



# EMPLOYMENT TRIBUNALS

**Claimant:** Sana Knaneh

**Respondents:** Judith Elkan, Deborah Nissenbaum, Amnon Daniel Smith & Brian Humphreys (Trustees of UK Friends of Bereaved Families Forum)

**Heard at:** London Central

**On:** 15, 16, 17, 18, 19 &  
22 March 2021  
15, 16 April, 14 May  
2021 (in chambers)

**Before:** Employment Judge H Grewal  
Mr R Baber and Ms P Slattery

## Representation

**Claimant:** Ms C Urquhart, Counsel

**Respondent:** Mr A Griffiths, Counsel

# JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal has jurisdiction to consider any complaints under the Equality Act 2010 that were not presented within the primary time limits;

2 The complaints of direct race discrimination in respect of the Claimant's pay, the refusal to increase her salary and making any increase contingent on her raising sufficient funds are well-founded;

3 The complaint of victimisation in respect of Mr Cohen's telephone conversation with the Claimant on 28 June 2019 is well-founded;

4 All the other complaints of direct race discrimination, race-related harassment and victimisation under the Equality Act 2010 are not well-founded;

5 The complaint of wrongful dismissal is not well-founded;

6 The complaint of unauthorised deductions from wages is not well-founded; and

7 The claim for holiday pay is not well-founded.

8 The Claimant's application for costs is refused.

## REASONS

1 In a claim form presented on 26 March 2020 the Claimant complained of race discrimination, breach of contract, unauthorised deductions from wages and failure to pay holiday pay. Early Conciliation ("EC") commenced on 30 September 2019 and the EC Certificate was issued on 13 November 2019.

### The Issues

#### Race Discrimination

2 The Claimant is Palestinian. She complained of direct discrimination, harassment and victimisation. It was agreed that the issues that we had to determine were as follows.

#### Direct Discrimination

3 Whether the Respondents discriminated against the Claimant by:

- (a) Paying her less than they paid D Taylor or S Orian, who were both Jewish, for performing the same work or, in the alternative, less than they would have paid a hypothetical comparator;
- (b) On or around 22 August 2019 Judith Elkan rejecting her request for a pay rise (the Claimant relies on the same comparators as in (a)) [the date given in the agreed list of issues was 2 August; that was the date on which the request was made; the rejection was on 22 August];
- (c) Ms Elkan insisting that any salary rise was dependent on the amount raised by the Claimant but not applying the same rule to her comparators;
- (d) On or around 3 October 2018 Ms Elkan moving the first sentence in the Claimant's biography in which she described herself as "a Palestinian citizen of Israel" to the end but keeping the reference to her being born in Jerusalem in the first sentence of her own biography.

#### Harassment

4 Whether the Respondents did any of the following acts and, if they did, whether they, individually or cumulatively, amounted to race-related harassment:

- (a) On or around 3 October 2018 Ms Elkan moved the first sentence in the Claimant's biography in which she described herself as "a Palestinian citizen of Israel" to the end but kept the reference to her being born in Jerusalem in the first sentence of her own biography.
- (b) On or around 6 November 2018 Ms Elkan and Ms Smith excluded the Claimant from organising a meeting with Prince William despite it being in her job description to organise such meetings and events;
- (c) On or around 12 November 2018, when the Claimant complained about being sidelined, Ms Elkan said "you are a tool for us in a way";
- (d) On or around 12 November 2018 Ms Elkan spoke positively of Ms Smith, a former Jewish trustee, but negatively of Ahlam Akram, a Palestinian former co-chair;
- (e) On or around 15 February 2019 Ms Elkan failed to copy the Claimant in to emails sent to the patrons introducing her, contrary to her request that she do so, in particular, in emails sent to her personal contacts;
- (f) On or around 5 May 2019 Ms Elkan failed to copy the Claimant in to an invitation sent to a patron, who was a personal contact of the Claimant, although she had agreed in February that she would do so in the future;
- (g) When the Claimant raised the above issue with Ms Elkan, she became angry with her and expressed punitive and retaliatory remarks and hung up the phone on her;
- (h) On 14 June 2019 the Claimant was shamed by Ms Elkan in an email about plans for the garden party that was copied to all the trustees;
- (i) On various occasions between 14 June 2019 and 14 August 2019 the Claimant asked the trustees for information about the history of the donors but her requests were ignored;
- (j) On or around 28 June 2019 Ronnie Cohen tried to force the Claimant to attend a dispute resolution meeting on a date when she had already told him that she could not attend on that date. When she complained he said, "Why can't you just say yes, your life depends on this." Mr Cohen threatened her that if she did not attend, they would meet and make decisions without her;
- (k) Between July and September 2019 the Claimant asked the trustees to allow a respected Palestinian figure to join the Respondent as a trustee. Her emails were at first ignored and she was then told that he had to join the steering committee for a few months first. Such conditions were not imposed when the Claimant suggested a Jewish candidate to become a trustee in March 2019;
- (l) At the garden party on 14 July 2019 Ms Elkan said to the Palestinian ambassador, "I will speak then you speak then Sana speaks" with a hand gesture that suggested that the Claimant was unimportant;

- (m) On or around 5 September 2019 Ms Elkan described the Claimant's complaint about her as "unnecessarily aggressive";
- (n) When the Claimant was on sick leave around 11-14 October 2019 Mr Humphreys contacted her and sent her aggressive emails although she had asked not to be contacted;
- (o) On or around 6 November 2019 Ms O'Donohoe, a friend of Ms Elkan, told the Claimant that she had mentioned the Palestinian ambassador's attendance at the garden party in a publication, contrary to the agreement with Ms Elkan that there would be no publicity about his attendance;
- (p) Mr Cohen did not uphold the Claimant's grievance on 21 November 2019;
- (q) In around December 2019 Mr Humphreys threatened not to pay the Claimant her sick pay;
- (r) On 22 January 2020 the Respondents suspended the Claimant and denied her access to her work emails;
- (s) The Claimant's appeal against her grievance outcome was heard on 27 January 2020 by Rob Humphreys who came with prepared answers, indicating it was a predetermined outcome;
- (t) During the Claimant's sick leave from around 18 February to 9 March 2020 Brian Humphreys disregarded the Claimant's request not to be contacted and sent her aggressive and stressful messages, including on 25 February setting the date of the disciplinary hearing for 11 March 2020;
- (u) On or around 10 March 2020 Mr Humphreys denied the Claimant's request to postpone the disciplinary hearing from 11 March until she was well enough to attend;
- (v) The disciplinary hearing went ahead on 11 March 2020 during the Claimant's sickness absence so she was unable to attend;
- (w) The Claimant was summarily dismissed.
- (x) On or around 23 March 2020 Mr Humphreys told the Claimant that she would not be paid for the period 1-16 March 2020 unless she returned her laptop and printer.

### Victimisation

5 Whether any of the following were protected acts:

- (a) The Claimant's complaint of 20 May 2019 about Ms Elkan's disrespectful behaviour towards her;
- (b) The Claimant's grievance on 17 October 2019;

- (c) The Claimant's grievance on 27 October 2019;
- (d) The Claimant said in her grievance hearing of 7 November 2019 that she believed that the Respondent's actions were discriminatory towards Palestinians including herself;
- (e) The Claimant's grievance appeal of 10 January 2020;
- (f) On 27 January 2020 at the grievance appeal hearing the Claimant voiced her concerns of discrimination.

6 Whether the Claimant was subjected to the following detriments:

- (a) On or around 28 June 2019 Ronnie Cohen tried to force the Claimant to attend a dispute resolution meeting on a date when she had already told him that she could not attend on that date. When she complained he said, "Why can't you just say yes, your life depends on this." Mr Cohen threatened her that if she did not attend, they would meet and make decisions without her;
- (b) On or around 2 August 2019 Ms Elkan rejected the Claimant's request for a pay rise on the basis that she did not do sufficient fundraising to fund either her salary or an increase when the Claimant's ability to fundraise was blocked by Ms Elkan and Mr Humphreys not sharing with the Claimant vital information about the history of donors;
- (c) The matters set out at paragraph 4 (m), (p) – (x) above.

7 Whether she was subjected to any of the detriments because she done any of the protected acts.

### Jurisdiction

8 The parties had not identified as an issue in the case whether there was jurisdiction to consider any complaints that had not been presented in time, nor did they address that in their closing submissions. Unfortunately, the Tribunal did not realise this at the time and did not raise it with the parties. On 19 April 2021 the Tribunal wrote to the parties as follows,

*"When the Tribunal met to deliberate on this case, it noticed that neither party had addressed the issue of time limits and whether the Tribunal had jurisdiction to consider any complaints that had not been presented in time. It did not appear as an issue in the list of issues. It is an issue that goes to jurisdiction and the Tribunal has to consider it.*

*Employment Judge Grewal apologises for not raising it in the course of the hearing.*

*The parties are to send in any submissions they wish to make by 7 May 2021."*

9 The Claimant sent submissions to the Tribunal on 7 May 2021. The Tribunal did not receive any submissions or response from the Respondent's solicitors. On 11 May 2021 the Tribunal's administrative staff tried calling the Respondent's solicitor but was told that she had to send an email. The original email was forwarded again to

two different persons at the Respondent's solicitors on 11 May 2021. At the time of completing this decision on 4 June 2021 the Tribunal had still not received anything from the Respondents' solicitor.

#### Holiday Pay

10 Whether the Claimant is owed any holiday pay.

#### Unauthorised deductions from wages

11 Whether the Claimant has been paid all the overtime and expenses due to her.

#### Wrongful Dismissal/Breach of Contract

12 Whether the Claimant's dismissal without notice was in breach of her contract of employment.

#### **The Law**

13 Section 13(1) of the Equality Act 2010 ("EA 2010") provides,

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

Race is a protected characteristic. Section 23(1) EA 2010 provides,

*"On a comparison of cases for the purpose of section 13 ... there must be no material difference between the circumstances relating to each case."*

14 The circumstances in each case do not have to be precisely the same. The question whether the situations are comparable is a question of fact and degree – **Hewage v Grampian Health Board [2012] UKSC 37**

In **Shamoon v Chief Constable of the RUC [2003] IRLR 285** Lord Scott of Foscote stated,

*But the fact that a particular chosen comparator cannot, because of material differences qualify as the statutory comparator... by no means disqualifies it from an evidential role. It may, in conjunction with other material, justify the tribunal in drawing the inference that the victim was treated less favourably than she would have been if she had been the [statutory] comparator... Their evidential value will, however, be variable and will be inevitably weakened by material differences between the circumstances relating to them and the circumstances of the victim."*

15 Section 26 EA 2010 provides,

*"(1) A person (A) harasses another (B) if –*  
*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*  
*(b) The conduct has the purpose or effect of -*  
*(i) violating B's dignity, or*

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

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

16 In order for harassment to be established under section 26 the Tribunal must find (i) that there was unwanted conduct; (ii) that the conduct was related to a relevant protected characteristic and (iii) that it had the proscribed purpose or effect set out in section 26(1)(b) – **Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336**. The test of whether conduct is related to a protected characteristic is different from whether conduct is “because of” a protected characteristic which is the test in section 13(1) EA 2010; it is a broader and, therefore, more easily satisfied test. Whether or not conduct is related to the protected characteristic in question, is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it and its other findings of fact. The fact that the complainant considers that the conduct related to that characteristic is not determinative – **Tees Esk and Wear Valleys NHS Foundation Trust v Asalm [2020] IRLR 495**.

17 Section 27 EA 2010 provides,

- “(1) A person (A) victimizes another person (B) if A subjects B to a detriment because –
- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act –
- (a) bringing proceedings under this Act;
- ...
- (d) Making an allegation (whether or not express) that A or another person has contravened this Act.”

18 Section 136(2) and (3) EA 2010 provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the Equality Act, the tribunal must hold that the contravention occurred unless A shows that A did not contravene the provision.

19 In **Igen Ltd v Wong [2005] IRLR 258** the Court of Appeal gave the following guidance on the application of the reversal of the burden of proof –

- (1) It is for the claimant who complains of 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 which is unlawful under the Equality Act 2010.
- (2) If the claimant does not prove such facts he or she will fail.
- (3) It is important to bear in mind when deciding whether the claimant has proved such facts that it is unusual to find direct evidence on race discrimination. Few employers would be prepared to admit such discrimination, even to themselves.

- (4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
- (5) It is important to note the word “could” in section 136. At this stage the tribunal does not have to reach a definitive determination that such facts would lead to the conclusion that there was an act of unlawful discrimination. At this stage the 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) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably because of race, then the burden of proof moves to the respondent.
- (8) It is then for the respondent to prove that he did not commit that act. 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 because of race.
- (9) 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 charge the burden of proof on the balance of probabilities that race was not a ground for the treatment in question.
- (10) 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.

20 In **Madarassy v Nomura International PLC [2007] IRLR 246** the Court of Appeal held that the bare facts of difference in status and difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” (the phrase used in previous discrimination legislation) that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. “Could conclude” must mean that a “reasonable tribunal could properly conclude” from all the evidence before it. The absence of an adequate explanation for differential treatment only becomes relevant if a prima facie case is proved by the complainant. The burden is then on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim.

21 Conscious motivation on the part of the discriminator is not a necessary ingredient of direct discrimination or victimisation – **Nagarajan v London Regional Transport [1999] IRLR 572**.

22 A Tribunal is not entitled to draw an inference of discrimination from the mere fact that the employer has treated the employee unreasonably. However, racial discrimination may be inferred if there is no explanation for the unreasonable conduct or the Tribunal does not accept the reason given by the employer – **The Law Society v Bahl [2003] IRLR 641**.

23 **Section 123 EA 2010** provides,



*“(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of –*

*(a) The period of 3 months starting with the date to which the complaint relates, or*

*(b) Such other period as the employment tribunal thinks just and equitable.*

...

*(3) For the purposes of this section –*

*(a) conduct extending over a period is to be treated as done at the end of that period;*

*(b) failure to do something is to be treated as occurring when the person in question decided on it.”*

24 Section 140B(3) EA 2010 provides,

*“In working out when the time limit set by section 123(1)(a) ... expires the period beginning with the day after Day A and ending with Day B is not to be counted.”*

“Day A” is defined as being the date on which Early Conciliation commences and “day B” as the date on which the Early Conciliation certificate is granted.

25 In **Barclays Bank plc v Kapur [1991] IRLR 136** the claimants, who were Asians from East Africa, complained of race discrimination because they were employed on less favourable terms as to pension rights than European employees from East Africa. Their previous years of service in banks in East Africa did not count towards their pension entitlement whereas that of the European employees did. The issue was whether the act of discrimination had taken place on the date when the Bank decided not to credit them their previous service in East Africa or was a continuing act during their employment. The House of Lords held that it was a continuing act lasting throughout the period of employment. Lord Griffiths said that continuing to pay lower wages to black employees than to white employees would be a continuing act lasting throughout the black employees’ employment. He continued,

*“A man works not only for his current wage but also for his pension and to require him to work on less favourable terms as to pension is as much a continuing act as to require him to work for lower current wages.”*

26 In **Sougrin v Haringey Health Authority [1992] IRLR 417** the claimant complained of race discrimination in respect of grading decisions as a result of which she was graded Grade E and the white comparator was graded Grade F. The Grade E pay was £2,000 lower than Grade F pay. The Court of Appeal held that the alleged act of discrimination was the grading decision. That had continuing consequences but was not a continuing act. Lord Donaldson MR said in Lord Griffiths’ example in **Barclays Bank plc v Kapur** it was the employer’s policy not to pay the same wages to black and white employees, and it was that policy which constituted the discriminatory act. In the case before them, it had never been suggested that the Health Authority had any such policy. Its policy was to pay the same wages to every employee in the same grade regardless of racial distinctions. The claimant’s complaint was that she had been refused an “F” regrading for racially discriminatory reasons.

27 In **Owusu v London Fire & Civil Defence Authority** [1995] IRLR 574 Mummery J said,

*“The position is that an act does not extend over a period simply because the doing of the act has continuing consequences. A specific decision not to upgrade may be a specific act with continuing consequences. The continuing consequences do not make it a continuing act. On the other hand, an act does extend over a period of time if it takes the form of some policy, rule or practice, in accordance with which decisions are taken from time to time. What is continuing is alleged in this case to be a practice which results in consistent decisions discriminatory of Mr Owusu.”*

28 In **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640 the Court of Appeal held that in section 123(1) EA 2010 Parliament has chosen to give the employment tribunal the widest possible discretion. It does not specify any list of factors to which the tribunal is instructed to have regard. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delays has prejudiced the respondent. There is no justification for reading into the statutory language any requirement that time cannot be extended in the absence of an explanation for the delay from the claimant.

### **The Evidence**

29 The Claimant, Ahlam Akram (former Co-Chair, FBFF) and Lawrence Joffe (member of the Steering Committee, FBFF) gave evidence in support of the Claimant. The following witnesses gave evidence on behalf of the Respondents – Judith Elkan (Chair and Trustee, FBFF), Ronnie Cohen (Trustee and former Vice-Chair, FBFF), Brian Humphreys (Trustee and Honorary Treasurer, FBFF), Robert Humphreys and Elizabeth Donohoe. The documents in the case were dispersed in four different bundles and were not in a chronological order, which made it difficult for the Tribunal to navigate its way through them. Having considered all the oral and documentary evidence, the Tribunal makes the following findings of fact.

### **Findings of Fact**

30 The Claimant is a Palestinian who lived in Israel before she came to the UK to study in October 2016. She claims race discrimination on the grounds that various persons in FBFF, who are Jewish, discriminated against her because she is Palestinian.

31 UK Friends of Bereaved Families Forum (“FBFF”) was founded in 2004 and became a UK registered charity in 2007. The Respondents in this case are the current Trustees of FBFF. It is a small charity. It was set up to support Parents Circle/Families Forum (“PCFF”) based in Palestine and Israel. PCFF supports Palestinian and Israeli bereaved families working for peace and reconciliation. FBFF was founded by Judith Elkan, Ronnie Cohen and Chani Smith and they became trustees when it was registered as a charity in 2007. They are all Jewish. Ms Elkan has been chair of the Trustees since 2007. The Trustees, who are all volunteers, bear legal responsibility for the conduct of FBFF.

32 Ahlam Akram, who is Palestinian, was co-chair of FBFF from about 2005 to 2007. She resigned at the time of the Gaza blockade because she felt that Ms Elkan and Ms Smith did not recognise Palestinian suffering and that having a Palestinian involved in the charity was a face saving measure. FBFF has not had any Palestinian trustee since she left. All the trustees from 2018 to 2020 were Jewish.

33 FBFF also has a Steering Committee which plans fundraising and promotional activities. Its members are also volunteers. Some of the Trustees attend Steering Committee meetings. Between 2018 and 2020 the majority of the Steering Committee members were Jewish but they also included one Christian, one Palestinian and two Muslims.

34 In 2011 FBFF placed an advertisement to employ a manager to work three days a week at a salary of £25,500 p.a. At that time it had a reserve fund of about £37,523. A Job Description and Person Specification were drawn up for the role. They showed that the "internal role title" was Manager and that the post-holder would report to Paul Hopkins, who was FBFF's Treasurer at the time. The key responsibilities of the role were fundraising, raising awareness about FBFF and organising events in order to raise funds and awareness. Ms Taylor, a Jewish woman, applied for the job and was appointed to that role. She preferred to be engaged on a self-employed basis which FBFF was happy to accommodate. Mr Hopkins calculated the daily rate for that role by using the advertised salary for the post. He worked out the salary for someone working full-time (42,500) and divided that by the number of working days in the year which he calculated as being 227 (260 – 33 (25 days' holiday allowance and 8 days bank holidays)). That equated to £187 a day and it was agreed that she would work three days a week and invoice for the days she had worked at the end of each month. As a result she was paid £25,469 per annum for working 3 days a week and having 33 days' holidays ( $3/5 \times 227 \times 187 = 25,469$ ). She was in the same position as she would have been as an employee – she was paid about £25,500 gross and was entitled to 33 days' holidays.

35 Ms Taylor worked for FBFF from 18 July 2011 to December 2013. She found, for a variety of reasons which she set out in a paper at the end of 2013, that it was very difficult to raise funds for FBFF. In January 2014 FBFF had a reserve fund of only £8,000 and due to the financial constraints it decided to terminate Ms Taylor's engagement.

36 In about March 2017 PCFF put pressure on FBFF to use the services of S Orian to raise funds and awareness about the work of FBFF and PCFF. Ms Orian lived in USA and had previously worked for PCFF and had raised a lot of money for them in the US. She is Jewish. FBFF had reservations about how it would work with her living in the US but agreed to it. Ms Orian put forward a proposal for her services to PCFF which was ultimately accepted by FBFF. Ms Orian conducted her business through an entity called Atlas Coaching & Consulting. The proposal was that she would provide 10-13 hours' services per week and would be paid a fixed retainer of \$2,300 US per month which equated to about £1775 per month. In addition she would be paid travel and accommodation expenses for two trips a year to the UK. That added £4120 p.a. She also required a budget of £5,000 for support expenses which included a support person to work in the UK. That proposal was accepted and she worked for FBFF on that package. It was agreed that the arrangement would be reviewed after one year. Ms Orian invoiced for her services and expenses every three months.

37 At a Trustees' meeting on 4 February 2018 the Trustees discussed whether they should renew the contract with Ms Orian. The general consensus was that she was expensive (her rate of pay was equivalent to a full-time person being paid £60,000 p.a. plus £9,000 for a trip to the UK), she had not achieved a great deal and that they found it difficult to work with her. The unanimous decision of the Trustees was that the situation was not working.

38 At the same meeting the Trustees discussed the employment of the Claimant. Some of them had met her and they had seen her CV. They were unanimous in agreeing that she would be excellent in the role. The Claimant had 2 BScs (in Pharmacy and Biology) and an MA in International Relations. She also had several years' experience of working in a variety of roles in civil society organisations and NGOs in Israel. She spoke Arabic, Hebrew and English. She had come to the UK in October 2016 on a student visa to study for a second Masters in International Strategy and Diplomacy. By the end of 2017 she was nearing the end of that course. She wished to work in the UK for which she needed an employer to sponsor her to obtain a Tier 2 visa. The Trustees decided to proceed with employing her. Ms Smith said that they could have a full-time worker for a similar cost to what they were paying Ms Orian for part-time work. They agreed that they would sell the idea of replacing Ms Orian with the Claimant to PCFF by pointing out the positives, namely that she would be working full-time, was Palestinian, would be a third of the cost and had lots of positive ideas. It was agreed that Ms Elkan would contact the Claimant and tell her that they hoped to be able to go ahead and that they would draft a job advertisement.

39 In February 2018 the Trustees drafted a Job Description for a Public Relations and Development Officer and the post was advertised. It is clear from looking at the experience, knowledge and skills required for the role that it was drafted with the Claimant in mind for the role. The main responsibilities of the role were to increase the awareness of FBFF and its work, to raise funds and organise events. It was described as a full-time role working 37.5 hours per week. The salary for the role was given as £21,000. It was fixed at that because that was the minimum required in order to obtain a Tier 2 visa.

40 The Claimant applied for the role and was interviewed by Ms Elkan and Mr Cohen on 5 March 2018. She was told that the salary for the role would be £21,000 (which would cost FBFF £26,000) and that the expectation was that enough funds would be raised to cover the salary. The Claimant said that she hoped that the salary would be reviewed and that she would be rewarded once her work brought success. The Claimant said that she foresaw being able to get more Palestinians (the ambassador, journalists and academics) to engage with FBFF. The Claimant was told that she would receive sickness and holiday pay but would be exempted from pension as that was an added complication.

41 The Claimant was offered the role at a salary of £21,000 on 11 April 2018 and she accepted the offer. The offer letter said that she would be reporting to Ms Elkan and would start employment as soon as her visa application had been granted. Ms Elkan applied to the Home Office for a tier 2 visa for the Claimant and spent some time in pursuing that application.

42 The Claimant's appointment and salary were discussed at a Trustees' meeting on 5 July 2018. The Trustees at the time were the original three founders, Mike Cowan, Brian Humphreys and Debbie Nissenbaum. Daniel Smith (husband of Chani Smith) joined as a new Trustee around that time. It was noted that the Claimant expected to hear from the Home Office by 15 July. The Claimant had asked for a salary of £28-30,000 p.a. and it was agreed that they would offer her £27,000 on the basis that that would cost them £30,000. There was also a discussion at that meeting about a legacy of £450,000 that had been left to FBFF. It was agreed that £235,000 of that would be transferred to PCFF and that £100,000 would be used for the employment of a Development Officer (i.e. the Claimant's role) for three years and that they would review the success of the role after one year. It was also agreed that Ms Elkan would write to Ms Orian to terminate her engagement.

43 It was clear from a number of documents before us that the relationship between FBFF and PCFF was not always smooth and there were often tensions between the two groups.

44 The Claimant commenced employment with FBFF on 13 August 2018. She was issued with a written contract of employment which both she and Ms Elkan signed. Her job title was Development Director. The contract of employment contained the following provisions in relation to pay:

*"The Employee shall be paid a basic salary of £27,000 per Annum.*

*The Employee's salary shall be reviewed by the Board annually. The Company is under no obligation to award any increase following a salary review...*

*The Employee may also be required to perform overtime as may be reasonably required by the Company in order for the Employee to properly perform their duties; however, the Employee would not be entitled to any payment in lieu of the overtime work performed."*

*"Your normal hours of attendance will be 35 Hours per week.*

*If you work in excess of your normal working hours in a week overtime payments will be made at an appropriate rate which will be discussed prior and agreed upon by the Company."*

*"The Employee shall be entitled to 28 days' paid holiday in each holiday year which shall include the usual public holidays in England or Wales. The Company's holiday year runs between January and December..."*

*The Employee shall not without the consent of the Board carry forward any accrued but untaken holiday entitlement to a subsequent holiday year unless the Employee has been unavoidably prevented from taking such holiday during the relevant leave year because of sickness absence or statutory maternity, paternity or adoption leave."*

*"There is no contractual sickness/injury payments scheme in addition to Statutory Sick Pay (SSP)."*

Ms Elkan was the Claimant's line manager.

45 Not long after she started work, when the Claimant was reviewing various FBFF documents, she came across the terms of agreement between FBFF and Ms Taylor. This showed that the advertised rate had been “£25,500 for an employee for a 3 day week” and that was “equivalent to 42,500 full time.” It then set out how the daily rate of £187 had been calculated and stated that Ms Taylor would invoice them at the end of each month. At that stage the Claimant did not attribute the difference between her pay and that of Ms Taylor to their difference in race.

46 On 4 October 2018 the Claimant and Ms Elkan met to discuss their biographies which they had to submit to Limmud, a Jewish educational charity, at which they were making a presentation on behalf of FBFF. The Claimant had described herself at the beginning of her biography as a Palestinian citizen of Israel. Ms Elkan asked her whether that was how she described herself as she had not heard that expression before. The Claimant replied that it was. She felt offended by the question as she felt that her Palestinian identity was being challenged. It was the Claimant’s case that Ms Elkan moved that line to the end of her biography. Ms Elkan did not recall doing that. We do not accept that Ms Elkan moved that line to the end of the biography. The Claimant complained about this meeting in November 2018 but she made no reference in that complaint to it being moved to the end. She made no reference to it in her grievance in October 2019. The first time the Claimant alleged that Ms Elkan did that was in her claim form presented on 21 March 2020.

47 In October 2018 the Claimant went to Israel and while there met the Palestinian and Israeli CEOs of PCFF. On 23 October Chani Smith sent her a message to ask PCFF whether they would like a meeting with Prince William when they visited London the following March. Prince William had visited Israel in the spring of that year and Chani Smith had tried to arrange a meeting between him and PCFF through Dr Williams, the former Archbishop of Canterbury, who was a patron of FBFF. PCFF had not been particularly enthusiastic about the idea. The meeting did not take place but on his return the Prince’s secretary had written a warm letter to Chani Smith.

48 On 6 and 7 November, after the Claimant returned to London, she and Ms Smith exchanged messages about the potential meeting with Prince William and what PCFF’s reaction to it had been. The Claimant said that it had been positive. She asked Ms Smith whether she would like to share the correspondence with Prince William with her so that she could take it forward. Ms Smith responded that she would not at that stage as it needed more thinking through. The Claimant said that she had a personal contact who might be able to help and concluded by saying “please share with me when you are ready and feel comfortable to share.”

49 On 10 November Ms Elkan sent an email to PCFF, which was copied to Ms Smith and the Claimant. She referred to their forthcoming visit in March and said,

*“One of the events that Chani and I think could take place, with great benefit would be a meeting with Prince William. We would like to follow up the very warm response we had from his Secretary, way back at the time of his visit to Israel and Palestine, and the Prince’s later commitment to further the work of peace in the area.”*

50 On 12 November the Claimant had a discussion with Ms Elkan in which she raised a number of issues. She complained about feeling sidelined in respect of the Prince William matter. She said that she had initially broached the matter with PCFF

and when she had asked for the communication be shared with her so that she could take it forward(as she was organising the PCFF trip in March) she was told that it still needed thinking through. Ms Elkan had then contacted PCFF as presented it as something that she and Ms Smith were taking forward. She said that she felt that she was being used like a tool to which Ms Elkan responded with something like “Well, you are a tool for us in a way. We have hired you to do things for us.” The Claimant complained about Ms Elkan and Ms Smith running things and not sharing information with others. Ms Elkan said that without Ms Smith the organisation would not be where it was. The Claimant complained about Chani Smith being controlling and forceful. Ms Elkan agreed that she was forceful at times but said that she had great ideas. The Claimant also expressed the view that it would be beneficial to FBFF to have Palestinian trustees because it would help in bringing the Palestinian community onboard. She suggested inviting Ahlam Akhram to be a trustee and Ms Elkan responded that she was a “control freak”. The Claimant suggested that if they were able to deal with the forcefulness of Ms Smith they should be able to deal with forcefulness of Ms Akhram too.

51 On the following day the Claimant sent an email to Ronnie Cohen in which she set out the discussion that she had had with Ms Elkan the day before and her concerns about what Ms Elkan had said.

52 It was agreed that Ms Elkan, Mr Cohen and the Claimant would meet on 19 November to discuss the concerns that she had raised.

53 On 15 November the Claimant sought Mike Cowan’s advice on a document that she wished to present at the meeting. The major part of it dealt with matters such as her responsibilities, working hours, communication and reporting lines. She also suggested a personal development plan and the setting of targets for herself. She suggested that her performance should be assessed on 20 March 2019 (seven months after she had been in the role) and set out the measures that should be used to assess her performance (such as funds raised, number of events held, expansion of subscribers to the newsletter). She said that after showing success and contribution in the fields of raising awareness and fundraising, she should be eligible to ask for an increase in her salary to £42,000.

54 The Claimant made other suggestions in that document about how FBFF should be run and operate. She said that it should appoint a Palestinian co-Chair, set out how it should work with PCFF and how Trustees and how members of the Steering Committee should be appointed. As a Development Director employed by FBFF the Claimant was not in a position to dictate to them how they should run their organisation.

55 On the same day the Claimant also spoke to someone at PCFF and said that she was unhappy and thinking of resigning. The person at PCFF contacted Mike Cowan to express her unease about the Claimant wanting to resign.

56 On 16 November Chani Smith sent the Claimant an email. She said that she had heard that the Claimant was unhappy about the Prince William issue and said that perhaps she had created the confusion. She said that when she had said that the matter needed more thinking though before they decided what to do she had forgotten that she had asked the Claimant to speak to PCFF about it and that the

Claimant had already spoken to PCFF about it. She apologised for the confusion that she had created.

57 At the meeting on 19 November Ms Elkan said that if they were to work together it was essential that they re-established mutual trust. She said that the Claimant's identity as a Palestinian citizen of Israel was highly appreciated and was a huge asset to future relations with the Palestinian community as was demonstrated by the fact that she had got the former Palestinian ambassador to become a patron of FBFF. Although there had been no intention to undermine the Claimant, she understood that that she felt that she had been undermined, and she apologised for any insensitivity on her part or that of others which had caused the Claimant to feel undermined. She stated that it was not right for the Claimant to have communicated the internal situation at FBFF with PCFF. The Claimant responded that she wished to resolve the situation and believed that it was possible to start afresh. She accepted Ms Elkan's apology and Ms Smith's letter accepting responsibility for the confusion. She accepted that she should not have raised her issues with PCFF and said that she written to them that she was confident that all matters could be resolved. She maintained that it was important to have Palestinian Trustees and a Palestinian voice at FBFF. It was agreed that they would clearly define the Claimant's responsibilities and tasks, her reporting lines, the structure of FBFF including the responsibilities of Trustees and members of the Steering Committee and how they are appointed, the Claimant's relations with the Trustees and the Steering Committee and with PCFF.

58 On 21 November the Claimant responded to Ms Smith's email of 16 November. She explained why she had been unhappy about the Prince William matter. She said that she accepted Ms Smith's apology. She said that the lesson to be taken from it was that people worked together well when they were be willing be transparent in communications and share ideas knowing that sharing their ideas did not take anything from them. She said that Ms Smith had no reason to worry or fear sharing things with her. Ms Smith was offended by the tone and content of the email and Ronnie Cohen, who had advised the Claimant against sending it, told her that he was disappointed that she had done so and felt that it showed lack of judgment on her part.

59 Following that, Mr Cohen erroneously sent an email addressed to his partner to the Claimant. In the email he said,

*"She showed poor judgment contacting PCFF directly and equally poor judgment in sending the email to Chani only a day after we agreed at a long meeting to change the way we communicate within FBFF.*

*What a waste of time. I can't see we can continue with her but Judith will send the email to all the trustees and get a view from them as to how we should proceed."*

The Claimant was upset to see that email and complained to Mike Cowan about it. She said that her purpose in writing to Ms Smith had been to respond to her email so that they could put the matter behind them and move on. She said that she had sent it before she received Mr Cohen's email advising her not to send it.

60 A further meeting took place on 5 December 2018 between Ms Elkan, Mr Cohen, Ms Nissebaum and the Claimant. The Trustees presented at that meeting a Job



Description for the Claimant's role of Development Director. It stated that the Development Director was accountable to the Trustees, who were the employers, and was directly accountable to the Chair who had been designated as her line manager. It set out the key tasks and responsibilities for the role which included fundraising, organisation of visits to the UK by PCFF representatives, designing and executing a programme of events to raise funds and awareness. Fundraising included maintaining a list of donors and donations. They also presented a document setting out the "Ways of working". This stated, among other things,

*"its [FBFF's] effectiveness depends to a large degree of co-operation between staff, elected officers and volunteers; and between FBFF and PCFF in Israel/Palestine. Flexibility of attitudes and collaboration is therefore essential from all parties involved in this endeavour. Notwithstanding this, while the charity welcomes advice and suggestions from the Development Director on matters connected with its work, decisions on all questions of policy and expenditure of funds ultimately rest with the Trustees."*

61 On 21 December 2018 the Claimant asked Brian Humphreys for information about donors. She wanted to create an Excel spreadsheet showing the donations that they received and the fund-raising activity that had generated the donations. She asked him for access to information about the donations received, the amount of the each donation and the reason for it. He responded on the same date. He sent the Claimant a spreadsheet showing FBFF's income and outgoings for that financial year (which had started on 1 June 2018). That showed regular monthly donations (of very small sums) and a small number of small donations via Virgin Money or JustGiving.

62 In February 2019 the Claimant was offered a part-time position with United Jewish Israel Appeal (UJIA") (a charity) as Arab Jewish Relations Educator. FBFF consented her to taking that role as it felt that would be beneficial to FBFF. She did that role in addition to her full time role with FBFF.

63 In January and February the Claimant put in a lot of time and effort into organising the visit of Robi Damelin and Bassam Aramin from PCFF for March of that year. At a meeting of the Steering Committee on 6 February 2018, which was attended by Ms Elkan and a number of the other Trustees, it was noted that the Claimant had been building very good relationships with venues and contacts. There was a discussion about a variety of events for the visit and it was noted that the Claimant had got them a slot on Radio 4 Today programme with Mishal Hussain. It was agreed that the Claimant and Ms Elkan would draft an invitation to send to the patrons. It was also noted at the meeting that the Claimant and Peter had created an excellent newsletter.

64 On 14 February 2019 Ms Elkan shared with the Claimant a draft of the letter that she intended to send to the patrons about the events during the PCFF visit. In the last paragraph of that draft letter she said,

*"I would like to let you know that we have recently appointed a Development Director of FBFF, Ms Sana Knaneh, a Palestinian citizen of Israel. We look forward to her dynamic input in helping to develop and expand FBFF's work."*

In her response the following morning the Claimant said that she would like to be "ccd" in the letter, especially the one to the former Palestinian ambassador whom she

had brought on board as a patron. Ms Elkan did not copy the Claimant in the email that she sent to the former Palestinian ambassador. The Claimant raised it with her and it was agreed that in future Ms Elkan would copy the Claimant into communications with the patrons, especially those who were the Claimant's contacts.

65 At a meeting on 27 February 2019 the Trustees approved a proposal that Professor Haj-Yahia become a patron and that Professor Mekelberg become a trustee and a member of the Steering Committee. The former (a Palestinian academic) had been introduced to FBFF by the Claimant. Professor Mekelberg (who is Jewish) had been known to the Trustees ever since FBFF had been founded. He had attended their first public meeting. He had worked at Chatham House and Regent's University and he had held public meetings in support of FBFF at both those places. At that meeting Ms Elkan said that she was thinking of stepping down as the Chair and Mr Cohen agreed to become Vice-Chair so that he could help her with some of her duties.

66 Bassam Aramin and Robi Damelin from PCFF visited London from 4 to 10 March 2019. They attended many events, spoke on Radio 4 and through the Claimant met the then Palestinian ambassador. They regarded the trip as having been a success. In an email to her colleagues about the trip Robi Damelin said,

*"We would like to thank Sana for all her hard work and for taking such good care of us, as well as the committee of the British Friends of the Parents Circle."*

67 On 22 March 2019 Ronnie Cohen replaced Ms Elkan as the Claimant's line manager.

68 Between 5 December 2018 and 5 May 2019, other than saying that she wanted to be copied into emails to patrons who were her contacts, the Claimant did not raise any issues.

69 On 1 May Ms Elkan tried calling the Claimant. The Claimant sent her an email that she was having problems with her mobile and suggested that she either email her or, if it was urgent, call her the following day. Ms Elkan responded by email that she had called in response to something that the Claimant had raised, and that the Claimant could call or email her the following day.

70 On 3 May (Friday) Ms Elkan called the Claimant. The Claimant was in a meeting with Professor Mekelberg at the time and did not answer the call. Ms Elkan left a message for her. The Claimant did not call her after the meeting finished.

71 FBFF had, with two other organisations, organised the screening of a Joint Israeli/Palestinian Memorial Day to take place on 7 May 2019. On 5 May 2019 Ms Elkan sent the patrons an email about the event. She then forwarded the email to the Claimant with the message, *"Just to let you know I sent this email to our Patrons today."* The Claimant responded, *"Thanks for the update. I think it's better that I am cced when you write to the patrons so I can contribute to strengthening the relationship with them."*

72 Later that day Ms Elkan forwarded to the Claimant a response that she had received from Professor Haj-Yahia to an invitation she had sent him. It was not clear

whether that was a response to the invitation to the Memorial Day screening or the garden party that was due to take place in July. At about 8.14 p.m. the Claimant sent Ms Elkan an email. She said,

*“Can you please cc me in the original message rather than sending it to me after you get a response Judith. It doesn’t look good at all that I’m not cced in such emails especially with the patrons that I know personally ... It’s very problematic.*

*We have discussed this in the past and it doesn’t respect me and my role not to cc me.*

*This does not encourage me to invite the support of more of my personal contacts of high esteemed politicians or professionals and brings me back to the feeling that I am only a tool for you. Can we get this clear for now and always please?”*

73 Later that evening the Claimant telephone Ms Elkan. It was a heated exchange. The Claimant complained about Ms Elkan not copying her into the emails sent to the patrons, especially the ones who were her contacts. Ms Elkan complained about the Claimant not having returned her call after she called her and left a message for her. She said that she had wanted to talk to her about the Memorial Day event. She also complained that that the Claimant had not written to the patrons. The Claimant said that Ms Elkan had always maintained that that was her (Ms Elkan’s responsibility). In the course of the conversation Ms Elkan said something along the lines “I don’t have to cc you in” and “I can write to them without ccing you in” and that maybe if the Claimant had called her she might have copied her in. At one point there was a long silence in the conversation and Ms Elkan put the receiver down.

74 After the telephone call the Claimant sent Ms Elkan an email. She explained why she felt that it was not productive to write to patrons who were her contacts without copying her in, said that it had been agreed in the past that Ms Elkan was in charge of writing to the patrons and asked her whether she was now passing that responsibility on to her and explained why she had not returned Ms Elkan’s calls. She said that she had not thought that they were urgent as Ms Elkan had sent her an email saying “give me a call or email as appropriate if you need to”. She said that there had been no intention to disrespect her and apologised if it came across in that way. Ms Elkan replied that her voice messages to the Claimant were after she had sent the email to which the Claimant had referred and not before that. She said *“if there was a misunderstanding on your part, let’s accept it happened and move forward now.”*

75 The Claimant sent an email in response at 23.59. She said *“It can’t always be resolved by making it seem a misunderstanding on my side.”* She said that she had found the conversation that evening very disturbing and that her interaction with Ms Elkan made her feel that there was a huge gap between what FBFF was promoting and how Ms Elkan treated her. She continued,

*“Professionally speaking, your statement on the phone “I can write them when I want without ccing you” sounds like an Israeli coercive attitude towards Palestinians.*

*Your answer of: “I sat here frustrated that you didn’t write to them and then I decided to write to them without ccing anyone” sounds to me like a retaliation attitude. Also, your reply “if you had called me back I would have cced you,”*

*sounds like I was punished for not calling you. Both not in line with the goals of the organization.”*

All the emails between the Claimant and Ms Elkan were copied to Ronnie Cohen.

76 Ms Elkan responded to the Claimant’s email on 8 May. She said that she had not responded earlier as had felt that she had needed to focus on making the Memorial Day a success. She said that she had many concerns about the Claimant’s response and would communicate them to Mr Cohen as the Claimant’s line manager.

77 The same day Ms Elkan sent an email to Mr Cohen. She said,

*“With regard to my email to our Patrons, Sana had a valid point. I did previously say that I would in future cc her in correspondence with Patrons and I omitted to do that. When she pointed this out, I did not immediately express regret.”*

She said that the telephone conversation had not been “*a happy one*” but that after it she had felt that it would have been right to cc the Claimant and that she had sent her an email in which she had apologised. That email was not in the documents before us.

78 She continued that the Claimant’s email sent at 23.59 was at the centre of her concern, both for its content and tone. She said,

*“I would like Sana to reflect deeply on what she wrote on this email. I do not want her **ever, ever** to send me an email with such content and in such a tone.*

*I felt such an email was destructive of a further working relationship and worrying for its effect on developing FBFF in a harmonious way.*

*The email was disturbing for the thoughts expressed. I was upset and extremely hurt and offended by such thoughts. What was really offensive was suggesting that what I said on the phone “sounded like an Israeli coercive attitude towards Palestinians” Further responses to our conversation on the phone were “sounds to me like a retaliation attitude” and “sounds like I was punished for not calling you”. Conversations on the phone – what is said, what is heard – can be interpreted in various ways by both parties. I find Sana’s way of latching on to each work and using it as ammunition not helpful or collegial, special after I apologized.*

*I think Sana cannot realise how offensive this email is to me, who has striven for 15 years in setting up and maintaining the constructive work of FBFF, including the hard work – virtually standing on my head – to have her appointed as our Development Director.”*

She said that this was the third occasion on which the Claimant had “*created a storm around her feelings*” that she was not supported and respected by Ms Elkan. She said that there were two other occasions when she had upset other colleagues – Chani Smith and Peter Singer (who was on the Steering Committee and an IT specialist).

79 On 10 May 2019 Mr Cohen forwarded Ms Elkan’s complaint to the Claimant and said that he was dealing with it as her line manager. He said that Ms Elkan had found

some of her statements in her email “*disturbing, hurtful and personally offensive.*” He said that they were personal attacks which had no place in the professional world, particularly in their world where they were seeking peace and reconciliation. He said that misunderstandings and errors in the workplace needed to be sorted out in a collegial way and with goodwill. He said that Ms Elkan had apologised to her for omission in not cc'ing her in her letter to the patrons and he hoped that she would be able to apologise to Ms Elkan for the statements that she had made in her email. He continued,

*“If you feel able to apologise to Judith, I recommend that we three should meet, not to go over these matters again but to focus on working well together which included mode of communication. It is vital that the Chair of FBFF and the Director of Development work closely together if we are to succeed.”*

80 Mr Cohen met with the Claimant on 15 May. She said that she wanted an opportunity to put her concerns in writing as Ms Elkan had done before she had any meeting with them. Mr Cohen agreed that she could do that. Ms Elkan was in Israel at the time.

81 On 20 May 2019 the Claimant sent Mr Cohen an email setting out her complaints. She said that she felt that it was important to focus not only on what she had said to Ms Elkan about the telephone call but also on what Ms Elkan had said to her during that call which she still found to be “*a very offensive personal non-professional attack*” . When she had asked Ms Elkan to explain why she had not been ccd, she had heard “*a storm of anger and frustration*” and it had been hard for her to complete a sentence. Ms Elkan had hung up on her which she had found offensive. She said that her response to that query had not been professional but personal statements which she had found “*offensive, coercive and expressed power relations.*” She continued,

*“My feelings about those personal statements are genuine and real as they take me to the power relations back home which I don't wish to see at FBFF; would like to believe that we are all equal despite the different positions and responsibilities.”*

She repeated what she had said in her email of 5 May. She said that Ms Elkan had apologised to her for not cc-ing her but not for the very offensive things that she had said on the telephone. She said that the issues that she had with Ms Smith had been resolved and that the issue involving Peter Singer was a minor matter. She complained about Ms Elkan not reading emails that she had sent and then complaining about not having received information or of being ignored. She concluded by putting forward suggestions of how they could work constructively together starting with a meeting between the two of them with Mr Cohen present to clear the air.

82 On 22 May Mr Cohen wrote to Peter Singer to ask him whether he had had any issues with the Claimant. He said that the differences between the Claimant and Ms Elkan had flared up again. He said,

*“Both feel very bitter towards the other and, although they both deny it, there is an element of personal attack.”*

We did not have Mr Singer's response in the documents before us.

83 On 6 June 2019, when Ms Elkan returned from Israel, Mr Cohen sent her the Claimant's complaint of 20 May.

84 At a Steering Committee meeting on 22 May (at which three of the Trustees, but not Ms Elkan, were present) the FBFF garden party which was an annual event held at Ms Elkan's house, and that year was to be held on 14 July, was discussed. It was suggested that there should be a maximum of 60 guests which was the most Ms Elkan's house could accommodate if it rained. It was also decided that the Claimant would invite the patrons. It was also noted at the meeting that the sum of donations so far received that year was £63,175.

85 On 14 June the Claimant sent emails to members of the Steering Committee and the Trustees about the event. She attached an invitation to the party and suggested that people who wished to attend should register for the event through Facebook or Eventbrite. She said that as Ms Elkan's house could accommodate only 60 people, it was important to know the numbers of people attending. Ms Elkan sent the Claimant two emails which were copied to all the Trustees and members of the Steering Committee. In the first she said,

*"The house can in fact have hold as many as 80 people. If it rains hard some people will not come in any case.  
Please keep in touch with me first regarding arrangements for the garden party."*

In the second email she said,

*"About your suggestions – I personally do not think it necessary to have people respond via links and registering with Eventbrite. A simple RSVP is sufficient. Often people have come spontaneously to the garden party without even a RSVP."*

86 Three members of the Steering Committee commented in private to the Claimant about Ms Elkan's response to her and the fact that it had been copied to others. Lawrence Joffe said in an email to her,

*"I feel uncomfortable about the way Judith emailed everyone with what should have been a simple administrative matter between the two of you. Maybe she did not mean it as such, but it sounded like an admonition of some sort."*

Ms Sheta said that she should not be spoken to in that way and that it was disrespectful. Ms Kelly said that everyone had seen "*her nasty email to you.*" Mr Cohen told the Claimant that it was a good idea to use Eventbrite and that she should continue to do so.

87 Mr Cohen was responsible for arranging a meeting between the Claimant, Ms Elkan, Mike Cowan and him to discuss the complaints made by the Claimant and Ms Elkan. It had initially been agreed that the meeting should be held on 24 July. On 18 June Mr Cohen sent them an email that he had run into various problem trying to get a neutral venue for that day. He said that there was a room available without charge at a synagogue which he had temporarily booked for the evening on 23 July. He

asked them to confirm whether they were available to attend. The Claimant responded within a couple of hours of receiving his email that she had an event booked that evening which she would really like to attend. She said that she could attend the meeting on 24 or 25 July, but not on 23 July. Mr Cowan said that if it helped he could attend on 22 July. Mr Cohen did not respond to the Claimant's email.

88 On 27 June the Claimant sent Mr Cohen an email. She said that she had made plans for 23 July because they had agreed that the meeting would be held on 24 July and that the event on 23 July was really important to her, she had made the effort to find an alternative venue for 22 July so that he did not have to do that again, it would cost £80 and everyone could attend on 22 July. She concluded by saying "*Can you please consider it?*" Mr Cohen responded that as the room he had booked was free he did not see the need to pay for a room elsewhere. The Claimant then sent an email to all of them and said that could not attend on 23 July. She explained that the event on 23 July was an important event in the Palestinian society and was going to be attended by the Palestinian ambassador. She said that she had explored the option for a venue on 22 July and there was a room available at JW3 at a cost of £40.50 per hour. She said if that date was not convenient, she could do the initial suggested date of 24 July or the following week.

89 At 10.50 p.m. that night Mr Cohen sent the Claimant an email which was copied to Ms Elkan and Mr Cowan. He said that he had booked the venue after that had all agreed to hold the meeting on 23 July. That was not correct. He had booked the venue for 23 July before he had checked whether they were all available on that date. He said that it was her responsibility to attend that meeting and he hoped that she would reconsider her decision. He accepted in cross-examination that his criticism of the Claimant in respect of the meeting was misplaced and said that he had overlooked the fact that she had said that she could not attend on that date.

90 Later that evening he spoke to the Claimant on the telephone. He was very angry with her. He asked her why she could not just agree to attend the meeting. He said "your life depends on this" and "without the meeting there will be no charity." Mr Cohen did not say anything about this telephone call in his witness statement. At a grievance hearing with the Claimant later that year he denied that he had ever said anything like that. In cross-examination he said that he had said "your life at FBFF depends on this." He said that he was not prepared to discuss the matter any further. If she did not attend, the meeting would go ahead and decisions would be made without her. He told her not to call him and said that he would resign as her line manager.

91 Following the telephone call he sent an email to Ms Elkan. He said that he had been badgered by the Claimant to change the date of the meeting to which he believed that she had initially agreed. That was not correct. He admitted that he had lost his temper with her. He said that in view of her email that she would not be attending the meeting he was "*really shocked*" and not prepared to continue as her line manager and he formally resigned from that position. He concluded by saying,

*"I think she has behaved badly and acted in a very cavalier way. She is convinced that she is the victim of aggressive behaviour towards her from within FBFF and that is how she justifies her own behaviour and attitude."*

92 Early on 28 June the Claimant sent Mr Cohen an email copied to Ms Elkan and Mr Cowan. She expressed her sadness and disappointment at the things that he had said the previous night. She said that her life and future did not depend on the meeting, only her visa sponsorship did. She asked him not to put pressure on her to attend the meeting on a date that she had made clear was not suitable for her. She repeated that she would not attend the meeting on 23 July.

93 Later that morning Mr Cohen sent an email to all the trustees. He said that he wished to inform them of two issues. The first was the poor relationship between the Claimant and Ms Elkan. The Claimant felt disrespected by Ms Elkan and that she was being treated as a “tool”. The second issue related to the meeting that he had tried to organise to resolve the issues between them. He said that everyone had agreed to the date and the neutral venue and that a while later the Claimant had informed him that she could not attend. He did not make it clear that the Claimant had never agreed that date. He said that “*due to costs and availability*” he had refused to change the date. He had formally resigned as her line manager. He suggested that they sought advice from an employment lawyer on how to deal with the situation. It would appear that Mr Cohen was persuaded to continue acting as the Claimant’s line manager. No one told the Claimant that he was no longer her line manager.

94 On 5 July the Claimant sent Mr Cohen an email headed “Potential Palestinian trustee”. She said that she had met a Palestinian man who was interested in becoming a trustee. She had been introduced to him by Lawrence Joffe who had known him for many years. She said that he had a long record in promoting Arab-Jewish relations. She sought some information as to what would be required if a trustee needed to resign. Mr Cohen did not reply. The Claimant chased it up in 12 July. There was no response from Mr Cohen.

95 On 12 July the Claimant informed Ms Elkan that she was not well and might not be able to attend the garden party on 14 July. On the day in question she arrived at the party shortly after it had started accompanied by the Palestinian ambassador. She had not told anyone in advance that he would be attending. Ms Elkan asked the ambassador to make a speech. She suggested that she would say a few opening words, then he would make a speech and the Claimant would speak after that. We do not accept that she made a dismissive hand gesture as she said that. The ambassador said that it might be better if the Claimant spoke before him. The Claimant informed Ms Elkan and the other trustees that the ambassador did not want his attendance at the garden party to be publicised. Later that evening the Claimant sent an email to the trustees and members of the Steering Committee about the garden party having been a success. She thanked Ms Elkan for opening her house to everyone and to others for their support and presence. She attached a picture of the ambassador making a speech and reminded them not to share it on social media at the ambassador’s request.

96 On 29 July Ms Elkan sent the Claimant an email about the Palestinian ambassador’s attendance at the garden party. She said it had been a very positive achievement to have his expression of support for their work and congratulated the Claimant and said a big thank you to her for bringing it about. On 31 July Ms Elkan sent the ambassador a letter, which was copied to the Claimant and the Trustees, thanking him. She concluded by saying that she hoped that there would be further occasions for continuing the link that had so helpfully been made by the Claimant.



The Claimant thanked Ms Elkan for her words of appreciation and said that she was happy to bring such a significant contribution to FBFF.

97 On 2 August Ms Elkan sent an email to all the trustees about an urgent meeting that she intended to call to discuss the Claimant's complaints and her concerns about issues underlying her complaints. She said that since November 2018 the Claimant had raised complaints against her on five occasions. The persistent theme of the complaints had been that her Palestinian identity was not being respected, she was being used as a "tool" and not treated as an equal and that she did all the work while Ms Elkan took all the credit. She said that the complaints were not valid and gave reasons to support that. She said that she thought that it needed to be pointed out to the Claimant that she was an employee, paid to do a job, that she was equal in every respect as a person but that in her post as an employee of FBFF she was not an equal in relation to her employers, the Trustees, who were the final authority regarding what should or should not be done. She believed that the Claimant had found it difficult to accept that. She continued that the Claimant had raised roughly between £4,000 and £5,000. She concluded by saying,

*"Brian has raised the point that if Sana is unable to raise the requisite funds to at least cover her salary, how long could we justify her continued employment? This point needs to be considered carefully."*

FBFF had consulted a solicitor by that date as she referred to advice having been given by the solicitor. A Trustees' meeting was subsequently arranged for 21 August.

98 On the same day the Claimant wrote to Mr Cohen to express her dissatisfaction at her salary being £27,000 a year for a full-time job. She said that after a year at FBFF she felt that her salary did not reflect her skills, knowledge, experience and education and what she brought to FBFF. Her research had shown her salaries ranging from £37,411 and £44,015 and she believed that an annual salary of £42,000 would represent her skills and experience more fairly. That was very close to the annual salary figure that she had seen on documents relating to the employment of Ms Taylor eight years earlier. She asked to have a meeting to discuss it as soon as possible.

99 On 13 August the Claimant wrote to Mr Cohen that she was very disturbed that the meeting to discuss her complaints had not taken place in July. She said that she was flying home on 7 September and that it needed to be addressed before then. Mr Cohen responded that they had a Trustees' meeting on 21 August and that they would discuss the issues that she had raised. The Claimant responded that the matters that were to be discussed on 23 July needed to be discussed with her and not in her absence. She said that she thought an outside mediator was "a must" and that the mediator could not be a trustee.

100 Between 14 June and 16 Aug 2019 the Claimant tried to get information about certain donors. On 14 June she sent emails to Messrs Cohen, Humphreys and Cowan and Ms Elkan asking what the term "special donors" meant (she had been given a list of special donors when she started) and for the history of their donations – the amount and frequency of their donations in the past. She said that that information would help them in their further approaches to them. Mr Humphreys replied that he did not know what the term meant. There was no other response to her request. On 17 July she chased it up with all of them. Mr Humphreys responded

that it would take him some time to go through past records to get the information and he would send her what he could find when he had the time to deal with it. There was no response from any of the others as to what the term meant. On 14 August Mr Humphreys asked Ms Elkan whether there was any reason why he could not give the history of donations to the Claimant. She responded that it would be helpful to see it before it was sent to her and said that the Claimant had recently complained about them not co-operating with her in respect of fundraising. Ms Humphreys gave her the information and checked again whether it was alright to send it to the Claimant. On 16 August Mr Humphreys sent the Claimant an email setting out the donations made between 2016 and 2019 by the individuals on her list. There were not many donations (there were nine altogether) but they were, by FBFF standards, for quite large amounts (ranging from £5,000 to a little over £33,000).

101 On 15 August the Claimant raised queries with Brian Humphreys about sickness absence and pay. He responded on 20 August that under her contract she was entitled to statutory sick pay and explained what that entailed. His response was copied to all the Trustees. He asked her whether she had started a period of sickness absence or was making inquiries in case she did. The Claimant responded that she was seeing her doctor the next day and explained why she was doing so. Her response was copied only to Mr Cohen and Ms Nissenbaum. She said that she did not want her medical information be shared with any of the other Trustees without her consent.

102 Prior to the Trustees' meeting the Claimant submitted a document setting out the evaluation of her one year's work with FBFF. She listed the new people that she had brought on board as patrons (both Palestinians), trustees and Steering Committee members, the various events that she had organised and attended to raise awareness about FBFF, activities on social media to increase the exposure of FBFF, the increase in the number of Facebook followers and subscribers the newsletter and the funds that she had raised (about £4,280).

103 The Trustees' meeting took place on 21 August 2019. They reviewed the Claimant's performance over the year and her request for a salary increase. Her evaluation report was read. They noted the Claimant needed to be reminded that she had been made aware at the outset that the expectation was that she would raise sufficient funds to cover her salary and costs. They also noted that since November 2018 there had been difficulties in the working relationship between the Claimant and her managers and that she had made numerous complaints which had been addressed but had continued. Mr Humphreys presented a financial report. We did not have a copy of that in the documents before us. The Trustees concluded that with the balance at that time, they could not afford to give the Claimant the raise that she had requested.

104 It was also agreed that the meeting to discuss the Claimant's complaint would be rescheduled in September. They would get an independent person to chair the meeting (possibly an HR expert) and both the Claimant and Ms Elkan would be permitted to be accompanied. Brian Humphreys was appointed the Claimant's line manager.

105 On 22 August Mr Humphreys informed the Claimant that in view of their financial situation the Trustees had not been able accede to her request to increase her salary to £42,000 and that for the future her salary would continue at the same level. He

said that it had been clearly stated to her at the outset that she needed to raise at least sufficient funds to cover her salary and donations from her contacts had contributed less than £5,000 which was a long way short of the target. He said that her request not to copy Ms Elkan into emails that contained personal information about her health was unacceptable. He said he could not withhold information from a fellow Trustee as they all had joint responsibility for the funning of the charity.

106 The Claimant responded that that was “*very unacceptable and legally problematic*”. She said that they could not block her way to fundraising by not giving her the information that she had sought on 14 June for two months and then use failure to funds as a reason not to give her a salary rise. She also did not accept that it was right to provide information about her health to all the Trustees. Mr Humphreys responded that her allegation that they had blocked her access to “special donors” was incorrect.

107 On 22 August Ms Elkan informed the Claimant that the Trustees had appointed Brian Humphreys as her new line manager. She said that it had also been agreed that the meeting that did not take place on 23 July should take place as soon as possible and preferably before she went on leave in September. She was advised that she could be accompanied by a person of her choice.

108 On 23 August the Claimant wrote to all the Trustees. She said that she was not happy with Mr Humphreys being appointed her line manager because he had blocked her access to crucial information on donors’ history. She said that the only two Trustees who “*were not involved nor witnessed with silence any biased act against me led by Judith*” were Ms Nissenbaum and Professor Mekelberg and, therefore, they were the only ones who could be impartial line managers. She also said that she would like an independent HR person to be appointed to FBFF as she felt that there “*was a misuse of power of the chair, Judith, that is often tolerated with silence of the trustees.*”. She said that they needed an “*impartial mediator*” for the meeting to discuss her complaint and she was not sure whether she could find one before 7 September.

109 There was a further exchange of emails between the Claimant and Ms Elkan on all these matters. Ms Elkan made it clear to her that it was for the Trustees to decide who her line manager should be, they had appointed Brian Humphreys and she should report to him.

110 On 23 August the Claimant wrote to all the Trustees that she wanted to set up a meeting to introduce them to a Palestinian who had agreed to become a Trustee on 5 July. It was the same person about whom she had written to Mr Cohen on 5 July. She said that he had been involved for years in the Arab Jewish forum. Ms Elkan responded on 29 August. She said, as always, they would be very pleased to meet any Palestinian who wished to become involved with FBFF’s work. However, they would need to explain to him that in order to become a Trustee he would be need to have been engaged with and contributed to their activities over a period of time. She said that they would be happy if after a meeting with them, the person in question wanted either to join the Steering Committee or support the charity in some other way.

111 The Claimant responded that she was not sure that it was a good idea to start the engagement with a well-respected Palestinian, who had a good record in Arab

Jewish relations, by imposing conditions on his becoming a Trustee. She said that Mr Joffe had known him for many years. She said that she would try to set up a meeting with him after 17 September.

112 In an email on 2 September 2019 to Ms Elkan about the refusal to increase her salary, the Claimant said that Ms Taylor, who had held exactly the same post before her, had been paid £42,000 p.a. She said that she considered that to be discrimination against her as a Palestinian and not in line with the values which FBFF aimed to promote. She also said that there had not been any fundraising target in her contract or any agreement that a salary rise was contingent on it. In any event, fundraising was only half of her work, the other half was raising awareness. The Claimant also said that at the meeting between them she wanted a Civil Society expert as a mediator and a trade union representative.

113 Ms Elkan responded that there was no basis for claiming discrimination in respect of her salary. She said Ms Taylor *“was employed on a free lance, part-time basis, and in different circumstances.”* She said that the Claimant’s work in raising awareness had been acknowledged and appreciated but the importance and priority of fundraising had been made clear when she had been appointed and in her job description. As far as the meeting was concerned, she made it clear that the Claimant could be accompanied by one person – that could be either a Civil Society expert or a trade union representative. It would be chaired by an independent HR person.

114 The Claimant accused Ms Elkan of *“disrespect”* and starting *“a parallel process”* to find someone to chair the hearing and asked her what procedure said that she could only be accompanied by one person. She refused to accept Mr Humphreys as her line manager because he had been involved *“in biased act”* against her led by Ms Elkan.

115 Ms Elkan responded that it was FBFF’s responsibility as her employer to organise the meeting and not hers to do so, legally she had the right to be accompanied to a grievance hearing by a work colleague or a trade union representative, the Trustees had appointed Mr Humphreys as her line manager and any refusal to accept him as such could amount to misconduct. She concluded by saying,

*“Finally, I must say how unhappy we are with the tone of your correspondence. Your use of language like ‘disrespect’, ‘pressure’, ‘biased’ and ‘misconduct’ in this morning’s email is unnecessarily aggressive. The general tone of antagonism and mistrust in your most recent correspondence potentially undermines the essential trust and confidence between and employer and their employee.”*

116 The Claimant responded by justifying her earlier email and refusing to acknowledge that it there was anything wrong with it.

117 On 30 September 2019 the Claimant contacted ACAS and commenced Early Conciliation.

118 On 2 October 2019 the Claimant sent Ms Elkan an email in which she said that she held her responsible for the deterioration in her physical well-being and health.

She said that all her “*disrespect and aggression*” towards her had affected her health and that she would pursue her “*all the way legally*” if she was diagnosed with diabetes because of the stress that she had caused her. She continued,

*“Yet, you keep fighting me by trying to impose an HR person on me and disrespecting my right to agree to a mediator as well as disrespecting my right to data protection by choosing to pass information to an HR person that I did not give my consent to pass any information to.  
Those are serious rights violations and I am deeply troubled that this has brought me to the health situation I am at.”*

119 On 10 October, just before 6 p.m. the Claimant asked Mr Humphreys to fill in a reference form which she needed in order to get a new tenancy. He responded at 10.22 the next morning that he had just seen her email and would complete the form later in the day and send it to her. At 3.05 p.m. the Claimant sent him an email in which she said,

*“I suspect you are acting with retaliation by not filling the reference and by that you are harming my wellbeing...  
I’m very disturbed with your attitude and it’s due to biased attitude and speaking with Judith’s voice that I rejected your appointment as a line manager. The only impartial line manager I’m willing to accept at the moment is Debbie.”*

120 On 11 October Mr Humphreys informed the Claimant that they would be proceeding with the meeting to discuss her complaints and that it would be chaired by the independent HR expert that they had appointed. The Claimant had not given any good reason for objecting to her. He told her that the meeting had been arranged for 18 October 2019. The Claimant responded that she totally rejected their attempts to impose an HR expert that they had chosen without her consent. She accused them of having violated her rights and exerting pressure on her and being in breaches of law.

121 On 17 October 2019 the Claimant raised a formal grievance about racial discrimination in respect of her salary. She complained that two white women (one British and one American) who had held her post had been paid more than her. She said that Ms Taylor had been paid £42,000 a year and Ms Orian had been paid more than her net pay for working 10-13 hours a week.

122 On 27 October she submitted a revised grievance. In that she complained not only of race discrimination in respect of pay but also of disrespectful treatment by Ms Elkan.

123 On 29 October both the Claimant and FBFF agreed to extend Early Conciliation to 12 November.

124 In October 2019 Elizabeth O’Donohoe, a supporter of FBFF who had attended the summer garden party informed Ms Elkan that she had written a short article about the garden party in the Westminster Interfaith newsletter. Ms Elkan mentioned it to the Claimant and the Claimant asked Ms O’Donohoe to send her a copy of the article, which she did on 6 November. The article said that the Palestinian

ambassador to the UK had spoken at the party *“with such appreciation for the work of the Group”*. The Claimant responded by asking,

*“Who from FBFF gave you that piece of information about the Ambassador’s presence and who gave you permission to publish it Elizabeth?”*

Ms Donohoe responded that she had been present at the garden party and had heard the ambassador speak and had written what she had seen. She had not asked anyone’s permission to do so. She said that she was sorry if the Claimant would have preferred her not to mention it and offered her sincere apologies. The Claimant also complained to Ms Elkan that she had allowed her friend Elizabeth to publish the article after she had told her that the ambassador did not want his presence to be publicised. She said it was another example of *“how dishonest, disrespectful you are and how unappreciative to my efforts.”*

125 The Claimant had asked for Mr Cohen to hear her grievance rather than the independent HR expert that FBFF had decided to appoint. The grievance hearing took place on 7 November 2019. Mr Cohen was accompanied by the HR expert and the Claimant was accompanied by a trade union representative. The hearing was recorded. It lasted two hours.

126 On 12 November the Claimant wrote to Mr Humphreys that she had never accepted his appointment as her line manager as he was not impartial and that she would wait for the outcome of the grievance before she engaged in any discussions with him as her line manager.

127 On 13 November the Claimant sent an email to Ms Elkan in which she complained about Ms Elkan having copied her into emails sent to Trustees, including former Trustees. She said,

*“After shaming me in front of the trustees I’m various occasions and harming my relationship with some, you have no right to use my name and position in such a cynical way to whitewash things. At the time I’m so harshly disrespected by you and bullied by you for a whole year, you have no right to use my name to beautify your image among your friends.”*

128 On 21 November Mr Cohen sent the Claimant the outcome of her grievance. He did not uphold any part of her grievance. He dealt with each of the points that she had raised and explained why he had not upheld her grievance. He said that the Claimant had not presented any evidence that any of the acts about which she had complained had been due to her race and that, coupled with the facts that he had known Ms Elkan for fifteen years and had never witnessed her act in a discriminatory way towards anyone, including the Claimant, had led him to conclude that Ms Elkan had not discriminated against the Claimant because she was Palestinian. In respect of the Claimant’s complaint of race discrimination in respect of pay he concluded that the difference in pay was due to the differences in employment status. He said that both Ms Orian and Taylor self-employed and not entitled to any employment benefits or rights such as holiday pay, sick pay and maternity leave. The Claimant was an employee and entitled to receive all those benefits.

129 In an email to Mr Humphreys on 8 December 2019 the Claimant claimed that she needed to have access to the charity’s bank account in order to identify donors

and donations. She said that not giving her access to the bank account amounted to a “*lack of transparency*” and not “*good governance*”. She also demanded that half the trustees should be Palestinian.

130 On 27 December the Claimant sent the annual plan for 2020 to the members of Steering Committee and Ms Nissenbaum. Ms Nissenbaum told her that her communication to the Steering Committee should be copied to Ms Elkan as the chairperson. The Claimant’s response was.

*“Sorry, but I can’t pretend everything is OK when not everything is OK. Judith bullied me for over a year, she has been disrespectful and demeaning and I don’t believe we can turn a blind eye and just act business as usual. We need to pursue the process fully and legally before one can assert that Judith can function as a chair after bullying me and violating my right to healthy constructive work environment.”*

131 At the beginning of December the Claimant appealed the grievance outcome but did not provide any grounds of appeal. She also stipulated that the appeal should not be heard by any of the trustees other than Ms Nissenbaum and Mr Cohen. Mr Humphreys responded that their view was that the appeal could be heard by any of the trustees other than Ms Elkan (because she was the subject-matter of the complaints) and Mr Cohen (because he had heard the original grievance). He asked her to provide her grounds of appeal and said that the appeal would be heard on 20 December. The Claimant responded that her grievance had been against him as well as Ms Elkan and, therefore, he could not hear the appeal. She said, “*You can’t have the violators be the judges in a grievance appeal.*” On 10 January the Claimant submitted detailed grounds of appeal.

132 In mid-January the Claimant was trying to arrange a Steering Committee meeting which Debbie Nisenbaum was due to chair. Ms Nissenbaum was unavailable on the date proposed by the Claimant. She said that it was their practice and necessary to have a trustee to chair the Steering Committee meetings and asked the Claimant to confer with Ms Elkan to see when she was available. The Claimant responded,

*“It can’t be treated as everything is normal with Judith bullying me over a year. I strongly feel that she is not suitable to chair SC meetings and it can’t be before we resolve the conflict and finish the grievance process.”*

Ms Nissenbaum’s response was that in that case she should not make any arrangements for the next Steering Committee meeting until the grievance process had concluded. The Claimant said that that would make it very difficult for her to do her job.

133 The Claimant was absent sick from 3 to 8 January. She was paid her normal salary although contractually she was only entitled to statutory sick pay. In an email to Mr Humphreys on 17 January the Claimant said that under her contract she was entitled to overtime payment. She said that she had worked overtime the previous March when Robi and Bassam from PCFF had visited and asked to be paid that overtime. She also said that her health had been harmed by his conduct while she had been off sick. Mr Humphreys asked her to send him a copy of her overtime claim and asked her with whom she had discussed the overtime and why she was only

pursuing it then. He said that he allegation that FBFF had harmed her health was not accepted. The Claimant responded,

*“I find it very troubling that FBFF’s bullying and disrespectful attitude that caused a lot of stress and created a toxic working environment is not taken responsibility for by you and others at FBFF. I have long suffered the retaliation attitude at FBFF and see your threatening of not paying my salary during days I needed to take sick leave to protect my physical and emotional well-being far from the toxic environment of FBFF, nothing but an aggressive retaliation...”*

134 On 22 January 2020 Mr Humphreys wrote to the Claimant that the Trustees had decided to suspend her from work pending a disciplinary hearing. The letter set out six allegations which the disciplinary hearing would consider. They included allegations that she had refused a reasonable and lawful request from Ms Nissenbaum to copy the chair Ms Elkan into Steering Committee notices and communications, had repeatedly stated that she refused to accept Mr Humphreys as her line manager and had sent aggressive and inappropriate emails to the Trustees. It was alleged that the above matters had led to breach of the implied term of trust and confidence that exists between an employer and employee. He said that the disciplinary hearing would take place after the grievance process and that Robert Humphreys, who was to conduct the grievance appeal, would not be informed about the suspension.

135 The grievance appeal was heard on 27 January 2020 by Robert Humphreys. He had had no previous involvement with FBFF or the Claimant. He had been asked by Brian Humphreys to hear the appeal. They knew each other because they attended the same synagogue. He had been a partner in a large accountancy for many years and had sat on the Boards of various charities. He was not told that the Claimant had been suspended. The external HR expert advised him and the Claimant was represented by the Regional Secretary of CWU.

136 Mr Humphreys sent the Claimant his decision on 11 February 2020. He did not uphold the appeal. In the outcome letter, which comprised five pages, he dealt with each of the points raised by the Claimant. He set out his conclusions and the reasons for them.

137 On 17 February Brian Humphreys invited the Claimant to a disciplinary hearing on 24 February to consider the allegations that had been set out in the suspension letter. He said that he would be conducting the hearing and would be advised by the external HR expert. He said that the Claimant would be provided with the evidence relating to the allegations at least five calendar days before the hearing. The Claimant was advised of her right to be accompanied and was warned that dismissal could be an outcome of the hearing.

138 The Claimant responded on the same day that she wished to be provided with the evidence immediately and that she was trying to find out whether her trade union representative could attend on that date.

139 On 17 February the Claimant wrote to UIJA and said that she would take one day’s annual leave on 18 February. On 19 February the Claimant sent them an email that she was not feeling well and that she would to take 20, 24, 25 and 27 February



as annual leave as she had four days' annual leave left. She said that she would pop into the office at certain times to say goodbye to certain people.

140 On 18 February the Claimant was certified as unfit to work until 24 February. The reasons given were "*fatigue, work-related stress*" and it was noted that she had been referred for counselling. On 19 February she was certified as unfit to work until 9 March 2020 for the same reasons.

141 On 18 February the Claimant advised Mr Humphreys that she was unwell and said that she needed more time to prepare for the hearing and to consider the evidence. She also objected to him being the decision maker at the disciplinary hearing. She said,

*"How can the violator of my rights be the judge. This undermines the term justice in a very problematic way. It also expresses racist approach of Jewish supremacy. Why would a Jewish person, even when accused of bullying and preventing a constructive working environment still be allowed to be the judge in a dispute with a Palestinian while we are both parties to the dispute?"*

142 On 25 February the disciplinary hearing was postponed to 11 March. The claimant had already been sent all the evidence prior to 25 February. The Claimant was also informed that her email of 18 February would be considered at the disciplinary hearing as part of the allegation about her sending aggressive and inappropriate emails to the Trustees.

143 On 9 March 2020 the Claimant sent Mr Humphreys a further medical certificate that she was unfit to work until 17 March. She did not ask for the hearing on 11 March to be postponed.

144 Mr Humphreys wrote to the Claimant that as he had not received a request to postpone the disciplinary hearing it would go ahead on 11 March. Two further charges were added. These were that in breach of her contract the Claimant was going to be doing some other work between 8 and 19 April 2020 during the hours when she was contracted to work for FBFF and that she had been working for UJIA and preparing for the work in April while being certified as unfit to work for FBFF. The former was based on an advertisement for a study holiday in London between 8 and 19 April. In the advertisement it said that the introduction to leading universities and opportunities to study in the UK would be led by the Claimant. It did not say anything about her being involved in the project in any other way. The latter was based on someone in HR at UJIA telling Mr Humphries that the Claimant's contract with them had ended on 28 February and that she had come into their offices in the last week of February.

145 The disciplinary hearing took place in the Claimant's absence. Mr Humphreys sent her the outcome on 13 March 2020. He said that as she had not attended and had not submitted any evidence or written representations, he had made his decision on the basis of the evidence that had been disclosed to her. In his outcome letter he set out each of the allegations and his conclusion on each one and the reasons for it. He upheld all eight allegations. Two of them he considered to be less serious – the sanction for one was first formal warning and for the other a final formal warning. The remaining six he considered to be gross misconduct and in breach of the relationship of mutual trust and confidence and concluded that the appropriate sanction for each

of them was summary dismissal. These were that she had sent aggressive and inappropriate emails to the Trustees, she had refused reasonable and lawful requests from Ms Nissenbaum to copy Ms Elkan as chair into Steering Committee notices and communications, had repeatedly refused to accept the appointment of Brian Humphreys as her line manager, had sent a complaint to Ms O'Donohoe without first referring the matter to the Trustees and the two new allegations that had been added. In respect of the emails to the Trustees he said that the Claimant's accusations were unfounded and that the tone and language used in the emails was aggressive, inappropriate and offensive. He informed the Claimant that her employment would terminate with immediate effect and her last day of employment would be 16 March 2020. She was advised of her right of appeal.

146 On 23 March Mr Humphreys informed the Claimant that at the end of March she would be paid her salary until 16 March (£1125) and five days' holiday pay (£519.23). He stated in that letter that payment would be made once she had returned FBFF property which she had (laptop, printer, etc). Although the Claimant did not return the items before the end of the month she was paid her salary and five days' holiday pay.

147 The Claimant did not appeal the decision to dismiss her. On 26 March she presented her claim to the Employment Tribunal.

## **Conclusions**

### **Pay – Direct discrimination**

#### **Jurisdiction**

148 The effect of section 140B(3) of the Equality Act 2010 is that when calculating the time limits in this case the period between 1 October and 13 November 2019 (44 days) does not count. The claim was presented on 26 March 2020. The effect of the extension of time means that a complaint about any act that occurred before 13 November 2019 (3 months + 44 days before 26 March 2020) will not have been presented in time unless it was part of a continuing act that ended after that date.

149 The Claimant's complaints of race discrimination in respect of pay were that throughout her period of employment she was paid less than the two comparators on whom she relied and that when she asked for a salary rise it was rejected on 22 August and conditions were imposed on her for a salary rise that were not imposed on the comparators. In considering whether the complaint about being paid less throughout her employment was a complaint about a continuing act of discrimination or a one-off act with continuing consequences, we took into account the following matters. The complaint was formulated by the Claimant as being something that continued throughout her employment. On 15 November 2018 the Claimant said that her salary should be reviewed in March 2019 and she should be eligible to ask for an increase to £42,000. That issue was not discussed at the meetings that took place between 15 November and 5 December 2018. On 2 August 2019 the Claimant asked for a salary increase and it was refused on 22 August 2019. On 2 September 2019 the Claimant complained about the refusal to increase her salary, compared it to what Ms Taylor had been paid and alleged that it was an act of race discrimination. She was not given a salary rise. On 17 October 2019 she raised a formal grievance about pay and race discrimination. She compared her pay to that of Ms Taylor and MS Orian. On 21 November her grievance was not upheld. She appealed and the

appeal was rejected on 11 February 2020. In light of the fact that the Claimant repeatedly raised the issue about her salary and that it was repeatedly rejected, we considered her complaint to be about a practice which resulted in consistent discriminatory decisions being taken in relation to her pay. Hence, the first complaint (paragraph 3(a) above) was about a continuing act and was presented in time.

150 However, in case we are wrong about that and the first complaint is about a one-off act that took place when the Claimant was offered the salary (around 18 August 2018) that complaint would be out of time, as would the rejection on 22 August 2019 for an increase in her salary. We considered, in the alternative, if that were the case whether it would be just and equitable in all the circumstances to consider those complaints. At the time when the Claimant was appointed she did not know what her predecessors had been paid. She discovered what Ms Taylor had been paid shortly after she started and what Ms Orian had been paid much later. She did not initially attribute the difference between her pay and that of Ms Taylor to race. The Claimant's right to live and work in the UK was dependent on her being employed by FBFF. We can understand why in those circumstances she would have been slow to commence legal proceedings against them. The Claimant tried to resolve the issue internally, first by asking for a salary rise and then by complaining of race discrimination and raising a formal grievance about it. There is no prejudice to the Respondents – they have been aware of the issue for a long time and have dealt with it internally. They never submitted to the Tribunal that it should not hear the claim because to do so would prejudice them. The Claimant had a trade union representative at internal hearings from 7 November 2019. Having considered all the circumstances, we conclude that if the complaints about pay not presented in time, it would just and equitable to consider them.

### Comparators

151 The Respondents' primary case was that the Claimant could not rely on Ms Taylor and Ms Orian as comparators because there was a material difference between their circumstances and hers. The Respondents' case has always been that the material difference was that they were self-employed and contracted to undertake certain work as contractors and the Claimant was an employee. The relevant circumstances in respect of this complaint are:

- (a) The work performed by the Claimant, Ms Taylor and Ms Orian;
- (b) What each of them was paid;
- (c) The circumstances in which they were engaged and how the level of pay was determined;
- (d) Their employment status.

In the Respondents' closing submissions it was submitted that prior charity experience might be a relevant circumstance. It has never been part of the Respondents' case that prior charity experience was a factor that was taken into account when the deciding what salary to offer to the Claimant or the comparators, or that any difference in salary was attributable to that factor. The Respondents did not say that at any stage in the internal process or in their response in this case. We, therefore, did not consider that to be a relevant circumstance.

152 It was not in dispute that all three of them did the same work. The key responsibilities set out in both the Claimant's and Ms Taylor's job descriptions were

raising funds, raising awareness of FBFF and its activities and organising events. Ms Orian was engaged to provide the same services.

153 Between August 2018 and March 2020 the Claimant was paid £27,000 gross p.a. to work 35 hours or 5 days a week. Between July 2011 and December 2013 Ms Taylor was paid £25,469 gross p.a. to work 3 days a week. Between March 2017 and July 2018 Ms Orian was paid £21,300 gross p.a. to work 10-13 hours a week.

154 The role to which Ms Taylor was appointed was for an employee. FBFF had advertised for an employee. The role had a job description and a person specification, which set out the job title (“manager”), to whom the post-holder would report and the key responsibilities for the role. The advertisement said that it was to work three days a week and that the annual salary was £25,500. That was the salary which FBFF had decided to pay an employee carrying out that role for three days a week. It was not seeking to engage a consultant to provide services and the rate of pay was not calculated on that basis. Ms Taylor preferred to be classified as self-employed for tax purposes. The same rate of pay was then converted to a daily rate. The daily rate was calculated by dividing the advertised salary by the number of days she would work having taken in to account that she would have 33 days’ holidays. As a self-employed person she was paid the same amount and had the same holidays as she would have had if she had been an employee.

155 Ms Orian offered to provide her services to FBFF. The proposal was that she would provide 10-13 hours’ services and that she would be paid a fixed retainer of \$2,300 per month which equated to about £1775 per month. She invoiced every three months. In addition she was provided support expenses and travel and accommodation expenses.

156 Although Ms Taylor was classified for tax purposes as “self-employed” she appeared in all other respects to be working as an employee. She had a job description and person specification, she reported to someone at FBFF, she worked three days a week, she had paid holidays (the calculation of the daily rate had taken that into account). Ms Orian worked as a genuine self-employed consultant. She lived in the US and did not report to anyone. She was paid expenses. She did not have a job description. She invoiced FBFF every three months through Atlas Coaching and Consulting.

157 In comparing the amounts paid to the Claimant and Ms Taylor for doing the same work, we concluded that there were no material differences between their circumstances and that Ms Taylor is an appropriate statutory comparator.

158 Ms Orian did the same work as the Claimant. However, she offered her services as self-employed consultant and was engaged on that basis. She was paid what she proposed for providing her services. She provided her services as a self-employed consultant. Having regard to the basis of which she was engaged and how she worked, we concluded that there was a material difference between her circumstances and those of the Claimant, and she did not qualify as a statutory comparator. That, however, does not mean that we cannot take into account the evidence relating to her when considering whether any inferences can be drawn as to whether the Claimant was because of race treated less favourably than Ms Taylor or a hypothetical comparator.

## Conclusion

159 We then considered whether the Claimant had proved facts from which we could conclude, in the absence of an adequate explanation, that by paying the Claimant less than Ms Taylor for doing the same work in comparable circumstances the Respondents had treated her less favourably than Ms Taylor because of race.

160 The Claimant has proved the following facts. She is Palestinian, Ms Taylor is Jewish. The level of the difference in pay is striking. Seven years after FBFF recruited Ms Taylor to work three days a week at a salary of just under £25,500 gross a year, it initially offered to pay the Claimant £21,000 gross a year to work five days a week. The Claimant was being offered a lower salary seven years later to work more hours. In real terms she was being offered half of Ms Taylor's full-time equivalent salary. It was increased to £27,000 when the Claimant asked for a salary of £28-30,000. FBFF had more funds available when it recruited the Claimant than it had when it had recruited Ms Taylor. At that time it was paying Ms Orian, who was providing services (10-13 hours a week) as a consultant, £23,100 gross p.a. Ms Orian is Jewish. It was recognised by the Trustees at the meeting on 5 February 2018 that she was being paid the equivalent of a full-time person being paid £60,000 p.a. and that employing the Claimant would be a third of that cost. There were three Trustees (Ms Elkan, Mr Cohen and Ms Smith) who had been involved in the engagement and payment of all three workers. The three Trustees are all Jewish. FBFF has not had any Palestinian trustee since 2007 when Ahlam Akram left. She left because of her unhappiness with Ms Elkan and Ms Smith. Ms Elkan referred to her as a "control-freak". At the time of the Claimant's employment all the Trustees were Jewish. When the Claimant complained of race discrimination in respect of pay, nobody at FBFF properly investigated the matter by looking at the circumstances in which Ms Taylor had been engaged. When the Claimant asked for her pay to be increased to the full-time equivalent of Ms Taylor's pay, one of the reasons given for refusing her request was her failure to have raised significant funds. Ms Taylor received the higher salary notwithstanding her failure to raise significant funds. In the absence of any adequate explanation, we could infer from those facts that the Claimant was paid less than Ms Taylor because of race, and that her request for an increase was rejected and made conditional on her raising sufficient funds because of race.

161 As the Claimant has proved a prima facie case of race discrimination, the burden then shifts to the Respondents to prove that race was not the reason for paying the Claimant less than Ms Taylor and for refusing to increase her pay and making any increase conditional upon her raising sufficient funds. The Respondents' explanation was that the difference in pay was due to the fact that the Claimant was an employee and that Ms Taylor was a self-employed contractor. In other words, the explanation for the less favourable treatment was the same as their basis for arguing that Ms Taylor was not an appropriate comparator. We have concluded that Ms Taylor's salary was not determined on the basis that she was being engaged as a self-employed contractor but was the amount that the Respondents had decided to pay an employee doing that work. Hence, that cannot be the explanation for the difference in pay. The Respondents have not provided an adequate explanation for paying the Claimant significantly less than Ms Taylor and for refusing to increase her

pay and making an increase conditional upon he raising sufficient funds. They have failed to prove that they did not discriminate against the Claimant in respect of those matter and, therefore, the Claimant's complaints of direct race discrimination in respect of pay succeed.

Direct discrimination – other complaints

162 We have not found that Ms Elkan moved the first sentence in the Claimant's biography, in which she described herself as "a Palestinian citizen of Israel" to the end of the biography. Therefore, that complaint fails.

Harassment and victimisation

163 As we said before (paragraph 148 above) a complaint about any act that occurred before 13 November 2019 will not have been presented in time unless it was part of a continuing act that ended after that date. The acts of harassment set out at paragraph 4(a) – (o) (above) are alleged to have occurred before that date. If the complaints of harassment set out at paragraph 4 (p) – (x) do not succeed, the complaints about the earlier acts will not have been presented in time. We considered whether it would be just and equitable to consider them if they were presented late. The earliest complaints were presented a little over a year after the primary time limit for presenting them had expired. As we have said earlier, the Claimant's right to live and work in the UK was dependent upon her being employed by FBFF and hence we can understand why she would have been reluctant to commence legal proceedings against them. She tried to resolve all issues by raising them internally. There was a delay of about six months in dealing with the issues that were raised in May 2019, a large part of which was not attributable to the Claimant. The Respondents have been aware of most of the complaints because they have been the subject of the internal process. They have not argued that they are prejudiced in defending them. Having taken into account all the circumstances, we concluded that it would be just and equitable to consider any complaints that were not presented in time.

164 We have found that most of the acts of which the Claimant complains took place. Many of the facts were not in dispute. The real issues for the harassment claims are whether the unwanted conduct was related to the fact that the Claimant is Palestinian and whether it had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her ("the proscribed purpose/effect"). For the victimisation claims, the issues are whether the Claimant was subjected to any detriments because she had done protected acts. We have found all the complaints listed at paragraph 5 to be protected acts. The Claimant has made complaints of race discrimination in all of them.

165 Before we look at the individual complaints we think it would be helpful to set out some of our general observations which provide a context for the individual complaints. The relationship between the Claimant and the Trustees is an employment relationship – they are the employers, she is the employee. They do not have the same status in that relationship. They make decisions about how the charity is structured and run, not the Claimant. The Trustees give the Claimant instructions and she is obliged to follow their instructions as long as they are not unreasonable. The Claimant at times failed to recognise or accept that difference in status. That having been said, FBFF is a small charity and not a large corporate or hierarchical

structure. The Trustees and members of the Steering Committee are all volunteers who can only devote some of their time to the charity. The Claimant, on the other hand, was a full-time employee, whose role was to raise awareness about the charity, organise events and to raise funds. In order for her to be able to function effectively, information needed to be shared with her and responsibility delegated to her. They needed to work together as one team. Ms Elkan had founded the charity and had been at its helm for 14 years when the Claimant joined. She was used to doing things her way and had certain set ways. She was not always receptive to new ideas especially when it involved the use of technology. The Claimant had very different ways of doing things and wanted to change things.

166 We looked at each of the complaints individually and then looked at them cumulatively to determine whether what happened amounted to harassment or victimisation. In respect of each issue we have set out in brackets the paragraph where our findings of fact are on that issue. In the few cases where we did not find that the alleged conduct had occurred, we have not considered those complaints.

Issue 4(b) (paragraphs 47-49)

167 In circumstances where the Claimant had been asked to speak to PCFF about meeting with Prince William on their visit in March, she was responsible for organising the events for that visit and she had asked Ms Smith to share any correspondence from Prince William with her so that she could follow it up, it is possible to see why the Claimant saw Ms Elkan's email to PCFF indicating that she and Ms Smith would follow the matter up as excluding her. There was no evidence that the Claimant's race had anything to do with it. Ms Elkan and Ms Smith decided to take the matter forward because they had contact with Dr Williams and Ms Smith had received the letter from Prince William's secretary. They thought that that would be more likely to produce a result. They were entitled to do that. It might have been courteous to inform the Claimant of that before Ms Elkan wrote to PCFF. It is not a matter which had the proscribed purpose or could reasonably have had the proscribed effect on the Claimant.

Issues 4(c) and (d) (paragraph 50)

168 Ms Elkan did not use the word "tool" in a pejorative way but, in circumstances where the Claimant had used it in a negative way, it was unwise and insensitive of Ms Elkan to adopt it. There is no evidence that it was related to the fact that the Claimant is Palestinian. The comments that Ms Elkan made about Ms Smith and Ms Akram show that she regarded the former, who was sometimes forceful, in a positive light and the latter, whom she described as a "control freak" in a negative light. The former is Jewish, the latter Palestinian. The Claimant attributed the difference in attitude to the difference in race, and we can understand why that was her perception. However, we are not satisfied that the expression of those views was related to the race of the two individuals. As the unwanted conduct on that day was not related to race, we do not need to decide whether it had the proscribed purpose or effect.

Issues 4(e) – (g) (paragraphs 64, 71-73)

169 We concluded that Ms Elkan's failure to copy the Claimant into certain emails after the Claimant had asked her to do so was inadvertent and not deliberate. There

was no evidence that it was in any way related to the Claimant's race. In the course of the heated telephone exchange Ms Elkan did say to the Claimant that she did not have to copy her into the emails. Subsequently she admitted that the Claimant had had a valid point and she had apologised to her for not copying her in. Had she done so immediately, it might well have defused the situation. There was no evidence before us that it was related to race.

Issue 4(h) (paragraphs 85-86)

170 It would have been better if Ms Elkan had discussed her disagreement with the Claimant about how people should respond to the invitations to the garden party in private rather than to tell her in public that her approach was wrong and unnecessary. The Claimant's original email had been sent to the Trustees and members of the Steering Committee. It was not clear whether Ms Elkan sent her reply to all deliberately or inadvertently. In any event, there was no evidence that the sending of the email to all was related to race.

Issue 4(i) (paragraphs 100-103)

171 There was a delay in providing the information to the Claimant and she had to chase it up once after making the original request. As we have said earlier, the Trustees were volunteers and not full-time employees of the charity. There was no evidence that the delay in providing the information had anything to do with race.

Issues 4(j) and 6(a), 7 (paragraphs 87-93)

172 This is both a complaint of harassment and victimisation. We have found that Mr Cohen behaved as alleged by the Claimant during the telephone call on 28 June 2019. His behaviour was unacceptable, unreasonable and unjustified. He had arranged the meeting on a different date from the one that had been agreed by everyone. The Claimant had told him within a few minutes that she could not attend on that date, which was in about five weeks' time. She had booked an alternative venue for a date on which everyone could attend. It was not very expensive. There was no reason why the meeting could not have taken place on 22 July at the alternative venue. But Mr Cohen was not prepared to consider that. He tried to force the Claimant to attend on the date on which she had said she could not attend and threatened her with the consequences if she did not. The fact that he denied it in the grievance hearing and omitted the incident from his witness statement indicates that he knew that what he did was wrong. Mr Cohen has not provided any satisfactory or credible explanation for his unreasonable and unacceptable behaviour. He had maintained at the time in his emails to his colleagues that the Claimant had agreed to the date of 24 July and then had badgered him to change it. That was not true and he must have known it was not true. We concluded that Mr Cohen was angry and exasperated with the Claimant because she had made complaints of race discrimination against Ms Elkan (which he did not consider to be well-founded) in her email of 20 May 2019 and that that was the reason he had been inflexible about moving the meeting, had portrayed the Claimant as having caused the problem and had threatened her in the telephone call.

Issue 4(k) (paragraphs 65, 94, 110-111)



173 The Claimant first mentioned the potential Palestinian trustee in an email to Mr Cohen on 5 July. At that stage she was seeking information about how a trustee could resign. That was about a week after Mr Cohen's angry outburst with her and his resignation as her line manager. The Claimant did not raise the issue again until 23 August 2019 when she wrote to all the Trustees seeking to set up a meeting to introduce him to them. The requirement for someone who wanted to be appointed a Trustee to have been engaged with and contributed to the activities of FBFF is reasonable and sensible. The appointment of Professor Mekelberg was approved at a Trustees' meeting on 27 February 2019 because he had engaged with and contributed to the work of FBFF over many years. The person suggested by the Claimant was not appointed immediately because he did not meet that requirement. It had nothing to do with race.

Issue 4(l) (paragraph 95)

174 We have not found that Ms Elkan used a hand gesture that suggested that the Claimant was unimportant. The order of speeches suggested by Ms Elkan was sensible and reasonable and had nothing to do with race.

Issues 4(m) and 6c, 7 (paragraphs 114-115)

175 Ms Elkan described the tone of the Claimant's email and certain words used by her to be "unnecessarily aggressive". It is a view that she was entitled to express on the Claimant's email. It had nothing to do with race but everything to do with the tone and language of the Claimant's email. Nor did it have anything to do with the Claimant's complaint of race discrimination against Ms Elkan on 20 May 2019.

Issue 4(o) (paragraph 124)

176 Ms O'Donohoe was not aware that the Palestinian ambassador did not want his presence at the garden party to be publicised. Ms Elkan was not aware that she was going to write a piece about it. The publication of Ms O'Donohoe's article had nothing to do with race.

Issues 4(p), 6(c), 7 (paragraphs 121-122, 125, 128)

177 Mr Cohen had founded the charity with Ms Elkan in 2004 and had been a Trustee alongside her since then. He was clearly not an independent person and it would have been very difficult for him to be impartial. It was, however, the Claimant who had chosen him to deal with the grievance rather than the independent HR expert proposed by the Trustees. He was assisted by the HR expert. He considered all the matters raised by the Claimant. He did not uphold the grievance because he genuinely believed that neither FBFF nor Ms Elkan had discriminated against the Claimant on the grounds of race. He did not reject it because she is Palestinian or because she had complained of race discrimination.

Issues 4(r), 6(c), 7 (paragraphs 134)

178 The Claimant was suspended pending a disciplinary hearing to consider serious allegations relating to her conduct and a breakdown of trust and confidence over the previous five months. There was ample evidence to support the allegations. In light of the nature of the allegations, suspending the Claimant and denying her access to

work emails and systems was a necessary precautionary measure pending the disciplinary hearing. It had nothing to do with race or the fact that the Claimant had done protected acts.

Issues 4(u) and (v), 6(c), 7 (paragraphs 143-145)

179 The Claimant did not say that she was not well enough to attend the disciplinary hearing and did not request it to be postponed. She simply sent a medical certificate to say that she was unfit to work. Mr Humphreys did not postpone it because she did not ask it to be postponed. In the absence of a request to postpone the hearing and as it had already been postponed once at the Claimant's request, Mr Humphries proceeded with it in the Claimant's absence. It had nothing to do with race or the fact that the Claimant had done protected acts.

Issues 4(w), 6(c), 7 (paragraphs 144-145)

180 Mr Humphries summarily dismissed the Claimant because he upheld all eight allegations against her and concluded that six of them amounted to gross misconduct and that the appropriate sanction was summary dismissal. We had some reservations as to whether there was sufficient evidence to uphold the two new allegations. We had no doubt at all that there was more than sufficient evidence to uphold the other four allegations that amounted to gross misconduct. The Claimant's emails referred to at paragraphs 108, 114, 116, 118, 119, 120, 124, 127, 130, 132, 133 and 141 (above) provide ample evidence to support those allegations. It was clear to us that it had become impossible to manage the Claimant and that because of the Claimant's conduct trust and confidence between employer and employee had broken down completely and the Claimant's employment could no longer continue. The Claimant's summary dismissal had nothing to do with race or the fact that she had done protected acts. She was dismissed because of her conduct over the preceding five months or so.

Issues 4(x), 6(c), 7 (paragraph 146)

181 Mr Humphreys told the Claimant that because he believed that it was permissible to do that. However, he was later advised that that was not the correct way of setting off any losses for property not returned and he did not act on what he had said. It had nothing to do with race or the fact that the Claimant had done protected acts.

Wrongful dismissal

182 For the reasons given at paragraph 180 (above) we concluded that the Claimant's conduct between the end of August 2019 and March 2020 and the sending of those emails was gross misconduct and a repudiatory breach of her contract of employment. The Respondent was entitled to dismiss her without notice.

Unauthorised deductions from wages

183 The Claimant's case in essence is that she was not paid for working overtime in March 2019. The Claimant's contract contained two apparently contradictory clauses about payment for overtime – one which provided that overtime would not be paid another which provided that it would. However, the latter provides no assistance to

the Claimant because it provides that overtime payments would be made at a rate which had been discussed and agreed with the employer prior to the employee working the overtime. The Claimant had never had any discussion with the Trustees about working overtime in March 2019 and no rate had been agreed. The Claimant first raised the issue of overtime payments in January 2020. The Claimant is not contractually entitled to be paid for any overtime that she worked in March 2019. She has no contractual entitlement to an expenses.

#### Holiday pay

184 The Claimant's case is that she took 13.5 days' holiday in 2019 out of the 28 days to which she was entitled, and that she should, therefore, be paid for the remaining 14.5 days. The Claimant's contract provides that the holiday year runs from January to December and that an employee needs the consent of the Board to carry forward any accrued but untaken holiday to the following year unless certain circumstances apply. They do not apply in the Claimant's case. The Claimant did not obtain the consent of the Board to carry forward the 14.5 days' untaken holidays in 2019 to 2020. The Claimant was paid the five days' holiday that she had accrued in 2020. The Claimant is not entitled to any holiday pay.

#### Costs

185 The Claimant applied for £1,500 costs (the costs of her counsel's attendance on day 6 of the hearing) on the grounds that these costs had been incurred because of the unreasonable conduct of the Respondents which had led to half a day being wasted on day 4.

186 The factual circumstances giving rise to the application were as follows. At the beginning of day 2 of the hearing the Tribunal asked the Respondents to provide a racial breakdown of the Trustees and members of the Steering Committee between 2018 and 2020 (and for a longer period if the Respondents felt that that would give a fairer picture). Ms Elkan was in the middle of giving her evidence at the end of day 3 and she was given the usual warning about not discussing her evidence or the case with anyone over the adjournment. Other witnesses of the Respondents were present and also heard that warning. That evening the Legal Adviser at the Respondents' solicitor dealing with the case sent an email to all the Respondents' witnesses asking them for the information about the race of the past and current trustees which she would use to compile a document. She said that the document needed to be completed the following day.

187 One of the Respondents (Amnon Daniel Smith) copied his response to all the witnesses, including Ms Elkan. He said, among other things,

*"Perhaps it is worth mentioning how hard we have fought to have and to keep Palestinian trustees or patrons, despite the changes in the situation in Israel/Palestine, and how much we sincerely welcome members of the British Palestinian community who were willing to publicly identify share the aims and purposes of FBFF."*

There was also an exchange of emails between Ms Elkan and Mr Cohen where they discussed whether there had been any Palestinian trustees in the past and mentioned someone called Rita Jabar who might have been a trustee.

188 At the beginning of day 4 the Respondents' counsel drew our attention to the fact that there had been an email exchange that had involved Ms Elkan and produced the emails. The Claimant applied for Ms Elkan's evidence to be struck out. The Tribunal refused to strike out the evidence but we said that we would take the emails into account when evaluating any evidence that might have been influenced by it. The whole matter took up half a day. The Claimant's position was that the evidence and submissions would have concluded at the end of day 5 if this matter had not arisen. We agreed with that.

189 We accepted that Ms Elkan had been told that she should not discuss her evidence or the case with anyone on the evening of day 3 and that the other Respondents knew that too. However, any communication between them and Ms Elkan arose as a result of the Respondents' solicitors sending an email to all the Respondents and Trustees, including Ms Elkan. In circumstances where the solicitor's employee was communicating with Ms Elkan for the purpose of providing the information requested by the Tribunal, we can see why the Respondents might have thought that it was alright for them to do so too. The communication between them was limited to the issue on which the Tribunal had requested information. In those circumstances, we do not consider that they acted unreasonably in having the communications that they had. In those circumstances we concluded that it would not be appropriate to make a costs order against them.

Employment Judge - Grewal

Date: 07/06/2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

08/06/2021...

.....  
FOR THE TRIBUNAL OFFICE