



EMPLOYMENT TRIBUNALS

Claimant: Miss A Dadd
Respondent 1: S N Marketing Services Ltd
Respondent 2: Mohammed Ayub
Respondent 3: Nasser Mughal

On: 18 and 19 July 2022
20 July 2022 (in chambers)

Heard in Leeds on 18 July 2022
By CVP on 19 and 20 July 2022

Before: Employment Judge Brain
Members: Mr T Downes
Ms N Arshad-Mather

Representation

Claimant: Mr J Wilson, Legal representative
Respondent: Mr J Ratledge, Counsel

RESERVED JUDGMENT

1. The claimant's complaint that the first respondent made an unauthorised deduction from her wages succeeds in part. The first respondent shall pay to the claimant the sum of £1146.33 being the amount of the unauthorised deduction made from her wages for the period between 15 January 2021 and 3 May 2021.
2. Upon the claimant's complaints brought under the Equality Act 2010:
 - 2.1. All of the complaints against the respondents of direct discrimination brought pursuant to sections 13 and 39(2) of the 2010 Act fail and stand dismissed.
 - 2.2. Save for the matter identified in paragraph 2.3 below, all of the complaints against the respondents of harassment brought pursuant to sections 26 and 40 of the 2010 Act fail and stand dismissed.
 - 2.3. The complaint of harassment brought against the first and third respondents of harassment related to the protected characteristic of race identified in paragraph 3(d) of the agreed list of issues succeeds.

- 2.4. The complaints against the respondents of victimisation brought pursuant to sections 27 and 39(4) of the 2010 Act fail and stand dismissed.
- 2.5. The first and third respondents shall pay compensation upon a joint and several basis to the claimant for injury to her feelings upon the complaint identified in paragraph 2.3 above in the sum of £1500.
- 2.6. The first and third respondents shall pay interest to the claimant on a joint and several basis upon the injury to feelings award made in paragraph 2.5 above in the sum of £140 (that being interest at the rate of 8% per annum from the date of the injury to the claimant's feelings until 20 July 2022).
- 2.7. The complaint in paragraph 2.3 was brought against the first respondent and the third respondent within the time limit in section 123 of the 2010 Act.
- 2.8. In the alternative, it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider the complaint in paragraph 2.3 against the first and third respondents.

REASONS

Introduction and preliminaries

1. In this matter, the Tribunal heard evidence in person from the claimant on 18 July 2022. Due to the extreme weather predicted for 19 July 2022, the Tribunal directed that the second day of the hearing should proceed by way of Cloud Video Platform (CVP). Accordingly, the respondents' evidence was heard remotely on 19 July 2022. After receiving helpful submissions from Mr Wilson and Mr Ratledge, the Tribunal reserved judgment. The Tribunal deliberated in chambers (again remotely) on 20 July 2022. We now give reasons for the judgment that we have reached.
2. The first respondent is a claims management company specialising in PPI claims. The second respondent is employed by the first respondent. He worked for the first respondent in a managerial capacity. The third respondent is a director and employee of the first respondent. For convenience, we shall now refer to the first respondent as *'the respondent.'* We shall refer to the second respondent as *'Mr Ayub'* and to the third respondent as *'Mr Mughal.'*
3. The claimant worked for the respondent between 15 January 2021 and 7 June 2021. There is no dispute about the period over which the claimant worked for the respondent. However, there is a dispute between the parties as to whether the claimant worked as an apprentice over the whole of this period (which is the respondents' case) or as an employee until 4 May 2021 (which is the claimant's case). The claimant and respondent agree that she was engaged as an apprentice customer service/administrator.
4. The Tribunal heard evidence from the claimant. We also heard evidence from Mr Ayub and Mr Mughal. In addition, the respondents called evidence from:
 - 4.1. Richard Hammond. He is employed by the respondent as a manager.
 - 4.2. Umbreen Ashraf. She is an employee of the respondent. She says, in paragraph 1 of her witness statement, that her *"responsibilities include dealing with complaints of all campaigns that the company runs. Prior*

to this I was also involved in HR for around four to five years. I was generally involved in all aspects of HR.”

5. Helpfully, Miss Ashraf goes on to say in the same paragraph that the respondent, *“is a call centre which runs various campaigns. It employed at the time of the claimant’s employment with us 12 male and 10 female members of staff across the admin department and call centre. Whilst we do not collect official data surrounding our employee’s race and nationality, I would estimate that 14 of the 22 employees were Muslim and of Asian heritage.”*
6. We shall consider the issues to which the case gives rise in due course. Suffice it to say at this stage that the claimant’s complaints are:
 - 6.1. That she suffered an unlawful deduction from her wages as the first respondent did not pay her lawful entitlements pursuant to the National Minimum Wage Act 1998.
 - 6.2. That she suffered direct discrimination because of the protected characteristics of her race, sex and religion.
 - 6.3. That she suffered harassment because of those protected characteristics.
 - 6.4. That she was victimised by the respondents.
7. The victimisation complaints arise out of a grievance brought by the claimant on 18 June 2021 and her appeal against the grievance outcome. Mr Hammond was the decision maker upon the claimant’s grievance. Miss Ashraf was the decision maker upon her appeal. The grievance and grievance appeal were brought after the end of the claimant’s contract with the respondent.
8. In paragraph 2 of her witness statement, the claimant says that she is *“female of Asian origin, British Pakistani nationality and I’m also a Muslim.”* In evidence given under cross-examination the claimant accepted Miss Ashraf’s evidence to the effect that 14 of the 22 employees engaged the claimant’s workplace were Asian (at the time that the claimant worked there) and that all the Asian employees were Muslims.

Findings of fact

9. As we have said, there is no dispute that the claimant commenced work for the respondent on 15 January 2021. Mr Ayub and Mr Mughal both refer in their evidence to a contract of employment at pages 92 to 102 of the bundle. The claimant said, at paragraph 1 of her witness statement, that she *“was never provided with a contract of employment despite me asking for one. The contract at page 92 was sent to me after my dismissal. [In] the text on page 185 Mr Ayub confirms I was never given a contract or signed one.”*
10. In her evidence given under cross-examination, the claimant said that Leeds City College put her in touch with the respondent. The respondent has an ongoing relationship with Leeds City College to provide apprenticeship training for those enrolled on courses with the College. The contract for services to provide apprenticeship training for the claimant is in the bundle at pages 105 to 124. This is dated 5 February 2021. It has been signed (on page 110) by Mr Mughal and an officer of Leeds City College.

11. The tri-partite agreement between the claimant, the respondent and Leeds City College was signed on 23 April 2021. This is at pages 125 to 146. The *'employer, learner and college declaration'* at page 140 includes a statement signed by Mr Mughal that the claimant commenced the apprenticeship programme the subject of the agreement on 4 May 2021 and that it was scheduled to last until 4 September 2022. The *'skill, trade or occupation'* for which the claimant was being trained was specified as a *'financial administrator'* (page 143).
12. As we saw, the claimant made reference in paragraph 1 of her witness statement to a text from Mr Ayub which appears at page 185 of the bundle. Chronologically, this text was sent to the claimant after she had left the respondent on 7 June 2021. The claimant asked Mr Ayub for a copy of her contract. Mr Ayub questioned her need for her it given that she was no longer with the respondent. Further, Mr Ayub did say to the claimant that she had not signed the contract.
13. The contract in the bundle at pages 92 to 102 has not been signed either by the claimant or the respondent. It is also incomplete as there is reference in section 5.1 to a job description which does not appear in the bundle. There was no evidence from the respondent, Mr Ayub or Mr Mughal as to the circumstances in which the claimant came to sign the contract. For these reasons, we prefer the evidence of the claimant and find as a fact that she did not sign the contract which appears in the bundle at pages 92 to 102 and that she never received it.
14. The claimant was undertaking work for the respondent from 15 January 2021. The claimant fairly accepted that the work that she was undertaking throughout (both before and after she signed the apprenticeship agreement commencing on 4 May 2021) was the same. She was working 37.5 hours per week for an annual salary of £8775. This equates to £4.50 per hour.
15. There was no evidence from any of the respondents to the effect that the claimant was receiving any kind of training after 15 January 2021 until 3 May 2021. The Tribunal was not presented with a training record. The respondents' position is not helped by the failure to supply a job description setting out what the claimant was required to do.
16. The claimant complains about a number of incidents which took place during the time that she worked for the respondent. We shall now consider each in turn and make our factual findings upon them.
17. The first incident chronologically is alleged to have taken place on 29 January 2021. The claimant alleges that Mr Ayub, *"spoke to the claimant in a demeaning manner like she was a stupid female. Mr Ayub said to the claimant 'you will get paid the third working day every month and you only get paid for the days you work lol'."*
18. The background to this incident was that on 26 January 2021 the claimant texted Mr Ayub to say that she was ill. The text is at page 172. The claimant took that day off work.
19. On 29 January 2021 she again texted Mr Ayub (page 173). She asked him *"Just out of curiosity what days do I get paid and how does it work like how many hours do I get paid for? I forgot to ask at work."* This was followed by a 'hand over the face' emoji. Mr Ayub replied to the effect that she gets paid

upon the third working day of the month. He went on to say that *“you only get paid for the days you work lol”*. The claimant replied *“ok”* with two ‘laughing’ emojis. Mr Ayub then said to her *“Get learning Asian languages first tests on Monday.”* The claimant replied, *“What do I have [to] learn to say lol.”* Again, this was followed by a ‘laughing’ emoji.

20. In paragraph 9 of her witness statement, the claimant explains the reference to Asian languages. We shall see that it is part of her complaint that Mr Ayub and Mr Mughal both told her that she was too westernised. It is her case that the reference to a need to learn Asian languages was an encouragement for her to be more *“traditional”* (as she says in paragraph 9 of her witness statement). The claimant in fact raises no legal complaint against Mr Ayub about the *“Asian languages”* comment although she does, as we say, raise an issue that she was regarded as being too westernised in her dress and outlook. It was not put to Mr Ayub in cross examination by Mr Wilson that the reference to Asian languages was anything other than a reflection of his view of her. It was not expressly put that this showed a view of her as too westernised.
21. In her evidence given under cross-examination, the claimant accepted that Mr Ayub was being *“jokey”* with her in the texts of 29 January 2021. Her evidence is that was how she took it and she simply laughed off his comment that she would only be paid for the days upon which she worked. She then said in evidence that she did not wish to tell Mr Ayub that she had found his texts (at page 173) to be rude and offensive. She accepted that from Mr Ayub’s perspective, the texts from him may reasonably be considered to be humorous and that in any case he informed her correctly and in a straightforward manner that she had no entitlement to sick pay.
22. Upon this issue, we prefer the evidence of the respondents. The claimant in fact initiated the exchange of texts with a ‘hand over the face’ emoji which in our judgment signalled to Mr Ayub that the claimant’s reasonable enquiry was being raised in a good-natured manner and that some attempt at levity on his part in return would be acceptable to the claimant. This impression was reinforced by the claimant using ‘laughing’ emojis in the two subsequent texts in short succession. Given this context, Mr Ayub’s text was not demeaning of the claimant.
23. The next allegation chronologically is that in February 2021, Mr Ayub approached the claimant and said to her *“you owe me. I gave you the job”*.
24. In paragraph 10 of her witness statement, the claimant says that she was sitting working at her desk in February 2021 when Mr Ayub approached her and said this. She goes on to say that she perceived there to be an insinuation that because he had employed her, she owed him. She interpreted this as owing sexual favours. She says, *“this made me feel so uncomfortable to the point it made feel physically sick. I was so upset that I confided in my colleague Laura [Hayton] about what Mr Ayub had said. I was too scared to raise a complaint as he was my boss and I would have been fired. This was my first job and I wanted to do well.”*
25. In paragraph 9 of his witness statement, Mr Ayub *“absolutely denies”* making the remark alleged against him. He said that he was *“deeply shocked and upset”* when he learned of the claimant’s allegation in these proceedings.

26. During the course of his investigation into the claimant's grievance, Mr Hammond emailed Miss Hayton on 28 June 2021 (page 197). He specifically asked if she had witnessed Mr Ayub and Mr Mughal subjecting the claimant to detrimental treatment. Miss Hayton replied on 9 July 2021. Her reply is at pages 214 and 215. Although she complains about aspects of Mr Ayub's and Mr Mughal's behaviour, she makes no reference to witnessing anything untoward from either of them towards the claimant or of the claimant complaining to her about such matters.
27. In her grievance letter at pages 164 to 166, the claimant alleged that Mr Ayub made this remark "*around March 2021*". When asked during cross examination about this discrepancy (between the date given in her witness statement in paragraph 9 and her grievance letter at page 164), the claimant said that she could not remember the date "*at the time*." This made little sense as, plainly, the grievance letter would have been prepared prior to the witness statement for this case. She then said that she thought that she would be able to go into further detail when preparing her witness statement for the Employment Tribunal proceedings. Again, this was evidence which was difficult to understand given that on 18 June 2021 Tribunal proceedings may not have been in her contemplation (although it seems she was in touch with her solicitor when her grievance was prepared). In any case, an ability to expand on her account doesn't explain the date discrepancy.
28. On balance, the Tribunal prefers the respondents' account upon this issue. The claimant's case (in particular, about confiding in her) was not corroborated by Laura Hayton. The discrepancy over the dates undermined the claimant's credibility upon this issue. The explanations which she gave for the discrepancy in dates was unsatisfactory.
29. The next issue is an allegation that on 1 March 2021 Mr Ayub texted the claimant with the remark "*no dumbo like apart from work*". The text in question was sent on 1 March 2021 and is at page 175. There is no dispute that Mr Ayub texted the claimant in these terms.
30. The context is that on 1 March 2021, the claimant texted Mr Ayub to say that she had contracted Covid. She accompanied her text with a screenshot of the positive test result following the test which she had taken on 28 February 2021. She was required to self-isolate immediately for 10 days. Upon receipt of the text, Mr Ayub asked the claimant where she had been. The claimant replied that she had gone to the test centre for her test. It was this reply which prompted Mr Ayub to text, "*no dumbo like apart from work*."
31. The claimant responded to the effect that she does not go anywhere except from work to home save for visiting local supermarkets or travelling on the bus. Mr Ayub then pressed further and suggested that the claimant must have gone somewhere else in order to contract Covid. The claimant then replied to ask about sick pay entitlement. Mr Ayub replied that she would receive sick pay but had to stand the first three days.
32. In paragraph 12 of his witness statement Mr Ayub says that, "*The claimant did not raise any concerns about my language at the time and it was meant to be amusing. I now appreciate that this message was not appropriate or professional*." He denies it had any connection with any of the claimant's protected characteristics.

33. For her part, the claimant says in paragraph 12 of her witness statement that she was offended by the term “*dumbo*”. Her evidence is that, “*Mr Ayub spoke to me in this manner because of his traditional, religious and cultural belief that women are not equal to men and are unintelligent. I also believed he was disgruntled because I had not accepted his earlier sexual advance/innuendo. I also felt uncomfortable him asking me where I had been in my private life outside of work. I believe his remark is sexual harassment and religious harassment.*”
34. The Tribunal has already found as a fact that Mr Ayub had not made a sexual advance towards the claimant in February 2021.
35. The Tribunal agrees with Mr Ayub’s assessment that calling the claimant “*dumbo*” was unprofessional and inappropriate. The Tribunal acknowledges Mr Ayub’s fair recognition of this.
36. The claimant fairly recognised in cross-examination that it was quite a leap to conclude from the inappropriate text that Mr Ayub considered women to be unintelligent or unequal. This was a fair and realistic concession for the claimant to make.
37. The claimant also acknowledged that nothing untoward had happened between the date of the sexual advance (on the claimant’s case) and the exchange of texts on 1 March 2021. That being the case, in the Tribunal’s judgment, Mr Ayub may have considered that he had the green light to attempt what he may have perceived to be humour when replying to the claimant and calling her “*dumbo*”. As we have said, the claimant had opened the door to this perception by her liberal use of emojis in the text exchanges around a month prior. This does not detract from the inappropriateness of Mr Ayub’s language towards the claimant. Nonetheless, subjectively, the Tribunal can see how Mr Ayub took it that the claimant may not be offended by the use of such language.
38. The next issue centres upon allegation that in or around March or April 2021 Mr Mughal said to the claimant that she “*spoke differently than everyone else, you can speak properly.*”
39. In paragraph 17 of her witness statement the claimant says that, “*In March/April 2021 [Mr] Mughal said to me that I ‘spoke differently than everyone else, the other Asian employees, you can speak properly.’ This remark made me feel uncomfortable as he was again pointing out how different I was from the traditional Asian women and how westernised I was. I feel like this is harassment on the grounds of race/religion or belief.*”
40. In paragraph 18 of his witness statement, Mr Mughal refers to a conversation which he says took place in April 2021 in which he complimented the claimant on the way that she spoke and how eloquent she was on the telephone. He denied comparing the claimant favourably to the other Asian employees. He says that he was seeking to encourage the claimant.
41. There is no evidence from the claimant that this remark was said in front of the other Asian employees. When questioned about this aspect of the matter, the claimant confirmed that Mr Mughal had not referred to the other Asian employees. Mr Ratledge put it to the claimant that Mr Mughal “*did not refer to other Asians*” to which the claimant replied, “*no I speak properly.*”

42. Upon this basis, we find as a fact that this was a remark made in a private conversation between the claimant and Mr Mughal. We find that Mr Mughal complimented the claimant upon her telephone skills and did so with a view to encouraging her. We also find that Mr Mughal was at least sub-consciously comparing the claimant favourably in comparison to other Asian employees, as that is what prompted his observation.
43. The next incident with which we are concerned is that, *'On 11 March 2021 Mr Ayub was rude to the claimant when he asked to get a further Covid-19 test following her isolation period ending.'*
44. The claimant's evidence in paragraph 14 of her witness statement is that *"On 11 March 2021, when my isolation had finished, Mr Ayub was rude and told me to get another test done. This is despite Covid-19 guidelines, which state that a re-test following a positive test should not be done until after 90 days until the virus has cleared the body. Otherwise the test will be positive."*
45. The claimant's view upon this was vindicated by the test results of 17 March 2021. She was again positive. However, the evidence is that she was allowed to return to work having completed 10 days of self-isolation after 1 March 2021.
46. There are some texts of 18 March 2021 within the bundle at pages 178 to 180. It is clear from these that Mr Ayub was unsure of the position. We can accept that the texts from him to the claimant may reasonably appear to her to be somewhat brusque and unhelpful. In particular, Mr Ayub appears to have objected to the claimant involving Leeds City College in the matter without good reason.
47. The next allegation chronologically is that in May 2021, Mr Mughal said to the claimant that, *"you look like a black girl and talk like a white girl" and that she dressed too 'westernised'.* In her witness statement, the claimant says that the remark that she *"looks like a black girl and talks like a white girl"* was made in May 2021 (by reference to paragraph 20). In evidence before the Tribunal, she said that the remark was made out of the blue when she was standing by the photocopier. However, the alleged remark about her being *"westernised"* was said in paragraph 16 of her witness statement to have taken place during a meeting held in March 2021 and not in May 2021. (On the claimant's case the comment about being westernised was not made at the same time as the *"you look like a black girl and dress like a white girl"* remark).
48. In paragraph 23 of his witness statement, Mr Mughal denies making a remark about the claimant *"looking like a black girl and talking like a white girl."* He also denies making a remark that the claimant dressed too westernised during May 2021.
49. Mr Mughal does agree with the claimant that there was a meeting in March 2021. Mr Mughal says that he and Mr Ayub were concerned about the claimant's levels of sickness absence and how this may impact upon the claimant's career development.
50. We have found as a fact already that in April 2021 Mr Mughal did compliment the claimant upon the way that she spoke. It is, therefore, credible that he would have made a similar remark about a month later about her manner of speaking as alleged by the claimant. The claimant's evidence before the Tribunal was that the *'white girl'* remark was to distinguish her from the other Asian employees all of whom had Asian accents. We accept her account as it

is consistent with Mr Mughal's conduct a month earlier. This corroborates our earlier finding in paragraph 42 about sub-conscious influence.

51. Further, Mr Mughal and Mr Ayub's credibility upon this issue is undermined by their insistence that the claimant's absence record was a matter of some concern and the absence of any meeting records.
52. By March 2021, the claimant had had just one day of sickness in addition to her mandatory absence having tested positive for Covid. The claimant cannot be criticised for either of these absences. She was duty bound to self-isolate after having tested positive for Covid on 28 February 2021 and indeed the respondent's own handbook required her to report having contracted a contagious disease (at page 255). The respondents' case is also not assisted by an absence of contemporaneous notes of the meeting held in March 2021 to discuss the claimant's performance.
53. We take Mr Ratledge's point that the claimant was not in a customer facing role and that the manner of her dress may not have been of great concern to the respondent from the perspective of customer relations.
54. The claimant's evidence before the Tribunal was that she dressed "*with vans, tracksuit bottoms ... I've never been traditional*". In her own words, she dressed differently from the other Asian women employed by the respondent "*some of whom wore head scarves*".
55. On balance, we prefer the claimant's account that Mr Mughal said to the claimant that she "*looked like a black girl and spoke like a white girl.*" Firstly, this is consistent with Mr Mughal having earlier singled the claimant out for praise for her eloquence. While we have found as a fact that he did not expressly compare her favourably with other Asian women this was the inference. Indeed, there is no other reasonable way of interpreting the remark. He saw something in the claimant which he did not see in others, in particular, her manner of speaking and remarked upon it.
56. Secondly, Mr Mughal's and Mr Ayub's credibility upon this issue is damaged by the absence of any contemporaneous record as to what was discussed with the claimant in the meetings with her. Further, we have difficulty with accepting that there were reasonably held concerns about her attendance for the reasons given in paragraph 52. This too is damaging of their credibility.
57. Thirdly, the claimant, on her own account, does dress "*like a black girl*". It is therefore credible that this remark may have been made. We find as a fact that it was, in conjunction with a remark about her manner of speaking, as Mr Mughal and Mr Ayub were commenting upon the difference between the claimant on the one hand and the other Asian female employees on the other.
58. For the reasons that we shall come on to below (in paragraphs 62 to 68), we do not find that Mr Ayub and Mr Mughal told the claimant that she was too westernised in March or May 2021.
59. Before turning to that, we shall deal with the next issue chronologically which is that on 14 May 2021, Mr Ayub said that he did not believe that the claimant was being truthful about a sickness absence on 14 May 2021.
60. The relevant texts are at pages 181 and 182. These texts were sent on Friday 14 May 2021. This was the day after Eid. Upon her reporting that she was suffering with food poisoning Mr Ayub responded to the claimant that he "*had*

a feeling your going to ring in sick today". When the claimant protested that she had a bad bout of food poisoning and had been stuck in the bathroom for 30 minutes Mr Ayub recorded that she was self-diagnosing and that he did not know that she was a doctor.

61. Mr Ayub seeks to justify his scepticism upon the basis of the claimant's high levels of sickness absence. In our judgment, this has little credibility. Up to and including 14 May 2021, the claimant had had only two days of sickness absence coupled with the 10 days of self-isolation after she tested positive with Covid. Her Covid absence was evidenced with a positive test. There was simply no reason for the respondent to disbelieve the claimant about the genuineness of her other illnesses. We accept the claimant's case that the respondents disbelieved her without justification.
62. The next allegation centres upon a meeting which took place on 27 May 2021. The claimant says that at this meeting Mr Mughal remarked to the claimant that she was not going to get far in life with her westernised ways. The claimant refers to the meeting of that date in paragraph 23 of her witness statement. She says that Mr Ayub and Mr Mughal told her that she was going to fail her apprenticeship and that Mr Mughal remarked upon her westernised ways.
63. Mr Ayub and Mr Mughal both refer to the claimant having drawn to the respondent's attention that the claimant's mother had tested positive with Covid and that she may possibly need to isolate as a consequence. Her text to this effect dated 25 May 2021 is at page 182.
64. The claimant raised the prospect of her being paid during any period of isolation after her mother's positive test. The claimant was told that she would not be paid as she did not have Covid herself. Mr Ayub commented (in a text dated 25 May 2021 at page 184) that the claimant didn't "*seem to be bothered about anything else but pay all the time*". This was an unfair remark to make. It has to be borne in mind that this was the claimant's first job. She was perfectly entitled to ask about her entitlements during periods of enforced absence in the midst of a public health emergency. Somewhat snide remarks such as that made by Mr Ayub at page 184 were unhelpful.
65. During her evidence given in cross-examination, the claimant said that the comment about her being too '*westernised*' was not in fact made during the meeting held on 27 May 2021. This was in contra-distinction to paragraph 23 of her witness statement where she identifies the remark as being made that day. This serves to undermine the claimant's credibility upon this issue.
66. The claimant was rather vague as to when the '*westernised*' comment was made. She said that it had been made "*throughout, several times.*" This was rather unconvincing evidence and persuades us that Mr Ayub and Mr Mughal did not say that the claimant was westernised whether at meetings held in March 2021, May 2021 or otherwise. While there was therefore credibility behind the remark about her speaking like "*a white girl*" (as the respondent accepts that they had made a remark about her eloquence at an earlier meeting) the allegation that a comment was made that she was '*too westernised*' lacks credibility.
67. The next complaint raised by the claimant is that in May 2021 her friend Tanya Ali was interviewed for a role with the respondent. Miss Ali was

interviewed by Mr Ayub. The claimant says that after the interview Miss Ali told the claimant that Mr Ayub *“fancies you .. because he would not talking and asking questions about you.”*

68. The claimant gives evidence about this in paragraphs 27 and 28 of her witness statement. She says that Tanya Ali told her that Mr Ayub *“would not stop talking”* about her. She says that there was no reason for Mr Ayub to be asking questions about her or to be discussing her in a job interview for someone else and she found Mr Ayub’s conduct to be deeply upsetting.
69. For his part, Mr Ayub accepts asking Miss Ali a few general questions *“about how long she and the claimant had been friends.”* Mr Ayub said that he did this in order to break the ice. Miss Ali had been introduced to the respondent by the claimant. This was after Mr Mughal asked members of staff if they knew of anyone who was looking for a job. The claimant had mentioned this opportunity to Miss Ali and the interview was arranged.
70. Although the claimant did raise this as an issue in her grievance (at page 165) she produced no supporting statement from Miss Ali at the time. The Tribunal also did not have the benefit of a witness statement or evidence from Miss Ali.
71. Mr Hammond made no findings about the claimant’s allegation concerning Tanya Ali’s interview. When she appealed Mr Hammond’s findings, the claimant complained that he had made no contact with Miss Ali. She (Miss Ali) was not interviewed as part of the investigation commissioned by Miss Ashraf following the claimant’s appeal against Mr Hammond’s decision. Miss Ashraf, in her appeal outcome letter at pages 239 to 241 said that she was unable to see *“how Tanya’s interpretation of that interview (as you describe it) amounts to some form of sexual harassment of you, as you now allege. I, like Richard [Hammond] do not see this as relevant.”*
72. The claimant’s point was that Mr Ayub’s conduct in talking about the claimant with Miss Ali (such as to convey to Miss Ali the message that Mr Ayub *“fancied”* the claimant) was in part corroborative of her case that the *“you owe me”* comment allegedly made by Mr Ayub was a sexual advance.
73. It was her case before the Tribunal that the conduct of Mr Ayub towards her after the *“you owe me”* comment was because she had rebuffed his advances. (It is to be noted that the grievance of 18 June 2021 at pages 164 to 166 does not make such a link). In our judgment, it was legitimate for the claimant to raise the conduct of the interview with Tanya Ali as evidence of a pattern of behaviour on the part of Mr Ayub concerning the claimant.
74. The difficulty for the claimant upon this issue before the Tribunal however is the absence of any corroborative evidence that Mr Ayub overstepped the mark when talking about the claimant with Tanya Ali. Miss Ali is the claimant’s friend. She never worked for the respondent. It is difficult therefore to understand why the claimant could not have put before the respondent a statement from Miss Ali as to what Mr Ayub had said. There was also no evidence from Miss Ali before the Tribunal.
75. The absence of any corroborative evidence from the claimant upon this point must outweigh any adverse inference to be drawn against the respondent for the way it conducted its investigation into the claimant’s grievance upon this point.

76. Objectively, we consider that Mr Hammond and Miss Ashraf were wrong to rule that the Tanya Ali issue was irrelevant to the claimant's grievance. In essence, the claimant was alleging that Mr Ayub had an unhealthy interest in her. An inappropriate discussion of the claimant with her friend going beyond mere small talk was an important part of the claimant's case.
77. That said, we think there is much in Mr Ratledge's point that the claimant, in her grievance, did not seek to expressly link Mr Ayub's advance in March 2021 when he allegedly made the "you owe me" comment on the one hand with the subsequent events which she sets out in her grievance on the other with an attribution of the conduct to her rejection of him. Indeed, a complaint in these proceedings of sexual harassment on the ground of her rejection was not pursued by her. The "you owe me" comment was listed in her grievance as but one of a number of instances of alleged improper behaviour towards her by Mr Ayub and Mr Mughal.
78. The claimant did not allege (in her grievance) that that improper behaviour was because of the rejection of Mr Ayub's advances. Had she done so, Mr Hammond and Miss Ashraf may well have taken a different view about the relevance of Tanya Ali's evidence.
79. Therefore, although we consider that Mr Hammond and Miss Ashraf were wrong not to look at the Tanya Ali issue, it is our finding that the respondent was not simply turning a blind eye to it. A wrong judgement call was made not to investigate it but the failure to do so does not, in our judgment, cause us to draw such an adverse interest against the respondent, Mr Ayub and Mr Mughal such as to outweigh the absence of any corroborative evidence advanced by the claimant. We therefore find that the claimant has not made out her case upon this issue and it fails on its facts.
80. The next issue concerns the events upon the final day of the claimant's employment. It is common ground that on 7 June 2021 the claimant told Mr Mughal that she was looking for a new job because she was not happy working for the respondent. There is testimony from the claimant to this effect in the claimant's witness statement in paragraph 29 and in paragraph 27 of Mr Mughal's witness statement.
81. It is also common ground that Mr Mughal then asked the claimant whether she thought that she should still be there. This is referred to in paragraph 30 of the claimant's witness statement and paragraph 28 of Mr Mughal's.
82. The difference between the parties is to whether Mr Mughal said to the claimant that she may as well leave (which is the claimant's case) or whether the claimant herself said that she may as well leave (which is Mr Mughal's case). The respondent's case effectively is that the claimant was given a choice and chose to resign there and then. The claimant's case is that she had no choice and was effectively dismissed by Mr Mughal.
83. Upon this issue, we prefer the evidence of the claimant. Mr Mughal's credibility is tainted by the fact that he sent a misleading email on 7 June 2021 to Leeds City College about the claimant. This is at page 161. He reported that the claimant "*has called in this morning saying that she is looking for another [job] and she won't be coming back so I thought I'd give you a quick update as she is no longer employed by us as from today 07/06/2021.*"

84. The brief description in the email to Leeds City College does not convey accurately the discussion between them. Even on the respondent's case, the claimant did not simply come in and resign. She said to Mr Mughal that she was looking for another job, Mr Mughal on his case asked her whether she thought that she should still be there, was given a choice and chose to leave there and then. The email at page 161 gave Leeds City College the impression that the claimant had simply summarily resigned without more.
85. Further, Mr Ayub told Leeds City College that the claimant was on "*her last warning*" due to her attendance record. This was misleading. As Mr Ayub accepted in evidence before the Tribunal, there was no formal warning. There was "*just a conversation*" as he put it. When discussing the claimant's attendance (on 27 May 2021) he accepted that he and Mr Mughal did not have her full attendance record before them.
86. As we have observed, it is difficult to understand how or why the respondent had such concerns about the claimant's attendance record in any case. She had one day off in January 2021 and then one day off in May 2021 (with food poisoning). There was then the Covid self-isolation period in March 2021. After testing positive, the claimant had no option but to self-isolate. She produced evidence of her positive test.
87. The claimant also complains about the conduct by Mr Hammond and Miss Ashraf of the grievance process. The claimant's grievance letter is at pages 164 to 166 of the bundle. It is dated 18 June 2021. Within it, the claimant sets out the complaints which have formed the basis of her claim before the Employment Tribunal. In addition, she mentioned that a white female colleague, Laura Hayton had received similar treatment.
88. Mr Hammond picked the matter up on 21 June 2021 when he returned to work following a period of annual leave. He telephoned the claimant and left a message on her voicemail. This prompted an email from the claimant (at page 168) requesting all correspondence to be by email.
89. In his email of 21 June 2021 at page 168, Mr Hammond offered the claimant the option of meeting with him or of her providing documentary or other evidence in support of her grievance. The claimant chose the latter option. The text messages at pages 172 to 186 (some of which we have already referred to) were forwarded to Mr Hammond. She also furnished him with Tanya Ali's and Laura Hayton's contact details.
90. Mr Hammond contacted Laura Hayton. She emailed to confirm that she would prefer to correspond by email rather than speaking with Mr Hammond directly. Mr Hammond therefore sent an email to Miss Hayton with a number of questions. The email is at page 199. He asked her open questions as to whether she had suffered any detrimental treatment and if so when and by whom. She was also asked whether she had witnessed such behaviour towards anyone else and specifically whether she had witnessed such behaviour towards the claimant. Mr Hammond's email was sent to Laura Hayton on 28 June 2021.
91. Mr Hammond then interviewed three employees all of whom worked in close physical proximity with the claimant. Mr Hammond's notes of interview are at pages 191, 192 and 195.

92. Mr Hammond asked each of the three witnesses the same three questions. Mr Ratledge accurately characterised Mr Hammond's approach as formulaic. The evidence obtained by Mr Hammond from the three employees favoured the respondent.
93. Mr Hammond also interviewed Mr Ayub and Mr Mughal. His interview with Mr Ayub is at pages 193 and 194. Mr Ayub claimed that the claimant "*was never in the office.*" For the reasons which we have already given, this is an unfair criticism of the claimant.
94. Notes of Mr Hammond's interview with Mr Mughal can be found at pages 198 and 199. Mr Mughal said that he was disappointed when the claimant left as she "*was only five months into the 12 month programme*". This does not seem to marry up with the documentation signed by Leeds City College, the respondent and the claimant on 23 April 2021 (in particular at pages 140 and 141) to the effect that the programme commenced on 4 May 2021 and was to be of 16 months duration until 4 September 2022. This underscores the Tribunal's misgivings about the accuracy of the information provided to the Tribunal by the respondents about the claimant's apprenticeship programme and in particular of its duration and commencement date. This adversely impacts the view we take of the respondents' account of the claimant's status before 4 May 2021.
95. Mr Hammond sent his decision upon her grievance to the claimant on 2 July 2021. The decision letter is at pages 202 to 204 of the bundle.
96. It was suggested to Mr Hammond by Mr Wilson that he had not allowed sufficient time give Laura Hayton chance to respond to his email of 28 June 2021. He says in paragraph 23(g) of his witness statement that his email to Miss Hayton had met with no response.
97. There is merit in the claimant's point that Miss Hayton was only given three clear days within which to respond about such sensitive matters and that Mr Hammond acted hastily in concluding that she was not co-operating. In cross-examination, Mr Hammond defended his position upon the basis that he didn't wish to keep the claimant waiting.
98. The Tribunal acknowledges this to be a laudable wish upon Mr Hammond's part. However, the evidence of Laura Hayton had the potential to be of great significance as, upon the claimant's case, it corroborated what she was saying about Mr Ayub's behaviour. The issue was sensitive. Miss Hayton may have needed time to formulate her response. No particular timescale is prescribed within the respondent's grievance policy (within the staff handbook at page 263) for the completion of a grievance investigation. It would therefore have been reasonable for Mr Hammond to wait a little longer to hear from Miss Hayton and also for him to send her a reminder in the event that she did not respond within a reasonable time.
99. We have little doubt that the claimant would have been placated should this approach have been adopted by being informed by Mr Hammond that he was awaiting a response from Miss Hayton. That would perhaps have been a preferable cause to take in the circumstances. Mr Hammond (for whom this was a first grievance investigation) may wish to take these comments on board as learning points.

100. At all events, Miss Hayton's evidence did come to hand on 9 July 2021. We see her email addressed to Mr Hammond of that date at page 212. Her witness statement is at pages 214 and 215.
101. It was, of course, by then too late for Mr Hammond to take account of what she said when reaching his decision. However, the claimant appealed against Mr Hammond's decision. One of the grounds of her appeal (which is at pages 204 and 205 and was dated 5 July 2021) is that no approach had been made to Laura Hayton or Tanya Ali. (We have already dealt with the issue around Tanya Ali – see paragraphs 67 to 79 above).
102. The claimant complained that Mr Hammond was biased. In essence, she said that he had reached unsustainable conclusions.
103. Miss Ashraf dealt with the claimant's appeal. She was the sole decision maker upon it.
104. Miss Ashraf had formerly worked at the respondent's premises in Bradford. However, by the time of the claimant's appeal, she had moved to Newcastle for family reasons. She was chosen to hear the claimant's appeal because of her HR experience. Due to her family commitments, she was unable to travel to Bradford to conduct interviews. She therefore commissioned Mr Hammond so to do.
105. On 9 July 2021 the claimant emailed Mr Hammond. She objected to Miss Ashraf conducting the appeal upon the basis that she had seen Miss Ashraf and Mr Mughal working together. The email is at page 211.
106. Miss Ashraf says, in paragraph 13 of her witness statement, that she *"found this comment completely absurd. Nasser [Mughal] is a director and manager of the company and therefore worked with all of the employees. The fact that I had worked with Nasser before did not in any way mean that I could not carry out the grievance appeal investigation without being impartial and reaching an independent conclusion."*
107. It is, in our judgment, harsh and unfair for Miss Ashraf to dismiss the claimant's complaint so peremptorily upon this aspect of matters as *"completely absurd"*. We again take into account that this was the claimant's first job and her lack of experience. That said, this is an employer of modest size. It was, in our judgment, reasonable for the respondent to commission Miss Ashraf to conduct the grievance appeal. She has HR experience. There was no suggestion from the claimant that anyone else was as well if not better suited to the task. It is inevitable in small and medium sized organisations that those commissioned to conduct disciplinary, disciplinary appeals, grievances hearings and grievance appeal hearings will know of and have some connection with others directly involved in the matters in hand.
108. We accept that Miss Ashraf dealt with the claimant's grievance appeal with an open mind as she commissioned Mr Hammond to obtain further evidence. It is fair to say (as the respondent accepted) that Mr Hammond again adopted a formulaic approach when interviewing the witnesses. Four of those witnesses' statements have been anonymised and referred to as *'witnesses E, F, G and H'* before the Tribunal. A fifth witness was identified by name.

109. Mr Mughal was interviewed upon the contents of Laura Hayton's witness statement. The grievance appeal investigation records of those witness interviews are at pages 216 to 230 of the bundle.
110. In her witness statement, Laura Hayton says, amongst other things, that:
- 110.1. Mr Ayub had a problem with "*people of our age*". This was a reference to the age of her, the claimant and other apprentices.
- 110.2. Mr Ayub was condescending and belittling and brought Miss Hayton to tears on occasions.
- 110.3. On several occasions Mr Ayub shouted at Miss Hayton "*in a very loud manner, in front of the entire office, about taking my breaks at certain allocated times.*"
- 110.4. She complained that Mr Mughal made a number of inappropriate comments around issues of sexual orientation and race. She also alleged that he had said "*that women shouldn't comment on men's sport.*"
111. As we have already observed, there was nothing within Miss Hayton's statement which corroborated the claimant's case that the claimant had complained to her (Miss Hayton) about Mr Ayub's behaviour towards her when he allegedly approached her (the claimant) and made the "*you owe me*" comment. As we have already found, this undermined the claimant's case upon this issue and persuaded us to prefer the respondent's case upon it.
112. Only witness E said anything which may have been helpful towards the claimant. At page 220, witness E told Mr Hammond that "*sometimes the way [Mr Ayub] spoke to [the claimant] could have been interpreted as rude. From what I recall, although I can't be specific I would have taken his comments to be light-hearted banter but not rude.*" No specific examples were given by witness E nor it seemed did Mr Hammond press for any.
113. In evidence given under cross-examination, Mr Ayub accepted that on occasions he may have shouted across the floor where Miss Hayton, the claimant and others were working. He says that he did this because it was a busy and noisy work environment. Mr Hammond also confirmed that Mr Ayub occasionally would shout across the office. The Tribunal accepts that the respondent was operating in a high pressure and busy call centre environment. It is credible therefore that management may on occasions have to shout their message to employees.
114. On 26 July 2021, Miss Ashraf sent a detailed letter outlining her decision upon her grievance appeal. This is at pages 244 to 246. As with Mr Hammond, Miss Ashraf did not, with one exception, uphold the claimant's appeal.
115. The one case that was upheld was that both Mr Hammond and Miss Ashraf found that Mr Ayub referring to the claimant as dumbo in the text at page 175 was inappropriate. Mr Hammond verbally reprimanded Mr Ayub for making this remark.
116. The claimant complained in her appeal about the failure to take disciplinary action against Mr Ayub. Miss Ashraf found that although the remark was inappropriate it was not discriminatory or harassing upon the grounds of any of the claimant's protected characteristics and therefore no heavier sanction was justified.

117. The final issue is around the respondent's pension scheme. The claimant complained that she was not enrolled on to it and the respondent failed to make pension contributions towards it on her behalf. There is no factual dispute that the respondent operates a pension as required by the Pensions Act 2008 but that the claimant and other apprentices under the age of 22 years are not included within it.

118. This concludes our findings of fact.

The issues in the case and the relevant law

119. Upon the first morning of the hearing, the parties presented the Tribunal with an agreed list of issues. It is not necessary, we think, to set this out in full at this stage. What we shall do is consider each issue in turn when we come to apply the relevant law to the factual findings in order to arrive at our conclusions upon the issues. With that in mind, therefore, we now turn to a consideration of the relevant law.

120. We shall start with the unauthorised deduction from wages complaint. By section 13 of the Employment Rights Act 1996 an employer shall not make a deduction from the wages of a worker employed by them unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing their agreement or consent to the making of the deduction.

121. By section 230(3) of the 1996 Act, a 'worker' means an individual who has entered into who works under (or, where the employment has ceased, worked under) a contract of employment or any other contract whereby the worker undertakes to perform work personally for the other party and where the other party is not a client or customer of any profession or business undertaking carried on by the worker.

122. Therefore, in order to have standing to bring a complaint that she suffered an unauthorised deduction from her wages, and to qualify as a worker, the claimant needed to have been employed under a contract of employment or another contract to perform work personally for the respondent. (There is no suggestion that the claimant was providing her work to the respondent in pursuance of a profession or business undertaking carried out by her).

123. A contract of employment is defined by section 230(2) of the 1996 Act as a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

124. No issue was taken by Mr Ratledge as to the claimant's standing to pursue an unauthorised deduction from wages claim. On any view, she was engaged to perform work personally and would therefore acquire standing as a worker upon that basis alone regardless of whether she was employed pursuant to a contract of employment. However, it is necessary for the Tribunal to determine the capacity in which the claimant was working for the respondent as this has implications for her wages.

125. In short, the respondent's case is that the claimant was employed pursuant to a contract of apprenticeship and therefore was entitled only to be paid the apprenticeship rate pursuant to the National Minimum Wage Regulations 2015. This is lower than the applicable minimum wage payable for workers of the claimant's age. The claimant says that she was not engaged pursuant to

an apprenticeship contract between 15 January 2021 and 3 May 2021 and is therefore entitled to be paid the higher rate over and above the apprenticeship rate. The difference between the two is £1.95 per hour for the period between 15 January 2021 and 31 March 2021 and then £2.06 per hour between 1 April 2021 and 3 May 2021.

126. The claimant also claims the higher rate after 4 May 2021 upon the basis that the respondent failed to provide her with an apprenticeship agreement as required by sections 32 and 33 of the Apprenticeships, Skills, Children and Learning Act 2009 until 21 June 2021.
127. It is therefore necessary for us to consider and classify the relationship between the claimant and the respondent between 15 January and 7 June 2021.
128. Unlike a contract of service, which has as its object the performance of work, the primary purpose of a contract of apprenticeship is training. As for the form of the contract, it is well established in relation to contracts of service that the label which the parties put on the working arrangement is not determinative, so the fact that the contractual documents do not themselves use the word '*employment*' will not prevent a Tribunal finding that there is a contract of service. The same is true for contract of apprenticeship, in that the parties' failure to use the word '*apprentice*' in agreeing the work and training arrangements will not of itself mean that the contract is not one of apprenticeship.
129. It is for the Tribunal to have regard to the way in which the parties have chosen to categorise the relationship. However, the Tribunal will consider the reality over the form. The Tribunal must consider the extent of any training provided, and whether the training was only incidental to the work carried out. Further, a contract of apprenticeship must be for a fixed term with an objectively ascertainable end or for an objectively ascertainable purpose. Therefore, there may either be a specific end date or the happening of a certain event such as the conclusion of a course of study or training plan.
130. A provision in a contract providing for dismissal may point against the contract being one of apprenticeship rather than of service. A traditional apprenticeship (also known as a '*common law*' apprenticeship) may be terminated in the case of gross misconduct but generally not otherwise.
131. In a drive to improve the take up of apprenticeships, statutory apprenticeship schemes have been introduced. The current statutory scheme is provided for by the Apprenticeships, Skills, Children and Learning Act 2009. This introduced a statutory form of apprenticeship known as an '*apprenticeship agreement*' with effect from 6 April 2011. These are tripartite agreements involving the apprenticeship, a training college or institution of that kind and an employer. Generally, apprenticeships of this kind will last for no less than 12 months.
132. Statutory apprenticeships are terminable upon notice. They therefore differ from traditional '*common law*' apprenticeships.
133. In contrast to statutory apprenticeships, there is no necessity for a common law contract of apprenticeship to be in writing following the repeal of the Apprentices Act 1814. As we have observed, pursuant to section 230(2) of the 1996 Act envisages the possibility of a contract of apprenticeship being

oral. It also provides that a contract of employment means “a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing” (emphasis added).

134. We now turn to a consideration of the relevant law as it applies to the claimant’s complaints brought under the Equality Act 2010. We shall start with a consideration of her complaints of direct discrimination.
135. By section 13 of the 2013 Act, 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. The relevant protected characteristics in this case are sex, race and religion. There is of course no dispute that the claimant is female, of Asian origin and British Pakistani nationality and is Muslim.
136. Upon a comparator of cases for the purposes of section 13 of the 2010 Act, there must be no material difference between the circumstances relating to each case. Therefore, in order to claim direct discrimination under section 13, the claimant must have been treated less favourably than a comparator who is in the same, or not materially different, circumstances as the claimant.
137. A successful direct discrimination claim depends on a Tribunal being satisfied that the claimant was treated less favourably than a comparator because of a protected characteristic. It is for the Tribunal to decide as a matter of fact what is less favourable. This is an objective test – the fact that a claimant believes that they has been treated less favourably does not of itself establish that there has been less favourable treatment.
138. In the absence of a statutory comparator – that is to say, an actual comparator who is in materially the same circumstances as the claimant and who has not suffered the same treatment- the question of less favourable treatment may be determined by reference to how a hypothetical comparator would have been treated. However, there must be some evidential basis for this. It is not open to a complainant simply to make an assertion that somebody with a different protected characteristic would have been treated better. There must be evidence of others whose circumstances are not sufficiently similar to warrant them being treated as actual statutory comparators, but which is sufficiently relevant for inferences to be drawn from the way they have been treated.
139. Essentially, upon a consideration of the direct discrimination complaints, it is for the Tribunal to decide factually upon the treatment received by the claimant, whether that treatment was or would have been less favourable than that of others who do not share the complainant’s protected characteristic and the reason for that treatment. Was the complainant treated less favourably because of a protected characteristic?
140. The key issue is the reason why the complainant was treated as he or she was. A complaint of direct discrimination will only succeed where the Tribunal finds that the protected characteristic was the reason for the claimant’s less favourable treatment.
141. This may involve a consideration of the mental process, conscious or subconscious, of the alleged discriminator to discover what facts operated on their mind. The protected characteristic need not be the only reason for the less favourable treatment provided it is an effective cause.

142. By section 24 of the 2010 Act, for the purposes of establishing a contravention of the Act it does not matter whether A (the putative discriminator) has the protected characteristic. It is therefore irrelevant that the alleged discriminator shares the claimant's protected characteristic. It is not therefore open to Mr Ayub and Mr Mughal in this case to argue that they cannot be liable for discrimination related to the protected characteristics of the claimant's race and religion upon the basis that they too are Asian and Muslim.
143. It is for the complainant to show a difference of status and a difference in treatment. However in order to establish a complaint, the complainant must also show something more than simply a difference of status and the difference in treatment. Something more than less favourable treatment compared with someone not possessing the complainant's protected characteristic is required. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal can conclude that on the balance of probabilities the respondent to the claim has committed an unlawful act of discrimination. The "*something more*" may be something such as an evasive or untruthful answer to a question or enquiry or perhaps statistical evidence suggesting an unconscious bias.
144. Direct discrimination contrary to section 13 of the 2010 Act is made unlawful in the workplace. In particular, by section 39(2), an employer (A) must not discriminate against an employee of A's (B) by dismissing B or subjecting B to any other detriment.
145. The word "*detriment*" is not defined by the 2010 Act. The Equality and Human Rights Commission's *Code of Practice* says that a detriment can take many forms and is anything which the complainant concerned might reasonably consider to be to their disadvantage. By section 212(1) of the 2010 Act, the concept of a detriment does not include conduct amounting to harassment. A claimant cannot therefore succeed upon a complaint of direct discrimination and harassment upon the same cause of action. However, it is open to a complainant to argue them in the alternative, as the claimant has done here,
146. By section 83(2) of the 2010 Act, '*employment*' means employment under a contract of employment or a contract of apprenticeship or a contract personally to do work. No issue was taken by any of the respondents upon the claimant's standing to pursue a complaint of direct discrimination under the 2010 Act (or, for that matter, any of her other complaints under the 2010 Act). On any view, she was engaged to perform work personally and perform that work either as an employee or as an apprentice.
147. By section 26 of the 2010 Act, a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic. That conduct must have the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
148. By section 26(4), in deciding whether conduct has the effect of violating B's dignity or creating an intimidating *etc* environment for B, the Tribunal must consider B's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
149. The relevant protected characteristics to pursue a complaint of harassment include race, religion or belief and sex. Harassment is made unlawful in the

workplace pursuant to section 40 of the 2010 Act which provides that an employer (A) must not, in relation to employment by A, harass a person (B) who is an employee of A's. Again, therefore, no issue was taken by the respondent as to the claimant's entitlement and status to pursue a complaint of harassment within the workplace pursuant to section 40.

150. There are, therefore, three essential elements of a harassment claim. Firstly, it must be shown there was unwanted conduct. Secondly, the conduct needs to have a proscribed purpose or effect. Thirdly, the conduct must relate to a relevant protected characteristic.
151. The EHRC's *Employment Code* notes that unwanted conduct can include "a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour." The conduct may be blatant such as, for example, overt bullying or more subtle (for example, ignoring or marginalising an employee).
152. The word "*unwanted*" is not defined in the act but is essentially the same as "*unwelcome*" or "*uninvited*". This is confirmed by the EHRC's Code (at paragraph 7.8). Whether the conduct is "*unwanted*" should largely be assessed subjectively from the employee's point of view. The conduct does not have to be directed specifically at the complainant in order for it to be unwanted by them. The employee does not have to be present when the words or actions occur and they only find out about them later.
153. There is no requirement that the alleged harasser be of the same or different sex, race or religion to the complainant in order for a claim to be well-founded. Again, therefore, it is no defence for Mr Ayub and Mr Mughal to say that they are of the same race and religion as the claimant.
154. The second limb of the statutory definition of harassment requires that the unwanted conduct in question has the purpose or effect of violating the complainant's dignity or creating an intimidating *etc* environment for them. Conduct that is intended to have that effect will be unlawful even if it does not in fact have that effect. In this case, no case is brought by the claimant that any of the impugned conduct was intended to have the proscribed effect.
155. We are therefore concerned with whether the impugned conduct took place and if it did whether it had the effect of violating the claimant's dignity or creating an intimidating *etc* environment for her.
156. The test as to whether or not the conduct in question had the effect of violating a person's dignity or creating an intimidating *etc* environment for them has subjective and objective elements. The subjective part involves the Tribunal looking at the effect that the conduct of the alleged harasser has upon the complainant. The objective part requires the Tribunal to ask itself whether it was reasonable for the complainant to claim that the conduct had the effect.
157. The complainant must therefore actually have felt or perceived their dignity to have been violated or an adverse environment to have been created. The Tribunal will then consider whether it was reasonable for them to have those perceptions. Plainly, if the complainant does not perceive their dignity to have been violated or an adverse environment created then the conduct cannot be found to have that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's

dignity or creating an intimidating *etc* environment for them then it should not be found to have done so.

158. The other relevant circumstances of the case should also be taken into account. The EHRC's Employment Code notes that relevant circumstances may include those of the complainant, such as their health, including mental health and previous experience of harassment. It can also include the environment in which the conduct takes place.
159. In order to constitute unlawful harassment under section 26(1) of the 2010 Act, the unwanted and offensive conduct must be "*related to a relevant protected characteristic.*" However offensive the conduct, it will not constitute harassment unless it is so related. Whether or not the conduct is related to the characteristic in question is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it.
160. Where direct reference is made to an employee protected characteristic the necessary link will usually be established. Where the link between the conduct and the protected characteristic is less obvious, Tribunals may need to analyse the precise words used, together with the context, in order to establish whether there is any negative association between the two.
161. By section 27 of the 2010 Act, a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act or A believes that B has done or may do a protected act. For the purposes of section 27, a protected act includes making an allegation that A or another person has contravened the Act. It is not in dispute that the claimant's grievance and grievance appeal are protected acts. No issue is raised by the respondent that the grievance and grievance appeal lose their status as protected acts because they were raised in bad faith.
162. By section 39(4) an employer must not victimise an employee of A's (B) by dismissing B or subjecting B to any other detriment. The word '*detriment*' is not defined for the purposes of the 2010 Act but, as before, should be taken to mean something that a reasonable person would consider to be to their disadvantage. Again, there is no issue raised by the respondents that the claimant does not have standing to pursue a victimisation complaint in this case.
163. To succeed in a claim of victimisation the claimant must show that they were subjected to the detriment because they had done a protected act or because the employer believed that they had done or might do a protected act. The test is not precisely one of causation. The Tribunal must identify the real reason or the core reason for the treatment complained of. A "*but for*" test does not mean that the treatment was because of the protected acts: in other words, it is not enough for the complainant to argue that but for having raised a grievance, the detriment would not have occurred.
164. The protected act must have a significant influence upon the acts in question. The protected act need not be the only reason for detrimental treatment for victimisation to be established. It is not necessary for the protected act to be the primary cause of a detriment, so long as it is a significant factor. Plainly, a detriment cannot be because of a protected act in circumstances where there is no evidence that the person who allegedly inflicted the detriment knew

about the protected act. In this case of course no question arises that Mr Hammond and Miss Ashraf knew of the grievance and grievance appeal.

165. By section 136 of the 2010 Act, once there are facts from which a Tribunal could decide that an unlawful act of discrimination or harassment has taken place, the burden of proof shifts to the respondent to prove a non-discriminatory explanation. The shifting of burden of proof applies to all of the complaints which the claimant pursues in this case. It therefore extends not only to discrimination and harassment but also to the victimisation claim. Should the claimant establish a *prima facie* case of discrimination, harassment or victimisation then the burden of proof shifts onto the respondent to show that the treatment of the complainant was in no sense whatsoever based upon the prescribed grounds.
166. By section 123 of the 2010 Act, the general rule is that a claim concerning work related discrimination, victimisation or harassment must be presented to the Tribunal within the period of three months beginning with the date of the act complained of. (To that three month period is to be added any time spent by the complainant undergoing mandatory early conciliation as required by the Employment Tribunals Act 1996).
167. There is however not an absolute bar on claims being presented outside the three month limitation period because the Tribunal has a discretion to allow a claim to be brought within such other period as the Employment Tribunal thinks just and equitable.
168. Conduct extending over a period is to be treated as done at the end of that period. Where there is a series of distinct acts, the time limit begins to run when each act is completed whereas if there is continuing discrimination, time only begins to run when the last act is completed.
169. Where an employer operates a discriminatory regime, rule, practice or principle, then such will amount to an act extending over a period. Where however there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though the act has ramifications which extend over a period of time. For example, a decision not to appoint or regrade an employee will be a one off act or decision but with continuing consequences. The Tribunal needs to look at the substance of the complaints in question and determine whether they can be said to be part of one continuing act by the employer.
170. In doing so, one relevant but not conclusive factor is whether the same or different individuals were involved in the incidents.
171. In **South Western Ambulance Service NHS Foundation Trust v King** [EAT 0056/19] the Employment Appeal Tribunal held that if any acts are not established on the facts or found not to be discriminatory then they cannot form part of the continuing act. In that case, the single act of victimisation found to be made out by the Tribunal was out of time. The complainant was unable to extend time by pointing to other acts of which he complained but which were held not to be in contravention of the 2010 Act.
172. Employment Tribunals have discretion to extend the time limit for presenting a complaint where they think it is just and equitable to do so. There is no presumption that Tribunals will do so. The Tribunal cannot hear a claim unless the claimant convinces the Tribunal that it is just and equitable to extend time.

The exercise of discretion is therefore the exception rather than the rule. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. In **Adedeji v University Hospital Birmingham NHS Foundation Trust** [2021] ICR D5, CA, guidance was given to Tribunals that when considering the exercise of the discretion, it is necessary to assess all of the factors in the particular case that it considers relevant including in particular the length of and the reasons for the delay and the balance of prejudice between the parties.

173. The Tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the claimant ought to have submitted their claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent. The Tribunal needs to weigh the balance of prejudice between the parties.
174. There will of course be prejudice to the complainant if time is not extended upon an out of time complaint. However, that in and of itself cannot be sufficient to justify an extension of time otherwise it would undermine the will of Parliament in prescribing such a short limitation period. On the other hand, of course, some prejudice will be caused to the employer if an extension of time is granted given that the case would otherwise be dismissed. However, the prejudice caused needs to amount to more than that.
175. It is not the case that in the absence of an explanation from the complainant as to why the claim was not brought in time the Tribunal cannot conclude that it was just and equitable to extend time. In **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] ICR 1194 the Court of Appeal held that the discretion under section 123 of the 2010 Act is for the Tribunal to decide what it thinks to be just and equitable. There is no justification for reading into the statutory language any requirement that the Tribunal must be satisfied that there was good reason for the delay, let alone that time cannot be extended in the absence of an explanation for the delay from the claimant. The most that can be said is whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the Tribunal ought to have regard. However, there is no requirement for a Tribunal to be satisfied that there was a good reason for the delay before it can conclude that it is just and equitable to extend time.
176. By section 124 of the 2010 Act, Tribunals may, by way of remedy: make a declaration as to the rights of the complainant and the respondent; make an appropriate recommendation; and order the respondent to pay compensation to the claimant. The amount of compensation available corresponds to the damages that could be ordered by a County Court in England and Wales.
177. When making an award of compensation, Tribunals must ascertain the position that the claimant would have been in had the discrimination not occurred. Another way of looking at this is to ask what loss has been caused by the discrimination in question.
178. The kinds of loss which compensation is available as a remedy for discrimination can be divided into two broad categories: financial and non-financial. Financial loss covers all things that most readily give a monetary value including loss of earnings and pension benefits. Non-financial loss

covers things such as personal injury and injury to feelings. Section 119(4) of the 2010 Act specifically provides that Tribunals may award compensation for injury to feelings whether or not compensation is awarded under any other head. Tribunals have a broad discretion as to the amount to award for injury to feelings.

179. In **Prison Service and Others v Johnson** [1997] ICR 275, EAT, the EAT summarised the general principles that underly awards for injury to feelings. These awards are designed to compensate the injured party full but not punish the guilty party. An award should not be inflated by feelings of indignation at the guilty party's conduct. Awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches.
180. In **Vento v Chief Constable of West Yorkshire Police (No 2)** [2003] ICR 318, CA the Court of Appeal set down three bands of injury to feelings award, indicating the range of award that is appropriate depending on the seriousness of the discrimination in question. The top band is to be applied only in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment. The lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. Then there is a middle band for serious cases that do not merit an award in the highest band. For claims presented between 6 April 2021 and 5 April 2022 (such as the complaints with which the Tribunal is dealing here) the lower band is between £900 and £9100, the middle band is £9100 to £27400 and the upper band is £27400 to £45600.
181. Compensation for injury to feelings is intended to compensate the complainant for subjective feelings of "*upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measure in monetary terms.*" (See paragraph 50 of **Vento**).
182. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 give Tribunals the power to award interest on awards in discrimination cases. A Tribunal is required to consider whether to award interest even if the claimant does not specifically apply for it. Interest is to be calculated as simple interest which accrues from day to day. The relevant rate of interest is that fixed for the time being pursuant to section 17 of The Judgments Act 1838. It is currently 8%.
183. The relevant date for the purpose of calculating interest differs according to whether the interest relates to a sum for injury to feelings or to arrears of remuneration and whether there would be serious injustice caused by an application of the normal rules. For injury to feelings awards, the period of the award of interest starts on the date of the act of discrimination complained of and ends on the day on which the Employment Tribunal calculates the amount of interest. For all other awards interest is awarded from the period beginning on the "*mid-point date*" which is the date halfway through the period beginning on the date of the act of the unlawful discrimination and ending on the day of the Tribunal's calculation of interest.

Discussion and conclusions

184. We now turn to apply the relevant law to the factual findings in order to arrive at our conclusions upon the matters for determination in the list of issues.
185. The first issue which we shall consider is the unlawful deduction from wages complaint. We reject the respondent's case that between 15 January and 3 May 2021 the claimant was employed upon a contract of apprenticeship.
186. There is no evidence that she entered into a statutory apprenticeship under the 2009 Act until 4 May 2021. We refer again to the tripartite agreement within the bundle at pages 125 to 146 and the particulars shown at pages 140 and 141. This document signed by the claimant and by Mr Mughal (together with a representative from Leeds City College) evidences that the statutory apprenticeship agreement was entered into on 4 May 2021. There was no evidence of a statutory apprenticeship agreement prior to that date.
187. Therefore, for the period between 15 January 2021 and 3 May 2021 the claimant can only have been working for the respondent as an employee or as a common law apprentice. Had the parties entered into the contract within the bundle commencing at page 92, such would have pointed away from a common law apprenticeship. In particular, the provisions for notice in clause 10 are inconsistent with a common law apprenticeship one of the hallmarks of which is that it is for a specific period or towards a specific training goal. However, the claimant (very much to her credit) did not seek to argue that she had entered into a contract in that form. It would have been in her interests to claim that she had for the reason given. We accept the claimant's evidence that she was not provided with the contract shown in the bundle commencing at page 92 upon the commencement of her employment. The text message at page 185 from Mr Ayub is also to the effect that the claimant had not entered into the contract at that time. The copy in the bundle is unsigned by the parties.
188. Therefore, the parties can only have proceeded upon the basis of an oral contract. Was it a contract of apprenticeship or a contract of employment? In our judgment, it was a contract of service and a contract of employment. This is because there was simply no evidence (or at any rate no satisfactory evidence) from the respondent about the training being furnished to the claimant between 15 January and 3 May 2021. There was no training record. The job description was not provided. There was no or no sufficient evidence from Mr Ayub or Mr Mughal about the training provided to the claimant. There is no evidence from them that prior to entering into the statutory apprenticeship the claimant was working towards any form of recognised award.
189. We accept that the introduction of the claimant to the respondent came through Leeds City College with whom the respondent has an existing relationship. However, that cannot in and of itself be sufficient to establish a common law apprenticeship. The reality is that the claimant was set on to work a 37.5 hours' week undertaking the role of administrator. The mere fact that both parties described her as an apprentice administrator cannot be conclusive. The Tribunal must look at the reality and not the form. Notwithstanding the label applied to her by both parties, the reality is the claimant was simply working pursuant to a contract of service. There was no or no meaningful training provided for her over a prescribed period of time in order to achieve a recognised qualification.

190. As she was an employee, and not an apprentice, she was entitled to be paid the higher national minimum wage applicable to employees over and above the apprentice rate which the respondent paid to her. There is therefore a shortfall of £1.95 per hour for the period up to 31 March 2021 and then £2.06 per hour for the period from 1 April 2021 to 3 May 2021. This shortfall is in the sum of £1146.33. It follows that the claimant has established that she was a worker (given that she was working pursuant to a contract of service) for the period from the start of her engagement with the respondent until 3 May 2021. She therefore was a worker and has an entitlement to pursue an unauthorised deduction from wages claim. The respondent has made an unauthorised deduction from the wages properly payable to her in the sum of £1146.33. The respondent shall pay that sum to her by way of compensation.
191. We do not accept the claimant's case that she was entitled to be paid the higher national minimum wage rate over and above the apprenticeship rate on and after 4 May 2021. The claimant's complaint that the respondent failed to provide her with an apprenticeship agreement pursuant to sections 32 and 33 of the 2009 Act until 21 June 2021 and that this entitles her to be paid above the apprenticeship rate is not understood. The Tribunal was not taken to those statutory provisions. They appear to relate to Wales and not England. Even then, they do not make remuneration at the apprenticeship rate contingent upon the employer providing a copy of the apprenticeship agreement to the apprentice.
192. In the final analysis, the claimant signed the statutory apprenticeship agreement on 23 April 2021 to run with effect from 4 May 2021. She therefore knew that she was a statutory apprentice from 4 May 2021 and therefore was entitled to remuneration only at the apprentice rate. In our judgment therefore it follows that she has been paid the amount properly payable to her for the period from 4 May to 7 June 2021. The second limb of the unlawful deduction from wages claim made in the sum of £355.35 for that period therefore fails and is dismissed.
193. We now turn to a consideration of the claims brought under the 2010 Act. There are a number of complaints most of which are brought under more than one head of claim. It is, we think, best to cite out each in turn and then analyse them by reference to the relevant law as we set out above.
194. We shall therefore start with the complaint that Mr Ayub and Mr Mughal made the remark to the claimant that the claimant was *'too westernised.'* This is brought as a complaint of direct race discrimination, direct discrimination upon the grounds of the claimant's religion and harassment related to race and religion. This complaint fails on the facts as found in paragraphs 62 to 67 and is dismissed.
195. The next complaint which we shall consider is that on 29 January 2021 Mr Ayub spoke to the claimant *'in a demeaning manner like she was a stupid female and told her that she would only be paid upon the third working day every month and would only be paid for the days upon which she works.'* Our findings of fact upon this issue are at paragraphs 17 to 22 above.
196. This is brought as a complaint of discrimination because of the protected characteristic of sex and harassment related to sex.

197. The factual findings are at paragraphs 17 to 22. We found as a fact that Mr Ayub did text as alleged by the claimant.
198. The difficulty for the claimant upon this issue is that there was simply no evidence that Mr Ayub treated a male comparator better than the claimant or would have treated a male comparator better. The appropriate comparison is with a male employee raising a similar query of Mr Ayub. There was simply no evidence from the claimant of an actual male comparator employee who was treated better than her in the same or similar circumstances. There is also no evidence from which the Tribunal could construct a hypothesis as to how Mr Ayub would have treated such a male employee.
199. Such evidence as there was pointed to Mr Ayub having a somewhat direct managerial style. Witness E, for example, said that Mr Ayub could come across as rude. Mr Ayub himself said that at times he was prone to shouting around the workplace. This suggests that Mr Ayub treated or would treat male employees in the same way.
200. Upon the harassment complaint which arises from this allegation, we accept the claimant's case that this was unwanted conduct. This was her first job and she was inexperienced. A senior person within the organisation (Mr Ayub) was brusque and offhand when dealing with her reasonable enquiry. We accept that this reasonably had the effect of creating an intimidating *etc* environment for the claimant and was a violation of her dignity. The claimant had to work alongside Mr Ayub within the working environment. His offhand manner towards her reasonably, in our view, would have the effect of creating an intimidating *etc* environment for the claimant given her age and inexperience.
201. The difficulty for the claimant upon this issue is to establish that Mr Ayub's conduct in addressing her as he did related to sex. There was nothing said by him which inherently relates to sex. The claimant invited the Tribunal to draw an inference that he had a certain attitude towards women, hence the allegation that he referred to her as "*a stupid female.*" This is a difficult argument for the claimant to sustain in the absence of any evidence as to how Mr Ayub addressed men. We appreciate that upon a harassment complaint there is no comparator exercise as there is with direct discrimination. There must however be evidence pointing to Mr Ayub addressing her as he did somehow related to her sex. In the absence of such evidence, this complaint must be dismissed.
202. The next complaint is that in February 2021 Mr Ayub approached the claimant and said, "*you owe me, I gave you the job.*" This is brought as an allegation of discrimination upon the grounds of sex and harassment related to sex. This complaint fails upon the facts and is dismissed. Our factual findings are at paragraphs 23 to 28.
203. Had the claim been made out, then plainly the Tribunal would have little difficulty in accepting from the claimant's perspective that this was unwanted conduct, and which could reasonably be considered to create an intimidating *etc* environment for her and a violation of her dignity. In such an eventuality, the comment would be capable of relating to the claimant's sex given the insinuation ascribed to it by the claimant. However, such does not avail the claimant given that that complaint fails upon its facts.

204. The next allegation is that on 1 March 2021 Mr Ayub texted the claimant to say “no dumbo like apart from work.” The relevant findings of fact are at paragraphs 29 to 37 above. The claimant complains of this as being an act of direct discrimination upon the grounds of race, religion and sex and harassment related to those three protected characteristics.
205. Again, upon the direct discrimination complaints, the difficulty for the claimant is the absence of any evidence as to how an actual comparator of the opposite sex or of a different race or religion (or indeed of no religion) was treated and the absence of any evidence from which the Tribunal could hypothesise how such a comparator would have been treated. It is not enough for the claimant simply to make an assertion. The less favourable treatment must be evidenced.
206. As with the 29 January 2021 allegation, such evidence as there was points in favour of the respondents. Miss Hayton’s witness statement at pages 214 and 215 are instances of Mr Ayub’s behaviour towards a white non-Muslim female. (Miss Hayton cannot of course stand as a comparator upon the claimant’s complaint of sex discrimination in relation to this allegation but she can stand as a comparator upon the complaints of direct discrimination upon the grounds of religion and race). Such evidence as we have shows that Mr Ayub behaved in much the same way towards Asian Muslim and white non-Muslim female employees. There was no evidence that he treated the claimant less favourably than male employees. The direct discrimination complaints in relation to the “dumbo” text of 1 March 2021 must therefore fail.
207. Upon the harassment complaints to which this matter gives rise, we accept entirely that the “dumbo” comment was unwanted conduct from the perspective of the claimant. It is the case that the claimant had sent to Mr Ayub texts containing emojis. Mr Ayub may have interpreted this as friendliness towards him upon the part of the claimant. Indeed, there was no suggestion from the claimant otherwise. The difficulty for the respondent upon this issue however is that it is something of a leap from interpreting the sending of (what some may consider to be) amusing emojis to welcoming banter of a kind involving (what some may regard) as abusive terms such as “dumbo”. We therefore accept the claimant’s case that such was unwanted conduct which again would, from her perspective, reasonably create an intimidating *etc* environment for her and was a violation of her dignity. We take into account again that this was the claimant’s first job and that she was inexperienced. She was having to work alongside Mr Ayub day in day out after 1 March 2021 in circumstances where she reasonably perceived that he thought her to be unintelligent.
208. The difficulty for the claimant upon this issue however is to show that the expression “dumbo” was in any way related to the claimant’s race, sex or religion. In our judgment, Mr Ratledge is right to submit that the word “dumbo” has no sexual, religious or racist connotations. None were suggested by or on behalf of the claimant. Therefore, while the claimant in our judgment could reasonably have formed the view that this word was abusive the complaint of harassment related to any of the three relevant protected characteristics must fail.
209. The next issue is that on 11 March 2021, Mr Ayub was rude to the claimant when he requested her to get a further Covid-19 test following her isolation

- period. This is claimed to be an act of sex discrimination and harassment related to sex.
210. The allegation is made out on the facts. Mr Ayub did make that request of the claimant. We refer to paragraphs 43 to 46 above. However, there is simply no evidence that a male employee who had undergone a period of self-isolation had not been asked for a further Covid test. There was also no material from which the Tribunal could construct a hypothesis as to how Mr Ayub would have dealt with a male employee in that position.
211. We can accept that this was an unwanted request made of the claimant by Mr Ayub. As the claimant rightly says, it was inevitable that the second test was going to return a positive result. As far as she was concerned, she had undergone 10 days of isolation after 1 March 2021 and was therefore ready, willing and able to return to the workplace. She reasonably perceived, in our judgment, that Mr Ayub was putting up unnecessary and unreasonable obstacles in her way. In the event of course she did return to the workplace in any case. We can accept that Mr Ayub's request created an intimidating *etc* environment for her. It was a violation of her dignity. Again, she was having to work alongside him in circumstances where he was making unreasonable requests of her.
212. Again, the difficulty for the claimant is in showing how that conduct relates to her sex. There is nothing inherently sexist in Mr Ayub making the request that he did of the claimant. The claimant has simply not made out her case that the unwanted conduct in question related to sex. The complaint must therefore stand dismissed.
213. The next complaint with which we shall deal is that around March or April of 2021 Mr Mughal said to the claimant that she "*spoke differently than everyone else, you can speak properly.*" This is a complaint of direct discrimination upon the grounds of race and religion. It is also a complaint of harassment related to race and related to religion.
214. We found as a fact that this was said. We refer to paragraphs 38 to 42 above. For the purposes of the direct discrimination complaints, the correct comparator must be an employee of a different race or of a different religion (or of no religion) who performs better than their peer group of the same race or beliefs. There is no evidence that such an individual would not have been singled out for praise by Mr Mughal. The claimant has not therefore made out her case on the facts that an employee of a different race who performed better than his or her peers would not have been singled out in this way or an employee of a different religion or of no religion who performed better than others within the organisation would not have been singled out.
215. We can accept the claimant's case that singling her out in this way as being able to "*speak properly*" was unwanted conduct. The claimant reasonably in our judgment took the view that in paying a compliment of this kind Mr Mughal was drawing a distinction between the claimant on the one hand and other Asian and Muslim employees on the other. We can accept that the claimant reasonably felt uncomfortable about this as he was setting her apart from her peer group. This was uninvited.
216. The difficulty for the claimant upon this issue is in establishing that the unwanted conduct had the effect of creating an intimidating *etc* environment

for her. There is no evidence that the compliment that was paid to her by Mr Mughal was said in front of the other Asian and Muslim employees. Had Mr Mughal been so indiscreet as to do this one could easily see how uncomfortable it would have made the claimant feel. Him saying that the claimant could speak properly carried with it the inference that the other Asian and Muslim employees did not, and had it been said in front of them may have generated some hostility towards the claimant.

217. However, Mr Mughal was not so indiscreet. He made the comment to the claimant in private. It is difficult therefore to see how it could reasonably be the case that the compliment paid to her in the private meeting would have the effect of creating an intimidating *etc* environment for her. It certainly could not be a violation of her dignity as a compliment was paid to her about her eloquence.
218. It is difficult to see how an intimidating *etc* environment was created by that compliment when working alongside Mr Mughal and Mr Ayub. The claimant would know that they were impressed with her telephone work. Such a compliment could, in our judgment, only have increased her confidence and her self-esteem within the workplace. Her fellow Asian workers were ignorant of the compliment. This aspect of the claim must therefore fail upon this basis.
219. That being said, we accept that the comment related to race and religion. Mr Mughal and Mr Ayub were contrasting the claimant and the other Asian and Muslim employees. They were effectively saying that her eloquence was to be contrasted with their expectations of Asian Muslim employees. The comment is firmly rooted in race and religion. However, this does not avail the claimant given our findings that there was no violation of her dignity or creation of an intimidating *etc* environment because of it.
220. The next issue with which we shall deal is that in May 2021, Mr Mughal told the claimant that "*you look like a black girl and talk like a white girl*" and that she dressed "*too westernised*". This is said to be a complaint of direct discrimination upon the grounds of race and religion and harassment related to race and religion.
221. In so far as this complaint relates to the "*too westernised*" comment, it fails upon the facts. We refer to paragraphs 47 to 58 and 62 to 67. That is sufficient to dispose of that aspect of the matter.
222. We found as a fact that Mr Mughal did say to the claimant that, "*you look like a black girl and talk like a white girl*". We refer to paragraphs 47 to 58 above.
223. The correct comparator for the purposes of the race discrimination complaint must be an employee or apprentice of a different race who looks and talks like somebody of another race (to that of the comparator). (By the time of the remark, the claimant had become an apprentice as she had signed up to the statutory apprenticeship scheme).
224. For example, a comparator may be a white female who dresses and speaks like an Asian female. Again, there was a paucity of evidence advanced upon behalf of the claimant that there were such actual comparators within with workplace treated better by Mr Mughal than was the claimant or any basis upon which we could hypothesise how such an employee or apprentice would have been treated. The religious discrimination complaint upon this aspect of

the matter comes up against the same obstacle. A comparator may be a white Christian female who dresses and speaks like a female Asian Muslim.

225. Upon the complaint of harassment related to race upon this issue, we can accept that this was unwanted conduct for the same reason as with the complaint that the claimant spoke differently than other Asian employees: see paragraphs 213- 219. There is an aggravating feature upon this issue in contrast to that one, in that this appears not to have been to encourage job performance said in the course of a meeting but rather was a gratuitous remark made to the claimant by Mr Mughal when she was by the photocopier going about her business.
226. For that reason, in our judgment it was reasonable for the claimant to have the perception that it created an intimidating *etc* environment for her and in violation of her dignity. In contrast to the performance issue, there was simply no reason for this to have been said. It served no purpose. It was not to encourage work performance.
227. Upon this issue, the claimant is able to show that the unwanted conduct relates to race. Race was at the heart of Mr Mughal's comment. He was effectively saying that the claimant did not conform to Asian norms of dress and speech. Race was very much at the heart of his remark. Her manner of dress and speech prompted his remark because he was contrasting how she presented herself to other Asian females. His remark relates to race. This aspect of the complaint therefore succeeds.
228. The same allegation in so far as it is brought as one of harassment related to religion must fail. It is difficult to see any connection between the remark on the one hand and the claimant's religion upon the other. There are of course many black people and white people who are adherents of the Muslim faith. Therefore, the words used were not something which inherently has a religious connotation. His remarks were rooted in and related to race and not religion.
229. The next issue is that on 14 May 2021, when informed by the claimant that she was getting a sick note, Mr Ayub responded to the claimant that he did not believe her as she was being untruthful. This is said to be a complaint of discrimination upon the grounds of sex and harassment related to sex.
230. The relevant findings of fact are paragraphs 59 to 61 above. We find that the claimant has made out her case upon the facts. We accept that Mr Ayub was sceptical and suspicious of the claimant without proper cause.
231. Again, however, there was simply no evidence that Mr Ayub would have treated a male apprentice or employee with a similar attendance record more favourably. Nor was there any evidence from which the Tribunal may hypothesise how a male apprentice or employee comparator would have been treated. Again, if anything, the evidence points in favour of the respondent and that Mr Ayub would have adopted a similar approach with a young male apprentice. The evidence of Laura Hayton is in favour of the respondents upon this issue about Mr Ayub's approach generally to young apprentices.
232. We accept that Mr Ayub's conduct was unwanted. There was simply no reason for him to disbelieve the claimant's account of suffering food poisoning. The claimant had been genuinely ill on 26 January 2021. At any rate, there was no evidence (or even any suggestion from the respondents) that her illness upon that day was not genuine. Her absence from work after having

tested positive for Covid was evidenced, as the claimant sent a screenshot to the respondent.

233. It is difficult to understand why Mr Ayub was dubious as to the genuineness of the claimant's illness in May 2021. The mere fact that it was the day after Eid is not, in our judgment, enough to fuel such suspicion and hostility as he portrayed to the claimant that day. The sardonic comment that he did not realise that the claimant was a doctor was uncalled for and was unnecessary.
234. There can be little doubt therefore that Mr Ayub's dealings with the claimant that day would reasonably from her perspective create an intimidating *etc* environment and a violation of her dignity. Following the recovery from her bout of food poisoning, she would need to go back into the workplace and work alongside Mr Ayub whom she would then know was harbouring unfounded suspicions about her. It was a violation of her dignity for the same reasons.
235. Again, the difficulty for the claimant is in drawing a link between Mr Ayub's conduct towards her on the one hand and her sex on the other. There is no connotation of sex in the text exchanges around the bout of food poisoning. There is no evidence as to how Mr Ayub dealt with male employees in the same position from which an inference may be drawn that sex was at the heart of Mr Ayub's attitude and approach towards the claimant. That case must therefore fail.
236. The next issue is that on 27 May 2021 Mr Ayub told the claimant that she was going to fail her apprenticeship and was not going to get far in life with her westernised ways. This is pursued as a complaint of direct race, religious and sex discrimination and harassment related to those three protected characteristics. Our findings of fact are at paragraphs 62 to 67 above. These complaints all fail upon the facts.
237. The next issue which we shall consider is the allegation that in May 2021, the claimant's friend Tanya Ali was interviewed for a role at the first respondent and she subsequently asked the claimant if "*Mohammad Ayub fancies you ... because he would not stop talking and asking questions about you.*" This is a complaint of direct discrimination upon the grounds of sex and harassment related to sex.
238. The relevant findings of fact are at paragraphs 67 to 79 above. We have found as a fact that although there was some small talk during which the claimant was discussed or spoken about but that Mr Ayub did not cross the line and convey to Miss Ali the impression that he "*fancied her*".
239. Further, there was simply no evidence from which the Tribunal could conclude that an actual or hypothetical male comparator would have been treated better than was the claimant. It seems to us that the correct comparator upon this issue must be a male apprentice or employee to whom Mr Ayub was attracted. We accept that it would be difficult to expect the claimant to adduce evidence of an actual comparator in such circumstances, but there was simply nothing from which we could construct a hypothesis as to how Mr Ayub would have dealt with a male employee in the position of the claimant and to whom Mr Ayub was attracted.
240. We accept that had such conduct taken place, it would have been unwanted as far as the claimant was concerned. The mere fact that she was not present in the interview but found out about it afterwards does not prevent her from

complaining that the conduct was unwanted. Had it taken place as she alleges then it would have created an intimidating, *etc* environment for her for obvious reasons and would have been a violation of her dignity. It also would have related to her sex again (we hope) for obvious reasons. Nonetheless, this complaint must fail on the facts.

241. The next issue with which we shall deal is that on 7 June 2021 Mr Mughal said to the claimant “*do you really think you should be here then Armani. You might as well leave now.*” This is said to be a complaint of direct discrimination upon the grounds of race and religion and harassment related to those two protected characteristics.
242. Our findings of fact are at paragraphs 80 to 86 above. We find that the claimant was dismissed by the respondent. Again, however the difficulty for the claimant is that she has not adduced evidence of an actual male apprentice unhappy in the workplace who approached Mr Mughal as did she on 7 June 2021 and who escaped dismissal. Again, there is nothing from which the Tribunal could hypothesise that such a male apprentice would have been better treated than was the claimant when she was dismissed having expressed unhappiness within the workplace. Again, if anything, the evidence that we do have points against the claimant’s case (in particular by reference to Laura Hayton’s statement).
243. We accept that the dismissal of her was unwanted conduct. On any view, few employees welcome being dismissed. That would not of course have the effect of creating an intimidating *etc* environment for her given that she would then no longer be within the workplace. However, dismissal is undoubtedly usually a violation of dignity.
244. The difficulty for the claimant again is to show a link between Mr Mughal’s decision to dismiss her on the one hand and her race or religion on the other. There is nothing inherently related to race or religion about this employer’s decision to dismiss her. This aspect of the complaint must therefore be dismissed.
245. The next allegation is that the claimant was not enrolled on the first respondent’s pension scheme and that the first respondent failed to make any pension contributions on behalf of the claimant. This is said to be an allegation of discrimination upon the grounds of race, religion and sex and harassment related to race and religion.
246. By section 3 of the Pensions Act 2008, a job holder who is aged at least 22, who has not reached pensionable age and to whom earnings of more than £10000 are payable must be enrolled in a pension scheme. By section 1, a ‘*job holder*’ is a ‘*worker*.’ By section 88, a worker means an individual who works under a contract of employment or any other contract by which the individual undertakes to do work or perform services personally for the other party to the contract. A contract of employment includes a contract of service or a contract of apprenticeship.
247. It follows therefore that the claimant was a job holder for the purposes section 3 of the Pensions Act 2008. However, as she was under the age of 22 at the material time, she was not entitled to be auto enrolled into the respondent’s pension scheme. There is no dispute of fact that the respondent maintains a pension scheme but did not include the claimant within it. Therefore, Mr

Ratlidge must be right when he says that it was a matter of discretion for the respondent as to whether to include the claimant in the scheme.

248. Again, the difficulty for the claimant is the absence of any evidence that apprentices or employees of her age of the opposite sex or of a different race or religion were treated better in that they were included in the pension scheme and that the respondent exercised discretion in their favour while exercising a discretion to exclude the claimant. Had there been evidence that, for example, Laura Hayton had been included in the pension scheme (assuming she is of around the same age as the claimant) whereas the claimant was not, then such would call for an explanation from the respondent by virtue of section 136. However, that is not the case. The discrimination claims must therefore fail.
249. We accept that not including her within the pension scheme was unwanted conduct from the claimant's perspective. It would be a rare employee who would not welcome being included in a pension scheme to which the employer is contributing.
250. We do not accept that the respondent's omission to include her in the pension scheme could reasonably have the effect of creating an intimidating *etc* environment for her or be a violation of her dignity or how such an exclusion could reasonably have that effect in circumstances where none of the apprentices were included who were under the age of 22. At any rate, there was no evidence to the contrary. The claimant was therefore being treated just the same as the others. This was a common policy adopted by the respondents. It was understood by all. It is difficult to see how there can be any connection between the respondent's decision on the one hand not to exercise discretion in the claimant's favour and the relevant protected characteristics on the other. There is simply no connotation to do with sex, race or religion upon decisions around the inclusion or operation of a pension scheme upon the facts of this case.
251. The next allegation is that the first respondent failed to make any findings as to harassment and failed to take disciplinary action against Mr Mughal and Mr Ayub following the claimant's grievance. It is convenient to also deal with the linked next allegation which is the conduct of the first respondent towards the claimant during her appeal against the outcome of the grievance. The factual findings are in paragraphs 87 to 116.
252. These allegations of discrimination related to the protected characteristics of race, religion and sex and harassment related to race and religion.
253. Upon this issue, it is very much to the respondent's credit that they undertook a grievance investigation at all. By the time the claimant raised the grievance, she was of course no longer engaged by the respondent as an apprentice. It would have been open to the respondent to say to the claimant that upon a fair interpretation of the grievance policy at pages 263 and 264, it is only applicable to current employees. A favourable inference is therefore drawn in favour of the respondent arising from their willingness to investigate the claimant's grievance.
254. In our judgment, Mr Hammond's and Miss Ashraf's conclusions were reasonable taken in the round. The claimant's grievance covered much the same ground as has been considered by the Employment Tribunal in this

case. We have differed from the conclusions of Mr Hammond and Miss Ashraf only upon the *“you look like a black girl and talk like a white girl”* comment. The attempt by the claimant therefore to characterise the respondent’s conclusions upon the grievance as a whitewash is somewhat overstated.

255. We take the claimant’s point that from her perspective Mr Ayub may have got off lightly upon the *“dumbo”* comment. That said, the respondent recognised the inappropriateness of the comment and he and was verbally reprimanded by Mr Hammond. We have little doubt that some employers would have dealt more harshly with Mr Ayub. However, it is a leap to conclude solely by virtue of the leniency extended to him that the process was tainted.
256. It was a reasonable decision to vest the conduct of the grievance appeal with Miss Ashraf. She has HR experience. This is a relatively small employer with limited resources. It was reasonable for Miss Ashraf to vest Mr Hammond with the task of commissioning further evidence to assist her conduct of the appeal given that her personal circumstances meant that she was geographically distant from Bradford. That she had worked with and was well known to Mr Ayub and Mr Mughal cannot make the decision to commission Miss Ashraf to conduct the grievance appeal an unreasonable decision. It is inevitable that they would know one another given the size of the organisation.
257. Upon the direct discrimination complaints, there is no evidence that the claimant’s grievance and grievance appeal was dealt with in a less satisfactory manner than that of a grievance or grievance appeal process raised by somebody of the opposite sex or of a different race or different religion. The Tribunal heard no evidence at all about the conduct by the respondent of other grievances from which we may hypothesise how such a comparator’s grievance may have been dealt with.
258. There is simply nothing to connect the conduct of the grievance and a grievance appeal on the one hand with the protected characteristics on the other. This again creates an insuperable obstacle upon the claimant’s harassment complaints.
259. We can accept that Mr Hammond’s conduct of the grievance was unwanted to the extent that he failed to make contact with Tanya Ali and did not allow Laura Hayton sufficient time to respond to his email to her. On any view, when the claimant raised her grievance, she wanted the respondent to conduct a proper and thorough investigation, and this was not done by Mr Hammond.
260. This is not of course an unfair dismissal complaint. However, we can say that the deficiency in failing to obtain a statement from Laura Hayton was corrected at appeal stage by Miss Ashraf.
261. We can accept however that Miss Ashraf’s conduct of the grievance appeal was unwanted to the extent of the failure to interview Tanya Ali. As we have said, this was an important part of the claimant’s case in seeking to establish a pattern of conduct on the part of Mr Ayub.
262. There are no connotations or connections to race or religion arising out of the respondent’s handling of the claimant’s grievance and grievance appeal.
263. A more difficult question arises as to whether the unwanted conduct of the grievance and grievance appeal relates to the claimant’s sex. An important part of the claimant’s grievance was of course about the claimant’s perception

of Mr Ayub's advances towards her. The alleged advances (which we have found as a fact did not take place) plainly relate to the claimant's sex. It is for that reason that the claimant wanted Mr Hammond and Miss Ashraf to interview Miss Ali to furnish the corroboration which would have assisted her case.

264. It is true to say therefore that but for the claimant's sex, race and religion the grievance and the grievance appeal would not have been brought by her. However, it is difficult to see how Mr Hammond and Miss Ashraf's conduct towards the claimant was in any way influenced by the claimant's sex or the other two protected characteristics. That they both had missed the point as to why the claimant wanted Tanya Ali to be interviewed does not mean that their conduct of matters related to the protected characteristics. Rather, it related to a lack of understanding of the claimant's complaint.
265. Again, the dismissal of the grievance and the grievance appeal could not have created an intimidating *etc* environment for the claimant as by that stage the claimant was away from the environment. We do accept that the failure of the grievance and the grievance appeal reasonably was a violation of the claimant's dignity as her perception of matters had not been vindicated. However, again, the absence of any connection with sex, religion and race means that this aspect of the matter must fail.
266. We now turn to the victimisation complaint. It is not in dispute that the claimant did protected acts by raising the grievance and the grievance appeal. Plainly, this was a concession properly made by the respondent as within the grievance and the grievance appeal the claimant was raising complaints of a breach by the respondents of provisions of the 2010 Act.
267. The detriments said to have been suffered by the claimant by reason of her protected acts are:
- 267.1. The failure to take disciplinary action against Mr Mughal and Mr Ayub.
- 267.2. The decision on the part of the respondent to commission Miss Ashraf to conduct the grievance appeal and then her decision for Mr Hammond to investigate the appeal and speak to witnesses both of which the claimant says meant that she would not receive a fair hearing.
268. It is right to say that but for the claimant having raised a grievance and the grievance appeal Mr Hammond would not have investigated matters, Mr Ayub would not have been sanctioned as he was and then Miss Ashraf would not have conducted the grievance appeal as she did (involving Mr Hammond at the investigation stage of it). However, as "*but for*" analysis is not enough.
269. The question that arises is whether the deficiencies (as the claimant would have them) in the manner of dealing with the grievance and the grievance appeal were because the claimant had done the protected acts or were materially influenced by them.
270. We do not accept the claimant's case that there were significant deficiencies with the grievance procedure overall. We repeat what we said in paragraph 251 to 265 above. We accept her case that there were deficiencies in the way in which Mr Hammond dealt with matters but that these were largely corrected by Miss Ashraf save in the important respect of the involvement of Miss Ali.

271. We do not accept that the deficiencies in Mr Hammond's investigation were because the claimant had done a protected act (that being the raising of the grievance). Mr Hammond of course was aware of the protected act.
272. There were deficiencies in Mr Hammond's approach. Firstly, he did not allow Laura Hayton enough time to respond. Secondly, he did not interview Tanya Ali. We do not accept it to be a deficient that he gave a verbal rebuke only to Mr Ayub or that he dismissed all of the claimant's complaints (including the "*look like a black girl and talk like a white girl*" comment) for the reasons that we have given.
273. We take into account that this was Mr Hammond's first grievance investigation. We find that he was motivated to reach a quick conclusion to avoid keeping the claimant waiting. He was not motivated to short circuit matters (by not waiting for Laura Hayton to respond) to in some way get back at the claimant for having raised a protected act and victimise her. Indeed, as we have said, a favourable inference is to be drawn in the respondents' favour from undertaking the task at all given that by then the relationship had ended.
274. The deficiencies in Mr Hammond approach were remedied to some degree by Miss Ashraf. She did obtain Laura Hayton's witness statement. She did not however interview Tanya Ali. Again, we conclude that she arrived at broadly reasonable conclusions. There is only one substantive difference between her conclusion and that of the Tribunal which relates to the "*look like a black girl and talk like a white girl*" comment which is a matter of judgement.
275. We do not consider that either Mr Hammond or Miss Ashraf were motivated not to interview Tanya Ali and to conduct a deficient investigation to in some way get back at the claimant for having raised a protected act. It bears repeating that the respondent was under no obligation to conduct the grievance investigation at all. The reason Tanya Ali was not interviewed was because Mr Hammond and Miss Ashraf had not fully appreciated the significance of her evidence to the claimant's case.
276. We accept therefore that the claimant suffered a detriment because of certain shortcomings with the grievance and grievance appeal investigation (in particular, the failure to interview Miss Ali). The claimant could reasonably take the view that such was to her disadvantage. However, we do not find that that detrimental treatment was because the claimant had raised protected acts. Rather, it was caused by a failure to appreciate the significance of her Miss Ali's account to the claimant's case.
277. We do not consider that the claimant could reasonably take the view that Miss Ashraf taking conduct of the appeal and commissioning Mr Hammond to conduct further enquiries was reasonably to her disadvantage (and thus a detriment) for the reasons already given. In reality, there was little option but for Miss Ashraf to undertake the task and indeed she appears to have been the ideal candidate within the small pool of available resources open to the respondent because of her HR experience.
278. The only complaint upon which the claimant has succeeded therefore (upon her complaints brought under the 2010 Act) is the allegation that dates from May 2021 to the effect that she "*looks like a black girl and talks like a white girl*". This remark was made by Mr Mughal. It follows therefore that all of the complaints against Mr Ayub stand dismissed.

279. Mr Mughal is an individual respondent to the complaints brought under the 2010 Act. Upon the authority of **King**, there is no continuing course of conduct given that all of the complaints save for one have failed. It follows therefore that when considering time limit issues, the Tribunal must take the incident of May 2021 as a specific and isolated act.
280. As it arose in May 2021, it follows that the claimant's complaints against Mr Mughal was brought in time. The claim form was issued on 1 July 2021 after the claimant underwent mandatory early conciliation pursuant to the Employment Tribunals Act between 29 June and 30 June 2021.
281. Upon the claimant's complaint against the respondent, her claim form was issued on 4 August 2021 after early conciliation beginning on 16 June 2021 and ending on 28 June 2021. Even if the relevant comment was made on 1 May 2021, the complaint brought in time.
282. Even if we are wrong on this and the claims against the first and third respondents were presented out of time, in our judgment, it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider her complaint. Firstly, the claim is meritorious. There will be significant prejudice to the claimant were it to be ruled out of time as she would not be able to pursue it. Secondly, there was no forensic prejudice to the respondents. There was no evidence that key witnesses or documentation were no longer available or that the cogency of the evidence was affected. Thirdly, the delay was not significant. The incident occurred in May 2021. Early conciliation was started promptly.
283. Most significantly, it seems to us, this was one of a number of incidents involving Mr Ayub and Mughal of which the claimant complains. Of course, that the complaints have failed on their facts cannot assist the claimant in abridging in time. However, *per King*, this is a matter which the Tribunal may take into account in deciding whether time ought to be extended upon just and equitable grounds.
284. The claimant acted quickly after her apprenticeship with the respondent ended. In reality, the explanation for the delay is that she considered there to be a continuing course of conduct up to and including 7 June 2021. It would be unrealistic for her to have issued proceedings after each and every occurrence. It is therefore just and equitable to extend time to vest the Tribunal with jurisdiction to consider the complaint upon which she has succeeded.
285. We now turn to the issue of remedy. The respondent is vicariously liable for the acts of Mr Mughal. The respondents did not seek to argue otherwise or rely upon the statutory defence in section 109(4) of the 2010 Act that the respondent took reasonable steps to prevent Mr Mughal from acting as he did towards the claimant. As Mr Mughal is a director of the respondent, it may have been difficult to run such an argument.
286. Mr Mughal also has a personal liability. He is an employee and a director of the respondent (according to paragraph 1 of his witness statement). He is therefore an employee and an agent of the respondent and has a personal liability pursuant to section 110(1).
287. Where more than one respondent is found liable for the same act of unlawful discrimination, the Tribunal is entitled to make an award for compensation on a joint and several basis. This means that the complainant is able to take

enforcement action against any one of the liable respondents for the full amount of the award. A joint and several award is appropriate where the damage is indivisible – that is to say, it is not possible to identify distinct elements of loss caused by the discriminators. Such is the case here as Mr Mughal was both an employee and a director of the respondent. As far as the claimant was concerned, he was therefore the personification of the respondent. It is not possible to identify distinct elements of loss caused by the respondent on the one hand and Mr Mughal on the other.

288. Discrimination and harassment under the 2010 Act is a statutory wrong or tort. Compensation is therefore to be assessed upon a tortious basis. That is to say, the object is to put the complainant in the position that they would have been in had the wrongful act not occurred.
289. In our judgment, had the unlawful harassment of the “*you look like a black girl and talk like a white girl*” comment not been said, the claimant would still have informed Mr Mughal on 7 June 2021 that she was seeking another job.
290. In this case, the claimant has complained of 18 separate incidents of harassment and discrimination during the time that she worked for the respondent. We find it impossible to say that had the impugned comment not been said the claimant would have tolerated the position and not done what she did on 7 June 2021.
291. The Tribunal must do its best to ascertain the position that the claimant would have been in had the harassment not occurred. Another way of looking at that is to ask what loss has been caused by the harassment in question. An example is given in the IDS handbook on *Discrimination at Work* of a claimant being selected for redundancy for a disability related reason but it then being established that they would have been selected for redundancy in any event. In that case, they will not be able to recover any financial loss flowing from the dismissal. They will of course be able to claim for any injury to feeling caused by the treatment.
292. In our judgment, the example given in the IDS handbook is analogous to the claimant’s case. We are satisfied that she would have expressed her unhappiness to Mr Mughal in any case on 7 June 2021. There was no evidence from her that she did so only because of the harassing remark made by him. We are satisfied therefore that but for the harassing remark the claimant would have been in the same position and that no financial loss flowed from it. Therefore, we shall make no award of monetary compensation.
293. We now turn to the issue of non-monetary compensation. The claimant advances no personal injury case. Her claim for non-monetary compensation is for injury to feelings only.
294. In paragraph 40 of her witness statement she said, “*When they would make nasty remarks like “you won’t get far in life if you carry on like this”, “change your mentality”, “stop dressing like a black girl”, “I don’t think you’ll pass your apprenticeship” it made me feel so depressed I even got migraines and I felt so drained by their energy. When I worked there I kept it professional. I did my work and I went home. I worked really hard for them and they threw it back in my face.*” She goes on in paragraph 41 to say that, “*It got to a point where I woke up one day and started crying to my mum and I told her I don’t want to work there anymore because of the way I am being treated like I’m dirt from*

the bottom of their shoe. I ended up getting depressed because I left there and I was jobless.”

295. Mr Ratledge is right to say that there is no corroborative evidence that the claimant suffered depression. The claimant gave no evidence that she was diagnosed as depressed by her general practitioner. An injury to feelings award is of course to compensate for the range of emotions suffered by a successful complainant which is incapable of independent medical corroboration or verification. We therefore accept that the claimant felt depressed (or perhaps more anecdotally, felt down).
296. It is clear from paragraph 40 of her witness statement that the harassing comment upon which she has succeeded is but one of a number which caused her upset and to feel depressed and down. The Tribunal can of course only award compensation for the injury to her feelings upon the complaint upon which she has succeeded.
297. The Tribunal has carefully considered the **Vento** guidance. This was a one-off remark. It was one upsetting incident amongst many (from the claimant’s perspective) which did not fall foul of the 2010 Act. We are therefore firmly of the view that this is a lower band **Vento** case.
298. In our judgment, the appropriate sum to award for injury to the claimant’s feelings is £1500. We do not consider that the compensation awarded should be at the very bottom of the lower **Vento** band. However, as it was a one-off remark and was but one of around 18 incidents which the claimant was upset by, doing the best we can, we think that this is an appropriate amount to award to compensate for the claimant’s injury to feelings.
299. We exercise our discretion to award interest upon the compensation in the claimant’s favour. No submissions were made that we should not. The date of the incident is uncertain. In the interests of proportionality, we shall for the purposes of calculation work upon the premise that it took place upon 20 May 2021. The claimant shall therefore be awarded interest upon the injury to feelings award for a period of 14 months at the judgment rate of 8%. The fourteen months period is from 20 May 2021 until 20 July 2022- the latter is the calculation date for the purposes of the 1996 Regulations. Interest is therefore awarded in the sum of £140.
300. The first respondent is therefore liable pay to the claimant:
- 300.1. Compensation upon the unauthorised deduction from wages claim in the sum of - £1146.33.
- 300.2. Compensation for injury to the claimant’s feelings upon the successful complaint of unlawful harassment - £1500.
- 300.3. Interest upon the injury to feelings award being £1500 x 8% per annum x 14 months - £140.

301. The third respondent is jointly and severally liable to pay the sums in paragraphs 300.2 and 300.3.
302. The total sum payable is £2786.33 which must be paid within 14 days of the promulgation date below.

Employment Judge Brain

Date: 09 August 2022

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