EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
Ms S Yedu	Telecom Service Centres Ltd t/a Webhelp UK

Heard at: **By CVP** **On: 21, 22, 25, 26, 28 January 2021**

29 January and 1 February 2021 (deliberations)

Before: **Employment Judge Davies**
Mr W Roberts
Mr K Smith

Appearances
For the Claimant: **Dr R Ibakakombo (representative)**
For the Respondent: **Mr R Byrom (solicitor)**

RESERVED JUDGMENT

1. The complaints of harassment related to race are dismissed on withdrawal by the Claimant.

2. The complaints of direct race discrimination and victimisation are not well-founded and are dismissed.

REASONS

Technology

1. This hearing was conducted by CVP (V - video). The parties did not object. A face to face hearing was not held because it was not practicable and all the issues could be dealt with by CVP.

Introduction

2. These were complaints of direct race discrimination, harassment related to race and victimisation brought by the Claimant, Ms Yedu, against her employer, Telecom Service Centres Ltd t/a Webhelp UK. The Claimant was represented by Dr R Ibakakombo (representative), and the Respondent was represented by Mr R Byrom (solicitor).

3. There was an agreed file of documents and everybody had a copy. We admitted a small number of additional documents by agreement during the course of the hearing.

4. The Tribunal heard evidence from the Claimant on her own behalf. For the Respondent we heard evidence from Mr K Arifeen, Mr S Whittingham, Ms J Platts, Mr H Ghulam, Ms R Parkin, Mr D Semley, Ms C Hawke, Mr C Barquero and Ms L McEwan. By consent, we allowed the Claimant to make some changes to the original draft of her witness statement and we allowed the Respondent to rely on evidence from two witnesses whose statements had been served late.

The Claims and Issues

5. The issues to be determined by the Tribunal were recorded by EJ Evans following a preliminary hearing on 1 July 2020. The list of factual allegations was extremely lengthy. It was based on the content of the claim form and was agreed by the representatives before and during the preliminary hearing. EJ Evans encouraged the Claimant to reduce the scope of those allegations, but recorded that Dr Ibakakombo did not express any willingness to do so. In those circumstances, EJ Evans annexed to his Case Management Order a list of the legal and factual issues to be determined, essentially reproducing the factual allegations as derived from the claim form and set out in the agreed list. That list is reproduced as an Annex to this judgment and sets out the issues to be determined.[1]

6. During his closing submissions Dr Ibakakombo indicated that the Claimant would withdraw her harassment claims. We gave him time to speak privately with her, after which he confirmed that those claims were withdrawn.

The Facts

7. We start with some comments about credibility. The Tribunal found the Claimant's evidence lacking in credibility in a number of respects and that affected our view of its reliability overall. By way of example:
    7.1 The Claimant was asked about her complaint that she was not paid for overtime hours she worked on 29 April 2019. It was put to her that this was not the first time she had worked overtime. She said that she could not remember; it was the first time she had not been paid. She was asked again if it was the first time she had done overtime and she said she could not remember. She was asked whether she had worked overtime on other occasions and she said she only worked overtime when the business needed extra support. She was asked if she could give a rough idea how many times she had worked overtime and she said she could not. She said that after April she had not worked overtime, but before April she could not remember. She was asked whether she was suggesting the occasion in April was the only time she had done overtime and she said, "No, it's the last time." She was therefore asked whether she agreed that it must follow that she had done overtime before April. She said that she

[1] We have corrected the spelling of some names and made some very minor changes, but it was not proportionate to review the factual allegations in greater detail.

could not remember. This was an example of what appeared to the Tribunal to be an unwillingness on the Claimant's part to accept what must obviously have been the position: she was clear that she had done overtime more than once and that she had not done it after April, so the only possibility was that she had done it before April, but she would not accept that. No doubt this was because she knew that the Respondent's position was that she had always been paid for overtime in the past, and she believed that if she agreed with that, it would undermine her case that the failure to pay on this occasion was because of her race. However, this sort of approach tended to undermine rather than support her case.

7.2 The Claimant agreed that the Respondent employed thousands of people. It was put to her that in an organisation that employs thousands of people, there will be issues with pay from time to time. She refused to accept that. She was asked whether she accepted in general that an employer of that size would sometimes have issues with pay and she did not. She insisted that they should organise it better.

7.3 The Claimant included what would have been highly relevant information for the first time in her witness statement, despite putting in a detailed grievance, a further list of 30 questions and then a grievance appeal at the time of the events in question. For example, she said in her witness statement that Mr Pierce approached her on 19 November 2019 to tell her that Ms Platts would never treat a white colleague the way he had treated the Claimant and encouraged her to put in a grievance. The Claimant made no mention of this at the time, even when Mr Semley asked her at her grievance hearing if there were any witnesses to the incident between her and Ms Platts. It was wholly implausible that if Mr Pierce had witnessed what happened and spoken to the Claimant in those terms, she would not have said so until writing her witness statement for these proceedings. Likewise, she said for the first time in her witness statement that colleagues told her that Ms Platts had disconnected her computer when she went home to change, but she did not say that in her detailed grievance submitted the day after the event. Again, it was wholly implausible that if somebody had told her they saw Ms Platts disconnecting the computer, she would not have said so at the time.

7.4 The Claimant was asked questions about what was said at the fact-finding meeting with Mr Ghulam on 19 November 2019. She agreed that she had signed every page of the notes, and that she had taken 20 minutes at the end of the meeting to read through the notes before doing so. She also agreed that two changes had been made at her request. She said that other things had happened that were not recorded in the notes. She was asked why she had not asked for them to be added. At one stage she said that they did not add her points. Then she said that she was stressed. Later she said that she was told she could not leave the meeting until she signed the notes. When asked who said that, she said it was Mr Ghulam. That had never been said before. It was wholly implausible that if Mr Ghulam had told the Claimant she could not leave the meeting until she signed the notes, she would not have included that in her detailed grievance the next day, her list of 30 questions, nor indeed her claim form and witness statement.

7.5 The Claimant accepted more than once that Ms Platts' only issue with the way the Claimant was dressed on 19 November 2019 was with her coat.

Nonetheless, she maintained in her witness statement and oral evidence that Ms Platts had a problem with her whole outfit (a skirt, top and boots) because they were black and Ms Platts had a problem with the colour black. There was nothing whatsoever to support that contention: on the Claimant's own case Ms Platts had said nothing at all about her outfit beneath her coat. This was one stark example of the Claimant attributing a discriminatory motive where there was clearly no foundation for doing so. Examples such as this were again relevant when the Tribunal was evaluating the other events in respect of which the Claimant was complaining of discrimination.

7.6 The Claimant's witness statement said that she had transferred to Mr Whittingham's team in November 2019 and that she explained to him that her overtime worked in April 2019 had not been paid and she needed his help with that. Mr Whittingham's clear evidence was that the Claimant had been in his team the previous year. He thought she might have joined in November 2018 and she had certainly left by April 2019 (before the overtime was worked). That was consistent with the contemporaneous documents, which showed the Claimant joining Mr Ghulam's team in October 2019. It appeared that the Claimant must have been mistaken about the date she joined Mr Whittingham's team. She cannot therefore have told him she needed his help with the overtime issue because it had not happened yet, but she gave an account of asking him to do so and of his response.

8. The Tribunal also found Ms Platts evidence in some respects unreliable, and we deal with that in the relevant section below. Otherwise, the Tribunal found that the Respondent's witnesses gave generally reliable evidence and we found that they were all seeking to give the Tribunal an accurate account of events at the time.

Parties

9. The Respondent provides outsourced services to major businesses at locations throughout Great Britain. The Claimant works at its Sheffield site as a Contact Centre Associate. This is essentially a call centre, and the Claimant works in an open plan office handling queries using a headset and computer.

Locker

10. We begin with the complaints relating to the failure to provide the Claimant with a locker. The Claimant started working for the Respondent in August 2017. There is no dispute that she was not provided with a locker until after she raised this issue in her grievance in November 2019. She says that the failure to provide her with a locker was because she is black.

11. In her witness statement the Claimant said that she requested a locker from various line managers on several occasions. She said that they told her the business was short of lockers or that they would deal with her request in due course or that they would come back to her and they never did. She said she had raised her concern about the company's failure to provide her with a locker with Scott Lewin and Matthew Jinkinson, and on 19 November 2019 with Habeeb Ghulam. She said that she had signed up on multiple floor managers' lists of people who did not have a locker. She said that she had raised it with

Sam Whittingham when she became a member of his team in November 2019. As already noted, the Tribunal found that the Claimant was a member of Sam Whittingham's team in the previous November.

12. In her witness statement the Claimant identified white colleagues who had been provided with lockers. Jessica Thompson was employed at the same time as the Claimant and had the same induction. The Claimant said that Ms Thompson told her that she was allocated a locker without requesting it. Liam Murphy started in 2017 and was allocated a locker at the time. The Claimant said that he told her that he was allocated a locker without requesting it. Harry Page and Pierce were employed in 2017 and were allocated lockers at the time. Bliss Rimington was employed in 2018 and was allocated a locker in 2018 without requesting it.

13. The Claimant did not call any of the comparators to give evidence. Her evidence in cross-examination was not consistent with what she said in her witness statement. In particular:
    13.1 The Claimant was asked if she spoke to anybody about not having a locker. Initially she said she did but that she could not remember each manager's name. She said that she signed up for a locker in a notebook. She was asked which managers she had spoken to and she said that she could not remember but she always signed up for a locker to be given to her. It was pointed out that there was a difference between going to a manager and saying that Jessica Thompson had a locker but the Claimant did not, and simply signing up for a locker in a notebook. At that stage the Claimant said that she "was signing up." She added that it was "embarrassing" to ask for it, that she feared victimisation, and that she should not have had to ask. When they asked if anybody had not got a locker, she would sign her name. She was asked if she had ever said to anybody that she had been waiting for a locker since 2017 and her evidence was that she had not mentioned it to anyone until she spoke to Mr Arifeen on 19 November 2019 and signed up again in a notebook.
    13.2 The Claimant said that she found out that Jessica Thompson had been given a locker in the first week when she asked her if she had one. She said that she did *not* ask Jessica how it came about and was just assuming it would have been allocated.

14. The Respondent's evidence was that there was a shortage of lockers throughout this period. Reception were responsible for handing out locker keys and keeping records of who had lockers and it was for individuals to go and request a locker from reception. There was no formal waiting list. The difficulties were compounded by employees who left the business passing their locker keys directly to a colleague rather than returning them to reception to be reallocated.

15. Evidence from the Respondent's witnesses was consistent with this. For example, Mr Whittingham could not remember whether the Claimant had ever spoken to him about not having a locker, but he said that it was an ongoing issue and that about half his team did not have a locker. The Respondent has a diverse workforce and there was no particular race or nationality that did not have a locker. If someone raised it with him he would speak to his manager and to reception to see if any lockers were available. If they were not he would explain alternatives to the colleague, for example using the coat racks near the

lockers, not bringing valuables into work or sharing with a colleague. Mr Ghulam said that he was told in his induction that it was his responsibility to go to reception to ask for a locker key. That was the process for everybody and that's what he told the agents in his team. It was not a manager's responsibility to keep lists of what lockers were allocated. They would advise employees to follow the process by approaching reception and requesting a locker. His evidence was that the first time the Claimant mentioned not having a locker to him was on 19 November 2019 (see further below). Ms Parkin said the situation with the lockers was an "ongoing battle." It was run by reception downstairs who were supposed to assign the lockers. She did not know if the Claimant had asked for a locker; she would have had to ask reception. Of the managers who gave evidence about it, only Mr Whittingham used a notebook.

16. The Respondent's case is that after the Claimant raised a grievance about this, an audit was undertaken to find out who had lockers and a spreadsheet was created. Ms McEwan confirmed that she created the document. The Tribunal accepted Ms McEwan's evidence about its creation. She noted that it included people who had worked for the company for many years, but it did not give the date when they received their locker. The Claimant's sister, who also works at the Respondent, is listed on the spreadsheet as having a locker. The Claimant explained that her sister was given a key by a colleague who left; this was a year after her employment started. Unsurprisingly, the spreadsheet does not give the race or ethnicity of those who have lockers. Of course, no assumption about any individual's race or ethnicity can be made on the basis of their name. However, it is reasonable to observe that overall the list of names on the spreadsheet appears to reflect a diverse workforce.

17. Taking all that evidence into account, the Tribunal found that the Claimant was not allocated a locker when she started work. The procedure was to ask reception for a locker. It appears that the Claimant was expecting to be provided with a key by her manager and that she did not approach reception to ask for one at any stage. Ms Thompson did get a locker, and the Claimant assumed she had been allocated one by her manager; Ms Thompson did not tell her that. The other white colleagues she named got lockers, but we do not know whether their managers gave them a key or they asked reception for one. There was a general shortage of lockers and many people did not have them. That was not limited to black colleagues. The Claimant did not raise her lack of a locker as a concern with any manager prior to 19 November 2019. She may have put her name down in a notebook, but it is not clear whose notebook or when that was. Given the general inconsistencies and lack of credibility in her evidence, the Tribunal did not accept that this happened multiple times.

Overtime

18. The Claimant worked overtime on 26 April 2019, which was not a working day for her. Manager Lucy Heczko appears to have told her that she would be paid time-and-a-half from 8am to 11am and double-time from 11am to 4:30pm. In fact, the Respondent has a policy that part-time workers who do overtime are only paid at single rate until they have worked the equivalent of full-time hours. Such a policy is not uncommon. However, that is not the immediate issue. It appears that the hours were originally entered in the Claimant's electronic timetable (known as "Teleopti") by Ms Heczko, showing time-and-a-half for the

first three hours and double-time for the remainder. However, part way through the shift the Claimant was asked to swap to assist a different team. A change was made to her Teleopti timetable, which now marked her as "multi-skilling." That change seems to have overwritten the original entry and the references to double-time from 11am.

19. When she received her payslip in May 2019, the Claimant realised she had not been paid properly for the overtime. She told Ms Heczko, who told her she would chase it up, but in June 2019 when the Claimant received her next payslip, she realised she still had not been paid properly. She spoke to Scott Lewin, who had by now become her manager. He asked her for details and she emailed him with a screenshot from her Teleopti timetable. That showed her working overtime at time-and-a-half from 8am to 11am, and then "multi-skilling overtime" with no rate specified for the remainder of the shift. In her email the Claimant told Mr Lewin that she had been "partially paid wrong" for the overtime because the multi-skilling "covered it up." She asked him to check with Ms Heczko, but said that she was sure it should have been double-time from 11am till 4:30pm. It appears that she had been paid for the overtime, but not at double rate for 5 ½ hours.

20. The issue was not resolved and the Claimant had another change of line manager. Matthew Jinkinson took over and the Claimant spoke to him and then emailed him on 31 August 2019, forwarding to him her exchange with Mr Lewin. She said that she was hoping Mr Jinkinson could help her follow it up, since she had been moving from team to team and had not really had anyone to help her with it. She appears to have forwarded the same email to Mr Jinkinson on 17 September 2019, and he then forwarded it to Ms Parkin in the OSS team. The Claimant was not aware at the time that he had done so. In her evidence to the Tribunal, Ms Parkin accepted that she must have received the email but she did not remember receiving it. The Claimant sent another email to Mr Jinkinson on 28 September 2019, having checked her payslip for September 2019. She said that the overtime from 26 April 2019 still had not been paid and that she was wondering if it would be paid on the next month's payslip. The Tribunal did not hear evidence from Ms Heczko, Mr Lewin or Mr Jinkinson.

21. Mr Ghulam then took over as the Claimant's line manager. On 15 October 2019 she emailed him, evidently following up on a conversation. Mr Ghulam's evidence to the Tribunal was that he did not receive the email. He said that he had ongoing issues receiving email and it was not uncommon. The overtime issue remained unresolved until the Claimant raised it in her grievance. The Claimant accepted that once she raised it in her grievance, it was appropriate for it to be addressed through that process and not by Mr Ghulam. When Mr Ghulam was asked about the overtime issue during the grievance (see below), he told Mr Semley that he thought it was resolved and that the Claimant was only entitled to single time because she only worked 16 hours per week.

22. It was the Claimant's case that each of the managers who failed to resolve this issue did so because she is black. Mr Ghulam, who was the only manager involved who gave evidence to the Tribunal, said that the Claimant's race had nothing to do with his treatment of her.

19 November 2019

23. That brings us to the events of 19 November 2019. The starting point is that the Respondent has a Personal Appearance Policy and a Clear Desk Policy. The Personal Appearance Policy is non-contractual, and managers have a discretion not to apply it in appropriate circumstances. It contains a non-exhaustive list of the type of clothing that is deemed appropriate to wear at work, and a list of items that it is not deemed appropriate to wear. Neither list includes coats. The Policy indicates that weekends and Fridays are dress down days, and identifies a small number of items that are permissible on those days only.

24. The Clear Desk Policy is designed to protect the sensitive data that the business handles. It requires employees to have only whiteboards and pens on their desks, which they must use to capture any necessary data and then wipe clean. Computer screens must be locked when employees leave their desks and must be locked away when not in use. For operational staff, the policy says, "all personal belongings must be secured in the locker provided to you throughout your shift, with the exception of break times where these items, if required, must be taken off the Call floor i.e. to the Canteen, for use. (Personal belongings include but are not limited to jackets, mobile phones and other electronic devices, bags, pencil cases and glasses cases)." There is no dispute that under the Clear Desk Policy the Claimant was not permitted to have her coat on the Call floor. It is not clear whether this policy was rigorously enforced every day, but on 19 November 2019 a VIP visitor from the client was due to attend the premises and the policy was rigorously enforced that day.

25. The Claimant said in her witness statement that when she arrived at work one of the managers, Mr Arifeen, told all staff that the site would be visited by the VIP and that they needed to clear the floor of their personal possessions including coats and bags. The evidence before the Tribunal was that two managers who were present, Mr Whittingham and Ms Platts, each took half of the Call floor and went round ensuring that the agents put away their coats and bags. Mr Arifeen went between the two halves. All agents were spoken to, to make sure they put their coats and bags away. Mr Whittingham explained that if agents did not have lockers they would be asked to hang their coats on the coat rack and would be provided with a secure room to store their bags.

26. The Claimant was working in the half of the Call floor covered by Ms Platts. There is no dispute that she had her knee length outdoor coat on and her bag at her desk.

27. The Claimant's evidence was that she told Mr Arifeen that she did not have a locker and had not had one since 2017. He passed her a notebook and asked her to write her name down, and told her that she would be provided with a temporary locker by 9am. In her original witness statement, she said that they had a further conversation a few minutes later when he approached her at her desk, and that she told him she had valuables in her bag and needed to keep it with her. She would put her coat and bag in the meeting room only if the business would sign a declaration accepting liability. Mr Arifeen told her that he would find her a temporary locker by 10am. In her amended witness statement, the Claimant said that Mr Ghulam approached her at her desk and told her that

the company would provide her with a temporary locker by 10am. She confirmed that in cross-examination.

28. Mr Arifeen said that he spoke to the Claimant once about her coat. When he arrived at work, Mr Whittingham and Ms Platts were already dealing with the two halves of the Call floor, so he joined in going round and making sure everyone was adhering to the policy. He approached the Claimant at her desk and asked her to put her coat away. There was no objection from her, it was a very brief conversation and he walked away. He did not remember having a conversation about a locker and he was clear he did not give the Claimant a notebook or say that she would get a locker. He explained that the Clear Desk Policy applied to managers' pads and paper too, so he did not approach the Claimant with a notebook. Mr Ghulam said that he did not speak to the Claimant at all that morning. His shift did not start until midday and he arrived at about 11:30am. That was consistent with the rota.

29. The Claimant's account of the conversations that morning has changed. She did not refer to any conversation with Mr Ghulam or Mr Arifeen in her detailed grievance documentation or ET1. In those circumstances, the Tribunal preferred Mr Arifeen's account, that he had a brief conversation with the Claimant, with no mention of a locker. We accepted that there was no conversation with Mr Ghulam.

30. Shortly after the conversation with Mr Arifeen, Ms Platts approached the Claimant, who still had her coat on and her bag with her. The Claimant's evidence was that Ms Platts approached her in an "aggressive" way, "blaming" her for wearing her coat and having her bag, which was on the floor. The Claimant said that she was on a call to a customer at the time and that Ms Platts persisted, using her hands and pointing her fingers as the Claimant continued to answer calls. Ms Platts never asked her to put her coat or bag in a meeting room or on the coat rack, but she would have refused if she had been asked. She would only have agreed to put her coat and bag in a locker. She said that to avoid "further aggravation" she decided to "hide my bag away so that it was neither on the floor nor in sight." Ms Platts persisted with her "aggressive blame" and "relentlessly searched" for the bag. Ms Platts then began to say that the Claimant's coat was "not dress code". The Claimant pointed out that Ms Platts was wearing jeans and trainers and Ms Platts "aggressively" added that it was dress down week, but said that the coat did not fit the criteria of dress down week. The Claimant said that she felt humiliated and harassed. The Claimant said that she then pointed out a white member of staff, Mr Pierce, and another white colleague with similar looking but sleeveless puffer coats. Ms Platts said that they were in dress down attire and persisted in telling the Claimant to remove her coat. The Claimant told Ms Platts that she would not remove her coat. The Claimant then told Ms Platts that it was reasonable for her to allow the Claimant to go home and change her clothes to fit "business attire", regardless of dress down week. Ms Platts answered, "If you need to do that, that's fine for me, you just can't wear your coat." After she approved this, the Claimant logged off from her phone, locked her computer and went home. She was wearing a black pencil skirt, black boots and black turtleneck top beneath her coat and she said that she took off her black outfit "as advised by my parents." She returned to work about 30 minutes later and noticed that all the cables on the phone on her

desk had been completely disconnected and her computer monitor had been switched off. She said that she was told by colleagues that Ms Platts had done this. She then noted that Ms Platts had marked her as AWOL, which meant that she would not be paid. The Claimant spoke to Mr Arifeen about the AWOL. The Claimant said that he sent off a request to remedy it and asked her to wait on the technical button. That was a button the operatives used to prevent incoming calls when they had a technical issue. The Claimant waited on the technical button for her timetable to be amended. Ms Platts then approached her again and started to "blame and aggravate" her by "aggressively asking" why she was on the technical button. The Claimant told her that she was waiting for the AWOL to be changed and Ms Platts ignored her. A few minutes later Ms Platts approached again and began to ask questions. The Claimant became "highly frustrated and "distressed" and "dismissed the argument with get lost."

31. In cross-examination it was put to the Claimant that Mr Pierce was wearing a gilet, not an outdoor coat, and that Ms Platts said this when the Claimant pointed Mr Pierce out. The Claimant accepted this, but she said that there was no difference between her knee length winter coat and his sleeveless gilet; his was still outdoor wear. It was put to her that wearing a coat was not permitted but wearing a gilet was. She then said that Ms Platts told her theirs was dress down attire and hers was not.

32. The Claimant accepted in cross-examination that Ms Platts' issue was with the coat, none of her other clothing. The Claimant was unable to give a sensible explanation in cross-examination of why she needed to go home to change, given that Ms Platts' only issue was with her coat. She said that she went to change into more business appropriate attire. It was suggested to her that it was she who had an issue with what she was wearing underneath and she said, "No. She had an issue with my coat. When I went home I changed into something she was more comfortable with. She was not comfortable with black."

33. In the notes of an investigation meeting later that day (see below), Mr Ghulam made reference to the Claimant wearing a "sheer" top. The Claimant had signed the notes, as noted above. When asked why she had not corrected the reference to a "sheer" top she said that it was a long meeting and it probably slipped her mind. In those notes, the Claimant is recorded as telling Mr Ghulam twice that she told Ms Platts she would go home to get changed. He asked her whether she asked if she could go home and her response was, "I told her."

34. Ms Platts wrote a brief statement that afternoon. She gave further information to Mr Barquero as part of the Claimant's grievance appeal (see below) and she added more information in her witness statement. In her original statement, Ms Platts described what appeared to be a single conversation with the Claimant, although she accepted in her evidence that she had spoken to her twice about the coat and bag. She said that the Claimant had looked *her* up and down and commented on what she was wearing. She asked the Claimant a few times to take off her coat and the Claimant said, "No". She saw her walking out of the building with her coat and bag and marked her AWOL after 30 minutes. Later in the day she was sitting in changed clothing in technical so Ms Platts asked her why she was in technical and the Claimant did not answer. Ms Platts told her to take calls and she said that she would not take calls until her AWOL was

removed. Ms Platts told her again to come out of technical and she told Ms Platts to "get lost" and waved her hand at her.

35. When questioned by Mr Barquero, Ms Platts recalled that the Claimant told her that if she had a locker she would put her coat and bag in them. Ms Platts said that the Claimant was not on a call when she approached her; the Claimant spoke back to her. Nobody else was in an outdoor coat. Ms Platts also recalled the Claimant saying that if she was made to take it off she would go home. Ms Platts was asked if she had pointed at the Claimant and she said that she would never point her finger in anyone's faced. She said that the interaction ended when she went to see Mr Ghulam to let him know what had happened and to her own manager, Mr Ghaichem, to say that she was uncomfortable dealing with the Claimant. The Claimant left and after 20 to 25 minutes Ms Platts noted her as AWOL. Ms Platts did not know when the Claimant came back. She went on her lunch and the Claimant was sitting in technical for an hour when she got back. Ms Platts asked the Claimant what she was doing and she said that she would not take calls until the AWOL was removed. The Claimant waved her hand in Ms Platts' face and told her to go away so Ms Platts passed it on to Mr Ghulam and Mr Ghaichem. She had approached just about everyone that day and no one else had reacted badly.

36. In her witness statement for the Tribunal, Ms Platts accepted that the Claimant had pointed out another colleague who was wearing a gilet. Ms Platts' understanding was that a gilet was like a body warmer and was acceptable as indoor clothing. The Claimant was wearing a knee length winter outdoor puffer coat, which was not acceptable. Ms Platts could not now recall whether the Claimant was on a call when she approached her. She said that if she had been she would not have carried on talking to her. Ms Platts said that she did not know what the Claimant was wearing underneath her coat. She said that the Claimant told her that she was uncomfortable with what she was wearing underneath her coat but did not say why. The Claimant told her that she would have to go home if she needed to remove her coat. Ms Platts said that her response was that she could not stop the Claimant doing that because they could not stop anybody leaving the building. She told the Claimant it was her choice and that is where it was left. She walked away and went to speak to Mr Ghaichem. At that point she saw the Claimant leave the Call floor with her coat and bag and she did not see her again until she came back from lunch about an hour later. Ms Platts said that she did not pull the wires out of the Claimant's phone and computer. She was in the canteen on lunch. She suggested another adviser must have tried to sit there and pulled out the Claimant's head phone and tried to plug theirs in, noticed the Claimant was logged on and left. When she knew that the Claimant had been away from her desk for 45 minutes, Ms Platts thought she had gone home and marked her as AWOL, which was standard procedure. Ms Platts said that when she approached the Claimant later in the day she asked her if she had some system issues because she had been sitting in technical so long. The Claimant would not look at her; she just tapped her finger on the screen and said that she was not taking another call until Ms Platts "got rid of that" [the AWOL]. Ms Platts said, "Well you left work" and the Claimant said, "No. I told you I was going home to get changed." Ms Platts said that she was not aggressive towards the Claimant, she did not gesticulate with her hands or point in the Claimant's face. In fact, the Claimant was the one

waving her hand in Ms Platts' face when she said, "Oh just get lost." Ms Platts said that she had not treated the Claimant any differently because she is black.

37. In cross-examination, Ms Platts said that when the Claimant told her she did not have a locker, Ms Platts informed her that there were wardrobes and cupboards just outside the Call floor that had cameras on them. She denied approaching the Claimant aggressively, blaming her or pointing her fingers round. She said that she had asked about the Claimant's bag because one minute it was there and the next it was not. She did not know the Claimant had hidden it. The Claimant just told her, "It's gone." She accepted that the Claimant was on a call when she first approached her. The Claimant put her hand up to say she was on a call so Ms Platts moved away until she was off the call. Ms Platts was asked why her witness statement said something different about this point and she said that she could not remember. It was put to Ms Platts that the Claimant told her she was not comfortable with the way Ms Platts was dealing with the situation, and Ms Platts said the Claimant said she was not comfortable with what she was wearing. Ms Platts explained that on the Claimant's team agents did not have their own desk: they used hot desking. Ms Platts was insistent that the Claimant told her that if she had to remove her coat she would have to go home and Ms Platts replied that she could not stop the Claimant from leaving. At the point the Claimant left, she did not tell Ms Platts. Ms Platts was talking to Mr Ghaichem when the Claimant left. Ms Platts said that when she approached the Claimant in the afternoon the Claimant did not tell her that Mr Arifeen had asked her to stay in technical while he tried to sort out the AWOL issue. In cross-examination Ms Platts suggested that between her initial conversations with the Claimant at about 8:30 or 9am and about 11:30 or 12pm when she was speaking to Mr Ghulam and Mr Ghaichem, the Claimant was taking calls on the Call floor. That was different from the written evidence. Ms Platts said that she could not remember what the timings were.

38. In his oral evidence, Mr Arifeen agreed that the Claimant had spoken to him about the AWOL on 19 November 2019. She did not explain what had happened, she just said that she had gone home to get changed and now her system was showing she was AWOL. Mr Arifeen had sent a request to get the AWOL removed. That would be dealt with by their Resource team and might take up to an hour. Mr Arifeen said that he did not advise the Claimant to sit in technical. He would not have done so because he knew it could take up to an hour to change the AWOL on the system. When she was asked about what happened later that day by Mr Ghulam (see below), the Claimant did not say that Mr Arifeen had told her to wait in technical, she said that she was not going to sit and take calls and not get paid for it.

39. We have already made observations about the Claimant's credibility generally. We approach her account of what happened on 19 November 2019 with some caution in those circumstances. Equally, there were a number of inconsistencies between Ms Platts' written versions of events, her witness statement and her oral evidence, so her evidence about what was said or done and when was not entirely reliable either. There were some points of agreement. Weighing all of the evidence the Tribunal made the following findings:

39.1 Everybody was asked to remove their coats and bags because of the VIP visit. The Claimant knew from when she arrived that she needed to do this and why.

39.2 The Claimant did not remove her coat or bag from the Call floor. Ms Platts approached her and asked her to do so and the Claimant refused. She told Ms Platts that she did not have a locker and Ms Platts no doubt referred her to the coat rack. Ms Platts went away.

39.3 The Claimant hid her bag and when Ms Platts returned she could not see it and asked where it was. The Claimant did not tell her, but just said it was gone.

39.4 Ms Platts told the Claimant again that she needed to remove her coat. The Claimant continued to refuse. The Claimant pointed out Mr Pierce and another colleague wearing gilet style tops. Ms Platts told her that they were suitable business attire, unlike the Claimant's coat. Although the real basis of the requirement to remove coats from the Call floor was plainly the Clear Desk policy, this comment was more related to the Personal Appearance Policy. That may well have confused matters, and led the Claimant to criticise Ms Platts' own outfit that day. Ms Platts was offended by that.

39.5 Ms Platts' only concern was with the Claimant's coat. She did not say anything about the Claimant's outfit underneath her coat. The Claimant told Ms Platts that she was uncomfortable with what she was wearing underneath, not that she was uncomfortable with the way Ms Platts was handling the situation. That is consistent with Mr Ghulam's reference to a "sheer" top, which the Claimant did not correct when she carefully reviewed the meeting notes. If that reference had been incorrect, it would not have been a question of the Claimant forgetting to correct it, the reference was obvious when she read the notes. Given that evidence, and the lack of any other rational explanation for the Claimant going home to change her outfit, we prefer Ms Platts' evidence on this point.

39.6 The Claimant told Ms Platts that if she needed to remove her coat she would have to go home and change. Ms Platts was clear and insistent in her evidence that she told the Claimant she could not stop her from doing so and we find that is what she said. That is consistent with the fact that Ms Platts' only concern was with the Claimant's coat. It would not have made sense for her to allow the Claimant to leave her shift to change outfit in those circumstances. This is also consistent with what the Claimant told Mr Ghulam - that she "told" Ms Platts, not that she asked her. Ms Platts did not give the Claimant permission to go home and change; she told her that she could not stop her from doing so.

39.7 The Claimant did go home to change. After some time, Ms Platts marked her as AWOL because she had left without authorisation. That was standard practice.

39.8 Ms Platts did not disconnect the Claimant's telephone or computer. That was pure supposition on the Claimant's part. Given that this was a hot desking environment, the obvious explanation was that somebody else had tried to use the desk after the Claimant had left. The Tribunal did not accept the Claimant's evidence, given for the first time in her witness statement, that unnamed colleagues had told her they saw Ms Platts disconnecting the equipment.

39.9 The Tribunal did not accept that Ms Platts acted "aggressively" or "relentlessly". She did not "blame", "aggravate" or keep "pointing around and around." These seemed to the Tribunal to be labels applied by the Claimant (or her representative) to the conduct as described above. That conduct was a manager seeking to persuade an employee to comply with a requirement to remove her coat, and dealing with the employee's refusal to do so.

39.10 When the Claimant returned to work she noted that she had been marked as AWOL and she asked Mr Arifeen to remove it. We preferred Mr Arifeen's account of their conversation. His evidence was generally clear and consistent. He sent an email to the Resource team to ask them to remove the AWOL now that the Claimant had returned, but he did not tell her to wait in technical. It seemed to the Tribunal that the Claimant chose to do so because she was not prepared to work without certainty that she would be paid.

39.11 Ms Platts noted that the Claimant was sitting in technical for a long time. She approached her to ask why. The Tribunal accepted Ms Platts' evidence that the Claimant tapped her screen and said that she would not take calls until the AWOL was removed. That evidence had the kind of detail that suggested it was true. It is also consistent with our finding that the Claimant had not been told to wait in technical, rather she chose to because she was unwilling to take calls until the AWOL was removed.

39.12 It seemed most likely to the Tribunal that Ms Platts went away and came back again. She may have been looking into the AWOL issue. The second discussion ended with the Claimant flicking her hand in Ms Platts' face and telling her to "get lost." The Claimant accepted she told Ms Platts to "get lost" and Ms Platts was consistent in her evidence that the Claimant flicked her hand towards her face when saying it.

40. Mr Ghulam's evidence was that at around midday, when he first arrived at work on 19 November 2019, Ms Platts told him she had had an issue with the Claimant. He was also told this by his manager, Ms Herlihy. He was told that the Claimant had refused to take off her coat when asked and that she had disappeared for a couple of hours after that. He thought she had gone home to change without asking. That was classed as abandonment of duty. Ms Herlihy asked Mr Ghulam to open an investigation. He spoke to the Claimant about it at around 2pm. He asked her to come to a fact-finding investigation later that afternoon. Mr Ghulam then spoke to Ms Platts as part of his investigation. She wrote the statement to which we have already referred.

41. Mr Ghulam then conducted the fact find with the Claimant. Ms Parkin took notes. Both Mr Ghulam and Ms Parkin said that the Claimant took time at the end of the meeting to read the notes twice before signing each page. She asked for specific points to be added and they were. Ms Parkin and Mr Ghulam were confident that the notes were accurate. We have already referred to the Claimant's evidence about the notes and the different reasons she gave for signing them if they were inaccurate. While they may not be a verbatim account, the Tribunal accepted that the notes were generally accurate. If they had included something that was incorrect, we have no doubt the Claimant would have pointed it out before signing the notes.

42. The specific matters to be investigated were noted at the outset as: abandonment of duty, inappropriate behaviour towards a manager and failure to carry out reasonable instructions from the manager. Mr Ghulam said that these concerns were formulated after his first conversation with the Claimant and after he took a statement from Ms Platts.

43. Mr Ghulam asked the Claimant what had happened that day and there was a discussion about it. We have referred to some of what was said above. At one point the notes record Mr Ghulam asking the Claimant to change her attitude and stop pointing at him and that they were trying to find out what had happened. The Claimant replied that she felt uncomfortable continuing, but the discussion then apparently continued. The Claimant's evidence was that she was explaining the situation using her hands and that Mr Ghulam "got extremely angry and said in an aggressive way" that if she continued explaining using her hands the matter would be escalated to "a higher level of management." She said that she was not given an opportunity to explain herself about the use of her hands which is her common habit; they decided to refer her case to a higher level of management. In cross-examination the Claimant said that Mr Ghulam telling her the case would be escalated to a "higher level of management" was deliberately left out of the meeting notes. She said that her whole case was escalated to a higher level of management because she gestured with her hands. Mr Ghulam's evidence was that the Claimant was pointing her finger at him and he asked her not to. He did not say anything about referring the matter to a higher level of management. In her evidence, Ms Parkin remembered Mr Ghulam asking the Claimant to stop using her hands because she was pointing a lot but she did not remember his saying that it would be raised to higher management. The Tribunal preferred Mr Ghulam's account of this part of the conversation, which was consistent with the notes signed by the Claimant at the time. Mr Ghulam did ask the Claimant to stop pointing at him, but he was not aggressive or angry and he did not tell her it would be escalated to higher management.

44. The discussion then turned to why the Claimant had been waiting in technical rather than taking calls. During that discussion the Claimant said that they had not even updated her overtime from April, so why would she work for free? Mr Ghulam said that they could look at her overtime separately. He then explained that they were going to adjourn and speak to "PAS" (HR). The Claimant said that she would be speaking to HR because Ms Platts should not have acted the way she did and the Claimant wanted to complain about the whole process. She said that Mr Ghulam kept cutting her off and she could not put herself across. She wanted copies of everything and the statement Ms Platts made. Mr Ghulam said that he would confirm that with PAS and send everything he could.

45. The meeting then adjourned for around 40 minutes. The Claimant's evidence was that she was isolated in the room with no further instruction, apart from Mr Ghulam telling her that she could not leave because she was under investigation, she could not get her bag because then she might run away, and they needed to speak to PAS. She needed the toilet, so she left the meeting room to go to the toilet where she was "aggressively confronted" by Mr Ghulam. He asked where she was going and she had to "humiliatingly" ask for permission to go to the toilet. He told her off in front of the ladies' toilet, saying that it was

standard procedure that she could be left in isolation for up to 2 hours without leaving. This happened in Ms Parkin's presence.

46. Mr Ghulam said that he explained to the Claimant that they were going to speak to PAS and asked her to wait in the room while they did so. This was because they could not really have someone walking around on the Call floor discussing the matter when they were in an investigation. He did not tell the Claimant that if she got her bag she was going to run away. When they came back from speaking with PAS they encountered the Claimant near the toilets. Mr Ghulam said that she was walking towards the gate to the Call floor, so she had actually passed the toilet. She had her phone with her and was making calls. He asked where she was going and she was "aggressive" towards him, pointing her finger and saying that she had been left in the room with nothing and was not sitting there. He asked her to calm down because there were other people walking past. She then said that she wanted to go to the toilet and he told her that was absolutely fine. Mr Ghulam said that there was no written policy about leaving people in the room while an investigation meeting was adjourned to seek HR advice, but that was standard practice. Ms Parkin agreed. Mr Ghulam said that he did not say anything about the Claimant having to stay in the investigation meeting room for two hours. Ms Parkin did not remember that being said either. Ms Parkin said that Mr Ghulam was not aggressive to the Claimant outside the toilet and did not speak to her any differently from how he would speak to anybody else.

47. The notes of the meeting simply record that after the break Mr Ghulam thanked the Claimant for waiting and apologised for the wait. He said that he was speaking with PAS and Ops. He said that this would be going to a hearing with Lucy on Tuesday. The Claimant would be given all the documentation. The Claimant said that Mr Ghulam had really stressed her out regarding the whole situation. She also asked for the notes to record that she have been left there for 30 minutes and needed the restroom. Mr Ghulam said that when they had left he told her they were speaking to PAS and asked her to stay in the room while they adjourned.

48. The Tribunal found that the meeting was adjourned for Mr Ghulam to take HR advice from PAS. The Claimant was asked to remain in the meeting room while that took place. That was standard practice, but not in any written policy. The Claimant did not say that she needed to use the bathroom at that stage. It took around 30 minutes for Mr Ghulam to speak to HR and Ops. When he and Ms Parkin were returning to the meeting room, they encountered the Claimant near the ladies' toilet and asked her where she was going. Mr Ghulam was not aggressive. At that stage the Claimant said that she needed the toilet and Mr Ghulam told her that was absolutely fine. They returned to meeting room. The Claimant was given a letter inviting her to the investigation meeting, which referred to 3 allegations: refusing to remove her coat when asked by a Team Manager; leaving partway through her shift without informing anyone; and refusing to dial into calls until her AWOL had been removed.

49. Mr Ghulam's evidence to the Tribunal was that he would have followed the same process if there were a conduct issue for anybody. The Respondent has a diverse workforce and his treatment would never differ, regardless of

somebody's race. The Claimant's race had no impact on the way he treated her. The Tribunal accepted that evidence. It appeared that the Claimant had refused to remove her coat, left without authorisation and then failed to answer calls on her return to work in the afternoon. Mr Ghulam was asked by his manager to conduct a fact-finding meeting, which he did. The meeting was recorded by a notetaker and shows him asking questions to investigate the matters of concern. He took advice from PAS and Ops before deciding that this should proceed to a disciplinary hearing. We have found that he did not act aggressively or inappropriately. There was nothing to suggest that he treated the Claimant differently from the way he would have treated a white person or someone of a different race and we accepted his evidence that he did not.

Grievance

50. The following day, the Claimant lodged a written grievance. It was five pages long and set out detailed complaints. In essence, they related to the failure to provide her with a locker; the failure to pay her for her overtime on 26 April 2019;[2] Ms Platts' conduct on 19 November 2019 and Mr Ghulam's conduct in respect of the fact find meeting that day. The letter incorporated the Claimant's version of events, much of which reflected the account she gave to the Tribunal, as recorded above. She requested a copy of the policy that allowed her to be kept in isolation for up to 2 hours. She also requested to be provided in advance with a list of the questions to be asked at the disciplinary hearing. She said that she was being discriminated against on the grounds of her race and asked that her grievance be dealt with before the disciplinary hearing. The Respondent did deal with her grievance first. Indeed, as we understand it, no further steps have been taken in the disciplinary process to date.

51. On 13 December 2019, the Claimant was invited to attend a grievance meeting on 17 December 2019, to be conducted by Mr Semley. The day before the meeting, the Claimant emailed a list of 30 questions to Mr Semley. That was a series of questions asking why particular things had happened. It essentially reflects the list of questions referred to in the issues annexed to the judgment below, although it is not precisely identical. As will be evident, the questions were premised on the Claimant's version of events and labelling of those events, for example, "Why did Ms Platts approach me and starting to blame and aggravate me by aggressively asking me as to why I was in technical button?"

52. The grievance meeting took place on 17 December 2019. Mr Semley repeatedly asked the Claimant to go through her statement and talk him through what had happened. She repeatedly referred him to her written document and refused to elaborate. Mr Semley explained more than once that the meeting was the Claimant's opportunity to talk about her grievance and tell him what resolution she wanted. She simply said that everything was in the letter and she wanted a written response. Eventually, Mr Semley said that he would look at the high level points for them to discuss; the main reasons for her grievance. The first was that she did not have a locker. He asked what the Claimant was looking for and she said that she had been here for three years, had always put her name down and still did not have a locker. Mr Semley then referred to the Claimant asking for pay for the overtime she worked in April. She said that she had never been paid

[2] The grievance refers to a failure to pay for the overtime hours, not to a failure to pay the enhanced rate.

three hours at time-and-a-half and 5 ½ hours at double-time. Mr Semley then referred to the incident when Ms Platts asked the Claimant to take her coat off which she was not happy with. The Claimant agreed. Mr Semley added that the Claimant was also not happy with the first investigation meeting and the Claimant agreed. Mr Semley summarised the high level points and asked the Claimant to talk him through her understanding of why it had been taken to an investigation. The Claimant did not disagree with the high level points. There was a discussion about the Claimant expressing herself with her hands and then the notes record Mr Semley asking the Claimant why she was shaking her head. She replied that she wanted a response in writing. There was an adjournment, after which Mr Semley said that he needed to speak to Ms Platts and Mr Ghulam to get their points. Mr Semley asked if there was a specific point or all of it the Claimant felt discriminated against. She replied, "It's all of them Point 1 no locker, Point 2 coat and bag always on me no locker, Point 3 overtime pay." Mr Semley said that the main thing he was trying to get was why the Claimant felt discriminated against. The Claimant simply referred again to her letter. She said that if she did not get answers to her questions that would highlight discrimination. Mr Semley asked her whether there were any other witnesses apart from her and Ms Platts and she said there was no one else there. Mr Semley tried to ask the Claimant what resolution she wanted or how matters could be fixed and she said that she wanted a reply to her points in writing.

53. Mr Semley's evidence to the Tribunal was that he was trying to get the Claimant to "bring to life her points" but she would not do so. The notes of the meeting make clear that Mr Semley was trying to get the Claimant to elaborate on her grievance and that she was refusing to do so. He was trying to find out why she felt she had been discriminated against and she would not elaborate. She did not provide him with the names of any witness or anybody she said had been treated differently. She did not provide any written evidence and she did not ask him to speak to anybody in addition to Ms Platts and Mr Ghulam. Mr Semley's evidence was that he thought the Claimant had agreed to him grouping her complaints into the four high level points. The Tribunal accepted that evidence. The meeting notes show that he identified the four points, the Claimant agreed they were accurate and subsequently referred to them herself when confirming that she felt she had been discriminated against in respect of all her complaints.

54. Mr Semley did speak to Mr Ghulam and Ms Platts. There were issues with the notes of both meetings. The notes of the meeting with Mr Ghulam did not contain a front sheet or an end sheet. Evidence provided to the Tribunal at our request during the course of the hearing showed that these notes were only uploaded onto the relevant system on 3 March 2020. Mr Barquero explained that when he dealt with the grievance appeal (see below) he noted that Mr Semley referred to a discussion with Mr Ghulam but that no notes were on the system. He asked Mr Semley for them but Mr Semley could not locate them. Eventually, Mr Semley forwarded an email chain to him in which OSS had emailed the notes to Mr Semley on 23 December 2019. The Tribunal accepted Mr Barquero's evidence. There was plainly a failure in record-keeping, but we accepted that Mr Semley did speak to Mr Ghulam at the time and that these were the notes. The notes of the meeting with Ms Platts did have a front sheet and an end sheet. They were dated 20 December 2019. The notes simply refer to the statement Ms Platts made on 19 November 2019 (as part of the conduct investigation) and

then record that Mr Semley asked questions from the list that the Claimant had given him. The specific questions and answers were not recorded. Mr Semley told the Tribunal that Ms Platts essentially kept telling him that she had nothing to add to her original statement. The Tribunal accepted that this discussion took place. Plainly the notes were inadequate.

55. The Claimant was invited to a grievance outcome meeting so that Mr Semley could deliver his outcome and discuss it with her, and so that he could give her a locker key. She declined to attend, so Mr Semley provided a written outcome. He said that "as agreed" he had provided an outcome using the four headings they agreed were the high-level concerns of her grievance. In addition, he noted that the Claimant believed that all of these issues were due to her race. Mr Semley's findings were:
    55.1 The Respondent aimed to provide all employees with a locker and was currently undergoing a locker audit to understand the situation and allocate lockers accordingly. The process was currently being reviewed and there were improvements needed. At present a number of people did not have a locker. Mr Semley could find no evidence to suggest that the Claimant's race had been a factor in any issue she had in regard to a locker. Mr Semley had secured a locker for the Claimant as part of the process.
    55.2 On investigation it had become apparent that the Respondent no longer held shift patterns or logged in data for 26 April 2019. From the Claimant's timesheet data Mr Semley could not see any record of overtime for that date. Mr Semley noted that as a part-time employee the Claimant was in general only entitled to overtime payments at single rate until she had worked 40 hours in a week. However, he had requested payroll to pay the overtime at single rate for eight hours. Mr Semley's investigations had shown that the Claimant had worked overtime and been paid in the past. Colleagues did have payroll issues or concerns on occasion. Mr Semley could find no evidence that the Claimant's race had any bearing on her overtime pay.
    55.3 Mr Semley had spoken to Ms Platts about what happened on 19 November 2019. Her account differed from the Claimant's. She believed she had made a reasonable request for the Claimant to remove her coat and bag from the Call floor, something she had requested of others on the same day. Neither the Claimant nor Ms Platts could identify a witness. Mr Semley understood that all employees were asked to put their coats and bags away that day. This was a reasonable request and if it was not fulfilled it would be the team manager's right to challenge any individual and take action where deemed necessary. Mr Semley had discovered that similar requests were made to a number of colleagues on the day and he could find no evidence to suggest that the Claimant's race impacted the request or how it was handled. He suggested that the Claimant and Ms Platts attend a mediation session to provide an opportunity for them both to discuss their conduct and behaviour on the day.
    55.4 Mr Semley had spoken to Mr Ghulam and believed the investigation conducted was reasonable and in accordance with the relevant policy. He acknowledged that there was an opportunity for them to signpost and explain context, such as how the adjournment worked, and had provided feedback to Mr Ghulam on this point. He could find no evidence to suggest that the Claimant's race had impacted the way the investigation was held.

56. Mr Semley told the Tribunal that when investigating the failure to provide a locker, he looked at the locker spreadsheet, looked at the names on there and relied on his own experience of how lockers were issued. That was not an extensive investigation, but the Tribunal noted that the Claimant did not provide any information about who she had asked for a locker nor about white colleagues who had been provided with lockers. When investigating the overtime Mr Semley looked at the pay sheets but could not find any documents. It appears that the Claimant did not provide him with the emails and Teleopti extract that were included in the Tribunal file. The grievance itself suggested that the Claimant had mentioned this to Mr Lewin and Mr Ghulam. Mr Lewin had left the business. Mr Ghulam was asked about it by Mr Semley and told him that he thought it was resolved and that the Claimant was only entitled to single time.

57. As regards Ms Platts' conduct on 19 November 2019, Mr Semley was asked in cross-examination how he had reached a conclusion that this was nothing to do with the Claimant's race. He said that he asked both if there were any witnesses and there were not. There had been a conversation between the two and there was no evidence to say it was one or the other or whose version was right. That is why he suggested a mediation session. As regards Mr Ghulam's conduct, Mr Semley spoke to him but not to Ms Parkin. He was not asked about that.

58. Mr Semley told the Tribunal that he did not answer the Claimant's 30 questions individually because he thought that was agreed with the Claimant. His reasoning was to group it together to try to understand how they could resolve the grievance. It was difficult to get the Claimant to say what she wanted, so this provided an end goal they could work towards.

59. Mr Semley accepted that the Claimant's complaints were serious. He said that he did carry out an investigation to try and provide an outcome for the Claimant. Regardless of race he would have done the same investigation for anyone. It was put to Mr Semley that because the Claimant was complaining of race discrimination he did not deal properly with her grievance. He said, "Not at all. This complaint is what prompted the investigation. That's what I tried to get out of her in the meeting to bring her grievance to life. What would she like us to do to rectify that?" The Tribunal had no hesitation in accepting that evidence. It was clear that Mr Semley was trying throughout to understand the Claimant's grievance, and to provide a resolution for her. He was limited in what he could investigate by the Claimant's reluctance to engage with him.

60. Mr Semley sent the Claimant his outcome letter and the notes of his meeting with her, but no other documents. That appears to be consistent with the Respondent's policy, which says that employees will be sent a written outcome but does not say they will be provided with other documents.

61. Mr Semley told the Tribunal that he did investigate the allegations about Ms Platts. From the conversations he had with Ms Platts and the Claimant and the fact that there were no witnesses, he did not feel that there was anything further that would have needed to be done with Ms Platts at that point. There was no evidence to warrant referring Ms Platts to a conduct hearing. Ms Platts had a right to challenge behaviours that were not right, but there was not any evidence

to suggest if it was done in the right way or not. Their versions of events were very different. The Claimant's referral to a conduct hearing was for not removing her coat, which was a reasonable request; it was not around her behaviour and how she acted on the floor that day. The appropriate action in the circumstances was a mediation session. The Tribunal accepted that evidence.

Grievance Appeal

62. On 16 January 2020 the Claimant emailed an appeal against the grievance outcome to Ms Hawke. She said that Mr Semley himself had discriminated against her and victimised her in his handling of the grievance and his decision. She requested all the grievance investigation documents to be sent to her within seven days and she complained about Mr Semley's failure to provide answers to her 30 questions. She explained why she disagreed with Mr Semley's decision on the individual points. She asserted that Mr Semley's conclusions that the Claimant had not been discriminated against were unreasonable when he had failed to answer her 30 questions. She repeated a number of those questions. The Claimant asked why disciplinary action had not been instigated against Ms Platts. The multi-layered structure of the appeal made it somewhat unwieldy and difficult to understand.

63. On 24 January 2020 Ms Hawke emailed the Claimant to invite her to a grievance appeal hearing with Mr Barquero on 3 February 2020. The Claimant did not attend the meeting. Ms Hawke went to speak to her the next day, and the Claimant said that she had not received the invitation. Ms Hawke also wanted to give the Claimant her locker key, but the Claimant refused to accept it. Later that day Ms Hawke re-sent her original email of 24 January 2020 and asked the Claimant when she was available for a rescheduled appeal hearing. The Claimant replied on 6 February 2020 to say that she "reserved the right not to attend" any grievance or disciplinary meeting because they were not being handled reasonably or fairly and this was race discrimination and victimisation. She requested copies of "all investigation documents (notes of investigation meeting, statements, investigation report et cetera…) From the date I submitted my grievance up to the business decision from my appeal letter dated 16/1/2020."

64. On 10 February 2020 the Claimant emailed to say that she was waiting for the written outcome and the documents and information as previously requested. Ms Hawke replied to say that Ms Basford was now likely to deal with the Claimant's grievance appeal and would provide a written outcome along with any investigation notes and statements.

65. No documentation was provided to the Claimant until she received the outcome to her grievance appeal (see below). Ms Hawke's evidence was that she had misunderstood the Claimant's request. She thought she was referring to the documentation that would be provided with the appeal outcome letter. She said that it was not usual practice to provide copies of all investigation notes along with a copy of the grievance outcome but they agreed to provide them as part of the appeal at the Claimant's request. She asked Mr Barquero to send them and he did. In cross-examination Ms Hawke said that this was the Respondent's usual process: they did not send out grievance documentation; they invited people in to hear the outcome and discuss it. If people requested the documents

they would be provided. The Respondent's Grievance policy does not say that documents will be sent out. Ms Hawke said that the Claimant's race had nothing to do with her not sending the Claimant the grievance investigation documents before the appeal outcome. She said that she was not trying to cover up discrimination, she just misunderstood was being asked for. The Tribunal accepted Ms Hawke's evidence. It is somewhat surprising that employees are not provided with grievance investigation documents before they appeal but the Tribunal accepted that this is the Respondent's policy. The Claimant's request was ambiguous. It could be read as a request for all documents up to the outcome of her appeal. She was provided with the documents at that stage.

66. It was Mr Barquero who was eventually appointed to deal with the grievance appeal. He never met the Claimant. He dealt with the appeal in writing as she had requested. When reading through the grievance documents, Mr Barquero felt that he did not have enough information. The notes of Ms Platts' grievance investigation meeting did not provide answers so he interviewed Ms Platts himself. The Tribunal saw the notes of that meeting. Mr Barquero asked Ms Platts about the events of 19 November 2019. As noted above, there was no record on the Cascade system of the investigation with Mr Ghulam that was referred to in the grievance outcome letter, so Mr Barquero asked Mr Semley for it. It was eventually provided by means of an email that had been sent to Mr Semley in December 2019. Mr Barquero also spoke to Mr Semley and reviewed the documents he had completed, so as to investigate the allegation of discrimination against him. Mr Semley wrote a brief statement for Mr Barquero.

67. Mr Barquero decided to respond to each of the Claimant's points line by line. Not being able to speak to the Claimant made that more difficult. There were some points that he was not able to investigate any further without more information from her. Mr Barquero did not feel that there was any ground to evidence discrimination. There was no comparison or evidence of the Claimant being treated differently. For example, the Claimant had not given dates, times or names of people who had lockers or didn't have lockers. There was no evidence of other situations being managed or approached differently. Mr Barquero sent a detailed appeal outcome letter to the Claimant on 17 March 2020. He upheld Mr Semley's decision and rejected the appeal. In response to her complaint about Mr Semley's failure to answer each of her 30 questions, Mr Barquero said that Mr Semley had rolled her questions into 4 main points and provided outcomes against those, as agreed between the Claimant and Mr Semley. That reflected what Mr Semley said in his written statement made after meeting Mr Barquero. Mr Barquero had answered all of the Claimant's 30 questions in order to address all of her remaining concerns. In answer to a number of them about Ms Platts' conduct, Mr Barquero said that after speaking to Ms Platts there was no evidence to suggest it had happened. In respect of the locker, Mr Barquero said that there was currently no central location where the Respondent could view who did or did not have a locker. An audit was underway. It had shown that many people did not have a locker, across both the Respondent's sites. The audit could not be shared for compliance and GDPR reasons. Mr Barquero concluded by saying that he did not believe the Claimant had been discriminated against at any point. Mr Barquero believed the outcomes Mr Semley had provided were fair and reasonable, and they would all remain as he outlined. Mr

Barquero said that he had attached all relevant notes from his investigation and Mr Semley's. Relevant policies were also attached.

68. In cross-examination, Mr Barquero agreed that an allegation of discrimination is serious. He accepted that he had not asked people expressly whether they had discriminated against the Claimant when investigating her appeal. He explained that he had investigated why Mr Semley approached the grievance as he did, rather than asking whether he had discriminated against the Claimant. Mr Barquero also accepted in cross-examination looking at the list of attachments to the appeal outcome letter, that the notes of Mr Semley's meeting with Ms Platts had not been sent with the grievance appeal outcome. He did not know why that was, but he said that it was not because the document did not exist at the time. The Tribunal accepted that evidence: it was the inadequacy of these notes that led Mr Barquero to interview Ms Platts himself. Mr Barquero accepted that he did not send the Claimant the notes of Ms Platts' meeting with Mr Ghulam. That was because this formed part of the conduct investigation, not the grievance. Mr Barquero was also asked why, whenever there was a conflict of evidence, he believed the person other than the Claimant. He did not accept that this was his approach. His feeling at the time was that there was not real evidence from the Claimant of any discrimination. He would have liked to investigate that further with the Claimant but he did not get the chance to do that. She refused to meet him. He alluded to that several times in his outcome letter.

69. It was put to Mr Barquero in cross-examination that the way he approached the Claimant's grievance appeal was influenced by her race, that he was subjecting her to detriment for complaining of discrimination, that he was covering up discrimination and that he did not answer her 30 questions because he was covering up discrimination. He denied all these allegations. His evidence was that the Claimant's race did not have any impact on the way he treated her. The Tribunal had no hesitation in accepting his evidence. It was clear to the Tribunal that he had done his best to investigate all the Claimant's points, filling in gaps where he saw them, and attempting to answer all of her detailed questions. He was hampered in his ability to investigate further by the Claimant's lack of engagement, but he did his best to investigate all elements of the appeal, including the discrimination aspects.

Legal principles

70. Claims of discrimination are governed by the Equality Act 2010, s 4 of which provides that race is a protected characteristic. Section 39 of the Equality Act 2010 makes it unlawful for an employer to discriminate against or victimise an employee by subjecting the employee to detriment. Direct discrimination is governed by s 13 of the Equality Act 2010, and victimisation by s 27, which provide, so far as material:

> **13 Direct discrimination**
> (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.
> …

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 -

…

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

…

71. The time limits for bringing claims of discrimination are governed by s 123. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period.

72. The burden of proof is dealt with by s 136 of the Equality Act 2010, which provides, so far as material:

136 Burden of proof

(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 provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

…

73. The Court of Appeal in *Igen Ltd v Wong* [2005] ICR 931 gave authoritative guidance as to the application of the burden of proof provisions. That guidance remains applicable: see *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913.

73.1 It is for the Claimant who complains of discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination against the Claimant. These are referred to below as “such facts”.

73.2 If the Claimant does not prove such facts she will fail.

73.3 It is important to bear in mind in deciding whether the Claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'. In deciding whether the Claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.

73.4 It is important to note the word 'could' in s 136(2). At this stage the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a Tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

73.5 In considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.
73.6 These inferences can include, in appropriate cases, any inferences drawn in accordance with s 138 of the Equality Act 2010 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 138.
73.7 Likewise, the Tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.
73.8 Where the Claimant has proved facts from which conclusions could be drawn that the Respondent has treated the Claimant less favourably on a prohibited ground, then the burden of proof moves to the Respondent.
73.9 It is then for the respondent to prove that it did not commit, or as the case may be, is not to be treated as having committed, that act.
73.10 To discharge that burden it is necessary for the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the ground of the protected characteristic, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.
That requires a Tribunal to assess not merely whether the Respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the protected characteristic was not a ground for the treatment in question.
73.11 Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

74. In essence, the guidance outlines a two-stage process. First, the complainant must prove facts from which the tribunal *could* conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination against the complainant. That means that a reasonable Tribunal could properly so conclude, from all the evidence before it. A mere difference in status and a difference of treatment is not sufficient by itself: see *Madarassy v Nomura International plc* [2007] ICR 867, CA. The second stage, which only applies when the first is satisfied, requires the Respondent to prove that he did not commit the unlawful act.

75. The guidance in *Igen* and *Madarassy* was expressly approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054. However, as the Supreme Court made clear in *Hewage*, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other: *Hewage* at para 32.

76. Under s 13, direct discrimination arises where (1) an employer treats a person less favourably than it treats or would treat others and (2) the difference in treatment is because of a protected characteristic. In answering the first question the Tribunal must consider whether the employee was treated less favourably than an actual or hypothetical comparator whose circumstances were not materially different. That means that all the characteristics of the employee that are relevant to the way the claim was dealt with must also be found in the comparator: see *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, HL. Where there are material differences in circumstances between the employee and the proposed actual comparator, the proposed comparator may still provide evidence that assists in determining how a hypothetical comparator would have been treated: *Shamoon*.

77. The second question entails asking why the employee received less favourable treatment. Was it because of a protected characteristic or was it for some other reason: see *Nagarajan v London Regional Transport* [1999] ICR 877, HL. In some cases, where the factual criteria applied by the employer as the basis for the treatment are inherently discriminatory, it will be clear why the employee received the less favourable treatment. In other cases, where the reason for the less favourable treatment is not inherently discriminatory, it is necessary to explore the mental processes of the employer, to discover what facts operated on his or her mind: see *R (E) v Governing Body of the Jewish Free School* [2010] IRLR 136, SC ("*JFS*"). It is important to note that the employer's motive is irrelevant: see e.g. the *JFS* case. It is not necessary for the protected characteristic to be the only or even the main cause of the less favourable treatment; it must be an effective cause: see e.g. *London Borough of Islington v Ladele* [2009] IRLR 154, EAT.

78. It is not always necessary to answer the first and second questions in that order. In many cases, particularly where there is not an actual comparator, it is preferable to answer the second question, the "reason why" question, first. If the answer to that question is that the less favourable treatment was on a proscribed ground, then there will usually be no difficulty in deciding whether the employee was treated less favourably than others would have been: *Shamoon* (above); *JFS*.

79. The same approach to the burden of proof applies in a victimisation claim in deciding whether the reason for the employer's treatment of the employee was that she did a protected act.

Application of the Law to the Facts

80. Applying those principles to the detailed findings of fact, the Tribunal's conclusions on the issues were as follows. We have made detailed findings of fact, which to a significant extent determine the complaints, either because the events did not happen as the Claimant alleges, or because we have found on the evidence that the reason was not race or victimisation. In that context we deal briefly with each of the factual allegations set out in schedule 1, and cross-referred to in schedule 2 below. We have borne in mind throughout that there is rarely overt evidence of discrimination or victimisation. It is often much more intangible. We have taken care to think carefully about the burden of proof and

whether, with that in mind, there were facts from which discrimination or victimisation could be inferred. However, even applying that careful scrutiny, we found that there were not. The Claimant did not shift the burden of proof in respect of any allegation and, for the most part, in any event we made clear findings of fact on the evidence about the reasons for people's decisions and actions.

81. In respect of the victimisation complaints, there is no dispute that the Claimant did a protected act when she raised her grievance and in her grievance appeal. The issue was whether the Respondent subjected her to detrimental treatment because she did so.

82. The only complaint the Respondent said was brought outside the time limit was the complaint about failure to pay overtime. However, the findings of fact set out above make clear that there was conduct extending over a period relating to that payment. The Claimant raised this with her managers each month or so and her query remained unresolved until it formed part of her grievance and was then addressed through that. The complaint was brought within three months of the end of the period and was brought within the time limit.

83. That brings us to the complaints in schedules 1 and 2. The sub-paragraph numbers below correspond to the numbered complaints in schedule 1 (e.g. 83.1 corresponds to complaint 1).

General complaints

83.1 The Respondent did fail to allocate a locker to the Claimant until December 2019. However, the Claimant has not proved facts from which the Tribunal could infer, in the absence of an explanation, that this was because of race. The evidence relating to the comparators is inadequate. The Claimant has not given evidence of any white comparator whose manager allocated a locker to them. It became clear that she had simply assumed this was the case. The position on the evidence was therefore that these particular white employees had lockers, but it was not known in what circumstances they obtained them. The process was to ask at reception. They may have done that. It does not appear that the Claimant did. The clear evidence is that numerous people had no locker, from all parts of the Respondent's diverse workforce. This was an ongoing problem. Equally, there was no evidence that a particular part of the diverse workforce did have lockers. As it transpired in cross-examination, the Claimant never raised her lack of a locker with a line manager as a concern before November 2019. There was simply nothing to suggest that the Claimant had no locker because she is black, rather than because of the ongoing lack of lockers for the workforce generally. The burden of proof does not shift.

83.2 It is not clear that the Respondent failed to pay the Claimant correctly for the overtime she worked on 26 April 2019. She was not contractually entitled to an enhanced rate until she had worked 40 hours and it appears that in May 2019 she was paid at single rate for the hours worked after 11am. However, she was initially told she would be paid an enhanced rate and the Respondent failed repeatedly to resolve with her queries about that. Plainly that is not good enough. However, the question for the

Tribunal is not whether she was badly treated, but whether she was discriminated against in this respect. The Tribunal was satisfied that she was not. She had previously been paid correctly for overtime. She did not identify any white comparator who was treated differently. She was not in fact contractually entitled to the enhanced rate. There was an obvious explanation why she was not initially paid the enhanced rate after 11am, which was that the "multi-skilling" hours overwrote the previous entry in her Teleopti timetable. There was also an obvious explanation why her queries were not dealt with, which was that she had four different line managers during the six-month period and that nobody took ownership of the issue before moving on. The Claimant herself appeared to acknowledge that in one of her emails at the time. The Tribunal accepted Mr Ghulam's evidence that he had ongoing issues with his email. He had spoken to the Claimant about the overtime and he told Mr Semley at the time that he thought the issue was resolved; his understanding was that she was only entitled to single-time. Mr Ghulam's failure to respond to the Claimant's email and to take further steps to resolve the situation during the relevant 5 or 6-week period are not facts from which the Tribunal could infer, in the absence of an explanation, that this was less favourable treatment because of race. There was simply no basis on which to infer that each of the previous three managers had failed to deal with her queries because of her race. The burden of proof did not shift.

Complaints against Ms Platts

83.3 Ms Platts did approach the Claimant on 19 November 2019 and ask her repeatedly to remove her coat and move her bag, but she did not do it aggressively, "blaming" the Claimant or using her hands and pointing her fingers "around and around." Ms Platts approached numerous employees and made the same request because of the VIP visit that day.

83.4 Ms Platts did return and ask the Claimant again where her bag was. She did not "aggressively blame" her or "relentlessly" search for her bag. The context was that she had asked the Claimant to remove her bag from the Call floor in accordance with policy. The bag had apparently disappeared although the Claimant had not left her desk. It was entirely legitimate for Ms Platts as a manager to ask where the bag was in those circumstances. Indeed, the Claimant was hiding the bag rather than removing it from the Call floor.

83.5 As set out in the findings of fact, Ms Platts did tell the Claimant that her coat was "not dress code." Ms Platts was wearing jeans and trainers and did tell the Claimant that it was "dress down week" and that the coat did not fit the criteria of dress down week. She was not aggressive. Ms Platts was plainly confusing two policies. The reason the Claimant was required to remove her coat was the Clear Desk Policy, not the Personal Appearance Policy. It was not about whether the Claimant's coat met the dress code: she was not allowed it on the Call floor because of the Clear Desk policy.

83.6 Ms Platts did persist in telling the Claimant to remove her coat. The Claimant did not tell her that she was uncomfortable with the manner in which she was handling the coat issue, she told her that she was uncomfortable with what she was wearing underneath. The Claimant did draw attention to white colleagues wearing gilets. Ms Platts told her that

gilets were indoor wear and were permissible whereas her knee length outdoor coat was not. The Tribunal considered that there was a clear and obvious difference between a knee length outdoor coat and a gilet.

83.7 Ms Platts did not tell the Claimant that it was fine to go home and change. The Claimant told Ms Platts that she was going to go home and change and Ms Platts told her that she could not stop her from doing so.

83.8 Ms Platts did not disconnect the cables on the phone on the Claimant's desk or switch off her computer monitor.

83.9 Ms Platts did note the Claimant as AWOL sometime after she had left. The Claimant was absent without authorisation: she had not been given permission to go home and change. She unilaterally decided to do so and left work without permission from a manager.

83.10 Ms Platts did approach the Claimant after she had returned to work and ask her why she was in technical. The Claimant did not tell her that Mr Arifeen had told her to wait while the AWOL was processed. The Claimant tapped the screen and said that she would not take calls until the AWOL was removed. Ms Platts did not ignore the Claimant. She did not blame or aggravate her and she was not aggressive towards her.

83.11 Ms Platts did come back a few minutes later to ask the Claimant why she was still in technical. She was not aggressive. The Claimant flicked her hand at Ms Platts and told Ms Platts to "get lost."

Given the inconsistencies and unreliability in Ms Platts' evidence in a number of respects, the Tribunal gave careful consideration to whether the burden of proof shifted and to whether any of her treatment of the Claimant was less favourable treatment because of race. We found that it was not. There was no evidence whatsoever to suggest that a real or hypothetical white comparator would have been treated differently in any way. Everybody was asked to remove their coats and bags that morning because of the VIP visit. The white colleague or colleagues who were wearing gilets were not comparable because a gilet is not an outdoor coat. Nobody else refused Ms Platts' request or hid their bag. This was a legitimate management request or instruction, and was in accordance with the Respondent's policies. The Claimant refused a reasonable management request or instruction and left work without authorisation. On her return she sat in technical refusing to work until the AWOL was removed. Nobody had told her to do that. It was legitimate for Ms Platts as a manager to ask why she was in technical and not taking calls. In the first instance, that would be so that any technical issue could be resolved. No doubt having checked about the AWOL, it was again legitimate for Ms Platts to return to the Claimant who was still in technical. In many respects the treatment complained of did not happen at all or in the way the Claimant said. For the treatment that did happen, the Claimant did not prove facts from which the Tribunal could infer, absent an explanation, that Ms Platts treated her less favourably because of race.

Complaints against Mr Ghulam

83.12 Mr Ghulam did not fail to pay the Claimant's overtime or fail to take reasonable steps to remedy the business's failure from 26 April 2019 to January 2020. He was not responsible for paying the Claimant's overtime. He was not involved until October 2019 and, as the Claimant accepted, after 20 November 2019 it was appropriate for this to be resolved through

her grievance. Mr Ghulam was therefore responsible for dealing with the Claimant's issue for about five weeks. He did not resolve it and he did not respond to her email. However, as set out above, the Claimant did not prove facts from which the Tribunal could infer in the absence of an explanation that this was because of her race. There was nothing whatsoever to suggest that a white person in the same situation would have been treated any differently. In any event, the Tribunal accepted Mr Ghulam's evidence that the Claimant's race did not play a part in his treatment of her.

83.13 Mr Ghulam did instigate a fact-finding meeting as part of a disciplinary process on 19 November 2019. He was told to do so by his manager. There were plainly sound reasons for doing so: the Claimant had apparently refused a reasonable management request, left work without authorisation and avoided calls on her return. The Claimant did not prove facts from which the Tribunal could infer in the absence of an explanation that this was because of her race. There was nothing whatsoever to suggest that a white person in the same situation would have been treated any differently. In any event, the Tribunal accepted Mr Ghulam's evidence that the Claimant's race did not play a part in his treatment of her.

83.14 Mr Ghulam did not get "extremely angry" or speak to her in "an aggressive way" during the meeting on 19 November 2019. He did ask her to stop pointing at him. That is because she was doing so. He did not tell her that if she carried on the matter would be escalated to a higher level of management. There was nothing whatsoever to suggest that a white person who was pointing at Mr Ghulam would not have been asked to stop. In any event, the Tribunal accepted Mr Ghulam's evidence that the Claimant's race did not play a part in his treatment of her.

83.15 The Claimant's case was not referred to a higher level of management because she used her hands to explain herself, nor because she kept pointing at Mr Ghulam. Mr Ghulam did seek advice from PAS and Ops about the conduct allegations that were being considered in the fact-finding meeting. That was normal process. The decision was to refer that potential misconduct to a disciplinary hearing. There was nothing whatsoever to suggest that a white person in the same situation would have been treated any differently. Ms Platts was not in the same situation. She had not apparently refused a management instruction, left without authorisation or avoided calls. When the Claimant alleged in her grievance that Ms Platts aggressively abused her using her hands and fingers, that was investigated and Mr Semley and Mr Barquero found no evidence that it had happened. The Claimant was reluctant to discuss it with Mr Semley and refused to meet Mr Barquero at all. There was no basis to refer Ms Platts for a conduct investigation about that in those circumstances. It would not have been for Mr Ghulam to refer Ms Platts for a conduct investigation in any case since they were at the same level of seniority. The burden of proof did not shift.

83.16 The Claimant's statements during the fact-finding meeting on 19 November 2019 were not disregarded. Ms Parkin did her best to write accurate notes. The Claimant read through the notes twice at the end of the meeting, spending 20 minutes doing so. She asked for changes to be made and they were. She signed the notes as accurate. There was nothing whatsoever to suggest that a white person would have been

treated any differently by Ms Parkin and the Tribunal accepted her evidence that the Claimant's race played no part in her treatment of her.

83.17 The Claimant was asked to remain in the room while Mr Ghulam and Ms Parkin sought advice from PAS. They explained that to her. This was their standard process. They did not tell the Claimant that she could not get her bag because then she might run away. There was nothing whatsoever to suggest that a white person in the same situation would have been treated any differently. In any event, the Tribunal accepted Mr Ghulam's evidence that the Claimant's race did not play a part in his treatment of her.

83.18 Mr Ghulam did not aggressively confront the Claimant. He encountered her near the toilet and asked where she was going. That was in the context that she had been asked to remain in the meeting room while they sought advice from PAS. Mr Ghulam was not aggressive. He did not tell the Claimant that she had to ask for permission to use the toilet, nor did he tell her off. He asked her to calm down. There was nothing whatsoever to suggest that a white person in the same situation would have been treated any differently. In any event, the Tribunal accepted Mr Ghulam's evidence that the Claimant's race did not play a part in his treatment of her.

83.19 The Claimant was not provided with a copy of a written policy about keeping employees in the meeting room during a fact-finding investigation because there is no such written policy. However, it was standard practice to ask employees to remain in the room in such circumstances for obvious reasons. The burden of proof does not shift.

Complaints against Mr Semley

83.20 Mr Semley did not reject the Claimant's grievance with no supporting reasons. He dealt with it in fairly brief terms but the Tribunal considered his investigation and reasons were entirely sufficient in the circumstances. The burden of proof does not shift.

83.21 Mr Semley did not answer each of the Claimant's 30 questions in turn. That was because he thought he had agreed with the Claimant to group them into four higher level issues and address those issues. As explained above, the Tribunal accepted his evidence about that. Mr Semley was trying to resolve the issues of concern to the Claimant in a practical and pragmatic way which seemed to the Tribunal entirely appropriate. The burden of proof does not shift. In any event, the Tribunal accepted Mr Semley's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.22 Mr Semley did not fail to investigate the Claimant's complaint that she was being discriminated against with no supporting reasons. He pressed her during their meeting to explain to him why she thought she had been discriminated against but she simply referred him to her list of questions. That list of questions did not provide the type of information required. What Mr Semley needed was witnesses, examples of people treated differently or information that tended to suggest that. He investigated as best he could in the circumstances. He dealt explicitly in the outcome letter with the complaint of discrimination in respect of each of the high-level issues the Claimant raised. He explained why he reached the conclusions he did. The burden of proof does not shift. In any event, the Tribunal accepted Mr Semley's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.23 Mr Semley did not provide information about the people who did not have a locker, the dates they started their employment or any grievances raised by such people. It was the Claimant's grievance that prompted the audit of lockers and led to the creation of the spreadsheet the Tribunal was shown. It was a work in progress at the time of Mr Semley's investigation. The Claimant did not name anybody else who did or did not have a locker, or who had raised a grievance about this, whose circumstances Mr Semley could investigate. The burden of proof does not shift. In any event, the Tribunal accepted Mr Semley's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.24 Mr Semley did provide a locker for the Claimant. He did explain why she did not previously have one: the ongoing problems with locker allocation and the need for improvements in the process. The Claimant's grievance did say that she had made repeated requests for a locker, but she did not tell Mr Semley to whom she had made requests or when, so that he could investigate that. The burden of proof does not shift. In any event, the Tribunal accepted Mr Semley's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.25 See 23 and 24 above.

83.26 Mr Semley explained that the Respondent no longer had the shift patterns or logged-in data for 26 April 2019. The Claimant's timesheet did not show overtime for that date. He had noted that she had been paid for overtime on other occasions. The Claimant did not provide him with the emails or information about raising this with her managers that she provided to the Tribunal. If she did not tell him about something, it was hard for him to investigate it. The grievance suggested it had been raised with Mr Lewin and Mr Ghulam. Mr Lewin had left. Mr Semley did ask Mr Ghulam about it. On the information provided by the Claimant, it is difficult to see what else Mr Semley could have done apart from investigate the records the Respondent held about the Claimant's overtime. In the absence of records, Mr Semley accepted what the Claimant said and authorised the payment of eight hours at single rate. The burden of proof does not shift. In any event, the Tribunal accepted Mr Semley's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.27 See 21 above.

83.28 Mr Semley did not explain explicitly in the grievance outcome letter why Ms Platts had not been referred for a conduct investigation. He explained why he had concluded that it was reasonable for the Claimant to be referred for one. Mr Semley told the Tribunal that the Claimant's version of events was very different from Ms Platts'. There were no witnesses and nothing to say whose version was right. He felt that it was legitimate for Ms Platts to challenge behaviours that were not right. He did not know if she did it in the right way or not. He thought that the best way to address the two different versions of events in those circumstances was a mediation session. He noted that the Claimant was not referred to a conduct investigation because of the way she acted on the floor, it was for refusing to remove her coat and then leaving without authorisation. The Tribunal accepted that evidence. Mr Semley was addressing a grievance, not

dealing with disciplinary issues. The reason he addressed the Claimant's allegations about Ms Platts by recommending a mediation session was because there were two differing versions and no other witnesses to say who was right. That had nothing to do with the Claimant's race or the fact she had made discrimination complaints.

83.29 See 20 and 21 above.

83.30 See 28 above.

Overall, the Tribunal had no hesitation in finding that Mr Semley did not treat the Claimant less favourably because of her race or victimise her for complaining of race discrimination. On the contrary, he came across from the documents and in his evidence to the Tribunal as someone who was trying his utmost to persuade the Claimant to engage with him and help him to understand why she felt she had been discriminated against, and who was trying to provide practical, concrete resolutions to the Claimant's complaints. He was limited in what he could do by the Claimant's lack of engagement.

Complaints against Mr Barquero

83.31 Mr Barquero did not reject the Claimant's grievance appeal without supporting reasons. He provided a detailed letter addressing each of her questions to the extent possible. The treatment complained of did not happen.

83.32 Mr Barquero did not fail to investigate the Claimant's complaint that Mr Semley's own conduct was discrimination or victimisation. He did not expressly ask Mr Semley if that was the case, but that is unlikely to be an effective way of investigating such a complaint because a perpetrator of discrimination would be unlikely to admit it. Mr Barquero dealt with this part of the complaint by investigating why Mr Semley approached the grievance as he did and by addressing the underlying complaints in the grievance point by point. Mr Barquero did not expressly state that he had concluded that Mr Semley did not discriminate against or victimise the Claimant, but he expressed a general conclusion that the Claimant had not been discriminated against in any respect, and he concluded that all Mr Semley's outcomes were fair and reasonable. The underlying premise of the complaint of discrimination and victimisation against Mr Semley is that they were not. That premise was rejected and it is plain that Mr Barquero rejected the allegation of discrimination and victimisation against Mr Semley. The burden of proof does not shift. In any event, the Tribunal accepted Mr Barquero's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.33 See 32 above.

83.34 Mr Barquero did not provide the Claimant with all the stage 1 grievance documents within 7 days of 16 January 2020. That is because the request was not addressed to him and it was not his responsibility to deal with it. The 7 day deadline was the Claimant's own deadline, it did not come from any policy. The request was addressed to Ms Hawke. She did not provide the documents because she misunderstood the Claimant's request. Mr Barquero did provide the relevant documents when he sent the appeal outcome. It appears that one document was omitted but that was no doubt

simply an oversight. The Tribunal accepted that it was not because of discrimination or a cover up.

83.35 Mr Barquero did conclude that not all the notes from the initial investigation were scanned. That was correct. He noted when considering the appeal that reference was made by Mr Semley to a meeting with Mr Ghulam. He properly investigated that, and was able to obtain a copy of the notes from Mr Semley, who forwarded him an email from OSS. The burden of proof does not shift. In any event, the Tribunal accepted Mr Barquero's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.36 Mr Barquero did investigate and give reasons why Mr Semley had not answered each of the Claimant's 30 questions. He said expressly in his appeal outcome letter that this was because Mr Semley had agreed with the Claimant to group the questions into 4 main headings. The treatment complained of did not happen.

83.37 Mr Barquero did answer the Claimant's questions so far as possible, and did provide reasons for his conclusions. He did provide supporting investigation documents. He could not provide documents that did not exist. The treatment complained of did not happen.

83.38 Mr Barquero did not provide information about the people who did not have a locker, their race or any grievances raised by such people. He explained that an audit was underway and that it could not be shared with the Claimant for GDPR/compliance reasons. The Claimant did not name anybody else who did or did not have a locker, or who had raised a grievance about this. The burden of proof does not shift. In any event, the Tribunal accepted Mr Barquero's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.39 Mr Barquero did not fail properly to investigate the Claimant's concerns. He either answered them, or explained why it was not possible to reach a conclusion. The Tribunal considered that his detailed outcome letter showed careful and detailed consideration of each complaint to the extent possible. Mr Barquero was trying to address each of the Claimant's concerns, not trying to cover anything up. He was limited in his ability to do so by her refusal to engage with him. The burden of proof does not shift. In any event, the Tribunal accepted Mr Barquero's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

83.40 Mr Barquero did not simply accept the evidence of witnesses other than the Claimant. In a number of respects, he noted in his appeal outcome letter that after speaking with Ms Platts there was no evidence to suggest that something had happened as the Claimant alleged. But the context is the Claimant's refusal to meet or speak to Mr Barquero, so he could not ask her about her version of events. He referred repeatedly to the fact that the Claimant had not provided any other evidence relating to these allegations that he could investigate further. That meant he had a bare, written allegation from the Claimant, no third party witnesses or other supporting evidence identified by the Claimant, and a different version of events given in person by Ms Platts. There is nothing to suggest that a white comparator would have been treated any differently in those circumstances. The burden of proof does not shift. In any event, the

Tribunal accepted Mr Barquero's evidence that the Claimant's race and the fact that she had complained of race discrimination had no impact on his treatment of her.

Again, overall the Tribunal had no hesitation in finding that Mr Barquero did not in any respect treat the Claimant detrimentally because of her race or complaints of discrimination. It was clear to the Tribunal that he had done his best to investigate all the Claimant's points, filling in gaps where he saw them, and attempting to answer all of her detailed questions. He was hampered in his ability to investigate further by the Claimant's lack of engagement, but he did his best to investigate all elements of the appeal, including the discrimination aspects.

Complaints against Ms Hawke

83.41 Ms Hawke did fail to provide the Claimant with all the grievance investigation documents within 7 days of her request in her appeal letter. For the reasons set out above, the Tribunal found that this was because Ms Hawke misunderstood the Claimant's request and not because of her race or because she had made complaints of discrimination.

84. For these reasons, none of the complaints of direct discrimination or victimisation is well-founded.

S-J Davies

_____

Employment Judge Davies
18 February 2021
Date: 23/02/21

ANNEX

A. Time limits

1. Were all of the Claimant's complaints presented within the time limits set out in s 123(1)(a) & (b) Equality Act 2010? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred; etc.

2. The Respondent contends that the Claimant's claim in relation to a failure to pay overtime as set out below is out of time. It does not contend that any other part of the Claimant's claim is out of time.

B. Direct race discrimination s 13 Equality Act 2010

1. The Claimant relies on the race of "black skin colour" or "dark skin colour";

2. Has the Respondent subjected the Claimant to the treatment set out in schedule 1?

3. Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

4. If so, was this because of the Claimant's race?

<u>Comparators</u>

5. The Claimant relies on hypothetical comparators (who are not "black skin colour") and/or the following actual comparators:

    5.1 Jessica Thomson who was employed in 2017 (white female) was allocated a locker at the time. Both Jessica Thomson and Claimant had an induction the same period.

    5.2 Liam Murphy started in 2017 (white) was allocated a locker at the time.

    5.3 Harry Page was employed in 2017 (white) was allocated a locker at the time.

    5.4 Pierce who was employed in 2017 (white) was allocated a locker at the time.

    5.5 Bliss Rimington, who was employed in 2018 (white) was allocated a locker in 2018.

    5.6 Pierce; Claimant pointed him out with similar looking but sleeveless puffer coat, Ms Joanne Platts said that they were in "dress down attire."

5.7 Ms Joanne Platts: Ms Platts' complaint against Claimant was investigated by Mr Habeeb Ghulam but Claimant's complaints and grievances were not investigated.

5.8 Habeeb Ghulam: Claimant's complaints and grievances against Habeeb Ghulam were not investigated by Daniel Semley.

5.9 Daniel Semley: Claimant's complaints and grievances against Daniel Semley were not investigated by Callum Barquero.

C. Victimisation s 27 Equality Act 2010

6. Did the Claimant do a "protected act" or did the Respondent believe that the Claimant had done or might do a protected act? The Claimant relies on the protected acts set out in schedule 2.

7. Did the Respondent subject the Claimant to a detriment/s as set out in schedule 2?

8. If so, was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?

D. Remedy

9. If the Claimant succeeds, in whole or part, the Tribunal will what is the appropriate remedy, taking into account the heads of compensation under the Equality Act 2010.

Schedule 1

The allegations of direct race discrimination are:

General complaints

1. The Respondent failed to allocate a locker to the Claimant until December 2019.

2. The Respondent failed to pay the Claimant overtime in respect of hours worked on 29 April 2019 until January 2020.

Complaints against Joanne Platts

3. When on 19/11/2019, at around 8:30 am Ms Joanne Platts approached Claimant in an aggressive way blaming Claimant for wearing her coat and having her bag which was on the floor, and then persisted to do this, using her hands and pointing her fingers around and around.

4. When on 19/11/2019, to avoid further aggravation and any direct involve in altercation with Joanne Platts, Claimant decided to hide her bag away so that it was neither on the floor nor in sight; Joanne Platts then persisted with her aggressive blames and relentlessly searched for Claimant's bag.

5. When on 19/11/2019, Joanne Platts then began to say that the coat Claimant was wearing was "not dress code" and when Claimant stated that on a business work

day Ms Platts wore jeans and trainers, and Claimant wore a black pencil skirt, black boots and black turtle neck top and a coat, both outside and inside work. Ms Platts then aggressively added that it was “dress down week” but the coat doesn’t fit the “criteria” of “dress down week.”

6. When Ms Platts persisted in telling Claimant to remove her coat because her coat was not “business appropriate” and disregarded the fact that Claimant had mentioned that she was uncomfortable with the manner she was handling the coat issue and other members of staff (white colleague) with similar looking.

7. When Ms Platts said: if Claimant need to do that, that’s fine for Claimant, Claimant just can’t wear her coat.” Replying to Claimant’s request to allow her to quickly go home and change her clothes to fit the “business attire”.

8. When all the cables on the phone on Claimant’s desk had been completely disconnected (completely pulled out from the phone) and her computer monitor had been switched off by Joanne Platts;

9. When Joanne Platts had noted Claimant’s presence down as AWOL (Absence Without Official Leave - which means that all the work that Claimant will do between this period will not be paid) from 9:35 am to 4:30pm on the online timetable system.

10. When on the Claimant return to work, Joanne Platts approached Claimant and starting to blame and aggravate Claimant by aggressively asking Claimant as to why Claimant was in technical button, which Claimant then replied that Mr Kam had already addressed the AWOL which she processed, and Claimant was here waiting for this to be changed. Joanne Platts neither acknowledged nor commented on what Claimant had just said and ignored Claimant.

11. When a few minutes later Joanne Platts then came back, again in an aggressive manner like before, and began to ask questions and acting completely oblivious to the AWOL she had just processed.

Complaints against Habeeb Ghulam

12. From 26 April 2019 to January 2020, continuous failing to pay, my 3.5 hours overtime and failing to take reasonable steps to remedy the business’ failure on receipt of emails and complaints raised during the meeting.

13. When on 19/11/2019, Habeeb Ghulam’s instigation of investigation disciplinary meeting was arranged for a Conduct i.e. for ‘abandonment of duty’ and ‘call avoidance.

14. When during the meeting on 19/11/2019, Claimant was explaining the situation using, her hands, Habeeb Ghulam got extremely angry and said in an aggressive way that “if Claimant continue explaining using her hands, this matter will be escalated to the higher level of management”.

15. When during the meeting on 19/11/2019, Claimant was not given an opportunity to explain herself about the use of her hands which is her common habit, they decided to refer her case to the higher level of management however, Joanne Platts who

aggressively abused Claimant and using her hands and fingers was not put under conduct investigation.

16. When during the meeting on 19/11/2019, all the relevant statements that Claimant mentioned in the meeting was disregarded as Ruth Parkin chose not to write it down and Claimant had to ask for information to be added at the end of the meeting minutes sheet and which some were not added allegedly because the notes taker could not recall Claimant making some statement.

17. When on 19/11/2019, Claimant was isolated in room CS4, for up to 30 minutes, with no further instruction besides Habeeb Ghulam saying that "claimant can't leave because her under investigation, and she can't get her bag because then she might run away from this room and they need to speak to PAS."

18. When on 19/11/2019, Claimant was sat there unable to move and in dire need for the toilet and which at this point Claimant left the meeting room to head to the toilet, she was then aggressively confronted by Habeeb Ghulam who then aggressively asking Claimant where Claimant was heading to, and after saying she was going to the toilet, Habeeb Ghulam then said Claimant was to ask for permission, and after Claimant asking him for permission to go to the toilet, he then proceeded to tell Claimant off, in front of the woman's toilet that "it is standard procedure that Claimant could be left in isolation for up to 2 hour without leaving." In presence of Ruth Parkin.

19. Failure to provide Claimant with a copy of the business policy or employees regulation about keeping employee isolated to the meeting room for up to 2 hour without leaving the room and when employee is isolated in the meeting room, he/she needs to ask for the permission to go to the toilet.

Complaints against Daniel Semley

20. On 14/01/2020, Daniel Semley's rejection of the Claimant's grievance with no supporting reason;

21. Daniel Semley's failure to investigate with no supporting reason and then provide explanation to Claimant's request for reason of the treatments (see my letter on 16/12/2019):

    20.1 Why Claimant's repetitive request of a locker or lack of assigning Claimant a locker, having her coat and bag with her has never been escalated to the investigation process including interviewing herself?

    20.2 Why since Claimant has been working at Webhelp on the Vodafone campaign for about 3 years she has never been assigned a locker (this was assigned only on 16/12/2019) despite this being standard procedure for staff, as no coats and bags are allowed on the call floor (see appeal letter on 16/01/2020)?

    20.3 Why from 26 April 2019, Claimant's 1.5 hours from 8:00 am to 11:00 am and 2.0 hours from 11:00 am to 4:30 pm of overtime had never been paid?

20.4 Why on 19/11/2019 did Joanne Platts approached Claimant in an aggressive way blaming Claimant for wearing her coat and having her bag which was on the floor; this happened whilst on a call to a customer and she persisted to do this?

20.5 Why on 19/11/2019 didn't Joanne Platts wait until the end of Claimant's call with the customer and then call Claimant to a private room?

20.6 Why was Joanne Platts using her hands and pointed her fingers around and around as Claimant continued to answer calls?

20.7 Why Joanne Platts persisted with her aggressive blames and relentlessly searched for Claimant's bag despite of the Claimant, hiding her bag away so that it was neither on the floor nor in sight?

20.8 Why did Joanne Platts say that the coat Claimant was wearing was "not dress code"?

20.9 Why did Joanne Platts aggressively add that it was "dress down week" but the coat doesn't fit the "criteria" of "dress down week." This when replying to Claimant statement that on a business workday she wore jeans and trainers, and Claimant wore a black pencil skirt, black boots and black turtleneck top and a coat, both outside and inside work?

20.10 Why when Claimant had point out other members of staff with similar looking but sleeveless puffer coats, Joanne Platts said that they were in "dress down attire" and why Claimant's dress was not down attire?

20.11 Why Joanne Platts persisted in telling Claimant to remove her coat because her coat was not "business appropriate" and why other members of staff with similar looking but sleeveless puffer coats, was "business appropriate"?

20.12 Why did Joanne Platts disregard the fact that Claimant had mentioned that Claimant was uncomfortable with the manner she was handling the coat's issue?

20.13 Why all the cables on the phone on Claimant's desk had been completely disconnected (completely pulled out from the phone) and Claimant's computer monitor had been switched off by Ms Joanne Platts despite of knowing that Claimant was to return to work?

20.14 Why did Joanne Platts approach Claimant and starting to blame and aggravate Claimant by aggressively asking Claimant as to why Claimant was in technical button?

20.15 Why Joanne Platts did ignore Claimant at all and left Claimant after replying to her that Mr Arifeen had already addressed the AWOL which Ms Platts processed, and Claimant was there waiting for this to be changed?

20.16 Why did Joanne Platts come back to Claimant a few minutes later, again in an aggressive manner like before, and began to ask questions and acting completely oblivious to the AWOL she had just processed?

20.17 Why Claimant was put under investigation for 'abandonment of duty' and 'call avoidance' and why Joanne Platts was not put under investigation for choosing to abuse the Claimant?

20.18 Why Claimant was put under investigation for 'abandonment of duty' and 'call avoidance' which was cause by the Managers' failure to properly complete their duties by failing to allocate Claimant a locker and after Joanne Platts' racial abused Claimant. Joanne Platts and do not understand what could be offensive to Claimant as a black employee to be humiliated for no good reason?

20.19 Why Joanne Platts didn't understand that as a current employee of 3 years, Claimant never have left her shift part way through and gotten and abandonment of duty nor have Claimant called avoided until of being abused on 19/11/2019?

20.20 If Claimant had abandoned her duty, why did Claimant then come back to work particularly; she could have abandoned her duty due to stress causing to her by Joanne Platts.

20.21 When Habeeb Ghulam had an investigation meeting with Joanne Platts and to provide Claimant with copy of these note prior or at the start of the grievance meeting on 17/12/2019.

20.22 Why on 19/11/2019, during the meeting Habeeb Ghulam got extremely angry and said in an aggressive way that "if Claimant continue explaining using her hand, this matter will be escalated to the higher level of management" when Claimant was explaining the situation using her hands?

20.23 Why on 19/11/2019, during the meeting Claimant was not given an opportunity to explain herself about the use of her hands and why did they decide to refer Claimant's case to the "higher level of management"?

20.24 Why Ruth Parkin, all the relevant statement that Claimant mentioned during the meeting on 19/11/2019 were disregarded by Ruth Parkin and why she chose not to write it down and Claimant had to ask for information to be added at the end of the meeting minutes sheet despite of not fully remembering all what Claimant stated?

20.25 Why did Habeeb Ghulam in his outcome of the investigation referred Claimant's case to the "higher level of management" and why Joanne Platts' racial abuse toward Claimant was not investigated; not referred to the "higher level of management"?

20.26 Why did Habeeb Ghulam accept Joanne Platts' evidence and why Claimant's evidence were not accepting leading him to refer Claimant's case to the "higher level of management"?

20.27 Why Claimant was isolated in room CS4, for up to 30 minutes by Habeeb Ghulam?

20.28 Why did Habeeb Ghulam say that: Claimant can't leave because she was under investigation, and Claimant can't get her bag because then she might run away from this room and they need to speak to PAS; being isolated for up to 30 minutes?

20.29 Why Claimant was aggressively confronted by Habeeb Ghulam (when aggressively asking Claimant where she was heading to and saying she could be left in isolation for up to 2 hour without leaving in presence of Ruth Parkin) when Claimant left the meeting room to head to the toilet?

22. Daniel Semley's failure to investigate Claimant's complaint that she is being discriminated on the grounds of her race, which is black with no supporting reason (see Claimant's letter on 16/12/2019).

23. Daniel Semley's conclusion that at present the business has a number of people who do not have a locker without providing date when those people started their employment, grievances evidence being raised by those people (highlight names of colleagues those individuals using black-marker for the reasons of data protection) and their National origin and/ or Nationality.

24. Daniel Semley's failure to provide reason why now he has secured a locker for Claimant and why this has not been done prior Claimant's grievance despite Claimant's several requests?

25. When Daniel Semley concludes that he can find no evidence to suggest that Claimant's race has been a factor in any issues Claimant has in regard to a locker, with no supporting investigation documents (as per Claimant's letter on 16/12/2019).

26. When Daniel Semley concludes that he can find no evidence that Claimant's race has any bearing on Claimant's overtime pay, particularly, he has failed to investigate Claimant's case by failing to answer to all the grievance meeting questions: why from 26 April 2019, Claimant's 1.5 hours from 8:00 am to 11:00 am and 2.0 hours from 11:00 am to 4:30 pm of overtime has never been paid for almost 9 months?

27. When Daniel Semley states that he can find no evidence to suggest that Claimant's race impacted the request or how this situation was handled, particularly, he has failed to answer to Claimant's questions raised in respect to Joanne Platts' conducts on 19/11/2019 (as per Claimant's letter on 16/12/2019).

28. When Daniel Semley concludes that he believes the investigation conducted was reasonable and followed their Conduct and Capability Policy and Procedure but has not given the reason why Joanne Platts' conducts on 19/11/2019, was not subjected to investigation under the same Conduct and Capability Policy.

29. When Daniel Semley concludes that he can find no evidence to suggest that Claimant's race has impacted the way the investigation was held with no supporting reason of his failure to provide Claimant with the requested explanation of the

treatments which Claimant has been subjected (as per Claimant's letter on 16/12/2019).

30. When Daniel Semley fails to give reason why no disciplinary action was not instigated against Joanne Platts for her racist conduct on 19/11/2019 and/or using her hands and pointing her finger around and around when Claimant was answering a call.

Complaints against Callum Barquero

31. Callum Barquero's rejection of Claimant's grievance appeal with no good supporting reason with the express intention of covering up acts of race discrimination and/or protecting perpetrators of race discrimination and/or to protect the interests of the Respondent.

32. Callum Barquero's failure to investigate Claimant's complaint that Daniel Semley's decision itself had constituted an act of racial discrimination and/or victimisation by way of discrimination (see Claimant's appeal letter on 16/01/2020) with no supporting good reason.

33. Callum Barquero's failure to investigate Claimant's complaint that Daniel Semley's handling of Claimant's Stage 1 Grievances procedure is itself had constituted act of racial discrimination and/or victimisation by way of discrimination(see Claimant's appeal letter on 16/01/2020) with no supporting good reason.

34. Callum Barquero's failure to provide Claimant with the requested all stage 1 grievance investigatory documents (notes of the meetings, statements being obtained) within 7 days from the date of receiving Claimant's appeal letter dated and sent by email on 16/01/2020;

35. When on 17/03/2020, Callum Barquero concludes that his investigations have determined that not all notes from the initial meeting were scanned and why these investigation documents were not scanned or were not kept safely.

36. Callum Barquero's failure to investigate and then give reason why of Daniel Semley's failure to investigate and then provide Claimant with answers related to Claimant's 30 written questions if the reason behind his failure was not to cover up racial discrimination conducts committed by those Claimant had raised a formal grievance against the business.

37. When on 17/03/2020, Callum Barquero provided Claimant with his findings related to all of Claimant's remaining concerns by answering each of Claimant's questions (which were ignored by Daniel Semley) with no supporting investigation documents and with no supporting reason.

38. When Callum Barquero conclude that there are currently many employees across both site who are without a locker without providing unsupported grievances evidence being raised by those people (highlight names of colleagues those individuals using black-marker for the reasons of data protection) were not provided; their National origin and/ or Nationality.

39. Callum Barquero's failure to properly investigate Claimant's concerns raised in Claimant's appeal letter leading to unreasonable findings (refer to points 4, 5, 6, 8, 8.1-8.3, 9,10, 11, 11.1-11.17, 12, 12.1-12.2;13, 14, 14.1-14.13,15, 16, 16.1-16.2 of ET1) with no good supporting reason with the express intention of covering up acts of race discrimination and/or protecting perpetrators of race discrimination and/or to protect the interests of the Respondent.

40. Callum Barquero's failure to give any reason why where there was a conflict of evidence, he accepted the evidence of witnesses other than Claimant's evidence and did not accept Claimant's evidence at all.

Complaints against Cheryl Hawke;

41. Cheryl Hawke's failure to provide Claimant with the requested all stage 1 grievance investigatory documents (notes of the meetings, statements being obtained) within 7 days from the date of receiving Claimant's appeal letter dated and sent by email on 16/01/2020.

Schedule 2

Victimisation committed by Daniel Semley

Protected Acts:

1. Claimant's complaints that she is being discriminated on the grounds of her race, which is black, complaint raised in her grievance/complaint letter dated 20/11/2019.

Detriments:

2. Are the acts of race discrimination or complaints of race discrimination committed by Daniel Semley as set out in schedule 1.

Victimisation Claim committed by Cheryl Hawke

Protected Acts:

3. Claimant's complaints that she is being discriminated on the grounds of her race, which is black, complaint, raised in her grievance/complaint letter dated 20/11/2019.

4. Claimant's complaints that Daniel Semley's handling of Claimant's Stage 1 Grievances procedure is itself had constituted act of racial discrimination and/or Victimisation by way of discrimination. Secondly, Daniel Semley's decision itself had constituted an act of racial discrimination and/or Victimisation by way of discrimination, raised in Claimant's appeal letter on 16/01/2020.

5. Claimant's complaint that Daniel Semley's failure to investigate and then provide Claimant with answers related to Claimant's 30 written questions in order to cover

up racial discrimination conducts committed by those she has raised a formal grievance against, raised in Claimant's appeal letter on 16/01/2020.

Detriments:

6. Are the acts of race discrimination or complaints of race discrimination committed by Cheryl Hawke as set out in schedule 1.

Victimisation Claim committed by Callum Barquero

Protected Acts:

7. Claimant's complaints that she is being discriminated on the grounds of her race, which is black, complaint, raised in her grievance/complaint letter dated 20/11/2019.

8. Claimant's complaints that Daniel Semley's handling of Claimant's Stage 1 Grievances procedure is itself had constituted act of racial discrimination and/or Victimisation by way of discrimination. Secondly, Daniel Semley's decision itself had constituted an act of racial discrimination and/or Victimisation by way of discrimination, raised in Claimant's appeal letter on 16/01/2020.

9. Claimant's complaint that Daniel Semley's failure to investigate and then provide Claimant with answers related to Claimant's 30 written questions in order to cover up racial discrimination conducts committed by those she has raised a formal grievance against, raised in Claimant's appeal letter on 16/01/2020.

Detriments:

10. Are the acts of race discrimination or complaints of race discrimination committed by Callum Barquero as set out in schedule 1.