



EMPLOYMENT TRIBUNALS

Claimant: Ms H Dadhanian

Respondents: (1) SAP (UK) Limited
(2) Herve Sortais
(3) Jade Horsman
(4) Bruce Pell
(5) Caroline Scott
(6) Iain Sibley

Heard at: Reading **On: 27, 28, 29, 30 June, 11, 12, 13, 14 July 2022**

Before: Employment Judge Gumbiti-Zimuto
Members: Mr C Juden and Ms H T Edwards

Appearances

For the Claimant: Mr R Dennis, counsel

For the Respondent: Miss D Masters, counsel

JUDGMENT

1. The claimant was dismissed, the claimant was unfairly dismissed.
2. The claimant's complaint of direct discrimination, harassment and victimisation are not well founded and are dismissed.
3. A remedy hearing shall take place on the 23 and 24 March 2023.

REASONS

1. In a claim form presented on the 24 July 2020 the Claimant made complaints of unfair dismissal, age, race and sex discrimination. The Respondents deny the claimants complaints.
2. The Claimant is a woman of Indian origin. At the relevant time she was 61 years old. The Claimant was employed by the First Respondent (SAP) from 18 July 2016 until 21 July 2020. The Claimant's employment terminated when she resigned without notice. The Claimant claims that she was

constructively dismissed and discriminated against because of her age, sex and or race. The Claimant brings her claim against her former and employer and five other individuals employed by the Respondent.

3. The case was heard in June and July 2022. The Tribunal, after hearing all the evidence on liability, determined that the Claimant's complaint of unfair dismissal was well founded and succeeded. There was no agreement on the question whether any of the complaints of age, race or sex discrimination, harassment or victimisation were well founded. The Tribunal needed to find further time to consider the Equality Act complaints. The Employment Judge's workload and other listed cases made it very difficult for him to find sufficient time to conclude a draft of the Judgment for the consideration of the Tribunal Members. After further consideration the Tribunal finally concluded that the Equality Act 2010 complaints were not well founded and should be dismissed. The Tribunal regrets and apologises to the parties for the excessive delay in sending this decision to the parties.
4. The Claimant gave evidence in support of her own case and also relied on the evidence of her husband Mr Jayendra Dadhanian. The First Respondent (hereafter referred to as the Respondent) at the relevant time employed Mr Herve Sortais (Second Respondent), Ms Jade Horsman (Third Respondent), Mr Bruce Pell (Fourth Respondent), Ms Caroline Scott (Fifth Respondent), Mr Iain Sibley (Sixth Respondent). The individuals who are Respondents all gave evidence in support of their cases and also relied on the evidence of Ms Rimjhim Jain, Mr Prakash Prabhakaran, Ms Rayanta Rana, Mr Amit Shetye and, Mr Jon Stubbington. All the witnesses produced statements which were taken as their evidence in chief. We were also supplied with a bundle of documents running to 4194 pages of documents. We made the following findings of fact which we considered necessary to determine the issues in the case.
5. The Respondent is a software developer that produces software used for running businesses, the Respondent sells software products and services to commercial clients globally. The Second to Sixth Respondents are employees of SAP who took decisions in respect of the Claimant's employment. At the relevant time they occupied the following roles: The Second Respondent, "Mr Sortais" - Head of Services EMEA North; The Third Respondent, "Ms Horsman" - Sales Manager for the UKI Services Group; The Fourth Respondent, "Mr Pell" - Services Sales Manager; The Fifth Respondent, "Ms Scott" - Senior Director, Global Marketing Enablement, SAP Concur; and The Sixth Respondent, "Mr Sibley" - Senior Business Manager.
6. The Claimant was employed as one of around 20 Services Account Managers (SAMs). Each of the SAMs was assigned several customer accounts, for which they were responsible for developing close, long-term relationships with those customers, identifying their needs, and closing sales opportunities.

7. The Respondent has a discretion to move accounts between SAMs, however there is a dispute between the Claimant and the respondents as to how the discretion to move accounts is applied by the Respondent. The Claimant states that due to the long-term nature of the sales cycle, and the long-term relationships required for SAMs to be successful, the Respondent's usual practice was only to move customers between them when a SAM left or joined the company or where an account had not been allocated to anyone. The respondents contend that it is not unusual to move accounts: the Claimant does not accept that was the case. Mr Pell stated that the accounts can be moved at the beginning of the year or during the year, no assurance is given that the accounts will remain with a SAM. The Tribunal concluded that the Respondent had a discretion to move accounts between SAMs that was not fettered by any specific custom or practice. The Respondent could move accounts between SAMs as it saw fit, but it was not routinely exercised.
8. Mr Jon Stubbington held the role of Services Sales Manager from 1 January 2019. In this role he had management responsibility for the Claimant in a team of around ten service account SAMs reporting to him. The Claimant was already allocated Account A when at the start of 2019 Mr Stubbington allocated Account B, a private sector pharmaceutical company, to the Claimant as the previous SAM for that account had recently left SAP.
9. In the first quarter of 2019 the Claimant was hitting only 11% of target bookings for that quarter. This put her at the bottom of Mr Stubbington's team. Mr Stubbington considered that the Claimant had some underlying performance issues, both in terms of her pipeline but also how she worked with other teams and managed the sales process once an opportunity had been identified. Mr Stubbington spent time coaching the Claimant and providing support.
10. Despite support, the Claimant's Q2 for 2019 also started badly in terms of her figures. There were, in Mr Stubbington's view, continuing problems with other aspects of the Claimant's work. In May 2019 Mr Stubbington decided that he would put in place a performance improvement plan ("PIP") for the Claimant. Mr Stubbington's aim in drafting the PIP was to make the performance concerns clear to the Claimant, to provide goals that needed to be met to address them, and to provide support to her in reaching those goals.
11. The PIP ran from mid-May to July 2019. Over this period, Mr Stubbington had regular catchups with the Claimant to discuss her progress against the plan objectives, made notes of these and updated the PIP as they went along. The Claimant managed to achieve a successful Q2 in terms of sales bookings, exceeding her target for that quarter. Mr Stubbington noted that the Claimant had made an effort and had improved, but that she had done so with a significant amount of support, he says that the Claimant's Q3 was better, however, in Q4 her *"performance started to drift again"* but then picked up again. Mr Stubbington was satisfied with the Claimant's performance at the end of 2019.

12. In January 2020, the Claimant was assigned 14 accounts in total, including Accounts A and B. In his email of 10 January 2020, Mr Stubbington stated that, *"I have secured approval to keep [Account A] with you as you have forged good relationships with the customer and the AE [Account Executive] which should lead to more business in 2020."*
13. From October 2019 to March 2020, Ms Raynata Rana held the position of interim Services Sales Director for UKI in this position she was ultimately responsible for the team of around 20 SAMs, who worked on customer accounts in UKI. The SAMs were managed directly by their first line managers, the Sales Managers, who reported to Ms Rana. In February 2020 Mr Bruce Pell replaced Mr Stubbington as Sales Manager on an interim basis, he thus took over as the Claimant's Line Manager.
14. Account A is a large organisation and has been a customer of the Respondent for many years. It is an important strategic customer with a lot of purchasing power for IT services.
15. In 2019 and 2020, Account A was undertaking a broad review of its IT software platforms including a digital transformation project. Mr Pell and the Claimant discussed Account A at their initial meeting when Mr Pell commenced in the role of Sales Manager in February 2020. In February 2020 the Claimant was told that she would be provided with account support by Mr Pell. The claimant persuaded Account A to consider a Services Rough Order of Magnitude (ROM)¹ from the Respondent. This would require the Claimant to make a presentation to the Deal Qualification Board (DQB), which needs to approve the deal. The Claimant met with Mr Pell to prepare her presentation for the DQB. The Claimant found Mr Pell to be "abrupt and condescending", she was intimidated by him. The Claimant attended the DQB on 11 February 2020 and made her presentation following which the project was given approval.
16. In the period from March 2020 to April 2020 the scope of the deal with Account A increased from a value of €3,000,000 to around €20,000,000.
17. On 1 April 2020 Ms Jade Horsman replaced Ms Rana as UKI Director of Sales. The size of the ROM deal with Account A meant that it was required to go before UKI Bid Council and the bid council for Europe Middle East and Africa (EMEA).
18. The ROM deal received approval from the UKI Bid Council following this the Claimant was in contact with Mr Pell about the deal. The Claimant complains that she was subjected to a unique level of micromanagement by Mr Pell who asked to be copied "into every email going forward, without giving any reasons."

¹ A ROM is a rough estimate of the work that the Respondent would do for the client.

19. At the EMEA Bid Council approval was granted. During the meeting Mr Sortais referred to the Account A ROM deal as a “must win” account. The Claimant continued to work on Account A and was requested to provide a ROM deck to Mr Pell. Subsequently Mr Pell told the Claimant that he could not approve the ROM slide deck. After the Claimant had carried out some amendments to the slide deck it was approved by Mr Pell.
20. On 17 April 2020 the Claimant received an enquiry from a colleague about an Account G. This was not allocated to the Claimant. The Claimant’s response was to say that the colleague was welcome to work on the Account if she had capacity.
21. Mr Pell requested that the Claimant provide him with a close plan on Account A, on 15 April and again on 17 April. The Claimant provided the close plan on 19 April 2020.
22. On 20 April 2020 Mr Pell attended a meeting to discuss Account A. This was a “day to day” meeting to discuss work. During this meeting where the Claimant and two others were present Mr Pell said that “we were going to do what the had done on Capita”. When the Claimant disagreed Mr Pell reacted aggressively to the Claimant’s comment that they would have to a good job because the deal was sponsored by the worldwide President of Services.
23. On 27 April 2020 the Claimant was attending a meeting about Account B. Mr Pell joined the meeting. The Claimant says that in this meeting Mr Pell was again aggressive and hostile to the Claimant by asking her three times “who will be writing the submission document?”
24. On 28 April 2020 the Claimant was told by Ms Horsman that she was being put on a PIP. When the Claimant asked what that meant on a day-to-day basis she was told “there will be more micromanagement of my time and activities.”
25. At a meeting on 28 April the Claimant says that Mr Pell’s attitude was to micromanage and pick on her.
26. On 1 May 2020 Mr Pell’s appointment as Sales Manager was made permanent. Also on the 1 May 2020 the Claimant and Ms Horsman discussed the details of the Claimant’s PIP.
27. The Claimant was informed that her Q1 and Q2 performance was unacceptable. The Claimant was told that she has poor relationships with account executives. The Claimant was told that Accounts A and B would be moved to another SAM because the Claimant had not been managing them well. Ms Horsman stated that it was not negotiable as it was coming from Mr Sortais.
28. Accounts A and B were both reallocated to white men who are British aged 39 (PW) and aged 25 (NP). The Claimant was the only person who had

accounts moved which were not the result of accounts being allocated to new joiners.

29. Accounts A and B were replaced with 4 other accounts which the Claimant says were dead accounts impacted by Covid 19 from which the Claimant could not achieve her targets. A number of objectives were set in the PIP, the review to set out the "formal Performance Improvement Plan" did not take place.
30. The Claimant submitted a grievance on 4 May 2020. On 11 May 2020 the Claimant emailed Ms Horsman and said she did not accept the four new accounts. The Claimant's grievance hearing took place with Ms Scott on 15 May 2020.
31. Removal of the Claimant's Accounts A and B resulted in her pipeline dropping from £27.6 million to £1.1 million, from the highest to the lowest.
32. The Claimant contends that the outcome of the grievance report was not a fair and independent investigation; that the Claimant's allegations of discrimination were not investigated but were instead simply dismissed.
33. The Claimant made an appeal against the grievance outcome. The grievance appeal hearing took place on 9 July 2020. The outcome of the appeal was a rejection of the Claimant's grievance.
34. By 21 July the Claimant had not had any PIP meetings. The Claimant had not had her accounts restored, she considered that she was not on a par with other SAM's in respect of account allocation. The Claimant resigned on 21 July 2020.

20 April meeting

35. The Claimant contends that at the meeting on 20 April 2020 she was undermined and belittled by Mr Pell. The meeting was a day-to-day meeting. The Claimant states that it is unusual for Mr Pell to attend such a meeting Mr Pell says the contrary. We note that Mr Pell received an invitation to join the meeting. There is in our view nothing outstanding about Mr Pell's presence at this meeting. The Claimant states that during the meeting Mr Pell said, "I don't give a fuck that Shane is sponsoring it." This is denied by Mr Pell and Ms Jain states that she does not recall this, and it is the type of comment she would have remembered.
36. The Tribunal have concluded that we prefer the Claimant's account to that of the Respondent's evidence on this issue. We considered the Claimant a believable witness and do not consider it is something that she is likely to have made up. The words allegedly used in our view are fairly commonplace and do not carry the shock value they might have done in another time. It is in our view something that might have been said and is not recalled now by Ms Jain or Mr Shetye because of its lack of significance at the time.

37. We note that the Claimant correctly relates that Mr Pell stated that the approach taken with another customer should be adopted with a Account A. Mrs Jain does not refer to this in her recounting of the meeting. The Claimant describes Mr Pell as aggressive during this meeting. This in our view may be a matter of perception but we note that Ms Jain refers to Mr Pell as assertive. We accept the Claimant's description of the behaviour of Mr Pell at the meeting on 20 April. Further in his evidence Mr Pell stated that he was not concerned that Mr Shane Paladin was the sponsor for the deal what was important was that you did a good job for all customers. In our view, without the expletive, this comment chimes with the evidence given by the Claimant we recognise that this evidence was given in the context of denying that at the meeting he made any comment referring to Mr Paladin as alleged by the Claimant.
38. Finally, the meeting on 20 April is described by witnesses present as "tense", and "hard" but "nothing personal". We accept that the comment though made by Mr Pell was not intended to be offensive towards the Claimant.

27 April 2020 Meeting

39. We accept that at the meeting on 27 April 2020 the Claimant was subjected to the treatment that the Claimant refers to in her witness statement. In coming to this conclusion, we note that there is a significant level of agreement between the parties about what was said. We also note that in his evidence Mr Pell agrees that he repeated his question as the Claimant alleges, the purpose or reason he states is because he wanted the Claimant to take ownership of the ROM. In circumstances described by either the Claimant or Mr Pell we are of the view that the exchange would have been aggressive and reasonably viewed as hostile.

28 April 2020 Meeting

40. The Claimant says that Mr Pell sought to micromanage and pick on her at this meeting by asking her trivial questions. The Claimant considers that Mr Pell attacked her in front of colleagues by asking unnecessary questions to "trip up" the Claimant. Mr Pell denies undermining or belittling the Claimant, or micromanaging her, Mr Pell says he went into high level of detail because he wanted to do a good job and as her senior line manager at the meeting wanted the Claimant to explain her strategy for closing the deal and challenged her on it as appropriate. Mr Pell says he would have done the same with any colleague regardless of age, sex or race.
41. The people present at this meeting do not support the Claimant's perception that the conduct of Mr Pell was micromanaging the Claimant or that his behaviour at the meeting was inappropriate towards the Claimant. We do not consider that the Claimant's thoughts and feelings about Mr Pell's behaviour at this meeting are objectively correct. She may well have felt

subjectively that she was being belittled and micromanaged but this was not actually correct in this instance.

Performance Improvement Plan

42. The Claimant considers that Mr Sortais, Ms Horsman and/or Mr Pell decided to put the Claimant on a PIP, and did so without any prior warning or discussion with her.
43. Mr Sortais says that while he agreed with the decision to put the Claimant on a PIP he did not give the instruction to do so. This is supported by Ms Horsman who states that while she “ran the decision to put the Claimant on a PIP by Mr Sortais” it was her decision not his, Mr Pell states that he discussed with Ms Horsman the Claimant’s performance and that they both had considerable concerns about it but it was Ms Horsman’s decision to place the Claimant on a PIP.
44. Mr Pell’s evidence is that he had witnessed that the Claimant was not in control of the potentially huge bid for Account A. He says that he had meetings with the Claimant, and made every effort to assist her. Despite this the Claimant continued to be failing in her performance and he received concerning feedback about the Claimant. We note that Mr Pell although saying that he had these concerns about the Claimant Mr Pell does not appear to have managed the Claimant in a way that aligns with the Respondent’s policy on performance management.
45. Ms Horsman had been in post about a month when she decided to place the Claimant on a PIP and reallocated the Claimant’s accounts. Ms Horsman lists a number of issues of concern about the Claimant’s performance but does not indicate addressing the issue before announcing to the Claimant that she would be placed on a PIP.
46. The Respondent’s performance management guidelines provide that there is a process for managing and monitoring performance through open dialogue, setting expectations and removing ambiguity; documenting areas to be managed and the actions to address them; and addressing concerns with both behavioural technical skills. (see p3819). “The core obligations on the business are to ensure that where an employee is not performing, the employee is (i) made aware of that fact, (ii) told what level of performance us expected of them, and (iii) given a reasonable time within which to meet the level of performance required.”
47. The policy guidelines provide that the employer will investigate the cause of the employee’s poor performance. The policy provides for exceptions to the policy, however the claimant does not appear to us to come within the exception. Step one of the policy calls for a PPP meeting. This is a meeting where the manager will invite the employee to an informal performance review meeting to discuss the nature of the employee’s poor performance and the improvement that they would like to see. At that meeting the

employee is to be given the opportunity to respond to the feedback they received from the manager. This did not take place in the Claimant's case.

48. There is nothing in the voluminous material provided to the Tribunal that evidences any discussions with the Claimant about her performance prior to notifying the Claimant that she was to be placed on a PIP in late April 2020.
49. The Tribunal has concluded that in placing the Claimant on PIP on 28 April 2020 the Respondent did so without any warning. There is no evidence that Mr Sortais was responsible for the Claimant being placed on a PIP it was just the Claimant's suspicion that he was behind the decision.

1 May 2020 meeting with Ms Horsman

50. At this meeting the Claimant was told that she was going to have her Accounts A and B reallocated and replaced with Accounts W, X, Y and Z. Following this meeting the Claimant raised a grievance. The Respondent denies that Mr Sortais was responsible for this decision, the Claimant says that Ms Horsman told her that the PIP was not negotiable because it was coming from Mr Sortais. The Claimant's evidence of this meeting is denied by the Respondent. It is our view that the decision to remove the accounts from the Claimant was one which Mr Pell was very much involved in and one which he approved of.

Grievance

51. On 4 May 2020 the Claimant submitted a grievance in which she said that she was unhappy about the reallocation of Accounts A and B. She said that being allocated four new accounts to replace Accounts A and B was unfair. Finally, she stated that she did not agree with the basis on which she was put on a PIP. The Claimant said that her treatment was "a very unfair manner with multiple discrimination".
52. The Claimant's grievance meeting was with Miss Scott on 15 May 2020. During the grievance meeting the Claimant explained that she had been disadvantaged by the account reallocation, treated differently and unfavourably in contrast to other SAMs. During the grievance investigation meeting the Claimant points out that she was not asked why she considered that she has been discriminated against. After the grievance investigation meeting Miss Scott did not speak to colleagues that the Claimant worked with on Account A and B. The Claimant received the grievance outcome on 5 June 2020. Miss Scott dismissed the grievance.
53. The Tribunal concluded that the Respondent via Miss Scott, did not carry out an adequate investigation of the Claimant's grievance. We consider that the criticisms listed by the Claimant at paragraph 81 of the Claimant's submissions are points that are well made.

Grievance appeal

54. The Claimant appealed the grievance. The Claimant's grievance appeal stated that she had been discriminated against because of her protected characteristics. The Claimant attended a grievance appeal hearing with Mr Sibley on 8 July 2020. During the appeal hearing the Claimant was told that the data for her comparators was "personal and confidential". The Claimant was told that she was to produce new evidence in the appeal. On 15 July 2020 the Claimant received her grievance appeal outcome. The Claimant's appeal was rejected.
55. We concluded that Mr Sibley knew that the Claimant's appeal was on the basis she believed the decisions to remove Accounts A and B to place her on a PIP were discriminatory on the grounds of her age, ethnicity, and sex. However, we find, as the Claimant points out that he failed to investigate the matters listed in the Claimant's submission at paragraph 90.

Direct discrimination

56. An employer (A) must not discriminate against an employee of A's (B) by dismissing B or by subjecting B to any other detriment. The reference to dismissing B includes a reference to the termination of B's employment by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice. (Section 39 Equality Act 2010 (EqA))
57. 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. (Section 13 (1) EqA)
58. The protected characteristics include age (a particular age or range of ages – section 5(2) EqA), race (which includes colour and ethnic origins section 9(1)) and sex. In this case the Claimant relies on her age (61 or over 55), colour, Indian ethnic origin and sex.
59. Section 136 EqA provides that 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. This does not apply if A shows that A did not contravene the provision.
60. Section 136 calls for a two-stage approach. At the first stage when considering what inferences or conclusions can be drawn from the primary facts, the tribunal must ignore any explanation for those facts given by the respondent and assume that there is no adequate explanation for them. The evidence of the reason for any such less favourable treatment cannot be taken into account at the first stage.
61. The employee must prove a difference in treatment, a difference in age or sex or race, and something more from which the tribunal could decide that there has been discrimination, then the burden of proof will shift to the

employer. A mere difference of treatment and difference of protected characteristic is not of itself sufficient to shift the burden of proof, there must be something more.

62. If the burden shifts to the employer, to discharge that burden it is necessary for the employer to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive. That requires the tribunal to assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question. Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice. (*Igen v Wong* [2005] ICR 931)

63. The protected characteristic must have been a material cause for, or had a significant influence on, the employee's treatment. If the employer fails to prove that the claimant's treatment was not significantly influenced by any protected characteristic, then the claim must be upheld.

64. Harassment

65. In the alternative to direct discrimination, the claimant makes a claim of harassment pursuant to section 26 EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has the said effect each of the following must be taken into account the perception of B, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect.

66. Conduct will be related to a protected characteristic if that characteristic was a significant part of the mental processes (conscious or unconscious) of the person responsible.

67. In the alternative to direct discrimination, the Claimant says that each of the acts set out above constituted an act of harassment related to the Claimant's age, sex and race. Each of those was an act of unwanted conduct related to age, sex and race: further she says each of them also had at least the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

68. Victimisation

69. Section 39(4) EqA provides that an employer (A) must not victimise an employee of A's (B) by dismissing B, or by subjecting B to any other detriment: this includes constructive dismissal.
70. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. Each of the following is a protected act, bringing proceedings under the Equality Act, giving evidence or information in connection with proceedings under the Equality Act, doing any other thing for the purposes of or in connection with the Equality Act, making an allegation (whether or not express) that A or another person has contravened the Equality Act.
71. The Respondent's accept that the Claimant did each of the following protected acts; the Claimant's grievance of 4 May 2020, the Claimant made comments during the grievance meeting on 15 May 2020 which related to discrimination, the Claimant's grievance appeal of 10 June 2020, the Claimant's email to SAP on 8 July 2020, attaching a 'speech' to use at the appeal, the Claimant read her speech out at the grievance appeal meeting making another 'protected act'.
72. The Claimant contends that Ms Scott and Mr Sibley also knew that the Claimant may do a protected act, by bringing a claim for discrimination under the Equality Act.

Constructive dismissal

73. The Claimant's contract of employment contained an implied term that the Respondent would not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. A breach of such term is a repudiatory breach.
74. The Claimant contends that the Respondent breached the implied term by subjecting the Claimant to the treatment on which she also relies as acts of direct discrimination, harassment and victimisation.
75. The Claimant contends that the conduct was likely to seriously damage the relationship of trust and confidence between the parties, whether or not it was also contrary to the Equality Act.

Conclusions

Breach of contract

76. We have concluded that the Respondent's conduct amounted to a breach of contract there was conduct that was likely to seriously damage the relationship of trust and confidence between the parties. The Respondent's decision to place the Claimant on a PIP without any prior warning or discussion with her was likely to and did seriously damage the relationship

of trust and confidence between the Claimant and the Respondent. The decision to dismiss the Claimant's grievance without carrying out an adequate investigation into the issues raised and the dismissal of the grievance appeal without considering the points that the claimant raised was also likely to have the effect of seriously damaging the relationship of trust and confidence.

77. The Claimant resigned her employment because of the Respondent's breach of contract. The Tribunal consider that the Claimant did not wait too long or otherwise affirm the contract of employment. The Tribunal has come to the conclusion that the Claimant was constructively dismissed.
78. We have considered whether there was a potentially fair reason for dismissal. In our view capability was an issue in scope and is potentially a fair reason for dismissal.
79. In our view dismissal of the Claimant for capability was not reasonable, the Respondent had accepted that the Claimant was capable of good work. She had been on a PIP previously and succeeded in improving her performance. The Respondent had not followed its own policy in the way it applied the PIP in the Claimant's case on this latter occasion. We are of the view that dismissal of the Claimant for capability in this instance would not have been fair.
80. The Tribunal concluded that the Claimant was unfairly dismissed. The Claimant was constructively dismissed and is entitled to compensation for the loss of her notice period.
81. Did the incidents in paragraph 1 of the list of issues occur?
82. The Tribunal has concluded that the Claimant was told by Mr Pell that they would adopt the same approach as they had with another account and that Mr Pell had said words along the lines quoted by the Claimant in the list of issues at 1 a(ii) of the list of issues. We have also concluded that the comments were not intended to be offensive towards the Claimant.
83. We have concluded that at the meeting on 27 April 2020 Mr Pell's exchange with the Claimant was aggressive and would have been reasonably viewed as hostile.
84. We did not find that the Claimant has shown that the conduct alleged towards her at the meeting on 28 April 2020 was proven on balance of probability.
85. The Tribunal is satisfied that the Claimant was placed on a PIP by Ms Horsman who discussed and agreed this action with Mr Pell before doing so, The fact that the decision to put the Claimant on a PIP was made was reported to Mr Sortais who agreed with it but was not party to the decision. There was no warning or discussion with the Claimant before placing her on a PIP.

86. We have come to the conclusion that the evidence before us shows that the decision to move the Claimant's accounts was made by Ms Horsman. The suggestion made that it was Mr Sortais in our view has not been proved. If there was any consultation about moving the accounts it would in our view more likely have been with Mr Pell.
87. The Claimant's grievance was dismissed by Ms Scott. We are satisfied that for the reasons put forward by the Claimant Ms Scott did not adequately investigate the Claimant's grievance. We also consider that for the reasons set out by the Claimant there was a failure to properly consider the matters that the Claimant raised on the grievance appeal.
88. The Respondents conduct in our view did amount to a detriment. The Claimant in our view could reasonably consider that she had been disadvantaged by the events which we have found proved.
89. Was the claimant treated less favourably because of a protected characteristic? The protected characteristics which the Claimant relies upon are age, sex, and/or race.

The conduct of meetings

90. We found that the Claimant's complaint about meetings in some parts proved and in other parts not established. In the meeting on 20 April 2020, we did not consider that Mr Pell intended any offence to the Claimant, his behaviour was not specifically directed at the Claimant. It was how he conducted himself. There was an aggressiveness by Mr Pell in the meeting on 27 April 2020. However, we have not been able to conclude that there is evidence from which we could conclude that the way that Mr Pell conducted himself was due to any protected characteristic of the Claimant.

Removal of Accounts A and B and being placed on a PIP

91. The Claimant contends that Mr Pell and Ms Horsman cannot explain their decisions by reference to the Claimant's performance against her bookings target in Q1 and Q2 2020. The Claimant compares herself to 3 male colleagues, of whom one was White British (DJ), one was White Kazakh (IS), and all aged between 33 years and in their 40's. Further the Claimant states that a SAMs booking against target can vary widely from quarter to quarter; Mr Pell and Ms Horsman had no reason to believe the Claimant's deal with Account A wouldn't be signed later in the year.
92. While Mr Pell now sets out a number of reasons for his assertion that the Claimant was not managing Accounts A and B, at the time Mr Pell did not raise these issues with the Claimant. The Claimant points out that Mr Pell's criticisms of the Claimant were such, after questioning, that they had no substance.

93. The Claimant argues that there is evidence from which the Tribunal could conclude that there was discrimination on the grounds of age, sex, and race. The Claimant goes on to say that the Respondents are therefore required to prove that there was no discrimination whatsoever, but has by virtue of the insubstantial evidence of Mr Pell and Ms Horsman should be found to have failed to do so.
94. The Respondent contends that the Claimant's performance in Q1 and Q2 2020 was poor and that is what led to a PIP. The Claimant was an inconsistent performer. The Respondent also relies on various comparators as showing that there was no discrimination against the Claimant because they performed better than the Claimant (PW), or had recently joined the Respondent (NP), or where there was poor performance treated the same as the Claimant by being put on a PIP (IS).
95. The Respondent also points out that the Claimant's assessment of her performance in comparison to others is flawed, she compared her bookings to others without reference to individual targets. The Claimant's reliance on her pipeline does not assist her because what matters is whether she closed a deal, the Claimant's pipeline was inflated because she had a large upside. The Respondent further states that when considering performance, the Tribunal should reject any analysis that does not take into account the Claimant's seniority in comparison to others.
96. There is a conflict of evidence between the Claimant and the Respondent about whether there was a DQB on 6 February 2020. Mr Pell says there was and it was "complete carnage", had to stop it because the Claimant had "no idea what her sales strategy is and no idea what she us doing ". In contrast the Claimant's evidence was that there was no DQB on 6 February 2020. What the Claimant relates is a meeting with Mr Pell where they review and discuss her presentation for a DQB on 11 February 2020. The Respondent asks us to reject the Claimant's evidence and to question her credibility generally as a result of this and other features of her evidence when her performance is questioned.
97. The conclusion of the Tribunal is that there is documentation which is contemporaneous which suggest that Mr Pell did attend a DQB with the Claimant on 6 February 2020 and that the Claimant's recollection may be faulty on this. We note that both Mr Pell and the Claimant refer to the later meeting when they discuss the Claimant's presentation for the DQB on 11 February which subsequently is referred to as "high quality" by Mr Pell. The DQB meeting on 6 February could not have been the reason for the Claimant's accounts being removed in April 2020. However, the perception of the Claimant's performance may well have been tainted and it is in our view possible that in seeking to justify his actions in supporting the removal of the Claimant's account Mr Pell relies on the event he can recall where he forms a unfavourable view of the Claimant's performance.
98. The Tribunal consider that the evidence shows UKI was under performing for the Respondent and that Account A was considered a must win account.

In moving the accounts, we consider that the motivation was a desire to maximise the chances of success by moving the accounts to someone considered to have a better chance of success in securing the deal. We have asked ourselves whether there is a basis for us to conclude that the fact that the Claimant was a 61-year-old Indian woman was part of the considerations which influenced the Respondent's decision. We have not been able to finally conclude that the Claimant's protected characteristics were the reasons for the view that the Claimant was not likely to succeed with Accounts A and B. We do not consider that the Claimant's age, race or sex consciously played a part in the decision to move the Accounts A and B.

99. The majority do not consider that the evidence allows us to conclude that there was any subconscious effect operating on the Respondents so as to conclude that the Claimant was treated less favourably on the grounds of her age, race or sex. The minority view is that the way the Respondent addressed the Claimant's performance issues leaves open the possibility that there were subconscious considerations arising from the Claimant being a 61-year-old Indian woman informing a view that the Claimant was not likely to close the deals with Accounts A and B and that these issues have not been adequately explained by the Respondent. The decision of the Tribunal however is that the complaint of direct discrimination is not proved.

Claimant's grievance and grievance appeal

100. There was a failure by Ms Scott to investigate aspects of the Claimant's grievance as listed in paragraph 81 of the Claimant's closing submissions, Ms Scott rejected the Claimant's grievance. The Claimant points to a number of reasons why the Tribunal should infer this was because of age, sex and/or race.
101. The Claimant relies on the absence of evidence of how Ms Scott failed to investigate other grievances. We consider that this absence of evidence does not help us conclude that there was discrimination. There simply is no evidence on how other grievances were considered or would be considered. The Claimant contends that Ms Scott "sanitised" her grievance. We do not consider that this complaint about Ms Scott's letter of outcome is correct. Ms Broos did not remove the reference to "rightly hard" Miss Scott made the decision to remove "rightly hard" after she noticed a "typo" where it read "hard rightly". Although the reference to the meeting being tense is omitted in our view it does not change the sense or effect of the evidence given to Ms Scott by Ms Jain and Mr Shetye. It does not lead us to an inference of discrimination.
102. The Claimant's grievance refers to "unfair treatment" and "multiple discrimination". In the outcome letter there is no reference to any specific protected characteristics there is however reference to the Claimant having "feelings of feeling harassed and discriminated against", Ms Scott conclusion was that there was no "harassing or bullying behaviour". Ms

Scott does not appear to have specifically addressed any protected characteristic in her grievance outcome but she does give reasons for her conclusions on the points made. There is in our view no attempt to address the question of discrimination because of a protected characteristic.

103. There is in our view a basis for concluding that the Claimant has proved facts from which we could conclude that there was a discrimination on the grounds of her protected characteristics. However, notwithstanding the failure to address the question of specific protected characteristics we consider that the conclusions reached by Ms Scott were her views on the Claimant's grievance based on the investigations she made. The reason why she did not specifically address specific protected characteristics is in our view because of the way she dealt with it was to address matters in way that they were put by the Claimant.
104. Mr Sibley did not deal with the Claimant's grievance appeal adequately. The Claimant says that Mr Sibley's evidence shows that he failed to deal with the Claimant's grievance in the way that he would have dealt with the a grievance made by someone of a different age sex, and/or race. The Tribunal consider that the inadequacy of Mr Sibley's appeal causes the Tribunal to conclude that there are facts from which we could conclude that it was because of the Claimant's protected characteristics of age, sex, and/or race.
105. Mr Sibley's evidence was that he was not influenced by the Claimant's age, sex and/or race or by the fact that the Claimant had raised the allegations. Mr Sibley's approach was to look to the Claimant to produce evidence that the Claimant would give him "cause to question the findings of the original grievance manager".
106. The Tribunal is satisfied that there is an explanation provided by Mr Sibley that his decision on the Claimant's appeal was not influenced by the Claimant's age, sex and/or race. While his investigation was poor we do not consider that the evidence he has given allows us to conclude that he has been influenced by the Claimant's age, sex, and/or race in reaching the decision that he did.

Harassment

107. While the Tribunal has made findings that there was conduct which was unwanted by the Claimant and may have had a harassing effect on the Claimant as set out above. We have not been able to find that the treatment of the Claimant was consciously related to her age, race or sex. We have not been able to agree that there may have been subconscious effect in the way that the Claimant was treated. The majority consider that the evidence does not justify a conclusion that there was any subconscious consideration operating so as to allow a conclusion that the treatment the Claimant was subjected to related to age, race or sex.

Victimisation

108. The Tribunal have considered whether the protected act was the reason of the Claimant being subjected to a detriment. We do not consider that the failure to uphold the grievance or the grievance appeal was because she made a protected act. We do not consider the evidence before us justified such a conclusion.

109. The conclusion of the Tribunal is that the Claimant's complaint of unfair dismissal is well founded and succeeds. The decision of the Tribunal is that the complaints made under the Equality Act 2010 are not well founded and are dismissed.

Employment Judge Gumbiti-Zimuto

Date: 16 January 2023

Sent to the parties on 19 January 2023

For the Tribunals Office

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