EMPLOYMENT TRIBUNALS

Claimant: **Mr Sandocan Stan**

Respondent: **Done Brothers (Cash Betting) Limited t/a Betfred**

Heard at: **East London Hearing Centre**

On: **16, 17, 18, 19 & 26 July 2024**
(19 July 2024 [PM only] and 26 July 2024 [AM and part of PM only] in chambers)

Before: **Employment Judge B Beyzade**
Members: **Mrs M Legg**
Mrs B K Saund

Representation
Claimant: In person
Respondent: Mr Robert Cater, Consultant

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The claimant's complaints of direct sex discrimination pursuant to section 13 of the Equality Act 2010 at paragraphs 6.1.1.1 and 6.1.1.2. of the List of Issues are not well founded and they are hereby dismissed.

2. The Tribunal, having decided that the claimant's complaints of direct sex discrimination pursuant to section 13 of the Equality Act 2010 at paragraphs 6.1.1.3., 6.1.1.4, 6.1.1.5, 6.1.1.6, and 6.1.1.7 of the List of Issues have been presented outside the time limit set out at section 123(1)(a) of the Equality Act 2010, and the Tribunal not being satisfied that it was just and equitable to extend time in terms of section 123(1)(b) of the Equality Act 2010, has no jurisdiction to hear those complaints, which are hereby dismissed.

3. The claimant's complaint of unauthorised deductions from wages pursuant to sections 13 and 23 of the Employment Rights Act 1996 in respect of alleged unpaid payments in the period from 25 April 2021 to 22 November 2021 (on grounds that he had been acting up during this period) is dismissed. The Tribunal, having determined that the claimant presented the complaint out of time and not being satisfied that it was not reasonably practicable to lodge it in time, has no jurisdiction to hear the complaint.

REASONS

Introduction

1 The claimant presented complaints of direct sex discrimination, and unauthorised deductions from wages on 18 August 2022, which the respondent resisted.

2 On 17 November 2022 Employment Judge O'Brien issued Case Management Orders requiring the claimant to provide further particulars.

3 We noted that subsequently Employment Judge Feeney at the Preliminary Hearing (case management) on 06 February 2023 listed the case for Final Hearing between 16 and 19 July 2024 for four days at the London East Employment Tribunal, set out the list of complaints and issues, and he also made Case Management Orders (the Record of the Preliminary Hearing was issued to parties on 09 March 2023)..

4 The Final Hearing in this case took place on 16, 17, 18, 19 and 26 July 2024. This was a Hearing conducted in person at the London East Employment Tribunal. The Tribunal comprised the Employment Judge, Mrs M Legg (Tribunal Member), and Mrs B K Saund (Tribunal Member).

5 We noted that the Tribunal were provided with a copy of a Hearing Bundle consisting of 173 pages, which we were informed had been agreed by the parties prior to the Hearing and they were contained in a lever arch file (referred to as "the Hearing Bundle"). Additional documents were added to the hearing bundle by agreement on the first day of the hearing and page numbered from pages 174 to 195. In addition the claimant prepared his witness statement and he had attached several documents by way of appendices (totalling 108 pages of which pages 33 to 108 contain the claimant's additional documents which will be referred to as "the claimant's documents") to his statement within a smaller blue file. It was agreed that the Tribunal would be referred to both sets of documents during the Final Hearing.

6 Following discussion with parties, it was agreed that any issues relating to liability and remedy would be investigated and determined by the Tribunal during this hearing.

7 We discussed the list of issues at pages 75 to 78 of the Hearing Bundle with the claimant and the respondent's representative at the outset of the hearing on the first day. The claimant indicated that he wished to add a further allegation of less favourable treatment because of his sex namely in terms of allegation 6.1.1.5. in amended form (as recorded below). The respondent did not object and that allegation was added within paragraph 6.1.1.5. of the List of Issues. We discussed further changes to the List of Issues which were agreed by parties. We directed the respondent's representative to file an Amended List of Issues, which were sent to the Tribunal and the claimant prior to the start of the second day of the Hearing. Parties confirmed their agreement with the content of the Amended List of Issues on the second day of the hearing and no further alterations were made. Accordingly, the issues which the Tribunal were required to investigate and determine were as follows, both parties being in agreement with these:

4. "The issues the Tribunal will decide are set out below.

5. Time Limits

5.1 The Claimant submitted his application to the Tribunal on 18 August 2022.

5.2 The Claimant entered into Early conciliation on 15 July 2022 and the EC Certificate was issued on 16 August 2022

5.3 The primary date is therefore, 19 May 2022.

5.4 The relevant date for the calculation of time limits is 18 April 2022.

5.5 Were the discrimination complaints made within the time limit. The Tribunal will decide: Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

5.6 If not, was there conduct extending over a period?

5.7 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

5.8 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

5.8.1 Why were the complaints not made to the Tribunal in time?

5.8.2 In any event, is it just and equitable in all the circumstances to extend time?

5.9 Was the unauthorised deduction/breach of contract complaint made within the relevant time limits of the Employment Rights Act 1996? The Tribunal will decide:

5.9.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the [effective date of termination / act complained of / date of payment of the wages from which the deduction was made etc]?

5.9.2 [detriment etc] If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the last one?

5.9.3 [unauthorised deductions] If not, was there a series of deductions and was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the last one?

5.9.4 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

6 Sex Discrimination

6.1 Was the Claimant directly discriminated against?

6.1.1 ***Direct sex discrimination (Equality Act 2010 s13)***

Did the Respondent do the following things:

6.1.1.1. During a telephone conversation on 6 June 2022, did

Bernadine Maxwell threaten the Claimant with dismissal if he did not return from his holiday in time?

6.1.1.2. Complain that the Claimant had returned to work late, which was followed by a disciplinary investigation on 21st June 2022.

6.1.1.3. Fail to pay the Claimant for acting up from 25 April 2021 to 22 November 2022.

6.1.1.4. Fail to promote the Claimant in March 2022 and ultimately promote a female, Ellie Beresford, after informing him in November 2021 he would be promoted to Manager.

6.1.1.5. Discipline the Claimant in January 2018, for being late to work on several occasions in December 2017, because he did not know the location of the key and subsequently disciplined the Claimant in January 2019 for leaving the key with a third party.

6.1.1.6. Did Bernadine Maxwell ask the Claimant if he had abusive behaviour against women in general, or at work in 2017?

6.1.1.7. Did Bernadine Maxwell ask the Claimant who made the decisions in his household?

6.1.1.8. Was that less favourable treatment?

6.1.1.9. The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

6.1.1.10. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

6.1.1.11. The Claimant says he was treated worse than an unidentified female employee; the Claimant has not named anyone in particular who he says was treated better than he was.

6.1.1.12. The Claimant has not identified any direct comparators, but has identified Ellie Beresford and Dani (Danielle) as evidential comparators.

6.1.1.13. If so, was it because of sex?

7 Unlawful deduction of wages

7.1 Were the wages paid to the Claimant between 25 April and 22 November 2022 less than the wages he should have been paid on the grounds that he had been acting up during this period.

7.2 Was any deduction required or authorised by statute?

7.3 Was any deduction required or authorised by a written term of the contract?

7.4 Did the Claimant have a copy of the contract or written notice of the contract term

before the deduction was made?

7.5 How much is the Claimant owed?

8 Remedy for discrimination

8.1 The Claimant does not seek a recommendation, but the Claimant does seek compensation.

8.2 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

8.3 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.4 Did the Claimant unreasonably fail to comply with the ACAS Code of Practice in failing to appeal against the Respondent's grievance outcome?

8.5 Did the Respondent fail to investigate the Claimant's grievance objectively on 3 August 2022?

8.6 If so, is it just and equitable to increase or decrease any award payable to the Claimant?

8.7 By what proportion, up to 25%?

8.8 Should interest be awarded? How much?

8.9 The Respondent makes no Shittu v Maudsley NHS Trust point."

Evidence and Submissions

9 Prior to the start of the evidence, the respondent's representative and the claimant were advised that they should let the Tribunal know if they require any reasonable adjustments. Neither the claimant nor the respondent's representative requested any reasonable adjustments to be made.

10 The claimant gave evidence on his own behalf, and he produced a written witness statement.

11 Mrs Sandra Callender, Mrs Jodie Carter and Mr Philip Robinson gave evidence on behalf of the respondent, all of whom produced a written witness statement. At the end of the claimant's cross examination of each of the respondent's witnesses the clamant was asked if he was satisfied that he had asked all the questions he wanted to ask, and the claimant confirmed the same. Ms Bernadine Maxwell (whose role was Area Manager and had left her employment in November 2022) also provided a written witness statement, although she did not attend the Tribunal to give oral evidence. The Tribunal was advised by the respondent's representative that she had left her employment with the respondent, she had moved to Northern Ireland, and she had been unwell. As a result, she did not attend the Tribunal to give evidence in person and she was unable to give evidence by Cloud Video Platform. Upon the claimant not objecting, we advised that we would read

Bernadine Maxwell's written statement and that parties could address us during their submissions in terms of how much weight we should give Bernadine Maxwell's statement. Accordingly, we gave Bernadine Maxwell's statement appropriate weight bearing in mind that she did not attend the hearing to give live evidence.

12 We were provided with a cast list which was agreed and a chronology which was also agreed (which the parties confirmed was agreed on the second day of the hearing).

13 Mr Robert Cater, consultant, represented the respondent, whereas the claimant represented himself during the hearing.

14 The Tribunal were provided with written representations by the respondent's representative by email dated 18 July 2024 at 08.22am. The claimant also provided written representations on the morning of the hearing on 18 July 2024. In addition to these, both the respondent's representative and the claimant provided representations by way of oral submissions.

15 At the outset of the hearing the parties agreed to work to a timetable to ensure that the evidence and submissions could be completed within the allocated time. Except on Wednesday 17 July 2024 when the claimant had returned substantially late from the morning break whilst he was undergoing cross examination (although the claimant did not notify the Tribunal that he required a break, the claimant eventually returned and he advised the Tribunal that he had not attended when the hearing was due to reconvene as he was upset) and on another occasion where we extended time by one hour for the claimant to cross examine the respondent's witness, Philip Robinson, but parties had otherwise adhered to the agreed timetable.

16 The Tribunal reminded the claimant and the respondent's representative of the need to co-operate and to assist the Tribunal to further the overriding objective. Parties and the respondent's representative assisted the Tribunal to meet its overriding objective and the evidence and submissions were completed within the allocated hearing timetable.

17 Although the evidence and submissions had been completed, the Tribunal conducted their deliberations in chambers (in private) on the afternoon of 19 July 2024 and on the morning and part of the afternoon of 26 July 2024, and the Judgment was delivered in public on the afternoon of 26 July 2024.

18 Following the Tribunal's oral Judgment and reasons being given to parties, the claimant requested written reasons. The Employment Judge apologises to parties for the length of time it has taken to produce the written Judgment and Reasons, and for any inconvenience caused in relation to this. It was not reasonably feasible to produce the written Judgment and Reasons sooner. This is due to a number of matters including sitting in other hearings, other writing and other judicial commitments, training commitments and annual leave. Parties were sent an update in correspondence previously.

Findings of Fact

19 On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the List of Issues:

<u>Background</u>

20 The claimant was employed by the respondent from 17 March 2017 until 28 August 2022.

21 The respondent is Done Brothers (Cash Betting) Limited located at The Spectrum, 56-58 Benson Road, Birchwood, Warrington, WA3 7PQ, and they trade under the trading name of "Betfred". The respondent is a limited company operating as a bookmaker. They own and operate a number of betting shops. The shops are managed under different areas, some of which are relatively large. The claimant specified on his ET1 Form that his place of work was located at 99 Goodmayes Lane, Ilford, Essex, IG3 9PL.

22 In 2017 the claimant became Assistant Sales Manager. He was principally located at the respondent's Chadwell Heath branch. As part of his role as Assistant Sales Manager, he would also provide cover at the respondent's other branches from time to time.

January 2018 Disciplinary Matter

23 The claimant was sent a letter from Jodie Carter dated 04 January 2018 requiring him to attend a Disciplinary Hearing on 17 January 2018 to discuss a number of timekeeping issues and an alleged failure to complete FOBT last 2 hours report on 16 December 2017. Jodie Carter was authorised to conduct disciplinary hearings in respect of lateness and attendance and any other matters assigned to her by Bernadine Maxwell, Area Manager. Bernadine Maxwell had asked Jodie Carter to investigate and determine the matters listed in the letter dated 04 January 2018 during a manager's meeting which are usually held on Mondays. The claimant sent a letter in relation to those allegations dated 16 January 2018. A Disciplinary Hearing was held on 17 January 2018. On 05 February 2018 Jodie Carter sent a letter to the claimant advising that the misconduct allegations against him were substantiated namely failure to open a branch ready for trading on 23 December 2017, 26 December 2017, 27 December 2017 and 29 December 2017, and in addition the allegation that he failed to complete the FOBT last 2 hours report (the allegation relating to 30 December 2017 was not included in the list of allegations that were proven). The claimant was issued a verbal warning which was to be disregarded for disciplinary purposes after six months. The letter stated that the claimant had a right of appeal against Jodie Carter's decision (which the claimant did not exercise). We noted that Jodie Carter conducted disciplinary hearings against around 30 other employees (both men and women) in relation to which she was asked to address lateness and absence in that same year. Normally a disciplinary process would be started if there were three or more instances of lateness to a shift (which was monitored via a tracking sheet). If there were three or more instances of lateness, normally a letter of concern or a verbal warning would be issued in the first instance.

January 2019 Disciplinary Matter

24 The claimant attended a Disciplinary Hearing on 17 January 2019 in relation to the allegation of an "*alleged act that is deemed to have put the safety or security of staff or customers at risk, further particulars being; leaving any shop keys in the possession of non Betfred employees*." On 21 January 2019, the claimant was sent a letter from Philip Randolph, Regional Security Manager East summarily dismissing the claimant for gross misconduct effective from 21 January 2019. He found the disciplinary allegation to be proven. A number of other employees (both male and female employees) were dismissed following a disciplinary process relating to this matter.

25 Following the claimant's appeal against that decision, he was sent a letter dated 07 January 2019 from Craig Sykes, Regional Manager upholding his appeal and overturning

the original decision to dismiss the claimant. Craig Sykes stated that there was no evidence that the claimant had given the keys or alarm code to a non-Betfred employee, and that the dismissal would be removed from the claimant's record. The other employees who were dismissed were also reinstated following the claimant's appeal.

26 Jodie Carter was issued with a final written warning in respect of the incident in question. That final written warning was never rescinded. She had asked for a transfer (which was granted) as she did not feel comfortable working with Bernadine Maxwell and Sandra Callender. She returned to work in the same area after the expiry of the final written warning, following reassurances from the Regional Manager.

27 The respondent operated a shift system where nominally morning shifts started at 7.45am until 5.45pm and the afternoon shift from 1.45pm to 10.15pm (Seven Kings 1) and at Chadwell Heath Lane the shift system varied and included a shift between 3.45pm to 10.15pm.

Claimant's transfers

28 In April 2021, the claimant was transferred to the respondent's Goodmayes store. He undertook management responsibilities at that store during the period in which the store manager was unwell, off sick, and hospitalised.

29 The claimant refers to a colleague called Danielle (also known as Dani) who was initially a cashier for around six months, and she was later appointed as a manager around June 2018.

30 Jodie Carter was informed that there was an issue between the claimant and the shop manager at the Chadwell Health Lane shop where he previously worked. The problem was that the manager (known as Dani) and the assistant manager had said the claimant was not following instructions. Therefore, the claimant was transferred to the Goodmayes shop to work with the manager Mrs Penny, with whom he had worked before and who was more experienced.

New manager and claimant's promotion

31 On 02 March 2022, the claimant had a meeting with Sandra Callender, Area Supervisor. The notes of that meeting which are signed by the claimant are at page 86 of the Hearing Bundle and they record that the claimant was told that a new manager would be coming to the shop from 07 March 2022 due to another shop closing as there was no permanent manager in the shop. The claimant was also told that this was due to a redundancy process that was being carried out in respect of Ellie Beresford (who was given three options, and she chose that particular shop which was due to the easier commute). The notes of that meeting recorded that the claimant was happy and would speak to the other staff at the shop.

32 On 22 November 2021, the claimant was promoted to the role of Deputy Manager by Bernardine Maxwell, who was the Area Manager.

Data relating to percentages of men and women

33 We noted that 60% of managers were men and 40% were women in the Area managed by Bernadine Maxwell between May 2022 and October 2022 (see pages 174 and 175 of the Hearing Bundle).

Claimant's personal circumstances from 22 November 2021

34 The claimant explained that towards the end of 2021 and in 2022 the situation regarding his parents had become severe and he had filed a series of criminal complaints with the court in Romania.

35 Not long afterwards, the claimant's wife informed the claimant that his mother-in-law was suspected to have breast cancer, and she was to undergo a series of very important medical investigations.

36 These events had an impact on the claimant, and he was required to attend to his family matters and provide support.

37 The claimant also explained that he had not seen his wife and daughter for two years due to COVID-19 restrictions and he asked Bernadine Maxwell for a two-week holiday at the end of February 2022 as a result of this.

Telephone conversation 06 June 2022

38 The claimant booked a period of annual leave after the COVID-19 restrictions were lifted in order to travel to Romania. His annual leave was booked for a period of 2 weeks.

39 The claimant spoke to Sandra Callender on or around 25 May 2022 before he went on annual leave. He advised her that he may return late from annual leave because he had problems at home. He said he did not know that that he would definitely be away for more than 2 weeks at that stage.

40 On 06 June 2022, the claimant contacted Bernadine Maxwell by telephone at 10.27am in order to advise about his delayed return from annual leave. The claimant had telephoned Bernadine Maxwell in compliance with the respondent's relevant policy. He advised that he would return to work on 19 June 2022 (this was 4 days later than his scheduled return to work date).

41 There was a two-page note prepared by Bernardine Maxwell, and the first half of the first page of those notes is a record of that telephone conversation, a copy of which is at pages 93 and 94 of the Hearing Bundle.

42 A text message was sent from the claimant to Bernadine Maxwell on the same day at around 10.53am UK time (12.53pm Romanian time), which was sent in multiple parts, stating as follows:

> *"I am sorry, but you need to understand that I have a situation at home, a very sever one, Sandra knows about it, and because of this I might be late couple of days. My request is very reasonable and if I have to, I will bring the matter to the court. You tell me about my duties etc. but I have done the managemet work for nearly one year. I didn't get paid for that work and you lied to me over the phone that you'll give me the manager position and you gave that position to a girl that she had to choose from 3 shops. Now, I told you that I have a very serious situation at home, and I may need couple of days to sort things out and you tell me what? Dear Mrs Bernadine you breach the law and you abused me throgh yor position, and I will take legal actions. Stan"*

Claimant's follow up correspondence 08 June 2022

43 The claimant sent an email dated 08 June 2022 to Bernadine Maxwell a copy of which appears at page 88-89 of the Hearing Bundle in which he stated:

> *"In line withe the rules and regulations in place, I inform you that I will return from my holiday a few days later, on June 19, 2022.*
>
> *I also inform that I will take the necessary steps so that I can return before 19.06.2022, but the situation that I have to face is very serious for me.*
>
> *My mother-in-law was diagnosed with TRIPLE NEGATIVE breast cancer and the situation was exponentially aggravated by the fact that her breast cancer was considered hereditary.*
>
> *I think you can only imagine the incredible stress that my family and I were exposed (I have an absolutely gorgeous little girl).*
>
> *Thank God the genetic test showed that the mother-in-law's breast cancer is not hereditary.*
>
> *To all this was added an ATTEMPT OF MURDER against my parents in a lawsuit filed against part of the local authorities in the county where they live.*
>
> *Reason for, I have to analyze the situation carefully, and obviously I need extra time, because the case was initially introduced as a civil action, after which the case became penal as well, and a dozen of people are currently being investigated from a criminal point of view in terms of abuse in service, negligence, false statements and, more recently, the police investigators will be informed in regard with the ATTEMPT OF MURDER against my parents.*
>
> *To check the information, please see the link inserted below. The information is in Romania language, but you can use google translation for English.*
> *http://www.curteadeapelpitesti.ro/Detalii_Dosar.aspx?id=752%2f46%2f2020&instantid=90*
>
> *In light of the above, on 6th of June, at 12:27, I contacted by phone the area manager, Mrs. Bernadine Maxwell, and I informed her that it was very possible for me to come on 19.06.2022 (not on 15.06.2022) from my holiday because I have a very serios situation at home.*
>
> *Unfortunately, the area manager, Bernadine Maxwell, chose to behave abusively and threaten me. (Telephone conersation: 2 minutes and 22 secons)*
>
> *That is why I inform you that I will take legal action.*
>
> *I also inform that this is not the first time I have had to deal with abuses and threats from Bernadine Maxwell, as well as other members of the Area team.*
>
> *All this will be detailed in a complaint that I will submit to ACAS, after which, if necessary, it will be sent for resolution to the court.*
>
> *In the end of this email, I would like to inform that I contact my coleague, Mr Scott*

and he is willing to cover my shift.

Also, for what I know, Mrs Ellie is always seeking for extra hours, some times even 80 hours/week, therefore, I reasonably assume that covering my shift should not be a problem."

Internal correspondences involving Bernadine Maxwell

44 Bernadine Maxwell sent an email to Jordan Lawrenson and Samantha Weaver on 09 June 2022 stating:

"I believe Sandra has already spoken to you about the email he sent yesterday. Can we send him a letter checking he is okay and offering EAP, please exlplain I am looking into his missing payment and we will deal with his other issues when he returns.
I am on holiday from 19th June for 2 weeks so I won't be able to see him myself. Sandra will see him on his return.
Can you give me a call to discuss"

45 In a later email that day Bernadine Maxwell stated:

"Oh forgot the note I made on the first day and have updated since

His txt message is below in email trail."

46 Sam Weaver, HR Adviser sent an email to Bernadine Maxwell on 10 June 2022 stating:

"I don't support you have his employee number? I'm struggling to find him on RSL.

Please can you also check over the attached letter and let me know if you're happy for me to e-mail a copy over to him and for the letter to come from Sandra if you're going to be off when he returns?"

47 Bernadine Maxwell sent an email to Sam Weaver on 10 June 2022 stating:

"Did you find it?

He spoke to me on 6th and as that is in the timeline of events I think it would be good to send the letter from me but state that I am away for 2 weeks when he returns so I have asked Sandra to meet with him re his issues but that have already started an enquiry with admin re any missing supplement.

What do you think?."

Correspondence with the claimant regarding leave

48 A letter was sent from Bernadine Maxwell to the claimant dated 13 June 2022 stating the claimant had been placed on authorised unpaid leave until 19 June 2022 as requested. In addition, she stated "*Should you fail to return to work by 19th June 2022, we will have no alternative but to follow our AWOL (Absent Without Official Leave) process, which could potentially result in your dismissal*."

49 On the same day on 13 June 2022 Nicky Bird sent Bernadine Maxwell a breakdown of the supplement to be paid to the claimant, totaling £383.54 between 22 November 2021 and 28 February 2022 (a copy of which appears at pages 96-97 of the Hearing Bundle).

50 The claimant returned from annual leave on 19 June 2022.

Meeting with the claimant to investigate matters regarding his leave

51 Jodie Carter, Area Operations Assistant was asked by Bernadine Maxwell during a regular Monday Area Manager's meeting to meet with the claimant to investigate his late return from annual leave, a process which the respondent followed with all staff who returned late from annual leave.

52 Jodie Carter met with the claimant on 21 June 2022 to investigate that matter. The investigation checklist is at pages 98 to 99 of the Hearing Bundle, and it sets out the allegation in the following terms:

> *"YOU Allegedly failed to return from holiday within Company guidelines In particular 2 week holiday 3/5/22-13/6/22 Due back 15/6/22 but didnt return until 19/6/22"*

53 The meeting between Jodie Carter and the claimant took place on 21 June 2022, and a handwritten record of that meeting can be found at pages 100 to 104 of the Hearing Bundle. The claimant signed the record of that meeting after having agreed to an amendment (underlined below) that was made at his request which was as follows:

> "*JC- ~~I believed you~~ He followed procedure regarding failing to return from holiday – Regarding Bernadine and your own Conversation I believe was a lack of communication*"

54 Jodie Carter also stated: "*I think you both should have a chat – As I dont believe Bernadine was aware why you had~~n't~~ returned home – she had got compassion*."

55 The conversation continued as follows:

> *"SG – I dont want to focus on this – I need to focus on my family –*
> *JC – Also wanted to share you will be paid supplement for manager in this month payslip £383.54."*

56 The claimant was furnished with a sheet providing the claimant with the breakdown relating to his payment which was referred to by Jodie Carter during that meeting.

57 The record of the meeting records that when the claimant was advised that he would be paid the supplement of £383.54, the claimant simply replied with "OK".

Claimant's Grievance

58 The claimant presented a grievance sent to the respondent and Bernadine Maxwell dated 13 July 2022, a copy of which can be found at pages 105 to 133. His grievance included allegations that Sandra Callender said to him at a meeting in March 2022 "Do I have any problems working with women?" He further states:

"I admit that I was completely disturbed by her question, especially for the fact that she came on behalf of Mrs Bernadine Maxwell, and this person Bernadine Maxwell, in 4 different occasions, asked me if I have any problems of working with women."

59 The claimant further stated in his grievance:

"*Though, based on the information that I had access, I noticed something that I found a little bit strange, all the men that I know that are managers of the shops, they can fit, in my opinion, into a certain psychological pattern. The only exception of the pattern it seems to be Mr Barry, the shop Manager from Collier Row.*
Apparently, Mrs Bernadine Maxwell wants as shops managers, only the men that she can emotionally overcome, and since she will never emotionally overcome me, she decided to discriminates me on the ground of my gender and to offer the manager position to a female."

60 The claimant's concluding paragraphs were:

*"**Conclusion***
In light of the above presented, it is opined that the allegation of Discrimination on the ground of gender, Abuse of power, Gross misconduct and Bribery formulated against Mrs Bernadine Maxwell are fully supported with evidence.
My Claim
Having the above mentioned, a consistent financial compensation needs to be in place. Contrarily, legal actions will commence forthwith."

61 In terms of the claimant's supplement, the claimant says in his grievance:

"*Noteworthy, during the meeting, the investigating manager informed me that I don't need to be upset by the way of how Bernadine Maxwell behave in my case, and to make my day better she has something for me from Bernadine Maxwell as a consideration for the situation.*

She told me that Bernadine Maxwell, Area Manager S4, decided to give me the money for the manager work that I have done [for a period of nearly one year – May 2021 until March 2022] and the amount of money that I will receive in addition to my next salary will be £383.54p.

In other words, Mrs Bernadine Maxwell, Area Manager S4, in consideration for the situation and to make my day better, she was thought to give me money now, money that I supposed to rightfully receive long time ago.

In light of the above mention, it is reasonably opined that Mrs Bernadine Maxwell tried to bribe me not to take legal actions against her, by offering me money that were rightfully mine for the manager work that I have done for nearly one year.

Ironically, I didn't receive at my next salary the amount of money that I was promised and which, in fact, was rightfully mine. Reason for, I called Mrs Nicky Bird, Area Administrator.

The Area Administrator informed me that a misunderstanding occurred, she was thinking that they [Mrs Bernadine Maxwell or Jodie Carter, the investigating manager] will inform the payroll, but they didn't.

Also, Mrs Nicky Bird, Area Administrator requested me not to ask her why I did not receive those money at the rightful time, because she does not know. Mrs Bernadine Maxwell ask her to do that and she complied with the request."

62 On 14 July 2022 Philip Robinson, Area Manager sent a letter to the claimant inviting him to attend a grievance hearing on 26 July 2022 at the Romford office, which would be conducted by Mr Robinson (who was an Area Manager in a different region). The claimant was advised that he had the right to be accompanied by a colleague or a trade union official.

63 The claimant contacted the HR department on the same day to advise that he would not be able to attend the grievance hearing at the scheduled date and time. A further letter was sent to the claimant from Mr Robinson on 15 July 2022 advising that the grievance hearing had been rescheduled to take place on 03 August 2022.

64 The grievance hearing took place on 03 August 2022. The hearing was chaired by Philip Robinson, the claimant was in attendance (he was not accompanied), and Akshay Jassal was present as the notetaker. The grievance hearing notes are at pages 137 to 144 of the Hearing Bundle, and they are signed by the claimant.

65 Jodie Carter attended an investigation interview with Philip Robinson on 03 August 2022, and a record of that meeting is at pages 156 to 159 of the Hearing Bundle. In respect of examples of where the claimant had problems working with women the following discussion took place:

"*PR Do you know if it had been examples where he had problem working with woman?*

JC: Yes he had issues with the female manager in shop Chadwell Heath Lane"

"PR: So did he moved to Goodmays because of this?

JC: Yes.

PR: So How did he get on with Panny?

JC: Good. Because Panny could manage him because of her past experience as Panny was very experienced manager

PR: Do you want to add anything else?

JC: No"

66 In respect of the issue relating to the supplement the following was discussed at that meeting:

"*PR: Did he ever mentioned to you about the management suplement money he owed to company?*

JC: Yes.

PR: Did you say to Stan, oh there is something for you that makes you good?

JC: No. I handed him a sheet and explained him how much money he owed to us during after the investigation was finished.

PR: So when you gave him the sheet of the breakdown of the money he owed, what was his reaction?

JC: Normal and he asked me, if he will get this money in next pay."

67 The claimant sent a letter to Philip Robinson on 04 August 2022, a copy of which appears at pages 160 to 162 of the Hearing Bundle. In this letter he states:

"*1. You argued that the text message sent to Mrs Bernadine Maxwell it can be interpreted as a threat, because I stated that I will take legal action.*
…
A.1.1 The statement is not a threat, it is a fact that, in my opinion, Mrs. Bernadine breached certain legal provisions of the legislation in force in relation with me, and as a consequence legal actions will be taken. The amount that might be claimed, according with "Vento" guide lines for the middle band, it is £27,000.
…
Also, as briefly mentioned during the yesterday meeting, it seems that something is wrong with my monthly payments, I honestly hope it's not a payroll fraud. I will analyze this aspect when time permits."

68 On Sunday 14 August 2022 Philip Robinson conducted a grievance investigation meeting with Bernadine Maxwell. The record of that meeting is at pages 145 to 151 of the Hearing Bundle. In relation to the comments that the claimant alleged she made she stated:

"*PR: SANDOCAN CLAIMS THAT YOU HAVE ASKED HIM ON FOUR OCCASIONS IF HE HAD A PROBLEM WORKING WITH WOMEN. IS THIS CORRECT?*

BM: NO. I HAVE NEVER HAD A CONVERSATION WITH SANDOCAN REGARDING THIS. THERE WAS NO NEED TO HAVE A CONVERSATION LIKE THIS AS HE HAD AWAYS GOT ON WELL WITH PENNY HIS MANAGER AND SEEMED TO GET ON WELL WITH THE OTHER TWO WOMEN HE WORKED WITH. I NEVER HAD AN ISSUE WITH HIM EITHER PRIOR TO THIS."
"*PR: SANDOCAN ALSO CLAIMS THAT HE HAS BEEN DISCRIMINATED AGAINST BECAUSE OF GENDER. DO YOU HAVE ANY KNOWLEDGE OR CAN YOU THINK OF ANY REASON WHY HE WOULD FEEL LIKE THIS*
BM: NO NOR AM I. CERTAINLY NOT BY ME. WE HAD PROMOTED HIM TO D.S.M. WHICH WE THOUGHT WAS A POSITIVE THING TO DO AFTER HE HAD DONE A GOOD JOB FOR US.

PR: DID SANDOCAN EVER EXPRESS AN INTEREST IN THE POSITION OF SHOP MANAGER IN GOODMAYES?
BM: NO NOT TO ME."

69 When asked why Ellie was put in the shop, Bernadine Maxwell stated:

"*PR: WHY WAS ELLIE PUT IN THE SHOP.*
BM: BECAUSE HER SHIP S28 LEYSTONSTONE CLOSED. I GAVE HER THE OPTION OF THREE SHOPS, ONE BEING GOODMAYES AS SHE NEEDED TO BE RELOCATED TO AVOID REDUNDANCY. SHE OPTED TO WORK IN GOODMAYES."

70 Bernardine Maxwell also stated that Ellie Beresford was offered Grays, Plaistow and Goodmayes stores as options as part of her redundancy consultation, and she chose to work at the Goodmayes store. She explained that Ellie Beresford had had problems working in Plaistow previously and Grays was too far for her to travel to, so Goodmayes was the natural choice for her.

71 Sandra Callender attended an investigation meeting with Philip Robinson on 14 August 2022 and the record of that meeting is at pages 153-155 of the Hearing Bundle. When asked about the comments she allegedly made to the claimant she stated:

"PR: YOU SPOKE TO SANDOGAN ABOUT THE FACT THAT A NEW MANAGER WAS COMING IN. DID YOU ASK HIM IF HE HAD A PROBLEM WORKING WITH WOMEN. Sc: No. WHY WOULD I ASK HIM THAT WHEN HE GOT ON WITH PENNY SO WELL
PR: SO AT NO TIME YOU HAVE ASKED HIM IF HE HAD A PROBLEM WORKING WITH WOMEN
SC: NO DEFINITELY NOT.
PR: WHAT WAS SAID AT THE MEETING
SC: I HAD GONE TO THE STORE TO INFORM SANDOCAN
THAT A NEW MANAGER WAS COMING INTO THE SHOP
AND THAT HER NAME WAS ELLIE BECAUSE HER SHOP WAS CLOSING DOWN
PR: DID YOU ONLY TELL SANDOCAN OR THE REST OF THE SHOP TEAM
SC: NO I JUST TOLD SANDOCAN AS HE WAS THE D.S.M. I WENT THERE ON BERNADINES BEHALF AS SHE WAS ON HOLIDAY.
PR: WHAT WAS SANDOCANS RESPONSE
SC: HE SAID THANKS AND HE WAS HAPPY WITH THAT AND THAT HE WAS HAPPY FOR HER TO COME TO THE SHOP
PR: DID HE RAISE ANY OBJECTIONS BECAUSE HE THOUGHT HE MIGHT BE THE NEXT MANAGER IN THE SHOP
SC: No
PR: HAD HE BEEN TOLD HE WOULD BE THE NEXT MANAGER
SC: No. WHO BY
PR: BY ANY MEMBER OF THE AREA TEAM

SC: No."

72 On 17 August 2022 Philip Robinson sent a letter to the claimant advising him that his grievance was not upheld, and he set out his reasons in respect of his decision, a copy of which is at pages 162 to 165 of the Hearing Bundle.

73 Within his grievance outcome letter, under the heading "Bernadine Maxwell, Area Manager, discriminated against you on the basis of gender" he stated in his concluding remarks:

> "*I also questioned Bernadine on your claim that she had asked you this question on four separate occasions. Bernadine stated that at no time has she asked you this as there was no need to. In her eyes you had worked with women in other shops and had been working with women in 2788 Goodmayes and there had been no issues so it wasn't something that was in her mind.*
>
> *Based on the fact that there is no evidence that any inappropriate comments were made to you and that the manager's position was offered based on the managers gender I dismiss this part of your grievance*."

74 His conclusions in respect of the various points raised by the claimant also included the following:

> -There was no evidence to support the claimant's accusation relating to bribery on Bernadine Maxwell's part,
> -In relation to the situation in a shop in Seven Kings in 2018 where keys were left with non-Betfred employees (Paddy Power) the matter was fully investigated, the matter was closed, appropriate action was taken at the time and that this did not show abuse on Bernadine Maxwell's part: and
> - He did not uphold the claimant's claim that Bernadine Maxwell was guilty of gross misconduct regarding her conduct in respect of the claimant's holidays.

Claimant's Tribunal claim

75 The claimant started ACAS Early Conciliation 15 July 2022, and his ACAS Early Conciliation Certificate was issued on 16 August 2022.

76 On 18 August 2022, the claimant presented his claim to the Tribunal.

Resignation

77 The claimant sent a letter to the respondent and Bernadine Maxwell dated 24 August 2022 tendering his resignation with effect from 28 August 2022. He states that he had a week's notice period. His letter begins as follows:

> "*Given the recent actions of Mrs Bernadine Maxwell, Area Manager S4, against me, that being Discrimination on the ground of gender, Abuse of power, Gross misconduct and Bribery, please accept this letter as my formal resignation from my position as Duty Sales Manager at Done Brothers (Cash Betting) Ltd. (t/as Betfred)*."

78 The claimant requested a reference from the respondent at the end of his notice period and he stated, "*In the end of this letter, I take the opportunity to wish everyone at Betfred all the best for the future*."

79 The claimant secured alternative employment with a different employer within a week after he left his employment with the respondent. In his new employment, the claimant's earnings exceeded (and continue to exceed) his earnings when compared with his salary that he was in receipt of whilst working for the respondent.

Observations

80 On the documents and oral evidence presented, the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the List of Issues.

81 The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of the event was more likely than not, then the Tribunal is satisfied that the event did occur.

82 Accordingly, where there was a dispute of fact, we made our decision on the balance of probabilities based on the evidence of the witness which set out the position both clearly and consistently, and we also considered the content of any relevant contemporaneous documents and emails.

83 This was a case where it was possible to distil a significant amount of the material from the documents to which we were referred in relation to the issues that required to be determined by the Tribunal.

84 The claimant repeatedly asserted that a number of individuals had collectively mounted a campaign of discrimination against him for a period of five years. He asserted that Bernadine Maxwell was a protagonist in respect the campaign. We did not accept the claimant's contention in this regard. We noted that there was no supportive evidence in terms of the documents and evidence before us. Furthermore, the claimant's arguments were inherently implausible on the evidence we were referred to and in terms of the evidence that we heard from relevant witnesses. By way of example the claimant asserted that he did not research the position on the law relating to time limits until August 2022 after having received a copy of the grievance outcome. However, the claimant had written to the respondent prior to receiving the grievance outcome threatening legal action, referring to ACAS, referring to the Vento guidelines, and he had started ACAS Early Conciliation on 15 July 2022. We did not accept his evidence in relation to the same in the circumstances.

85 We also treated with a certain note of dubiety the claimant's account that he did not consider the events he complains of in his claim to be discrimination in terms of their nature until after the call with Bernadine Maxwell on 06 June 2022. In fact, some of the alleged comments he says were made by Bernadine Maxwell (which we did not accept were made) in 2017 and 2018 we considered were discriminatory in nature, and that it was not clear to us why the claimant did not complain about the alleged conduct of Bernadine Maxwell earlier.

86 The claimant referred to colleagues called Danielle (cashier initially for around six months and she was later appointed as a manager in around June 2018). The claimant did provide any or any substantial evidence or information in relation to her circumstances.

87 The claimant had alleged as part of his grievance that Bernadine Maxwell used a payment made to him of £383.54 as a form of bribery. However the claimant's account of events is not congruent with the record of the meeting with Jodie Carter on 21 June 2022. We noted that when the claimant was informed about the payment at that meeting, the claimant responding stating "OK". The claimant did not allege at that meeting that the respondent was bribing him or that the payment being made to him was short or inadequate.

88 The claimant also asserted that the respondent was engaged in a practice of saving millions by not paying their employees their acting up supplements for covering management roles and he also made allegations of bribery (which was not supported by any evidence). The claimant acknowledged that the only evidence he had presented in support of his assertion related to the respondent making payments in respect of his supplement between 25 April 2021 and 28 February 2022 (not paid between 25 April 2021 to 22 November 2021). In any event he had not provided any evidence relating to any such payments that were not made to other employees.

89 We found that the respondent's evidence was on the whole consistent with the documents that were before the Tribunal. Jodie Carter and Sandra Callender both gave clear and consistent evidence (which was also in accordance with the documentary evidence before us). The documents provided relating to Bernadine Maxwell, including the correspondences to which we were referred, and the grievance investigation interview conducted with her (referred to above) were consistent with their witness evidence. We noted that Sandra Callender's account of events in her grievance investigation interview were in line with the information provided during the grievance investigation interview conducted with Bernadine Maxwell.

90 Jodie Carter told the Tribunal that she had thought that the claimant and Bernadine Maxwell had a good working relationship previously. Jodie Carter also described that she did not trust Bernadine Maxwell after she had been issued with a final written warning (which was never rescinded).

91 Philip Robinson had acknowledged in his evidence where he had made errors, for example, in relation to the issue relating to the claimant's payments. We noted that Mr Robinson did not seek to address all the points from the claimant's grievance with the claimant. We felt that it would have been good practice for him to do this, although we did not find that this was in any sense whatsoever connected to the claimant's sex. Sandra Callender had also recognised and accepted in relation to relevant points in her evidence where she could not remember certain events due to the passage of time.

92 Although we noted that Bernadine Maxwell was not called to give oral evidence by the respondent, we reviewed the documents relating to her involvement including a file note dated 06 June 2022 explaining what had happened during a telephone conversation with the claimant. We found that on the balance of probabilities the file note was an accurate reflection on what had transpired during that telephone call. This was consistent with the surrounding context including the email correspondences to which we were referred and the grievance investigation interview notes.

The Law

93 To those facts the Tribunal applied the law:

Direct discrimination

94 Direct discrimination is defined at Section 13(1) of the Equality Act 2010 ("EqA") as follows: -"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others." The protected characteristic of sex is listed at section 4 of the EqA (as defined in section 11).

95 The concept of treatment being less favourable inherently suggests some form of comparison and in such cases section 23(1) applies: "On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case."

96 The effect of section 23 of the EqA as a whole is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical person.

97 Further, as the Employment Appeal Tribunal ("EAT") and appellate courts have emphasised in a number of cases, including *Amnesty International v Ahmed [2009] IRLR 884*, in most cases where the conduct in question is not overtly related to [the protected characteristic], the real question is the "reason why" the decision maker acted as he or she did.

98 Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator, and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator.

99 The basic question in a direct discrimination case is: what are the grounds or reasons for treatment complained of? In *Amnesty International v Ahmed* the EAT recognised two different approaches from two (then) House of Lords authorities - (i) in *James v Eastleigh Borough Council [1990] IRLR 288* and (ii) in *Nagarajan v London Regional Transport [1999] IRLR 572*. In some cases, such as James, the grounds or reason for the treatment complained of is inherent in the act itself.

100 In other cases, such as *Nagarajan*, the act complained of is not discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in *R (on the application of E) v Governing Body of the Jewish Free School and another [2009] UKSC 15*.

101 The Tribunal should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions) – as explained in the Court of Appeal case of *Anya v University of Oxford [2001] IRLR 377*.

102 In *Glasgow City Council v Zafar [1998] IRLR* 36, also a (then) House of Lords case, it was held that it is not enough for the claimant to point to unreasonable behaviour. He must show less favourable treatment, one of whose effective causes was the protected characteristic relied on.

103 Thus the reason for the treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the treatment to amount to an effective cause of it. In "reason why" cases the matter is dispositive upon determination of the alleged discriminator's state of mind. In "criterion cases" there is no need to consider the alleged discriminator's state of mind when the treatment complained of is caused by the application of a criterion which is inherently or indissociably discriminatory (*R (E) v Governing Body of JFS [2010] 2AC 728, SC*).

104 In *Shamoon v Chief Constable of the RUC 2003 IRLR 285*, a (then) House of Lords authority, Lord Nichols said that a Tribunal may sometimes be able to avoid arid and confusing debate about the identification of the appropriate comparator by concentrating primarily on why the complainant was treated as she was and leave the less favourable treatment issue until after they have decided what treatment was afforded. Was it on the prescribed ground or was it for some other reason? If the former, there would usually be no difficulty in deciding whether the treatment afforded the claimant on the prescribed ground was less favourable than afforded to another.

105 Direct discrimination may be intentional or it may be subconscious (based upon stereotypical assumptions). The Tribunal must consider the conscious or subconscious mental processes which caused the employer to act. This is not necessarily a question of motive or purpose and is not restricted to considering 'but for' the protected characteristic would the treatment have occurred (see *Shamoon*).

Burden of proof

106 The burden of proof provisions in relation to discrimination claims are found in Section 136 of the EqA. Section 136(2) of the EqA provides that "(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."

107 However, Section 136(3) of the EqA goes on to provide that: "But subsection (2) does not apply if A shows that A did not contravene the provision.

108 Finally, in terms of Section 136(6), a reference to "the court" includes a reference to an Employment Tribunal.

109 The burden of proof is considered in two stages. Giving the judgment of the Court of Appeal in *Igen Limited v Wong [2005] ICR 931*, Peter Gibson LJ said in paragraph 17:"The statutory amendments clearly require the employment tribunal to go through a two-stage process if the complaint of the complainant is to be upheld. The first stage requires the complainant to prove facts from which the tribunal could, apart from the section, conclude in the absence of an adequate explanation that the respondent has committed, or is to be treated as having committed, the unlawful act of discrimination against the complainant. The second stage, which only comes into effect if the

complainant has proved those facts, requires the respondent to prove that he did not commit or is not to be treated as having committed the unlawful act, if the complaint is not to be upheld."

110 The Court of Appeal, in Igen Limited v Wong, set out the position with regard to the drawing of inferences in discrimination cases.

111 It is unusual to have direct evidence as to the reason for the treatment. Discrimination may not be intentional and may be the product of unconscious bias or discriminatory assumptions (*Nagarajan*). Evidence of the reason for the treatment will ordinarily be by reasonable inference from primary facts. At stage 1 proof is of a prima facie case and requires relevant facts from which the tribunal could infer the reason. Relevant facts in appropriate cases may include evasive or equivocal replies to questions or requests for information; failure to comply with a relevant code of practice; the context in which the treatment has occurred including statistical data; the reason for the treatment (See *Madarassy v Nomura International Plc [2007] ICR 867 (CA)*). "*In so far as this [information] was in the hands of the employer, the claimant could have identified the information required and requested that it be provided voluntarily or, if that was refused, by obtaining an order from the Tribunal*" (*Efobi v Royal Mail Group [2019] EWCA Civ 19*).

112 Assessment of Stage 1 is based upon all the evidence adduced by both the claimant and the respondent but excluding the absence of an adequate (i.e. non-discriminatory) explanation for the treatment [which is relevant only to Stage 2] (See *Madarassy*). All relevant facts should be considered but not the respondent's explanation, or the absence of any such explanation (*Laing v Manchester City Council [2006] ICR 1519, EAT* and *Efobi*). The respondent's explanation for its conduct provides the reason why he has done what could be considered a discriminatory act. "*Most cases turn on the accumulation of multiple findings of primary fact, from which the court or tribunal is invited to draw an inference of a discriminatory explanation of those facts*" (See *Madarassy*). "*In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts*" (See *Igen v Wong*).

113 The employer must seek to rebut the inference of discrimination by explaining why he has acted as he has (See *Laing*). The treatment must be "*in no sense whatsoever*" because of the protected characteristic (*Barton v Investec [2003] IRC 1205 EAT*). The explanation must be sufficiently adequate and cogent to discharge the burden and this will depend on the strength of the Stage 1 prima facie case (*Network Rail Infrastructure Limited v Griffiths Henry [2006] IRLR 865*). The Tribunal may elect to bypass Stage 1 and proceed straight to Stage 2, if they are satisfied that the reason for the less favourable treatment is fully adequate and cogent (See *Laing*).

114 In *Madarassy*, the Court of Appeal found that the words "*could conclude*" must mean "*a reasonable Tribunal could properly conclude*" from all the evidence before it, meaning that the claimant had to "*set up a prima facie case*". That done, the burden of proof shifted to the respondent (employer) who had to show that they did not commit (or is not to be treated as having committed) the unlawful act. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that, on balance of probabilities, the respondent had committed an unlawful act of discrimination.

115 The Supreme Court, in *Hewage v Grampian Health Board [2012] ICR 1054*, held that Tribunals should be careful not to approach the *Igen* guidelines in too mechanistic a fashion, and the Court of Appeal has confirmed that approach under the EqA in its Judgment in *Ayodele v Citylink [2018] IRLR 114*. The Supreme Court stated at paragraph 32 of that decision: "*The points made by the Court of Appeal about the effect of the statute in these two cases could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other*."

Time limits

116 Section 123 of the EqA deals with time limits. Section 123(1) provides that proceedings on a complaint under Section 120 may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the Employment Tribunal thinks just and equitable.

117 Section 123(3) provides that (a) conduct extending over a period is to be treated as done at the end of the period, and (b) failure to do something is to be treated as occurring when the person in question decided on it.

118 The time limit in Section 123 is, however, subject to Section 140B, which provides for an extension of the time limit to facilitate conciliation before institution of Tribunal proceedings.

119 Day A is the day on which the worker concerned complies with the requirement of Section 18A of the Employment Tribunals Act 1996 to contact ACAS in relation to the matter in respect of which the proceedings are brought, and Day B is the day on which the worker receives or is treated as receiving the ACAS certificate issued under Section 18A.

120 In working out when the time limit expires, the period beginning with the day after Day A and ending with Day B is not to be counted. If the time limit set would, if not extended, expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

121 As to conduct which *'extends over a period'* the Court of Appeal in *Hendricks v Metropolitan Police Commissioner [2003] IRLR 96*, sets out that the burden is on the claimant to prove, either by direct evidence or inference, that the numerous alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of 'an act extending over a period'.

122 In *South Western Ambulance Service NHS Foundation Trust (appellant) v King (respondent) - [2020] IRLR 168* Chaudhury P in the EAT stated in the context of a continuing act at [36-38] "It will be necessary, in my judgment, for at least the last of the constituent acts relied upon to be in time and proven to be an act of discrimination in order for time to be enlarged."

123 Whether there is conduct extending over a period was considered to include where an employer maintains and keeps in force a discriminatory regime, rule, practice, or

principle which has had a clear and adverse effect on the complainant - *Barclays Bank plc v Kapur [1989] IRLR 387*. The Court of Appeal has cautioned Tribunals against applying the concepts of 'policy, rule, practice, scheme or regime' too literally, particularly in the context of an alleged continuing act consisting of numerous incidents occurring over a lengthy period (*Hendricks v Metropolitan Police Commissioner*).

124 Where a claim is submitted out of time, the burden of proof in showing that it is just and equitable to allow it to be received is on the claimant (*Robertson v Bexley Community Centre [2003] IRLR 434*).

125 Moreover the EAT stated in *Dr Nicholas Jones v The Secretary of State For Health and Social Care [2024] EAT 2* that: "*It remains a common practice for those who assert that the primary time limit should not be extended to rely on the comments of Auld LJ at paragraph 25 of Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576, [2003] IRLR 434, that time limits in the Employment Tribunal are "exercised strictly" in employment cases and that a decision to extend time is the "exception rather than the rule" as if they were principles of law. Where these comments are referred to out of context, this practice should cease. Paragraph 25 must be seen in the context of paragraphs 23 and 24*". The EAT stated that the propositions of law for which Robertson is authority are that the Employment Tribunal has a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere.

126 Exceptional circumstances are not required for the Tribunal to exercise its discretion and the test remains what the Tribunal considers to be just and equitable (*Pathan v South London Islamic Centre UKEAT/0312/13*).

127 Even if the Tribunal disbelieves the reason put forward by the claimant it should still go on to consider any other potentially relevant factors such as the balance of convenience and the chance of success: *Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] IRLR 278*, following *Pathan v South London Islamic Centre UKEAT/0312/13* and *Szmidt v AC Produce Imports Ltd UKEAT/0291/14*. We also considered the EAT's decision in *Habinteg Housing Association Ltd v Holleran UKEAT/0274/14* holding that where there was no explanation for the delay tendered that was fatal to the application of the extension, which was followed. In *Edomobi v La Retraite RC Girls School UKEAT/0180/16* in which the Judge added that she did not "*understand the supposed distinction in principle between a case in which the claimant does not explain the delay and a case where he or she does so but is disbelieved. In neither case, in my judgment, is there material on which the Tribunal can exercise its discretion to extend time. If there is no explanation for the delay, it is hard to see how the supposedly strong merits of a claim can rescue a claimant from the consequences of any delay*."

128 Per Langstaff J in *Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0305/13 (18 February 2014, unreported)*, a litigant can hardly hope to satisfy that burden unless he provides an answer to two questions (paragraph 52): "*The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and insofar as it is distinct the second is [the] reason why after the expiry of the primary time limit the claim was not brought sooner than it was*."

129 In *Wells Cathedral School Ltd (2) Mr M Stringer v (1) Mr M Souter (2) Ms K Leishman*: EA-2020-000801 the EAT did not directly address those authorities but stated

that, in relation to the issue of delay, "*it is not always essential that the tribunal be satisfied that there is a particular reason that it would regard as a good reason*".

130 In *Rathakrishnan* there was a review of authority on the issue of the just and equitable extension, as it is often called, including the Court of Appeal case of *London Borough of Southwark v Afolabi [2003] IRLR 220*, in which it was held that a Tribunal is not required to go through the matters listed in s.33(3) of the Limitation Act, in the context of a personal injury claim, provided that no significant factor is omitted. There was also reference to *Dale v British Coal Corporation [1992] 1 WLR 964*, a personal injury claim, where it was held to be appropriate to consider the plaintiff's (claimant's) prospect of success in the action and evidence necessary to establish or defend the claim in considering the balance of hardship. The EAT concluded "*What has emerged from the cases thus far reviewed, it seems to me, is that the exercise of this wide discretion (see Hutchison v Westward Television Ltd [1977] IRLR 69) involves a multi-factoral approach. No single factor is determinative*."

131 That said, the Limitation Act checklist as modified in the case of British Coal Corporation v Keeble includes as possible relevant factors: i) the relative prejudice to each of the parties; ii) all of the circumstances of the case which includes: iii) The length and reason for delay; iv) The extent that cogency of evidence is likely to be affected; v) The cooperation of the respondent in the provision of information requested, if relevant; vi) The promptness with which the claimant had acted once he knew of facts giving rise to the cause of action, and vii) Steps taken by the claimant to obtain advice once he knew of the possibility of taking action.

132 In *Abertawe Bro Morgannwg University Local Health Board v Morgan* the Court of Appeal held: "*First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable*") that Parliament has chosen to give the employment tribunal the widest possible discretion."

133 That was emphasised more recently in *Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23*, which discouraged use of what has become known as the Keeble factors, in relation to the Limitation Act referred to, as a form of template for the exercise of discretion.

Complaints under the EqA and Remedy

134 Section 120 of the EqA provides that an Employment Tribunal has jurisdiction to determine a complaint relating to a contravention of Part 5 (work) of that Act and, subject to the time limit provisions of Section 123, as detailed above, are subject to the remedies set forth in Section 124 of the EqA, if an Employment Tribunal finds that there has been a contravention of the EqA.

135 In that event, the Tribunal may, as per Section 124(2), (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; (b) order the respondent to pay compensation to the claimant; and (c) make an appropriate recommendation, as defined in Section 124(3) of the EqA.

136 In terms of Section 124(6) of the EqA, the amount of compensation which may be awarded under Section 124(2)(b) of the EqA corresponds to the amount that could be awarded by the County Court under Section 119 of the EqA and, as per Section 119(4) of

the EqA, an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

137 The Tribunal is empowered to award interest under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (SI 1996/2803), and we also considered Section 207(a) of the Trade Union and Labour Relations Consolidations Act 1992. We took into account the ACAS Code of Practice on disciplinary and grievance procedures as a relevant Code of Practice.

Unauthorised deductions from wages – s 13 and 23 of the Employment Rights Act 1996

138 The right not to suffer unauthorised deductions from wages is contained in s13 of the Employment Rights Act 1996 ("ERA 1996").

139 The time limit for bringing a claim for unauthorised deduction of wages is found at s23 ERA 1996. It requires that a complaint be presented to the Tribunal within three months of the deduction from wages. There are provisions relating to series of deductions, but these are not relevant to this case.

140 If a claim is brought after the statutory time limit in s23 it can only be considered by the Tribunal if time to bring the claim is extended under s23(4). This sets out that time can only be extended if a) it was not reasonably practicable to bring the claim within the three-month time-limit and b) that it is presented within a reasonably period of time thereafter.

141 Where a claim has been lodged outwith the time limit in s 23 of the ERA 1996, the Tribunal must determine whether it was not reasonably practicable for the claimant to present the claim in time. The burden of proof lies with the claimant. If the claimant succeeds in showing that it was not reasonably practicable, then the Tribunal must determine whether the further period within which the claim was brought was reasonable.

142 The definition of and approach to the concept of 'reasonably practicability' and extensions of time has been the subject of extensive appellate comment. We have considered in particular the guidance laid down in *Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119*, in which it was concluded that the concept of '*not reasonably practicable*' fell between the extremes of what is physically possible to achieve on the one hand and a simple question of what was reasonable on the other. Rather, we must consider broadly whether it was reasonably feasible to present the claim to the Tribunal within the time limit.

143 In *Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490*, the Court of Appeal summarised the approach along the following lines:

> 1 . The test should be given a liberal interpretation in favour of the employee.
>
> 2. The statutory language is not to be taken only as referring to physical impracticability and might be paraphrased as to whether it was "reasonably feasible" for that reason.
>
> 3. If an employee misses the time limit because he or she is ignorant about the existence of the time limit, or mistaken about when it expires in their, case, the question is whether that ignorance or mistake is reasonable. If it is, then it will not

have been reasonably practicable for them to bring the claim in time. Importantly, in assessing whether ignorance or mistake are reasonable, it is necessary to take into account enquiries which the claimant or their adviser should have made.

4. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53*).

5. The test of reasonable practicability is one of fact and not of law (*Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119*).

144 S.207B of the ERA 1996 provides for an extension to the three-month time limit in certain circumstances. In effect, s.207B(3) of the ERA 1996 'stops the clock' during the period in which the parties are undertaking early conciliation and extends the time limit by the number of days between 'day A' and 'Day B' as defined in the legislation. This 'stop the clock' provision only has effect if the early conciliation process is commenced before the expiry of the statutory time limit. Where a limitation period has already expired before the conciliation commences, there is no extension (*Pearce v Bank of America Merrill Lynch UKEAT/0067/19*).

145 Where an employee has worked in accordance with their contract they will be entitled to be paid in accordance with that contract. Where an employee has not worked, but was 'ready, willing and able to work', they will generally also be entitled to be paid, see *North West Anglia NHS Foundation Trust v Gregg [2019] IRLR 570*.

Submissions

146 The respondent's representative and the claimant provided written submissions after the conclusion of the evidence, and both parties made oral submissions to supplement those. We fully considered both parties' submissions prior to reaching our decision. They are referred to where relevant.

Discussion and Decision

147 On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

<u>Unauthorised deductions from wages</u>

148 The deduction of wages claim related to wages that were claimed in respect of the period between 25 April 2021 and 22 November 2021 during which time the claimant was acting up. It was not disputed that the claimant was acting up and carrying out managerial duties during that period.

149 On the evidence before the Tribunal, this meant that the payment due to the claimant should have been made to him by 30 November 2021. This matter was not in dispute.

150 Accordingly, the claimant was required to present his claim to the Tribunal by 01 March 2022 in terms of the statutory time limit set out at section 23 of the ERA 1996.

151 As the claimant did not start ACAS Early Conciliation prior to the expiry of the statutory time limit, there is no extension of time in terms of ACAS Early Conciliation (see the case of *Pearce* cited above).

152 The claim was not presented until 18 August 2022. It was therefore not presented within the statutory time limit set out at s 23 of the ERA 1996. The claim was presented significantly out of time.

153 We considered whether time should be extended on the basis that it was not reasonably practicable to present the claimant's claim within the statutory time limit per s 23 of the ERA 1996.

154 Having considered the claimant's circumstances and noting the difficulties he described in terms of the situation with regard to his family, his parents and his mother-in-law, and the fact that he said he was hoping that the respondent would resolve his payments issue, we were not satisfied that it was not reasonably practicable for the claimant to present his claim within the statutory time limit. It was therefore reasonably practicable for the claimant to present his unauthorised deductions from wages complaint within the time limit stipulated at section 23 of the ERA 1996.

155 In our view, the claimant's explanation is not sufficient to show that it was not reasonably practicable to present a claim within time. The claimant does not suggest that he was unaware of the possibility of bringing a claim of some sort. Nor did he suggest that there was any reason he could not make enquiries, either through a law centre, a Citizens' Advice Bureau or elsewhere about how he might enforce his rights. He was obviously capable of pursuing the matter internally, since he raised a grievance with the respondent on 13 July 2022.

156 We also find that the claimant had internet access, and he could have researched limitation periods and how to make his claim earlier. He did not provide a satisfactory explanation in terms of why he did not do so.

157 The claimant clearly had some knowledge of the ACAS process (as demonstrated in his email dated 08 June 2022), Vento guidelines (per the claimant's letter dated 04 August 2022) and he threatened legal proceedings prior to the grievance response (in text messages sent on 06 June 2022), and he also threatened to start legal proceedings within his grievance dated 13 July 2022 which contained a number of discrimination allegations. The claimant commenced ACAS Early Conciliation on 15 July 2022 and accordingly he would have had access to the information available on ACAS's website.

158 Although English was his second language, we do not find that this was a material factor in terms of his failure to present his claim within the statutory time limit.

159 If we are wrong, in the alternative, we would have found that the claim was not brought within such a further period as the Tribunal considers reasonable in terms of section 23(4) of the ERA 1996. We do not consider that the further period of time taken by the claimant to present his claim between 01 March 2022 and 18 August 2022 was reasonable. The claimant explained that he was hopeful that the respondent would resolve the situation regarding his payments, and that he was waiting for his grievance to be resolved. However, the Tribunal did not consider the rather lengthy further period of time taken by the claimant to be reasonable in terms of section 23(4) of the ERA 1996.

160 In conclusion, the claimant has not discharged the burden of proving it was not reasonably practicable for him to present his complaint on time. In any event and in the circumstances, since it was reasonably practicable to present the complaint within the statutory time limit, we do not extend time.

161 As we do not have jurisdiction to hear the claimant's complaint pursuant to s 23 of the ERA 1996, we dismiss the claim for unauthorised deductions from wages on grounds that the claim was presented outwith the time limit set out in s 23 of the ERA 1996. Accordingly, the Tribunal lacks jurisdiction to hear this complaint which is hereby dismissed.

Direct sex discrimination – s 13 Equality Act 2010

162 In coming to our decision in this case, the Tribunal has carefully reviewed and analysed the whole evidence before the Tribunal, both in terms of witness evidence, and within the various documents to which we were referred during the Final Hearing.

Issue 6.1.1.1.

163 We do not accept that Bernadine Maxwell threatened the claimant with dismissal if he did not return from his holiday in time. We refer to our findings of fact and observations above in respect of that telephone call. Whilst Bernadine Maxwell did not attend to give oral evidence, we considered the witness evidence as a whole and the documents we had before us. We noted that in the letter of 13 June 2022 she stated that the claimant had been placed on authorised unpaid leave until 19 June 2022 as requested (which we accepted was sent to the claimant and we observed that there were surrounding emails, and a file note referred to above supporting this letter being sent which was signed by Sam Weaver who was asked to prepare the letter). This is consistent with what the respondent did at the time namely placing the claimant on unpaid authorised leave (he was not issued with a disciplinary sanction for being late from returning from annual leave, but he was subject to a formal investigation in accordance with the respondent's normal procedures).

164 We noted that the file note nor claimant's evidence reflected the comments ascribed to Bernadine Maxwell by the claimant as stated in the List of issues at paragraph 6.1.1.1., however, we considered whether it may be possible that she said words similar to those contained in the letter of 13 June 2022 namely "Should you fail to return to work by 19th June 2022, we will have no alternative but to follow our AWOL (Absent Without Official Leave) process, which could potentially result in your dismissal." Having considered the evidence that we were referred to and the evidence that we heard, we do not find that the claimant has made a prima facie case to show that any such words were said to the claimant because of sex. In fact, we conclude that the reason for the use of any such words (consistent with the letter dated 13 June 2022) was the fact that the respondent was following their standard process in circumstances where an employee (the claimant) returned late from annual leave.

165 We are satisfied that the claimant's sex was in no sense whatsoever connected with this matter. There was nothing in Bernadine Maxwell's file note or other documents we were taken to (including but not limited to the grievance investigation interviews, and related correspondences) to suggest this. Ultimately the claimant was not dismissed or

given a disciplinary sanction as a result of this matter. It was agreed by Jodie Carter that the claimant had followed the respondent's procedure in this regard.

166 On the evidence and the documents before us, we considered that the allegation set out at paragraph 6.1.1.1. of the List of Issues is not well founded and it is therefore dismissed.

Allegation 6.1.1.2.

167 We accepted that Jodie Carter met with the claimant on 21 June 2022 to investigate the allegation that the claimant failed to return from annual leave on his scheduled return to work date, in order to decide whether there is a disciplinary case to answer. Jodie Carter completed a standard form in relation to this matter, to which we were referred.

168 On the evidence before the Tribunal, we found that the reason why the claimant was required to attend the meeting on 21 June 2022 was that this was the respondent's standard process. Jodie Carter was authorised to deal with this disciplinary matter (and other disciplinary matters) by Bernadine Maxwell. We noted earlier in this Judgment that Jodie Carter conducted disciplinary hearings against around 30 other employees (both men and women) in relation to which she was asked to address lateness and absence within a single year.

169 In the premise, we are satisfied that the claimant's sex was in no sense whatsoever connected with the conduct set out at allegation 6.1.1. 2.. of the List of Issues. We accepted Jodie Carter's evidence that this was not connected with sex, and that she was following the respondent's standard process. Ultimately the claimant was not dismissed or given a disciplinary sanction as a result of this matter. It was agreed by Jodie Carter that the claimant followed the respondent's procedure in this regard.

170 Although Bernadine Maxwell had asked Jodie Carter to investigate the allegation in question at an Area Managers' meeting, this was part of the respondent's standard process when investigating such matters. In addition, it was part of Jodie Carter's role to investigate matters relating to attendance and lateness. We did not accept that her involvement was in any sense whatsoever connected to sex.

171 Jodie Carter had acknowledged that there had been a communication failure at the relevant time (between the claimant and Bernadine Maxwell), however, considering the context in which that comment was made, we were satisfied that this was in no sense whatsoever connected with sex.

172 Having considered the witness evidence and the documents before us, we conclude that the allegation set out at paragraph 6.1.1.2. of the List of Issues is not well founded and it is therefore dismissed.

Allegation 6.1.1.3

173 The claimant was paid for his supplement in relation to the period between 22 November 2021 to 28 February 2022 during which the claimant was acting up, albeit the claimant said this was paid to him a couple of months after he was told that it would be paid.

174 The claimant was not paid his supplement in relation to the period between 25 April 2021 and 21 November 2021 (although the List of Issues contains the date 22 November 2022 this is clearly incorrect, and the claimant was no longer employed at that time) during which the claimant was acting up. Philip Robinson accepted that the claimant should have been paid his supplement in respect of this period in his oral evidence. He acknowledged that he had not investigated this matter or reached a conclusion on this issue specifically in his grievance outcome letter. He explained that this was an error on his part. We accepted his evidence in this regard, and we were satisfied that sex played no part whatsoever in relation to the respondent's conduct. We considered all the witness evidence and documents before us in reaching our conclusion.

175 We have reached this conclusion in the alternative, in the event that we are wrong to find that this particular complaint and allegation was presented outside the statutory time limit (please see below).

176 As we have only found the payment between 25 April 2021 and 21 November 2021 to have not been made, the complaint relating to this matter was lodged outside the statutory time limit to present the claimant's claim set out at section 123(1)(a) of the EqA. There are no acts that we have found to be in-time and proven to be an act of discrimination, in the absence of which we are unable to determine that this allegation was part of a continuing act. Furthermore, we do not extend time on a just and equitable basis. The complaint at paragraph 6.1.1.3 of the List of Issues is therefore dismissed for want of jurisdiction as it has been presented outwith the statutory time limit.

177 Having considered the claimant's circumstances and noting the difficulties he described in terms of the situation with regards to his family, his parents and his mother-in-law, and the fact that he said he was hoping that the respondent would resolve his payments issue, we were not satisfied that time should be extended on a just and equitable basis pursuant to section 123(1)(b) of the EqA.

178 In our view, the claimant's explanation does not provide sufficient basis for the Tribunal to extend time on a just and equitable basis. The claimant does not suggest that he was unaware of the possibility of bringing a claim of some sort. Nor did he suggest that there was any reason he could not make enquiries, either through a law centre, a Citizens' Advice Bureau or elsewhere about how he might enforce his rights. He was obviously capable of pursuing the matter internally, since he raised a grievance with the respondent on 13 July 2022.

179 We also find that the claimant had internet access, and he could have researched limitation periods and how to make his claim earlier. He did not provide a satisfactory explanation in terms of why he did not do so.

180 He clearly had some knowledge of the ACAS process, Vento guidelines and he threatened legal proceedings prior to the grievance response and within his letter of grievance (as referred to earlier in this Judgment).

181 Although English was his second language, we do not find that this was a material factor in terms of his failure to present his claim within the time limit.

182 We considered the balance of convenience and the prejudice and hardship that will be suffered by the claimant in terms of not being able to pursue an important part of his sex discrimination complaints and we balanced this against the prejudice and hardship that the respondent will suffer if time is extended on a just and equitable basis. We considered that the respondent's witnesses suffered difficulties recalling some of the events, including Sandra Callender. The passage of time will no doubt affect witnesses' recollection of events. In addition, the respondent's key witness Bernadine Maxwell had left her employment with the respondent, and had moved to Northern Ireland (and we were informed that she had subsequently been unwell). This meant that she did not attend the Tribunal to give evidence. We had documentary evidence before us, however, in the context of the claimant's discrimination allegations effective oral evidence was also important. In contrast, we considered that the claimant still has in time sex discrimination allegations that were determined by the Tribunal on their merits. In all the circumstances, we consider that the balance of prejudice and hardship lies in favour of the respondent. We decline to extend time on a just and equitable basis and this allegation is accordingly dismissed.

Allegation 6.1.1.4

183 The claimant says in his submissions he does not pursue this allegation. However, when invited to withdraw this allegation by the respondent's representative at the end of the hearing, he did not do so. We have therefore set out our conclusions in respect of this allegation below.

184 This allegation relating to the alleged failure to promote the claimant in March 2022, was presented outside the time limit set out at section 123(1)(a) of the EqA.

185 There are no acts that we have found to be in-time and proven to be an act of discrimination, in the absence of which we are unable to determine that this allegation was part of a continuing act. Furthermore, we do not extend time on a just and equitable basis. The complaint at paragraph 6.1.1.4 of the List of Issues is therefore dismissed for want of jurisdiction as it has been presented outwith the statutory time limit. We repeat our findings at paragraphs 177-182 above, which are factors we considered in declining to extend time on a just and equitable basis. The claim was presented on 18 August 2022, around five months after this allegation is alleged to have taken place (and the claimant had not contacted ACAS to start Early Conciliation until 15 July 2022, some four months after the allegation is alleged to have taken place and therefore there can be no extension of time in respect of ACAS Early Conciliation). The balance of convenience is in the respondent's favour, and we decline to grant an extension of time on a just and equitable basis.

186 In the event that we are wrong to so find, we have set out below our conclusions in respect of this allegation.

187 We did not accept that the claimant was told that he would be appointed as the shop manager. We were told that manager roles (including managers, deputy managers and assistant managers) were advertised on the company portal in Philip Robinson's oral evidence (we accepted the Mr Robinson's evidence in this regard).

188 We were advised by Sandra Callender that all vacancies were placed on a company portal. There was no evidence before us that the claimant had in fact made any application for a manager's role.

189 The respondent's representative submits at page nine of his written submissions that the claimant at no stage had applied for a manager's role, in particular the two other vacancies that Ellie Beresford was offered in the area.

190 At the "Lets talk" meeting on 02 March 2022 the claimant confirmed that he was happy about the manager role being allocated to his colleague Ellie Beresford.

191 She was placed in that role following a redundancy consultation process. Ellie Beresford chose the particular role among three roles she was offered as part of the redundancy consultation process and her reason related to distance (per our findings above). Therefore, and in any event, we were satisfied that this had no connection whatsoever with sex.

192 We were not satisfied in all the circumstances that sex had any connection whatsoever in terms of the claimant's allegation that the respondent failed to promote the claimant in March 2022, based on the witness evidence we heard and the documents to which we were referred.

193 We noted that the claimant did not apply for the two other roles that originally Ellie Beresford had been offered as options. We also noted that the claimant did not request that he be appointed within a manager's role in his letter of grievance.

Allegation 6.1.1.5.

194 There are no acts that we have found to be in-time and proven to be an act of discrimination, in the absence of which we are unable to determine that this allegation was part of a continuing act. Furthermore, we do not extend time on a just and equitable basis. The complaint at paragraph 6.1.1.5 of the List of Issues is therefore dismissed for want of jurisdiction as it has been presented outwith the statutory time limit. We repeat our findings at paragraphs 177-182 above, which are factors we considered in declining to extend time on a just and equitable basis. The claim was presented on 18 August 2022, around over four years (January 2018 allegation) and over three years (January 2019 allegation) after these allegations are alleged to have taken place (and the claimant had not contacted ACAS to start Early Conciliation until 15 July 2022, several years after the alleged matters took place and therefore there can be no extension of time in respect of ACAS Early Conciliation). The balance of convenience is in the respondent's favour, and we decline to grant an extension of time on a just and equitable basis.

195 In the event that we are wrong to so find, we have set out below our conclusions in respect of this allegation.

196 The claimant was issued a verbal warning for a number of matters including being late to his shifts by Jodie Carter in January 2018. He did not appeal against that decision. There was no satisfactory explanation for the claimant's failure to present an appeal at the relevant time.

197 We were satisfied that on the basis of Jodie Carter's evidence and further that in all the circumstances that sex had no connection whatsoever in terms of this allegation. Jodie Carter was following the respondent's standard process and conducted a similar process with a number of other employees (both men and women).

198 The claimant was dismissed in January 2019 along with several other staff, which included male and female staff members. They were all reinstated following the successful appeals process.

199 We noted that the original decision to dismiss the claimant and other employees had arisen as a result the shop keys being left at the Paddy Power shop next door (see details of the allegation set out in the letter dated 21 January 2019 at pages 82-83 of the Hearing Bundle).

200 Jodie Carter confirmed that she received a final written warning (although she was more senior, and we did not have details of her individual disciplinary matter). This final written warning was never rescinded.

201 We took into account all the circumstances including but not limited to the fact that Bernadine Maxwell promoted the claimant on 22 November 2021.

202 We did not find that the respondent's conduct was in any sense whatsoever connected with sex on the documents we considered and the evidence we heard.

Allegation 6.1.1.6.

203 There are no acts that we have found to be in-time and proven to be an act of discrimination, in the absence of which we are unable to determine that this allegation was part of a continuing act. Furthermore, we do not extend time on a just and equitable basis. The complaint at paragraph 6.1.1.6 of the List of Issues is therefore dismissed for want of jurisdiction as it has been presented outwith the statutory time limit. We repeat our findings at paragraphs 177-182 above, which are factors we considered in declining to extend time on a just and equitable basis. The claim was presented on 18 August 2022, around five years after this allegation is alleged to have taken place (and the claimant had not contacted ACAS to start Early Conciliation until 15 July 2022, once again this is around five years after the allegation is alleged to have taken place and therefore there can be no extension of time in respect of ACAS Early Conciliation). This represents a very significant delay in bringing this complaint, which is not justified in all the circumstances and the balance of convenience is in the respondent's favour, and accordingly, we decline to grant an extension of time on a just and equitable basis.

204 In the event that we are wrong to so find, we have set out below our conclusions in respect of this allegation.

205 The claimant alleged in his grievance that he had suffered gender discrimination, and he alleged that Bernadine Maxwell had asked him four times if he had any problems working with women. He also alleged that during the "Lets talk" meeting (referred to earlier in this Judgment) that Sandra Callender had asked whether he had problems working with women and that she had attended that meeting on behalf of Bernadine Maxwell.

206 We noted that Bernadine Maxwell denied saying the words ascribed to her in the claimant's grievance in her investigation interview, which was documented.

207 The claimant made similar allegations against Sandra Callender, but these were denied by Sandra Callender. On the basis of the evidence, we heard and the documents we considered and to which we were referred, we did not accept that Sandra Callender asked the claimant if he had a problem working with women at the "Lets Talk" meeting.

208 The claimant does not assert in his letter of grievance that the words contained at allegation 6.1.1.6. of the List of Issues were said to him specifically.

209 He did not provide any specific date or any relevant context in respect of when those words were allegedly used or said to the claimant by Bernadine Maxwell.

210 We noted that the claimant's grievance was not presented until several years after it is alleged that allegation 6.1.1.6. took place. The claimant did not offer a good or a satisfactory explanation for this in his evidence. The respondent's representative points out that if this comment were made the claimant is likely to have complained about this matter earlier.

211 Accordingly, on the witness evidence and the documentary evidence before us, we are not satisfied that on the balance of probabilities that this comment was made to the claimant.

Allegation 6.1.1.7.

212 There are no acts that we have found to be in-time and proven to be an act of discrimination, in the absence of which we are unable to determine that this allegation was part of a continuing act. Furthermore, we do not extend time on a just and equitable basis. The complaint at paragraph 6.1.1.7 of the List of Issues is therefore dismissed for want of jurisdiction as it has been presented outwith the statutory time limit. We repeat our findings at paragraphs 177-182 above, which are factors we considered in declining to extend time on a just and equitable basis. We noted that there was no specific date in respect of when this comment was allegedly made. The claimant clarified during the hearing that this comment was allegedly made in 2018. The claim was presented on 18 August 2022, and as this comment related to 2018, the claim was made some four years after (and the claimant had not contacted ACAS to start Early Conciliation until 15 July 2022, some four years after the allegation is alleged to have taken place and therefore there can be no extension of time in respect of ACAS Early Conciliation). This represents a very significant delay in bringing the claim which is not justified in all the circumstances. The balance of convenience is in the respondent's favour, and we decline to grant an extension of time on a just and equitable basis.

213 In the event that we are wrong to so find, we have set out below our conclusions in respect of this allegation.

214 The claimant alleged in his grievance that he had suffered gender discrimination, and he alleged that Bernadine Maxwell had asked him four times if he had any problems working with women. He also alleged that during the "Lets talk" meeting referred to earlier Sandra Callender had asked whether he had problems working with women and that she had attended that meeting on behalf of Bernadine Maxwell.

215 We noted that Bernadine Maxwell denied saying the words ascribed to her in the claimant's grievance in her investigation interview, which was documented. The documents relating to Bernadine Maxwell were on the whole both internally consistent and consistent with the respondent's witnesses who gave live evidence, and the documentary evidence referred to.

216 The claimant made similar allegations against Sandra Callender, but these were denied by Sandra Callender. On the basis of the evidence, we heard and the documents we considered and to which we were referred, we did not accept that Sandra Callender asked the claimant if he had a problem working with women at the "Lets Talk" meeting.

217 The claimant does not assert in his letter of grievance that the words contained at allegation 6.1.1.7. of the List of Issues were said to him specifically.

218 The claimant did not provide a specific date or any relevant context in respect of when the words in question were allegedly used or said to the claimant by Bernadine Maxwell.

219 We noted that the claimant's grievance was not presented until several years after it was alleged the comment at allegation 6.1.1.7. of the List of issues was made. The claimant did not offer a good or a satisfactory explanation for this in his evidence.

220 On the evidence we read and heard, we do not find on the balance of probabilities that this comment was made.

Comparators

221 We considered the comparators relied upon by the claimant. Their circumstances were materially different. There are non-discriminatory reasons put forward by the respondent to explain the treatment of Ellie Beresford, who was placed in the shop where the claimant was based in a managerial capacity following a redundancy exercise. Dani, on the other hand, was a cashier appointed to a manager's role and her circumstances were materially different to the claimant's circumstances. However, we note that we were not provided with any other substantial details about Dani's role and circumstances. We noted that the claimant did not, according to the evidence before us, make an application for a role or post as Manager whilst working for the respondent.

222 The Tribunal considers that, for the purposes of section 23 of the Equality Act 2010 headed "Comparison by reference to circumstances", there were indeed substantial material differences between the circumstances of the claimant and the individual named comparators. On a proper analysis, they were not appropriate comparators for the purposes of section 23 of the Equality Act 2010.

223 The claimant submitted that those individuals may be relied upon as evidential comparators. Due to the material differences between their circumstances (and their nature and extent) and the claimant's circumstances and on the evidence before us, we did not find that the claimant's named comparators were of any significant evidential value. However, we took their circumstances into account along with all the other evidence before us in reaching our conclusions in this case.

Conclusion

224 The claimant's complaints that he was subjected to direct sex discrimination as set out at paragraphs 6.1.1.1 and 6.1.1.2 of the List of Issues are not well-founded and they are therefore dismissed.

225 The remainder of the claimant's direct sex discrimination complaints are dismissed on the basis that they were presented outwith the statutory time limit set out at section 123(1)(a) of the Equality Act 2010, the Tribunal declined to extend time on a just and equitable basis, and accordingly those complaints were dismissed for want of jurisdiction. Alternatively, those complaints were not well-founded.

226 The claimant's claim relating to unauthorised deductions from wages is dismissed on the basis that it was presented outwith the statutory time limit set out at section 23 of the ERA 1996 and it was reasonably practicable for the claimant to present the complaint within the statutory time limit. Accordingly, the said complaint was dismissed for want of jurisdiction.

Employment Judge B Beyzade
Date: 28 October 2024