



EMPLOYMENT TRIBUNALS

Claimant: Miss C Maughan

Respondent: Great Ormond Street Hospital for Children NHS Foundation Trust

Heard at: London Central

On: 9, 10, 11, 12, 16, 17, 18,
19 & 20 November 2020
16 & 17 December 2020
(in chambers)

Before: Employment Judge H Grewal
Mr D Carter and Mr T Robinson

Representation

Claimant: In person

Respondent: Mr P Linstead, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal does not have jurisdiction to consider the complaints of direct religious discrimination.

2 The complaints of direct race discrimination relating to acts that occurred after 25 October 2018 are not well-founded. The Tribunal does not have jurisdiction to consider complaints of direct race discrimination about acts that occurred before that date.

3 The complaints of direct sex discrimination are not well-founded.

4 The Tribunal does not have jurisdiction to consider the complaint of indirect race or religious discrimination.

5 The complaint of victimisation is not well-founded.

6 The complaint of unauthorised deduction from wages is well-founded.

REASONS

1 In a claim form presented on 6 April 2019 the Claimant complained of race, religious and sex discrimination and unauthorised deductions from wages. The Claimant commenced Early Conciliation (“EC”) with ACAS on 24 January 2019 and the EC certificate was granted on 10 March 2019.

The Issues

2 It was agreed that the issues that we had to determine were as follows (we have grouped issues that are similar or occurred on the same day into a single issue).

Direct race and religious discrimination

3 The Claimant describes her race as white British and her religion as Christian. Whether the following acts occurred as alleged by the Claimant:

3.1 On 31 July, 3 August and 6 August 2018 Ayotunde Ojo told the Claimant that she could or should not drink alcohol after work (on Friday) because it was against the Muslim religion and she would be offending the Muslims or it would be disrespectful as Tobi did not drink.

3.2 On 28 August 2018 Adeboye Ifederu expressed his displeasure at the Claimant for replacing a colleague with a Spanish colleague in his absence stating it was because the Spanish colleague was “raising complaints of bullying and harassment” and was Spanish like a previous colleague was.

3.3 On 4 September and 9 October 2018 Margaret King called the Claimant “a lazy white bitch”.

3.4 On 5 September 2018 A Ojo asked the Claimant what religion she was and said that she “should believe in God”.

3.5 On 5 September 2018 A Ojo told the Claimant, “It’s the African culture that men can speak down to women and you should accept that’s how it is in this department”. On 19 October 2018 A Ojo told the Claimant, “You need to accept that in black African culture men are dominating towards women.”

3.6 On 20 September 2018 A Ojo asked the Claimant whether she was Christian and she thought that “lesbians and gays are against the Christian religion”.

3.7 On 5 October 2018 A Ojo told Esther Acanit that she should not speak to the Claimant or she would be in trouble and how the Claimant had put in a complaint to Christine and something big was going on.

3.8 On 12 October 2018 A Ojo called the Claimant a “white Yorkshire girl”.

3.9 On 19 October 2018 A Ojo asked the Claimant what her religious beliefs were because she was a “white girl”.

3.10 On 23 October 2018 A Ojo created a board for Black History Month with the words “celebrating blacks”.

3.11 On 23 October 2018 A Ojo asked the Claimant whether she celebrated any “white Yorkshire days”.

3.12 On 4 December 2018 A Ifederu said to the Claimant in reference to another employee of the Respondent, “Oh her, she’s another stupid white Northerner like you.”

4 If any of them occurred, whether they amounted to the Respondent subjecting the Claimant to a detriment;

5 If they did, whether by subjecting the Claimant to that detriment the Respondent treated her less favourably than it treated or would treat others because she was white British or Christian.

Direct sex discrimination

6 Whether any of the acts set out at paragraph 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 and 3.12 and any of the following acts occurred as alleged by the Claimant:

6.1 On 9 and 29 August 2018 A Ifederu told the Claimant that he did not know how long she would be in the role (on the latter occasion whilst standing closely behind her desk watching her work).

6.2 On 31 August 2018 A Ifederu told the Claimant not to speak with Jessica Hylton whilst walking very closely behind her desk.

6.3 On 30 October 2018 A Ifederu interrupted the Claimant and told her to “shut up” as he had not finished speaking and called her a “silly little girl” and slammed his fists on her desk in anger.

6.4 On 5 November 2018 A Ifederu gave the Claimant unrealistic deadlines and put pressure on her to complete tasks immediately.

6.5 On 6 November 2018 A Ifederu denied the Claimant the opportunity to become involved with recruitment processes like other Band 5 managers and told her that she was inexperienced with interviews and he did not think that she would be able to manage. On the same day he lost his temper and shouted aggressively at her in an angry tone calling her a “stupid girl” whilst standing close to her and stood behind her desk demanding that she show him what she was working on, making her feel uncomfortable. On that day he treated and spoke to her differently than he did with other colleagues making her feel very isolated.

6.6 On 7 November 2018 A Ifederu discussed the Claimant’s grievance complaints with other colleagues at the tea bar in a manner which could be overheard and called her a “stupid white girl” and asked her why she had “not run away like the others.”

6.7 On 7 November 2018 Zarah Ahmed said that she would use her pregnancy as an excuse to get the Claimant into trouble and she, Shahjedah Khair and A Ifederu discussed how they were going to get the Claimant into trouble and A Ifederu encouraged the discussion.

6.8 On 8 November 2018 A Ifederu spoke to the Claimant in an aggressive, intimidating

tone and accused her of discriminating against Zarah Ahmed because of her pregnancy and of lying in relation to the allegations made by Z Ahmed.

6.9 HR failed to take appropriate action after the Claimant complained on 8 November 2018 that people were colluding to get her into trouble following her grievance.

6.10 On 8 November Mr Ifederu demanded that the Claimant not speak with Azuma kalu.

6.11 On 4 December 2018 A Ifederu stood closely to the Claimant when there were no colleagues around, called her a “silly white girl” and said that he was surprised that she had been a manager before “being stupid and inexperienced”, told her that she must ask permission when leaving her desk or going to the toilet, slammed his fists on her desk in anger, threatened her in a vicious tone making her worry for her safety and told her that she would “be sorry” for complaining about him.

6.12 On 5 December 2018 A Ifederu raised his voice and acted in a threatening and aggressive way towards the Claimant, demanded that she agree to an Occupational Health referral “or else”, demanded to know her whereabouts at all times, particularly during lunch or toilet breaks, told her that she should do as he said and raised his hand near his face, blocked the door to prevent the Claimant from leaving the room and shouted at her that he had “not finished speaking” and followed her when she eventually left the room and spoke quietly as other colleagues were around.

6.13 On 11 December 2018 Simon Heales changed his story regarding the incident between the Claimant and A Ifederu on 5 December and said that the Claimant was “disruptive” for making a complaint about the incident.

6.14 On 29 November and 3 December 2018 the Respondent offered the Claimant the option to move to another department on a temporary basis while the grievance investigation was taking place after the Claimant complained that the bullying had gotten following her complaint and offered her a Band 3 training role as a temporary redeployment option.

6.15 On 6 December Michelle Lennon in the Occupational Health department told the Claimant in an abrupt phone call that she was not allowed to return to work, asked her whether she had “gone crying to Security” and criticized her and made her feel in trouble for complaining about the incident on 5 December 2018.

7 If any of them occurred, whether they amounted to the Respondent subjecting the Claimant to a detriment.

8 If so, whether the Respondent treated the Claimant less favourably than it treated or would treat others because she is a woman.

Indirect race and religious discrimination

9 Whether the Respondent applied a provision, criterion or practice (“PCP”) that employees could not drink alcohol at certain work social events.

10 If it did, whether the PCP put white British or Christian employees at a particular disadvantage when compared with employees who are not white British or Christian.

11 If it did, whether it put the Claimant at a particular disadvantage.

12 If it did, whether the Respondent can show that the PCP is a proportionate means of achieving a legitimate aim.

Victimisation

13 It was not in dispute that the Claimant's grievance of 9 November 2018 amounted to a protected act.

14 Whether the Respondent subjected the Claimant to a detriment by stating in a reference provided for her on 17 July 2019 that she was subject to ongoing disciplinary proceedings.

15 If so, whether the Respondent subjected her to that detriment because she had done the protected act.

Jurisdiction

16 Whether any of the alleged acts of discrimination occurred before 25 October 2018.

17 If any of them did, whether they constitute conduct extending over a period where the end of the period is on or after 25 October 2018.

18 If not whether it would be just and equitable for the Tribunal to extend time for those claims and to determine them.

Statutory Defence

19 If any of the Respondent's employees are found to have discriminated against the Claimant, whether the Respondent took all reasonable steps to prevent the employee(s) from doing acts of that description in the course of his/her employment.

Unauthorised deductions from wages

20 Whether the deduction of 5 hours' salary from the Claimant's pay in March 2019 because of her absence from work on 14 December 2018 was an unlawful deduction.

The Law

21 Section 13(1) of the Equality Act 2010 ("EA2010") provides,

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

Sex, race and religion are protected characteristics. On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case (section 23(1) EA 2010).

22 Section 19 EA 2010 provides,

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if –

- (a) A applies, or would apply, it to person with whom B does not share the characteristic,*
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
- (c) it puts, or would put, B at that disadvantage, and*
- (d) B cannot show it to be a proportionate means of achieving a legitimate aim.”*

23 Section 27 EA 2010 provides,

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act, or*
- (b) A believes that B has done, or may do, a protected act.*

(2) Each of the following is a protected act –

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

24 Section 39(2)(d) EA 2010 provides that an employer (A) must not discriminate against an employee of A’s (B) by subjecting B to any detriment. In determining whether an employee was subjected to a detriment, the test is whether by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to “detriment” (per Lord Nicholls in **Shamoon v Chief Constable of the RUC [2003] ICR 337**).

25 Section 123 EA 2010 provides,

“(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of –

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or*
- (b) such other period as the tribunal thinks just and equitable.*

...

(3) For the purposes of this section –

- (a) conduct extending over a period is to be treated as done at the end of that period;*
- (b) failure to do something is to be treated as occurring when the person in question decided on it.*

- (4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –*
- (a) *when P does an act inconsistent with doing it, or*
 - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”*

Section 140B EA 2010 provides for extension of time limits to facilitate Early Conciliation before the start of proceedings.

26 Section 136(2) and (3) EA 2010 provide that if there are facts from which tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of Equality Act 2010, it must hold that the contravention occurred unless A shows that A did not contravene the Act. We had regard to the guidance given by the Court of Appeal in Igen Ltd v Wong [2005] IRLR 258 and Madarassy v Nomura International plc [2007] ICR 867 and the Supreme Court in Hewage v Grampian Health Board [2012] UKSC 37 on the application of section 136.

27 Section 13 of the Employment Rights Act 1996 (“ERA 1996”) provides,

- “(1) An employer shall not make a deduction from wages of a worker employed by him unless –*
- (a) 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*
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*
- (2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised –*
- (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
 - (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for this Part as a deduction made by the employer from the worker’s wages on that occasion.”*

Section 14 provides that section 13 does not apply to a deduction from a worker’s wages made by his employer where the purpose of the deduction was the reimbursement of the employer in respect of an overpayment of wages.

The Evidence

28 The Claimant, Kathleen Maughan (her mother), and Alice Munn gave evidence on behalf of the Claimant. The following witnesses gave evidence on behalf of the Respondent – Christine Morris, Professor Simon Heales, Adeboye Ifederu, Ayotunde Ojo, Margaret King, Claire Fletcher, Christopher Longster, Zarah Ahmed, Michael Neill, Rebecca Eyton-Jones, Lisa Liversidge, Stephen Mathew, Michelle Lennon, Laura Walters, Katherine Joel and Jane Taylor. We also admitted the witness statements of Jessica Hylton (on behalf of the Claimant) and Georgia Huelamo (on behalf of the

Respondent). We indicated to the parties that we would attach such weight to those statements as we thought appropriate in light of the fact that their evidence had not been tested in cross-examination. The documents in the case ran into about 3,000 pages. Having considered all the oral and documentary evidence, the Tribunal makes the following findings of fact (it is, however, not possible to refer to all the evidence in our Reasons)

Findings of Fact

29 The Claimant, who describes herself as white British and a Christian, commenced employment with the Respondent on a temporary contract in January 2015. Her employment was made permanent in February 2016. Between 2016 and 2018 she worked in the Cardiac Intensive Care department. That was a band 4 role.

30 In about May 2018 the Claimant applied for the role of Data Office Manager in the Newborn Screening Department. That was a Band 5 role and a promotion for the Claimant. Adeboye Ifederu, Head of Newborn Screening, interviewed the Claimant and appointed her to the role.

31 Newborn Screening (“NS”) is located within Chemical Pathology in the Respondent’s Paediatric Laboratory Medicine Directorate (“the Laboratories”). All newborn babies in the UK are tested for a range of inherited conditions by a heel prick which draws blood onto specially designed filter paper. The samples are tested and processed and fed back to the babies’ local medical providers with a view to arranging medical treatment if required. The Respondent’s Newborn Screening Team is the largest in the country, processing one-sixth of the UK’s heel prick test results from all over the country. The test results need to be processed quickly. It is a high intensity work environment because of the volume of work and the speed at which it needs to be done. The team is split into two parts – the Technical/Clinical team and the Administration team.

32 The Claimant commenced in her role on 16 July 2018. She managed a small team. At that time the team comprised three Laboratory Assistants (Margaret King, who had been in the department for over 20 years, Filsan Obuli and Ogunbiyi Olumide) and two bank staff (Rebecca Eyton-Jones and Martin Campbell). Mr Olumide left at the end of August 2018. Mr Campbell left in August 2018 and was replaced by Estefania Bori-Roman who started on 13 August 2018. Three apprentices joined the team in August and September 2018. They were Shajedah Khair (started on 13 August), Rachel Graham (started on 17 September) and Zarah Ahmed (started on 24 September).

33 The job description for the Claimant’s role set out the main duties and responsibilities of the role which fell into four categories. These were data management, office management, staff supervision and quality. Data management included loading and co-ordinating the entry of data to hospital computer systems from information provided on new born screening bloodspot cards, ensuring that data entry requirements were met in relation to guidance from the National Newborn Screening Network, actively managing data enquiries and responding to requests for information in an accurate and timely manner.

34 The Claimant’s contract provided that her hours of work were 37.5 hours per week exclusive of breaks. Clause 1 set out what her annual salary would be and provided that payment of her salary would be made on the last day of the month through the BACS system into an account of her choosing. It continued,

“The Trust is entitled to deduct payments for the following: any loans to the Trust, excess leave entitlement, other excess payments made to you, any deductions agreed by you and any deductions required by legislation.”

35 Esther Acanit had been the Data Office Manager before the Claimant and she had been in the role for six months until 29 May 2018. While she was working in that role she had not made any complaints about the role or her training. When she was interviewed in December 2018, as part of the investigation of the Claimant’s grievance, she said that she had been very unhappy in the role from the outset. Her reasons for being unhappy were that the department was short-staffed and she felt that she was doing Band 3 Medical Laboratory Assistant (“MLA”) work rather than being a manager. She was also unhappy with the training which had consisted of Filsan Obuli training her in data entry. She felt that Margaret King was rude and had complained informally to Mr Ifederu about the team being rude. He had acknowledged that some of them could be difficult but had told her that as a manager she had to find a way to manage it. Things had improved when two new members joined the team. However, she had resigned and gone to work elsewhere for the Respondent. She said that she had not seen Mr Ifederu shout at anyone.

36 Alice Munn, who had been the Data Office Manager from April 2013 to December 2016, gave evidence on behalf of the Claimant. She gave evidence that Mr Ifederu had bullied her and shouted at her. We did not consider her to be a reliable or an impartial witness. Mr Ifederu had taken action against her under the Respondent’s Managing Poor Performance Procedure in October 2013 and had instigated the disciplinary process against her which had led to her being given a final written warning in June 2014. In December 2015 Christine Morris had spoken to her and warned her about her offensive behaviour because in the course of a discussion about her making up time after an absence, she had called Mr Ifederu “miserable and sadistic” and had called him a “wild animal” in Ms Morris’ presence.

37 On her first day at work Mr Ifederu introduced the Claimant to her team and carried out the induction process with her, which included informing her about her hours of work and the absence notification procedure. He informed her that the working hours were 9 to 5.30 pm with a one-hour lunch break. The absence notification procedure in the team was to call between 7.30 and 8 at a number which would be answered at that time.

38 In order for the Claimant to carry out her role, it was essential that she knew how Data Entry worked and was able to do it. Mr Ifederu assigned Filsan Obuli, who was very experienced in Data Entry, to train the Claimant on it. Mr Ifederu gave the Claimant a copy of the Data Entry training plan which was used for training new Laboratory Assistants. The expectation was that all the relevant areas would be covered but possibly within a shorter time-frame. Mr Olubimi assisted Ms Obuli with training the Claimant. It was not uncommon in the Laboratories for those who were more experienced in certain areas to train those who were not, regardless of whether they had a higher or lower banded role.

39 The Claimant, however, resented being trained by someone whom she was managing and having to do the same training as the MLAs who did the data entry work. In order to be signed off on any competency in the training, the individual needs to have done the task three times. The Claimant’s trainers found that she would not approach them to complete the training but they would have to chase her to do it. Quite

often, when they suggested a time for doing it she would say that she was busy or not available. She picked up most things quickly but got defensive if they pointed out any errors to her. She also felt that data entry was something that had to be done the band 3 MLAs and that she as a Band 5 office manager should not be required to do it. She did not regard it as being part of her job in spite of what was said in the job description.

40 In her first week Mr Ifederu invited the Claimant to a meeting with the Apprenticeship lead so that she would have a better understanding of how the apprenticeship scheme was run in Newborn Screening

41 Very soon after starting the Claimant advised Mr Ifederu of training courses she wanted to attend. On 25 July she attended a Conflict Resolution Course. Mr Ifederu's view was that it was better for the Claimant to wait until she understood her role and what data entry entailed before attending other training courses.

42 Soon after the Claimant started Mr Ifederu spoke to her about the different personalities in the team and how she needed to be mindful of them in managing the team. He had in mind particularly Margaret King and Rebecca Eyton-Jones, who were outspoken and not slow to voice their concerns. He informed the Claimant of the steps that he had taken to improve Ms King's interpersonal skills and communications.

43 The Claimant sat in an office with three persons in another team in Chemical Pathology. They were Dami Taiwo, Ayotunde Ojo and Jessica Hylton. Ms Taiwo was the manager of that team. The Claimant's team sat in an adjoining room. Her team had to go through the room in which she sat to access their room.

The Claimant's diary

44 When the Claimant submitted a formal grievance on 9 November 2018 she attached to it a typewritten document headed "Diary". The document comprised 30 pages and contained almost daily entries for the period between 16 July 2018 and 8 November 2018. There are a number of entries for 16 July which was the Claimant's first day in Newborn Screening. The Claimant's evidence in cross-examination was that she had started making notes in a notebook on her first day because she was very shocked at what she had walked into. She said that she had typed up the notes after she submitted the informal grievance (on 3 September 2018) and before she submitted the formal grievance. Initially she said that had not disclosed her notebook because it had been left behind at the hospital. A day later she said that the notebook had been in a folder that had been removed from her desk on 10 December. We did not find the Claimant's evidence in respect of the diary to be credible for a number of reasons. The first time that she ever referred to the notebook and manuscript notes was in cross-examination. There was no reference to it in her witness statement or the pleadings. There was no reference either to a diary or to many of the items recorded in it in her informal grievance. The first entry in the Claimant's "diary" was at 9.10 a.m. on 16 July 2018. We thought that it was extremely unlikely that any employee would start making diary entries within minutes of starting a new job or on the first day in a new job. We found that the Claimant started compiling the document headed "diary" sometime between 3 September and 8 November 2019. It is not a contemporaneous record of what happened but a document created to support the Claimant's formal grievance.

45 It was made clear to the Claimant at the outset that she was required to hold weekly meetings with her team and to enter the minutes of those meetings on the Respondent's system in order to comply with the Respondent's audit requirements. No

minutes were entered on the Respondent's system until the beginning of November 2018. On 1 November 2018 the Claimant typed up minutes of meetings that allegedly took place on 18 July, 26 July, 3 August and 16 August 2018. The Claimant's team complained in the course of the investigation into the Claimant's grievance that meetings did not take place every week. Rebecca Eyton-Jones in her witness statement, which was sent to the Claimant on 17 September 2020, highlighted certain matters in the minutes which she said were inaccurate. In particular, the minutes stated that the first meeting on 18 July 2018 (three days after she started) the Claimant reminded them about the expected behavior and explained the GOSH values and the need to adhere to them. The next three meetings all contained the following entry,

“Catherine expects to see an improvement in team work and the rude and unwelcoming behaviour needs to stop – this is still an issue.”

Ms Eyton-Jones in her witness statement said that those matters were not raised at those meetings. She also said that although she was shown as having attended the meeting on 3 August, she did not attend a meeting on that day because she was on holiday.

46 On 6 November 2020 (three days before the hearing started) the Claimant disclosed to the Respondent manuscript notes of the minutes of those meetings, except for the meeting of 3 August. The Claimant's evidence was that the manuscript notes were taken at the time and she used them to produce the typewritten notes. We did not find the Claimant's evidence that she had taken the manuscript minutes of team meetings home and retained them for almost two years after she typed them up to be credible. We found that that the minutes of the meetings created by the Claimant on 1 November 2018 were not an accurate reflection of what was discussed at those meetings and that the manuscript notes were produced recently and copied the typewritten notes.

47 At the end of July 2018 Ms Ojo was organising a party for a colleague, Ms Tijani, who was about to get married. The party was to be held on 3 August after work at the rooftop garden in the hospital. It is the only part of the building where drinking alcohol is permitted. The Claimant got involved in it and offered to buy a gift and to book the rooftop terrace. A few days before the party Ms Quagraine, a scientist in Newborn Screening, said to Ms Ojo that she would bring a bottle of wine to the party. Ms Ojo (who is a practising Christian) said that she thought that would not be good idea as Ms Tijani was a Muslim and it would be offensive to her. Ms Quagraine said that she had known Ms Tijani for a long time and she did not think that she would be offended by it. She said if she found it offensive she would say so. The Claimant was present during the conversation and she said that it was within the Respondent's policy to have alcohol on the rooftop garden after work hours.

48 There were further conversations on the topic on the day of that party and after the party. The conversations were along the same lines. Ms Ojo thought it was disrespectful for people to drink alcohol at events at which Muslims were present. Some people agreed with her view, others disagreed. Ms Tijani had no problem with people drinking alcohol. There was alcohol at the party and some people drank it.

49 The Claimant's evidence was that Ms Ojo had told her directly that she (the Claimant) should not drink after work that Friday and in general because it was against the Muslim religion and would offend Muslims. The only context that she gave about the conversation was that it was in reference to a hen party that she was helping to organise after work hours. She said nothing in her witness statement about the

conversations between Ms Quagraine and Ms Ojo and others about whether it would be appropriate to have alcohol at a party for a Muslim. She accepted in cross-examination that those conversations had taken place.

50 We found that the Claimant had distorted the conversations that had taken place. Ms Ojo had never directly told her that she should not drink after work on that day or in general because it was against the Muslim religion. At best, that was the Claimant's interpretation of Ms Ojo's views about drinking alcohol at the party. At worst, it was a deliberate distortion of the conversations that had taken place. The fact that the Claimant had omitted from her statement the context of the discussions led us to conclude that it was the latter.

51 On 6 August 2018 Mr Ifederu conducted a Performance Development Review ("PDR") appraisal for the Claimant. The Claimant rated her performance as "excellent". Mr Ifederu rated it as "good" and noted,

"I feel she has settled well in the short period since starting a new role and has only covered the essential areas of her duties. I am confident in her ability to meet the expectations in her role to very high standards within further time to establish herself."

He rated her "excellent" for demonstrating the Respondent's "Our Always Values". In terms of personal development it was agreed that she would continue with relevant data entry training and she was booked to attend management training (PDRs, recruitment and selection) in January 2019.

52 The Claimant's evidence was that on 9 August 2018 she asked Mr Ifederu why she had not received any training and he had responded that he did not know how long she would be in the role for. Mr Ifederu denied that that conversation had taken place. The Claimant's account is inconsistent with the PDR that had taken place only three days earlier. Training had been discussed at that PDR and it had been agreed that the Claimant would initially focus on data entry training and would attend management training in January 2021. At the PDR Mr Ifederu had expressed confidence in the Claimant's ability to meet the expectations of her role to very high standards in time. Her evidence on this point was not credible and we found that Mr Ifederu did not make the comment alleged by the Claimant.

53 On 3 August Martin Campbell, one of the two bank staff on the Claimant's team, resigned with one week's notice. He had found Margaret King sullen and unco-operative and had had problems with Rebecaa Eyton-Jones. He had raised his concerns about Ms Eyton-Jones with Mr Ifederu. Mr Ifederu had moved her to a different area and that had helped to improve things. The Claimant asked the agency that supplied bank staff to send someone to replace Mr Campbell. They sent Ms Bori-Roman and she started on 13 August. Mr Ifederu was unaware that the Claimant had sought a replacement for Mr Campbell. When he saw Ms Bori-Roman he asked the Claimant who she was. He was annoyed that the Claimant had sought a replacement for Mr Campbell. He said that the department did not need additional support because two new apprentices were joining the team (one of them started on 13 August). He did not express displeasure at the Claimant recruiting her because she was Spanish or because she had complained of bullying and harassment. The Claimant's evidence was that he did at a meeting on 28 August. The Claimant's "diary" records Ms Bori-Roman being mentioned at a meeting on 28 August but there is no reference to Mr

Ifederu expressing displeasure at her being recruited for the reasons given by the Claimant in her evidence.

54 In the course of August 2018 the Claimant's team raised a number of complaints about the Claimant with Mr Ifederu. They said that she did not carry out the duties that had been done by the previous Data Office Manager, she did not help them with their work when the team was short-staffed or they were particularly busy, she did not engage with the team, she left early, she spent a lot of time on her mobile phone, she would often disappear and nobody knew where she was. Mr Ifederu raised these concerns with the Claimant. The Claimant in turn complained about the team. She said that they were rude, difficult and unco-operative, and that if they had issues they should raise them first with her before approaching him. Mr Ifederu encouraged her to meet with her team and to build relationships with them.

55 On 24 August 2018 (Friday) Mr Ifederu was informed that the Claimant had left work at lunch-time. She had not told him that she was leaving early that day.

56 On 28 August Mr Ifederu met with the Claimant to discuss her having left early the previous Friday and other concerns that he had. He had been advised by Georgia Huelamo in HR to record what was discussed with the Claimant in meetings. He raised his concern about the fact that the Claimant had left at lunch-time on Friday without telling him beforehand that she was going to do so. The Claimant said that she had told him and that it had been entered on the whiteboard in her office. Mr Ifederu disputed her assertion that she had told him. He said that in future if she wanted to leave early she should tell him directly and not expect him to pick up the information from her whiteboard. She also said that she had taken it as time off in lieu for having worked longer hours before. She said that she only took half an hour's lunch break and had stayed late on occasions. Mr Ifederu reminded her that the working hours were 9 a.m. to 5.30 p.m. five days a week with a one-hour lunch break. Tea breaks were allowed but they were not part of a contractual allowance. Arriving late or leaving early and making up the lost time later had to be approved by him. Not taking lunch and tea breaks and calling that "owed time" was not acceptable and would be considered unauthorised leave in the future. He also raised with her the issue of accumulated emails in their generic email accounts the previous week. The Claimant said that no training had been provided for that task and Mr Ifederu told her that there was no specific training to tell an office manager how to open emails. The matters discussed were set out in a letter to the Claimant dated 28 August 2018.

57 The Claimant's evidence was that Mr Ifederu was aggressive and kept raising his voice at that meeting. The Claimant made many allegations about Mr Ifederu shouting at and being aggressive to her. In the course of investigating the Claimant's formal grievance Martin Neill interviewed 22 employees who worked in the laboratories. They comprised men and women of different races in different roles. They included staff in administrative roles and scientists, those who were managed by Mr Ifederu and those who were senior to him. They included individuals who do not feature in this case and those who were critical of others in the department. Not one of them had ever witnessed Mr Ifederu raise his voice or shout at or behave inappropriately towards anyone. That included Esther Acanit, the Claimant's predecessor in her role, who had been unhappy with many aspects of her role. No one had seen him shout or behave inappropriately towards the Claimant. He was described by the interviewees as being "professional", "calm", "such a good manager", "not capable of shouting", "very pleasant" and "very supportive and encouraging". One of the witnesses, who does not feature in this case, said that he had heard Mr Ifederu disagree with people and tell

them not to do things but had never heard him raise his voice. The Claimant tried to explain this by saying that he shouted when he was alone with her. That was not consistent with her evidence about him behaving inappropriately towards her in her office. The Claimant worked in an office with three others. Two of them were interviewed as part of the grievance investigation. It was also clear that the senior managers who gave evidence before us regarded Mr Ifederu as an experienced and professional manager. The picture that the Claimant painted of Mr Ifederu was very different from how many other people working with him saw him. We found that Mr Ifederu did not shout and was not aggressive at the meeting on 28 August. The Claimant was upset about being told that she had to work until 5.30 and could not leave half an hour earlier by taking a shorter lunch break.

58 In the summer of 2018 the Claimant joined a trade union (UNISON). In her evidence she said that she joined it in July 2018. In her “diary” she said that she joined it on 28 August 2018.

59 The Claimant’s evidence was that on 29 August at 11 a.m. Mr Ifederu had stood behind her desk looking at her screen while she was working and had said that he did not know how long she would be in her job. She said that he had said out of the blue unrelated to anything else. In the Claimant’s “diary” these matters were recorded as two separate incidents – the remark was allegedly made at 10.30 a.m. and he had stood behind her desk looking at the screen at 11 a.m. The Claimant’s evidence was not consistent. If that had happened, one or more of the people who worked in the same room as the Claimant would have seen and heard it. The Claimant’s evidence was not corroborated by any of them. There was nothing in Jessica Hylton’s statement about that. There was no reference to it in the informal grievance that the Claimant raised on 3 September 2020. We found that Mr Ifederu did not behave as alleged by the Claimant.

60 In light of the concerns that the team had raised about the Claimant and she had raised about them, Mr Ifederu decided to attend the team meeting on 30 August to see if he could help them resolve their differences. At the meeting both sides raised issues about which they had concerns and the meeting was sometimes heated with people trying to talk simultaneously. The day after the meeting Mr Ifederu set out in an email the points that had been raised and agreed at the meeting. These were:

- The importance of good communication;
- All members of the team had to be willing to engage in all aspects of the service to ensure sustainability of the service;
- Some tasks had to be handled by the office manager to alleviate pressure on the data entry team. These included the handling of telephone queries, positive letters (for which training was required) and managing the two generic email accounts during the course of the day;
- The team had to schedule lunch breaks to support service delivery and communicate these times to others in the team and the office manager and vice versa;
- If any operational issues arose within the team, especially regarding the workload, these should be raised with the office manager first. It was agreed that there would be more frequent assessment of work in progress by the office manager to get an idea of how much support was required to finish tasks on time;
- The importance of exhibiting “Our Trust Values” in the team’s interactions with each other.

61 The Claimant's evidence was that shortly after the meeting Mr Ifederu told her that the Trust's values meant nothing. That is inconsistent with what he said at the meeting and set out in the email after the meeting. We found that he did not say that.

62 During August 2018 Mr Ifederu had noticed the Claimant often having long personal conversations with Jessica Hylton rather than working. On 31 August the Claimant's team was very busy and Mr Ifederu noticed that instead of helping them the Claimant appeared to be engaged in a non-work related conversation with Ms Hylton. That was the day after the team meeting when it had been agreed that all members of the team had to be helpful (one of the Trust's values) and willing to engage in all aspects of the service. On 31 August Mr Ifederu raised the matter with Dami Taiwo, who was Ms Hylton's manager, and with the Claimant herself. He expressed his view that there was too much chatter going on which distracted the Claimant from her work and that it should be cut down. Ms Taiwo did not object to people having private conversations during work but she took on board the concerns that he had raised. Mr Ifederu did not raise it in an aggressive manner. It was not raised to alienate the Claimant, but simply to cut down the level of what he perceived as idle chat in the office.

63 On 3 September 2018 there was a NS Management meeting which was attended by the Claimant, Mr Ifederu, Christine Morris, Helen Aitkenhead (Director of NS) and senior scientific staff. In the meeting the Claimant on a number of occasions raised her disappointment in her team and said that she might have to discipline them. Ms Morris told her that she could not discipline the whole team for a breakdown in communications with her and that it was not an appropriate or effective way to improve team dynamics and performance.

64 Later that day the Claimant sent Ms Morris an email raising her concerns. In the email she complained about three things: the unacceptable behaviour of some members of her team (Margaret King, Rebecca Eyton-Jones and Filsan Obuli) and her manager's failure to support her and to deal with that, her contracted hours and the lack of training. In respect of the first issue, she said that the three individuals were unwelcoming, aggressive, unprofessional and disrespectful. She complained about them not carrying out routine tasks (such as dealing with emails) and said they felt that it was her job to do those things. She complained that Mr Ifederu had told her that GOSH values did not mean anything and had asked her whether she had ever managed a team before and said that she had not been a proper manager before because she had not had to manage such a difficult team. He had told her not to talk to the people with whom she shared a room and had told Dami Taiwo that he did not want anyone to speak to her. She referred to the behaviour of the team as being bullying behaviour. In respect of training she said that she had been given little training and thought that it was inappropriate for staff whom she was managing to train her. She complained about not being able to take time off in lieu if she worked extra hours. There was no suggestion by her that any of the matters of which she complained had anything to do with race, sex or religion.

65 Ms Morris sent the Claimant's email to Mr Ifederu on the same day and suggested that they discussed it the following day. She also sent the Claimant an email asking her what her availability was to meet that week. She wanted to meet with the Claimant at the earliest opportunity to discuss her concerns and to attempt to resolve them. Ms Morris offered the Claimant meetings on 10 September but the Claimant said that she was on annual leave from 6 to 11 September. Ms Morris then offered her an appointment on 5 September but the Claimant said that she could not attend then as she wanted to meet her trade union representative before the meeting. Having sought

HR advice Ms Morris told her that there was no need for her to discuss her concerns with her trade union before attending the meeting and that her trade union representative's availability should not delay the meeting. She could have a support companion if she wished. Ms Morris concluded that she regarded her request for a meeting at 3 p.m. that day as a reasonable management instruction. The Claimant responded that she could not meet that day and that she wanted something clarified before the meeting. The Claimant did not attend the meeting on 5 September 2018. She was on annual leave from 6 to 11 September 2018.

66 On 11 September Mr Ifederu provided Ms Morris his comments on the Claimant's complaints.

67 Ms Morris met with the Claimant on 17 September to discuss her concerns. Ms Morris explained to the Claimant that the core hours of the laboratory were 9 a.m. to 5.30 p.m. with a one-hour lunch break and that that was consistent with the Claimant's contract of employment which stated that she was required to work 37.5 hours per week. She explained to her that she would deal with her concerns under the Respondent's Dignity at Work policy. She went through the Claimant's email and Mr Ifederu's responses to it with her. It was agreed that there would be another meeting with Mr Ifederu present the following day to try to see whether they could resolve her concerns informally. Ms Morris sent the Claimant a letter on the same day setting out in brief their discussion. She also said in a separate email that HR had confirmed that the core hours of the department were as she had advised the Claimant. Ms Morris sent the Claimant an electronic invite to a meeting at 1 p.m. on 18 September.

68 The Claimant did not accept the invite and Ms Morris reminded her of it at 9.58 that morning. The Claimant responded at 12.42 that she had just finished training which had overrun and that she had sent a new proposed time for the meeting later that day. Ms Morris told her that she could not meet at that time as she had another meeting at 2 pm that day. The Claimant did not respond.

69 On 19 September Ms Morris sent an email to the Claimant and Mr Ifederu in which she expressed her disappointment at the Claimant's cancellation at short notice of the meeting on the previous day and her lack of communication since then. The purpose of the meeting had been to continue with the informal stage of the grievance process by formulating and agreeing actions between the Claimant and Mr Ifederu. As she was going to be on annual leave from 20 September to 4 October she suggested certain actions as an attempt to improve the situation and said that she would meet with them on her return to review progress. The suggested actions included Mr Ifederu meeting with the Claimant to review her training records and to plan a "back to basics" training plan to ensure that she was fully competent in all the tasks undertaken in the date entry office and to identify a trained and competent member of the team to undertake the training, Mr Ifederu and the Claimant meeting regularly to review progress, Mr Ifederu identifying any training required by the Claimant to fulfil her management responsibilities and the two of them agreeing on a way to facilitate improved working relationships with individuals in the team, which would need to include individual meetings with staff members whose behaviour had fallen below expected standards.

70 The Claimant's evidence was that on 4 September Mr Ifederu was shouting and screaming in the corridor. There is also an entry in her "diary" to that effect. That evidence is inconsistent with what a wide variety of employees said about Mr Ifederu (see paragraph 57 above). We did not find that evidence to be credible.

71 In her witness statement the Claimant said that on 4 September and 9 October 2018 Margaret King called her “a lazy white bitch”. She gave no further details about these allegations. Ms King denied that she had done that. In cross-examination the Claimant said that on 4 September she was in the office where Ms King worked and walking back to her room and heard Ms King say to someone else “She’s a lazy white bitch”. She did not hear the rest of the conversation. She accepted that Ms King could have been talking about anyone but she had assumed that she was referring to her. In cross-examination about 9 October the Claimant said that she had been sitting at her desk in her room and Ms King had been sitting at her desk in the adjoining room. Ms King sat at the other end of the room and had her back to the Claimant. She was talking to someone else. She heard her say “She’s a lazy white bitch” and she looked at the Claimant through the glass partition when she said that. She did not hear the conversation before and after that comment. Jessica Hylton heard it too and looked at the Claimant. In her “diary” the entry about 9 October reads as,

“13.15 pm – Zarah, Margaret, Filsan and Shajedah talking rudely and being personal about me in the office. Margaret called me a “lazy white bitch.” Jessica was a witness to this.”

72 Not only are the accounts given by the Claimant inconsistent and implausible, but there are also other matters that cast doubt about their veracity. Around this time the Claimant had made contact with Esther Acanit and one of the ways in which she communicated with her was on the Respondent’s live chat system. In a chat on 5 September the Claimant told her about trying to speak to Ms Morris and putting in a written complaint on 3 September. She makes no reference in that chat to Ms King having called her a “lazy white bitch” the previous day. The Claimant met Ms Morris on 17 September. She did not tell her about it. Jessica Hylton in her witness statement makes no reference to it. No one in the investigation of the Claimant’s formal grievance referred to it. Although some people referred to Ms King as being rude, sullen and unco-operative no one said that she engaged in racist or abusive language. Having considered all the evidence, we found that Ms King did not call the Claimant a “racist white bitch”.

73 Ms Ojo, who is a Christian, was interested in religion and often talked about it with everyone in the office, including the Claimant. In about September or October she encouraged her colleagues to buy tickets for her church’s carol concert which she said was more like a West End show than a usual carol church service. Either in the context of talking to the Claimant about the concert or on some other occasion Ms Ojo asked the Claimant what religion she was and the Claimant responded that she was a Christian. Ms Ojo’s evidence was that she asked her whether she was a practicing Christian and the Claimant said that she was not as she did not go to church regularly. The Claimant denied that she said that, although her evidence to us was to the same effect. The Claimant said that Ms Ojo said to her “You should believe in God” and Ms Ojo’s evidence was that she asked her whether she believed in God. It is possible that Ms Ojo did say to her that if she was a Christian she should believe in God. It is also possible that there was a conversation in the office about whether homosexuality was against the Christian religion and Ms Ojo asked the Claimant what she thought. The Claimant’s evidence was that after these conversations on Ms Ojo asked her what her religious beliefs were because she was a “white girl”. We found that that question was not asked. Ms Ojo already knew what her religious beliefs were.

74 In her witness statement the Claimant said that on 5 September 2018 Ms Ojo spoke about Mr Ifederu and said that *“it’s the African culture that men can speak down to*

women". She said that Jessica Hylton had witnessed that conversation. She also said that on 19 October Ms Ojo had told her that she needed "*to accept that in black African culture men are dominating towards women*". The "diary" entries are similar, except that on 5 September she has also recorded Ms Ojo as saying that she should accept "*that's how it is in this department.*" In cross-examination the Claimant said that on both occasions she had been sitting at her desk working and Ms Ojo had been at her desk. They had their backs to each other. Jessica Hylton and Dami Taiwo were in the same room. Suddenly out of the blue Ms Ojo had made those comments. They were not part of a wider conversation and she did not say anything after that. The comments were made to her. She was shocked and did not know what to say. The Claimant's account about these comments being made in a vacuum is not credible

75 Ms Ojo's evidence was that there was a discussion between all four of them in the room about a friend of hers who was married to a Ghanaian man and how she was dominated by him. She had to seek his permission before she could do anything. Ms Ojo said that that was quite common.

76 We found that the conversation started as Ms Ojo claimed and that there was then a conversation in general about relationships between men and women in African culture. Ms Ojo said that the men were dominant and the women had to defer to them. It is quite likely that in the course of that conversation Ms Ojo said that one might not agree with it but that's the way it was and one had to accept it. The conversation had nothing to do with Mr Ifederu or his relationship with the Claimant. No one said to the Claimant that she had to accept that that was how it was in the department. The Claimant did not have any discussions with Ms Ojo about her relationship with Mr Ifederu and Ms Ojo had never see him shout at or behave inappropriately towards the Claimant. This is yet another example of the Claimant taking a conversation out of context and distorting it to give a different picture from what actually happened.

77 As suggested by Ms Morris, on 20 September Mr Ifederu met with the Claimant to discuss her training. He gave her a copy of the Data Entry training plan and competence log and asked her to indicate the areas in which she had been trained and to identify those in which she required training. They agreed that a suitable trainer would need to be identified once they knew what gaps were. The arranged to meet again on 25 September. The discussion was noted in an email.

78 On the same day the Claimant complained to Georgia Huelamo, HR Manager, about how Ms Morris had dealt with her complaints. She said that she had been dismissive of her complaints of bullying and inappropriate behavior and had not dealt with them. Ms Huelamo responded that the process of looking into her complaint had not concluded and that Ms Morris had put certain actions in place to improve things while she was on annual leave. She advised her that if she was not happy with the resolution or outcome at the end of the informal process, she could move the matter to further stages in the policy. Ms Huelamo also suggested providing a mentor to support the Claimant.

79 On 25 September Mr Ifederu met again with the Claimant to discuss the gaps in her training and set out what was discussed in an email the same day. They identified five areas in which the Claimant required training. Mr Ifederu said that, although those were tasks which were normally done by the laboratory assistants, as the office manager the Claimant needed to be fully competent in those areas. They agreed to create a training timetable with identified trainers and for the training to commence in the first

week of October. It was also agreed that on completion of the core training they would look at other areas of training.

80 At the end of September the Claimant asked for Azuma Kalu (a Biomedical Scientist) to be appointed her mentor and HR agreed.

81 On 5 October Mr Ifederu met again with the Claimant to discuss the progress she had made on her training plan. The Claimant had been trained in some of the areas by Tobi Tijani. It was also agreed that she would produce a rota for the following week and follow up with regular weekly meetings with her team. There is no reference in the Claimant's witness statement to these meetings with Mr Ifederu to discuss training.

82 On 5 October Esther Acanit went to the office where the Claimant worked to sign Jessica Hylton's leaving card (her last day at work was 10 October). The Claimant was not in the office and Ms Acanit asked where she was. When she left Ms Ojo followed her and told her that she should not speak to Ms Hylton or the Claimant as she might say something that could get her into trouble. She said that "big things" were happening - the Claimant had put in a complaint to Ms Morris. Ms Acanit had left Newborn Screening and should not interfere in its politics. Jessica Hylton had told her about the Claimant's complaint to Ms Morris and Ms Ojo was aware she was making notes on her computer about people in the office.

83 On 10 October Ms Morris invited the Claimant and Mr Ifederu to a meeting on 18 October to discuss the Claimant's grievance. Mr Ifederu was due to go on leave on 19 October. The Claimant said that she could not attend the meeting because her mentor was unavailable on that date and asked to have the meeting when Mr Ifederu returned from leave. Ms Morris told her that the role of the mentor was to support her in her work and not to accompany her to meetings. Furthermore, it was an informal meeting and she did not need to be accompanied.

84 On 12 October Mr Ifederu met with the Claimant and went through her training log and identified the areas in which she had been trained and those areas in which training remained outstanding. He noted that she had covered a significant part of her training. He set out the discussion in an email to the Claimant.

85 On 12 October the Claimant contacted Ms Huelamo in HR about wanting to be accompanied at the meeting with Ms Morris. Ms Helamo advised her that as it was an informal meeting she did not have the right to be accompanied. If her issues were not resolved at the meeting, she could raise the matter formally. The Claimant kept repeating her concerns and Ms Huelamo emphasised several times that she needed to meet with Ms Morris to discuss the issues that she had raised.

86 On 17 October the Claimant asked Ms Morris what the purpose of the meeting was. Ms Morris responded that it was to continue with the informal stage and to review with her and Mr Ifederu the progress that had been made on the actions that she had proposed before she went on leave. She said that while there was no requirement for representation at the informal stage, she was happy for the Claimant's trade union representative to attend.

87 On 18 October Mr Ifederu met with the Claimant to discuss her training. They were able to complete and sign off the training and competency logs in accordance with the training plan for most of the procedures in Data Entry. The two that remained were "the Front of Box" and "sending of positive letters". He assigned Tobi Tijani as her trainer

for the next two weeks. He also advised her that she should hold weekly teams meetings for her team and should ensure that the minutes were recorded in compliance with the UKAS guidelines. The discussions were set out in an email from him to the Claimant.

88 On 18 October the Claimant told Ms Morris that she could not attend the meeting that day as the person accompanying her was not available. She said that she was available to meet after 1.30 pm the following day. Ms Morris responded that she was not available that afternoon. Ms Morris concluded that the Claimant was not willing to meet with her and that the matter would have to be concluded without a meeting.

89 On 19 October she sent the Claimant the outcome of her informal grievance. She said that she had confirmed that the Claimant's working week was 37.5 hours a week with a local requirement to work from 9 am to 5.30 pm to cover the service needs. She said that she had agreed that the Claimant's training had fallen below the required standard and had suggested corrective action in her email of 19 September. She was satisfied that those actions had been implemented and that good progress had been achieved. Hence, she regarded that matter as resolved. She then dealt with the Claimant's complaints about the behavior of R Eyton-Jones, M King and F Obuli. She said that Ms Eyton-Jones had left and Mr Ifederu had discussed Ms King with the Claimant and that he had shared information with her that would enable her to work with Ms King towards achieving her Trust Values related objective in her PDR. She also felt that as the Claimant had now completed her training and was able to fulfil her role more effectively, that would lead to an improvement in the relationships in the team. She said that Mr Ifederu had disputed the Claimant's account that he had not supported her and she had hoped that to discuss that at a meeting with both of them but the meeting had not taken place. However, as the Claimant and Mr Ifederu had been working closely on the Claimant's personal development she hoped that the relationship had improved. She said that Mr Ifederu had spoken to the Claimant and Dami Taiwo about reducing the level of conversation between her and members of Ms Taiwo's team and that she thought that that had been appropriate.

90 On 24 October the Claimant wrote to Ms Morris and expressed her unhappiness about how she had dealt with her informal grievance. She said that Ms Morris had been inflexible about meetings and had been biased at the meeting on 17 September because she had said that there was no bullying in the dept. She said that her grievance had not been kept confidential and that people in the department had been discussing it. She said that there had been no improvement in the bullying and she wanted to formally escalate her grievance.

91 In the Claimant's witness statement she said that on 12 October Ms Ojo had called her a "white Yorkshire girl". In her "diary" she recorded for that date, "*Ayo was very rude calling me a "white Yorkshire girl"*". Again the Claimant gave no detail or context in which she claimed that remark was made. In cross-examination she said that they had both been working in the office and she had said something about having booked tickets to go home and Ms Ojo had asked her where she was from. The Claimant had responded that she was from Guisberg and Ms Ojo said that she had never heard of it. She had told her that it was a small town in North Yorkshire and Ms Ojo had then called her a "white Yorkshire girl." Ms Ojo in her witness statement denied that she had ever called the Claimant that. When the context of the conversation was put to her when she gave evidence (over two years after the alleged conversation), she denied that there had ever been any such conversation. We concluded that it was likely that there was a conversation about where the Claimant was from and Ms Ojo, having

discovered that the Claimant was from Yorkshire, might have said something like “So you are a Yorkshire girl”. We do not accept that she referred to race or colour or that she said it rudely.

92 “Black history month” is an international event to recognise and celebrate the contribution of black people through history, and has been celebrated in the UK since 1987. It normally takes place in October. The Respondent chose to participate in the celebration and Ms Ojo took a lead role in organising it in the Laboratories. One of the things that she did towards the end of October was to create boards that were displayed in the entrance area. There were three boards. One of them related to the contribution of black people in science and healthcare. The initial heading that Ms Ojo drafted for the board was “*Celebrating Blacks in Science & Healthcare*”. It was later changed to “*Celebrating the Contributions of Blacks in Science & Healthcare.*”

93 The Claimant’s case is that Ms Ojo creating a board for Black History Month with the words “*celebrating blacks*” was an act of direct race discrimination. In her oral evidence she said that it was offensive to her because she is white British. There were discussions about celebrating Black History Month in the office and the Claimant asked why the celebration was limited to one ethnic group and other groups, such as the British, were not celebrated. In the course of those conversations Ms Ojo said that they could celebrate a “Yorkshire day” and asked the Claimant whether they had any particular days that they celebrated in Yorkshire.

94 On 21 October 2018 Ms Ojo placed an order online with Marks and Spencer for two cakes for Black History Month. The wording on one of them was “*Celebrating Blacks in Science & Healthcare.*” The following day someone from M & S called her and told her that they were not happy with the wording. The Claimant relied on that to suggest that her view that the wording was discriminatory was correct. M & S’s reasons for objecting to the wording were very different from those of the Claimant. M & S thought that it was offensive to refer to black people as “blacks”. The Claimant found the idea of celebrating black people (“blacks” using Ms Ojo’s words) offensive to her as a white British person.

95 On 25 October Ms Huelamao advised the Claimant that in order to raise a formal grievance she needed to set out in writing her complaint and the issues that remained unresolved from her original complaint. By 1 November she had not received anything from the Claimant and she chased her to provide the information so that she could put the process into motion.

96 Throughout October Mr Ifedru was concerned that the Claimant’s relationship with her team was seriously deteriorating. The Claimant had started monitoring her team’s movements – when they arrived, when they took breaks and when they left. If they arrived late, she recorded the extent of the lateness as annual leave. Between 26 and 30 October she sent Mr Ifederu several emails to that effect. Mr Ifederu received complaints from her team that she did not assist them with their workload and did not inform them of her whereabouts when she was not in the office. She was not holding regular team meetings and was failing to follow up external emails. Zarah Ahmed, who started as an apprentice on 24 September and was pregnant, complained to Mr Ifederu about how the Claimant was treating her in relation to her pregnancy.

97 In her witness statement the Claimant said that on 30 October Mr Ifederu interrupted her during a conversation and told her to “shut up” as he had not finished speaking and then called her “a silly girl” and slammed his fists on her desk in anger. In her

“diary” she referred to a meeting with Mr Ifederu on that date and said that he was talking over her and kept interrupting her. There is no reference in that entry to him telling her to “shut up”, calling her a “silly girl” or slamming his fists on her desk in anger. There is no reference to that in the live chat that she had with Esther on 1 November. There is no reference to it in her formal grievance raised on 9 November. The first time that the Claimant made those allegations was in her claim form on 6 April 2019. If Mr Ifederu had behaved in the way that she alleges, it is inconceivable that she would not have mentioned it earlier. It is also inconsistent with all the other evidence about Mr Ifederu’s behavior. If it had happened, one of the others in the Claimant’s office would have witnessed it. Our finding is that that did not happen.

98 The Claimant had a meeting with her team on 2 November. Ms King did not work on Fridays and so was not present at the meeting. The attendees were Filsan Obuli and the three apprentices – Z Ahmed, S Khair and R Graham. The apprentices had issues that they wanted to raise about their training and them being put on the rota to do tasks for which they had not been trained. Zarah Ahmed asked about telephone training which according to the training plan they were meant to have. The purpose of the training was to understand the type of inquiries they received and how to deal with them. The Claimant’s response was that they did not need training for that and if they had basic manners they would know how to answer a phone. The Claimant told them that the purpose of the meeting was for her to update them on various issues and not for them to raise issues. If they wanted to raise issues, they should send her an email. When they continued to raise issues, the Claimant walked out of the meeting. All four attendees at the meeting gave a similar account in the grievance investigation. Rachel Graham said that it was the first meeting that she had attended and that she was shocked by the Claimant’s behavior.

99 Following the meeting, the Claimant sent the team an email in which she said,

“The weekly meetings are a place to update you. This is not a meeting to be negative, complain and be disrespectful by talking over me and undermining my position as your manager.”

100 Later that day the Claimant and Mr Ifederu met to discuss the issues that she had with her team and his concerns about her performance. The Claimant said that she had experienced rudeness and unwelcoming behavior from most of her team members and that when she asked about work progress there was hardly any response. She also said that there had been unacceptable behavior by some of the team at the team meeting that morning. Mr Ifederu sought some more information from her about that and said that he would look into it. Mr Ifederu raised his concerns about the lack of documented evidence relating to the training of the apprentices. The Claimant attributed the failure to complete the records to the communication barriers created by the staff, including the apprentices. Mr Ifederu reiterated that she was expected to train the apprentices and to engage with them. He also raised the issue of the minutes of team meetings which she was supposed to have weekly. She had previously agreed to enter all the minutes on the system by 1 November. When they checked the folder together, the latest minutes that had been provided dated back to August 2018. Mr Ifederu reminded her that that was a key requirement of staff management and an expectation for the upcoming UKAS visit. He informed her that in view of the concerns raised about the completion of tasks and what she considered to be lack of the team’s support, especially with workload, he would refer her to Occupational Health to support her in her role. He had been advised by Ms Huealmo in HR to refer the Claimant to

Occupational Health as she appeared to be struggling in her role and stressed by it. The Claimant agreed to that.

101 Mr Ifederu set out everything that was discussed at the meeting, including the discussion about the referral to Occupational Health, in an email which he sent to the Claimant the following Monday morning. He asked her to let him know if he had missed anything. He suggested meeting on 8 November to review progress on all actions. The Claimant did not correct or amend his record of the meeting.

102 On 5 November at 9.30 there was a monthly meeting of the Newborn Screening Management team. The Claimant, Mr Ifederu and Ms Morris were among those who attended the meeting. There is nothing in the minutes of the meeting to indicate that the Claimant was allocated more tasks than others. At the meeting there was a discussion between Mr Ifederu and the Claimant about certain tasks that he had told her that she needed to complete. Some of them, such as the completion of the weekly team meetings, were tasks that should have been completed a long time ago. Most of the others were tasks that needed to be done for the UKAS inspection. They related mainly to the training of the five staff that she managed and needed to be completed by the end of the week. These were not new tasks but ongoing tasks that had not been done.

103 Soon after the meeting ended the Claimant sent an email to HR (Ms Huelamo) and said that since the previous week her manager had been giving her a high workload and setting her unrealistic deadlines. She sought her advice. Ms Huelamo advised her to raise the matter with her manager and that if the feelings of stress continued she should ask for a referral to Occupational Health. The Claimant then sent an email to Mr Ifederu complaining about the workload and the deadlines. She set out the tasks that she said that he had asked her to complete. She said that HR had suggested that she should be referred to Occupational Health. Mr Ifederu responded on 6 November that some of the matters set out in her email were duplications and said that he was happy to meet with her that day to clarify some of the tasks and to draw up a plan to help her complete them in time.

104 In the afternoon of 5 November Ms Ojo was speaking on the telephone to someone in another laboratory and she became agitated because she was not getting the assistance that she needed. As she became more upset, she raised her voice and shouted at the person on the phone. While she was on the call a manager walked into the office and asked what was going on. Ms Ojo put the telephone on loudspeaker and asked him to intervene. The Claimant told her that she should not shout at people on the phone and Ms Ojo turned around angrily to her and shouted that she should not interfere with their office and should focus on her section. Another employee who was in the office took Ms Ojo out of the office to calm down the situation. The Claimant complained to Ms Ojo's line manager about the incident. That email was copied to Mr Ifederu.

105 On 6 November Mr Ifederu spoke to the Claimant about the incident and emailed her at 11.44 to say that he had spoken to Ms Ojo's manager about the incident and that she was going to investigate it. At some stage during that day Mr Ifederu asked the Claimant whether she had finished the minutes of the team meetings and, when she replied that she had not, he asked her why she had not and what she had been working on that day.

106 In her witness statement the Claimant said that on 6 November Mr Ifederu had said that she could not become involved in recruitment processes like other Band 5 managers as she was inexperienced in interviews and he did not think that she would be able to manage. When she asked for interview training “*he lost his temper and shouted aggressively in an angry tone calling me a ‘stupid girl’ whilst standing close to me*”. Mr Ifederu denied that any exchange of that nature had taken place.

107 In the Claimant’s “diary” she has referred to Mr Ifederu coming to her office twice on 6 November (at 10 a.m. and 3.02 p.m.) to speak to her. There is no reference to any of the matters in paragraph 106 (above) in her “diary”. There is no reference to them in her formal grievance of 9 November. There was no recruitment taking place in November or December 2018. In her claim from the Claimant said that the context of the conversation was that she reminded Mr Ifederu that they would shortly need a replacement as one member of her team would be going on maternity leave. The only person in her team who was pregnant at the time was Zarah Ahmed, who was an apprentice. There was no evidence that she was due to go on maternity leave before the end of the year or that she would be replaced if she did. It had been agreed at the Claimant’s appraisal on 6 August that she would have recruitment training in January 2019 and she had been booked on that. No one else in the Claimant’s office corroborated her account. It is inconsistent with what everyone said about Mr Ifederu’s behavior during the grievance investigation. In a live chat with Esther Acanit on 7 November the Claimant complained about Mr Ifederu being aggressive to her the previous day, and asked her whether he had been aggressive to her and Ms Acanit responded “*No, never.*” For all the reasons given above, we found that the acts set out at paragraph 106 (above) did not happen.

108 In her witness statement the Claimant said that on 7 November she had heard Mr Ifederu discussing her grievance complaints with Daley Aofolaju (another manager) at the tea bar, which was in the corridor outside her office. She said that he had called her “*a stupid white girl*” and asked her why she had not run away yet like the others. Mr Ifederu denied that that had happened.

109 There is no reference to those matters in the Claimant’s “diary”. In her formal grievance on 9 November the Claimant stated that on 7 November she had overheard Mr Aofolaju and Mr Ifederu discussing her complaint at the tea bar but there was no reference to calling her a “*stupid white girl*” or asking why she had not run away like the others. The first time that the Claimant referred to those matters was in her claim form on 6 April 2019. We found that Mr Ifederu did not make those remarks.

110 The Claimant also said in her witness statement that on the same day she heard Zarah Ahmed, Shajedah Khair and Mr Ifederu discussing how they were planning to get her into trouble. She said that Mr Ifederu was encouraging the discussion and Ms Ahmed said that she would use her pregnancy as an excuse to get her into trouble. In her “diary” she said that she had overheard Zarah having a discussion with Shajedah that she would get her in trouble with Mr Ifederu and would use her pregnancy to say that the Claimant was discriminating against her and that Mr Ifederu and Ms Taiwo would back her up as witnesses. In her formal grievance she said similar things and said that Zarah had been talking about complaining to Mr Ifederu. That is very different from the account that the Claimant gave in her witness statement. It is clear that the Claimant has changed her account in order to implicate Mr Ifederu. Ms Ahmed was very unhappy about the Claimant was dealing with her pregnancy and it is very likely that she spoke to Shajedah about complaining to Mr Ifederu about it. Mr Ifederu was not involved in that discussion.

111 On around 7 November Ms Ahmed complained again to Mr Ifederu about the way the Claimant was treating her as a pregnant employee. Ms Ahmed had been raising complaints over a number of weeks (see paragraph 96 above) and they related, among other things, to the Claimant making it difficult for her to attend ante-natal appointments and the way in which she reacted to her pregnancy-related sickness and any absences or late starts as a result of that.

112 On 7 November Azuma Kalu, the Claimant's mentor, advised Mr Ifederu that the Claimant had asked him for guidance on UKAS requirements and, if Mr Ifederu approved, he would do that. Initially, Mr Ifederu agreed but, having reflected on it, he thought that it would be better for someone in NS to provide the training as they would be more familiar with the processes and requirements for NS. On 8 November he sent Mr Kalu an email that he had arranged for Rebecca Stead to provide the Claimant with UKAS training.

113 On 8 November Mr Ifederu met with the Claimant to discuss a number of matters. He said that there were still a few gaps in the minutes of the weekly team meetings but he was going to draw a line under that. He told her that in future the minutes must be available before the next meeting. He reminded her that the purpose of the meetings was to discuss operational issues and record agreed actions, and not to raise concerns about staff behavior. He told her about the complaint that he had received from Zarah Ahmed and advised her to handle the situation sensitively as she had a protected characteristic. The Claimant denied that she had acted inappropriately. He also informed her that Rebecca Stead would provide her with guidance and any training regarding the UKAS inspection and that he had also conveyed that to Azuma Kalu. He told her that Joanna Quagraine would support her with completing the documented evidence of training for her team. He set out the discussion in an email later that day and invited the Claimant to advise him if he had failed to include anything in his note. Mr Ifederu did not, as the Claimant has alleged, speak to her in an aggressive and intimidating tone, he did not accuse her of discriminating against Zarah because of her pregnancy and did not accuse her of lying when she denied the allegations and did not demand that she not speak to Azuma Kalu.

114 Mr Ifederu discussed Zarah's complaint with Christine Morris. She advised him to inform Ms Ahmed that if she wished to pursue the matter as a grievance, she needed to set out her complaint in writing. On 9 November Ms Ahmed sent an email to Ms Morris and Mr Ifederu attaching a written statement dated 7 November.

115 On 9 November 2018 the Claimant sent a formal grievance to Ms Huelamo in HR. The grievance comprised seven typed pages and attached to it was a "diary log of events" covering the period from 16 July to 8 November 2018. The diary log comprised thirty typed pages. In the grievance the Claimant complained about training, racial and religious offensive comments and aggressive, humiliating and intimidating behaviour. The complaints of aggressive and intimidating behaviour related to the same acts which the Claimant now complains are acts of sex discrimination. She did not allege in her grievance that they had anything to do with gender. By the time the Claimant raised the formal grievance she had been working in Newborn Screening for just under four months. In the grievance and diary log she complained about the conduct of fourteen colleagues. These included four members of her team (M King, R Eyton-Jones, F Obuli and O Olumide), two of the apprentices (Z Ahmed and S Khair), her line manager (A Ifederu), his manager (C Morris) and other colleagues in various roles in the Laboratories (T Ramgoolam, D Taiwo, A Ojo, D Aofolaju, T Tijani, H Atkinson). The

only members of her team not included were Martin Campbell and Estefania Bori-Roman (two bank employees who worked for very short periods) and the apprentice Rachel Graham. According to the diary log, King, Obuli and Eyton-Jones had had been unprofessional, unwelcoming, rude and had ignored her from 9.10 a.m. on her first day.

116 In relation to Ms Ahmed's complaint Ms Huelamo advised that Mr Ifederu should look into the matter further by talking to Ms Ahmed and getting further details, including the name of any witnesses. Once he had all the relevant information, he should speak to the Claimant about it. She advised that while he looked in to the matter Ms Ahmed should temporarily report to him. Mr Ifederu interviewed Ms Ahmed on 15 November in connection with her complaint.

117 Mr Ifederu attended the next NS team meeting that took place on 22 November as both the Claimant and the members of her team had complained to him after the previous meeting. It was a long meeting as those present raised their respective concerns. Mr Ifederu set out in an email afterwards some of the issues that had been discussed. These included the need to have team meetings weekly and for the minutes to be entered centrally, the need to avoid excessive use of personal mobile phones during working hours, the need to communicate about absences from the department during the working day and the need for teamwork.

118 On 28 November the Claimant was informed that Michael Neill (interim HR Consultant) had been appointed to investigate her grievance and what his terms of reference were. Mr Neill was an HR Consultant and had entered into a consultancy agreement with the Respondent in late November 2018 to assist with various employee related projects. On the same day Mr Neill invited the Claimant to a meeting on 6 December to discuss her grievance.

119 Mr Ifederu had a catch-up meeting with the Claimant on 28 November. As the Claimant had indicated that she was going to be accompanied by her mentor, Mr Ifederu was accompanied by Chris Longster, General Manager. The Claimant identified two gaps in her training and it was agreed that she would be trained on those as soon as possible. Mr Ifederu suggested that the Claimant be allocated a desk in the data entry office as that would assist in her training. It was agreed that weekly team meetings would be held on Thursdays at 2.30 p.m. He specified the times at which she needed to check the email accounts. At the end of the meeting he told her that a member of her team had raise serious concerns about her conduct and that he would meet her soon to complete a fact-finding exercise. He also told her that he would deal with Ms Ahmed's annual leave and sickness absences while she would manage her in all operational matters and support her training.

120 The Claimant complained on the same day to HR about the suggestion that she move into the Data Entry office. She said that she felt that it was inappropriate as they were bullying her. Ms Huelamo suggested that she discuss the matter with her manager. The Claimant responded that he had done it deliberately to make her uncomfortable and that he wanted her to be forced to leave her job. She said that she was being targeted and victimised for having made a complaint about bullying. She concluded her email by saying,

"Harassment, abuse and racial discrimination is a criminal offence, has the police been notified of my complaint?"

Ms Huelamo suggested that if the situation was causing her distress she should consider whether she wanted to be temporarily moved to another role or another location until the investigation had been concluded. The Claimant responded that the policy provided that bullies could be moved or suspended while the investigation was taking place and asked whether that was an option. Ms Huelamo replied on 3 December 2018 that as she had made allegations about a large number of people within the department, moving all of them would have a significant impact on the continuation of the service and for the patients. She reassured the Claimant they would aim to find a temporary role that was in line with her skills and experience. Later that day she informed the Claimant that it would most likely be a B5 admin role in Pharmacy.

121 On 29 November Ms Huelamo advised Mr Ifederu to refer the Claimant to Occupational Health as soon as possible. She told him to share the referral with the Claimant. Mr Ifederu spoke to the Claimant on the same day and she said that she did not want to be referred to Occupational Health as she had referred herself to Care First and was having counselling sessions with them. She did not see what else Occupational Health could provide. Care First is an independent company that provides counselling services. It is not the Respondent's occupational health advisor. Mr Ifederu advised her that Occupational Health provided a different service and the purpose of the referral was to provide her with support, and tried to persuade her to change her mind. The Claimant was adamant that she did not want to be referred. Mr Ifederu advised Ms Huelamo of the Claimant's response and set out the discussion in an email to the Claimant. The Claimant responded to that by saying that she had not declined support. Mr Ifederu understood that to mean that she was willing to be referred to OH. He replied that he wanted to discuss the content of the referral with her and asked him to confirm her availability that day (30 November). The Claimant did not respond to that.

122 On the following Monday (3 December 2018) Ms Huelamo advised Mr Ifederu to inform the Claimant that they had a duty of care towards her and in light of what was going on and as she had cited stress he wanted OH to review her. She advised him to put the referral through the system that day and to ensure that the Claimant received a copy.

123 Mr Ifederu followed that advice. He sent the Claimant an email in which he said what Ms Huelamo had advised him to say. He attached a copy of the referral that he had made to his email. It was an unusual referral in that it did not refer to any health concerns that had prompted the referral or had been put forward as impacting on the Claimant's ability to do her job. It stated that there were functional capability and/or performance concerns and sought advice as to whether there were any undisclosed underlying problems preventing the Claimant from performing her duties to an expected level, completing tasks within set deadlines and from playing her supervisory role effectively.

124 The Claimant complained to Ms Huelamo about the referral and said that Mr Ifederu had not discussed the questions he asked OH with her. Ms Huelamo advised her to raise any issues that she had with the questions with Mr Ifederu and to discuss them with the OH Advisor when she saw him or her. The Claimant continued complaining about the referral. She said that the form and the reason for referring her had not been discussed with her. She said that her manager had mentioned on 2 November that he would refer her to Occupational Health but she had assumed that it would be for support in dealing with difficult and abusive members of staff. She omitted

to mention that he had given her the opportunity to discuss the content of the referral and that she had not taken it up. Ms Huelamo advised her that if she wanted to add other matters in the referral she could speak to her manager about it or raise them with OH when she attended the appointment.

125 On 4 December Chris Longster met with the Claimant to discuss a temporary redeployment while the investigation was taking place. There was no existing vacancy but he was prepared to create a temporary role for the Claimant to provide admin support in the Pharmacy Department. Her salary would remain the same. The Claimant then informed Ms Huelamo that she did not consider that a move was necessary as she was soon going on annual leave for two weeks and by the time she returned the investigation would probably have concluded.

126 On 4 December Mr Ifederu noticed that the Claimant was away from her desks for significant periods of time and her team did not know where she was. That was an issue that Mr Ifederu had raised with her before. He reminded her that if she was going to be away from her desk for any length of time, she needed to let him and her team know of her whereabouts.

127 The Claimant's evidence was that Mr Ifederu had come into her office after 5 p.m. when all the others had left. He had stood very close to her and when she had stepped back he had moved closer. In an aggressive tone he had called her a "silly white girl" and had said that he was surprised that she had been a manager before "*being stupid and inexperienced.*" He had said that she needed to ask his permission if she went to the toilet. He had slammed his fists on her desk in anger and had said in a threatening tone of voice that she would be sorry for complaining about him. That had made her anxious and worried for her safety. She also said that he had commented in respect of another employee, "*Oh her, she's another stupid northerner like you.*" Her evidence was that he came into her office, said those things out of the blue and then left.

128 The Claimant's account was not credible and was not consistent with the evidence before us of Mr Ifederu's conduct. The Claimant wrote to Mr Neill on 5 December about an incident that she alleged occurred on that date but made no reference to Mr Ifederu threatening her on 4 December. When she met Mr Neill on 6 December she mentioned the incident on 5 December but made no reference to threatening conduct on 4 December. The Claimant was not slow to raise issues with Ms Huelamo in HR. If Mr Ifederu had behaved as the Claimant says that he did on 4 December and it had made her feel anxious and worried for her safety, it is inconceivable that she would not have raised it with anyone at the time. We found that Mr Ifederu did not behave as alleged by the Claimant in her evidence.

129 On 4 December Ms Huelamo informed Mr ifederu that the Claimant had complained about the OH referral. She advised him that if he had not mentioned stress at work/problems with workload or an outstanding complaint he should write to OH to highlight those factors and send a copy of that to the Claimant. Mr Ifederu told her the questions that he had asked and said that he was not aware of any workload related stress. Ms Huelamo discussed the matter with Christine Morris and they advised him to re-engage with the Claimant in respect of the referral.

130 Mr Ifederu approached the Claimant the following morning at about 10.35 a.m. to discuss the OH referral. As she shared her office with others he asked her to step out to talk to him. They spoke in the stairwell of the corridor outside her office. It was a brief conversation and lasted a little over five minutes. Mr Ifederu reminded her that if

she was going to be away from her desk or the department she should let him know her whereabouts. The Claimant responded to that by asking him whether that meant that she had to inform every time she went to the toilet. Mr Ifederu then then talked to her about the Occupational Health referral. He asked her why she was unhappy with the referral and she said that he had not discussed it with her and she had not consented to it. He said that that was not true because he had discussed it with her and she had consented to it at the beginning of November. She said that he had not discussed the contents of the referral with her before he made it. He told her that he could amend the referral if that was what she wanted. The Claimant said that it was too late to do that. She said that she was in discussion with HR and did not want him to do anything. Mr Ifederu told her that the referral was in her best interests and to ensure that she received support. The Claimant was adamant that she would not attend the meeting with Occupational Health.

131 Mr Ifederu was calm at the start of the conversation. Professor Simon Heales walked past him and the Claimant on two occasions and heard them talking to each other normally. However, as the conversation progressed Mr Ifederu became increasingly frustrated with the Claimant's unwillingness to co-operate and raised his voice. The Claimant said that she did not want to be shouted at and turned to walk away. Mr Ifederu put his hand on the door and said that had not finished speaking. His hand was on the door for a matter of seconds after which the Claimant left and Mr Ifederu followed her into the communal area. Mr Ifederu did not wave his hands in her face or say "*I am not playing games with you and you will do as I say.*"

132 At 10.45 Mr Ifederu sent Ms Healamo an email. It was copied to Christine Morris. He said that the Claimant had refused to meet with him to discuss the contents of the referral saying that it was too late to change it. He said in that email,

"She said I was shouting at her and stopping her from leaving the conversation by holding the door which was not the case."

Ms Huelamo asked him whether there had been any witnesses and advised him not to have any more meetings with the Claimant unless someone else was present.

133 The Claimant went to see Professor Heales. He described her as being in a distressed state. She asked him whether he had seen Mr Ifederu being aggressive to her. He said that he had not and had seem him talking to her normally.

134 At 10.51 the Claimant sent an email to Michael Neill. She complained about Mr Ifederu's conduct that morning. She said that he had been acting aggressive, waving his hands around and raising his voice at her. He had shouted that he was not playing games with her and she would do as he said. He had demanded that that she email him saying that they had had a discussion about the referral to OH. She had tried to leave the room and he had slammed his hand on the door to block her from leaving. He had shouted that he had not finished speaking. She then left the space.

135 Ms Morris called Mr Ifederu after she received his email to Ms Huelamo. He explained to her what had happened and said that he had not raised his voice or prevented the Claimant for leaving. He said that Professor Heales had walked past them when they were talking. Ms Morris spoke to Professor Heales and he said that he had not seen Mr Ifederu shouting or behaving aggressively towards the Claimant.

136 At 11.08 Mr Ifederu sent the Claimant an email summarising the conversation that they had had about the OH referral. He also said that he was concerned about the inappropriateness of some of her responses when he made simple requests. He gave as an example his request that she inform him if she was going to be away from her desk or the department to which she had responded "*Does this mean when I go to the toilet I let you know?*"

137 At 11.31 the Claimant sent an email to the Respondent's Chief Executive in which she gave the same account of the incident as she had to Mr Neill. That email was forwarded to Ms Huelamo. Shortly after 12 noon she went to see Paul Anstee, Head of Security. Mr Anstee sent an email to Ms Huelamo about her visit. He said that she had been in tears and had said that she had felt intimidated when Mr Ifederu had spoken to her alone that morning about the OH referral, she had said that he had been speaking loudly and had closed a door at one point.

138 Having spoken to Mr Ifederu and Professor Heales, Christine Morris was concerned about the allegation made by the Claimant which had not been verified by anyone. She sent an email to Ms Huelamo and Chris Longster, which was copied to Professor Heales and Mr Ifederu. She said,

"...I do consider the current situation as untenable – I feel that we are now not safeguarding Ade – this is for a number of reasons but the incident this morning is of real concern – Catherine has this morning accused Ade of physically barring her from leaving the room which has not been verified by anyone, indeed Professor Simon Heales who witnessed the conversation has confirmed the behaviour Catherine described did not occur."

139 Professor Heales sent an email to them in which he said that the Claimant had been to see him to see whether he could support what she was saying. He said that he had told her that he could not support the allegation because he had seen Mr Ifederu speaking calmly and what she had claimed would be very out of character for him. He continued,

"The situation is now getting out of hand. I also think we have a clear duty towards Ade. I am very concerned about Catherine's disruptive behaviour and the potential detrimental impact this could have on our service, in particular Newborn Screening."

It is clear that Ms Morris and Professor Heales did not believe the account given by the Claimant, largely because it had not been verified by Professor Heales who had witnessed part of it and because it was out of keeping with Mr Ifederu's character and normal manner of acting with his colleagues. Many aspects of her account were not a true reflection of what had happened but certain details were, although they were embellished and portrayed in amore negative light. Unfortunately, Mr Ifederu, who was already feeling under pressure because of the serious allegations made against him in the grievance, was not prepared to concede that he had lost his patience towards the end of the conversation and had raised his voice and put his hand on the door.

140 Ms Huelamo advised that the Claimant be put on special leave for the rest of the week while the matter was investigated under the Respondent's Disciplinary Procedure. Christopher Longster, General Manager for the Clinical Directorates, was appointed Commissioning Manager. Mr Longster spoke to the Claimant early in the afternoon. He spoke to the Claimant about the incident and she gave him the same

account that she had to others. He told her that he would appoint someone to conduct a fact-finding investigation under the Respondent's Disciplinary Procedure. He said that for her personal well-being she would be put on special leave for the rest of the week and he would arrange for Occupational Health to assess whether she need any support in returning to work. He confirmed that in an email to her. Ms Huelamo contacted Occupational Health and informed them of the incident and asked them to see the Claimant that week.

141 Ms Huelamo and Mr Longster had agreed that the fact-finding investigation would be conducted by Stephen Mathew, Service Manager, Laboratory Medicine. It was the first fact finding investigation he conducted in that role. On the same day (5 December) Ms Huelamo forwarded to Mr Mathew the Claimant's email to the Chief Executive and a pro forma fact-finding form. She asked him to get statements from all witnesses, including from Mr Ifederu and then to send the completed form and all the witness statements together with his recommendation to Mr Longster. She later gave him the names of two witnesses who had been identified – Professor Heales and Helen Aitkenhead,

142 Mr Mathew sent emails to both those witnesses and asked them to provide statements of what they had seen and heard. Ms Aitkenhead responded that she had not seen or heard anything. Professor Heales forwarded to Mr Mathew the email that he had sent to Ms Huelamo earlier that day. Mr Mathew also asked Mr ifederu to provide a statement. Mr Ifederu responded the same day. Mr Ifederu set out the account of the conversation that they had had about the referral to Occupational Health. He continued,

“At this point she said to me, “I won't have you talk to me like that, you are shouting and being aggressive”. This baffled me and I asked her why she was insinuating that I was shouting when I clearly wasn't. She responded by saying “you are being aggressive towards me and you are stopping me from leaving” and she walked away.”

143 On 6 December Michelle Lennon, OH Advisor, called the Claimant to make an appointment for her. Ms Lennon had previously called the Claimant on 4 December after she had received Mr Ifederu's referral. The Claimant had expressed her unhappiness about that referral. On 6 December Ms Lennon told the Claimant that she was calling to arrange an appointment for the following day as her manager had asked for her to be seen urgently because of the incident the previous day. The Claimant said that she was not happy about the referral and no one had given her the reasons for the referral. Ms Lennon explained that her managers were concerned about her health and well-being as she had complained to Security about being threatened by her line manager and had been crying at the time. The Claimant continued to refuse to attend. Ms Lennon explained that her managers wanted her to attend OH before she returned to work to ensure that she was supported and fit to return to work.

144 After the call the Claimant sent an email to Lisa Liversedge, Head of OH, and complained about Ms Lennon. She said that Ms Lennon had been abrupt and had told her that she would not be allowed to work if she did not attend the appointment. She also said that she did not want to be seen by Ms Lennon. Several hours later she sent another email. In that she said that Ms Lennon had snapped at her and asked her why she had gone crying to Security and had told her that she could not return to work until she had attended the meeting. She also spoke to Mr Longster about it. In an email to

her explained why it was important for her to attend the appointment with Occupational Health. He said,

“As a Manager I have a responsibility to protect your health and wellbeing and I would like ensure that recent events have not had an adverse effect on you. OH will be able to offer me with guidance with regards to supporting your return to work.

I understand that you have some issues with the wording of the original referral and I am happy to work through that with you alongside HR.”

145 The Claimant attended the appointment on 7 December 2018 and was seen by Lisa Liversidge. In a brief report of the same date Ms Liversidge stated that the Claimant had been very clear that she had no underlying health conditions. She advised that she was fit to fulfil the full remit of her role and that there were no underlying health issues that prevented her from completing her assigned tasks within set deadlines or from undertaking her supervisory role effectively.

146 On 7 December Mr Mathew sent Mr Longster his fact-finding investigation report. He had not spoken to the Claimant. He set out the accounts that had been given to him by Mr Ifederu and Professor Heales. In the section headed “Concerns remaining and recommendation” he said,

“I have concerns around how Catherine has misinterpreted what appears to be a very supportive discussion with her line manager. Recommend ensuring there are witnesses in any future conversations between both Adeboye and Catherine going forward.”

147 Mr Longster told him that he needed to get the Claimant’s account before he could conclude his investigation. It is surprising that that was not obvious to Mr Mathew. Mr Mathew spoke to the Claimant and on 10 December he sent Mr Longster a fact-finding report that included the Claimant’s account. He changed his recommendation to “*I have no further concerns.*”

148 The Claimant returned to work on 10 December and went on annual leave on 17 December.

149 In deciding whether to take the matter further Mr Longster attached considerable importance to the fact that Professor Heales, whom he regarded as an independent witness, had not supported the Claimant’s account. While it is true that when he walked past them Mr Ifederu was not behaving as the Claimant alleged, he was not present throughout their conversation.

150 On 11 December Mr Longster spoke to the Claimant to convey his decision and discuss the next steps. He told her that he had not found any evidence that Mr Ifederu had acted aggressively or inappropriately towards her and would, therefore, not be taking the matter any further. He also said that he was very concerned about the relationship between herself and Mr Ifederu and asked whether she wanted to consider a temporary move to the Pharmacy team until the conclusion of the investigation of her grievance. He also advised Mr Ifederu and Ms Morris that the matter would not be progressed any further.

151 On 10 December Mr Ifederu sent Ms Morris an email about Zarah Ahmed's grievance. He said that he had interviewed Ms Ahmed but due to a breakdown in communication with the Claimant he had not be able to speak to her and to complete investigation. He sent her a copy of the notes that he had made from his interview with Ms Ahmed. Ms Morris decided that she would take over the informal investigation of the grievance.

152 On 11 December Ms Morris told her that she wanted to arrange a meeting with her to discuss Ms Ahmed's grievance against her. She explained that the she needed to get her response so that she could decide whether a formal investigation was required. She wanted to have the meeting that week as the Claimant was going on annual leave the following week and over four weeks had lapsed since Ms Ahmed had raised the grievance. On 12 December Ms Morris asked the Claimant about her availability on Friday 14 December. Ms Morris did not hear from the Claimant. She invited her to a meeting at 2 p.m. on 14 December. The Claimant said that she did not know whether her trade union representative would be available at that time. Ms Morris responded that she was flexible and could change the time or meet on 13 December. She said that if representative was not available, she could request someone else from the union to represent her or arrange for a work colleague to accompany her. Ms Huelamo also contacted the Claimant's trade union representative and explained the nature of the meeting and the need to have it that week. He tried contacting the Claimant but was unable to do so.

153 On 14 December Ms Morris sent the Claimant an email at 9.59 a.m. She asked the Claimant to confirm that she would attend the meeting at 2p.m. that day. She said that if her trade union representative was not available she could be accompanied by a work colleague. She reminded the Claimant that it was an informal meeting and there was no right to be accompanied to such a meeting. Therefore, even if the Claimant could not find someone to accompany her, the meeting would go ahead and she regarded her attendance at the meeting as a reasonable management request.

154 The Claimant did not respond to that email and did not attend the meeting at 2 p.m. Ms Morris went to the laboratory to look for her and was told that the Claimant had left the office before midday. She checked the toilets to see whether the Claimant was there and checked several times in her office in the course of the afternoon. She confirmed that the Claimant was not on annual leave. One of the Claimant's team said that she had asked her in the morning to cover her duties for the remainder of the day.

155 The Claimant was on annual leave for two weeks from 17 December 2018 and then had a few days' sickness absence. She returned to work on 5 January and Ms Morris met with her on 7 January to complete her return to work interview. Ms Morris informed the Claimant that until the conclusion of the investigation of her grievance she would line manage her and she would spend time with her in the department on 10 January to get a better understanding of her role. She also asked the Claimant about what she regarded as her unauthorised absence from the department on 14 December between 11.30 and 5.30. The Claimant said that she had had a number of meetings to attend with her trade union and Care First and confirmed that she had not sought authorisation from Mr Ifederu to be away from the department. It was agreed that the Claimant would provide evidence of the meetings that she had attended so that Ms Morris could decide how to progress the matter. Ms Morris set out the contents of the discussion in an email shortly after the meeting. The Claimant responded that the meetings that she had attended were work-related meetings and that she did not

normally seek permission from Mr Ifederu to attend work meetings. She said that her team were all aware that she was at meetings on 14 December.

156 On 8 January Ms Morris and the Claimant arranged to meet at 12.30 on 10 January to discuss Ms Ahmed's complaint. The meeting was arranged for that time because that was the time when the Claimant said that her colleague was available to attend with her. The Claimant claimed that Ms Ahmed's complaint was not in accordance with the Dignity At Work policy because Ms Ahmed had not raised any issues with her. The Claimant was provided with a copy of the policy and was told that it was not against the policy because the policy provided that if an employee felt unable to speak to speak to their manager because the complaint related to him or her they could raise it with their line manager's manager. That was exactly what the Claimant had done with her grievance.

157 On 9 January Ms Morris asked the Claimant who was going to accompany her at the meeting and informed her that Stephen Mathew would be attending as a note-taker. The Claimant responded that if he was attending it sounded like a formal meeting and she would have to discuss that with her trade union representative. She suggested that meeting be cancelled. Ms Morris responded that it was an informal meeting and that she would take notes herself and proceed without a note taker. The Claimant said that she was due to speak to her trade union representative at 12 on 10 January and Ms Morris responded that she would see the Claimant after that

158 At 11.57 on 10 January the Claimant sent Ms Morris an email that she was meeting her trade union representative at 12 to seek advice from him and she would update her when she returned from that meeting. At 12.24 Ms Morris sent her an email in which she reminded the Claimant yet again that it was an informal meeting to discuss a complaint from one of team members and that the meeting had already been delayed in part because the Claimant had not attended the meeting on 14 December. She continued,

"I do view this as a reasonable management request and will manage as a conduct issue if you fail to attend our meeting at 12.30.

I am still awaiting evidence of your whereabouts from 11.30-17.30 on the 14th December – I will extend our agreed deadline (Tuesday) until 5 pm today following which I will make arrangements for the hours to be deducted from your salary and commence to manage as a disciplinary matter."

159 The Claimant responded at 12.54 that her trade union representative had advised that the meeting should be put on hold because Ms Morris had made it formal by requesting a note-taker. That completely ignored the fact that Ms Morris had told her that she would proceed without a note-taker. The Claimant said that the meeting on 14 December had not been confirmed because she had been asked at the last minute to find a colleague to accompany her because her trade union representative could not attend. That was not correct. It had been made clear that she did not have the right to be accompanied and that the meeting would go ahead anyway. She said that she already told Ms Morris her whereabouts and the tasks on which she was working that afternoon. She had not provided the evidence that she had been asked to provide.

160 Later that day the Claimant sent Ms Morris an email and asked to meet with her the following week to discuss her whereabouts on 14 December and a separate meeting to discuss Ms Ahmed complaint.

161 On 11 January (a Saturday) the Claimant informed Ms Morris and HR that she had been to The NHS Soho Walk In Centre that day and had been advised that she should not be working in a hostile environment that appeared to condone bullying and threatening behaviour. She said that the situation was making her feel, unsafe, anxious and stressed. The bullying and harassment had gotten worse since she had complained.

162 The Claimant did not attend work the following week. On 15 January she informed Ms Morris that she was still feeling anxious and stressed. She said she had been advised not to attend work and to see her GP and that she had made an appointment to see the GP on 19 January.

163 On 16 January Ms Morris sent the Claimant a letter at her work email address informing her that her concerns about the Claimant's failure to comply with reasonable management requests to attend meetings on 14 December and 10 January to discuss concerns raised by her team member about her and her unauthorised absence from work on 14 December 2018 were going to be pursued under the Respondent's Disciplinary Policy. She said that the Commissioning Manager, Christopher Longster, would inform her of the next steps. She also advised her that as she had not received any evidence about the Claimant's whereabouts on 14 December, despite requesting it on a number of occasions, she would make arrangements for the hours to be deducted from her salary. On 18 January Ms Morris completed a fact finding report about the two matters.

164 On 19 January the Claimant was certified as unfit to work because of stress at work until 5 February 2019. On 21 January Ms Morris spoke to the Claimant and sent her a copy of letter of 16 January to her personal email address. She also informed the Claimant that she would be referring her to Occupational Health and set out the questions that she would ask OH. One of the questions was whether the Claimant was fit to attend a disciplinary hearing.

165 Mr Longster was advised by HR to put the disciplinary matter on hold pending the advice from Occupational Health about the Claimant's ability to participate in it.

166 In January 2019 the Claimant changed her trade union. She joined Unite.

167 On 31 January 2019 Michael Neill sent his investigation report to Laura Walters and informed the Claimant that he had done that and that Ms Walters would meet with her to discuss the outcome of the investigation and any recommendations. Mr Neill's report comprised 28 typewritten pages. He interviewed 26 witnesses (that included the Claimant) and notes of their interviews and other documents that he considered were attached to his report. The notes of the interviews comprised 203 typewritten pages. It was a thorough and comprehensive investigation. We have set out (at paragraph 57 above) what the witnesses said about Mr Ifederu. There were recurring themes in what the witnesses said about the Claimant. These were that she did not help her team when they were short-staffed or particularly busy, she spent long periods on her mobile phone, she disappeared without telling anyone where she was going, she did not engage with the team and did not provide support or training to the apprentices. These comments were not made by one or two individuals but a large number of people working in the Laboratories and almost everyone in the Claimant's team. They were not limited to people about whom the Claimant had complained. For example, Rachel Graham, about whom the Claimant had not made any complaints, was critical of the Claimant. She said that the Claimant did not support her training and development,

there were communication barriers between her and the team, she found it difficult to approach her and her defence level was very high, team meetings did not happen weekly, and when they had raised the issue of training at a team meeting on 2 November the Claimant had said that it was not up for discussion and had walked out of the room. She said that that was her first meeting and she had been very shocked by that. Mr Neill concluded that there was no evidence to support any of the Claimant's complaints.

168 The Claimant was assessed by the Occupational Health doctor on 26 February 2019. In a report dated the same day the doctor advised that the Claimant had complained of symptoms of anxiety and depression which were attributable to her perception of work issues. She had told him that she had been bullied and harassed since she started in her new role and that her concerns had not been addressed. She had been signed off by her GP for another six weeks. He did not recommend her returning to her current role while her concerns were being addressed. He did not address the issue of whether she was fit to attend a disciplinary hearing.

169 Ms Walters met with the Claimant on 26 February to discuss the outcome of her grievance. She gave her a copy of the Grievance Investigation Report together with all the appendices. She discussed Mr Neill's conclusions with her and informed her of the actions that would be put in place. These included arranging mediation between the Claimant and Mr Ifederu in order to rebuild trust and confidence, facilitating a "team values and behaviours" workshop to be attended by the Claimant and members of team, asking Ms Morris and Mr Ifederu to put together some basic expectations for her daily, weekly and monthly managerial and leadership responsibilities. The discussion was confirmed in a letter dated 4 March 2019. In that the Claimant was also advised of her right of appeal if she felt that her concerns had not been sufficiently addressed.

170 The Claimant appealed on the same date and sent details of her grounds of appeal on 26 March 2019. On 24 April 2019 she was informed that her appeal had not been upheld.

171 The Claimant remained absent sick and the disciplinary matter was not progressed while she was off sick.

172 Ms Morris instructed payroll to deduct five hours' pay from the Claimant's pay in February 2019 for the hours that she had been absent from work on 14 December. She took the view that excess payments had been made to the Claimant in December when she had been paid for hours that she had not worked and that the Respondent was entitled under the Claimant's contract to deduct that from a later payment.

173 On 11 March HR advised Ms Morris and Mr Longster that the disciplinary investigation could progress while the Claimant was off sick subject to OH advice to the contrary. It was agreed that a further referral would to OH would be made. However, that did not happen until June 2019 and in the meantime the disciplinary investigation was not progressed.

174 The Claimant was applying for jobs elsewhere and on 25 June 2019 she received a conditional offer for a role at a hospital in Leeds subject to references and pre-employment checks. On 25 June her trade union representative asked Ms Huelamo some questions about any reference that the Respondent would provide. One of the questions was that if the reference asked whether there were any outstanding disciplinary matters what would the response be. He said,

“I know that there was a suggestion of an investigation way back at the start of the year. As far as I can recall this petered out. Is this still considered a live matter?”

He did not receive a response and chased the matter up on 16 July and asked specifically whether there was a live investigation in relation to the Claimant and, if so, whether it would be included on any reference. Ms Huelamo responded on 17 July that there was a live disciplinary investigation and that it would be included in any reference.

175 On 25 June the Respondent received a reference request for the Claimant from the hospital in Leeds. It was sent via NHS jobs, which is centralised NHS Jobs Service, where NHS jobs across the country are advertised and through which standard reference requests are made and processed on an agreed template. One of the questions asked on the standard request is *“Is the applicant currently under any investigation for any matter (incl. conduct, capability or performance) under any of your employment policies?”* and if the answer is positive, details are requested. The reference was completed by someone in the Respondent’s Business Support Team and the information in relation to any current investigation was obtained from the Employee Relations team. It was sent on 17 July 2019. The answer to the question was “Yes” and the details given were *“Ongoing disciplinary investigation into conduct.”*

176 In August 2019 Occupational Health advised that the Claimant was fit to participate in a disciplinary investigation. The investigation was not commenced until the beginning of October 2019.

177 We were referred to the Respondent’s 2018 and 2019 NHS Staff Survey results. We have taken that evidence into account.

Conclusions

Direct religious discrimination

178 Although the Claimant has listed the same acts as being alleged acts of direct race and religious discrimination, it is clear that some of them relate only to religion and others only to race. We identified the complaints listed at paragraphs 3.1, 3.4, 3.6 and 3.9 as being the only complaints of religious discrimination. The other complaints have nothing to do with the fact that the Claimant is Christian. They all relate to race.

179 The complaints of religious discrimination relate to acts that are alleged to have occurred between 31 July and 19 October 2018. The effect of sections 123 and 140B of the Equality Act 2010 is that any complaint about any act that occurred before 25 October 2018 was not presented in time. All the alleged acts of religious discrimination took place before that date and the complaints about them are, therefore, all out of time. We only have jurisdiction to consider them if we consider it just and equitable to do so. In considering whether to exercise our discretion we took into account the following matters. The Claimant had all the relevant information to complain about these acts when they occurred if she believed them to be acts of unlawful discrimination. She did not complain about the ones that occurred before 3 September in her informal grievance. By the time she complained about them in her formal grievance on 9 November 2018 the earliest complaints were already out of time. The investigation into her grievance took nearly three months and was concluded on 31 January 2019 and conveyed to the Claimant on 26 February 2019. The Claimant had

since the summer of 2018 been a member of a trade union and had throughout that period been advised and represented by the trade union. In those circumstances, the Claimant should have received advice and been aware of the time limits for bringing claims of discrimination. We concluded that in all the circumstances of this case it would not be just and equitable to consider those complaints.

180 In case we are wrong in that conclusion, we set out below what our conclusions would have been had we considered the complaints of religious discrimination.

Issue 3.1

We have found that Ms Ojo did not tell the Claimant that she could not drink after work either at the party on that Friday or in general. What we have found is that there was a discussion among the Claimant's colleagues about whether or not it was disrespectful to drink alcohol at a party which was for a Muslim colleague or at which Muslims were present. Ms Ojo thought that it would be disrespectful. Ms Quagraine and the employee for whom the party was being held did not think that it was disrespectful. Different people have different views on a wide variety of issues. The expression of a view with which someone else disagrees does not amount subjecting that other to a "detriment". Neither Ms Ojo nor Ms Quagraine subjected the other to a "detriment" by expressing the views that they did. Ms Ojo did not subject the Claimant to a detriment by expressing the view that she did.

Issue 3.4

We have found that in the context of conversations about religion, having discovered that the Claimant was a Christian, Ms Ojo might have said that if she was a Christian she should believe in God. We do not see how saying that could amount to a detriment to a Christian. Belief in God is part of the Christian religion.

Issue 3.6

We have also found that Ms Ojo might have asked the Claimant whether she thought that the Christian religion was opposed to homosexuality. We do not see how asking that question could amount to subjecting her to a detriment because she is a Christian. It is well-known, because it has often been the subject of cases in Employment Tribunals and higher courts, that some Christians feel that they cannot carry out certain duties or provide certain services to homosexual couples because homosexuality is contrary their religious beliefs. It is difficult to see how merely asking the Claimant that question could amount to subjecting her to a detriment.

Issue 3.9

We have found that that question was not asked.

181 If, contrary to our understanding, it is the Claimant's case that these alleged acts were also acts of race discrimination, our conclusions about whether what we have found to have occurred amounts to subjecting the Claimant to detriments would apply equally and they would fail on that basis. In addition, there is no evidence from which we could infer that what happened had anything to do with the Claimant being white British.

Direct race discrimination

182 We understood that the matters set out at issues 3.2, 3.3, 3.5, 3.7, 3.8, 3.10, 3.11 and 3.12 were alleged to be acts of direct race discrimination. The last of those occurred after 25 October 2018 and, therefore, the complaint in respect of that was presented in time. If that is not found to be an act of race discrimination, then all the other complaints of race discrimination will be out of time. We have found that Mr Ifederu did not make that comment on 4 December 2018. Although most of these complaints are not as out of time as the complaints of religious discrimination, we concluded for similar reasons that it would not be just and equitable to consider them

183 However, in case we are found to be wrong in coming to that conclusion we set out below what our conclusions would have been on those complaints.

Issue 3.2

We found that Mr Ifederu did not make the remarks alleged by the Claimant.

Issue 3.3

We found that Ms King did not make the remarks alleged by the Claimant.

Issue 3.5

We have found that there was a general conversation about relationships between men and women in African culture. That conversation had nothing to do with relationships in the department or the relationship between the Claimant and Mr Ifederu. Ms Ojo did not say to the Claimant that she had to accept Mr Ifederu talking down to her because that was how it was in the African culture. By expressing her views about relationships between men and women in the African culture, Ms Ojo did not subject the Claimant to a detriment and did not treat her less favourably than she treated or would treat others because she is white British.

Issue 3.7

We have found that Ms Ojo did say that to Ms Acanit. We accept that could amount to subjecting the Claimant to a detriment. There was no evidence from which we could infer that Ms Ojo said that because the Claimant was white British.

Issue 3.8

We have found that in the context of the Claimant explaining that she from Yorkshire Ms Ojo probably referred to her as being a “Yorkshire girl” but that she did not say that rudely or refer to her being white. We concluded that the comments that were made in the context in which they were made did not amount to subjecting the Claimant to a detriment and were not made because of her race.

Issues 3.10 and 3.11

The whole purpose of “Black history month” is to recognise and celebrate the contribution of black people through history on the grounds that it has long been ignored and not recognised. The words “Celebrating Blacks in Science and Healthcare” were used as part of a display to celebrate Black History Month. There are no doubt people who, like the Claimant, do not agree with the concept of Black History

Month. The Claimant said that as a white British person she found the words offensive and did not agree with the idea of celebrating one particular ethnic group. The fact that that is what she felt and thought does not mean that she was subjected to a detriment. By celebrating Black History Month and using the words in the display the Respondent and Ms Ojo did not subject the Claimant to a detriment. By the same token, the Claimant and others who disagreed with celebrating Black History Month did not by expressing their views subject those who were celebrating it to a detriment. Nor did Ms Ojo subject the Claimant to a detriment by asking her in the context of a conversation about it whether they celebrated any particular days in Yorkshire.

184 If it was the Claimant's case that these acts are also acts of religious discrimination, we would have concluded that the claims failed for the reasons given above and because there is no evidence from which we could infer that the fact that the Claimant is Christian had anything to do with these complaints.

Indirect race and religious discrimination

185 This claim is out of time. It would not be just and equitable to consider it for the same reasons that it would not be just and equitable to consider the direct race and religious discrimination claims. If we had considered it, it would not have succeeded because we have found that the Respondent did not apply a provision, criterion or practice that its employees could not drink alcohol at certain work social events.

Direct sex discrimination

186 The Claimant's case that the acts at paragraphs 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 and 3.12 (above) were also acts of direct sex discrimination. We have found that the acts alleged at paragraphs 3.2, 3.3, 3.9 and 3.12 did not happen. In respect of paragraphs 3.4, 3.5 and 3.8 we have found that what was said in the context of those conversations did not subject the Claimant to a detriment. For those reasons, those complaints also fail as complaints of direct sex discrimination.

187 The majority of the complaints of direct sex discrimination are made against Mr Ifederu. They are at paragraphs 6.1 to 6.8 and 6.10 to 6.12. We have found that Mr Ifederu did not behave as alleged by the Claimant at paragraphs 6.1, 6.3 to 6.8 and 6.11.

188 In respect of paragraph 6.2 we found that Mr Ifederu told the Claimant that personal conversations between her and Ms Hylton needed to be cut down as they distracted her from her work. He also raised the matter with Ms Hylton's line manager. He did not raise it in an aggressive manner. That was an issue which Mr Ifederu as a manager was perfectly entitled to raise. By doing so, he did not subject the Claimant to a detriment. There was no evidence that by doing that he treated her less favourably than others and did so because she is a woman.

189 In respect of paragraph 6.10, we have found that Mr Ifederu did not stop the Claimant speaking to Azuma Kalu. What he did stop was the Claimant being given guidance or training on UKAS requirements by Mr Kalu. He did that because he thought that it would be better if that training were provided by someone in NS and he arranged for someone in NS to provide the Claimant with that training. By doing that he did not subject the Claimant to a detriment or treat her less favourably than he treated or would treat others and her gender had nothing to do with his action.

190 In respect of paragraph 6.11 our findings are set out at paragraphs 130 and 131 above. We found that Mr Ifederu did not threaten the Claimant that there would be consequences if she did not agree to an OH referral (by using the words “or else”), did not demand to know her whereabouts during lunch and toilet breaks, did not demand that she should do as he said and did not raise his hand near her face. We have found that it was a brief conversation and that most of it was conducted calmly. However, towards the end of it Mr Ifederu became frustrated with the Claimant’s approach to the OH referral and that raised his voice and put his hand on the door when the Claimant tried to leave while he was speaking. He did not prevent her from leaving for more than a few seconds. We have not found that he behaved in a threatening or aggressive manner but he did lose his temper towards the end of that conversation. There was no evidence before us from which we could infer that Mr Ifederu would have reacted differently towards a male employee in similar circumstances or that the Claimant’s gender had anything to do with it. The circumstances were that the relationship between them was strained at this time. Mr Ifederu had concerns about the Claimant’s performance and relationships with her team, she had made complaints about him which he felt were unjustified, they both felt the need to be accompanied at meetings and Mr Ifederu felt that the Claimant was deliberately being difficult. We concluded that the complaint of direct sex discrimination in respect of Mr Ifederu’s conduct during that exchange was not made out.

Issues 6.7 and 6.9

191 We have found that Zarah Ahmed probably did speak to Shajedah Khair about complaining to Mr Ifederu about the Claimant’s treatment of her in relation to her pregnancy. She did so because she was very unhappy about how the Claimant was treating her. There was no evidence from which we could infer that the Claimant’s gender played any part in that. The Claimant complained about people colluding against her as part of her formal grievance and it was part of the investigation.

Issues 6.13 – 6.15

192 Professor Heales did not change his story about the exchange between the Claimant and Mr Ifederu on 5 December. His account was consistently that the Claimant had asked him whether he had seen Mr Ifederu being aggressive towards her and his response was that he had not and could not support her allegation to that effect. He did refer to the Claimant as being “disruptive”. He did so because he believed that what she was alleging was not true. There was no evidence that her gender played any part in his making that remark.

193 The Respondent did not offer the Claimant a Band 3 training role as a temporary redeployment option. There was no existing vacant Band 5 role, but the Respondent was prepared to create a temporary Band 5 role for the Claimant. Following a meeting with Mr Ifederu on 28 November 2018 the Claimant complained to HR that she was being targeted and victimised for having made a complaint about bullying. Ms Huelamo suggested that if the situation was causing her distress she should consider whether she wanted to be temporarily moved to another role or another location until the investigation had been concluded. When the Claimant questioned why those about whom she had complained were not being moved, Ms Huelamo pointed out to her that as she had complained about almost everyone in her department moving all of them would have a significant impact on the continuation of the service and for the patients. By offering the Claimant the option to move temporarily to a different role at the same

Band and rate of pay, in circumstances where she said that she was unhappy about the way she was being treated in her current role, the Respondent did not subject her to a detriment and her gender played no part in that offer.

194 Ms Lennon did not criticise the Claimant or tell her that she could not return to work. She explained to her why the referral had been made because the Claimant was unhappy about it and did not want to attend Occupational Health. She did not subject the Claimant to a detriment or treat her less favourably than others because of gender.

Victimisation

195 The Respondent said in the reference that it provided on 17 July 2019 that there was an ongoing disciplinary investigation into the Claimant's conduct because that was the truth. The Respondent could not have said otherwise. The Claimant had been informed of the start of the disciplinary process on 16 January 2019. The Claimant had shortly thereafter started a long period of sickness absence and during that period the matter had not been progressed. Occupational Health had been asked whether the Claimant could take part in the disciplinary process while she was absent sick and that questions had not been answered. There was a long gap before it was raised with OH again. However, the Claimant had never been told that the Respondent was no longer pursuing the disciplinary process and her trade union representative was certainly aware that it might still be ongoing and hence had raised it with HR. The Respondent did not say that in the reference because the Claimant had raised the grievance on 9 November 2019.

Unauthorised deductions from wages

196 The Claimant was at the end of February 2020 paid less than what was properly payable to her. The issue for us was whether that was a deduction authorised by clause 1 of the Claimant's contract or section 14 applied. The issue in both cases was similar. The clause in the contract entitled the Respondent to deduct for any excess payments that had been made. Section 14 would apply where the purpose of the deduction was to reimburse the employer in respect of any overpayment. The issue, therefore, was whether the Claimant had been paid more than what she was entitled to at the end of December. We think that the simple answer to that was that she had not. She had been paid her normal monthly wage at the end of December. By February no decision had been made as to whether there had been five hours' unauthorised absence by the Claimant in December. That was something that was going to be investigated and dealt with as part of the disciplinary process. We concluded that section 14 did not apply and the deduction was not authorised by a relevant provision of the Claimant's contract.

Employment Judge - Grewal

Date: 27/1/21

JUDGMENT & REASONS SENT TO THE PARTIES ON

.27th Jan 2021.

.....
FOR THE TRIBUNAL OFFICE