



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Ali

**Respondent:** Notting Hill Genesis

**Heard at:** London Central

**On:** 4, 5, 6, 9, 10 & 11 March 2020

**Before:** Employment Judge Khan  
Ms L Jones  
Mr G Bishop

## Representation

**Claimant:** In person

**Respondent:** Ms N Ling, Counsel

# JUDGMENT

1. The unanimous judgment of the tribunal is as follows:
  - (1) The race and disability discrimination complaints fail and are dismissed.
  - (2) The breach of contract complaint fails and is dismissed.
  - (3) The unauthorised deductions complaint succeeds in part in relation to the October 2018 salary (issue 24.2).
  - (4) The unauthorised deductions complaint is struck out in part in relation to the August 2018 holiday pay (issue 24.3).
  - (5) The remainder of the unauthorised deductions complaint fails and is dismissed.
  - (6) The respondent is ordered to pay the claimant £185.15 in compensation for making unauthorised deductions unless such payment has already been made. This payment to be made within 28 days.
2. The complaints of whistleblowing detriment and automatically unfair dismissal are dismissed on withdrawal.

# REASONS

1. By an ET1 presented on 13 February 2019 the claimant brought complaints of whistleblowing detriment and automatically unfair dismissal (protected disclosures), direct race discrimination, disability discrimination (i.e. direct and indirect disability discrimination, and a failure to make adjustments), unauthorised deductions from wages, and breach of contract (i.e. wrongful dismissal). The respondent resisted these complaints.
2. At this hearing:
  - 2.1 The claimant withdrew his complaints of whistleblowing detriment and automatically unfair dismissal.
  - 2.2 The claimant also withdrew one of the five allegations of race discrimination.
  - 2.3 The respondent conceded liability in respect of one of the four allegations of unauthorised deductions.
  - 2.4 We struck out one of the three remaining allegations of unauthorised deductions because the claimant was unable to specify the basis on which this complaint was being brought.

## **The Issues**

3. The issues we were required to determine were set out in the Order of Employment Judge Davidson dated 30 July 2019. These issues were refined following discussion with the parties at the hearing. They are set out below.

### **A. Disability**

1. Was the claimant a disabled person within the meaning of section 6 of the Equality Act 2010 (“EQA”) at the relevant time? The claimant relies upon the following:
  - a. Depression;
  - b. Severe anxiety;
  - c. Autism.
2. The claimant contends that the respondent had actual or constructive knowledge of his disability by 17 September 2018.

**B. Direct disability discrimination**

3. Did the respondent treat the claimant less favourably than it treats or would treat a real or hypothetical comparator because of the claimant's alleged disability? The claimant relies on Donal Gordon, Katrina Kemp, Alice Agyepong as comparators and / or a hypothetical comparator.
4. The claimant relies on the following treatment:
  - 4.1 Being told on 2 October 2018 by Linda Emmanuel to do the work of Mr Gordon, whilst also training him in, in circumstances where the claimant had concerns about Mr Gordon's behaviour, and where the claimant and Mr Gordon earned the same salary and were contracted to do the same hours.
5. Has the claimant presented his claim to the tribunal before the end of the period of three months starting with the date of the alleged act or omission or, for conduct extending over a period, the date on which that period ends (allowing for the ACAS early conciliation process)?
6. If not, is it just and equitable to extend the time limit?

**C. Indirect disability discrimination**

7. Did the respondent apply a provision, criterion or practice ("PCP") which applies, or would apply, to the claimant and to persons who do not have the same alleged disability as the claimant? The claimant relies on there being an expectation to work late and take ownership of work even when the work was not originally his own.
8. If so, did the PCP put or would it put persons who have the same alleged disability as the claimant at a particular disadvantage when compared to person who did not have the same alleged disability as the claimant? The claimant relies upon such persons having difficulty with confrontation and the relevant personal skills, and struggling to refuse to take on work that was given to them by their manager. The claimant contends that it is conceivable that such persons, whilst also still on probation, would likely burn out while trying to cope with little or no assistance.
9. If so, did the PCP put or would put the claimant at the disadvantage alleged?
10. If so, was the PCP a proportionate means of achieving a legitimate aim?

11. Has the claimant presented his claim to the tribunal before the end of the period of three months starting with the date of the alleged act or omission or, for conduct extending over a period, the date on which that period ends (allowing for the ACAS early conciliation process)?

12. If not, is it just and equitable to extend the time limit?

**D. Failure to make adjustments**

13. Did the respondent apply a PCP which placed the claimant at a substantial disadvantage compared with persons who are not disabled? The claimant relies on there being an expectation to work late and take ownership of work even when the work was not originally his own.

14. If so, did the respondent know or ought it have known that the claimant was disabled and likely to be at a substantial disadvantage compared with persons who were not disabled and, if so, at what date did the respondent have that knowledge?

15. Did the respondent fail to make such adjustments as were reasonable to avoid that substantial disadvantage by failing to share the workload equally between the Financial Inclusion Officers and the two Welfare Benefits Advisors?

16. Has the claimant presented his claim to the tribunal before the end of the period of three months starting with the date of the alleged act or omission or, for conduct extending over a period, the date on which that period ends (allowing for the ACAS early conciliation process)?

17. If not, is it just and equitable to extend the time limit?

**E. Statutory defence**

18. If the indirect disability discrimination and failure to make reasonable adjustments complaints are well-founded is the respondent liable for the act(s) of the claimant's peers or did it take all reasonable steps to prevent these employees doing the act(s) or from doing the act(s) in the course of their employment?

**F. Direct race discrimination**

19. Did the respondent treat the claimant less favourably than it treats or would treat a comparator because of the claimant's race i.e. he is African? The claimant relies upon Mr Gordon, who is Black and of Afro-Caribbean heritage, as a comparator.

20. The claimant relies on the following treatment:

- 20.1 On 16 May 2018, Ms Emmanuel seeking to address concerns about the claimant's timekeeping.
- 20.2 Ms Emmanuel expecting the claimant to take directions from Mr Gordon by email exchange on 11 June 2018, where Mr Gordon advised that, when briefing Income Officers, the claimant should not "talk at the income officers".
- 20.3 On 5 September 2018, Ms Emmanuel berating the claimant for embarrassing Mr Gordon and accusing the claimant of acting unprofessionally during a training session on 30 August 2018.
- 20.4 Ms Emmanuel dealing with the claimant's complaints about Mr Gordon by offering to meet the claimant in the presence of HR at the claimant's probationary review, turning down the claimant's request for Clare Toye to be in attendance and not asking an independent person to investigate.

21. Has the claimant presented his claim to the tribunal before the end of the period of three months starting with the date of the alleged act or omission or, for conduct extending over a period, the date on which that period ends (allowing for the ACAS early conciliation process)?

#### **G. ACAS Code**

22. Did the claimant fail to raise a grievance regarding his complaints of discrimination in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures such that any award of compensation should be reduced by up to 25%?

#### **H. Breach of contract – wrongful constructive dismissal**

23. Do any of the matters listed at paragraphs 200 to 239 of the claimant's grounds of complaint and specifically the events leading to, and immediately after, the meeting between the claimant, Ms Emmanuel and Mr Gordon on 2 October 2018, whether individually or cumulatively, amount to conduct which, without reasonable or probable cause, was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent i.e. the implied term of trust and confidence?

#### **I. Unauthorised deductions from wages (i.e. arrears and holiday pay)**

24. Does the respondent owe the claimant the following payments?

- 24.1 £336 for the period 27 to 30 September 2018.

- 24.2 £185.15 through incorrect calculation of the claimant's October 2018 salary. The respondent conceded liability on this part of the complaint.
- 24.3 £260.74 for 2.27 days' accrued and untaken annual leave, accrued through working on 2, 3 and 22 August 2018 (a half day), which were days which had been booked as holiday but were then worked. We struck out this part of the complaint as the claimant was unable to confirm that these were the days on which he worked nor clarify any alternative dates when he says he worked.
- 23.4 £114.87 for 0.99 day's annual leave due to an incorrect calculation of accrued and untaken leave.

### **The Evidence and Procedure**

- 4. The claimant gave evidence himself.
- 5. For the respondent, we heard from: Clare Toyne, formerly Income Services Manager and now Newbuild Manager; Linda Emmanuel, formerly Income Services Manager and now Housing Operations Manager; Daven Hinkson, Income Services Manager; and Sabrina Bose, HR Advisor.
- 6. We also heard from Frank Beckley, who attended under a witness order. We did not hear from Although Abdi Aboker and Adishakoor Osman who also attended the tribunal under witness orders, because the claimant did not call on them to give evidence.
- 7. There was a primary bundle which exceeded 900 pages. There was also a secondary correspondence bundle which exceeded 250 pages. We read the pages in these bundles to which we were referred.
- 8. We also considered closing submissions from both parties and the authorities relied on by the respondent.
- 9. We refused the claimant's application to strike out the response under rule 37 as we were not satisfied that the manner in which the respondent had conducted these proceedings was scandalous, unreasonable or vexatious, or that the respondent materially breached any of the tribunal's orders or that it was possible for us to conclude, without hearing all of the evidence, that the response had no reasonable prospect of success.
- 10. We also refused the claimant's application to exclude Ms Toyne and Ms Emmanuel from the hearing room when his witnesses gave evidence. Accepting that it would be necessary for the respondent to take instructions from its witnesses in relation to this evidence and absent any evidence which suggested coercion or undue influence by the respondent's witnesses we were not satisfied that it was in interests of justice to grant this application.

**The Facts**

11. Having considered all of the evidence, we make the following findings on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.
12. The respondent is a housing association formed upon the amalgamation of Notting Hill Housing Trust and Genesis Housing Association in April 2018. It manages over 30,000 properties across the East and South East of England.
13. The claimant was employed by the respondent for six months, from 9 April 2018 until 12 October 2018, as a Financial Inclusion Officer (“FIO”).
14. The claimant is African.
15. The claimant claims that he is disabled by reference to depression, severe anxiety and autism. Our findings on whether the claimant was disabled at the relevant time and if so, whether the respondent had knowledge of this are set out at the end of this judgment.
16. The claimant was based in the Camden office. His line manager was Linda Emmanuel, then an Income Services Manager, who is Black and of Afro-Caribbean heritage. He worked as part of the Income Services Team. The Income Services Team was divided into four regions each managed by an Income Services Manager: Ms Emmanuel for region 1; Clare Toyé for region 2, who is White; Adeshina Uthman for region 3; and Daven Hinkson, for region 4. The claimant was one of two FIOs in the team. He was responsible for regions 2 and 4. Donald Gordon, who was the other FIO, had responsibility for the other two regions. Mr Gordon, who is Black and of Afro-Caribbean heritage, started in February 2018 and was managed by Ms Toyé. The team worked in an open plan office with regions 1 and 2 situated at one end and the other two regions at the other end on the same floor. The claimant and Mr Gordon hot-desked. Mr Gordon had an agreement to work from 8am – 4pm and he was often at work before 8am.
17. The function of the Income Service Team is to reduce arrears, make arrears arrangements with tenants and to sustain tenancies through targeted intervention and referrals to appropriate teams. As an FIO, the claimant’s role was to provide debt signposting and budgeting advice, deal with tenants who had Universal Credit queries and carry out affordability assessments for prospective tenants. Cases were referred to the FIOs by the Income Services Officers (ISOs). The FIOs also worked alongside two welfare benefits advisers (“WBAs”), Katrina Kemp and Alice Agyepong.
18. The respondent’s formation in April 2018 created the need to integrate the separate structures in each of the legacy organisations and there was an ongoing project to restructure these teams. This created uncertainty as job profiles, teams and offices were likely to change and there was a prospect that redundancies would be made. The claimant had been through a similar exercise in a previous role which had been extremely stressful for him especially as a work colleague and friend had, against that

background, taken his own life in October 2017.

First probationary meeting on 16 May 2018 – timekeeping concerns

19. The claimant complains that Ms Emmanuel treated him less favourably because of his race when she raised concerns about his timekeeping at his probationary meeting on 16 May 2018. He compares himself with Mr Gordon who he says was not monitored in the same way in relation to his daily whereabouts and leaving time.
20. Timekeeping was one of the five performance areas enumerated in the probation period assessment form. Notably, Ms Emmanuel marked the claimant “Good” for each of the other four performance areas. In respect of this fifth area, the claimant agreed that he had been late on several occasions. It is also notable that as a result of their discussion about the claimant’s timekeeping at this meeting, Ms Emmanuel agreed to adjust the claimant’s start time which was to his benefit. We therefore find that this was not a detriment. Even had we found that it was, we would not have found that the reason for this treatment was the claimant’s race. Ms Emmanuel had raised a genuine performance issue with the claimant which she was required to monitor and to discuss at this probation meeting.
21. For completeness, we do not find that Mr Gordon was in materially the same circumstances as the claimant as he was managed by a different line manager, Ms Toye, and we accepted her evidence that she had no major concerns with Mr Gordon’s timekeeping and there was also evidence that she had monitored him on two occasions. We also accept that Ms Toye had a different management style to Ms Emmanuel and was less likely to micromanage her direct reports.

The claimant’s workload

22. The claimant emailed Ms Emmanuel on 8 June 2018 when he complained that he was “drowning in work and a lot of it is unavoidable”. This was the first time he complained about his workload. Ms Emmanuel met with the claimant later that day to discuss his workload. She redirected a referral to one of the WBAs. During this meeting the claimant told Ms Emmanuel that he was regularly working until 7 or 8pm. Ms Emmanuel told him that he should not be working after 5pm. The claimant agreed that Ms Emmanuel repeatedly told him that she did not want him to work late. He also agreed that Ms Emmanuel did not expect him to work beyond his contracted hours. We therefore find that there was no expectation on the claimant to work late.
23. The claimant complains that work was referred to him inappropriately as follows:
  - (1) ISOs referred cases to him which should have been referred to WBAs.
  - (2) ISOs referred cases to him without investigating the issues which needed to be resolved.
  - (3) Work was also referred via the Tenants Support Team and the neighbourhood managers.



24. The claimant soon gained a reputation as someone who would take on complex cases notwithstanding that these were outside the scope of his role. The claimant's evidence was that his colleagues were inadequately trained to do their work. He, on the other hand, had accumulated over 12 years' knowledge and experience in the social housing sector, having worked for another housing association, and as an assessor for the DWP and a local authority. The respondent agreed that work was "palmed off" onto the claimant. It also agreed that whilst this work was necessary it was not necessary for the claimant to do it. We find that the claimant was unable to refuse work or establish clear boundaries. As well as being very knowledgeable, he was keen and passionate about this work. He also wanted to be proactive and if he foresaw a potential issue arising from a referral made to him he wanted to take action before a problem arose. In his evidence to the tribunal, the claimant agreed that his managers tried to support him in putting systems in place. He was told that he should let other teams deal with the referrals which were outside the scope of his role. However, he felt that action was not being taken and he was concerned that if he did not intervene vulnerable tenants would face further hardship and in some cases, eviction and destitution. Notably, the claimant used the metaphor that he was a firefighter and Ms Emmanuel was his commanding officer, and he said that he could not stand aside and watch a building burn down. The claimant consequently took on complex, time-consuming and often time-critical work which was outside the scope of his role. Unable to complete all of this work in the time available the claimant amassed a backlog of casework. The claimant subsequently acknowledged that the way he approached his work which was informed by "me caring too much" was "part of the problem".
25. We do not therefore find that the respondent expected the claimant to take on work that was not within the scope of his FIO role or to take on work that was not originally his own.
26. The claimant also says that colleagues referred more work to him than to Mr Gordon because Mr Gordon did not have the competence to undertake the full remit of the FIO role and was not liked. We do not find this. Mr Gordon was evidently less experienced than the claimant. It is also likely that he misrepresented his level of experience to his managers. In her evidence, Ms Emmanuel recalled that Mr Gordon admitted, at a meeting on 23 August 2018 that he had said that he knew more than he did. She also agreed that Mr Gordon had limited knowledge of Universal Credit. However, whilst his experience and knowledge were more limited than the claimant's, we accept Ms Toye's evidence that Mr Gordon was competent and got on with his work. We were not taken to any evidence which substantiated any animosity between Mr Gordon and his colleagues. We find that the claimant had more work than Mr Gordon and this was because he took on additional and more complex cases for the reasons we have given above.

Email exchange on 11 June 2018 – training

27. The claimant complains that Ms Emmanuel treated him less favourably because of his race when she emailed him on 11 June 2018 to tell him not to "talk at" the ISOs at a forthcoming briefing. Although this instruction was

sent to the claimant and Mr Gordon the claimant felt it was directed at him because he would be preparing and leading this training.

28. The claimant says that this instruction came from Mr Gordon and was a case of “he said, she did”. His evidence was that Mr Gordon had used the same words to him i.e. “talk at” before Ms Emmanuel sent her email. He did not witness Mr Gordon saying this to Ms Emmanuel. We accept Ms Emmanuel’s evidence that Mr Gordon did not tell her what to say in this email and that she sent out this instruction because she wanted to ensure that the training was more interactive to better engage the ISOs. We do not therefore find that Ms Emmanuel expected the claimant to take directions from Mr Gordon. This instruction was her own and it was a reasonable one.

Open roadshow incident on 15 August 2018

29. On 15 August 2018 Vipul Thacker, Executive Director, gave a presentation to approximately 150 staff, including the claimant’s team. This was billed as an open roadshow on the integration process and restructure. During this presentation Mr Gordon challenged Mr Thacker about the lack of consultation. The claimant says that Mr Gordon was angry. Although this was denied by Ms Emmanuel and Ms Toye we find that it is likely that Mr Gordon was frustrated and angry when he challenged Mr Thacker. Ms Toye agreed that Mr Gordon was animated and frustrated. Ms Emmanuel agreed that Mr Gordon was evidently frustrated, he talked over Mr Thacker and was being quite vocal, and spoke quite loudly. We also take account that Mr Gordon subsequently agreed, at a meeting on 2 October 2018, that he could be a “hot head” and overreact. When after this presentation Mr Thacker wanted to discuss this issue with Mr Gordon he could not be found. The claimant says that Ms Emmanuel told him “I’ve covered for him many times but I’m done”. Although she denies saying this, we find it likely that Ms Emmanuel did say something to this effect because Mr Gordon was no longer at work and available to speak to Mr Thacker and we do not find that it is likely that the claimant would have invented this detail.
30. Mr Thacker instead arranged to meet with Mr Gordon to discuss his concerns. Ahead of this meeting, Mr Gordon emailed over 1,000 colleagues canvassing for any questions relating to the restructure which he could put to Mr Thacker. He was not a union official. Ms Toye emailed Mr Gordon about this. We accept her evidence that she also had an informal discussion with Mr Gordon about his email. No formal action was taken against Mr Gordon either in relation to his outburst at the presentation or his email. We find that this was because his managers recognised, not unreasonably, that the integration project was an emotive issue for staff and felt that Mr Gordon had articulated views which many colleagues were likely to share. We do not find that there was any evidence to show that these managers would have treated the claimant any differently had he conducted himself in the same way.
31. Although the claimant says that Mr Gordon was routinely angry we do not find that he was. Both Ms Toye and Ms Emmanuel denied this although Ms Emmanuel agreed that Mr Gordon tended to get animated and quite

loud. As noted, the claimant and Mr Gordon worked in an open plan office. They often sat next to each other or back to back and within 10 – 15 feet from where Ms Toye and Ms Emmanuel sat. Whilst Mr Gordon was a self-proclaimed “hot head” we do not find that this automatically meant that he was regularly angry. We also find that had this been the case it is likely that both managers would have witnessed this and intervened because of the impact it would have had on the telephone calls being conducted between officers and tenants in this open plan office.

Meeting on 23 August 2018

32. The claimant met with Mr Gordon, Ms Emmanuel and Ms Toye on 23 August 2018 to review their workloads. Mr Gordon agreed to take on the claimant’s new referrals so that he could work through his backlog. Ms Emmanuel followed up on this a few days later when she spoke to Mr Gordon and the claimant and they confirmed that Mr Gordon was picking up some of the claimant’s referrals.

Criticism of the claimant on 5 September 2018

33. At a meeting on 5 September 2018 with Ms Emmanuel, Mr Gordon and Ms Kemp the claimant said that Mr Gordon only knew how to get grants i.e. he was not carrying out the full remit of the FIO role. Afterwards, the claimant and Ms Emmanuel went outside to smoke. The claimant complains that during this break Ms Emmanuel berated him for embarrassing Mr Gordon and accused him of being unprofessional during a training session on 30 August 2018. He complains that this was because of his race.
34. Ms Emmanuel denied that she berated the claimant although she agreed that she was critical of the claimant because he had disparaged Mr Gordon. She felt that his comment was belittling and demeaning. In respect of the training session on 30 August 2018, it had been reported to Ms Emmanuel that the claimant and another colleague, Rasheda Begum, criticised Mr Uthman’s knowledge of Universal Credit. This had upset a member of Mr Uthman’s team. We accept Ms Emmanuel’s evidence that she had already discussed this with Ms Begum who acknowledged that she had been unprofessional and apologised. The claimant agreed that Ms Emmanuel had discussed this issue with Ms Begum. We also accept Ms Emmanuel’s evidence that when she raised this issue with the claimant during the smoke-break he shrugged his shoulders. The claimant alleges that Mr Gordon had been the one to report him and Ms Begum to Ms Emmanuel. Ms Emmanuel was unable to recall who it was. Even had Mr Gordon reported this issue to Ms Emmanuel, we find that she raised it with the claimant because she had concluded that he had acted unprofessionally. He did not deny this at the time and he had also acted unprofessionally towards Mr Gordon at their meeting that day. Whilst the claimant felt that Ms Emmanuel berated him we find that she did nothing more than raise her legitimate concerns about the claimant’s conduct with him in an informal setting. This was appropriate. We do not find that this was a detriment and even had we found that it was we would not therefore have concluded that this was because of the claimant’s race.

Meeting on 13 September 2018

35. The claimant had a follow-up meeting to review his workload with Ms Emmanuel and Ms Toye on 13 September 2018. Mr Gordon was unable to attend this meeting because he was on sick leave.
36. The claimant complained about Mr Gordon. He said that he was offensive, confrontational, had made personal attacks and had taunted him. He repeated his assertion that Mr Gordon only worked on grants. He said that he had offered to train him but Mr Gordon had refused. This was the first time when the claimant complained about his working relationship with Mr Gordon. His managers agreed to investigate this when he provided more detail.
37. There was also a discussion about the ongoing restructure. The claimant was anxious about how this would impact on him. He had shared with colleagues his views about this restructure and had referred to his friend's suicide. He had also told colleagues that they would lose their jobs in this restructure. His managers felt that this had been inappropriate. He was told to be more mindful about what he said about this restructure because colleagues were also anxious. We find that this informal discussion was consistent with the manner in which Ms Toye had addressed Mr Gordon's conduct in August 2018.
38. The claimant became upset and started crying. He said he was feeling overwhelmed, he was struggling with his workload and he complained of sleep deprivation. He had suffered two bereavements. He also referred to his friend who had taken his own life and said he had thought about suicide. He then said he was joking. He told his managers that he had been contemplating resigning. Ms Emmanuel told him to go home and take the remainder of the week and the next week off work. She gave him her personal phone number and asked him to call her later that day.
39. Ms Emmanuel was concerned about the claimant's wellbeing. In her summary of this meeting she noted that "Safeguarding may be a requirement as Abdi takes on too much – mentioned suicide – even joking this has been recorded". She emailed Mr Kuponiyi when she noted that the claimant had had "a breakdown which was really concerning. He is suffering with sleep deprivation along with other issues in his private life...it is a wellbeing issue". We find that Ms Emmanuel was referring to an emotional breakdown. In an email she wrote the next day, Ms Emmanuel noted that the claimant "really needs rest. He was looking bad yesterday, severe darkness under his eyes and just rambling when he was talking – Really sad." She understood the claimant's presentation to be a situational response to the issues with his workload, his working relationship with Mr Gordon and his anxiety about the restructure which did not reveal any underlying mental health condition.
40. The claimant called Ms Emmanuel later that day when he became upset again. As he had not registered with a local GP, Ms Emmanuel suggested that the claimant visited a walk-in centre for medical support. The claimant agreed to do this.

The claimant's first resignation on 13 September 2018

41. At 11.51pm that evening emailed Ms Emmanuel to resign when he wrote:

“I'm not really sure how to say this so I'll just come out with it, Genesis has bested me and I think it's time for me to depart. I really appreciate what you and Clare have done for me, and I mean that but I can't see things improving in fact it's almost certainly going to get worse. I've been thinking about this for a while and today really put things into perspective, life's simply too short to be this stressed and miserable so I'm going to admit defeat and jump. I've literally been running around the last few months and got myself in such a spin and truth be told I don't think even with intervention I can stop it happening again. I know we spoke about me caring too much before which was part of the problem but I'd rather do that not care enough as there's enough of that in this world...Works a big part of my life when but when you have to be prescribed medication just to get some sleep that's probably a good indicator something need to change.”

42. The claimant noted that although he was only required to give one week's notice he would agree to stay on for another month to catch up on his work. He said that he had started writing up his cases and would continue to update his notes over the next couple of days.
43. We find that whilst Ms Emmanuel was already concerned about his wellbeing the claimant did not convey to his managers nor did they understand that he had a mental impairment. He referred to medication for sleep although he did not refer to depression, anxiety or autism. The claimant was conveying that he was struggling at work and this was irremediable because, in large part, of the way he approached his work. Ms Emmanuel replied the next morning to say that she was sorry to have received his email and she hoped he would reconsider.
44. Having consulted Ms Toye and Mr Kuponiyi, Ms Emmanuel followed Ms Toye's suggestion not to accept the claimant's resignation and to give him some time away from work to reconsider his position. We were taken to correspondence between Ms Toye and Ms Emmanuel from which we find that they remained invested in the claimant and hopeful that his working relationship with Mr Gordon could be resolved. The claimant agreed that he would take a week off and return to work.

Café meeting on 17 September 2018

45. Although he had agreed to take some time away from work, the claimant was insistent on attending a tenancy support hub meeting on 17 September 2018 which related to the restructure. After this meeting he met with Ms Emmanuel in a local café. They spoke for about an hour.
46. The claimant told her he found it difficult to fit in, found it hard to be happy and didn't feel anything sometimes when people should. He said that he thought he might be autistic. When Ms Emmanuel asked him, he confirmed that he did not have a diagnosis. In her evidence to the tribunal, she agreed that she may have told him that he was “too smart” to be autistic. We find that it is likely she did. Whilst this revealed that Ms

Emmanuel lacked knowledge and insight in relation to autism, we accept her evidence that she understood that the claimant was joking when he referred to autism.

47. The claimant continued to work through his backlog from home. In a Skype conversation on 18 September 2018 the claimant told Ms Toye that he was feeling “all the better” and “you really put things into perspective”. When he returned to work on 24 September 2018 he reported to Ms Emmanuel “I’m actually feeling a lot better, starting to see the wood through the trees and if I can keep this up I might actually catch up on everything.” An hour later he emailed Ms Toye and Ms Emmanuel to say “100% agree I should’ve taken Linda’s advice weeks ago and worked from home, I keep humming ‘I can see clearly now the rain has gone’...”

Meeting on 26 September 2018

48. The claimant met with Ms Toye, Ms Emmanuel and Mr Gordon on 26 September 2018. This meeting took place in the café on the ground floor of their building. They discussed the division of work between the claimant and Mr Gordon. The claimant complained about Mr Gordon’s anger and inappropriate jokes. He told Mr Gordon that he did not appreciate being called an “arse licker”. Mr Gordon became very angry. He denied using these words. When Ms Emmanuel told Mr Gordon that he had used this language in front of her, he told her she was lying. Although Ms Emmanuel’s note of this meeting recorded that Mr Gordon had called only the claimant a “liar”, it did record that she had also challenged Mr Gordon and he had contradicted her. The claimant also complained that Mr Gordon had belittled him. Mr Gordon stormed out of the meeting.
49. The meeting continued without Mr Gordon when the claimant continued to complain about Mr Gordon’s anger. He also alleged that Mr Gordon had been playing golf during work time. He said that he intended to pursue a grievance against Mr Gordon.
50. Mr Gordon returned around 10 – 15 minutes later when he asked to speak to Ms Toye alone. He told her that he had made a formal complaint against the claimant and Ms Emmanuel. He asked to take leave that afternoon which was agreed. It is likely that Mr Gordon also told Ms Toye that he was going to resign because she referred to this in an email she sent to him at 11.55pm that day in which she also emphasised that she and Ms Emmanuel were prepared to facilitate an improvement in the working relationship with the claimant if he wanted to continue working for the respondent. Mr Gordon responded that he was going to take out a grievance against the claimant and Ms Emmanuel. He had not therefore taken this step. He asked to work from home until this issue was resolved. Ms Toye agreed that he could work from home the following day only. He was therefore expected to return to the office on 28 September 2018. Noting that she would be on leave then, she told Mr Gordon that if wanted to come back to work he should contact Mr Hinkson, who had not been involved in this issue. The claimant understood that Ms Toye asked Mr Hinkson to conduct an independent investigation into Mr Gordon’s grievance. We accepted Mr Hinkson’s evidence that he was not asked to investigate this issue. In fact, as will be seen, Mr Gordon did not lodge a

grievance and there was no investigation.

51. Although the claimant says that Ms Emmanuel became distressed when she discovered that Mr Gordon intended to pursue a grievance against her, we accept Ms Emmanuel's evidence that she was not upset. She had been robust enough to have confronted Mr Gordon about his language and she also felt that she had acted appropriately. What is clear, however, is that the claimant now understood that Mr Gordon was at loggerheads with Ms Emmanuel and he felt responsible for this.
52. Neither Ms Toye nor Ms Emmanuel viewed Mr Gordon's conduct as serious. They had both been involved in situations where colleagues had been more volatile and vocal than Mr Gordon had been at the meeting on 26 September 2018. They felt that the issues between the claimant and Mr Gordon were capable of resolution through informal mediation. We accept Ms Toye's evidence that she intended to discuss Mr Gordon's behaviour with him when she had the opportunity to do so.

Telephone call on 1 October 2018 – invitation to informal mediation

53. When he was back in the office on 1 October 2018 Mr Gordon apologised to Ms Emmanuel. He told her that he had not submitted a grievance and had threatened this in the heat of the moment. He said he wanted to meet with the claimant to apologise. He told Ms Emmanuel that he could learn from the claimant and wanted to ask the claimant to coach him. Ms Emmanuel told him that this would be a decision for the claimant to make. She agreed to speak to the claimant to explore his willingness to meet with Mr Gordon. She agreed that she would not refer to Mr Gordon's coaching request as he wanted to ask the claimant directly. We find that this was reasonable as it would convey that this was Mr Gordon's idea and was not a management instruction.
54. Ms Emmanuel called the claimant who was working from home. She told him that Mr Gordon had apologised to her and he wanted to apologise to him too. She did not refer to coaching. The claimant was sceptical. He said that he did not feel that it would make any difference. However, he agreed to meet Mr Gordon because he felt that this is what Ms Emmanuel wanted. He also felt that this was more likely to appease Mr Gordon's ill-feeling towards Ms Emmanuel and encourage him to withdraw his grievance which he understood had been lodged and for which he felt responsible. The claimant told Ms Emmanuel that he did not want to be forced to work with Mr Gordon again. She replied that no one was forcing him to do anything.

Informal mediation meeting on 2 October 2018 – the agreement to coach Mr Gordon

55. The claimant met with Ms Emmanuel and Mr Gordon on 2 October 2018. Prior to this, Ms Emmanuel had separate pre-meetings with the claimant and Mr Gordon. In her pre-meet with the claimant, she told him he could cancel the meeting if he wanted. The claimant agreed to proceed with the meeting in Ms Toye's absence.

56. At the informal mediation meeting, Mr Gordon apologised. The claimant did not feel that this was a genuine apology. Mr Gordon admitted that he could overreact and be a “hot head”. He said that he was addressing his behaviour and was going away to a meditation retreat. The claimant also apologised for belittling Mr Gordon. The claimant was surprised when Mr Gordon asked about coaching because he had rejected the claimant’s repeated offers to train him. The claimant complains that he was told to train Mr Gordon i.e. it was imposed on him with the consequence that he was required to take on the tasks which Mr Gordon was unable to do without this training. We do not find that this was imposed on the claimant. We find that the claimant agreed to coach Mr Gordon. We accept that Ms Emmanuel encouraged him to do this as she was motivated to resolve this working relationship. We also accept the claimant’s evidence that he also felt that he had to agree to this because he was still within the probation period which was due to be signed off the following week although Ms Emmanuel did not refer to this. We find that the claimant neither objected to coaching Mr Gordon nor did he complain about having to work with him during this meeting and in these circumstances Ms Emmanuel had reasonable cause to encourage the claimant and Mr Gordon to find a way of working together. Nor did the claimant complain that he was being required to take on Mr Gordon’s workload. Whilst the claimant may have had this expectation we do not find that this was discussed nor was the claimant told to do Mr Gordon’s work whilst also training him. In her note of this meeting, Ms Emmanuel recorded that Mr Gordon had asked the claimant to coach him and they “agreed that they both want to work together to form a better & more professional working relationship”.
57. Two days later, on 4 October 2018, the claimant emailed Ms Emmanuel to arrange a final probation meeting on 9 October 2018 when he also asked to discuss the mediation meeting and noted “I’m happy to go along with what we discussed but just wanted some clarification on a few things”. In this contemporaneous correspondence the claimant confirmed that he was happy with what had been agreed at the informal mediation meeting.

Second and final resignation on 8 October 2018

58. The claimant wrote to Ms Emmanuel and Ms Toye to resign on 8 October 2018. He complained about having to coach Mr Gordon. He felt his position had become untenable. He said that they could discuss this at the probation meeting the next day and if they agreed that the situation could not be resolved then his email should be treated as a formal resignation. In this event he would consider that he had been constructively dismissed. His resignation was therefore conditional on his managers confirming that the issue with Mr Gordon could not be resolved.
59. Ms Toye replied to the claimant at 3.11pm when she explained that “the situation has not been concluded” noting that Mr Gordon’s conduct had not been “legitimised” or “accepted” and she had not had an opportunity to meet with Mr Gordon to discuss his conduct on 26 September 2018. She had been on leave since 27 September 2018 and this was her first day back in the office. Alluding to the claimant’s first resignation, Ms Toye wrote:



“It is not conducive to keep having these same conversations week after week with you threatening to leave and us trying to get you to stay... We would like to retain you within the organisation and put steps in place to ensure your well-being but have no desire to make you ‘work under protest’.”

Ms Toye had already discussed the claimant’s email with Ms Emmanuel and understood that the probation meeting would still be going ahead. She did not feel that it would be appropriate for her to attend as she was not the claimant’s line manager. She concluded her email “I will let you speak to Linda, as your line manager, tomorrow, regarding where we go from here.”

#### The response of Ms Emmanuel

60. Ms Emmanuel replied to the claimant at 3.47pm. In relation to the probation meeting the next day, 9 October 2018, she explained that Ms Toye would not be in attendance as she was not the claimant’s line manager and noted “I am happy to discuss how we move forward with the points you have raised and your future plans regarding your employment” and she agreed to ask that someone from HR was also present if this was what the claimant wanted.
61. The claimant complains that Ms Emmanuel treated him less favourably because of his race when she turned down his request for Ms Toye to attend their meeting on 9 October 2018, she offered instead to meet with him in the presence of HR and she failed to refer his complaints about Mr Gordon to an independent investigator. We find that Ms Emmanuel and Ms Toye agreed that it was not appropriate for Ms Toye to attend this probationary meeting as she was not the claimant’s line manager. We also find that having understood that the claimant wanted a second manager to attend this meeting, which she did not agree was appropriate, she suggested the alternative that an HR officer was present. This was a proposal for the claimant to take or leave. We also find that Ms Emmanuel did not refer the claimant’s complaints about Mr Gordon to an independent investigator because she had agreed to discuss all the points he had raised in his email at their meeting. As we have found, Ms Toye had referred Mr Gordon to Mr Hinkson because she would be on leave and not because he had submitted a grievance. He had not. Nor had the claimant. We do not find that Ms Emmanuel’s actions amounted to detriments. Even had we found them to be, we find that these are each cogent reasons which explain Ms Emmanuel’s response and we do not therefore find that this was because of the claimant’s race.

#### The termination of the claimant’s employment

62. As we have found, the claimant made his resignation conditional on his managers confirming that these issues could not be resolved. We find that in neither of the replies sent by Ms Toye and Ms Emmanuel did these managers state that this situation was irremediable. They had both responded on the basis that the probationary meeting would be proceeding the next day between the claimant and Ms Emmanuel when the claimant would have the opportunity to discuss all of his concerns with his line manager.

63. At 3.52pm, five minutes after Ms Emmanuel sent her reply to him, the claimant emailed his managers to confirm that he would be resigning and his last day would be 12 October 2018.
64. The claimant worked in the Willesden office in his final week. He had an exit interview with Mr Hinkson. His employment ended on 12 October 2018.

#### Pay issues on termination

65. The claimant complains that he is owed four days' pay for the period 27 to 30 September 2018. He relies on the fact that the pay date on the September 2018 payslip is the 26<sup>th</sup> day of the month. Noting that this payslip shows that the claimant was paid for a whole month i.e. a full twelfth of his annual salary, we accept the respondent's evidence that its employees were paid for the whole calendar month on this pay date each month. We therefore find that the claimant received his full contractual pay in September 2018.
66. The claimant also complains that he is owed an additional 0.99 day's pay in lieu of annual leave accrued on termination. The claimant relies on a letter from Mr Hinkson dated 12 October 2018 stating that he accrued 14.27 days' leave over the course of his employment. We find that this was erroneous as it was based on a yearly leave allowance of 28 days (excluding bank holidays) and not the claimant's contractual yearly allowance of 26 days. We find that the claimant was paid the correct holiday pay on termination which was calculated with reference to his contractual allowance.

#### The Relevant Legal Principles

##### Direct discrimination

67. Under s13(1) EQA, direct discrimination takes place where, because of disability, a person (A) treats the claimant less favourably than that person treats or would treat others.
68. Under section 23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case. Under section 23(2), where the protected characteristic is disability, the circumstances relating to a case include a person's abilities.
69. There are two elements in direct discrimination: the less favourable treatment, and the reason for that treatment (see Glasgow City Council v Zafar [1998] IRLR 36).
70. It is unnecessary for the protected characteristic to be the sole basis for the less favourable treatment complained of provided it had a significant influence on the outcome (see Nagarajan V London Regional Transport [2000] 1 AC 510).

Indirect discrimination

71. Under section 19 EQA, indirect discrimination occurs when a person (A) applies to the claimant a provision, criterion or practice which (a) A applied or would have applied to those with whom the claimant does not share his protected characteristic, (b) put, or would have put those sharing the claimant's protected characteristic at a particular disadvantage when compared with those not sharing the claimant's protected characteristic, (c) put, or would have put the claimant at that disadvantage, and (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

The duty to make adjustments

72. The duty to make reasonable adjustments is set out in sections 20 and 21 EQA and in Schedule 8. Where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer is required to take such steps as it is reasonable to have to take to avoid the disadvantage.
73. Under Schedule 8, paragraph 20(1), the employer is not subject to a duty to make reasonable adjustments if the employer does not know, and could not reasonably be expected to know that the disabled person has a disability and is likely to be placed at the relevant disadvantage.

Detriment

74. Section 39(2)(d) EQA provides that an employer (A) must not discriminate against a claimant by subjecting him to any other detriment.
75. A complainant seeking to establish detriment is not required to show that he has suffered a physical or economic consequence. It is sufficient to show that a reasonable employee would or might take the view that they had been disadvantaged, although an unjustified sense of a grievance cannot amount to a detriment (see Shamoon v Chief Constable of RUC [2003] IRLR 285, HL).
76. The EHRC Employment Code provides that "generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage".
77. Any alleged detriment must be capable of being regarded objectively as such (see St Helens MBC v Derbyshire [2007] ICR 841).

Discrimination – burden of proof

78. Under section 136(2) EQA, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person (A) has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision. Subsection (2) does not apply if A shows that it did not contravene the provision.

79. In many cases it will be appropriate to focus on the reason why the employer treated the claimant as it did and if the reason demonstrates that the protected characteristic played no part whatsoever in the adverse treatment, the complaint fails (see Chief Constable of Kent Constabulary v Bowler UKEAT/0214/16/RN). Accordingly, the burden of proof provisions have no role to play where a tribunal is in a position to make positive findings of fact (see Hewage v Grampian Health Board [2012] IRLR 870, SC).

#### Constructive dismissal

80. For there to have been a constructive dismissal the following three conditions must be met:
- (1) There must be a fundamental breach on the part of the employer.
  - (2) The employee must not, by the time of the resignation, have conducted himself in such a way as to have relinquished the right to rely on the breach. This is known as affirmation.
  - (3) The fundamental breach must be a contributing cause of the resignation though it need not be the principal cause.
81. The implied terms of a contract of employment include the implied term of mutual trust and confidence i.e. that a party not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and the other party to the contract. This breach can be the result of a single act / omission or of cumulative conduct which culminates in a last straw. A last straw need not amount to blameworthy or unreasonable conduct but it must contribute in some meaningful way to the overall breach.
82. Whether there has been a fundamental breach is an objective test. Accordingly, there will be no breach of trust and confidence simply because the employee subjectively feels that such a breach has occurred, no matter how genuinely this view is held.

### Conclusions

#### **A. Disability**

83. We find that the claimant was disabled in September 2018 by reference to depression but not to severe anxiety or autism. We also find that the respondent lacked actual or constructive knowledge of the claimant's disability at all relevant times.
84. For the purposes of these proceedings the claimant disclosed medical records from which we noted:
- (1) There was no medical evidence that the claimant had severe anxiety.
  - (2) In respect of depression, these records refer to the claimant having a history of low mood and depression since 2005, being under the care of a mental health team in 2015, to a "depressive order" in January 2017, to the claimant having an 18-month period of low mood from

October 2017 – May 2019 during which he reported having suicidal thoughts to his GP in January 2018. The only other time he attended his GP over this 18-month period was in February 2018, although he attended a walk-in centre in September 2018.

- (3) In respect of autism, the claimant had an initial assessment in June 2019 which indicated that he was on the autistic spectrum but a formal diagnosis has not been made. Until this assessment, when the claimant reported that he had had hallucinations arising from sleep deprivation there is no other reference to anything which is patently capable of amounting to a substantial adverse impact. It was not clear to us when the claimant had these hallucinations or whether they were attributable to autism.
  - (4) The claimant was prescribed sertraline in January 2018 which he took for a week. He was prescribed mirtazapine for mood, sleep and appetite in May 2019 which he stopped taking due to its side effects. He then took temazepam and zopiclone for sleep.
85. There was little evidence which linked impairment with effect. The claimant's disability impact statement refers to an inability to fight back, a tendency to help people in pain, a preference for his own company, difficulty fitting in socially, a requirement for a rigid structure and also that he has insomnia. It was not clear to us which of these effects were said to relate to depression, anxiety or autism. Nor was there sufficient clarity as to the extent to which these effects impacted on the claimant's day to day activities. The exception to this is in relation to insomnia the effects of which we find were self-evidently adversely impactful on the claimant's day to day activities. As Ms Emmanuel had noted about the claimant on 14 September 2018 "he really needs rest. He was looking bad yesterday, severe darkness under his eyes and was just rambling when he was talking".
86. On balance and looking at the totality of the evidence we find that the claimant had a mental impairment i.e. depression which affected his day to day activities in that it had a substantial, adverse and long-term impact on his ability to sleep. The claimant reported the sleep issue to his GP in January 2017, he told the respondent in September 2018 that he was suffering with sleep deprivation and that he had been prescribed medication to help him sleep, in June 2019 he reported that he had had hallucinations induced by lack of sleep. We find that the claimant was disabled by September 2018 because of the recurrence of the sleep issue on this date.
87. We find that the claimant was not disabled by reference to anxiety as there was no reference to this in his medical notes. Nor do we find that the claimant was disabled by reference to autism as he has not provided any cogent evidence of how this condition has impacted on his day to day activities. We agree with the respondent that without this evidence we are unable to conclude that the effects which the claimant has set out in his disability impact statement were attributable to autism.
88. We do not find that the respondent had actual or constructive knowledge of this disability i.e. depression at any relevant time. The claimant did not

refer to depression. Although it was clear to the respondent that the claimant had had an emotional breakdown on 13 September 2018 and the he referred to being prescribed medication for sleep deprivation later that date, we find that without any other information the respondent did not know and could not have known that this was linked to his depression or that it had had a long-term impact on the claimant's day to day activities or that it was likely to have such an effect. The claimant relies on his meeting with Ms Emmanuel on 17 September 2018 when he referred to autism for which he confirmed he had no diagnosis and he made no reference to depression. Nor we do find that the respondent had actual or constructive knowledge of the claimant's disability at any subsequent date prior to the termination of his employment.

**B. Direct disability discrimination**

89. This complaint fails because we have not found that this allegation is made out on the facts. We have found that the claimant was not told to do the work of Mr Gordon whilst also training him.
90. For completeness, had we found that this treatment took place, we would not have found that it was because of the claimant's depression. This treatment was not linked inherently to depression and we have found that Ms Emmanuel did not have actual or constructive knowledge of the claimant's disability so that we would have found that she was neither consciously nor subconsciously motivated by it.

**C. Indirect disability discrimination**

91. This complaint fails because we have found that the respondent did not apply the PCP that the claimant contends for.

**D. Failure to make adjustments**

92. This complaint fails because we have found that the respondent did not apply the PCP contended for. We have also found that the respondent did not know that the respondent was disabled at the relevant time.

**E. Statutory defence**

93. It is not necessary to make findings on this because of our findings above.

**F. Direct race discrimination**

94. This complaint fails.
  - (1) We have found that the allegation dated 11 June 2018 is not made out on the facts. We have found that Ms Emmanuel did not expect the claimant to take directions from Mr Gordon.

- (2) We have found that part of the allegation dated 5 September 2018 is not made out on the facts. We have found that Ms Emmanuel did not berate the claimant as alleged.
- (3) We have found that the remaining allegations of race discrimination did not amount to detriments.
- (4) For completeness, had we found that they did constitute detriments we would have found that the respondent provided cogent non-discriminatory reasons for this treatment.

#### **G. ACAS Code**

95. It is not necessary to make findings on this because of our findings above.

#### **H. Breach of contract – wrongful constructive dismissal**

96. This complaint fails because we do not find that the claimant was constructively dismissed with reference to the matters listed at paragraphs 200 to 239 of the claimant's grounds of complaint for the following reasons:
  - (1) Ms Emmanuel had reasonable cause on 1 October 2018 to invite the claimant to a meeting to resolve his working relationship with Mr Gordon. The claimant had the opportunity to refuse to attend this meeting. He told Ms Emmanuel that he did not want to be forced to work with Mr Gordon and she reassured him that he would not be forced to do anything. We do not find that he was. Ms Emmanuel gave the claimant the opportunity to cancel this meeting the next day when he agreed to proceed with it in Ms Toye's absence.
  - (2) Ms Emmanuel had reasonable cause to withhold the proposal to coach Mr Gordon until the meeting because Mr Gordon wanted this proposal to come from him and not from his manager.
  - (3) The claimant agreed to coach Mr Gordon on 2 October 2018. Ms Emmanuel had reasonable cause to encourage this arrangement as she was motivated to repair the working relationship between the claimant and Mr Gordon. The claimant did not tell Ms Emmanuel during this meeting that he was no longer prepared to work with Mr Gordon. The claimant was not told that he would be required to take on Mr Gordon's work nor did the claimant complain about this. It is also notable that the claimant wrote to his manager two days later, on 4 October 2018, to confirm his agreement to train Mr Gordon.
  - (4) The claimant's resignation on 8 October 2019 was conditional on his managers confirming that the issue with Mr Gordon could not be resolved. This implied that the claimant had not lost trust and confidence in the respondent. We have found that both managers replied to convey in clear terms that this situation was not irremediable and the claimant would have the opportunity to ventilate his concerns at his probationary meeting with Ms Emmanuel the next day.
  - (5) Ms Emmanuel had reasonable cause for refusing the claimant's request for Ms Toye to attend this probationary meeting and for suggesting an HR presence at this meeting. It was reasonable for Ms

Emmanuel not to refer the claimant's complaints to an independent investigator at this stage.

- (6) We do not therefore find that the respondent acted without reasonable or probable cause and in a manner calculated or likely to destroy the relationship of trust and confidence between itself and the claimant.

**I. Unauthorised deductions**

97. The respondent conceded that it carried out an unauthorised deduction from the claimant's wages in October 2018 in the amount of £185.15. This complaint succeeds and we make an order for payment of this sum.
98. We struck out the complaint for 2.27 days of unpaid wages in August 2018 because the claimant was unable to confirm the days on which he worked and was therefore unable to specify the basis on which this complaint was being brought.
99. The remainder of this complaint fails:
- (1) We found that the claimant was paid the correct amount in wages in September 2018.
- (2) We also found that the claimant received the correct payment in lieu of accrued annual leave on termination.

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**Employment Judge Khan**

Date 17 June 2020

REASONS SENT TO THE PARTIES ON

18 June 2020

FOR THE TRIBUNAL OFFICE