



EMPLOYMENT TRIBUNALS

Claimant: Miss N Nolan

Respondent: Catherine Fairfield and Jason Fairfield t/a Appletree Guest House

Heard at: Manchester

On: 29-31 January 2024
8 March 2024
(in Chambers)

Before: Employment Judge Slater
Ms A A Roscoe
Ms A Ramsden

REPRESENTATION:

Claimant: In person
Respondent: Mr Searle, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's employer was Catherine Fairfield.
2. Jason Fairfield is a correct respondent to the complaints brought under the Equality Act 2010 as he acted as the agent of Catherine Fairfield.
3. The complaint of constructive unfair dismissal is well founded against Catherine Fairfield.
4. The complaint of harassment related to sex in relation to Jason Fairfield saying to the claimant when asked if he was going to strip the bed: "No, it's not my job to do it, it is a woman's job" is well founded against both respondents.
5. The other complaints of harassment related to sex and the complaints of direct sex discrimination are not well founded.
6. Catherine Fairfield was in breach of contract by not enrolling the claimant in a workplace pension scheme from September or October 2019 until 13 May 2021.

7. Catherine Fairfield failed to comply fully with her obligations under section 1 Employment Rights Act 1996 to provide a written statement of employment particulars.
8. There will be a remedy hearing on 7 May 2024.

REASONS

Introduction

1. The claimant brought complaints of constructive unfair dismissal, harassment related to sex, direct sex discrimination and breach of contract. The complaints and issues were discussed at the start of the hearing and the Judge drew up a list of complaints and issues which was agreed by the parties. This is included in the Annex to these Reasons.

2. In discussion during closing submissions, the Employment Judge identified that, if the Tribunal concluded that Catherine Fairfield alone was the employer of the claimant, then Catherine Fairfield would be the correct respondent to the complaints of constructive unfair dismissal and breach of contract and a correct respondent to the discrimination complaints. However, even if Jason Fairfield was not the correct respondent to the complaints of constructive unfair dismissal and breach of contract, he could be an individually named respondent to the discrimination complaints. Mr Searle agreed this on behalf of the respondents.

Evidence

3. We heard evidence from both respondents and from the claimant. There were written witness statements for each witness. We had a bundle of documents for the hearing of 267 pages.

4. This was a hybrid hearing, with the respondents appearing in person at the Tribunal hearing centre and the claimant attending by CVP, as an adjustment because of health conditions.

5. The claimant told us that she only received the paper bundle of documents on the Saturday before the hearing began on Monday 29 January 2024. She had not received paper copies of the witness statements. She had received electronic copies in August 2023, but told us that, due to her dyslexia, it had been agreed with the respondents' representative that she would be sent paper copies. The claimant said she did not have any way of printing the electronic statements. She said she had not read the electronic copies before the hearing because she was expecting to receive paper copies. Although the respondent's representative posted copies of the statements to her on the first day of the hearing, she did not receive these by the time the respondents gave evidence on the second day of the hearing. The claimant said she had managed to read the statements online with difficulty. She said it was always better to have things on paper so she could highlight things. The judge suggested that the respondents could read their statements out but the claimant did not want them to do this. The claimant did not ask for the hearing to be postponed so that she could have paper copies of the statements and have more time to prepare once having received the paper bundle.

6. In submissions, the claimant said that she had not had time to prepare for the hearing since she had only just received the paper bundle of documents and had not got any printed copies of the witness statements so she had not been able to go through the statements thoroughly and ask more questions.

The Facts

7. The claimant was employed at the Appletrees Guest House in Keswick ("Appletrees") as an Assistant. She was initially a casual worker and began her permanent employment in 2019. She worked Monday to Friday 8.00am to 2.00pm on various duties, including serving breakfast and cleaning of guest rooms.

8. Appletrees was purchased as a going concern by Mr and Mrs Fairfield prior to the claimant's employment. Although a letter from the respondents' accountant dated 24 January 2023 asserted that Appletrees is a business in which Mr Fairfield has no interest and receives no share of profits and that he purely resides at Appletrees, it was conceded in closing submissions that Mr Fairfield does have an interest in the business and would receive a share in the profits, although Mr Fairfield says the business makes no profit.

9. The witness statements of Mr and Mrs Fairfield minimised, and in some respects misrepresented, the role of Mr Fairfield in the business. Although Mrs Fairfield was mainly responsible for running the business, Mr Fairfield did play a role that was greater than described in the respondents' witness statements. Mr Fairfield also has another business in which he is mainly engaged.

10. As previously noted, Mr and Mrs Fairfield jointly purchased Appletrees not just as a house but as a going concern, down to expecting the previous owners to have left the stocks of cereal. The business expenditure and income were run through an account held jointly in the names of Mr and Mrs Fairfield. Mr Fairfield's name appeared jointly with that of Mrs Fairfield on various letters concerning the claimant's employment. These included a letter about pension (page 74) dated 20 September 2022. Mrs Fairfield's explanation that Mr Fairfield's name was on the letter as a witness lacks any credibility. Mr and Mrs Fairfield's names were put on the letter dated 12 June 2022 which gave the outcome of the claimant's grievance. Mrs Fairfield gave evidence that Mr Fairfield as well as Mrs Fairfield had investigated the claimant's grievance. The Fairfields had previously advertised their business on Booking.com describing both of them as managers of the Guest House.

11. The contracts of employment for the claimant included in the bundle identify the employer as "Appletrees", which is a trading name rather than the legal name of the employer. This does not assist in identifying the legal employer. HMRC documentation and payslips identify Catherine Fairfield t/a Appletrees as the claimant's employer.

12. Mr Fairfield acted in various ways on behalf of and for the benefit of the business. For example, he carried out renovations and decorating, he checked in guests on occasions and, very occasionally, he had cooked breakfasts while the claimant served.

13. The claimant's contract of employment stated that, if she was eligible, the respondents were obliged to enrol her into a pension scheme. The parties agree that

the claimant asked to be put into the pension scheme in September or October 2019. The respondents did not put the claimant into the scheme at that time. In a letter dated 20 September 2020, Mr and Mrs Fairfield wrote that they would enrol the claimant into the pension scheme on 1 November 2020 since she met the relevant criteria, but no action was taken until the claimant was enrolled into Nest with effect from 13 May 2021. Mrs Fairfield's explanation for not enrolling the claimant earlier was sloppiness on her part.

14. After the end of her employment, the claimant wrote to Mr and Mrs Fairfield in terms drafted by an adviser at ACAS on 27 April 2022 complaining about their failure to automatically enrol her into a workplace pension. She asked for them to backdate contributions from the date she was legally entitled up until her leaving date of 3 April 2022, including compensation for the loss of investment opportunity, distress and inconvenience. She wrote that, if they did not resolve her complaint within eight weeks, she would exercise her right to take her complaint to the Pension Ombudsman and ask them to deal with the complaint. Mr and Mrs Fairfield took no action. Mrs Fairfield's explanation for this lack of action was that she had decided to wait for the Ombudsman to tell her what to do.

15. It is agreed by the parties that the claimant had a good working relationship with Mrs Fairfield prior to 16 March 2022. Various messages we have been shown demonstrate the friendly relationship between Mrs Fairfield and the claimant. The majority of messages end with kisses and a variety of emojis. The claimant was supportive when Mrs Fairfield was diagnosed with cancer, and Mrs Fairfield was supportive when the claimant's dog (which had been the claimant's companion for many years) had to be put down.

16. Events in the period 16 March 2022 to 4 April 2022 ended in the claimant's resignation with immediate effect on 4 April 2022. There is a considerable dispute of facts in relation to what happened during this period. To a large extent we are dependent on the accounts given by the claimant and Mrs and Mrs Fairfield in their witness statements and oral evidence when making our findings of fact.

17. The claimant told us that she had made notes at the suggestion of her boyfriend (who was a manager) when there started to be difficulties in the working relationship. She made these notes in the evening in a notebook provided by her boyfriend. The claimant has dyslexia and has difficulty with reading and writing.

18. We accept that the claimant did make contemporaneous or near contemporaneous notes of events in the period 16 March 2022 to 4 April 2022. A typed document was subsequently created based on these notes which became the particulars of claim attached to form ET1 and paragraphs 19-52 of the claimant's witness statement. We accept that these documents are based on the claimant's notes. The claimant dictated to her boyfriend, who typed up what she was saying. We consider it likely that the typed version was not a verbatim record of the notes made but find that the typed notes included essential parts of the claimant's recollection. We consider it unlikely that the claimant's recollection, even when she was making the contemporaneous or near contemporaneous notes, would have been good enough to recall precisely the words used by Mr and Mrs Fairfield. We accept the claimant's evidence that she threw the handwritten notes away after the typed version had been created because she did not realise the importance of retaining the original notes.

19. With the assistance of advisers at the Citizen's Advice Bureau the claimant's letter of grievance was compiled. This was written and printed and signed by the claimant when she attended the CAB office on 27 May 2022. This includes some, but not all, of the allegations made by the claimant in these proceedings. We accept that the claimant, due to her dyslexia, had more difficulty in checking the accuracy and completeness of this grievance letter than she would have done had she not had dyslexia.

20. The respondents made no contemporaneous record of events. The first written record which we have seen on behalf of the respondents is the grounds of resistance presented by solicitors on the respondents' behalf and dated 31 October 2022.

21. Although the claim form made very specific allegations about events in the period 16 March to 4 April 2022, the grounds of resistance did not provide the respondents' version of events in relation to all the allegations made. In particular, they are silent as to the events on 16 March 2022. In relation to 4 April 2022, the grounds of resistance assert that the claimant said that she was resigning because the respondents were unable to offer her any additional money. The respondents' own witness evidence at this hearing did not support this assertion. The grounds of resistance also asserted that the claimant did not start employment until 29 July 2020 and, therefore, did not have the two years' service required to bring a complaint of unfair dismissal. The respondents maintained this position until this hearing, after the claimant had produced payslips going back for a further period.

22. On 16 March 2022, we find that something happened which changed the previously good working relationship the claimant had with Catherine Fairfield. We find that the claimant said something to Jason Fairfield, suggesting that he should have made or stripped the bed that he and Catherine Fairfield had slept in the previous night, and he replied by making a comment that it was a woman's job. There is some dispute as to whether the bed in question was that in the Fairfield's private quarters or whether they had slept in the guest house apartment that night, but it is of no significance to our findings and so we do not find it necessary to make a finding of fact about that. It is not in dispute that the bed in question had been slept in by Catherine and Jason Fairfield rather than guests. It was not part of the claimant's normal duties to change the Fairfield's personal bed. The claimant agreed to do this extra job because Mrs Fairfield was not able to do it because of her treatment for cancer. We base our finding of fact that Mr Fairfield made the alleged comment about changing the bed being a woman's job based on the claimant's evidence supported by the reference to this in her grievance letter of 27 May and the claim form particulars of claim, which we find were based on contemporaneous notes. Mr Searle's submission and the evidence of the Fairfield's that Mr Fairfield would not make a comment of this nature because he has three daughters does not persuade us that he did not make that comment. It is possible that it was not a sincerely held view which he expressed but something said to deliberately wind the claimant up.

23. There was a further conversation that day between Mr Fairfield and the claimant about a toilet seat. The Fairfield's had installed quick release toilet seats to assist cleaning following the Covid pandemic. The claimant raised an issue about the toilet seat coming unfastened when she was cleaning it. The claimant says she has raised this issue on a number of occasions. Mr Fairfield's evidence was that he was not aware of a problem with it before. We prefer the claimant's evidence to the extent that we find that Mr Fairfield said words to the effect of "do I need to take you upstairs and

show you how to clean a toilet seat?”, “do I need to give you an instruction manual on how to clean a toilet seat?”

24. The claimant also alleges that Mr Fairfield said, “do you not know how to do a woman’s job of cleaning a toilet seat?”. We consider it unlikely that Mr Fairfield would have used these precise words, partly because of the complicated construction of such a sentence. The claimant, in her grievance letter, alleged that, after she raised her concerns about the toilet seat, Mr Fairfield spoke to her in an insulting and aggressive manner. She did not, however, in her grievance letter allege that he referred to the job of cleaning a toilet seat as being a woman’s job. It may be that the claimant felt that Mr Fairfield by his comments was patronising her and that he would not have spoken to a man in the same way and conflated this with the earlier reference to a woman’s job in relation to changing the bed. Given the absence of this specific allegation in the grievance letter, the claimant has not persuaded us that in relation to the toilet seat Mr Fairfield used the term “woman’s job”.

25. We consider the claimant’s account in relation to the toilet seat discussion, with the exception of the reference to “woman’s job,” to be more plausible than the account given by Mr Fairfield. In Catherine Fairfield’s oral evidence, she said the claimant became irate in this discussion. We consider it unlikely the claimant would have become irate had Mr Fairfield acted as he says he did i.e. to confirm the details of the toilet seat and say nothing further.

26. The claimant alleges that Mr Fairfield shouted at her and verbally abused her. We do not find any verbal abuse other than the specific type of comments we have referred to. We accept that the claimant perceived Mr Fairfield as shouting at her and that it is more likely than not that he did raise his voice. The claimant raised with Catherine Fairfield on 4 April that Jason Fairfield had shouted at her, although Mrs Fairfield says that she would not recognise this as having been the case. We find, in accordance with Catherine Fairfield’s evidence about the claimant having been irate, that it is more likely than not that the claimant also raised her voice.

27. On 17 March 2022, the claimant alleges that she raised the issue of the conduct of Jason Fairfield on 16 March and Catherine Fairfield did not respond to this and failed to address it. It is common ground that there was a staff meeting between the claimant, Catherine Fairfield and Grace Fairfield on 17 March. It is common ground that one of the matters raised was that Catherine Fairfield told the claimant at this meeting that she could only offer a pay rise to £10.66 per hour and the claimant said that she would have to start looking for another job because this was too low to live on. It is common ground that, at the end of the meeting, Catherine Fairfield asked whether the claimant or Grace Fairfield had any other business to raise. Mrs Fairfield says that the claimant mentioned her dissatisfaction with the toilet seat again but did not refer to Jason Fairfield’s conduct on 16 March.

28. We find that the claimant raised Jason Fairfield’s behaviour in this meeting. It is agreed by Catherine Fairfield that on 4 April the claimant raised the issue of Jason Fairfield shouting at her. It is consistent with this that the claimant raised an issue about Jason’s behaviour at the meeting on 17 March, rather than just a technical issue about the toilet seat. This finding is supported by the particulars in the claimant’s claim form which were based on contemporaneous notes. We find that Catherine Fairfield did not respond or do anything to indicate that she would consider or address the issue of her husband’s behaviour, when the claimant raised this.

29. We find, in the period 17 March to 24 March 2022, after which the claimant went on sick leave until 4 April, that there was an atmosphere between the claimant and Catherine Fairfield. There was not normal conversation between them. We accept that Catherine Fairfield was preoccupied with her health issues. Catherine Fairfield said they were not as chatty as before and thought this was because of the loss of the claimant's dog. There was also not the same opportunity for normal conversation as prior to Catherine Fairfield's illness since Catherine Fairfield, due to her illness, was not working alongside the claimant in the way she did before. However, the claimant has not satisfied us that Catherine Fairfield ignored her.

30. The claimant alleges that, on 18 March 2022 Catherine Fairfield was nit-picking about what she was doing, saying she was doing her job wrong, although the claimant was doing things in the same way as since she had started working there. The claimant gave the specific examples of telling her that she was doing the wrong thing with the tea and the toast. We accept Catherine Fairfield's explanation for this. The practice in relation to whether the tea and the toast were put on the table before the guests came down had changed with changing practices as Covid restrictions relaxed. Previously, guests had to come down at a specific time for their breakfast and this had now been relaxed. If the tea and the toast were put on the table early, this could get cold and this did not look good for guests.

31. We accept that Catherine Fairfield did not mention Jason Fairfield's behaviour towards the claimant.

32. On 24 March 2022, it is common ground that the claimant and Jason Fairfield were working in the house without Catherine Fairfield and Grace Fairfield being present. They were not working together. We find the reason for them being alone in the house was that Jason Fairfield was working on putting a TV into one of the guest rooms, which was a job Grace Fairfield could not do, so they had agreed that Grace, rather than Jason, would take Catherine Fairfield to the hospital in Carlisle for her treatment.

33. The claimant then had a period of sick leave until 4 April 2022. She was signed off work on 24 March 2022 until 4 April 2022 with depression. The claimant had recently lost her dog, her companion of longstanding, and was very upset about this.

34. At first, during the claimant's sick leave, there were friendly messages by text between Catherine Fairfield and the claimant.

35. On 30 March 2022 Catherine Fairfield messaged the claimant in a friendly way, albeit without the normal kisses and emojis. The claimant did not respond. Catherine Fairfield messaged again on 31 March 2022 asking whether the claimant thought she would be better by Monday and that she needed to know to cover the shift. Again, the claimant did not reply. The claimant's explanation for this was that she was sleeping and not often looking at her messages and that she had already told Mrs Fairfield she would be back on 4 April when she handed in her sick note. That does not entirely satisfy us. It appears to be a change for some reason from the friendly nature of their previous contact.

36. The claimant attended for work on 4 April 2022. It is agreed that, as soon as she arrived, she asked to talk to Catherine Fairfield. We accept the claimant's evidence that she wanted to try and restore a good working relationship at a place

where she had happily worked for about four years. It is common ground that Catherine Fairfield did not agree to speak to the claimant immediately. We accept that Catherine Fairfield did not agree to speak immediately because it was a busy time of day, when the claimant needed to do breakfast with Grace Fairfield. Catherine Fairfield was not working at the time, because of her illness, and she went to walk the dog. When Catherine Fairfield returned from walking the dog and breakfast was over, she said she would speak to the claimant. There is a difference between the parties as to whether, as on the claimant's account, Catherine Fairfield was unpleasant in her tone both at the beginning of the day, when she refused to have a discussion then, and then when she was agreeing to talk.

37. It is common ground that the claimant raised the issue of Jason Fairfield's behaviour and Catherine Fairfield not doing anything about it. We find there was a difficult discussion which may have been heated. At the end of it, the claimant walked out, saying she had no choice but to leave. In the respondent's grounds of resistance at paragraph 11, the respondents assert that the claimant said she was resigning because they were unable to offer her any additional money. Catherine Fairfield's witness statement does not support that the claimant raised this as the reason for her leaving. We find that money may have been mentioned at some point in the heated discussion that followed the claimant raising the issue of Jason Fairfield's behaviour, but we find that this was in the context of Catherine Fairfield raising how she felt she had been good to the claimant, one example she gave being allowing the claimant to go to the vet to sort out her dog.

38. The claimant alleges that, when she raised the issue of Jason Fairfield's behaviour, she said she wanted an apology and alleges that Catherine Fairfield laughed and said she was not going to apologise and the claimant certainly would not get an apology off Jason Fairfield. This allegation is consistent with what the claimant wrote in her grievance on 27 May 2022. We find that she asked for an apology and Catherine Fairfield refused. We consider it unlikely that Catherine Fairfield laughed in amusement, but we consider that she may have laughed in a nervous way. We accept that the claimant perceived that Catherine Fairfield found the situation amusing, which is consistent with the grievance where the claimant alleges that when matters were brought to Catherine Fairfield's attention some of this she found amusing. For these reasons, the claimant has not satisfied us on a balance of probabilities that Catherine Fairfield laughed at her in amusement.

39. The claimant alleges that Grace Fairfield joined in the discussion, shouting at the claimant and accusing her of asking too many times about the toilet seat. We did not hear from Grace Fairfield although, at the preliminary hearing, it was said that she would give evidence. We had no explanation as to why she did not give evidence. Grace Fairfield's behaviour is not referred to in the grievance. We do not think that whether or not Grace Fairfield joined in is of any significance. If it happened as the claimant alleged, on the claimant's account Catherine Fairfield took appropriate action to stop Grace Fairfield, saying it was not a matter for her. If it was necessary for us to make a finding of fact on this, we would find that the claimant had not satisfied us on a balance of probabilities that Grace Fairfield had acted as alleged. The claimant has not satisfied us that Catherine Fairfield shouted at the claimant, as opposed to both Catherine Fairfield and the claimant engaging in a heated discussion.

40. The claimant left and did not return to work.

41. At 12.58, Catherine Fairfield messaged the claimant as follows:

“Really sorry about how this morning turned out. I feel we have tried to be supportive of you at every opportunity.

The lack of sympathy for my cancer treatments has really saddened me, last Thursday I needed Grace to support me, and since I have left you to work alone on many occasions I really didn't see an issue, the list I left wasn't extensive, and I even asked if you were ok with all of it, where you replied what should I do when I done it all?

You have said you had no choice but to leave. Do I take this as your resignation.”

42. The claimant did not reply.

43. At 20.35 that evening, Catherine Fairfield sent another message:

“Further to you walking out on the job this morning (4th April) and my subsequent texts to you. As at 8.30 p.m. on the 4th April 2022 we have had no communication from you and therefore will take your decision to walk out of work at 10am as a termination of your Contract of Employment with Appletrees.

It is unfortunate that it has come to this situation and we feel we have been very supportive during your time with us, however the situation is untenable on both sides.”

44. The claimant was in hospital between 11 and 21 April 2022 due to illness and returned to the hospital for further tests on 23 April.

45. The claimant took advice from ACAS and the CAB between 23 April and 27 May 2022. We accept the claimant's evidence that she was still really ill during this period.

46. On 27 April 2022, the claimant sent the letter referred to previously about failure to enrol her into a workplace pension, with the wording drafted by an adviser at ACAS (p.137). The claimant wrote that, if they did not resolve her complaint within 8 weeks from that date, she would exercise her right to take her complaint to the Pensions Ombudsman. As previously noted, the respondents took no action in response to this letter.

47. On 27 May 2022, with the assistance of a CAB adviser, the claimant wrote to Catherine Fairfield raising a grievance (p.134). The letter was drafted and printed by the adviser and signed by the claimant.

48. The letter asserted that the claimant had no choice about leaving due to many issues she had raised and had usually been ignored and then later used against her. It asserted that Catherine Fairfield had laughed at the claimant, making light of the situations the claimant described, when the claimant tried to resolve problems on her return to work on 4 April 2022. The letter included an allegation that Jason Fairfield had refused to strip and make the Fairfields' bed on 16 March 2022, stating to the claimant that it was a “woman's job.” The claimant alleged that Grace Fairfield had been given preferential treatment, being given more hours of work than the claimant.

The toilet seat was referred to in the context of being a health and safety issue. The letter alleged that, when the claimant raised concerns, Jason Fairfield “spoke to me in an insulting and aggressive manner on more than one occasion which made me feel upset.”

49. The letter referred to the pensions issue.

50. The letter included some other complaints which have not been relied on in these Tribunal proceedings.

51. Jason and Catherine Fairfield responded to the claimant’s letter on 12 June 2022. They wrote:

“We have had professional advice and carried out an internal investigation to all the points you have raised and cannot find any evidence to back up your allegations or version of events, however we have found evidence that refutes your claims and will supply this evidence to the courts in the event you take this matter further.”

52. When asked about the investigation, Catherine Fairfield said, in oral evidence, that this was carried out by her and Jason Fairfield. She said they had made notes, going through the points in the claimant’s letter. These notes had not been disclosed to the claimant in these proceedings and were not included in the hearing bundle. When asked about the evidence which the respondents asserted refuted the claimant’s claims, Catherine Fairfield referred to the texts the claimant had sent and the fact that Catherine Fairfield was the person there and had not laughed at the claimant.

53. The claimant engaged in ACAS early conciliation between 24 June and 5 August 2022. She presented her claim to the Tribunal on 1 September 2022.

54. The claimant always had access to the internet via a smartphone. She bought a laptop just so she could take part by video in this hearing.

55. The claimant got advice from ACAS after coming out of hospital. The advice was on the phone. A member of the ACAS pension team told the claimant, word for word, what to write in the letter about pensions.

56. The claimant talked to the CAB on the phone initially and then went into the office when a volunteer who dealt with employment law was available, on 27 May 2022. The letter of 27 May was printed for the claimant at the CAB office because the claimant does not have a printer. The claimant signed the letter whilst at the CAB office and it was sent. The adviser the claimant spoke to on the phone had drafted some parts before the claimant went into the office and the letter was finished by the volunteer (a different person) while the claimant was in the office, after speaking to her. The claimant has dyslexia and was not able to read and understand the draft given to her to sign as well as she would have been able to, had she not had dyslexia.

57. The claimant says she did not start early conciliation earlier because she was recovering from illness and had not been given the right information.

58. The claimant says that, between 5 August 2022 (the end of the early conciliation period) and 1 September, when she presented her claim) she tried to do the claim form herself but it timed out and she had not saved it. She had to start again and found the process very stressful so tried to put it off until the latest date possible. In the end, the claimant's boyfriend typed the particulars of claim for her. We accept the claimant's dyslexia made the process of completing the online claim form more difficult for her than it would have been had she not had dyslexia.

59. The claimant thought that ACAS had only given her one date as the relevant deadline. She said she did not know there was another date for something else. We find that, if the claimant was given information about there being a separate time limit for Equality Act complaints to that relating to dismissal, this information did not register with the claimant at the time. Everything the claimant did subsequently indicates an intention to comply with the time limit of which she was aware, being the time limit relating to the complaint of constructive unfair dismissal. That complaint of constructive unfair dismissal relies in part on the conduct alleged to constitute unlawful discrimination and pursued in addition as complaints brought under the Equality Act.

60. The claimant did not contact a solicitor until after starting Tribunal proceedings.

61. On 5 or 6 April 2022, the claimant started a new job. A friend put her in touch with a friend who needed someone to start as soon as possible. The Tribunal uses its judicial knowledge of the shortage of labour in the hospitality sector, particularly post Brexit, to find that it is plausible that the claimant had not taken steps to find other employment before she resigned on 4 April. It was not put to the claimant in cross examination that she had lined up a new job before she resigned. It is more consistent with the claimant's agreed behaviour in asking for a meeting when returning to work on 4 April to try to resolve problems in the working relationship that she had not secured new employment at this point. The respondent has not satisfied us, on a balance of probabilities, that the claimant had arranged the new job prior to the meeting on 4 April 2022.

Submissions

62. Mr Searle and the claimant made oral submissions.

63. We summarise the respondent's submissions as follows. Mr Searle submitted that the claimant, who bears the burden of proof in respect of all the claims, had not been able to establish that the alleged treatment happened, or happened for the reasons she said.

64. Mr Searle accepted that the claimant's contract of employment was defective to the extent it was not absolutely clear that the correct legal name of the employer was set out, Appletrees being a trading name. He submitted that the correct employer was Catherine Fairfield trading as Appletrees, although accepting that Jason Fairfield has an interest in, and receives a share of the profit (if any) in the business. Mr Searle accepted, on behalf of the respondents, that, if Catherine Fairfield alone was the employer, Jason Fairfield was properly a respondent to the discrimination complaints. The respondents accepted that Jason Fairfield was clearly acting as an agent of his wife for the purposes of the Equality Act.

65. In relation to the complaint of constructive unfair dismissal, Mr Searle submitted that the alleged fundamental breach in issue was a breach of the implied duty of mutual trust and confidence. The claimant was not saying that the lack of pension contributions was operating on her mind when she resigned.

66. Mr Searle made submissions on the factual disputes, arguing that the respondents' account should be preferred. He submitted that the trigger for the claimant leaving was the pay issue. Mr Searle submitted that the claimant must have lined up her new job before 4 April. In acknowledgement of the point that he had not put this to the claimant in cross examination, Mr Searle said the Tribunal could use its own knowledge of how easy it was to walk into a new job without making enquiries days before.

67. Mr Searle submitted that the claimant's explanation that she had made contemporaneous notes of events but destroyed them made no sense and went against her credibility. He pointed to omissions in the grievance letter of some of the alleged conduct now relied on.

68. In relation to the discrimination complaints, Mr Searle submitted that there was nothing the claimant had said which should persuade the Tribunal to consider it would be just and equitable to extend time. The claimant had obtained advice from ACAS and the CAB and was aware of being able to search on the internet. She could have googled time limits.

69. Mr Searle referred to the case of **Richmond Pharmacology Ltd v Dhaliwal** [2009] IRLR 336 EAT as a reminder of the need to address all the elements in deciding whether a complaint of harassment was made out.

70. Mr Searle accepted, on behalf of the respondents, that there was a breach of contract in not enrolling the claimant in the pension scheme in the period September or October 2019 to 13 May 2021, when she was enrolled.

71. The respondent accepted, for the purposes of the s.38 Employment Act 2002 claim that the respondent had not complied fully with section 1 of the Employment Rights Act 1996 in relation to identifying the name of the employer.

72. The claimant made submissions relating to the facts. The judge explained to the claimant that, where she provided new information about facts in her submissions, the Tribunal would not be able to take this into account.

73. The claimant submitted that the respondents had not been truthful; their witness statements did not make sense. Even their accountant's letter contained things that were not true.

The Law

74. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996. Section 94(1) of this Act provides that an employee has the right not to be unfairly dismissed by his employer. Section 95(1)(c) provides that an employee is to be regarded as dismissed if "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

75. An employee will be entitled to terminate a contract of employment without notice if the respondent is in fundamental breach of that contract and the employee has not waived the breach or affirmed the contract by their conduct.

76. An implied term of an employment contract is the term of mutual trust and confidence. This is to the effect that an employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Limited** 1981 ICR 666, said that the tribunal must “look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.”

77. The law relating to harassment is contained in the Equality Act 2010 (EqA).

78. The relevant parts of section 26 EqA provide:

“(1) A person (A) harasses another (B) if –

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

(b) The conduct has the purpose or effect of –

(i) violating B’s dignity, or

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

.....

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.”

Subsection (5) lists relevant protected characteristics which include sex.

79. If conduct constitutes harassment related to sex, it is deemed not to be detrimental treatment and cannot also be direct sex discrimination: s.212(1) EqA.

80. Section 136 EqA provides:

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

81. Section 123 EqA provides that proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.

82. Time limits are extended to take account of time spent in the early conciliation process with ACAS, if notification to ACAS is made within the primary time limit.

Conclusions

The identity of the employer

83. Whilst we have found, as a matter of fact, that Jason Fairfield's involvement in the business was considerably greater than had been acknowledged by the respondents, the official documentation identifying the claimant's employer was in the name of Catherine Fairfield t/a Appletrees. The HMRC documentation and payslips gave this as the name of the employer. We conclude, based on this, that the claimant's employer was Catherine Fairfield t/a Appletrees. Jason Fairfield did, however, act on behalf of the business and had an interest in the business and it was entirely understandable from the way the business was conducted, which included the claimant's wages coming out of a joint account held in the names of Mr and Mrs Fairfield, that the claimant thought that Jason Fairfield as well as Catherine Fairfield may well be her employer.

84. Since we conclude that Catherine Fairfield alone was the claimant's employer, the complaints of constructive unfair dismissal and breach of contract can be brought only against Catherine Fairfield. However, Mr Searle accepted on behalf of the respondents, and we conclude, that Mr Fairfield acted as agent in relation to the business. He had general authority to act on behalf of Catherine Fairfield in relation to the Appletrees Guest House business.

85. Since the allegations of harassment related to sex and, alternatively, sex discrimination, relate to conduct by Mr Fairfield, we conclude that Mr Fairfield properly remains an individual respondent to the discrimination complaints. Mrs Fairfield is also properly a respondent to the discrimination complaints as being liable for the acts of her agent, Jason Fairfield.

Constructive unfair dismissal

86. We consider in turn each of the allegations listed at 2.1.1 to 2.1.16 in the list of complaints and issues, being the conduct relied upon as together constituting a fundamental breach of the implied duty of mutual trust and confidence.

2.1.1 On 16 March 2022, Jason Fairfield saying to the claimant, when asked if he was going to strip the bed: "No it's not my job to do it, it is a woman's job."

87. We found as a matter of fact that Jason Fairfield made the alleged comment. We conclude that this comment, regardless of whether or not it expressed a genuinely held view, is capable of contributing to a breach of the implied duty of mutual trust and confidence.

2.1.2 On 16 March 2022, Jason Fairfield shouting at the claimant and verbally abusing her.

88. We found as a matter of fact that Jason Fairfield made the specific comments set out in 2.1.3 and 2.1.4 i.e. words to the effect of "do I need to take you upstairs and show you how to clean a toilet seat?", "do I need to give you an instruction manual on how to clean a toilet seat?" We did not find any other kind of verbal abuse took place. We found that Jason Fairfield and the claimant raised their voices. We conclude that the comments made are capable of contributing to a breach of the implied duty of mutual trust and confidence. Given the reciprocal nature of the raised voices, we do not consider that Jason Fairfield raising his voice to the claimant can, in this context, contribute to a breach of the implied duty.

2.1.3 and 2.1.4 On 16 March 2022, Jason Fairfield saying to the claimant: "Do I need to take you upstairs and show you how to clean a toilet seat?" and "Do I need to give you an instruction manual on how to clean a toilet?"

89. These allegations are dealt with under the heading of 2.1.2.

2.1.5 On 16 March 2022, Jason Fairfield said to the claimant, "do you not know how to do a woman's job of cleaning a toilet seat?"

90. We were not satisfied, as a matter of fact, that this was said.

2.1.6 On 17 March 2022, Catherine Fairfield not responding when the claimant raised an issue about the conduct of Jason Fairfield on 16 March 2022, failing to address the issue.

91. We found, as a matter of fact, that the claimant did, at the meeting on 17 March 2022, raise an issue about the conduct of Jason Fairfield the previous day and that Catherine Fairfield did not respond and did not address the issue. We conclude that this is a matter capable of contributing to a breach of the implied duty. Catherine Fairfield was failing, in her capacity as an employer, to acknowledge a complaint made by an employee about the behaviour of Jason Fairfield, who had been acting on behalf of the business when interacting with the claimant on 16 March 2022 and to indicate an intention to consider that complaint and take any appropriate action.

2.1.7 On 18 March 2022, Catherine Fairfield ignoring the claimant and Grace Fairfield only speaking normally to the claimant when Catherine Fairfield was out of the room.

92. We were not satisfied that this occurred as alleged.

2.1.8 On 18 March 2022, Catherine Fairfield nit picking about what the claimant was doing, saying she was doing her job wrong, although the claimant was doing things in the same way as since she started working there.

93. We found that Catherine Fairfield raised issues about when the tea and toast were made. However, we found that this was due to practice changing as Covid restrictions relaxed. We conclude that what the claimant perceived as nit picking had reasonable and proper cause and cannot, therefore, contribute to a breach of the implied duty.

2.1.9 On 18 March 2022, Catherine Fairfield failing to mention Jason Fairfield's behaviour towards the claimant.

94. We found that this occurred, after the claimant had raised, at a meeting on 17 March, the issue of Jason Fairfield's behaviour. Catherine Fairfield did not respond at the meeting and then did not mention the issue the following day. For the reasons given in relation to 2.1.6 we conclude that this is a matter capable of contributing to a breach of the implied duty.

2.1.10 and 2.1.11 On 21, 22 and 23 March 2022, Catherine Fairfield ignoring the claimant

95. We were not satisfied, as a matter of fact, that Catherine Fairfield ignored the claimant in this period, although we found that there was an atmosphere between the claimant and Catherine Fairfield.

2.1.12 On 24 March 2022, the respondent leaving the claimant on her own with Jason Fairfield

96. We found, as a matter of fact, that the claimant was left on her own in the house with Jason Fairfield on 24 March 2022, although working in different parts of the house. We found that this was because Jason Fairfield was doing a job of installing a TV which Grace Fairfield could not do and, therefore, Grace Fairfield was taking Catherine Fairfield for her treatment at hospital rather than Jason Fairfield taking his wife. We conclude that there was reasonable and proper cause for this treatment and it is not capable of contributing to a breach of the implied duty.

2.1.13 On 4 April 2022, when the claimant asked to have a talk with her before they started work, Catherine Fairfield refused, saying she was busy and needed to walk the dog.

97. We found that Catherine Fairfield did refuse to have a talk at that time but found this was because it was a busy time of day and the claimant was needed to serve breakfast. We conclude that Catherine Fairfield had reasonable and proper cause for putting off the discussion and this cannot contribute to a breach of the implied duty.

2.1.14 On 4 April 2022, when Catherine Fairfield came back from her walk, being defensive and abrupt and, when the claimant said she wanted an apology, laughing

and saying she wasn't going to apologise and the claimant certainly wouldn't get one off Jason Fairfield.

98. We have not made any finding as to whether Catherine Fairfield was defensive and abrupt and do not consider it necessary to do so as this would not be something which could contribute to a breach of the implied duty. The heart of this allegation is what was said when the claimant asked for an apology. We found that the claimant did ask for an apology and Catherine Fairfield refused. We did not find that Catherine Fairfield laughed out of amusement. We conclude that Catherine Fairfield refusing an apology or indicating in any way that she would do anything about the alleged conduct by Jason Fairfield is capable of contributing to a breach of the implied duty. As with the conduct in 2.1.6, we conclude that, by her reaction, Catherine Fairfield was failing, in her capacity as an employer, to acknowledge a complaint made by an employee about the behaviour of Jason Fairfield, who had been acting on behalf of the business when interacting with the claimant on 16 March 2022 and to indicate an intention to consider that complaint and take any appropriate action.

2.1.15 On 4 April 2022, Grace Fairfield shouting at the claimant, accusing the claimant of asking too many times about the toilet seat.

99. We did not consider it necessary to make a finding of fact about this, given, on the claimant's evidence, Catherine Fairfield took appropriate action to stop Grace Fairfield, so we would not have concluded the alleged conduct by Grace Fairfield capable of contributing to a breach of the implied duty. However, if we had been required to make a finding, we would not have been satisfied that it occurred as alleged.

2.1.16 On 4 April 2022, Catherine Fairfield shouting at the claimant

100. We found that both the claimant and Catherine Fairfield engaged in a heated discussion. In these circumstances, we conclude that Catherine Fairfield raising her voice to the claimant is not capable of contributing to a breach of the implied duty.

Whether the conduct taken together constituted a breach of the implied term of trust and confidence

101. The conduct found to have occurred which we concluded capable of contributing to a breach of the implied term falls into two categories: the comments made by Jason Fairfield on 16 March 2022 and the way Catherine Fairfield responded when the claimant raised this with her on 17 March and 4 April 2022. We would not have found the conduct of Jason Fairfield alone to be sufficient to breach the implied term. However, we considered the failure of Catherine Fairfield to indicate in any way that she would consider and, if appropriate, take action in relation to the issues raised by the claimant about Jason Fairfield's conduct to be a matter likely to seriously damage the trust and confidence between the claimant and her employer. This was all the more serious given the nature of the working environment. Appletrees was not only the claimant's workplace but the home of Catherine and Jason Fairfield. Jason Fairfield was the husband of the claimant's employer. If the claimant remained at work, she would be bound to encounter Jason Fairfield on a regular basis. Jason Fairfield had been insulting and patronising to the claimant when acting as agent for his wife. Catherine Fairfield, by her response, or lack of it, to the claimant raising an issue about Jason Fairfield's behaviour, gave the claimant no assurance that she would take steps to prevent any recurrence of similar behaviour. Catherine Fairfield was failing in her

duty as an employer to acknowledge and look into a grievance raised by her employee. We conclude that the comments of Jason Fairfield together with the way Catherine Fairfield responded to the claimant raising issues about this behaviour was likely to destroy or seriously damage the trust and confidence between the claimant and her employer, Catherine Fairfield. This was a breach of the implied duty of mutual trust and confidence. We conclude that this was so serious that the claimant was entitled to treat the contract as being at an end.

102. We conclude that the claimant resigned as a result of this conduct. We rejected the submission that the claimant resigned because she wanted more money. As she had indicated on 17 March 2022, the claimant may have left in due course for other employment, since Catherine Fairfield had told her they could not raise her pay to the level the claimant suggested she needed. However, we conclude that the reason the claimant left on 4 April 2022 was because of the conduct of Jason Fairfield and Catherine Fairfield's reaction when the claimant raised an issue about this conduct. The respondent did not satisfy us that the claimant left because she had already lined up another job.

103. For these reasons, we conclude that the claimant was constructively dismissed. Catherine Fairfield has not sought to argue that, if there was a constructive dismissal, this was a fair dismissal. We, therefore, conclude that the complaint of constructive unfair dismissal is well founded.

The time limit issue for the complaints of harassment and direct sex discrimination

104. The alleged harassment/direct sex discrimination occurred on 16 March 2022. The primary time limit expired on 15 June 2022. The claimant gets no extension of the time limit because of early conciliation because this was not begun until 24 June 2022. The claim was presented on 1 September 2022. The complaints are, therefore, presented outside the primary time limit and the Tribunal will only have jurisdiction to consider them if the Tribunal considers it just and equitable to extend time in all the circumstances.

105. Relevant circumstances include that the claimant obtained advice from ACAS and the CAB but understood from this advice (whether rightly or wrongly) that there was one time limit, which was the one relating to her dismissal. Her actions demonstrate that she understood she had to meet this deadline and she did so, albeit with difficulty. The claimant was in hospital for some of the primary time limit and suffered poor health during at least part of the remaining part of the time limit and beyond. Mr Searle pointed out that the claimant would have been able to google time limits in employment tribunals. This is correct, but we accept that the claimant was relying on what she understood to be the advice she had been given. This is particularly understandable, given the difficulties her dyslexia caused her to have with reading information online. Her dyslexia also caused her difficulties in completing the claim form, taking her longer, and more attempts, than would be the case for someone without dyslexia. This is not a case where the claimant ignored or was reckless about time limits. She complied with what she understood to be the time limit. The delay in presenting the discrimination complaints causes no prejudice to the respondents who have to face exactly the same factual allegations in the context of the complaint of constructive unfair dismissal.

106. In all these circumstances, we conclude it is just and equitable to consider the complaints of harassment and, alternatively, direct sex discrimination out of time.

Harassment related to sex

107. It was accepted on behalf of the respondents that, if Jason Fairfield was found to have acted in such a way that amounted to harassment related to sex, he was acting as Catherine Fairfield's agent when doing so and both Catherine and Jason Fairfield would be liable for the act of unlawful discrimination.

108. We found that the conduct at 6.1, 6.3 and 6.4 occurred as alleged. 6.2 was found only to the extent of the conduct referred to in these other complaints, so we do not deal with this separately. 6.1 to 6.4 is the conduct relied on for constructive unfair dismissal at 2.1.1. to 2.1.4. We were not satisfied that the conduct alleged at 6.5 occurred. The complaint in relation to 6.5, therefore, fails.

109. 6.1 was Jason Fairfield saying to the claimant in relation to stripping the bed "No it's not my job to do it, it is a woman's job". In closing submissions, Mr Searle accepted on behalf of the respondents that, if the Tribunal found this was said, it was clearly a sexist comment and offensive. It was understandable if the claimant was offended. If it was said, the respondents conceded that it was done with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

110. On the basis of this concession, we conclude that the complaint of harassment in relation to this comment is well founded.

111. Had this concession not been made, we would have concluded that the comment was made with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It is difficult to see what other purpose the comment could have. We had no other explanation from Jason Fairfield, who denied making the comment. In the alternative, we would have concluded that the claimant, as evidenced by her subsequent actions, was offended by the comment and that the comment violated her dignity and created for her an intimidating, hostile, degrading, humiliating or offensive environment and it was reasonable for the conduct to have this effect.

112. We conclude that the complaint of harassment related to sex is well founded in relation to the conduct at 6.2 in the list of complaints and issues.

113. We found that the conduct alleged at 6.3 and 6.4 occurred i.e. on 16 March 2022, Jason Fairfield said to the claimant words to the effect of "do I need to take you upstairs and show you how to clean a toilet seat?", "do I need to give you an instruction manual on how to clean a toilet seat?" . It may be that the claimant felt that Mr Fairfield by his comments was patronising her and that he would not have spoken to a man in the same way. The comments are not, in themselves, overtly related to sex. The burden is on the claimant to prove facts from which we could conclude that all the elements of harassment are satisfied. This includes that the conduct was related to sex. We have no evidence from which we could make an inference that the making of these comments was related to sex apart from what was said to have occurred on 16 March 2022. We were not satisfied that Jason Fairfield referred to cleaning a toilet seat being a woman's job. However, we found that, earlier that day, in relation to bed

stripping, he had referred to this as a woman's job. We have concluded, on balance, that this is not sufficient for the claimant to satisfy the initial burden of proof on her in relation to the comments about cleaning the toilet seat. We would have concluded that the claimant satisfied the initial burden of proof in relation to the other elements of harassment i.e. that the conduct was unwanted and had the requisite effect on her, and that it was reasonable for it to have that effect. Because she has not satisfied the initial burden of proof in relation to the conduct being related to sex, however, the complaint in relation to allegations 6.3 and 6.4 fails.

Direct sex discrimination

114. We do not consider 6.1 under this heading, since it has been found to be harassment related to sex.

115. We can, however, consider 6.3, 6.4 and 6.5 under this heading, since this has not been found to be harassment. We do not consider 6.2 separately, since this succeeded on the facts only to the extent of repetition of what is in 6.1, 6.3 and 6.4.

116. 6.5 was not made out on the facts, so the complaint in relation to this fails.

117. In relation to 6.3 and 6.4, for the same reasons that the claimant did not satisfy the initial burden of proof for harassment in relation to it being related to sex, the claimant does not satisfy the initial burden of proof in relation to the conduct being less favourable treatment because of her sex. These complaints are not well founded.

Breach of contract

118. Mr Searle accepted, on behalf of Catherine Fairfield, that she was in breach of contract by not enrolling the claimant in a workplace pension scheme from September or October 2019 until 13 May 2021.

s.38 Employment Act 2002 – written statement of employment particulars

119. Catherine Fairfield failed to comply fully with its obligations under section 1 Employment Rights Act 1996 to provide a written statement of employment particulars since the statement failed to identify correctly the legal entity which employed the claimant. An award of two or four weeks' pay will be made under s.38 Employment Act 2002 at the remedy hearing, unless the respondent persuades the Tribunal that there are exceptional circumstances which would make an award unjust or inequitable.

Employment Judge Slater

Date: 13 March 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

25 March 2024

FOR THE TRIBUNAL OFFICE

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Annex

List of Complaints and Issues

Respondents

1. Is the correct respondent Catherine and Jason Fairfield or only Catherine Fairfield?

Constructive unfair dismissal

The respondent accepts that the claimant had sufficient continuous service to pursue a claim for unfair dismissal.

2. Can the claimant prove that there was a dismissal?
 - 2.1. Did the respondent do the following things:
 - 2.1.1. On 16 March 2022, Jason Fairfield saying to the claimant, when asked if he was going to strip the bed: “No it’s not my job to do it, it is a woman’s job.”
 - 2.1.2. On 16 March 2022, Jason Fairfield shouting at the claimant and verbally abusing her.
 - 2.1.3. On 16 March 2022, Jason Fairfield saying to the claimant: “Do I need to take you upstairs and show you how to clean a toilet seat?”
 - 2.1.4. On 16 March 2022, Jason Fairfield saying to the claimant, “Do I need to give you an instruction manual on how to clean a toilet?”
 - 2.1.5. On 16 March 2022, Jason Fairfield said to the claimant, “do you not know how to do a woman’s job of cleaning a toilet seat?”
 - 2.1.6. On 17 March 2022, Catherine Fairfield not responding when the claimant raised an issue about the conduct of Jason Fairfield on 16 March 2022, failing to address the issue.
 - 2.1.7. On 18 March 2022, Catherine Fairfield ignoring the claimant and Grace Fairfield only speaking normally to the claimant when Catherine Fairfield was out of the room.
 - 2.1.8. On 18 March 2022, Catherine Fairfield nit picking about what the claimant was doing, saying she was doing her job wrong, although the claimant was doing things in the same way as since she started working there.

- 2.1.9. On 18 March 2022, Catherine Fairfield failing to mention Jason Fairfield's behaviour towards the claimant.
- 2.1.10. On 21 March 2022, Catherine Fairfield ignoring the claimant.
- 2.1.11. On 22 and 23 March 2022, Catherine Fairfield ignoring the claimant.
- 2.1.12. On 24 March 2022, the respondent leaving the claimant on her own with Jason Fairfield.
- 2.1.13. On 4 April 2022, when the claimant asked to have a talk with her before they started work, Catherine Fairfield refused, saying she was busy and needed to walk the dog.
- 2.1.14. On 4 April 2022, when Catherine Fairfield came back from her walk, being defensive and abrupt and, when the claimant said she wanted an apology, laughing and saying she wasn't going to apologise and the claimant certainly wouldn't get one off Jason Fairfield.
- 2.1.15. On 4 April 2022, Grace Fairfield shouting at the claimant, accusing the claimant of asking too many times about the toilet seat.
- 2.1.16. On 4 April 2022, Catherine Fairfield shouting at the claimant.
- 2.2. Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide:
 - 2.2.1. whether the respondent had reasonable and proper cause for those actions or omissions, and, if not,
 - 2.2.2. whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
- 2.3. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.
- 2.4. Was the fundamental breach of contract a reason for the claimant's resignation.

Harassment related to sex

3. Was the complaint presented in time?
4. If not, is it just and equitable to extend time?
5. If Jason Fairfield is not a correct respondent, was he an employee acting in the course of his employment or acting as agent of the respondent when he did the conduct alleged on 16 March 2022?
6. Did the respondent do the following alleged things:
 - 6.1. On 16 March 2022, Jason Fairfield saying to the claimant, when asked if he was going to strip the bed: “No it’s not my job to do it, it is a woman’s job.”
 - 6.2. On 16 March 2022, Jason Fairfield shouting at the claimant and verbally abusing her.
 - 6.3. On 16 March 2022, Jason Fairfield saying to the claimant: “Do I need to take you upstairs and show you how to clean a toilet seat?”
 - 6.4. On 16 March 2022, Jason Fairfield saying to the claimant, “Do I need to give you an instruction manual on how to clean a toilet?”
 - 6.5. On 16 March 2022, Jason Fairfield said to the claimant, “do you not know how to do a woman’s job of cleaning a toilet seat?”
7. If so, was that unwanted conduct?
8. Was it related to sex?
9. Did the conduct have the purpose of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
10. If not, did it have that effect? The Tribunal will 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.

Direct sex discrimination

This applies only If the conduct is not found to be harassment:

11. Was the complaint presented in time?
12. If not, is it just and equitable to extend time?

13. If Jason Fairfield is not a correct respondent, was he an employee acting in the course of his employment or acting as agent of the respondent when he did the conduct alleged on 16 March 2022?

14. Did the claimant reasonably see the treatment as a detriment?

15. If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than a man in the same material circumstances was or would have been treated? The claimant relies on a hypothetical comparison.

16. If so, has the claimant also proved facts from which the Tribunal could conclude that the less favourable treatment was because of sex?

17. If so, has the respondent shown that there was no less favourable treatment because of sex?

Breach of Contract

18. Was the respondent in breach of contract by not enrolling the claimant in a pension scheme from around 5 June 2019 until 13 May 2021?

Failure to comply with the requirements to provide a written statement of employment particulars – s.38 Employment Act 2002

This only applies if the claimant succeeds in one or more of her complaints.

19. Did the respondent fail to comply with the requirements in s.1(1) or 4(1) Employment Rights Act 1996 to provide a written statement of initial employment particulars or of particulars of change?