



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Irshad

**Respondent:** 1. MAN Commercial Protection limited  
2. Mr J Wilson  
3. Mr A Bryce

**Heard at:** Leeds      **On:** 11 and 12 May 2017  
7 June 2017 (deliberations in chambers)

**Before:** Employment Judge Cox

**Members:** Ms L Fawcett  
Mr G Corbett

**Representation:**

**Claimant:** In person

**Respondent:** Miss M Lloyd, counsel

## RESERVED JUDGMENT

1. The claim against the Third Respondent is dismissed, having been withdrawn by the Claimant.
2. The claim of sex discrimination is struck out, the Claimant having failed to pay a deposit.
3. The claim of breach of contract is dismissed, having been withdrawn by the Claimant.
4. The claims of direct discrimination because of race and harassment related to race fail and are dismissed.

## REASONS

1. On 9 October 2016 Mr Irshad presented a claim to the Tribunal alleging

race discrimination and sex discrimination and that he was owed “other payments”. At a Preliminary Hearing on 16 January 2017, an Employment Judge clarified the nature of his claim with him, including identifying that he wished to allege breach of contract. The Judge ordered him to pay a deposit as a precondition of continuing with his allegations of sex discrimination. At the Preliminary Hearing, Mr Irshad withdrew his claim against Mr Andy Bryce.

2. At the main Hearing, the Tribunal dismissed the claim against Mr Bryce, with Mr Irshad’s consent. It also dismissed the breach of contract claim, Mr Irshad having confirmed that he did not pursue that allegation. Mr Irshad had not paid the deposit in relation to his allegations of sex discrimination and so the Tribunal confirmed that that aspect of his claim was struck out (pursuant to Rule 39(4) of the Tribunal’s Rules of Procedure).
3. In discussions with Mr Irshad during the course of the main Hearing, the Tribunal further clarified his allegations and agreed a finalised list with him. During the course of those discussions, Mr Irshad raised the issue of religious discrimination, in response to which the Tribunal noted that no allegation of religious discrimination was contained in his claim form. At the end of the first morning of the Hearing, Mr Irshad applied for leave to amend his claim to include an allegation of victimisation (under Section 39(4) of the Equality Act 2010 – the EqA). That application was opposed by the Respondents, and refused by the Tribunal. The Tribunal had already spent a considerable amount of time at a Preliminary Hearing assisting Mr Irshad to articulate his claim, and it would not have been fair or just to expect the Respondents to answer a new allegation raised for the first time when the Hearing had already begun.
4. At the Hearing, the Tribunal heard oral evidence from Mr Irshad himself. On behalf of the Respondents, it heard evidence from: Mrs Traci McCallister, the Company Secretary of the First Respondent (“the Company”), who has responsibility for personnel issues; Mr James Wilson, the Second Respondent, who is an Operational Support Manager and was Mr Irshad’s line manager during his employment with the Company; Mrs Laura McCarthy, the Company’s Office Manager; Ms Tracey Bell, who currently works for the Company as a security guard; and Mr Sajid Hussain, who worked for the Company as a security guard from 2008 to 2015.
5. On the basis of that oral evidence and the documents in the Hearing bundle, the Tribunal made the following findings on the background facts and reached the following conclusions on Mr Irshad’s allegations.

## **Background**

6. The Company is a family-run business that provides security guards to a range of clients across the country. The owner of the business is Mr McCallister, Mrs Traci McAllister’s husband. The Company’s headquarters are in Solihull, where its management and administrative staff and Control Room are based. Around 15 staff work at the headquarters.

7. The Control Room is a busy office. Control Room staff not only co-ordinate the posting of guards to different sites but also deal with alarm calls and activations and calls from staff registering their arrival at and departure from work and requesting changes to their rotas. The Company employs around 1,000 security staff overall, so the Control Room handles a large volume of calls. It operates 24 hours a day. The Company has a high rate of turnover amongst security staff, and takes on around 25 to 30 new security staff each month. It is common for those who have been offered a job not to turn up on their first day of work. A large number of the Company's security staff are of ethnic minority origin.
8. In the period leading up to the incidents that led to this claim, Mr Andy Bryce (originally the Third Respondent), one of the Company's Contract Managers, was seriously ill with cancer. Because of his illness, he was unable to fulfil all of his normal job duties, which involved managing all the sites that the Company was responsible for north of Birmingham. Mr Wilson had recently been recruited to be his deputy. Because of Mr Bryce's illness, Mr Wilson had had to take on some of Mr Bryce's responsibilities as well as his own, at a time when he was also having to familiarize himself with his new employer's way of working. Mr Wilson was therefore dealing with a substantial workload and was experiencing a high degree of stress as a result.
9. The Company had contractual arrangements with employment agencies to supply security staff if none of its own employees is available to cover an assignment. The Company aims to restrict its use of agency staff, because agency staff are a more expensive way of fulfilling its contractual obligations than utilising its own employees. At this time, Mr Bryce had identified that the Company was using too many agency staff to cover the security requirements of its client Selco at Selco's Bradford and Leeds Stores. He had therefore instructed Mrs McCarthy to place advertisements on a recruitment website for a security guard in Leeds and a security guard in Bradford, with the aim of having three employees to cover the two sites. These were the advertisements to which Mr Irshad responded.

### **The allegations and issues**

10. Mr Irshad is of Asian ethnic origin. He is originally of Pakistani nationality but became a dual national of Pakistan and the UK on 14 July 2016. He made ten allegations that he had been less favourably treated than others were or would have been treated because of his nationality and/or ethnic origin (contrary to Section 39(2)(c) and (d) read with Section 13 EqA). He also alleged that allegations 1, 6 and 7 below amounted in the alternative to harassment related to his nationality and/or ethnic origin (contrary to Section 40(1)(a) read with Section 26 EqA).
11. When a Claimant alleges that he has been the subject of direct discrimination because of his own nationality or ethnic origin, the issue for the Tribunal is whether the employer has, because of the Claimant's race, treated him less favourably than it treats or would treat an individual of a different nationality or ethnic origin in the same or not materially different circumstances (Section 13 and 23(1) EqA).

12. Where a Claimant alleges harassment, the issue for the Tribunal is whether the Claimant has been subjected to unwanted conduct that is related to race and that has the purpose or effect of creating a hostile or humiliating environment for the Claimant (Section 26 EqA).

**Allegation 1: On 6 June 2016 at Mr Irshad's job interview, Mr Wilson said about another applicant: "he doesn't look any good because he has a long surname".**

13. There was a preliminary issue in relation to this allegation. A claim of discrimination cannot be presented to the Tribunal after the end of the period of 3 months starting with the date of the act to which the claim relates, or such other period as the Tribunal thinks just and equitable (Section 123(1) EqA). For these purposes, conduct extending over a period is treated as done at the end of the period (section 123(3) EqA). (There are statutory provisions that extend the time limit to allow for a period of early conciliation through ACAS, but these did not apply in Mr Irshad's case as he did not contact ACAS until after the time limit in relation to this allegation had already expired.)
14. As will be apparent from the Tribunal's findings on Mr Irshad's other allegations set out below, it did not accept that Mr Wilson's conduct at Mr Irshad's interview was part of conduct extending over a period. This allegation should therefore have been presented to the Tribunal by 5 September 2016 but was not presented until 9 October 2016. When invited to put forward any circumstances he wanted the Tribunal to take into account in relation to the timing of his claim, Mr Irshad said only that he had raised the comments Mr Wilson made at the interview in a grievance he presented to the Company on 20 July 2016 and was expecting it to be dealt with in the course of the grievance process. Mr Irshad resigned from the Company on 16 September 2016. The Tribunal does not accept that he could still have had any reasonable expectation that the Company would resolve any complaint about the interview after this time, but he did not present his claim for a further three weeks.
15. It is the exception rather than the rule that a Tribunal will extend time for a claim and it is for the Claimant to persuade the Tribunal that it would be just and equitable to do so. In the absence of any good reason for the delay in the presentation of the claim beyond 16 September 2016, the Tribunal concluded that it had no jurisdiction (that is, no power) to hear this allegation.
16. The Tribunal nevertheless made the following findings in relation to this allegation in deciding whether it formed part of conduct extending over a period.
17. Mr Wilson conducted Mr Irshad's recruitment interview on 6 June 2016. Towards the beginning of the interview, Mr Wilson apologised to Mr Irshad for mispronouncing his first name. He also said that he had another candidate to interview whose surname he would struggle to pronounce correctly. The Tribunal accepted Mr Wilson's clear and convincing

evidence that his intention in making these comments was to put Mr Irshad at his ease. Mr Wilson has experience of interviewing job applicants with foreign surnames. He is not hostile towards them if the name is unfamiliar to him; rather, he takes care to check pronunciation of any name he is unsure of with the candidate, out of respect for him or her.

18. In evidence, Mr Irshad said that Mr Wilson had then gone on to say he was expecting to interview a candidate who didn't look any good because, looking at his CV, he had a long surname. This, Mr Irshad alleged, indicated that Mr Wilson thought the other candidate would not be any good because he was foreign. The Tribunal did not find this evidence credible. Mr Wilson's unchallenged evidence was that he considered Mr Irshad a good candidate for the post, not least because Mr Irshad had 10 years' previous experience and qualifications in the security industry and Mr Wilson was keen to recruit him. It is very unlikely that Mr Wilson would have said that the other candidate's capabilities were in doubt because his name was difficult to pronounce, since that would have been very likely to alienate Mr Irshad, whose name he had already mispronounced. Both Mr Irshad and Mr Wilson confirmed in their evidence to the Tribunal that they considered at the time that the interview went well. If Mr Wilson had made disparaging comments about another candidate by reference to his foreign-sounding name, it is unlikely that Mr Irshad would have felt that way.
19. In summary, the Tribunal did not accept that Mr Wilson made the alleged disparaging comment about the other candidate, or indeed that he treated Mr Irshad in any way unfavourably because of his race at the job interview. These allegations of direct discrimination because of race and harassment related to race would therefore have failed, even if the Tribunal had had jurisdiction to deal with them on their merits.

**Allegation 2: Mr Wilson decided to withdraw an offer of a job at Selco Leeds, which had been due to start 6 July 2016. The job was given instead to Tracey Bell. This decision was communicated to Mr Irshad in an email from Harmony Arkinson on 11 July 2016.**

20. The Tribunal accepts that Mr Wilson initially offered Mr Irshad a job with the Company during the course of the interview on 6 June, on the understanding that he would be based, initially at least, at the Selco store in Leeds and that he would be allocated around 48 hours' work a week. As Mr Irshad accepted in his evidence, however, the Company required employees to be flexible in their place of work and Mr Irshad confirmed at his interview that he would be prepared to work at Selco Bradford if that was necessary to meet the client's requirements. He accepted the job offer on that basis.
21. On 14 June 2016, the Company wrote to Mr Irshad confirming its offer of employment. The first day of his employment was to be a training shift on 6 July at Selco's store in Leeds. The Control Room contacted him with their telephone number, confirmed his start date with him and told that if he had any issues with shifts, he should contact them.

22. On 27 June Mr Irshad replied to the job offer by sending an email to Harmony Arkinson, the Office Administrator, thanking the Company for the job offer but saying that he would not be able to start on 6 July and asking to start on 8 July. Mr Irshad is a Muslim and he would be celebrating Eid on 6 or 7 July, although he did not mention this in his email. He also said in his email he would be attending a Citizenship Ceremony on 14 July so, if his proposed shift pattern covered that day, he would need that day off work. The Tribunal accepts that Mr Irshad had raised the possibility that he might need to change his start date at his interview with Mr Wilson, and Mr Wilson had said that if he needed to change it he should let the Company know and they would sort something out. Although the reason Mr Irshad thought he might need to change his start date was because Eid might fall on 6 July, the Tribunal does not accept that he told Mr Wilson this at the interview.
23. On the basis of the screen shots and copy emails in the Hearing bundle and what Ms Arkinson later told Mrs McCallister, the Tribunal finds that Ms Arkinson forwarded Mr Irshad's email to the Company's Control Room on the day she received it. She was then on holiday from 28 June to 11 July.
24. Ms Bell is white. The Tribunal was not told her nationality, but it proceeded on the assumption that she is British. Ms Bell had worked for the Company before. On or around 6 June, she telephoned Mr Bryce to find out whether the Company had any work available. Mr Bryce told her that there were some jobs going within Selco in Leeds and Bradford. She had worked at both those places when she worked for the Company previously. A couple of days later, Mr Bryce telephoned her and offered her shifts at Selco Leeds. Mr Bryce told Mr Wilson to re-activate Ms Bell's employment. On around 10 June Mr Wilson told the Control Room that Ms Bell was available to be offered work. The Control Room told her to attend a training day at Leeds Selco on 20 June 2016 and then continued to allocate her work at that site. She was working there on 6 July, the date Mr Irshad had been due to start work.
25. When Mr Irshad did not receive a response to his email of 27 June, he tried to contact Mr Wilson but did not manage to speak to him. On one occasion Mr Wilson answered Mr Irshad's call but he was driving at the time and the line was poor so he could not identify who was calling. On another occasion, Mr Wilson did not answer the call because Mr Irshad was calling from a withheld number and Mr Wilson had had a number of calls from market research organisations and suspected this might be another of those.
26. On 4 or 5 July Mr Irshad spoke to the Control Room, who told him that he had not been put onto the Company's administration system for 6 July. There was no direct evidence before the Tribunal on the reason why Mr Irshad was not on the system for 6 July, but the Tribunal found it more likely than not that it was because the Control Room had acted on Mr Irshad's email, forwarded by Ms Arkinson, to the extent that it had registered that he was not available for work on his scheduled start date, albeit that nobody then contacted Mr Irshad to confirm with him when he could start work.

27. Mr Irshad did not report for work at the Leeds Selco store on 6 July because he was celebrating Eid. The Company's Control Room had allocated shifts at the Leeds store to Ms Bell, including 6 July. It was unclear from the evidence presented to the Tribunal whether these were the same shifts that the Company had originally planned to allocate to Mr Irshad, but the Tribunal accepted that they might have been.
28. More importantly, however, the Tribunal accepted Mr Wilson's evidence that he played no part in the decisions to re-employ Ms Bell and allocate her the work at the Leeds store. Those decisions were taken by Mr Bryce and the Control Room staff. Mr Irshad did not allege that Mr Bryce had acted in a discriminatory way. Mr Wilson had never met Ms Bell, and arranged for her to be put back on the Company's system because Mr Bryce instructed him to. Equally, the Tribunal was satisfied that Mr Wilson never withdrew the job offer he had made to Mr Irshad. On 6 July, the Control Room told Mr Wilson that Mr Irshad had not turned up for work, and Mr Wilson was disappointed but not unduly surprised, since it was not uncommon for individuals who had been made an offer of employment not to turn up on the day they were due to start work. From Mr Wilson's perspective, Mr Irshad had failed to follow through on his acceptance of the Company's offer of employment. It was not until 8 July that Mr Wilson became aware of the existence of Mr Irshad's email of 27 June saying he would be unavailable to start work on 6 July.
29. The Tribunal also considered it inherently unlikely that Mr Wilson, who had offered Mr Irshad a job with full knowledge of his ethnic origin would, less than a month later, decide to withdraw it because of Mr Irshad's ethnic origin. It was also inherently unlikely that Mr Wilson would make an offer of employment but then withdraw it because of Mr Irshad's nationality, when it was part of the Company's standard operating practice to make offers of employment subject to confirmation of the individual's right to work in the UK, which will always depend in large part on the individual's nationality,
30. The Tribunal therefore dismissed this allegation of direct discrimination because of race.

**Allegation 3: Mr Wilson caused Ms Arkinson's email of 11 July 2016 to include a false statement that the vacancy at Leeds had had to be filled urgently.**

31. Mr Irshad finally succeeded in speaking to Mr Wilson on Friday 6 July and complained that he had emailed the Company to explain that he was not available to start work on 6 July but had had no response. On returning to the office that day, Mr Wilson told Mrs McCarthy that Mr Irshad had said he had sent an email to Ms Arkinson. Ms Arkinson was on holiday at the time, but Mrs McCarthy accessed her emails and found the one that had been sent by Mr Irshad. She decided to speak to Mrs McCallister about the matter at the first available opportunity. Mr Wilson then spoke to an individual in the Control Room, who told Mr Wilson that Mr Irshad had telephoned a few days back but the individual was busy and had forgotten

to mention this to Mr Wilson.

32. When Ms Arkinson returned to work on Monday 11 July, she spoke to Mr Irshad on the telephone and then sent an email as follows:

*“Further to our phone call this afternoon. I have attached a screenshot of the email you have sent to me on the 27<sup>th</sup>. I passed the message on to control and as far as I was aware it was being dealt with. However that doesn’t seem to be the case. As you could not start on the selected dates the 6<sup>th</sup> and 7<sup>th</sup> July, also telling us you could not do the 14<sup>th</sup> as well. This was no use to us as the guard was needed urgently. We had to fill the vacancy fast as we can’t leave a site down by a guard you need to understand that. I do apologise for no one getting in contact with you about this but it was out of my hands.*

*As mentioned on the phone your cv and pack have been put aside for the next vacancy and we have made you a priority over other guards who apply.”*

33. At some point later that week, Mrs McCarthy spoke to Mrs McCallister about the fact that the Company had not acted on Mr Irshad’s email but he still wanted to work for the Company. Ms Arkinson overheard this conversation and said that she had replied to Mr Irshad. Mrs McCallister and Mrs McCarthy looked at Ms Arkinson’s email and realised that it was not accurate. Mrs McCallister decided to speak to Mr Irshad straight away and so telephoned him at once. When he confirmed that he still wanted to work for the Company, she issued instruction that he should be allocated shifts.
34. The Tribunal accepts Mr Wilson’s evidence that he, like Mrs McCallister and Mrs McCarthy, knew nothing about Ms Arkinson’s email until after it had been sent. Mr Irshad did not allege that Ms Arkinson discriminated against him because of his race. This allegation of direct discrimination because of race failed.

**Allegation 4: During a telephone conversation on 15 July 2016 Mr Wilson offered Mr Irshad a job on less favourable terms than the original job offer, involving 40 rather than 48 hours work a week, and based at Selco Bradford rather than Selco Leeds.**

35. Mr Wilson, like Mrs McCallister, was concerned at the Company’s error in not acting on Mr Irshad’s email explaining that he could not start work on 6 July. In accordance with instructions he received from Mrs McCallister or Mr Bryce, he offered Mr Irshad the next available vacancy. This was a job to be based, initially at least, at the Selco Bradford store, on 43 hours a week. He made that offer to Mr Irshad during a telephone conversation on 15 July.
36. The Tribunal accepts that Mr Irshad viewed this offer as less favourable than the initial offer the Company had made, as Bradford was slightly less convenient for him than Leeds and there were fewer hours’ work on offer.



There was no evidence, however, that the terms of Mr Wilson's offer were affected in any way by Mr Irshad's race. He was simply offering Mr Irshad the next available vacancy, which happened to be at Selco Bradford. The lower number of hours available was due to the client's requirements at the Bradford store.

37. This allegation of direct discrimination because of race therefore failed.

**Allegation 5: Mr Wilson omitted to make this offer of employment until Mr Irshad became a British national on 14 July 2016.**

38. Mr Irshad alleged that Mr Wilson made this second offer of employment only once he knew that Mr Irshad had been granted British nationality.
39. The Tribunal accepts that, by the time he made the offer of employment at Selco Bradford, Mr Wilson had seen Mr Irshad's email of 27 June, so he knew he was attending a Citizenship Ceremony on 14 July. There was no evidence before the Tribunal, however, to indicate that the timing of Mr Wilson's offer to the Bradford job was in any way affected by Mr Irshad's nationality. He made the offer of work in Bradford at the time he did because he had received management instructions to make the offer, in order to make good the Company's earlier mistake.
40. The allegation of direct discrimination because of race therefore failed.

**Allegation 6: Between 14 and 31 July 2016 Sean and Chris, two employees working in the Company's Control Room, threatened Mr Irshad that if he did not do as he was told and stop complaining and accept the shifts he was given he would be sacked.**

41. The only detail of this allegation given by Mr Irshad in his witness statement was that Mr Wilson had changed his shift patterns and timings and when he had advised that he could not change his timings "2 individuals at the control room during phone conversations bullied, belittled and threatened me with my job security".
42. From reading Mr Irshad's later emails, the Tribunal concludes that this allegation relates wholly or mainly to two conversations that Mr Irshad had with Sean and Chris, two employees working in the Control Room. The first was with Sean on the evening of Thursday 21 July and the second was with Chris on the morning of Friday 22 July. Mr Irshad covertly recorded the conversation with Chris. The Tribunal listened to that recording as well as reading the agreed transcript of it.
43. The background to these conversations was that Mr Wilson had told Mr Irshad that he would be working at Selco Bradford on Monday 18, Wednesday 20, Thursday 21, Friday 22 and Saturday 23 July between 11:15am and 8:15pm.
44. On the afternoon of 21 July, Sean telephoned Mr Wilson to let him know that there was a problem covering the 6am to 8pm shift at Selco Leeds the

following day. Mr Wilson understood from Chris that Mr Irshad was working at Selco Bradford from 11am to 8pm on 22 July, so he told Sean to contact Mr Irshad and ask him to go to work in Leeds rather than Bradford, but with a start time of 11am. The Tribunal accepted Mr Wilson's clear and unequivocal evidence that he would not expect an employee to change the time of their shift without 24 hours' notice.

45. For reasons that are unclear, Sean did not appear to register the part Mr Wilson's instruction that related to keeping Mr Irshad's start time as 11am. On the evening of Thursday 21 July, Sean telephoned Mr Irshad and told him that Mr Wilson wanted him to work at Selco's Leeds store the following day from 6am to 8pm. Mr Irshad had arranged with Mrs McCallister to have a telephone conversation with her at 10am on 22 July about a grievance he had submitted and so he told Sean that he could not do that shift. Sean responded that Mr Irshad should take this up with Mr Wilson. He said that Mr Wilson was Mr Irshad's manager and if he had put Mr Irshad on this shift and he didn't turn up, Mr Irshad would know what the consequences would be. At around 10:30pm Mr Irshad texted Mr Wilson to make clear that he could not work the proposed shift in Leeds the following day. Because this text was sent late in the evening, Mr Wilson did not read it until the following morning.
46. Early the following morning, Chris told Mr Wilson that Mr Irshad had not turned up for work. Mr Wilson assumed that Mr Irshad had agreed a 6am start, and told Chris to telephone him and find out why he was not at work. Chris telephoned Mr Irshad and clarified with him that the only issue he had with working the Leeds shift was the timing of it, and Chris asked him why he hadn't called the Control Room to explain that, rather than texting his Manager to say he couldn't do the shift. Mr Irshad explained that he had had some important things planned for the following day and that there was a big difference between a 6am start time and an 11am start time. Chris's response was: "I can understand that".
47. Mr Irshad told Chris that Sean had told him that there would be consequences if he did not agree to do the shift, but how, he asked Chris, could there be consequences if he had not agreed to do the shift? Chris's response was "well for starters, you are on your induction period and so they can terminate at any point without a reason while you are on your induction period". Chris then discussed with Mr Irshad whether he could do any part of the Leeds shift and eventually agreed with Mr Irshad that he would work the shift from 11am.
48. When Mr Wilson saw the text that Mr Irshad had sent him the previous night he realised that Mr Irshad had not agreed the earlier start. At around 7am Mr Wilson went into the Control Room and asked what was going on and that there was no reason to push Mr Irshad to make a 6am start. Chris apologised and said he did not realise that Mr Irshad had not agreed to the early start.
49. The Tribunal accepts that both Sean and Chris made clear to Mr Irshad that he needed to do the shift that they thought he had been allocated or his employment would be at risk. He was still in his induction period and the Company would be free to dismiss him if he did not follow

management instructions. This message was blunt and to the point, but understandably so when they were trying to get an employee to carry out a shift that they understood he had been allocated by his Manager. The Tribunal accepts that Mr Irshad had never in fact agreed to work the early shift at the Leeds site but these employees were not proceeding on that basis. Having heard the recording of Mr Irshad's conversation with Chris, the Tribunal does not accept that he was acting in a threatening way. He was trying to clarify with Mr Irshad what his problem was with the Leeds shift. Once he realised that the issue was that it involved an early start that Mr Irshad had not agreed to and could not accommodate because of other important plans, he acknowledged Mr Irshad's difficulty and went on to reach an agreed solution with Mr Irshad.

50. There was no evidence before the Tribunal that either Sean or Chris would have acted differently towards an employee of a different ethnic origin or nationality who they understood to be refusing to do a shift that had been allocated to them by a Manager. Although the Tribunal accepted that Sean and Chris's comments were unwanted and had the effect of creating a hostile and humiliating environment for Mr Irshad, there was no evidence that they related in any way to his race. The allegations of direct discrimination because of race and harassment related to race therefore both failed.

**Allegation 7: Mrs McCallister failed to deal with Mr Irshad's grievances within a reasonable time or treat them seriously.**

51. Mr Irshad sent the Company various emails complaining about the way in which he had been treated. On 20 July 2016 he sent an email to Mrs McCallister complaining about the withdrawal of his job offer. On 21 July he sent another email complaining about the change to his shift without his consent and the bullying behaviour to which he had been subjected by Sean. On 22 July he sent a third email complaining about the bullying behaviour of Chris. On 28 July he sent a fourth email, largely repeating existing allegations but also complaining about other matters, including the Company's failure to supply him with a written contract of employment. On 5 August he sent an email complaining about an unlawful deduction from his wages for July.
52. Mrs McCallister has no formal training in human resource management. Her primary responsibilities appear to relate to the administration of the Company's payroll, which takes up most of her time in the first and last weeks of the month.
53. When Mrs McCallister received Mr Irshad's first email on 20 July, she replied the same day to acknowledge receipt of his grievance and to assure him that the Company would address it "very seriously". She asked him whether it would be possible to speak to him on the telephone and they arranged that she would call him between 9am and 10am that Friday, 22 July. Mrs McCallister's preferred way of operating is to sort out any issues raised by employees directly and informally if possible. It became apparent during her telephone call with Mr Irshad on 22 July, however,

that it was not possible to sort out his complaint immediately and that a formal meeting would be necessary.

54. Meanwhile, Mrs McCallister had forwarded Mr Irshad's email to Mr Wilson for his comments, and he provided these in an email on 21 July. In this email, Mr Wilson stated that he had made the decision to withdraw the Leeds job offer from Mrs Irshad, but the Tribunal accepted his evidence that he in fact had no authority to revoke a job offer and he had not done so; his responsibilities were limited to recruitment and performance management of staff. He was accepting responsibility for Mr Irshad having missed out on the Leeds job because he did not want Mr Arkinson, who is a young employee, to get into trouble for sending her email of 11 July to Mr Irshad without referring to him. In summary, Mr Wilson's email to Mrs McCallister stated that Ms Bell had ended up working in Leeds because Mr Irshad had not reported for work on the due date.
55. After discussing Mr Irshad's first grievance with him on the telephone and obtaining Mr Wilson's comments on it, Mrs McCallister did not follow up with any form of formal investigation. The overall impression the Tribunal gained from her evidence was that she felt exasperated that Mr Irshad continued to send in emails with further complaints. This exasperation was reflected in her description in her evidence of Mr Irshad's grievance of 20 July as "incoherent and rambling". In the Tribunal's view, the grievance was not incoherent, although it could have been expressed more succinctly. Mrs McCallister was involved in the July payroll process from the end of July until around 7 August. She nevertheless responded on the same day to Mr Irshad's grievance of 5 August about his July pay and resolved this with him.
56. Mrs McCallister was then on annual leave from 12 to 28 August. On 3 August, Mrs McCarthy sent Mr Irshad a letter inviting him to a grievance hearing with Mrs McCallister on 31 August, immediately after her return to work. In the event, Mrs McCallister had a backlog of issues to deal with on her return from her holiday and contacted Mr Irshad on 30 August to rearrange the meeting to 10 October. In her letter confirming the new date, she apologised to Mr Irshad for the inconvenience. The meeting never took place because on 16 September Mr Irshad resigned.
57. The Tribunal accepts that the Company did not resolve Mr Irshad's grievances within a reasonable time. The first of his complaints was made on 20 July and it was not reasonable to delay holding the first formal meeting to discuss this until 10 October, over 7 weeks later. The Tribunal also accepts that the Company had not formally investigated Mr Irshad's complaints by the time he resigned, beyond asking for Mr Wilson's comments. Mrs McCallister's evidence was that, by the time of the formal grievance meeting, she would have collated the information she had gathered into some sort of report, but the Tribunal is unconvinced by this evidence, given her admitted preference for dealing with issues on a direct and informal basis. She did not, however, dismiss Mr Irshad's grievances out of hand and was intending to discuss them further with him, albeit in an unstructured way. The Tribunal did not accept that she was not treating his grievances seriously.

58. Whilst Mrs McCallister could certainly have dealt with Mr Irshad's grievances more effectively, there was no evidence before the Tribunal to indicate that Mrs McCallister's attitude towards Mr Irshad's grievance and the way in which she dealt with it was in any way affected by or related to his ethnic origin or nationality. All the indications were that she would have adopted the same approach with a grievance from any Company employee, whatever their ethnic origin or nationality. These allegations of direct discrimination because of race and harassment related to race therefore failed.

**Allegation 8: Mr Wilson instructed Mr Irshad to carry out a full shift on 23 July 2016 but when he reported to work no work was made available for him.**

59. The Tribunal accepted Mr Wilson's evidence in relation to this allegation, which it found clear and credible. Mr Wilson had identified that an agency worker was due to be working the 23 July shift at Selco Bradford. As part of the Company's general effort to reduce the use of agency staff, he asked the Control Room to put Mr Irshad on that shift instead. The Control Room staff should then have contacted the agency by email to let it know that its worker was not required. Either the Control Room never sent the necessary email or the agency did not act on an email that was sent, because an agency worker turned up for work on 23 July.
60. The Company is required to give an agency 12 hours' notice if it wants to cancel the supply of an agency worker. If an agency worker is supplied, the agency bills the Company for the worker's services and the Company passes this cost onto the client. The Company's standard operating procedure is therefore to "stand down" its own employee in the event of a duplication of staffing. The reason why Mr Irshad was told that no work was available for him when he turned up on 23 July was that either the Company or the agency had failed to follow through on Mr Wilson's instruction to cancel the supply of the agency worker and the agency worker was therefore to work the shift. There was no evidence before the Tribunal to indicate that the actions of anyone involved in this process were because of Mr Irshad's nationality or ethnic origin or affected by them in any way.
61. This allegation of direct discrimination because of race therefore failed.

**Allegation 9: Mrs McCallister and Mr Wilson failed to provide Mr Irshad with a statement of his main terms and conditions of employment, despite frequent requests made by him.**

62. The Tribunal accepted that Mr Irshad had raised with Mr Wilson and Mrs McCallister on more than one occasion that he had not received a contract of employment. Mr Wilson told Mr Irshad to take this up with HR.
63. The Tribunal accepted Mrs McCarthy's clear and unequivocal evidence that it was part of her duties as Office Manager to send out written

contracts to new employees. As the Company has 25 to 30 new employees due to begin work with it each month and many either do not turn up or do not stay long, the Company's practice is not to send out contracts until around 28 days after the employee starts work. (This practice also complies with the employment protection legislation: an employee has a right to a written statement of their main terms and conditions of employment under Section 1 of the Employment Rights Act 1996 (ERA) only if employed for one month or more: Section 198 ERA.) In line with this practice, Mrs McCarthy sent Mr Irshad a written contract of employment on 8 August 2016, by ordinary post.

64. The Tribunal accepted Mr Irshad's evidence that he did not receive the document Mrs McCarthy sent him. It also accepted Mrs McCallister's evidence that she assumed that Mr Irshad had received his contract because he made no further complaint about not receiving it after the date it was sent out on 8 August.
65. There was no evidence before the Tribunal to indicate that either Mrs McCallister or Mr Wilson had any input into whether, when and how Mr Irshad's statement of terms and conditions should be issued. It was Mrs McCarthy's responsibility to deal with this, and there was no evidence before the Tribunal to indicate that she did anything other than follow her usual practice for newly-recruited employees, whatever their nationality or ethnic origin.
66. This allegation of direct discrimination because of race therefore failed.

**Allegation 10: On 16 September 2016, Mr Irshad resigned from his employment in response to the Company's breach of the implied term of mutual trust and confidence, and in particular because it had failed to deal with his grievance and failed to provide a written statement of terms and conditions**

67. Mr Irshad resigned from the Company on 16 September 2016. He alleged that he was constructively dismissed, in that the reason for his resignation was the Company's breach of the implied term in his contract of employment that it would not, without reasonable and proper cause, act in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and Mr Irshad.
68. The Tribunal did not accept that, at the date of Mr Irshad's resignation, the Company was in breach of the implied term of mutual trust and confidence. In particular, the Company had sent out Mr Irshad's terms and conditions of employment, even if he had received them. It had also set a date for the hearing of his grievance, which he agreed with Mrs McCallister on 30 August. Although this date was unreasonably delayed, the Tribunal did not accept that this was such a serious delay as to amount to a breach of the implied term, particularly since the Company was clearly indicating its intention to deal with his grievance.
69. In any event the Tribunal concluded that none of the Company's actions were because of Mr Irshad's race, for the reasons set out above. Even if

the Company's actions, individually or collectively, had amounted to a breach of trust and confidence, the allegation that any constructive dismissal arising from them amounted to race discrimination would therefore have failed.

70. The Tribunal is satisfied, moreover, that the reason that Mr Irshad resigned was not because of any action or inaction by the Company but because he had a few days earlier received an offer of permanent employment with Her Majesty's Revenue and Customs (HMRC) on a salary of £23,000, over £6,000 per annum more than the income he was receiving from the Company.
71. Mr Irshad had applied for the post with HMRC before joining the Company and was told in May 2016 that he was on a list of candidates who would be offered employment when a vacancy became available. He was also actively pursuing the possibility of running a sub-post office. In June 2016, he had made an offer to buy a sub-post office that had been accepted. He had applied to the Post Office for approval to become a sub-postmaster that same month. The approval process was a long process and at the time he resigned from the Company he had still not received a decision on it.
72. Mr Irshad's evidence to the Tribunal was that, if the Company had not fundamentally breached his contract of employment, he would have remained working as a security guard until the arrangements for him to take over the post office had been finalised. The Tribunal does not consider that evidence to be credible. He did not know when or even if those arrangements could be finalised. On his own evidence, he had a wife and a two-year-old daughter to support, a mortgage to pay and was afraid of the prospect of job insecurity. It was not credible that Mr Irshad would have remained in employment as a security guard if a permanent post was being offered to him as a civil servant, with the pay, benefits and career prospects that entailed, and his ultimate aim of running his own sub-post office was still uncertain.
73. The allegation of direct discrimination because of race by constructive dismissal therefore also failed.

## **Overview**

74. In order to ensure that it had not overlooked a pattern of behaviour that might, if viewed as a whole, indicate racial bias, the Tribunal considered Mr Irshad's allegations overall. The pattern that emerged was that the Company had significant problems maintaining clear lines of communication between Mr Bryce, Mr Wilson, the Control Room, the administrative staff and Mr Irshad as its employee. For example, Mr Irshad's email to Ms Atkinson and his call to the Control Room indicating that he was unavailable to start work on the scheduled date were not followed up. Mr Wilson's order to cancel the agency guard at Bradford might not have been acted upon. The Control Room had not picked up on the fact that Mr Irshad had not agreed to an earlier start on 23 July.

75. It was clearly regrettable that these failures in effective communication occurred, not least because of the consequences for Mr Irshad. Although they indicated a level of inefficiency, they were not surprising, given the volume of work that Mr Wilson was having to deal with in Mr Bryce's absence and the level of activity in the Control Room. There was nothing in the evidence to indicate that these failures were due to or affected by Mr Irshad's nationality or ethnic origin in any way. Indeed, having heard from the Company's witnesses in evidence and read the emails that they wrote to Mr Irshad in response to the various issues that he raised whilst in the Company's employment, the Tribunal is satisfied that they dealt with him with courtesy and respect.

Employment Judge Cox

Date: 11 July 2017