



EMPLOYMENT TRIBUNALS

Claimant

1. Miss L Alaeddine
2. Mr B Rfaieh

v

Respondent

1. The Government of the State of Kuwait
2. Abdullah Alkhadher
3. Hamad Al Rumaidhin
4. Saif Borjos Mohammad

PUBLIC PRELIMINARY HEARING

Heard at: Central London Employment Tribunal (By CVP)

On: 5 & 8 September 2025, 9 September & 8 October 2025 in Chambers

Before: Employment Judge Brown

Appearances

For the Claimant: Mr J Fireman, Counsel
For the Respondent: Mr M Sethi KC

JUDGMENT

The judgment of the Tribunal is that:

1. The correct identity of the First Respondent is The Government of the State of Kuwait. The name of the proceedings is changed accordingly.
2. The employment of both Claimants was an act of sovereign authority, so their claims are barred by s1 State Immunity Act 1978.
3. Both Claimants' race discrimination and harassment complaints regarding their suspension and investigation, arising out of the First Respondent's investigation into the former Kuwaiti Prime Minister, are barred by state immunity, because they relate to acts of sovereign authority.
4. The Second Claimant's personal injury claim for unlawful discrimination is also barred by state immunity.
5. The Second, Third and Fourth Respondents are immune from the civil jurisdiction of the courts and tribunals of the United Kingdom by virtue of Article 39(2) of the Vienna Convention on Diplomatic Relations 1961, in respect of the alleged unlawful acts. The claims against the individual Respondents are therefore struck out.
6. All the Claimants' claims are barred by state immunity and are struck out.

REASONS

Background

1. This Public Preliminary Hearing in these joined cases was listed to determine all issues relating to state and diplomatic immunity.
2. By a claim form in claim number 2204383/2021, presented on 23 July 2021, the First Claimant, Miss L Alaeddine, brought complaints of unfair dismissal, race discrimination, race harassment, sexual harassment, breach of the Working Time Regulations, failure to pay holiday pay and breach of contract against the First Respondent's Embassy and the individual Respondents. The Claimant relied on her Lebanese nationality in her race discrimination and harassment complaints.
3. By a claim form in claim number 2206375/2021, presented on 24 September 2021, the Second Claimant, Mr Rfaieh, brought complaints of unfair dismissal, race discrimination, race harassment, breach of the Working Time Regulations, failure to pay holiday pay and breach of contract against the First Respondent's Embassy and the individual Respondents. He also relied on his Lebanese nationality in his race discrimination complaints.
4. The Respondents defended the claims, asserting state and diplomatic immunity.
5. The claims had previously been stayed pending the implementation of the *State Immunity Act 1978 (Remedial) Order 2023* and pending the decision of the Supreme Court in *Saudi Arabia v Costantine* [2025] IRLR 636 (SC).
6. It was agreed that the correct identity of the First Respondent Is The Government of the State of Kuwait. I ordered that the name of the proceedings is changed accordingly.
7. The issues for determination were agreed:

State immunity from adjudication of the First Respondent

1. Whether the First and Second Claimant's claims against the First Respondent are barred by state immunity pursuant to sections 1 and 16 State Immunity Act 1978 as amended by the State Immunity Act 1978 (Remedial) Order 2023/112 from 23 February 2023 ("SIA 1978 (as amended)"). This raises the following subsidiary questions:
 - 1.1 Do the proceedings relate to a contract of employment between a State and an individual?
 - 1.2 Was the First and Second Claimant employed under the contract as a member of a diplomatic mission?
 - 1.3 Did the State enter into the contract in the exercise of sovereign authority within the meaning of s16(1)(aa)(ii) SIA 1978 (as amended)? This raises the following further questions:

- (a) What functions was the First and Second Claimant employed to perform?
- (b) Were the functions which the First and Second Claimants were employed to perform sufficiently close to the governmental functions of the mission that their employment was an inherently sovereign or governmental act of the State of Kuwait (Benkharbouche (SC) [53] to [55])?

1.4 Did the State engage in the conduct complained of in the exercise of sovereign authority within the meaning of s16(1)(aa)(ii) SIA 1978 (as amended)?

Diplomatic immunity from adjudication of the Second, Third and Fourth Respondent

2. Whether each of the Second, Third and Fourth Respondent is immune from the civil jurisdiction of the courts and tribunals of the United Kingdom by virtue of Article 39(2) of the Vienna Convention on Diplomatic Relations 1961 ("VCDR"), as enacted into English law by section 2(1) of the Diplomatic Privileges Act 1964. This raises the following subsidiary questions:

2.1 Was each of the Second, Third and Fourth Respondent at all material times a member of the diplomatic staff/diplomatic agent of the military mission of the State of Kuwait in London within the meaning of Article 1(d)/(e) VCDR?

2.2 If so, were the alleged acts performed by the Second, Third and Fourth Respondent in the exercise of their functions as a member of the mission within the meaning of Article 39(2) VCDR?

Personal Injury

3. The First Claimant does not pursue a personal injury claim. The Second Claimant brings a claim for psychiatric injury following a clinical diagnosis of Panic Disorder and Severe Depressive Episodes is pursued.

3.1 Even if the Second Claimant's claims are otherwise barred by State Immunity, can his claims for personal injury arising out of discrimination proceed pursuant to s5 State Immunity Act 1978?

8. I heard evidence from: Colonel Doctor Abdullah Alkhadher, the Second Respondent; Major General Hamad Al Rumaidhin, the Third Respondent; Lieutenant General Saif Borjos Mohammad, the Fourth Respondent; and Adil Alroujaib, for the Respondents. I heard evidence from both the Claimants.

9. There was a bundle of documents. Both parties made written and spoken submissions.

10. The judgment of the Court of Appeal in *Royal Embassy of Saudi Arabia (Cultural Bureau) v Alhayali* [2025] EWCA Civ 1162 was handed down on 11 September

2025, after the preliminary hearing had concluded. I gave the parties permission to file further written submissions and replies, arising from it, which they did by 29 September 2025. I then considered my decision, further, in Chambers.

Findings of Fact

11. There were some very substantial disputes of fact about the duties the Claimants carried out during their employment.
12. I made the following findings.
13. There were some facts which were common to the two different claims.
14. The Claimants are married.
15. At the times relevant to their claims, both Claimants were employed by the First Respondent at the Military Attache Office of the Embassy of the State of Kuwait in London.
16. The Military Attache Office ("MAO"):
 - 16.1. Represents the state of Kuwait on military matters in the UK, by holding meetings between military representatives of the State of Kuwait and the UK Ministry of Defence, in which matters of mutual military interest are discussed and sensitive military information is shared.
 - 16.2. Protects the interests of the State of Kuwait and its nationals in the UK in military matters by: Sharing sensitive military information with the UK government; Arranging military training; and Providing travel and security arrangements for dignitaries who visit the UK in connection with military matters;
 - 16.3. Negotiates with the UK government on matters of mutual military interest, in relation to military training and in the purchase of military equipment and parts, and, in doing so, liaises with the Kuwait Air Force operation centre and UK Royal Air Force air bases to arrange ground equipment support for Kuwaiti military aircrafts and accommodation and transportation for the crew;
 - 16.4. Ascertains, by lawful means, conditions and developments in the UK in connection with military matters and reports these to the Kuwait government. The Kuwait and UK governments conduct regular steering group meetings, which are facilitated through the MAO.
17. The First Claimant had worked with the Prime Minister of Kuwait, Sheikh Jaber Mubarak Alsabah, when he was Defence Minister in 2001 and continued to work with him when he was appointed Prime Minister on 4 December 2011.
18. R2, Colonel Alkhadher, was appointed as the Assistant Military Attache for Technical Affairs on 11 October 2017 and worked in the London Embassy from 23 November 2017 until 1 June 2021. R3, Major General Al Rumaidhin, was appointed as the Assistant Military Attache for Financial Affairs on 5 June 2018 and worked in the London Embassy from 31 July 2018 until 18 June 2019. R4, Lieutenant General Borjos Mohammad, was appointed as the Military Attache on

24 April 2019 and worked in the London Embassy from 19 July 2019 until 1 July 2021.

19. In late 2019 a Kuwaiti government official conducted an investigation at the MAO and Embassy into the alleged misappropriation of around £900M from the Kuwaiti Ministry of Defence by the Kuwaiti Prime Minister, Sheikh Jaber Mubarak Alsabah, and Major General Al Baz, Head of the MAO.
20. The Claimants were suspended during this investigation.
21. The Kuwaiti Prime Minister, Sheikh Jaber Mubarak Alsabah, resigned on 19 November 2019.
22. The former Kuwaiti Prime Minister, Sheikh Jaber Mubarak Alsabah, and Major General Al Baz, former Head of the MAO, have been convicted in Kuwait of offences of fraud and have received prison sentences. Maj. Gen. Al Baz was convicted of offences which occurred when he was Head of the MAO.

The First Claimant, Miss L Alaeddine

23. The First Claimant was employed by the First Respondent at the Military Attache Office of the Embassy of the State of Kuwait in London from 25 May 2000 until 2 March 2021.
24. The First Claimant was employed as “PA secretary / Public Relation under her contract of employment dated 31 August 2000, p105. She was also contractually required to ‘carry out such duties as the employer may from time to time direct.’ Her contract contained a confidentiality clause, p107.
25. The First Claimant was in charge of the PR/Administration Department, p170. In that role, she gave instructions to another secretary, to drivers and to domestic services personnel, p170.
26. It was not in dispute that, in her role, the First Claimant was responsible for:
 - 26.1. Making accommodation bookings for Kuwaiti Government officials when they visited London, including the Prime Minister of Kuwait, Sheikh Jaber Mubarak Alsabah (before his resignation on 19 November 2019), the Chief of Staff and the Defence Minister, and inspecting hotel rooms for large delegations, to ensure that the rooms matched the rank and booking;
 - 26.2. Booking chauffeurs for the length of an official visit and organising collection of the passengers from the airport, going to the airport to ensure that the arrangements were properly in place;
 - 26.3. Booking VIP ‘Meet and Greet’ for official visitors;
 - 26.4. Occasionally, booking private jets for national and international travel for Kuwaiti officials;
 - 26.5. Sending letters of guarantee and receiving invoices for transport and hotel bookings and, having checked the invoices, forwarding them to the accounts department for processing;

- 26.6.Booking medical appointments for Kuwaiti officials, including members of the Kuwaiti Royal Family. Passing on complaints or queries from Kuwaiti nationals and defence staff receiving medical treatment in the UK to the Attache Doctor, Dr Fawzia Alsayegh. The Claimant would have knowledge of the broad nature of the medical issue and the treating hospital/Doctor, for these purposes;
- 26.7.Booking restaurants for MAO visitors;
- 26.8.Helping identifying suitable local schools for the children of diplomats and officers, arranging meetings with the schools, receiving invoices from the schools, to be passed to the relevant person/department for payment;
- 26.9.Arranging property viewing for private homes for diplomatic staff and officers;
- 26.10. Receiving rental agreements for diplomatic staff, checking that the agreements reflected the rules and regulations under which the Attache operated, obtaining the signature of the staff member and returning the signed agreement to the relevant estate agent;
- 26.11. Completing forms for diplomats' duty free requests;
- 26.12. Compiling the list of invitees from the MAO for Kuwait National Day, which was organized by the Kuwaiti Embassy, and hand writing their names on the invitations;
- 26.13. Arranging insurance and AA cover for MAO vehicles and sending invoices to the accounts department for payment.
27. Until 2019, the First Claimant used a diplomatic vehicle, driven by an MAO driver, when undertaking these tasks.
28. The First Claimant had a friendly relationship with the Prime Minister's wife, who would go shopping with the First Claimant and would call her on her mobile phone.
29. The First Claimant did not undertake typing duties, other than those required for her specific administrative tasks. She did not have an official email account at the First Respondent, but used her own email address for her duties.
30. She had exemption from biometric login requirements because, from time to time, she worked irregular hours, being on call for VIP arrivals at the airport. MAO drivers also had this exemption, for the same reason.
31. There was a significant dispute of fact regarding the First Claimant's handling of the Diplomatic bag and her knowledge of sensitive and secret information .
32. Colonel Doctor Abdullah Alkhadher, the Second Respondent told the Tribunal that, when Major General Al Baz had been Head of the MAO:
- 32.1.The Claimant would receive the diplomatic bag every Wednesday, Major General Al Baz would initial the documents in it and the First Claimant would then distribute the mail to the relevant individuals at the MAO, undertake any translation requirements and keep copies of original documents. The First

Claimant was also responsible for collecting letters to be sent from the MAO through the diplomatic bag, sorting the mail and placing it inside envelopes. She was responsible for checking and sealing the contents of the bag.

- 32.2. Col Dr Alkahadher had personally seen the First Claimant dealing with the information that arrived through the bag, and deciding which department in the MAO this should be sent to.
- 32.3. The types of communication which the First Claimant would have seen and processed included details of purchases and repairs required to military equipment, arrangements for military training and information relating to interactions between the Kuwait and UK Ministries of Defence. Communications in the diplomatic bag would also include information concerning state visits by high-ranking military officials visiting the UK, as set out in memos from the Kuwait Intelligence Corps to the MAO.
- 32.4. The Kuwait Ministry of Defence met with the UK government twice a year. Minutes of the meetings would be taken, and a report would then be sent to the Kuwaiti Embassy. The meetings and reports included discussions on the UK military presence in Kuwait, training and military exercises and the procurement of military equipment. There were also regular "Dragon" meetings between the Chiefs of Staff of the Gulf Countries and the UK, on military matters. There were further joint steering groups which included representatives of governmental departments such as defence, national security, education and commerce.
- 32.5. The First Claimant did not attend the meetings, but she had knowledge of the reports arising from them, as a result of Major General Al Baz giving them to her to seal and put in the diplomatic bag. Major General Al Baz would have opened the reports to review them;
- 32.6. The First Claimant mentioned matters from these meetings to Colonel Doctor Abdullah Alkhadher, which he had not discussed with her. For example, the First Claimant mentioned comments made in the meetings, from a report which he had drafted after attending a steering group.
- 32.7. Major General Al Baz recorded all meetings held in his office and the First Claimant would subsequently listen to the recordings. The contents of such meetings would often include information of a sensitive nature.
33. The First Claimant told the Tribunal that the Diplomatic Bag arrived from Kuwait weekly, containing sealed, numbered envelopes which bore the recipient's name. She said that the letters would go to post handling officer, to be passed to the Head of Office, to be signed and then distributed. She denied having any knowledge of the contents of Kuwaiti and UK MoD meetings and reports. She denied listening to recordings of meetings in Major General Al Baz's office.
34. There was little contemporaneous documentary evidence to shed light on the dispute of evidence. There were disputes about which documents in the bundle containing lists of duties were applicable to the First Claimant's employment.
35. I found the Respondents' evidence to be slightly more persuasive on the disputed matters. Col Dr Alkhadher gave some additional details to his evidence in cross

examination: for example, that Major General Al Baz had played the First Claimant a recording of a meeting which he had had with Major General Hamad Al Rumaidhin, the Third Respondent, so that she could hear what had been said. The Third Respondent corroborated this evidence, saying that he had been surprised to hear his own voice being played when he was in the office after office hours; and that the First Claimant had later told him that Maj Gen Al Baz had invited her to listen to the recording. In cross examination, Col Dr Alkhadher also gave more detail of the First Claimant quoting the contents of his report to him – he said that this had happened a day or two after a biannual Kuwaiti/UK joint steering group meeting, and the Claimant had commented on the detail of his report, as a way of showing her power and authority, he believed.

36. Further, it appeared that the First Claimant did have a close friendly relationship with the former Prime Minister's wife, which was widely known about at the MAO. There appeared to have been a blurring of the lines between the First Claimant's professional and personal relationships. There also appeared to be a blurring of the responsibilities of certain posts in the MAO, including the Second Respondent's – see below. For example, the Second Respondent was involved in making arrangements to receive the Kuwaiti Defence Minister in April 2019, even though that was not part of his role as an accountant/ Head of Accounts.
37. In those circumstances, I considered that it was very possible that the First Claimant would have assumed greater status and different tasks at the MAO, than her original job title and responsibilities would have suggested.
38. I therefore accepted the majority of the Respondents' evidence about the First Claimant's handling of the diplomatic bag, reading reports from joint UK/Kuwaiti meetings and listening to records of private meetings in Maj Gen Al Baz's office, at the invitation of Maj Gen Al Baz. I did not make a finding that the First Claimant had translated the contents of the diplomatic bag because this was not put to her in cross examination and I considered that the wording of Col De Alkhadher's witness statement in this regard was ambiguous.

The Second Claimant, Mr B Rfaieh

39. The Second Claimant was employed by the First Respondent as an Accountant from 27 April 2009, p270 – 274, to 1 June 2021, p 305. From early 2010, he was the Head of Accounts.
40. Along with the other 5 accountants in the Accounts Department, the Claimant received invoices, entered them onto the Sage Accounting system, cross checked purchases and reconciled the data. He collated the data and produced PDF reports to be sent back to Kuwait, for reimbursement of the relevant sums.
41. As Head of Accounts, the Second Claimant reported directly to diplomatic rank officers. He would answer questions from the Financial Secretary on all the accounts. To do this, he would access all the invoices and supporting documents which had been saved onto the First Respondent's IT systems.
42. The Second Claimant had access to financial documents relating to military spending, for example regarding ammunition, military training and military repairs.

Invoices for these would be supported by attached details of the thing which had been purchased.

43. The Second Claimant would look at these documents to answer any queries on the accounts. The Second Claimant would thereby have knowledge of, for example, what military training was being undertaken and when. He would also have knowledge of the type of weaponry, military vehicles and aircraft held by Kuwait and expenditure on repairs and maintenance. This would include details of who had sold such equipment to the MAO, when it was sold and when it had been delivered.
44. I accepted the Respondents' evidence that such information was highly confidential and sensitive and could seriously prejudice the interests of the Kuwaiti State if it came into the wrong hands. For example, I accepted Lieutenant General Borjos Mohammad's evidence that this sensitive information could give insight into the strengths and weaknesses of Kuwait's military forces.
45. Large weapons agreements, however, were agreed directly between the Kuwaiti and UK governments and the Second Claimant did not have sight of these.
46. The Second Claimant also had access to invoices for the payment of medical bills for Kuwaiti officials, and would answer questions on these and the supporting documents.
47. The Second Claimant translated all the information on the SAGE system from English to Arabic and made corrections to it, if information had been entered incorrectly.
48. While it was not part of his role as Head of Accounts, the Second Claimant was involved in making the travel, VIP reception, and accommodation arrangements for the Kuwaiti Minister of Defence, pp298-299. For example, on 25 April 2019, the Claimant emailed VIP services at Eurostar, from his Kuwait Military Office email, saying that the Kuwaiti Defence Minister would be arriving on an official visit and saying, "We therefore request the usual assist from your team on that day, and the help of the British Transport Police, as we are providing the delegation with transport and we are anticipating to park around 10 cars in the front of the station (like usual). I will be coming to see you on Monday to finalise the operation." P299
49. In at least the year 2020, the Claimant was tasked with completing the annual budget for the MAO. I accepted the evidence of Major General Al Rumaidhin, Assistant Military Attache for Financial Affairs from 31 July 2018 to 18 June 2019 and Lieutenant General Borjos Mohammad, Military Attache from 2019 to 2021, that preparing the annual accounts necessitated knowledge of the military equipment and armaments purchased, their cost and the countries and businesses from which they had been purchased. Given their roles at the Respondent, the Assistant Military Attache and Military Attache would be aware of the information required to produce the annual accounts.

Law - State Immunity

50. Foreign states enjoy a general immunity from the jurisdiction of the courts in the UK, pursuant to the State Immunity Act 1978. By SIA 1978 s 1(1): 'A state is

immune from the jurisdiction of the courts of the UK, except as provided in the following provisions of this Part of this Act'.

51. The Tribunal is required to give effect to state immunity even if the State does not appear in the proceedings, *s1(2) State Immunity Act 1978*.

52. Regarding employment claims, *s4 SIA* provides,

“4 Contracts of employment.

(1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual where the contract was made in the United Kingdom or the work is to be wholly or partly performed there. ...”

53. Regarding diplomats and those employed by diplomatic missions, *s16 SIA 1978* further provides,

“16 Excluded matters.

(1) This Part of this Act does not affect any immunity or privilege conferred by the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968; and—

(a) section 4 above does not apply to proceedings relating to a contract of employment between a State and an individual if the individual is or was employed under the contract as a diplomatic agent or consular officer;

(aa) section 4 above does not apply to proceedings relating to a contract of employment between a State and an individual if the individual is or was employed under the contract as a member of a diplomatic mission (other than a diplomatic agent) or as a member of a consular post (other than a consular officer) and either—

(i) the State entered into the contract in the exercise of sovereign authority; or

(ii) the State engaged in the conduct complained of in the exercise of sovereign authority;]

54. These provisions of *ss4 and 16 State Immunity Act 1978* are as amended by the *State Immunity Act 1978 (Remedial) Order 2023*, which came into force 23 February 2023.

55. The amendments were intended to give effect to the Supreme Court judgement in *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs; Secretary of State for Foreign and Commonwealth Affairs and Libya v Janah*, [2018] IRLR 123, [2017] ICR 1327. In that case, the Supreme Court decided that the doctrine of state immunity in international law applied only sovereign acts, not private acts, of the foreign state concerned.

56. As a result of the amendments to *s16 SIA*, employees of a foreign Embassy in the UK are generally no longer be barred from bringing any type of employment claim against their employing State, so long as the employee is not a diplomatic agent or

consular officer, or the employment was not entered into in the exercise of sovereign authority, or the conduct complained of was not an act of sovereign authority.

Law - Employment Entered into in the Exercise of Sovereign Authority

57. As stated, in *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs; Secretary of State for Commonwealth Affairs and Libya v Janah*, [2018] IRLR 123, [2017] ICR 1327, the Supreme Court decided that the doctrine of state immunity in international law applied only sovereign acts, not private acts, of the foreign state concerned. “The rule of customary international law is that a state is entitled to immunity only in respect of acts done in the exercise of sovereign authority” [37].

58. Lord Sumption explained that the ‘restrictive doctrine’ of state immunity, which applies, is that, unless a countervailing customary international law rule can be established, a State is entitled to immunity before another State’s courts only in respect of conduct of a sovereign character, but not in respect of acts of a private law nature, as described by Lord Sumption at [8] [10], [17] *Benkharbouche*.

59. Whether the employment in a Mission is an act of sovereign authority will depend on the nature of the relationship between the parties, and this in turn will depend on the functions that the employee was employed to perform [54].

60. At [55] Lord Sumption distinguished between the three categories of embassy staff as follows: “The Vienna Convention on Diplomatic Relations divides the staff of a diplomatic mission into three broad categories: (i) diplomatic agents, ie the head of mission and the diplomatic staff; (ii) administrative and technical staff; and (iii) staff in the domestic service of the mission. Diplomatic agents participate in the functions of a diplomatic mission defined in article 3, principally representing the sending state, protecting the interests of the sending state and its nationals, negotiating with the government of the receiving state, ascertaining and reporting on developments in the receiving state and promoting friendly relations with the receiving state. These functions are inherently governmental. They are exercises of sovereign authority. Every aspect of the employment of a diplomatic agent is therefore likely to be an exercise of sovereign authority. The role of technical and administrative staff is by comparison essentially ancillary and supportive. It may well be that the employment of some of them might also be exercises of sovereign authority if their functions are sufficiently close to the governmental functions of the mission. Cypher clerks might arguably be an example. Certain confidential secretarial staff might be another: see *Governor of Pitcairn and Associated Islands v Sutton* (1994) 104 ILR 508 (New Zealand Court of Appeal). However, I find it difficult to conceive of cases where the employment of purely domestic staff of a diplomatic mission could be anything other than an act *jure gestionis*. The employment of such staff is not inherently governmental. It is an act of a private law character such as anyone with the necessary resources might do.”

Vienna Convention on Diplomatic Relations

61. Article 3 VCDR sets out the essential functions of a diplomatic mission. The performance of any of the Article 3 functions constitutes acts done in the exercise of sovereign authority.

“Article 3

1. The functions of a diplomatic mission consist, inter alia, in:

- (a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.”

UK Appeal Decisions Following Benkharbouche

62. *The Royal Embassy of Saudi Arabia (Cultural Bureau) v Costantine* [2025] UKSC 9, addressed the new wording of *section 16(1)(aa) SIA* and its application to technical and administrative staff.

63. Lord Lloyd-Jones, delivering the Judgment of the Court (with whom Lord Briggs, Lord Hamblen, Lord Leggatt and Lord Burnett agreed), approved paragraphs [54] and [55] of *Benkharbouche*, saying that the approach to immunity set out in them, “accurately reflects the position in international law” ([62] of *Costantine*).

64. At [61] of *Costantine*, Lord Lloyd-Jones also specifically disapproved an observation of Browne-Wilkinson J, delivering the judgment of the EAT in *Sengupta v Republic of India* [1983] ICR 221, EAT, (at p 228 F-G), upon which the Appellant Embassy in the Supreme Court had relied in argument, that,

“... when one looks to see what is involved in the performance of the applicant’s contract, it is clear that the performance of the contract is part of the discharge by the foreign state of its sovereign functions in which the applicant himself, at however lowly a level, is under the terms of his contract of employment necessarily engaged. One of the classic forms of sovereign acts by a foreign state is the representation of that state in a receiving state.”

65. Lord Lloyd-Jones observed that the decision in *Sengupta* had been expressly disapproved in *Benkharbouche*, on the ground that it took an over-expansive view of the range of acts relating to an embassy employee which could be described as an exercise of sovereign authority. Lord Lloyd-Jones noted that Lord Sumption observed (at para 73) that *Sengupta* was decided at an early stage of the development of the law and that the test applied was far too wide.

66. At [62] *Costantine*, Lord Lloyd-Jones referred to the extensive citation of foreign authority in *Benkharbouche* at para [56] and said,

“I would draw attention in particular to a line of authority in the European Court of Human Rights, all cases concerning the administrative and technical staff of diplomatic missions and cited with approval in *Benkharbouche*, where the test applied by the Strasbourg court was whether the functions for which the applicant

was employed called for a personal involvement in the diplomatic or political operations of the mission, or only in such activities as might be carried on by private persons.”

67. In *Kingdom of Spain v Lorenzo* [2024] EWCA Civ 1602 at [29], Bean LJ said, “We were not shown any authority demonstrating that, as a matter of customary international law or UK domestic law, anyone employed at an embassy who has any access to confidential documents or conversations must be treated as barred by state immunity from bringing a tribunal claim. Cleaners, at least in the era of hard copy documents, may have the opportunity to read confidential documents if they choose to do so. Most employees who work for senior diplomats may know about their confidential activities or overhear their confidential conversations. This does not elevate the employee to become the equivalent of a diplomatic agent.”

68. In *The Royal Embassy of Saudi Arabia (Cultural Bureau) v Alhayali* [2025] EWCA Civ 1162, the Court of Appeal restated the law concerning state immunity of embassy employees as set out in *Benkharbouche* and noted that the Supreme Court, in *Costantine v Royal Embassy of Saudi Arabia (Cultural Bureau)* [2025] 1 WLR 1207, had also made it clear that they were applying the principles in *Benkharbouche* and were not departing from them.

69. In *Alhayali*, the Court of Appeal said that the critical test for whether state immunity applied to the employment of a member of an Embassy’s technical and administrative staff was whether their functions were ‘sufficiently close to the exercise of sovereign authority, as opposed to being merely ancillary and supportive.’ At [24] of the judgment, LJ Bean, giving the judgment of the Court, also observed that, ‘The examples given by Lord Sumption of employees in the category of technical and administrative roles which are sufficiently close to the exercise of sovereign authority for claims by them to attract immunity are very limited.’

70. At [23] *Alhayali*, LJ Bean also specifically disapproved the argument, on behalf of the Embassy, that ‘once it is shown that the department or section of the Embassy in which the Claimant worked was exercising any of the functions listed in Article 3.1 of the Vienna Convention, that is sufficient to establish the defence of sovereign immunity.’

Other Relevant Cases

71. In *Holland v Lampen-Wolfe* [2000] 1 WLR 1573 (HL), the House of Lords held that the provision of an educational programme to US personnel on a military base was an exercise of sovereign authority [1577E-F] [AB/64].

Acts of Sovereign Authority

72. In *Benkharbouche* Lord Sumption said, at paragraph [58],

“58. ... a state’s immunity under the restrictive doctrine may extend to some aspects of its treatment of its employees or potential employees which engage the state’s sovereign interests, even if the contract of employment itself was not entered into in the exercise of sovereign authority. Examples include claims arising out of an employee’s dismissal for reasons of state security. They may also include

claims arising out of a state's recruitment policy for civil servants or diplomatic or military employees, or claims for specific reinstatement after a dismissal, which in the nature of things impinge on the state's recruitment policy. ...".

73. In *The Royal Embassy of Saudi Arabia (Cultural Bureau) v Costantine* [2025] UKSC :Lord Lloyd-Jones said, at [76]

"76. The appellant submits that the respondent's complaints concern and would require investigation into sovereign decisions of the mission as to what work would be done, when and by whom. In particular, it is said that it would require investigation into why the respondent was not given any further work from May 2017 following the appointment of a new cultural attaché, the decision to transfer her back to the Administrative Affairs Department in the last week of September 2017 and the reasons for the decision to terminate her employment. These further submissions lack any substance. First, the respondent seeks compensation and a declaration. She does not seek reinstatement. The appellant's right to decide who is employed at the mission is not restricted in any way by the claim. Secondly, the appellant has produced no evidence to support the suggestion that the treatment of the respondent engaged the State's sovereign interests. There has been no accusation of wrongdoing on the part of the respondent. There has been no disciplinary investigation against her. There has been no suggestion that her dismissal was connected in any way with sovereign matters such as State security. If the appellant were entitled to immunity in these circumstances, there would be such an entitlement in every case of dismissal of a member of the administrative staff of a mission."

Discussion and Decision - State Immunity

74. The Respondent contended that state immunity barred the Claimants' claims because the functions which they were employed to perform were sufficiently close to the governmental functions of the mission that their employment was an inherently sovereign or governmental act.

75. The Military Attache Office of the Embassy of the State of Kuwait, in which the Claimants were engaged:

- 75.1. Represents the state of Kuwait on military matters in the UK, by holding meetings between military representatives of the State of Kuwait and the UK Ministry of Defence, in which matters of mutual military interest are discussed and sensitive military information is shared.
- 75.2. Protects the interests of the State of Kuwait and its nationals in the UK in military matters by: Sharing sensitive military information with the UK government; Arranging military training; and Providing travel and security arrangements for dignitaries who visit the UK in connection with military matters;
- 75.3. Negotiates with the UK government on matters of mutual military interest, in relation to military training and in the purchase of military equipment and parts, and, in doing so, liaises with the Kuwait Air Force operation centre and UK Royal Air Force air bases to arrange ground equipment support for Kuwaiti military aircrafts and accommodation and transportation for the crew;

75.4. Ascertains, by lawful means, conditions and developments in the UK in connection with military matters and reports these to the Kuwait government. The Kuwait and UK governments conduct regular steering group meetings, which are facilitated through the MAO.

76. I decided that the Military Attache Office functions therefore involved at least the following governmental functions under Article 3 VCDR:

- “(a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

Decision - Employment as an Act of Sovereign Authority - The First Claimant

77. The correct test under international law for deciding whether the First Claimant's employment at the Cultural Attache Office was an act of sovereign authority was set out by Lord Sumption in [54] and [55] of *Benkharbouche*. The issue depends on the nature of the relationship between the parties, and this in turn will depend on the functions that the employee was employed to perform. Regarding administrative and technical staff, in particular,

“The role of technical and administrative staff is by comparison essentially ancillary and supportive. It may well be that the employment of some of them might also be exercises of sovereign authority if their functions are sufficiently close to the governmental functions of the mission. Cypher clerks might arguably be an example. Certain confidential secretarial staff might be another”.

78. This was reiterated in *Royal Embassy of Saudi Arabia (Cultural Bureau) v Costantine* [2025] UKSC 9. At [62] *Costantine*, Lord Lloyd-Jones said, “I would draw attention in particular to a line of authority in the European Court of Human Rights, all cases concerning the administrative and technical staff of diplomatic missions and cited with approval in *Benkharbouche*, where the test applied by the Strasbourg court was whether the functions for which the applicant was employed called for a personal involvement in the diplomatic or political operations of the mission, or only in such activities as might be carried on by private persons.”

79. For the purposes of this claim, the First Claimant was employed, pursuant to her contract of employment as, PA secretary / Public Relation. She was in charge of the PR/Administration Department.

80. I decided, on the facts, however, that she undertook some tasks and functions, as permitted/instructed by Maj Gen Al Baz, which were sufficiently close to the governmental functions of the Military Attache Office so that her employment was an exercise of sovereign authority, applying [54] and [55] of *Benkharbouche*.

81. Those were:

- 81.1. Receiving the diplomatic bag each week, distributing the contents after Maj Gen Al Baz had initialled them and keeping copies of the originals;

collecting letters to be sent from the MAO through the diplomatic bag, sorting the mail and placing it inside envelopes, checking and sealing the contents of the bag. I decided that these functions were extremely close to the governmental functions of the mission because the diplomatic bag itself and its contents are protected under international law, including Art 27 VCDR. Under Art 27(4), the diplomatic bag, “may contain only diplomatic documents or articles intended for official use.”

By definition, therefore the documents which the Claimant personally received, distributed, collected and dispatched were governmental- level communications.

In the case of the MAO, they included documents which intimately concerned the diplomatic functions of the MAO, protecting the interests of the State of Kuwait and its nationals in the UK in military matters, in that they contained highly sensitive details of purchases and repairs required to military equipment, arrangements for military training, information relating to interactions between the Kuwait and UK Ministries of Defence and information concerning state visits by high-ranking military officials visiting the UK.

I also decided that the Claimant’s handling of these documents was not simply ancillary and supportive of the governmental functions of the mission, because I accepted the Respondent’s evidence that the Claimant read reports of governmental-level joint UK-Kuwait steering groups, before she put them in the diplomatic bag.

- 81.2. At Major General Al Baz’s request, listening to recordings of meetings held in his office, in particular between Maj Gen Al Baz, Head of the MAO, and Major General Al Rumaidhin, Assistant Military Attache for Financial Affairs. I decided that that was a governmental-level function, in that discussions between diplomats at the Military Attache office are governmental -level interactions.

It was not suggested that the First Claimant was acting as a secretary in this regard – she did not undertake general secretarial work. It appeared that she was being invited to partake in the governmental-level exchange between the two men.

She was therefore personally involved in the political operations of the mission, not just in the type of work carried out by private persons.

- 81.3. Booking VIP Meet and Greet for Kuwaiti Government Officials and Attending Airports to Ensure the Arrangements Were in Place. This was a function which was normally carried out by the First Claimant. From my findings of fact regarding the Second Claimant, the instructions which the First Claimant gave would therefore include, “We therefore request the usual assist from your team on that day, and the help of the British Transport Police, as we are providing the delegation with transport and we are anticipating to park around 10 cars in the front of the station (like usual). I will be coming to see you on Monday to finalise the operation.” P299.

The fact that the Second Respondent used the words “like usual”, indicated that this request was a standard request made by the MAO when organising reception of Kuwaiti officials.

I decided that making arrangements for the reception of foreign officials, including requesting the involvement of a UK Police Force, was a governmental function. It involved (a) Representing the sending State in the receiving State; and (b) Protecting in the receiving State the interests of the sending State and of its nationals, under Art 3 VCDR. The MAO, as a State

entity, was asking to engage UK Crown servants to carry out public duties. This was an interaction between the public functions of the MAO and the public functions of the UK state. As the First Claimant normally undertook such tasks, her role involved carrying out governmental functions of the MAO. She was personally (a) Representing the sending State in the receiving State; and (b) Protecting in the receiving State the interests of the sending State and of its nationals, by making such travel and security arrangements for dignitaries visiting the UK, under Art 3 VCDR.

82. On the facts, I decided that the First Claimant undertook these unusual functions, which were not typical of a private employment administration / PR role. Her employment in this regard was an exercise of sovereign authority, as these functions were sufficiently close to the governmental functions of the Mission.

83. For completeness, I decided that her other tasks, such as booking hotels, transport, cars, and facilitating school enrollment, medical appointments, rental agreements for diplomats and their families, were acts of a private nature, such as would be carried out by a PA in a private company (albeit a PA to very senior members of a company). The fact that some of those activities involved knowledge of some confidential information would not elevate her to the equivalent of a diplomatic agent, *Kingdom of Spain v Lorenzo* [2024] EWCA Civ 1602 at [29], per Bean LJ. These were practical, administrative and clerical tasks, which were ancillary to the governmental functions of the MAO.

84. However, seeing that I have decided that the First Claimant's employment was otherwise an act of sovereign authority, her claim is barred by *s1 State Immunity Act 1978*. That is because the *s4 SIA* exception to State Immunity for employment law claims is disapplied by *s16 (1) (aa) SIA* –“section 4 above does not apply to proceedings relating to a contract of employment between a State and an individual if the individual is or was employed under the contract as a member of a diplomatic mission (other than a diplomatic agent) or as a member of a consular post (other than a consular officer) and ... (i) the State entered into the contract in the exercise of sovereign authority.”

Decision - Employment as an act of Sovereign Authority - The Second Claimant

85. The Second Claimant was employed as an accountant and was also Head of Accounts.

86. His role as Head of Accounts involved reporting directly to diplomatic rank officers, answering questions on the whole range of invoices and supporting documents which had been saved onto the First Respondent's IT systems by all the accountants.

87. I decided that the Second Claimant's functions were so close to the governmental functions of the MAO that his employment was an act of sovereign authority. I did so because:

87.1. The Second Claimant's job involved looking at, and answering questions on, financial documents relating to military spending, for example regarding ammunition, military training and military repairs. Invoices for these

would be supported by attached details of the thing which had been purchased.

The Second Claimant would look at, both, the invoices and the attached documents, in order to answer any queries on the accounts.

The Second Claimant would thereby have knowledge of, for example, what military training was being undertaken and when. He would also have knowledge of the type of weaponry, military vehicles and aircraft held by Kuwait and expenditure on repairs and maintenance. This would include details of who had sold such equipment to the MAO, when it was sold and when it had been delivered. Such information was highly confidential and sensitive and could seriously prejudice the interests of the Kuwaiti State if it came into the wrong hands. This sensitive information could give insight into the strengths and weaknesses of Kuwait's military forces.

This was not a case where the Second Claimant incidentally had access to confidential information. His job involved examining, interrogating and reporting on highly confidential and sensitive military information.

His role was, either, extremely close to the governmental functions of the MAO, or actually involved the governmental functions of the Mission - in that he had overall responsibility in the Accounts department for protecting the interests of the State of Kuwait in the UK in military matters, by providing financial oversight of its activities.

87.2. The Second Claimant was involved in booking VIP Meet and Greet for Kuwaiti Government Officials

As I have set out with regard to the First Claimant, the Second Claimant sent instructions to Eurostar on 25 April 2019, from his Kuwait Military Office email, saying that the Kuwaiti Defence Minister would be arriving on an official visit and saying, "We therefore request the usual assist from your team on that day, and the help of the British Transport Police, as we are providing the delegation with transport and we are anticipating to park around 10 cars in the front of the station (like usual). I will be coming to see you on Monday to finalise the operation." P299.

As I have explained above, I decided that making arrangements for the reception of foreign officials, including requesting the involvement of a UK Police Force, was an interaction between the public functions of the MAO and the public functions of the UK state. As indicated by his statement that he would, "be coming to see you ... to finalise the operation", the Second Respondent was personally carrying out the governmental functions of the Mission. The relevant governmental functions under Art 3 VCDR.were (a) Representing the sending State in the receiving State; and (b) Protecting in the receiving State the interests of the sending State and of its nationals.

88. The Second Claimant's employment was an act of sovereign authority, so his claim is barred by s1 State Immunity Act 1978.

Decision - Act of Sovereign Authority

89. In *Benkharbouche*, Lord Sumption indicated that state immunity could attach to certain acts of a state, even in private law employment - paras [57] & [58] *Benkharbouche*.

90. Lord Sumption gave examples of acts of sovereign authority in private law employment, such as claims arising out of an employee's dismissal for reasons of state security. Claims arising out of a state's recruitment policy for civil servants or diplomatic or military employees, or claims for specific reinstatement after a dismissal, which impinge on the state's recruitment policy, can also attract state immunity. He also gave an example of the introduction of a no strike policy at a military base.

91. The Respondents contended that the Claimants' dismissal was an act of sovereign authority because the former Kuwaiti Prime Minister and Defence Minister had been convicted of fraud relevant to their time at the MOA, which had led to the restructuring of the London Mission and the Claimants' dismissal.

92. The Respondents also contended that the Claimants' discrimination claims include complaints about their suspension in relation to the investigation into the former Kuwaiti Prime Minister. They contended that looking into such matters would be impermissible under international law as it would involve unwarranted inquiry into sovereign acts.

93. As the Respondents had yet to present their substantive defence, there was little material upon which I could base my decision.

94. I agreed with the Respondents that it would not be permissible for the Tribunal to examine a foreign state's investigation into fraud by its own diplomatic agents and ministers. Such an investigation would be a sovereign act and would be a matter covered state immunity.

95. In unfair dismissal complaints arising out of alleged redundancy/restructuring, however, the relevant law on redundancies does not permit the Tribunal to look at the reasons behind the decision to make redundancies, or to restructure. The relevant law permits the Tribunal to decide whether there was a restructure / redundancy situation at all; and whether the dismissal process was conducted fairly. Those latter issues would be focused on the Claimant's dismissals, and not on the background fraud investigation. On that basis, I did not consider that state immunity would attach to the allegations of unfair dismissal, even if there was a state investigation into fraud in the background, into which the Tribunal could not look.

96. However, I agreed with the Respondents that the Claimants' race discrimination and harassment allegations regarding their suspension and investigation, arising out of the investigation into the former Kuwaiti Prime Minister, were barred by state immunity. This was because the discrimination claims would involve examining the reasons for the Claimants' suspension and investigation and therefore directly relate to the fraud investigation and acts of sovereign authority. Those claims could not proceed, in any event.

Personal Injury – the Second Claimant

97. The Claimant brings a personal Injury claim arising out of his race discrimination and harassment complaints.

Personal Injury Law

98. By s5 State Immunity Act 1978, “A State is not immune as respects proceedings in respect of— (a) death or personal injury; or (b) damage to or loss of tangible property, caused by an act or omission in the United Kingdom.”

99. In *Ogbonna v. Republic of Nigeria* [2012] ICR 32. In that case, Underhill P held that claim for compensation for psychiatric illness caused by unlawful discrimination is a claim for “personal injury” within the meaning of s5 *State Immunity Act 1978*, so an employment tribunal accordingly has jurisdiction to entertain such a claim by an employee of a state, even if he or she is a member of mission within the meaning of s16(1)(a) SIA. Underhill P held that, while personal injury was not a necessary or even typical part of a discrimination claim, when personal injury occurred in such a claim, the SIA did not bar a claim for damages for it:

“[12] The first point, as helpfully elucidated by Mr Pipi in his skeleton argument and oral submissions, is that the effect of sections 4 and 16 taken together is that a state enjoys absolute immunity in respect of “proceedings relating to a contract of employment” — which includes a claim of infringement of statutory rights: see section 4 (6) — in the case of employees who are members of a mission, and that section 5 has no application in such a case. I cannot accept this submission. Sections 4 and 5 are separate and freestanding exceptions to the general rule of state immunity provided by section 1 : that is so even though on the facts of a particular case, and specifically in a case of a claim for personal injury by an employee, both exceptions might be engaged. Section 16 (1) (a) expressly qualifies that exception as regards section 4 but it has no impact on section 5.”

100. In *Shehabi v Bahrain* [2024] EWCA Civ 1158, Males LJ held at [82]-[116] that psychiatric injury was “personal injury” within the meaning of s5 SIA 1978.

101. However, in *The Royal Embassy of Saudi Arabia (Cultural Bureau) v Alhayali* [2025] EWCA Civ 1162, Bean LJ said, obiter, at [33] that *Ogbonna* (EAT) was wrong on the issue of whether s16(1)(a) SIA applied state immunity in respect of all employment claims by members of diplomatic missions, including s5 SIA personal injury claims, for following reasons:

‘[33] ... *Shehabi* was not an employment case and tells us nothing about the interaction of ss 4 and 5. There is no authority at the level of this court deciding whether *Ogbonna* was correct on the first issue. Although it is not necessary to determine the point, I consider that on the first issue *Ogbonna* is wrong. It would be very peculiar if an employee of an embassy, perhaps a very senior diplomatic agent, could be precluded from bringing any employment claim by virtue of ss 4 and 16, including a claim for compensation for discrimination, with the exception that if the discrimination caused psychiatric injury that element of the claim could not be defeated by state immunity. That would drive a coach and horses through the careful scheme of exceptions created under ss 4 and 16.

[34] The exception created by s 5 is in my view linked to the cause of action, not the nature of the damage. If a chandelier at an embassy in London drops from the ceiling and causes injury to the person standing beneath it, there is no obvious rationale for conferring immunity on the state occupying the premises, whether the injured person is a diplomatic agent, a member of the technical and

administrative staff, a member of the domestic staff, or simply a visitor to the premises. That would apply whether the injury caused was physical, psychiatric or both. But a claim by an employee that her employer had discriminated against her and thereby caused her harm of various kinds including psychiatric injury falls squarely within the scheme of ss 4 and 16.'

The Second Respondent's Personal Injury Claim - Decision

102. I agreed with the Respondents that the judgment of Bean LJ in the Court of Appeal in *Al Hayali*, with whom the other judges agreed, has provided persuasive authority that, if an employment claim is subject to state immunity by virtue of ss4 and 16, the Claimant cannot rely on s5 as an alternative ground on which to exclude immunity on the basis that the claim includes damages for personal injury.

103. The Court of Appeal heard full argument on the s5 personal injury exception. It carefully considered and clearly disagreed with, and disapproved of, the EAT's decision in *Nigeria v Ogbonna*.

104. I considered that I should follow the reasoning of the Court of Appeal in *Al Hayali*. The Second Claimant's personal injury claim arises out of a cause of action which is barred by state immunity under *ss4 and 16 SIA*. It is not a freestanding personal injury claim. It would be contrary to the scheme of the SIA to resurrect the same cause of action because a different type of damage arises out of it.

105. The Second Respondent's personal injury claim is also barred by state immunity.

Diplomatic Immunity – the Facts

106. It was not in dispute that the 3 individuals were diplomats at the First Respondent at the time of the acts complained of in the Claimants' claims.

107. Each of the Second, Third and Fourth Respondents contend that they are immune from the civil jurisdiction of the courts and tribunals of the United Kingdom by virtue of Article 39(2) of the Vienna Convention on Diplomatic Relations 1961 ("VCDR"), as enacted into English law by section 2(1) of the Diplomatic Privileges Act 1964, so that the claims against them, personally, should be struck out.

108. The Claimants characterised their pleaded allegations against the Respondents as follows:

Against R2:

- a. Discriminatory conduct in removing or attempting to remove duties / responsibilities from the Claimants, and generally encouraging their departure from the office on the basis of their nationality, including by assigning them menial duties and disciplining them (C1 PoC paras 10, 11, 13, 15, 18, 29, 36, 38, 39 40, 41, 42,
- b. Disparaging comments about C1 and C2's nationality, such as referring to them as "the Lebanese" (C1 PoC para 12, 13, 15 17 and 18 and C2 PoC para 46);
- c. Abusing and shouting at C2 (C2 PoC para 31, 45);
- d. Ignoring C1 and C2 (C1 PoC para 10 and C2 PoC para 20);

- e. Requiring the C1 and C2 to attend the office during Covid-19 (C1 PoC para 40 and C2 PoC para 36);
- f. Not permitting C1 and C2 to take holiday or sickness leave (C1 PoC paras 52, 53, 54 and 55 and PoC para 48);
- g. Dismissing C1 on the basis of purported redundancy (C1 PoC para 58, 61 and 63);
- h. Withholding payments from C1 and C2 (C1 PoC paras 64, 65, 66 and 68);

Against R3

- a. Attempting to find evidence to dismiss C1 and C2 and/or encouraging their removal from the office (C1 PoC para 23 and C2 PoC para 22, 23, 25, 29, 30, 44);
- b. Accusing C2 of having access to all of the offices, tracking vehicles or accessing CCTV, on the basis of his Lebanese background (C2 PoC paras 26, 27 and 28);
- c. Derogatory comments about C1 and C2 on the basis of their nationality including that they were “aliens in this office” (C1 para 24 and p.208 para 23);
- d. Attempting to unlawfully deduct C1’s salary (C1 para 25).

Against R4

- a. Taking steps to remove C1 and C2’s duties or responsibilities from her (C1 para 32, 34 and 35, p.46 para 38, p.48 para 48 and 49 and C2 PoC para 30, 34, 35, 37, 39, 42);
- b. Suggesting to C1 that he and she could visit a restaurant where people eat in the dark with no clothes on (C1 para 33);
- c. Requiring the C1 and C2 to attend the office during Covid-19 (C1 PoC para 40 and C2 PoC para 36);
- d. Not permitting C1 and C2 to take holiday or sickness leave (C1 paras 52, 53, 54, 55 and PoC para 48);
- e. Making threatening comments about C1 and C2 (C1 para 57);
- f. Dismissing C1 and C2 on the basis of purported redundancy (C1 PoC para 58 and 61 and C2 PoC para 52);
- g. Refusing to provide C2 with a reference (C2 PoC para 53);
- h. Withholding payments from C1 and C2 (C1 paras 64, 65, 66 and p.52 para 68 and C2 para 54).

109. The Respondents have not presented any substantive response. They have not set out any pleaded factual contentions regarding the Respondents’ dealings with the Claimants. It is not known whether the First Respondent will plead a statutory defence to the Second Claimant’s surviving claims.

110. However, it is not disputed that the Respondents have all left the Mission and returned to Kuwait and that none of them retain diplomatic status.

Diplomatic Immunity – Law

111. In *Basfar v Wong* [2023] AC 33 (SC) Lord Briggs and Lord Leggatt at [11]-[12] explained the legal framework of diplomatic immunity as follows:

- (1) “The principle of legal immunity for diplomatic agents is a fundamental principle of national and international law, rightly described in a recent case as

"one of the most important tenets of civilised and peaceable relations between nation states": *A Local Authority v AG* [2020] Fam 311, para 38 (Mostyn J).

(2) At the international level the relevant law is contained in articles 1, 22-24, 27-40 and 45 of the VCDR, to which 193 states are parties.

(3) Section 2(1) of the DPA 1964 incorporates these provisions into UK domestic law.

(4) As recorded in the fourth recital to the VCDR, the purpose of diplomatic privileges and immunities "is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states". To this end:

- (a) the premises of the mission are inviolable (article 22);
- (b) all correspondence relating to the mission and its functions is inviolable and the diplomatic bag must not be opened or detained (article 27);
- (c) the person of a diplomatic agent is inviolable and he shall not be liable to any form of arrest or detention (article 29);
- (d) the premises of a diplomatic agent are inviolable, as are his papers, correspondence and (save in cases where he is not immune from civil jurisdiction) his property (article 30);
- (e) a diplomatic agent enjoys immunity from the criminal jurisdiction and (with limited exceptions) the civil and administrative jurisdiction of the receiving state (article 31(1));
- (f) a diplomatic agent is not obliged to give evidence as a witness (article 31(2));
- (g) diplomatic immunity may be waived only by the sending state and not by the individual (article 32);
- (h) with limited exceptions, diplomatic agents are exempt from all dues and taxes in the receiving state (article 34);
- (i) the privileges and immunities enjoyed by a diplomatic agent extend to family members who form part of his household (article 37); and
- (j) although such privileges and immunities normally cease when the functions of a diplomatic agent have come to an end, immunity continues to subsist with respect to acts performed in the exercise of his functions as a member of the mission (article 39(2))."

112. Article 39(2) VCDR provides:

"When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist."

113. As to the scope of "official functions", in *Basfar* (SC) Lord Briggs and Lord Leggatt stated at [14]:

(1) “In *Reyes* (SC) this court unanimously held that the employment and alleged acts of maltreatment of the claimant by the respondent diplomat were not performed “in the exercise of his functions as a member of the mission” within the meaning of article 39(2).

(2) As discussed by Lord Sumption JSC (with whom the rest of the court agreed on this point), a diplomatic agent’s “functions as a member of the mission” in article 39(2) are the same as “his official functions” in article 31(1)(c) and are, in each case, those functions which the diplomatic agent performs for or on behalf of the sending state: see [2019] AC 735, para 20.

(3) The acts alleged in *Reyes* (SC) were plainly not done for or on behalf of Saudi Arabia (see para 48); the same is equally true here.”

114. In *Reyes v Al-Malki and another* [2017] UKSC 61, the Supreme Court considered Article 39(2) in circumstances where the claimant alleged mistreatment, including trafficking, during her employment as a domestic servant at a diplomat’s residence.

115. Lord Sumption explained that what is done by an agent of a diplomatic mission in the course of his official functions is done on behalf of the state [17]:

“By comparison, the acts which an agent of a diplomatic mission does in a personal or non-official capacity are not acts of the state which employs him. They are acts in respect of which any immunity conferred on him can be justified only on the practical ground that his exposure to civil or criminal proceedings in the receiving state, irrespective of the justice of the underlying allegation, is liable to impede the functions of the mission to which he is attached.”

116. He explained at [20] :

“Accordingly, the first question is what are a diplomatic agent’s official functions. The starting point is the functions of the mission to which he is attached. They are defined in article 3 of the Convention, and comprise all the classic representational and reporting functions of a diplomatic mission. It is, however, clear that the official functions of an individual diplomatic agent are not necessarily limited to participating in the activities defined by article 3. They must in the nature of things extend to a wide variety of incidental functions which are necessary for the performance of the general functions of the mission. But whether incidental or direct, a diplomatic agent’s official functions are those which he performs for or on behalf of the sending state. The test is whether the relevant activity was part of those functions. That is the basis on which the courts in both England and the United States have approached the residual immunity in article 39(2)....”.

117. Both *Reyes* (SC) and *Basfar* (SC) involved the employment of a trafficked domestic workers in the private household of the diplomat in circumstances of modern slavery.

Decision – the Individual Respondents have Diplomatic Immunity

118. As the individual Respondents have left the Mission and returned to Kuwait, in order to have diplomatic immunity from the Claimant's claims, their acts, of which the Claimants complain, must attract the residual immunity in Article 39(2) VCDR.

119. It is necessary to look at the nature of the acts performed by each of the Respondents in order to assess whether they were undertaken "in the exercise of his functions as a member of the mission".

120. The Claimants contended that the Respondents have failed to set out what the individual official functions of each of R2, R3 and R4 were, so it is difficult to conduct the exercise of assessing whether or not their acts fell within their official functions. The Claimants contended that, in the absence of such information, the Tribunal is entitled to infer that it does not form part of the functions of the mission to subject workers in the Embassy Office to discrimination and harassment on the basis of their race or sex.

121. They also contended that disparaging remarks about the Claimants and their nationality were not part of the functions of the mission within the United Kingdom. They contended that an alleged comment made by R4 to C1, about them attending a restaurant naked, referred to activities outside of the office and crossed the boundary into personal matters.

122. However, I decided that all the acts alleged against the individual Respondents were acts performed by them in the exercise of their functions as a member of the mission, so that immunity continues to subsist against the Claimants' claims.

123. All the acts took place during - and only in - the context of the Claimant's employment at the Military Attache Office, in which the Respondents were serving diplomats at the relevant times.

124. There was no other context in which the alleged acts are said to have occurred. The Claimants were not employed personally by the Respondents as domestic servants in their households. The Claimants did not happen to encounter the Respondents outside the workplace, or in other circumstances unrelated to the Respondents' work as diplomats.

125. I noted Lord Sumption's statement that, "... the official functions of an individual diplomatic agent are not necessarily limited to participating in the activities defined by article 3. They must in the nature of things extend to a wide variety of incidental functions which are necessary for the performance of the general functions of the mission. But whether incidental or direct, a diplomatic agent's official functions are those which he performs for or on behalf of the sending state. The test is whether the relevant activity was part of those functions.

126. On the facts of all the acts alleged, the Respondents were talking to the Claimants, giving them instructions relevant to their work, allocating duties to them and making decisions in respect of their work. The Claimants' own employment was, at the very least, for the purpose of the performance of the general functions of the Embassy. When the Respondents talked to them at work, gave them instructions, or made decisions on their work, their acts were therefore in the course of their own functions, which were necessary for the performance of the general functions of the MAO.

127. The Respondents were acting in their roles as diplomats, on behalf of the MAO, in doing so, for or on behalf of the sending state. They were not acting for themselves as private employers, or in the course of some unrelated commercial activity. All the acts complained of were modes of exercising of the Respondents' functions as members of the employing mission.

128. I did not accept that there was any rule of international law which indicated that a discriminatory way of exercising functions as a member of a mission negated the exercise of the function, or the operation of Art 39(2).

129. The Respondents therefore retain the residual immunity in Art 39(2) against civil claims in respect of the alleged unlawful acts.

130. The claims against the individual Respondents are struck out.

All the Claims are Struck Out

131. All the Claimants' claims are barred by state immunity and are struck out.

Dated: 8 October 2025



Employment Judge Brown

SENT TO THE PARTIES ON

29 October 2025

.....
M PARRIS

.....
FOR THE TRIBUNAL OFFICE