EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms S Lyfar	**v**	**Clarion Housing Group**

Heard at: Watford Employment Tribunal (in public by video)

On: 22 March to 1 April 2021

Before: Employment Judge Quill
Members: Mr D Bean; Mr D Sutton

Appearances

For the Claimant: Ms A Brown, counsel
For the Respondent: Ms C Musgrave, counsel

This was a remote hearing . The form of remote hearing was V: video. The documents that we were referred to are as stated below, the contents of which I have recorded. The order made is described below

JUDGMENT

Our decisions are unanimous.

1. The decision to dismiss on 17 January 2019 was an act of direct race discrimination (as per the definition in section 13 of the Equality Act 2010). The Claimant was reinstated and the act was therefore a contravention of section 39(2)(d) of that Act.

2. All the other complaints fail and are dismissed, including the allegations that the dismissal decision on 17 January 2019 was a contravention of section 40 (harassment) or section 39(4)(c) (victimisation) of the Equality Act 2010.

3. The Respondent is ordered to pay the Claimant £8,236.60

REASONS

1. This was a nine-day case. We gave our decisions orally and we were asked to supply written reasons. These are those reasons.

The Hearing

2. The first day was for reading and discussion and the parties agreed that the list of issues that appears in the bundle at page 65 - having been drawn up at a preliminary hearing before Employment Judge Wyeth on 24 July 2019 – was still correct.

3. In the remainder of the first week, we heard the witness evidence. The claimant was the only witness on her side and then there were eight witnesses for the respondent, being Ms Handley, Ms Jackson, Ms Jones, Ms Curry, Ms Stark, Ms Lawson, Mr Morrison and Ms Parker.

4. The hearing was conducted entirely remotely video. There were some minor connection difficulties at different points in the hearing but they did not affect the overall fairness of the hearing and everybody was able to hear all parts of the evidence. There was a strike-out application made by the Claimant on Day 6 which we dealt with at the time, and which we refused for the reasons that we gave at the time.

5. We had a bundle which is in several parts and we received additional documents as well. The bundle produced by the respondent with the additional pages added up to more than 1,400 pages and the claimant's supplementary bundle was around 200 pages.

6. In relation to credibility of witnesses, we just need to make a few preliminary comments and specifically in light of the documents that we received after the close of evidence and, therefore, after the opportunity to cross-examine witnesses about those documents had passed.

7. One set of documents we received were photographs of the shower cubicle from the accommodation which 'F' had lived in 2015 and 2016. The photographs did not necessarily show what we had expected to see based on what witness evidence we had heard. However, the evidence was not actually misleading, it was simply that we had understood the testimony when we heard it, given the fact that – at that stage - the witness had seen the photographs and we had not. The photographs did not in fact, as we had expected, show the shower tray in situ and therefore we were not able to reach any conclusions about whether it would or would not have been possible to place any items - whether a briefcase or just papers/documents - under the shower tray. The photographs therefore do not help or harm anybody's credibility. In any event, none of the respondent's witnesses had examined the accommodation prior to the dismissal or prior to the appeal etc; the inspection only took place in July 2019.

8. We also received some e-mails that had been sent immediately before the strategy meeting in July 2019 and we also received e-mails which included Ms Jackson's comments on the notes of the strategy meeting. In relation to both these sets of items, but especially the e-mails before the strategy meeting, these are items which should have been disclosed by the respondent during the course of the litigation given their relevance to the issues in the case and in particular the issues about the respondent's

correspondence with the Local Authority and whether or not the respondent provided sufficient information to the Local Authority for it to close its enquiry and confirm that the claimant could return to her normal duties.

9. One thing that the correspondence shows is that the Local Authority member of staff (who we will refer to as Social Worker A), was asserting that she was unaware of the allegation of £2,500 being missing. If Ms Jackson's note of 11 March 2018 meeting with 'F' is accurate, then that is surprising because Social Worker A was present at that meeting. So the possibilities include that Social Worker A made no notes and forgot about the allegation, or that she did make notes but either did not make accurate notes or else did not refer to the notes before commenting that she had not previously been aware of this particular allegation. The other possibility, of course, being that Ms Jackson's notes were inaccurate. There was no opportunity for Ms Brown to cross-examine Ms Jackson about this specific point (given the timing of the disclosure); Ms Jackson was, however, challenged about whether or not she produced her note promptly after the 11 March 2018 meeting and whether or not it was accurate.

10. In relation to Ms Jackson's evidence about the strategy meeting, she was taken in cross-examination to a particular passage in the minutes where she was reported as saying that the Police had not investigated sufficiently. Our decision is that the answer that she gave to that line of questioning intended to convey
    10.1 that she had not made this particular comment during the meeting and
    10.2 that the minutes were wrong to say that she had and
    10.3 that she had challenged the Local Authority about the inaccurate minutes.

11. The late disclosure reveals that, in fact, while Ms Jackson did ask for some amendments to the minutes, she did not ask for this particular passage to be changed. We conclude from that - because what she had said at the meeting was fresh in her mind at the time - that the minutes were, in fact, accurate. Therefore her answers to the questions under cross-examination were misleading, both on the issue of what her comments had been at that July meeting and of whether she had asked the Local Authority to make the particular correction.

12. The other issue which we need mention, though only briefly, is what arose in connection with Ms Jackson's evidence which led to the strike-out application. We do not need to repeat the full details of what occurred. Suffice to say that we were asked to draw adverse conclusions about the reliability of Ms Jackson's evidence. We have taken those events into account, although they do not undermine Ms Jackson's credibility.

13. Taking these matters, and the totality of the evidence, into account, it is our decision that we are not satisfied that the note of the March 2018 meeting with 'F' that was in the bundle was produced promptly after that particular meeting. It seems at least possible that it was produced a long time afterwards and it is not really possible for us to say whether it was produced closer in time to March 2018, or closer in time to November 2018 when it

was submitted by e-mail to Ms Jones. We do not make any criticism of the fact that the original hand-written notes have not also been supplied given the fact that for the last 12 months Ms Jackson has not had the opportunity to go to the office to look to see whether she still has those original hand-written notes in her locker.

14. The other thing to mention in relation to the October meeting is that there are some differences between the document that was sent to Human Resources on 20 November 2018 and the document that was disclosed to the claimant in response to her subject access request. However, our finding in relation to those differences is that they are comparatively minor and do not have a particular significance to the issues that we actually have to decide in this case. We might have taken a different view if this had been an unfair dismissal case, but it is not an unfair dismissal case.

15. Overall then, in relation to the two notes from March and October 2018, it is our decision that the notes do give the general gist of what 'F' said to the investigators; Ms Jackson has not invented comments which she attributed to 'F'. It is not clear - of course - what his exact words were. The notes are not verbatim but they do not purport to be verbatim on their face. Perhaps it would have been preferable if a more accurate and complete note had been taken, but, again that is not especially relevant to the decisions that we have to make in relation to whether or not there has been discrimination or harassment or victimisation. In terms of our decision that the notes convey the general gist of what F said, we do not think it is particularly significant that the notes were not signed by him.

16. As far as the dismissal outcome letter is concerned (which contains the respondent's purported reasons for the dismissal), we will discuss that more fully when we come to it. However, as far as the remainder of the documents are concerned, we accept that the documents do contain the genuine opinions of the authors at the time they were written. This includes the grievance outcome letter by Ms Curry (23 August 2018, the grievance appeal outcome letter by Ms Stark (21 November 2018), the written statement prepared by Ms Quirke in March 2018, the safeguarding referral form submitted by Ms Handley in March 2018 and the appeal outcome letter prepared by Mr Morrison in March 2019.

17. So avoidance for the doubt, we have considered the claimant's overall comments that documents may have been, in her words, "doctored". Subject to the comments that we have just made, we are satisfied that there are no suspicious changes to the relevant documents. It is fairly normal and unsurprising that there are some changes between a document produced in draft form and the later final version of the same document.

Findings of fact

18. In its current format the respondent, has existed since November 2016 when it was formed as the result of a merger. The claimant has continuity of employment going back to 2010. She is a current employee.

19. The respondent is a registered provider of social housing and has approximately 4,000 employees. The claimant is a Tenancy Sustainment Officer ("TSO"). Amongst other things, her duties include: working with residents and the welfare benefits team to ensure that eligible benefits are in place; assisting with the completion and monitoring of housing benefit claims to ensure supporting documentation is submitted and that appropriate claims are successful in relation to benefits; to liaise with the voids and letting team and with the Local Authority to assist in the letting process; to assist residents to have an understanding of their rights and responsibilities in relation to their agreements with the respondent; keep an accurate record in relation to cases, making referrals and to an appropriate agency if required.

20. Her duties include working with residents and other staff as well as other agencies where there are any safeguarding concerns and/or when an individual may be at risk. TSOs have their own code of conduct in the relevant handbook and that includes the requirement to be flexible and adaptable in the approach that they take to meet the needs of residents. The code of conduct says that TSOs will not make personal relationships with residents or undertake personal favours or carry out favours for residents outside working hours or carry out tasks that are outside of their role, handle money or cheques or valuables for residents and they should not help residents with finances. It also specifically mentions that they should not receive inheritance money or money in kind or be a witness for any legal documents. In the handbook under the heading "What we never do" are included amongst other things, carrying out personal care or nursing duties, providing practical assistance with cleaning tasks and help with shopping or being a keyholder.

21. In 2012, there was an incident in relation to two TSOs. We were given the names of these two people and we are going to refer to them as Employee A and Employee B. The two officers are both white, the claimant describes her race as black Afro-Caribbean. The officers were suspended around 2 October 2012. The suspension letters were similar in each case (although one contained an invitation to an investigation meeting) and they said that the suspension was with immediate effect following the commencement of an investigation into an allegation by a resident of financial misconduct. In each case, a disciplinary hearing took place on 19 October so of course that is 17 days later. The hearing officer in each case was Julie Schoon, Director of Supported Housing. We are told that she no longer works for the respondent. Employee A was dismissed with immediate effect because the employer said that it could not trust her. The decision made - according to the outcome letter - was that the evidence demonstrated that the employee had written and witnessed a will for a vulnerable adult which named Employee A's daughter as a beneficiary. The employee admitted breaking policies and procedures. The employer (this is the respondent's predecessor rather than the current respondent) made no safeguarding referrals to the Local Authority at the time and nor was there any referral made to the Police.

22. For Employee B the outcome was a final written warning. The allegation was that Employee B had been a witness to the will just mentioned, which named Employee A's daughter as a beneficiary. The employer accepted that Employee B had had no knowledge of any facts which had caused Employee B's integrity to be in question. Again, there was no safeguarding referral and no referral to Police.

23. From around 2011 onwards, the claimant had been providing an assistance - off and on - in her role as TSO to one of the respondent's residents who has been called in all the witness statements, 'F'. 'F' had become one of the claimant's clients because another worker had originally been dealing with him but that worker had found it difficult to understand his accent. His accent is a Jamaican accent and it had been agreed that the claimant might be able to understand him better because her parents are from Jamaica. The claimant provided useful and helpful assistance to 'F' over the years and she was able to close his case originally, although she continued to provide him with further assistance later on when he asked for it.

24. In June 2015, the claimant sent an e-mail to her Line Manager, Ms Fletcher which stated that 'F' had conducted her again. She was not currently dealing with him as a client at that time and referred to the fact that he was being dealt with by Social Services or he fell under Social Services responsibilities. An e-mail referred to interactions that the claimant had had with two Social Workers in relation to 'F'. The e-mail refers to both, the information that the claimant had given to Social Services and information about 'F' which the claimant had received from Social Services. No referral was made by Ms Fletcher and no safeguarding was made to the Local Authority by Ms Fletcher, nor did she suggest that the claimant should make one.

25. On 24 June 2015 at a one-to-one meeting, the claimant and Ms Fletcher had a discussion. Safeguarding referrals was a standard item on the proforma for meetings of this type. Neither of them raised any specific issues in connection with any proposed referral of 'F' to the Local Authority. This is not necessarily surprising given that social workers were already dealing with 'F' and as mentioned, had been the source of some of the information which the claimant was in possession of and which she had written to Ms Fletcher about. In August, another manager, Ms Wolstencroft, asked the claimant to contact the Police to discuss 'F' with them. We infer that this was not to make a report, but rather that the claimant was believed to be somebody who could supply the Police with some information about 'F'. The claimant did do that. The claimant also visited 'F' and in due course, the Police arranged for security cameras to be placed outside 'F's home in order to provide protection to him.

26. In her one-to-one meeting on 8 December 2015, the claimant discussed 'F' with her line manager and it was noted that by this time 'F' was currently in a residential home following a stay in hospital. There was a plan to terminate his tenancy because he was now going to go to sheltered housing rather than to return to live at the respondent's property. The original termination date had been due to be in November 2015 but that had shifted and it was

going to be the end of January 2016. Prior to the original termination date, the respondent had sent a letter to 'F' requesting that he authorise a social worker ("Social Worker B") to move his belongings out of the property and that he authorised the respondent (or at least acknowledged) that the respondent would destroy any items that were left in the property by the tenancy end date. In other words, the respondent was not envisaging that 'F' himself would be returning to the property and clearing items out but the respondent was aware that it would be Social Worker B rather than 'F' who would do that. 'F' signed and returned the form, but after the original end date. It is our inference that this was in readiness for the revised end date that was due to be January.

27. On 21 December, there was a detailed exchange of correspondence between the claimant and Social Worker B and the gist of this correspondence was properly recorded by the claimant on the respondent's CRM system. There were efforts by the claimant to persuade Social Worker B to attend to collect property and there was a discussion about exactly what would be needed. Social Worker B did eventually say that they would be attending on 8 January and so, on 7 January, the claimant attended 'F's property to make preparations for Social Worker B's visit, including arranging for the respondent's staff to take the TVs from the walls so that they could be collected.

28. However, on 8 January Social Worker B did not actually attend. There was a further exchange of e-mails and discussion between the claimant and Social Worker B and the claimant was told by Social Worker B that 'F's son would be attending the property and that he would be collecting the remaining items. Social Worker B told the claimant that there were certain documents and letters that were not to be handed to 'F's son. The claimant made notes about this on CRM as well, and on 15 January 2016, she had a one-to-one meeting with her line manager, during which she provided an update in relation to 'F'. The update included the fact that it was the son who was going to make contact and collect the items from the property. It is clear to us that it was known to the manager, or it ought to have been clear to her from what she was told, that 'F' himself was not going to be present for this. During the meeting, Ms Fletcher reminded the claimant of the importance of keeping her file notes up-to-date; she also praised what the claimant had done in relation to 'F's file as an example of good record keeping and praised her good work generally in relation to 'F'.

29. Subsequently, the claimant and 'F's son did make contact with each other and an arrangement was made that the claimant would meet him at the property on 25 January 2016. She went to collect the keys from 'F' so that she could let the son into the property and F asked her to put his briefcase out of the way so that the son would not see it. The claimant did, in fact, attend the property and she put the briefcase into the shower so that the son would not see it. However, the son did not actually turn up, therefore the claimant returned the keys not to 'F' but to the voids team. This was so that the voids team would, in due course, close the tenancy and destroy the remaining belongings that were in the accommodation. The account was

closed on 9 February 2016. Nobody knows what happened to the briefcase but it is assumed by all concerned that it was destroyed and has been permanently lost, given that there is no record of anybody else going back to the property - 'F', Social Worker B, the claimant, or anybody else - after the claimant left on 25 January and handed the keys back to the voids team.

30. There is another TSO, her name was mentioned openly during the hearing and in the statements but it is sufficient for us to refer to her as Employee C. In February 2018, Employee C told the respondent that she had taken some bank statements for a particular client to the Local Authority, so that the Local Authority could copy those bank statements as part of a Housing Benefit application. Employee C had then taken the items home overnight and said that she had been intending to return them to the client the following day, but had lost them. The respondent liaised with the tenant and gave the tenant advice in relation to measures that the tenant might take to ensure that there was no identity theft. The respondent did not decide that any disciplinary action should be taken against Employee C, and Employee C was not investigated for allegations of misconduct. There was no safeguarding referral made to the Local Authority and no report to Police although as mentioned, the employee was given advice. The respondent also made a data breach referral.

31. 'F' had had a stroke some years previously and he had been receipt of advice and assistance from the Stroke Association and that continued after 'F' had left the respondent's accommodation. In around February 2018, Laura McGregor of the Stroke Association contacted the respondent. She sent an e-mail to a manager, Mr Allen. The e-mail was dated 22 February 2018 and it said:

> "I have recently been told about a person called Sonya who is from the respondent, has been charging 'F' £70 for food from the food bank and £40 to take him into Watford, I don't suppose you have notes on who this Sonya person is on your system do you?"

32. Mr Allen brought the matter to the claimant's attention, or she somehow became aware that Mr Allen had received this e-mail, and as a result the claimant approached one of the team leaders, Ms Quirke, who was not the Claimant's own line manager. Ms Quirke was about to leave her the same month, March 2018. As a result of the discussions between Ms Quirke and the claimant, several phone calls were made by Ms Quirke in the presence of the claimant. Ms Quirke made a three page note of the conversation that is dated 8 March 2018. There is a document in the bundle from 283 to 285 and in the bundle there is an e-mail, on page 286 from Janet Quirke to Sarah Fletcher, dated 8 March, attaching a document called 'Sonya' and the text of the e-mail says:

> "Have a read of my statement"

33. It is our finding that the item that is in the bundle 283 to 285 is indeed the attachment that was sent by Ms Quirke to Ms Fletcher, copied to Ms Handley on 8 March. We were invited to take note of the fact that Ms Quirke never actually put an ink signature on this document. We do not think that

this is significant. We were also asked to take note of the fact that the claimant did not see it for the first time until after she had been dismissed, despite having made several requests to see it. We do take that into account and comment on it in more detail below; however, for present purposes, suffice it to say that we are satisfied that the document in the bundle was Ms Quirke's immediate and genuine recollection of the conversations. At the conclusion of the notes, Ms Quirke mentioned that in discussions with the claimant, the claimant had admitted taking money from 'F' in circumstances which the claimant thought were justified. The justification according to Ms Quirke's notes including the fact that 'F' was no longer a resident of the respondent at the time and that it was simply a genuine reimbursement of her expenses. Ms Quirke stated that but for these latter comments by the claimant, she, Ms Quirke, would have potentially been satisfied that no further action was required; however, in light of those particular comments, she referred it on.

34. Ms Handley was the line manager of Ms Quirke and Ms Fletcher and she was concerned about the note that she received. She discussed it with her own line manager, Anne Brighton. She also went and spoke to Human Resources about it. There was a decision made to suspend the claimant. It is surprising to us that Ms Handley cannot remember the name of the specific individual within the employee relations team and with whom she had discussions about the possibility of suspension. It is very surprising that there are no written records of this and no exchange of e-mails or other documentary evidence. However, we do accept that the reasons for this suspension were that Ms Handley believed that an investigation in relation to the matters brought to Ms Handley's attention by Ms Quirke and brought to Ms Quirke's attention by the claimant and by Ms McGregor and a friend of 'F's called 'J' and by 'F' himself. Those were the matters that Ms Handley believed needed investigating and she believed that there should be a suspension. The suspension letter was dated 9 March 2018, signed by Ms Parker and the letter included the passage:

> "I write to confirm the decision taken to suspend you from your duties with immediate effect following the commencement of an investigation into an allegation of misconduct and potential safeguarding."

35. At the suspension meeting, Ms Handley was also accompanied by a member of the employee relations team. At the time of the suspension, the claimant was aware of the reason for the suspension. She was aware it related to the allegations made by Ms McGregor and by 'J'. She did not have specific information about exactly which parts of the code of conduct might be alleged to have been breached, but she had the general gist and we note that the letter sent to the claimant is similar to the letters sent to Employee A and Employee B in 2012. Around 9 March 2018, Ms Handley made a referral on behalf of the respondent to the Local Authority using the Local Authority standard safeguarding adults form. Prior to submitting it she produced a draft and discussed the draft with her own line manager Anne Brighton. There are no suspicious changes between the draft version and the final version and the final version notes that the respondent had been

contacted by Ms McGregor and that concerns about 'F' had been raised and that the concerns were that 'F' was being taken advantage of by one of the respondent's employees including taking money off him, possibly for petrol and possibly for food. The referral did make clear that 'J' was actually a friend of 'F's although there is a slight error later on in that it talks about two people who worked with 'F'. 'J' was a friend rather than somebody who worked with F but that minor error is not particularly significant. The referral briefly described the claimant's interaction with 'F' while he had been a tenant and mentioned that the claimant had stated that she had visited 'F' on more than one occasion after he had left the respondent's property. The referral form stated correctly that 'F's consent to make the referral had not been sought and therefore not been given. It also said that the claimant was suspended pending further enquiries. The referral form stated that the respondent believed that the concerns were potentially serious enough that the Police should become involved but the respondent wanted the Local Authority to advise them about that.

36. The respondent appointed Ms Emma Jackson to be the investigating officer. Ms Jackson's current job is National Sustainment Lead, and she currently manages Sarah Fletcher. However, that was not her role at the time. At the time she was appointed to investigate, she worked in a different location, and she did not know the claimant or Ms Handley or Ms Fletcher personally. Ms Justine Jones from the Employee Relations team was appointed to provide employee relations advice to Ms Jackson. Before the respondent contacted the claimant with further information about the specific allegations or specifically what it would do in relation to the investigation, the respondent was contacted by the Local Authority who said that an investigation was potentially commencing and that the Police wanted to speak to 'F' before deciding. The authority advised that, in the meantime, the respondent should not give any further information to the claimant. This remained the situation until 29 August 2018. The respondent made several attempts between March 2018 and August 2018 to hurry the Police along and obtain clearance from the police that the Respondent could proceed with its own investigation and speak to the claimant about the relevant matters. The Police stated that they did not want the respondent to speak to the claimant about the allegations of what was termed as 'financial abuse' or potential 'financial abuse' in relation to 'F'. They did not object to the respondent interviewing the claimant so long as the interview did not touch on such matters. The respondent took the view - and we find it was reasonable for them to do so - that it would not have been possible or reasonable to have a meeting with the claimant in relation to the 'F' matter if they did not touch on the so called financial abuse allegations.

37. During the Police investigation, the Police had asked for various pieces of information from the respondent including personal data about the claimant. In our opinion, there is nothing surprising or suspicious about the fact that the respondent co-operated with the Police, including supplying the requested information to them. Ms Jackson sought and followed advice from Ms Jones in relation to this.

38. Later on, in August 2018, having interviewed the claimant under caution, including in relation to the contents of Ms Quirke's letter, the Police decided that there was insufficient evidence and closed their investigation. Promptly upon being told about this, the respondent sent an e-mail (from Ms Jones) which invited the claimant to an investigation meeting on 7 September. The claimant was unable to attend the meeting plan for 7 September due to health and the meeting was therefore rearranged for 11 October and she was interviewed by Ms Jackson in connection with the matters for which she had originally been suspended.

39. After the claimant had been suspended, another matter came to the respondent's attention. Around Valentine's Day 2018, there had been a fundraiser for a charity. The fundraiser had been organiser by the respondent's staff. The cash collected had been taken the claimant, with the agreement of her colleagues so that she could pay it into her bank account and subsequently make a cheque payment to the charity. It was brought to Ms Fletcher's attention after the claimant's suspension, that no thank you letter had been received. She checked with the charity and they had not received the money. Ms Fletcher informed Ms Handley who told her - on 10 April - to forward the details to Ms Jackson so that Ms Jackson could deal with it as part of her investigation. Ms Fletcher's opinion was that she had said to the Claimant that the Claimant should pay the money into a particular bank account controlled by the respondent and that that would be an appropriate method for the cheque to the charity to be produced. On 1 May 2018, so around 10 weeks after the fundraiser, Ms Jones telephoned the claimant to ask if the cash was in the claimant's locker at work for example, or elsewhere at work. The claimant told Ms Jones that it was not; she said that it was in her bank account. She blamed in part, at least, her suspension for the fact that she had not yet paid the money to the charity. The claimant asked Ms Jones if she should send the cheque at that stage and Ms Jones said not to do anything straight away as Ms Jones was intending to refer the matter to Ms Jackson. Ms Jackson decided that she would interview the claimant about this matter and she did that on 24 May 2018. She produced a formal report around June 2018. We do not have the exact date. The version we have bears the date 30 May but it is common ground that the text was finalised later than that. The written report noted that there was no clarity over exactly how much had been collected or why there had been such a delay in making the payment to the charity. The report said that on one interpretation, the claimant might have breached the respondent's code of conduct. The respondent decided that there would not be a disciplinary hearing in relation to this matter. The claimant was told this on 18 July and it was confirmed in writing to her. In response, on 23 July, the claimant agreed to the respondent's request that she pay the charity money to the respondent so that the respondent could in turn pay it to the charity. The claimant stated that she was – in her words - the "guardian" of the money. She would have preferred to discuss the matter with her colleagues about whether it was appropriate to pay to the respondent. She could not do that because of the suspension and therefore agreed to pay it to the respondent.

40. The same day, 23 July, the claimant submitted a grievance. It is common ground that this grievance was a protected act. It is in the bundle on page 475 and we will not quote from it extensively at this point, but will refer to it in our conclusions. Suffice it to say that the heading of the letter itself says "grievance re discrimination on grounds of race and victimisation" and in the opening paragraph the claimant refers to the conduct of the respondent's managers and says that conduct was on the grounds of race and also evidence of victimisation. The respondent appointed Ms Tammy Curry, Service Delivery Manager to deal with the grievance. Ms Curry received further documents from the claimant. She met the claimant to discuss the grievance and she also spoke to Ms Jones. She gave a written response on 23 August, which is in the bundle 539. For present purposes we do not need to refer to the contents of that letter in detail and will comment on it further in our conclusions. As the timings make clear, the written outcome was supplied to the claimant within one month of the date of grievance. The respondent did not uphold the grievance and the claimant appealed against the outcome and the outcome to her appeal is in the bundle. It is in the supplementary bundle at page 2097. The appeal outcome, in November, was given by Janet Stark, head of employee relations. This is a role which she job shares with Helen Parker. It was a detailed and thorough response and we will comment on it in more detail in our conclusions.

41. Meanwhile, Ms Jackson had finished her report. As we have mentioned she had interviewed the claimant on 11 October. She conducted other interviews as well. Together, with appendices the report was around 180 pages. It is a 25 page report submitted to the respondent on 6 November and a two page list of appendices. The remainder of the 180 pages were the appendices themselves of which there were 25 and she numbered them. She submitted the report itself to Ms Jones on 6 November 2018 and the appendices followed on 20 November. Ms Jackson made no recommendation one way or the other in relation to whether the claimant should face disciplinary action. Ms Jackson had no further involvement in the matter prior to the claimant's dismissal.

42. After Ms Jackson had submitted this report, there was some process by which the 180 pages were reduced to something less than 60, being just four pages of the report, one page listing the appendices (which were no longer numbered but instead had bullet point formatting) and there was now 16 appendices. We accept the Respondent's evidence that this process was not either done by Ms Jackson nor by Ms Lawson. The respondent's position is that it must have been done by some manager, but they cannot say who it was. They say it would not have been done by the employee relations team. The respondent's position is that a manager would have been the person who decided that there should be a disciplinary hearing and that it was two particular allegations that would be addressed at that disciplinary hearing. We will read out those allegations in a moment, but it is the respondent's position that after a manager had decided what the allegations were, somebody – and they do no know if it was the person who made the decision about what allegations would be or somebody else - decided that the report should be edited. It was also apparently decided

that the editing of the report should not be done by Ms Jackson, or in consultation with Ms Jackson, but somebody else should do it. Ms Jackson's name remained on the report and the date of 6 November 2018 remained the same. Some of the editing was done – according to the respondent - by an employee in the employee relations team who no longer works for the respondent. The respondent argues that the redactions and editing was appropriate and was fair. An employee who does work for the respondent, still in the employee relations team, is Dunja Rogelj. On 11 December 2018, Ms Rogelj sent an e-mail and letter to the claimant inviting the claimant to attend a disciplinary hearing on 20 December 2018. The two allegations that the claimant was now to face were:

Allegation 1: It is alleged that you handed valuables (personal paperwork /passport/credit card/right to remain) which was subsequently hidden by you at 'F's address and these items have subsequently been lost.

Allegation 2: Further to the above, you failed to raise concerns with your line manager or authorities regarding the resident 'F' in relation to the request by him for you to hide valuables (personal paperwork /passport/credit card/right to remain) for him.

43. The edited investigation pack was also sent to the claimant. The same pack was sent to the hearing officer which was to be Amy Lawson. At the time, her post was Strategic Head of Supported Compliance. The hearing began on 20 December, and it continued on 17 January 2019. We will comment on it in more detail in our conclusions. The claimant was dismissed at the end of the hearing following deliberations. A letter dated 24 January 2019 confirmed the decision and gave written reasons. Both of the allegations were upheld.

44. There is disputed issue about what was said at the disciplinary hearing. The notes produced by the claimant's sister that say on 17 January 2019, when referring to Employee C, the claimant and her sister did not merely state that Employee C had been treated differently or more favourably than the claimant (and there is no dispute about that part), but they specifically raised the point that they were asserting that the reason for the difference in treatment was race. That latter remark is not the notes produced by the respondent and Ms Lawson's evidence was that she is confident that was not said. That was her opinion when she reviewed the Claimant's sister's notes nearer the time, and it is still her position now. We accept that Ms Lawson is giving honest evidence to the tribunal. She is not knowingly stating something that she knows to be untrue; however, our finding is that in fact the claimant and her sister did make those statements in January 2019. As with any disputed issue of fact, when it one person's recollection pitted against another's, we have to come down one way or the other on the balance of probabilities. In this particular case the claimant had issued a grievance in July 2018. We accept Ms Lawson was not aware of that but it is still a fact that it had been issued in July 2018 and the claimant had alleged in that document that she was being discriminated against on the grounds of race. By 17 January 2019, this was about a month after she had lodged a claim in the Employment Tribunal, alleging race discrimination. It is more

probable than not that when the claimant raised the alleged difference in treatment between her and her comparator she would have said during the disciplinary hearing that she was alleging that the difference in treatment was because race (or, at the very least, that there was a difference in race. We accept that the evidence is not 100% clear cut one way or the other but on the balance of probabilities we are satisfied that she did say it.

45. Subsequently, the claimant wrote to the Chief Executive. She had not had the Quirke letter by this stage (it was one of the appendices submitted by Ms Jackson but removed by person or person's unknown, and the Respondent refused the Claimant's requests to see it prior to dismissal). After the dismissal, the Quirke letter was supplied to the claimant.

46. The claimant appealed against her dismissal and the appeal was dealt with by Ian Morrison who is the respondent's Director of Property Services. Mr Morrison decided that the claimant would be reinstated. We comment on his decision in more detail in our conclusions. His appeal outcome letter is in the bundle at page 1230 and is dated 29 March 2019. His decision was that the claimant would be reinstated. He addressed the specific eight points raised by the claimant in her appeal and gave his reasons for not agreeing with the particular points that the claimant made, other than that he decided that the dismissal should be overturned, and the claimant should be reinstated. He did not overturn the findings of misconduct but he replaced the decision with a decision that there would be a final written warning instead. The claimant did not return to work immediately after the reinstatement letter was sent. She was not specifically told at the time that she would be unable to return immediately, but Mr Morrison's letter does inform her that if she has any queries about the reinstatement she should liaise with Helen Parker in the first instance Head of Employee Relations (job-shared with Ms Stark). Mr Morrison's letter did also say that the matter was still under consideration by the Local Authority and that the claimant would be updated in due course.

47. In fact, the claimant was not able to return to work immediately because she was ill. When the claimant was planning to return to work at the end of her illness, the respondent informed her that she could not return straight away because there needed to be clearance for the Local Authority before she did so.

48. There had been a meeting of the Local Authority in April 2019. Nobody from the respondent attended the meeting but Ms Handley did send an e-mail to the Local Authority stating that the claimant had been given a final written warning and that the respondent's enquiries were concluded. There seems to have been some internal disagreement at the respondent about who, if anybody, should attend the meeting and we will comment on that in more detail. In any event, it was Ms Handley's opinion that her written information was sufficient and appropriate. There was then a further meeting of the committee in May. The April decision of the Local Authority was that the respondent should send somebody in person to the May meeting and that that person should be able to answer appropriate queries at the meeting.

49. For entirely legitimate personal reasons, Ms Handley was not able to attend. For whatever reason – and the respondent itself does not try to justify this failure - the respondent failed to send anybody to the May meeting.

50. A meeting attended by the Respondent eventually took place in July 2019. It was Ms Jackson who attended on behalf of the Respondent. Prior to the meeting - as we have mentioned at the outset of these reasons - Ms Jackson was in correspondence with Social Worker A in relation to one of the particular allegations that 'F' had made. Ms Jackson was commenting that she did not have particular information about that allegation and that the Local Authority should ensure that the Police attended the meeting, because they would be better placed to comment on it. As mentioned already, during the meeting, Ms Jackson gave the opinion that the Police had not investigated thoroughly and had not pursued all lines of enquiry.

51. The decision made at the July meeting was that the claimant was able to return to work. She did return to work and the exact details of what happened after that can be considered in more detail at the remedy stage. Suffice it to say that she was first on a phased return and then eventually full-time.

The Law

52. All the complaints in this matter are complaints of breach of the Equality Act 2010.

53. Section 123 of the Equality Act deals with time limits. In applying Section 123(3)(a) of EA 2010, the tribunal must have regard to the guidance in Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530); Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548. Applying that guidance, the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents: Aziz v FDA 2010 EWCA Civ 304. The tribunal must consider all relevant circumstances and decide whether there was an act extending over a period or else there was a succession of unconnected or isolated specific acts. If it is the latter, time runs from the date when each specific act was committed

54. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. The Tribunal has a broad discretion to extend time when there is a good reason for so doing. Parliament has chosen to give the Employment Tribunal the widest possible discretion. Unlike s 33 of the Limitation Act 1980, s 123 of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it is wrong to interpret it as if it contains such a list. A tribunal can consider the list of factors specified in s 33(3) of the Limitation Act 1980, but if it does so, should only treat those as a guide, and not as something which restricts its discretion. The factors that may helpfully be considered include, but are not limited to:

54.1 the length of, and the reasons for, the delay on the part of the claimant;

54.2 the extent to which, because of the delay, the evidence is likely to be less cogent than if the action had been brought within the time limit specified in Section 123;

54.3 the conduct of the respondent after the cause of action arose, including the extent (if any) to which it responded to requests for information or documents

55. Section 136 of the Equality Act deals with burden of proof and is applicable to all the Equality Act claims in this action, namely all the claims of harassment or victimisation which rely on the definitions in section 26 and 27. Section 136 of EA 2010 states (in part)

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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

56. Section 136 requires a two stage approach:

56.1 At the first stage the tribunal considers whether the Claimant has proved facts (on the balance of probabilities) from which the tribunal could conclude, in the absence of an adequate explanation from the respondent, that the contravention has occurred. At this stage it would not be sufficient for the Claimant to simply prove that what she alleges happened did, in fact, happen. There has to be some evidential basis upon which the tribunal could reasonably infer that the proven facts did amount to a contravention. That being said, the tribunal can look at all the relevant facts and circumstances and make reasonable inferences where appropriate.

56.2 If the Claimant succeeds at that first stage, then that means that the burden of proof has shifted to the respondent and that the claim must be upheld unless the respondent proves that the contravention did not occur.

57. Where the Claimant fails to prove, on the balance of probabilities, that a particular alleged incident did happen, then complaints based on that alleged incident fail. Section 136 does not require the Respondent to prove that alleged incidents did not happen.

58. Section 27 Equality Act 2010 reads:

27 Victimisation

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

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

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

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

59. There is an infringement if (a) a claimant has been subjected to a detriment and (b) she was subjected to that detriment because of a protected act. The alleged victimiser's improper motivations might be unconscious or conscious. A person is subjected to a detriment if they are placed at a disadvantage. There is no need to prove that their treatment was less favourable than another's.

60. In terms of what constitutes a protected act, as per section 27(2)(d), an act may be a protected act where the allegation is either express or implied. There is no requirement for the claimant to have specifically mentioned the phrase "Equality Act" or to have used specific words such as "discrimination" or "race". However, to be a protected act in accordance with 27(2)(d) the allegation relied on must assert facts which, if true, could amount to a breach of Equality Act 2010. Where an employee makes an allegation of wrongdoing by the employer, but without asserting (either expressly or by implication) that the wrongdoing was a breach of the Act (eg that it was less favourable treatment because of a protected characteristic, or harassment related to a protected characteristic) then the allegation does not fall within section 27(2)(d).

61. To succeed in a claim of victimisation the claimant must show that she was subjected to the detriment because she did a protected act (or because the employer believed she had done or might do a protected act). Where there has been a detriment and a protected act then that is not sufficient, in itself, for the complaints of victimisation to succeed. The tribunal must consider the reason for the claimant's treatment and decide what (consciously and/or subconsciously) motivated the employer to subject the claimant to the detriment. This will require identification of the decision-maker(s) and consideration of the mental processes of the decision-makers. If the necessary link between the detriment suffered and the protected act is established, the complaint of victimisation succeeds. The Claimant does not succeed simply by establishing that "but for" the protected act, she would not have been dismissed (or subjected to another detriment).

62. The Claimant does not have to persuade us that the protected act was the only reason for the dismissal or other detriment. If the employer has more than one reason for the dismissal (or other detriment), the Claimant does not have to establish that the protected act was the principal reason. The victimisation complaint can succeed provided the protected acts have a "significant influence" on the decision making. For an influence to be "significant" it does not have to be of great importance. A significant

influence is rather "an influence which is more than trivial". See Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA and Villalba v Merrill Lynch and Co Inc and ors 2007 ICR 469, EAT.

63. A victimisation claim might fail where the reason for the dismissal (or other detriment) was not the protected act itself but some feature of it which could properly be treated as separable, such as the manner in which the protected act was carried out. See Martin v Devonshires Solicitors 2011 ICR 352.

64. Section 136 applies to victimisation complaints. Therefore, the initial burden is on the claimant to prove facts from which the tribunal could decide, in the absence of any other explanation, that the respondent has contravened section 27. If the Claimant does that, the burden then passes to the respondent to prove that victimisation did not occur. If the respondent is unable to do so, the tribunal is obliged to uphold the claim.

65. I should mention at this point that the claimant's claim was submitted to the Employment Tribunal and received by the Employment Tribunal on 13 December 2018. It is submitted that that this first claim was a protected act. It does make allegations of race discrimination, and allegations of discrimination, harassment and victimisation. The claim was sent to the respondent by the tribunal by letter dated 18 January 2019. We accept that it was received by the respondent on 22 January but nothing particular turns on the gap between 18 January and 22 January.

66. Section 26 of the Equality Act defines harassment.

Section 26 of EA 2010 states (in part)
(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
…
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

67. We are going to refer to the contents of section 26(1)(b) as "the prohibited effect", but we do take into account the full wording of the subsection, including that it is the purpose or effect which must be considered.

68. Race is a relevant characteristic.

69. The Claimant needs to establish - on the balance of probabilities - that she has been subjected to "unwanted conduct" which has the "the prohibited effect".

70. To succeed, in a claim of harassment, it is not sufficient for a claimant to prove that the conduct was unwanted or that it has the purpose or effect

described in Section 26(1)(b) Equality Act 2010. The conduct also has to be related to the particular protected characteristic, ie race. However, because of section 136, the claimant does not necessarily need to prove - on the balance of probabilities - that the conduct was related to the protected characteristic. To shift the burden of proof, she would need to prove facts from which we can infer that the conduct could be so related.

71. In HM Land Registry v Grant 2011 ICR 1390, the court of appeal stated that – when considering the effect of the conduct, and taking into account section 26(4) – it was important not to "cheapen" the words used in section 26(1). It said.

Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset … but that is far from attracting the epithets required to constitute harassment. … to describe this incident as the Tribunal did as subjecting the claimant to a "humiliating environment" when he heard of it some months later is a distortion of language which brings discrimination law into disrepute.

72. When assessing the effects of any one incident which is one of several incidents, it is not sufficient to consider each incident by itself in isolation. The impact of separate incidents can accumulate and the effect on the work environment may exceed the sum of the individual episodes. In Qureshi v Victoria University of Manchester, the EAT warned against taking too piecemeal an approach to the analysis of a set of incidents which were each said to amount to harassment or discrimination. Taking the allegations as a whole (as well as considering each individually) is necessary not just when assessing the effect of the Respondent's conduct on the claimant, but also when deciding whether to draw inferences that the unwanted conduct (or any of it) was related to race.

73. In relation to direct discrimination, Section 13(1) of EA 2010 states

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.

74. Section 39 EA 2010 provides that an employer must not discriminate against an employee. The characteristics which are protected by the legislation include race.

75. The definition in section 13(1) incorporates two elements Firstly, whether A has treated B "less favourably than" than others, ("the less favourable treatment question"). Secondly, whether A has done so "because of the protected characteristic", ("the reason why question".)

76. For the first of these elements ("the less favourable treatment question"), the comparison between the treatment of the claimant and the treatment of "others" can potentially require decisions to be made about the characteristics of a hypothetical comparator. The two questions are intertwined and sometimes a tribunal will approach "the reason why question" first. If a tribunal decides that the protected characteristic was not the reason (even in part) for the treatment complained of it will necessarily follow that a person whose circumstances are not materially different would have been treated the same, and there will be no need to embark on the task of constructing a hypothetical comparator. When a comparator is used,

it can either be an actual person or a hypothetical person. Either way, the comparator's circumstances must be the same as the claimant's other than the protected characteristic in question.

77. When we consider the reason that the Claimant was treated in a particular way (and/or the reason for a difference in treatment in relation to a comparator) we must consider whether it is because of the protected characteristic or not. We must analyse both conscious and subconscious mental processes and motivations for actions and decisions. However, the burden of proof does not simply shift where a claimant proves a difference in race and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient. "Something more" is needed. However, it need not be a great deal more. It could, for example, be an untruthful or evasive response from the alleged wrongdoer.

78. When there are multiple allegations, the tribunal must consider each allegation separately to determine whether the burden of proof shifts for each, rather than taking a broad-brush approach in respect of all the allegations. However, evidence relating to one particular allegation can also be taken into account when assessing other allegations.

Analysis and Conclusions

79. When considering the burden of proof, we have looked at the allegations individually in order to decide whether in relation to that allegation, the burden of proof has shifted in accordance with Section 136 of the Equality Act (and relevant case law). In relation to time limits, leaving to one side for a moment, the allegation in relation to the fact that the claimant was interviewed about the charity money, our finding is in relation to all of the remaining allegations that there is a continuing act. The trigger for everything which followed was the fact that the respondent was contacted in around February 2018 by the Stroke Association. That led in turn to the conversations between Ms Quirke and others in the presence of the claimant on 5 March 2018. That in turn led Ms Quirke to referring the matter to colleagues who, in turn decided to suspend the claimant and to commence an investigation and appointed Ms Jackson to be the investigator. They made a referral to the Local Authority. In turn, this led to the suspension lasting until after the conclusion of the Police investigation and then continuing until after the end of the respondent's internal investigation. This led to the production of Ms Jackson's report which then became - in an edited format - the report that was considered by Ms Lawson, which in turn led Ms Lawson to dismiss. The dismissal was eventually overturned. The same set of events which led to the safeguarding referral having been made led– when combined with the Respondent's failure to attend the meetings in April and May 2019 – to the fact that the safeguarding referral did not close until July 2019.

80. The claimant first contacted ACAS on 19 October 2018. Day B was 15 November 2018. The claim was submitted on 13 December 2018, in other words it was less than one month after Day B. For that reason, allegations

about acts and omissions contained within that claim form, and which occurred within the three months prior to 19 October 2018, were in time. In other words, anything that occurred on or after 20 July 2018 was in time. As mentioned we do conclude that the suspension and investigation which started prior to July (and which were still continuing in July) were part of a continuing act with (for example) the invitation to a disciplinary hearing.

81. A second period of early conciliation was 15 and 16 April 2019, with the claim itself presented 16 April 2019. To the extent, therefore, that a second period of early conciliation was necessary (and therefore effective), the latter claim form was in time in relation to acts and omissions that occurred on or after 16 January 2019. Whereas to the extent that a second period of early conciliation was unnecessary (and therefore ineffective), the second claim form was in time in relation to acts and omissions – which were the subject of allegations contained in that claim form - that occurred on or after 17 January 2019.

82. The acts in claim 2 form part of a continuing act with the events in claim 1. The dismissal (which was later overturned) took place on 17 January 2019, and so it was after the first claim form, but was included in the second.

83. In relation to the charity money allegation, we have also decided that is also part of a continuing act and therefore that is also in time. Even though the investigation meeting occurred on 24 May and even though by 18 July 2018, the claimant had been told that the matter was concluded and would not go to a disciplinary hearing, we say that it is part of the continuing act, because it became intertwined with the other matters when, because of the claimant's suspension, and because of Ms Jackson's role as investigator of those matters, the respondent decided that the charity money issue would be referred to Ms Jackson, assisted by Ms Jones, and that they would interview the claimant in May 2018.

84. Therefore, for these reasons, our decision is that none of the claims fail as being out time based on the normal time limit in section123 (as extended by early conciliation).

85. However, in case we are wrong about that, we have also considered our just and equitable discretion. Had it been necessary to exercise our just and equitable discretion in relation to the events of March 2018 onwards, then we would have also extended time on a just and equitable basis, given that the respondent has not been disadvantaged by the fact that the first claim was presented in December 2018 (rather than earlier) and the second claim was presented in April 2019 (which is, in any event, within 3 months of the 17 January 2019 dismissal). The Respondent knew from the Claimant's grievance, and appeal against grievance, that the Claimant disputed their actions and alleged discrimination and they were on notice that they needed to retain documentary evidence. Any employer should also be aware of the need to properly document an investigation/suspension that might lead to dismissal and if the Respondent has been prejudiced by its inability to confirm certain facts (about the suspension in March 2018, or the calling to

the disciplinary hearing in November/December 2018), that prejudice has not been caused by delays on the Claimant's part in issuing proceedings.

86. Turning now to the allegations from the list of issues, page 65 of the bundle. The allegations that are first in time, are under the heading 3.2.2, and in particular, they are broken down into three categories.

3.2.2 In respect of the claimant's suspension on 9 March 2018 specifically:
3.2.2.1 . failing to adequately inform the claimant of the reason for her suspension;
3.2.2.2. failing to give the claimant regular updates during the course of her suspension;
3.2.2.3. suspending the claimant for in excess of 10 months before dismissal and over 4 months following police confirmation that there was no case to answer and that no action would be taken

87. For 3.2.2.1, we accept that the claimant would have required more information that she was given on 9 March 2018 in order to properly defend herself against any misconduct allegations. However, we do not accept that it was necessary for the respondent to have provided more detailed information to her actually on 9 March 2018 itself.

87.1 We take into account that, as the claimant herself admits, and as she stated in various contemporaneous documents in 2018, the claimant was aware that the issue related to the fact that the respondent had been contacted by the Stroke Association and the conversations which Ms Quirke had had with various people in the claimant's presence at the start of March 2018. She knew that that was the reason that the respondent had decided to suspend the claimant and commence an investigation.

87.2 The claimant has not been treated less favourably than either employee A or employee B from 2012. Each of those were given a similar level of information in relation to the suspension as the claimant was given in relation to hers. We find that she has not been treated less favourably than any actual comparator.

87.3 There is nothing inherently suspicious or unreasonable about the amount of information the claimant was given on 9 March. She has not proven any facts from which we might infer that she has been treated less favourably than a hypothetical comparator. A hypothetical comparator would be an employee of a different race in the post of tenancy support officer about whom allegations had been made which had suggested that the employee had accepted money from a vulnerable former tenant who had once been a client of hers in her role of TSO.

87.4 Our decision is that the reason that the claimant was given the amount of information that she was given was that the respondent believed genuinely that no further information was necessary on 9 March.

87.5 At the time, Ms Parker's letter of that date was accurate; the respondent envisaged that, as usual, an investigating officer would conduct the investigation and contact the claimant and that in part and parcel of the investigation, further information about specific matters would be supplied to the claimant.

87.6 We do note what Ms Stark says in her grievance appeal outcome letter of 23 November, and we note that Ms Stark's opinion is that more information could have been given to the claimant. That is true, and is certainly always going to be the case that more information could be given. Sometimes suspension letters do make specific reference to specific paragraphs to the code of conduct which have potentially been breached. However, as mentioned, this particular employer does not always follow that process as we can see from the 2012 letters.

87.7 We are satisfied that the reason that no additional information was given to the claimant has nothing whatsoever to do with her race.

87.8 In relation to whether the failure to provide additional information could be viewed as an act of harassment, it was not the respondent's purpose when explaining the suspension reasons in the way that it did to violate the claimant's dignity or to have the forbidden effect that is defined in Section 26(1) of the Equality Act.

87.9 We do not consider that the effect of the respondent's actions was to have the prohibited effect on the claimant. Furthermore, and in any event, it would not be reasonable for an individual who was suspended - having been given this amount of information - to believe that their dignity had been violated etc. by the failure to supply more detailed information in writing in the suspension letter.

87.10 As we have mentioned already the claimant, in general terms, knew the reasons for her suspension and she states in her witness statement that she is not disputing the appropriateness of the suspension in all the circumstances.

87.11 Of course, if the claimant or any other employee had been suspended and given no information whatsoever about the reasons for the suspension, then that is potentially something that could be deemed to violate the employee's dignity. But that is not what happened in this case. Furthermore, and in any event, the claimant has not proven any facts from which we could infer that the amount of information given to her on 9 March, was related to her race. Our finding is that the amount of information in the suspension letter was not related to her race.

88. It is convenient to deal with 3.2.2.2 and 3.2.2.3 together. We will do that momentarily.

89. However, the next allegation chronologically is:

3.2.3 Making a safeguarding referral to Hertfordshire County Council on 9 March 2018

90. There is a difference in treatment between the fact that a referral to the Local Authority was made on the same day of the suspension in the claimant's case but not in the cases of either Employee A or Employee B.

90.1 The potential differences between the alleged comparators circumstances and the claimant's circumstances include:

90.1.1 The six-year time difference.

90.1.2 Different individuals on behalf of the respondent were making the decision

90.1.3 Technically it is a different organisation as well.

90.1.4 The Care Act 2014 had been enacted.

90.2 We do take into account the submissions made by the respondent in response to questions raised by the claimant, starting on page 1351 of the bundle. The accuracy of this document was not challenged in the evidence and we are going to rely on it. In that document it stated that - in the three year period following the creation of the respondent and up until December 2019 - a total of 2,402 safeguarding referrals were made by the respondent of which 1987 concerned vulnerable adults.

90.3 The reason why there was a referral made in the claimant's case on 9 March 2018 was that the respondent believed that certain matters had been drawn to its attention which it was under an obligation, potentially a legal obligation, to report to the Local Authority. In making the referral, the respondent followed the practice that it had by then adopted and had been following since 2016. In other words, by March 2018, it had decided that it was better to refer matters to the Local Authority, and see if a reply came to say that no referral had actually been necessary. The Respondent had decided that is better to do that rather than fail to refer a relevant matter which the Local Authority - some other regulator - might later say should have been referred.

90.4 So in relation to this particular matter, the burden of proof has not shifted. We find that Employee A and Employee B are not actual comparators because their circumstances are different. The claimant has not proven facts from which we could infer that a hypothetical comparator who was a different race to the claimant's race, would not have been the subject of a referral if the employee had been the subject of similar allegations to those that were made about the claimant's conduct in February and March 2018.

90.5 We also decide that Employee C is not a valid actual comparator. Employee C's circumstances were significantly different to those of the claimant. Employee C had done something wrong in that she had lost certain documents and she should not have lost them. However, having the documents in her possession in the first place was entirely appropriate and she was carrying out the duties as per her job description. The respondent did not simply take Employee C's word for it but did liaise with the resident to whom the documents belonged.

90.6 It was suggested during a course of cross-examination by the claimant's counsel, that the respondent could potentially have taken the view that Employee C had deliberately and fraudulently kept the paperwork for herself as part of an identity theft scheme. However, no evidence was presented to us to suggest that that would have been a reasonable inference for the respondent or anybody else to draw from the circumstances. No facts have been proven to demonstrate that the respondent might have drawn such inferences had Employee C had been the same race as the claimant.

90.7 In relation to allegations of harassment, it was not the respondent's purpose to violate the claimant's dignity by making the safeguarding referral. The respondent's purpose was to report a matter to the Local Authority. It would not be reasonable for an employee working in Adult Social Care to consider that a safeguarding referral had violated their dignity in such circumstances. The claimant herself had heard what had been said about her alleged conduct to Ms Quirke. The claimant of course

does not agree with what was said to Ms Quirke, but she had heard the allegations being made for herself and it would be reasonable for an employee to expect that such allegations might have to be reported to the local authority.

91. In relation to the allegations 3.2.2.2 and 3.2.2.3, following the suspension, the respondent's initial intention was to commence an investigation promptly. That was to be carried out by Ms Jackson. However, by the tenth day of the suspension, on 19 March 2018, Ms Jackson was informed by the Local Authority that the Police wished to interview 'F' before making any further decisions and that the claimant should not be given further information at that time.

91.1 The following week Ms Jackson did attend an interview with 'F' which was conducted by Police and the following day, 27 March Ms Jones contacted the claimant to give the claimant a limited update. The update could not give the claimant concrete information at that time. In particular, the respondent had been asked not to tell the claimant about the Police investigation and they did not do so, the reason they didn't tell her about the Police investigation is that they were following the Police's request.

91.2 The situation was still unchanged, as of 27 April 2018, when Ms Jones provided a further update, again the reason the respondent did not provide further information was that the respondent was waiting on decisions to be made by outside bodies. During the this period, the respondent was not slow to deal with the queries that were raised with them by the Police or by the Local Authority. When requests for information were made, the respondent supplied the information promptly.

91.3 Ms Jones did speak to the claimant again on 1 May. This was specifically in relation to the charity money investigation and the claimant was subsequently contacted by the respondents to arrange the interview for 24 May in relation to the charity money.

91.4 We do not have evidence of additional updates being supplied to the claimant during the month of June, however, there was no change in circumstances. The reason the respondent did not contact the claimant in June is that there was no new information to supply her. The respondent had not received a decision from the Police. Ms Jackson was regularly chasing the Police in April, May, June and July and August. The reason that the Claimant was not told about that was that the Respondent had been asked not to inform the Claimant that the police were involved, and they complied with the request.

91.5 On 18 July, the Claimant was told that the charity money matter was not going to be pursued as a disciplinary allegation. We do think that potentially she could have been given that information sooner than 18 July. However, the respondent did inform the claimant of that fact on 18 July by phone and subsequently in writing.

91.6 After that, the claimant lodged her grievance on 23 July and the respondent was in reasonably regular contact with the claimant between 23 July and 23 August in relation to her grievance and the outcome was given to her on 23 August.

91.7 Then as soon as the respondent was able to, on 29 August, it invited the claimant to an investigation meeting in relation to the matters connected with 'F'.

91.8 We do agree with the comments made in Ms Stark's grievance appeal outcome letter which is that it is very unfortunate indeed that the claimant was kept in the dark about the progress of matters and about what was going to happen next.

91.9 There are no relevant actual comparators in the evidence before us. There is no employee of a different race - or of any race - who was also on suspension at a time that the Police and/or local authority was telling the respondent not to commence their own investigation pending the Police decision. A hypothetical comparator would be somebody of a different race who had also been suspended and also been the subject of a safeguarding referral which had led to communications from the Police and/or the Local Authority asking them to delay bringing certain matters to the attention of the employee.

91.10 The claimant has not proven facts from which we might infer that a hypothetical comparator of a different race would have been treated differently and our finding is that that is not the case. We are satisfied that the reason why the claimant was not given additional information during the period 9 March to 29 August 2018, is that the respondent believed that it was appropriate for it to adhere to the requests made by the Police and the Local Authority.

91.11 In relation to the allegation of harassment, it was not the respondent's purpose by having a lengthy period of suspension, and by failing to update the claimant regularly during this period, to violate the claimant's dignity. We are satisfied that the lengthy period of suspension did have the prohibited effect. We have taken s26(4) into account, and it reasonable for the lengthy suspension and the lack of updates to have had that effect on her.

91.12 However, the claimant has not proven any facts from which we might infer that the unwanted conducted – the length of the suspension and failing to supply more regular and more detailed updates was related to race.

91.13 Furthermore, our finding is that once the Police had concluded their investigation (and informed the respondent that there was insufficient evidence), the respondent did keep the claimant appropriately informed thereafter and did not unduly prolong the suspension thereafter. The claimant was not able to attend the investigation meeting in September 2018 for understandable reasons but not reasons that were attributable to the respondent. The claimant was able to attend the investigation meeting on 11 October 2018. Ms Jackson's report was submitted fairly promptly after that on 6 November with the attachments being sent on 20 November. It was on 11 December that the claimant was notified that there would be a disciplinary hearing.

91.14 In the intervening period between 11 October meeting and 11 December letter, the respondent was in touch with the claimant. In particular, the respondent was in touch with the claimant about her grievance appeal outcome. She met Ms Stark on 5 November and she received Ms Stark's outcome letter dated 23 November.

91.15 The period between when the respondent was free to start investigating the disciplinary matters and the first day of the disciplinary hearing on 20 December was not excessive. Furthermore, the period between Day 1 of the disciplinary hearing and Day 2 (17 January 2019) was not excessive in all the circumstances. The interval, of course, included the Christmas break and the need for Ms Lawson to carry out some further enquiries. The claimant had been given the information about the reasons for that delay between 20 December and 17 January.

91.16 So the delay from 29 August 2018 to 17 January 2019 was not less favourable treatment because of race and it was not harassment related to race. We do not find that Employee A or Employee B are valid actual comparators in relation to the duration of the suspension. They were only suspended for 17 days, before, being dismissed and given a final written warning respectively. However, we accept - on the limited information before us - that there was no factual dispute about what had happened and that no external agencies were involved. The reason that those suspension periods were much shorter, is that in those case the respondent believed it was able to make its decisions promptly. The allegations did not involve a former resident; they involved a current resident. They were not allegations in relation to which a Police interview under caution had to take place with the employees before the investigation could proceed.

91.17 In relation to the employees about whom information was given by the respondent in the document starting on page 1351:

91.17.1 in relation to employee 1, the period of suspension which culminated in that persons' dismissal was not the first period of suspension that the employee had been subjected to. There had previously been a period of suspension of around six weeks between 1 February and 15 March so that is one reason that employee 1 is not an actual comparator. Employee 1's race according to the respondent is black or black British-Caribbean UK.

91.17.2 Employee 2 was suspended. We do not have the exact details of the length of the suspension. It is probably no earlier than around November 2019 with the decision date 29 January 2020. In other words, the suspension period was probably less than three months. However, we also think that this person, white-British according to the respondent, was not an actual comparator given, because the circumstances were different and outside agencies did not need to become involved and were not involved prior to the respondent's decision. A safeguarding referral was made but there was no instruction given to the respondent to delay its own internal investigation.

91.17.3 Employee 3, also white-British according to the respondent, was not suspended during the investigation but that was because they were on sick leave. We accept that they would have been suspended otherwise. That persons' investigation took around five months from January to May 2020, prior to a final written warning being issued. So it is a longer period of time than the investigation of the claimant took from 29 August to 17 January. (The circumstances were different, and we do not have exact details of how long the employee was ill for and what delays, if any, that caused to the investigation process.)

91.18 So, for those reasons, the allegations fail in relation to allegations 3.2.2.2 and 3.2.2.3.

3.2.1 Requiring the claimant to attend an investigation meeting in relation to charity money on 24 May 2018;

92. The reason why Ms Fletcher contacted the line manager, Ms Handley about the charity money is that it had been brought to Ms Fletcher's attention that no thank you letter had been received from the charity and her further enquiries showed that the charity had not received the money. The reason why Ms Handley referred the matter to Ms Jackson to deal with is that the claimant was suspended and Ms Jackson was already pursuing an investigation for disciplinary allegations. It was not Ms Handley's role to decide whether the matter would or would not part of the disciplinary investigation. The Police were notified about the charity money allegation and the reason why they were given that information was that they had placed a barrier, they had placed a ban on the claimant being supplied with certain information that was relevant their pending investigation of alleged financial abuse. It was necessary and appropriate for the respondent to be satisfied that the Police did not consider that interviewing the claimant about the charity money, would contravene the request that the Police had made to limit information given to the claimant. The reason why Ms Jones contacted the claimant on 1 May, having discussed the matter with Ms Jackson was to gather further information. For example, as was noted, it could have easily have been the case that the reason the money had not been given to the charity was that it was still in cash on the respondent's premises locked away somewhere; alternatively, the claimant might have said that she had actually already sent the money to the charity and might have been able to provide proof that she had done so if required.

92.1 The claimant confirmed however, to Ms Jones, on 1 May, that 10 weeks after the money had been collected it was still in her bank account.

92.2 A decision was made by Ms Jackson that rather than simply have Ms Jones go back to her and say that the money should be paid to the charity and that would be the end of the matter, she, Ms Jackson, would instead, conduct a formal investigation meeting with the claimant.

92.3 It is our decision that there is nothing inappropriate about the meeting claimant face-to-face rather than conducting the investigation meeting by phone and nothing inappropriate about deciding to have a formal meeting about it. There is nothing inherently suspicious about deciding to question the claimant about the whereabouts of the charity money or the delay in paying. We do not ignore the fact that on 1 May, the claimant had offered to send a cheque and Ms Jones had replied to say that she should not do that for the time being, but it is also true that the fundraising events had occurred around on Valentine's Day 2018, more than 3 weeks prior to the claimant's suspension, and the money had been collected in the cash. So, when the claimant paid it into her bank account she did not need to wait for anything to clear, she could have made out a cheque straight away and sent it to the charity. She could also, of course, as Ms Fletcher claims to have told her, paid the money into one of the respondent's bank accounts

and then a cheque could have been drawn promptly by that method instead.

92.4 So, it was not unreasonable or suspicious for the Respondent to consider that the fact that the claimant was on suspension from 9 March onwards, did not necessarily explain why the claimant had not made the payment either before 9 March or after 9 March and before Ms Jones phoned her on 1 May.

92.5 We would like to make clear that we are entirely satisfied that the claimant was not intending to permanently keep the money and our comments above are not intended to imply otherwise.

92.6 There is no actual comparator because no evidence has been provided to us about any other employee who held on to charity collection money in similar circumstances. The claimant describes herself as a guardian of the money and that is a reasonably accurate summary of the fact she was a trustee of the money. She had been given it for a specific purpose and she was obliged to pay it to the charity promptly. The claimant has not proved any facts from which we might infer that a hypothetical comparator of a different race would have been treated differently.

92.7 We reject the suggestion that the reason why there was a disciplinary investigation meeting was an attempt to smear the claimant's name, either in the eyes of the Police or the eyes of her colleagues or the eyes of anybody else. We also reject the suggestion that it was somehow a wrongful attempt to justify the ongoing suspension in circumstances in which the respondent was unable to progress the investigation in relation to the allegations for which the claimant had originally been suspended on 9 March.

92.8 As far as harassment is concerned, it was not the respondent's purpose to have the prohibited effect. It was the respondent's purpose to properly document its investigation about the whereabouts of some money that had been earmarked for a charity that had been collected and entrusted to the claimant.

92.9 If the claimant felt that she had suffered from the prohibited effect, we do not think that is a reasonable reaction in all the circumstances. Anyone who allows money to be placed in their own account and to rest there for 10 weeks should reasonably be expected to be aware that they very likely to be questioned about why they had not yet made the payment that they were obliged to make to the charity sooner. That is especially true when the person is somebody who is employed in a position of trust with access to vulnerable adults.

92.10 The claimant has proven no facts from which we might infer that the investigation meeting on 24 May was related to her race and we find it was not related to her race.

3.2.4 In respect of the claimant's grievance dated 23 July 2018 specifically:
3.2.4.1. failing to adequately investigate the reason for the claimant's suspension;
3.2.4.2. failing to adequately address the claimant's grievance relating to being called to an investigation meeting regarding the charity money;
3.2.4.3. failing to provide sufficient information to the claimant about Ms Curry's investigation of the claimant's grievance;

93. We turn now to three allegations in relation to the grievance. We were not provided with any details of any actual comparator; in other words, we were not provided with any details of anybody else who had raised a grievance in connection with the suspension, lack of reasons for suspension, failure to progress an investigation or being called to an investigation meeting about a particular topic (in this case, the charity money).

93.1 In relation to the allegation that Ms Curry failed to adequately investigate the reason for the claimant's suspension, Ms Curry stated openly and accurately in her grievance letter that she did not know the full details. She said, as explained in the hearing:

> "I have no knowledge surround the reasons for your suspension but as part of your grievance I did enquire as to why it is still ongoing. As you can appreciate, no detail has been provided to me but it has been explained that your suspension is ongoing due to the investigation which includes contact with external agencies."

93.2 Immediately prior to that she had quoted from the disciplinary procedure and said:

> "some examples of when we might suspend you from work are when there is a potential risk to Clarion, its' employees, its' customers, or other third parties and also when there as audit or Police investigation into matters which may have a bearing on your suitability for continued employment"

93.3 Although Ms Curry faced criticism during cross-examination that if she did not know the full details, she should therefore have concluded that she was unable to say one way or the other whether the suspension was an act of race discrimination or victimisation, we do not agree. The claimant made clear to Ms Curry that she, the claimant, was aware that the suspension was connected with the allegations of 'F' and the conversations with Ms Quirke which the claimant had personally witnessed. Even without being in possession of the full facts, it was not unreasonable or inappropriate for Ms Curry to draw the same conclusion that this tribunal has drawn, which is that the suspension was explicable on grounds other than being in any way motivated by the claimant's race.

93.4 There is no evidence from which we might infer that a hypothetical comparator of a different race would have been treated differently by Ms Curry. The reason why Ms Curry provided the limited information in the outcome letter to this part of the grievance is that she herself only had limited information (that which she had received from Ms Jones). As we have already said, Ms Curry was open about that.

93.5 There is no basis for us to conclude that the admitted protected act (the 23 July grievance letter itself) caused Ms Curry to subject the claimant to a detriment.

93.6 The fact that the respondent did not give the claimant information about the police and the fact the investigation was being delayed because of the police (causing a lengthy suspension), is because they did not feel able to give her that information at the time, for the reasons we have discussed already.

93.7 Not being given the information, was a detriment but the reason for the detriment was not a protected act. The protected act was not any significant influence in the reasoning of the respondent or of Ms Curry when deciding what to say in the 23 August 2018 letter.

93.8 In relation to what Ms Curry said about the charity investigation meeting, she said she had spoken to Sarah Fletcher and Rebecca Handley on separate occasions and was satisfied with their version of events. She said the question of where the charity money had gone was brought up by the Claimant's work colleagues and that her colleagues (because of the suspension) were unable to contact her to ask what happened and that Ms Handley had followed the correct process by contacting HR about it. She rejected the allegation of harassment.

93.9 By the time the claimant raised the grievance she had been told (and she mentioned in the grievance letter itself) that she was not going to face any disciplinary hearing in relation to the charity money. We reject the suggestion that the claimant has been treated less favourably than any actual person or any hypothetical comparator. We reject the suggestion that she has been subjected to a detriment in relation to this explanation being given to her by Ms Curry. On the contrary, our decision is that she has been given an adequate explanation by Ms Curry, both as to the respondent's reasons for interviewing her about the charity money and the approach which Ms Curry took to investigating the matter.

93.10 We reject the allegation that the information about the investigation was not adequate. Ms Curry gave the claimant as much information as she was able to do so. It was adequate in relation to the charity money part of the grievance and she was not able to supply any additional information (beyond what she put in the outcome letter) in relation to the suspension issue and the duration of the suspension.

93.11 Later on, Ms Stark sent a much more detailed letter to the claimant but Ms Stark's much more detailed letter does not demonstrate that Ms Curry's letter was inadequate. Ms Stark was writing in November 2018 which was after the Police investigation had concluded and the claimant had already been interviewed under caution by the Police and was aware that there was to be no further action by the Police. Ms Stark was therefore able to speak very freely about the duration of the suspension and why the claimant had been kept in the dark; Ms Curry was not able to do the same thing in August.

93.12 The purpose of Ms Curry's outcome letter was not to violate the claimant's dignity. The purpose of the letter was to respond to the points which the claimant had made in her grievance letter and her subsequent documents; the response did so promptly within a month of the grievance being raised.

93.13 We accept that the the lack of further information about the suspension may well have had the prohibited effect. She had suspended for quite a long time by this point and we do accept that it would be a reasonable reaction for an employee who had been suspended for this length of time (about five months) who received a letter which did not give a clear date for the end of the suspension or the date of the next steps in the investigation would very reasonably be upset. However, the contents of the letter were not related to the claimant's race.

3.2.6 Failing to uphold the claimant's grievance appeal on 23 November 2018

94. In relation to allegation 3.2.6, we will deal with that now because that also relates to the grievance. It is not entirely accurate to say that the grievance appeal was not upheld. In relation to some elements of the grievance, Ms Stark partially agreed with the comments that the claimant made.

94.1 As with the original grievance itself, there is no actual comparator.

94.2 The claimant has not proved any facts from which we could conclude that Ms Stark's response was less favourable treatment than that which she would have given to a hypothetical comparator. A hypothetical comparator would be an employee of a different race to the claimant who had also raised a grievance about the length of time that they had been on suspension and/or the fact that they have been called to a specific investigation meeting on a particular topic.

94.3 Ms Stark gave her genuine opinions in the letter and she did not seek to defend anything that she did not think should be defended. She apologised to the claimant for certain things that had happened. Ms Stark's letter was detailed and reasonable. It was not less favourable treatment because of race and it was not motivated by the fact that the 23 July letter made allegations of race discrimination.

94.4 Ms Stark knew the facts re Employee A and Employee B whom the claimant alleged were comparators. Ms Stark's conclusion was that the individual circumstances were different because there was no Police involvement. Furthermore, Ms Stark supplied the claimant with specific details of the dates on which Ms Jackson had telephoned or emailed the Police during the suspension to try to progress matters. Ms Curry would not have been able to give any of these dates to the claimant in August, because Ms Curry did not know them herself and also because the respondent had been asked not to tell the claimant about the contact with the Police.

94.5 Each matter that the claimant raised as part of her appeal received a specific and detailed response. Even though the claimant does not agree with the conclusions that were reached in Ms Stark's outcome letter, they were clearly explained to her and she was able to see what Ms Stark's reasoning had been. It would not be reasonable, in our opinion, for any employee who received such a detailed letter responding to their grievance appeal to feel that the effect of the letter had been to violate the person's dignity.

3.2.5 Failing to provide the claimant with a copy of Janet Quirke's statement in advance of disciplinary hearing of 20 December 2018;
3.2.7 Failing to adequately investigate the allegations made against the claimant that formed the basis of the disciplinary hearing;
3.2.8 Dismissing the claimant on 17 January 2019;

95. The next part of our analysis we will discuss 3.2.5 and 3.2.7 and 3.2.8 together.

95.1 In relation to the allegation that the investigation was inadequate, it is important to realise that there were essentially three separate stages to the investigation.

95.1.1 First of all, there is the stage which culminated in Ms Jackson submitting what she submitted on 6 November 2018 with the appendices being sent on 20 November.

95.1.2 We have noted already that one aspect of concern is that we were not persuaded that the note about the March 2018 interview with 'F' was contemporaneous and it is possible that it was produced some time afterwards. As we have already said, we are satisfied that the contents of the notes do reflect things that 'F' said at some stage, regardless of whether he actually said them all in March 2018 or not.

95.1.3 We also accept that Ms Jackson made her best efforts to put an accurate note of the March 2018 conversation (and that for that matter the October 2018) conversation as an appendix to her report. She based the note on her recollections of what was said and the contents of her handwritten notes.

95.1.4 In any event, we are satisfied that the overall report and appendices that Ms Jackson submitted was reasonably thorough and demonstrates an effort on Ms Jackson's part to follow reasonable lines of enquiry wherever they might lead. It was not deliberately slanted to be unfavourable to the claimant.

95.1.5 It is not significant that the statements of any person were unsigned, for one thing that is not a requirement of the respondent's procedure and for another thing we are satisfied that the reason the unsigned documents were attached to the investigation report, is that Ms Jackson did not believe that signed statements were a requirement. Neither Ms Jones nor anybody else told her differently.

95.1.6 The statements being unsigned (for example) had nothing to do with the claimant's race and nothing to do with any protected act.

95.1.7 It is notable that the report which Ms Jackson submitted in November contained full versions of certain relevant documents including the Janet Quirke statement from 8 March 2018 and including Ms Jackson's note (or at least one version of Ms Jackson's note) of the interview with 'F' in October 2018.

95.1.8 Ms Jackson did not make any recommendations in her report. She summarised at great length in around 25 pages on what the evidence was for and against the claimant having committed breaches of certain policies of the respondents.

95.2 We said there were three phases of the investigation and the second phase is that somebody or other (we do not know who) decided to massively strip down the 25 page report to around four pages and also to omit some of the appendices entirely while editing and redacting some of the other appendices.

95.2.1 It is fair to mention that where edited versions of one of Ms Jackson's appendices were made they were usually described as excerpts. What is particularly significant from this stage of the process is that the three page Janet Quirke statement of 8 March was reduced to just one page. Likewise, Ms Jackson's notes of the October 2018 interview with 'F' were significantly reduced.

95.2.2 In December 2018, the employee relations adviser wrote to the claimant with a copy of this stripped-down report and a covering letter and e-mail inviting the claimant to a disciplinary hearing. There is no

indication in that covering letter that what was attached was anything different to Ms Jackson's original report. It would have reasonable for the claimant to infer that it was the original report that was sent to her even though, we the tribunal can see that it was not.

95.2.3 It is reasonable to infer, and we do infer, that somewhere along the line, once some unknown person had decided what the two allegations would be (those referred to in 11 December letter), somebody decided to make a conscious effort to strip out from Ms Jackson's report information that was not relevant to those particular allegations. (That is, not relevant in the opinion of the person who was doing the editing).

95.2.4 It seems very strange to us that it Ms Jackson was not asked to do the editing if editing was thought necessary or desirable. We are not able to say why Ms Jackson was not asked, because we do not know who took the decision to do the stripping-out.

95.2.5 Similarly, we do not know who selected the allegations and we do not know why they selected those allegations. They were not allegations that had been selected by Ms Jackson and therefore by definition they were not allegations that she had been specifically looking into.

95.2.6 Our inference is that somebody, having considered the documents prepared by Ms Jackson, decided that there were sustainable disciplinary allegations that could be made but that does not answer fully the questions that we need to address, because we do not know why they decided that. It is possible of course that they were simply motivated by an objective desire to ensure that the respondent's policies and procedures were adhered to and that there should be a fair hearing in relation to potential breaches of the allegations. But one other possibility (not the only other possibility) was that the person who selected these allegations was motivated by a desire to ensure that the claimant would be dismissed and that there be some plausible justification for her dismissal and deliberately sought a justification that would potentially rely on conduct which the claimant had admitted, and did not rely on any decision-maker having to base a decision – for example - on an alleged belief that 'F' had given credible evidence.

95.2.7 Without knowing the identity of the person who chose the allegations, we do not know whether they were aware of the claimant's race, and still less do we know whether the claimant's race influenced their thinking. Likewise, we do not know whether they were aware of the protected act of 23 July 2018, or whether that influenced their thinking.

95.2.8 The respondent's witnesses all state that it would not have been employee relations who chose the allegations and that it would have to be a manager but they are not able to say which manager. The Respondent's witnesses are not able to say why they did not take the simple step of asking Gunja Rogelj which manager gave her the instructions to draft the letter containing the allegations; she still works for the respondent.

95.2.9 The respondent's explanation for why particular redactions were made from the appendices is somewhat peculiar. The task was

apparently not entrusted any manager or to Ms Jackson, nor even – we are told to Gunja Rogelj who had sent the letter inviting the Claimant to the disciplinary meeting. We are told that the task was handed to an employee relations adviser who has since left the respondent's employment and who has not been asked to give evidence about the reasons for her redactions and her editing of the documents. The respondent's witnesses say that they think it might have been done for data protection reasons, but as they themselves admit, that is only speculation.

95.2.10 It is at least possible that the person who made the redactions was acting on the specific instructions of the unknown person who chose the disciplinary allegations but we have no way of knowing whether that is the case or not.

95.2.11 There is no explanation provided to us about why Ms Jackson was not asked to redact the report or otherwise amend the report and the appendices to specifically address the chosen disciplinary allegations.

95.2.12 Given the lack of transparency about these changes, and the second and third hand information about why they were all made, and the complete lack of information about who chose the particular allegations, it is our inference that it is appropriate for us to be suspicious about the pack that was sent to the claimant and sent to Ms Lawson. As already mentioned we accept the Respondent's witnesses evidence on oath that it was not Ms Lawson who chose the allegations or who created the disciplinary pack.

95.3 We said there was three stages in relation to the investigation and the third stage is that which took place after the first meeting on 20 December 2018 when - not unreasonably - Ms Lawson decided to adjourn and conduct further enquiries.

95.3.1 Any hearing officer should adjourn when they think it is appropriate to do so. That is entirely reasonable and appropriate.

95.3.2 However, for whatever reason Ms Lawson's enquiries failed to take account of relevant information that was potentially exculpatory to the claimant, including communications with her line manager about 'F' in the period of June 2015 to January 2016.

95.3.3 The other issue which is relevant here is the failure to supply the claimant with the full statement of Janet Quirke until after the dismissal decision had already been taken. Ms Lawson was not responsible for preparing the pack, and so it was not Ms Lawson who was initially responsible for the decision to include only excerpts of Janet Quirke's statement.

95.3.4 It was clearly a potentially relevant document. Certainly, the claimant thought it was a relevant document and the police had asked her questions about it. Ms Jackson herself had included the full version of the Janet Quirke statement her report, so as far as Ms Jackson had been concerned (i) the document was potentially relevant and (ii) there was no reason that why the claimant should not see the full document.

95.3.5 While Ms Lawson did not prepare the initial pack, it was within her power, as the hearing officer, to make a decision that the claimant

herself should see the full Janet Quirke statement. It is not inappropriate for Ms Lawson to take advice from employee relations before making a decision, but it was not appropriate or reasonable for Ms Lawson to abdicate responsibility for the decision and allow the employee relations advisor to make the decision. Ms Lawson is a senior manager with responsibility for various policies, including safeguarding and she has conducted disciplinary and appeals hearings in the past and it very surprising indeed, in our opinion, that Ms Lawson could have thought it was fair or reasonable to dismiss an employee without either her or the employee having seen a particular written statement which (i) was produced some ten months earlier, when events were much fresher in everybody's mind and (ii) which had been part and parcel of the employer's reason for suspending the claimant and commencing the investigation in the first place and (iii) had been part and parcel of the reason for making the safeguarding referral which Ms Lawson was aware had been made and (iv) contained a note, not of information which should have been confidential from the Claimant, but had alleged details of conversations which the Claimant had witnessed at the time.

96. Our decision in this particular case is that the dismissal decision was an extraordinary one. We think it is so extraordinary to dismiss an employee for the particular reasons that were given (namely moving "valuables" as they were loosely described and not telling the line manager about the valuables) that we do not think that the respondent has adequately explained to us why they took the decision to dismiss.

97. Both the original report submitted by Ms Jackson in November and the edited version of that report that was submitted to Ms Lawson, included an appendix which listed the CRM entries which the claimant had made. It is clear from those CRM entries that Social Worker B had instructed claimant that the son of 'F' would collect F's property from the address, but the son of 'F' was not to be given letters. It is clear from the documents in the respondent's possession that 'F' had authorised Social Worker B to collect his belongings and it was sufficiently clear from the notes which the claimant had made on the system that the Social Worker B had delegated some of this task to the claimant. It is also sufficiently clear from the notes of the one-to-one meeting in January 2016 between the claimant and Ms Fletcher that the claimant and Ms Fletcher had discussed that the claimant was going to have a role in overseeing the son's collection of items from the address. It was known to Ms Fletcher that 'F' was in hospital and – therefore – Ms Fletcher knew, based on what the Claimant had told her, that F was not going to be present. No satisfactory explanation has been provided to us for why all of this information, which was in the respondent's possession, was not taken into account by Ms Lawson at the time of making her decision. The full extent of the claimant's admitted wrongdoing is that she has accepted that it would have been more ideal if she had made a specific entry on CRM to state exactly what she had done at the claimant's address on 25 January, and exactly what she had done with the briefcase and exactly where she had left it at the property. However, nowhere in Ms Lawson's

analysis is there a satisfactory explanation of why the evidence should be taken to show that (i) F was scared of his son and/or that (ii) the Claimant should have done more to alert her manager to the fact that F did not want his son to have certain documents. The local authority social worker was fully aware of F's instructions (and it was he who was partially responsible for passing those instructions to the Claimant) and Ms Lawson's simple assertion that, as an expert in the field, she thinks that this was an obvious safeguarding issue, and she thinks it ought to have been obvious to the Claimant, fails to grapple with the fact that the Claimant's line manager and the local authority (or, at least, Social Worker B) did already know the situation (that F did not want his son to have certain documents). If it is a safeguarding issue, it has not been explained satisfactorily to us why the Claimant should have been dismissed for gross misconduct when neither Social Worker B nor Ms Fletcher appear to have shared Ms Lawson's opinion.

98. Ms Lawson was adamant in her evidence that it was her professional opinion that a safeguarding concerning should have been identified and that the claimant's training ought to have been sufficient for the claimant to reach the same opinion as she, Ms Lawson, did. However, 'F' didn't live with his son, 'F' was out of hospital but he was not going to live with his son, he was going to live in sheltered housing. He was already under the care of social services and the detailed file notes had been made about 'F' by the claimant. These were notes which were praised by Ms Fletcher in January 2016. It is our decision that we should be suspicious of the purported reasons given for the claimant's dismissal as per the dismissal letter. The dismissal of the claimant on 17 January, based on those alleged reasons, the fact that those alleged reasons are so unsupported by the evidence that we have seen, evidence that was in the possession of the respondent, is so unreasonable, that we are satisfied that we should reject those reasons as being genuine and consider if the burden of proof has shifted in this particular case.

98.1 Employee B (white) received a final written warning (albeit 6 years earlier and as part of a different organisation) having not reported a breach of policy in that employees had witnessed a will.

98.2 Employee 2 (white) received a final written warning for staying at the property of a vulnerable tenant and not reporting the safeguarding issues arising from that.

98.3 Employee 3 (white) received a final written warning for managing the belongings of a deceased resident and purchasing items from a resident.

99. We are satisfied that the dismissal was not because of any protected act. We are satisfied that Ms Lawson was not aware of the protected act of 23 July and not aware of the protected act of issuing the claim form. We found that allegations of discrimination were made to Ms Lawson during the disciplinary hearing but those were not pleaded as being protected acts.

100. There was no conscious decision by Ms Lawson or by anybody else that the claimant should be dismissed because of her race. However, applying Section 136 of the Equality Act, we have asked ourselves whether the claimant has proven facts from which we could infer in the absence of a

reasonable explanation from the respondent that the dismissal could have been unconsciously because of her race.

101. We have taken into account that no good explanation was provided to us for why Ms Quirke's statement could not have been or should not have been given to the claimant before the dismissal decision was taken. We have taken into account that between them, the employee relations adviser and Ms Lawson failed to record the fact that the claimant had stated that there was less favourable treatment because of her race. We have taken into account that our finding that the dismissal decision stated reasons which were so unreasonable and far-fetched that we do not accept them as being true. Our decision is that the burden of proof has shifted.

102. We therefore have to ask ourselves whether the respondent has proved that the claimant's race plays no part whatsoever in the decision to dismiss her.

103. We are satisfied that none of the six real comparators should be treated as valid actual comparators because in each case their circumstances were different. Employee A was white, and was dismissed of a far more serious offence than the claimant was accused of and the circumstances are not comparable. Employee 1 (whose race was described as "Black or Black British – Caribbean (UK)" was dismissed for allegations which were different to those for which the claimant was dismissed. Employee C is of no assistance because we are satisfied that the treatment of employee C was entirely appropriate in all of the circumstances.

104. However, in relation to Employee B and Employee 2 and Employee 3, each of these are white employees. Their circumstances are not sufficiently similar to the Claimant and so they are not actual comparators. However, we think that what happened to them is potentially relevant to us when trying to decide what would have happened to a hypothetical comparator whose circumstances were exactly the same as the claimant's other than race. Employee B committed a significant breach of the respondent's procedures, in other words, signing a Will, a legal document despite that being exactly contrary to the respondent's procedures. As far as we are aware, employee B failed to tell her manager about the breach of procedures and did not raise any safeguarding concerns with her manager about it. We do acknowledge of course that there were more than six years between the final written warning given to employee B and the one given to the claimant. Closer in time, are Employees 2 and 3. Employee 2 was only given a final written warning for living at the property of a tenant, contrary to the respondent's procedures. Employee 3 was only given a final written warning for having financial dealings with one or more tenants, including selling the property of a deceased tenant (apparently, with the permission of the next of kin). There does not seem to be any suggestion that either Employee 2 or 3 reported their own breaches of procedure to their manager.

105. It is our decision that each of Employees B, 2 and 3 committed far worse misconduct that the claimant committed (assuming, in the Respondent's favour that the claimant committed misconduct at all). The claimant kept the manager reasonably well informed, kept the respondent's case

management system reasonably well updated. Even though Ms Lawson has found that there were crucial omissions, we have discussed these already; the Claimant accepts that she could and perhaps should have written exactly and specifically what she did at the property on 25 January 2016 on CRM. However, the claimant's failure to do that did not cause the loss of any property of 'F'. It was Social Worker B's responsibility and/or the sons' responsibility to collect the property and the claimant had taken adequate steps to remind the social worker about this, on 21 December 2016, as well as on other dates.

106. Given that the burden of proof had shifted, and taking into account the final written warnings given to other employees for different breaches of the procedure, the respondent has not discharged its burden of proof. It has not proven to our satisfaction that the claimant was not treated less favourably than a hypothetical comparator (an employee of a different race facing the same allegations, based on the same evidence) would have been treated.

107. In relation to the other specific issues that we mentioned in the lead into this section, (3.2.2.5 and 3.2.2.7) as we have just explained at some length, we took those matters into account when reaching our overall conclusion that the claimant succeeds on allegation 3.2.2.8, the dismissal. However, we do not find that those other two incidents in and of themselves were breaches of the Equality Act.

107.1 In particular, the report which Ms Jackson completed in November was good enough; we are satisfied that it was not less favourable treatment because of race and nor was it a detriment because of 23 July grievance.

107.2 The Quirke letter should have been provided to the claimant and its non-provision to the claimant is suspicious. However, in and of itself, we are not satisfied that the reason it was not given to the claimant was because of her race or was because of any protected act.

107.3 We found that the dismissal was discrimination, but not harassment.

107.4 In relation to failing to provide the Quirke statement and the alleged failure to investigate, these are not acts of harassment. The Jackson report was an adequate investigation of the allegations that have been raised against the claimant. The claimant only saw the edited version of the report in any event. It is not reasonable for an employee to perceive that the carefully written investigation report with appendices should have the effect of violating their dignity and the faults were not in the actual report itself but rather in the decision to dismiss the claimant based on the edited version of the report. In relation to the unwanted conduct of not providing the Quirke statement to her, although we think that this falls closer to the line of potentially amounting to the prohibited effect, we have not been satisfied that it was related to her race.

3.2.9 Requiring that the claimant's reinstatement be effected immediately by letter on 29th March 2019;

108. Next in the list of issues is 3.2.2.9. We think it is proportionate to deal with this allegation fairly briefly and to be blunt, it is somewhat misconceived.

108.1 The effect of a successful appeal against dismissal is that the employee is automatically reinstated by the appeal decision. The mutual agreement that is required to cancel out of this dismissal is found by the fact that the claimant submits the appeal (and does not then withdraw the appeal) and the fact that the employer agrees to hear the appeal. If the employee does not wish to be reinstated then they should not appeal in the first place or they should withdraw the appeal before a decision is made.

108.2 No questions were put to Mr Morrison to suggest that he was wrong to reinstate the claimant and his dismissal outcome letter plainly stated that the exact details of the return to work were a matter which the claimant could discuss with Ms Parker. If the claimant had, for example, wanted to take a period of annual leave prior to returning to work, we have no reason to doubt that she would have that approved. In any event, she did not request it, or make any other request for special leave. She was not treated less favourably than anybody else because of her race, and she was not subjected to any detriment because of any protected act.

108.3 For it is worth, the claimant actually was off sick and therefore did not return to work immediately after 29 March letter in any event.

3.2.1 0 Issuing a final written warning to the claimant on 29 March 2019;

109. For 3.2.10, we take into account the fact that - as stated by Mr Morrison and as was in accordance with the respondent's policies - his appeal process was more way of review than of a fresh hearing.

109.1 We are satisfied that what Mr Morrison did was take as his starting point, the fact that the claimant had been found guilty of misconduct by Ms Lawson and had been dismissed. He does not seem to have approached the matter with an open mind as to whether here had or had not been misconduct. We do not think he tried to hide that; he was quite clear, that he approached the appeal on that basis.

109.2 He dealt specifically with the appeal points that the claimant raised. He dealt with them one by one.

109.3 He did a careful investigation and obtained further information (some of which was supplied to him by the claimant) and gathered more facts and documents than had been available to Ms Lawson.

109.4 There are no actual comparators whose circumstances are sufficient similar to the claimant's. We have referred to employees 2 and 3 already and each of them was a white employee given a final written warning and the conduct in those cases were different and more serious.

109.5 However, that being said the claimant has not proved facts from which we might infer that the decision to give her a final written warning was less favourable treatment than a hypothetical comparator would have received because of race.

109.6 We will say, for what it is worth, that each of the three members of this particular panel are quite clear that in our own minds, and based on allegations 1 and 2 for which the claimant was originally dismissed and for which she ended up with q final written warning, and taking into account all the information that has been put before us and putting out of our minds, the financial abuse allegations in relation to 'F' for which she was originally suspended, it would be our view that the conduct would actually fall a long

way short of conduct for which a reasonable employer would issue a final written warning. However, of course, that is not particularly relevant to our decision.

109.7 We are satisfied that Mr Morrison's decision to downgrade the sanction from dismissal to a final written warning was on the basis that Ms Lawson's assessment had been that misconduct had been committed and that the claimant had not satisfied him otherwise. We are satisfied that Mr Morrison would not have taken a more favourable approach with an employee of a different race. For the same reason, it was not conduct that was related to race and the harassment allegation fails.

3.2.11 Failing to send a representative to the case management meeting at Hertfordshire County Council (HCC) on 2 April 2019;

3.2.12 Failing to send a representative to the case management meeting at HCC on 17 May 2019;

3.2.13 Failing to provide adequate information to HCC, specifically:

3.2.13.1 failing to provide information that was supportive of their confidence in the claimant's continued ability to undertake her role;

3.2.13.2. failing to inform HCC that Hertfordshire Police considered there was no case to answer and no further action was taken against the Claimant following an interview with her on 31 August 2018.

3.2.13.3. providing inaccurate information to HCC, specifically that the respondent told the Council that the resident's brief case contained a credit card.

110. We will deal in our analysis 3.2.11, 3.2.12 and the three paragraphs of 3.2.13 together, since they all relate to the interactions with the Local Authority HCC.

110.1 We are satisfied that the initial referral on 9 March was appropriately made and that the contents of the referral were appropriate.

110.2 We are satisfied that throughout the period March 2018 to August 2018, the respondent kept in contact appropriately with both the Local Authority and the Police. It is not the role of the respondent to inform the Local Authority about decisions which the Police have made, on the contrary it would potentially be inappropriate for the respondent to purport to give information about what the Police had decided. If the Local Authority wanted to know what the Police had decided (and it is obvious that they would want to know that), then the Local Authority could and would approach the Police directly and get the information from the Police.

110.3 The respondent had reason to believe, (and their belief was correct and reasonable) that the Police and Local Authority were in direct communication with each other and that the Local Authority had at least as much information about the Police enquiry as the respondent did.

110.4 The respondent informed the Local Authority promptly about its decision to issue the final written warning on 29 March and that was done by Ms Handley's e-mail. We are not persuaded that the respondent was under any obligation to specifically inform the Local Authority in different words about the confidence that they had in the claimant's ability to work with vulnerable adults.

110.5 Issue 3.2.13.1 in our opinion, misses the obvious point that the professionals with whom the respondent was dealing were completely

aware of what the requirements are to work with vulnerable adults. The very fact that the respondent was telling the Local Authority that they had reinstated her and they were willing for her to return to her duties is sufficient information. That is the only information that the Local Authority potentially needed to have at that point as far as is relevant to 3.2.13.1.

110.6 Looking at the respondent's organisation as a whole, we do think it is unsatisfactory that there was no individual willing to take responsibility for liaising more directly with the Local Authority once the Local Authority said that they wanted fuller details about the decision that had been made. However, in fairness to the respondent there are of course, competing considerations. It has data protection obligations to the claimant as well as safeguarding responsibilities to its residents and obligations to co-operate with the Local Authority and the Police. Given the respondent has 4,000 employees and quite a few people working with vulnerable adults, and given the number of high number of referrals it makes in relation to vulnerable adults (based on the statistics we saw for December 2016 to December 2019), it might potentially be appropriate for the respondent to give detailed consideration as to how it will approach a similar situation in future. However, that is not a matter for us. Looking at Ms Lyfar's case following her reinstatement, there were understandable explanations for each of individual making a personal decision that they were not the appropriate person to attend meeting with the Local Authority.

110.6.1 The employee relations team believed that they were not the people with sufficient information and expertise to answer questions from the Local Authority.

110.6.2 Ms Handley believed that her only involvement had been 12 months earlier to make the referral, and she was not the appropriate person to speak to the contents of the investigation.

110.6.3 Ms Jackson submitted her report in November 2018, which was not a report which contained any recommendations and it was not Ms Jackson's original report (it was a version edited by persons unknown) that went to the dismissal hearing. [We think Ms Jackson is wrong to think that as between her and Ms Handley it was more appropriate for Ms Handley to do it; as between the two of them, she had more information than Ms Handley, but we do understand why Ms Jackson thought that it wasn't her responsibility to comment on the dismissal reasons.]

110.6.4 There is an argument, perhaps, that Ms Lawson might have been an appropriate person to liaise with the Local Authority given her role as responsible for the respondent's safeguarding policies. If the dismissal decision had stood, then there might have been a strong argument that Ms Lawson was the most appropriate person to liaise with the Local Authority; however, her dismissal decision (thought not her misconduct decision) was overturned on appeal by Mr Morrison. It is therefore understandable why Ms Lawson did not think that she was the most appropriate person to answer the local authority's questions (and it is not necessarily a disadvantage to the Claimant that Ms Lawson did not attend the meeting).

110.6.5 Mr Morrison, who dealt with the appeal and decided on behalf of the Respondent that the Claimant should be reinstated might have

been well-placed to attend the meeting and answer relevant questions, but he does not seem to have been specifically asked.

110.7 There is nothing suspicious or inappropriate about the failure to attend the meetings on 2 April or 17 May. We are satisfied with the explanations that were given in relation to those. The reason why nobody attended those is that the respondent could not agree internally which individual should attend and, for April, Ms Handley believed that making a written submission was the most appropriate course of action. The reason why nobody attended in May was that Ms Handley was unable to attend and the Respondent failed to arrange for someone else to do so. The claimant has not proved any facts from which we might infer that she has been treated less favourably because of race because of a hypothetical comparator or from which we might infer that she has been subjected to a detriment because of her protected acts, or that to the extent that is alleged that this was harassment that the conduct by the respondent was related to the claimant's race.

110.8 Overall, in relation to the information which the respondent provided, including by Ms Jackson at the July meeting, the claimant has not proven any facts from which we might infer that there has been a contravention of the Equality Act. We do accept that Ms Jackson's comments in her e-mails shortly before the July meeting were genuine and reasonable opinions and that she pointed out that there were certain things that were the Police's responsibility rather than hers to answer if the Local Authority wanted more information. The Local Authority did agree to clear the claimant to return to work after its 3 July meeting, even though it made a decision that it would still like some further investigations to be done. The claimant was not therefore subject to any ongoing disadvantage after the 3 July meeting (or certainly after she was told about the outcome on 5 July).

110.9 We have discussed the comments that Ms Jackson made during the meeting already. We have taken them into account in assessing Ms Jackson's credibility as a witness but they are not something that led to the claimant's being subjected to any disadvantage and we do not think there is any evidence from which we might infer that Ms Jackson would have made different comments to the Local Authority had the claimant been of a different race, or had the claimant not done the protected acts in question.

111. Those then are our lengthy reasons for our liability decision.

REMEDY

112. After we announced our decision and reasons on liability, we dealt with remedy. We announced our decision orally and were asked to give reasons. These are those reasons.

113. The purpose of compensation is to provide proper compensation for the wrong which we have found the respondent to have committed and so not of course to give compensation for anything that might have been part of the claim, but was not found by us to be a breach of the Equality Act. The purpose is not to provide an additional windfall for the claimant and it is not

to punish the respondent either. It is to provide, as we say, proper compensation.

114. It is agreed in this case that there are no financial losses. We are considering making an award for injury to feelings. We must not too lightly assume that injury to feelings inevitably flows from each and every unlawful act of discrimination. In each case it is a question of considering the facts very carefully to determine what injury has actually been sustained in any particular case and we take into account that the same type of conduct might affect different people in different ways.

115. The leading case as both sides agree of course is Vento v Chief Constable of West Yorkshire. Both sides also agree we must take account of the changes that have occurred since that case was originally decided. Vento set out three broad bands of compensation for injury to feelings, distinguishing compensation for injury to feelings from other matters such as psychiatric or similar personal injury. The top band is for the most serious cases, the middle band for serious cases which do not merit an award in the highest band and then for less serious cases is what is called the lower band. Very low awards - which at the time would be considered anything less than £500 are to be avoided – when an injury to feeling is found to have occurred, as they risk being so low as not to give proper recognition for the injury and the importance of giving a proper remedy in cases of breaches of the Equality Act.

116. In Da'Bell v NSPCC and the Employment Appeal Tribunal revisited the bands and operated them for inflation. In Simmons v Castle the Court of Appeal declared that in England and Wales, with effect from April 2013, the proper level for general damages in all civil claims would be increased by 10% for pain and suffering. In De Souza v Vinci Construction it was decided that the 10% uplift should apply to Employment Tribunal awards.

117. Presidential Guidance is issued which takes into account all of the above. and the one that is applicable to this claim is the one that applies to all claims presented on or after 6 April. In this case the December 2018 claim by the claimant is not relevant as that did not refer to the dismissal of 17 January 2019. Our finding of a contravention of the Equality Act related to the decision to dismiss (later overturned) on 17 January 2019; the claim which relates to that is the one presented in April 2019 with case no. 3314030/2019. So for those claims, as per the Presidential Guidance, the appropriate Vento bands are lower band £900-£8,800, middle band £8,800-£26,300 and the other band is above that. Interest is at the Tribunal's discretion, however when awarded it should be awarded at 8% per annum from an appropriate date.

118. Turning to the facts of this case, we will not repeat everything that was said in our liability decision from earlier today. It is appropriate for us to take into account that this was a long serving employee and with a previously good disciplinary record. She was dismissed in the circumstances that we referred to earlier. She appealed against the dismissal and she was

reinstated and, as she states in her witness statement, she was aware of the reinstatement on 29 March 2019.

119. On 1 April 2019 the claimant sent an email which is set out at page 1236 of the bundle and was received by Ms Parker, with a copy to Mr Morrison as well. The email said that the claimant felt traumatised by the whole experience. It had impacted on her wellbeing. She also referred to the long delay for the appeal outcome and she referred to her GP having signed her off. The GP note is also in the bundle at 1228 and the date that the doctor signed it is 27 March 2019. The claimant was signed off as unfit for work and the reason given is anxiety, and the period of the note was 3 months (26 March 2019 to 26 June 2019). We know that the claimant was potentially fit for work upon the expiry of that note. She did not go back immediately for the reasons discussed above, namely that there needed to be clearance from Hertfordshire County Council (or, at least that was the respondent's opinion). She did resume work promptly once that clearance was received in July, so not that long after she was medically fit. She was on a phased return to work and several weeks later she was back working full time.

120. When considering the award to make in this particular case we must do our best to discount any part of the claimant's injuries to feeling which was due to other matters such as the length of suspension or the fact that a safeguarding referral had been made to the local authority and so on. The respondent is not liable for those matters. Firstly, those matters were not found to be a breach of the Equality Act and secondly it was not the respondent who raised the allegations in the first place; the allegations were brought to the respondent's attention by outside sources, Ms McGregor and J and F.

121. We are satisfied that this is not a case in which an award in the middle band would be appropriate. There was not a series of acts of discrimination. The injury to feelings caused by the dismissal were significant but not long-lasting. A three month period of illness or lack of fitness for work is far from trivial. When making an award that is in the lower band of Vento the Tribunal is not signifying that the effects on the claimant should be regarded as trivial. In this particular case we are satisfied that the dismissal decision was a one-off incident and that the effects, while very real and very upsetting for the claimant, were not such that an award in the middle band is appropriate and we are satisfied an award in the lower band is correct.

122. We have taken into account the claimant's oral evidence. Her evidence is consistent with the email and other documents that we have mentioned, and we accept it to be true. We have done our best to ignore the effects of things that happened either prior to the dismissal and during the suspension period. All that being said we do think that an award towards the upper end of the lower band of Vento is required. Having weighed everything we think that an award of £7,000 is the appropriate amount to make. We also think it is an appropriate case in which to award interest. At 8% per annum on an award of £7,000 is £560 per year, daily rate of about £1.534, the number of

days is 806 so multiplying that daily rate by 806 we arrive at £1,236.60. So that means that the amount that the respondent is ordered to pay to the claimant is £8,236.60.

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Employment Judge Quill

Date: 07/06/2021

Sent to the parties on: 18 June 21

For the Tribunal Office