



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms M Mdlasose

v

Norfolk County Council

Heard at: Norwich

On: Monday 17 February 2020
Tuesday 18 February 2020
Friday 21 February 2020

Discussion day: Friday 28 February 2020

Before: Employment Judge Postle

Members: Mrs M Prettyman and Mrs L Gaywood

Appearances

For the Claimant: Mr Mullins, Counsel

For the Respondent: Mr A Brett, Solicitor

RESERVED JUDGMENT

The Claimant's claims under the Equality Act 2010 for the protected characteristic of race, particularly direct s.13, and harassment under s.26 are not well founded.

RESERVED REASONS

1. The Claimant brings claims to the Tribunal on the grounds that she was subjected to race discrimination, particularly direct discrimination and harassment by the Respondents. The claim is based on nationality / ethnic origin and colour, being black South African. The detail of the Claimant's claims for racial harassment were set out at the Case Management Hearing held on 17 June 2017 before Employment Judge Postle and are recited at paragraphs 3a – q, as were the claims for direct discrimination relying on the same matters as the claim for harassment.
2. The Claimant put forward comparators in connection with the claim relating to the allocation of cases sooner in their training of Katie Joseph, Sarah-Jane Quinn, Jade (surname unknown), Danielle (surname unknown) and Lisa (surname unknown).

3. In relation to the claim for criticism for not completing a matching form and risk assessment quickly enough, the Claimant relies on Katie Joseph.
4. In relation to the allegation that the Claimant was criticised for putting children at risk and for not raising informally the matter, Meghan (surname unknown) and Katie Joseph.
5. The Claimant also relies on Katie Joseph, Meghan, Sarah-Jane Quinn, Jade, Danielle, and Lisa, as comparators for all incidents. In the event the Claimant believes the comparators are not suitable, then the Claimant relies upon a hypothetical comparator.
6. It should also be noted, the claim was submitted on 15 January 2019, the Acas Early Conciliation Certificate dates 15 November 2018 to 15 December 2018. The Claimant's resignation appears to have occurred around 31 August 2018. Therefore, any claims arising on or before 14 September are out of time and the Tribunal will have to consider whether they are single or continuing acts and if there is any case advanced by the Claimant justifying an extension of time.
7. In this Tribunal, we have heard evidence from Mrs Baldwin, Operational Head of Intensive and Specialist Support Services; Mrs Stephens, Practice Consultant within its Children's Services department; and Mrs K Dexter, Assistant Director of Social Care. All giving evidence on behalf of the Respondents through prepared witness statements.
8. The Claimant gave evidence through a prepared witness statement and called no further evidence.
9. The Tribunal had the benefit of a bundle of documents consisting of 397 pages.
10. The Claimant is a black woman of South African national origin, employed as a Social Worker within the Looked After Children's Team from 21 January 2018 until her resignation on 31 August 2018.
11. The Claimant was a newly qualified social worker and undertaking her ASYE (Assisted and Supported Year in Employment Programme), which is where an individual has to undertake 9 months practice at a satisfactory level in order to fully qualify as a Registered Social Worker.
12. As a newly qualified social worker, she would be supported by the practice Consultant, Mrs Stephens, which involves supervision, exploration and application of different theories, informing the work, helping social workers to learn and adhere to statutory time scales and exploring the impact of the work on themselves and their impact on others. The aim is to develop competence and confidence in direct practice and work effectively as a team member in the team they are placed. Mrs Stephens commenced her

role with the Respondents in June 2018 which is accepted, is after the time the Claimant commenced her employment.

13. Newly qualified social workers are not allocated complex cases at the outset of the year, until they become confident and clearly more experienced. There had been with the Respondent, a high turnover of staff within the Looked After Children's Team so it was important to ease newly qualified Social Workers in gently. In the team the Claimant was to be placed, there were six social workers, of which two were newly qualified who would hold the least complex cases. The addition of the Claimant to the department, restricted at the beginning of her employment, identifying further low complex cases. Furthermore, it was known that Sarah-Jane Quinn was due to go on maternity leave on 8 June 2018, so the plan was the Claimant to take over her workload prior to and after commencing her period of maternity leave. In the meantime, it is clear from the Claimant's own critical log (page 118) that she was co-working on a number of cases and comments,

"I had had numerous social work tasks to complete and at times felt overwhelmed by the scale of my work load and the deadlines that need to be met."

14. Clearly, the Claimant in her early period of employment, was engaged in a number of cases, albeit co-working, further comments at (page 119)

"within my work I have found being able to complete some of these tasks have been very helpful and has been able to explain deadlines etc. in supervision."

15. Further, on (page 119) states,

"Despite the fact not had many supervisions for the work I was doing, I do feel supported by my manager and that they are providing me with opportunities and responsibilities that aid my learning and professional development."

16. Clearly in preparation for the Claimant's allocation of Sarah-Jane Quinn's case load, the Claimant was being given specific tasks allocated from case work of the team's qualified social workers such as viability assessment, parenting assessments, life story work, social work assessments, pathway needs assessments, care plans, chronologies and file audits, as well as shadowing other qualified social workers.

17. The Claimant had supervised sessions throughout February, there were none in March and then again in April, May and June. It is clear from email exchanges between the Claimant and Sarah-Jane Quinn that handovers and co-working was taking place as early as April 2018 and it is also clear there was attempted a gradual build up handover of Sarah-Jane Quinn's case load and that was confirmed by the Claimant's supervision notes of 14 May 2018 (pages 97 – 98). Indeed, Sarah-Jane Quinn

comments at one stage and raised her concerns that the Claimant was obstructing the introduction and transfer of cases by refusing to attend agreed appointments (page 319) and confirmed by Sarah-Jane Quinn in her supervision notes of 18 April 2018 (page 316).

18. By 19 June 2018, it would appear the Claimant had been allocated nine cases in her case load (11 children), four co-working (page 139). What is clear, at a supervision meeting between the Claimant and Mrs Stephens and Mrs Baldwin on 17 July 2018 (page 139) concern was expressed about

“... about being determined rather than too singular in her approach and not engaging as a team player as much as she could at times. The Claimant confirmed she had been batted off by peers and colleagues and not heard when she has asked for help. We talked about the Claimant making sure that she was heard and recognising that she would need to be assertive.”

19. The Claimant was on annual leave on 30 July 2018 and due to return on 31 July 2018 and on 30 July 2018 there had been email correspondence (page 145) from Mary Baldwin to Kate Dexter and copied to various other people including the Claimant which read,

“Dear Kate

We LAC duty have been advised at 1600 hours today that they wish for A’s placement (of over three years to end following one incident in the home yesterday evening destroying property and throwing items from the top of the stairs and minor assaults). They have had her arrested today following this continuing today and she is currently in Police custody and due to be interviewed this evening.

This is the only known incident and they advised why there has been no incidents for two years.

I am absolutely frustrated that a residential home can make such demands and show this level of care commitment. I am aware that Y challenged this decision immediately on her telephone conversation with their staff at 1600 hours today and that A has followed this up.

I trust that A is able to negotiate a different outcome.

Mary.”

20. This had been copied to the Claimant as this was one of her cases.
21. On 30 July 2018, Mrs Dexter successfully negotiated one extra night placement outside the providers immediate termination notice, but clearly urgent action was required the following day to find alternative placement

for the young person and leave the current residential home on 31 July 2018.

22. On 30 July 2018 at 2116 hours, Mrs Baldwin emailed the Claimant (page 147),

“Please respond to the current situation with a placement”.

23. Whilst the Claimant said on the one hand that she did not look at the laptop on 30 July 2018, namely her email, at page 143 of the bundle it was noted the Claimant nevertheless on that day did access her laptop because she signed off her Record of Supervision on that date. What is therefore surprising, is that even if the Claimant did not see the email on 30 July 2018, as a professional social worker she did not check her emails first thing on 31 July 2018 when returning from annual leave to see if there had been any urgent developments in her case load of very vulnerable clients during her absence.
24. On 31 July 2018, the Claimant had arranged a home visit with a client at 10:00 am without first attending the office. On her way to see the client her phone rang and as she was driving she returned the call when she arrived at the client’s house. She apparently spoke to Julie Roberts, a clerk in administration and she advised the Claimant she needed to return to the office as soon as possible and asked if it was okay to tell her 10 o’clock visit that she would need to reschedule and was informed that was okay.
25. The Claimant, therefore, returned to the office. What is clear, by 1 pm when the Claimant was asked if she had completed the placement search and liquid logic needed urgently, the Claimant confirmed she had not begun the task and was instructed by Mrs Baldwin to complete the task as a matter of urgency given the nature of what was required. This task would take approximately two hours to complete and if the Claimant was uncertain what was required she could have sought advice from her team if she was encountering difficulties. By 3:30 pm the task had still not been completed and in the end, Tess Turner, a Social Worker, assisted in completing the task which was finally finished by 4 pm. There was then a meeting called to discuss the events of 31 July 2018. In attendance was the Claimant, Mrs Dexter and Mrs Baldwin as clearly the events of 31 July 2018 were matters of concern to the Respondents. It is clear, both Mrs Dexter and Mrs Baldwin, at the meeting did express concern over the delay in completing the form and risk assessment by the Claimant. Further concern was expressed over the fact that the Claimant did not seem to appreciate the seriousness of the situation. Minutes of that meeting (page 153) clearly show that that meeting was intended to be supportive of the Claimant and there is clearly no reference to the Claimant being reported to the HCPC being the Health Care and Professional Council. It was agreed, however, that the Claimant’s probationary period would be extended.

26. After that meeting, Mrs Dexter confirms to Mr Hurst, Director of Social Services (page 152) of the intention to extend the Claimant's probationary period by 3 months given the seriousness of the events of 31 July 2018 and the apparent lack of awareness by the Claimant of the seriousness of the situation.
27. On 2 August 2018, the Claimant met Mrs Stephens and Mrs Baldwin for a supervision meeting and minutes of that meeting are at page 157. Those minutes clearly show by this stage the Claimant had 13 children and 9 family cases in her case load. During the meeting it was discussed that the Claimant lacked self awareness at work and appeared to lack urgency. Furthermore, the feedback was that the Claimant,
- “came across as closed and distant and there was a barrier and maybe this was a cultural thing and that was a concern.”*
28. Mrs Stephens explained to the Claimant at the above meeting, that without really understanding ourselves and the impact of work on ourselves and how to deal with it and manage it, then what one is likely to suffer is burn out. All of this was intended to assist the Claimant rather than criticise, particularly in a social worker understanding the impact of their work on individuals. Clearly, one of the reasons for holding supervision sessions is not only to review cases, but to consider a Social Worker's welfare and to discuss at times difficult and intimate personal issues in their challenging working environment and to be in a way a critical self reflection fundamental to the job requirements.
29. Meanwhile on 8 August 2018 there was a meeting to consider extension of the Claimant's probationary period at which the Claimant was represented by her Trade Union Representative Mr Lambert. At the meeting Mrs Stephens and Mrs Baldwin were in attendance. Minutes are at pages 163 – 167. At this meeting a number of concerns were identified in addition to the incident on 31 July 2018. Concern was that the Claimant was not progressing and that statutory and other pieces of practice were not being completed in a timely manner and even with a low protected case load, there appeared to be a lack of urgency to follow instruction. The Claimant was not a team player and appeared to be isolating herself. The purpose of the meeting was to discuss these concerns, identify and create an action plan to support the Claimant and that would be put in place as soon as possible and at the same time to confirm the extension and time scales of the Claimant's probationary period. An action plan was created for the Claimant (pages 169 – 172) with a review date of 12 September 2018. It is accepted if the Claimant did not improve and meet the required professional standards that she could ultimately be dismissed. What is clear, is Mr Lambert, the Trade Union Representative did not suggest at this meeting, or subsequently, that the Claimant was being treated less favourably because of her race. Mr Lambert is known to speak his mind in support of work colleagues in no uncertain terms. It is true, at this meeting there had been some confusion over how long the probationary period

could be extended and this was clarified the following day by Mr Lambert, three months and not six weeks as originally discussed.

30. On the same day 8 August 2018, the Claimant and a colleague Meghan Hyde a Social Worker, were supervising a contact for two children with their older sibling. During the contact it is clear part of the conversation between the Claimant and one of the children could have led to the location of the foster placement being identified and also the school. Due to the risks posed by the birth family, no identifying information, placements, schools etc., are to be shared with anyone from the birth family. Ms Hyde was so concerned by these events and potential danger to the child, advised her line manager who in turn reported it to Mrs Dexter and Mrs Stephens. This is confirmed by the LADO referral at page 176e being the local area designated officer.
31. As a result of the above, the Claimant was instructed to stay in the office and not go on any visits and not to attend to or answer any phone calls or emails.
32. A meeting was convened on 14 August 2018, Mrs Baldwin and Mrs Dexter and Mrs Stephens were in attendance with the Claimant. The incident was discussed at which the Claimant said she was unaware that her questioning of the child put the child at risk or the stability of the placement. The Claimant acknowledged she had messed up and made an error of judgment. Concern was raised, there had now been two incidents that had placed children at risk very recently. The Claimant was asked to reflect, the Respondent wanted to support the Claimant into becoming a competent and safe social worker. There would be a further review on 17 August 2018.
33. That review duly took place on 17 August 2018, the minutes of that meeting are at page 184a.
34. There is then a further record of supervision on 22 August 2018, with Mrs Stephens. It is clear at this meeting the Claimant was informed there was really three options regarding the Claimant's continued employment and these were; that her probation extended and if that goes well and the action plan is met for the rest of the year then she would qualify effectively. The second option, the decision being made, namely to end the assisted supported year in employment and the Claimant terminate the employment by resigning. The third option, wait for the review and if the plan has not been met the ASYE would then end and her employment terminated and if this happened the Claimant would find it difficult to find other employment and the HCPC would have to be informed. The minutes of that meeting confirm the Claimant was asked to think about her options with her Trade Union Representative Mr Lambert. The reasons for the options being discussed at the supervision meeting was quite simply because her practice had not been good and there was a real risk that the Claimant would fail given the second most recent incident.

35. On 29 August 2018, the Claimant had failed to contact a supervising social worker immediately after she had received a telephone call where there was concern that a Looked After Child had allegedly sexually assaulted a three year old birth daughter of their foster carer. The Claimant, instead of taking immediate action, went out on a client visit and only raised it with her manager approximately five hours later. This was an extremely serious incident which clearly showed a lack of insight by the Claimant.
36. As a result of the above incident, the Claimant was called to a meeting on 30 August 2018. In attendance was Mrs Dexter, Mrs Baldwin, the team manager, the minutes are at page 193. It was discussed with the Claimant about the serious concern over the delay and the lack of insight and the fact that Mrs Dexter had spoken with HR and Mr Lambert and outlined the possibility of the Claimant being suspended. Alternatively, for the Claimant to no longer hold her own case load and have further development opportunities from shadowing others. Mrs Dexter decided to remove her case load until further notice for a meeting on 12 September 2018 where matters could be discussed further and the way forward with the Claimant.
37. The Claimant resigned by letter of 3 September 2018 (page 205) following the supervision on 3 September 2018 with Mrs Stephens (the minutes at page 207), at the time Mrs Stephens was not aware the Claimant was considering resigning and had not been made aware of the recent incident of 29 August 2018. Although she was aware the Claimant was not making visits to families and was office bound catching up with paperwork.
38. The Claimant raises a grievance (page 217) on 31 August 2018, in which the Claimant made no allegations of any race discrimination, far from it. The Claimant alleged she did not have adequate support and was bullied. There was a full investigation and an outcome (pages 229 – 241). Race discrimination is only raised in the grievance interview investigation.
39. The grievance outcome officer concluded at page 237 4.7,

“I have found no evidence that Mapule [the Claimant] has been treated differently to her race or ethnicity. The claims of poor performance and lack of safeguarding practice that may have placed children, young people and families at risk were legitimate allegations that required investigation by the team manager and Head of Social Workers.”

At 4.8,

“it is the line manager’s responsibility to seek to address areas of poor performance in individuals. I therefore conclude that the actions taken by Mary Baldwin and Suzie Stephens and Kate Dexter were proportionate responses to seek redress to areas of poor performance and unsafe practice. The areas of poor

performance occurred in quick succession after a time when cases were directly allocated to Mapule [the Claimant].”

40. All the grievances were not found in the favour of the Claimant.

The Law

41. Section 13 - 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.
42. Section 136, The Burden of Proof, sub-Section 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.
43. The burden of proof requires the Employment Tribunal to go through a two stage process. The first stage requires the Claimant to prove facts from which the Tribunal could apart from the section conclude in the absence of an adequate explanation that the Respondent has committed or is to be treated as having committed the unlawful act of discrimination against the Claimant. The Tribunal is required to make an assumption at the first stage which may be in contrary to reality, the plain purpose being to shift the burden of proof at the second stage so that unless the Respondent provides an adequate explanation, the Claimant will succeed.

Harassment – s.26

44. 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.
45. Sub-section 4, in deciding whether conduct has the effect referred to in sub-section 1(b), each of the following must be taken into account:
- a. the perception of B;
 - b. the other circumstances of the case; and
 - c. whether it is reasonable for the conduct to have that affect.

Conclusions

Time Points

46. The claim was filed on 15 January 2019 and the last act of discrimination alleged is 30 August 2018. Acas Early Conciliation commenced on 15 November 2018 and ended on 15 December 2018. Therefore, the claim should have been filed by 14 January 2019 and therefore the claims alleged, if not continuing acts, are all out of time. It is clear when one looks at the allegations, each of those allegations are separate allegations. They are not continuing acts, they are all in relation to individual complaints into the Claimant's work practice and legitimate criticism of her shortcomings. They are not continuing acts linked together and are clearly separate and distinct acts.
47. Should the Tribunal exercise its discretion to extend time, the Tribunal will remind itself there has to be exceptional reason and it is the exception rather than the rule.
48. In this case, the Claimant has confirmed she was in a Trade Union and was represented at various stages of her employment by a very competent Trade Union Representative, Mr Lambert. The Claimant accepts she was made aware of time limits and accessed the internet to obtain information as to how to launch a claim with the Employment Tribunal. That being so, there is no reason why the Claimant could not have put her claim in time, if she believed she was being discriminated. Further, nothing has been advanced before this Tribunal on her behalf justifying the Tribunal exercising its discretion to extend time. Therefore, all claims are out of time and the Tribunal has no jurisdiction to hear those claims.
49. However, even if the Tribunal were wrong on the question of jurisdiction, the Tribunal nevertheless deals with the Claimant's allegations as if they were in time.
50. Allegation 1 - The Claimant not being allocated to her own case load until six months after starting employment.
51. It was clear at the outset of a social worker joining a department that they are eased in gently. Clearly, they are not to be given a work load incompatible with their experience. Upon joining the department, there has to be suitable cases in which to allocate to social workers. In the Claimant's department there were two existing individuals who had cases and it was always made clear that when Sara-Jane Quinn left for maternity leave, the Claimant would take over her case load and in the meantime, would co-work with Sarah-Jane Quinn and others. It is clear that happened and it is also clear that on occasions the Claimant was not co-operative and on occasions obstructive in working with Sarah-Jane Quinn as expressed by Mrs Quinn in emails.

52. Indeed, the Claimant herself, from her own critical log (page 118) stated she was co-working on a number of cases and had numerous social work tasks to complete using her own word "*felt overwhelmed by the scale of workload and deadlines that had to be met*". It is clear, therefore, that this allegation is not made out and there is simply no less favourable treatment.
53. Allegation 2 - The Claimant not being allocated to co-work with Sarah-Jane Quinn prior to her leaving.
54. That is simply not borne out by the facts. The Claimant was allowed to work with Sarah-Jane Quinn and there is clear documentary evidence in which the Claimant cancelled visits and reviews with Sarah-Jane Quinn. Indeed, Sarah-Jane Quinn encountered difficulties with the Claimant and voiced them on occasion. The Claimant herself, at page 118, comments about her co-working.
55. This claim is simply not made out. There is no prima facie evidence of any less unfavourable treatment.
56. Allegation 3 – Being given a full case load in one go in June 2018 rather than building up gradually.
57. It would appear, the Claimant only ever had a total of 9 cases. It was never the case that she was given a full case load in one go, it was built up slowly over a period of time. There is no evidence that the Claimant was given a full case load in one go.
58. Certainly, in June, the Claimant had expressed no concerns about her case load, was enjoying the challenge of social working and therefore, this claim is simply not made out at all.
59. Allegation 4 – 17 July 2018, Mrs Baldwin saying to the Claimant she was not a team player and that she was isolating herself.
60. If one looks at Mrs Baldwin's evidence, clearly as a Social Worker team working and communication is an important attribute to the job. If one looks at the minutes of that review (at page 139 – 142), there is nothing in them which suggests Mrs Baldwin, or anyone else, pointing to the Claimant's race, national origin or colour. Indeed, the Claimant herself confirmed that team working was part of her professional development and in an open plan office one would expect open discussion and sharing experiences. The Claimant certainly expressed no concerns in the feedback. These were genuine concerns expressed by an experienced Social Worker intended to assist the Claimant in developing her own role as a Social Worker. They had absolutely nothing to do with the Claimant's race, colour or national origin. This claim is not made out.

61. Allegation 5 – The Respondent, Mrs Baldwin and Mrs Dexter criticising the Claimant for not completing a risk assessment and a matching form quickly enough, on or around 31 July 2018.
62. This is the incident that took place on 31 July 2018. The Claimant admits she opened her work laptop on 30 July 2018 (page 143), the Respondents had only 24 hours to sort out a new placement and quite simply the Claimant did not react when she returned to work with the speed and urgency that was required in an emergency situation. The Claimant's actions were simply not acceptable.
63. Furthermore, if the Claimant had not checked her email on the 30th, one would expect a Social Worker, newly qualified, to check her emails on her return from leave to make sure there had been no major problems needing to be dealt with as a matter of urgency in relation to her own clients. For reasons best known to the Claimant, she delayed and had plenty of people to ask in the office if she was unsure what to do and in the end the task was completed by another Social Worker Tessa, much later in the day, around about 3:30pm.
64. Clearly, the Respondents, Mrs Baldwin and Mrs Dexter were entitled to criticise the Claimant in respect of her delay in failing to address the matter with some urgency. Clearly, any other newly qualified Social Worker, regardless of colour or race would have been criticised in exactly the same way. This had nothing to do with the Claimant's race, this claim is simply not made out.
65. Allegation 6 – On 1 August 2018, Mrs Dexter shouting at the Claimant and telling her she was being reported to the HCPC.
66. It is clear that Mrs Dexter did not threaten to report the Claimant to the HCPC on 1 August 2018. What is clear, Mrs Dexter was concerned about the Claimant's professional capability. It is also clear, the Claimant was not reported to the HCPC and the notes of that meeting do not reflect that. Clearly, Mrs Dexter, as head of Social Working was relaying serious professional concern about the Claimant's practice. She would have done exactly the same to any other Social Worker whose practice had fallen below standard, regardless of race, colour or national origin. This claim is simply not made out.
67. Allegation 7 – On 1 August 2018, Mrs Dexter extending the Claimant's probation period without good reason.
68. Regardless of the date it was extended, there were perfectly good reasons to extend the Claimant's probation. There was the recent incident of 31 July 2018 and that had nothing to do with the Claimant's race. Indeed, the Claimant accepted in evidence that the Respondent had raised performance issues and it seems the Claimant accepted and welcomed the extension to her probation period. It was certainly something that was agreed by the Claimant's Union Representative Mr Lambert, as was the

action plan to move the Claimant forward in the hope of developing her as a good Social Worker. Mr Lambert raised no issues of race in his email of 9 August 2018, or indeed during the meeting on 8 August 2018. Mr Lambert is known to be a strong minded Union Representative, had there been any issues of race it is likely that Mr Lambert would have raised those firmly and in writing.

69. The actions of extending the Claimant's probation period had absolutely nothing to do with the Claimant's race and again a Social Worker faced with the problems that the Claimant had, had over the past few weeks with performance issues, would have been treated exactly the same. This claim is simply not made out.
70. Allegation 8 – The Claimant being criticised by Mrs Suzie Stephens on 2 August 2018 and being told she had no understanding of what she had done.
71. Here there was a professional discussion on the Claimant's performance overall. It naturally touched on the events of 31 July 2018. It is important that feedback is given to Social Workers where their performance falls below standard. This would not be unusual in any walk of life and with the problems the Claimant had, had in the recent weeks, it is not surprising that positive feedback and criticism would be given. It is clear that any Social Worker, regardless of colour, race or national origin, that fell below standards would be treated in exactly the same way as the Claimant. This had absolutely nothing to do with race, colour or national origin and the claim is simply not made out.
72. Allegation 8 – On 2 August 2018, Mrs Stephens saying to the Claimant “*is it a cultural thing that you don't show any emotions?*”
73. This again was part of a discussion about the Claimant's work practice, development and wellbeing and is a standard agenda for such reviews. The focus was on the Claimant's practice and the Respondent / Mrs Stephens did not want any Social Worker facing burn out. It is clear from the notes that Mrs Stephens talks about herself by reference to “we” and is talking about self-awareness being an important tool at work. These matters would be discussed with all Social Workers, newly qualified or others, regardless of race, colour or national origin. Again, this had nothing to do with race and the claim is simply not made out.
74. Allegation 9 – 8 August 2018, the Claimant being told at her probationary meeting by Mrs Stephens that she could be dismissed in 6 weeks if she did not improve.
75. This was a probationary review meeting and this was all about the Claimant's performance in her role as a Social Worker and the concerns about that performance. It had nothing to do with the Claimant's race, colour or national origin. There was an agreed outcome, the Claimant would be subject to a 'Smart Plan', in other words an action plan following

advice received from HR. The Claimant would then have a mid-term review on 12 September 2018 and a final review on 22 October 2018. At this meeting the Claimant was represented by her Trade Union Representative Mr Lambert and there is no evidence whatsoever that he objected to the tone of the meeting, the reason for the meeting, or the outcome of the meeting. Again, this claim is simply not made out and has absolutely nothing to do with race, colour or national origin.

76. Allegation 10 – The Claimant being told by Mrs Baldwin on 10 August 2018 to stay in the office and not to go on visits and not to make any telephone calls or emails.
77. Given what had gone on and the concerns about the Claimant's performance issues and her work, this was a reasonable and proportionate holding measure until the incident of 8 August 2018 had been fully explored and investigated which was discussed with the Claimant on 14 August 2018.
78. Again, it had absolutely nothing to do with the Claimant's race, national origin or otherwise. Had a white person, a newly qualified Social Worker, let slip the information the Claimant did on 8 August 2018 when supervising the contact for two children with their older sibling, the outcome would have been exactly the same. The Claimant herself admits she messed up. This claim is surely not made out.
79. Allegation 11 – The Claimant being told by Mrs Dexter, in the presence of Mrs Baldwin and Mrs Stephens on 13 August 2018, without good reason that she had put children at risk, she could not be trusted around children and could not keep children safe.
80. To repeat, there was a major safeguarding breach by the Claimant as a result of her questions during a contact visit on 8 August 2018. The matter was of serious concern. The meeting actually took place on 14 August 2018 at which the Claimant was properly criticised for her practice. Again, this had nothing to do with her race. To repeat, had a white Social Worker, newly qualified or otherwise, behaved in a way the Claimant did at the contact visit they would have been rightly and properly criticised for their lack of professionalism.
81. It is clear the Claimant, at the contact visit, should not be raising anything that might identify the child's location or schooling and that clearly was a major lack of insight by the Claimant. Mrs Dexter, Mrs Baldwin and Mrs Stephens were right to criticise, right to point out and set out the shortcomings of the Claimant. To repeat, if a white person behaved in this manner, they would have been dealt with in exactly the same way. This claim is simply not made out.
82. Allegation 12 – The alleged performance issues not being raised by the Respondent informally.

83. Given the quick succession of the performance issues the Claimant was involved in over a very short period of time, and these were not minor infringements, the delays, the breach of confidentiality, not realising the importance and seriousness of her shortcomings, were matters that had to be raised and ultimately dealt with formally. In that respect, they had nothing to do with the Claimant's race, colour or nationality and again, had a white person been involved in three major incidents as the Claimant was, in such a short period of time, the matters would have been raised in a formal way. This claim is simply not made out, there is no less favourable treatment.
84. Allegation 13 – On 15 August 2018, Mrs Baldwin saying that she wanted to dismiss the Claimant immediately but had been told that she could not do so.
85. It seems likely this did not happen on 15 August 2018. Mrs Baldwin accepts she had conversations with HR on a number of occasions, one of which would be on the 14 August 2018. They are clearly documented at page 295 onwards in the bundle. There are no other notes in the bundle that corroborate discussion with someone else as suggested by the Claimant in her evidence, or on 15 August 2018 with any other person from the Respondent. What is clear is that Mrs Baldwin was seeking professional HR advice due to her concerns about the Claimant's lack of professionalism. These were discussions over a period of time which involved senior management about the Claimant's performance and the Respondent's concerns over the Claimant developing as a Social Worker.
86. It is clear the Claimant had been given an action plan which the Claimant was going to endeavour to achieve the goals set out (page 169) and the Respondents would assess her performance against those agreed tasks. That is what happened until the Claimant decided to resign of her own volition.
87. Therefore, the above has nothing to do with the Claimant's race, colour or national origin. Again, had it been a white Social Worker, newly qualified or otherwise, who had performed in the manner that the Claimant had over the last month, then they would have been treated in exactly the same way and this has nothing to do with the Claimant's race, colour or otherwise. The claim is simply not made out.
88. Allegation 14 - On 22 August 2018, Mrs Stephens telling the Claimant she could resign or stay with the Respondent and fail and be reported to the HCPC.
89. If one reads the full notes of the meeting on 22 August 2018 (page 185) it is clear all options were discussed and the Claimant was advised to speak to her Trade Union Representative. It is clear, if Mrs Stephens wanted to jeopardise the Claimant's career, on the Claimant's own evidence this would be in local government, she could have just let the review run its course, then if the Claimant failed she would not become a Social Worker

and any failure would have to be reported to the HCPC. Clearly, if the Claimant resigned she could continue with the ASYE in another Social Worker employed role. The comments that Mrs Stephens made were due to the Claimant's performance and have to be seen against the background of the major deficiencies in the Claimant's performance in her role as a Social Worker. They had absolutely nothing to do with the Claimant's race, colour or otherwise. The Tribunal repeats, had it been a white Social Worker, newly qualified or otherwise, with the background of shortcomings and lack of performance, they would have been treated in exactly the same way. The claim is simply not made out.

90. Allegation 15 - On 30 August 2018, the Claimant being unduly criticised by Mrs Dexter and being told there was a good reason to dismiss her and that her cases were being taken away.
91. On 29 August 2018, there was a major incident whereby the Claimant had failed to contact a supervising Social Worker immediately after she had received a telephone call where there was concern that a looked after child had allegedly sexually assaulted a three year old birth daughter of their foster carer. The Claimant, instead of taking immediate action went out on a client visit and only raised it with her Manager approximately 5 hours later. This delay could have been crucial and could have put the child at risk. The Claimant showed a complete lack of insight and understanding of what she had done and what was wrong and how the delay was complete failure in her duty to act promptly. Given the seriousness of the Claimant's lack of understanding and lack of a quick response to the report, it clearly was of major concern to the Respondent. It was therefore proportionate and sensible protection of the Respondent's clients to remove cases from the Claimant until the next review. Therefore, any criticism of the Claimant would have been justified and had absolutely nothing to do with the Claimant's race. Again, had a white Social Worker, newly qualified or otherwise, acted in the way the Claimant did, that person would have been treated in exactly the same way regardless of colour, race or national origin. The claim is simply not made out.
92. Allegation 16 – The Claimant's enforced resignation on 31 August 2018.
93. It is difficult on the facts to see where there is any breach of any implied term of trust and confidence. The Claimant had been involved in three major incidents in the last month. There were serious incidents where the Claimant showed a lack of understanding and concerns were being expressed about the Claimant's performance and competence as a Social Worker. The Claimant knew she was falling below standard and rather than be dismissed which would be a blot on her career, she took the decision to resign in circumstances where there was no breach by the Respondent and which, taking all the matters into account, effectively and singularly had absolutely nothing to do with the Claimant's race, national origin or colour.

94. For those reasons, the Claimant's claims for the protected characteristic of race, direct and harassment as referred to in the allegations above, are simply not made out.

Employment Judge Postle

Date:21.05.2020.....

Sent to the parties on:01.06.20.....

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For the Tribunal Office