Case No: 2303129/2024

EMPLOYMENT TRIBUNALS

Claimant: Ms L Benn

Respondent: Professional Game Match Officials Limited

Heard at: **London South Employment Tribunal by CVP**
On: 17, 18, 19, 20, 21 November 2025
and 28 November 2025 (in chambers)

Before: Employment Judge T Perry,
Tribunal Member Mrs H Carter, and
Tribunal Member Mr A Peart.

Representation
Claimant: Ms C Fischer (of Counsel)
Respondent: Mr J Crozier (of Counsel)

RESERVED JUDGMENT

1. The Claimant's claims for direct sex discrimination and unlawful deduction from wages are dismissed on withdrawal.
2. By a majority decision (Mr Peart dissenting), the Claimant's claim for harassment related to sex fails and is dismissed.
3. By a unanimous decision, the Claimant's claim for victimisation fails and is dismissed.
4. By a unanimous decision, the Claimant's claim for unfair dismissal fails and is dismissed.
5. By a unanimous decision, the Claimant's claim in respect of breach of contract is well founded and succeeds.

REASONS

Introduction

1. The Tribunal was provided with a bundle of documents running to 745 pages. The Bundle index refers to four recordings, none of which we were asked to listen to. During the hearing, a short video clip was disclosed and watched by the Tribunal in the presence of the parties.
2. The Claimant gave evidence from a written witness statement. John Farries, the Claimant's coach, gave evidence from a written witness statement. Lisa Rashid, an assistant referee, gave evidence from a witness statement. We read a statement from Ellis Lander, Operations Coordinator at the Respondent.
3. For the Respondent, we heard evidence from the following, all from written witness statements:
    a. Stephen Child, at the time Assistant Referee Coach for the Select Group Women's Professional Game;
    b. Ruby Sykes, match official in the Select Group Women's Professional Game;
    c. Adam Gale-Watts, Technical Director of the Respondent;
    d. Steve Moore, HR Director of the Respondent;
    e. Howard Webb, Chief Refereeing Officer of the Respondent; and
    f. Bibiana Steinhaus-Webb, at the time Select Group Women's Professional Game Director.
4. There was some discussion of adjustments to accommodate Mr Child at the hearing but in the end, these issues did not seem to materialise.
5. The Tribunal had the benefit of written submissions from both parties and heard further oral submissions.

The issues

6. At the start of the hearing, the Tribunal clarified the issues in the case as being broadly in line with the agreed list of issues contained in the hearing bundle from page 67.
7. Ms Fischer on behalf of the Claimant confirmed that the Claimant was withdrawing her claims for direct sex discrimination and unlawful deduction from wages and that these could be dismissed.
8. During the course of the hearing, it became evident that one of the two alleged protected acts in relation to the victimisation claim was slightly

different to the description in the list of issues. The final list of issues the Tribunal had to determine was therefore as follows (retaining the original numbering but with minor typographic corrections):

> ***TIME LIMITS***
>
> *1. Did the Claimant submit her ET1 within three months of each and every act complained of?*
>
> *2. The Respondent says that the following allegations are out of time:*
>
> *a. Steve Childs' alleged actions on 29 March 2023.*
>
> *b. The alleged failure properly to investigate the Claimant's complaints relating to Steve Childs.*
>
> *c. The alleged failure to take any action against Steve Childs.*
>
> *d. Steve Childs' alleged actions on 19 August 2023.*
>
> *e. The Claimant's change of ranking from five to six.*
>
> *3. If not, was there conduct extending over a period of time which would bring the claim in time?*
>
> *4. If not, were the claims made within such other period as the tribunal thinks is just and equitable?*
>
> *…*
>
> ***HARASSMENT***
>
> *9. The alleged unwanted conduct complained of is:*
>
> *a. Steve Childs' actions on 29 March 2023, which included physical conduct, as set out at paragraph 4 of the Particulars of Claim.*
>
> *b. Steve Childs' actions on 19 August 2023, as set out in paragraph 13 of the Particulars of Claim.*
>
> *c. The Respondent's failure to take adequate steps to prevent the harassment described above from occurring. The Claimant relies on the following specific acts/omissions:*
>
> *i. Bibianna Steinhaus-Webb failing to provide the Claimant with a chaperone on 19 August 2023, so the Claimant was not left on her own with Steve Childs.*
>
> *ii. Bibianna Steinhaus-Webb failing to ensure Steve Childs did not interact with the Claimant on 19 August 2023.*
>
> *10. Was the Claimant subjected to the above treatment?*
>
> *11. If so, was that treatment unwanted conduct?*
>
> *12. If so, was that treatment related to sex?*

a. In respect of paragraphs 9(a) and 9(b) above, the Clamant avers that Mr Childs treated the Claimant as he did because the Claimant was a woman.

b. In respect of paragraph 9(c) above, the Claimant avers that the Respondent was motivated by her sex and that the Respondent did not want allegations of harassment to come out.

13. If so, did that conduct have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The Tribunal will consider inter alia:

a. The Claimant's perception,

b. The other circumstances of the case, and

c. Whether it was reasonable for the conduct complained of to have the aforementioned effect.

VICTMISATION

14. Do the following acts, if proven to have occurred, amount to a protected act for the purposes of EqA 2010, s 27. The Claimant relies upon her complaints of discrimination and/or harassment:

a. On 29 March 2023, to Bibianna Steinhaus-Webb, by email and telephone, saying what had happened to her that day, as set out at paragraphs 4 and 5 of the Particulars of Claim ('PA1'); and

b. On 20 August 2023, to Bibianna Steinhaus-Webb, by email, saying what had happened at the training camp, as set out at paragraph 13 of the Particulars of Claim ('PA2').

15. Did the following acts, if proven, amount to a detriment:

a. Failure to properly investigate the Claimant's complaints. The Claimant relies on the following specific acts and/or omissions:

i. Bibianna Steinhaus-Webb's delay informing HR of the Claimant's complaint. The complaint was raised on 29 March 2023, Bibianna Steinhaus-Webb did not inform HR until 7 April 2023.

ii. The delays between the initial complaint (29 March 2023) and the outcome (27 June 2023).

b. Failure to take action against Steve Childs. The Claimant says this detriment was from 27 June 2023 until dismissal. The Respondent says a decision was made on 27 June 2023.

c. If Steve Childs was made aware of the Claimant's complaint, his actions towards her on 19 August 2023, as set out at paragraph 13 of the Particulars of Claim.

d. The Claimant's change of ranking from five to six.

e. The Claimant's dismissal from employment.

f. The continuing acts that have taken place after the Claimant has left employment and was she was engaged as a worker for the First Respondent, namely the lack of appointment to women's super league games and no international games as a fourth official. The dates on which the Claimant states these failures occurred are:

i. Women's super league - 1/3/24, 2/3/24, 3/3/25, 23/3/24, 24/3/24, 30/3/24, 31/03/24, 27/4/24, 28/04/24, 4/5/24, 5/5/24

ii. International games - 24/1/24, 31/1/24, 9/4/24, 5/4/24, 23/2/24, 28/3/24,9/4/24, 31/04/24

16. If so, did the Respondent so act to the Claimant's detriment because she had done a protected act? PA1 is relied on in relation to paragraphs 15 a, b and c. PA1 and PA2 are relied on for paragraph 15 a, b, c, d, e and f.

UNFAIR DISMISSAL

17. Did the Respondent have a fair reason for dismissal? The Respondent will say that the potentially fair reason for dismissal was that the Claimant was no longer included in the international match officials FIFA list, which was a precondition of her continuing employment. The Respondent avers that this amounted to either:

a. 'Some other substantial reason', within the meaning of s.98(1)(b) ERA, or

b. A reason that related to the capability or qualifications of the Claimant, specifically that her inclusion on the international match officials FIFA list was a 'qualification' as defined at s.98(3)(b).

18. If so, did the employer act reasonably in treating that reason as a sufficient reason for dismissing the Claimant?

WRONGFUL DISMISSAL

19. Does the Claimant's employment contract give the Respondent a right to pay the Claimant in lieu of notice, in circumstances where clause 3.5 is triggered? The Claimant avers that the Respondent has breached clause 3.5 of the Claimant's employment contract, and

avers that this clause entitles the Claimant to work throughout her 3 month notice period.

20. If there is no right to pay the Claimant in lieu of notice, has the Claimant suffered a loss in relation to pension contributions; accrued further holidays; training fees; and insurance?

9. Given there was insufficient time to give a judgment, we did not hear submissions in relation to remedy.

The facts

10. Many of the facts in this case are not disputed. Both parties provided chronologies, for which we were grateful.
11. The Claimant is a referee working in both men's and women's football. Those terms relate to the sex of the players and not the sex of the match officials.
12. The Respondent is a company limited by guarantee which provides match officials for football matches in the higher leagues of English football in both the men's and women's game. The stakeholders in the Respondent are the Football Association ("FA"), the governing body of English football, the Premier League and English Football League. The governing body of European football is called UEFA. The governing body of world football is called FIFA.
13. Refereeing has been referred to before us as a pyramid and, at the higher levels, compared to competitive sport. We accept both these characterisations as broadly accurate. The pinnacle of the pyramid in both the men's and women's game is appointment to the FIFA international list of referees (FIFA list) being officials eligible to referee international fixtures. There is inherently a level of direct competition between officials seeking appointment to the FIFA list.
14. Nominations for the FIFA list are formally made by the Referee's Committee of the FA. The Respondent has staff on this committee. There is a specialist working group that guides the decision on the nominations. Again, the Respondent has staff on this working group. It seems that the substantive discussions and decisions seem to be taken primarily in the working group. There are minutes of the Referee's Committee in the bundle but not of the working group.
15. In the women's game, appointment to the FIFA list entitles a referee to become an employee of the Respondent. Referees in the women's game

not on the FIFA list (or a separate development cohort, irrelevant for the purposes of this claim) are workers but not employees of the Respondent.

16. The domestic football season runs broadly from August to May with the potential for international tournaments over the summer depending on the year. Appointment to the FIFA list runs with the calendar year.
17. The Claimant had a strong year in the 2021/2022 football season. At some point in the second half of 2021 the Claimant was nominated to go onto the FIFA list for 2022. This nomination was accepted and the Claimant was told in December 2021 that she would be going onto the FIFA list for 2022. The Claimant went on the FIFA list at the start of 2022. However, the UEFA introductory course for new FIFA list match officials in January 2022 was cancelled due to Covid. The Claimant was at the same time promoted to a 2b National League South referee in the men's game.
18. The Claimant took up employment with the Respondent effective 1 January 2022 under the terms of a contract of employment dated 6 January 2022 (in the bundle from page 92). We will return to the terms of this contract in more detail later. However, it is important to note clause 3.5 stated that employment was conditional on the Claimant being included in the FIFA list.
19. In March 2022 the Claimant was appointed to referee the Women's Super League (WSL) league cup final.
20. On 10 May 2022 the Claimant failed the fitness test necessary to referee at the 2b men's game level. It is implicit in the evidence of both sides that this also prevented the Claimant from refereeing women's international games until this test was passed. Part of the (if not possibly the entire) reason the Claimant failed this test was due to the extremely hot weather on the day of the test.
21. In July 2022 the Referee's Committee recommended the Claimant for inclusion on the 2023 FIFA list. Six referees were recommended for the 2023 FIFA list. The Claimant was fifth. The sixth nominee was Emily Heaslip.
22. On 8 October 2022, a matter of days before the Claimant was due to retake the fitness test, the Claimant suffered a leg injury that required a period of three to four months' rehabilitation. The Claimant was reassured by the chair of the Referee's Committee, David Crick, that she had "nothing to fear about your nomination for 2023" (page 372).

23. In December 2022 only five recommendations were accepted by FIFA for the women's FIFA list. The Referee's Committee communicated that they would continue to seek a sixth place for a referee in the women's list for 2024.
24. On 30 January 2023 the Claimant passed the UEFA fitness assessment.
25. On 12 March 2023 the Claimant took charge of her first international fixture and was rated 8.3 or "good but with one area for improvement". The Claimant expressed before this tribunal her justifiable pride at this accomplishment.
26. On 28 and 29 March 2023 the Claimant attended a training camp in Loughborough organised by the Respondent. The purpose of this course was to familiarise and train officials in the women's game in the use of Video Assistant Referee (VAR) technology, which is a system whereby "on field" decisions of officials can be checked and reviewed by an "off field" VAR based on videos. The coaches in attendance were Steve Childs, Paul Graham and Rob Shoebridge. Mr Graham left after the first day as his wife had contracted covid.
27. On 29 March 2023 there was a serious injury during one of the earlier matches, which resulted in a significant delay as there was no longer an ambulance in attendance as agreed in advance with the participants. A revised timetable was circulated with reduced breaks between matches.
28. The Claimant took charge of the last match scheduled for the day. The outcome of the tournament had been determined by the penultimate match and a presentation took place on the pitch between the penultimate and last matches.
29. Several witnesses describe Mr Child as being stressed on 29 March 2023 and he restated before this tribunal his desire to get the tournament finished due to the need for attendees to get home.
30. Mr Child asked the Claimant to get fitted with the radio equipment used for the VAR technology. The Claimant went over to do this and was heard saying she did not know why she had been sent there as the only radio had not been given back by the previous referee.
31. After the Claimant had been fitted with the radio Mr Child asked the Claimant to blow her whistle to get the teams ready for kick off. At the time there was still a table on the pitch from the presentation. The Claimant replied to Mr Child that he should "chill."

32. At this point the Claimant alleges Mr Child grabbed her arm and pushed her onto the pitch. The Claimant says she was walked three or four steps onto the pitch over about four to six seconds. Mr Child accepts that he did make contact with the Claimant but says he used a guiding arm to move her on to the pitch.
33. During the game, Mr Child several times passed advice to the Claimant via the fourth official, Ms Sykes, that the Claimant should "kill the game" meaning not play advantage and give softer free kicks to try to avoid the game becoming any more fractious. The Claimant's response to this was "tell him to fuck off, I know how to referee."
34. At half time Mr Child repeated his advice that the Claimant "kill the game." The Claimant did not respond to Mr Child.
35. In the second half the Claimant made the decision to send a player off. The Tribunal watched video footage of Mr Child coming and moving Ms Sykes away from the dugout where the player in question was. Mr Child put his hands on Ms Sykes upper arms and manoeuvred her, seemingly gently away to the other side of a camera operator on the half way line. Ms Sykes appears to have had no issue with Mr Child doing this.
36. At the end of the match there was a brawl between the two sides including the player who had been sent off. Several of the Respondent's staff got involved in trying to break this up. Mr Lander saw Mr Child trying to get the Claimant away from players.
37. After the match Mr Child took the Claimant aside. There are differing accounts of this exchange too. The Claimant says Mr Child grabbed her again and shouted at her that she was bloody minded and that her card was marked. The Claimant says she shouted in response "what is your problem?" Mr Child admits he was losing his patience with the Claimant and asked her "what's going on?". He says she grunted at him and he asked her "don't you want me to help you?" Mr Child says the Claimant walked away shouting but could not hear precisely what she said. It appears this incident was witnessed by Mr Lander who described as part of the investigation Mr Child saying something to the Claimant, the Claimant shouting back something "clearly aggressive" Mr Lander did not see physical contact but heard the Claimant say "don't grab me like that."
38. The exact sequence regarding the reporting of this incident on 29 March 2023 is unclear. There were seemingly several telephone calls between the

Claimant and Ms Steinhaus-Webb, the Claimant and Mr Farries and Ms Steinhaus-Webb and Mr Farries. It is unclear whether Ms Steinhaus-Webb spoke with Mr Child on that day or the day after. The one piece of clear evidence is the email from the Claimant to Ms Steinhaus-Webb at 20:19 that evening. The Claimant said "I do not expect to by physically manhandled and threatened by a PGMOL member of staff." The Claimant said the incident was witnessed by "several PGMOL employees naming one Ellis Lander. I raised this immediately to Francis Bunce pitchside." Ms Steinhaus-Webb is unclear when she read this email.

39. In the following days, Ms Steinhaus-Webb spoke to Mr Child, Mr Lander and Mr Chitson to try to understand what had gone on.

40. On 6 April 2023 Mr Child messaged the Claimant to wish her luck before she refereed an international match. The Claimant contacted Ms Steinhaus-Webb to ask for an updating saying "it has been 8 days? This is totally unacceptable." Ms Steinhaus-Webb replied suggesting a call between the Claimant and Mr Child for the following day. Following this email Ms Steinhaus-Webb spoke to Mr Farries, who stressed that, in his view the matter needed to be raised formally with HR. Ms Steinhaus-Webb agreed to this and referred the matter to HR, telling the Claimant by email on 7 April 2023, "please await contact to be made shortly from HR."

41. Mr Gale-Watts, then very recently appointed Technical Director, conducted an investigation into the Claimant's complaint. Mr Gale-Watts reviewed video footage of the game and, on 14 April 2023, met with the Claimant, who recounted her version of events and identified several potential witnesses, namely Emily Carney, Abby Dearden, Louise Saunders and Ruby Sykes. Mr Gale-Watts also then met with Mr Lander, Mr Bunce and Ms Saunders. On 18 April 2023, Mr Gale-Watts met with Ms Carney and Ms Sykes. On 19 April 2023, Mr Gale-Watts met with Ms Dearden. On 26 April 2023, Mr Gale-Watts met with Mr Child. None of those interviewed witnessed any physical contact between the Claimant and Mr Child or directly overheard much of the detail of the exchange after the game (save for Mr Lander having overheard the Claimant make a reference to not grabbing her).

42. We do not accept the submission made on behalf of the Claimant that Mr Gale-Watts mischaracterised the Claimant's allegations in the introduction to these meetings. Mr Gale-Watts generally seems to have sought to ask

open questions to get witnesses' version of events. To that end, it would have been counter-productive to start the meeting with all the details of the Claimant's allegations. Several of the meetings were short but, in circumstances where witnesses had not seen or heard much, that is not unusual.

43. On 19 May 2023, Hannah Goodwin, HR Executive, emailed a letter from Mr Gale-Watts to Mr Child to inform him of the outcome of the investigation. The conclusions were that it was most likely that there had been physical contact, that the motivation was to expedite the start of the match and that this was likely a guiding arm rather than an aggressive grabbing or dragging action. In relation to the exchange after the match, the conclusion was that this was "most likely a frustrated and frank exchange of views and was unlikely to have been constructive." The conclusion was that the behaviour was below the level to be described as aggressive or threatening but suggested "significant lessons" including avoiding all physical contact and discussions at emotional times and having colleagues present as witnesses.
44. Also on 19 May 2023, Hannah Goodwin emailed the Claimant to inform her the investigation had concluded and to invite her to a meeting on 25 May 2023 to discuss this with the Claimant. A decision appears to have been taken to inform the Claimant of the outcome in person in the first instance.
45. The Claimant was informed of the outcome of the investigation on 31 May 2023. The Claimant expressed her disappointment that "people feel like they can't come forward." The Claimant said she never wanted to be in the same room as Mr Child again and expressed concern at being able to attend training camps going forward. Ms Goodwin followed up the meeting with a summary email.
46. On 2 June 2023 the Claimant replied by email raising several requests for clarification. The Claimant repeated that she felt unable to attend future training camps. On 12 June 2023 Ms Goodwin replied to confirm the Claimant's concerns would be addressed in the formal outcome letter.
47. On 27 June 2023 the Claimant received the formal outcome letter to her complaint. This included a section recommending mediation. The Claimant was offered the right to appeal.
48. Over the course of the summer of 2023 the Claimant and Mr Childs were both included on several emails. On 17 July 2023 the Claimant emailed Ms

Steinhaus-Webb saying that she wished to have no direct correspondence with Mr Child.

49. On 28 July 2023 and then again on 11 August 2023 Ms Goodwin emailed the Claimant to follow up on the suggestion of mediation before a mid August training camp. The Claimant did not reply to either email.
50. On 1 August 2023 Ms Steinhaus-Webb emailed the Claimant ahead of the training camp in August 2023 to say that she was mindful this would be the first meeting with Mr Child and that she wanted the Claimant to feel safe and protected. Ms Steinhaus-Webb specifically asked what could be done to help the Claimant and reiterated the suggestion of mediation. Again, the Claimant did not reply to this email.
51. On 19 August 2023 there was a training camp. The Respondent did not know whether the Claimant was attending and had not booked her a room. On the day, the Claimant arrived and was discussing the lack of a room with the concierge. Mr Child came over and said words to the effect that he would deal with the room if the Claimant wanted to go to training. We do not accept that Mr Child leant in close to the Claimant when he said this. The Claimant walked out of the training course. Ms Steinhaus-Webb called the Claimant several times but the Claimant did not answer.
52. On 20 August 2023 the Claimant emailed Ms Steinhaus-Webb stating “I had to leave yesterday as I got confronted by Steve, totally unnecessarily, in reception prior to the practical training. It was already a very difficult situation and I just needed to get out.” Ms Steinhaus-Webb replied stating that there needed to be a face to face meeting as “this situation can’t continue.”
53. On 21 August 2023 there was a meeting of the working group to determine the nominations for the FIFA list. The parties do not have minutes of this meeting. The Claimant has requested these from the FA via a Freedom of Information Act request but they also do not appear to have minutes. It is unsatisfactory that a decision of such potential importance would take place at a meeting at which there were no minutes taken. Mr Webb and Ms Steinhaus-Webb confirmed in evidence that there was no discussion of the training camp or the Claimant’s complaint about Mr Child. However, we are largely unable to test these assertions because of the lack of minutes.
54. At the meeting the Claimant was ranked sixth and therefore inherently at risk of not making the FIFA list if (as had happened in previous years) only five referee appointments were made. Ms Heaslip came on to the list in third

place. A decision was made not to change Stacey Pearson's position on the list, as she had had a period of maternity leave during the year in question.

55. The Respondent has sought to explain the Claimant's rating before this Tribunal based on a number of reasons. These include the strong performance of Ms Heaslip, which is a reason we generally accept as credible. The Respondent relies on the Claimant's relative ranking below the other 5 individuals in her statistics for the 2022/2023 Women's Super League, which again seems to be objectively justified based on the tables included in the bundle (notably the combined table at 604). The Claimant also seemed to accept in cross examination that her performances suffered after the incident at the end of March 2023. The Respondent also refers to the Claimant having missed a full year's international refereeing due to failing a fitness test and injury and then the Claimant's only average performance as an international referee following her international debut in March 2023. The Claimant had, by this point, only refereed two international matches. Finally, the Claimant was a Category 2 referee whilst others above her on the list were Category 1 and Elite level referees.
56. From late August 2023 there were attempts to find a date that worked for a face to face meeting between the Claimant, Mr Webb and Danielle Every, Chief Operating Officer.
57. On 18 September 2023 the Referees Committee approved the proposed nominations for the FIFA list.
58. On 22 September 2023 the Chair of the Referees Committee, Mr Crick, emailed the nominees for the FIFA list to confirm their nomination. There was no indication in this email that the Claimant's ranking on the nominations list had changed.
59. On 26 September 2023, Mr Crick wrote a covering letter to FIFA refereeing with the nominations for the FIFA list. The letter praised Emily Heaslip and said of the Claimant "Moreover, Lisa Benn's solid performances over the past year after a difficult start to her FIFA career, demonstrates she has potential to develop as an international referee." There was no mention of any other individual referee in the letter.
60. By 19 October 2023 the Claimant was refusing to attend a training camp because progress had not been made to meet with the Claimant.
61. The Claimant met with Mr Webb and Ms Every on 23 October 2023. The Claimant expressed her dissatisfaction at the outcome of the grievance and

the removal of Mr Farries as her coach. It was confirmed the investigation would not be reopened absent of any new information but that Mr Webb and Ms Every would look at the investigation materials. There was discussion of the possibility of mediation and the Claimant confirmed she would be professional in groups but would minimise one on one contact. There was some discussion of staff being concerned not to speak up and the Claimant appears to have described an incident in October 2022 when Mr Child was overly critical and shouted at referees.

62. On 14 December 2023 the Claimant was informed by Mr Crick that she had not been appointed to the FIFA list. During this call the Claimant was told that she had been nominated 6th.
63. On 21 December 2023 Mr Crick emailed the Claimant with an explanation for her nomination ranking.
64. On 4 January 2024 Isabelle Wallings emailed the Claimant to inform her that a letter would be sent to the Claimant regarding a final payment as a result of coming off the FIFA list.
65. On 17 January 2024 a letter setting out the final payments was sent to the Claimant.
66. The bundle included at pages 218 to 220 details of the Claimant's refereeing appointments for March 2024 to May 2024. It is clear from these pages which fixtures the Claimant was appointed to but it is not always clear when or why the Claimant is marked as unavailable. For example, rest days after fixtures can be seen but there was a dispute about whether other days when the Claimant was marked as unavailable were only recorded as such after she had not been assigned a game.

The Law

Proving discrimination

67. Section 136(2) Equality Act 2010 states

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
> *(3)But subsection (2) does not apply if A shows that A did not contravene the provision."*

68. The leading case on the burden of proof remains the joined cases known as **Igen Ltd v Wong** [2005] IRLR 258 which confirmed the guidance given in **Barton v Investec Securities Ltd** [2003] IRLR 332

"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word "could" in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

69. In **Hewage v Grampion Health Board** [2012] UKSC 37, Lord Hope stated regarding the burden of proof provisions, 'they will require careful attention where there is room for doubt as to the facts necessary to establish

discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other'.

70. In **Efobi v Royal Mail Group Ltd** [2021] IRLR 811, the Supreme Court said that so far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so.

Harassment

71. Section 26(1) Equality Act 2010 states

"(1)A person (A) harasses another (B) if—

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

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

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

72. Guidance on the level below which conduct does not engage the statutory definition was given by the EAT in **Richmond Pharmacology v Dhaliwal** [2009] ICR 724 and (in the context of the word "violating" and "intimidating" in **Betsi Cadwaladr University Health Board v Hughes** EAT 1079/13). The Court of Appeal in **Land Registry v Grant** 2011 ICR 1390 warned against cheapening the significance of the words in the statutory test so as to allow trivial acts causing minor upset from being caught by the concept of harassment.

73. Guidance on whether the effect of unwanted conduct amounts to harassment was provided by Lord Justice Underhill in **Pemberton v Inwood** 2018 ICR 1291, CA where he stated:

"a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to

be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so"

74. When dealing with a series of alleged incidents of harassment, it is important not to carve up the allegations and only consider them one by one. It is important to stand back and have regard to the entirety of the conduct which is found to have occurred (**Qureshi v Victoria University of Manchester** [2001] ICR 863 and **Anya v University of Oxford** [2001] ICR 847).

75. This is important when considering whether it would be reasonable to regard the conduct as having the prohibited effect and whether to draw inferences that the conduct was related to the protected characteristic. (**Reed v Steadman** [1999] IRLR 299 (Morison P) and **Rihal v London Borough of Ealing** [2004] IRLR 642).

76. The requirement is for conduct to be 'related to' the protected characteristic. The Court of Appeal in **UNITE the Union v Nailard** [2018] IRLR 730 is authority that action 'because of the background of harassment related to sex' does not amount to harassment. Where an action is not in itself evidently discriminatory, the Tribunal may need to make findings as to the mental processes of the alleged harasser and whether they had been motivated by discrimination. That is not to suggest that it must be a causative link, it may be associative.

Victimisation

77. Section 27 Equality Act 2010 states

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

…

(d)making an allegation (whether or not express) that A or another person has contravened this Act.

78. The Claimant by implication necessarily alleges that her protected acts fall under s27(2)(d). An express reference to the Equality Act is not required to fall under this category. A complainant can allege that things have been done which would be a breach of the Equality Act but does not say that those things are contrary to the Act. Per Waite LJ in **Waters v Metropolitan**

Police Commissioner [1997] IRLR 589 'The allegation relied on need not state explicitly that an act of discrimination has occurred – that is clear from the words in brackets in s 4(1)(d). All that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of s 6(2)(b).' Alternatively, a complainant may assert that there has been discrimination but does not say that the allegation is of discrimination in relation to one of the protected characteristics (**Durrani v London Borough of Ealing** UKEAT/0454/2012 (10 April 2013, unreported), per Langstaff P, “it is not necessary that the complaint referred to race using that very word. But there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.”

79. HHJ Beard in **Kokomane v Boots Management Services** [2025] EAT 38, summarises the law as follows at [24]:

> *“It appears to me the law could be summed up in this way: what is necessary is that the ET should take account of all of the factors that are provided in the information given by the employee to the employer. In addition the ET needs to consider that information on the basis of how it would be understood by the employer in context. It would be understood by the employer, in part, because of the general facts about the employee and the place of work, which the employer would know of in any event. In terms, that the employee's complaint should be considered by the ET by examining the way that it would be understood by the employer. When the employee makes the complaint explicit that will be an easy task. When the complaint is oblique the context becomes important.”*

80. A detriment exists 'if a reasonable worker would take the view that the treatment was to his detriment' (**MOD v Jeremiah** [1979] IRLR 436). Detriment is to be interpreted widely and it is not necessary to establish any physical or economic consequence (**Warburton v Chief Constable of Northamptonshire Polic**e [2022] EAT 42). It is the view of a reasonable worker, not the Tribunal’s own view that is important.

81. The reason for the detriment must, in part, be the protected act. The issue of the respondent's state of mind therefore is likely to be critical (**Nagarajan v London Regional Transport** [1999] IRLR 572).

Time limits

82. Section 123 Equality Act 2010 states, in so far as it is relevant

(1) …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.

…

(3)For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;"

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

84. In **South Western Ambulance Service NHS Foundation Trust (appellant) v King (respondent)** - [2020] IRLR 168 Chaudhury P in the EAT stated in the context of a continuing act at [36-38] "It will be necessary, in my judgment, for at least the last of the constituent acts relied upon to be in time and proven to be an act of discrimination in order for time to be enlarged." Accordingly, cannot rely on matters to extend time unless it is actionable.

85. Whilst extension of just and equitable grounds is a broad discretionary power for the Tribunal, it is important to recognise that the onus is always on the claimant to convince the tribunal that it is just and equitable to extend time.

86. In **Adedeji v University Hospitals Birmingham NHS** [2021] ICR D5, the Court of Appeal repeated a caution against tribunals relying on the checklist of factors found in s 33 of the Limitation Act 1980 (which applies to extensions of time for late personal injury claims in the civil courts). The Court of Appeal described that 'The best approach for a tribunal in considering the exercise of the discretion under s 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is

just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"'.

87. That said, the Limitation Act checklist as modified in the case of **British Coal Corporation v Keeble** [1997] IRLR 336 includes as possible relevant factors:

    a. the relative prejudice to each of the parties;
    b. all of the circumstances of the case which includes:
    c. The length and reason for delay;
    d. The extent that cogency of evidence is likely to be affected;
    e. The cooperation of the Respondent in the provision of information requested, if relevant;
    f. The promptness with which the Claimant had acted once she knew of facts giving rise to the cause of action, and
    g. Steps taken by the Claimant to obtain advice once she knew of the possibility of taking action.

Unfair Dismissal

88. Section 98 Employment Rights Act 1996 states

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

…

(3) In subsection (2)(a)—

…

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

89. The Respondent does not dispute that the Claimant was dismissed.

90. In **Blue Star Ship Management Ltd v Williams** [1979] IRLR 16, , Phillips J commented '"“qualifications” … has in mind matters relating to aptitude or ability, and … a mere licence, permit or authorisation is not such a qualification unless it is substantially concerned with the aptitude or ability of the person to do the job'. However, a driving licence may be a qualification where it is a condition of employment that an employee will retain a clean driving licence, **Tayside Regional Council v McIntosh** [1982] IRLR 272.

91. In **Blackman v Post Office** [1974] IRLR 46, the employee was required to pass an aptitude test, agreed between the employer and the union, in order to be permanently employed as a post and telegraph officer. On appeal, the NIRC held that this could constitute a dismissal either for capability, as the [employment] tribunal had originally found, or for lack of qualifications. However, the court preferred the latter basis since there was evidence that the employee concerned had shown that he was in practice capable of performing the job satisfactorily. Finally, the court also held that the dismissal could be justified under the heading 'some other substantial reason' since the employer would have been required to break its agreement with the union if it had retained the claimant in employment.

92. The termination of a fixed term contract may fall within the definition of some other substantial reason. As Browne-Wilkinson LJ put it in **North Yorkshire County Council v Fay** [1985] IRLR 247.

"… if it is shown that the fixed term contract was adopted for a genuine purpose and that fact was known to the employee, and it is also shown that the specific purpose for which the fixed term contract has ceased to be applicable then, for the purposes of [section 98], these facts are capable of constituting some other substantial reason'.'

93. The Supreme Court in **Royal Mail Group Ltd v Jhuti** [2020] ICR 731 at [60] held that "if a person in the hierarchy of responsibility above the employee" determines that the employee should be dismissed for reason A "but that reason A should be hidden behind an invented reason B which the decision-maker adopts […] it is the court's duty to penetrate through the invention rather than to allow it also to infect its own determination."

Wrongful dismissal

94. The correct construction of a contract is a matter of common law. The basic principle is that interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
95. The contra proferentem rules refers to the rule that, in the event of any ambiguity, wording in a contract is to be construed against a party who seeks to rely on it in order to diminish or exclude their basic obligation.

Conclusions

Harassment

29 March 2023 - Before the game

96. The Tribunal did not reach consensus on the type of physical contact made between Mr Child and the Claimant before the start of the match on 29 March 2023.
97. The majority did not consider it likely that Mr Child "grabbed" the Claimant in the sense of gripping her forcefully with his hands. The majority felt Mr Child touched and moved or pushed the Claimant without grabbing. The majority considered it likely that the Claimant perceived this as being grabbed due to her view that any physical contact of a referee was inappropriate. The majority were partly persuaded by the video evidence of Mr Child moving Ms Sykes later in the same game.
98. Mr Peart considered it likely that Mr Child did grab the Claimant. Mr Peart believed the Claimant's evidence on this point as she had repeated it a number of times soon after the incident. Mr Peart felt the concept of a guiding arm had been introduced by Mr Gale-Watts at the investigation and doubted that a guiding arm would have been enough to move the Claimant onto the pitch at that time.

99. Regardless of the form of physical contact, the Tribunal unanimously agreed that it did have the effect of creating an intimidating environment for the Claimant, who considered it "manhandling" and that, notwithstanding her interpretation that no physical contact from a coach was allowed, which we consider likely to be mistaken based on the evidence of the Respondent's witnesses, it was reasonable for the Claimant to consider that it had this effect.

100. The Tribunal did not reach consensus on whether Mr Child's conduct was related to the Claimant's sex.

101. The majority did not consider that Mr Child acted as he did because of the Claimant's sex or that his actions were otherwise related to the Claimant's sex. The majority considered it likely that Mr Child would have done exactly the same with a male referee in the same circumstance, namely where he was frustrated by a referee who he considered was "going slow" to start a game that had been delayed and who had told him to "chill". The majority considered it relevant that on the Claimant's own evidence Mr Child had previously shouted at mixed groups of officials. There were no facts from which the majority felt it appropriate to draw an inference that this incident was related to sex and/or were satisfied that a non discriminatory explanation had been provided for the conduct.

102. Mr Peart disagreed that Mr Child would have treated a male referee in the same way. Mr Peart felt Mr Child was comfortable in physically moving the Claimant in part because she was a woman. In reaching this conclusion Mr Peart was concerned that Mr Child later moved to a role in the men's game that was explicitly not a promotion and the lack of supportive statements from officials in the women's game. Mr Peart considered the act of grabbing to be a fact from which he could infer discrimination and did not consider that a non discriminatory explanation had been provided for the conduct.

29 March 2023 - During the game

103. The Tribunal unanimously found that Mr Child gave repeated instructions to the Claimant to kill the game including during half time. However, we unanimously agreed that this was not related to sex but rather was simply Mr Child coaching the Claimant in accordance with his responsibilities.

29 March 2023 - After the game

104. The Tribunal unanimously agreed that Mr Child did physically touch the Claimant to take her aside for a conversation and that this was likely in the form of grabbing the Claimant, which explained why the Claimant was overheard by Mr Lander telling Mr Child not to grab her.

105. The tribunal unanimously concluded that Mr Child did tell the Claimant that she was bloody minded, as this was consistent with Mr Child's evidence that he felt the Claimant had been deliberately ignoring his instructions.

106. The Tribunal unanimously considered that Mr Child did not say to the Claimant that her card was marked. We considered that there was no reason for Mr Child to have made this comment.

107. The Tribunal unanimously agreed both that the Claimant subjectively felt an intimidating atmosphere had been created by the exchange and that, given the anger expressed by Mr Child, this was reasonable in all the circumstances of the case.

108. The majority did not consider that Mr Child acted as he did because of the Claimant's sex or that his actions were otherwise related to the Claimant's sex but were rather the result of his frustration at the Claimant's handling of the match, which Mr Child considered had contributed to the brawl at the end of the match. Even if we considered that Mr Child's unreasonable conduct in confronting the Claimant might have shifted the burden, the majority are satisfied by the non discriminatory explanation provided for this conduct.

109. Mr Peart disagreed that Mr Child would have treated a male referee in the same way. Mr Peart felt Mr Child was comfortable in physically grabbing the Claimant in part because she was a woman. Mr Peart considered the act of grabbing to be a fact from which he could infer discrimination and did not consider that a non discriminatory explanation had been provided for the conduct.

Mr Child's actions on 19 August 2023

110. As set out above, the Tribunal unanimously considers that Mr Child did not get close to the Claimant when speaking to her. There are no facts from which the Tribunal could conclude that Mr Child's actions in saying that he would sort a room for the Claimant so she could go to training were related to the Claimant's sex. Given the anodyne nature of his comments, it was unreasonable for the Claimant to consider that Mr Child's actions created the prescribed atmosphere to amount to harassment.

Bibianna Steinhaus-Webb failing to provide the Claimant with a chaperone on 19 August 2023, so the Claimant was not left on her own with Steve Childs and failing to ensure Steve Childs did not interact with the Claimant on 19 August 2023

111. We found these considerably weaker allegations of harassment. Ms Steinhaus-Webb and the Respondent's HR department had on several occasions before 19 August 2023 sought to engage with the Claimant about how to address her concerns regarding Mr Child. The Claimant had not asked for a chaperone on 19 August 2023. Indeed, the Respondent did not know that the Claimant was attending on 19 August 2023. The exchange with Mr Child happened within minutes of the Claimant arriving. There are no facts from which the Tribunal could conclude that Ms Steinhaus-Webb's actions or lack of actions were related to the Claimant's sex or arose from a desire to prevent allegations of harassment from surfacing.

112. It follows from the above that, based on the majority's decision, the Claimant's claim for harassment fails and is dismissed.

113. Stepping back and considering the individual allegations of harassment together does not change the analysis. We find this adds nothing to the decision on whether the various actions were related to sex or reasonably had the prescribed effect.

Victimisation

Protected Act – 29 March 2023

114. The Claimant asserts that the email of 29 March 2023 amounts to a protected act because of the use of the word "manhandle" and the implicit nature of the allegation of a man physically manoeuvring a woman. It was accepted by the Claimant that the wording in the email is substantively the same as the information disclosed by the Claimant to Ms Steinhaus-Webb over the phone. There was no explicit allegation of a breach of the Equality Act 2010.

115. As to whether there was an implicit allegation, the Tribunal unanimously disagrees with both the Claimant's points. We consider that the term manhandle is a neutral term that would be understood as relating either to a man or a woman. Equally, we do not consider that the context of the allegation relating to a man touching a woman is enough to mean that the allegation would be understood to be one of harassment related to sex. There is nothing in the general facts about the employee and place of work

that would lead to a conclusion that the touching was related to sex without the Claimant making some suggestion that this was the case – even indirectly – for example by referring to the difference in size between Mr Child and the Claimant or even mentioning the difference in sex between them.

116. It follows that we do not find this email to be a protected act.

Protected Act – 20 August 2023

117. The Claimant's case in relation to the second alleged protected act is, if anything, even weaker. Again, there is no express allegation that Mr Child has breached the Equality Act 2010. There is no term equivalent to "manhandle" that the Claimant can seek to rely on to suggest an implicit reference to sex. There is no suggestion in the email that sex motivated Mr Child's actions or that this was in any way an act of retaliation for the Claimant having earlier raised a complaint regarding him. If the 29 March 2023 email had contained an allegation of discrimination, that might have changed the way this email would have be read. But that is not the case here.

118. It follows that we do not find this email to be a protected act.

119. It follows from the above that, the Claimant's claim for victimisation fails and is dismissed.

120. However, for the avoidance of doubt we will nonetheless go on to consider the allegations of detriment as these are potentially relevant to the unfair dismissal claim below.

Bibianna Steinhaus-Webb's delay informing HR of the Claimant's complaint.

121. We accept this delay would reasonably have been considered a detriment by the Claimant.

122. As a serious allegation, this matter should have been reported to HR straight away. We accept that Ms Steinhaus-Webb's motivation for not doing so was in part because she wanted to try to find out what had gone on and then to try to arrange an informal resolution once tempers had hopefully calmed. Although the ACAS code on disciplinary and grievances does explicitly provide for such informal resolution of disputes, we consider this was not the correct approach in this case.

123. That said, even if the delay were enough to shift the burden, we accept that Ms Steinhaus-Webb was not motivated to act as she did because of the first alleged protected act or from any wider motivation to prevent

allegations of harassment from surfacing. Ms Steinhaus-Webb did not understand the Claimant to be making an allegation of harassment related to sex. Once it became clear to Ms Steinhaus-Webb that an informal resolution was not possible, she was prepared for the matter to be independently investigated by or via HR.

The delays between the initial complaint (29 March 2023) and the outcome (27 June 2023)

124. We do not consider that this was the correct period. The Claimant was informed of the outcome of the investigation on 31 May 2023, albeit the formal outcome letter was not sent to her until 27 June 2023.

125. We do not consider that there was any substantial delay to the investigation or providing the Claimant with the outcome of the investigation. Interviews were conducted within a reasonable period of time and a conclusion was reached within a further reasonable period. The Claimant was told that a decision had been reached on 19 May 2023, there was only a further delay in providing that outcome to the Claimant because a decision had been taken to do this in person rather than by writing.

126. Whilst there was a reasonable period between Mr Child getting his written outcome and the Claimant getting hers, this appears to have been primarily a result of seeking to address in the outcome letter points made by the Claimant on 31 May 2023. We do not consider that the alleged protected act played any part in the reasons for this delay. The Respondent did not understand the Claimant to be making an allegation of harassment related to sex and we do not accept there was any wider motivation to prevent allegations of harassment from surfacing.

Failure to take action against Steve Childs

127. We consider that the failure to take formal disciplinary action against Mr Childs was solely the result of the investigation concluding that his actions had not been aggressive or threatening. That was a conclusion that we accept Mr Gale-Watts genuinely held. We do not consider that the alleged protected act played any part in this decision. The Respondent did not understand the Claimant to be making an allegation of harassment related to sex and we do not accept there was any wider motivation to prevent allegations of harassment from surfacing.

Mr Child's actions on 19 August 2023

128. It follows from our conclusions above that we do not consider the Claimant's first alleged protected act played any part in Mr Child's actions on this day.

The Claimant's change of ranking from five to six

129. The absence of minutes of the working group at which this decision was in effect made is a fact from which we could have concluded that the Claimant's alleged protected disclosures played some part in the decision to change the Claimant's ranking from five to six.

130. We do not consider that it was the main reason for the decision. We accept that the main reason for the Claimant's ranking were those given by the Respondent's witnesses in evidence, namely Ms Heaslip's relatively better performance that year, the Claimant's relatively lower rating relative to all five referees above her in the domestic league that year (a drop off in performance acknowledged by the Claimant in front of this Tribunal), plus some of the difficulties faced by the Claimant in her first year as an international referee. However, we would not have been satisfied that the Respondent's explanation for this decision established that the alleged protected acts did not play some material part in this decision. We think the Claimant was to some extent seen as a troublesome employee due to her complaints and in particular the refusal to accept the outcome of her grievance or to consider mediation with Mr Child and her refusal to work with him. We consider that this played some part in the decision to move her to a lower ranking.

The Claimant's dismissal from employment

131. We consider this below under unfair dismissal.

The lack of appointment to women's super league games and no international games as a fourth official.

132. We did not consider that we had enough information on which to base a finding as to the reasons for the Claimant's non appointment to various individual matches. In light of our findings on protected acts and because this issue is irrelevant to the question of dismissal, we make no further comment on it.

Time Limits

133. Had the majority reached a different decision on the harassment allegations we would have been prepared to extend time on a just and

equitable basis. A fair trial of the facts going back to 29 March 2023 has been possible with no real forensic prejudice to the Respondent. The Claimant was following an internal process for at least part of the period in question. Even though the Claimant could have done more to seek legal advice, this would not, in our opinion, have led us to decline to extend time had the alternative been to deny the Claimant a remedy.

Unfair dismissal

134. In one sense the decision on dismissal might be said to be very straightforward. The decision to remove the Claimant from the FIFA list was made by FIFA in not accepting the sixth nominated referee and the consequence of that was the termination of the Claimant's employment.

135. However, it is also possible to see the decision to nominate the Claimant in sixth place as implicitly putting her at risk of removal from the FIFA list. This arguably bears similarities to the Iago situation referred to in **Jhuti**.

136. The question then would be "what was the sole or principal reason for the change in the Claimant's ranking from fifth to sixth?" We are satisfied that the principal reason was the performance of the Claimant relative to the others on the FIFA list.

137. Whichever analysis prevails, we are satisfied that the Respondent has shown it had a potentially fair reason for dismissal. The straightforward analysis based on FIFA's decision would be a reason relating to qualifications of the Claimant for performing work of the kind which she was employed by the employer to do. Inclusion on the FIFA list can be said to be a qualification for the purposes of section 98(3)(b) Employment Rights Act 1996. We consider the comparison to losing a driving licence a valid one as in **McIntosh**. Alternatively, if we are wrong about inclusion on the FIFA list as being a qualification, it would be some other substantial reason justifying dismissing the Claimant as her employment was solely based on performing duties related to the FIFA List per **Fay**. We do not consider that it would have been relating to capability in the normal sense of the word as the Claimant was not incompetent or incapable of doing the role.

138. Even considering the ranking of the Claimant as in effect a decision to dismiss would also lead to the conclusion that dismissal was by reason of some other substantial reason justifying dismissing the Claimant as her employment was solely based on performing duties related to the FIFA List.

139. In circumstances where the employment was entered into with the express condition that removal from the FIFA list would result in dismissal, and the main reason for the Claimant dropping off the FIFA list was her relative performance, our conclusion is that the employer was acting within the band of reasonable responses in dismissing the Claimant in the circumstances of this case. We do not consider that performance management or warning was required in this case given the Claimant was not a poor performer and was well aware that inclusion on the FIFA list was the result of competition with other high performing referees.

Wrongful dismissal

140. Clause 3.5 of the Claimant's contract reads:

"Your employment is conditional on you being included in the international match officials FIFA list whether you are officiating or carrying out any other duties for PGMOL. If you are removed from or otherwise fail to be included on this list then you agree (subject to Clauses 8.5 and 8.6) that your employment will terminate at the end of the period of 3 months from the end of the month in which you are removed from the list and that this 3 months shall constitute your notice period from the Company."

141. Clause 18 of the Claimant's contract reads:

"18.1 Subject to the provisions regarding termination without notice below and save as otherwise set out in Clause 3.5 of this Agreement, the following notice provisions apply:

18.1.1 you are obliged to give PGMOL three months' notice of your intention to terminate your employment;

18.1.2 the length of notice which you are entitled to receive from PGMOL to terminate your employment is twelve months.

18.2 Notwithstanding Clause 18.1 PGMOL may, at its sole and absolute discretion, terminate your employment at any time and with immediate effect by notifying you that the PGMOL is exercising its right under this Clause 18.2 and that it will make within 28 days a payment in lieu of notice (Payment in Lieu) to you. This Payment in Lieu will be equal to the basic salary (as at the date of termination) which you would have been entitled to receive under this Agreement during the notice period referred to at Clause 18.1 (or if notice has already been given, during the remainder of the notice period) less income tax and National Insurance contributions.

18.3 For the avoidance of doubt, the Payment in Lieu shall not include any

element in relation to:

18.3.1 Any performance payment or commission payment, or additional fees, the TIP and monthly payments in respect thereof, that might otherwise have been due during the period for which the Payment in Lieu is made;

18.3.2 Any payment in respect of benefits which you would have been entitled to during the period for which the Payment in Lieu is made; and

18.3.3 Any payment in respect of any holiday entitlement that would have accrued during the period for which the Payment in Lieu is made."

142. Clause 18.1 provides a notice period for circumstances other than termination under clause 3.5. The notice period from the employer is substantially longer than under clause 3.5.

143. Clause 18.2 explicitly provides a mechanism to override the notice periods contained in clause 18.1 by payment of basic salary only for the periods referred to in clause 18.1. Clause 18.2 does not refer to overriding the notice period in clause 3.5 by payment in lieu of basic salary in respect of the periods set out in clause 3.5 nor does it confer a general power to pay in lieu of any notice period generally. It is at best unclear whether clause 18.2 applies to notice under clause 3.5. Following the contra proferentem rule, that uncertainty should be resolved in the Claimant's favour.

144. It follows that the breach of contract claim is well founded and succeeds in respect of damages arising from payment in lieu of basic salary only during the period of notice.

145. A notice of hearing will be sent out shortly for a remedy hearing in relation to this aspect of the Claimant's claim only.

Approved by
Employment Judge **T Perry**

_____
Date 28 November 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON
Date 02 December 2025

A. Cole

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FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/