EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S Stoedinova	**v**	**The Secretary of State for Health and Social Care**

Heard at: Watford

On: 2-10 March 2020, 11 & 12 March 2020 (in chambers)

Before: Employment Judge Bedeau
Mr I Bone
Mr S Bury

Appearances

For the Claimant: In person
For the Respondent: Mr G Anderson, Counsel

RESERVED JUDGMENT

1. The claim of direct race discrimination is not well-founded and is dismissed.

2. The claim of harassment related to race is not well-founded and is dismissed.

3. The claim of victimisation is not well-founded and is dismissed.

4. The claim of public interest disclosure detriment is not well-founded and is dismissed.

5. The claim of breach of contract has not been proved and is dismissed.

REASONS

1. In her claim form presented to the tribunal on 10 March 2018, the claimant made claims of indirect race discrimination; harassment related to race; victimisation; public interest disclosure detriment; and breach of contract arising out of her employment with the respondent as a Transformation Lead. The claim form comprised of 24 pages of narrative on her treatment which was not clearly particularised.

2. In the response, presented to the tribunal on around 3 May 2018, the claims are denied.

3. At a preliminary hearing in public, held on 22 March 2019, Employment Judge McNeill QC, struck out the claimant's indirect race discrimination claim. Several of the public interest disclosure claims were also struck out. The Judge also ruled that any allegations of victimisation before 25 May 2017 "is not pursued". Case management orders were issued, and the case was listed for a final hearing from 2-10 March 2020 before a full tribunal.

4. The claimant produced in accordance with the Judge's orders, further particulars of her claims. Schedule 1 lists her direct race harassment and victimisation claims. Schedule 3 lists her public interest disclosure detriment claims.

5. The claimant produced an amended Schedule 3 which did not include those claims which were struck out. Schedule 2 was her indirect race discrimination claims which were struck out.

6. Mr Anderson took into account her Schedules 1 and 3 and produced a list of issues. This list was not agreed by the claimant as she was relying on her amended Schedules. Her schedules were not always easy to follow. We, however, are satisfied that Mr Anderson's list of issues clearly and accurately encapsulates the claimant's Schedules. We set out below what is in the list of issues. In our judgment we identified the relevant paragraphs in the list in square brackets.

7. **The claims**

7.1 On 22 March 2019, EJ McNeill QC was minded to strike out a number of C's claims; those that survive are:

7.1.1 Direct race discrimination-Bulgarian national origin) (EqA 2010, s.13);
7.1.2 Harassment (EqA 2010, s.26);
7.1.3 Victimisation (EqA 2010, S.27);
7.1.4 Whistleblowing detriment (ERA 1996, s.47B);

7.2 The only contract claim the claimant has identified is one for notice pay, which the respondent do not understand.

8. **The issues**

Alleged Conduct

8.1 Did the following alleged conduct ("the Conduct") happen?

8.1.1 Between 10 April 2017-30 June 2018, R failed to provide C with (1) an induction programme to integrate her into the organisation or (2) adequate training (other than on 8 March 2013);

8.1.2 Between 10 April 2017-30 June 2018, R (1) failed to provide C with adequate lines of management (including by creating an "upside-down" hierarchy in which lower grade staff manage higher grade staff and: (2) extended her contract in a "humiliating manner";

8.1.3 Between 10 April 2017-30 June 2018, R (1) failed to carry out any or any adequate performance appraisals, (2) failed to award her a performance-related bonus and (3) on 6 November 2017, Ms Snook requested to appraise C's performance at a hotel venue;

8.1.4 Between 8 June 2017 and December 2017, Ms Snook requested weekly contact outside contractual working hours;

8.1.5 Between 29 November 2017 and 20 December 2017, Ms Snook criticised C for not being able to challenge NHS Trusts;

8.1.6 Between 20 November 2017 and 22 March 2018, R excluded C from a Manchester University NHS Trust meeting with Sir Keith Pearson that fell within her remit;

8.1.7 Between April 2017 and May 2018, R ignored, undermined and criticised C's expertise and concerns about KPIs, data collection and modelling, and removed her from dealing with them;

8.1.8 Between 19 May 2017 and 30 May 2018, Mr Howarth, who C describes as a subordinate, subjected her to undue criticism; (1) criticising her for raising issues of public interest to Mr Stanisz on 16 May 2017; (2) criticising and rejecting her input into the KPIs in front of all other staff in the open-plan office; (3) persistently criticising her performance while supporting other team members; (4) requesting fortnightly 1-1 meetings to manage her conduct behaviour despite not being her line manager; (5) segregating C in an email dated 1 June 2017; (6) on 19 May 2017 "*requesting to enforce some personal objectives"* on her out of contract time*;* (7) shouting at C during a visit to the St. Bart's NHS Trust on 25 May 2017; (8) in November 2017 to January 2018, unfairly rejecting C's input regarding the Manchester University NHS Trust; (9) in April/May 2018, pressuring C to develop two webinars alone;

8.1.9 Between 21 August 2017 and November 2017, R removed C from working with Bart's Health NHS Trust and King's College NHS Trust;

8.1.10 Between 10 April 2017 and 30 May 2017, Mr Howarth and Ms Snook unfairly segregated C from colleagues in that their criticism and ignorance of C's capabilities encouraged other team members and NHS staff to '*copy their behaviour, take a stand against her and refuse to collaborate with C'*

8.1.11 Between October 2017 and 7 July 2018, (1) R created a demeaning situation with regard to Jonathan Bartram of Cambridge University NHS Trust; and (2) Mr Howarth encouraged C not to defend herself in response to a critical email from Mr Bartram; (3) Mr Yiannikkou and Mr Brown failed to prevent matters from escalating;

8.1.12 The grievance investigation and report were biased, unfair and discriminatory in that (1) the investigator used and based his conclusions

on "multiple anonymous hearsay" evidence and branded C a "poor performer"; (2) the investigation was based on Mr Brown escalating C's informal complaints against Mr Howarth and Ms Snook, rather than her formal complaint and evidence; (3) point 39 implies that C has to be treated less favourably than Mr Howarth and Ms Snook.

8.1.13 There was a pattern in Mr Brown's behaviour in that he (1) escalated informal grievances without contacting her prior to doing so; (2) treated C's grievances as if part of a complaints procedure with R does not have; (3) failed to send to C the evidence file on which the report was based despite requests; (4) forwarded the meeting notes to C without asking her to agree on their content; (5) instigated a misconduct procedure against C in relation to Mr Bartram's complaint; (6) instigated a disciplinary procedure against her in relation to her inappropriate use of a personal email address for government "Official Sensitive" material; (7) pressured C to develop two webinars alone; (8) investigated C's grievance against Ms Isteed and Ms Boultbee;

8.1.14 Further complaints about the grievance that (1) R failed to send to C the evidence file on time; (2) the appeal was delayed; (3) meeting notes were forwarded to her without asking her to agree the contents; (4) R failed adequately to train managers on best practice when dealing with grievances; (5) the Grievance, Disciplinary and Whistleblowing Policies are "flawed"; (6) decisions have not been reviewed; (7) R failed to use the appeal hearing to "*close any loopholes"*; (8) R failed to train managers in equality, diversity and equal opportunities;

8.1.15 R "targeted" C as demonstrated in a letter of 19 February 2018; it did not investigate her grievance in this regard;

8.1.16 Between 8 February 2018 and 28 February 2018, blocking C's access to the NHS Labour market by denying her an interview and not investigating her grievance in this regard;

Jurisdiction

8.2 C referred the dispute to ACAS on 24 January 2018; an EC Certificate was issued on 10 March 2018. C presented her claim to the ET on 10 March 2018. Accordingly, any conduct relied on as unlawful that took place on or before 11 December 2017 is, on its face, out of time.

8.2.1 Does any out of time conduct form a continuing act with conduct that is in time?

8.2.2 If not, is it just and equitable to extend time?

Direct discrimination

8.3 In respect of each instance of the conduct that the Tribunal finds happened, did it amount to less favourable treatment than any named comparator or a hypothetical comparator who is not of Bulgarian national origin?

8.4 If yes, was the reason for the conduct that C is of Bulgarian national origin?

Harassment

8.5 In respect of each instance of the conduct that the Tribunal happens:

8.5.1 Was it unwanted?

8.5.2 Was it related to C's Bulgarian national origin?

8.5.3 Did it have the effect set out in EqA 2010, s.26(1)(b)?

Victimisation

8.6 R admits that the protected acts C relies on amounted to protected acts:

8.6.1 Written complaints of discrimination on;

20 May 2017 [196]
5 June 2017 [193]
7 June 2017 [191]
7 November 2017 [305]
4 December 2017 [338]
18 December 2017 [352]
22 January 2018 [467-469]
5 February 2018 [488]
5-7 March 2018 [532-555]
9 March 2018 [558]
18 March 2018 [586]
18 April 2018 [629-630]
25 April 2018 [641-644]

8.6.2 Oral complaints on 8 June 2017, to Ms Snook in an informal meeting [212-215]

8.6.3 Bringing proceedings in the Employment Tribunal on 10 March 2018 [2]

8.7 Was the reason for the Conduct (except (1) that set out at paragraph 7.1.1 above and 7.1.2 any instance that took place before 20 May 2017) that C had done one or more of the protected acts?

Whistleblowing detriment

9. Did C make the following disclosures ("the Protected Disclosures")?

9.1 On 16 May 2017, to Tomas Stanisz by email [171], that

9.1.1 a team sent to visit Chelsea & Westminster NHS Trust to assess its processes and issue recommendations regarding compliance was ill-equipped and untrained to do that job;

9.1.2 Mike Ball, R's finance lead, used a theoretical model applied to a corrupted data set in order to pressurise a Trust to deliver an undeliverable amount of money, thus misleading the Trust and leading to misuse of public resources;

9.2 On around 19 May 2017, at a meeting in an open plan office, with Mr Howarth, that:

9.2.1 He conducted the discussion in front of all other staff;

9.2.2 Pressure was put on C to develop KPIs which would impose a burden on NHS providers to waste public money;

9.2.3 Malpractice in that inexperienced and untrained staff were encouraged by Mr Howarth to create unrealistic KPIs for which data was not collectable at the time and which would require extra work and staff time and, as a result of which, the data would not be collected and money would be wasted;

9.2.4 The use of speculative, unfounded methodologies to pressure NHS Trusts to deliver undeliverable targets, thus making them spend public money unreasonably.

9.3 On around 5 June 2017, by email [193] to Mr Howarth and Ms Snook, C raised concerns about an "unhealthy work environment and arrangements", namely that:

9.3.1 Mr Howarth had shouted at her;

9.3.2 That she had to cover the job of three Transformation Leads;

9.3.3 That Mr Howarth did not try to help her.

9.4 On around 8 June 2017, orally, that

9.4.1 Pressure was put on C to develop KPIs which would impose a burden on NHS providers to waste public money;

9.4.2 Inexperienced and untrained staff were encouraged by Mr Howarth to create unrealistic KPIs for which data was not collectable at the time and which would require extra work and staff time and, as a result of which, the data would not be collected and money would be wasted;

9.4.3 The Overseas Visitors Regulations themselves were flawed;

9.5 On 21 June 2017, orally and in the email at [221], that speculative, unfounded methodologies and modelling were being used to pressurise a Trust to deliver an undeliverable amount of money, misleading NHS providers and putting pressure on them to unreasonably spend time and resources and that there was malpractice in creating unrealistic KPIs;

9.6 On 21 August 2017, orally, that the Overseas Visitors Regulations that set the legal framework for cost recovery were flawed;

9.7 On 1 November 2017, to Ms Snook in a weekly catch up and in an email of the same day [294], C raised concerns about:

9.7.1 Using speculative modelling to pressurise Trusts to deliver an undeliverable amount of money, thus misleading them and pressuring them to spend public resources unreasonably;

9.7.2 That Ms Snook and Mr Howarth supported Mike Ball in using a "theoretical model" based on 'no theory'" and against the basic standards for modelling, applied on a corrupted dataset;

9.7.3 That the Overseas Visitors Regulations were themselves flawed.

9.8 On 29 November 2017, orally during a weekly catch up,

9.8.1 that speculative methodology/modelling was being used to pressurise Trusts to deliver an undeliverable amount of money, which was a misuse of public funds;

9.8.2 that the Regulations were flawed;

9.8.3 that she had been segregated;

9.8.4 that she had been pressured to "fix it" in regard to the KPIs

9.9 On 29 November 2017, in an email to Ms Snook [327], that

9.9.1 Unacceptable practices had allowed the "*manipulation of C's dealings] with Mr Bartram";*

9.9.2 She had been segregated;

9.9.3 That she had been pressured to "fix it" in regard to the KPIs

9.9.4 Mr Howarth had deliberately delayed a report for the Manchester Trust because she had not "punished" it for not cooperating [327].

9.10 In respect of each disclosure that the ET founds C made:

9.10.1 Did it amount to a disclosure of information?

9.10.2 Did C believe that the disclosures tended to show a breach of a legal obligation (ERA, s.43B(1)(b)), that health and safety was endangered (s.43B(1)(d)) or that any such matter had been covered up (s.43B(1)(f)?

9.10.3 Was C's belief reasonable?

9.10.4 Did C believe that the disclosures served a public interest?

9.10.5 Was C's belief reasonable?

9.11 Did R subject C to any of the conduct the ET finds happened because she had made one or more of the Protected Disclosures.

10. As the acts relied on by the claimant are many and varied, we have decided to address her claims separately, making findings of fact as we go along and applying the law to those facts in coming to our conclusions in relation to each claim.

The law

11. Under section 13, Equality Act 2010, "EqA", direct discrimination is defined:

> "(1) 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."

12. The protected characteristics are set out in section 4 EqA and includes race, which can be on nationality and or national origins, section 9(1).

13. Section 23, provides for a comparison by reference to circumstances in a direct discrimination complaint:

> "There must be no material difference between the circumstances relating to each case."

14. Section 136 EqA is the burden of proof provision. It provides:

> "(1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions 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."

15. In the Supreme Court case of Hewage v Grampian Health Board [2012] ICR 1054, it was held that the tribunal is entitled, under the shifting burden of proof, to draw an inference of prima facie race and sex discrimination and then go on to uphold the claims on the basis that the employer had failed to provide a non-discriminatory explanation. When considering whether a prima facie case of discrimination has been established, a tribunal must assume there is no adequate explanation for the treatment in question. While the statutory burden of proof provisions have an important role to play where there is room for doubt as to the facts, they do not apply where the tribunal is in a position to make positive findings on the evidence one way or the other.

16. In Madarassy v Nomura International plc [2007IRLR 246, CA, the Court of Appeal approved the dicta in Igen Ltd v Wong [2005] IRLR 258. In Madarassy, the claimant alleged sex discrimination, victimisation and unfair dismissal. She was employed as a senior banker. Two months after passing her probationary period she informed the respondent that she was pregnant. During the redundancy exercise in the following year, she did not score highly in the selection process and was dismissed. She made 33 separate allegations. The employment tribunal dismissed all except one on the failure to carry out a pregnancy risk assessment. The EAT allowed her appeal but only in relation to two grounds. The issue before the Court of Appeal was the burden of proof applied by the employment tribunal.

17. The Court held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status, for example, sex and a difference in treatment. Those bare facts only indicated a possibility of

discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

18. The Court then went on to give a helpful guide, "Could conclude" [now "could decide"] must mean that any reasonable tribunal could properly conclude from all the evidence before it. This will include evidence adduced by the claimant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent in testing the complaint subject only to the statutory absence of an adequate explanation at this stage. The tribunal would need to consider all the evidence relevant to the discrimination complaint, such as evidence as to whether the acts complained of occurred at all; evidence as to the actual comparators relied on by the claimant to prove less favourable treatment; evidence as to whether the comparisons being made by the claimant is like with like, and available evidence of the reasons for the differential treatment.

19. The Court went on to hold that although the burden of proof involved a two-stage analysis of the evidence, it does not expressly or impliedly prevent the tribunal at the first stage from the hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the claimant's evidence of discrimination. The respondent may adduce in evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the claimant; or that the comparators chosen by the claimant or the situations with which comparisons are made are not truly like the claimant or the situation of the claimant; or that, even if there has been less favourable treatment of the claimant, it was not because of a protected characteristic, such as, age, race, disability, sex, religion or belief, sexual orientation or pregnancy. Such evidence from the respondent could, if accepted by the tribunal, be relevant as showing that, contrary to the claimant's allegations of discrimination, there is nothing in the evidence from which the tribunal could properly infer a prima facie case of discrimination.

20. Once the claimant establishes a prima facie case of discrimination, the burden shifts to the respondent to show, on the balance of probabilities, that its treatment of the claimant was not because of the protected characteristic, for example, either race, sex, religion or belief, sexual orientation, pregnancy or gender reassignment.

21. The employer's reason for the treatment of the claimant does not need to be laudable or reasonable in order to be non-discriminatory. In the case of B-v-A [2007] IRLR 576, the EAT held that a solicitor who dismissed his assistant with whom he was having a relationship upon discovering her apparent infidelity, did not discriminate on the ground of sex. The tribunal's finding that the reason for dismissal was his jealous reaction to the claimant's apparent infidelity could not lead to the legal conclusion that the dismissal occurred because she was a woman.

22. The tribunal could pass the first stage of the burden of proof and go straight to the reason for the treatment. If, from the evidence, it is patently clear that the reason for the treatment is non-discriminatory, it may not be necessary to consider whether the claimant has established a prima facie case, particularly where he or she relies on a hypothetical comparator. This approach may apply in a case where the employer had repeatedly warned the claimant about drinking and dismissed him for doing so. It would be difficult for the claimant to assert that his dismissal was because of his protected characteristic, such as race, age, or sex. This was approved by Lord Nicholls in Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, judgment of the House of Lords.

23. The claimant has to prove that the act occurred and, if so, did it amount to less favourable treatment because of the protected characteristic?, Ayodele v Citilink Ltd [2017] EWCA Civ 1913.

24. Unreasonable conduct does not amount to discrimination, Bahl v Law Society [2004] IRLR 799

25. Harassment is defined in section 26 EqA as;

> **"**26 Harassment
>
> (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 and intimidating, hostile, degrading, humiliating or offensive environment for B"

26. Harassment covers the protected characteristics as set out in section 26(5) which includes race and sex.

27. In deciding whether the conduct has the particular effect, regard must be had to the perception of B; other circumstances of the case; and whether it is reasonable for the conduct to have that effect, section 26(4).

28. In this regard guidance has been given by Underhill P, as he then was, in case of Richmond Pharmacology v Dhaliwal [2009] ICR 724, set out the approach to adopt when considering a harassment claim although it was with reference to section 3A(1) Race Relations Act 1976. The EAT held that the claimant had to show that:

(1) the respondent had engaged in unwanted conduct;

(2) the conduct had the purpose or effect of violating his or her dignity or of creating an adverse environment;

(3) the conduct was on one of the prohibited grounds;

(4) a respondent might be liable on the basis that the effect of his conduct had produced the proscribed consequences even if that was not his purpose, however, the respondent should not be held liable merely because his conduct had the effect of producing a proscribed consequence, unless it was also reasonable, adopting an objective test, for that consequence to have occurred; and

(5) it was for the tribunal to make a factual assessment, having regard to all the relevant circumstances, including the context of the conduct in question, as to whether it was reasonable for the claimant to have felt that their dignity had been violated, or an adverse environment created.

30. An unjustified sense of grievance cannot amount to detriment, Barclays Bank v Kapur and Others (No 2) [1995] IRLR 87, CA.

31. Under section 123 Equality Act 2010, a complaint must be presented within three months,

> "starting with the date of the act to which the complaint relates" (a), "or such other period as the employment tribunal thinks just and equitable," (b) and "conduct extending over a period is to be treated as done at the end of the period," (3)(a).

32. Time limits are to be applied strictly. The Court of Appeal held that the exercise of the discretion on just and equitable grounds is the exception rather than the rule, Robertson v Bexley Community Centre [2003] IRLR 434. The factors the Tribunal may consider in exercising its discretions are: the reason for and the extent of the delay; whether the Claimant was professionally advised; whether there were any genuine mistakes based on erroneous information; what prejudice, if any, would be caused by allowing or refusing to allow the claim to proceed; and the merits of the claim. There is no general rule and the matter remains one of fact.

33. In the case of Abertawebro Morgannwg University Health Board v Morgan EWCA/Civ/EAT/640, it was held by the Court of Appeal, that the Tribunal has a broad discretion to consider factors, such as the length of and reasons for the delay; whether the delay has prejudiced the respondent; and the prejudice to the claimant.

34. In relation to public interest disclosure, we have taken into account section 47B Employment Rights Act 1996 on detriment.

35. Section 47B(1), Employment Rights Act 1996 provides,

> "A worker has the right not to be subjected to any detriment by any, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

36. A protected disclosure means a qualifying disclosure as defined under section 43B made by a worker in accordance with sections 43C to 43H, ERA 1996, section 43A.

37. Section 43B defines what is a qualifying disclosure. It states,

> "(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following --
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."

38. What is a detriment under section 47B is not defined in the legislation. In this regard the judgments of their Lordships in the case of Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285, will apply. It is whether the worker was put at a disadvantage having made a protected disclosure? The disadvantage could be either physical, such as being instructed to engage in degrading work; or denying them benefits such as a company car, medical cover or membership of a sports or social club; being denied the opportunity of promotion, or a delay in addressing an issue. It may also be psychological, financial, or not being offered employment, amongst other things.

39. The qualifying disclosure must be a disclosure of information, that is conveying facts, Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, a judgment of the Employment Appeal tribunal.

40. A reasonable belief is assessed objectively taking into account the particular characteristics of the worker in determining whether it was reasonable for him/her to hold that belief, Korashi v Abertwe Bro Morgannwg University Local Health Board [2012] IRLR 4, EAT.

41. In the case of Fecitt and Others and Public Concern at Work-v-NHS Manchester [2011] EWCA Civ 1190, the Court of Appeal held that the causal link between the protected disclosure and suffering a detriment under section 47B, is whether the protected disclosure "materially

influenced", in the sense of being more than a trivial influence, the employer's treatment of the whistleblower.

42. In a breach of a legal obligation case, the tribunal should identify the source of the legal obligation and how the employer failed to comply with it. Actions could be considered wrong because they were immoral, undesirable or in breach of guidance without being a breach of a legal obligation, Eiger Securities LLP v Korshunova [2017] IRLR 115, EAT.

43. In the case of Chesterton Global Ltd v Nurmohamed [2018] ICR 731, the Court of Appeal did not define public interest but held that a "useful tool" would be: the numbers in the group whose interests the disclosure serves; the nature and extent of the interests affected; the nature of the wrongdoing; and the identity of the wrongdoer, Underhill LJ.

44. Section 48(3) provides that the claim under section 47B must be presented within three months from the date of the act or failure to act. Time could be extended if it was not reasonably practicable to present the claim in time, Section 48(4) states,

> "For the purposes of subsection 3 ---
>
> (a) where an act extends over a period, the "date of the act" means the last day of that period, and
>
> (b) a deliberate failure to act shall be treated as done when it was decided on."

45. Time is extended under section 207B where there has been conciliation before the presentation of the claim, section 48(4A).

46. In the case of Arthur v London Eastern Railway Ltd [2006] EWCA Civ 1358, the Court of Appeal held, Mummery LJ giving the leading judgment, that,

> "Section 48(3) is designed to cover a case which cannot be characterised as an act extending over a period by reference to a connecting rule, practice, scheme or policy, but where there is some link between the acts which makes it just and reasonable for them to be treated as in time and for the claimant to rely on them. In order for the acts in the three-month period and those outside to be connected, they must be part of a "series" and acts which are "similar" to one another."

47. As regards victimisation, section 27 EqA states;

> "27 Victimisation
>
> (1) A person (A) victimises another person (B) if A subjects B to a detriment because-
> (a) B does a protected act, or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act-

> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;
>
> (d) making an allegation (whether or not express) that A or another person has contravened this Act."

48. For there to be unlawful victimisation the protected act must have a significant influence on the employer's decision making, Nagarajan v London Regional Transport [1981] IRLR, Lord Nicholls**.** In determining whether the employee was subjected to a detriment because of doing a protected act, the test is whether the doing of the protected act had a significant influence on the outcome, Underhill J, in Martin v Devonshire Solicitors [2011] ICR EAT, applying the dictum of Lord Nicholls in Nagarajan

49. In relation to a breach of contract claim, it can be brought before an Employment Tribunal if "it arises or is outstanding on the termination of the employee's employment", article 3, Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

50. The claim must be presented,

> "(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim..", article 7.

The evidence

51. The tribunal heard evidence from the claimant who did not call any witnesses. On behalf of the respondent evidence was given by:

- Mr Jason Yiannikkou - Deputy Director for Acute Care and Provider Policy;
- Mr Timothy James Brown – Deputy Director NHS Costs Recovery;
- Ms Claire Emma Stoneham – Director, Provider Efficiency and Performance;
- Ms Mia Snook - Deputy Branch Head. EU Exit implementation and
- Mr David George Howarth - Senior Policy Advisor, Workforce Directorate

52. In addition to the oral evidence the respondent produced a joint bundle of document comprising in excess of 784 pages. The claimant produced, in addition, 4 lever arch bundles comprising of over 1,700 pages.

Findings of fact

53. This case is about the claimant's alleged treatment while she worked in the respondent Costs Recovery Support Team, "CRST" or the "Team". She was born in Bulgaria but lives in the United Kingdom.

54. One of the functions of the respondent is to improve costs recovery from individuals using the National Health Service, "NHS", who are not eligible for NHS funded care. To that end, NHS Trusts are required to comply with the National Health Service (Charges to Overseas Visitors) Regulations 2015, amended in 2017 by the Charges to Overseas Visitor's Amendment Regulations 2017.

55. The Civil Service, at one time, had very few policy or legislative options available to improve costs recovery, despite the fact that national income from overseas visitors was well below published independent estimates of the cost to the NHS of treating them.

Costs Recovery Support Team

56. There had been an early CRST in 2014-15. A decision to re-establish it was taken by the respondent by early 2017. Recruitment of fixed term employees to the Team began in early 2017. What the respondent was looking for in its recruitment drive were individuals who would be able to provide bespoke, expert support to those NHS Trusts who had the most potential for improved costs recovery.

57. It and a separate body called NHS Improvement, identified through analysis of current recovery income and local demographics, 20 Trusts as having the most scope for improving costs recovery by applying improved local practices. The Team were tasked with identifying and developing best practices and to work the Trusts' very junior teams responsible for costs recovery to put new practices into effect and to overcome barriers to effective adherence to the regulations.

58. Following close work with the NHS and NHS Improvement to identify the best skills set, the respondent advertised a small number of positions for senior individuals with extensive experience in finance, transformation, and informatics roles in the NHS, as well as senior clinicians. During the recruitment process, all candidates were informed of some of the challenges they would face in costs recovery to ensure, from a personal and professional perspective, that they were confident in their ability to deliver.

59. We further find that during the interview process, Ms Mia Snook, Deputy Branch Head- EU Exit Implementation, who was on the recruitment panel along with Mr David George Howarth, Senior Policy Advisor- Workforce Directorate, described the policy in detail, discussed the key challenges the successful candidates would face and how those were reflected in the respondent's requirements for the role. They stated that the successful candidates must be prepared to engage in extensive travel and overnight stays working with the Trusts.

60. Not all Team members joined at the same time. Once the majority were in place, a half-day induction was held on 11 April 2017.

61. All members of the Team were on fixed term contracts. The claimant was appointed from 10 April 2017 to 31 March 2018 and was fully aware that she was a fixed term employee of the respondent. (150-158)

62. The Team were all assigned a Civil Service Department grade when they joined which reflected their salary. The grading system for the NHS and Civil Service differ. A Civil Service grade equivalent was required to ensure staff information aligned with the respondent's practices and systems. Individuals within the Team although they all given the same DHSC grade, had different salaries to reflect their experience and seniority.

63. In relation to the structure of the Team, it comprised of:

- Project Manager, Mr Tomasz Stanisz, who had no line management responsibility for those in the Team;
- 2 Clinical Leads who were: Ms Judith Hunter; and Ms Marion Smith;
- 3 Finance Leads: Mr Mike Ball; Ms Julie Renfrew, and Mr Yinka Ehindero;
- 2 Information Technology Leads: Mr Darrin Flood, and Mr Kevin Harwood; and,
- 3 Transformation Leads: the claimant; Ms Barbara Isteed, and Ms Elizabeth Boultbee.

64. Above them but working as full-time civil servants were, the following persons in order of seniority:

- Mr Tm Brown, Deputy Director, Costs Recovery;
- Ms Mia Snook; and
- Mr David Howarth (page 142 of the joint bundle)

<u>The Team's grading</u>

65. In relation to the claimant's position of Transformation Lead, her Grade 6 equivalent was reflected in the Agenda for Change, referred to in the job description. (159)

66. In effect, the Team were a group of specialists who were paid at a level required to attract people of some seniority and experience. The claimant, along with others in her team, were treated as civil servants, bound by the Civil Service Code, as well as the Official Secrets Act 1989, although they worked in the health department. (150-151).

67. The Team were never intended to have day-to-day senior management responsibilities, which was the next grade above Grade 6. They were recruited to work independently from the respondent with Trusts on the NHS frontline because of their considerable experience. The grade was set not to reflect seniority but to recruit people with the appropriate skills, and

abilities which the respondent did not have. This is reflected in the Organisational Chart referred to above.

68. The Team reported to Mr Howarth who was a Grade 7, one grade below those in the Team.

69. The claimant was employed part-time working 3 days a week, 22.2 hours. She worked a full day on Mondays, Tuesdays and until 2pm on Wednesdays.

70. In her contract of employment, under Disclosure of Information, it states the following:

> "During your employment with the department you will not be free to communicate official information which you will acquire in the course of your work to anyone who is not authorised to receive that information. You will need to be aware of the Official Secrets Act 1989. The guide to the Official Secrets Act 1989 is enclosed." (156)

71. Further, under Disclosure of Information, it states:

> "Where official information merits a protective marking, for example RESTRICTED – POLICY, you must take particular care to ensure that it is, at all times, handled and stored securely in accordance with the Department's rules." (157)

72. We find that the respondent has a policy on "Handling official information" which could be accessed via its intranet. It sets out the classification of official documents; precautions when handling data; safeguarding documents outside of the office; using sensitive data on laptops and other devices.

73. In the policy, in relation to emailing securely, it provides:

> "It is unacceptable and a breach of security to 'auto forward' mail directly or via an intermediary address from DH or NHS.net accounts to your personal or other business email accounts including NHS.UK" (675

74. As will become apparent later in this judgment, the respondent considered that the claimant was in breach of the above email policy.

75. In the claimant's offer letter, dated 5 April 2017, it states, in relation to an induction:

> "When you join the Department, you will receive an induction to introduce you to the Department and to help you feel quickly at home in a new environment. Your line manager will be responsible for guiding you through the induction process. As part of this, there is a half day induction event that all new staff attends." (150)

<u>No Departmental induction [8.1.1]</u>

76. A decision was taken not to have a departmental induction as it would not have helped the Team members because it covered the overall aims of the Department, how it operates and how it supports ministers, which was more broader in scope than what the Team required. A Team induction was considered more relevant and appropriate and, wherever possible, the Team's line manager would explain matters relevant to the Department overall. This approach applied to all Team members, none of whom attended any departmental induction.

77. The Team induction began at 11am and finished at 2pm, on 11 April 2017. The claimant, along with some members of the Team, were present as were Ms Snook and Mr Howarth, who ran the induction. Ms Snook talked about the charging regulations, outlined many of the challenges faced by the NHS, and discussed the best practice already in place in the NHS Trusts. We find that the Team were told that Mr Howarth was going to be their line manager.

78. Ms Snook joined the Policy Team as Grade 7 in March 2016 and was promoted to a Grade 6 either in February or March 2017. She and Mr Howarth were clear in their evidence that from the documents that Mr Howarth exercised over the claimant and the rest of the Team, line managerial responsibility.

79. The claimant's case was that she was not invited to a departmental induction despite making enquiries and did not receive any departmental induction material. She asserted that she was treated less favourably because of her Bulgarian national origins by Ms Snook and Mr Howarth.

80. She did not refer to an actual comparator, a hypothetical comparator would be a member of the Team not of the claimant's national origins but of her grade. From the evidence, we do find as fact that no other member of the Team was treated any differently. They all had the Team's half day induction, and no one attended any departmental inductions. It was, however, open to the claimant to book herself on a departmental induction but she said in evidence that she was too busy and was unaware of it. Had she discussed with those in the Team she would have discovered that they did not attend a departmental induction.

81. We bear in mind that the nationalities of those in the Team were: Mr Stanisz, Polish; Mr Ehindero, Nigerian; there was a South African; and the rest British. It was a multi-national, multi-racial team. There was no evidence that the claimant was treated any differently from others in the Team. She believed that because of her Bulgarian national origins, she had been treated less favourably but could not point to any evidence in support of her claim in relation to the induction. The decision to arrange an induction for the Team, as opposed to a departmental induction, was nothing to do with the claimant's race or race generally.

82. We further find that Mr Howarth only became aware of the claimant's Bulgarian nationality when he later received a copy of her grievance, dated 18 December 2017, in January 2018, nine months after the Team induction.

83. Ms Snook could not recall whether during the interview with the claimant, she was aware of the claimant's Bulgarian nationality.

The claimant's line management [8.1.2]

84. The claimant alleged that she was not provided with adequate line management, help, supervision, and support because of her race and this led to the creation of an intimidating, hostile, degrading, and offensive environment for her. She, therefore, claims direct race discrimination as well as harassment related to race.

85. We have already made the finding that members of the Team were recruited based on their skills and experience as well as their knowledge. They did not require day-today management as they were required to do much of the groundwork themselves and to travel extensively.

86. Mr Howarth, as we have found, was the Team's line manager. The claimant was aware of this although Mr Howarth's Civil Service pay grade was Grade 7 and the claimant's National Health Service Agenda for Change Grade was Grade 6. The claimant alleged that because of the different salary scales, there was no line manager because she believed Mr Howarth was junior to her, but she was conflating two different pay regimes. She knew at all material times that Mr Howarth was her line manager because she later complained about his behaviour towards her, alleging race discrimination. This resulted in a meeting with Ms Snook on 8 June 2017, to discuss her concerns and a decision was taken that Ms Snook should be her line manager in place of Mr Howarth. The change in manager was unrelated to Ms Snook's pay grade, being Grade 6.

87. The claimant later on 4 December 2017, wrote to Mr Brown complaining about Ms Snook's behaviour towards her. Mr Tm Brown, Deputy Director, Costs Recovery, agreed to take over her line management and she was informed of this. The changes in manager indicates that the claimant was aware of who was her line manager.

88. From the evidence and having regard to our findings of fact, the claimant had not established that a hypothetical comparator would have been treated any differently. Initially, all members of the Team were line manged the same way by Mr Howarth and there was no difference in their treatment because of race.

89. In relation to this part of the claimant's claim, on our findings of fact, she has not established any unwanted conduct related to either her race or to race.

Extension of the claimant's contract [8.1.2]

90. She further alleged that the respondent extended her contract in a "humiliating manner". She stated that the Team having been informed in March 2018, that their contracts would be extended by a further three

months, she did not receive her extended contract until she had raised it with Human Resources and then received it the day before the expiry date. The expiry date being 31 March 2018.

91. We find that on 7 March 2018, Mr Howarth wrote to all in the Team informing them that he was pleased to confirm that their contracts would be extended for a further three months and that the respondent would organise the required paperwork over the next week "or so". He expressed the hope that the information he conveyed to them would give them some certainty. (552.1)

92. The claimant wrote to him on 26 March 2018, stating:

> "Dear Tim,
>
> According to Dave's emails, Claire's and your confirmations, the CRST members contracts have been extended by three months. However, according to the HR, this is not the case in regard to my contract (please, see below, could you please clarify the situation."

93. The email was in response to an email from Ms Rozzlyn Richards' email on the same day to the claimant in which she wrote:

> "As of yet HR has not received notification of your extension, please ask your line manager to forward a Staff Moves and Pay Change form re the TP to the HR Ops in box."

94. Mr Brown responded to the claimant's enquiry on the same day. He wrote:

> "HR are in the process of issuing extension letters and have issued some, but not all, to members of the CRST. I have been told that they expect to issue yours tomorrow"

95. The claimant said in evidence that she was the only one in the team who, by 26 March 2018, had not received her extended contract. This was not true. The tribunal asked the respondent to produce evidence of when members in the Team received their extended contracts. The documents produced showed Ms Smith and Ms Hunter got their contracts on 20 March 2018 and Ms Isteed on 28 March 2018. The contract copies of the other team members are undated. What the evidence revealed was that the contracts were issued to the members at different times. The claimant received her contract on 27 March 2018, the day before Ms Isteed's. (596-597, R1 and R2)

96. The claimant had not established less favourable treatment in relation to the extension of her contract. Ms Isteed received her contract extension after the claimant. Furthermore, it was not established that the timing of when se received her extended contract was, on its face, unwanted conduct related to race. The contracts were issued at different times and the email from Mr Howarth on 7 March 2018, did not stipulate a specific date when the contracts were going to be issued to those in the Team.

Performance appraisal and bonus [8.1.3]

97. The claimant alleged that performance objectives were agreed on 21 August 2017 with her manager four months after she started work and but did not have a formal performance appraisal which resulted in her not receiving performance related bonuses set out in her contract. This was less favourable treatment as other members of the Team were appraised as well as the other employees of the respondent.

98. In the claimant's contract it states, under salary:

> "Progression within the pay band of your grade is dependent on performance and the award of performance related pay. Information on the department's pay policy and the current rates of pay for each grade are published on the intranet site and can be made available to you".

99. The full-time salary for her post was £66,582 per annum to be pro-rated on her part-time working hours. (153)

100. The claimant did not produce any evidence that those within the Team received performance related pay or a bonus for the year 2017/2018.

101. The respondent's performance appraisal cycle runs from 1 April to 31 March. Its policy provides for half yearly and end of year reports. The performance rating determines whether a performance related pay is received.

102. It was agreed that the respondent's Human Resources advisors for the Acute Care and Workshop Group, the level at which performance management moderation takes place, that the Team were not comparable to other Grade 6 colleagues across the Department and it would, therefore, be unfair for both the Team members and substantive Grade 6 staff, for them to be included in that process of moderation. It was also standard practice to agree objectives several months after starting a role, once more is known about the individual and the role, to ensure they are well-matched. In Mr Howarth's experience, this has been the practice for over 10 years in the department.

103. In a typical performance management cycle, mid-year reviews and end of year reviews, would be moderated across a group putting individuals into boxes 1, 2 or 3. Those who are awarded a Box 1 marking would receive the performance related bonus. Box 2 marking indicates that the staff member is meeting objectives. Box 3 is requiring improvement.

104. As the Team began after the start of the appraisal year and only had contracts up to 31 March 2018, the respondent managers in the Team took the decision not to moderate. The scores, therefore, did not apply to those in the Team. However, the respondent did wish to undertake a mid-year performance appraisal of the Team.

105. On 31 October 2017, Mr Howarth emailed those in the Team stating that it was his intention to conduct mid-year reviews and gave the dates in November against each member of the Team. (286)

106. On 6 November 2017, the claimant emailed Ms Snook stating, amongst other things, that she understood that some of her colleagues in the team had already had their mid-year appraisals and she would welcome her making the necessary arrangements to hold a mid-year appraisal meeting. (306)

107. On the same day Ms Snook replied:

> "That's really helpful Sashka – thank you. I hope to try and attend one of the workshops so if your appraisal would work on one of those days for you then that would work really well. Would you be content if Dave joined us? I am aware I'm not close to the day-to-day work of the team at all times and so I think it would be helpful." (305)

108. On 7 November 2017, the claimant objected vehemently to Mr Howarth's involvement because she lodged grievances against him on 20 May and 5 June 2017, alleging race discrimination, and that she was not happy about the proposed venue, a hotel meeting room, that was booked for a workshop. She asserted that her appraisal would be in public. (304-305)

109. We find that it was not the intention of Ms Snook to conduct the claimant's mid-year appraisal in public, as the claimant alleged. Ms Snook replied the same day. She acknowledged that a workshop venue would not be appropriate and apologised for not clarifying the point. She suggested that as they both would be in London on the day, they should meet at Richmond House for the review. Richmond House is the respondent's main office. Ms Snook stated that it was her practice to carry out mid or end of year reviews face to face and if the timing did not work, the meeting could be rearranged. (304)

110. As the claimant in her 7 November 2017 email to Ms Snook, raised a number of issues about Mr Howarth, alleging that his interference in her appraisal was a continuing act of race discrimination and harassment as well as punishment for her "blowing the whistle" for making public interest disclosures. She also alleged victimisation. Ms Snook took advice from Human Resources and was advised that the business had a duty to formally investigate the claimant's resurrected complaints, as they appeared unresolved. The investigation would be under the respondent's grievance procedure. (303-304)

111. Ms Snook expressed the view to Human Resources and to Mr Brown, that she should carry out the mid-year appraisal after the grievance investigation had been concluded. Human Resources supported this approach as well as Mr Brown. (302)

112. As Ms Snook did not have day-to-day line management of the claimant's work, that had been the role of Mr Howarth who was no longer involved with

her line management, Ms Snook decided that she would attend with the claimant and others in the team, the Manchester Trust on 8 November 2017, to observe the claimant's performance. Ms Snook told us in evidence, and we find as fact as she came across as a credible witness prepared to accept that, on some occasions, she could not recall events with any degree of certainty. During her visit to the Trust, she observed that the claimant was very quiet at the meeting and seemed very distant from the rest of the Team during their discussions with the Trust's managers. She was observed speaking to individuals in the Trust trying to build up a rapport and would often speak when others were speaking. At break times she said almost nothing and her input into the Team's considerations was negligible. Ms Snook was left feeling very uncomfortable about the claimant going on visits.

113. On 14 November 2017, she met with the claimant to talk through the forthcoming investigation and to ensure she was aware of the support available. She followed up the meeting with an email to the claimant on the same day.

114. In the first paragraph she wrote:

> "Thanks again for making the time yesterday to speak at short notice. I hope that today we soon be able to confirm who will be taking forward the investigation. As I set out last week, there will be a Senior Civil Servant in the DH but will be independent from our team. Once confirmed we will be in a better position to set out the timetable for this investigation and then decide when would be a sensible point for your mid-year review. As I said, my preference would be to hold it after the investigation concludes, but I agree with you that that may not be for some time. Let's see how we get on this week."

115. The claimant responded two hours later stating:

> "Hi Mia,
> Thank you very much. I'm happy with these arrangements."

116. It follows from this that the claimant agreed with Ms Snook that it would be better to conduct a mid-year appraisal after the conclusion of her grievance. (316)

117. From our findings, compared with a non-Bulgarian national, there was no less favourable treatment in respect on bonus, and the claimant had agreed that her appraisal should be delayed pending the outcome of the investigation. Having failed to overcome the first hurdle of establishing less favourable treatment, the burden does not shift on to the respondent to show a non-discriminatory reason.

<u>The claimant working outside her contractual hours [8.1.4]</u>

118. The claimant had a meeting with Mr Howarth on 19 May 2017, to discuss KPIs and general feedback. Mr Howarth then emailed her after the meeting setting out what they had discussed. The following day she emailed him making an informal complaint against him alleging that he had discriminated against her based on her race and sex and had racially and sexually harassed her. She further alleged that he, together with Mr Nick Dawson, constantly criticised her in hostile manner in front of the Team members on her work on KPIs. Others in the Team were not similarly criticised thus segregating her as a "second class" team member. She asserted that other Team members were involved in the production of KPIs but she should not be held accountable for the absence of their contribution. She also referred to a "criticism" email sent to Mr Tomasz Stanisz, Project Manager, in relation to the Chelsea and Westminster Hospital NHS Trust. She asked Mr Howarth to refer to Mr Stanisz any issues concerning the Team and not to her. (196-198)

119. As the allegation concerned Mr Howarth, the claimant's line manager at the time, she met with Ms Snook on 8 June 2017, to resolve her informal grievance. As already stated, Ms Snook agreed to be her line manager in place of Mr Howarth and understood that the claimant was content with the outcome of their meeting. Ms Snook emailed an account of their meeting on the same day. It was recorded that they agreed that it would be sensible to have a few short one-to-one discussions by telephone over the following weeks to keep everything under review. In evidence, the claimant agreed with Ms Snook's account of the meeting. (212-216)

120. The claimant alleged that between 8 June 2017 and December 2017, Ms Snook requested weekly contact outside her contractual working hours and to do unpaid overtime. Further, Ms Snook became biased and would call her on Wednesday afternoons after 2pm, the time she finished work. She alleged that these calls would last an average of an hour and would sometimes result in her doing additional work.

121. Ms Snook told us in evidence that she was not initially aware of the claimant's working pattern being Mondays and Tuesdays all day and Wednesdays up until 2pm. The claimant did not initially reject the one-to-one calls on Wednesday afternoons, nor did she explain that the time did not fit in with her working pattern, nor had she sought to rearrange it.

122. On 12 July 2017, Ms Snook changed the call time from Wednesday afternoon to the following Monday, during working hours. It was made clear to the claimant during the meeting on 8 June that she could take time off in lieu. The notes reads:

> "I set out that whilst on longer days and working outside contracted hours would be expected at times, it should not be standard and any additional hours should be taken in lieu (Sashka is doing so)." (214)

123. We find that the claimant was aware that any work she engaged in outside of her contracted hours she could take as time off in lieu.

124. In relation to the issue of the claimant working outside of her hours of work, apart from a call on 29 November 2017, she said lasted 44 minutes, she did not provide a list of the dates and times of other calls outside of her working hours. The evidence provided show that the calls were made during working hours on Mondays from 12 July 2017. What was clear was that she emailed Mr Stanisz on 12 July 2017, stating that she would take the 29 August 2017 off in lieu because she worked on Thursday 6 July 2017 visiting "Barts Trust". (231)

125. On 5 June 2017, the claimant emailed Mr Howarth and copied in Ms Snook stating that Mr Stanisz had agreed she should take the 19 and 20 June as time off in lieu for working two days' overtime. (192)

126. We find that the majority of the calls made by Ms Snook to the claimant were ad-hoc and lasted no more than 30 minutes. During the call on 29 November 2017, the claimant did not say to Ms Snook that she needed to finish or leave because it was the end of her working hours for that day.

127. The claimant gave her personal mobile number to Ms Snook for Ms Snook to call her at any time. In addition, on 30 August 2017, Ms Snook emailed her at 1.37pm, stating that she was unable to reach her and to give her a call if she had any time off before she logged off. The claimant responded eight minutes later, stating that she was at home expecting Ms Snook's call and that she had left a message on Ms Snook's mobile phone. She asked Ms Snook what was the best number to contact her on. (245)

128. We find that there was some flexibility and understanding between the claimant and Ms Snook as to when they should contact each other. This would suggest that the claimant was content for Ms Snook to speak to her after 2pm or to start the conversation prior to 2pm and to continue after 2pm

129. From our findings the claimant had not been treated less favourably because of her Bulgarian nationality in respect of her working hours. The contact arrangements were flexible and were with the claimant's agreement who took time off in lieu. It was difficult to see how a non-Bulgarian, in similar circumstances, would have been treated any differently.

<u>Not challenging the Trusts [8.1.5]</u>

130. The claimant further claims that between 29 November and 20 December 2017, Ms Snook criticised her for not being able to challenge the NHS Trusts. In her witness statement, the claimant referred to the interview notes of Ms Snook during the investigation into the claimant's grievance by Mr Jason Yiannikkou - Deputy Director for Acute Care and Provider Policy, on 20 December 2017. The claimant referred to paragraph 13 of Mr Yiannikkou's notes, in which it states the following:

> "Mia commented that Sashka was good at building relationship with Trusts and getting them on side, but she also needed to feel able to challenge them – this was a key role of the CRST".

131. The claimant alleged that that statement was an act of direct race discrimination and harassment related to race.

132. In evidence, Ms Snook said that this was a constructive feedback regarding the claimant's working style.

133. We find that Ms Snook was referring to feedback she had received form two Transformation Leads on a workshop for the Trusts which they had organised. They said that the claimant was asked to work with them, but she refused because she did not agree with their approach. Ms Snook also said to Mr Yiannikkou that there was negative criticism regarding the claimant from the Trusts delegates who attended the workshop as they felt she added less value than the other facilitators and did not offer them the same level of support.

134. Ms Snook bore in mind an email sent to Ms Isteed on 24 November 2017, from a delegate of Newcastle University Hospital NHS Trust, who attended a workshop organised by the team. The claimant was facilitating in that person's group. The delegate wrote:

> "I wanted to drop you a line following the workshop this week. Kate and I enjoyed the day and were glad to have picked up some good ideas from other OV Teams good practice. It seems Leeds and Sheffield especially have some excellent processes in place we can learn from. We're looking forward to getting the staff e-learning training to and have plans to do a league table for the directorates to generate some healthy competition!
>
> Our only negative from the day if I'm being honest was the host from the table didn't have much input, she was very friendly and prompted us to ask questions, but there wasn't anything productive forthcoming and she did have a tendency to talk over people…." (317)

135. We also bear in mind that Ms Snook attended the Manchester Trust visit and observed the claimant's performance. It was clear, in our view, that Ms Snook's comments about the claimant was based on information provided to her and was in the nature of constructive criticism. Her comments were unrelated to the claimant's race. We further find that this would have been done in relation to any other Transformation Lead whose conduct raised similar concerns.

136. We have also taken into account that in the claimant's job description, it states:

> "This is a fluid and varied role with the chance to drive real improvements across the country for the benefit and sustainability of the NHS. This is not just process-focus role, but one that requires an individual to inspire behavioural and cultural change as well. Delivering this across a devolved healthcare system is a fantastic challenge and requiring drive; the ability to spot and implement innovation; confidence, and the ability to influence others and effect positive change" (160)

137. The claimant was expected to be actively involved in her discussions with the Trusts as part of her role. Where this was failing, it was incumbent upon

her line manager to draw this to her attention. Ms Snook could not be criticised for doing so. On the fact as found there was no evidence that Ms Snook had treated her less favourably because of race nor was her conduct related to race.

Manchester University Trust Meeting [8.1.6]

138. The claimant claimed that between 20 November 2017 and 22 March 2018, the respondent excluded her from a Manchester University Trust meeting, with Sir Keith Pearson that fell within her remit.

139. In her witness statement she stated that on 20 November 2017, Ms Snook invited Ms Judith Hunter, Clinical Lead, to a follow up visit with Sir Keith but she, the claimant, was not invited. Instead, she alleged that she was pressured to visit the rest of the Trusts' sites, eight additional visits, treating her less favourably because of her race.

140. In evidence, Ms Snook told us that in November 2017, the Royal College of Midwives, sought to arrange a visit to demonstrate the work their midwives do with vulnerable women. This was to take place at St Mary's Hospital which had become part of Manchester NHS Trust. Sir Keith Pearson was the independent NHS advisor to the Visitor and Migrant NHS Costs Recovery Programme, therefore, he was attending the visit along with Ms Snook. She invited Ms Hunter to attend as the Clinical Lead for that Trust as the meeting was about a clinical subject with clinicians. The aim was for the Trust to receive recognition from a well-known, senior figure and it was always good for Sir Keith to see innovative practice which he could then pass on during his visits to other sites. There was no need for the claimant to attend that particular visit as it was not within her remit and skills set.

141. Quite apart from the claimant not attending the visit, there was nothing else in support of her claim that she had been treated less favourably because of her Bulgarian national origins. The decision that Ms Hunter should attend was a management decision as she was the Clinical Lead and the visit was to discuss clinical issues. There was no evidence that the other Transformation Leads attended. Had it been a non-Bulgarian national Transformation Lead, the decision would have been the same. That person would not have had the required skills set to attend. The decision was unrelated to the claimant's race.

Key Performance Indicators – KPIs [8.1.7]

142. The claimant's next claimed that between April 2017 and May 2018, the respondent ignored, undermined, and criticised her expertise and concerns about KPIs, data collection and modelling. She alleged that Mr Howarth subjected her to undue criticism and had suffered acts of direct race discrimination and racial harassment. She again referred to the notes of Ms Snook's interview with Mr Yiannikkou on 20 December 2017, which she received on 8 January 2018, and to the statement by Ms Snook that she did not challenge others which we have dealt with earlier in this judgment.

143. She asserted that the KPIs were taken from her and given to Ms Elizabeth Boultbee, Transformation Lead but the KPI Dashboard was not developed and data not collected. She said that following her meeting with Ms Snook, she was removed from the Dataset dealings which were forwarded to Mr Mike Ball and Ms Julie Renfrew, Finance Leads. This was a further act of direct race discrimination. She stated that she was the only member of the Team qualified to conduct research, develop performance measurement and management systems, deal with data, data modelling and analysis.

144. In relation to the KPIs, Mr Howarth told us, and we do find as fact, that the work of the Team was vital to improving the operational processes in the 20 Trusts with the greatest potential for income. It was, therefore, essential to be able to track performance improvements across a number of key indicators. The claimant had volunteered to take on this task and produced a first draft for comment at a meeting of the Team on 11 May 2017, with NHS Improvement. It was important that all members of the Team explored options within their Trusts. Mr Howarth was not present at that meeting at which the claimant presented the first draft PKIs. Mr Nick Dawson, NHS Improvement, however, was present.

145. Mr Dawson, along with Mr Howarth, were of the view that the indicators needed to be considerably more focussed and measurable. This was explained to the Team as a whole. Various emails were exchanged on 16 May 2017 on developing the KPIs. The purpose of the work was to create a series of indicators which all four workstreams, clinical, finance, IT and Transformation, could monitor to know whether the Trusts were improving their performance. It was recognised early on that many of the Trusts would not, on their own, be able to collect the data but the Team would help or find ways to collect it.

146. Mr Howarth and Mr Dawson were involved in providing feedback on the KPIs to the claimant. Mr Dawson's concern was that they should be measurable, in that they should be "SMART compliant," namely Specific Measurable, Achievable, Realistic and Timely. He stated that the use of the Trusts' Overseas Policy and Procedures gave a standard operating procedure, not a KPI. He also made it clear his concerns in other areas. His email, dated16 May 2017, was addressed to Mr Howarth, the claimant and to Mr Stanisz. It was also copied to Ms Hunter, Mr Flood, Mr Ball, Mr Ehindero and Ms Boultbee, who made up the Team. In the claimant's email response, 18 minutes later, she wrote the following:

> "Dear Nick,
>
> I'm even more frustrated as I believe I've incorporated your input into the KPIs, at least what you have said on the date of the meeting. Your email below includes additional input.
>
> This is what I can do alone having in mind over 30 years of experience in this area and credentials (PHD econ, MBA and MSC in management research (both qualitative and quantitative)). I am happy to attend meeting with you and Dave in Richmond House so that I can implement your inputs to your satisfaction.

> Also if you feel you have somebody else in mind with better credentials than me to do this job, please let me know and I will forward this work to him/her".

147. We find that this email was quite disparaging of Mr Dawson as the claimant it sought to undermine him by highlighting her academic qualifications. (175)

148. In her fairly lengthy complaint dated 23 January 2018, covering 32 pages, the claimant wrote on page 22 of her grievance, the following:

> "I have better education background (registered nurse, first-class degree with honour in business and economics, MSC in management research (by research), MBA, post-graduate certificate in teaching, post-graduate diploma in management and PHD and economics). D Howarth has only a degree in politics and parliamentary studies, 2:1 grade achieved. M Snook has a degree and she just graduated a Master's degree in Health Policy. I have over 30 years of experience in the health care industry in many countries (over 17 years in the UK) in both private and state sectors. Their total combined years of experience in the healthcare in less than half of my experience." (444)

149. Further in her complaint the claimant wrote in respect of Ms Isteed, that she was a Band 8B NHS grade but currently received £10,000 more per year.

> "Therefore, she doesn't want to go back to her job trying to emphasise how professional she is in her business management although not having any degree." (450)

150. In the context of the work of the Team, as a comparatively new employee, in our view, the claimant considered herself best qualified to engage in developing KPIs, and found it difficult to accept that there could be criticism of her work. It was clear to us that Mr Howarth, Mr Dawson, and Ms Snook provided her with what could only be described as constructive criticisms of her work. Her response was to engage in a personal attack on them alleging the lack of relevant qualifications or discriminatory treatment based on her Bulgarian national origins.

151. On 19 May 2017, Mr Howarth and the claimant discussed KPI feedback in an open plan office. At the time the claimant wanted to work on her computer. Ms Snook was on the other side of a bank of desks working on her own computer. Mr Howarth initially offered the claimant a more private room, but she preferred to work on a computer in the open plan office. They then had their meeting, at the end of which Mr Howarth forwarded to her his notes of their discussion, outlining legitimate points including her manner in interacting with her colleagues and her offensive response to feedback. He stated that he wanted her to take on board feedback which he and Mr Dawson gave her in a positive manner and was disappointed in her response to it during the meeting. (197-198).

152. In relation to the claimant's email dated 6 June 2017, sent to those in the Team including Mr Howarth and Mr Dawson, in which she wrote that she organised a few conference calls to discuss the KPIs but had forgotten to invite Mr Howarth and Mr Dawson. She offered her sincere apologies.

153. Mr Howarth's response 12 minutes later, was that he did not need to be in the conference call as he and Mr Dawson had given clear guidance on what they would like to see in the KPIs. He further wrote that he would rather have the opportunity to review them when the claimant had a draft. (187)

154. We find that rather than this being a criticism by Mr Howarth, his response revealed his confidence in the Team in addressing the matter by drafting appropriate KPIs.

155. In his email to the claimant and to Mr Stanisz on the 21 June 2017, he offered constructive assistance to them in relation to the KPIs which the claimant responded by thanking him for his input. (219)

156. On 20 November 2017, Mr Howarth also gave constructive feedback to Mr Stanisz, following a draft report that was in circulation for submission to the Manchester Trust. Mr Howarth was willing to approve the report after his comments had been taken on board. (314-315)

157. In Mr Howarth's email he clearly praised the claimant for engaging in the SWOT analysis which he described as "excellent as always!" We find that the respondent did not ignore, undermined, or negatively criticised the claimant's expertise in relation to her concerns about KPIs data collection and modelling, nor had he removed her from dealing with them. The communication between her and Mr Howarth, were in our view, normal transactions between a manager and his team seeking to finalise a report. The claimant has not established facts from which we could decide that the respondent had treated her less favourably because of her Bulgarian national origins. The conduct of the respondent's manager, Mr Howarth, fell within the range of normal managerial oversight and would have been the same if it was a non-Bulgarian Transformation Lead. Further, we have not found facts from which we could decide that the respondent had engaged in conduct related to race.

<u>19 May to 30 May 2018 [8.1.8]</u>

158. The claimant claimed that between the 19 May 2017 and 30 May 2018, Mr Howarth discriminated against her because of her nationality; criticised her for raising issues of public interest disclosure to Mr Stanisz on 16 May 2017; criticised and rejected her input into the KPIs in front of all the members of staff in an open plan office; persistently criticised her performance whilst supporting other team members; requesting fortnightly one-to-one meetings to manage her conduct despite not being her line manager; segregating her in an email on 1 June 2017 and on 19 May 2017, requesting to enforce some personal objectives on her out of contract time; shouting at her during a visit to St Bart's NHS Trust on 25 May 2017; from November 2017 to January 2018, unfairly rejecting her input regarding the Manchester University NHS Trust; and in April/May 2018 pressurising her to develop two webinars alone.

159. We find that during the discussion on 19 May 2017, at Richmond House, having considered the evidence given by Ms Snook, Mr Howarth, and the

claimant, that not many staff were around at the time. Ms Snook was able to give the Tribunal a description of the banks of desks in relation to where the claimant and Mr Howarth were sitting discussing KPI feedback. There were around 7 people all engaged in their work, not focused on the claimant and Mr Howarth and were also some distance away from them. Ms Snook was nearest to the claimant and Mr Howarth and was not paying much attention to what they were saying. As this meeting was on a Friday many staff members would have been working from home. Those walking by, who were few in number, would have been approximately 10 feet away from the claimant and Mr Howarth. No other member of the Team, apart from Ms Snook, was present.

160. During the hearing, for the first time, the claimant said in evidence before us, that while she was in the kitchen at Richmond House, some staff asked her what was going on and, from her accent, where she came from. She assumed that they must have asked that question because they overheard the discussion she had with Mr Howarth. As she had raised this conversation for the first time during the hearing, which took the respondent by surprise, it was put to her that it would have featured in her correspondence to either Mr Howarth or Ms Snook, but was noticeably absent. She maintained that the interaction with other staff did take place. We reject her evidence about her discussion with Mr Howarth being overheard by anyone present or that her nationality had been raised by those in the kitchen. We further find that Ms Snook, who could hear the conversation, said at no point were voices raised during the discussion.

161. The discussion was a normal management transaction between a manager and his staff which would have been held in private had the claimant not insisted on working on a computer in the open plan office.

162. Requesting fortnightly one-to-one meetings was not an instruction but a suggestion on the part of Mr Howarth. It had nothing to do with the claimant's race, nor was it related to race.

163. The claimant raised the issue of being segregated. In evidence she explained that she was being criticised by Mr Howarth while others in the Team were not. She was not complaining that she had been physically segregated from the rest of the team. In her witness statement she wrote that Mr Howarth supported Ms Hunter during a visit to Coventry NHS Trust while he criticised her excessively about her involvement in that visit. She also referred to Mr Howarth supporting Ms Boultbee and Ms Isteed while taking a stand against her.

164. Both Mr Howarth and Ms Snook told us that, unlike others in the Team, they had received complaints about the claimant's conduct and performance from a variety of sources.

165. The claimant also alleged that on 25 May 2017, at St Bart's NHS Trust, Mr Howarth shouted at her in a demeaning manor. We find that the Team were at a meeting in a room at the hospital which was also used as "Gold Command" for major incidents. During the meeting, the Deputy Chief

Executive, who was waiting by the door and had said that the room needed to be vacated because Bart's were experiencing a major computer hacking incident and Gold Command needed to be instigated. Mr Howarth and other members of the Team left the room, but the claimant remained talking to one of the hospital's staff. Mr Howarth, aware that the Deputy Chief Executive was becoming agitated by the delay in using the room, called to the claimant from some 50 feet away according to the claimant by saying, "Sasha we have to go". We find that from that distance, he would have had to raise his voice. There was an urgent need to vacate the room and Mr Howarth had to raise his voice to attract the claimant's attention. The same would have been done to any other member of the Team who had remained in the room talking to a member of the hospital's staff. His conduct was unrelated to the claimant's race.

166. In relation to webinars, the claimant emailed Ms Isteed and Ms Boultbee on the 7 April 2018, stating that she was not happy with the way they had treated her as if she was "a second-hand employee". She asserted that at a meeting they had pushed her to do the webinars alone which she did not agree to do.

167. The claimant accepted in evidence that she was responsible for webinars following a discussion between three Transformation Leads. In fact, she did not do the webinars. We further find that this was no more than a discussion between the Team members and was a suggestion not an instruction. There was no evidence upon which we could find as fact, that how the work was allocated was because of race or related to race or that of the claimant's race.

Removal from Barts Health NHS Trust and King's College NHS Trust 8.1.9]

168. The claimant alleged that she was removed from Bart's and Kings College NHS Trust in a humiliating manner and had been treated less favourably because of her race.

169. During July 2017, she was working on developing recommendations for Bart's Trust. Mr Howarth had informed her that the focus for the Trust needed to be on why its cash recovery rates were so low given the high number of chargeable patients it had identified. This Trust was strategically important to the project given its high potential for income from overseas patients.

170. In the claimant's email dated 17 July 2017, sent to Ms Isteed, in relation to Bart's Trust, she wrote:

> "Dear Barbara
>
> I have spent yesterday all day reviewing Bart's findings as I was really eager to see what's happening there. After linking all the facts, I found out that it wouldn't be so difficult to achieve good results without extra resources needed by the Trust but utilising current resources more effectively and efficiently.

> Until recently, we all looked at a wrong direction – recovering debt (as they have a high level of 'identification'). But how you recover debt from patients who do not have money (poorest area, immigration level about countries average, cultural issues – 40% to 50% of Trust staff are from ethnic groups, treating their relatives from abroad free of charge, consultants treat all patients free of charge, etc).
>
> Therefore I suggest we make three main recommendations.
>
> Erect high barriers to entry for 'health tourists' who try to abuse the NHS system by forwarding a strict policy and procedures in place in regards to overseas patients." (235)

171. The reference to 40% to 50% of the Trust's staff were of an ethnic background and were treating their relatives from abroad free of charge, shocked Mr Howarth as a remarkable, if not a false allegation. When she came back to the Team with her findings, she explained that the finding was based on something she had overheard on a bus and that clinicians were inviting family members to the Trust for free treatment from overseas. Mr Howarth was staggered by the assertion and the limited evidence in support of it. There were many operational and culture issues he had with her recommendation.

172. The claimant, in her evidence before this Tribunal, said that the information on the percentages also came from Trust's staff as well as from what she overheard on a bus. She did not produce any witnesses to confirm her conversations. There was simply no evidence to support the claim that 40% to 50% of the Trust's staff were from ethnic backgrounds and were treating their relatives from abroad free of charge.

173. Mr Howarth received negative feedback from Bart's about the claimant during a phone conversation with their Overseas Visitor Manager including a read out from a meeting with their Finance Director who had left a meeting with the claimant feeling "incensed". The conversation also disclosed that the claimant was late for every visit. In evidence she accepted that she had been late on at least two occasions.

174. As Bart's Trust was a high priority Trust, Mr Howarth spoke to Ms Snook and then took the decision to remove the claimant from that Trust. He asked another member of the Team to lead the work for the Trust.

175. The claimant said in evidence that she had never met the Finance Director of Bart's Trust. However, in relation to a document recording a meeting on 25 July 2017, she was present along with Mr Baresh Patel, Director of Income and Contracting, as well as Mr Martin Botterill, Associate Director of Finance, and Mr Andrew Melia, Assistant Director of Finance – Contracts. We, therefore, accept the evidence given by Mr Howarth that the claimant had upset the Finance Director at a meeting who was left feeling "incensed". (90)

176. We find that the decision to remove her as Transformation Lead from Bart's was unrelated to her race but to establish on-going good relations with that Trust as she was not assisting the Trust in a positive way.

177. In relation to the claimant's removal from Kings College NHS Trust, on 7 September 2017, Mr Howarth received an email from several people in the Team, raising concerns on about her performance. This followed from a visit to Kings Trust and included an incident in which the claimant had accused, in front of everyone at the meeting, another Team member of having a conflict of interest; she refused to undertake a task assigned to her by the Team; and of telling one of the Trust's staff that they were not doing their job. The Trust asked that Team member, Ms Boultbee, to be their Transformation Lead instead of the claimant.

178. The alleged conflict of interest was that Ms Boultbee had previously worked at Kings and wished to return when the project term finished. There was no evidence produced by the claimant to support such an assertion on her part.

179. Mr Howarth was uncertain in his evidence whether the decision to remove the claimant as Transformation Lead for Kings Trust was made by him, by the Team, or by Ms Snook. In any event, from our findings, the claimant has not established a prima facie case that she was treated less favourably based on her race. She removed because of her conduct. The initiative to remove her came from the Trust, not the respondent. Had it been a non-Bulgarian Transformation Lead who had behaved in similar ways, we were satisfied that that person would have been removed from working with the Trusts.

180. We find also that the claimant had a difficult relationship with other Trusts such as Cambridge University NHS Trust and Newcastle University NHS Trust.

Unfairly segregated from 10 April 2017 to 30 May 2017 [8.1.10]

181. The claimant further alleged that Ms Snook accepted that she was "an academic, very objective and evidence-based"; but was unfairly segregated; Mr Howarth and Ms Snook criticised her and were in ignorance of her capabilities regarding the KPIs, data management and modelling; and had encouraged other Team members, Ms Hunter, Ms Smith, Ms Boultbee, Ms Isteed, Mr Stanisz, Mr Flood and others in the NHS, such as Mr Dawson and Mr Bartram, to take a stand against her. She referred to a visit to Liverpool NHS Trust and was told by Mr Flood and that Mr Stanisz and Ms Hunter told him that he would lead the meeting in the afternoon as Ms Hunter had to leave early. She said the Mr Flood did not seem to be experienced and was very vocal in demonstrating his leadership. Mr Stanisz and Mr Hunter chose him instead of her despite his very junior status. She claimed that in so doing, she had been treated less favourably because of her race and the others were influenced by Mr Howarth and Ms Snook. She had been undermined by Mr Stanisz, Ms Hunter, and Mr Flood, because they followed the manager's behaviour.

182. The claimant's case here was based on pure assertions without any direct evidence. We have already found that Mr Howarth and Ms Snook did not behave in racially discriminatory ways towards the claimant nor was their conduct related to race. They did nothing more than engage in the normal management of staff. In the claimant's case, she treated anything she did not like as discriminatory because of her race. We were unable to make findings of fact from which we could decide that the claimant was treated in the manner she alleged.

183. We have already dealt with the issue of the KPIs.

Cambridge University NHS Trust [8.1.11]

184. The claimant further claimed that during a meeting on 8 June 2017, she believed that Ms Snook became biased in standing against her in favour of Ms Isteed, and that the matter involving Mr Jonathan Bartram at Cambridge NHS Trust was deliberately created by Ms Isteed to compromise, degrade and humiliate her. She asserted that Ms Isteed was a friend of Mr Bartram and that they had previously worked together collaboratively. She asserted that Mr Howarth discouraged her from defending herself in response to an email from Mr Bartram and that Mr Yiannikkou and Mr Brown failed to prevent matters from escalating.

185. The claimant was the Transformation Lead for Cambridge University Hospitals NHS Foundation Trust and worked with Mr Jonathan Bartram, Private and Overseas Patient Manager, at the Trust. It was clear that their relationship was not constructive, and Mr Bartram wrote to her on 5 February 2018 at 9:36 in the morning, copying Mr Howarth, Ms Snook, and a few others. He stated:

> "Dear Sashka
>
> It is with regret that I am writing to you in this manner, but I'm afraid I no longer see you as the best person to be able to provide the necessary support to Cambridge University Hospitals NHS Foundation Trust in terms of the work that you are doing with the CRST on overseas visiting matters and in the developments that we, as a Trust, are making to address both the recent legislative changes and the recommendations made by in the CRST report.
>
> I have worked with the CRST since its inception and through many of its various disguises prior to commencing my current role within the NHS. I therefore believe I have a fairly comprehensive knowledge of the challenging aims and targets the Department of Health has set and the importance that the CRST plays in supporting Trusts to achieve these. However, I personally believe from the communication that I have had with you and from meeting with you in person at the Peterborough workshop that you are not able to provide the additional support and knowledge that we as a Trust perhaps require from a transformations manager.
>
> I therefore think that it is best that we longer proceed with the fortnightly calls as this is not a constructive use of mine or your time, nor do we have any direct communication with yourself going forward.

> I am however going to continue to work with other members of the Cost Recovery Support Team, from an IT, clinical and financial prospective, and I am sure that they will provide feedback to you on the work that we are doing as a Trust between now and the end of March. I wish you all the best for your future endeavours." (491-492)

186. Mr Howarth emailed the claimant at 14:02 in the afternoon saying,

> "Please can you refrain from responding to John until Mia and I have had a chance to discuss."

187. The reference to John is to Mr Bartram.

188. The claimant responded to Mr Howarth, 44 minutes later, stating:

> "Dear Dave
>
> Thank you very much for your email.
>
> I also need some time to obtain legal advice as I find John's email insulting and defamatory in nature, especially in regard to copying so many people in it and making allegations without providing any evidence. I really feel shocked and distressed as I have done a lot to help him and I do have evidence to prove this. He also refused to be contacted by Darrin on a weekly basis. Darrin also expressed his concerns about John's dealings in regard to the OV agenda (well documented in his emails). Prior to his employment, I didn't have any issues with the Trust." (491)

189. In evidence to the Tribunal the claimant said she did not see Mr Bartram as a senior manager. We find, however, that he was the most senior member of the Trust's team dealing with overseas visitors. She alleged that he was only raising these issues to cover his own inadequacies.

190. Mr Bartram's position does not come out of the blue. On 24 November 2017, he emailed Mr Howarth in relation to the Transformation Lead, the claimant, apologising for getting in touch with him and wrote that he attended the Team's workshop the previous Wednesday, in Peterborough, and it became quite apparent that the support to Cambridge University Hospitals NHS Foundation Trust had received from the team Transformation Lead, failed somewhat short of the support other Trusts had. He then wrote:

> "It was also slightly disappointing to hear some of the feedback my OVM had about our Transformation Lead from Wednesday's workshop.
>
> Do you have any time this afternoon to discuss perhaps?" (407)

191. It was clear by January 2018, that Cambridge Trust was looking for a new Transformation Lead as this was stated in an email by Mr Howarth to Mr Brown dated 12 January 2018. (405)

192. Despite Mr Howarth's clear instructions that the claimant should not contact Mr Bartram, she ignored that instruction and emailed Mr Bartram at 8:40 in

the morning on 7 February 2018, copying Mr Howarth, Ms Snook, and few others. She wrote;

> "Dear Jonathan, you neither qualified nor in a position to assess my level of knowledge and skills. Therefore, I'll not engage in such type of communications. Please, do not contact me in such a manner again as I find it very insulting and humiliating." (497)

193. We find her email to a Trust which the Team were working with on improving its overseas patients' revenue, was totally unacceptable and in clear breach of Mr Howarth's instructions to her. It confirmed the reasons why Mr Bartram wanted her no longer to be the Transformation Lead to the Trust as their relationship had broken down. The respondent had good grounds for taking disciplinary action against her for clearly disobeying a reasonable management instruction. It did investigate her conduct and having considered all aspects of the matter, decided to take no action against her. This was confirmed in a letter from Mr Brown on the 12 March 2018. (557)

194. In it, amongst other things, he wrote:

> "I have carefully considered the circumstances, including the conversation we had on 20 February 2018 and the files of evidence which you subsequently sent to me, and have determined there is nothing that warrants further investigation or formal action. I informed you of this decision verbally on 7 March 2018.
>
> It is, however, disappointing that relationships with the Trust have broken down to the point where they feel they cannot continue to engage with you, resulting in us having to provide them with a new Transformation Lead. It is, of course, a matter for you; however, I would advise that you consider whether independent mediation may assist in resolving any of these issues. Information on the mediation support offered by the Department is available on the intranet." (557)

195. The claimant did not pursue mediation with the Trust. Had relations between a hypothetical Transformation Lead and a Trust broken down, it is highly probable that the Trust would no longer want to work with that person and another would have to replace him or her. There was no evidence that the claimant was treated less favourably, compared with the hypothetical comparator, because of race

196. It was not correct for her to assert that Mr Howarth prevented her from defending herself. He simply asked her not to respond to Mr Bartram until the matter was considered by him and Ms Snook.

197. Further, we consider that the respondent dealt with this matter in a lenient manner and that there was no detriment to the claimant. The respondent's conduct was unrelated to the claimant's Bulgarian national origins.

<u>The grievance investigation [8.1.12]</u>

198. The claimant further claimed direct race discrimination and racial harassment in relation to the conduct of Mr Yiannikkou, who conducted the investigation into her formal grievance. She claimed that the report he produced was seriously flawed; biased; discriminatory in nature; that the meeting with Mr Howarth on 19 May 2017, was widely rumoured within the Department; and the report was based on anonymous hearsay evidence about her conduct and attitude.

199. To put matters in context, the claimant had emailed Mr Howarth on 20 May 2017, alleging that she had been treated less favourably because of her race and sex. She also alleged that she had been harassment because of her race and/or sex. She described this as an informal complaint. (196-197)

200. On 5 and 7 June 2017, she made several further allegations in emails to Mr Howarth. On 8 June, Ms Snook, Mr Howarth's line manager, met with the claimant to seek to resolve her complaints informally. At that meeting she notified the claimant that because of the allegations she made against Mr Howarth, she, Ms Snook, would be taking over her line management. The claimant confirmed at the meeting that she did not want to make a formal complaint or take her complaint further. It was Ms Snook's sincerely held belief that matters were resolved amicably at that meeting. She emailed the claimant later that day setting out an account of their discussion. Which we have already referred to earlier in this judgment. It was an account the claimant said in evidence was accurate. (191-195, 212-215)

201. On 7 November 2017, the claimant again made allegations of discrimination, harassment and also detriment due to whistleblowing and victimisation. This complaint followed on from Ms Snook suggestion to her that Mr Howarth will be present as part of her appraisal at the workshop. The claimant objected to his attendance because she had lodged complaints about his conduct. (305)

202. Ms Snook had taken advice on how to deal with the claimant's more recent complaints and contacted Ms Claire Salmon, HR Case Manager, on 7 November 2017. Ms Salmon replied on the same day copying Mr Brown, stating:

> "To confirm, the approach should be that as a business we have a duty to formally investigate this resurrected complaint as it appears unresolved to her. This will be an investigation under the formal grievance procedure." (303)

203. Mr Brown, as Deputy Director of the Team, who had line management responsibilities for both Mr Howarth and Ms Snook, commissioned Mr Jason Yiannikkou, to conduct the investigation into the claimant's complaints under the respondent's grievance procedure. Mr Yiannikkou worked in the same Director-General led group as Mr Brown but in a separate directorate from him and the claimant. He had not met the claimant before conducting his investigation.

204. In relation to Mr Yiannikkou's conduct of the investigation, in advance of holding grievance meetings, he was given a number of documents by the

claimant, Mr Howarth, Ms Snook and Mr Brown. On the 18 December 2017, he held an investigation meeting with the claimant. She began the meeting saying that she wished to raise a formal complaint in relation to the allegation she had previously put forward and wanted to raise a formal complaint about Mr Howarth and Ms Snook regarding the lack of a departmental induction; KPIs; being treated differently than others in the Team; Mr Howarth's conduct towards her; calls by Ms Snook to her outside of her contractual hours; and that Team was set up incorrectly. (348-350)

205. After the meeting she emailed Mr Brown a 12-page formal complaint letter. Further documents were forwarded by her which were then forwarded on to Mr Yiannikkou.

206. On 20 December 2017, Mr Brown responded, signposting her to the formal grievance procedure. He advised her that her new complaints would be considered as part of the grievance and requested that that be the final submission from her as Mr Yiannikkou had to respond to all of the points raised in his outcome report. She responded stating that it was unfair to suggest the use of the grievance procedure. (371)

207. We find that the respondent did not have a "Complaints" procedure as such, and that her grievances properly fell within its grievance policy.

208. Mr Yiannikkou met with Mr Howarth on the 19 December 2017 and with Ms Snook on the 20 December 2017. Notes were taken of their meetings. (365-369, 378-381)

209. In addition, he considered three anonymous statements provided by those who worked with the claimant which were about her performance and conduct. (413-415)

210. Mr Yiannikkou also reviewed the respondent's bullying, harassment and discrimination policy, as well as the whistleblowing policy.

211. He did not send the claimant notes of his meetings with Mr Howarth and Ms Snook, as well as the anonymous statements for her comments. The reason being that it was his practice to conduct an investigation in that way and did not want to engage in a process, for an indefinite period, of having to deal with responses to ongoing matters not necessarily within his remit.

212. On 8 January 2018, Mr Brown wrote to the claimant sending her a copy of Mr Yiannikkou's report. (382)

213. In Mr Yiannikkou's report he addressed all of the concerns raised by the claimant covering 19 pages. (383-401)

214. His conclusions are summarised in paragraphs 37-41 of his report in which he wrote the following:

> "37. Having considered the points raised by Miss Stoedinova and the evidence supplied by Ms Snook and Mr Howarth and having also considered the DH policies on these matters, I have concluded that there is no evidence to justify

> further investigation or action on any of these allegations. Accusations of this kind are, of course, extremely serious and concerning, and it is right that they are thoroughly looked at. It is also true that many forms of discrimination and harassment are not explicit but occur through indirect means such that as exclusion, excessive criticism and subtle denigration. I have been mindful of this in sifting the evidence I have received and that I have heard. This does not, however, alter my conclusion.
>
> 38. In essence, I believe this is a very unfortunate situation in which a clash of working styles, a demanding work programme and relatively unusual team structure have led to a breakdown in key relationships. The Department may need to reflect on the importance of insuring that members of teams of this kind are fully inducted in future, and understand the ways of working of the Department, though it remains an open question whether such interventions would have prevented these issues from developing. I incline to the view that they would not have made a decisive difference in this case.
>
> 39. The Department should also consider how to manage formal reporting relationships where there is a lack of clarity about grade differences/seniority between Civil Servants and those seconded in or employed on a fix-term basis. Once again, while this might have been helpful in this case, I do not believe it would have made a decisive difference.
>
> 40. I am also aware that both Mr Howarth and Ms Snook have reflected on their management decisions and a number of specific issues as a result of this case.
>
> 41. I have arrived at a perspective that is clearly different to that of Miss Stoedinova. I would emphasise that her sense of grievance appears to be genuinely felt even if it is not grounded in the actual behaviour of Ms Snook or Mr Howarth." (391)

215. Mr Brown invited the claimant to a grievance meeting on 23 January 2018. On the same day, she wrote stating she had not received the evidence given by Mr Howarth and Ms Snook during their meetings with Mr Yiannikkou. (409)

216. Although Mr Yiannikkou provided his report setting out his conclusions, the decision in relation to the claimant's grievance was going to be taken by Mr Brown. Mr Yiannikkou's role was not to establish whether the performance concerns about the claimant and her conduct were justified. It was whether there was some evidential basis for the concerns Ms Snook and Mr Howarth had about her.

217. On 23 January 2018, the claimant met with Mr Brown and was given the opportunity to raise her concerns. It is noteworthy that in her very detailed complaints letter to him, she wrote the following about her colleagues:

> "To my knowledge, one of the finance leads – M Ball has only a grammar school education while the other one – J Renfrew has only a degree but not sure about that. Both IT leads have only a degree." (445)

218. This again highlights the claimant's mindset regarding her colleagues' qualifications and abilities to carry out their roles.

219. On 24 January 2018, Mr Brown wrote to her setting out his grievance outcome. He stated that in relation to her specific allegations of direct race discrimination; indirect race discrimination; harassment; victimisation; and unfair treatment for whistleblowing, they were not upheld. He further wrote that the investigation report made reference to development and learning points which he would address with the individuals concerned. He informed her of her right of appeal. (470-471)

The grievance appeal [8.1.12]

220. On 24 January 2018, she appealed against the outcome to Ms Claire Stoneman, Director Provider Efficiency and Creativity, and in effect repeating she set out in her grievance, raising indirect race discrimination, harassment, and public interest disclosure. She referred to procedural errors, in that that her evidence files were not reviewed. The outcome she was seeking was a declaration that she had been discriminated on grounds of her race, as well as compensation. (475-476)

221. On 30 January 2018, Ms Stoneman invited her to an appeal meeting on Tuesday 6 March 2018. (486-487)

222. On the 5 February 2018, the claimant expanded on her grounds of appeal. (488-490)

223. On the 5 March 2018, the day before the appeal hearing, she forwarded further points of her appeal covering 6 pages. (532-537)

224. In addition, she set out her account of events in relation to Mr Bartram. (538-543)

225. We have noted that in the morning of the appeal meeting, at 6.19am, the claimant sent Ms Stoneman a fourth letter setting out her grounds of appeal. It included an additional appeal point that her contract had not been extended. She asserted that Mr Stanisz had informed the Team, on the 5 March, that their contracts had been extended. She was not aware that her contract had been extended. She alleged that she had been victimised for blowing the whistle and discriminated against because of her race.

226. The appeal went ahead as listed and notes were taken. Ms Stoneman informed the claimant that the appeal was not to reconsider the case but specifically the grounds of appeal in relation to the original decision.

227. At the conclusion of the meeting Ms Stoneman said that she would send the decision within 5 working days. The claimant informed her that she was due to go on annual leave until 19 March but would respond to private emails.

228. We have already dealt with the contract of extension point in our earlier findings and conclusions.

229. On the 7 March 2018, the claimant forwarded to Ms Stoneman additional points in relation to her appeal. One point being that Mr Brown on the 7

March 2018, informed her that he would be investigating the inappropriate us of her laptop in forwarding emails to her private email address and printing out them for work related purposes. (553-555)

230. On the 13 March 2018 Ms Stoneman wrote to her setting out her grievance appeal outcome in which she rejected her grounds for appeal. (561-562)

231. The claimant before us said that there was undue delay in addressing her appeal. It was by 23 days. We find that she was invited to an appeal hearing within 5 working days from the grievance decision as stated in the respondent's grievance policy. Given the scope of her complaints and the huge number of documents produced, it was entirely reasonable that someone of Ms Stoneman's seniority, who had a lot of other work in addition to conducting the appeal, should have to take a reasonable amount of time to read the documents, meet with the claimant and compile her report.

232. With regard to the way in which the grievance was dealt with as a whole, from Mr Yiannikkou's initial investigation through to Mr Brown's grievance hearing and Ms Stoneman's appeal, we find that it was conducted in accordance with the respondent's grievance procedure to give the claimant every opportunity to state her case which she did exercise on more than one occasion. There was no evidence that the way it was conducted, and the conclusions arrived at, were in any way related to the claimant's race**.** We have not made findings from which we could decide that there was less favourable treatment because of race or that her treatment was related to race.

233. We further find that from Ms Snook dealing with the claimant's original complaint on 8 June 2017, Mr Yiannikkou's investigation, Mr Brown's grievance hearing, Ms Stoneman's appeal outcome, the claimant chose to characterise the decisions which she did not like as being attributable to her Bulgarian national origins. At no stage did she produce any direct evidence that this was the case, nor could that be inferred from our findings of fact.

234. If it is the claimant's case that she was treated less favourably when compared with Mr Howarth and Ms Snook, we were not drawn to the similarities upon which we could find that they were true comparators.

<u>Mr Brown's behaviour towards the claimant [8.1.13]</u>

235. As part of her race discrimination and harassment claims, she referred to Mr Brown's conduct towards her. She stated that he escalated informal grievances without contacting her prior to doing so; treated her grievances as if part of a complaints procedure which the respondent does not have; failed to send her the evidence file on which the investigation report was based despite her requests; forwarded the meeting notes to her without asking her to agree their content; instigated a misconduct procedure against her in relation to Mr Bartram's complaint; instigated a disciplinary procedure against her in relation to her inappropriate use of a personal email address for Government "official sensitive" material; pressured her to develop two

webinars alone; and had not investigated her grievance against Ms Isteed and Ms Boultbee.

236. As we have stated earlier, on 18 December 2017, the claimant lodged what she described as a formal complaint alleging race discrimination, harassment, victimisation, and whistleblowing. (352-363)

237. Upon receiving it Mr Brown emailed her on the 20 December 2017, stating the following:

> "Thank you for sending me the details of your complaint. As I am sure you are aware, the Department does not have a formal complaints procedure for employees but a grievance procedure. It is that procedure that was triggered by the allegations you made previously and is currently being investigated by Mr Jason Yiannikkou. This was done at my request as outlined to you in my emails of 24 November and 5 December. An investigation into this type of allegation is essential and I took the decision to investigate formally under the grievance process due to the nature of the allegations you have made.
>
> The material you have provided (which I see you copied to Jason) will be considered as part of this investigation. For the purposes of a swift resolution, I ask that you ensure this is your final submission, unless brand new information becomes available. Once the process is complete you will be informed of the outcome. You will also have one right of appeal, which would be considered by another independent senior officer not connected with the case.
>
> As you have also made allegations regarding breaches of the Public Interest Disclosure Act 1998 I will need to take advice on whether these will need to be dealt with separately as they, of course, subject to different departmental procedures.
>
> With best wishes for the Christmas season." (372)

238. The claimant replied on 21 December 2017, to Mr Brown in which she wrote:

> "I am not happy with your suggested processes in terms of my grievances as they are unfair. Also, they do not comply with the ACAS Code of Practice on disciplinary and grievance procedures as well as with the DH grievance policies and procedures.
>
> You have made your decision without reading my formal complaint (18 December 2017) and without making yourself aware of the above ACAS Code of Practice one, and the DH grievance policies and procedures. I would like to remind you that according to the above ACAS Code
>
> 'Grievances are concerns, problems or complaints that employees raise with their employer.'" (371)

239. The ACAS Code refers to grievance procedures not complaint procedures. The respondent has a grievance policy and procedure document. Having regard to the serious allegations raised by the claimant, Mr Brown was correct in drawing to her attention that the respondent does not have complaints but a grievance procedure and that her complaints would be

treated under that procedure. Her grievances were not, contrary to what she asserted, treated as if part of a complaint's procedure or as a detailed investigation into her conduct. Further, we find that the notes of the meeting Mr Brown had with her were sent to her shortly after the meeting because she was going on leave to Bulgaria.

240. As soon as she raised the issue of not having the interview notes of Mr Howarth and Ms Snook taken during the course of Mr Yiannikkou's investigation, Mr Brown forwarded them to her. She requested evidence on 8 January and Mr Brown provided it to her on 16 January 2018. This was a week in advance of the grievance meeting with Mr Brown to afford her sufficient time to consider them. (412, 413 and 415)

241. She also complained that Mr Brown instigated a misconduct procedure against her in relation to Mr Bartram's complaint. As we stated earlier, the respondent would have been justified in commencing disciplinary action against her for disobeying Mr Howarth's instruction not to communicate with Mr Bartram until he and Ms Snook had time to consider his email. Mr Brown did not invoke the formal disciplinary procedure, instead he dealt with the matter informally taking into consideration the interactions between her and Mr Bartram. Mr Brown wrote to her on the 12 March 2018, as we have already referred to, stating that he concluded his informal investigation into her conduct and behaviour following a complaint from the Cambridge NHS Trust.

242. We consider that Mr Brown had no alternative but to consider, as a serious matter, the complaint by a senior member of Cambridge University NHS Trust and did this informally but nevertheless gave the claimant the opportunity to give her account and to provide any evidence. After considering all the information made available to him, he concluded that there were no grounds for any further action.

<u>The claimant's emails [8.1.13]</u>

243. In relation to Mr Brown's investigation into the claimant's conduct in that emails were sent to her personal email account, as we have previously stated, the respondent's emails security guidance states that its emails are used for business purposes and that it is unacceptable and a breach of security to auto-forward mail from the Department's accounts to a personal or other business email address.

244. As part of Mr Brown's investigation into Mr Bartram's complaint, the claimant had sent him a number of electronic PDF files of supporting evidence which were received on 21 February 2018. He reviewed them between the 22 February and 7 March 2018. It was clear to him that they contained around 350 pages of emails relating to work and the engagement the claimant had with the Cambridge Trust. All the emails had originated from DHSC email account but had subsequently been forwarded to her home email address, her MSN account. There was evidence to suggest that material relating to the Trust's performance, unpublished data, and internal policy documents, were included in the emails and attachments. In

Mr Brown's view this was a potential serious breach of the respondent's policy on information security. He instigated an IT search of her DHSC email account which identified that between 7 November 2017 to 2 March 2018, a total of 1,044 emails had been sent from her DHSC account to her personal email account.

245. Having taken advice from human resources and the respondent's IT security team, he decided on the following course of action:

    (i) To inform the claimant of the suspected breach of security and the need for the matter to be investigated in line with the departmental policy;

    (ii) To require the claimant to cease sending further emails to her home email account;

    (iii) To request the IT security team to provide a full details on all email traffic between the claimant's work and personal email account; and

    (iv) To begin the formal investigation process, which, in light of the on-going grievance/appeal issues, would be conducted by an independent decision manager.

246. On the 7 March 2018, he informed the claimant, verbally, that there would an investigation into her potential breach of information security and that she should stop immediately sending emails to her personal email account.

247. On 5 March 2018, information was sent to Mr Brown by the respondent's IT provider regarding the potential breach. (564-583)

248. On 16 March 2018, he wrote to the claimant to confirm, in writing, that the investigation had commenced and that an independent decision manager would be appointed. (585)

249. In response to his letter, the claimant wrote to Ms Stoneman copying Mr Brown on 18 March 2018, alleging that his actions in investigating the matter were "misleading and manipulative" and accused him of engaging in a "witch hunt". As the letter was addressed to Ms Stoneman, Mr Brown did not respond.

250. On 9 March 2018, Ms Jennifer Benjamin, Deputy Director of Quality CQC and Investigations, was appointed as the independent decision manager. She was unable to review the detailed information until June 2018 because of work and other commitments. The claimant's contract expired on the 30 June 2018 and Ms Benjamin was unable to interview her in advance of her leaving, nor did she interview any witnesses. However, on 25 July 2018, she completed her investigation. Her conclusions were:

> "During a period of six months, there were a large number of emails that the employee had forwarded from her departmental email account to her personal account that held official information. The vast majority were work-related and therefore should have been managed as official or restricted information in line

> with departmental policy. The employee therefore transferred a significant amount of official and sensitive information to an un-trusted email address without encryption.
>
> This is in breach of departmental policy, in that there is a risk that the information contained in these emails may cause compromises departmental policy for operational disruption." (651-654)

251. This report has limited value because the claimant was not interviewed and there was a long gap between 9 March 2018 and the claimant leaving on 30 June 2018. Without an explanation from Ms Benjamin, it seemed to us that there was enough time to interview the claimant. We do not infer from this that the delay was an act of direct race discrimination or racial harassment. In line with Madarassy, much more evidence would be required to establish less favourable treatment.

252. As the claimant had left her employment due to the expiration of her contract, formal disciplinary process could not be invoked.

253. We find that Mr Brown had good grounds for forming the view that, on the face of it, the claimant had been in breach of the respondent's email security policy and was under an obligation to investigate the matter. He was supported in his view by Ms Benjamin's conclusions, though the scope of her investigation was limited.

Complaints against Ms Isteed and Ms Boultbee [8.1.13]

254. In relation to the claimant's complaints against Ms Isteed and Ms Boultbee, her letter was sent on 18 April 2018 to Ms Stoneman and was one of the four letters she sent of alleged direct and indirect race discrimination based on harassment. She also claimed that her treatment was in response to her alleged public interest disclosures. She stated that she had been treated by Ms Isteed and Ms Boultbee as a "second-hand employee". She wrote that on the 17 April 2018, at the end of a Team conference call, she asked Ms Isteed and Ms Boultbee whether they still wanted a meeting scheduled by them for 1pm to go ahead. They insisted that the Team should meet at 1pm via a Skype call conference. She claimed that during the call she was pushed in to producing the webinars alone, but she refused. Immediately after that they were on other calls which lasted 5 to 6 minutes. She was unhappy that she had been treated in that way and believed that the aim of the meeting was to push her to develop the webinars on her own, as she wrote, "as if I am their slave". She had complained about the Team's behaviour towards her, but managers did nothing to rectify the situation. Accordingly, she had been treated less favourably than other staff in similar circumstances. (629-630)

255. The email was copied to Mr Brown, who wrote to the claimant on the 18 April 2018, inviting her to an investigation meeting on 1 May 2018, to discuss her allegations of race discrimination and harassment made against Ms Isteed and Ms Boultbee. It was to be an informal investigation. (631)

256. He interviewed Ms Isteed and Ms Boultbee separately, asking them to provide their accounts of what had occurred during the telephone conference call on 17 April 2018. He also met with the claimant on 1 May, as arranged, during which she gave her account of events.

257. Having considered all the evidence, he concluded that nothing had occurred that warranted further investigation or formal disciplinary action against Ms Isteed or Ms Boultbee.

258. On 4 May 2018, in his outcome, he wrote:

> "A response to complaint.
>
> I am writing to you inform you that my informal investigation into the complaint you raised on 18 April, regarding an incident which took place on 17 April, has concluded. Thank you for coming in to see me earlier in the week to discuss this matter.
>
> I have spoken to the individuals concerned and have considered all the points that have been presented to me. It is clear that whilst you all agree as to the content of what was a very short conversation, there remains a difference of opinion regarding the motivation behind the matters discussed. I have concluded that there is nothing that warrants further investigation or formal action at this time.
>
> It is disappointing that relationships between some members of the CRST remain difficult and that this has the potential to have a detrimental impact on the work of the team as a whole. As before, it remains a matter, however, I would advise that you carefully consider whether independent mediation may assist in resolving these issues.
>
> Thank you for your cooperation in this matter." (647.1)

259. It may have been better for someone other than Mr Brown to have undertaken the investigation as the claimant had outstanding complaints against him. However, at that time the claimant had made similar allegations against every member of the management team. It seemed to the Tribunal, having looked at the subject matter of the complaint, there was a disagreement between members of the Team and Mr Brown interviewed all three people involved before reaching his conclusions.

260. Having made our findings in relation to this claim and its various component parts, as set out in paragraph 8.1.3 of the Issues, from the facts as found the claimant had not been treated less favourably because of her Bulgarian national origins. She was informed of the approach to be taken by Mr Brown. Mr Brown was entitled to follow the respondent's procedure by engaging in an informal investigation in relation to her use of email accounts. This resulted in no action being taken against her. The same applied to the complaints against Ms Boultbee and Ms Isteed. The behaviour of Mr Brown was unrelated to the claimant's race and was in accordance with the respondent's procedure and the application of reasonable management oversight.

Further complaints about the grievance process [8.1.14]

261. The claimant further complained that the respondent failed to send her evidence in relation to Mr Yiannikkou's investigation; that the appeal was delayed; meeting notes were forwarded to her without asking her to agree the contents. These matters we have already addressed.

262. In relation to the allegation that the respondent failed to adequately train managers on best practice when dealing with grievances; that the grievance disciplinary and whistleblowing policies were "flawed"; and the respondent failed to train managers in equality, diversity and equal opportunities, these alleged failings, applied to all and were not specific to the claimant and do not evidence less favourably treatment of her but criticisms of managerial policies and practices. In any event, on their face they do not reveal disclosure of information or less favourable treatment because of race.

263. In relation to her assertions that decisions were not reviewed and the respondent failed to use the appeal hearing to "close any loopholes", we find that the correct processes were followed and every opportunity was given to her to raise issues which she exercised. She initially lodged an informal grievance which was investigated by Ms Snook. Thereafter, she presented a formal grievance which was investigated by Mr Yiannikkou. She appealed against his findings and conclusions and against Mr Brown's decision in relation to her grievance. She attended the appeal meeting conducted by Ms Stoneman. There was no evidence adduced by her nor have we made findings of fact from which we could decide that there had been less favourable treatment of her because of her race. The burden had not shifted to the respondent. In any event, the respondent reasons for the treatment were unrelated to the claimant's race or to race.

264. The claimant refused to develop the two webinars and there the matter rest. She was not disadvantaged, in that she had not suffered a detriment nor had she produced evidence showing that she was instructed to develop the webinars. She was working as part of a team within which work was shared, but in her case, she refused to prepare the webinars.

Targeting the claimant in a letter dated 19 February 2018 [8.1.15]

265. Her other direct race and harassment claims were in connection with the letter she received on 19 February 2018 from Ms Deborah McCrory, Data Protection Unit, in response to her subject access request. In the letter Ms McCrory wrote the following:

> "Initial searches of our electronic records have identified a minimum number of 16,988 emails potentially containing your personal data. Based on it taking 30 seconds to open each email, scan it to confirm its relevance or see if it is a duplicate, it estimated that this work would take in the region of 19 working days."

266. The claimant was asked to provide further information to enable to Ms McCrory to narrow down the search. (519-520)

267. The claimant's case, as set out in her witness statement, paragraph 30 on page 51, was that having worked nine and a half months, the equivalent of 287 days, 16,988 emails being discovered, represented 60 emails containing her personal data each day which, she calculated, would have been read by about 200 people each working day. She stated that it was distressing to her and felt that she had been targeted, persecuted, intimidated, and victimised for "blowing the whistle". She also had been treated less favourably than the respondent treats or would t reat other members of staff in similar circumstances, because of her race. She also referred to her treatment being in connection with public interest disclosures. She had complained about her treatment in her letter to Ms Stoneman dated 5 March 2018, at paragraph 5. (536)

268. She did not provide evidence on the accumulation of emails by those in the Team. There was no evidence upon which we could engage in a comparative analysis with reference to the number of emails generated in relation to each member of her Team in order to determine less favourable treatment. Having generated so much correspondence it was a reasonable request for the claimant to narrow down the search. The same would apply to a Transformation Lead who had a similar amount of email traffic.

269. Having considered the documentary evidence in this case, it was quite apparent to this Tribunal that the claimant was in the habit of generating a considerable amount of email correspondence. Further, advice had to be taken on many occasions from human resources on how to address the number of complaints. There was no evidence to demonstrate that the amount of emails reflected the intention, desire, motivation on the part of the respondent to target her. We have come to the conclusion that she had not established facts upon which we could decide she had been treated less favourably because of her race.

<u>Head of Clinical and Product [8.1.16]</u>

270. The claimant next referred to her treatment in relation to her application for the position of Head of Clinical and Product. On 19 February 2018, she was invited to attend an interview scheduled to take place on the 28 February 2018 at 1:30pm. She was told she would be required to give a presentation as part of the interview for 10 minutes. The topic would be confirmed, and she would be notified by email or telephone.

271. Having heard nothing about the topic for the presentation, she emailed the recruiter twice on 27 February 2018.

272. On the morning of her interview, 28 February 2018 at 12:00pm, she was informed that no presentation would be required. The weather was bad that morning as there was heavy snow and trains to London had been cancelled. She was, therefore, unable to attend the interview at 1:30pm. These were the facts.

273. The claimant asserted that her complaints of race discrimination and whistleblowing were known throughout the respondent's Department and it

was a deliberate act to delay giving her information about the presentation until the last minute because of her race and her public interest disclosures.

274. We find that her assertion that race and public interest disclosures were known throughout a very large Government department, was fanciful. There was no evidence she adduced in support of this. There was no evidence before us that any of her managers or members of the Team knew that she had applied for the position. She was unable in her witness statement to identify any particular individual who had behaved in the way she had described. Our conclusion was that there was no evidence upon which we can make findings of fact that the delay in telling her that she was not required to give a presentation, was in anyway influenced by her race or by any alleged protected disclosures.

Victimisation [8.6]

275. In relation to the claimant's victimisation claims, there was no dispute that she raised complaints of discriminatory treatment in the following documents: 20 May 2017 (196); 5 June 2017 (193); 7 June 2017 (191); 7 November 2017 (305); 4 December 2017 (338); 18 December 2017 (352); 22 January 2018 (467-469); 5 February 2018 (488); 5-7 March 2018 (532-555); 9 March 2018 (558); 18 March 2018 (586); 18 April 2018 (629-630); and 25 April 2018 (641-644).

276. It is also not disputed that the claimant made protected act during her meeting with Ms Snook on 8 June 2017, when she alleged that she had been discriminated against and harassed because of her race. (212-215).

277. Finally, in bringing these Tribunal proceedings on 10 March 2018.

278. There is no dispute on the part of the respondent that these constitute protected acts. The issue being whether the detriments, as alleged by the claimant, were or are causally connected to any or some of the protected acts?

279. We have made findings of fact in relation to the claimant's direct race discrimination and harassment claims and have held that they are not well-founded. In doing so, we have identified the reasons why the respondent acted in each case. The reasons given, as we have found, were not connected to any of the protected disclosures. The claimant had not established that her alleged detriments were causally connected to her protected disclosures in that they were significantly influenced by them. Accordingly, the victimisation claims are not well-founded and are dismissed.

Public interest disclosures [9]

280. As regards her public interest disclosure detriment claims, she relied on a number of qualifying disclosures. The first was her email dated 16 May 2017, to Mr Stanisz in relation to how the KPIs should be set out with regard to relevant indicators. This, in our view, was the claimant expressing her

views in relation to them and was no more than a disagreement on the approach to be taken between her, Mr Ball and others in the Team. It does not identify any breaches, a likely breach or past breach of a legal obligation, nor does it identify the health and safety of any individuals who had been, were being, or were likely to be endangered.

281. As we have found that this was just a dispute between two individuals. We find that the claimant did not have a genuine belief based on reasonable grounds that she was disclosing information in the public interest as the dispute did not have wider impact beyond her and Mr Stanisz. We, therefore, have come to the conclusion that this was not a qualifying disclosure either under section 43B(1)(b) or (d) Employment Rights Act 1996. [9.1]

282. The next alleged qualifying disclosure was in relation to the meeting the claimant had with Mr Howarth at Richmond House on 19 May 2017, in the open plan office. The claimant asserted that the discussion was in front of other staff; that pressure was put on her to develop KPIs which would impose a burden on NHS providers to raise public monies; there was malpractice, in that inexperienced and untrained staff were encouraged by Mr Howarth to create KPIs for which data was not collectable; the use of speculative, unfounded methodologies to pressure NHS Trusts to deliver undeliverable targets, thus making them spend public money unreasonably.

283. This was a case in which the claimant, based on her acclaimed academic qualifications and experience, believed that her approach should be the preferred approach to take in relation to KPIs. A bald assertion that Mr Howarth encouraged staff to create unrealistic KPIs for which data was not collectable and would result in money being wasted, was the expression of an opinion by the claimant. She was not giving facts upon which the respondent would be aware that behaving in the way alleged, would be in breach of a legal obligation. Further she had not identified the specific legal provisions the respondent would be in breach of. She was not, in our view, disclosing information. Accordingly, this was not a qualifying disclosure. [9.2]

284. The claimant next relied on her written disclosure dated 5 June 2017, to Mr Howarth, copying Ms Snook. She alleged that she had been segregated. She stated that Ms Snook was her manager. She also stated that she had been treated less favourably. She then relied on the paragraph in her email referring to being the only Transformation Lead contributing to the delivery of the objectives of the Team. At the time one Transformation Lead, who had just started, was on holiday, and the other one had not yet taken up her post. The claimant then noted that Mr Howarth was not appraising her. More to the point, he unfairly criticised her performance without any facts and evidence. Such treatment was unfair. She also gave an account of her work on Mondays, Tuesdays and Wednesdays stating that she had to work on a Thursday and that she had to travel long distances to Liverpool NHS Trust and Leeds NHS Trust.

285. Essentially her complaint was about working outside her contracted hours on a temporary basis. There was no indication from her that this was affecting her health and safety. The complaint appeared to be largely about the disruption to her other activities. Once these issues were raised with Ms Snook, the claimant accepted that she took time off in lieu for working outside of her contracted hours and that arrangements were made to avoid her setting off from her home in the early hours of the morning.

286. We find that the email was all about the claimant and her working patterns as well as her allegations against Mr Howarth. It did not refer to those in the Team who were working similar patterns as the claimant outside of their contracted hours, to bring in possibly a public interest element. It did not reveal a breach of a legal obligation nor health and safety. It was not the disclosure of information in the reasonable belief that it was made in the public interest. [9.3]

287. The claimant referred to having made, orally, a qualifying disclosure on 8 June 2017, in that she stated that pressure was put on her to develop the KPIs and it would have imposed a burden on NHS providers to waste public money; that inexperienced and untrained staff were encouraged by Mr Howarth to create unrealistic KPIs; and the Overseas Visitor Regulations themselves were flawed.

288. It cannot be a qualifying disclosure for the claimant to assert the Overseas Visitor Regulations were legally flawed, as it is simply an expression of an opinion. It does not amount to the respondent having breached legal obligation, was breaching or was likely to breach a legal obligation.

289. From Ms Snook's summary of their discussion on 8 June 2018, sent to the claimant, reference was made to longer days and working outside contracted hours, should be not be standard and any additional hours should be taken in lieu. At one point, the claimant referred to that as a discussion in respect of her health and safety. This meeting was principally to talk through the claimant's complaints about Mr Howarth. Some other issues were discussed. The note produced by Ms Snook is a record of the discussion which was not challenged by the claimant in evidence. She agreed with the approach suggested by Ms Snook on how they were to take matters forward.

290. There is nothing in the email to suggest any breach of a legal obligation. While there was a discussion on hours of work and Team capacity, there was no suggestion by the claimant that her health and safety or that of her colleagues, was being endangered. It was a matter largely related to the claimant only. Even if it was related to her health and safety, it was personal to her without the public interest element. Accordingly, there was no disclosure of information which in her reasonable belief was made in the public interest.

291. Confusingly, the claimant said in evidence that she did not make a qualifying disclosure on 8 June 2017 during her meeting with Ms Snook. In any event, we have considered it and found, in relation to her schedule on

public interest disclosures on that date, that she had not made qualifying disclosures. [9.4]

292. The claimant next relied on an alleged qualifying disclosure made on 21 June 2017. She stated that she raised concerns about the respondent's unacceptable practices and about unsubstantiated excessive criticisms by untrained and unqualified staff regarding the alleged highly technical area of KPIs, data collection and modelling, to pressurise her to develop KPIs. She repeated that to develop the KPIs, as suggested, would impose a burden on the NHS providers and thus a waste of public money.

293. Her email of 21 June 2017, came after her meeting with Ms Snook on that day who asked her to summarise her points. The claimant wrote:

> "Dear Mia,
>
> The methodology used by Mike doesn't account for;
>
> - Trust size – it compares a basket with two apples to a basket with twenty apples.
> - Demographics, e.g. location, migration level, especially migration level.
> - The unidentified potentially chargeable overseas patients.
> - The construction of clinical income and overseas recoverable debts of each Trust which are different for each Trust.
> - Theoretically based assumptions or established practices.
> - Visuals are based on the above points.
> - According to this methodology, Barts is our champion, compared to the rest of the Trusts. Barts is under both quality (CQC) and finance (from NHS) measure (underperforming). How we could say to the other Trusts to follow Barts?" (221)

294. We conclude that this was yet another assertion by the claimant that her approach to KPIs should be preferred above Mr Ball's. It made no mention of wasting public funds. It did not raise any facts, nor did it identify any breaches of a legal obligation. Again, it was simply a difference in approach to be taken. It was clear that she disagreed with Mr Ball's methodology. It also did not satisfy the requirement that the alleged disclosure made was in the public interest. Accordingly, this was not a qualifying disclosure. [9.5]

295. The claimant also claimed that she made a qualifying disclosure on the same day 21 June 2017, to My Howarth and Mr Stanisz. In that email she wrote copying members of her Team, in relation to KPIs:

> "Dear Dave, thank you very much for your input. I've checked with many Trusts different (numerical) operational indicators but basically I've been told that their IT systems do not report such data and that they cannot provide me with "numeric" data on the number of patients, etc as they have to do this

> manually and that they have not enough trained staff for such a task. However, if you feel that we could collect some reliable numerical data, let's try.
>
> What about the clinical indicators – the issue is the same, Judith encountered the same problems." (219)

296. It was clear to us that her email was not a qualifying disclosure. She was not disclosing facts which tend to show a breach or likely breach of a legal obligation or health and safety. Further it does not show that she reasonably believed the alleged information was made in the public interest. All she did was to highlight potential problems with the KPI indicators. [9.5]

297. The claimant next relied on her qualifying disclosure made on 21 August 2017. What she said in schedule 3 of her claims, number 7, was this:

> "I raised concerns that the regulations (charges to Overseas Visitors Regulations 2015 and the DHSC Guidance on the Regulations at the time they came into force) that set the legal frame for costs recovery from chargeable overseas visitors are flawed. The NHS Trust do not have incentives to identify and seek to recover costs from chargeable, non-EEA patients. This is because when a Trust identifies a chargeable OV patient, the entire financial risk burden for recovering the debt falls on the Trust. However, if the Trust (deliberately or not) avoid identifying these patients as chargeable, the cost of this treatment, as a burden, remains with the commissioner. Note: although on 23 October 2017 these Regulations have been changed, issues remain – National Health Service (Charges to Overseas Visitors) (amendment) Regulations 2017".

298. She claimed that as a result of raising her concerns she was segregated, marginalised for reputational damage, and was criticised by Mr Howarth and Ms Snook in relation to her capabilities with regard to KPIs, data management and modelling.

299. Under cross-examination she resiled from her statement that the Overseas Visitors Regulations were flawed. Instead she said that the disclosure she made was a breach of the legal obligation, in that the NHS Trust failed to identify patients who received treatment and without this information they could not receive payment.

300. The alleged qualifying disclosure was about her concerns about the regulations. The regulations, in her view, do not incentivised the Trust to identify and seek to recover costs from chargeable non-EEA patients.

301. Given that these are the regulations, the Trusts have to abide them. By definition, the flaws in the regulations cannot be a breach of the legal obligation. This alleged qualifying disclosure was totally misconceived.

302. Further, the claimant had not explained why the mere failure to identify patients was a breach of a legal obligation. [9.6]

303. The claimant further asserted that on the 1 November 2017, she raised concerns about unacceptable practices in relation to support for the KPIs by Mr Howarth and Ms Snook and that she repeated her concerns about the regulations being flawed. Her concerns repeat the above alleged qualifying

disclosure. Our conclusion in relation to whether or not she made a qualifying disclosure was the same as our conclusion in respect of the alleged disclosure on 21 August 2017. It cannot be a qualifying disclosure if she raised concerns about the Overseas Regulations being flawed. In relation to the KPIs, again she expressed a different methodology for drafting them and did not satisfy in the public interest requirement. [9.7]

304. She also claimed that on the same day, 1 November 2017, she made a qualifying disclosure, in that she raised concerns about the respondent's unacceptable practices; Mr Ball using another speculative methodology/modelling to pressurise the Trust to deliver an undeliverable amount of money; and that this would have misled the NHS providers and put pressure on them to unreasonably spend time and resources.

305. We have examined the email which was sent by the claimant to Mr Ball with whom she had a disagreement over the appropriate KPI indicators. It was forwarded by her on 1 November to Ms Snook. It was, yet again, a detailed argument about the construction of the KPIs. There was no indication whatsoever that she was disclosing information about a breach of a legal obligation. The subject matter bore no relation to health and safety nor do we conclude that it was in the public interest. (294) [9.7]

306. On 29 November 2017, she alleged that she made a qualifying disclosure, in that, again, she raised concerns about the respondent's unacceptable practices. She stated in her witness statement that the Team wasted time and money, unreasonably, while burdening Trusts to gather uncollectable data. She said that this was said during a discussion with Ms Snook on 29 November 2017.

307. This was a repeat of the above three alleged disclosures in relation to the Charging Regulations and KPIs. In her schedule, again she repeated her concerns about the regulations being flawed. We have considered the statement, in paragraph 17. She made reference to money being wasted, and the unreasonable burdens on the Trusts to gather uncollectable data. These do not disclose a breach of a legal obligation. Again, these were the claimant's concerns about the KPIs methodology and also had no public interest element. We have come to the conclusion that this was not a qualifying disclosure. [9.8]

308. The claimant further claimed a qualifying disclosure was made on 29 November 2017, in her email to Ms Snook. She stated that she was not happy with her conversation with Ms Snook at 2:00pm as Ms Snook was biased and took a stand against her without any evidence and facts. She asserted that the Manchester report was delayed by Mr Howarth, who was not happy that the Team did not "punish the Trust". She referred to it being her idea to initiate KPIs which were later allocated to Ms Boultbee. She alleged the "manipulation" of her dealings with Mr Bartram and she had been segregated.

309. Nowhere in her email does it state that the respondent had been, was likely to be, or was currently at the time, in breach of any legal obligations. This

was more to do with the claimant's role in relation to KPIs and again we repeat here our conclusions in relation to the above four alleged qualifying disclosures. They were more to do with her personal disagreement with a number of individuals. It was not disclosure of facts nor was it made in the public interest. (327-328) [9.9]

310. It follows from our findings in relation to there not being any qualifying disclosures, that the claimant was unable to causally link the detriments with any qualifying disclosures. Her public interest disclosure detriment claims were not well-founded and are dismissed.

Breach of contract

311. A further claim made by her was that the respondent had breached her contract of employment by not paying her notice pay.

312. Her contract of employment, under "Notice to terminate employment" states:

> "The period of notice that you will be entitled to receive on termination of employment on grounds other than misconducts will be two weeks. Should you wish to terminate your contract of employment, you will be required to give one week notice." (157)

313. She was on a fixed-term contract. We have construed the above provision as referring to either party terminating the contract prior to the fixed expiration date, namely prior to the 30 June 2018. If the claimant worked up to the 30 June 2018, she is not entitled to two weeks' pay. This claim has not been proved and is dismissed. No evidence was adduced that others in the Team received two weeks' notice pay upon the expiration of their contractual term.

314. Furthermore, the claimant's claim form was received by the Tribunal on 10 March 2018, two and a half months before her termination. Her contract had not been terminated on or prior to the 10 March 2018. At the time she presented her claim, she was still in employment.

315. Under article 7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, breach of contract claim can only be brought to the Tribunal,

> "within the period of three months beginning with the effective date of termination of the contract giving rise to the claim."

316. In this case, the claimant was still in employment when she presented her claim form to the Tribunal. The Tribunal, therefore, does not have jurisdiction to hear and determine it.

317. We note that she told the Tribunal that she informed the respondent in relation to Mr Bartram's complaint, that she would be taking legal advice. If she did, she ought to have been aware of the time limits and that a breach of contract claim arises upon termination of employment. [paragraph 7.2 under Claims]

Out of time

318. In relation to some or all of the acts relied upon by her as being out of time, we have come to the conclusion that they do form course of conduct extending over a period to include the last act which was in time. Her principal concerns were in relation to Mr Howarth's, Ms Snook's, and Mr Brown's alleged treatment of her and how they dealt with her grievances, to the outcome of the appeal on 18 May 2018.

The claimant's credibility

319. Much of the evidence in this case was disputed between the parties, particularly on what was alleged to have been said at meetings between the claimant and her managers where no notes were taken, and no third party was present. At times we found the claimant to be evasive and inconsistent when answering questions under cross-examination. On certain matters we regret to say that we found her to be untruthful. The most striking example of this was her evidence that when attending a meeting with Ms Snook on 8 June 2017 at Richmond House, the claimant saw a poster on the wall making detrimental comments about the use of the National Health Service by Bulgarians. She did not raise this in her various grievances and appeals alleging racial discrimination despite submitting many extremely detailed and lengthy documents. She did not make the allegation in her claim form nor in her schedule of allegations considered by Employment Judge McNeill at the preliminary hearing and included in the joint bundle before us. It was not mentioned in her witness statement she exchanged with the respondent before the full merits hearing.

320. The only mention of this matter came in the revised witness statement submitted by her on the first morning of the hearing. She said this was the same as that exchanged earlier save for the inclusion of page references coloured blue and some notes in red for her own use. She said the notes in red were not part of her statement. One of these notes in red on page 59 of her 62 page statement stated,

> "Who put the poster/banner with a Bulgarians coming to use the NHS on 8/6/2017 for our meeting."

321. She did not include any reference to the alleged poster in the parts of her witness statement that dealt with her meeting with Ms Snook on 8 June 2017, and only made reference to it in her oral evidence when asked by a member of the tribunal whether there were any other things during her employment that might suggest that the respondent treated people of Bulgarian national origins less favourably. She said she had seen the poster on the wall on her way to the meeting. She could not recall exactly what the poster said nor whether it was monochrome or in colour.

322. She said she had a camera on her phone but had not photographed the poster because she did not think she was allowed to take photographs in the respondent's headquarters. She said she had raised the matter with Ms Snook at the meeting who had said it was only a joke.

323. We find that there was no mention of her raising the matter in the detailed note of the meeting made by Ms Snook. This had been sent to the claimant who agreed the way forward suggested in the note and made no suggestion it was inaccurate or that such an important matter had been omitted. Ms Snook was adamant in her evidence before us that the claimant had not said anything about the poster and had she done so, she would have had it removed and commissioned an investigation into its origin.

324. We find it not credible that, had the claimant seen such a poster, she would not have raised it in writing at the time and included in her complaints of race discrimination or harassment. Her complaint was that her treatment related to her Bulgarian nation origins and such clear evidence, if it existed, would have substantially strengthened her case. If Ms Snook had treated the matter as a joke, this would have been clear evidence in support of the allegations of race discrimination and harassment she later made against Ms Snook.

325. None of the respondent's witnesses saw the alleged poster.

326. As already been referred to, we were also concerned about the claimant's evidence that staff at St Bart's Hospital, who were from ethnic minorities, treated their relatives from abroad without charge. She said the source was something she had overheard on a bus. She denied this in writing to the respondent, saying it was insulting to suggest that someone of her intelligence would say this. However, in evidence before us she said the primary source was what hospital staff had told her, but she also overheard this on a bus.

327. Again as we have already referred to, we were also concerned about the oral evidence the claimant gave for the first time before us about meeting staff whom she did not know, in the kitchen, during a meeting with Mr Howarth, in the open plan office, on 19 May 2017. She said they had asked her where she came from and commented how badly she was being treated. Again, given the comprehensive written evidence she submitted during her grievance, the grievance appeal, and to the tribunal, we find it very unlikely that she would not have included this in written evidence had it occurred.

328. In contrast the tribunal found the witnesses for the respondent to be helpful and open. Where they were shown from documents to be incorrect in their recollection of events, they readily admitted it. At all times they sought to assist the Tribunal. Consequently, where there was a dispute about evidence between the claimant and the respondent's witnesses, we preferred the evidence of the respondent's witnesses.

329. It was clear from the evidence the claimant gave before us and from the documentary evidence, that she considered herself more able and better qualified than the majority of people with whom she worked. It is true that she who holds a Phd, is highly qualified, and is no doubt very able in some

fields. She was, however, quite disparaging about the qualifications of Ms Snook, Mr Howarth, and others. She said in documents that some had only a degree or only a grammar school education. We considered that with this mind set, she found it very difficult to accept what she considered to be criticism from people she felt were her intellectual inferiors. She, therefore, could not accept that criticism or disagreement with her approach could be for valid reasons and must, consequently, be motivated by something improper. in this case her Bulgarian national origins or the fact she had made public interest disclosures.

330. In summary, we have come to the conclusion that all of the claimant's claims are not well-founded and are dismissed.

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Employment Judge Bedeau

13 August 2020
Date: ……..

Sent to the parties on: .18/08/2020

..Jon Marlowe
For the Tribunal Office