volunteer, Mr Malik was almost like a member of staff. He had shadowed a manager and learned from her and had relationships with high net worth donors. He had brought in partners and worked on TV and radio appeals. He had also done similar work for other leading Muslim charities and also worked with partners from professional backgrounds such as accountants and banks.

76. Mr Khan said that in addition Mr Malik's network was very important to the respondent – both his contacts with high net worth donors and with professional networks.
77. The CVs for the claimant and Mr Malik seemed to us to reflect what Mr Kamel told us about the differences between their experience.
78. Around this time, Mr Kamel offered to introduce the claimant to a contact for some freelance work with an organisation called MEND. The work would have involved some administration work and advice about an upcoming boat dinner. The claimant turned this offer down on 19 February 2018 in a friendly text message to Mr Kamel. She told the Tribunal he was offering her the work in order to dissuade her from taking the role with the respondent.
79. Mr Kamel said that the work was providing advice about planning a boat event. It appeared to be something he thought she could do before she started her work for the respondent.
80. On 20 February 2018. Mr Kamel told the claimant that the salary would be £25,000 and asked when she wanted to start. They exchanged messages about how she would have to attend an induction at the respondent's head office (in Manchester).
81. On 21 February 2018, the claimant asked to start on 26 February 2018. She was told her induction would take place on 12 March followed by the respondent's away day event from 13 to 15 March 2018.
82. Ms Raja explained to the Tribunal that the respondent's induction process was an all day event requiring input from various departments. They could not run an induction day every time a new person started employment but would do induction days for batches of employees so it was unlikely any new employee would have an induction on their first day. Mr Kamel wanted the claimant to start straight away, whereas usually new employees might have a four to six week notice period.
83. This also meant that not all of the paperwork for the claimant was ready when she started and her laptop was on order. They did not have laptops in reserve but ordered them as needed and they then had to be configured by IT.

84. All contracts for new employees had to be physically signed by the CEO who was not present in the office.
85. The claimant wrote to Ms Ahmed on 22 February 2018 before she commenced work to ask if she would get a brief induction when she started work. Ms Ahmed replied on 23 February 2018 to say:

So the induction you will be receiving from us will be at the head office in Cheadle on 12th March, however Khaled will be giving you an overview of Human Appeal along with your set duties and tasks on your first day.

86. Also on 23 February 2018, Ms Ahmed wrote to Mr Kamel to say that Mr Malik had said that the earliest he could start work was 19 March 2018, however he would be attending the same induction day as the claimant on 12 March 2018.
87. We saw a series of text messages between the claimant and Mr Kamel from 25 February 2018:
- Mr Kamel asked the claimant to attend early and before a planned conference call on her first day. The claimant then asked if she should come at 9:30 and he said he did not mind.
88. On 26 February 2018, the claimant texted Mr Kamel at 10:11 am to say she was on her way but there was a lot of traffic. He asked her how long she would be and then tried to join her to the conference call. It appeared that the claimant was late on any basis given that she had been told to arrive before the planned conference call. She was late again the following day.
89. The claimant alleged that on the first day she was given minor PA and admin tasks. She said that male colleagues were not given such tasks. The example she gave in her statement was being asked to count coins which had been collected by Mr Kamel. She said that Mr Kamel told her that the coin counting machine was not working but another employee told her that it was and that Mr Kamel would have to sign for the coins in any event. The suggestion was that the work was not required.
90. Mr Kamel's evidence was that the coin machine was not working. Two people had to count each batch of coins. Everyone would do this job, including directors. Ms Khatib and Mr Khan gave essentially the same evidence – that coin counting from collections by bucket was done by everyone at whatever level when necessary. It was not 'personal assistant' work for Mr Kamel as the claimant suggested.

91. We accepted that the coin counting task was part of the fundraiser role rather than 'PA work' for Mr Kamel. The claimant may not have expected her job to encompass some lower level tasks and admin work; she was used to planning large events but the fundraiser role encompassed a mix of tasks. It seemed to us that the mismatch between the claimant's expectations and the reality of the role probably got the working relationship off to a poor start. Because of their previous social relationship, Mr Kamel seems to have struggled to put in place firm boundaries and expectations as the claimant's manager. The claimant was on a learning curve as she had not performed the fundraiser role and she seems to have found the on the job learning and the mix of responsibilities and tasks challenging. She complained about having to do administrative work which Mr Kamel said was part of the work of a fundraiser.
92. The claimant complained about not being provided with a desk or computer. She said that there were two desks only in the office and they were taken by Mr Kamel and Mr El-Turk. The respondent said that in fact there were four desks and a long table in the office. One desk was used by Mr El-Turk, a very long serving employee, but the remaining spaces were hot desks to be used by employees and also volunteers when they used the office. A lot of the work of the fundraisers was out of the office. Ms Khatib said that there was no rule about the desk used by Mr El-Turk but that no one else used it 'out of respect'. Mr Kamel did not have a fixed desk. There were several desktop computers available for use but employees were allocated laptops. The claimant's laptop was not ready on the first day of her employment but it had been ordered for her.
93. The claimant complained that Mr Malik received his induction before starting. Mr Malik did not commence his employment until 19 March 2018, which was after the group induction day.
94. The claimant said she had to ask repeatedly on the first day for her contract and was given excuses. She said that she eventually got it at the end of the day but it was missing documents. She asked HR for these and was told she would get them at the induction day. Ms Raja said it was the respondent's practice that other documents which employees were required to sign when starting employment were provided in hard copy at induction and then collected once employees had signed them. She said that if the documents were not dealt with in this way, employees did not necessarily return them.
95. The claimant said that Mr Kamel asked her to set up an event booking page, email address and a new bank account external to the respondent for an event. She said that she questioned the permissibility and legality of these instructions and Mr Kamel became annoyed with her. Mr Kamel denied that

he gave any such instructions. The claimant did not put to Mr Kamel that he as seeking to commit fraud although the Tribunal told her in terms that she needed to put that allegation to him if she wished to pursue it.

96. In evidence, the claimant said that Mr Kamel then said she should use the bank account of a volunteer. She said she told Mr Kamel that she would ask Mr Khan if that was allowed and he said Mr Khan was new and didn't know anything. She asked why he couldn't do it and he said angrily 'forget the whole thing'. She still had to set up the email and an external event booking page, she told the Tribunal. In submissions the claimant said that it was a volunteer's husband's bank account.
97. It was difficult for the Tribunal to understand why, if confronted with an apparent fraud on the first day of her employment, the claimant would not have raised the issue with someone at the time.
98. Mr Kamel told the Tribunal that they often used an external provider to manage ticketing for events. There would be multiple people involved so it was possible that a separate email account would have been used to manage the tickets on an occasion.
99. It seemed to the Tribunal that the explanation of a separate email address to manage ticketing for a particular event made sense. We think that the claimant concluded that this was suspect and over time her account of what occurred has become inaccurate and significantly embellished. We note that during the hearing itself she would sometimes give a materially inaccurate account of something which had occurred or evidence which had recently been given in circumstances where we did not form the impression that she was deliberately misrepresenting what had occurred but genuinely believed the inaccurate account to be correct.
100. It seemed to us very unlikely that Mr Kamel would have asked a new employee to set up a bank account to enable him to orchestrate a fraud on the respondent even if he had been minded to commit such a fraud (and we make clear that we saw no credible evidence that he was so minded).
101. We did not accept the claimant's account of these events.
102. Mr Kamel told the Tribunal that during these early days of the claimant's employment, she did not engage with volunteers as she had been asked to do. She did not meet with an important group of volunteers in Luton and prioritised a collection at a school instead although Mr Kamel asked her to get a volunteer to cover the school collection as the volunteers meeting was important as it involved planning for the year. She did not meet with the Luton volunteers thereafter either.

103. She requested not to have to be responsible for events in her area which had already been planned such as a vintage tea party. She felt that the event would not work and did not want the cost of the event to come from her budget. Mr Kamel sought to reassure her about the event and said that she would not be blamed for the event if it was not successful. We saw messages in which she told Mr Kamel that she did not wish to go ahead with the tea party at all and ultimately Mr Kamel had to take over the running of that event.
104. Ms Khatib said that the claimant was vocally opposed to the tea party: *You were against using the word vintage when it was not vintage, you were worried that it was at a community centre, you were worried about quality of event. Kamel said if it failed it's on me; if it succeeds it's on your target, and you had it on paper, you were very negative and didn't want to do it.*
105. The claimant said that Mr Kamel told her that her comments about the event were a 'weakness' and he would 'flag it up'. On her account this happened on 28 February 2018. Mr Kamel said that he did eventually express his disappointment to the claimant about her not taking the event on and he said that her refusal to take on the event would be flagged up and viewed negatively in the organisation.
106. Mr Kamel said that the claimant also later (on 7 March 2018) declined involvement in another pre-planned event which was a cupcake sale. She declined to deliver cupcakes to the houses of those who had purchased the cupcakes and said her father would not allow her to do something like that and it was not part of her contract. The claimant told the Tribunal that delivering cupcakes had not been mentioned in interview and did not form part of her job description. She did not feel comfortable carrying out home visits and felt Mr Kamel was targeting her because she was a woman.
107. Mr Kamel said that he told the claimant it was a normal well-established fundraising activity and that the team of volunteers had done it before and there had never been any issue. If the claimant refused to do it, it would reflect badly on them with the volunteers. The claimant said that Mr Kamel said that her refusal was a 'weakness' which he would 'flag'.
108. Mr Kamel and Ms Khatib told the tribunal that it was a normal part of the role to deliver cupcakes and it was safe; it was a matter of delivering cupcakes to addresses of donors. It was not that the claimant was being asked for example to sell cupcakes door to door.
109. On 28 February 2018, the claimant said that Mr Kamel compared a group of female volunteers to slaves in a telephone conversation. She set out in detail the exchange on her witness statement. She said that Mr Kamel said 'If you

use the volunteers properly, they will be as if they are slaves for you.’ and that she queried his reference to slaves.

110. The claimant’s evidence was that the ten line exchange in her witness statement was a verbatim account of what had been said which she later wrote down. She did not produce the notes.
111. Mr Kamel denied that this conversation occurred. He pointed in support of his account to a text message exchange between the two which occurred whilst they were arranging an event together prior to the claimant’s employment by the respondent. In the course of that exchange the claimant said: ‘Volunteers aren’t slaves’ and Mr Kamel replied: ‘Who suggested that volunteers are slaves. Zainab, volunteers are your team to help u ease ur job.’
112. In terms of other evidence we had, we noted that messages with volunteers, including the Luton group, which we saw, showed that the relevant volunteers could be quite forceful and have strong views. It seemed to us that the most likely course of events was that whilst Mr Kamel was trying to encourage the claimant to work with the volunteers the claimant herself made another reference to volunteers not being slaves. It was we found to some extent a feature of the claimant’s recollections that she would remember the interpretation she placed on what someone had said as what they had literally said. This occurred on occasion when evidence was being given in the course of the hearing.
113. The claimant complained that she was micro managed by Mr Kamel, given tasks outside her job description, worked in excess of her contracted hours and expected to respond to calls at night.
114. There was not much detail provided by the claimant about these allegations but she put to Mr Kamel that he had required her to carry out administrative tasks for a particular volunteer such as setting up accounts and doing emails. Mr Kamel said that he had asked the client to work with the volunteers on events. That would involve the claimant leading the event and there would also be administrative tasks to do. He had not asked her to perform administrative tasks for volunteers but had asked her to take on the tea party event.
115. We concluded that the fundraising role did involve some antisocial hours in the evening and at weekends but that this had been flagged up to the claimant at interview.
116. The micro managing appeared to consist of Mr Kamel asking the claimant to perform tasks which were part of the fundraiser role such as continuing with the tea party event. The impression we gained was that the claimant expected

to continue to work semi autonomously as she had when she was a freelance event planner. She challenged management instructions.

117. On 2 March 2018 the claimant messaged Mr Khan, Mr Kamel's line manager, on Facebook saying she had a few questions as she was really confused about some things and had not had an induction yet. This was a day when the claimant had been pushing back with Mr Kamel about working on the tea party event.
118. Mr Khan replied that he had just got back from a family break. He said that the claimant had done really well in interview, he saw lots of promise in her. He offered her support and advice if needed and provided her with his mobile number. He said that he looked forward to seeing her the following week. Mr Khan worked in the Manchester office which the claimant was due to visit the following week.
119. Mr Khan was surprised that the claimant had messaged him via Facebook rather than using his work email address.
120. On 2 March 20218, the claimant sent Mr Kamel a text message:

Do you want me to come into the office today? I'm going to try and book with GP in the morning because my nose won't stop running from the cold!
121. The claimant said that Mr Kamel was put on notice she was unwell and should have made more enquiries. The Tribunal considered that the text message was not something which would have provoked a reasonable manager to make any detailed queries about health. It did not suggest that the client was seriously unwell.
122. On 3 March 2018, there were more messages between Mr Kamel and the claimant about the tea party event. The claimant did not want her telephone number on the poster and Mr Kamel agreed to include a volunteer's number instead. Looking at the content and tone of the messages over this period, the Tribunal could understand why Mr Kamel had told the claimant that her refusal to be involved in the event would be perceived as an issue.
123. The claimant said that Mr Kamel had removed a mosque from her area for budgetary purposes at a meeting on 6 March 2018 so that her region lost the revenue from the mosque. She said that Ms Khatib had expressed shock about the proposal and said she herself would not have accepted it. Mr Kamel denied that that had occurred and Ms Khatib, who was present at the relevant meeting, said that the claimant's account was '100% not true'. She would not

have been shocked if the mosque had been put into a more general budget pot but it was not and she did not make the remarks attributed to her by the claimant. She did mention the mosque to the claimant when the claimant was being negative about the work Mr Kamel had given her. She told the claimant she had been given rich areas in her region including the particular mosque, which donated £33,000 at Ramadan. She told the claimant that Mr Kamel was doing his best to add to the income of her region.

124. At what appears to have been the same meeting on 6 March 2018, the claimant told the Tribunal that she discussed her plans and ideas with Mr Kamel but he did not approve any of her ideas or give a reason for his refusal. We saw a table of the ideas the claimant presented.
125. Mr Kamel told the Tribunal that the claimant's plan included events and activities some of which included interesting and innovative ideas which he was happy to consider. He said that he was not confident enough in the ideas to proceed with them at that point as there were a lot of events taking place just prior to Ramadan which required a high level of investment. He said that he told the claimant he was happy to try the ideas in future but not before Ramadan when they would put existing fundraising plans at risk, unless the claimant could think of ways to increase the potential revenue and lower the risk. He said he discussed with the claimant the need for her to do more grassroots activities.
126. The claimant continued to disagree with Mr Kamel. She also raised with Mr Kamel the issue of why the income from the boat event was attributed to the team as a whole rather than to her region. Mr Kamel had made this decision prior to the claimant's employment to maximise involvement and income and reduce conflict.
127. Ms Khatib's evidence about this meeting was that the claimant's plan lacked grassroots events and focussed on high end events. Mr Kamel had simply told the claimant that the timing was wrong for these events. They had both tried to share their experience with the claimant about what the appropriate timing for the events would be. The claimant had been adamant about three expensive events in particular.
128. We concluded that Ms Khatib's and Mr Kamel's consistent evidence about this meeting was to be preferred to that of the claimant.
129. On 7 March 2020 Mr Kamel and the claimant took a train together from Manchester. In her witness statement the claimant said that Mr Kamel told her on the train that she was a 'weak fundraiser' and was 'never going to be any good'. In oral evidence she suggested that he had 'hurled abuse' at her but she did not further particularise the alleged abuse.

130. Mr Kamel said that they conversed about various matters on the train including family. He said that they had positive discussions about work and he provided the claimant with some feedback, sharing some lessons he had learned from fundraising and from working in her region in particular.
131. He also raised some performance concerns relating to the tea party, the cupcake sale and the claimant's lack of engagement with volunteers. He said that he expressed his appreciation for her experience in managing events but emphasised the need to become more involved in grassroots events. He denied making the statements the claimant had alleged.
132. He also raised with her the fact that she challenged so many of his instructions, said that he would guide her and support her but that if she continued to argue about almost everything and unreasonably challenge his instructions the relationship was not going to work. He said that the tone was polite and constructive.
133. We accepted Mr Kamel's account of the conversation. The claimant's version shifted from her statement to 'hurling abuse'. Mr Kamel's account seemed to us consistent with the tone and approach we could see in conversations which the claimant later covertly recorded and which were very far from amounting to 'abuse'.
134. The claimant also alleged that her nose was running on the train and that Mr Kamel said, 'your allergies look like they will hinder you from doing your job properly.' Mr Kamel said that he did not recall the claimant's nose running but that he would not have said anything about allergies hindering her in her job. The claimant also said that Mr Kamel should have asked what the respondent could do to help her when he saw her nose was running and should have put reasonable adjustments in place.
135. Overall, it seemed to us that here as at other times, the claimant did not accept any criticism even when expressed in a constructive and helpful way as we found Mr Kamel's criticisms to have been expressed. She characterised that criticism as 'hurling abuse'.
136. The claimant said that whilst at the Manchester head office she told Mr Khan that Mr Kamel was preventing her from doing her job, not approving any of her proposed events and setting her up to fail. Mr Khan agreed that the claimant complained about Mr Kamel's management but not that she said that Mr Kamel was setting her up to fail. Mr Khan told the claimant to be patient and try to accommodate Mr Kamel's needs. The claimant said that Mr Khan told her that her probation period would be six rather than three months but Mr Khan denied having said anything about the claimant's probation period; this was not a matter for him as he was not HR or her line manager. He told the claimant he would speak to Mr Kamel.

137. Mr Khan subsequently spoke with Mr Kamel and suggested he be patient with the claimant as she was new to fundraising. He suggested Mr Kamel give her more time and support. Neither Mr Khan nor Mr Kamel thought the claimant was complaining or was going to complain about sex discrimination.
138. On 8 March 2018 the claimant sent Mr Kamel a fundraising idea about selling roses for Mother's Day. We can see from the messages that he expressed great enthusiasm for the idea but it was not pursued at the time because it was too close to Mother's Day. The claimant agreed to take it forward on another occasion.
139. The claimant and Mr Kamel also exchanged some messages about the claimant booking a hotel for her induction day. The claimant was asking what hotel she should book and Mr Kamel made a suggestion, the claimant did not complain that she was booking the hotel herself.
140. On 9 March Mr Kamel asked the claimant to attend the meeting with the Luton volunteers. The messages show that she declined Mr Kamel's instruction to prioritise the meeting over the school visit which she had agreed to do at her father's school. Mr Kamel told her the volunteer meeting was crucial; this was the most active group of volunteers responsible over a year for £100,000 of fundraising. It was to plan for the whole year and the claimant had declined to meet with the volunteers previously. Although the claimant was asked to arrange school collections she was not obliged to attend them herself and should have sent volunteers. A school collection might raise £1000.
141. On 10 March 2018 on a group WhatsApp chat, Mr Kamel nonetheless wished the claimant luck with the event at the school. The claimant replied 'Thanks I need it. Lol. Bit unwell'. Mr Kamel said that hopefully she would feel better when she saw the results of the collection.
142. The claimant said the Mr Kamel should have realised at this point that she was unwell on an ongoing basis. Mr Kamel said that was not his impression.
143. On 12 March 2018, the claimant told the Tribunal that she found out that Mr Kamel had assigned one of her event ideas to a male colleague.
144. We saw some messages sent to a team group chat in which Mr Kamel said:
We need to have an event for volunteers early in April. Part of it to be training and part about the year plan. Who can lead on this?
145. Mr Malik replied: 'I can do it if you want' and Mr Kamel accepted Mr Malik's offer. He told us that Mr Malik had volunteered first. The claimant did not volunteer and there was no evidence she raised the issue with Mr Kamel.

Induction day

146. The claimant's induction day in Manchester was 12 March 2018. It appeared that the claimant chose to drive to the event. She told the Tribunal that she was at the garage with her father checking the car at approximately 7:30. Although she talked about the traffic being bad around her home, it seemed to the Tribunal she had no hope of arriving in Manchester for an event starting at 10 am if she was leaving London at around 7:30 am.. She did not tell the Tribunal that her lateness was connected with her health although she put to Mr Kamel in relation to this point that he was aware she was unwell (as a result of the text message we have referred to above).
147. At 9:05 Mr Kamel sent a WhatsApp message wishing the claimant and Mr Malik luck with their induction day. Mr Malik messaged at 9:11 to say that he was on the train. The claimant did not respond until 3:05 pm when she said: 'Ummmmm thank you'.
148. At 9:08 the claimant sent an email to Iman Ahmed, HR assistant, saying, 'I am on my way but there are more delays than I expected so I might be a little late, really sorry!' Ms Ahmed advised Ms Raja of the claimant's message and asked of she should wait for the claimant. Ms Raja said that Ms Ahmed should start the induction and go over with the claimant at the end of the day what she had missed.
149. At lunchtime Ms Ahmed advised Ms Raja that the claimant had still not arrived. Given that the claimant had missed much of the programme, Ms Raja told Ms Ahmed to complete the relevant paperwork with the claimant if there was time and that the claimant would have to attend the next induction programme.
150. The claimant signed in at reception at 2:42 pm. She had not sent any further messages to anyone.
151. We saw messages between Mr E-Noor and Mr Kamel in which Mr E-Noor raised the claimant's extreme lateness for the induction day. Mr Abdul-Rahman rang Mr Kamel to express disappointment that the claimant had not turned up and Mr Kamel said he would raise the matter with the claimant at the away day and ask the claimant why she was late.
152. The claimant had booked herself a hotel for that night so she could then travel to the away day event without returning to London.
153. The claimant complained that she had had to book her own hotel. Mr Kamel said that he had never booked a hotel for another member of staff, male or female.

154. Ms Raja's evidence was that the respondent had a system where an employee filled in a travel booking form, had it approved by their line manager and then sent to a booking officer in advance. However, given the nature of the work, it was common for staff to book their own hotels or trains and expense them back.
155. We noted that the message we have cited above showed the claimant raising the hotel issue on the last working day before the induction day.

13 March 2018

156. The claimant said that she woke up feeling very unwell and was unable to drive. In oral evidence, she said she had severe anxiety symptoms and could not lift her head from the bed. She felt dizzy and nauseous and needed the bathroom. She decided it was not safe to get in the car and drive even five minutes to the office. She said it was Mr Kamel who made her so ill and she was physically sick.
157. On 9 March 2018, Ms Ahmed had sent an email to staff attending the awaydays

Please find below all information pertaining to the Away Day 2018. I expect all staff to be present at the venue by 11:30 am. As such, the coach will leave head office at 9:30am promptly and I expect all staff to be in office by 9am.

158. The claimant had previously been told about the coach arrangement and not objected to it although she had made it clear that she was intending to drive rather than take the train to Manchester for her induction.
159. The claimant did not arrive at head office to take the coach. She did not contact anyone. She said that she extended her checkout time at the hotel because she was feeling so unwell. At some point she set off in her car to the awayday venue. Ms Ahmed tried to contact the claimant unsuccessfully when she did not arrive for the coach departure.
160. Mr Kamel tried to contact the claimant. We saw some telephone records. He telephoned at 12:38 pm and 12:57 and got no answer. He rang again at 1:27 and got no answer but the claimant sent a text saying, 'I am on my way'. Mr Kamel texted back: 'how far?' but received no answer.
161. Mr Kamel spoke to Mr Abdul-Rahman about the claimant's absence. He told Mr Abdul-Rahman that he had been unsuccessfully trying to contact the claimant. They discussed the claimant's work performance and attitude to

work and he understood Mr Abdul-Rahman to be advising him that that the claimant should be dismissed, saying she had no respect for the organisation

162. Mr Kamel telephoned the claimant again at 3:09 pm when she still had not arrived and she said that she was on her way but was not feeling too well.
163. Mr Kamel messaged the claimant at 4:19 pm asking her to let him know when she arrived. She messaged: 'I am behind you' (in the conference hall).
164. The claimant said that she arrived between 3 and 4 pm and only missed the introduction and a brief icebreaker.
165. She said that an employee named Hamza who started around the same time as herself just did not attend the away day. She said he told her he was not attending because it was not his thing. Ms Raja told the Tribunal that Hamza had fallen ill and notified her he would not be attending.
166. The claimant said that two employees called Zen Raza and Tokheer were skiing in the Alps and did not attend. Ms Raja told the Tribunal that both employees had booked their holiday before the away day dates were arranged and would not therefore have been required to attend.
167. After the claimant arrived Mr Kamel and Mr Abdul-Rahman exchanged messages. Mr Abdul-Rahman said that the claimant's behaviour was 'really sending a very negative and disturbing message about her performance and personality.' Mr Kamel and Ms Raja should have a meeting with the claimant to communicate the respondent's disappointment in her performance. Peninsula (the external HR consultants used by the respondent) should be consulted. Mr Kamel asked if that message could just be given to the claimant and 'She can stay at the rest of the away days and carry on with her job.'
168. What was clear to the Tribunal from the messages was that there was no enthusiasm from Mr Kamel to dismiss the claimant even at this stage. Mr Abdul-Rahman was the decision maker but was requiring Mr Kamel to carry out the dismissal as the claimant's line manager. Mr Kamel said in evidence that he had divided loyalties; he was having difficulties with the claimant but did not want to dismiss her.
169. Ms Raja met with Mr Abdul-Rahman at 5 pm – they discussed the claimant's lateness and Mr Abdul-Rahman reported that Mr Kamel was having difficulties working with the claimant. He asked Ms Raja what the options were as he did not consider the claimant was the right fit for the respondent.

170. Ms Raja told Mr Abdul-Rahman that the claimant was in her probation period so they had the right to give her one week's notice and terminate her employment. He asked her to verify that this was a viable option. Ms Raja spoke with Peninsula who said that it was viable as long as there were no discrimination concerns.
171. At 7:30 pm Ms Raja told Mr Kamel and Mr Abdul-Rahman the results of her enquiries. They also told Mr Khan what was happening. Mr Abdul-Rahman expressed a clear view that the claimant's employment should be terminated.
172. At about 8:20 pm after supper, Mr Kamel, Mr Khan and Ms Raja held a meeting with the claimant.
173. Mr Raja said the meeting was held that evening because the following morning she would have been organising the day's activities from early in the morning. She was the business partner and needed to be at the meeting. That evening the other away day attendees were around the campfire occupied with an awards ceremony so they could use a breakout area off the conference hall to meet with the claimant.
174. The claimant's account of the meeting was that Mr Khan asked why she had been late the last two days and said, 'this just isn't going to work'. She apologised and said she had been very unwell. She said that Ms Raja told her she did not look unwell. She offered to produce a doctor's note. Mr Khan said she had not disclosed any medical conditions. She said she had not been given any forms to complete. She said Mr Khan said it would have been better for her to take a sick day off and not show up at all. She said that Mr Khan accused her of wasting the respondent's time and money. She said that Ms Raja accused her of not communicating about her lateness. She said that the meeting was aggressive and that caused her to break down in tears and leave the meeting several times.
175. The claimant said that Mr Kamel eventually said that the real reason for the meeting was that the claimant had refused to do home visits and that there had been disagreements between the claimant and Mr Kamel. The claimant said home visits were not part of her job description and the disputes occurred because Mr Kamel was preventing her from doing her job.
176. Ms Raja's evidence was that she explained they were terminating the claimant's contract. Mr Kamel said that they attempted to understand from the claimant why she was so late, They asked her why it took her over three hours to reach the venue when the drive should have taken 1.5 hours. The claimant said that she had had to stop along the way due to illness. The claimant said that there must be another reason for dismissing her.

177. Ms Raja said that the claimant was very agitated and loud and wanted Mr Kamel to explain why the decision had been made. Mr Kamel tried to explain about the claimant's behaviour which he had experienced since her employment had commenced and how it was difficult to work with her. The claimant interrupted Mr Kamel and tried to talk over him. She said that she knew from the beginning that Mr Kamel had planned to get rid of her.
178. Ms Raja intervened and said to the claimant that she had been advised of the reasons for termination and that the decision would not be changed. She would receive one week's pay in lieu of notice.
179. The claimant then said she had been very ill and had not had the energy to tell Mr Kamel she was going to be late. She said that she had telephoned reception at the hotel to extend her stay in the room. M Raja said that she did not tell the claimant she not look ill but asked her about what was wrong with her health. Ms Raja said that the claimant was loud and aggressive. The claimant did not explain the nature of her illness although Ms Raja asked her several times. Ms Raja said if anything had been raised which in her view was a red flag or suggested the dismissal should not go ahead, she would have stopped the meeting.
180. The claimant said she was going to leave the venue right away but Mr Kamel tried to persuade her to stay the night. She refused and said she was feeling insulted. She left the room saying she did not even want her week's notice.
181. It was clear to the Tribunal that the claimant was, understandably, very upset during this meeting which was unexpected by her and went on for some 45 minutes when she was away from home in an unfamiliar venue. We saw during the course of the hearing itself that when the claimant became upset she also interrupted others and became loud; she could appear aggressive. We accepted that these behaviours were related to her ADHD. It was also apparent from the hearing that when the claimant became upset her ability to recall what had just been said or done was impaired. We accepted that the respondent's account of the meeting, insofar as there were material differences, was to be preferred.
182. It was clear to us that the respondent had attempted to convey to the claimant that there were problems with her lateness and reliability and that the claimant did not provide any coherent reasons at the meeting for her failures to be in touch about her lateness.
183. The respondent, we considered, had made an error in having this meeting in what was a side area off the main conference room at the venue. It was not an entirely private place. It appeared that there was nowhere more suitable at the venue. Ms Raja took some notes but managed not to take the notebook

back to the office with her and the notes were lost. She told us that she had in any event set the notebook aside when the claimant had become agitated.

184. The claimant drove home that night despite the respondent suggesting she leave in the morning. She was very upset and would have had to share a room with other employees had she stayed.
185. On 16 March 2018, there was a telephone conversation between the claimant and Mr Kamel which the claimant covertly recorded. We saw various transcripts of the recording – one commissioned by the respondent from an agency which translated the few words and phrases which were in Arabic. The differences between the versions did not seem to the Tribunal to be material. We also heard the original recordings. In the recording the claimant is audibly angry. Mr Kamel asks her if she got home safely. She asks why she was dismissed at night, Mr Kamel explains that they had activities organised the following morning. He expresses concern about their ‘family kind of relationship’. He said that the head of HR had found her lateness unacceptable and had questioned his skills as a manager.
186. On 18 March 2018, the claimant was sent a termination letter by the respondent. Ms Raja told the Tribunal that she delegated the drafting of this letter to another member of staff, Mr Ali who used a template. The result contains significant errors, The letter has an entirely incorrect date on it. It does not refer to Mr Kamel being present at the dismissal meeting.
187. The letter stated:

Further to your conversation on 13th March 2018 with Pulvisha Raja (People & Culture Business Partner) and Zaheer Khan (Head of Fundraising) I am writing to confirm the outcome.

During this conversation Pulvisha discussed the termination of your fixed term contract, which is due to your overall performance.

Unfortunately we were unable to find a way that your current work could continue.

As a result, your employment was ended effective immediately on 13th March 2018.

Your P45 and monies due will be forwarded to you at the appropriate time once the enclosed forms have been filled out

188. On 26 March 2018 there was a handover meeting between the claimant and Mr Kamel. The claimant again covertly recorded the meeting. Mr Kamel was again expressing concern about their family friend relationship. It is relevant to the issues in this case to reproduce parts of the transcript:

ZY: *I said I said I'm really unwell Khaled*

KG: *[Translation If you] feel very unwell I would have told you to not come*

...

ZY: *and did you think dismissing me because I'm late is just?*

KG: *dismissing you because you are late is — firstly, you were not dismissed because you were late — only.*

ZY: *why was I dismissed?*

KG: *only. Dismissed because you are late this is the main flag and if this did not happen you would have never been dismissed on the day.*

ZY: *yeah tell me why I was dismissed then*

KG: *you were dismissed because number one because you came late this way, right, and without really giving any whatever valid reasons, calls, notices whatever comes with it, that's number one*

KG: *and then number two, the other issues that we've raised together a few times right, both of them coming together they made-*

...

ZY: *you didn't want me in this job. When I called you I said is this vacancy open, do you know what you said to me?*

KG: **Laughing* go on*

ZY: *you said to me, uh this is a bit of a man's job, I'm like what? You're like yeah, late hours, Ramadan, it's a man's job. That's what you kept insisting. Then in the interview, all of your questions, 99%, were about what happens when the men don't speak to you, what happens when this they don't do that, what happens when the men in the community don't want to speak to you?*

It was all about me being a woman -your questions

KG: *No no. Stop. Don't even bother, do not even bother going this route. Zinab, with all due respect, do not bother going this route*

ZY: *did you say those two things?*

KG: *do not bother going this route. In the interview - I will not respond to you Zinab, I will stop talking. In the interview we had two more people with myself Alhamdulillah [praise be to God] and yourself, so four of us -*

ZY: *Kifah and Zaheer?*

KG: *so four of us we can confirm what I said, and they can tell me if I am wrong*

ZY: yeah

KG: *[Translation when I tell you] Zinab -you know even if tell me give me a Quran [Translation: 3 Bible and a Torah I'll put the three on top of each other] right, [Translation I when I tell you Zinab], as my sister if this was Hader applying for the job I would not have advised her to go for it because it's not really a a job that when our sisters*

ZY: ok

KG: *when our [translation: listen] when our sisters go and do them will be the easiest thing for them to do. When I say to you it's a job where you will have to finish late, where you will have to do things that possibly I would stress that you will have to deal with that I wouldn't want you to deal with, unless you really feel so much about it then it's up to you*

ZY: ok so

KG: *I had a friend of mine right, a friend of mine a partner of ours that came just a few days ago and he said I'm interested for my wife to work as a fundraiser, the same job. I told him look if she feels strong about it, bismillah [in the name of God], if she doesn't I wouldn't advise you to do that because it demands a lot, it will take over your time, it will take over her time*

ZY: ok

KG: *she's not going to have enough time for her family, she's not going to have time for her kids*

ZY: ok well this is what I'm saying

KG: *Don't use your words use mine*

ZY: ok so on use yours

KG: *what I said to him I wouldn't advise you to get your wife to work this job. My wife is a midwife right, so she does some sort of like community development where she does work with the community but her job when she finishes at 5 her job finishes at 5, but the fundraiser finishes at 5 doesn't mean that your job is finished, you still need to think about opportunities, you you need to pick your phone up anytime the donor calls you you need to be around, you need to do meetings late in the night.*

ZY: I understand

KG: *Not really the ideal job*

ZY: for a woman I get it.

KG: *No no no forget some women like Ranya for example its normal for her, no problem at all.*

There are some sisters who have no problem with the work load being like that but some of our women

ZY: *So what have I said wrong?*

KG: *no no [Translation There is a big difference that you that you] you bring it about to be that I'm sexist that I am more towards male than the female*

ZY: *You just said now --- you don't think it's a women's job.*

KG: *No no, I never said that*

ZY: *You just explained that*

KG: *I did not say that, with all due respect*

ZY: *What did you do in the interview?*

KG: *With all due respect. Interview — I will not reply. You have three people you can speak with. You have two sorry. Ok?*

ZY: *Yep OK that's excellent but the point is I didn't say anything that you didn't say right now. Why are you acting like don't go down that road when you just repeated the exact same thing again.*

KG: *no no I umm but anyway umm*

ZY: *anyway you didn't want me from the beginning but between you...*

KG: *That's not correct*

ZY: *you shouldn't have accepted me if you were going to treat me like that*

KG: *That's not correct. I tried to make things easy but you insist*

ZY: *Khaled — Where in the history of the world does somebody get dismissed after two weeks because they are late?*

KG: *Yeh, so many people.*

ZY: *no no no*

Law

Sex discrimination

189. Direct discrimination under section 13 Equality Act 2010 occurs when a person treats another:
- Less favourably than that person treats a person who does not share that protected characteristic;
 - Because of that protected characteristic.
190. In a direct discrimination case, where the treatment of which the claimant complains is not overtly because of the protected characteristic, the key

question is the “reason why” the decision or action of the respondent was taken. This involves consideration of mental processes of the individual responsible; see for example the decision of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884 at paragraphs 31 to 37 and the authorities there discussed. The protected characteristic need not be the main reason for the treatment, so long as it is an ‘effective cause’: O’Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372.

191. This exercise must be approached in accordance with the burden of proof provisions applying to Equality Act claims. This is found in section 136: “(2) if there are facts from which the Court could decide, in the absence of any other explanation, that person (A) contravened the provision concerned, the Court must hold that the contravention occurred. (3) but subsection (2) does not apply if A shows that A did not contravene the provision. “
192. Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof (in the context of cases under the then Sex Discrimination Act 1975). They are as follows:

(1) Pursuant to s.63A of the SDA, 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 respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA 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 s.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 s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.

(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 s.56A(10) of the SDA. 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 respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent 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 respondent 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 respondent 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.

193. We bear in mind the guidance of Lord Justice Mummery in Madarassy, where he stated: 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.' The 'something more' need not be a great deal; in some instances it may be furnished by the context in which the discriminatory act has allegedly occurred: Deman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA.

194. The tribunal cannot take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.)
195. The distinction between explanations and the facts adduced which may form part of those explanations is not a watertight division Laing v Manchester City Council and anor 2006 ICR 1519, EAT. The fact that inconsistent explanations are given for conduct may be taken into account in considering whether the burden has shifted; the substance and quality of those explanations are taken into account at the second stage: Veolia Environmental Services UK v Gumbs EAT 0487/12. In Commissioner of Police of the Metropolis v Denby EAT 0314/16 the EAT confirmed that a tribunal may consider all relevant evidence at the first stage of the burden of proof exercise, even if some of it is of an explanatory nature and emanates from the employer, whether or not it is called by the employer. The case law did not require the tribunal at the first stage to 'blind itself to evasive, economical or untruthful evidence' from the employer which may help the tribunal to decide that there are sufficient facts to shift the burden on to the employer to provide an explanation.
196. In Chief Constable of Kent Constabulary v Bowler EAT 0214/16 Mrs Justice Simler said that: 'It is critical in discrimination cases that tribunals avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal's own findings.'
197. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.
198. We remind ourselves that it is important not to approach the burden of proof in a mechanistic way and that our focus must be on whether we can properly and fairly infer discrimination: Laing v Manchester City Council and anor [2006] ICR 1519, EAT. If we can make clear positive findings as to an employer's motivation, we need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT.

Harassment

199. Under s 26 Equality Act 2010, a person harasses a claimant if he or she engages in unwanted conduct related to a relevant protected characteristic,

and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

200. By virtue of s 212, conduct which amounts to harassment cannot also be direct discrimination under s 13.

201. In Richmond Pharmacology Ltd v Dhaliwal [2012] IRLR 336, EAT, Underhill J gave this guidance in relation to harassment in the context of a race harassment claim:

'an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so.....Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

202. As was pointed out by Elias LJ in Grant v HM Land Registry [2011] EWCA Civ 769, the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:

"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

Victimisation

203. Under s 27 Equality Act 2010 a person victimises another person if they subject that person to a detriment because that person has done a protected act or the person doing the victimising believes that person has done or may do a protected act.

204. The definition of a protected act includes the making of an allegation that the person subsequently subjecting the claimant to a detriment (or another

person) has contravened the Equality Act 2010 or done 'any other thing for the purpose or in connection with' the Equality Act.

205. A detriment is anything which an individual might reasonably consider changed their position for the worse or put them at a disadvantage. It could include a threat which the individual takes seriously and which it is reasonable for them to take seriously. An unjustified sense of grievance alone would not be sufficient to establish detriment: EHRC Employment Code, paras 9.8 and 9.9.
206. The protected act need not be the only or even the primary cause of the detriment, provided it is a significant factor: Pathan v South London Islamic Centre EAT 0312/13.
207. A claim for victimisation will fail where there are no clear circumstances from which knowledge of the protected act on the part of the alleged discriminator can properly be inferred: Essex County Council v Jarrett EAT 0045/15.

Credibility and reliability

208. We bore in mind when assessing different accounts of the same events and any inferences about credibility which we might draw, that memory is fluid, memories are rewritten when recalled and the process of reducing them to a witness statement further distorts memory and crystallises the version presented in the witness statement, a version which may have been influenced by reading documents and discussing the events with others. We bore in mind the guidance provided in case law that we should base factual findings on inferences drawn from the documents and known or probable facts where possible. Confidence in recollection is not an indicator of the truth of that recollection. We had regard to the guidance given by Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm).

Amendment

209. In considering an application to amend a claim, a Tribunal will have particular regard to the balance of hardship and injustice in refusing or allowing the amendment, together with any relevant factors. Those include the factors set out in Selkent Bus Co Ltd v Moore ICR 836, EAT:

The nature of the amendment: The Tribunal has to decide whether the amendment sought is one of the minor matters or a substantial alteration pleading a new cause of action.

Applicability of time limits: If a new claim or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider

whether that claim/cause of action is out of time and, if so, whether the time limit should be extended.

Timing and manner of the application: Delay in making the application is a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the identification of new facts or new information from documents disclosed on discovery.

210. The merits may be relevant to an amendment application; if a proposed claim is obviously hopeless, that consideration affects the assessment of the injustice caused to a claimant by not being able to pursue it. Nothing is lost in not being able to pursue a claim which cannot succeed: Herry v Dudley MBC and anor EAT 0170/17.
211. Vaughan v Modality Partnership [2021] ICR 535, EAT contains guidance on applications to amend tribunal pleadings. The core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The parties must therefore make submissions on the specific practical consequences of allowing or refusing the amendment.

Submissions

212. We heard detailed submissions from both parties which we have carefully considered. We refer to them below only insofar as is necessary to explain our conclusions.

Conclusions

EQA, section 13: direct discrimination because of sex

Issue (i) Have the respondents subjected the claimant to the following treatment

In relation to each of the allegations:

(ii) Was that treatment “less favourable treatment”, i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies on the following comparators: Mr Hamza (the claimant’s case is he did not attend away day at all as he was ill); Abdul Malik (the claimant’s case is he received an induction as opposed to claimant who did not and that he was allowed his own projects and not micromanaged); Mr Gamal (ie Mr Kamel) and Mr Jamal Elturk (the claimant’s case is they had allocated desks and the claimant did not) and/or hypothetical comparators.

(iii) if so, was this because of the claimant's sex and/or because of the protected characteristic of sex more generally?

a. *Dismissal (paragraphs 24 — 40);*

213. The facts were that the claimant was in her probation period and had been employed for a very short time. She had had episodes of lateness from the first day of her employment and then was very very late for the induction and away day event without explanation or adequate notification of the respondent two days in a row.
214. The background was that Mr Kamel had selected the claimant for employment. He worked well and supportively with Ms Khatib and did not, we find, have a prejudice against female fundraisers. He expressed the issues with the job in a way which was inflected by sex (talking about 'sisters' and examples of women he knew) but we accepted that he had and would have similar conversations with 'brothers'. The conversations he had were sex specific in that those were the examples he chose but we did not find that they were evidence that he did not think women were suitable for the fundraising job. He was inexperienced as a manager and was also in an uneasy position where he had a pre-existing relationship with the claimant.
215. The claimant's lateness and failures to update the respondent led to a discussion with Mr Abdul-Rahman about Mr Kamel's concerns about her underlying performance.
216. He was still not enthusiastic to dismiss the claimant; it seemed to the Tribunal that he was uncomfortable and conflicted because of the pre-existing relationship family relationship.
217. When we looked at the evidence as to Mr Kamel's role in the dismissal it seemed to us that there was no evidence from which we could reasonably conclude that he was influenced by the claimant's sex. The claimant had not been performing or following his advice and instructions; she had been actively resisting being managed. He was in a potentially embarrassing position with his own managers; he had not been long in his role and his appointment of the claimant was beginning to appear to have been an unwise one.
218. Similarly we could see not evidence from which we could reasonably conclude that Mr Abdul-Rahman was influenced by the claimant's sex in deciding that she should be dismissed. The claimant's behaviour very early in her employment was strikingly unreliable. She provided no adequate

explanation for missing her induction and for her dramatic lateness and failure to properly notify the respondent that she was going to be so late.

219. It was perfectly reasonable for Mr Abdul-Rahman to conclude on the basis of the evidence that he had that the claimant was not a good fit for the respondent.
220. The claimant suggested that the respondent should have asked for medical evidence but in circumstances where she did not explain in what way she was unwell or how that unwellness had led to her failures to make appropriate contact, that fact did not lead the Tribunal to any inference that her sex had played a role.
221. The evidence we had about the proposed comparator, Hamza / Mr Hamza, was that he had pre-notified the respondent of his ill health. His circumstances were materially different from the claimant's in that she was serially late for two events without proper explanation against a background of significant issues in how she was performing her role.
222. We did not uphold this complaint.

b. Dismissing the claimant late at night and away from home/office;

223. We accepted that to some extent the respondent was between a rock and a hard place in dealing with this issue. Allowing the claimant to remain at the away day event without discussing what had occurred was likely to be misleading to her. Dismissing her in the evening when she was likely to be upset and would have had to remain overnight in a shared dormitory room was also inflammatory and predictably led to the claimant leaving and driving herself home at night and in an upset condition.
224. The fact that the respondent chose what appeared to the Tribunal the worse of two difficult options was not material from which, taken in the factual context we have found, we could reasonably draw any inference that the claimant's sex had played a role.
225. We did not uphold this complaint.

c. Making comments at the pre interview and interview stage as set out in paragraphs 1 - 7;

226. We did not accept that Mr Kamel made the remarks alleged by the claimant. We considered that her account was the interpretation she subsequently put on the remarks which he did make. That process of 'remembering' that the claimant's interpretation of things people said was what they actually said was something that occurred both in the course of the hearing and in the transcript of the handover meeting which we have set out above.
227. Given that the comments were not made, they could not have constituted less favourable treatment of the claimant. We did however also look at the questions and comments which we found did form part of the pre-interview discussion and the interview.
228. We considered that the questions and comments which were made about how the claimant would deal with the culture of the mosques were not less favourable treatment of the claimant. They reflected what Ms Khatib had told the Tribunal about a facet of the job. Being asked the questions allowed the claimant to demonstrate that she was able to deal with that part of the role, which she did successfully.
229. Mr Kamel's sex-inflected remarks to the claimant when discussing the role seemed to us to have been unwise in that they could be open to misinterpretation, as they ultimately were in this case. However, we accepted his evidence that he would have also said to a man that 'some brothers' found the job problematic because of its antisocial demands. The fact that he encouraged the claimant to apply and appointed the claimant to the role and supported Ms Khatib in her role led us to the conclusion that he was being honest with the Tribunal about these matters. The treatment of a man would have been different in that he would have chosen different examples but it would not have been more favourable.
230. We did not uphold this complaint.

d. Failing to provide an induction (paragraph 9, 14);

231. We accepted the clear and cogent evidence about the respondent's practice as to holding inductions for a group of employees at a time at Head Office. That would inevitably mean that some employees would not be inducted on their first day or very shortly after.
232. Mr Malik's circumstances were different from the claimant's. His employment was commencing later and so he was able to attend the induction day that she was also attending before his employment started.
233. There was simply no evidence from which we could reasonably conclude the claimant's treatment was due to her sex and we did not uphold this complaint.

e. Failing to allocate the claimant a desk;

234. We accepted the respondent's evidence that in general there were desks available for use by employees and volunteers on a hotdesking basis since the employees were not consistently in the office every day. Employees would have laptops which they could set up at an available work station. The fundraising role was not primarily a desk based role and the fundraisers would spend a significant amount of their time out in the community. The only employee who was treated as having a fixed position to work from was Mr El-Turk, not because he was male but because of his longstanding position.
235. Mr El-Turk was not we concluded an appropriate comparator and, given that we accepted the evidence that there were a considerable number of places to work from which would have been available to the claimant as they were available to other employees apart from Mr El-Turk, there was no evidence from which we could reasonably conclude that the client was treated less favourably than an appropriate male comparator because of her sex.
236. We did not uphold this complaint.

f. Threatening to award a lower salary (£24k as opposed £25k — the claimant states Mr Malik was awarded £25k from outset of his employment) (paragraph 8);

237. What happened is not really appropriately characterised as a 'threat' on the findings of fact which we have made. Mr Malik was offered £25,000 and the claimant was also offered £25,000. Mr Kamel explained that they had intended to offer her £24,000 but ultimately the claimant was also paid £25,000.
238. The difference in treatment was that Mr Malik was never offered £24,000. However we accepted the respondent's cogent evidence that Mr Malik's experience was considered to justify an offer slightly higher in the salary range for the job. We were able to make a positive finding that there was a reason not related to sex for the difference in treatment.
239. Had we reverted to the burden of proof, and had we considered that the burden of proof shifted, we would have considered that we were satisfied that the respondent had established the difference in treatment was in no way due to sex.
240. We did not uphold this complaint.

g. Delaying the provision of an employment contract (paragraph 10);

241. On the facts the claimant received her employment contract the first day of her employment. The fact that it was towards the end of the day did not seem to us any kind of sound basis for an inference that a male employee would have been treated differently and received his contract at the beginning of the day or at an earlier time. There was a delay in receiving the related documents because it was the respondent's practice to provide these at the induction day when they could be discussed and signed.
242. We were able to make a positive finding that the reason for delay in provision of the additional documents had nothing to do with sex. If Mr Malik got his documents sooner in relation to his start date, it was because of the happenstance of when his start date fell in relation to the group induction day.
243. We did not uphold this complaint.

h. Requesting that the claimant set up a bank account (paragraph 11);

244. This complaint failed on our findings of fact and we did not uphold it.

i. Making comments at a meeting on 28 February 2018 as set out in paragraphs 12 and 13;

245. These were the alleged comments about the claimant's concerns about the tea party event being a 'weakness' which Mr Kamel would 'flag up' and the alleged remark about volunteers being 'slaves'.
246. We concluded that Mr Kamel had raised the issue of how the claimant's approach to her role would be viewed in the organisation rather later than 28 February 2018. By the time he did raise it, he had significant reasons for concern; the claimant was resisting being managed and was not accepting his direction or even his advice. He must have been feeling insecure about his management decision in appointing her and how it would look to those senior to him in the respondent.
247. We did not accept that Mr Kamel made the 'slave' remarks.
248. in terms of Mr Kamel raising the issues about how the claimant's approach to events would be viewed in the organisation, we made a positive finding that his reason for raising it was to try and encourage her to perform her role. As her manager, he could have issued an instruction but he seems to have struggled to an extent to segue from the previous relationship where the claimant was a social contact and collaborator to one where he had a managerial relationship with her. There was no relationship with the claimant's sex.

249. Alternatively there were no facts from which we could reasonably infer that Mr Kamel would have treated a man in the same circumstances more favourably because of sex.
250. We did not uphold this complaint.

j. Making comments on the claimant's performance and work, micro-managing the claimant (paragraph 16, 17, 20 and 21). not allowing the claimant freedom of ideas and the assignment of projects and events (paragraph 14);

251. So far as comments about the claimant's performance were concerned, we find that these were raised because of genuine and reasonable concerns about the claimant's performance.
252. There was no evidence of inappropriate managing or micro managing or that, in respect of the examples the claimant put forward, a male employee would have been treated any differently. The examples were of coin counting which everyone in the organisation did and admin work on projects in her own area. Mr Kamel also had to become involved in existing events in the claimant's region which she declined to take forward such as the tea party.
253. We have made findings of fact above about the claimant's proposals for events. We accepted the evidence of Mr Kamel and Ms Khatib that the claimant's plan was slanted towards more expensive events and what was raised with her was the need also to include smaller grassroots fundraising and that the timing for the more high end events was not ideal. The events were not rejected. They could be tried after Ramadan.
254. In terms of 'freedom of ideas and the assignment of projects and events', the claimant's expectation seem to have been entirely unrealistic. She was part of a team and she had a manager. She appears to have expected that she would be able to work autonomously, not continuing with events which were already in the pipeline and having a free hand to run any other events which she devised.
255. In terms of the event which Mr Malik took on, we could see from the contemporaneous correspondence, that the task was offered generally and Mr Malik was the first to volunteer to take it on. The claimant did not raise with anyone that she felt she had ownership of that event and wanted to do it herself.
256. We could see no evidence from which we could reasonably conclude that any of these examples of the claimant's treatment were in any way related to her sex.
257. We did not uphold this complaint.

k. Making it difficult for the claimant to perform her role effectively (paragraphs 17, 18, 19);

258. These paragraphs of the Particulars of Claim referred additionally to:
- Mr Kamel removing organisations from the claimant's region (the only one we heard about in evidence was the mosque);
 - On 7 March 2018 Mr Kamel telling the claimant to deliver cupcakes to donors' homes and saying her refusal was a weakness he would 'flag';
 - On 7 March 2018 Mr Kamel telling the claimant that she was a 'weak fundraiser' who was 'never going to be any good'.
259. We found as a fact that the mosque was not removed from the claimant's region. We accepted Ms Khatib's clear and credible evidence which supported that of Mr Kamel on this issue.
260. So far as the cupcake deliveries were concerned, we accepted that this was an activity expected of the fundraiser role. In asking her to carry out the deliveries, Mr Kamel was simply asking the claimant to do her job. This was the opposite of treating her differently because she was a woman – he was not suggesting that she should be exempted from the task as a woman; if anything that appears to have been the underlying theme of the claimant's objection to carrying out the deliveries. The claimant did not want to be involved in the less glamorous grassroots activities but they were part of the role. We accepted that Mr Kamel did say her refusal would be seen as a weakness in the context of explaining how it would appear to the volunteers.
261. So far as the conversation on the train was concerned, we concluded that the claimant reacted very badly to constructive criticism. Mr Kamel was trying to manage a situation which was rapidly getting out of hand where the claimant was refusing to carry out reasonable management requests. In both their interests, he was trying to help her to perform the role she had been appointed to effectively.
262. We have made positive findings as to the reason for the complained of treatment which reasons are unrelated to the claimant's sex. In the alternative we could find no evidence from which we could reasonably conclude that the claimant was treated less favourably than a similarly circumstanced man would have been because of her sex.
263. We did not uphold this complaint.

l. Not booking a hotel for the claimant for the away day (paragraph 22).

264. The evidence we had showed that the respondent sometimes booked hotels for employees and sometimes they booked them for themselves. There was no process that was set in stone.
265. The whole issue of the hotel booking was raised late in the day and the claimant did not ask anyone else to make the booking for her or complain at the time that that did not happen. The correspondence showed that Mr Kamel was trying to help her sort out her booking.
266. There was no actual comparator and no evidence at all from which we could reasonably conclude that the handling of the claimant's hotel booking had any relationship with sex.
267. We did not uphold this complaint.

EQA, section 26: harassment related to sex

Issue: (iv) Did the respondents engage in conduct as follows

(v) If so was that conduct unwanted?

(vi) if so, did it relate to the protected characteristic of sex?

(vii) Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant

a. Dismissing the claimant when it was late at night and she was away from home/office;

268. This was clearly unwanted conduct. We considered carefully whether it had the proscribed effect. The claimant was very upset and she told the Tribunal she felt humiliated and degraded.
269. Was it reasonable for the conduct to have that effect? We considered that the claimant should reasonably have been aware that she had put her ongoing employment seriously at risk given the facts we have found, so the act of the termination would not itself reasonably have been seen as humiliating and degrading.
270. However the circumstances of the dismissal did seem to us to be circumstances which could reasonably be regarded as having the proscribed effect. It was late in the evening and the claimant was away from home. The venue for the meeting was not entirely or reliably private and the claimant was left with a choice of having to return in an upset state to shared accommodation and then leave in the morning or leave that evening when she was upset and anxious.
271. Although we therefore found that the conduct did have the proscribed effect, we did not find any relationship with the claimant's sex or evidence from which

we could reasonably infer such a relationship. Ms Raja was trying to deal efficiently with a situation which had arisen and in respect of which there were competing pressures. The right course, the tribunal considered, would have been for her to flag with the claimant that the situation was viewed seriously and that it would be dealt with at a meeting when employees had returned from the away day event.

272 We did not uphold this complaint.

b. Making comments at pre interview and interview stage as set out in paragraphs 1 - 7;

273. We accepted the claimant's evidence that she did not like Mr Kamel's remarks about the challenges of the role and was offended by the way he expressed them in discussion prior to the interview. We accepted that she also did not like the questions at interview which related to the potential issues to be managed for a female fundraiser at some mosques.

274. There was a relationship with sex. The remarks made at the pre-interview stage were tailored to the sex of the person Mr Kamel was speaking to in terms of the examples he gave. And the questions at interview related to cultural issues which were themselves related to sex.

275. However we did not consider that the remarks and questions had the proscribed purpose or effect. Mr Kamel's intention at the pre-interview stage was to make sure that the claimant had the full facts about the role; he then encouraged her to apply and ultimately appointed her to the role. The purpose of the questions at interview was to ensure that an appointee was able to deal with aspects of the role.

276. We did not consider that the remarks and questions had the proscribed effect. The reasonable person in the claimant's position would have taken into account the whole context and would have realised that she was not being discouraged from applying because she was a woman and that Mr Kamel was genuinely trying to ensure she understood what the role entailed and that she was suitable for it. There was nothing which could reasonably be regarded as having the proscribed effect.

277. We did not uphold this complaint.

c. Threatening to award a lower salary (£24k as opposed £25k) (paragraph 8)

278. This was unwanted conduct but we found no relationship with the claimant's sex and did not consider that the incident had the proscribed purpose or

effect. The claimant was told a mistake had been made and the respondent then agreed not to resile from its original offer. It was a relatively trivial incident.

279. We did not uphold this complaint.

d. *Delaying the production of an employment contract (paragraph 10)*

280. We have made positive findings about what occurred. There was no evidence from which we could reasonably conclude there was any relationship with the claimant's sex or that the respondent had a prohibited purpose.

281. It would 'cheapen the words' to find that this conduct had the proscribed effect.

282. We did not uphold this complaint.

e. *Requesting the claimant set up a bank account (paragraph 11)*

283.. This complaint failed on our findings of fact and we did not uphold it.

f. *Making comments at a meeting on 28 February 2018 as set out in paragraphs 12 and 13;*

284. We did not accept that Mr Kamel made the 'slaves' remark. The criticisms of the claimant's performance were made later. They were clearly conduct the claimant did not want but we found no facts from which we could reasonably conclude that there was any relationship with the claimant's sex or that Mr Kamel had the proscribed purpose. We also found that the way in which Mr Kamel raised the issues and the fact that it was entirely reasonable for him to raise them means that they did not have the proscribed effect.

285. We did not uphold this complaint.

g. *Making comments on the claimant's performance and work, micro-managing the claimant (paragraph 16, 17, 20 and 21), not allowing the claimant freedom of ideas and the assignment of projects and events (paragraph 14);*

286. Our findings of fact on these issues are as we set out above. We accept that the conduct was unwanted by the claimant who appears to have expected that the role would allow her considerably more autonomy than was the case.

287. There was no proscribed purpose or effect. Mr Kamel was simply trying to manage the claimant. A reasonable person in the claimant's position would have understood that she needed to accept some management direction and constructive criticism.
288. We found no evidence from which we could reasonably conclude that there was a relationship with the claimant's sex.
289. We did not uphold this complaint.

h. Making it difficult for the claimant to perform her role effectively (paragraphs 17, 18, 19);

290. Our findings of fact are the same as in respect of these same matters when labelled as direct sex discrimination. The claimant did not want to be told to deliver cupcakes or criticised for not doing so. She did not welcome the constructive criticism offered by Mr Kamel on the train journey.
291. We found no proscribed purpose. Mr Kamel was simply trying to manage the claimant. We found no proscribed effect; it was not reasonable for the claimant to receive the criticism as anything other than reasonable managerial input.
292. We found no evidence from which we could reasonably conclude that there was a relationship with the claimant's sex.
293. We did not uphold this complaint.

i. Not booking a hotel for the claimant for the away day (paragraph 22).

294. This seemed to us to be an entirely innocuous matter in respect of which there was no evidence of a relationship with sex or of a proscribed purpose. We were not even convinced that the conduct was actively 'unwanted' by the claimant at the time and it certainly could not be regarded as having the proscribed effect.
295. We did not uphold this complaint.

Equality Act, section 27: victimisation

(viii) Did the respondents believe that the claimant had done or might do a protected act? The claimant's case is that she raised complaints to Mr Khan, as per paragraph 20 of her particulars of claim, on 7 March 2018 and that she had said to Mr Khan she would be raising the issues she had in more detail, as a result the respondents believed she would do a protected act.

296. We found that there was nothing in the complaints the claimant made which related to sex or in any way would have suggested that the claimant was going to allege that there was a breach of the Equality Act 2010.
297. Mr Khan's evidence, which we accepted, was that he did not think that the claimant was doing or would do a protected act. There was nothing in the context to put Mr Khan or Mr Kamel on notice of such a complaint.
298. Although we did not find that there could be a causal relationship with an actual or anticipated protected act, we nonetheless considered the alleged detriments.

Issue (ix) Did the respondents subject the claimant to any detriments as follows:

(x) If so, was this because the respondents believed the claimant had done, or might do, a protected act?

a. By the second respondent making comments about the claimant's performance on the train on the way home on 7 March 2018, leading the claimant to think she would be dismissed.

299. in terms of why Mr Kamel had this discussion with the claimant after the trip to head office it was clear to the Tribunal that he was motivated by a combination of the issues which had been arising with the claimant's performance and the fact that Mr Khan told him she was not herself happy, He was trying to provide support but also to raise the issues which had arisen and help her to address them.

300. We did not consider that what was said could reasonably be regarded as a detriment. There was no protected act or anticipated protected act. We did not uphold this complaint.

b. Assigning one of the claimant's events (a volunteer training event due to be held in April 2018) to Mr Malik on 12 March 2018, who was yet to commence employment (paragraph 21).

301. In circumstances where the claimant did not volunteer to do the event, we did not consider there was in fact a detriment. There was no protected act or anticipated protected act. We did not uphold this complaint.

c. Requiring the claimant to book her own hotel room

302. This was too trivial to be regarded as a detriment. There was no protected act or anticipated protected act. We did not uphold this complaint.

d. Dismissing the claimant when it was late at night and she was away from home/office

303. This would have been a detriment in terms of the choice of venue and timing. There was no protected act or anticipated protected act. We did not uphold this complaint.

e. Dismissal

304. Again dismissal is obviously a detriment however there was no protected act or anticipated protected act. We did not uphold this complaint

Holiday pay, unlawful deductions from wages and breach of contract claims

305. The parties had settled these claims and the claimant withdrew them. We were presented with no reason why they should not be dismissed and we accordingly dismiss them.

Conclusion

306. For all of the above reasons, the claimant's claims are dismissed.

Employment Judge Joffe
06/12/2021

JUDGMENT SENT TO THE PARTIES ON
.06/12/2021.

FOR THE TRIBUNAL OFFICE