EMPLOYMENT TRIBUNALS

Claimant: Mrs F Aftab

Respondent: The Christie NHS Foundation Trust

Heard at: Manchester **On:** 12-19 March 2018
4 July 2018
5 July 2018
(in Chambers)

Before: Employment Judge Slater
Mr D Wilson
Mr S Stott

REPRESENTATION:

Claimant: Ms S Wilson, friend
Respondent: Ms A Smith, counsel

JUDGMENT

The judgment of the Tribunal is:

1. The complaint of constructive unfair dismissal is not well-founded.

2. The complaints of harassment related to race or religion and direct discrimination because of religion and because of race are not well-founded.

3. The remedy hearing provisionally arranged for 20 September 2018 is cancelled.

REASONS

The Issues

1. The issues to be determined were set out in the notes of a preliminary hearing held on 12 June 2017. The parties agreed that the issues were still as set out in that

preliminary hearing. These issues are set out in the Annex to these Reasons. The claimant subsequently provided further details of some of the complaints of discrimination in further particulars provided on 21 June 2017. In the conclusions section of these reasons, we set out the complaints as clarified by these further particulars, where applicable.

2. The claimant brings complaints of harassment related to race or religion, direct discrimination because of religious belief, direct race discrimination, and constructive unfair dismissal.

The Facts

3. The claimant is a Muslim and identifies herself as Asian for the purposes of her complaints of race discrimination.

4. The claimant began working for the respondent in March 2009 as a Clinic Prep Clerk for the Clinical Oncology Department. Danielle Longworth started work in that department as Assistant Service Manager in September 2014. Danielle Longworth reported to Margaret Cox, who was Interim Service Manager at the time, becoming Directorate Improvements and Operations Manager for Clinical Oncology in November 2016.

5. In the winter of 2014, there was an incident when another employee, Megan, was upset by a comment which the claimant had made about her pregnancy. Megan complained to Danielle Longworth about this comment and about the claimant blocking her on Facebook. Megan also made a complaint about another employee blocking her on Facebook.

6. Margaret Cox and Danielle Longworth had a meeting with the claimant, Megan and the other employee to discuss the matter. The claimant alleges that at, this meeting, Danielle Longworth made a comment that Danielle Longworth would take further action against the claimant if any further complaints were made about her and that the claimant could lose her job. Danielle Longworth denies that she said that the claimant could lose her job. Danielle Longworth says that she told the claimant that blocking Megan on Facebook could be bullying.

7. It is for the claimant to satisfy us on a balance of probabilities that the facts occurred as alleged by her. We find, on a balance of probabilities, that Danielle Longworth did not tell the claimant that she would take further action against her if further complaints were made and that the claimant could lose her job. We note that the claimant did not mention this allegation in the investigatory meeting in July 2016 when she was raising other complaints about Danielle Longworth. We find that the claimant could reasonably have understood from Danielle Longworth saying that blocking Megan on Facebook could be bullying, that disciplinary action could be taken against her if this happened again, but we find that Danielle Longworth did not expressly say this to the claimant. No disciplinary action was taken and no grievance brought by any of the people involved in this incident.

8. On 10 November 2014 the claimant went on sick leave in relation to a personal matter.

9. The respondent has a management of attendance policy. The claimant accepts that she was aware of this policy and of her responsibilities under the policy at relevant times. Relevant parts of this policy for the purposes of this case including the following.

10. There is a notification procedure when an employee is sick. Absence is to be notified personally by the employee, where possible, to the manager or nominated representative as soon as possible prior to the commencement of the shift or period of duty. For the first seven calendar days of absence the employee is to self certify by phoning their manager/nominated representative. For longer absences, medical certificates and fit notes are to be sent to the line manager or nominated representative in a timely manner.

11. There is a return to work interview after every episode of absence. At the return to work interview, employees should be reminded of the trigger levels and informally warned of the next applicable stage of the management of attendance policy. If an employee has triggered a stage of the management of attendance policy, they should be informed at the relevant return to work meeting and advised of any action to be taken. The policy sets out trigger levels set by the Trust in order to assist in the management of absence and to ensure consistent application of the policy. The policy states:

> "In order to treat employees in a fair manner, for the purpose of monitoring triggers, all episodes of sickness absence will be considered. Therefore, when an employee returns from long-term absence, they will automatically trigger the appropriate stage management of attendance review."

12. There are three stages in the management of attendance. Stage three may result in dismissal. In the section dealing with exceptions, the following is included:

> "Similarly, when dealing with sensitive situations and employees who have suffered an injury or illness as a result of their work, who have a disability or are due to have planned surgery due to genuine medical need, consideration should be given to the appropriateness of moving an employee through stages of a policy. It is important to note that such situations are not automatically excluded. Again, advice should be sought from Human Resources when making such decisions."

13. This is consistent with the evidence of James Stone, HR Business Partner, to the Tribunal that there is very limited room for discretion as to whether the appropriate stage management of attendance hearing should be held once an employee has reached the appropriate trigger.

14. On 11 January 2015, the claimant returned to work after her period of sickness absence. She was given a warning that she was on stage one and that further absence could trigger stage two. The claimant did not appeal this warning under the management of attendance policy (and, indeed, did not appeal any other warning given under the policy). The claimant gave evidence that she was not concerned about having triggered stage one.

15. On 6 March 2015, the claimant sent an email enquiry to Danielle Longworth about the possibility of obtaining additional hours.

16. On 13 March 2015 the claimant asked Danielle Longworth if she could leave at 1 p.m. to take her son to a hospital appointment that day. Danielle Longworth agreed to this request.

17. On 20 March 2015, the claimant sent an email to Danielle Longworth, again enquiring the possibility of additional hours. She wrote, "I'm really desperate to increase my hours". Danielle Longworth replied the same day saying that 15 hours had been approved and she would send out an expression of interest to the department the following week. The claimant replied that she would be applying for this. She asked whether Danielle Longworth have any other hours available for her if she was not successful in this application.

18. On 30 March 2015, the claimant sent a further email enquiry about when the hours would be advertised. The same day, Danielle Longworth sent out an email to people in the department about an expression of interest in the 15 hours. The claimant expressed interest and was duly appointed after interview. The claimant was given a contract for an additional 13.5 hours. It appears that, in error, Danielle Longworth had invited expressions of interest for a 15 hour appointment whereas only 13.5 hours had been approved.

19. The claimant came to see Danielle Longworth on 8 May 2015 to query the difference between the hours in the contract and what she had been expecting. The claimant said she needed 30 hours in the contract so that her child tax credits would not be affected. Danielle Longworth apologised and said she would make up 1½ hours from bank. Danielle Longworth made a comment, when seeking to reassure the claimant that she would not suffer financially, along the lines of telling her not to worry because she knew she needed the extra hours to clothe and feed her children. The claimant went out of the office but returned very upset, saying she was offended by the comment Danielle Longworth had made about her children. We find that, in making the comment she did, Danielle Longworth was reflecting back a remark which had been previously made to her by the claimant. We rely on the note which Danielle Longworth made shortly after the relevant incident on the advice of HR as being the most reliable source of information as to what was said on that day. In that note, Danielle Longworth referred to what appears to have been a conversation in March when the claimant phoned her asking when the hours would be available, mentioning that she was desperate for the hours as "kids were growing up and that they need clothes and want stuff". Since that conversation appears to have taken place some weeks before this conversation on 8 May 2015, it is possible that the claimant had forgotten about it, which would make explicable the offence she took at what may have appeared to her to be a remark out of the blue about feeding and clothing her children. We prefer the evidence of the near contemporaneous note as being more reliable than the claimant's present denial that she had ever said anything herself about wanting extra hours because of needing to clothe and feed her children.

20. After the claimant had left the office again, the claimant went to speak to her trade union representative. Danielle Longworth approached the claimant later and the claimant said that she did not want to talk to her. The claimant alleges that Danielle Longworth shouted at her. Danielle Longworth denies this. We find that Danielle Longworth did not shout at the claimant. We rely on an email sent by the claimant's trade union representative on the same day when making this finding. Helen Beard, the trade union representative, wrote:

> "Danielle asked Farah if she could speak with her. Farah stated she didn't want to speak with her. Danielle asked her not to speak to her in the manner she did. I overheard this and Farah's 'manner' was completely understandable because she was extremely upset at Danielle's attitude."

21. It appears from this note that Helen Beard witnessed the claimant responding to Danielle Longworth's request to talk to her in what must, on the evidence of this email, have been an unpleasant manner, although the trade union representative sought to excuse this on the grounds that the claimant was very upset by what Danielle Longworth had previously said. Danielle Longworth says that the claimant slammed the door in her face. It is not necessary for us to make a finding as to whether this was the case.

22. The claimant went home upset after this incident. Danielle Longworth phoned HR for advice and, on their advice, made the note shortly after the events to which we have referred.

23. As a result of this incident, there was a meeting. There is a dispute as to whether Danielle Longworth was at this meeting, as Danielle Longworth contends, or whether it was just Margaret Cox with the claimant. It does not appear that there are any notes of this meeting. What had happened was discussed. Whoever took part in the meeting and whatever was said, there followed on 19 May 2015 a letter of apology from Danielle Longworth. She wrote:

> "I write to you regarding incident dated Friday 8 May 2015, please accept my most sincere apologies that you felt offended from a conversation between myself and you regarding your contract."

She informed the claimant that the contract had been ratified and a new contract would be with her shortly. She wrote:

> "Be reassured that no offence was intended and hope to resume our professional working relationship."

24. The claimant emailed in reply saying:

> "Wanted to say thanks and apology excepted [sic]."

25. The claimant sat in the same office as a number of other employees, including Vicky Haughton. The claimant accepted that she was friendly with Vicky Haughton for much of the time she worked for the respondent. She disputed the degree of their interaction and some of the subject matter of their conversation. It is common ground that, at least sometimes, they walked together at lunchtime and that they got on well. The claimant says she never initiated any discussion about her faith and did not like talking about it, and that Vicky Haughton should have known this by her body language. We prefer the evidence of Vicky Haughton to that of the claimant in finding that the claimant and Vicky Haughton talked about many things, including their backgrounds and the claimant's faith. The claimant has frequently described herself at this hearing as "a proud Muslim". The claimant has not given any plausible explanation as to why she would not, as a proud Muslim, feel comfortable about talking about her faith to someone she accepts she was friendly with at the time. We consider it more likely than not that two co-workers who spent a considerable

amount of time together would talk about many matters, including the claimant's faith.

26. In June 2015, there was a terrorist attack in Tunisia. The claimant alleges that Vicky Haughton said, “Why do Muslims do this?”. Vicky Haughton says that she said, “Why do these keep doing this?” and by “these” she meant “deranged people”. She denies she said, “why do Muslims do this?”. The claimant's own witness statement refers to Vicky Haughton saying, “why do these keep doing this?” rather than “why do Muslims do this?”. The claimant says she thought the remark was aimed at her because Vicky Haughton looked directly at her. Vicky Haughton denies this. The claimant says she thinks she was being targeted by this remark because she was the only Muslim in the office. We find that Vicky Haughton said, “why do these do this?” rather than “why do Muslims do this?”. We did not find plausible the claimant's evidence in cross examination that the difference in her witness statement from the allegation was a “typing error”. Also, a negative remark about Muslims would not be consistent with Vicky Haughton, a few days later, sharing a post on Facebook which had positive remarks about Muslims forming a human shield to save hotel guests. The claimant has not satisfied us that the remark was targeted at the claimant. We are not satisfied on a balance of probabilities that the claimant was offended by the comments made by Vicky Haughton about the attack in Tunisia at the time. She did not do or say anything at the time to suggest that she took offence. In contrast, when other things offended her, such as Danielle Longworth’s comments about needing to feed and clothe her children, the claimant was very quick to take this up. If the claimant felt she could not raise it with Danielle Longworth, she could have gone to Margaret Cox. Indeed, later on, the claimant did not feel constrained from raising things directly with the Chief Executive.

27. The claimant alleges that, around the same time, Vicky Haughton made comments that she did not like “Pakis”. The claimant gave no evidence about this in her witness statement, although she did assert in answers in cross examination that this had been said. Vicky Haughton denies that she said this. The claimant has not satisfied us on the balance of probabilities that Vicky Haughton said this. We consider it implausible that the claimant would remain friendly with Vicky Haughton if Vicky Haughton was making comments of this nature.

28. At this time, and for some considerable time thereafter, the claimant was exchanging friendly messages with Vicky Haughton on Facebook, although she later blocked Vicky Haughton when she took offence at something else.

29. The claimant also alleges that, in June or July 2015, Vicky Haughton asked her why Muslims did not drink alcohol and commented, “who would know if you had a drink?” and asked the claimant whether she had ever drunk alcohol. Vicky Haughton accepts that she asked the claimant if she had ever had a drink. This came, Vicky Haughton said, and we accept, in the context of a general conversation about what they were doing at the weekend, and the claimant saying that Muslims did not drink as it was against their religion. Vicky Haughton says that the claimant said she thought she had drunk something once which tasted like peaches but it gave her a fuzzy head and laughed about this. The claimant denies this. There is common ground that, whatever the exact words used, Vicky Haughton asked the claimant whether she had ever drunk alcohol. We find, on the balance of probabilities, that Vicky Haughton did not say “who would know if you had a drink?”. We are not satisfied that the claimant took offence at the time at Vicky Haughton’s

questions. This was a conversation with someone with whom she was friendly and remained friendly for some time thereafter.

30. On 28 July 2015 the claimant says that she returned from annual leave to find that her files had been dumped by Vicky Haughton into a filing box under the table and that she hurt her shoulder moving them. The claimant has not satisfied us that Vicky Haughton had dumped any files into a filing box. There is no contemporaneous record which suggests that the claimant said, at the time, that this had been done. There is nothing in the claimant's correspondence complaining that this was a new thing which had caused her injury. The claimant did assert during her employment that she had injured her shoulder at work, but all the documents are consistent with Danielle Longworth understanding at the time from the claimant and/or another employee, Claire in the office, that the claimant had been working with files kept in a box under her desk since January 2015. An Occupational Health report of 28 September 2015 recorded the claimant as attributing the shoulder problem to "repetitive lifting, particularly from low levels, whilst at work". This does not suggest something which simply happened on 28 July.

31. On 29 July 2015, the claimant commenced a period of sick leave which continued until 2 November 2015, attributed to a shoulder problem.

32. There has been a dispute of evidence as to whether the claimant reported her absence by phone to her team leader, Karen Hunter, or just reported her absence to the trade union representative. We note in the management statement of case dated 7 July 2016 that this records that the claimant sent a text message to her team leader, Karen Hunter, to say she would not be in work that day as she had pulled her shoulder on 29 July 2015. We consider that this record is more likely to be accurate than the later recollections of witnesses. It appears from this that the claimant texted, rather than telephoned, Karen Hunter and that she contacted her team leader rather than her line manager, Danielle Longworth.

33. It appears that the claimant did not say in her text to Karen Hunter (then Tyson) that she had suffered a workplace injury. It appears that the first mention of a workplace injury occurred in an email from the claimant's trade union representative on 29 July in which she wrote:

> "Just to say I've spoken to Farah regarding the fact she's had to inform you of a workplace injury. We need to have confirmation that this has been recorded as an incident, please."

Danielle Longworth's evidence that Karen Hunter came to her saying "do you know anything about this because I don't" is consistent with Karen Hunter not having been aware of a possible workplace injury until after the trade union representative's email.

34. Danielle Longworth phoned the claimant to discuss the matter. The claimant told her that she had not reported the injury earlier because she only realised afterwards that she had hurt herself. The claimant alleges that, in this telephone conversation, Danielle Longworth insisted she move to the Breast office. Danielle Longworth said that she had offered a move but the claimant did not want to move so she did not press it further. The claimant did not move office. The closest to a contemporaneous record we have of what was said in this telephone conversation is

what Danielle Longworth recorded on the respondent's system, Datix. Danielle Longworth wrote there:

> "Manager phoned the member of staff on her mobile phone to see if she was ok and to find out what had happened. When the member of staff answered the phone, it was very heavy background noise and she seemed surprised to have received a phone call from manager.
>
> Manager asked for member of staff to explain what happened and why they didn't bring any incident or discomfort to anybody's attention so that any immediate action could have been taken or prevented as the member of staff had been working in this method for six months and never highlighted to anyone that it was causing discomfort to her working practice."

Danielle Longworth did not record on Datix any response from the claimant to her questions. Danielle Longworth gave evidence that she had recorded all that the claimant had told her.

35. Danielle Longworth found out afterwards, from another employee, that the claimant, apparently, did not like the tone of her voice when she spoke to her about the accident, and that the claimant had said she did not want to speak to Danielle Longworth.

36. Danielle Longworth emailed the claimant's trade union representative on 29 July to say that she had recorded the incident on Datix. She wrote:

> "After speaking to Farah's colleague as she would have been a witness, Farah has been working in this method since January 2015 and has not mentioned to anyone that it is causing any discomfort until today."

She wrote that going forward she would move the claimant's notes to a suitable shelf that was available in the office and that she had provided a kickstand, which she wrote is what health records use when pulling notes from above head height.

37. Danielle Longworth completed a root cause analysis of the incident regarding the claimant's shoulder with Jane Hadfield, Health and Safety Manager. She did not speak to the claimant again about the injury before completing this analysis. She said in evidence that, at the time, the claimant was not talking to her. It appears that this analysis was completed some time after 16 September 2015, since it refers to a phone call from Margaret Cox to the claimant of that date. This analysis then formed part of an executive review group report dated 15 October 2015.

38. The claimant alleges that Danielle Longworth failed to acknowledge that the claimant had received a work related injury. We found that Danielle Longworth acted on information she was given when recording the alleged incident on Datix and then, together with the Health and Safety Manager, completing a root cause analysis. She did not have further contact with the claimant around this time since the claimant said she did not wish to speak to her.

39. The claimant's team leader, Karen Hunter, should have been keeping in touch with the claimant but had difficulty contacting the claimant. The matter was escalated to Danielle Longworth. Margaret Cox then took over the management of the

claimant's absence because of the breakdown in the relationship between the claimant and Danielle Longworth. Danielle Longworth considered her relationship with the claimant to have been fine before the claimant went off sick. Danielle Longworth discussed with Margaret Cox how the claimant had said she had injured herself.

40. During the claimant's sick leave, she failed to attend a number of appointments related to her sickness absence. Her sick note ran out on 10 September. Karen Hunter tried to call the claimant on 10 September but her calls were declined. At Karen Hunter's request, another employee texted the claimant and the claimant replied to the colleague's text. The claimant was on holiday in Egypt at the time. The claimant wrote in her text that she could not speak to Karen Hunter as she had no wi-fi and that she would speak to Karen Hunter the following day. Since Karen Hunter did not work Fridays, she asked the other employee to say that she needed to speak to the claimant that day. The claimant said she could not and she would be flying back that night. Karen Hunter asked the other employee to text the claimant and ask if she would be attending her sickness review meeting on 14 September. The claimant is recorded as replying that she would think about it and see how she felt and would be in touch.

41. On 14 September, Karen Hunter wrote in an email to various managers that she had had a text from the claimant that morning to say that her husband would "drop her sick note off today as she was late picking it up from the doctor on Friday and that she was not up to the meeting". The claimant accepted in evidence that she had not complied with the notification requirements in the managing of attendance policy.

42. On 14 September 2015, Margaret Cox wrote to the claimant about her failure to attend various meetings. She wrote:

> "I am concerned that you have been absent on sick leave since 29 July 2015 and you have not maintained regular contact with Danielle as your line manager or myself to update me on your progress or to confirm reasons for cancelling appointments. For clarification, the contact procedure is via your line manager and not your trade union representative.
>
> Your medical certificate is due to expire on Tuesday 22 September 2015. I have tried to contact you by telephone on various occasions, as have other members of the management team. Unfortunately we were unable to leave voicemails as we did not get the option to do this.
>
> I would request that you call me on the above number within seven days from the date of this letter to update me on your progress and to rearrange the long-term review meeting. Failure to get in touch with me will lead to you being placed on unauthorised unpaid leave."

43. The claimant and Margaret Cox spoke on 16 September. Margaret Cox referred to the claimant having cancelled an Occupational Health appointment on 2 September and long-term sickness meetings with HR and Danielle Longworth on 25 August and 14 September. The claimant informed Margaret Cox that she had been unable to attend these appointments as she was "bed bound" and not well enough to attend. The claimant was cross examined on her assertion to Margaret Cox that she

was bed bound. It was put to the claimant that she had gone on holiday in Egypt. The claimant first said that her mobility on holiday had not been good, and then that she was bed bound when she got back. It was put to her that she was saying that, in the period 12-16 September, she became bed bound. The claimant first agreed then said that she had been bed bound before she went on holiday but was not continuously bed bound whilst on holiday. She said she was bed bound when she got back. Then she said she was bed bound throughout the whole period. On holiday she was in pain. She obviously had to get out of bed on holiday to go to the airport when she was bed bound. The Tribunal found the claimant's evidence in this respect completely incredible.

44. The respondent received a further sick note on 23 September 2015 for a further four weeks.

45. The claimant attended an Occupational Health assessment on 28 September. The report recorded that she had been off work since 29 July due to a musculoskeletal problem affecting her left shoulder, neck and upper back. The report wrote:

> "Farah attributes this to repetitive lifting, particularly from low levels, whilst at work."

The report said that she was likely to be fit to return to work on expiration of the current sick note on 20 October 2015.

46. On 15 October 2015, an executive review group report on the shoulder injury incident noted that an investigation had concluded that there was no evidence and no witnesses to suggest that the injury occurred.

47. The claimant had a long-term absence review meeting with Margaret Cox on 19 October 2015. She was told that, on her return to work, she would trigger stage two and they would arrange a further meeting about this. The claimant called Margaret Cox after the meeting to say that she would be returning to work on 21 October. However, on 20 October, she contacted Margaret Cox by email and text to say that her GP had issued a sick note for a further two weeks.

48. Margaret Cox wrote to the claimant to confirm their discussions on 19 October and subsequent contact. Although the letter is dated 19 October, it clearly must have been sent on or after 20 October since it referred to events up to and including 20 November. Margaret Cox wrote that the claimant had been advised that, on return, she would trigger stage two management of absence and that they would arrange a further meeting regarding this. She also noted that they had discussed the matter of annual leave allowance and that, with the exception of dates already booked, the claimant had no further leave entitlement for the current financial year. Margaret Cox wrote that, following the further notification of sickness, she had asked the claimant's line manager to refer her back to Occupational Health for further assessment.

49. The claimant returned to work on 4 November 2015.

50. On 10 November 2015, the respondent's social media officer contacted Danielle Longworth about a posting an employee, LW, had made on the staff forum.

This was about Christmas plates that employee was selling. The social media officer wrote that:

> "Having consulted with colleagues in HR we do not feel it is appropriate for her to be taking orders for these via her Christie email address during work time."

He asked that Danielle Longworth ask the employee to amend the post on the staff forum to direct people to her Facebook page or to an external email address. Before Danielle Longworth could speak to the employee, the employee removed the post from the intranet.

51. On 12 November 2015, Danielle Longworth forwarded a link to Margaret Cox which related to the claimant selling makeup. Margaret Cox forwarded this email to HR copied to the social media officer. Her understanding, as expressed in that email, was that another member of staff had brought it to Danielle Longworth's attention. Danielle Longworth in her witness statement said she thought this was Karen Hunter but Karen Hunter said this was not correct. However it came to Danielle Longworth's attention, Margaret Cox, when alerted to it, referred to the previous example of the sale of Christmas plates and asked HR about the policy around advertising and selling on the forum and who made the decision of what needed to be removed. The HR Manager replied on 13 November to Margaret Cox to say that she had spoken to Danielle Longworth and advised that the post should be taken down as discussed with the claimant if they were uncomfortable with it. She recorded that Danielle Longworth had stated the concern was the claimant potentially had her own business selling these products and she was using her department name in the advertisement, which was not appropriate.

52. Margaret Cox replied the same day to say that she had spoken with the claimant and asked her to take the advert down off the forum. She wrote:

> "I have explained that we had a case recently regarding another member of staff selling large numbers of items and that their advert had been removed too, and that we have to be fair and equitable. I also explained that selling them from the office would be disruptive to other team members who were trying to work and the inappropriate use of the department name in the advert.
>
> She said she was selling them on behalf of her mum who had obtained the items at wholesale price. She understood and will remove the advert from the forum."

53. We find that Margaret Cox spoke to the claimant in the terms which she recorded and that the claimant's reaction at the time was as Margaret Cox recorded.

54. On 18 December 2015, a risk assessment was completed with the claimant. This resulted in some suggestions about sourcing a more suitable chair and other things to do with the workstation. It was also noted that the claimant was to rearrange a physiotherapy appointment.

55. On 20 January 2016, the claimant made a request for time off when her daughter was ill. Karen Hunter referred the request to Margaret Cox. Margaret Cox asked whether the claimant had any leave left, and she was informed by Karen

Hunter that the claimant did not have any leave left. Margaret Cox asked whether the claimant was aware she had no leave and that it would have to be unpaid. Karen Hunter replied that she had had a discussion with the claimant that she had no carer or annual leave so the leave would have to go down as unpaid leave. In fact, it appears that Karen Hunter made a mistake in thinking the claimant had exhausted her carer's leave.

56. The claimant spoke to Karen Hunter on 25 January, saying she had not used all her carer days and wanted to speak with her trade union representative. The trade union representative raised this with Danielle Longworth. Danielle Longworth replied that the claimant was entitled to two days' carer's leave and had used one of these already. She wrote that, on this occasion, the first day of absence would be recorded as emergency carer's leave and, as the claimant had used all her annual leave for the year, it would have to be unpaid leave for the remaining days she was absent from work.

57. The claimant alleges that, in early 2016, Vicky Haughton asked her, "Do all Muslim men treat women badly?". Vicky Haughton denies that she said this but said that she asked, "Do men think that women are second class citizens in Muslim culture?". Vicky Haughton's evidence was that this arose in the context of the claimant talking about someone who had just had a baby but her husband was still going out doing his own thing and not pulling his weight with jobs around the house, and saying that she would have to drive round to help this lady out. Vicky Haughton says that the claimant, in response to her question, replied, "He does", which she understood as meaning "he thinks he's better". Vicky Haughton said she definitely did not say "Do all Muslim men treat women badly?" because she knew for a fact that this was not true and that the claimant's husband did a lot of the housework. Neither Vicky Haughton nor the claimant understandably made notes of their conversation at the time. We, therefore, have no documents which assist us as to what exactly was said. It is for the claimant to prove the facts on which she relies on a balance of probability. In general, we found Vicky Haughton to be a more credible witness than the claimant. We refer, in particular, to the claimant's evidence about being bed bound. There was nothing which led us to believe that Vicky Haughton was not seeking to give an honest recollection of events. We, therefore, prefer the evidence of Vicky Haughton as to the gist of the comment made by her and the context in which this occurred. We note that, at this stage, the claimant had not blocked Vicky Haughton on Facebook and was still sending friendly messages.

58. On 1 February 2016, the claimant had a meeting with Margaret Cox. This was a second stage management of attendance meeting. Margaret Cox wrote to the claimant on 5 February 2016 to confirm the outcome of this meeting. The claimant's trade union representative raised in the meeting whether the monitoring would be stage two given that this was a workplace injury. Margaret Cox said that, having investigated this and reviewed the executive review meeting notes, it was concluded that this could not be evidenced as a workplace injury, therefore they would not be applying discretion to the trigger points. She wrote:

> "On this basis I can confirm that your absence will be monitored under stage 2 of the management of attendance procedure for a period of 12 months with effect from 3 November 2015. If you have three episodes or 15 calendar days of absence within the monitoring period you will trigger a stage 3 hearing where your absence levels will be considered. At this hearing consideration

> will be given, dependent upon any mitigating circumstances, to your continued employment with the Trust."

59. At the meeting on 1 February 2016, they also discussed possible mediation with Danielle Longworth. Following the meeting, the claimant's trade union representative confirmed that the claimant would like to undertake mediation with Danielle Longworth and Margaret Cox confirmed in her letter that she was in the process of arranging this.

60. The claimant had a right of appeal under the management of attendance policy. The policy states:

> "If a member of staff wishes to appeal any stage of the process, other than dismissal, they must do so in writing to the next level of line management within five working days of the date of the outcome letter. They must clearly state the grounds of appeal."

61. Although Margaret Cox's letter did not remind the claimant of her right of appeal, the claimant did not suggest she was unaware of her right of appeal. We note she was accompanied by a trade union representative who would no doubt understand that there was such a right of appeal. The claimant did not appeal against this stage of the process.

62. Mediation with Danielle Longworth duly took place and it had a positive outcome. The claimant, in an investigation interview on 13 July 2016, told the interviewer that the outcome was good, that it was very positive and a fresh start. She said that things in the office after this had been "ok and comfortable". She said they had an "ok" working relationship at that point.

63. In March 2016, there was a heated argument between Vicky Haughton and the claimant during which each used derogatory swear words and called each other names. On 9 March 2016, Vicky Haughton sent the claimant a text apologising for the name she had called her. The claimant blocked Vicky Haughton on Facebook and WhatsApp. The incident was reported by the claimant to Danielle Longworth who arranged a meeting between the claimant, Danielle Longworth, Vicky Haughton, Margaret Cox and Karen Hunter. In that meeting, Vicky Haughton and the claimant both raised their voices. Margaret Cox told them that they had to lower their voices or she would end the meeting. It is common ground that the meeting ended with the claimant hugging Vicky Haughton.

64. The claimant alleges that, during this meeting, she made allegations that Vicky Haughton had made comments about race and religion. We prefer the evidence of the respondent's witnesses that this was not done. We find that Danielle Longworth and Margaret Cox were not informed at this, or any other, time by the claimant of alleged racist and Islamophobic comments by Vicky Haughton. The claimant did not mention such allegations in the investigation or that she had told Margaret Cox and Danielle Longworth about these but they had ignored this. We consider it unlikely that the meeting would have ended as it did, had the claimant made such allegations. We find the respondent's witnesses generally more credible than the claimant.

65. We find that the relationship between the claimant and Vicky Haughton improved for some time. The claimant unblocked Vicky Haughton on Facebook for a while but then blocked her again in July 2016.

66. In the period 23 March to 8 April 2016, the claimant was off work sick with gastroenteritis. She returned to work on 8 April 2016.

67. On 11 April 2016, Karen Hunter sent Margaret Cox a copy of Facebook postings showing the claimant at Blackpool. Karen Hunter wrote:

> "Thought you might like to see this. This is an absolute joke when she is supposedly off sick all week with gastroenteritis. Well enough for Blackpool = well enough for work."

68. The claimant has said in evidence that the trip to Blackpool was at the weekend before she returned to work. The matter was never raised with the claimant during her employment since the person who had reported the Facebook postings to Karen Hunter did not want to log the issue formally. It is not necessary for us to make a finding as to whether all the claimant's sickness absence in the period 23 March to 8 April 2016 was genuine or not and we do not do so.

69. The claimant's further period of absence was sufficient to trigger stage three of the management of attendance process. Sam Hinchcliffe conducted a return to work interview with the claimant on 18 April but failed to notify the claimant, as she should have done, about triggering stage three. Margaret Cox noticed this on reviewing the interview form and, therefore, arranged a further meeting with the claimant for 29 April 2016.

70. On 22 April 2016, the claimant's husband's cousin unexpectedly died. The claimant left work without speaking to a manager. The policy required an employee to speak to a manager before leaving. The claimant says she was unable to do this because there were no managers about. She left a message with a colleague. She accepts that she could have texted Margaret Cox but said she did not think about this. The message the claimant left with a colleague did not say that burial was likely to take place the same day in accordance with Muslim practice.

71. On Monday 25 April 2016, Margaret Cox told Karen Hunter that the claimant had been absent from work on Friday 12 April due to a family bereavement. She told Karen Hunter that the claimant had failed to report the absence properly and asked Karen Hunter to speak to the claimant and inform her that her absence would need to be recorded as unpaid leave as it would not qualify as special leave and she did not have any annual leave to take. Karen Hunter duly spoke to the claimant in these terms. The claimant was upset that she would not be allowed to record the absence as special leave.

72. The policy on bereavement leave gives authorising managers discretion to allow up to a maximum of the equivalent of one working week's paid leave to any employee experiencing urgent need for time off on compassionate grounds. The policy provides that employees may take up to one day's leave to attend a funeral and, where the bereavement involves a close family member such as parent, brother, sister or child (adopted or natural) grandparent or where the employee is named as the executor, up to one working week. The policy allows also for unpaid

leave to be considered by the authorising manager. We accept the evidence of Karen Hunter that her experience is that special leave has only been granted for absence due to the death of an immediate family member. We also accept the evidence of Vicky Haughton that when her uncle died she was refused bereavement leave and had to take annual leave for the funeral.

73. On 25 April 2016, the claimant's trade union representative emailed Margaret Cox. She wrote that the claimant was upset to be told that she would be marked unauthorised absence as she had left a message with a colleague, having not been able to find Sam. Helen Beard referred to a family member being buried the same day because of their Muslim religion. We find that this information had not been given to Margaret Cox prior to this email. We accept Margaret Cox's evidence that she was surprised by this as she had understood that the relative died unexpectedly in intensive care and did not expect the coroner to release the body on the same day.

74. Margaret Cox thought the claimant was upset because the leave granted was unpaid. She tried to speak to the claimant and emailed her about trying to speak to her. The claimant then emailed Margaret Cox on 27 April 2016. She wrote that she felt upset on the Monday that she had to be reminded of the policies and procedures and was told that she was given unpaid leave without her giving an explanation of what had happened. She wrote that, if she had not left, she would still have had to leave as the funeral was the same day as, in her religion, burials take place immediately after death. She wrote:

> "I'm really upset that I'm having to explain this and an issue has been made of it. I'm happy to take that day as unpaid leave."

75. Margaret Cox replied on 28 April 2016. She apologised for any distress caused, writing that this was not her intention. She wrote:

> "I understand that Sam may have been away from her desk. However, I was in my office on Friday morning and you also have my work mobile. As I only had limited information it was important on your return to ascertain the full facts and to enquire about awareness of the Trust policy, and I had asked Karen to meet with you to discuss on your return to work.
>
> As a department we have to be consistent regarding leave and previously bereavement leave has been given for immediate relatives. I am happy for you to take the hours on Friday as short notice annual leave and will ask your team leader to amend this on ESR."

76. The claimant met with Margaret Cox on 29 April 2016. Margaret Cox discussed the procedures for absence. She also conducted a further return to work meeting. She noted on the record of that meeting that "may refer for MOA 3". In the section on further action she wrote "MOA 3 triggered". The claimant accepted that she knew from this time that she would be going to a stage 3. The claimant has asserted that she raised the issue that the shoulder injury was because of an accident at work. Margaret Cox does not recall the claimant raising this in this meeting but rather recalls it having been discussed at stage 2. There is no record on the return to work interview form of this being raised again. We find, on the balance of probabilities, that it was not raised again in this meeting.

77. Danielle Longworth was then told by Margaret Cox that the claimant had triggered stage 3 and that Danielle Longworth needed to prepare all the paperwork for it. Danielle Longworth's understanding was that she did not have to exercise any judgment. The decision had been made and she was just doing the paperwork.

78. The claimant alleges that, in the meeting on 29 April 2016, Margaret Cox made comments about having been caught up in the Brussels terrorist attacks. The claimant says she considered this was directed at her and claims this was direct religious discrimination. Taking the claimant's account at its highest, Margaret Cox told her that she had been there at the Brussels terrorist attacks. The claimant does not allege that Margaret Cox said anything else about this. Margaret Cox does not recall discussing this with the claimant at the return to work interview, saying this was not something she would raise at such an interview. Her evidence is that she did discuss this in the office because people knew she had been in Brussels and had asked her about it. We prefer the evidence of Margaret Cox, finding on a balance of probabilities that Margaret Cox discussed it generally in the office and not in a one-to-one meeting with the claimant.

79. In June 2016, Karen Hunter took the claimant into Daniele Longworth's office to conduct the claimant's PDR. Danielle Longworth was in the office. There is some dispute about what was said. It was common ground that reference was made to it being Ramadan and that the claimant was fasting. We find the most reliable source of information as to what was said to be Karen Hunter's amended responses to interview questions in July 2016, as being the closest to a contemporaneous record. When invited to add anything about the issues under investigation relating to the claimant's concerns the notes, as amended by Karen Hunter, record that she said:

> "I don't know if Farah has mentioned this. I did do her PDR and we went into Danielle's office. Farah was fasting for Ramadan and Danielle was questioning her about this and commented to Farah that she had seen her on the corridor and thought she looked like Farah was going to pass out and that Danielle couldn't do it. Farah wasn't pleased by these remarks but answered the questions and explained how fasting works. Farah was very upset and angry about this and didn't appreciate this. I feel that Farah answered the questions as she was put in a very awkward position and Danielle is her boss."

80. We accept the evidence of Karen Hunter as to the type of questions Danielle Longworth asked of the claimant. We found Karen Hunter to be a very balanced witness. Some of her evidence supported the claimant's case, contradicting evidence given by Danielle Longworth. Other parts of her evidence were contrary to the claimant's case. We find that Danielle Longworth asked the claimant questions about when she could eat and whether she could drink. We accept that Karen Hunter could tell from the claimant's demeanour that she was getting angry and upset, although she did not tell Danielle Longworth that she was uncomfortable with the questions and did answer the questions. We find that, after Danielle Longworth had left the office, the claimant expressed anger to Karen Hunter and swore.

81. Danielle Longworth gave evidence that she had never asked anyone else about their religious practices. She did not know if the claimant was the only Muslim in the office. She referred to another member of staff who she believed had

converted to Islam. Another witness confirmed that this person had converted to Islam but said he worked in a different office.

82. The claimant's PDR was positive and Danielle Longworth did not disagree with Karen Hunter's positive assessment of the claimant's work.

83. The claimant applied for a job outside the respondent organisation. The prospective employer contacted Danielle Longworth and Karen Hunter for references. Danielle Longworth told Karen Hunter that she did not need to complete a reference as Danielle Longworth had already done one. Danielle Longworth completed and sent a reference which she accepts was factually inaccurate in a number of respects. Danielle Longworth included information about disciplinary action taken against the claimant but accepts that she should not have done so since "no case to answer" was found. Danielle Longworth did not write in the reference that "no case to answer" was found although she accepted in cross examination that she knew this had been the outcome. Danielle also incorrectly mentioned that there were stage 3 management of attendance proceedings underway. She should not have done so since these had not been formally commenced, although she had been instructed by Margaret Cox to prepare the paperwork to do so. Danielle Longworth wrote, "do not wish to comment" in answer to a question whether she would employ the claimant in a similar role, because of issues relating to performance which had not been discussed with the claimant. The number of absences over the past two years was incorrectly stated. Danielle Longworth said that she was rushed and she made errors in completing the reference.

84. Danielle Longworth was not aware that she had made errors in any references for any other people since no-one had raised this with her. Danielle Longworth had not received any training in completing references. She did not contact HR for advice before completing the reference.

85. Following discovery of the inaccuracies in this reference, the respondent changed its policy so that all requests for references are now passed to HR and completed by HR.

86. Karen Hunter received a number of chasing requests for a reference for the claimant. She mentioned these at a meeting of team leaders on 28 June 2016. Karen Hunter told Margaret Cox that she had not completed the reference because Danielle Longworth had instructed her not to. Margaret Cox told her that she needed to marry up her reference with Danielle Longworth's. We accept that this was meant as ensuring consistency in the details given as to absences. Danielle Longworth said she would sent Karen Hunter a copy of the reference she had sent.

87. Karen Hunter duly completed a reference but did not replicate information from Danielle Longworth's reference since she realised it contained inaccurate information. Karen Hunter completed the reference using information from the electronic staff recording system. She recorded correctly the claimant's number of absences. She also included information about the disciplinary proceedings taken against the claimant but recorded that the claimant successfully defended disciplinary proceedings.

88. Having realised the inaccuracies in Danielle Longworth's reference, James Stone, HR Business Partner, wrote to the prospective employer on 29 June 2016,

apologising for the errors and saying that a new reference would be supplied by the end of the day. A new reference was duly supplied.

89. The claimant approached Karen Hunter and said she felt she had been set up by Danielle Longworth and was going to see her trade union representative.

90. On 29 June 2016, Danielle Longworth wrote to the claimant inviting her to a stage 3 management of attendance hearing. She received HR advice on the letter. The claimant says she did not receive this letter. We have no reason to believe the letter was not sent. It is not necessary for us to decide whether it was received since the stage 3 hearing was subsequently put on hold pending outcome of a grievance submitted by the claimant.

91. On 29 June 2016, the claimant submitted a grievance to the Trust's Chief Executive, Roger Spencer, making allegations against Danielle Longworth and Margaret Cox. She referred to the most recent incident complained of as being "falsification" of a reference by Danielle Longworth. She said the vacancy had been put on hold until she proved the information put on the reference was false. She referred to HR having informed the prospective employer that a new reference would be submitted by the end of that day. Complaints in the grievance included the comment made by Danielle Longworth about needing the extra hours to clothe and feed her children when she was asking for extra hours. She complained about Danielle Longworth's attitude when the claimant reported her shoulder injury. She complained about Margaret Cox asking her to take down the posting about make up for sale. She complained about Margaret Cox telling her she had to take unpaid leave when her daughter was ill. She complained about treatment by Margaret Cox when the claimant had left work because of her husband's cousin dying suddenly. The claimant wrote:

> "I feel I am a victim of discrimination and I'm starting to think this may be a racial issue here too."

92. The claimant wrote that she was seeking legal advice and also going to her local newspaper and local MP "to name and shame the defraud [sic] management system in place on the Clinical Oncology Department at The Christie as these two managers conspire together to defraud the system and this has been proven".

93. In an undated letter, the prospective employer informed the claimant that:

> "Due to unsatisfactory pre employment check findings, we will not be pursuing your application further and hereby withdraw our earlier conditional offer of employment."

94. On 7 July 2016, Danielle Longworth drafted a management statement of case for the stage 3 hearing. However, this hearing was put on hold pending the outcome of the claimant's grievance.

95. As the claimant said she was going to do, she went to the local press. A story was printed in the Manchester Evening News which referred to Danielle Longworth by name; this was before the respondent could conduct an investigation into the claimant's grievance.

96. The claimant appointed Jo Anne Hughes to conduct the grievance investigation. The claimant accepts that Jo Anne Hughes spoke to all relevant people in conducting this investigation. She held investigatory interviews with the claimant, Karen Hunter, Danielle Longworth and Margaret Cox.

97. On the same day as an investigatory interview with the claimant, on 13 July 2016, the respondent conducted a stress risk assessment and decided that the claimant would not report to Danielle Longworth and Margaret Cox during the investigation and that there should be a physical separation from Danielle Longworth to reduce interaction. Danielle Longworth moved to work in another office. There was an arrangement that, if Danielle Longworth needed to go to the corridor where the claimant worked, Danielle Longworth would tell the claimant's trade union representative in advance so that they would not encounter one another.

98. On one occasion, despite advance warning having been given, the claimant went into the Urology office to speak to Karen Hunter about annual leave at a time when Danielle Longworth was there. The claimant alleges that Danielle Longworth smirked, grinned and muttered under her voice when she saw the claimant in the department. The claimant made no mention of the alleged smirking, grinning and muttering in an email of complaint she sent to the Chief Executive on 13 July about coming into contact with Danielle Longworth; the claimant made no mention of this in her investigatory interview. The burden of proof is on the claimant to satisfy us that the facts she relies on occurred as alleged by her. The claimant has not satisfied us in relation to this allegation. We find, on a balance of probabilities, that Danielle Longworth did not smirk, grin and mutter under her voice when she saw the claimant in the department.

99. The claimant wrote to the Chief Executive on 13 July 2016 about coming into contact with Danielle Longworth. She wrote that she was scared of going out of her office or going to the toilet or kitchen in case she bumped into Danielle Longworth.

100. An Occupational Health report was prepared on 18 July 2016. This wrote that the claimant was experiencing symptoms of work related anxiety due to issues with a senior colleague. It recorded that stress levels were likely to remain high for the claimant until the investigation was concluded. They wrote:

> "It would also likely support Farah's earlier to return if she can feel assured that she will not be working in the vicinity of the colleague named in the investigation."

101. The claimant went on sick leave on 18 July 2016 and remained on sick leave with stress and anxiety until 9 January 2017.

102. A management statement of case was prepared on 22 August 2016. It summarised the allegations from the claimant both in her written statement and her interview as follows:

> "2.1 Allegations relating to Danielle Longworth
>
> - Allegations of unacceptable behaviour, resulting in FA being treated unfairly or less favourably than other staff.

- Allegation of knowingly completing an inaccurate reference for FA on behalf of The Christie NHS Foundation Trust.

- Purposeful behaviour from DL as FA's line manager to conspire with others to treat FA unfairly.

2.2 Allegations relating to Maggie Cox

- Allegations of unacceptable behaviour resulting in FA being treated unfairly or less favourably than other staff.

- Purposeful behaviour from MC as FA's manager to conspire with others to treat FA unfairly."

103. An investigation outcome dated 26 August 2016 found insufficient evidence to prove the allegations against Maggie Cox and Danielle Longworth. The letter advised the claimant of her right of appeal. An appeal was duly submitted by her trade union representative on 9 September. The letter did not set out the grounds of appeal.

104. The claimant wrote to the Chief Executive on 4 September 2016. Her letter included a complaint of being put on a staging of sickness for a work related injury.

105. Sara Mort of HR replied to the claimant's trade union representative's letter on 13 September 2016, suggesting that they move to a stage 2 grievance. The trade union representative rejected the suggestion on the claimant's behalf and requested a full investigation by an independent/outside investigating officer.

106. Jane Burtoft, an HR consultant, was appointed to review the case. She met with the claimant on 13 October and sent recommendations on 14 October which were forwarded to the claimant on 19 October. The recommendations were as follows:

"(1) The organisation and Danielle Longworth in particular should take some responsibility for the impact on Farah of sending an inaccurate reference. She should receive a formal apology, as it is a fact that an inaccurate reference was sent out. It was surprising to me that this was not done immediately the error was noticed. This may have prevented a lot of distress to Farah over the last few months.

(2) Farah accepts that she was responsible for going to the press with her concerns. She felt that she was not being listened to by the organisation and she became desperate to be heard. She confirmed to me that she was not considering going to the press in future.

(3) She has made it clear to me that she will not work with Danielle Longworth as her manager. She does not feel safe around her. She is requesting that the Trust looks for a way for this to happen. She is very happy to continue working for her current team leader. She accepts that she will have to come into contact with Danielle in the line of her work.

(4) It would seem reasonable that a copy of a current and accurate reference is prepared for Farah and given to her and that should she require one in the future that it is prepared by her team leader and approved by HR before it is sent to any potential employee.

The outcome of our discussions was that Farah will not be taking this grievance any further. I have recommended to her that she access some staff counselling to support her in her return to work."

107. On 21 October 2016, the claimant contacted Sara Mort to say there had been a misunderstanding. Sara Mort contact Jane Burtoft as requested so that the claimant could follow up the process with her.

108. On 21 October 2016, the claimant sent an email to the Chief Executive Officer. The claimant wrote that, in the meeting with the external investigator, the claimant had said she would only move if she moved to a Band 4 position doing similar roles as the one she lost as a result of Danielle Longworth's false reference. The claimant said that the external investigator went out of the room during the meeting to ask about these options and about secondments available but when she came back she said that, because the claimant had been to the papers, she would not be compensated in any sort of way, and, by HR doing this, it would give her an option to go back to the papers. The claimant asked for something to be done.

109. On 25 October 2016, the claimant wrote to Sarah Mort in HR saying that she was taking this back to the papers as she was sick and tired of being treated the way she had been. Sara Mort replied on 25 October informing the claimant that she had contacted Jane Burtoft about the alleged misunderstanding so that the claimant could follow up the process with her.

110. Around November 2016, Danielle Longworth left the Trust.

111. On 9 December 2016, the claimant had a further Occupational Health assessment. The Occupational Health adviser wrote that the claimant remained concerned about the application of the management of attendance policy i.e. the stage at which she was being managed, and that she also needed to feel reassured that she would not be working directly with any of the persons named in the complaint/investigation. The adviser wrote that, if these issues could be addressed, the claimant should be fit to return to work on expiration of her current medical certificate on 9 January 2017.

112. The claimant had a meeting with HR on 15 December 2016 to discuss the Occupational Health report. Sara Mort wrote to the claimant on 16 December, recording the discussion the previous day. She recorded that the claimant's first day back in work would be 11 January 2017 in line with her working days. She recorded that the claimant had been informed that Danielle Longworth was no longer employed by the Trust and Claire Dyson had started in the post of Assistant Service Manager. The claimant would still report in to the supervisors and Claire above them.

113. The claimant was informed that, on her return to work, Claire Dyson would carry out a return to work interview with her and that it would be Claire's responsibility to review all the details relating to her current and previous absences and progress any management of attendance processes as she felt appropriate.

They discussed the claimant's concerns about returning to work with Margaret Cox. Sara Mort wrote that the claimant had explained that she was keen to put the past behind her and move forward, so they discussed that, once she had returned to work and settled back in through her phased return, she might wish to consider if there was anything they could do to support and facilitate a positive way forward for her relationship with Margaret Cox. HR suggested that, when she had been back in work for around four weeks, it may be appropriate to have a further meeting to establish how things were going and to see if any further support was needed.

114. Around December 2016, Claire Dyson was told by Margaret Cox that she would be reviewing the claimant's management of attendance stage 3.

115. The claimant says she began to look for work again around December 2016.

116. On 21 December 2016, Sara Mort, Head of HR, wrote to the claimant on behalf of the respondent offering her sincere apologies in relation to the employment references that were provided to the prospective employer. She acknowledged that the references that were submitted contained inaccurate information. She wrote:

> "I can confirm that learning has been taken from this unfortunate situation and the approach to provision of references is being reviewed across the organisation. Once again please accept my apologies on behalf of the organisation for the impact that this situation has had on you."

117. On 6 January 2017, the claimant emailed Sara Mort. She wrote that she was feeling very anxious and stressed that she would return to work and be told that the management of attendance hearing would go ahead. She wrote:

> "I know I should never be having this in the first place as I should never of [sic] been put on the management of attendance stage 2 in the workplace as it was a work related injury."

118. The claimant wrote that she believed James [Stone] was making the decision.

119. Sara Mort replied on 9 January 2017. She wrote:

> "When you came in to meet with Bernie Delahoyde and myself we discussed the fact that it is important for Claire to review your absence record as a whole in order to establish how best to manage this going forward. This will include a decision about which stage in the management of attendance policy you are at. It is Claire, as your manager, who is responsible for making this decision. When we discussed this, you agreed that this review was needed. It is important that you return to work as planned, to allow you to have that discussion with Claire once she has had the opportunity to review all the details. It is appropriate for James Stone to support Claire with this, as he is the HR Manager for Network Services."

120. The claimant's official return to work date was 9 January but her first day back at work was 11 January because of her working days.

121. The claimant was told by Claire Dyson, in a telephone conversation before she returned to work, that she would be going to a stage 3 management of

attendance meeting. Claire Dyson confirmed this in a meeting after the claimant returned to work. The claimant disputed with Claire Dyson that she should be going to stage 3 because of absence which she said was related to a workplace injury. Claire Dyson sought HR advice about this. Claire Dyson had a meeting with James Stone of HR at which they discussed Claire Dyson's concerns about proceeding to stage 3. James Stone gave answers to the points she raised. They checked that the claimant's absence record was correct. James Stone advised Claire Dyson that the absence in the period 18 July 2016 to 9 January 2017 (which followed the incident with the reference) should be discounted, but the claimant's absences, without taking account of that period of absence, were sufficient to trigger stage 3. James Stone told Claire Dyson he could see no reason under the policy not to progress the matter to a stage 3 hearing but it was her decision to make. Either at the same meeting, or in a different conversation, Claire Dyson spoke to Margaret Cox who told Claire Dyson that it was her decision.

122. We find that Claire Dyson was uncomfortable at having to make a decision and uncomfortable about the decision she felt constrained to make. She felt she had no reason not to proceed to a stage 3 hearing. She felt she was abiding by the policy which the claimant had clearly triggered.

123. We find that the decision to proceed to a stage 3 hearing was in accordance with the respondent's policy. The respondent exercised discretion to disregard the absence following Danielle Longworth's reference but they did not consider there were circumstances to cause them to disregard the absence relating to the shoulder injury because the report had found no evidence of workplace injury.

124. On 20 January 2017 the claimant emailed Claire Dyson and others her resignation with effect from 20 February 2016. She wrote:

> "The reason being is due to recent events I have experienced with the corrupt management system that is in place and also the corrupt HR system that is in place and supports these managers. This is no disrespect to yourself [Claire Dyson] as I am aware you are new to your management role.
>
> I have been left with no other option other than to do this as these bullies will continue to victimise and discriminate against me, ruin my reputation and use their authority to bend rules and policies and treat me differently just how they have. I love my job but feel stressed and I am suffering with anxiety because of what has been done to me and feel I can no longer work for a trust who treats their employees this way and supports corrupt managers who bully and tell lies about their employees."

125. The claimant signed off with her name, putting in brackets afterwards, "a name this Trust will always remember".

126. After her resignation, the claimant telephoned Claire Dyson and had a lengthy conversation which the claimant covertly recorded. The conversation indicates that Claire Dyson was clearly uncomfortable with the decision she had had to make but that it was her decision to progress to stage 3. She referred to conversations with James Stone and Maggie Cox saying, "they were just coming back with an answer for everything". She said, "I felt like I didn't have a leg to stand on, do you know what I mean?".

127. Claire Dyson responded to the claimant's resignation by an email dated 24 January 2017. She wrote:

> "As explained after reviewing the MOA policy with HR, we felt that the case needs to go to an MOA stage 3 hearing, it would then be up to the panel to assess the information provided and this will give you the opportunity to present your case with your union support."

She wrote that she respected the claimant's decision and she would process her termination appropriately.

128. The claimant wrote to Claire Dyson on 24 January 2017, questioning who had made the decision to go to a stage 3 hearing. She wrote that she felt that the hearing was going ahead based on information which Margaret Cox and Danielle Longworth, who she described as liars and corrupt managers, had made up. She concluded her letter: "No one should play these dirty games with someone who plays them better."

129. The claimant started a new job around 24 April 2017. She told the Tribunal that she had applied for this job after she had resigned from the respondent and that she had got the job offer around the end of February 2017.

Submissions

130. Ms Smith, for the respondent, produced written submissions on the law and a table of the claims, setting out, in summary, why the respondent said these should not succeed. The written submissions can be referred to, if required, so we do not seek to summarise these. Ms Smith made supplementary oral submissions, largely relating to the reliability and credibility of witness evidence and as to the findings of fact the respondent submitted the tribunal should make. We do not seek to summarise these oral submissions.

131. Ms Wilson, on behalf of the claimant, made oral submissions. She told us she was not legally trained so would not refer to any case law. We do not seek to summarise all the submissions relating to the facts she submitted the tribunal should find. She submitted that the claimant's evidence was credible and reliable. She submitted that, by the time the claimant handed in her resignation, when she was being taken to stage 3 of the attendance management procedure, all trust in the respondent had gone. She submitted that the claimant was treated differently because of race and religion.

The Law

Discrimination claims

132. Section 13(1) of the Equality Act 2010 (EqA) provides: "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others". Section 4 lists protected characteristics which include race and religion or belief. "Race" is defined by section 9(1) as including colour, nationality, ethnic or national origins.

133. Section 23(1) EqA provides that "on a comparison of cases for the purposes of section 13….there must be no material difference between the circumstances relating to each case."

134. The relevant parts of section 26 EqA provide:

> "(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.
>
> ……
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
>
> (a) the perception of B;
>
> (b) the other circumstances of the case;
>
> (c) whether it is reasonable for the conduct to have that effect."

135. Section 39(2) provides, amongst other things, that an employer must not discriminate against an employee by subjecting that employee to a detriment.

136. In *Ministry of Defence v Jeremiah [1980] ICR 13,* Lord Justice Brandon, in the Court of Appeal, thought "any other detriment" meant "putting under a disadvantage". The House of Lords in *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337,* said a sense of grievance which is not justified is not sufficient to constitute a detriment.

137. Section 136 provides:

> "(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."

138. The tribunal makes findings of fact, having regard to the normal standard of proof in civil proceedings, which is on a balance of probabilities. A party must prove the facts on which they rely. A claimant must prove he suffered the treatment alleged, not merely assert it.

139. Once the relevant facts are established, the tribunal must apply section 136 in deciding whether there is unlawful discrimination.

140. The Court of Appeal in *Ayodele v CityLink Ltd and another [2017] EWCA Civ 1913,* has reaffirmed that there is an initial burden of proof on the claimant; the claimant must show that there is a prima facie case of discrimination which needs to be answered. The Court of Appeal concluded that previous decisions of the Court of Appeal, such as *Igen Ltd v Wong [2005] IRLR 258,* remained good law and should continue to be followed by courts and tribunals. The interpretation placed on section 136 EqA by the EAT in *Efobi v Royal Mail Group Limited (UKEAT/0203/16)* was wrong and should not be followed.

141. The effect of the authorities is that the tribunal must consider, at the first stage, all the evidence, from whatever source it has come, in deciding whether the claimant has shown that there is a prima facie case of discrimination which needs to be answered.

142. A finding of bad treatment, will not be enough to satisfy the tribunal that a claimant has suffered less favourable treatment: *Essex County Council v Jarrett EAT 0045/15.*

143. A finding of less favourable treatment, without more, is not a sufficient basis for drawing an inference of discrimination at the first stage: *Madarassy v Nomura International plc [2007] ICR 867, CA.* In *Dedman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1279 CA,* Lord Justice Sedley said that "the 'more' which is needed to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred."

144. The fact that a claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift: *Glasgow City Council v Zafar [1998] ICR 120 HL.* In that case, the House of Lords held that a tribunal had not been entitled to infer less favourable treatment on the ground of race from the fact that the employer had acted unreasonably in dismissing the employee.

145. If the claimant establishes facts from which the tribunal could conclude there was unlawful discrimination, the burden passes to the respondent to provide an explanation for its actions. The tribunal must find that there was unlawful discrimination unless the respondent provides an adequate, in the sense of non-discriminatory, explanation for the difference in treatment.

146. Less favourable treatment will be because of the protected characteristic if the characteristic is an "effective cause" of the treatment; it does not need to be the only or even the main cause. The motivation may be conscious or unconscious: *Nagarajan v London Regional Transport [1999] IRLR 572 HL.*

<u>Constructive unfair dismissal</u>

147. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996. Section 94(1) of this Act provides that an employee has the right not to be

unfairly dismissed by his employer. Section 95(1)(c) provides that an employee is to be regarded as dismissed if "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

148. An employee will be entitled to terminate a contract of employment without notice if the respondent is in fundamental breach of that contract and the employee has not waived the breach or affirmed the contract by their conduct.

149. An implied term of an employment contract is the term of mutual trust and confidence. This is to the effect that an employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Limited 1981 ICR 666, said that the tribunal must "look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."

150. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a "last straw" incident, even though the "last straw" is not, by itself, a breach of contract: *Lewis v Motorworld Garages Limited 1986 ICR 157 CA.* The last straw does not have to constitute unreasonable or blameworthy conduct, but it must contribute, however slightly, to the breach of the implied term of trust and confidence: *Omilaju v Waltham Forest London Borough Council 2005 ICR 481 CA.*

151. In *Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978,* the Court of Appeal has reasserted the orthodox approach to affirmation of the contract and the last straw doctrine i.e. that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer's acts, notwithstanding a prior affirmation. The Court of Appeal set out the questions the tribunal must ask itself in a case where an employee claims to have been constructively dismissed:

(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

(2) Has he or she affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *Malik* term? (If it was, there is no need for any separate consideration of a possible previous affirmation because the effect of the final act is to revive the right to resign.)

(5) Did the employee resign in response (or partly in response) to that breach?

Conclusions

<u>Harassment related to race or religion</u>

The response of Danielle Longworth to the claimant reporting a shoulder injury sustained at work in July 2015 and the refusal to recognise it as a work-related injury

152. We found that Danielle Longworth did take action in response to the report. She recorded the information given on the respondent's system and carried out some investigation including a root and branch analysis in conjunction with the health and safety manager. She found no evidence that this was a work-related injury.

153. The claimant was unhappy with Danielle Longworth's conclusion that it was not a work-related injury. We conclude that Danielle Longworth's response was unwanted conduct. However, there is nothing to link this to race or religious belief. The claimant has not proved facts from which we could conclude that there is such a link. There is no evidence that Danielle Longworth response had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for her. We are not satisfied that it had this effect on the claimant. However, if we are wrong on that, conclude that it was not reasonable for it to have that effect. We conclude, for these reasons, that this complaint is not well founded.

In comments allegedly made by Vicky Haughton in the period between July 2015 and March 2016

a) in June 2015 Vicky Haughton asked the claimant "why do Muslims do things like this?" when discussing the Tunisian attack (religion only)

154. We found that Vicky Haughton did not say "why do Muslims do things like this?" but said "why do these do that". We found that she meant by "these", deranged people. Considering the complaint of harassment in relation to what we have found that Vicky Haughton said, the claimant has not proved facts from which we could conclude that the comments were related to religion. We were not satisfied, on the evidence, that the claimant was offended by the comment made by Vicky Haughton at the time. The claimant did not do or say anything at the time to suggest that she took offence. If this was unwanted conduct, we are not satisfied that the conduct had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The claimant has not proved facts from which we could conclude that the comments were related to religion.

b) In June 2015 onwards Vicky Haughton would make comments like "I don't like pakis" (religion only);

155. We found that this comment was not made. We conclude, therefore, that this complaint is not well founded.

c) In June/July 2015 Vicky Haughton asked the claimant "why did Muslims not drink (alcohol)". She asked "who would know, if you had a drink". She kept on asking like she did not believe the claimant.

156. We found that comments made were not entirely as alleged by the claimant. We found that Vicky Haughton did ask the claimant whether she had ever drunk alcohol. We found that she did not say "who would know if you had a drink?" We

were not satisfied that the claimant took offence at the time at Vicky Haughton's comments and questions. We accepted evidence that the conversation occurred in the context of a general conversation about what they were doing at the weekend and the claimant saying that Muslims did not drink as it was against their religion. We are not satisfied that Vicky Haughton's comments and questions were unwanted and that the claimant took offence at the time. The comments and questions clearly were related to religious belief. We conclude that Vicky Haughton did not engage in unwanted conduct and it did not have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, grading, humiliating or offensive environment for her. We conclude, therefore, that this complaint is not well founded.

d) In early 2016 Vicky Haughton asked the claimant "do all Muslim men treat women badly?"

157. We found that Vicky Haughton made a similar comment to this, being "Do men think that women are second class citizens in Muslim culture?". We found that this arose in the context of the claimant talking about someone who had just had a baby but her husband was still going out doing his own thing and not pulling his weight with jobs around the house, and saying that she would have to drive round to help this lady out. The comments and questions clearly were related to religious belief. We do not conclude that they were related to race since case law suggests that Muslims do not constitute a distinct and separate ethnic group. We conclude that Vicky Haughton did not engage in unwanted conduct and it did not have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, grading, humiliating or offensive environment for her. We conclude, therefore, that this complaint is not well founded.

In a meeting in March 2016, the claimant told Margaret Cox that she was fed up with racist and Islamophobic language being used against her. Margaret Cox did nothing and hugged Vicky Haughton.

158. We found that, in this meeting, the claimant did not tell Margaret Cox about alleged racist and Islamophobic language being used by Vicky Haughton. This complaint, therefore, fails as the facts relied upon have not been established.

In the instruction by Margaret Cox in November 2015 for the claimant to remove from the staff intranet a posting offering make up for sale and telling the claimant she was not to use the staff intranet to run a business (race only)

159. We found that Margaret Cox did ask the claimant to remove the posting from the intranet. This was in the context of there having been another case shortly before, regarding another member of staff selling items on the intranet who was to have been told to remove their advert, but had taken their advert down before they were spoken to. Margaret Cox explained to the claimant about the other advert and that they had to be fair and equitable and that selling make up from the office would be disruptive to other team members who were trying to work and it was inappropriate to use the department name in the advert. We found that the claimant appeared to understand and accept the reason for removing her posting at the time.

160. If this conduct was unwanted, the claimant did not indicate this at the time. We accept, however, that the claimant may have been unhappy about being asked to take the posting down but did not display this unhappiness. Even if the conduct

was unwanted, we conclude that the complaint is not well founded since the claimant has not proved any facts from which we could conclude that the treatment was related to race. We also conclude that the treatment clearly did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, grading, humiliating or offensive environment for her. We are not satisfied, from the way the claimant appeared to Margaret Cox at the time, that the claimant was offended by being asked to take down the posting. Even if the claimant was offended, it was not reasonable for the treatment to have the effect of violating the claimant's dignity, or creating an intimidating, hostile, grading, humiliating or offensive environment for her. We conclude that the treatment did not have the requisite effect to satisfy the definition of harassment so, for this reason also, the complaint is not well founded.

The response by Margaret Cox in January 2016 to the claimant's request for time off when her daughter was taken ill and had to be hospitalised.

161. We found that Karen Hunter referred the request to Margaret Cox. Margaret Cox asked whether the claimant had any leave left, and she was informed by Karen Hunter that the claimant did not have any leave left. Margaret Cox asked whether the claimant was aware she had no leave and that it would have to be unpaid. Karen Hunter replied that she had had a discussion with the claimant that she had no carer or annual leave so the leave would have to go down as unpaid leave. In fact, it appears that Karen Hunter made a mistake in thinking the claimant had exhausted her carer's leave. The mistake was subsequently rectified after the claimant's trade union representative raised the matter with Danielle Longworth. Since the claimant had used one of the two carer's days to which she was entitled, she was allowed, on this occasion, to take the first day of absence as emergency carer's leave. As the claimant had used all her annual leave for the year, she was informed that remaining time off would have to be unpaid leave.

162. The initial misinformation was given in error; an error in the information given by Karen Hunter to Margaret Cox (and we note no complaint is made about Karen Hunter). The claimant has not proved any facts from which we could conclude that the mistake was related to race or religion. We conclude, therefore, that the complaint is not well founded.

In April 2016 Margaret Cox instructed the claimant's team leader to remind her about policies and procedures for taking leave and to insist that she had unpaid leave (rather than annual leave) when her husband's cousin had passed away suddenly.

163. We found that the claimant left work without notifying a manager directly, in breach of the respondent's notification of absence policies, although the claimant did leave a message with a colleague. The claimant says she could not find a manager and she did not think of texting Margaret Cox. We found that the message the claimant left with a colleague did not say that burial was likely to take place the same day in accordance with Muslim practice.

164. The claimant was reminded of these policies because she had breached policy. She was also informed that her absence would need to be recorded as unpaid leave as it would not qualify as special leave and she did not have any annual leave to take. The claimant was upset that she would not be allowed to record the absence as special leave.

165. We found that the policy on bereavement leave gives authorising managers discretion to allow up to a maximum of the equivalent of one working week's paid leave to any employee experiencing urgent need for time off on compassionate grounds. The policy provides that employees may take up to one day's leave to attend a funeral and, where the bereavement involves a close family member such as parent, brother, sister or child (adopted or natural) grandparent or where the employee is named as the executor, up to one working week. The policy allows also for unpaid leave to be considered by the authorising manager. We accepted the evidence of Karen Hunter that her experience is that special leave has only been granted for absence due to the death of an immediate family member. We also accepted the evidence of Vicky Haughton that when her uncle died she was refused bereavement leave and had to take annual leave for the funeral.

166. We conclude that the conduct, of being reminded of the policies for notification and being told that she could only take unpaid leave, rather than special leave, was unwanted. However, the claimant has not proved facts from which we could conclude that the treatment was related to race or religion. The respondent acted consistently with its policies and past practice. We conclude that the complaint is not well founded.

The factually inaccurate reference completed by Danielle Longworth in June 2016 which deprived the claimant of a new role with a different Trust.

167. This was a most regrettable incident where we found an inaccurate reference was provided by Danielle Longworth. Danielle Longworth was not aware that she had made errors in any references for any other people since no-one had raised this with her. We have no evidence as to who else Danielle Longworth had provided references for in the past and as to their race or religion. Even if Danielle Longworth had not made any errors in references for other people, we do not consider this, by itself, to be evidence from which we could infer that the provision of a factually inaccurate reference was related to race or religion. The claimant herself did not appear, at the time, to consider that the provision of an inaccurate reference was related to race or religion. The claimant wrote, in her letter to the Chief Executive dated 29 June 2016 that "I believe Danielle has not provided a true, accurate and fair reference and the information given was provided in malice due to the history of relationship between us!" The claimant has not pointed to any evidence which could lead us to infer that the inaccuracies in the reference were related to race or religion. We conclude that the conduct was unwanted and had the requisite effect on the claimant. However, we conclude that the inaccurate reference was not related to race or religion and, for this reason, we conclude that this complaint of harassment related to race or religion is not well founded.

In early 2017 the claimant was informed that she would be proceeding to a stage 3 sickness meeting on the instructions of Margaret Cox when she had previously been told that whether such a meeting would be required would be decided by her new line manager.

168. We found that the claimant was told she would be proceeding to a stage 3 sickness meeting because her absences (leaving aside the absence following the inaccurate reference) had hit the trigger point for stage 3. It was entirely in accordance with the respondent's absence management procedure that there should be a stage 3 hearing when this trigger point was reached. Only in exceptional

circumstances would the case not progress to a stage 3 hearing. The respondent exercised the very limited discretion it had in discounting the absence following the reference but did not consider the circumstances relating to other absences warranted not proceeding to a hearing. The respondent had concluded at stage 2, which the claimant did not appeal, that there was no evidence that the absence with a shoulder injury was work-related. At the stage 3 hearing the claimant would have had an opportunity to argue why she should not be dismissed. We found that Margaret Cox did not make the decision, although she had made an earlier decision that there should be a stage 3 hearing, before the process was put on hold because of the claimant's grievance about the reference. After the grievance had been dealt with, the claimant's new manager, Claire Dyer, was given the decision of whether to proceed to a stage 3 hearing. We found that it was Claire Dyer's decision that there should be a stage 3 hearing, albeit she felt she had no choice but to make that decision in the circumstances, and clearly felt very uncomfortable about making that decision. The claimant has not proved facts from which we could conclude that the decision to proceed to a stage 3 hearing was related to race or religion. For this reason, we conclude that this complaint is not well founded.

Direct discrimination because of religious belief

In April 2016 Margaret Cox instructed the claimant's team leader to remind her about policies and procedures for taking leave and to insist that she had unpaid leave (rather than annual leave) when her husband's cousin had passed away suddenly

169. We found that the claimant left work without notifying a manager directly, in breach of the respondent's notification of absence policies, although the claimant did leave a message with a colleague. The claimant says she could not find a manager and she did not think of texting Margaret Cox. We found that the message the claimant left with a colleague did not say that burial was likely to take place the same day in accordance with Muslim practice.

170. The claimant was reminded of these policies because she had breached policy. She was also informed that her absence would need to be recorded as unpaid leave as it would not qualify as special leave and she did not have any annual leave to take. The claimant was upset that she would not be allowed to record the absence as special leave.

171. We found that the policy on bereavement leave gives authorising managers discretion to allow up to a maximum of the equivalent of one working week's paid leave to any employee experiencing urgent need for time off on compassionate grounds. The policy provides that employees may take up to one day's leave to attend a funeral and, where the bereavement involves a close family member such as parent, brother, sister or child (adopted or natural) grandparent or where the employee is named as the executor, up to one working week. The policy allows also for unpaid leave to be considered by the authorising manager. We accepted the evidence of Karen Hunter that her experience is that special leave has only been granted for absence due to the death of an immediate family member. We also accepted the evidence of Vicky Haughton that when her uncle died she was refused bereavement leave and had to take annual leave for the funeral.

172. We conclude that the claimant has not proved facts from which we could conclude that the treatment was less favourable treatment than would be given to

others of a different religion in the same, or not materially different, relevant circumstances and that the treatment was because of religious belief. There is no evidence that suggests that Margaret Cox would have acted differently in the case of someone who was not Muslim, leaving work without notifying a manager directly because of the death of the cousin of their spouse and who had taken all their annual leave. Indeed, the evidence of Vicky Haughton that she was refused bereavement leave and had to take annual leave for the funeral of her uncle suggests that paid bereavement, or special, leave would not be granted for the death of a spouse's cousin. We, therefore, conclude that this complaint of direct religious discrimination is not well founded.

Comments made by Margaret Cox in April 2016 about being caught up in the Brussels terrorist attacks.

173. We found, on a balance of probabilities, that Margaret Cox discussed having been at the Brussels terrorist attacks generally in the office and not in a one-to-one meeting with the claimant.

174. We conclude that the claimant has not proved facts from which we could conclude that the treatment was less favourable treatment than would be given to others of a different religion in the same, or not materially different, relevant circumstances and that the treatment was because of religious belief. There is nothing to suggest that Margaret Cox spoke about this experience because of religious belief. It was entirely understandable that she would talk about this in the context of general conversation in the office.

175. Even if we had accepted the claimant's evidence, this amounted, at its highest, to Margaret Cox telling the claimant in a one to one meeting that she had been there at the Brussels terrorist attacks. The claimant did not allege that Margaret Cox said anything else about this. We would still have concluded that the claimant had not proved facts from which we could conclude that the treatment was less favourable treatment and because of religious belief.

176. We conclude that this complaint of direct religious discrimination is not well founded.

Questions from Danielle Longworth in June 2016 about the claimant fasting during Ramadan, and negative remarks about how it looked like the claimant was about to keel over and pass out, and aggressive questions about her faith.

177. We found that Danielle Longworth asked the claimant questions about when she could eat and whether she could drink. We found that she commented to the claimant that she had seen her on the corridor and thought it looked like the claimant was going to pass out and commented that she, Danielle, could not do it i.e. keep such a fast. We found that the claimant was angry and upset by the questions and remarks.

178. The questions and comments are not intrinsically offensive, albeit they were not welcomed by the claimant, perhaps more because of her poor relationship with Danielle Longworth rather than because of the nature of the comments and questions themselves. We conclude that the claimant, whilst upset, was not subjected to a detriment, in the sense of being put at a disadvantage, by these

questions and comments. We conclude that the claimant has not proved facts from which we could conclude that she was treated less favourably than a person of another religion in the same or not materially different relevant circumstances would have been. The questions and comments indicate curiosity, concern and even admiration, albeit not appreciated by the claimant, perhaps more because of the source of the comments and questions rather than the comments and questions themselves. There is nothing which suggests Danielle Longworth would have taken a different approach if there was an employee of another religion who was engaged in some other religious practice about which Danielle Longworth was curious or was fasting for a non-religious reason. We conclude that this complaint of direct religious discrimination is not well founded.

In June 2015 Vicky Haughton asked the claimant "why do Muslims do things like this?" when discussing the Tunisian attack

179. We found that Vicky Haughton did not say "why do Muslims do things like this?" but said "why do these do that". We found that she meant by "these", deranged people. Considering the complaint of direct religious discrimination in relation to what we have found that Vicky Haughton said, we are not satisfied, on the evidence, that the claimant was subjected to a detriment by the comment made by Vicky Haughton at the time. We are not satisfied that she was offended by this at the time. We also conclude that the claimant has not proved facts from which we could conclude that the comments were less favourable treatment than would have been given to a person of a different, or no, religion and that the reason for the treatment was religious belief. We, therefore, conclude that this complaint of direct religious discrimination is not well founded.

In June/July 2015 Vicky Haughton asked the claimant "why did Muslims not drink (alcohol)". She asked "who would know, if you had a drink". She kept on asking like she did not believe the claimant.

180. We found that comments made were not entirely as alleged by the claimant. We found that Vicky Haughton did ask the claimant whether she had ever drunk alcohol. We found that she did not say "who would know if you had a drink?" We were not satisfied that the claimant took offence at the time at Vicky Haughton's comments and questions. We accepted evidence that the conversation occurred in the context of a general conversation about what they were doing at the weekend and the claimant saying that Muslims did not drink as it was against their religion. We are not satisfied that the claimant took offence at the time. We conclude that the claimant was not subjected to a detriment by these questions. The comments and questions clearly were related to religious belief. The claimant has not proved facts from which we could conclude that this was less favourable treatment than would have been given to a work colleague of a different, or no, religion, in the same or not materially different relevant circumstances. The questions are not intrinsically offensive. The context of the questions, and the fact that they were asked by a work colleague with whom the claimant was friendly at the time, suggest curiosity which might be extended to a colleague who did not drink for some other reason or behaved in some other way which was different to the lifestyle of Vicky Haughton. Vicky Haughton had no reason to think the claimant would take offence because of her questions and we are not satisfied that the claimant did take offence. Questions about behaviour linked to religious practice will not automatically be less favourable treatment; the context of the nature of the discussion and the participants in that

discussion and their relationship and the nature of the questions themselves must be relevant in considering whether there is less favourable treatment because of religious belief. Considering all the circumstances, we conclude that this complaint of direct religious belief is not well founded.

In early 2016 Vicky Haughton asked the claimant "do all Muslim men treat women badly?"

181. We found that Vicky Haughton made a similar comment to this, being "Do men think that women are second class citizens in Muslim culture?". We found that this arose in the context of the claimant talking about someone who had just had a baby but her husband was still going out doing his own thing and not pulling his weight with jobs around the house, and saying that she would have to drive round to help this lady out. We are not satisfied that the claimant was offended by the comment. We conclude that the claimant was not subjected to a detriment by the comment. We conclude, having regard to the context of the discussion and the relationship of the participants, that the claimant has not proved facts from which we could conclude that this was less favourable treatment because of religious belief. We conclude that this complaint of direct religious belief is not well founded.

Direct race discrimination

In June 2015 onwards Vicky Haughton would make comments like "I don't like pakis".

182. We found that this was not said. We conclude, therefore, that this complaint of direct race discrimination is not well founded.

In early 2016 Vicky Haughton asked the claimant "do all Muslim men treat women badly?"

183. We found that Vicky Haughton made a similar comment to this, being "Do men think that women are second class citizens in Muslim culture?". We found that this arose in the context of the claimant talking about someone who had just had a baby but her husband was still going out doing his own thing and not pulling his weight with jobs around the house, and saying that she would have to drive round to help this lady out. We are not satisfied that the claimant was offended by the comment. We conclude that the claimant was not subjected to a detriment by the comment. We conclude, having regard to the context of the discussion and the relationship of the participants, that the claimant has not proved facts from which we could conclude that this was less favourable treatment than how someone of a different race, in the same, or not materially different, relevant circumstances would have been treated. In addition, the comment relates to Muslims, rather than people of a particular race, Muslims not being regarded as constituting a distinct and separate ethnic group We conclude that this complaint of direct race discrimination is not well founded.

Constructive unfair dismissal

184. The matters the claimant relies on as, individually or cumulatively, constituting, she submits, a breach of the implied duty of mutual trust and confidence are set out in the agreed list of issues. We consider whether each of these in turn

constitutes a breach of that implied term or is capable of forming part of a breach of that implied term, and then consider whether, cumulatively, they constitute such a breach.

In the winter of 2014 Danielle Longworth told the claimant that she would take further action against her if any further complaints were made about her and reminded her that she could lose her job.

185. This relates to a meeting following an incident when another employee, Megan, complained to Danielle Longworth about a comment which the claimant had made about her pregnancy and about the claimant blocking her on Facebook. Margaret Cox and Danielle Longworth had a meeting with the claimant, Megan and the other employee to discuss the matter. We found that Danielle Longworth did not tell the claimant that she would take further action against her if further complaints were made and that the claimant could lose her job. We found that the claimant could reasonably have understood from Danielle Longworth saying that blocking Megan on Facebook could be bullying, that disciplinary action could be taken against her if this happened again, but we find that Danielle Longworth did not expressly say this to the claimant. No disciplinary action was taken and no grievance brought by any of the people involved in this incident. The claimant has not established the facts she relies upon. We conclude that the facts we found do not constitute a breach of the implied duty of mutual trust and confidence and are not capable of forming part of such a breach.

In April 2015 Danielle Longworth said to the claimant "don't worry, I know you need the extra hours to clothe and feed your kids."

186. The incident the claimant refers to occurred on 8 May 2015 rather than April 2015. The comment made by Danielle Longworth was made in a conversation when the claimant was querying a shortfall in the hours in a contract from what she had been expecting. We found that Danielle Longworth made a comment, when seeking to reassure the claimant that she would not suffer financially, along the lines of telling her not to worry because she knew she needed the extra hours to clothe and feed her children. The claimant was offended by the comment. We found that, in making the comment she did, Danielle Longworth was reflecting back a remark which had been previously made to her by the claimant. We conclude that the comment, made in this context, does not constitute a breach of the implied duty of mutual trust and confidence and is not capable of forming part of such a breach.

In July 2015 Danielle Longworth failed to acknowledge that the claimant had received a work related injury.

187. Danielle Longworth investigated this and completed a root cause analysis with the Health and Safety Manager. Danielle Longworth understood, from speaking to a colleague of the claimant's, that the claimant had been working in in the same way, picking up files from a box on the floor, from January 2015 until she went off sick in July 2015 and had not mentioned to anyone that it was causing any discomfort until she went off sick. The root cause analysis formed the basis of an executive group report in October 2015 which concluded that there was no evidence and no witnesses to suggest that the injury occurred. Whilst it may have been preferable that Danielle Longworth or another manager spoke again to the claimant before writing the report, Danielle Longworth having just spoken to the claimant on the day

she reported sick, we conclude that Danielle Longworth and the respondent were entitled, on the basis of the evidence available, to conclude that the injury was not work-related. We note that the occupational health report prepared on 28 September 2015, shortly before the executive group report, recorded that the claimant attributed her condition to "repetitive lifting, particularly from low levels, whilst at work." The claimant's description at this time was, therefore, more consistent with the information Danielle Longworth recorded than the account of an accident the claimant has given in evidence to this tribunal i.e. that she injured herself moving a box of her files which Vicky Haughton had "dumped" in a box whilst the claimant was not at work. We conclude that the failure of Danielle Longworth to acknowledge that the claimant had received a work related injury was not, in the circumstances, a breach of the implied duty of mutual trust and confidence and was not capable of forming part of such a breach.

In the instruction by Margaret Cox in November 2015 for the claimant to remove from the staff intranet a posting offering make up for sale and telling the claimant she was not to use the staff intranet to run a business.

188. We found that Margaret Cox did ask the claimant to remove the posting from the intranet. This was in the context of there having been another case shortly before, regarding another member of staff selling items on the intranet who was to have been told to remove their advert, but had taken their advert down before they were spoken to. Margaret Cox explained to the claimant about the other advert and that they had to be fair and equitable and that selling make up from the office would be disruptive to other team members who were trying to work and it was inappropriate to use the department name in the advert. We found that the claimant appeared to understand and accept the reason for removing her posting at the time.

189. We considered this allegation in the context of the claimant's complaint that this constituted harassment related to race and concluded that it did not constitute harassment related to race.

190. We conclude that what was said by Margaret Cox does not constitute a breach of the implied duty of mutual trust and confidence and is not capable of forming part of such a breach.

The response by Margaret Cox in January 2016 to the claimant's request for time off when her daughter was taken ill and had to be hospitalised.

191. We found that Karen Hunter referred the request to Margaret Cox. Margaret Cox asked whether the claimant had any leave left, and she was informed by Karen Hunter that the claimant did not have any leave left. Margaret Cox asked whether the claimant was aware she had no leave and that it would have to be unpaid. Karen Hunter replied that she had had a discussion with the claimant that she had no carer or annual leave so the leave would have to go down as unpaid leave. In fact, it appears that Karen Hunter made a mistake in thinking the claimant had exhausted her carer's leave. The mistake was subsequently rectified after the claimant's trade union representative raised the matter with Danielle Longworth. Since the claimant had used one of the two carer's days to which she was entitled, she was allowed, on this occasion, to take the first day of absence as emergency carer's leave. As the claimant had used all her annual leave for the year, she was informed that remaining time off would have to be unpaid leave.

192. The initial misinformation was given in error; an error in the information given by Karen Hunter to Margaret Cox (and we note no complaint is made about Karen Hunter).

193. The respondent was acting in accordance with its policies.

194. We considered this allegation in the context of the claimant's complaint that this constituted harassment related to race and religion and concluded that it did not constitute harassment related to race or religion.

195. We conclude that the treatment complained of does not constitute a breach of the implied duty of mutual trust and confidence and is not capable of forming part of such a breach.

In March 2016 Margaret Cox and Danielle Longworth ignored the claimant's comments about racist and Islamophobic comments by Vicky Haughton.

196. We found that the claimant did not inform Margaret Cox and Danielle Longworth of such comments. This matter cannot, therefore, constitute a breach of the implied duty of mutual trust and confidence or part of such a breach.

Comments made by Margaret Cox in April 2016 about being caught up in the Brussels terrorist attacks.

197. We found, on a balance of probabilities, that Margaret Cox discussed having been at the Brussels terrorist attacks generally in the office and not in a one-to-one meeting with the claimant. We conclude that having such a discussion does not constitute a breach of the implied duty of mutual trust and confidence and is not capable of forming part of such a breach.

198. Even if we had accepted the claimant's evidence, this amounted, at its highest, to Margaret Cox telling the claimant in a one to one meeting that she had been there at the Brussels terrorist attacks. The claimant did not allege that Margaret Cox said anything else about this. We would have found that this did not constitute a breach of the implied duty of mutual trust and confidence.

In April 2016 Margaret Cox instructed the claimant's team leader to remind her about policies and procedures for taking leave and to insist that she had unpaid leave (rather than annual leave) when her husband's cousin had passed away suddenly.

199. We found that the claimant left work without notifying a manager directly, in breach of the respondent's notification of absence policies, although the claimant did leave a message with a colleague. The claimant says she could not find a manager and she did not think of texting Margaret Cox. We found that the message the claimant left with a colleague did not say that burial was likely to take place the same day in accordance with Muslim practice.

200. The claimant was reminded of these policies because she had breached policy. She was also informed that her absence would need to be recorded as unpaid leave as it would not qualify as special leave and she did not have any annual leave to take. The claimant was upset that she would not be allowed to record the absence as special leave.

201. We found that the policy on bereavement leave gives authorising managers discretion to allow up to a maximum of the equivalent of one working week's paid leave to any employee experiencing urgent need for time off on compassionate grounds. The policy provides that employees may take up to one day's leave to attend a funeral and, where the bereavement involves a close family member such as parent, brother, sister or child (adopted or natural) grandparent or where the employee is named as the executor, up to one working week. The policy allows also for unpaid leave to be considered by the authorising manager. We accepted the evidence of Karen Hunter that her experience is that special leave has only been granted for absence due to the death of an immediate family member. We also accepted the evidence of Vicky Haughton that when her uncle died she was refused bereavement leave and had to take annual leave for the funeral.

202. The claimant relied on this treatment as constituting harassment related to race or religion. We concluded that this complaint was not well founded.

203. The respondent was acting in accordance with its policies. We conclude that the treatment does not constitute a breach of the implied duty of mutual trust and confidence and is not capable of forming part of such a breach.

The factually inaccurate reference completed by Danielle Longworth in June 2016 which deprived the claimant of a new role with a different Trust.

204. We found that Danielle Longworth made a number of serious errors in the reference she provided for the claimant. The respondent sought to correct the errors as soon as HR learnt of the problem. We conclude that the provision of the original inaccurate reference was so serious that this matter, by itself, was capable of constituting a breach of the implied duty of mutual trust and confidence. We consider this to be the case even though we do not conclude, as was alleged by the claimant, that the inaccurate reference was provided out of malice. We conclude that the errors were made without reasonable or proper cause. A breach of contract cannot be cured by subsequent actions, such as the provision of the corrected reference and apology. However, we conclude that the claimant did not resign in response to this breach alone. There was a significant delay in the claimant resigning. The claimant was expressing willingness to return to work after sickness absence and did return to work in January 2017. If the claimant had considered the working relationship so damaged by the breach that she had no trust and confidence in the respondent, she would not have returned to work. The claimant indicated in a meeting with the respondent that she would stay if she got a band 4 position. She resigned after this was rejected and the respondent made it clear that she would be required to attend a stage 3 management of attendance hearing. We conclude that the complaint of constructive dismissal cannot succeed on the basis of the breach of contract relating to the reference alone because of the claimant's actions after this breach which we conclude amount to affirming the contract.

During this period Danielle Longworth was supposed to have no contact with the claimant but would smirk, grin and mutter under her voice when she saw the claimant in the department.

205. We found that Danielle Longworth did not smirk, grin and mutter under her voice when she saw the claimant in the department. The claimant cannot, therefore,

rely on this alleged conduct as part of the breach of the implied duty of mutual trust and confidence.

Questions from Danielle Longworth in June 2016 about the claimant fasting during Ramadan, and negative remarks about how it looked like the claimant was about to keel over and pass out, and aggressive questions about her faith.

206. We found that Danielle Longworth asked the claimant questions about when she could eat and whether she could drink. We found that she commented to the claimant that she had seen her on the corridor and thought it looked like the claimant was going to pass out and commented that she, Danielle, could not do it i.e. keep such a fast. We found that the claimant was angry and upset by the questions and remarks.

207. The questions and comments are not intrinsically offensive, albeit they were not welcomed by the claimant, perhaps more because of her poor relationship with Danielle Longworth rather than because of the nature of the comments and questions themselves. The questions and comments indicate curiosity, concern and even admiration, albeit not appreciated by the claimant, perhaps more because of the source of the comments and questions rather than the comments and questions themselves.

208. The claimant relied on this matter as a complaint of direct religious discrimination. We concluded that this complaint was not well founded.

209. We conclude that the questions and comments of Danielle Longworth are not capable of constituting a breach of the implied duty of mutual trust and confidence or part of such a breach.

In early 2017 the claimant was informed that she would be proceeding to a stage 3 sickness meeting on the instructions of Margaret Cox when she had previously been told that whether such a meeting would be required would be decided by her new line manager.

210. We found that the claimant was told she would be proceeding to a stage 3 sickness meeting because her absences (leaving aside the absence following the inaccurate reference) had hit the trigger point for stage 3. It was entirely in accordance with the respondent's absence management procedure that there should be a stage 3 hearing when this trigger point was reached. Only in exceptional circumstances would the case not progress to a stage 3 hearing. The respondent exercised the very limited discretion it had in discounting the absence following the reference but did not consider the circumstances relating to other absences warranted not proceeding to a hearing. The respondent had concluded at stage 2, which the claimant did not appeal, that there was no evidence that the absence with a shoulder injury was work-related. At the stage 3 hearing the claimant would have had an opportunity to argue why she should not be dismissed. We found that Margaret Cox did not make the decision, although she had made an earlier decision that there should be a stage 3 hearing, before the process was put on hold because of the claimant's grievance about the reference. After the grievance had been dealt with, the claimant's new manager, Claire Dyer, was given the decision of whether to proceed to a stage 3 hearing. We found that it was Claire Dyer's decision that there should be a stage 3 hearing, albeit she felt she had no choice but to make that

decision in the circumstances, and clearly felt very uncomfortable about making that decision.

211. The claimant relied on this matter as a complaint of harassment related to race or religion. We concluded that this complaint was not well founded.

212. The respondent was acting entirely in accordance with its policies. We conclude that this matter cannot, alone, or together with other matters, constitute a breach of the implied duty of mutual trust and confidence.

Whether matters collectively constitute a breach of the implied duty of mutual trust and confidence

213. The only matter which we concluded constituted a breach of the implied duty of mutual trust and confidence was the provision of an inaccurate reference by Danielle Longworth. We conclude that none of the other matters relied on are capable, by themselves, or together with other matters, of constituting a breach of the implied duty of mutual trust and confidence.

214. The claimant delayed for a significant period of time, around 7 months, after the inaccurate reference and before she resigned. She was off sick for much of that time but had meetings about her return to work, in which she indicated her willingness to return to work, and did, in fact, return to work in January 2017. She resigned on 20 January 2017 when it was clear to her that she would have to attend a stage 3 management of attendance hearing. We have found that it was entirely in accordance with the respondent's policies for the claimant to be required to attend such a hearing, given her history of absences. We conclude that the claimant would have remained working for the respondent if she had been told that she was not required to attend a stage 3 hearing. We accept that the inaccurate reference formed part of the claimant's reasons for resigning but conclude that she would not have resigned but for subsequent events which were not capable of forming part of a breach of the implied duty of mutual trust and confidence. We conclude that the claimant affirmed the contract by indicating her willingness to return to work and then returning to work in January 2017.

215. We conclude, therefore, that the claimant was not constructively dismissed and her complaint of constructive unfair dismissal is not well founded.

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Employment Judge Slater

Date: 20 July 2018

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

24 July 2018

FOR THE TRIBUNAL OFFICE

ANNEX

Complaints and Issues

Part 1: Equality Act 2010

Harassment related to race or religion: section 26

1. Can the claimant prove facts from which the Tribunal could conclude that in relation to any or all of the following allegations:

(a) The respondent engaged in unwanted conduct;

(b) Which was related to race or religious belief;

(c) Which had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

1.1 In the response of Danielle Longworth to the claimant reporting a shoulder injury sustained at work in July 2015 and the refusal to recognise it as a work related injury;

1.2 In comments allegedly made by Vicky Horton in the period between July 2015 and March 2016 [*to be specified in further particulars*];

1.3 In the instruction by Margaret Cox in November 2015 for the claimant to remove from the staff intranet a posting offering makeup for sale and telling the claimant she was not to use the staff intranet to run a business [*the claimant relies on race not religion for this allegation*];

1.4 The response by Margaret Cox in January 2016 to the claimant's request for time off when her daughter was taken ill and had to be hospitalised;

1.5 In April 2016 Margaret Cox instructed the claimant's team leader to remind her about policies and procedures for taking leave and to insist that she had unpaid leave (rather than annual leave) when her husband's cousin had passed away suddenly;

1.6 The factually inaccurate reference completed by Danielle Longworth in June 2016 which deprived the claimant of a new role with a different Trust;

1.7 In early 2017 the claimant was informed that she would be proceeding to a stage 3 sickness meeting on the instructions of Margaret Cox when she had previously been told that whether such a meeting would be required would be decided by her new line manager.

2. If so, can the respondent nevertheless show that it did not contravene section 26?

Direct discrimination because of religious belief – section 13

3. Can the claimant prove facts from which the tribunal could conclude that in any or all of the following respects she was treated less favourably because of her religious belief than a person of a different religion was or would have been treated?

3.1 In April 2016 Margaret Cox instructed the claimant's team leader to remind her about policies and procedures for taking leave and to insist that she had unpaid leave (rather than annual leave) when her husband's cousin had passed away suddenly;

3.2 Comments made by Margaret Cox in April 2016 about being caught up in the Brussels terrorist attacks;

3.3 Questions from Danielle Longworth in June 2016 about the claimant fasting during Ramadan, and negative remarks about how it looked like the claimant was about to keel over and pass out, and aggressive questions about her faith;

3.4 Comments allegedly made by Vicky Horton in the period between July 2015 and March 2016 [*to be specified in further particulars*].

4. If so, can the respondent nevertheless show that it did not contravene section 13?

Direct race discrimination – section 13

5. Can the claimant prove facts from which the Tribunal could conclude that she was treated less favourably because of her race than the respondent treated or would have treated a person of a different race in relation to the comments allegedly made by Vicky Horton between July 2015 and March 2016 [*to be specified in further particulars*]?

6. If so, can the respondent nevertheless show that it did not contravene section 13?

Vicarious liability

7. If any of the respondent's employees are found to have contravened section 26 or section 13 in the course of their employment, can the respondent show that it took all reasonable steps to prevent that person from doing that thing or from doing anything of that description?

Time Limits

8. In so far as any of the matters for which the claimant seeks a remedy under section 26 or section 13 occurred on or before 3 December 2016, can the claimant show that they formed part of conduct extending over a period ending after that date; or that it would be just and equitable for the Tribunal to allow a longer time limit for bringing proceedings?

Part 2: Unfair Dismissal Part X Employment Rights Act 1996

Dismissal

9. Can the claimant prove that the respondent breached the implied term of trust and confidence in any or all of the following respects, taken individually or cumulatively?

9.1 In the winter of 2014 Danielle Longworth told the claimant that she would take further action against her if any further complaints were made about her and reminded her that she could lose her job;

9.2 In April 2015 Danielle Longworth said to the claimant “don’t worry, I know you need the extra hours to clothe and feed your kids”;

9.3 In July 2015 Danielle Longworth failed to acknowledge that the claimant had received a work related injury;

9.4 In the instruction by Margaret Cox in November 2015 for the claimant to remove from the staff intranet a posting offering makeup for sale and telling the claimant she was not to use the staff intranet to run a business;

9.5 The response by Margaret Cox in January 2016 to the claimant's request for time off when her daughter was taken ill and had to be hospitalised;

9.6 In March 2016 Ms Cox and Ms Longworth ignored the claimant's complaints about racist and Islamophobic comments by Vicky Horton;

9.7 Comments made by Margaret Cox in April 2016 about being caught up in the Brussels terrorist attacks;

9.8 In April 2016 Margaret Cox instructed the claimant's team leader to remind her about policies and procedures for taking leave and to insist that she had unpaid leave (rather than annual leave) when her husband’s cousin had passed away suddenly;

9.9 The factually inaccurate reference completed by Danielle Longworth in June 2016 which deprived the claimant of a new role with a different Trust;

9.10 During this period Ms Longworth was supposed to have no contact with the claimant but would smirk, grin and mutter under her voice when she saw the claimant in the department;

9.11 Questions from Danielle Longworth in June 2016 about the claimant fasting during Ramadan, and negative remarks about how it looked like the claimant was about to keel over and pass out, and aggressive questions about her faith;

9.12 In early 2017 the claimant was informed that she would be proceeding to a stage 3 sickness meeting on the instructions of Margaret Cox when she had previously been told that whether such a meeting would be required would be decided by her new line manager.

10. If so, did that breach form a reason for the claimant's resignation?

11. If so, had the claimant lost the right to resign by affirming the contract through delay or otherwise?

NB: If the claimant establishes that her resignation should be construed as a dismissal, the respondent does not raise a potentially fair reason for dismissal and therefore the dismissal will be unfair.

Part 3: Remedy

12. If any of the above complaints succeed, what is the appropriate remedy?