EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mrs Marie-Antionette St Joseph **v** **Citywest Homes Services Limited**

Heard at: London Central **On**: 11 - 19 January 2021

Before: Employment Judge E Burns
Mr David Carter
Mr Paul Secher

Representation

For the Claimant: In person

For the Respondent: Mr S Harding (counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that all of the claimant's claims fail and are dismissed.

REASONS

CLAIMS AND ISSUES

1. This is a claim arising from the claimant's employment with the respondent as a Housing Services Adviser. Her employment began on 5 March 2018 and continued until her dismissal by the respondent. There is a dispute between the parties as to the date when the claimant's employment ended.

2. The claimant presented claim number 2200116/2019 to the tribunal on 10 January 2019. It included a claim for interim relief that was held by the tribunal to have been presented out of time. Following a period of early conciliation from 19 to 20 February 2019, she presented claim number 2200609/2019 to the tribunal on 21 February 2019. The claims were consolidated at a case management hearing on 8 March 2019.

3. It is notable that the claimant appealed against the decision to reject her claim for interim relief to the EAT and then to the Court of Appeal. The appeals were rejected on the basis that the correct date of termination was 23 November 2018.

4. The claims raise the following causes of action:

- Detriments and dismissal because of a protected disclosure
- Direct discrimination on the grounds of age and marital status
- Harassment on the grounds of age
- Victimisation
- Unpaid wages, holiday pay and notice pay

5. The claimant relies on a "Schedule of Acts of Discrimination" which contains a large number of separate factual allegations. Most of these were said to arise under several of the above causes of action. The Schedule is attached to this judgment. The types of claim being pursued in relation to each factual allegation are as noted in the Schedule, subject to the fact that harassment due to marital status is not a cause of action.

6. There are three allegations in the Schedule which we do not need to determine, following a preliminary hearing on 12 and 13 August 2019:

(i) 13.06.18 allegation.
(ii) 31.08.19 allegation.
(iii) 12.09.18 allegation.

The claimant wishes these to be considered as background factual matters, however.

7. The issues, agreed at that preliminary hearing, are as follows:

Time limits / limitation issues

(i) Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") and sections 23(2) to (4) of the Employment Rights Act 1996 ("ERA")? Dealing with this issue may involve consideration of subsidiary issues including: when the treatment complained about occurred; whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether it was not reasonably practicable for a complaint to be presented within the primary time limit; whether time should be extended on a "just and equitable" basis.

(ii) Given the date the second claim form was presented and the dates of early conciliation, any complaint about something that happened before 20 November 2018 may potentially be out of time, so that the tribunal may not have jurisdiction to deal with it. If the claimant's appeal is successful, and/or the 10 January 2019 claim form is deemed to have been accepted, then it will be necessary to decide what effect (if any) that has on any time limit issues.

Remedy for unfair dismissal

(iii) If the claimant was automatically unfairly dismissed and the remedy is compensation:

a. What adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been fairly dismissed for a different reason? See: Polkey v AE Dayton Services Ltd [1987] UKHL 8; paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825; [W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604];
b. Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?
c. Did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

Public interest disclosure (PID)

(iv) Did the claimant make one or more protected disclosures (Part IVA ERA). The claimant relies on a claim form submitted to the employment tribunal circa 26 January 2018 (2200265/2018) against a previous employer. The claimant alleges that her disclosure was of financial fraud and financial malpractice at that previous employer.

(v) The respondent defends the claim on the following basis in particular:

a. It makes no admissions that the 26 January 2018 (2200265/2018) claim form was a protected disclosure.
b. It makes no admission of knowledge of the protected disclosure (if any)
c. It denies that it dismissed the Claimant because of any protected disclosure, or anything connected to the 26 January 2018 (2200265/2018) claim form, and asserts it dismissed her for conduct.

(vi) What was the principal reason the claimant was dismissed and was it that s/he had made a protected disclosure?

(vii) Did the respondent subject the claimant to any detriments, as set out in the Claimant's Schedule? Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the claimant as a matter of law.

(viii) If so was this done on the ground that she made the protected disclosure mentioned in paragraph (iv) above?

EQA, section 13: direct discrimination because of marital status

(ix) Has the respondent subjected the claimant to the treatment identified in her Schedule as amounting to discrimination because the Claimant is married?

(x) 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? The Claimant relies on comparators who are not married (whether divorced, or never married).

(xi) If so, was this because of the claimant's marital status?

EQA, section 13: direct discrimination because of age

(xii) Has the respondent subjected the claimant to the treatment identified in her Schedule as amounting to discrimination because of age?

(xiii) 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? The claimant relies on comparators in their 20s or 30s (the Claimant being in her 40s).

(xiv) If so, was this because of the claimant's age?

(xv) If so, has the respondent shown that the treatment was a proportionate means of achieving a legitimate aim?

EQA, section 26: harassment related to age.

(xvi) Did the respondent engage in the conduct identified in her Schedule as amounting to harassment related to age:

(xvii) If so was that conduct unwanted?

(xviii) If so, did it relate to the protected characteristic of age?

(xix) Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Equality Act, section 27: victimisation

(xx) Did the claimant do a protected act *and/or* did the respondent believe that the claimant had done or might do a protected act? The claimant relies upon the following:
   a. a claim form submitted to employment tribunal circa 26 January 2018 (2200265/2018) against a previous employer.
   b. a grievance submitted to respondent in July 2018

(xxi) Did the respondent subject the claimant to any of the detriments as alleged in the Claimant's Schedule to be acts of victimisation?

(xxii) 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?

Unpaid annual leave – Working Time Regulations

(xxiii) When the claimant's employment came to an end, was she paid all of the compensation she was entitled to under regulation 14 of the Working Time Regulations 1998?

(xxiv) What was the claimant's leave year?

(xxv) How much of the leave year had elapsed at the effective date of termination?

(xxvi) In consequence, how much leave had accrued for the year under regulations 13 and 13A?

(xxvii) How much paid leave had the claimant taken in the year?

(xxviii) How many days remain unpaid?

(xxix) What is the relevant rate of pay?

(xxx) How much pay is outstanding to be paid to the claimant?

Unauthorised deductions

(xxxi) Did the respondent make unauthorised deductions from the claimant's wages in accordance with ERA section 13 by not paying the Claimant from 1 October 2018 onwards and if so how much was deducted?

(xxxii) Was the Respondent entitled to withhold pay in all the circumstances?

(xxxiii) Why was the Claimant not at work after 24 September 2018?

(xxxiv) What was the period (if any) for which the Claimant was entitled to be paid after 1 October 2018? If necessary, this may entail making a decision about the date on which the Claimant's contract ended, taking proper account of, amongst other things, the decision of EJ Wisby in March 2019, and the outcome of any appeal against that decision.

Breach of contract

(xxxv) To how much notice was the claimant entitled?

(xxxvi) Did the claimant fundamentally breach the contract of employment? (In other words, did she commit what is sometimes referred to as gross misconduct?) This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the gross misconduct.

(xxxvii) Did the respondent affirm the contract of employment prior to dismissal?

THE HEARING

8. The hearing was a remote hearing. Although the claimant initially objected to this, she decided that she would prefer this format of hearing to a postponement. The form of remote hearing was V: video fully (all remote). A face-to-face hearing was not held because it was not practicable due to the ongoing COVID – 19 pandemic and all issues could be determined in a remote hearing.

9. The tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net

10. From a technical perspective, there were a few minor connection difficulties from time to time. We monitored these carefully and paused the proceedings when required.

11. The participants were told that it was an offence to record the proceedings.

12. For the claimant we heard evidence from her. For the respondent we heard evidence from:

- Mr Ray Allard, Housing Services Manager – the claimant's line manager
- Mr Antony Berge, Human Resources Business Partner
- Mr Chris Parry – Duty Manager
- Ms Augustina Odiadi, Housing Services Officer
- Ms Elizabeth Waine, Area Services Manager (Mr Allard's line manager)
- Ms Kanayo Nwosu, Housing Services Officer
- Mitin Patel, Area Estate Services Manager

13. The tribunal ensured that each of the witnesses, who were all in different locations, had access to the relevant written materials which were

unmarked. We were satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

14. There was an agreed trial bundle of 1062 pages. It was not a well-ordered bundle and contained a number of duplicate documents. We were satisfied that it contained all of the documents that the claimant had asked to be included. She was asked repeatedly to check if there was anything missing. In addition, some new documents from the claimant were admitted during the course of the hearing. We read the evidence in the bundle to which we were referred and refer to the page numbers of key documents that we relied upon when reaching our decision below.

15. The tribunal explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the claimant was not legally disadvantaged because she was a litigant in person.

16. During the course of the hearing, the claimant alleged that she was dismissed for being absent from work at a time when she was exercising a statutory right to protect herself from harm. This suggests a claim for automatic unfair dismissal under section 100(1)(d) of the Employment Rights Act 1996. The claimant did not seek to amend her claim to include such a claim, which would now be very out of time, and it was not discussed during the hearing. We have, however, made some findings that would be relevant to this claim and highlight this below.

FINDINGS OF FACT

Introduction

17. Having considered all the evidence, we find the following facts on a balance of probabilities. The parties will note that not all the matters they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

18. As explained further below, this is not the first employment tribunal claim that the claimant has brought against an employer. She brought proceedings against her employer before the respondent, Westway Housing Association ("WHA") in January 2017. We know about that claim because the claimant relies on the claim form as a protected disclosure and a protected act in this litigation. We have therefore been provided with a copy of the claim form, some correspondence and the judgment.

19. When considering this claim, we have been very careful not to be influenced by the findings in the WHA claim. We have, however, been struck by some of the similarities between the cases.

20. It is notable that in the WHA case, the tribunal found that the claimant misinterpreted very normal things that happened or were said to her. They observed that in some cases the claimant's interpretation of events was so unusual as to be inherently unlikely to be correct, even taking account that unusual things can and do occur in the workplace. The tribunal concluded

that the claimant had constructed an overarching conspiracy theory that came to dominate her interpretation of various incidents, despite evidence to the contrary.

21. This was also a striking feature in this case, although here the claimant put forward several connected theories. Time and time again the claimant refused to entertain the idea that she might be wrong about her theories. This was despite there being a lack of evidence supporting her position and considerable contrary evidence.

22. In this case the claimant was convinced:

- Managers at the respondent (Ms Waine in particular) knew about her tribunal claim against WHA from an early stage in her employment and orchestrated a campaign to force her out, both by their own direct actions and by using other colleagues.

- Ms Waine harboured resentment towards the claimant because the claimant was married, but nevertheless was good at her role

- Ms Nwosu and Ms Odiadi also harboured resentment against the claimant because she was married. According to the claimant this was rooted in their Nigerian heritage

- Ms Waine either actively used Ms Nwosu to conduct an orchestrated campaign of harassment against the claimant or created a culture which allowed Ms Nwosu to do this

- Ms Nwosu had much to gain from this involvement because the claimant was assigned to a geographical patch which she used to manage and wanted back

- Ms Waine and Ms Nwosu dominated the behaviour of Mr Allard who was unable to stand up to them

- Ms Waine and members of the claimant's team had wanted Mr Allard to recruit a younger person and so had also taken against the claimant because of her age

- When the claimant submitted a grievance, the respondent did everything they could to try and "shut" her and it down. This extended to the respondent's most senior managers with the end result that the claimant was dismissed.

23. In contrast to the claimant's evidence, the respondent's witnesses gave their evidence far less dogmatically. In many cases, they could not recall the incidents about which the claimant complains, but were prepared to listen to her provide more detail to see if this assisted with their recollection. When asked about matters they did recall, they did not hesitate to offer an explanation.

The Claimant's Diary Entries and July Grievance

24. The bundle contained several diary entries written by the claimant. She explained that she made diary entries when things happened at work that caused her to have strong feelings. It is therefore informative that she did not make diary entries in respect of a number of matters that are included in her schedule, despite telling us that they went straight to the "*in-box of her heart*" and caused her considerable upset and distress.

25. The claimant made a complaint about her treatment at work in July 2018. This was initially in the form of an email sent on 19 July 2018 to HR (with Mr Allard and Ms Waine copied) (566 – 569) but evolved into a formal grievance 31 July 2018 (581 – 590). We have also found it informative to consider which of the incidents were included in the grievance.

Claimant's Employment with the Respondent

26. The claimant commenced her employment with the respondent on 5 March 2018. She reported to Mr Allard, Housing Services Manager who in turn reported to Ms Waine, Area Services Manager. Both are operational rather than strategic roles.

27. The claimant is a married woman. At the time she worked for the respondent she was 42.

28. The claimant worked as part of a team of ten women. Mr Allard estimated the average age of the team as around the mid-forties. The two youngest members of the team are in their thirties. The marital status of the members of the team varies. The work of housing officers is very busy and extremely demanding.

29. We note that Mr Allard is, and was at all relevant times, married. We did not find out his age, but he has fifty years of working in housing. Ms Waine is and was at all relevant times, married. She has previously been divorced. Ms Nwosu and Ms Odiadi are, and were at all relevant times, single. Ms Nwosu had been married. She is in her late thirties. Ms Odiadi is in her forties.

30. The claimant, Ms Nwosu and Ms Odiadi are of Nigerian heritage, although from different parts of Nigeria. The claimant suggested to Ms Nwosu and Ms Odiadi that Nigerian culture places pressure on women to get married at a young age and that at their ages, they would both be looked on unfavourably because they were not married. They both rejected this as outmoded and inaccurate. Although the claimant believes this, we find Ms Nwosu and Ms Odiadi do not.

31. Mr Allard was part of the panel responsible for recruiting the claimant. Ms Waine was not part of the recruitment process. Mr Allard recalls that prior to the recruitment exercise, the team, which is made up of ten women, joked with him that they wanted him to recruit a "young strapping male." He understood them to be joking because he knew they would expect him to

approach the recruitment exercise correctly and make the decision on the basis of relevant experience.

32. We find that the claimant's recruitment was based on her application and interview before the three-person panel. The respondent received a number of applications from a range of candidates, for two vacancies that it had. The candidates were both male and female and a range of different ages. Two women were recruited, based on their experience. The claimant has a long history of working in housing.

Previous Employment and Tribunal Claim

33. Prior to working for the respondent, from 31 July to 2 October 2017, the claimant was employed by WHA. Following the termination of her employment, she brought an employment tribunal claim against WHA for race and sex discrimination (790 – 801). The schedule attached to the claim form also included allegations of fraud. The claim form identifies that the claimant was seeking compensation and a recommendation in connection with her discrimination claims.

34. The claimant was required to attend preliminary hearings on 20 April 2018 and 28 June 2018 in connection with the case. The final hearing took place from 30th October to 6 November 2018. This was during her employment with the respondent. The claimant's claims were dismissed in full (94 – 107). She appealed against this decision to the Employment Appeal Tribunal and to the Court of Appeal, but her appeals were dismissed.

35. The claimant did not tell the respondent about her previous employment with WHA or about the litigation. She is convinced however that they knew about it and from an early stage in her employment. In Ms Waine's case, the claimant says this was from the very beginning of her employment.

36. All of the respondent's witnesses deny having any knowledge of the claimant's employment tribunal claim against WHA during her employment. Mr Allard told us he became aware that the claimant had worked for WHA at around the time of her grievance (July 2018) because someone told him this in passing. We suspect he was mistaken in his evidence on this point, it is not important as we accept his evidence that he did not find out about the WHA claim until after the claimant's employment ended.

37. The claimant asserted that there was a strong connection between WHA and the respondent. We do not accept this.

38. Although both organisations are involved in the provision of residential housing, they operate in very different ways. WHA is a housing association that operates across London whereas the respondent is an Arms Length Management Organisation (ALMO) of Westminster Council set up to manage housing stock owned by Westminster Council. While it is likely that WHA was engaged by Westminster Council to provide housing to some of its residents, there was no direct link between WHA and the respondent. The respondent's witnesses were not aware of WHA as an organisation.

39. The claimant placed great reliance on an email which she was sent on 18 July 2018 from Doreen Cousins which asked her the direct question, "*Marie, did you once work for Westway HA?"* (554) The claimant's case was that although Mr Allard and/or Ms Waine already knew about the claimant's previous employment, they arranged for Ms Cousins to ask the claimant this question to get positive proof in writing without having to reveal their interest in the answer directly.

40. It is notable that the question from Ms Cousins, Allocation Officer for Westminster Council, comes somewhat out of the blue during an email exchange about a tenant. The claimant did not respond to the email so did not ask Ms Cousins her motive for asking the question. Ms Cousins did not pursue an answer when the claimant failed to reply.

41. As far as the claimant was aware, she had not had dealings with Ms Cousins while working at WHA. In our view this is the most likely explanation for why Ms Cousins posed the question, as she recognised the name and asked out of interest. Ms Cousins did not pursue an answer when the claimant failed to reply suggesting it was not an important issue for her. If the respondent's managers had wanted to get written proof of the claimant's employment with WHA we can think of far more obvious ways to do this that did not involve an employee of another organisation.

42. The claimant says that another matter that aroused her suspicions was that during the course of the litigation with WHA, WHA tried to obtain a copy of her contract of employment with the respondent. She resisted providing it to them until she was ordered to do so. She has disclosed some of the relevant correspondence from that litigation. Our reading of it leads us to conclude that WHA's representative was simply seeking a copy of the contract in order to assess the potential value of the claim and the extent to which the claimant had mitigated her loss by obtaining new employment. The claimant was eventually ordered to provide it by 25 September 2018.

43. In addition, the claimant alleges that Mr Allard and/or Ms Waine asked Mr Patel, the respondent's Area Estates Manager to ask the claimant if she had previously worked for a housing association. This was said to have taken place on 12 September 2018 when Mr Patel asked the claimant to accompany him to a client visit.

44. Mr Patel had no recollection of the visit and thought it was unlikely to have been him as he rarely conducts front line visits. He thought it was possible the claimant may have confused him with a member of his team who was front line facing. We have not found it necessary to resolve this factual dispute, because we are satisfied that Mr Patel had never heard of WHA before he was asked to be a witness for the respondent. He told us that he thought Westway was a sports centre. In addition, he barely knew the claimant. In our view, it would be extremely farfetched to conclude that he might have been part of a wider conspiracy.

6 March 2018

45. The first allegation made by the claimant concerns a conversation with LW which the claimant says took place on 6 March 2018. This was the first interaction between LW and the claimant.

46. The claimant says she and LW were separately walking towards the respondent's offices. According to the claimant as they came together, LW greeted her by saying, "*So you are back?*" The claimant responded by asking if there was any reason why she wouldn't be back, to which LW replied, "*It's just that some people wouldn't like it."*

47. The claimant recorded this exchange in her diary (510) saying, "*I hope this is not another WHA drama. AH of Central surprised to see me back on second day. What did she expect? Even if people don't feel they like a role at first instant, this is not what is expected of a senior manager. Comments are so inappropriate. Feel very unwelcomed. No diplomacy. She could not hide her feelings. Will hold my head up nevertheless. Going nowhere this time*."

48. LW could not recall the conversation, but was prepared to accept that she said something of this nature. She explained to us that the role of Housing Services Officer is a demanding one and doesn't suit everyone. She was surprised by the way the claimant interpreted her comments. Although the claimant later raised a grievance that included a complaint about Ms Waine (the "July grievance"), she did not raise this as an issue in that grievance.

15 March 2018

49. On 15 March 2018, Mr Allard returned to the office and, while laughing with some colleagues, said two things to her: –

    "Marie, you should thank your luck you got this job"

    "Before the interview we were told to make selection based on young strapping candidates"

50. The claimant made an entry in her diary about this incident saying:

    "*The staff in this org are quite direct – to your face. [Mr Allard] telling me that I am quite lucky to have a job! What's that all about – not to mention the attitude of [Ms Nwuso]- most challenging"* (511).

51. Mr Allard has no recollection of this incident. When asked about it, he could recall having a conversation with team members about employing a strapping young male before the recruitment process, as noted above, but not afterwards. We find that he did make these comments, but has forgotten them. We make this finding because of the similarity to the conversation before the recruitment process.

52. The claimant suggested that Mr Allard may not have wanted to employ her because of her age, but was overruled by the other two recruitment panel members. She presented no evidence to support this and we reject it. IN

addition, the claimant suggested that an instruction to recruit a young person had come from Ms Waine. She presented no evidence to support this. Ms Waine refuted this allegation. She was not party to or aware of the team's discussion about their ideal candidate.

53. The claimant did not raise a concern about this in her July grievance, even though that grievance included a complaint about Mr Allard.

24 April 2018

54. A number of the allegations which we are required to determine concern Ms Nwosu's behaviour. The claimant alleges that soon after she started work Kanayo Nwosu began to harass her by interfering in her work. This included monitoring her computer display screen and interfering in conversations between the claimant and colleagues or stakeholders.

55. The office in which Ms Nwosu and the claimant worked was open plan, with other members of the team. Their desks were close to each other and there were often shared conversations about work and on occasions, their personal lives.

56. It is notable that the claimant's diary entries include a number of references to Nwosu. The claimant describes her in very disrespectful terms in her diary saying she lacks manners and respect or courtesy for work colleagues and has a "*complex of grandeur*" (534).

57. When asked about Ms Nwosu, Mr Allard told us that he had been her manager since 2017 when he joined the team. She was a long standing employee before this and very experienced.

58. With regard to her approach to customers, colleagues and managers Mr Allard told us that she was "a bit like Marmite". Expanding upon this, he explained that Ms Nwosu can sometimes come across as direct, which some people do not like, but many find engaging because she always told them the truth and there was never any pretence. He said that she was one of the most helpful people he had ever worked with. This had led to her winning an award in 2020 for being the best team member in the whole of Westminster Council's housing department.

59. Ms Waine had worked with Ms Nwosu since 2016. At that time she held an interim position and was not located in the same office as Ms Nwosu. IN 2017, as a result of a restructure, they moved into the same central office.

60. We found Ms Nwosu to be a credible witness. Her evidence was direct and focussed. When she understood what was being asked of her and recalled the incident she did not hesitate to respond. It was obvious that she was bemused by the claimant's interpretation of her actions.

61. Ms Nwosu last manged the patch allocated to the claimant in 2015. She was not moved from the patch because of any concerns or complaints, but because it was time for a change. Several other employees had managed the patch since. Ms Nwosu was very happy with her current patch and we

accepted her evidence when she told us that she had no desire to return to it. Had she wanted the patch back she could have asked for it at the time of the 2017 restructure or before the claimant joined, but made no such request.

62. The first of the incidents we need to consider is from 24 April 2018. According to the claimant, on this date Ms Nwosu is alleged to have made the following comments in relation to the claimant's use of tabs and other formatting in letters.

"What are these things that keep appearing in your letters"

"I don't know who told you, you have to use them"

"And this subject of letter---no one uses them anymore. I don't know why"

"You better change it"

63. The claimant did not make a diary entry about this incident, nor did she raise it as part of her July grievance.

64. We find it likely that Ms Nwosu did comment in passing on the claimant's work on this occasion, but without any malice.

27 April 2018

65. The claimant alleged that Ms Nwosu interfered with her work again on 27 April 2018 when asking her about some keys. Her schedule records that the Ms Nwosu made the following comments to her.

"Why did you take those keys"

"Nyem miah(Ibo)---Give me those keys, give it to me"

66. The claimant did not provide any context for this allegation. In addition, she did not make a diary entry about this incident in or raise it as part of her July grievance. Ms Kwosu had no recollection of the incident.

67. We consider that we have been provided with insufficient evidence to conclude that this incident took place.

30 April 2018

68. According to the claimant, during a discussion about a work-related matter in the open plan office, Ms N was disrespectful about a senior manager. Ms N allegedly said "*Karen doesn't know anything. We know what we are doing."*

69. The claimant also says that Ms Allard and Ms Waine were present in the office but did nothing to correct or intervene when Ms Nwosu was speaking disrespectfully about the manager in the open office.

70. The claimant made a diary entry about this incident as follows:

> *"Start of the week and she is already setting it off [Ms Nwosu] What is most appalling is that 2 managers were listening to the argument but remained indifferent – just carried on with their business – disregarding the remarks. Gosh!!!"* (512)

71. This was the first incident raised by the claimant in her July grievance.

72. None of Ms Nwosu, RA or LW recalled the incident. We find it is likely that Nwosu did make a comment similar to the one attributed to her, but that she doesn't recall it because it was so trivial and part of a work-related discussion about process. We do not find the comment as described by the claimant to be disrespectful. It appears to us to be a comment that recognises that often front line staff have more knowledge of some processes than more senior managers.

Probationary Review

73. The claimant's employment was subject to a six-month probationary period. A very positive review was undertaken by Mr Allard at the three-month stage on 8 May 2018 (844 – 845) which was supported by Ms Waine.

9 and 10 May 2018

74. On 9 May 2018 the claimant says she received a pop-up message on her computer apparently saying "*KNwosu has requested remote control access to your computer".*

75. The claimant did not take a screenshot of the message. However, when she received similar messages on a later date (18 July 2018) she did screenshot them and these were included in the bundle. The claimant said these were a sample only as she had been receiving similar messages on a fairly regular basis but containing different names.

76. The claimant interprets this as being an attempt by Ms Nwosu to access her computer in order to monitor her activities. According to the claimant Ms Nwosu used the names of other members of staff to cover her tracks. The claimant told us that Ms Nwosu would often ask her questions about her activities which she could not have known about unless she was undertaking some form of monitoring.

77. Ms Nwosu denied this allegation and we accept her evidence. She explained that although she considered herself to be an experienced and knowledgeable user of Word and Excel and able to help colleagues when they were struggling, her prowess did not extend to anything like being able to hack IT systems. She was not authorised to access the claimant's laptop, would have no reason to do so and was unable to do this without authority.

78. Having viewed the screenshots of the messages from 18 July 2020, we can see that they are familiar system messages that arise when using Microsoft software.

79. The claimant spoke to Mr Allard about the pop-up message on 10 May 2018. He contacted IT to ask about it as he did not understand what it could be. He sought to reassure the claimant by telling her, "*It could have been a glitch*." This was not a deliberate attempt to cover up for Ms Nwosu because he was responsible for asking Ms Nwosu to monitor the claimant's activities.

80. Our finding is not contradicted by the fact that the claimant later reported the issue to IT who messaged her to say it was possible her laptop had been compromised. We do not know what information the claimant gave IT.

81. Along a similar theme, the claimant accused Ms Nwosu of deliberately hacking into the claimant's profile on the respondent's HR system in order to upload a picture of herself. The claimant complained to Westminster Council's data protection department about this. Despite it being explained to her that the picture is not a photograph but a digital placeholder, the claimant has refused to accept this and told us that the council was covering up the issue. We were provided with a screenshot from which it is very clear that there is a digital placeholder (391 – 394).

16 May 2018

82. The next complaint made by the claimant concerns a conversation between her and Ms Waine when Ms Waine asked the claimant a number of questions about her children.

83. Ms Waine cannot remember the incident but accepts that she is very likely to have asked these questions in order to make conversation with the claimant and develop their relationship.

84. The claimant made a diary entry about the questions in which she complains that the questions were intrusive and that she felt like she was "on a stage" (522). The claimant did not raise this in her July grievance.

11 June 2018

85. The claimant booked a holiday on 11 June 2018. While absent, she experienced an allergic reaction meaning she had to take time off on sickness absence up to and including 18 June 2018 (928). Mr Allard, in line with the respondent's policy, insisted on treating the day off as sickness rather than holiday. He believed this was for the claimant's benefit as it enabled her to get the holiday entitlement back

86. A potential consequence was that the claimant needed to obtain a doctor's certificate rather than self-certify the sickness absence.

87. The claimant insisted on the date being treated as holiday and her final holiday record shows this is what happened (993). The claimant alleges that Mr Allard wanted her to have a longer sickness record in order to give him a reason to terminate her employment, but we do not find this to be the case.

18, 20 and 22 June 2018

88. The claimant makes a number of complaints that Ms Nwosu undertook work on her patch while she was absent. The claimant herself accepted that it was appropriate for a colleague to cover her work. Her complaint was that Ms Nwosu should have told her what she had done when she returned, but did not do so.

89. Although involved in authorising at least one of the transactions, Mr Allard did not take steps to update the claimant about the transactions or ensure that Ms Nwosu did. Ms Nwosu accepts that she did not email the claimant to update her about the activities she undertook. She denies that this was intended to upset the claimant.

90. We note that there was no formal process for such updating. Mr Allard told us that he did not micromanage his team and so did not routinely check that they updated each other on return from holiday.

26 June 2018

91. The claimant accuses Ms Nwosu of deleting notes that she had entered on an Excel spreadsheet keeping a record of people who had requested parking spaces. The claimant did not see her doing this, but assumed it must have been Ms Nwosu because they had had a brief discussion about the person involved a little earlier. Ms Nwosu denies the allegation.

92. The claimant made an entry in her diary about this incident as follows:

> *"[Ms Nwosu] out of order!! So out of order!! Who is she to decide who gets parking on my patch!! This girl is so full of it xxxx. How can she wipe out my notes and just write "not priority." ….there must be something wrong with this woman/girl whatever she is. Very erratic Really hate it when she keeps prawling behind me to see what I am doing, telling me how she thinks I should be setting my margin, butting into my conversations Too much! Too much! Too much!" (*534)

93. The incident was included in the claimant's July grievance. Although the respondent investigated this with its IT department, it found that it was not possible to identify who was responsible.

94. We find that there is insufficient evidence for us to conclude Ms Nwosu deleted the claimant's notes, whether maliciously or otherwise.

28 June 2018

95. The claimant was again absent on annual leave on 28 and 29 June 2018. She had arranged an appointment with an occupational therapist before her leave. While she was away, the therapist rang the office to change the appointment. Ms Nwosu took the call. The therapist suggested times that she was available and so having checked the claimant's diary Ms Nwosu made an appointment for her. She then emailed the claimant as follows:

"Hi

I have a changed this to 1 pm on 4/7/18.
I noticed that you are the library between 10 am to 12 pm.

*Kind regards" (*865)

96. The claimant was upset about this for two reasons. First, she was offended by Ms Nwosu beginning the email with "Hi". The other reason was because the claimant had a surgery (between 10 and 12) that day and felt that an appointment at 1 pm did not allow her enough time between appointments. She did not make a diary entry about the incident, but did include it in her grievance.

97. We find the claimant's objection to the use of "Hi" inexplicable considering we have seen at least one email she wrote to her manager doing the same thing (920).

98. We find that Ms Nwuso did not deliberately reschedule the appointment to cause the claimant difficulty. She checked the claimant's calendar and allowed a whole hour between appointments. She believed this was ample time. She also emailed the claimant to tell her she had done this so that when the claimant returned to work, two days before the appointment, she was aware and could change it if necessary.

3 July 2018

99. A further incident occurred on 3 July 2018, which the claimant claims was an argument that lasted around 20 minutes, between her, Ms Nwosu and Ms Volpi, another member of the team about a work-related matter. According to the claimant, the argument only stopped when Mr Allard intervened.

100. The case concerned a tenant who was refusing contractors access to his home to undertake repairs, unless the respondent agreed to provide him with temporary accommodation. The claimant alleges that Ms Nwuoso tried to convince her that she could arrange temporary accommodation without a written surveyor's report. Ms Nwuso denied this, telling us that she supported the tenant's wish, but was fully aware that a surveyor's report was necessary as was authorisation from a manager.

101. Ms Nwosu remembered the case, but could not remember an argument nor could Mr Allard who was also present at the time. There is contemporaneous evidence that he emailed the surveyor involved that morning to ask the surveyor's opinion (546 – 549).

102. The claimant included this incident in her July grievance and made a diary entry about this incident saying:

"[Ms Volopi] walked up to me after I came back from lunch advising on the need to [arrange temporary accommodation for the tenant]. [Ms Nwuso} had to drop it on me kept me in the dark about incident with resident and dropped

it on me when it got too hot. Can't understand what her understanding of repairs management is. If she does not need [a surveyor's report] she confuses disrepair for repairs such a shame and she wouldn't listen. [Mr Allard] sat there and only decided to act at the last minute." (51)

103. We conclude that there was a discussion about this matter. It is unlikely to have lasted as long as 20 minutes, however and did not constitute an argument. It is unlikely that Ms Nwuso tried to convince the claimant to ignore the correct procedure, but there does appear to have been some confusion. This is most likely to have arisen because the situation developed during the day and both Ms Volpi and Ms Nwosu were involved. The situation was resolved without difficulty when escalated to Mr Allard.

10 and 11 July 2018

104. The claimant was upset by Ms Nwosu's actions again on 10 and 11 July 2010. Both incidents were work related and were included in the July grievance.

105. The first concerned the process for serving a notice to quit. The notice needed to be served on two addresses, the Westminster property and another address close to where the claimant was living at that time. The claimant says she offered to hand deliver the notice, but Ms Nwosu refused to allow this.

106. An email in the bundle, addressed to Mr Allard and the claimant and part of a chain concerning this issue confirms that Ms Nwosu concluded that it would be necessary to issue the notice by recorded delivery (551). This seems to us to be an entirely sensible course of action. It does not indicate that Ms Nwosu was insisting on serving the notice to quit herself even though the property was in the claimant's patch.

107. The claimant did not make a diary entry about the incident on 10 July 2018, but she did about a further incident on 11 July 2018. The diary entry says:

"This girl needs some serious manners. No home training at all. So rude. How can she just come and demand for the keys abruptly. No courtesy even though the sheds are on my patch. So annoying., Have to raise this at 1-2-1 tomorrow with [Mr Allard]." (553)

108. Ms Nwosu was legitimately dealing with a matter involving a shed on the claimant's patch as it involved a swap she had initially suggested as a resolution to a long-standing issue. Shed keys are kept by the individual Housing Officers. Given Mr Allard's comments about Ms Nwosu's direct manner, we find it is likely that she asked for the keys somewhat abruptly.

12 July 2018

109. On 12 July 2018, the claimant attended a one-to-one meeting with Mr Allard. He conducts such meetings with members of his team on a regular basis, usually meeting all of them at around the same time.

110. The claimant and Mr Allard gave us different versions of what was discussed at the meeting. There were however a number of similarities.

111. The claimant made the following diary entry:

"This is all too much. Spoke to [Mr Allard] but he seems quite content with the situation. Said (KN) means well. There is nothing right about her continued offensive attitude. Always interfering. [Mr Allard] had to break it by suggesting I want to hide in a corner instead of dealing with the real issues. So bad – so bad."

112. She also referred to the meeting in the email she sent to HR on 19 July 2018 (568).

113. The claimant alleges that Mr Allard accused her of being "too quiet" and "having a negative impact on others" at the meeting. Mr Allard accepts that he mentioned that she seemed very quiet. This was out of concern for the claimant. Several team members had mentioned to him that the claimant seemed very quiet/upset and were wondering if someone had upset her. He denies accusing the claimant of having a negative impact on others, but did say that members of the team were concerned. We find his comments have been misunderstood by the claimant and given a negative interpretation that is unwarranted.

114. The claimant raised concerns with Mr Allard about KN. He acknowledged that KN's tone may not always come across as sounding helpful, but sought to reassure the claimant that KN was very experienced and probably the most helpful person in the office. He believes he told the claimant that he would speak to KN and indeed he did do this when he next had a one-to-one meeting with KN a few days later (1034).

115. With regard to the reference to Mr Allard saying, "*So that you can hide in the corner where no one can see you,*" he has no recollection saying this. He believes that it was possible that he suggested to the claimant that if she wanted to work somewhere quiet away from the team noise, she could use a desk in the corner. This was not meant as a punishment, but proffered as an option to assist the claimant.

13 July 2018

116. On the following day, the claimant was upset by the conduct of KM again. On this occasion, the claimant says that the KN came into the open office and in front of everyone first accused her of having lunch with a tenant in their car and then falling to require the tenant to move his car from a controlled parking area.

117. The claimant made a diary entry and included this allegation in her July grievance. The diary entry recorded:

*"[Ms Nwosu so spiteful. Said I was having lunch with a tenant in their car. She was told by another tenant. This girl is out of her mind. I just need to stay clear. [Mr Allard] was there again but won't say nothing." (*553)

118. Ms Nwosu recalled this incident but explained that all she had done was to tell the claimant that a tenant had spoken to her and made this complaint about the claimant. She was not accusing the claimant, but merely passing the information on.

119. We find that KN was trying to be helpful in sharing this information with the claimant rather than cause her any difficulty.

July Complaint – 19 July 2018

120. The claimant sent a complaint about her treatment at work to HR by way of an email sent on 19 July 2018 to HR with Mr Allard and Ms Waine copied in. The email provided a short description of her one-to-one meeting with Mr Allard and contained a chronology of 10 incidents involving Ms KN from 30 April to 18 July 2018. The complaint focussed on Ms Nwosu's behaviour with a very brief criticism of Mr Allard and Ms Waine (566 – 569).

121. The claimant's email was acknowledged by a member of the HR team who said she would forward it to Mr Burge to pick up on his return from annual leave (566). As Mr Allard was on leave until 1 August 2018 (1034), Ms Waine emailed the claimant, copying in HR, to suggest they speak on Monday, 23 July 2018 when she was back in the office. Ms Waine also emailed Lisa Hall, Mr Burge's line manager saying:

"*I am aware of the personality clash between her and [Ms Nwosu] – [Mr Allard] discussed this with me only on Thur or Fri last week and he has spoken to [Ms Nwosu] about not jumping in on her patch. I am aware that [Mr Allard] has been speaking with [the claimant] about these issues. I am sorry she hasn't escalated to me." (1034)*

122. On his return from leave, Mr Burge emailed the claimant saying *"Thank you for contacting us. I am sorry that you felt the need to write such an email. I can see that [Ms Wayne] intends to discuss these issues with you and I'm sure that either she or you will provide some feedback to those discussions if necessary*." (902).

123. The claimant complains that Mr Burge's email was an attempt to prevent her making a complaint both with regard to the second sentence in his email and his suggestion that she meet with LW. We find nothing untoward in the tone of the email. Mr Burge's apology was meant to convey empathy towards the claimant rather than criticise her.

124. The claimant objected to Mr Burge's suggestion that she meet with LW. He encouraged her to do this however, in accordance with the informal stage of the respondent's grievance procedure. He later explained to her that it was not HR's role to get involved in such informal meetings. This was entirely appropriate in the circumstances (899 – 903).

125. The claimant met Ms Waine that same day. She emailed Mr Burge the following day, before Ms Waine had had an opportunity to investigate her

concerns, to say that she did not believe that the meeting was fair or conducted properly as all she got were "challenging questions".

126. Ms Waine provided a detailed and lengthy written response by email to the claimant of 25 July 2018 after Ms Waine had spoken to Ms KN. She concluded her email by emphasising the need to work closely as a team. She said "I am sorry that you feel that issues have not been taken seriously and it is clear to me that relationships need to be rebuilt.… I know that it is never easy raising issues within the workplace relating to those with whom one works closely day-to-day. I would like to assure you that I treat any such information seriously and … we will deal with any issues of inappropriateness in a sensitive and proportionate manner." (1031 – 1032)

127. In our view, the email demonstrates that Ms Waine took the claimant's concerns seriously, sought to understand them and tried to address them. The claimant refused to accept the response on the basis that Ms Waine was not objective (1028 – 1029). When she reported her feelings to Mr Berge he advised her how to escalate her concerns under the formal stage of the grievance procedure if this was what she wished to do (899). She did this on 31 July 2018 (581 – 590).

128. The claimant did not say, in either the initial complaint of 19 July 2018 or the formal grievance of 31 July 2018, that she felt she was being discriminated because of her age or marital status. There is no mention of age, marital status, discrimination, harassment, victimisation or the Equality Act 2010. The claimant also said nothing about the behaviour being because of the WHA employment tribunal claim.

129. The claimant does not say that she feels that Ms Kwnosu's behaviour towards her has any connection with her age or marital status or indeed any other protected characteristics. The claimant accuses Ms Kwnosu of inappropriate and unacceptable conduct, but suggests that this is because she lacks professional work ethics and respect for work colleagues and stakeholders alike. The claimant suggests that Ms Kwnosu behaves in the same way to everyone because of a desire to use her extensive knowledge of housing to dominate and exert control over others.

130. The claimant accuses Ms Kwnosu or defamation of character at one point in the grievance. She also accuses the managers of indifference and negligence.

27 July 2018

131. In the meantime, some further incidents occurred on 27 July 2018.

132. Ms Odiadi, another of the claimant's Housing Officer colleagues, approached her that morning and asked her to speak with her. When Ms Odiadi asked the claimant about her relationship with Ms Nwosu, the claimant assumed that Ms Nwosu had told her about her complaint. This was not the case. Ms Odiadi explained to us that it was obvious that something was wrong as the claimant was not speaking to Ms Nwosu. She was very deliberately missing out Ms Nwosu when, for example, she said

hello to other members of the team. Ms Odiadi's evidence, which we accept, was that she did not find out about the grievance until much later.

133. At some point during the day, the claimant alleges that while dealing with a difficult tenant, Ms Odiadi said that she "*Can't understand why people breed like animals".* The comment was about the tenant and not directed at the claimant. However according to the claimant, it was said in her presence and she found it upsetting. She made a diary entry about the incident saying:

"Offensive comments from [Ms Odiadi] had to correct her view advising that children are gifts from God & not otherwise." (597)

134. Although Ms Odiadi could not recall the exchange, she accepted that it was not an appropriate way to speak about tenants.

135. The claimant's diary entry also recorded: "*She also suggested that I go back to my children later on in the day. I had to give it back to her asking if I go back to them if she will give the money to feed them*." (597)

136. Ms Odiadi could not recall this exchange, she confirmed that she would regularly tell colleagues at the end of the working day that it was time to go home. She told us that if she had encouraged the claimant to go back to her children, this would have been meant in a friendly way and not as construed by the claimant.

137. The claimant alleges that Ms Waine subjected her to unfair treatment into different ways on or around 27 July 2018. The first incident was when Ms Waine asked the claimant a question about her work. The claimant primarily objects to this because Ms Waine was not her line manager. In addition, she says Ms Waine had been provided with the information already.

138. The question according to the claimant was:

"Marie can you detail what attempts have been made, when the last tenancy review was carried out and when the letter before action was sent to her / due to be sent"

139. Ms Waine cannot remember the particular case but told us that there was no reason why she should not have asked the question directly of the claimant, particularly if they were sitting close to each other at the time. In her view the request was a normal work-related enquiry.

140. The claimant also objects to a request made by Miss Waine for access to her outlook calendar. She claims she was singled out by Miss Waine making the request in front of others in the Open Plan office. Miss Waine cannot recall if she had access to the claimant's outlook calendar before 27 July 2018. For some reason which she cannot remember, she identified that she did not have access to two employees' calendars on this date and therefore made the same innocuous request to both of them.

1 & 8 August 2018

141. The claimant makes two allegations against Mr Allard for dates in August. The first allegation concerned an email sent by Mr Allard to the claimant on 1 August 2018.

142. Prior to going off on leave, Mr Allard had been involved in organising the installation of some bollards on one of the housing estates managed by the respondents. In order to install the bollards, the road needed to be clear of parked cars. Mr Allard had emailed the claimant asking her to put notices up in good time before the arrival of the contractors.

143. When Mr Allard returned from annual leave, he was alerted to a problem at the site by an email from Ms Waine. She passed on that the contractor had encountered parked cars and not been able to complete the full works. (916 – 917).

144. Before responding, in order to find out what had happened Mr Allard emailed the claimant to ask her the simple question whether she put notices up as he had requested (915). This was simply a request for information. Mr Allard's email suggests no blame or recriminations, but was interpreted in this way by the claimant.

145. On 2 August 2018, on his second day back from leave, Mr Allard emailed two members of staff, one of whom was the claimant, to ask if they knew whether a completion of debit form, requested on 9 July 2018, had been completed. The claimant's colleague replied to say she did not know. The claimant did not reply. This led Mr Allard to say in an email on 8 August 2018 that he was waiting on the claimant to confirm if the form was completed. (919)

146. This email provoked the claimant to email Mr Allard to say:

"Hi Ray

Karen had addressed this request to you and as there are charge implications, I would not have had the grounds to authorise. (919).

147. Mr Allard responded politely, but expressing a degree of frustration that the claimant had not taken any action while he was away on leave. He pointed out that she could have spoken to one of the other managers in his absence. The claimant disagreed and replied to point out that the request had come in a week before Mr Allard's leave began.

148. Before us, the claimant said she felt it was unfair for Mr Allard to try and blame her for the delay. We do not consider that he was doing this.

31 August 2018

149. The claimant and her family were homeless at this time and living out of a van in Thurrock. This led to the claimant telephoning an out-of-hours hotline

operated by the respondent to ask about temporary accommodation on 31 August 2018.

150. Front line members of the respondent's staff deal with the calls received into the out of hours service. There is always a tier 2 duty manager available to whom they can escalate calls where needed (Mr Allard's level) and a tier 3 manager above them (Ms Waine's level). The respondent operates a rota system so that the managers take it in turns.

151. On 31 August 2018 Mr Chris Parr was on duty at the tier 2 level. His line manager (not Ms Waine, although she was on the rota to undertake this role) was on duty at the tier 3 level.

152. According to the claimant, the operative who dealt with her call told her he had found accommodation which he intended to allocate to her, but needed authorisation first. He therefore telephoned Mr Parry to get this. The authorisation was not forthcoming and instead the operative reported that Mr Parry had told him to tell the claimant:

"You go back to the bus you have been sleeping in since January this year."

and

"*We don't have any accommodation for the size of your family."*

153. Mr Parry recalled speaking to the operative, but not whether he was told the name of the caller or that she was an employee of the respondent. He explained to us that he only gets involved in authorising emergency temporary accommodation for Westminster residents. This might be required, for example, in the event of a flood. He does not get involved in or have the power to authorise temporary accommodation for anyone who is homeless. He was unable to say whether the out of hours service had this dual function or not.

154. In this case, he spoke to his line manager to double check the position, namely that he could not help the caller, because she was not a Westminster resident and explained this to the operative. He did not speak to the claimant directly. He did tell the operative to advise the claimant not to make herself intentionally homeless.

155. Mr Parry did not speak to Ms Waine about the call and had no knowledge of the Westway claim.

156. The day before she made this call, the claimant had attended a joint strategy meeting with Thurrock about her family's situation. An action from the meeting was that a Thurrock social worker was asked to obtain the claimant's contract of employment. The claimant is convinced that information about the strategy meeting was passed on by Thurrock to the respondent. The respondent refuted this claim, and we were provided with no evidence to support it. We have not made a finding in relation to this matter, however, as we cannot see how this is relevant to this claim.

Grievance Outcome

157. The respondent's Head of Operations, Mr Peter Doherty was asked to consider the claimant's grievance. She was invited to a grievance hearing held on 9 August 2018. Notes were taken at the hearing and the claimant had a full opportunity to review and amend these (607 – 616). She was also able to provide Mr Doherty with documents she felt were relevant to her complaints.

158. Mr Doherty sent the claimant an outcome letter dated 13 September 2018 (621 – 625). For the most part he rejected her complaints. He did however uphold two complaints that when Ms Nwosu had done work on the claimant's patch, she ought to have informed the claimant. He did not consider Nwosu had acted maliciously in this regard however.

159. Six of the claimant's allegations concern the contents of Mr Doherty's letter. In many cases, the claimant has extracted incomplete sentences without including the full context.

160. Mr Doherty did not appear as a witness to explain his thinking. He left the respondent in April 2019. Having reviewed he letter however and read it as a whole, we are satisfied that Mr Doherty's comments and conclusions are entirely reasonable. In particular, it was appropriate for him to say that it would have been preferable for the claimant to have tried to discuss the incidents involving Ms Nwosu with her directly at the time. He explains in the letter that this is because "It is well established that complaints and grievances are best resolved at the most informal level." It was also appropriate for him to tell the claimant that she needed to try and work in harmony with her team. We note that he offered to arrange assistance from an independent third party to facilitate this.

161. The claimant was not happy with the outcome and appealed in a letter dated 18 September 2018 (630 – 634). Mr Joe Joseph, the respondent's Director of Resident Services was appointed to dealt with the appeal.

162. Although we have not seen any documentation relating to it, we understand that the respondent confirmed the claimant had passed her probationary period at some point before 5 September 2018.

18, 19 and 20 September 2018

163. The claimant complains that Ms Waine and Mr Allard continued to subject her to unfair treatment in September. She cites three incidents:

- Ms Waine asking, in front of the claimant's colleagues, if the claimant was competent to complete tenancy reviews on 18 September 2019 and separately risk assessments the following day. Ms Waine's recollection of the conversations was limited. She told us that as part of her role she must ensure that team members are comfortable with allocated tasks. As the claimant confirmed that she was, Ms Waine took no further action.

- A comment made about her in an email sent by Mr Allard in response to a complaint from a tenant – both in terms of the content of the comment and the fact that Mr Allard got her name wrong and called her Anne-Marie. The comment in the email is not at all critical of the claimant (1019 -1020).

164. The claimant described these incidents as victimisation, harassment and humiliation in an email addressed to Mr Allard and Ms Waine dated 21 September 2018 (1019) which she copied to Mr Joseph saying that she wished the issues to be added to her current grievance. He responded by telling her that he would not do this, because it would not be proper process to do so at the appeal stage. He advised her that, if she wished the issues to be investigated, she could raise a further grievance (1018). This was an entirely appropriate response.

24 September 2018

165. On 24 September 2018 the claimant emailed Mr Joseph to tell him that she would not be returning to work. In her letter to Mr Joseph the claimant explained her position thus:

"*I am writing to confirm that I do not agree with the decision you have made with the further incidents that have occurred since my appeal.*
As a result of this I will not be returning back to that work environment until appropriate steps have been taken to make it safe and conducive to work in. Returning back will only subject me to further detriment and harsh treatment from the managers who have not taken responsibility for their failures in this matter and you have chosen to cover them up and frustrate the process further."

166. The email was forwarded to Mr Berge who wrote to the claimant to warn her that, unless she was unwell or wished to take annual leave, her absence would be treated as unauthorised and therefore unpaid (969). The claimant replied to say that she was exercising her "*right not to be subjected to further detriment and unfair treatment*" by Mr Allard and Ms Waine. She accused the respondent of failing to take the appropriate steps to make the workplace safe for her (968). She maintained this position even when the respondent suggested she could return to work from a different office (971 - 972)

167. On the same day, Mr Allard emailed the claimant to ask her for information about her reason for absence on 17 September 2018 as no reason was recorded on the respondent's HR system. Despite the fact that the email contained no criticism of her, but was simply asking for information, the claimant reacted badly towards it and accused Mr Allard of harassing her. The claimant told us that she had informed a different manager of her reason for absence on 17 September 2018 who would have told Mr Allard meaning he should not have needed to contact her (964).

1 October 2019

168. Mr Berge wrote to the claimant on 1 October 2018 (1016) to confirm that as the claimant was absent from work without authorisation she was not entitled to be paid. As the claimant had already received her salary for the month of September 2018, her pay was stopped with effect from 1 October 2018. The respondent did not attempt to claw back the overpayment.

Grievance Appeal

169. A grievance appeal hearing was conducted on 5 October 2018. Notes were taken of the hearing, upon which the claimant was given an opportunity to comment. (976 – 981).

170. Several of her complaints concern things that she alleges Mr Joseph said at the appeal hearing. The comments she attributes to him are additions to the hearing notes made by the claimant. These are not accepted by the respondent. Mr Joseph did not appear as a witness for the respondent, as he also left it on 1 April 2019.

171. We find it is likely that Mr Joseph made the comments attributed to him by the claimant, or at least said similar things. She provided her comments on the notes to the respondent on 12 October 2018 (984), which was within a relatively short period of time of the hearing.

172. The comments address the fact that the claimant was late arriving at the hearing, which she accepts is correct and reiterate the decision previously taken by Mr Joseph that he would not be considering any new allegations.

173. The outcome of the appeal hearing was communicated to the claimant in a letter dated 10 October 2018 (645). Mr Joseph upheld the grievance findings. In his letter, Mr Joseph indicated that the claimant was expected to return to work. He added that there may be an opportunity to work from another office on a different patch. He asked that the claimant respond to this offer by close of play on 12 October 2018. His letter concluded with a warning to the claimant that any further unauthorised absence would be treated seriously in line with the respondent's approach to dealing with such matters.

174. The claimant responded in a letter dated 12 October 2018 (652). She refused to engage with the respondent's offer because she considered it to be too speculative. The claimant indicated that she would not be returning back to work. Mr Joseph acknowledged receipt of the letter and indicated that the HR team would be in contact early the following week (653). We note that the claimant's letter of 12 October 2018 refers to the breaches by the respondent of the Equality Act 2010, the Employment Rights Act 1996 and the Human Rights Act 1998, but without specifying the nature of such breaches.

175. The claimant complains that an agreement was reached between her and Mr Joseph at the conclusion of the grievance hearing that she would be offered an entirely new position, but retracted this with the offer made being

less advantageous. If such an agreement had been reached, we feel sure the claimant would have referred to it in her letter of 12 October 2018. We therefore find that although there may have been some discussion around the possibility of an alternative role, no agreement was reached.

Dismissal

176. The claimant's response led to Mr Joseph drafting a report recommending her dismissal for her continued absence without an authorised reason (654 – 655).

177. The respondent invited the claimant to a formal meeting to discuss her future employment. The claimant makes a number of complaints about the content of the letter of 29 October 2018 (660-661). The letter, in our view, contains the standard provisions we would expect to see in such a letter, namely warning the claimant that a possible outcome of the meeting could be her dismissal and advising her of her right to be accompanied at the meeting. The letter also confirmed that if the claimant failed to attend the meeting the respondent reserved the right to continue with it in her absence.

178. The claimant claims not to have received the invitation letter at the time it was originally sent. On 19 November 2018, she emailed the respondent from her personal email address to say that the last correspondence she had received was from Mr Joseph telling her she would hear from the HR team week commencing 15 October 2018. She explained that she had not received any form of communication in the last six weeks as she could not access her work emails. She assumed however that the respondent had her postal address and personal email address (990).

179. The respondent has a self-service HR system. Employees are required to input contact details in it themselves and to ensure these are kept up-to-date. Although the claimant had corresponded with the respondent during her recruitment process using her personal email address she had not entered this on to the HR system. In addition, the respondent had not sought to freeze her work email address (1033). It therefore assumed she was receiving all correspondence. The claimant had inputted an address on an industrial estate which was a care off address where her payslips were sent.

180. When the claimant highlighted that she had not received the correspondence, the respondent sent it to her. The respondent also confirmed that Mr Joseph would be conducting the meeting as the person originally assigned to do so was unwell and absent from work. The claimant did not accept the respondent did not have her personal contact details and accused the respondent of lacking integrity.

181. The claimant did not attend the formal meeting, which was held on 22 November 2018. In her absence, Mr Joseph, unsurprisingly, followed his own earlier recommendation and decided that she should be dismissed. His decision was confirmed this in a letter to her of the same date (663 – 664). The letter was sent by email to the claimant on 23 November 2018 (662).

182. In the letter, Mr Joseph explained why he had conducted the meeting and reiterated the respondent's position with regard to the claimant's personal contact details. The respondent's reason for termination was the claimant's ongoing refusal to attend work with no realistic prospect of return without good reason. The letter did not use the term gross misconduct, but the claimant was not given notice of termination or paid in lieu of notice. As at the date of termination she had taken 19 days holiday (993).

Appeal Against Dismissal

183. Although she says she did not realise she had actually been dismissed, the claimant appealed against the decision to dismiss her in a letter dated 28 November 2018 (666 – 669). The appeal letter makes no mention of the Equality Act 2010.

184. The appeal was considered by Jo Bowles, Executive Director of Shared Services. The claimant did not attend the appeal hearing and did not offer any alternative dates, but sent written submissions in a letter dated 17 December 2018 (670 – 676).

185. The appeal hearing was held on 18 December 2018 in the claimant's absence. The outcome of the appeal was decision to dismiss her was upheld. This was confirmed to the claimant in a letter dated 7 February 2019 (1010 - 1012).

186. The outcome letter contains an inaccuracy as it suggests the claimant took compassionate leave from 3 to 21 September 2018. This was not correct. The claimant was only absent on compassionate leave from 4 to 7 September 2018. She worked from 10 to 21 September 2018. This makes no difference to the outcome and was simply a misunderstanding on the part of Ms Bowles.

187. Other than this mistake, the outcome letter reflects the facts correctly as we understand them. This includes that Mr Joseph had suggested an alternative role to the claimant. It is not strictly correct that he had gone as far as expressly offering the claimant the opportunity to work in a different team. His offer was actually silent on this point, although we consider it is reasonable to infer this is what he meant. Because the claimant did not engage with the offer, she did not give him an opportunity to clarify.

188. The claimant received her P45 on 7 January. Her final complaints are that the P45 was issued on 14 December 2018 in an envelope postmarked 21 December 2018 before the appeal hearing and this prejudiced the outcome of the appeal hearing. Issuing the P45 did not prevent the respondent from deciding to reinstate the claimant, but in any event, as the respondent used a third party for its payroll there is no evidence that Ms Bowles was even aware that this was done.

LAW

Protected Interest Disclosure

189. Section 47B(1) of the Employment Rights Act 1996 says: "A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

190. The term "detriment" is not defined in ERA 1996 and tribunals have therefore looked to the meaning of detriment established by discrimination case law. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 it was held that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work.

191. The EHRC Employment Code, drawing on this case law, says: '*Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage……. However, an unjustified sense of grievance alone would not be enough to establish detriment*." (paragraphs 9.8 and 9.9). Accordingly, the test of detriment has both subjective and objective elements.

192. A detriment can encompass a range of treatment from general hostility to dismissal. It does not necessarily entail financial loss, loss of an opportunity or even a very specific form of disadvantage.

193. Section 103A of the Employment Rights Act 1996 provides that **"**An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".

194. Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of a whistleblower, whereas section 103A requires the protected disclosure to be "the principal reason" for the dismissal. In both cases, an enquiry into what facts or beliefs caused the decision-maker to act is necessary.

195. Section 43B(1) defines what constitutes a "qualifying disclosure." A qualifying disclosure becomes a "protected disclosure" only if it is made by a worker in accordance with any of sections 43C to 43H (section 43A). The default position is that the disclosure should be made to the worker's employer (43C). Disclosures made to other responsible persons, prescribed persons and others can be protected disclosures but only if the conditions in the relevant sections are met.

Equality Act Claims

196. The claimant brings several claims under the Equality Act 2010. She relies on the age and marital status (i.e. that she is married) which are both protected characteristics under section 4 of the Equality Act 2010.

197. Section 39(2) of the Equality Act 2010 prohibits an employer directly discriminating against one of its employees by dismissing him or by

subjecting the employee to a detriment. It is possible to bring claims for direct discrimination because of age and because of being married.

198. Section 40(1)(a) of the Act provides that an employer must not, in relation to employment by it, harass a person who is one of its employees.

199. Section 39(4) of the Equality Act 2010 provides that an employer (A) must not victimise an employee of A's (B)—

(a) by dismissing B;
(d) by subjecting B to any other detriment.

200. In subsection 212(1) of the Equality Act, a detriment does not include conduct that amounts to harassment. It must be one or the other – it cannot be both. This provision is disapplied, however, by section 212(5) where it is not possible to pursue a claim for harassment related to a particular characteristic, such as being married.

Direct Discrimination

201. Section 13 of the Equality Act 2010 provides that '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'.

202. It is possible to bring claims for direct discrimination because of age and because of being married.

203. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

204. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

205. We must consider whether the fact that the claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

206. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as she was.

207. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination.

208. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's protected characteristic. The respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

209. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd* v *Wong [2005] EWCA Civ 142; [2005] IRLR 258* and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The recent decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.

210. The Court of Appeal in *Madarassy*, states:

'*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination*.' (56)

211. It may be appropriate on occasion, for the tribunal to take into account the respondents' explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the respondent asserts that it has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

212. We are required to adopt a flexible approach to the burden of proof provisions. As noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they may have little to offer where we are in a position to make positive findings on the evidence one way or the other.

213. Allegations of discrimination should be looked at as a whole and not on the basis of a fragmented approach *Qureshi v London Borough of Newham* [1991] IRLR 264, EAT.

Harassment

214. The definition of harassment is contained in section 26 of the Equality Act 2010.

215. Section 26(1) of the Equality Act 2010 provides:

> "A person (A) harasses another (B) if
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of—
>
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."

216. Age is a relevant protected characteristic for the purposes of section 26, but being married is not (section 26(5) Equality Act 2010).

217. A similar causation test applies to claims under section 26 as described above to claims under section 13. The unwanted conduct must be shown "to be related" to the relevant protected characteristic.

218. The shifting burden of proof rules set out in section 136 of the Act can be helpful in considering this question. The burden is on the claimant to establish, on the balance of probabilities, facts that in the absence of an adequate explanation from the respondent, show she has been subjected to unwanted conduct related to the relevant characteristic. If she succeeds, the burden transfers to the respondent to show prove otherwise.

219. Harassment does not have to be deliberate to be unlawful. If A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the *purpose* of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.

220. If the conduct was not deliberate, it may still constitute unlawful harassment. In deciding whether conduct has *the effect* of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in section 26 (4), namely:

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that affect.

221. The shifting burden of proof rules can be also be helpful in considering the question as to whether unwanted conduct was deliberate.

Victimisation

222. Section 27(1) contains the definition of victimisation saying:

> '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.'

223. The definition of a protected act is found in section 27(2) as follows:

(a) bringing proceedings under the Equality Act 2010;

(b) giving evidence or information in connection with proceedings under the Equality Act 2010;

(c) doing any other thing for the purposes of or in connection with the Equality Act 2010; and

(d) making an allegation (whether or not express) that an employer or another person has contravened the Equality Act 2010

224. A grievance can amount to a protected act under section 27(2)(d) without referring to the Equality Act 2010 and without using the correct legal language. It must however contain a complaint about something that is capable of amounting to a breach under the Equality Act 2010 (*Beneviste v Kingston University* EAT 0393/05).

225. Where the tribunal is satisfied that a claimant has done a protected act, the claimant must show any detriments/ dismissal occurred because she had done a protected act.

226. The analysis the tribunal must undertake is in the following stages:

(a) we must first ask ourselves what actually happened and whether it falls within the scope of the prohibited circumstances in the Equality Act. This will include dismissal.

(b) where the treatment found is something less than dismissal, we must then ask ourselves if it constitutes a detriment;

(c) finally, we must ask ourselves, was the treatment (be it dismissal or another form of detriment) *because of* the claimant's protected act. The protected act only needs to be one of the reasons for the treatment. It need not be the only reason (EHRC Employment Code paragraph 9.10).

227. The test for what constitutes a detriment is the same as described above in the section on protected disclosures.

228. The shifting burden of proof found in section 136 of the Equality Act also applies. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the reason for any detriment / dismissal was because of the claimant's protected act. If the claimant succeeds, discrimination is presumed to have occurred, unless the respondent can show otherwise.

Unlawful Deductions from Wages / Holiday Pay/ Breach of Contract

229. Claims concerning payments can often be pursued as unauthorised deductions from wages and breaches of contract.

230. Section 13 of the Employment Rights Act 1996 deals with the right not to suffer unauthorised deductions. It prohibits an employer making a deduction from a worker's wages unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

231. By subsection 13(3) a failure to pay an employee the full amount due is deemed to be a deduction.

232. Holiday pay claims can be brought as unlawful deductions from wages claims, breach of contract claims and claims under the Working Time Regulations 1998.

233. Regulations 13 and 13A of the Working Time Regulations 1998 taken together confer an annual statutory entitlement of 28 days paid holiday, which can include bank holidays. How statutory holiday entitlement should be calculated where a worker does not work an entire year is determined by the provisions of the same regulations.

234. Claims for breach for contract depend on the wording of the contract involved.

Time Limits – Section 13, Breach of Contract, Section 47B and Section 103

235. The normal time limit for a claim of unlawful deductions of wages is found in section 23(2) of the Employment Rights Act 1996. That section provides that a claim must be brought before the end of the period of three months beginning with the date of the payment of wages form which the deduction was made. Section 23(3) goes on to say that where a complaint is from the last deduction in the series.

236. The normal time limit for a claim of breach of contract is found in article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623. It provides that claims must be brought (a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim or (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated.

237. Section 48(3) provides that a claim under section 47B must be brought within before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them.

238. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. An example is found in the case of *Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT/0342/17* where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.

239. It is not necessary to take an all-or-nothing approach to continuing acts. The tribunal can decide that some acts should be grouped into a continuing act, while others remain unconnected *(Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548*)

240. Section 111(2)(a) provides that a claim for automatically unfair dismissal under section 103A must be brought before the end of the period of three months beginning with the effective date of termination of employment (as defined in section 97 of the same act).

241. The normal three month time limit needs to be adjusted to take into account the early conciliation process and the extensions provided for in subsections 207B(3) and (4) of the Employment Rights Act 1996.

242. All of the above subsections go on to say that a tribunal may still consider a claim presented outside the normal time limit if it is satisfied that:

- it was not reasonably practicable for the claim to be presented within the normal time limit and
- the claimant has presented it within such further period as the tribunal considers reasonable.

243. This is a strict two stage test. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the claimant. The factors that can be taken into account will vary from case to case (*Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470).

Time limits – Discrimination Claims

244. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period. This latter test is the same as described above.

245. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.

246. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).

247. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach is for the tribunal to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include a number of other factors.

248. It is for the claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the rule (*Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576).

ANALYSIS AND CONCLUSIONS

Protected Interest Disclosure

249. The reason we have dismissed the claimant's claim that she was subjected to detriments and/or dismissed because of a qualifying protected disclosure is because the disclosure she relies upon is not a qualifying protected disclosure as defined in the legislation.

250. The respondent correctly conceded that the WHA claim form contains information that meets the test in section 43B. This does not make it into a qualifying protected disclosure, however. This is because the disclosure was not made in accordance with the requirements of section 43C to 43H.

251. The disclosures were made to the claimant's former employer and to the employment tribunal. Neither of these are other responsible persons (as defined in section 34C) or prescribed persons (as defined in section 43F).

252. The circumstances in section 43G are not met. One of those circumstances is that the disclosure must not be made for personal gain (section 43G(1)(c)). The claimant presented her tribunal claim against WHA for personal gain as she issued it in order to obtain compensation and a recommendation. This is also a condition found in section 43H meaning the test in that section is not met either.

253. If our interpretation of section 43G and 43H is incorrect however, her claim under section 47B still fails because of our factual finding that none of the respondent's staff knew about the disclosures contained in the WHA claim. This factual finding also prevents the claimant's claim for automatic dismissal for having made a protected disclosure succeeding. Her dismissal cannot have been because of the contents of the WHA claim form because

none of the respondent's staff and in particular Mr Joseph who made the decision to dismiss the claimant, were aware of the claim.

254. Moreover, we do not consider that any of the claimant's allegations under this head of claim (that we found happened on their facts) amount to detriments for the purposes of section 47B. Applying the *Shamoon* test, we consider that no reasonable worker in the claimant's position would take the view that they had been disadvantaged in the circumstances in which they had to work by any of the matters about which the claimant complains. They are all cases where she has an unjustified sense of grievance.

255. As a number of the allegations are raised under multiple heads of claim we address the majority of them below to avoid undue repetition. Here, though we deal the allegations that are said to be solely because of the claimant's disclosure.

256. The first of these allegations concerned the attempts the claimant says Ms Nwosu made to gain remote access to her laptop. This allegation fails on the facts as we have found that she did not do this, nor did Mr Allard try to cover it up.

257. The next allegation relates to Mr Allard's actions on 3 July 2018. This allegation also fails on its facts.

258. The claimant alleges that Doreen Cousins' email to her of 18 July 2018 in which she asked her if she had ever worked for WHA constituted a detriment because of her disclosure. We note that Ms Cousins did not work for the respondent and therefore the respondent cannot be held liable for her actions. In any event, this allegation fails for lack of causation as we found that it was unlikely that the reason Ms Cousins sent the email because of the WHA claim.

259. We also reject the claimant's claim that she was dismissed because of her disclosure. A significant fact for us is that if the respondent had wanted to dismiss the claimant for this a far easier route would have been to bring her employment to an end during her probation period rather than confirm her successful completion of it.

260. Our positive finding is that the reason for the claimant's dismissal was genuinely and solely for the reasons explained in Mr Joseph's termination letter. The dismissal was solely because she was not attending work and had indicated that she was not prepared to return, despite the respondent's efforts to meet her ongoing (but unjustified) concerns by offering her the opportunity to work from a different office.

261. For the sake of completeness, we reject any contention that the claimant had a valid reason on health and safety grounds to refuse to work. In view of our findings, there is no evidence that the workplace was unsafe for her. This may have been the claimant's subjective opinion, but it was not a reasonable opinion for her to hold. The claimant had flatly, and entirely unreasonably, refused to engage with this option. There was nothing else

the respondent could reasonably have been expected to do to in the circumstances.

Victimisation

262. The WHA claim is a protected act for the purposes of section 27 of the Equality Act 2010. The conclusion we refer to above, that none of the respondent's employees were aware of the claim during the claimant's employment, is also relevant here. It prevents the claimant succeeding with her claim that she was subjected to detriments and/or dismissed because of this protected act.

263. We consider that the claimant's complaints of 19 July 2018 and formal grievance of 31 July 2018 do not constitute protected acts for the purposes of section 27 Equality Act 2010.

264. We found, as a matter of fact, that the complaint of 19 July 2018 and the grievance of 31 July 2018 make no mention of the Equality Act 2010, nor do they refer to age, marital status, discrimination, harassment or victimisation. By itself, this would not prevent them meeting the section 27 requirements for a protected act. A grievance can amount to a protected act without referring to the Equality Act 2010 and without using the correct legal language. It must however contain a complaint about something that is prohibited under the Equality Act.

265. The claimant has made a previous employment tribunal claim and so, at the time of making the complaint and grievance she had knowledge of the Equality Act 2010 and its provisions. It is notable that she did not shy away from using legal terminology in the complaint and grievance, referring both to defamation of character and negligence. This leads us to conclude that the absence of any reference to complaints of discrimination was deliberate. It is also telling that she accuses Ms Nwosu of behaving badly not just towards her, but to work colleagues and stakeholders. This does not describe the behaviour of someone who picks on people with particular protected characteristics or treats them differently to others.

266. The claimant's claim for victimisation under section 27 therefore fails. For the sake of completeness, we address here the specific allegations and why, in addition, we consider for the most part that they do not meet the threshold required to constitute detriments. We deal here with the allegations that are put either solely under the head of victimisation and those that are said to be allegations of victimisation and detriments because of a protected disclosure.

267. The first allegation put solely as an allegation of victimisation is Mr Berge's response to receiving the claimant's complaint of 19 July 2018. We consider that a reasonable employee would not think they were being disadvantaged by any of his responses. The claimant has an unjustified sense of grievance here. Mr Berge did not try to dissuade the claimant from pursuing her complaint, he expressed empathy towards her situation and suggested a way that he genuinely felt would be most likely to lead to a resolution.

268. Mr Doherty's comments in his outcome letter do not amount to detriments. In our view no reasonable employee would think they were disadvantaged by his comments. He considered the claimant's allegations and reached the conclusion, which in our view was correct, that they lacked merit. We interpret his comments against this background as they were meant, an attempt to try and encourage the claimant to take a different approach to her relationship with Ms Nwosu. The claimant has an unjustified sense of grievance here.

269. Our view of Mr Joseph's decision not to consider the new allegations of victimisation as part of the claimant's appeal and his related comments about this approach at the grievance appeal hearing is that there was no detriment to the claimant. It was appropriate based on the respondent's process for him to take this approach. The claimant was able to raise a fresh grievance if she wished and we consider that a reasonable employee would have understood and accepted this rather than interpreting his actions as having a sinister motive.

270. We found on the facts that Mr Joseph did not agree that the claimant would be offered another role at the conclusion of the grievance hearing and therefore he did not deviate from that in relation to offer made to the claimant on 10 October 2018. The way the offer was put in his letter of 10 October 2018 was perfectly acceptable. The claimant's flat refusal to engage with it was unreasonable, and an unjustified sense of grievance.

271. In addition, we reiterate our conclusion that the claimant's dismissal was genuinely and solely for the reasons explained in Mr Joseph's termination letter. All of the steps taken towards the claimant's dismissal, and the failure to overturn it on appeal, must constitute detriments because without doubt the proposal to dismiss the claimant was subjecting her to a disadvantage. The steps were not taken, however, because of the claimant's disclosures in the WHA claim or the discrimination elements of that claim because the individuals involved were not aware of the claim.

272. The individuals were aware of the claimant's grievance, but they did not take the steps they took towards the claimant's dismissal because of the grievance. They took the steps that took because the claimant was refusing to attend work. We add that, in our view, the process followed was an entirely fair and reasonable one with all the employee protections in place that we would expect to see if we were required to consider whether or not the dismissal was fair.

273. The claimant's allegations concerning the respondent's decision to correspond with her at her work email address hold no merit in our view. There was no evidence that the respondent was aware that the claimant was not receiving the work emails. The explanation given by the respondent as to the operation of its self-service HR system is straight forward and honestly given any reasonable employee would have accepted it. We add, in our view, if the claimant's work email was frozen as she says, the onus was on her to alert the respondent to this and check that they had a means

of communicating with her rather than the other way around. Again, the claimant has an unjustified sense of grievance here.

274. We do not consider the claimant was put to a disadvantage because she was sent her P45 before the outcome of her appeal against dismissal was known because it did not prevent Jo Bowles from making a decision to reinstate her. This would have been a simple administrative process.

275. Finally, we consider that the claimant was not subjected to a disadvantage by the minor factual inaccuracy in Jo Bowles letter. This was part of the background narrative and did not influence her reason for not upholding the claimant's appeal. In our judgment, these final two allegations in this section are examples of the claimant having an unjustified sense of grievance.

Direct Discrimination and Harassment Claims

276. When analysing claims of direct discrimination, the first step is to identify any less favourable treatment when compared to a comparator in the same material circumstances. It is then necessary to consider the reason for that less favourable treatment.

277. Before considering each of the allegations in turn, we have sought to identify relevant primary facts that point to the possibility of discrimination and apply an overview approach.

278. The claimant's case with regard to age discrimination rests solely on the comment made by Mr Allard on 15 March 2018 that the team had wanted him to employ a strapping young man. The comment was made, but in our view this fact is insufficient to shift the burden of proof onto the respondent. It is countered by the fact that, notwithstanding the comment, Mr Allard offered the claimant the role. In addition, she was not obviously older than the other members of her team, with her age being in line with the team's average age. No other comments / incidents referenced anything that is connected with age.

279. When it comes to marital status the claimant's case rests solely on her assertion that Ms Waine, Ms Nwosu and Ms Odiadi envied her being married because they were either single or in Ms Waine's case, because she had remarried after a divorce. It is notable that she does not complain or that adverse comments were made about her marital status. Instead, she has interpreted queries/comments made about her status as a parent as implying a connection to marital status without any obvious justification.

280. The claimant's suggestion that these three hardworking and successful women resented the claimant's marital status so much that they would behave deliberately badly towards her is quite staggering. And for her to suggest that such feelings might be rooted in Ms Nwosu and Ms Odiadi's Nigerian heritage might even be considered offensive. We have nevertheless analysed each allegation in turn so that we can be sure we have considered the claimant's allegations fully and thoroughly.

281. Dealing first with the comments made by Mr Allard on 15 March 2018, we found that he did tell the claimant that she was lucky to have been given the job because the team had wanted him to employ a strapping young man. The claimant was given the job by Mr Allard and so there is no evidence he meant anything other than a joke. The context is that the team of women were joking with him that they wanted him to employ an attractive young man. The remark in our view is predominantly sexist rather than ageist.

282. We consider this allegation is understood as an allegation of harassment rather than a detriment arising from direct discrimination (applying section 212 (1) of the Equality Act 2010. However, for the sake of completeness we have considered both claims put by the claimant.

283. We conclude that the remarks did not constitute direct discrimination because of age as the claimant was not treated less favourably than a younger *person* would have been treated in the same circumstances. The joke was primarily about the fact that she was not a man. In our judgment, Mr Allard would have made the same remark to a younger woman because the joke still worked if this had been the context.

284. Having said that, the remarks were age-related, and the claimant was upset by it. Mr Allard did not intend this effect. however. The remarks did constitute unwanted conduct related to age that the claimant says had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

285. We do not uphold the claim for harassment based on the remarks, however. This is for two reasons. The first is that we think the claimant was not as upset by the remarks as she claimed. This is based on her diary entry and the fact that she did not mention it in her grievance. If we are wrong about this though, our view is that for her to be so upset about the remark, from an age-related perspective, was unreasonable. It is obvious from the context that the remark was meant as a joke.

286. We consider that Ms Nwosu did not treat the claimant any less favourably than any other colleague, never mind one that was younger or unmarried, on any of the occasions cited by the claimant. This includes the comments and or actions of Ms Nwosu on 24 April, 27 April, 18 June, 20 June, 22 June, 28 June, 10 July, 11 July or 13 July.

287. On each occasion, Ms Nwosu behaved as she would towards any other colleague, and we conclude there was no discrimination or harassment. In addition, none of these incidents constitute detriments for the purposes of the claimant's public interest disclosure claim. No reasonable employee would have thought they were being disadvantaged by the actions of Ms Nwosu and in fact, many would have been grateful for her help. It follows that we reach the same conclusion in relation to any involvement by Mr Allard in relation to authorising any of the transactions involved. In all cases we consider the claimant had an unjustified sense of grievance.

288. The comment made by Ms Nwosu about the manager Karen on 30 April 2018 was not related to any protected characteristic. It was not deliberately ignored by Mr Allard or Ms Waine. They were not aware of it.

289. The allegation that Ms Nwosu was trying to remotely access the claimant's computer has been rejected on its facts.

290. We consider that none of the remaining actions of Mr Allard towards the claimant continued less favourable treatment of her because of her age or marital status. Mr Allard's actions with regard to the claimant's holiday on 11 June 2018 arose because he was applying the respondent's policy on sickness arising on a pre-booked holiday and sickness. We are satisfied he would have done the same with any other employee regardless of age or marital status. His actions were not intended to cause the claimant a disadvantage, but to enable her to recover a lost day's holiday. Any reasonable employee would have understood this. There was therefore no detriment to the claimant and again her sense of grievance was entirely unjustified in the circumstances.

291. The conduct of Mr Allard in the one-to-one meeting with the claimant on 12 July was also not less favourable treatment when compared to how Mr Allard would have dealt with a member of staff of a different age or marital status. Mr Allard was simply trying to address a problem in the relationships between members of his team. The claimant has taken his comments completely out of context. She was not disadvantaged by anything that took place at that meeting and in fact Mr Allard tried to resolve the situation by speaking to Ms Nwosu. There was no detriment to the claimant. This is another example where she has an unjustified sense of grievance.

292. In our view, the claimant has also overreacted to the emails sent to her by Mr Allard about work matters on 1 August, 8 August, 20 September and 24 September. The claimant presented no evidence that suggested Mr Allard would not have sent the same emails to any other employee in the same circumstances. They are all innocuous work enquiries that did not cause any disadvantage to the claimant. Her claims that they were sent because of her age, marital status, the content of the WHA claim and/or her grievance therefore fail.

293. Turning to the allegations levied at Ms Waine, we have reached the same view in connection with each of these.

294. The first allegation concerns Ms Waine's comments to the claimant on 6 March 2018. The comments in the context in which they were made were entirely innocuous and, in our view, do not constitute less favourable treatment of the claimant. In any event, they have no connection to age or marital status.

295. The next allegation concerns the conversation the claimant had with Ms Waine on 16 May 2018. This was a normal friendly conversation that Ms Waine would have had with any colleague about their children regardless of

their age or marital status. No reasonable employee would consider themselves to have been disadvantaged by the conversation.

296. It is surprising that the claimant does not allege in the schedule that the conversations she had with Ms Waine on 6 March and 16 May 2018 are because of her WHA claim. This is inconsistent with her argument that Ms Waine wanted to make life uncomfortable for her because of the claim so that she would leave. To us it demonstrates the inconsistencies in the claimant's arguments and reinforces our view that her conspiracy theories are simply not credible.

297. With regard to the allegations arising on 27 July and 18 and 19 September, we consider these to be innocuous work-related matters. They do not constitute direct discrimination against the claimant by Ms Waine on the grounds of age or marital status. Nor are they detriments to which Ms Waine subjected her because of the WHA claim or grievance. These are further examples of situations where the claimant has an unjustified sense of grievance.

298. The final allegations we are required to consider are the comments made by Ms Odiadi on 27 July 2018. The first comment was not directed at the claimant, but was said in her presence. It was not connected to marital status, but a comment about parenting decisions. Ms Odiadi did not make it because of the claimant's complaint of 19 July 2018 because she was unaware of its existence.

299. The second comment did not constitute less favourable treatment of the claimant on any grounds. Ms Odiadi was trying to be encouraging and supportive of the claimant. No reasonable employee would have interpreted the comment, in the context in which it was said as anything different.

Unlawful Deduction of Wages

300. The claimant's claim of unauthorised deductions from wages fails because there was no unauthorised deduction. In fact, the claimant was paid more than her entitlement because she refused to work from 24 September 2018 but was paid up to 30 September 2018.

301. The claimant's absence from 24 September until 23 November 2018, the date of the termination of her employment was unauthorised. It was also, in our view, undertaken without good reason as the claimant's workplace was not unsafe. Under an express provision in the claimant's contract of employment, she was not entitled to be paid while absent without authorisation.

Holiday Pay

302. Applying the formula contained in the claimant's contract for calculation of accrued holiday pay, the claimant had accrued 18.67 days of holiday entitlement as at the date of termination of her employment. Her holiday began in March and she was entitled to 32 days (plus bank holidays) in each holiday year. This gives an accrual rate of 2.67 days per month. Only

complete calendar months are factored in. The claimant was employed for 7 of these, April though to October 2018. She had taken 19 days of holiday plus 5 days of bank holiday when she was dismissed and so was not due to be paid for any accrued untaken holiday entitlement.

303. Under the Working Time Regulations 1998, accrued leave is not calculated using complete calendar months. The annual entitlement, however, is to 28 days including bank holidays. The accrual calculation for the period from 5 March to 23 November 2018 gives a total of 20.3 days. As bank holidays can be counted towards this, the claimant was not due to be paid for any accrued untaken holiday entitlement under the regulations.

Notice Pay

304. The claimant's contract included an express provision that entitled the respondent to terminate her employment without notice or payment in lieu of notice in the event of gross misconduct. The respondent was correct to categorise her unauthorised absence work as gross misconduct and was therefore entitled to rely on this section.

Time Limits

305. For the sake of completeness, we record our findings in relation to the time points. Our findings here will only become relevant if the claimant overturns the rejection of her claims on appeal.

306. The claimant's claim form of 10 January 2019 was accepted. Although the interim relief claim within it was out of time, this does not negate the validity of the other claims contained within it. We note that not all of the claims we have been required to determine were. Some were added later via the later claim form and some even later by way of the production of the schedule.

307. Using the earliest date of 10 January 2019, however, means that all claims for anything that occurred prior to 11 October 2018 are outside the normal three-month time limit.

308. The claimant cannot therefore rely on the continuing act provisions to try to link together all together all of her allegations so that they are in time because they were not linked. Based our findings, there was no campaign of harassment in our view.

309. Entire processes, such as dismissal processes or grievance processes can also be continuing acts. In order for us to be able to consider matters that occurred before the time limit cut-off, the last part of the process must be within the normal time limit. Here, all elements of the dismissal process are within time here meaning the tribunal does have jurisdiction to consider that. The conclusion of the grievance process was on 10 October 2018, however, prior to the time limit cut-off date.

310. The tribunal can nevertheless grant a just and equitable extension for discrimination claims. We are minded to do this as the delay of one day is so minimal. We are also minded to extend time in respect of the allegations

the claimant raised as part of the grievance on the basis that she tried to resolve these internally before taking legal action.

311. We have not gone through the allegations to identify which would be in time and which would fall out of time as a result of these decisions. As we have rejected all of the allegations, this would involve disproportionate effort.

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Employment Judge E Burns
25 January 2021

Sent to the parties on:

26/1/21

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For the Tribunals Office