EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000257/2023

Held in Glasgow on 12 – 14, 17 & 18 February, 27- 29 May 2025

Employment Judge Campbell
Tribunal Member Ms E Coyle
Tribunal Member Ms P Fallow

Ms S Kellington-Craword	**Claimant** **In Person**
Newlands Care Angus Ltd	**Respondent** **Represented by:** **Mr T Muirhead -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claim in respect of unlawful deduction from wages succeeds and the respondent is ordered to pay the claimant the sum of £16.97 in compensation for the net amount of the unlawful deduction;

2. The claims of direct race discrimination and harassment arising from the meeting on 14 December 2022 succeed and the respondent is ordered to pay the claimant the sum of £2,500 in compensation for injury to feelings, together with interest at the rate of 8% per annum from that date until the date on which this judgment is sent to the parties;

3. The remaining claims are unsuccessful and are dismissed.

REASONS

Introduction

1. This claim was raised by a care worker against her former employer which is a provider of care in the Northeast of Scotland. It involved complaints of age

and sex discrimination, harassment, victimisation and detriment and unfair dismissal on the grounds that protected disclosures were made.

2. At a case management hearing on 1 November 2023 a table of the claimant's complaints was drawn up by the presiding judge and the claimant made revisals to it a few days after. The contents were taken to be the claimant's agreed list of her complaints, as was the intention. The respondent provided a similar table containing its response to those complaints on 5 January 2024. That was taken to be its summary position in relation to the complaints. Where necessary to do so in the text below these are referred to as 'the claimant's table' and 'the respondent's table' or similar.

3. In summary, the legal complaints to be decided were:

    a. Direct age discrimination under section 13 of the Equality Act 2010 ('EqA') – there were three complaints. The claimant was one of the older staff members and compared herself to younger colleagues;

    b. Direct race discrimination – section 13 EqA – there were five complaints including her dismissal, based on race which she expressed as being of English national origin;

    c. Harassment related to race – section 26 EqA – there were five allegations of harassment;

    d. Victimisation – section 27 EqA – there were four alleged protected acts and one alleged resulting detriment;

    e. Detriment on the grounds of making protected disclosures – section 47B of the Employment Rights Act 1996 ('ERA') – the claimant relied on 12 potential protected disclosures, and alleged two detrimental acts;

    f. Automatically unfair dismissal on the grounds of making protected disclosures – section 103A ERA – the claimant also alleged that her dismissal was because she had made the disclosures relied on.;

g. Unlawful deduction from wages –section 13 ERA - she alleged first that she was not paid for two days of a one-week notice period which she served and secondly that deductions were made from her pay to cover clothing and other items not returned by her, and the cost of collecting and cleaning a company car she had used;

h. Failure to pay in respect of accrued annual leave – Regulation 30 of the Working Time Regulations 1998 – she alleged that she had accrued holidays by the point of her dismissal which were not paid to her in lieu of taking them.

4. Evidence was heard across two sets of dates. It was necessary to add dates in order to complete the hearing of the evidence. In particular it was necessary to use an interpreter for some witnesses and to take additional breaks.

5. A joint hearing bundle was prepared. In addition the claimant provided a supplementary bundle and the respondent provided two further supplementary bundles. Where necessary to refer to documents below, numbers in square brackets correspond to page numbers in the main joint bundle and the designations ‘C’, ‘S1’ and ‘S2’ are used to denote the supplementary bundles.

6. Evidence was heard first from the claimant. She then called Ms Valerie Bell, a former colleague. The respondent called Ms Ewelina Masiak (Managing Director), Ms Alexsandra Seneczko (HR and Accounts Manager), Ms Iwona Golanska (Manager/Care co-ordinator), Ms Gosia Berent (Care Manager), and Ms Sylwia Natzel (Manager/Care co-ordinator). The titles referred to are as they held them at the time of the relevant events. There were no notable issues with the credibility of the witnesses. The case turned more on differing interpretations of the evidence and matters of judgment.

7. Following conclusion of the evidence it was agreed that the parties would have the opportunity to provide submissions in writing, with Mr Muirhead providing his first shortly after the hearing concluded and then the claimant being given a week after that to provide hers. She opted not to do so. The tribunal then deliberated before this judgment was finalised.

Findings of fact

The following findings were made as relevant to the claims to be decided, based on the evidence provided, and either as agreed, uncontested or on the balance of probabilities.

Background

1. The claimant was employed by the respondent company between the dates of 14 February 2022 and 24 January 2023. On the latter date she was dismissed, having been given one week's notice by letter.

2. The respondent operated to provide care support to vulnerable members of local communities, including in the Angus area. The claimant was engaged as a Care Assistant ('CA') and was promoted to a Senior Care Assistant ('SCA') at or around the end of October 2022. Each role involved a probation period of three months.

3. The claimant's duties in both roles involved assisting individual service users ('SUs') in their homes dealing with matters such as dressing, cleaning, personal care, preparing food, changing bedding and taking medication. She normally worked alongside another CA or SCA on each shift, though not always the same individual. She worked five days a week, and the days varied according to rotas. She was contracted to work 35 hours per week and sometimes worked more. She completed timesheets and was paid an hourly rate which started at £12 per hour at the beginning of her employment and rose to £13 per hour when she was promoted to SCA.

4. SCAs had some additional responsibilities. Those were mainly in relation to supervision and documentation. They would tend to supervise and support CAs and generally took the lead at SU visits. They also prepared risk assessments and care plans for SUs, and filled in 'tick sheets' recording what had been done on each visit to a SU.

5. The claimant was given a written statement of terms and conditions of employment on 30 March 2022 [76-84]. The respondent intended to issue her with a new statement of terms upon her promotion, which is its normal

practice. Ms Seneczko emailed a statement to her along with other items such as a new job description on 7 November 2022 [87]. However, the statement attached was another copy of contract for a CA rather than an SCA contract, and so they were essentially the same as the ones she was already working under. The error was not known about by either party while the claimant was in the respondent's employment. The tribunal preferred the claimant's evidence in making this finding, as she was clear in saying she had never seen the SCA contract [88-98] at the time. The email she received, produced in the bundle, appeared to have a 'standard' CA contract attached rather than a 'senior' one.

6. This was important as the SCA contract contained terms not present in the CA contract which the respondent sought to rely on in this claim. The tribunal noted that the respondent's HR portal 'Atlas' suggested that a 'Contract – Senior' had been uploaded to the claimant's space but there was not proof that the SCA contract itself was added at the time, and in any event the claimant did not check there and relied on the documents she had been directly emailed.

7. Although she was able to drive, the claimant did not have a car and relied on her colleagues to drive to SUs' homes. This is where she performed most of her work but occasionally she attended the respondent's office in Arbroath. She would be driven by the CA she was working alongside or a designated driver which the respondent used. The respondent also had a pool of cars which staff could use if they did not have their own vehicle. The claimant was one such person. The respondent has a Company Car Policy and Procedure ('Car Policy') which is updated from time to time. It was updated in March 2022 and again on 1 January 2023 [145-153]. The claimant was given a paper copy of the earlier of those when she first used a company car in December 2022 [747-754]. She did not realise that it was also available on the Atlas portal and was not aware of it being revised, or how, in January 2023. However, the respondent reserved the right to make changes to its policies and the changes did take effect on 1 January 2023 whether the claimant knew

about them or not. In this respect they were different from the key terms in the 'contract' statement discussed in the paragraph immediately above.

8. The claimant's immediate line manager was a Care Manager, Gosia Berent. The respondent's owner and proprietor was Ewelina Masiak. There was a management team of around five individuals. There were around 45 employees in the company in total at the time of the claimant's employment, with the majority being CAs and SCAs.

9. The claimant identifies as English by nationality. She does not speak or understand the Polish language. When employed by the respondent she was over 50. The majority of her SA and SCA colleagues were in their twenties or thirties.

10. The majority of the employees of the respondent were Polish. Some spoke English fluently and others did not, but could use English in a more limited way. The claimant was also aware of at least one colleague who was Ukrainian and another who was South African. Only a small number were Scottish. The predominance of Polish employees is mainly because the business is owned and run by individuals who are Polish. There is no policy or practice of excluding individuals of other nationalities from working with it, but most applicants for work tend to be Polish or of other East European nationality.

11. The respondent has a policy whereby only English may be spoken during visits to SUs. An exception is where care assistants would find it more expedient to speak Polish between themselves in order to assist the SU with a particular issue. On such an occasion the permission of the SU must be sought first.

12. At the respondent's office English is the main language spoken but given that all members of the management team are Polish, or at least speak Polish, that language is often used among themselves.

Compassionate leave

13. On 9 July 2022 the claimant messaged Ms Natzel to say that her father was seriously ill and that she had booked a flight leaving on 13 July and returning on 27 July to visit him. She proposed to take the working days as holidays and apologised for the need to cover her shifts. Ms Natzel asked her to apply for the holidays using an online platform referred to as 'citation', which is part of Atlas. The respondent's policy on compassionate leave was that two days would be paid and any further days would be unpaid, or need to be taken as paid holidays.

14. The claimant's flight was changed by the airline so that her return date was 25 July, a Monday, and she updated Ms Natzel. She said she was available to work from the Tuesday onwards, including the following Sunday. Ms Masiak misread the information that the claimant provided about her revised return flight and believed it only showed the outward trip. She asked the claimant for clarification and the claimant provided further screen shots of the details and explained her timings again [1156]. Ms Masiak thanked her for clarifying the position and said to take care. The claimant's father died whilst she was visiting him and she provided a copy of his death certificate to the respondent.

15. On 29 July 2022, having checked her pay, the claimant noticed that she had not had her compassionate leave beyond the first two days treated as paid holidays, despite her request. She messaged Ms Masiak to ask why, and the response was that as she had not requested the annual leave days she wanted four weeks in advance they were not authorised, and the leave was treated as unpaid. This was inconsistent with the instruction Ms Nazel had given her to apply through the portal. That suggested that there was at least a degree of discretion available as to allowing a request less than four weeks before the requested dates.

Claimant promotion to Senior Care Assistant

16. The claimant believed that she was substantially carrying out the role of a SCA by the beginning of June 2022. Other colleagues she worked with

suggested the same to her. She messaged Ms Berent on 5 September 2022 to ask whether there was a reason she had not been asked to become one. Ms Berent replied to say that she had been discussing the possibility with other managers 'months ago', but had heard that the claimant was looking for another role. She was pleased that the claimant did wish to become a SCA and said she was 'happy to talk about it'. The claimant had been looking for a second job, not an alternative to her role with the respondent. Ms Berent did not know this. There was therefore a misunderstanding over whether the claimant wished to leave.

17. The claimant was offered an SCA position around late September or early October 2022. After consideration she messaged Ms Masiak to say that she had decided not to take it, with reference to her being at an age where her children, grandchildren and their pets needed to be her priority. She was asked to reconsider and trialled the role, before deciding that she would take it. She was promoted to SCA on or around 28 October 2022. It was subject to a three-month probationary period which the respondent was entitled to extend if necessary. As with the CA role she was engaged for a minimum of 35 hours per week on a flexible basis, and any additional hours required would be paid at the standard rate.

18. The claimant did not have a computer with a Microsoft licence and she struggled with the use of electronic template documents the respondent used for the risk assessments and care plans she now needed to prepare. She had received an hour of training from Ms Bell but believed more was required. She prepared these documents by hand. Ms Berent told her that they needed to be prepared using the templates, and that if needed the claimant could come into one of the offices and complete the documents there. This was not however convenient to the claimant and would have added significant time to her working day.

19. By late November 2022 the claimant was still preparing documents by hand. Ms Berent said she would need to extend the claimant's probationary period to ensure the claimant became competent in preparing documents using the templates. She also said that the claimant had to undertake some Atlas-based

training modules. The claimant acknowledged this. Ms Berent stopped asking the claimant to complete risk assessments around this time until she was able to do so using the templates. The last document the claimant recalled preparing was on 29 November 2022.

20. One of the duties of an SCA is to perform on-call working when required over weekends. The respondent operated a monthly rota. The claimant had been added to the rota on one weekend for each of the months October, November and December 2022. By being on call an SCA will receive a payment, which at that time was £70. Ms Natzel said that it was not guaranteed that each SCA would be needed to be on call in a given month. The claimant was not included in the January 2023 rota. This was through a combination of there being enough other SCAs to cover the dates required, and the respondent's declining confidence in the claimant as an SCA.

Meeting on 14 December 2022 and events surrounding

21. The claimant attended a disciplinary meeting on 9 December 2022, chaired by Ms Seneczko and with Ms Berent as a note-taker. This was to discuss an allegation that she had made critical and personal comments to a service user.

22. The claimant was invited to a 'support supervision meeting' on 14 December 2022. It appears to be a practice of the respondent to hold such meetings with carer staff and a template exists to document how the meeting will be conducted and what will be covered. The claimant met with Ms Berent and Ms Masiak, and Ms Natzel was also present. A copy of the template was completed to cover what was discussed [157-158]. The claimant and Ms Berent were sat next to each other on a sofa. Ms Masiak and Ms Natzel were at their desks adjacent. They spoke with each other in Polish at various points in the meeting. Ms Masiak said the claimant that she had put something inappropriate in a group chat, but did not elaborate with details. The claimant felt uncomfortable. She felt she was being discussed and criticised without knowing what was being said.

23. On 16 December 2022 Ms Seneczko sent the claimant a letter headed 'Final written warning as an alternative to gross misconduct dismissal' [159-160]. It referred back to the hearing on 9 December 2022.

24. Also on 16 December 2022, the claimant was working alongside a CA, Ms Zukowska. They carried out a number of SU visits. After their shift ended and when travelling away from the last SU's home the claimant said to Ms Zukowska that whilst other people may have been pleased at her return to work, the claimant herself was not, and believed that Ms Zukowska should not have been allowed to go back to being a carer. This was a reference to Ms Zukowska having been suspended from practice for three months by the SSSC as a result of a complaint of mistreatment by a SU.

25. On 17 December 2022 Ms Seneczko wrote to a CA named Patrycja Opalska offering her a promotion to SCA with effect from 20 December 2022.

Company car

26. The claimant used a company car from December 2022 onwards. She was using the car on 4 January 2023. She was about to go on annual leave the next day. Ms Masiak messaged her at 16.41 and asked her to return the car that day. She said she was reminding the claimant that the cars had to be returned to the place from where they were collected after the user's last shift, and the office was closing at 5pm. Two other carers needed to use it while the claimant was away. The claimant disagreed that this was the company policy and believed that someone should have been coming to collect the car, and said it was refuelled and ready. The difference of views was caused by the fact that the claimant had only read the version of the Car Policy dated March 2022 whereas Ms Masiak was referring to the version updated on 1 January 2023. The latter had a term stating 'In case of renting the company car from the office the car must be returned to the same place.' This wording was not included in the earlier version. Ms Masiak said it was part of the conditions of use of the cars that they be returned, that she would send someone to collect the car, but that the claimant would be 'charged for the time and petrol used by [that] person'. She added that 'deduction can be taken from your wages

according to our contract and policy.' The claimant disputed that the respondent could or should charge her for collecting the car. She also explained that she had filled the car with fuel. Ms Masiak said that her position would be fully explained in a letter to come from her lawyers. This conversation continued into the evening of that day. The car was collected shortly before 9.10pm and the claimant confirmed that to Ms Masiak.

27. On 5 January 2023 Ms Natzel messaged the claimant to say that the car was not returned in an appropriate state, attaching four photographs of its interior. She said that personal travel and the carrying of pets was not allowed, and dog paw prints and fur could be seen in the pictures. She said Ms Masiak would clean the car and contact the claimant about the bill. The claimant denied that she had allowed a dog in the car and believed it was in no worse a state than after normal use, hence the incurring of cleaning costs was not justified.

28. The SCA contract template contained a section titled 'Company vehicle' and within that was wording requiring the employee to return any vehicle at any time requested by management, or immediately upon the termination of their employment. It expressly stated that failure to do so would result in the cost of its recovery being deducted from any monies outstanding to the employee [90]. The contract contained a separate section titled "Deduction from pay'. This had more detailed provisions for the respondent to make deductions and provided examples of situations where that may be deemed necessary. Under an additional section titled 'Company Property' there was a provision requiring the employee to return all company property on termination of their employment including (among other items specified) any documents, ID card and uniform. It was stated that each such unreturned item would prompt a deduction of £40. None of these terms featured in the standard CA contract document.

29. The Car Policy provides for deductions to be made from the pay of car users in certain circumstances, but not in relation to cleaning a vehicle or its recovery where the user has not returned it to the office from where it was collected.

Probation review meeting 17 January 2023

30. Ms Masiak wished to conduct a meeting with the claimant to discuss her performance during the probation period in the SCA role. There were a number of attempts to arrange this in December 2022 but they were unsuccessful due to other priorities. Ms Seneczko wrote to the claimant on 6 January 2023 to propose the meeting take place on 17 January 2023 [166]. On the same day the claimant's probation period was extended by two weeks.

31. Ms Berent asked Ms Bell, an experienced SCA, to carry out a spot check of the claimant's practices with SUs and this took place on 13 January 2023. This involved observing the claimant at work and completing a checklist of necessary actions [169-173]. She signed the completed checklist and the claimant countersigned it.

32. Ms Seneczko prepared a summary of the key points of Ms Bell's observations, split into positive and negative comments. There were three of the latter. Those were that the claimant should have checked equipment such as a hoist and sling before use in case of any faults, she had poor hand hygiene during the visit and she did not offer the SU choices in relation to self-cleaning and clothes to be worn. Under 'recommendations' she added 'meeting in the office'. The claimant later denied the latter two criticisms were valid on the basis that Ms Bell was not present at the very start and end of the visit, and so missed her dealing with those matters. However, she signed a copy of the observation notes and did not query any aspect of what Ms Bell had recorded at that time.

33. The claimant attended the meeting on 17 January 2023 along with a colleague, Ms Molenda. Ms Masiak and Ms Golanska attended to conduct the discussion. Audio recordings were made by both parties which were later transcribed [197-218, 807-843].

34. On 18 January 2023 Ms Seneczko wrote a letter to the claimant stating that the decision had been made to end her employment based on the matters discussed in the review meeting the day before [223-224]. The main concerns were said to be (i) the way she treated Ms Zukowska on 16 December 2022,

(ii) not completing SU documents fully or accurately, (iii) not complying with the Car Policy by having a dog in a work vehicle and (iv) not returning it as requested. The letter gave the claimant one week of notice, to expire on 24 January 2023. It also said that she would be paid for any accrued holidays but there would be a deduction for the cost of valeting the company car in which she allowed a dog. A right of appeal was given, to be exercised within five working days.

35. The claimant worked her shifts on Friday 20 and Saturday 21 January 2023 [684]. She could not work her second shift on the latter day as she suffered a panic attack. She messaged Ms Opalska asking if she could find cover. The claimant was on the rota for Monday 23 and Tuesday 24 January 2023 [S25] but she was told by other carers, including Ms Molenda, on the first of those days that she had been removed from that week's rota and so did not work shifts on those two days. She messaged Ms Berent to ask for confirmation, but Ms Berent replied to say she had been on holiday and did not know. She said she would ask but did not follow up with any details and her next message to the claimant was to ask for the return of her uniform. On the balance of probability it is found that a member of management assumed that, the claimant having reported ill during 21 January 2023, she would remain unwell on her last two days of employment and so cover was arranged for her remaining working days.

36. There were exchanges between the claimant and Ms Seneczko following the issuing of the dismissal notice letter. The claimant challenged the respondent's right to deduct money from her pay to cover car valeting costs. The figures were stated to be £38 for cleaning, £13 for a member of staff to collect the car from her home, £5 for petrol and a £25 administration fee totalling £81 [227].

37. In these emails the claimant also challenged some of the observations that Ms Bell had made on 13 January 2023 when conducting her spot check. She raised that Ms Bell arrived after the claimant's visit to the SU had begun and so did not see what hygiene routine the claimant had gone through at the outset. Similarly she said that Ms Bell was not present when she concluded

providing care to the SU, so again did not see her hand-cleansing procedure nor any discussion with the SU about clothing and other choices. She added that no hygiene issues were raised by Ms Bell on the day of the visit. Ms Bell had only mentioned the need to check equipment (in this case a hoist) before using it. She stressed that Ms Bell seemed to be trying very hard to find fault with her. Ms Seneczko said in reply that she herself had not attended the visit, but that the claimant had countersigned the form when these matters were noted. In other words, she was taking Ms Bell's criticisms as admitted.

38. On 27 January 2023 Ms Seneczko emailed the claimant to say that she made a deduction of £160 from the claimant's pay to cover the claimant's ID badge and three uniforms which she had not returned. She said the money would be reimbursed if the claimant returned those items.

39. The claimant returned the items and was paid the amount of £224.03. She claimed pay for accrued annual leave and for her shifts on 23 and 24 January 2023. Ms Seneczko said that the claimant had used up all of her accrued annual leave before her dismissal date.

40. Among various emails exchanged around this time the claimant intimated that she wished to appeal against her dismissal. This was done by an email on 23 January 2023. On 31 January 2023 she emailed to say 'You have not replied to my appeal against dismissal.'

41. On 20 February 2023 the respondent made a referral to the SSSC in relation to the claimant. There was no copy of the document submitted or its textual content, but the response from the SSSC dated 21 February 2023 was provided [248-249]. It quoted or summarised the complaint to be that the claimant 'fails to listen to feedback, cooperate with colleagues or treat them with respect. Failed to follow company policies, breached confidentiality.' The decision taken was that this would not be investigated as it fell below the relevant threshold and was unlikely to affect her fitness to practice.

Discussion and decision

42. The parties were given the opportunity to provide written submissions after the hearing. The respondent provided a written note. The claimant opted not to provide submissions.

Time bar issues

43. A number of the claimant's complaints were about things done or not done more than three months before the claim was presented, even taking account the statutory extension created by the ACAS Early conciliation process. The tribunal had therefore to decide whether to extend the time limit for any such complaint so that it could be decided on its merits rather than be treated as outside of its jurisdiction.

44. The time limit for any complaint under the EqA is explained in section 123 as follows:

'123 Time limits

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

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

(b) such other period as the employment tribunal thinks just and equitable.'

45. An employment tribunal has a wide discretion to extend time under section 123(1)(b). However, the starting point should always be that the primary time limit of three months should be applied. Only if it is just and equitable to extend time should that happen.

46. Neither party is subject to a burden of proof in relation to the issue, although a decision to extend time must be based on some relevant material or facts. That need not necessarily be provided by the claimant in such a case, although often this will happen as they are the party seeking the exercise of the discretion.

47. A helpful list of factors to consider was provided in the cases of ***British Coal Corporation v Keeble [1997] IRLR 336*** and ***DPP v Marshall [1998] IRLR 494***, namely:

    a. The length of and reasons for the delay,
    b. The extent to which the cogency of the evidence is likely to be affected by the delay,
    c. The extent to which the respondent had co-operated with any requests for information,
    d. The promptness with which the claimant acted once they knew of the possibility of taking action, and
    e. The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

48. However, it has been made clear in subsequent cases that there is not a closed or definitive list to be slavishly followed. Some factors will be more relevant in a given claim than others.

49. There is no onus on a claimant to provide reasons why the complaint was not presented on time, although it will normally be helpful for them to do so. The tribunal can take into account anything it believes to be relevant and it has a wide discretion.

50. The claimant began ACAS Early Conciliation on 11 April 2023, which ended on 23 May 2023. She submitted her claim to the tribunal on 4 June 2023. Going by those dates and applying the relevant rules, any act complained of occurring before 12 January 2023 would be out of time, unless part of a continuing act (i.e. ‘conduct extending over a period’ within section 123(3) of EqA) which carried on beyond that date.

51. The tribunal considered all factors which appeared relevant to this issue and reached the view that it was just and equitable to extend time and decide the time-barred complaints. The factors most in favour of extending time were:

    a. The further delay beyond the date when the complaints could have been timeously raised was short – most acts complained of occurred in (or continued into) the period between October 2022 and January 2023. That was within a short space of time, and not long before the cut-off date of 12 January 2023;
    b. The claimant had given credible reasons for not raising a claim earlier, principally that she was not aware of time limits, she had no professional or otherwise informed representation, and was focussing on resolving outstanding issues directly with the respondent. Those were not challenged by cross-examination as being irrelevant or false; and
    c. There was in the event no apparent disadvantage to the respondent through the unavailability of witnesses or degradation of evidence as a result of the short additional passage of time. There was contemporaneous documentation of the key events through electronic conversations, meeting notes, audio recordings and letters.

52. The time-barred claims were therefore admitted by extending the time for presenting them to the date when the claim was actually presented, and decided on their merits below.

Direct age discrimination – section 13 EqA

53. The first complaint was that there had been unreasonable delay in promoting the claimant to SCA, which occurred on or around 28 October 2022 after she had been employed for some eight months. Her comparators were a Ms Wieczorek and Ms Opalska, both who were younger than her and were said to have been promoted after a shorter period of employment as a CA. Ms Wieczorek had started with the respondent in June 2022 and was appointed to SCA at that time, but had worked for the respondent during an earlier period

beginning in February 2018. Ms Opalska was appointed an SCA on 20 December 2022 but had relevant external qualifications in care, which the claimant did not. The comparators were therefore not materially the same as the claimant. They had more qualifications and/or experience. Further, the claimant would have been asked earlier to consider being a SCA but was believed to have been looking to leave the respondent for a job elsewhere. This was another factor differentiating her from her comparators. She was not discriminated against on the basis of age. There was no evidence at all that the respondent had an issue with her age.

54. The second complaint was that the claimant had to ask to be promoted, whereas the same two comparators were invited to step up. The evidence did not show the issue to be so clear cut. As above, she was considered by the respondent to be worthy of promotion, but not asked as she had said she was looking for other employment. She meant by that a second job but management innocently believed her to be saying she wanted to leave. When this misunderstanding was resolved the claimant was asked to consider stepping up, that she declined initially citing family-related reasons, was asked to try out the role and then accepted it. As with the first complaint, her comparators were not materially the same as her and she was not in any event unfavourably treated on the basis of age, or indeed at all.

55. The third complaint was that she was removed from the on-call rota from January 2023 (and not December 2022 as had originally been alleged) and was given fewer risk assessments to complete. As regards the on-call rota, it was accepted that she was not added for January 2023 in contrast to the three months before. This could have been less favourable treatment in the sense that being on call was a reinforcement of her seniority and also was paid. However, the claimant was not treated less favourably than a younger employee because of her age. Being added to the rota was not guaranteed and depended on the availability of all SCAs. There was nothing to link the change in approach in January 2023 to her age. The more likely reason was that by the end of December she was under increased scrutiny over her conduct and capability, and was deemed not needed to provide on-call cover.

The respondent had enough SCAs to omit her. In relation to risk assessments, it is correct that around this time she was given fewer to complete but the reason based on the evidence was that Ms Berent had taken the decision after and because the claimant visibly struggled to provide them in the electronic format requested. The claimant did not name a comparator, but realistically that would have been a hypothetical one in a younger age group but in all other material respects performing the same role with the same skills and competence. That comparator, having struggled similarly with preparing risk assessments using the prescribed template, would also have been given fewer to prepare. There was no discrimination based on age.

Direct race discrimination – section 13 EqA

56. The claimant relied on being English as a protected characteristic. Case law authorities have confirmed that English nationality or national origins can qualify as 'race' and so be a protected characteristic - ***Northern Joint Police Board v Power [1997] IRLR 610.***

57. The first complaint based on race was that staff spoke Polish in her presence on some occasions when she visited the office as a means of excluding her. She said this occurred between October 2022 and January 2023, coinciding with her time in the SCA role. She said that this was done by Ms Masiak, Ms Golanska and Ms Natzel. She alleged that it did not happen when other non-Polish speaking people visited the office. Her position was that those colleagues were therefore her comparators. The tribunal accepted the claimant's evidence about Ms Masiak and Ms Natzel speaking Polish to each other at times during the meeting of 14 December 2022, which is the subject of the second complaint and dealt with below. It did not however accept that the more general complaint about management using Polish to exclude her was established. The tribunal did accept that at times members of management spoke Polish among themselves in the open plan office at times when the claimant visited. This was not however proof that they did so to put the claimant at a disadvantage, or for reasons related to the claimant at all. They simply spoke in their native language from time to time – sometimes when the claimant was there and more often when she was not. It was not

targeted at the claimant. The claimant's suggested comparators were not in materially the same circumstances as her because their reasons for visiting the office, who they dealt with when they were there, and for how long would be different from the claimant's experiences. There was in any event a lack of evidence that Polish-speakers actually refrained from speaking Polish in the presence of other employees who did not speak Polish. That is to say, evidence showing the claimant to have been singled out, for whatever reason, was not there.

58. The second complaint was similar but more specific. The claimant alleged that Ms Masiak and Ms Natzel spoke Polish with each other at times during the supervision meeting on 14 December 2022. The tribunal accepted the claimant's evidence that they did so, although noted that the meeting was led by Ms Berent who did not. Ms Masiak and Ms Natzel played a lesser part. The claimant did not nominate a comparator for this complaint. The tribunal considered that it would be an employee attending a meeting for the same reasons as the claimant, but who could understand Polish. Although the ability (or lack of ability) to speak the language of a nation is not the same as being of that nationality itself, the two can be linked closely enough that treating an employee a certain way because of that ability, or lack of it, can be 'because of' the protected characteristic of race – see for ***example Dziedziak v Future Electronic Limited UKEAT/0270/11/ZT***. The scenario in question was such an occasion – the claimant was the only non-Polish person and non-Polish speaker in the meeting. The other three people were Polish and understood it. On this basis the claimant was treated less favourably than her comparator because of race. The comparator would have been able to understand the comments of Ms Masiak and Ms Natzel and to respond, which would have been of benefit in the meeting. Had any of the comments made in the claimant's meeting been inappropriate in any way, they likely would not have been made at all if the claimant would have understood them.

59. The next complaint was that Ms Masiak demanded she return the company car she was using on the same day, namely 4 January 2023, knowing she was about to go on annual leave, and threatening to engage lawyers. There

were additional complaints that Ms Masiak had questioned whether the claimant was insured to drive the car, and then that the claimant had been charged for collection and valeting of the car, having been accused of having a dog in it. These things happened, but not in connection with race. Ms Masiak wanted the claimant to return the car before going on holiday because two other carers needed to use it while she was away. She relied on the later version of the Car Policy which obliged staff to return vehicles to the office they had been taken from. The claimant was unaware of this requirement as she only referred to a previous version which did not contain the relevant wording. This was the seed of the misunderstanding between the two individuals which escalated through further exchanges. But none of it was related to the claimant's race. The same applied to Ms Masiak querying whether the claimant had insurance and insisting on charging the claimant for recovery and cleaning of the vehicle. It is academic for the purposes of this claim whether Ms Masiak genuinely or justifiably doubted whether the claimant was insured to drive or believed the claimant had carried a dog in the car because her understanding was not connected to the claimant's race.

60. The claimant complained that her dismissal was itself an act of direct race discrimination. There were no preliminary facts to support this conclusion. The respondent had engaged her less than a year before, knowing her nationality and age, and had promoted her less than three months previously. That tended to suggest that it had no issue with her nationality or age. The evidence strongly suggested that she was dismissed for a combination of factors coming to a head in December 2022, involving her inability to prepare risk assessments in the forma required, some more minor errors in her record keeping, and complaints from colleagues suggesting that she was not a supportive colleague. The claimant argued against the correctness of that conclusion but the fact was that this was why her employment was terminated. Her promotion was subject to a three-month probation period and it was consistent with this that her position was reviewed in December 2022 and again in January 2023.

61. Finally under this heading, the claimant alleged that the respondent had unjustifiably tried to have her struck off the SSSC register by making a complaint about her. Again there were no preliminary facts to link this to her nationality. The complaint was made primarily because of perceptions about her suitability as a senior carer. Again they were genuinely held (whether or not they were justifiably held) and were not based on the claimant's race.

Harassment – section 26 EqA

62. The claimant alleged harassment related to the protected characteristic of race, being English.

63. The first complaint was the same as the first complaint of direct race discrimination – that the same individuals had spoken Polish when she attended the office with the purpose or at least the effect of excluding her from understanding what they were saying.

64. The tribunal considered the occasions when this had allegedly happened. Those were firstly on a number of routine visits to the office, when the reason for attending and the individuals who spoke Polish in her presence differed. The tribunal accepted that from the claimant's point of view, members of management were 'engag[ing] in unwanted conduct relating to' her protected characteristic of race. It also accepted that she genuinely felt that those individuals doing so had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. However, where it is claimed that the behaviour in question has the effect described rather than that purpose, the test for harassment has an objective as well as a subjective element – it will only be harassment if it is reasonable that the claimant perceived it as such. On this point, the tribunal found that the conduct complained of, to the extent that it occurred, did not have the purpose of affecting the claimant in a way amounting to harassment. Whilst it did have that effect on her, it was not reasonable for her to perceive it that way as it was too infrequent and innocuous. In other words, managers including Ms Masiak, Ms Golanska and Ms Natzel did occasionally speak Polish to one another in the claimant's company when she visited the office,

but it was done briefly, without intent to upset her and not targeted at her alone. It did not alter the generally positive working relationship the individuals had.

65. The tribunal next considered the conduct of the supervision meeting on 14 December 2022. This was by its nature different from the shorter, more amicable everyday interactions described immediately above. The claimant's performance and conduct were being reviewed and, in some aspects, criticised. This was ostensibly being done by Ms Berent with the oversight of Ms Masiak and Ms Natzel who, not leading the meeting, spoke to each other in Polish at certain points. The tribunal accepted that, unlike the other interactions, this crossed the threshold by being something that the claimant did reasonably believe to have violated her dignity or created an intimidating, degrading or humiliating environment for her. She was outnumbered and the only one who could not understand anything being said in Polish. Given the importance of the meeting and the sensitivity of the matters under discussion it was reasonable that she felt intimidated and humiliated. The tribunal did not find that the conduct complained of had this as its purpose - in other words, those speaking Polish did not intend to harass the claimant by doing so – but it did have that effect and it was reasonable for the claimant to feel that way.

66. The next complaint was that she was only given two days of compassionate leave when her father died and she required to visit him. She was not allowed to take additional days by way of paid annual leave and had to provide documentation to prove the reason for her absence. The claimant believed that at least one other Polish employee, Ms Babska, had been granted more compassionate leave and/or had not been asked to provide evidence supporting the request, such as a death certificate as she had. The evidence from the respondent witnesses, which the tribunal preferred as being more reliable, was that Ms Babska had also only received two days of compassionate leave following the death of a relative. She was not asked for further information because the required absence was for just those two days and not an extended period which changed, as the claimant's compassionate leave did, albeit for reasons outside of her control. Any request made of the

claimant for more information was based on the circumstances of the absence and not her nationality. It therefore could not amount to harassment under section 26, which requires the unwanted conduct to be related to a protected characteristic.

67. The next complaint was the demand for the return of the company car, as formed part of the direct race discrimination claim. As confirmed in relation to that complaint, there was no connection between the respondent's actions and the claimant's race. Ms Masiak simply wanted the vehicle back and was concerned that the claimant was about to go on holiday without returning it. Again therefore they could not constitute harassment as the term is used in section 26.

68. The claimant also alleged that Ms Masiak used disrespectful gestures and body language in her probationary review meeting on 17 January 2023. The claimant's evidence is accepted as being the more reliable account of the interaction. She made a note at or shortly after the meeting capturing her impressions. However, there was nothing to link what were gestures of frustration or impatience by Ms Masiak with the claimant's race. On the evidence, her demeanour was dictated by the fact that she was conducting a meeting in which she was having to raise with the claimant perceived shortcomings in her performance of her duties and her attitude towards fellow carers. As it developed, disputes between them on some topics became more entrenched and she became more visibly agitated.

69. The last allegation of harassment was that some time in April 2023 and during the period of ACAS Early Conciliation, Ms Masiak had said openly in the office that 'the English bitch isn't getting anything out of me'. The claimant said she had been told this by someone who was in the office at the time. Ms Masiak denied saying it. The tribunal was bound to accept the evidence of Ms Masiak, given under oath, in favour of the account of a witness who did not attend the tribunal and make a similar oath, or submit themselves to cross-examination. In any event, it is difficult to see how such a comment, had it been made, would have either the purpose or the effect of causing one of the prohibited outcomes stated in section 26(1)(b) since it would not have been said in the

claimant's presence, or with the intention that she found out, and after her employment had ended. It could have had the effect of violating her dignity admittedly, but the claimant did not actually say that she was so affected.

Victimisation – section 27 EqA

70. The claimant relies on four alleged protected acts as follows:

    a. Advising Ms Masiak and Ms Golankska in the meeting on 17 January 2023 that she believed other staff had behaved in a racist way;

    b. Sending an email and special delivery letter on 28 March 2023 alleging discrimination;

    c. Sending emails to Ms Masiak and Ms Seneczko in late April 2023 saying that she could not attend a meeting in the office due to discrimination which had occurred; and

    d. Commencing her claim by way first of ACAS Early Conciliation which began on 11 April 2023.

71. The alleged detriment which followed was that she was dismissed, which was effected by letter dated 18 January giving notice that employment would end on 24 January 2023.

72. Considering initially the relevant chronology, only the first alleged protected act occurred before the alleged detriment. On this basis the other three could not be the foundation of a victimisation complaint even if they were protected acts.

73. Both the claimant and the respondent provided their own transcript of the meeting on 17 January 2023. Both record the same statement made by the claimant towards the end of the meeting that colleagues' behaviour towards her was 'racist against my ethnic and social background', and that she wanted to raise a complaint about that. She did not give specific examples but Ms Masiak understood that a more detailed complaint would follow. This is taken to be an allegation of at least one person contravening the EqA and therefore

falling within section 27(2)(d) of that Act. This allegation therefore satisfied the test of being a 'protected act'.

74. Next was considered whether the claimant was dismissed because the claimant carried out that protected act. The evidence did not support this. From the transcripts of the meeting it is appreciable that Ms Masiak had a number of points of evaluation and criticism to raise with the claimant, although her feedback was not wholly negative and the claimant's positive qualities were also discussed. The tribunal concluded that at the outset of the meeting there was still every possibility that the claimant would be allowed to continue in her role, most likely having to undergo some further training, and with her conduct towards colleagues being kept under review. That may have been by way of a further extension to her probation period. However, as the meeting continued it descended into more of an argument with Ms Masiak and the claimant being unable to resolve a number of differences, particularly as to whether the claimant deserved criticism for her conduct towards her colleagues. The minutes give the impression that by the end of the meeting Ms Masiak had 'had enough' and reached the view that the outstanding issues were irreconcilable.

75. Although the claimant's statement constituting a protected act was part of the discussion, it was not the reason for the termination of her employment, or even a material factor. By the time she had said it the meeting was almost over and both individuals were essentially arguing about other things. It was those things which were the reason for Ms Masiak deciding to terminate the claimant's employment.

Alleged detriment and dismissal on grounds of making protected disclosures – sections 47B and 103A of ERA

76. The claimant's table contained 12 alleged protected disclosures. All were said to have been made to the respondent, specifically one or more members of management. Some were said to have been made verbally and others by electronic message. Each was said to have expressed the claimant's reasonable belief in the actual or likely endangerment of health and safety of

an individual in a way which was in the public interest, and therefore within the scope of section 43B(1)(d) of ERA.

77. The respondent accepted that ten of those alleged disclosures had been made as well as part of an eleventh, and that they met the definition of being protected disclosures. Its position in relation to those was that the respondent welcomed reports by staff of concerns and was responsive to them. The respondent did not accept that:

    a. The claimant sent a message to Ms Golanska on 6 September 2022 about another carer who had insufficient knowledge of both English and carer skills to move and handle service users, and that this was a protected disclosure; or that

    b. The claimant reported to Ms Masiak both in writing and verbally in the meeting of 17 January 2023 that colleagues spoke in a language which could not be understood in front of service users, or could not understand the mental and physical needs of service users, and that this was a protected disclosure.

78. The tribunal accepted that the alleged disclosures which the respondent admitted did meet the statutory test for being protected disclosures. Of the ones it did not admit:

    a. the alleged disclosure to Ms Golanska on 6 September 2022 was said to be found within pages [641-643] but the claimant's messages did not meet the requirement. She asked if a colleague had passed her three-month review and said she was not liable for staff if they were untrained, but she did not convey clear information showing the necessary belief. She was asking a question and/or making a general statement;

    b. the alleged disclosures in the meeting of 17 January 2023 could not obviously be found in the transcripts and are taken as not having occurred. In any event, the claimant had made protected disclosures

about the same issues at other times, which were admitted by the respondent as such.

79. The claimant alleged that she suffered two particular detriments as well as being dismissed on the grounds that she had made her disclosures. The detriments were:

    a. Ms Masiak inviting her to a 'conduct meeting', i.e. the probationary review meeting, on 14 December 2022 without sufficient cause, and doing so inappropriately by using facebook messenger; and

    b. Removing her from the on-call rota for January 2023 and reducing the number of risk assessments she was given to complete.

80. Dealing with those in turn, the tribunal's findings were that the meeting of 14 December 2022 was called because the claimant was not completing risk assessments properly and complaints had been made about her attitude towards colleagues. It followed the disciplinary meeting five days before at which allegations were put to her of making negative comments to a service user. There was no evidence that the meeting was prompted, wholly or in part, because of any protected disclosure made beforehand.

81. The matter of reducing the claimant's risk assessments and removing her from the on-call rota for January 2023 have already been covered within the discrimination complaints above. The respondent's motivation for the first was that the claimant had not grasped how to use the correct electronic template and for the second, she was simply not needed that month.

82. Generally, there was evidence of the respondent taking on board the issues the claimant raised and engaging with them. By way of example, when the claimant raised that a SU had been made a meal using out of date eggs, the respondent circulated a message to all carers to check carefully the 'use by' dates on food they prepared. Similarly, when the claimant mentioned that there had been a mix up over a SU's medication because they had taken pills from their packaging and put them in their own pill box, the respondent issued an instruction that only medication from blister packs was to be prompted.

83. Finally, the claimant alleged that her dismissal itself was on the grounds that she had made protected disclosures. The tribunal has already explained above that the reasons for her dismissal were different. Those were essentially irreconcilable differences over the claimant's conduct towards colleagues, her inability to prepare risk assessments, inaccuracies in her record keeping and the disagreement over return of the company car.

Additional claims – notice pay, deductions from wages, holiday pay

Notice period and related pay

84. The claimant was entitled to one week's notice. She served her notice period rather than being paid in lieu. Under her contract she was paid an hourly rate for the hours she worked on a weekly basis every Friday. Her normal hours of work were stated to be a minimum of 35 per week and according to the weekly rota. The hours could be varied to meet the needs of the business.

85. The claim in relation to notice was related to her not working her shifts on Monday 23 and Tuesday 24 January 2023, her last two days of work. She had been informed by a fellow carer that she had been taken off the rota for those days and asked management for clarification, although did not receive any.

86. The tribunal accepts the claimant's evidence that a colleague she was due to share a shift with on Monday 2023, Ms Malenda, told her that another CA had been scheduled to take her place. On the balance of probability Ms Malenda was telling the truth and management had assigned another CA to take the claimant's place, believing that she would not return to work from her reported absence on 21 January and given that she only had two days of employment remaining.

87. However, the claimant's contract entitled her to pay only for the hours she worked rather than a flat daily or weekly rate. She did not work any hours on 23 and 24 January 2023. Further, the claimant did not have set working hours. In each week she worked whatever hours were allocated to her on the rota. The respondent had discretion in deciding whether she would work or not on

a given date. Therefore, notwithstanding the misunderstanding causing her to be removed from the rota for the two days in question, the respondent was contractually entitled to do that and she has no claim for the wages she would have received had she worked.

Unlawful deduction from wages

88. Deductions can only be made from a worker's pay in prescribed circumstances. Those are found in section 13 of ERA and in summary are:

    a. The deduction is required by law, e.g. deduction of income tax under the PAYE system,

    b. There is a relevant provision allowing for it in the employee's contract, or

    c. The employee has given their advance written consent.

89. As covered in the findings of fact, the claimant was issued a standard CA contract when she started her employment with the respondent and then the same document when she was promoted. She was not issued with the SCA contract which was the only one of the two containing provisions authorising deductions to be made from pay.

90. The claimant had the sum of £160 deducted from her final pay, shown on her payslip dated 27 January 2023 [293]. The respondent withheld the money to cover uniforms and her ID badge which she had not returned. The amount of £81 was also deducted on 20 January 2023 [292] to cover the various charges made for recovery and cleaning of the company car.

91. The £160 deduction was not authorised under her contact. She returned the missing items on 3 February 2023 and was then reimbursed, indeed overpaid, receiving £224.03 on 10 February 2023 [294], and so although there had been an unlawful deduction she had by now sustained no loss.

92. As the deductions in respect of return and cleaning of the company car were not authorised, the respondent made them unlawfully. She is therefore due back the sum of £81 deducted, but given the overpayment above she is now

owed the net sum of £16.97. The deduction was made less than three months before she commenced ACAS Early conciliation and the complaint is within time.

93. The claimant separately sought to recover alleged underpayment of wages on nine occasions between 4 March 2022 and 6 January 2023. There was said to have been an unauthorised deduction from the claimant's pay in each of those because she had worked less than her normal minimum number of weekly hours as stated in her contract. In other words, the claimant had been paid the correct rate for the hours she worked, but she alleged that she was entitled to work, and be paid for, a minimum of 35 hours in each week. She did not claim to have worked additional hours in those weeks but not be paid for them.

94. Under both the CA and SCA contracts, weekly hours were stated as 'normal hours of work' which 'may be varied to meet the needs of the business'. As such there was not an absolute guarantee that the claimant would be needed to work for at least 35 hours in every week. The way her contract was structured, she would only be paid for hours worked and not a set weekly amount. The respondent had the required flexibility not to require her to work 35 hours, at least from time to time and assuming this was to serve business needs and not, for example, as an act of discrimination or otherwise to cause her detriment. There was no evidence of the respondent being motivated in that way for the weeks in question, as opposed to the greater number of weeks in which she was allocated at least 35 hours of work.

95. Leaving aside the question of whether each week referred to when taken together constituted a series linked by some common element, there was no unauthorised deduction from pay for any of them. She was not paid less than the 'amount of wages properly payable' to her under section 13(3) of ERA.

<u>Holiday pay</u>

96. The holiday year ran from 1 April to 31 March. The claimant was entitled to the equivalent of 5.6 weeks per year, including any local holidays – in other words the minimum prescribed by the Working Time Regulations 1998.

Holiday pay was to be calculated under her contract based on her average pay from her commencement date.

97. The claimant's own position was not completely clear. She found it difficult to understand the way the Atlas system calculated her holidays. She believed however that she had some accrued hours outstanding at the point of termination which were not paid to her. Copies of her payslips were available to review and the respondent prepared a schedule showing its calculation of leave entitlement built up and days or hours of leave taken (S56-57). They showed that she had taken more days than she had accrued and that she had been paid for all of them. This included the two days of compassionate leave in July 2022 [268]. In cross-examination the claimant appeared ultimately to accept this was the position. On the evidence available the tribunal concluded that the claimant had no outstanding accrued leave at the time she left the respondent's service on 24 January 2023.

Conclusions and remedy

98. All but the claimant's complaint of (i) unlawful deductions from wages, (ii) direct race discrimination arising from the meeting on 14 December 2022 and (iii) harassment based on the same meeting were unsuccessful on the basis of the evidence provided, and so must be dismissed. The wages claim was within time, and it was just and equitable to extend the time period for presenting the other claims by the period of around four weeks to allow them to be determined.

99. The claimant was successful in challenging the deductions made from her pay, because there was no statutory requirement to make them, the respondent did not have power under her contract and she had not given prior written consent. That claimant succeeds and the balance of the deductions, factoring the respondent's overpayment in respect of her unforms, is due to her. The amount is calculated to be £16.97 as above.

100. The tribunal had to consider the extent to which the claimant sustained an injury to her feelings as a result of the successful race discrimination and harassment complaints. The claimant did not lead medical evidence but gave

oral evidence to say that she had felt uncomfortable, intimidated and humiliated. Both complaints related to the same behaviour and so the tribunal was careful not to double-count the effect on her. The tribunal was also mindful that the claimant was upset by how the meeting went generally, and not all of that was attributable to the specific acts which amounted to discrimination or harassment, i.e. those present speaking in Polish.

101. Considering the evidence of how the meeting took place – its setting, who was there and in what position, the subject matter of the discussion – and the effect on the claimant of the unlawful conduct specifically, the tribunal considered that this fell within the lowest of the three ***Vento*** bands – per ***Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102*** and as revised annually by way of Presidential guidance. This was because the conduct was a one-off occurrence and it was not 'serious', in the sense that whilst it caused the claimant upset it was not particularly aggressive, deliberate or hurtful. At the time when the claim was submitted that corresponded to an award of between £1,100 and £11,200. The tribunal considered the overall effect to be at the lower end of that band and reached the view that an award of £2,500 is appropriate.

102. The final matter to consider is interest on the award for injury to feelings. Interest runs from the date of the discriminatory act (since this occurred on a single date) until the date of calculation, taken to be the date of issuing this judgment. A calculation has not been made. If the parties are unable to agree the relevant figure one will be provided.

Date sent to parties **07 July 2025**