

JERSEY / JUDGMENT

Kosma Owczarkowski v Spellbound Holdings Limited T/A Trustford, Kerstin Lenhardt, Jamie Cormack, Michael Martin

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IN THE JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL BETWEEN KOSMA OWCZARKOWSKI CLAIMANT AND (1) SPELLBOUND HOLDINGS LIMITED T/A TRUSTFORD (2) KERSTIN LENHARDT (3) JAMIE CORMACK (4) MICHAEL MARTIN RESPONDENTS

JUDGMENT

Reference: [2025] TRE 86 Hearing date: 5 & 6 November 2025 Before: Advocate C E Whelan, Deputy Chair Mr M de la Haye and Mr M Richardson, panel members For the Claimant: In person For the Respondents: Mr I Maccabe, No5 Chambers Decision The Claimant's claims of sex and race discrimination, constructive unfair dismissal, unfair dismissal, failure to give notice to terminate employment, harassment and failure to pay minimum wage fail. The Parties

1. We take the correct name of the First Respondent to be as shown in the heading of this judgment. That is the name of the employer as it appears in the claimant's contract of employment. We have adopted that name despite what we believe to be earlier misdescriptions. We go on to refer to this respondent as 'the company'.
2. The Claimant was employed by the company from 30 October 2023 as a Sales Executive at its Victoria Avenue site, until he resigned on 12 May 2025 with immediate effect.
3. The company is a wholly owned subsidiary of Ford Motor Company trading independently as TrustFord. It sells new and used Ford cars and commercial vehicles, and operates an aftersales workshop, repair and service centre.
4. The Second Respondent, Kerstin Lenhardt ("Ms Lenhardt"), is a Retail Manager at the company's Victoria Avenue site and is part of the managerial structure, senior to the claimant.
5. The Third Respondent, Jamie Cormack ("Mr Cormack"), is General Manager of the company's sites in the Channel Islands.
6. The Fourth Respondent, Michael Martin ("Mr Martin"), is a Sales Executive who, like the claimant, worked at the Victoria Avenue site.

7. It is also necessary to mention David Heron, who is not a party to the proceedings, but who played a part in some of the relevant events. He is no longer with the company, but for some of the time with which the tribunal is concerned he was the claimant's line manager. He did not make a witness statement. The claimant did, however, provide the tribunal with an email (25 April 2025) sent to him by Mr Heron, setting out the latter's recollection of what had taken place on certain material occasions. Mr Heron appeared before us on the first day of the hearing and addressed the content of the email. His personal commitments were such that he had limited time on that day and said that he would arrange to appear for cross-examination/re-examination the next day. He did not appear on the next day, however, and e-mailed the tribunal towards the lunch hour on that day to say that he had been unable to make the arrangements necessary to enable him to participate. We expressed the intention to ignore the whole of Mr Heron's evidence given his unavailability for it to be tested. We invited contrary submissions, and as none were forthcoming, that is the course we have adopted. The claims By a claim form presented on 20 May 2025, the Claimant brought the following claims: (a) discrimination on the grounds of sex and race;
- (b) constructive unfair dismissal;
 - (c) failure to give notice to terminate employment;
 - (d) harassment; and
 - (e) failure to pay minimum wage. The Complaints of the Claimant
8. The sales department at the company's Victoria Avenue site was not a workplace to be thought of as untroubled or uneventful. Instead, it is plain that during the time with which the tribunal is concerned, tension and barely suppressed animosity prevailed there. The claimant and Ms. Lenhardt, his line manager, did not get on. All parties had been known to each other in previous places of employment. There had been difficulties, and the auguries were not good when they found themselves comprising the small sales team at Victoria Avenue.
9. ['The physical contact'] 4 March 2024 is fairly to be taken as a starting point for the matters now before the tribunal. The claimant alleges that on that day Ms Lenhardt hit him on the back of the head and called him incompetent in front of customers. He complained about this to Mr Cormack the same day, but he says that his complaint was ignored, and the incident was played down; no significant action was taken against Ms. Lenhardt. The claimant characterises this as 'assault and public humiliation – physical assault, workplace harassment, mishandling of grievance, sex discrimination'. The latter on the basis that the same complaint made by a female would not have been ignored, and that a male assailant would have been immediately suspended.

10. ['Exclusion'] The claimant says that as the time went on, he was 'isolated' by Ms. Lenhardt and Mr. Martin. They did not include him in conversation, they did not make eye-contact and did not bid him good morning or goodbye. 'I think I was portrayed as a person who goes and reports on people for anything'. The claimant categorizes this as 'Isolation and Exclusion – Discrimination and Harassment on grounds of nationality, language, workplace bullying.'
11. ['Withholding of assistance'] The claimant says that Ms Lenhardt would ignore him and not assist him with sales, as she did with Mr Martin. Moreover, she used email to identify mistakes made by the claimant, whereas she spoke to Mr Martin directly in similar cases. The claimant had spoken to Mr Heron about this, and Mr Heron had said that he would raise it with Ms Lenhardt. The claimant said that he noticed that Mr Martin was less friendly towards him and that Mr Martin and Ms Lenhardt had 'formed a weird kind of alliance and agenda against me'. The claimant categorizes these things as 'Unequal treatment, harassment on grounds of nationality, language, workplace bullying.'
12. ['The laptop'] 15 March 2025 is a specific date mentioned by the claimant. He says that on that day his laptop was out of commission, and he heard Ms Lenhardt say that she did not want him to use anyone else's in order to participate in a team meeting. 'At the time I was the only non-English member of staff. Which made me feel excluded and my presence unwanted alongside people whose native language is English.' The claimant categorizes these things as 'Exclusion from team communications – discrimination on grounds of nationality, language.'
13. ['The test drive confrontation'] The claimant speaks of a test drive incident around October 2024. He had a client who was on his way to test drive a particular vehicle. Mr Martin demanded the keys of that vehicle so that he could show that vehicle to one of his clients who was present. The claimant refused because he had reserved the vehicle for his client to test drive. Mr Martin started to shout aggressively at the claimant in front of the client and to call him stupid. Such was the noise that Mr Heron came out of his office. Mr Martin left the area, slamming a door on the way. The claimant had felt intimidated, he says. He characterises this incident as 'Harassment and fear of physical violence in the workplace.'
14. ['The "stolen" client'] 12 December 2024 is another specific date mentioned by the claimant. He says that on that date a sale that should have fallen to him went instead to Mr Martin. This had happened because Ms. Lenhardt had not amended the record in the relevant system as he had requested her to do. The claimant characterises this as 'mismanagement, unfair treatment, discrimination'.
15. ['The thrown calculator'] 25 February 2025 is another date relied on by the claimant. There was a dispute about the pricing of a vehicle, and Ms Lenhardt threw her calculator at the claimant and told him to go, using an obscenity. The claimant characterises this as 'verbal and physical abuse, harassment.'

16. ['Particular withholding of assistance'] 25 February 2025 is a further date relied on by the claimant. He says that on that day Ms Lenhardt refused to help him with three named clients. 'I felt yet again discriminated, incompetent and not supported'. He characterises this as 'discriminatory treatment, bullying.'
17. ['Not pushing the line'] 8 March 2025 was a day on which the claimant asked Ms Lenhardt to 'push the line' (expedite) the servicing of a car for a client of his. She refused, saying it was his job to do that, yet she later performed exactly that task for Mr Martin. The claimant characterises this as 'Discriminatory Treatment, harassment, unequal treatment on grounds of nationality'.
18. ['Further withholding of assistance'] 8 March 2025 was the day of another incident. The claimant said that he needed help with six named clients, but Ms. Lenhardt refused to help. On occasion she stood outside smoking rather than helping. 'She was only helping Mr Martin's clients that day. I felt excluded and helpless'. The claimant characterises this as 'Discriminatory treatment on grounds of nationality.'
19. ['Rudeness on racial grounds'] 6 May 2025 is spoken of by the claimant. He says that he mentioned a potential sale to the Ms Lenhardt, and she replied 'I have no idea what you just said. I can't understand you.' and walked away. The claimant characterises this as 'Discrimination, unequal treatment on grounds of nationality'. Matters raised against the Claimant; Mr Palmer
20. Ms Lenhardt had kept a note of events within the team starting on 16 December
2024. They record a consistent pattern of the claimant having neglected to use internal systems correctly (we were shown corrective emails sent to the claimant by Ms. Lenhardt), of not obtaining customer details correctly, of accepting customer payment by the incorrect means (use of PDQ machine), of being quarrelsome when mistakes were pointed out to him, of reluctance to engage with prospective customers ('prospect calls' or visitors to the forecourt), of insubordination.
21. On 17 February 2025, Ms. Lenhardt raised these matters with the company's HR department citing his performance and overall conduct, identifying in particular aggression and rudeness towards her by the claimant and threats towards Mr Martin. These matters were taken forward by the company.
22. Ms Lenhardt having raised concerns about the claimant's performance and attitude towards her, there were meetings on 28 February 2025 at which Mr Martin confirmed Ms. Lenhardt's account while the claimant and Mr Heron denied it. The meetings were conducted by Mr Lee Palmer, sales development manager.
23. On the performance matters being raised with him, the claimant provided various reasons for his non-compliance, but Mr Palmer nevertheless reminded him of his workplace obligations.

24. Mr Palmer concluded that differing versions of events had left him unable to substantiate the facts but reminded the claimant of his obligation to treat Ms Lenhardt with respect as she was a manager of the company, and to carry out reasonable management requests.
25. Mr Palmer concludes his finding by saying “I do believe that the situation has been allowed to escalate by mediation not being carried out in a timely manner and this has created an unprofessional working environment that everyone involved feels uncomfortable in.”
26. Mr Palmer accordingly arranged for a mediation session to begin during the week commencing 31 March 2025. His findings were dated 24 March 2025. Ms. Lenhardt was notified of her right to appeal this outcome but did not take that course. In the event, the mediation did not take place because the claimant raised a grievance of his own in the meantime. Grievance by the claimant; Mr Brett
27. The character of the environment in which the events of this case played out are demonstrated by the fact that in his turn, on 20 March 2025, the claimant had raised his own grievance against Ms. Lenhardt and Mr. Martin, based largely on the matters set out above, although he had not at that earlier stage raised the allegation that Ms Lenhardt had been racially insulting towards him by saying that she couldn’t understand something that he had just told her and had walked away. That alleged incident was said by the claimant only to have arisen on 6 May 2025 and so had not arisen at the time of which we are speaking.
28. The claimant’s hearing was conducted by Mr. Simon Brett, general manager at TrustFord, Ashton, and took place on 1 April 2025.
29. As part of his procedure Mr. Brett interviewed Mr. Cormack and Mr. Martin, separately on 4 April 2025, Ms. Lenhardt on 11 April 2025, the claimant again on 10 April 2025 and an anonymous witness referred to only as “Colleague 1” on 11 April 2025. [Because there had been no application for anonymity, and because this witness was not presented for cross examination/re-examination we decided and declared to the parties that we would take no account of their evidence.]
30. Mr. Brett delivered his findings in writing on 17 April 2025. In summary, they were as follows: [‘The physical contact’]: Ms Lenhardt had described this as a tap with her spectacles which were in her hand at the time. The claimant had accepted in the meeting with Mr. Brett that she may indeed have had something in her hand, thus differing from his original account. Mr. Cormack had met with the claimant and his then line manager, Mr. Heron, and a point had been reached at which the claimant agreed that the matter could be resolved by an apology to him from Ms. Lenhardt.
31. She had apologised accordingly. The claimant considered the apology grudging and insincere and told us that Ms. Lenhardt had later said to Mr. Heron that she wished the slap had been harder. There was no third-party evidence of which we could take account to support this. In any event the apology was made, and the claimant continued to work for the company for over a year after the event.

32. ['The thrown calculator'] On the question of the thrown calculator and the obscenity, Ms. Lenhardt had denied these things and said, though, that there had been an argument over an unrealistic pricing proposed by the claimant.
33. In the absence of third-party evidence Mr. Brett was unable to substantiate the facts.
34. ['The laptop'] As to the laptop comment Ms Lenhardt denied it, and Mr. Martin had no recollection of such a comment. Mr. Brett was therefore unable to uphold that part of the grievance as there were differing accounts and he was unable to substantiate the facts put forward by the claimant.
35. ['The "stolen" client'] As to the stolen client, there was to have been mediation on the point by Mr. Heron, but that did not take place because Mr. Heron had left the company before it could do so. We understood the claimant's submissions to be that the customer had been allocated to Mr. Martin but Mr. Heron had found it necessary to do this because Ms. Lenhardt had not amended the company system as she should have done. This operated to the detriment of the claimant.
36. ['Withholding of assistance'] As to the complaint of different treatment, with Ms. Lenhardt's refusal to help with the claimant's clients, spending more time with Mr Martin's clients than with the claimant's, Mr. Brett had heard from Ms. Lenhardt that in fact she spent more time with the claimant's clients because other sales representatives did not require the same level of assistance.
37. Mr. Brett reported that he had spoken with Mr. Martin and another colleague in the department who both said that they felt that Ms Lenhardt's time was split evenly across all of the sales executives employed by the company and that they had not witnessed any bullying or unfavourable treatment from Ms Lenhardt towards the claimant. Mr Brett had therefore been unable to uphold that part of the claimant's grievance.
38. Mr. Brett had also found that Ms. Lenhardt acknowledged that the working relationship between her and the cl could be seen as different from that between herself and others. Ms. Lenhardt described this as confining conversations simply to work matters saying, "I feel I'm having to walk around on eggshells, as [the claimant] will constantly say I am going to go to HR about this or that.' Mr. Martin had also reported that the claimant had made similar comments to him.
39. ['The test drive confrontation'] - As to this, Mr. Brett found that as there was no evidence beyond the word of one person against another, he was unable to substantiate the events as presented in the claimant's account.
40. Mr. Brett noted that the claimant had alleged that Mr. Martin had allowed a client to test drive a car while uninsured. This had been checked and found to be untrue.
41. The claimant complained that at the investigation meeting with Mr Palmer, the latter had been more accusatory than enquiring.

42. Mr Brett's report met the point in this way: "I have reviewed the notes from your investigation meeting on 13 March 2025. I personally did not feel the tone in the meeting was accusatory. It is clear that there were a number of concerns raised by [Ms. Lenhardt] that [Mr. Palmer] needed to address with you to get your perspective/version of events, and this is common practice in an investigation/fact finding meeting."
43. Mr. Brett's overall response to the grievance was to say that it was clear that relationships had become increasingly unprofessional in the absence of earlier intervention by way of mediation. He recommended that mediation now take place.
44. As to specific incidents raised by the claimant, differing versions left him unable to substantiate the facts.
45. The claimant was informed of his right of appeal and availed himself of it. The claimant's appeal; Mr. Fellows
46. The appeal was heard on 29 April 2025 by Mr. Ashley Fellows, general manager at TrustFord, Cribbs.
47. The claimant rehearsed his grievances and complained about the conduct of the investigation by Mr. Brett and its outcome.
48. Mr. Fellows found himself unable to differ from the conclusions reached by Mr Brett or to find fault with the conduct of the steps taken by him to reach them. New evidence is the requirement on an appeal as stipulated by the company, and Mr. Fellows was unable to identify any such evidence. This outcome was communicated to the claimant by letter of 7 May 2025.
49. The claimant resigned with immediate effect by email of 12 May 2025. Our receipt and consideration of evidence
50. We have taken time to describe Mr. Brett's report and conclusions because it means that difficult ground has already been trodden and it provides us with a reasonable platform from which to begin our own exploration of the facts.
51. At the hearing before us we heard evidence from the following: the claimant, Ms. Lenhardt, Mr. Martin, Mr. Cormack, Mr. Brett and Mr. Fellows. Each of them had made a witness statement, the contents of which were consistent with the information which respectively they had given to those conducting the internal hearings which have been mentioned.
52. In the tribunal hearing, each of the witnesses gave evidence which was consistent with that which they had said during the internal hearings and in their witness statements. Key points include the following.
53. Ms. Lenhardt a. Ms. Lenhardt - As to isolation of the claimant, Ms. Lenhardt told us that she felt always as though she was walking on eggshells around the claimant because of his attitude and continual threats to make complaints. b. As to the withholding of assistance,

her evidence was that she helped everyone equally and gave them reminders of proper procedure equally. She had on occasion sent corrective emails to Mr. Martin as well as to the claimant. c. She told us that her own remuneration depended in part on sales achieved by the salesman generally, including the claimant. Her concerns about this are evident from the concerns which she raised with management in February 2025 to which we referred earlier. The claimant's evidence that she was actively sabotaging his performance therefore made no sense. d. On the date on which she was alleged to have made the rude racial remark to the claimant, she had not been at work. She was on leave and never went to the work premises when that was the case. She was unshaken on this point, or any other, under cross-examination. e. In contrast to the claimant who described the physical contact as a slap to the back of his head, Ms Lenhardt described and demonstrated to us a light tap with the spectacles which she was holding, delivered in a jovial manner to demonstrate to the clients present that she was raising a point with the claimant light-heartedly, rather than delivering a reprimand. f. As to the 'stolen client', the allocation of a claimant's client to Mr. Martin, Ms. Lenhardt gave us an entirely rational account of what happened. We use a pseudonym – on the company's system were the names A Smith and B Smith. The claimant had a client, C Smith, who was interested in a particular vehicle. The claimant says that he asked Ms Lenhardt to move the client, C. Smith to him on the company system. Ms Lenhardt told us that there was no such client on the system and so she would have had nothing to move. The client had subsequently spoken with Mr Martin, who had therefore entered him onto the system as his own client, and Mr. Heron had accordingly adjudicated that the client should remain allocated to Mr. Martin.

54. Mr Martin a. Where it dealt with the same matters, his evidence coincided with that of Ms Lenhardt in its main particulars. b. As to the test drive confrontation, it was the claimant who had been unreasonable. Certainly, he had a client due to arrive on site to take the vehicle in question for a test drive, but Mr. Martin had a client present who by chance had come onto the site and expressed interest in the same vehicle. Mr. Martin had therefore asked the claimant for the keys to the vehicle and the claimant had refused on the basis that he had a client booked to test-drive the vehicle in question. Mr. Martin wanted the keys simply to show the client the interior of the car; the discussion with the client had not yet reached the test-drive stage. Mr. Martin told us, though, that the timings were anyway such that there would have been ample time for his client to have taken a test drive before the arrival of the claimant's client. Certainly, there had been a set-to about this and voices had been raised. The nature of the meeting with Mr. Palmer
55. The claimant said that when he had been called in to an interview with Mr. Palmer, following the matters raised by Ms. Lenhardt, he had not understood its purpose and had he known that it was part of a formal procedure he would have taken someone with him for support and might have presented situations to Mr. Palmer in a different way.

56. Some time was spent deliberating the point at the hearing, but we are satisfied that this was a preliminary fact-finding exercise that Mr. Palmer was undertaking at which the claimant had no contractual right to support and in which he was in no way prejudiced. Matters were presented to him fully and fairly and he was given every opportunity to respond. In fact, the exercise did not develop into a more formal procedure. Our findings of fact
57. Our findings of fact from all of the documentation put before us and from the evidence which we heard are as follows. The sales department was a troubled and disagreeable place in which to work. This was because of the attitude and behaviour of individuals towards each other in an environment likely anyway to be pressured and competitive. We include the conduct of the claimant, which we find to have been to some extent self-willed and sometimes disrespectful, particularly when asked by Ms. Lenhardt, as he was on a number of occasions, to follow company procedure more closely. a. ['The physical contact'] We find it more likely than not that Ms. Lenhardt's contact with the claimant's head, of which complaint is made, was by way of a tap with her spectacles which were in her hand. We find, of course, that no contact of any sort should have taken place. It was demeaning and Ms Lenhardt was at fault. b. ['Withholding of assistance'] On the question of unequal treatment by way of lack of assistance with customers and sales, we prefer the account given to us by Ms. Lenhardt and Mr Martin and set out earlier in these reasons. c. ['The laptop'] As to the laptop incident, we are unable to conclude on the balance of probability, that it took place. d. ['The test drive confrontation'] - we find it more likely than not that the account given to us by Mr. Martin was the correct account, and that the claimant's conduct was unreasonable on the occasion in question. The ensuing altercation did neither of them credit. e. ['The stolen client']- we accept the explanation given to us by Ms Lenhardt. f. ['The thrown calculator'] - as to the thrown calculator and the use of obscenity, we prefer the account given to us by Ms. Lenhardt and set out earlier in these reasons. g. About further non-assistance with clients, we prefer the account given to us by Ms. Lenhardt and set out earlier in these reasons. h. ['Not pushing the line'] i.e. refusal to expedite customer vehicle servicing - we accept the explanation given to us by Ms. Lenhardt and set out earlier in these reasons. i. As to the complaint of additional non-assistance with clients, again we accept the explanation given to us by Ms. Lenhardt that it was not part of her role to do this, and she never did so for any salesman. j. We have considered the claimant's dissatisfaction with the investigation meeting conducted by Mr. Palmer. We have considered the transcript of that meeting and find the meeting to have been properly conducted, and the claimant's objections unfounded. k. ['Rudeness on racial grounds'] In the matter of the "I can't understand you" occasion attributed to Ms Lenhardt we find on the balance of probability that this did not happen. l. Failure to pay minimum wage - we are satisfied that basic pay plus commission was the formula properly used by the company to establish whether minimum wage had been achieved, and that on any occasion when it had not been achieved, the company topped it up to achieve the minimum wage.

58. Where we have spoken of being satisfied or of preferring one account over another, we mean that we have used the balance of probability as the criterion. The Law Having reached these findings of fact, we turn to the relevant law. Discrimination
59. The claimant has alleged discrimination on the grounds of his race and/or sex on some of the occasions which it has fallen to us to consider. They are those which we have referred to as “physical contact”; “assistance with sales”; exclusion from team communications, “the test drive clash”; “the stolen client”; “pushing the line”; “I have no idea what you just said etc.”
60. The questions which we have to answer are succinctly set out in the case management orders sent to both parties. They are these: a. Did the Respondent treat the Claimant as alleged by the Claimant? b. In doing so, did the Respondent treat the Claimant less favourably than it treated or would have treated the Claimant’s actual or hypothetical comparators who are not in materially different circumstances to the Claimant, other than they are not male or Polish? c. Can the Claimant prove on the balance of probabilities that the difference in treatment was because of the Claimant’s race or sex? d. Can the Respondent prove a non-discriminatory reason for the treatment? e. Did the Claimant suffer hurt or distress or financial loss as a result of any proven discriminatory treatment?
61. After careful examination and thought, the only matters which we consider to have any bearing whatever on matters of race and/or sex are those of physical contact and of the alleged comment: “I have no idea what you just said. I can’t understand you.” accompanied by an abrupt turning away.
62. As we have been unable to conclude that it was more likely than not that the second of those matters took place, it has not been necessary for us to consider the question of discrimination in connection with it.
63. We have considered the physical contact in the context of discrimination only because the claimant submitted to us that ‘if a female colleague were hit by a male colleague the situation would likely be recognised immediately as serious and unacceptable. Mine was not.
64. There is not a single case in Jersey (publicly reported) where a man has accused a woman of physical abuse occurring in a workplace environment – it can be viewed as a cultural stereotype that women can be hit by a man but not the other way around. Just because it is less common doesn’t mean it’s less important.’
65. We have found ourselves unable to categorize this event and its treatment by the company as any form of discrimination on grounds of either race or sex. We accept the evidence that the contact took place as an intended jovial way of addressing a supposed omission by the claimant and would have taken place whatever the sex or nationality of the sales executive. We had the straightforward evidence of Mr Cormack on the point. That is not to say that we condone the action in any way, but its characterization as discrimination based on race and/

or sex is a different matter entirely, and we reject it.

66. We consider the response of the company, as the employer and first respondent in these proceedings, to have been sufficient and satisfactory and likely to have been applied whatever the nationality and/or sex of the complainant.
67. The claimant helpfully referred us to the case of *Goh v Asda Stores Ltd.*, a reserved judgment of the Employment Tribunal (Case 2304998/2020). We mentioned to the claimant as a caveat that employment cases are likely to be highly fact specific. Indeed, there were important factual distinctions between *Goh* and the instant case. Nevertheless, we found the approach taken in that case in matters of principle to be of assistance.
68. In particular we accepted the guidance offered as to the correct comparator in the present circumstances, and took it to be a hypothetical comparator as follows: a woman who had raised a written complaint that a male manager had tapped her on the head with his spectacles to draw attention to a supposed omission in her work in a light hearted manner rather than delivering a reprimand in the presence of customers.
69. We were unable to conclude that management would have treated a male manager differently from the way in which it treated Ms. Lenhardt, and we had the specific evidence of Mr. Cormack on the point.
70. We have set out our consideration of the individual acts and our conclusions about them both for completeness and to support our conclusion that the matters of which the claimant makes complaint were anyway out of time under Article 37 (b)(i) in so far as they are complaints about matters arising before 25 March 2025, and are not rescued by Article 37 (3) (a) given that we are unable to construe them as a single continuing act, as is apparent from our earlier findings of fact.
71. We noted that we received no evidence to show that in the history of this matter the claimant made any complaint of racial or sexual discrimination at any time before coming to the tribunal. Constructive Unfair Dismissal
72. The essential features of constructive unfair dismissal are set out in the case management orders in the form of questions as follows: a. Did the way the Respondent treated the Claimant constitute a fundamental breach of contract? b. Were its actions, or inactions, so serious they struck at the root of the contract entitling the Claimant to resign? c. Did the Respondent act, without reasonable and proper cause, in a way that destroyed or seriously damaged the trust and confidence between the parties? d. The breach of contract may not be a single act but may be made up of a course of conduct, culminating in a last straw event. e. If there was a fundamental breach of contract, did the Claimant resign in response to that breach? f. The breach does not need to be the only reason for resignation, but the resignation must have been, at least in part, due to the breach. g. Did the Claimant treat the employment relationship as continuing following the breach? Did he affirm the contract after the breach?

73. The tribunal has carefully considered the claimant's submission that the respondent's rejection of his grievance appeal constituted the last straw in a course of conduct which cumulatively amounted to a fundamental breach of contract. We have taken account of the principles set out by the Court of Appeal in *Omilaju v Waltham Forest lbc* [2005]EWCA Civ 1493 in which it was held that a final act may, even if relatively minor, form part of a cumulative breach provided that it contributes, however slightly, to the destruction of the relationship of trust and confidence. However, the act relied upon must not be trivial or innocuous.
74. In this case the tribunal is satisfied that the respondent's handling of the grievance appeal, and its ultimate rejection, was conducted in a procedurally fair and reasonable manner. The receipt, hearing, and adjudication of an appeal under a contractual internal grievance procedure is fairly to be described as innocuous. While the claimant was plainly disappointed with the outcome, we do not consider that the rejection itself contained any element of bad faith or unfairness.
75. Applying the guidance in *Omilaju* and applying the 5-stage test in the later case of *Kaur* set out below, the Tribunal finds that the grievance appeal outcome was an innocuous act which did not contribute to any cumulative breach of the implied term of mutual trust and confidence. The appeal decision was a legitimate exercise of managerial discretion and did not alter the overall balance of the respondent's conduct towards the claimant. It happens that the managerial discretion in the instant case was factually akin to that in *Kaur*, which we now go on to mention for its principled guidance.
76. In turning to the further Court of Appeal guidance given in *Kaur v Leeds Teaching Hospitals NHS Trust*
- [2018] EWCA Civ 978, we have had particular regard to the 5-stage test which it propounds in last straw cases, thus: 1. What was the most recent act by the employer that the employee claims was the "last straw"? 2. Did the employee affirm the contract after the last straw? 3. Was the "last straw" by itself a fundamental breach? (If yes, the claim may proceed. If no, proceed to the next question) 4. Was the "last straw" part of a series of acts which, cumulatively, amounted to a fundamental breach? (If yes, proceed to the next question. If no, the claim will likely fail) 5. Did the employee resign in response to this cumulative breach?
77. Our negative responses to questions 3, 4, and 5 and the reasons for that will be apparent from the analysis and conclusion which we offered in discussing *Omilaju*.
78. For those reasons, the Tribunal concludes that the rejection of the grievance appeal cannot properly be regarded as a last straw that entitled the claimant to resign. Even taking the earlier matters into account, the final act was a reasoned managerial finding and it does not transform what were at most workplace disagreements into a fundamental breach of contract.

79. The importance of our finding in this regard is that we do not consider this to be a case in which the claimant has been the victim of a cumulative pattern of negative conduct ending in a final straw so as to amount overall to a fundamental breach of the claimant's contract of employment. It follows that the alleged conduct of the employer does not fall to be considered as a single piece dating from the supposed last straw and thus individual incidents have to be considered as such as to weight and timing.
80. We have therefore gone on to consider those earlier matters, and we find either that we cannot in some cases find it more likely than not that they took place, or in others that they amount to more than disagreements in an unpleasant workplace, a workplace about which we shall have more to say under the rubric of harassment below. Our view of the individual matters of which the claimant makes complaint is to some extent foreshadowed in the findings of fact set out earlier, but we rehearse them in the context of the legal test which we must apply. They are as follows.
81. ['Physical contact']: there is no doubt that this took place; Ms Lenhardt admits it. We think it more probable that it took the form of a tap with the spectacles which she was holding. Clearly it should not have taken place at all. It was reprehensible. However, the company addressed it, Ms Lenhardt made an apology – be it sincere or otherwise – which the claimant accepted. He cannot have it both ways. While we can take account of that incident as part of a context as we go on to consider events and relationships, absent the application of the last straw doctrine, the claimant cannot now revive the incident to his direct advantage. Supposing the incident to have been a fundamental breach on the part of the company (a stretch, given the remedial action taken by the company and its acceptance by the claimant) the claimant continued to work for the company for something over a year and must therefore be taken to have affirmed the contract. In concluding that this was the case, we have adopted the usual reasoning that if an employee continues to report to work he may be deemed to have waived the breach and can hardly bring a claim subsequently based on the employer's repudiation. "The law does not allow him to have his cake and eat it" (Hunt v British Railways board [1979] IRLR 379 EAT)
82. ['Withholding of assistance']: the claimant spoke of a number of occasions on which Ms Lenhardt refused or neglected to assist him with clients. We have given attention to each of the occasions to which the claimant adverts, but prefer the evidence of Ms Lenhardt and, where relevant, Mr Martin and find nothing in this ground.
83. ['The laptop']: we are unable to conclude that such an incident took place.
84. ['The test drive confrontation']: we are unable to characterise this as anything more than a workplace disagreement, likely to have been sparked, in part, by the unreasonable conduct of the claimant.
85. [The "stolen customer"]: we are satisfied with the explanation given to us by Ms Lenhardt and discount any allegation of responsibility, let alone malice, on her part.

86. [The thrown calculator]: we are unable to conclude that this incident took place in the manner alleged
87. “Pushing the line” – We accept the evidence of Ms Lenhardt that she had no responsibility for doing this and did not do so for anyone.
88. Mr Palmer’s investigation meeting: we have given our view of this in our findings of fact, and find nothing in the point. 89. “I can’t understand you etc”: we are unable to conclude that this incident took place.
90. In summary we do not find this to have been a last straw case and examining the individual matters of complaint singly or in the round we find, for the reasons which we have given, that they do not amount to a repudiatory breach of contract which enabled the claimant to resign and to claim constructive unfair dismissal. In reaching that conclusion we have considered express terms as well as the implied term that the employer must not act in a way that is calculated or likely to destroy or seriously damage the relationship of trust and confidence with an employee. Harassment
91. The claimant claims to have been the victim of harassment in the workplace on the factual basis which he puts forward and which we have described. It has been necessary for us, therefore, to turn to Article 28 of the Discrimination (Jersey) Law 2013. It is in these terms, so far as relevant to the instant case: 28 Harassment
- (1) Harassment is an act of discrimination prohibited by this Law, where it occurs in any circumstances where an act is prohibited under Parts 3 to 5.
- (2) A person harasses another person (the “subject”) if, in the circumstances described in paragraph (1), the person engages in unwanted conduct that is related to a protected characteristic and which has the purpose or effect of –
- (a) violating the subject’s dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the subject.
- (3) In deciding whether conduct has the effect described in paragraph (2)(a) or (b) each of the following must be taken into account –
- (a) the perception of the subject;
- (b) the circumstances of the case; and
- (c) whether a reasonable person could regard the conduct as having that effect.
92. We find that the claim in this regard falls at the first hurdle because we can identify no conduct that related to the claimant’s sex or race. What we find is that this was an unhappy workplace characterised by tensions between individuals, predominantly the claimant and Ms Lenhardt. Clearly they had a history – not only in this workplace – of inability to get

along with each other. It is scarcely unusual for such a thing to be encountered in any workplace. Sometimes people have a mutual antipathy; that is a fact of life and has nothing whatever to do with race or sex. We find that to have been the case here. We have no doubt that the claimant contributed significantly to the poor atmosphere at work. We are quite unable to find that this was a case of harassment in law or in fact. Minimum wage

93. As indicated earlier in these reasons, we are satisfied that sales commission is to be taken into account when compliance with Part 4 of the Employment (Jersey) Law 2003 is being considered. We are satisfied that the claimant was never paid below the minimum wage by the company.
94. For completeness we refer to Regulation 7 of the Employment (Minimum Wage) (Jersey) Regulations 2004, which provides in its material part as follows: Payments by the employer that are to be taken into account
- (1) The total remuneration in a pay reference period shall be calculated by adding together –
- (a) all payments paid by the employer to the employee in the pay reference period; The payment of commission is a payment made by the employer to the employee, and is not excepted from the calculation by any statutory provision. Notice pay
95. Claims for notice pay arise on the grounds of customary law breach of contract, and as we have found no such breach in this case there is no basis for such a claim.

Conclusion

96. For the reasons which we have given, each of the claims against each of the respondents is dismissed. Advocate C E Whelan, Deputy Chair Dated: 12 November 2025

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Prepared on 22 October 2026 · Esheria