



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Targonska

Respondents: 1. Get My Slice Partners LLP
2. Mr O Southgate
3. My Zero-One Technologies Limited

Heard at: London Central **On:** 10, 11, 15 July;
(by remote video hearing) 6 August & 12 September
2024 (in chambers)

Before: Employment Judge B Smith (sitting with members)
Ms Campbell
Mr Greenland

Representation

Claimant: In person

Respondents: Mr Southgate (in person and for the first and third respondent)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

Unfavourable treatment because of something arising in consequence of disability

1. The following complaints of unfavourable treatment because of something arising in consequence of disability are well-founded and succeed against the first and second respondents:
 - a. not receiving the full monthly drawings for the whole period of her sickness absence and only receiving statutory sick pay;
 - c. cutting the claimant's expenses; and
 - d. not communicating with the claimant about starting statutory sick pay.
2. The remaining complaint of unfavourable treatment because of something arising in consequence of disability against the first and second respondents are not well-founded and are dismissed.

3. The complaints of unfavourable treatment because of something arising in consequence of disability against the third respondent are not well-founded and are dismissed.

Failure to make reasonable adjustments for disability

4. The complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.

Direct discrimination

5. The complaint of direct marital status discrimination is not well-founded and is dismissed.
6. The complaint of direct race discrimination is not well-founded and is dismissed.

Harassment

7. The complaint of harassment related to disability or race is not well-founded and is dismissed.

Victimisation

8. The complaint of victimisation is not well-founded and is dismissed.

Wages

9. The complaint of unauthorised deductions from wages is well-founded against the first respondent. The first respondent made an unauthorised deduction from the claimant's wages in the periods May 2022 to 5 July of 2022 in the sum of £5,715.43 and also the tax year April 2021 to April 2022 in the sum of £9,136.32.
10. The complaints of unauthorised deductions from wages against the second and third respondents are not well-founded and are dismissed.

Holiday Pay

11. The complaint in respect of holiday pay is well-founded against the first respondent. The first respondent made an unauthorised deduction from the claimant's wages by failing to pay the claimant for holidays accrued but not taken on the date the claimant's employment ended.
12. The respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and it is just and equitable to increase the amount payable to the claimant by 25% in accordance with s.207A Trade Union & Labour Relations (Consolidation) Act 1992.
13. The complaints in respect of holiday pay against the second and third respondents are not well-founded and are dismissed.

REASONS

Introduction

1. The claimant was engaged by the first and third respondents as a Digital Product/Product Manager from 1 April 2021 until 6 July 2022. The claim form was presented on 12 November 2022. Acas conciliation started on 31 August 2022 and ended on 12 October 2022 against all respondents

2. The claimant brings claims of:
 - (i) Discrimination arising from disability (s.15 Equality Act 2010 'EQA');
 - (ii) Failure to make reasonable adjustments (ss.20 and 21 EQA);
 - (iii) Direct discrimination because of marital status (s.13 EQA);
 - (iv) Direct discrimination because of race (s.13 EQA);
 - (v) Harassment because of disability or race (s.26 EQA);
 - (vi) Victimisation;
 - (vii) Unpaid annual leave; and
 - (viii) Unauthorised deductions from wages (Employment Rights Act 1996 'ERA').

3. The issue of disability was in dispute.

Procedure, documents, and evidence heard

4. The parties represented themselves throughout the hearing. The second respondent spoke on behalf of the first and respondents.

5. The tribunal took into account the fact that all parties were not represented and used clear language to explain the procedure. The claimant was

permitted adjustments to the procedure as requested, namely regular breaks, pauses whilst she recomposes herself, and additional time if she becomes anxious. We had regard to the Equal Treatment Bench Book and relevant practice directions on vulnerable witnesses. The tribunal ensured that the questioning of the claimant was with clear questions which took into account her emotional state and in a slow manner, with necessary time for her to process her answers. The tribunal clarified the witnesses' evidence where necessary in a neutral manner with its questioning.

6. The claimant confirmed at all relevant times that she had sufficient breaks as required.
7. All witness gave evidence under affirmation and were cross-examined:
 - a. Mrs Targonska, the claimant;
 - b. Mr Travis Du Plessis, the claimant's husband; and
 - c. Mr Southgate, of the respondents.
8. The list of issues was set by orders of EJ Nicholle dated 4 July 2023 and EJ Nicklin dated 27 February 2024. It was necessary to revise these slightly at the final hearing. The amendments involved: clarification of the nature of the impairment for disability, the addition of other reasonable adjustments the claimant says should have been put in place, and a revision of the questions in the discrimination arising from disability claim to properly reflect the legal framework given how the claims were made. Also, a small addition to reflect the legal test for failure to make reasonable adjustments was included, as was a background passage about time limits and the legal test for disability.
9. The parties agreed the final list of issues. Specifically, the claimant confirmed that the direct race discrimination claim accurately reflected her claim. None of the amendments made required an amendment to the claims because they did not introduce new facts or claims and the points raised were in the original claim form to the extent they needed to be. If this is

wrong, there was no prejudice to the parties to the amendments made because they were made at the start of the hearing and the parties had ample opportunity to respond to them.

10. The final list of issues can be found at **Appendix A**. The table of allegations relevant to the harassment and victimisation claims can be found at **Appendix B**. We took into account that a list of issues is not a strict legal pleading and that we should be reasonably generous in interpreting it to an extent that is fair to all parties.
11. The claimant's additional bundle of documents was included by agreement.
12. The agreed documents were:
 - (i) Final Bundle – 3616 pages;
 - (ii) Index to final bundle;
 - (iii) Witness statement - Southgate;
 - (iv) Witness statement – Claimant;
 - (v) Witness statement – Travis Du Plessis;
 - (vi) Cast list;
 - (vii) Claimant's additional bundle – 53 pages;
 - (viii) Index to claimant's additional bundle;
 - (ix) Claimant's chronology;
 - (x) Respondent's chronology;
 - (xi) Schedule of loss;
 - (xii) Respondent's skeleton argument; and
 - (xiii) Whatsapp chats with 'Nick' about a mortgage.
13. The Whatsapp chats were introduced by the respondents during the hearing. We admitted them as evidence because the claimant was given sufficient time to consider them and we did not consider that allowing them as evidence prejudiced the claimant. They were of limited relevance to the

issues, in any event, but provided context for one of the decisions made by the respondent during the relevant period.

14. The tribunal only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. The parties were made aware of this from the outset and the parties given an opportunity to say what documents they thought the tribunal should read.
15. By agreement, after the end of the evidence both parties made written submissions only. It was made clear to the parties that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the tribunal's attention. We have only resolved the issues of fact necessary to make our decisions.
16. Further written submissions were provided to the tribunal by the parties in response to matters which arose during the tribunal's deliberations which we did not feel the parties had necessarily had a fair opportunity to comment on during the hearing or in their written submissions. We took them into account.

Relevant Law

(i) Employment status

17. The definition of employee is covered by s.230(1) ERA 1996. This means '*an individual who has entered into or works under ... a contract of employment.*'
18. Section 230 ERA includes:
 - (3) *In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*
 - (a) *a contract of employment, or*

(b) *any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*

and any reference to a worker's contract shall be construed accordingly.

19. Applying s.230(2), contract of employment '*means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*' The multiple test for determining the presence of a contract of service includes (adopting the language used in case law) that: an agreement exists to provide the 'servant's' own work or skill in the performance of service for the master ('personal service') in return for a wage or remuneration; in the performance of that service, the servant agreed expressly or impliedly to be subject to a sufficient degree of control from another to make that other their master; and the other provisions of the contract are consistent with a contract of service: *Ready Mixed Concrete (South East) Limited v the Minister of Pensions and National Insurance* [1968] 2 QB 497.
20. A contract of employment cannot exist without the irreducible minimum mutuality of obligation and a sufficient degree of control: *Ready Mixed Concrete*. For a contract of employment to exist there must be an irreducible minimum of obligation on each side: *Carmichael and anor v National Power plc* [2000] IRLR 43.
21. Generally, if one of the factors of personal service and substitution rights, control, and mutuality of obligation are not met, there is no contract of employment. Even if there is a significant degree of control, if there is no mutuality of obligation there will be no contract of employment: *Cheng Yuen v Royal Hong Kong Gold Club* [1998] ICR 131. The possibility of future offers of work is not enough; a framework for a series of successive ad hoc contracts of service is not necessarily enough: *Carmichael*.

22. The documentary position is not necessarily determinative, nor necessarily the starting point, and we must also consider the reality of the situation: *Uber BV and others v Aslam and others* [2021] UKSC 5. The conduct of the parties and other evidence may show that the written terms were in fact understood and agreed to be a record, possibly an exclusive record, of the parties' rights and obligations towards each other. However, there is no legal presumption that a contractual document contains the whole of the parties' agreement and no absolute rule that terms set out in a contractual document represent the parties' true agreement just because an individual has signed it: *Uber* at [85].
23. The parties' intentions may be a relevant factor but it is the substance of the situation that should be given significant consideration.
24. The way in which an individual is taxed is not, on its own, determinative of employment status.

(ii) Equality Act 2010

25. Disability, race, and marital status are all protected characteristics under the ss. 6, 8 and 9 EQA.
26. We took into account where relevant the EHRC Employment Code of Practice.
27. Section 6 EQA, in summary, says that a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Under section 212 EQA substantial means more than minor or trivial. Under paragraph 5 of Schedule 1 EQA an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to correct it, and, but for that, it would be likely to have that effect. Long term is defined in schedule 1 paragraph 2 as lasting for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life

of the person affected. The relevant time to be considered is at the time of the discriminatory act.

28. The burden of proof for discrimination, harassment and victimisation claims is governed by s.136 EQA:

(1) *This section applies to any proceedings relating to a contravention of this Act.*

(2) *If there are facts from which the court could decide, in the absence of any explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

[...]

29. It was held in *Field v Steve Pie* [2022] EAT 68 at [37]: *'In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities.'* Further at [41] that *'if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment.'*

30. Time limits for claims under the EQA are governed by s.123:

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

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

(b) *such other period as the employment tribunal thinks just and equitable [...]*

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

- (a) *conduct extending over a period is to be treated as done at the end of the period;*
- (b) *failure to do something is to be treated as occurring when the person in question decided on it [...]*

31. Applying *Jones v Secretary of State for Health and Social Care* [2024] EAT 2, we have a wide discretion to extend time on just and equitable grounds. Relevant factors we should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondent (for example, preventing or inhibiting it from investigating the claim while matters were fresh), whether someone was in ignorance of their rights or had received incorrect advice, if there was an ongoing internal procedure, and reasons relating to disability or ill health.

32. We must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96.

(iii) *Liability of employers and principals under the EQA*

33. Section 109 EQA says:

Liability of employers and principals

- (1) *Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.*
- (2) *Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.*
- (3) *It does not matter whether that thing is done with the employer's or principal's knowledge or approval.*
- (4) *In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is*

a defence for B to show that B took all reasonable steps to prevent A—

- (a) from doing that thing, or
- (b) from doing anything of that description.

[...]

34. Section 110 EQA says:

Liability of employees and agents

- (1) A person (A) contravenes this section if—
 - (a) A is an employee or agent,
 - (b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and
 - (c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).
- (2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 109(4).

35. Where the conditions for liability of an individual employee or agent under s.110 are met an employment tribunal must find that a contravention of that section has occurred: *Baldwin v Cleves School and others* 2024 EAT 66.

36. Section 6 Limited Liability Partnerships Act 2000 says:

- (1) Every member of a limited liability partnership is the agent of the limited liability partnership.

[...]

- (iv) Discrimination arising from disability

37. Section 15 EQA says:

- (1) A person (A) discriminates against a disabled person (B) if—

- (a) *A treats B unfavourably because of something arising in consequence of B's disability, and*
 - (b) *A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
- (2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*
38. 'Unfavourably' is not defined in the EQA. The Code at [5.7] says that this means that the disabled person must have been put at a disadvantage.
39. The proper approach to determining s.15 EQA claims was summarised by Mrs Justice Simler in *Pnaiser v NHS England and anor* [2016] IRLR 170 EAT at [31]:

'(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: ... A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises...

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is ‘something arising in consequence of B’s disability’. That expression ‘arising in consequence of’ could describe a range of causal links. Having regard to the legislative history of section 15 of the Act ... the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) ... the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) ...

(h) Moreover, the statutory language of section 15(2) makes clear ... that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the ‘something’ leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. ... it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of “something arising in consequence of the claimant’s disability”. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to ‘something’ that caused the unfavourable treatment.”

40. It follows that the something that causes the unfavourable treatment does not need to be the main or sole reason but must have at least a significant

(or more than trivial) influence on the unfavourable treatment and so amount to an effective reason for or cause of it: *Pnaiser v NHS England* (above) at [31(b)].

41. A claimant bringing a complaint under s.15 EQA bears an initial burden of proof. They must prove facts from which the tribunal could decide that an unlawful act of discrimination has taken place. This means that the claimant has to show that they were disabled at the relevant times, they have been subjected to unfavourable treatment, a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment, and evidence from which the tribunal could infer that the something was an effective reason or cause of the unfavourable treatment. If the claimant proves facts from which the tribunal could conclude that there was s.15 discrimination the burden shifts under s.136 EQA to the respondent to provide a non-discriminatory explanation or to justify the treatment under s.15(1)(b).
42. Whether or not unfavourable treatment is a proportionate means of achieving a legitimate aim involves a balancing exercise between the reasonable needs of the respondent and the discriminatory effect on the claimant: *Hampson v Department of Education and Science* [1989] ICR 179 CA. Factors to be considered include whether a lesser measure could have achieved the employer's legitimate aim.

(v) *Failure to make reasonable adjustments*

43. The duty to make reasonable adjustments is found in s.20 EQA. That duty applies to employers: s.39(5) EQA. A failure to comply with the duty is in s.21 EQA. The relevant questions are:
- a. what is the provision, criterion or practice ('PCP') relied upon;
 - b. how does the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled;

- c. can the respondent show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage; and
 - d. has the respondent failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?
44. The Code says at [6.10] that it '*should be construed widely so as to include, for example, an formal or informal policies, rules, practices, arrangements or qualifications include one-off decisions and actions*'.
45. *Pendleton v Derbyshire County Council* [2016] IRLR 580 and *Nottingham City Transport Ltd v Harvey* [2013] ALL ER(D) 267 EAT demonstrate that, generally, a one-off incident will not qualify. However, a practice does not need to arise often to qualify as a PCP. However, in *Ishola v Transport for London* [2020] ICR 1204 the Court of Appeal said that the words provision, criterion or practice '*carry a connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again*'.
46. Substantial disadvantage means more than minor or trivial: s.212 EQA. It must also be a disadvantage which is linked to the disability.
47. A PCP is unlikely to be considered proportionate if there is a way of achieving the aim which imposes less detriment: *Chief Constable of West Yorkshire Police v Homer* [2012] ICR 704.
48. The tribunal must also consider the extent to which the step will prevent the disadvantage to the claimant.
49. In the context of reasonable adjustments claims, the claimant must prove facts from which it could reasonably be inferred, absent an explanation, that the relevant duty has been breached: *Project Management Institute v Latif* [2007] IRLR 579 EAT at [54]. The burden then shifts to the respondent

under s.136 EQA. In *Rentokil Initial UK Ltd v Miller* [2024] EAT 37 it was then held at [43] that '*What Latif means is that the burden is on the employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment.*'

(vi) *Direct discrimination because of race or marital status*

50. Direct discrimination is prohibited conduct under s.13 EQA:

(1) *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. [...]*

51. The less favourable treatment must be because of the protected characteristic. The circumstances of the comparator must be the same as those of the claimant: s.23 EQA. The protected characteristic need not be the only reason for the less favourable treatment, or the main reason: *London Borough of Islington v Ladele* [2009] IRLR 154 (EAT). The decision must be more than trivially influenced by the protected characteristic.

(vii) *Harassment because of disability or race*

52. Harassment is prohibited conduct under s.26 EQA:

(1) *A person (A) harasses another (B) if—*

(a) *A engages in unwanted conduct related to a relevant protected characteristic, and*

(b) *the conduct has the purpose or effect of—*

(i) *violating B's dignity, or*

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

53. The purpose or effect of the conduct must be considered separately. In deciding whether conduct has the effect, we must take into account the claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect. In terms of effect, we must ask first whether the claimant genuinely perceived the conduct as having that effect, and whether in all the circumstances, was that perception reasonable: *Pemberton v Inwood* [2018] EWCA Civ 564.
54. When deciding whether the conduct related to a protected characteristic, we bear in mind that we must evaluate the evidence in the round and recognise that witnesses will not readily volunteer that conduct was related to a protected characteristic: *Hartley v Foreign and Commonwealth office Services* [2016] ICR EAT. 'Related' is a reasonably broad word, on its face, and is a looser statutory requirement than direct causation. The context of any given conduct is important: *Warby v Wunda Group plc* EAT 0434/11.
55. If there are facts from which a tribunal could find that the conduct was related to a protected characteristic it is then for the respondent to discharge the burden of proof that it was not.

(viii) Victimisation:

56. Victimisation is prohibited conduct under s.27 EQA:
- (1) *A person (A) victimises another person (B) if A subjects B to a detriment because –*
- (a) *B does a protected act, or*
- (b) *A believes that B has done, or may do, a protected act.*
57. Protected acts are defined in s.27(2) and include making allegations, whether or not express, that someone has contravened the Equality Act 2010 and bringing proceedings under the EQA. One relevant question is why was the discloser subjected to the detriment: was it because of the protected act, or for wholly other reasons?
58. A detriment is a disadvantage.

(ix) Unpaid annual leave – Working Time Regulations

59. A claim for holiday pay can be brought as a complaint under the Working Time Regulations 1998 ('WTR'). The WTR entitles workers to 5.6 weeks leave each leaving year (inclusive of bank holidays). Employees are entitled to be paid in lieu of any holiday which has accrued but has not been taken on termination of employment under the WTR even in the absence of contractual provisions for this.
60. Holiday pay that it is outstanding on termination can also be claimed as unpaid wages: s.27 ERA 1996. If claimed as wages then an unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 can result in an increase in the amount payable if it is just and equitable to do so: s.207A Trade Union & Labour Relations (Consolidation) Act 1992.

(x) Unauthorised deductions from wages (Employment Rights Act 1996)

61. The right not to suffer unauthorised deductions from wages is found in s.13 ERA 1996 which says:

Right not to suffer unauthorised deductions.

(1) *An employer shall not make a deduction from wages of a worker employed by him unless—*

(a) *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*

(b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

...

(3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total*

amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

62. The relevant question is whether the amount is properly payable which clearly connotes a legal entitlement: *New Century Cleaning Co Ltd v Church* [2000] IRLR 27 CA.
63. The ordinary time limit for an unlawful deductions claim is before the end of the period of 3 months, in this case beginning with the date of the payment of wages from which the deduction was made (s 23(2)(a) ERA 1996). That time limit will be extended to allow for early conciliation, in accordance with s 207B ERA 1996. If the complaint is about a series of deductions or payments, the three-month time limit starts to run from the date of the last deduction or payment in the series: s.23(3) ERA 1996.
64. An uplift under s.207A Trade Union & Labour Relations (Consolidation) Act 1992 also applies to unauthorised deductions from wages claims.

Findings of fact

65. We make our findings of fact on the balance of probabilities. We have only made those findings of fact necessary to resolve the claims. The findings of fact below, in general, are made on the basis of the the oral and written evidence. We only explain our reasons where there facts were disputed.
66. There is no dispute about the authenticity of the documents in the hearing bundles.
67. The claimant's overall dates of engagement, Acas conciliation dates, and presentation of her claims were as set out in the introduction, above.

68. The claimant is a Ukrainian national and is married. The claimant has a good command of English.
69. The claimant provided a disability impact statement (bundle page 3578). She was diagnosed by a consultant psychiatrist as having Recurrent Depressive disorder and Post-traumatic Stress Disorder on 31 July 2023. Her treatment includes, since April 2023, for depression and anxiety from a psychotherapist (bundle page 3575). The claimant described in evidence wanting to have time off for recovery in April 2022 and seeing GP for eczema, she believes relating to anxiety, in March 2022. We accepted that evidence and make those findings.
70. The second respondent is a director of the third respondent and a member of the first respondent. He describes himself as a senior partner of the first respondent. He was also the claimant's line manager at all material times. The second respondent was the relevant decision maker matters relating to the claimant's remuneration and working terms with the first and third respondents. He has over twenty years of experience leading new companies. In the second respondent's additional closing submissions he stated '*Regardless of employment of status, at all times I acted as the CEO in relation to any decision made for and on behalf of the companies involved.*' This was consistent with the written and oral evidence.
71. We find that the claimant's working engagements were with the first and third respondents only. This is because these were the entities that entered into written agreements with the claimant for her work and who dealt with her on a day-to-day basis. There is no cogent evidence on which we could find that the second respondent entered into a working arrangement with the claimant directly. However, it is clear that the second respondent acted on behalf of the third respondent as company director and the first respondent as its senior partner, and as a member of it as an LLP.
72. Between August and September 2020 the claimant was engaged in unpaid work experience at the third respondent. This developed into a role, ostensibly as a self-employed contractor, between 1 October 2020 and 31

December 2020. The role was subject to a written contract negotiated between the parties. The terms of this are as set out in page 3488 of the bundle. The claimant was paid with shares in the third respondent and was entitled to claim up to £200 of expenses each month on provision that receipts are provided. The contract is expressed as a contract for services between the third respondent and the claimant. The services included operational project management, development project management, growth project management, compliance, and working alongside the team to fill any gaps. The work was full time for 40 hours a week. Paragraph 5 of the contract includes a reference to meeting at regular intervals to discuss and monitor the provision and progression of the services.

73. During December 2020 there was an alleged incident about payment of expenses with another contractor at the respondent named Mia. Mia's terms of engagement included a cash component in contrast with the claimant's contract.
74. The respondent has a calendar entry dated 23 December 2020 with the subject as: Pay Mia, grace and Jennica. They were all contractors for the third respondent. This is indicative of all three of these people being paid on that day, or being due for payment on that date.
75. The claimant was on materially different contractual arrangements to Mia. This is because of the content of the contractual documents themselves.
76. At this point in time the claimant's expenses were to be paid on submission of receipts and at this point the delay in payment was because the claimant had not yet submitted receipts. This is because we accept the respondents' evidence on this point which is supported by the documentary position, such as the claimant's contractual terms. It is also not clearly undermined by the other evidence.
77. It was alleged by the claimant that around this time the second respondent made a comment suggesting or alluding to the idea that Mia was being paid

as opposed to the claimant because the claimant was married and therefore could be expected to rely on her husband. This comment is denied by the second respondent. In the absence of independent corroborating evidence, we do not find that the second respondent made an alleged comment about Mia being paid because of any reason to do with marital status. It is one person's word against another. We do not consider Mr Du Plessis' evidence to be independent corroborative evidence because he was not present for the conversation. Also, his evidence under cross-examination was that any difference in payments was insinuated to be because of marital status, as opposed to anything more concrete or specific.

78. The claimant entered into a second contract with the third respondent starting on 1 January 2021 during which she was paid £1,000 a month, the same expenses allowance, and she also received shares in the company. The terms of that contract are set out in page 3501 of the bundle and include the same or similar terms about the work as set out above.
79. In March 2021 there was negotiation between the claimant and the third respondent about how her role would continue. The plan was for an LLP to be formed, the first respondent, which would engage the claimant and others. The first respondent would provide services to the third respondent. When the claimant entered into the LLP agreement it was described to her as being effectively an employment relationship.
80. At some point the claimant's contract with the third respondent was extended to end on 28 April 2021 and changed to a payment of £3,000 a month, provision of shares, and payment expenses as before.
81. The email correspondence about negotiations of all the contracts demonstrated that the claimant was able to and did negotiate some specific parts of her working arrangements with detailed consideration of some of the specific terms.
82. In April 2021 the first respondent was formed as an LLP.

83. The claimant's relationship with the first respondent was subject to an LLP agreement between 6 April 2021 and 5 July 2022. The LLP contract was signed by the claimant at some point in June or July 2021. The terms of the LLP agreement are at page 3510 of the bundle. It is described as a partnership agreement and is dated 30 March 2021. It includes *'It is agreed that you have joined the Partnership with effect from the date of this agreement as shown above. The specific terms upon which you are engaged as a partner are set out in your Partnership Statement as amended from time to time by mutual agreement. The rest of this agreement sets out the terms of engagement applying to partners generally.'*
84. The LLP agreement includes provision for a hypothetical tax deduction which is held in a bank account under the name of the LLP. It provides for tax to be on a self-assessment basis. Paragraph 15 of the LLP agreement includes *'Your specific engagement terms include the equivalent of all statutory and contractual rights and obligations associated with any employment contract which you may have had with the Partnership's licensor company immediately before joining the Partnership.* Paragraph 16 includes *'In any event, your specific engagement terms include the equivalent of all statutory and contractual rights and obligations that would typically have applied had you been an employee of the Partnership rather than being engaged as a partner. This includes, but is not limited to, statutory parental pay ..., statutory sick pay and statutory redundancy pay. For the purposes of calculating these entitlements, your effective start date will be the earlier of the date you joined the Partnership's licensor company, or the date you joined the Partnership.'*
85. Paragraph 17 says *'The Partnership may make payments over and above the equivalent statutory amounts at the sole discretion of the Partnership.'*
86. The Partnership Statement includes an effective start date of 6 April 2021 and at paragraph 3: *'Your entitlement to regular net drawings (Fixed Monthly Drawings) is based on a Fixed Profit Share of £40,000 per annum. You are also entitled to variable amounts based on working hours and performance targets as agreed between you and the Partnership.'* Working

hours and patters, and holiday allowance, are as agreed between the claimant and the LLP. It makes reference to a capital contribution of £20,000 and is signed by the claimant.

87. The claimant was declared to be self-employed in all of the relevant contracts with the first and third respondents.
88. At all material times the claimant was working full time, for approximately 40 hours a week, and was working exclusively for the third respondent and then, later, the first respondent. The claimant was not able to subcontract the work. Although it was the respondent's intention for the claimant to be doing this on a self-employed basis, this was not the claimant's intention. This is because, for example, the claimant indicated in an email dated 28 September 2020 when negotiating her contract with the third respondent a reference to joining the team on a permanent basis and that from the details of the contract it looked (for IR35 purposes) like full-time employment.
89. It was not in dispute that the claimant was a member of the first respondent LLP, ie. a partner.
90. The second respondent accepted in his evidence to the tribunal that the third (and, later, the first) respondent were under a contractual obligation to provide work to the claimant, for the claimant to do that work, and for the claimant to be paid for that work. We make those findings accordingly.
91. The first and third respondents also had a complete control over the claimant's work as if she were an employee during the times of her engagement with them. This was effectively accepted on their behalf in the evidence of the second respondent. Also, we make this finding on the basis of the claimant's evidence on the issue of control and the reality of her situation which was not effectively challenged or undermined by the other evidence as to how things worked in practice. At various times the claimant provided updates to the second respondent about whether she was not working due to taking holiday or sickness absence, including provision of

sick notes. This is supported by those messages included in the evidence. We also find on the basis of the claimant's evidence that when the LLP was formed she was not offered an alternative for continuing her work and the other staff from the third respondent had effectively transferred over to the LLP as members. There was also no change to duties or reporting lines. We also find, because we accept the claimant's evidence of this and there is no evidence to the contrary, that she was not a true partner of the LLP in the sense of making any kind of joint business decisions, hiring decisions, of having visibility of the entity's operations.

92. Although the LLP documents refer to a capital contribution, we find that this was very much a paper-only exercise which did not reflect the reality of the situation. This is because no real capital contribution was ever paid by the claimant and the working environment described by the claimant and respondents is indicative more of this being a structure set up for tax purposes rather than being a true partnership business of which the claimant was a part. This finding is also supported by the claimant's unchallenged evidence that the capital contribution was described to her as just being needed on paper.
93. In an email dated 31 May 2024 Mr du Plessis repeated the claimant's account as to how the LLP was presented to her, namely that it was effectively equal to an employment relationship. Also, in a letter dated 23 July 2021 the second respondent described the claimant as an employee of the LLP in official correspondence on headed notepaper.
94. The claimant was off sick from the first respondent between 12 and 14 January 2022.
95. At one stage, an individual engaged by the first respondent went on jury duty but did not suffer a reduction in pay.
96. The claimant was not working between 14 January 2022 and 23 January 2022. The claimant requested this time off to rest and recover, following

illness. The claimant was paid her full pay in January 2022. The respondent did not treat it as annual leave or sickness leave.

97. On 24 February 2022 the second respondent acknowledged to the claimant the start of the Russian invasion of Ukraine.
98. On 25 April 2022 the claimant started a week of annual leave.
99. On 6 May 2022 the claimant sent a two-week fit note / sick note to the respondent and was off sick. The reason was the claimant's anxiety state. She is recorded as being not fit for work.
100. On 9 May 2022 the second respondent contacted the claimant about forwarding work emails. This email included *'I hope you are feeling better. So you can concentrate on your health and wellbeing. Can you please forward all your email to me so that I can stay on top of things whilst you are off? Let me know anything that needs to be dealt with on a day to day basis whilst you are off so that we can minimise any contact with you?'*
101. On 23 May 2022 the claimant provided a second two-week fit note. This stated the condition was anxiety and ended on 3 June 2022. No adaptations for a return to work are included in the box for this. Also, it reads (with the strikethrough included): *'I ~~will~~/will not need to assess your fitness for work again at the end of this period'*.
102. As of the end of May 2022, the claimant received statutory sick pay ('SSP'). This continued until the end of her engagement at the respondent.
103. On 6 June 2022 the second respondent requested a call with the claimant over Whatsapp. The second respondent had expected the claimant to return to work because the previous sick note stated that the last day was 3 June 2022 and it did not include any mention of reassessment prior to returning to work.

104. On 6 June 2022 the claimant provided a four week sick note because of anxiety state until 4 July 2022. No adjustments are included and it states, as above, that the doctor will not need to assess fitness for work again at the end of the period.
105. Communications from the claimant to the first and second respondent about her health included:
 - (i) An email dated 6 May 2022 stating that she was struggling with her mental state and the impact on her health over the last few months due to the war in Ukraine and the impact of this on her family and friends, and difficulties sleeping, concentrating, and severe anxiety leading to a deterioration in health.
 - (ii) An email dated 23 March 2022 stating that she was still struggling with severe anxiety.
 - (iii) An email dated 6 June 2022 stating that she was still in a dark place with her mental health.
106. In June 2022 the first respondent was suffering from financial difficulties resulting in payments to some LLP members being delayed, including the claimant's June salary payment.
107. On 5 July 2022 the claimant resigned and raised an informal grievance.
108. Around this time the claimant made a request about cashing in her shares. The respondent responded substantively on 28 July 2022 with an email at bundle pages 2172.
109. Between June 2022 and August 2022 there were various issues with the claimant's pay and payslips. However, we accept the respondents' explanation that these were due to effectively administrative issues. Also, there were delays in some payments being made. However, these were due to the respondents' financial position.

110. During October and November 2022 the respondent made offers to settle these proceedings through Acas, offering shares only. This evidence about this is admissible because of an earlier ruling of the tribunal. Those offers were declined.
111. On 17 July 2023 the claimant made a payment to the claimant of £1,161.84 for outstanding SSP and holiday pay (five days).
112. The claimant's May 2022 payslip indicates payment of £913.43.
113. The claimant's June 2022 payslip indicates payment of £437.14.
114. The claimant's July 2022 payslip indicates payment of £461.54. The claimant worked 2 days of July 2022 taking into account her resignation. For July 2022 there were 21 working days.
115. The first respondent made deductions from the claimant's payments to be held in a notional 'tax reserve'. Deductions were made in the year 2021-2022 and the 2022-2023. Issues relating to the 2022-2023 year were resolved between the parties. For the tax year 2021-2022 the first respondent deducted £9,136.32. This amount is included by the claimant in her schedule of loss and was not clearly challenged by the respondents. That amount was never in fact paid onto HMRC. We make this finding which was asserted by the claimant and not clearly challenged by the claimant because of the claimant's oral evidence of this, supported by email correspondence with the respondents and their accountant. In particular, an email from the first respondent's accountant dated 4 June 2024 admitted that payslip deductions were hypothetical for the purposes of calculating net pay amounts and that the reserves were an accrued hypothetical tax and were not income tax and or national insurance to be paid to HMRC. The email also confirms that no income tax or national insurance payments were paid by the LLP on the claimant's behalf to HMRC for the year 2021 – 2022.

116. The LLP agreement included at paragraph 6 that the LLP could make deduction from the fixed monthly drawings for a hypothetical deduction for tax. Clause 9 suggested that the LLP would pay all legitimate taxes arising from a profit share allocation.
117. Our factual findings on some particular allegations of harassment or detriments are set out below so as to be consistent with the list of issues. For the avoidance of doubt, however, we made those findings of fact as distinct conclusions before turning applying the law to those findings. It is not proportionate to repeat those findings here. Specifically, the following paragraphs below are repeated here as findings of fact: [172], [175], [178], [182], [187], [192], [195], [199], [202], [203], [206], [210], [214], [218], [222].

Conclusions

(i) Employment status

1. Whether the Claimant was an employee or contract worker or partner for the purposes of her relative claims against the Respondents?

118. In light of our factual findings above, the claimant was neither an employee, contract worker, or partner of the second respondent. This is because the second respondent's role for these purposes is that of agent of the first and third respondents. The second respondent did not, on the evidence, engage the claimant directly with himself as any kind of worker, contractor or employee.
119. It is not in dispute that the claimant was a member and partner of the first respondent and we make that finding.
120. The second respondent accepted in his evidence to the tribunal that the third (and, later, the first) respondent were under a contractual obligation to provide work to the claimant, for the claimant to do that work, and for the

claimant to be paid for that work. The claimant also had to do the work herself. The first and third respondents also had a complete control over the claimant's work as if she were an employee. Although the respondent sought to describe it as a business to business relationship, this was not the reality. The LLP agreement was described to the claimant as being effectively an employment relationship when she entered into it. This is corroborated by references to some statutory employment rights in the LLP agreement. Additional evidence in support of this is the account of Mr du Plessis in an email dated 31 May 2024 which repeats the claimant's account of how it was presented to her, albeit after the event. We also note that in a letter dated 23 July 2021 the second respondent describes the claimant as an employee of the LLP in official correspondence on headed notepaper. We make the above findings accordingly.

121. We take into account the fact that the claimant was working full time and exclusively for the first and third respondents respectively. She was paid a regular monthly amount for her work and could not subcontract the work. We also consider that the respondents' position was more informed by advice from accountants and the tax position than a real understanding of employment rights given the evidence of the second respondent. We find that the reality of the situation was the claimant being engaged in the manner of a full time employee throughout the relevant period.
122. We conclude that the claimant was an employee for status purposes of the third respondent. We do not find that the engagement contract reflected the reality of the situation. For example, accept the claimant's evidence that the monitoring clause (paragraph 5) did not happen in reality or in the manner of a contracted worker. As described, this would suggest that the third respondent would check in with the contractor at, for example a progress meeting. In reality, the claimant provided updates on when she was not working for the purposes of holiday or sickness to the respondent, which is more like an employee.
123. We find that the overall situation was no different with the first respondent as LLP. The claimant had been assured that, in reality, it was effectively the

same as employment and the contracts make reference to a length of service date. The claimant had equivalent rights against the LLP as if she was an employee through the LLP agreement. We also find that, taking the correspondence and evidence as a whole, the LLP structure was very much presented to the claimant as to how the engagement would work in the future and the shift to working via an LLP structure did not in reality represent a truly considered move by the claimant. No capital contribution was ever paid by the claimant and she was not a true investor in the LLP.

124. We therefore conclude the claimant was an employee for status purposes of the LLP first respondent. This is for the same reasons that she was an employee of the third respondent.

125. We conclude that the claimant's relationship with the third respondent ended when her contractual relationship ended with it, and she started her engagement with the first respondent. This is because the contract with the third respondent was time limited and it was clearly the intention of the parties that the claimant's engagement would continue under the LLP setup. This is because fresh terms were negotiated and put in place. We do not consider that the facts in this case supported the claimant having more than one employer. Ultimately, the claimant was paid what was effectively her salary by the LLP, the claimant's written terms of engagement were with the LLP. Although we were told that the third respondent in fact paid her expenses amount (£200 a month), we did not feel that this was sufficient in all of the circumstances to find that a contract of employment continued with the third respondent after it ended. The £200 amount stopped in May 2022, that payment presumably being in respect of April 2022.

126. In summary, we find that the claimant was employed as follows. Between 1 October 2020 and 28 April 2021 the claimant was an employee of the third respondent. Between 6 April 2021 and the claimant's resignation on 5 July 2022 the claimant was an employee of the first respondent.

127. Any potential overlap between the start of the claimant's engagement by the first respondent and her finishing her employment at the third

respondent was not determinative of any of the claims given the chronology of events.

(ii) Time limits

The Claimant was engaged by the Respondents as a Digital Product/Product Manager from 1 April 2021 until 6 July 2022. The claim form was presented on 12 November 2022. Acas conciliation started on 31 August 2022 and ended on 12 October 2022 against all respondents. Anything that happened on or before 1 June 2022 may be out of time, such as allegations 1, 2, 5, 6 (victimisation/harassment). Other allegations may also be out of time depending on when they happened.

2. *Insofar as any of the Claimant's discrimination, harassment or victimisation complaints are found to be out of time, do those claims form part of conduct extending over a period, including at least one well-founded allegation that is in time for the purposes of section 123(3)(a) Equality Act 2010.*

3. *If not, would it be just and equitable to extend time?*

128. Time limits are considered below for the applicable claims.

(iii) Disability: EQA s.6

4. *Was the Claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of anxiety disorder and/or panic attacks against a background of hypothyroidism?*

The Claimant says that she started to experience the symptoms of anxiety disorder and/or panic attacks in February and March 2022 and was off work as a result for approximately 2 months.

Mr Southgate says that he was aware of the Claimant experiencing anxiety and stress primarily as a result of the situation in Ukraine

The Tribunal will decide:

5. Did the impairment have a substantial adverse effect on their ability to carry out day-to-day activities?

129. We find, and it was not really disputed, that the claimant has the impairment (generally) of anxiety disorder and or panic attacked against background of hypothyroidism. This is confirmed in the evidence by the two diagnoses letters, her GP evidence, sick notes, and the claimant's impact statement.
130. We find that the condition did have substantial adverse effect on day to day activities. This is because, for example, she had two months off sick, signed off by GP, and unable to work. We find that the adverse effect started in March and April 2022 cumulating in the sick notes around that period, and this is supported by the claimant's oral evidence and her impact statement. We also consider that it is consistent with nature of her impairment that she would not necessarily immediately take time off when it arose but would it would increase until time off was necessary. Also, the claimant described in evidence wanting to have time off for recovery in April 2022 and seeing GP for eczema, she believes relating to anxiety, in March 2022. We accepted that evidence.
131. Whilst we recognise that the war in Ukraine was a significant factor in the claimant's impairment we do not consider it to be the only factor. This is because of her psychotherapist's evidence that the genesis of her depression and anxiety was triggered by a combination of her difficulties at work and the war in Ukraine.

6. ***If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?***

7. ***Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?***

132. In light of our findings above it is not necessary to address these issues.

8. ***Were the effects of the impairment long-term? The Tribunal will decide:***

a. ***did they last at least 12 months, or were they likely to last at least 12 months?***

133. We consider that the medical evidence suggests that the effects of the impairment had not at the relevant time having lasted at least 12 months, but were likely to last at least 12 months. We find that they were likely to last at least 12 months because that is in fact what happened, on the medical evidence. It is also the nature of the condition that it could last for significant periods of time and it is described in the medical evidence as recurrative.

134. Based on diagnosis evidence, we find that the condition became likely to last 12 months as of May 2022, when the claimant was signed off sick. This is the best conclusion we can reach in light of the available material.

135. We for those reasons we find that the claimant was disabled for the purposes of s.6 EQA from May 2022 onwards.

b. ***if not, were they likely to recur?***

136. In light of our findings above it is not necessary to address this issues.

(iv) **Discrimination arising from disability: EQA, section 15**

9. ***Did the respondent treat the claimant unfavourably by:***

- a. ***not receiving the full monthly drawings for the whole period of her sickness absence and only receiving statutory sick pay;***

137. We find that this is proven as a matter of fact; the fact that the claimant was only paid SSP for the relevant period is not in dispute. This is for the period from 6 May 2022 onwards.

138. We find that this was unfavourable treatment. This is because on a fair reading of the claimant's contract as a whole with the first respondent she was entitled to a fixed amount of £40,000 a year, pro rata'd per month. This was not, contractually, contingent on her performance or working hours because the contract provided for a separate amount in that regard. In deciding to only pay (bar one payment in May 2022 for days worked) SSP, the claimant was in a considerably unfavourable position, financially.

139. What the respondent labelled drawings was in reality a monthly amount that the claimant was entitled to as a matter of her contract. These contractual terms were designed by the respondent.

140. We reject the respondents submissions that the contractual documents show otherwise. Firstly, to the extent that there is any contradiction between the clauses of the contract, the fixed drawings element was drafted specific to the claimant (as opposed to the standard SSP terms which were applied to everyone, on their face). Also, we do not accept that there is necessarily any contradiction within the document. This is because stating that someone is entitled to a fixed monthly amount does not preclude additional payments as a result of having the equivalent of various statutory rights. Also, the fact that those engaged with the first respondent were paid their full salary when off sick (save for the instance of the claimant) – as set out

in our readings about the PCPs of the respondents – is consistent with the fixed about being payable to the claimant. We find that our interpretation of the contract in that way reflected the reality of the situation more generally.

b. loss of income for July to November 2022 as she was struggling through and undergoing therapy;

141. We do not find that this was unfavourable treatment. This is because the lack of payment was because the claimant had resigned and not for any other reason. The claimant was not entitled to those payments after her engagement at the respondent had ended.

c. cutting the claimant's expenses; and

142. The respondent, effectively, conceded during the hearing that at some point the £200 payment continued throughout all of the contracts and was, after a time, paid regardless of expenses. We are clear that the LLP arrangements included payment of £200 a month expenses because they were paid up to May 2022, presumably in relation to April 2022. Although as a matter of fact the £200 a month payments stopped, we find that the claimant was entitled to that amount because it was consistently paid throughout as a matter of course by the parties up until the claimant was on sick leave. We find that this was unfavourable treatment because she was in a materially worse financial position as a result.

d. not communicating with the claimant about starting statutory sick pay

143. The only communication the respondents suggest they made about starting sick pay was the mention of SSP in the LLP contract at paragraph 16. However, the respondents admitted that there was no sickness policy and in the circumstances where the LLP agreement did not expressly state that the fixed entitlement to drawings was not applicable if the claimant off sick. We find that there was no real communication with the claimant about the

fact that, on a submission of a fit note, her payments would be limited to statutory sick pay. There was insufficient evidence for us to make a finding that including a mention of SSP in the LLP agreement really amounted to a communication with the claimant, in all the circumstances. Given the financial effect of going down to SSP, we consider it inherently unfavourable to the claimant without communication because it left her unable to plan financial matters.

10. Did the following thing(s) arise in consequence of the Claimant's disability?

- a. The claimant was off sick between 6 May 2022 and 5 July 2022.**

144. We find that this did arise in consequence of the claimant's disability. This is plain because the claimant's sickness was because of her anxiety and other difficulties, in accordance with the content of the fit / sick notes.

11. Was the unfavourable treatment because of that?

145. We find that the unfavourable treatment, ie the reduction of pay to SSP and ceasing the 'expenses' payment, was because the claimant was off sick between those dates. This is effectively admitted by the respondent: she was only paid SSP because she was off sick on their own account. It follows that the lack of communication about SSP was also because the claimant was off sick, as a matter of logic.

12. Did the Respondents treat the Claimant unfavourably in any of those ways?

146. We repeat our findings and reasons above as to the claimant having been treated in those ways as a matter of fact. However, and as further explained below, the relevant decisions were made by the second respondent on behalf of the first respondent. The claimant was neither a partner nor

contract worker nor employee of the third respondent at the relevant times for this allegation consistent with our findings on employee status above. Her engagement with the third respondent had ended earlier.

13. If so, have the Respondents shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

147. On the issue communication, we find that they have not. This is because there is no legitimate aim identified for this treatment. Also, it would have been very easy for the first respondent to either have a sickness policy in place, or to at least give the claimant at any stage a clear communication about what would happen if she went off sick.

148. On reducing pay and expenses, we find that there are legitimate aims of managing company-wide finances, fairness across the company, and company financial stability. However, this was not a proportionate way of achieving that aim. The situation involved reducing an employee's payments to SSP when this is contrary to their contractual entitlements. Lesser options, and less discriminatory options, were available, such as deferring payment, or ultimately making a position redundant if it can no longer be funded.

14. Alternatively, have the Respondents shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability?

149. We find that the respondents did not, in fact, know that the claimant had a disability. This is because of the clear limits of the information provided to the respondents by the claimant, particularly in relation to longevity of her condition. However, the second respondent had over twenty years of experience leading new companies. We find that in light of the claimant's communications about her mental state and the content of the fit notes, the respondents could reasonably have been expected to know that the

claimant had the disability. There was no referral or even a thought of referral to any kind of occupational health service.

150. Also, the fact that the fit notes did not identify adjustments did not mean that the respondent was not obligated to enquire more, in the circumstances.
151. For all the above reasons this claim is successful against the first and second respondents. It could only apply against the first and second respondents because the claimant was not disabled during her engagement at the third respondent.
152. We find the second respondent also liable because he was the principal decision maker about what the claimant should or should not be paid and was responsible for communicating with the claimant about this. There is no reason why he should not be liable on the straightforward application ss.109 and 110 EQA. We consider that the decision to make the relevant payments (and non-payments) was his, and he was responsible for the lack of communication to the claimant.
153. We make these findings because the relevant decisions about how to treat the claimant in terms of pay and communications about this were made by the second respondent. The second respondent was acting as an agent of the first respondent at all material times, applying the above provision of the Limited Liability Partnerships Act 2000. Those acts are treated as having been done by the employer applying s.109(1) EQA. The second respondent was acting as an agent, he did something which is treated by s.109(1) EQA as having been done by the employer, and those things (the discriminatory acts above) amounted to a contravention of the EQA. Applying s.110, therefore, the second respondent also has liability for the contravention.

(v) **Failure to make reasonable adjustments: EQA, sections 20 & 21**

15. ***Did the Respondents not know, and could it not reasonably have been expected to know the Claimant was a disabled person?***

A "PCP" is a provision, criterion or practice.

154. Firstly, this claim cannot succeed against the third respondent because the claimant was not disabled for the purposes of s.6 EQA whilst she was engaged by the third respondent. We found above that the claimant was disabled only after May 2022, which is after the claimant's engagement at the third respondent had ended on our findings of fact (above).

16. ***Did the Respondents have the following PCP(s):***

a. ***That employees and contractors needed to be at work/performing their duties to receive full payment of the drawings/other payments to which they would otherwise have been entitled.***

155. We do not find that this PCP was applied by the first or second respondents. This is because for at least the period in January 2022 the claimant was not at work or performing her duties but did receive full payment of the drawings and or other payments she was entitled to. Also, the second limb of the LLP particulars did not seem to be applied in practice on the evidence we heard. In addition, there was evidence of an individual going on jury duty showing that the employer did not have this PCP. Also, the claimant's own evidence included that through any other sickness absences for her or other members the respondents paid a regular salary.

b. ***That employees and contractors needed to perform their full duties, to include meeting deadlines, in order to***

receive full payment of the drawings and other payments to which they would otherwise have been entitled.

156. We do not find that this PCP was in place, as a matter of fact, either. This is because the allegation is not supported by the evidence.
157. In light of these findings it is not necessary to address the other issues in this claim. This claim unsuccessful for the above reasons.

(vi) Direct discrimination because of marital status: EQA, section 13

22. Have the Respondents subjected the Claimant to the following treatment:

Not making prompt payment to her of expenses when the Claimant says that an unmarried individual by the name of Mia received payments promptly on the basis that the Respondents considered that she was more in need of the payment as she did not have a husband who partly financially supported her.

158. The respondent has a calendar entry dated 23 December 2020 with the subject Pay Mia, grace and Jennica, who were all contractors for the third respondent. However, there is a paucity of evidence in support of this allegation. The claimant has only made allegations about Mia, however the evidence suggests that two others were also paid on that date (or were due for payment on that date). We have no clear evidence about their marital status. We accept the responses that the claimant was on a different contractual arrangement than Mia and this is supported by the contractual documents. We find at least at that stage, the claimant's expenses were to be paid on submission of receipts, and we accept the respondent's explanation that any delay at that stage was because the claimant had not yet submitted her receipts. We do not find therefore that any delay was because of the claimant's marital status.

159. We did not find that the alleged marital status preferential payment comment about Mia was made, as a question of fact, for the reasons outlined above.

160. In those circumstances we do not find that the claimant has established the primary facts from which we could find that the respondents contravened the EQA for this allegation.

23. Was that treatment “less favourable treatment”, i.e., did the Respondents treat the Claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The Claimant relies on Mia.

161. In any event, the claimant’s comparison with Mia, does not work. The claimant was in a materially different set of circumstances to Mia because Mia had a different set of contractual arrangements. For those reasons, it was not less favourable treatment.

24. If so, was this because of the Claimant’s marriage status /or because of the protected characteristic of marriage more generally?

162. In any event, if we are wrong about the above, there are no primary facts from which we can infer any less favourable treatment was because of marital status.

163. If we are wrong about the above, we also consider this allegation to be out of time. It relates to payments around December 2021. It’s considerably out of time. No clear explanation was provided by the claimant why the claim was not brought sooner. We find that there was considerable prejudice to the respondents in responding to allegations about what was said with no independent evidence or documentary evidence on that issue. Taking all factors into account, we find that it is not just and equitable to extend time on that allegation.

164. This claim is unsuccessful for all of the above reasons.

(vii) Direct discrimination because of race: EQA, section 13:

The claimant's race is her Ukrainian nationality

25. *Have the Respondents subjected the Claimant to the following treatment:*

Treating her less favourably in relation to the impact of her illness and more generally in respect of her ability to defend her rights as result of her being a foreigner unfamiliar with the local law and the judicial system.

26. *Was that treatment "less favourable treatment", i.e., did the Respondents treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on hypothetical comparators.*

27. *If so, was this because of the Claimant's race and/or because of the protected characteristic of race more generally?*

165. This allegation is expressed extremely broadly but without any specific detail. If we take it to mean the claimant's contractual arrangements with the respondent, including those relating to sick pay, there is no clear comparator. There is also no clear evidence of less favourable treatment at all. We do not in those circumstances find that the alleged less favourable treatment happened.

166. Further, this is an allegation with no named comparator. The claimant says she was unfairly treated, for example, in negotiations of her contracts. We find, however, that to the extent that the claimant was unaware of her legal rights, this had nothing to do with her race and she was not less favourably

treated than others. There is no real identifiable less favourable treatment in our factual findings.

167. In any event, there are no primary facts from which we could infer that her contractual or other arrangements were because of the protected characteristic of race. The contractual arrangements, in so far as the claimant feels she was taken advantage of, would have been the same regardless of the claimant's nationality. The claimant has a good command of English and we have email evidence of her negotiating some terms of her contract. Also, there is some evidence of the claimant being supportive of the claimant when the war in Ukraine started, such as offering time off. This is conduct inconsistent with less favourable treatment because of race/nationality.
168. There is also a lack of evidence from which we could find that the claimant was treated less favourably than any potential comparator in terms the impact of her illness or her ability to defend her rights. For example, the claimant cannot point to another individual who was treated differently from an illness perspective by the respondents, or was engaged in a dispute with the respondent about their employment rights. Even if we seek to construct a hypothetical comparator on the broader sense of the allegation, we struggled to find any evidence from which we could infer that the claimant was treated differently to anyone else on account of her race/nationality.
169. This claim is unsuccessful for all of the above reasons.

(viii) Harassment because of disability or race: s.26 of the Equality Act 2010

28. Did the Respondents engage in conduct as set out in the Claimant's Summary document?

29. If so was that conduct unwanted?

- 30. If so, did it relate to the protected characteristic of disability or race?**
- 31. Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?**
170. These allegations must fail against the third respondent in respect of disability because the claimant was not disabled at a relevant time for the purposes of any claim against the third respondent. Also, the claimant was not engaged by the third respondent during the relevant times of the harassment allegations and there is no evidence that the acts complained of were the third respondent in any event.
171. Unless specified below, we do not find that the claimant has established the primary facts from which a tribunal could find that this contravention occurred, and so the burden of proof did not shift to the respondents.

Allegation 1

172. We do not find allegation 1 proven as a matter of fact. This is because we do not find it is adequately supported by the available evidence, taking into account the oral and written evidence of the witnesses and the documentary position. We consider that there was a genuine disagreement between the parties as to the claimant's entitlement to shares. However, on our reading of the correspondence, this was not an attempt by any respondent to distort reality or an attempt to get the claimant to question reality.
173. This allegation also cannot succeed in respect of disability because the claimant was not disabled at the relevant time.

174. Although this allegation is out of time, we find that it is just and equitable to extend time. The principal evidence is in documentary form and so the modest delay has not caused any prejudice to the respondent. Also, there was an element of this disagreement that was ongoing. We also take into account the claimant's developing mental state at that time in her favour.

Allegation 2

175. This allegation must also fail in relation to disability because the claimant was not disabled at the relevant time.
176. In terms of the facts, the respondents accepted in evidence that the goals were ambitious, but we do not find that the goals set to the claimant were unrealistic. This is because there is nothing unusual about having ambitious 'stretch' goals. It follows that this allegation fails as a question of fact.
177. Although this allegation is not in time, we find that it is just and equitable to extend time for the same reasons as for allegation 1.

Allegation 4

178. We find that this happened as a matter of fact for the reasons outlined above in respect of communications about sick pay and the documentary position. The first and second respondents admitted that it could have communicated better with the claimant. It was also, on its face, unwanted conduct.
179. However, we find that the conduct was not done with any of the relevant purposes for s.26 EQA, ie. with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. This is because there is a distinct lack of evidence from which we could make such a finding. We consider that the actions of the respondent are more consistent with inadequate responses to an employee that they should have known was disabled for the purposes of

the EQA, and a lack of policies and procedures around sick pay, than deliberate actions of harassment.

180. We do not find that this conduct had any of the relevant effects on the claimant, the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment (s.26 EQA). This is because of a lack of evidence that this was the case. The claimant's evidence on the effect of the various allegations of harassment lacked detail and, for example, referred to the result of her overall treatment leading to a feeling of humiliation and great stress as opposed to the effect of specific acts. Also, although the claimant describes it making her mental health condition worse, and we acknowledge that her psychotherapist shared this view, we do not feel that the evidence was sufficient overall to clearly find that the particular conduct in question had the effect required to amount to harassment. This conclusion is informed by the fact that other factors were also clearly affecting the claimant, such as the war in Ukraine. This finding also informed our decisions below as to the effect of other acts.
181. Also, if we are wrong on this finding, then we do not find that such an effect was reasonable. Whilst we accept that the claimant suffered from considerable anxiety following her resignation we do not find it was because of this particular conduct based on all of the evidence. Also, taken objectively (and taking into account the claimant's state of mind), we do not consider that this conduct was such that such an adverse reaction would be reasonable, given its limited nature.

Allegation 5

182. We find that this did happen as a matter of fact in light of our findings above. It was unwanted conduct because we accept the claimant's evidence of this.
183. However, we find that the conduct was not done with any of the relevant purposes for s.26 EQA. This is because there is a distinct lack of evidence from which we could make such a finding.

184. We do not find that this conduct had any of the relevant effects on the claimant (s.26 EQA). This is because of a lack of evidence that this was the case. Whilst we accept that the claimant suffered from considerable anxiety following her resignation, we do not find it was because of this particular conduct. There were clearly a lot of other factors involved, including her mental state more generally.
185. If we are wrong about this, then we do not find that such an effect was reasonable. Whilst we accept that not alerting the claimant to a changes in payment of wages or SSP could result in a negative reaction, we do not consider such a reaction would reasonably reach the threshold to amount to any of the effects in s.26 EQA.
186. Although this allegation is not in time, we find that it is just and equitable to extend time for the same reasons as for allegation 1.

Allegation 6

187. We find that this did happen as a matter of fact. This is clear from the bundle at page 2146. We accept that the claimant was asked to forward her emails, but the message did not specifically ask her to check.
188. We find that this was unwanted conduct because we accept the claimant's evidence of this.
189. We do not find that this had any of the relevant purposes for section 26 EQA. This is because of a lack of evidence from which we could make such a finding.
190. We find that because of the claimant's anxiety, and her evidence about this, the acts of Allegation 6 had the effect of creating a hostile environment and we accept her evidence of this. However, we do not find that this was a reasonable effect because the email was on its face entirely innocuous. We

consider that the claimant misread the purpose and intent behind the email but this was a reflection of her mental state at the time.

191. Although this allegation is not in time, we find that it is just and equitable to extend time for the same reasons as for allegation 1.

Allegation 7

192. We find this proven as a matter of fact. This is because it was not really disputed by the respondents. It was also plainly unwanted conduct, given the claimant's evidence.

193. However, we do not find that this had any of the relevant purposes for section 26 EQA. This is because of a lack of evidence from which we could make such a finding.

194. We find that because of the claimant's anxiety, this conduct did have the effect of creating a hostile environment (only). However, we find that it was not reasonable to have this effect. This is because an employer is perfectly entitled to restrict access rights to software when an employee is off sick, and is arguably obligated to in order to maintain data security for someone not working due to sickness. The effect this had on the claimant was not objectively reasonable in those circumstances, even taking into account her mental state at the time.

Allegation 8

195. We find this proven in light of our factual findings above and the documentary evidence of the communications between the parties.

196. However, we do not find that this had the purpose or effect of creating any of the relevant environments for the purposes of s.26 EQA. This is because of a lack of cogent evidence from which we could make such a finding.

197. Also, if we are wrong about this, we do not find that such an effect would be reasonable. This is because we consider that the June 2022 request for a call was made by the respondent when the claimant's fit note had expired and so on the face of the documents the claimant was fit for work, so entirely reasonable conduct. It was not the respondents' fault that it did not know that the illness was continuing at that stage.
198. Also, if the respondents' use of Whatsapp rather than email did have any such effect on the claimant, this would not be reasonable even taking into account her mental state. Whilst we accept it was not what the claimant preferred, the use of a different text-based messaging system to the claimant's preference is not objectively such that the alleged effect would have been reasonable.

Allegation 9

199. We find this proven as a matter of fact. This was not really disputed by the respondents and is clear from the substantive responses in the email correspondence. We also find that the substance of the respondents responses to the claimant were not what she wanted, given her evidence.
200. However, we do not find that this had the purpose or effect of creating any of the relevant environments for the purposes of s.26 EQA. This is because of a lack of cogent evidence from which we could make such a finding.
201. If we are wrong about this, we do not consider that any such effect on the claimant would have been reasonable. This is because whilst it was no doubt frustrating to the claimant to not have substantive responses to the issues raised, particularly taking into account her mental state at the time, it would not be objectively reasonable for this conduct to have that effect taking into account that the EQA uses strong words to describe the threshold to be met.

Allegation 10

202. We do not find this proven as a matter of fact. This is because we find that the respondent's email dated 28 July 2022 amounted to a response and included an explanation, which must be understood against the first and third respondent's liquidity difficulties around that time. In those circumstances the allegation as made is not proven.

Allegation 11

203. We find this proven as it is effectively accepted by the respondent in so far as there was poor communication and delays in responding. It is also clear from the substance of the emails in the bundle. It was plainly unwanted conduct.
204. However, we do not find that this had the purpose or effect of creating any of the relevant environments for the purposes of s.26 EQA. This is because of a lack of cogent evidence from which we could make such a finding.
205. If we are wrong about this, we do not consider that any such effect on the claimant would have been reasonable. This is because whilst it was no doubt frustrating to the claimant to not have substantive responses to the issues raised, particularly taking into account her mental state at the time, it would not be objectively reasonable for this conduct to have that effect taking into account that the EQA uses strong words to describe the threshold to be met.

Allegation 12

206. We find this proven as it is accepted by the respondents. It was plainly unwanted conduct.

207. However, we do not find that this had the purpose or effect of creating any of the relevant environments for the purposes of s.26 EQA. This is because of a lack of evidence from which we could make such a finding.
208. If we are wrong about this, we do not consider that any such effect on the claimant would have been reasonable. This is because whilst it was no doubt frustrating to the claimant to not have substantive responses to the issues raised, particularly taking into account her mental state at the time, it would not be objectively reasonable for this conduct to have that effect taking into account that the EQA uses strong words to describe the threshold to be met.
209. We also accept the respondent's explanation that this was because of administrative errors.

Allegation 13

210. We find this proven as it is accepted by the respondents in as much as there were admitted delays in payment. It was plainly unwanted conduct.
211. However, we do not find that this had the purpose or effect of creating any of the relevant environments for the purposes of s.26 EQA. This is because of a lack of cogent evidence from which we could make such a finding.
212. If we are wrong about this, we do not consider that any such effect on the claimant would have been reasonable. This is because whilst it was no doubt frustrating to the claimant to have delays, particularly taking into account her mental state at the time, it would not be objectively reasonable for this conduct to have that effect taking into account that the EQA uses strong words to describe the threshold to be met.
213. Also, we accept that this happened because of the first respondent's liquidity issues.

Allegation 14

214. We find this proven as it is accepted by the respondents. It was plainly unwanted conduct.
215. However, we do not find that this had the purpose or effect of creating any of the relevant environments for the purposes of s.26 EQA. This is because of a lack of evidence from which we could make such a finding.
216. If we are wrong about this, we do not consider that any such effect on the claimant would have been reasonable. This is because whilst it was no doubt frustrating to the claimant to not have accurate pay documentation, it would not be objectively reasonable for this conduct to have that effect taking into account that the EQA uses strong words to describe the threshold to be met.
217. Also, we accept that this happened because of an operational oversight.

Allegation 15

218. We find this proven as it is effectively accepted by the respondents. It was plainly unwanted conduct.
219. However, we do not find that this had the purpose or effect of creating any of the relevant environments for the purposes of s.26 EQA. This is because of a lack of cogent evidence from which we could make such a finding.
220. If we are wrong about this, we do not consider that any such effect on the claimant would have been reasonable. This is because whilst it was no doubt frustrating to the claimant to not have substantive responses to the issues raised, particularly taking into account her mental state at the time, it would not be objectively reasonable for this conduct to have that effect taking into account that the EQA uses strong words to describe the threshold to be met.

221. Also, we accept that this happened because of an operational oversight.

Allegation 16

222. We find that this allegation fails as a matter of fact. This is because we find that it was not an offer made in bad faith. This is because of a lack of evidence from which we could make such a finding. Whilst we accept that from the claimant's perception there was the possibility of shares being worthless, this was nonetheless a currency she initially was content, to a degree, to receive as part payment for her services. Also, it is not axiomatic that the shares would be worthless. Also, it is clear that the respondents' resources were limited in the circumstances. It cannot be safely inferred from this that their offer was made in bad faith.

The overall position

223. In the alternative, these allegations fail because we find that none of the conduct had anything to do with race. This is because there are no primary facts from which we could make such a finding.

224. For completeness, we did find however that allegations 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, in the broader sense, did relate to the claimant's disability. This is plain from the circumstances of the allegations.

225. We also stood back and looked at the effect of the entirety of the proven conduct. We accept that, overall, the claimant's perception was of a hostile environment (only). This is supported by the claimant's evidence as to the effect of the treatment, cumulatively, on her. There was no cogent evidence from which we could find it was, overall, done with such a purpose. However, we do not consider that it was reasonable for it to have such an effect, even given the claimant's mental state at the time and that the respondent should have known it was engaging with someone who was s.6 EQA disabled. This is because the conduct as a whole demonstrates an employer which did not always communicate effectively,

or sympathetically. However, this is insufficient to meet the threshold for the relevant s.26 EQA environments to be a reasonable effect given the strong words used in the legislation for it to amount to harassment.

226. This claim is unsuccessful for all the above reasons.

(ix) Victimisation: s.27 of the Equality Act 2010

**32. Did the Claimant do a protected act and/or did the Respondents believe that the Claimant had done or might do a protected act?
The Claimant relies on the following:**

a. In respect of items 5 and 7: the Claimant says that on or around 6th May 2022, she provided a fit note to the Respondents which the Respondents believed was the Claimant gathering evidence to present a complaint against the Respondents regarding discrimination.

b. In respect of items 10 – 16: the Claimant says that the protected act was her grievance submitted to the Respondent on 5th July 2022.

227. A protected act includes making an allegation, whether or not express, that another person has contravened the Equality Act. The claimant's email dated 5 July 2022 clearly makes allegations of discrimination because of mental health issues and the fact that the claimant is not native to the country. We therefore also find that this was a protected act.

228. The May 2022 sick note is not clearly on its face a protected act. It is not an allegation about contravention of the Equality Act 2010 or any of the other potential forms of protected act. The claimant argued that because of the May 2022 sick note, the respondents believed that she may do a protected act (such as file a grievance alleging discrimination contrary to the Equality Act 2010 or bring employment tribunal proceedings for the

same). However, we find that this is purely speculative on the part of the claimant. There is no real detail about this allegation in her evidence. When the claimant was asked about this in evidence, all she relied on was internal communications at the respondent about applying statutory sick pay to her, and that such payment might be 'harsh'. However, none of that is indicative that the respondent believed that she may do a protected act. The respondents denied this as a matter of fact, and no cogent evidence was presented to undermine that. For those reasons, we do not agree that item (a) above was a protected act or was evidence from which we could find that the respondents believed that the claimant had done or might do a protected act.

33. *If so, did the Respondents subject to the Claimant to the detriments as set out in the Claimant's Summary document (items 5 and 7 and 10-16 as applicable)?*

229. We repeat our findings and reasons above in respect of harassment as to whether the detriments were found proven as a matter of fact. Specifically, allegations 5, 7, and 11-15 were found proven as a matter of fact. Allegations 10 and 16 were not found proven as a matter of fact.

34. *If so, was this because the Claimant did a protected act and/or because the Respondents believed the Claimant had done, or might do, a protected act*

230. We find that allegation 5 cannot satisfy this question because it predates the only protected act that we have found to be the case, above. There is also no evidence that the respondents believed the claimants may do a protected act before the resignation. Allegation 7 also cannot be because of any protected act for the same reasons.

231. We do not find that any of the respondent's alleged or proven conduct was because of the protected act, or that the claimant might do a protected act, in any event. This is because there are no primary facts from which we

could infer that any of the detriments were because the claimant did a protected act or because the respondents believed the claimant had done or might do a protected act.

232. This claim is unsuccessful for all the above reasons.

(x) Unpaid annual leave – Working Time Regulations

233. The respondent has already admitted that there was some unpaid holiday that the claimant had accrued but was unpaid on termination of her employment. Liability for this allegation was therefore admitted but the respondent's position was that it had made a correcting payment to the claimant during the course of these proceedings. This was accepted by the claimant. However, the allegation still required a determination because the claimant was seeing interest on that sum and also an uplift under s.207A Trade Union & Labour Relations (Consolidation) Act 1992.

234. This allegation was only against the first respondent, and it could only be this way in any event given it was only the first respondent that engaged the claimant at the relevant time.

235. We consider that the first respondent did unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 and it is just and equitable to increase the amount payable to the claimant by 25% in accordance with s.207A Trade Union & Labour Relations (Consolidation) Act 1992. This is because the evidence clearly demonstrated that the it did not respond meaningfully to the claimant grievance about holiday pay and she was forced to commence tribunal proceedings before it was paid. In those circumstances we decided that a 25% uplift to the remedy was appropriate.

236. For completeness, we considered that this was an allegation that could be considered equally as unpaid wages under s.13 ERA as an alternative to a claim under Working Time Directive and there was no unfairness to the

respondent in it being considered in this way. The only meaningful difference between the two for these purposes is whether an ACAS uplift applies and the claimant was clear from the outset that she sought an ACAS uplift to the remedy in this claim. It follows that this must have been the route under which the claim was made, regardless of any label given to it in the list of issues.

(xi) **Unauthorised deductions**

45. Did the Respondents make unauthorised deductions from the Claimant's wages in accordance with ERA section 13 and if so how much was deducted?

237. We find that the first respondent did make unauthorised deductions from the claimant's wages. This is because we find that the fixed monthly amount in the LLP agreement, namely £40,000 a year pro rata'd on a monthly basis, was an amount that was properly payable to the claimant. We find that this was payable regardless of whether she was off sick or not because of the reasons already outlined above about how the agreement should be interpreted. We are satisfied that in reality, taking into account our finding on employment status, this was actually wages. In addition, we find that the £200 a month originally described as expenses, was by this stage, as effectively admitted by the first respondent, also a wage payment.
238. We therefore find that from 6 May 2022 to 5 July 2022 to the extent that the claimant was not paid (1) £3,333 a month and (2) an additional £200 a month ('expenses') the first respondent made an unlawful deduction of wages. The amount that was deducted is £3,533 less what the claimant was actually by the first respondent each month.
239. The claimant's May 2022 payslip indicates payment of £913.43. It follows that the shortfall for May 2022 was £2,619.57.

240. The claimant's June 2022 payslip indicates payment of £437.14. It follows that the shortfall for June 2022 was £3,095.86.
241. The claimant's July 2022 payslip indicates payment of £461.54. The claimant only worked 2 days of July 2022. For July 2022 there were 21 working days suggesting an effective daily rate of £168.23 (ie. £3533/21). It follows that there were no unlawful deduction from wages for July 2022.
242. The total unlawful deduction from wages under this heading was £5,715.43.
243. We do not find that the first respondent breached the ACAS code Disciplinary and Grievance for this element of the claim. This is because there is no clear element of the code that has been breached in this issue. Also the respondent did not ignore the claimant's complaints in this issue as is evident from the email correspondence compared with how it dealt with the holiday pay grievance. The fact that the claimant disagreed with the respondent's reasoning as to why she was only paid SSP, and that we have found that the claimant was entitled to more than SSP, does not mean that there was a breach in terms of how the claimant's queries were dealt with by the respondent.
244. The second heading of the unlawful deduction from wages claim related to amounts deducted throughout the tax year 2021-2022 in relation to 'hypothetical tax'. The claimant included these in her claim, her schedule of loss, and expressly confirmed during her evidence that this element of her claim was maintained. Some documents about it were also included in her supplementary bundle. For the 2021-2022 the additional amounts deducted were £9,136.32.
245. We find that deductions were purportedly made for the purposes of a hypothetical tax. However, the amounts were held by the first respondent and not ever paid to HMRC on the basis of our factual findings above. We do not find that these deductions were for a statutory purpose because

they were not in fact, or reality, for income tax or national insurance contributions because the first respondent left it to the claimant to make those payments through self-assessment.

246. We do not find that the claimant agreed to those deductions through the LLP agreement. This is because the provisions in the agreement were for these deductions to be made if they genuinely were for tax purposes. In a situation where the first respondent was not making payments to HMRC for income tax, national insurance, or any other taxes for that period (and the claimant was ultimately responsible for self-assessment, this being inherent in self-assessment) the wording in the agreement did not reflect reality of the situation. This is, in part, because the reality of the payments made to the claim were simply wages to an employee and not, in truth, a profit share. In those circumstances any notions of a hypothetical tax and tax on a profit share did not reflect the reality of the situation and were not what was genuinely happening in the claimant's case.

247. Also, in the circumstances as we have found them to be, those deductions were plainly not justified. For those reasons we find that these deductions were made without lawful basis.

248. We do not find that the first respondent breached the ACAS code Disciplinary and Grievance for this element of the claim. This is because there is no clear element of the code that has been breached in this issue. The respondents did ultimately respond to the claimant's complaint about this, even if the claimant and the tribunal disagree with the conclusion.

249. To that extent, the first respondent also made unlawful deductions from the claimant's wages for the tax year 2021-2022, namely £9,136.32.

Liability of other respondents

250. In terms of the successful claims, the only respondents liable are those who are expressly found to be liable as set out above. This is because

there is no basis on our factual findings for the other respondents to be otherwise liable as a matter of law. In particular, the claims for unlawful deduction from wages can only be made against the relevant employer which in this case is the first respondent. The second respondent does not have personal liability in those circumstances because he was not the claimant's employer and he did not make the relevant deductions. The same applies to the holiday pay claim.

251. Although the claimant sought to hold the second respondent liable on very broad grounds, as set out in her written submissions on the second respondent's liability, we did not consider these to be correct as a matter of law, save where we have found the second respondent liable applying ss.109 and 110 EQA as set out above.

Employment Judge Barry Smith
23 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

27 September 2024

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FOR THE TRIBUNAL OFFICE

Appendix A – List of Issues

Additions are undermined.

Employment status

1. Whether the Claimant was an employee or contract worker or partner for the purposes of her relative claims against the Respondents?

Time limits

The Claimant was engaged by the Respondents as a Digital Product/Product Manager from 1 April 2021 until 6 July 2022. The claim form was presented on 12 November 2022. Acas conciliation started on 31 August 2022 and ended on 12 October 2022 against all respondents. Anything that happened on or before 1 June 2022 may be out of time, such as allegations 1, 2, 5, 6 (victimisation/harassment). Other allegations may also be out of time depending on when they happened.

2. Insofar as any of the Claimant's discrimination, harassment or victimisation complaints are found to be out of time, do those claims form part of conduct extending over a period, including at least one well-founded allegation that is in time for the purposes of section 123(3)(a) Equality Act 2010.
3. If not, would it be just and equitable to extend time?

Disability: EQA s.6

4. Was the Claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of anxiety disorder and/or panic attacks against a background of hypothyroidism?

The Claimant says that she started to experience the symptoms of anxiety disorder and/or panic attacks in February and March 2022 and was off work as a result for approximately 2 months. Mr Southgate says that he was aware of the Claimant experiencing anxiety and stress primarily as a result of the situation in Ukraine

The Tribunal will decide:

5. Did the impairment have a substantial adverse effect on their ability to carry out day-to-day activities?
6. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
7. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
8. Were the effects of the impairment long-term? The Tribunal will decide:
 - a. did they last at least 12 months, or were they likely to last at least 12 months?
 - b. if not, were they likely to recur?

Discrimination arising from disability: EQA, section 15

9. Did the respondent treat the claimant unfavourably by:
 - a. not receiving the full monthly drawings for the whole period of her sickness absence and only receiving statutory sick pay;
 - b. loss of income for July to November 2022 as she was struggling through and undergoing therapy;

- c. cutting the claimant's expenses; and
 - d. not communicating with the claimant about starting statutory sick pay
10. Did the following thing(s) arise in consequence of the Claimant's disability?
- a. The claimant was off sick between 6 May 2022 and 5 July 2022.
11. Was the unfavourable treatment because of that?
12. Did the Respondents treat the Claimant unfavourably in any of those ways?
13. If so, have the Respondents shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?
14. Alternatively, have the Respondents shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability?

Failure to make reasonable adjustments: EQA, sections 20 & 21

15. Did the Respondents not know, and could it not reasonably have been expected to know the Claimant was a disabled person?
- A "PCP" is a provision, criterion or practice.
16. Did the Respondents have the following PCP(s):
- a. That employees and contractors needed to be at work/performing their duties to receive full payment of the drawings/other payments to which they would otherwise have been entitled.
 - b. That employees and contractors needed to perform their full duties, to include meeting deadlines, in order to receive full payment of the drawings and other payments to which they would otherwise have been entitled.
17. Did any such PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that she did not receive normal payments?
18. If so, did the Respondents know or could they reasonably have been expected to know the Claimant was likely to be placed at any such disadvantage?
19. If so, were there steps that were not taken that could have been taken by the Respondents to avoid any such disadvantage? The burden of proof does not lie on the Claimant; however it is helpful to know what steps the Claimant alleges should have been taken and they are identified as follows:
- a. discussing with the Claimant what adjustments could be made in relation to the amount of work she was required to undertake
 - b. discussing whether changes could be made to the tasks and deadlines the Claimant was required to perform and meet;
 - c. discussing possible changes to the normal modes of communication to include limiting interaction with "challenging" individuals;
 - d. communicating if statutory sick pay was to be applied to the claimant, including what it is and how it works;
 - e. Informing the claimant of any late payments; and
 - f. Payment of statutory sick pay should have been prioritised to the claimant.

20. If so, would it have been reasonable for the Respondents to have to take those steps at any relevant time?
21. Did the Respondent fail to take those steps?

Direct discrimination because of marital status: EQA, section 13

22. Have the Respondents subjected the Claimant to the following treatment:
 - a. Not making prompt payment to her of expenses when the Claimant says that an unmarried individual by the name of Mia received payments promptly on the basis that the Respondents considered that she was more in need of the payment as she did not have a husband who partly financially supported her.
23. Was that treatment “less favourable treatment”, i.e., did the Respondents treat the Claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The Claimant relies on Mia.
24. If so, was this because of the Claimant’s marriage status /or because of the protected characteristic of marriage more generally?

Direct discrimination because of race: EQA, section 13:

The claimant's race is her Ukrainian nationality

25. Have the Respondents subjected the Claimant to the following treatment:

Treating her less favourably in relation to the impact of her illness and more generally in respect of her ability to defend her rights as result of her being a foreigner unfamiliar with the local law and the judicial system.
26. Was that treatment “less favourable treatment”, i.e., did the Respondents treat the Claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The Claimant relies on hypothetical comparators.
27. If so, was this because of the Claimant’s race and/or because of the protected characteristic of race more generally?

Harassment because of disability or race: s.26 of the Equality Act 2010

28. Did the Respondents engage in conduct as set out in the Claimant’s Summary document?
29. If so was that conduct unwanted?
30. If so, did it relate to the protected characteristic of disability or race?
31. Did the conduct have the purpose or (taking into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Victimisation: s.27 of the Equality Act 2010

32. Did the Claimant do a protected act and/or did the Respondents believe that the Claimant had done or might do a protected act? The Claimant relies on the following:
 - a. In respect of items 5 and 7: the Claimant says that on or around 6th May 2022, she provided a fit note to the Respondents which the Respondents believed was the Claimant gathering evidence to present a complaint against the Respondents regarding discrimination.

- b. In respect of items 10 – 16: the Claimant says that the protected act was her grievance submitted to the Respondent on 5th July 2022.
33. If so, did the Respondents subject to the Claimant to the detriments as set out in the Claimant's Summary document (items 5 and 7 and 10-16 as applicable)?
34. If so, was this because the Claimant did a protected act and/or because the Respondents believed the Claimant had done, or might do, a protected act

Unpaid annual leave – Working Time Regulations

35. When the Claimant's employment came to an end, was s/he paid all the compensation she was entitled to under regulation 14 of the Working Time Regulations 1998?
36. What was the Claimant's leave year?
37. How much of the leave year had elapsed at the effective date of
38. termination?
39. In consequence, how much leave had accrued for the year under
40. regulations 13 and 13A?
41. How much paid leave had the Claimant taken in the year?
42. How many days remain unpaid?
43. What is the relevant net daily rate of pay?
44. How much pay is outstanding to be paid to the Claimant?

Unauthorised deductions

45. Did the Respondents make unauthorised deductions from the Claimant's wages in accordance with ERA section 13 and if so how much was deducted?

Appendix B

No	Allegations	Dates	Type	Individual
1	Dragging on the conversation about shares that I thought I was owed as part of my remuneration (requiring many follow up messages and emails) for 3 months. Moving goal post from "I will look into this" - "I remember the conversation but it wasn't written" – "If there is an email please forward it to me" – "It's mentioned in email chain but it wasn't finalized, we can't redo the past" with the aim to drag the conversation on and distort the reality by making me question the reality.	February – April 2022	Harassment	Oliver Southgate (Director)
2	Setting a new goal post for me to gain shares by setting unrealistic goals of team performance. That email was sent only to me individually following shares conversation and not to the other team members (hence applied different standards for me than existed for other members).	11 April 2022	Harassment	Oliver Southgate (Director)
4	Not explaining SSP application or any company policies when questioned about difference in amounts paid for sick absence in Email chain following my resignation.	July 2022	Harassment	Oliver Southgate (Dir
5	Not alerting about change in wage amount or application of SSP (including rules of its application).	May 2022	Harassment Victimisation	Oliver Southgate (Director), Sulaiman

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6	Requesting me in email chain following my sick leave announcement to check and forward emails for my benefit (“So you can concentrate on your health and	9 May 2022	Harassment	Oliver Southgate (Director)
7	Changing my access rights/restricting my access to internal system (that was one of my core work duties) and not communicating such changes while I was signed off work for mental health issues, leading me to feel more	May – June 2022	Harassment Victimisation	Oliver Southgate (Director) Mia Swailes (team member)
8	Messaging on WhatsApp on multiple occasions during absence due to mental health while I was communicating over emails. Short notice (23 minutes) request for a call without specifying a reason and topics for discussion	06 June, 20 June 2022	Harassment	Oliver Southgate (Director)
9	Ignoring grievances that I raised in my resignation email and not making any effort to investigate or address	July 2022	Harassment	Oliver Southgate
10	Ignoring request about cashing out shares without providing reasons or discussing any opportunities or details for cashing them out in the future in	July 2022	Harassment Victimisation	Oliver Southgate (Director)
11	Ignoring my emails in the chain following my resignation email on regular basis requiring me to reach out to accountant or send multiple follow up emails to get	July 2022	Harassment Victimisation	Oliver Southgate (Director)
12	Paying an amount differing from the one stated in payslip provided for June 2022 on the date of 9 August 2022.	July – August 2022	Harassment Victimisation	Oliver Southgate (Director), Sulaiman Hemat or
13	Withholding July payments, holiday pay during August 2022 payout (9 August 2022).	July – August 2022	Harassment Victimisation	Oliver Southgate (Director), Sulaiman Hemat or
14	Backdating payslips for June and July 2022 to make them look like they were created and paid in time, where they were created on different date and not paid as stated.	June – October 2022	Harassment Victimisation	Oliver Southgate (Director), Sulaiman Hemat or
15	Ignoring my queries about the payslips and reasons why they are backdated and not providing realistic dates when	July – October 2022	Harassment Victimisation	Oliver Southgate (Director)
16	Offering to pay amounts due just in shares while knowing that shares real value is 0 and that business had no intention of buying back from me. The offer was made in bad faith as I wouldn't be able to pay for anything (including food and bills) with these shares. While the wages should have been paid in cash and other members were paid in cash for the same periods I was offered no real choice but either to accept shares or not	October – December 2022	Harassment Victimisation	Oliver Southgate (Director)