EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs S Omojola	**v**	**Reed in Partnership Limited**

Heard by: Cloud Video Platform

On: 25 January to 3 February 2021
8, 10 February and 1 March 2021
(in Chambers)

Before: Employment Judge Bedeau
Members: Mrs I Sood
Mr N Boustred

Appearances

For the Claimant: In person
For the Respondent: Mr T Kirk, Counsel

JUDGMENT

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

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

3. The claim of public interest disclosure dismissal is not well-founded and is dismissed.

4. The claims of public interest disclosure detriment are not well-founded and are dismissed.

5. The claim of harassment related to sex is not well-founded and is dismissed.

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

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

8. The provisional remedy hearing listed on 17 June 2021, is vacated.

REASONS

1. By a claim form presented to the tribunal on 28 April 2019, the claimant made claims of unfair dismissal; public interest detriments; direct race discrimination; direct sex discrimination; harassment related to sex; harassment related to race, and victimisation. She worked for the respondent as a Careers Guidance Adviser from 17 September 2018 to either on 8 March or 22 March 2019.

2. In the response presented to the tribunal on 3 June 2019, the claims are denied. The respondent asserts that the reason why the claimant's employment was terminated was because the contract she was working under came to an end in March 2019 and, at the time, there was a restructuring and a consequent reduction in staff.

The evidence

3. The tribunal heard from the claimant. The statements by Mr Babatunde Omojola, the claimant's husband, and by Ms Michelle Shaw, the claimant's sister, who attended to give evidence, were not called as their evidence was not challenged.

4. On behalf of the respondent evidence was given by Mr Liam Taylor, Human Resources Business Manager; Ms Sheryl Moore, Business Manager; Ms Danielle Aliberti-Burling, Operations Manager; Mr Richard Stacey, Head of Human Resources; Mr Dan Addison, Senior Operations Manager; and Mr Nick Morgan, Regional Director.

5. In addition to the oral evidence parties adduced a joint bundle of documents comprising of 569 pages. Further documents were adduced by the claimant. The respondent produced statistical evidence on the racial makeup of its managerial staff. We shall refer to the documents as numbered in the bundles.

6. Before the tribunal heard evidence two issues arose from the list of issues. The first was in relation to the claimant's reliance on a black, Senior Operations Manager, whom she claimed was the only Senior Operations Manager to be made redundant whereas his direct report, Mr Nick Morgan, a white male, was promoted to Director. Her case being that the respondent's culture was such that black staff were denied promotional opportunities to senior managerial positions, and that a black Senior Operations Manager was unlikely to be promoted to Director.

7. The black Senior Operations Manager referred to by the claimant, was employed and was made redundant before she commenced employment with the respondent. She invited the tribunal to make findings of fact in relation to his case. As he was not going to be called to give evidence it was difficult to determine precisely what the circumstances were

surrounding the redundancy process during which he was made redundant. The evidence was not there from which the tribunal could make proper findings of fact supportive of the claimant's contention. This was the difficulty the claimant understood and did not pursue the matter any further.

8. In addition, she was seeking to rely on her earlier employment with the respondent between 2011 to 2013 and her application for a manager's position which was unsuccessful, whereas, she asserted, a white, young graduate who had only been with the respondent for a few months, was offered a more senior position. She alleged that black employees were disadvantaged because of the culture of the respondent in denying them promotional opportunities.

9. Her recent employment with the respondent began in September 2018. It did not have all the information pertaining to 2011-2013 in relation to the manager's position and was not in a position to give relevant evidence as many of its staff have since left.

10. The evidence in relation to the period of 2011-2013, presented evidential difficulties for the respondent and for the claimant as she did not have the documents relating to the selection and recruitment exercise at the time. We ruled that the more relevant period was from 17 September 2018 to March 2019, the claimant's recent employment with the respondent which is the subject of her claims. She could put questions to the respondent's witnesses along the lines of how many black members of staff occupied managerial positions in order to invite the tribunal to find that black members of staff applied for managerial positions and, invariably, were rejected.

11. Following on from our rulings, the respondent provided statistical evidence of the spread of managerial positions amongst certain racial groups including black African and black Caribbean. The claimant wanted the same evidence either over five year or ten-year period focussing on inner London. She also asked that the categories should include Operations Manager, Senior Operations Manager, and Director.

12. We ruled that such a request was disproportionate to the issues in the case. She worked for the respondent for six months and was based in Willesden although she travelled within inner London and outer London, she did not apply for any of the senior management positions and did not pursue a case of indirect race discrimination. The evidence, in statistical form produced by the respondent, could be referred to by Mr Richard Stacey, Head of Human Resources, who compiled the information. We also allowed the claimant to question him on the spread of black members of staff within management and senior management positions.

<u>The claimant's late application to add indirect sex discrimination</u>

13. After submissions in the case on liability on the last day of the hearing, 3 February 2021, the tribunal adjourned to consider the claims by way of a two days' chambers discussion on 8 and 10 February 2021.

14. On Thursday 4 February 2021, at 9:45 in the morning, the claimant emailed the tribunal stating the following:

> "Please could you forward my correspondence to the tribunal.
>
> I was informed that our preliminary hearing by Judge Alliott that my case was not one of indirect discrimination, although I had listed this in my ET1 form on page 39 of the bundle.
>
> This element of my claim was removed by Judge Alliott as he deemed the issues presented to be one of direct discrimination page 114 (para 6 of the bundle). If the court is now under the assumption that this is in fact an indirect discrimination case, then I would ask them to reconsider my ET1 form as this was initially presented to the tribunal.
>
> The respondent is copied into this email."

15. In the response sent at 10:14 the same morning, the respondent's solicitors wrote to the tribunal, in the following terms:

> "The respondent objects to the claimant's application to amend (if that is what it is meant to be). Indirect discrimination was not one of the issues before the tribunal and was not recorded in the list of issues. Even if it had been, it would have had to have been properly pleaded, with provision, criterions and practices identified, as well as the identification of individual and group disadvantage etc. For the purposes of section 19 Equality Act 2010. The respondent would have had to have had the opportunity to plead an objective justification defence.
>
> The claimant's application to amend is obviously highly prejudicial to the respondent, which had called its witnesses and responded to the claims based on what was recorded in the case management order and the list of issues. This application, which has come not only after the close of the evidence but after the parties had made submissions, is far too late in the proceedings and should be rejected in the interests of justice."

16. In paragraph 6 of Employment Judge Alliott's case management summary, in respect of the hearing held on 16 January 2020, he wrote:

> "6. Before me today the parties have produced a draft agreed list of issues. The reason it is in draft is that the respondent seeks clarification and further information on certain of the claims. In discussion with the parties, the claimant has confirmed to me that this document, subject to the further information to be provided, captures all the claims that she intends to bring. In particular, we have discussed an indirect discrimination claim relating to the claimant not being offered flexible working time at her interview in July. We have confirmed that such a claim is not brought as indirect discrimination as it is apparent that it is a direct discrimination claim."

17. As before us, the claimant represented herself at the preliminary hearing. During the final hearing, at the request of the Judge, the parties considered overnight the final list of the claims and issues in the case. As already referred to above, the document was presented to the tribunal the following morning, 26 January 2021. However, the respondent objected to two passages in it.

18. The claimant was seeking to refer to matters relevant to her case of culture of race discrimination allegedly perpetrated by the respondent on black Caribbean and black African members of staff. We gave our ruling in respect of that matter as referred to above.

19. In the final agreed list of issues there is no reference to indirect sex discrimination being claimed. Accordingly, neither party adduced evidence in respect of that claim. The claimant, in light of Judge Alliott's direction, by its absence, withdrew the indirect sex discrimination claim.

20. Having considered her application, which was in effect an application to reinstate that claim, or an application to amend, applying Selkent, the tribunal considered that it would be too prejudicial to the respondent for the indirect sex discrimination claim to be allowed. The respondent had called many witnesses and did not focus on an indirect sex discrimination claim as it was not going to be heard and determined by the tribunal. Relevant witnesses would have to be identified and evidence taken; a new bundle of documents may have to be prepared; and there will the attendant time and costs to the respondent. The claimant had more than adequate time to challenge the direction given by EJ Alliott and did not do so. She left her employment in March 2019, and it remain unclear whether cogent evidence is likely to be obtained to challenge this new claim. She has many claims against the respondent. Balancing the relative prejudice between the parties, we are satisfied that the claimant would not be severely prejudiced if the tribunal did not allow the application. The prejudice to the respondent outweighs the prejudice she is likely to suffer. Accordingly, her application to either reinstate or add indirect sex discrimination is refused.

The issues

21. The "Agreed" list of issues which the claimant stated should be considered along with the claim form and her further information, covers 20 pages. It was sent to the tribunal on 26 January 2021 following the Judge's direction the previous day that there should be an agreed list. We attach at the end of this judgment as an appendix. It was sometimes difficult to follow whether a claim was still being pursued as the claimant would say that it was withdrawn only for her to later say that it was not. We have focussed on the Agreed list of issues and have taken into account any relevant matters in the claim form and further information.

Findings of fact

22. Having considered the evidence, we made findings of fact in chronological order.

23. During the claimant's employment the respondent delivered the Youth Careers contract within the Career Cluster. It was responsible for engaging and referring students for work placements to an organisation called Skills Training UK and its sub-contractors of which 5e was one.

24. The contractual and legal responsibilities for identifying and assessing the suitability and safety of all businesses used within the Careers Cluster contract lay with Skills Training UK and its sub-contractors.

25. From 2011 to 2013, the claimant, a black woman, worked for the respondent. She later married and gave birth to a baby boy.

26. In or around July 2018, she applied to the respondent for the position of Careers Guidance Advisor. The salary range was £24,000 to £27,000 gross per annum. As already referred to above, she asserted that the respondent has a culture of denying black staff promotional opportunities to management and higher management grades. If that be right it is difficult to understand why she decided to return to the respondent 5 years later.

27. She was interviewed on 11 July 2018, by Ms Cheryl Moore, Business Manager, and Black-British, who went through the goals; specific competency-based questions; a role play; a literacy assessment; and engaged in a general discussion around the claimant's curriculum vitae. Ms Moore said to the tribunal that, arising out of the claimant's curriculum vitae, they talked about childcare arrangements, and the claimant informed her that she had a son who would be looked after by family members in Bracknell. Ms Moore was surprised at the location as it was some distance from the claimant's home in West London. The claimant's response was to say that she was particular about who looked after her son and that the arrangements in Bracknell were what she preferred.

28. Ms Moore features heavily in the claimant's case against the respondent.

29. The claimant denied that she had a discussion during her interview with Ms Moore about childcare arrangements. The tribunal considered some messages between the claimant and her friend called Ms Kalejaiye Kalejaiye. Ms Kalejaiye contacted the claimant on 14 July asking about her interview. The claimant responded by stating that she had been called the previous day to be asked about her hours and that she would know by Monday.

30. In a later WhatsApp message sent on 25 July 2018 to Ms Kalejaiye, the claimant wrote that she felt as though someone in Human Resources was trying to block her from returning to work with the respondent and stated that they said initially that it was to do with her hours and could not be flexible with her childcare. She further stated it was not what was conveyed to her during her interview. She wrote to Ms Kalejaiye that she would try to make it

work and that she could do 40 hours. She also wrote that the respondent was saying that she scored Level 1 in the assessment but would need to pass Level 2 which she said Ms Moore believed was not necessary as Level 1, she said, would be sufficient. The claimant then wrote that she had GCSE English Language Grade B and completed her A Levels. She ended by writing that she thought that the job was not meant for her.

31. From the WhatsApp messages and having regard to an email from Ms Moore to Mr Liam Taylor, Human Resources Business Manager, copying Ms Danielle Aliberti-Burling, Operations Manager, we find that there was a discussion during the claimant's interview about childcare arrangements and working hours. This was followed up on 13 July with a further discussion between the claimant and Ms Moore which led to Ms Moore putting what the claimant was proposing in terms of her shift pattern, in writing, in the email. (page 156)

32. The claimant had failed the literacy test and after having sent in evidence of GCSE English and A Levels, she was allowed to take the test again at Level 2. Level 2 was the requirement in the job description which she passed. The literacy test was conducted by the Learning and Development Team. (140-143)

33. She requested reduced hours working Monday to Wednesday, 10am to 4pm, and Thursday to Friday 8am to 6pm, a total of 38 hours. The respondent do not pay for one hour lunch breaks, therefore, she was requesting that she be allowed to work 33 hours a week, however, the job required a candidate to work 40 hours as it was a full-time position.

34. Her request to work 33 hours, was considered by Ms Moore and by Ms Aliberti-Burling. Ms Moore wrote to Mr Miren Chauhan, Reed Specialist Recruitment, stating the following:

> "Having discussed the below with my Operations Manager, our position still stands that the candidate needs to be able to commit to the full 40 hours to fulfil the requirements of the role. In addition, the candidate would be required to work on Thursday in a Barnet School and early during the week (Monday, Tuesday or Wednesday) in our two Enfield Schools.
>
> If you have any further questions please feel free to get in touch." (160)

35. It was clear to us that enquiries were made by Ms Moore of the school to see whether it was possible to accommodate the claimant's reduced hours. From the information obtained the position was taken that the role required the person to commit to 40 hours a week. The Young Careers Contract was due to come to an end in March 2019. (161-164)

36. The claimant accepted the offer of employment to work 40 hours a week on a salary of £26,000 gross per annum. An offer letter dated 13 August 2018, by Mr Richard Stacey, Head of Human Resources, was sent to her. It confirmed her 40 hours a week, Monday to Friday, 8:30am to 7:30pm

"together with such additional hours as may be necessary to properly fulfil the duties of the role." (187(a) to 187(b)

37. Although the offer letter referred to the probationary period being nine months, both parties told us that it was six months. The claimant was due to start on 17 September 2018 and signed the contract of employment on 19 September 2018. The discussions about her hours and childcare predated the commencement of her employment with the respondent. (195-203)

38. It maybe that the claimant wanted to work 35.5 hours a week by having half an hour lunch instead of one hour. If that was the case, she did not put in that specific request to the respondent. Although it is the respondent's policy to allow its staff an hour lunch break, it can be shorter.

39. Ms Moore told us in evidence that she rang the claimant on 29 August 2018 to speak about the change in the allocation of schools. The claimant was required to service four schools but another Careers Guidance Advisor gave her intention to resign from her post on 25 July 2018, but no formal resignation letter had been tendered. As she was servicing four schools, the decision was taken not to recruit for her post but instead to reallocate two schools to the claimant and two schools to the other Careers Guidance Advisor, Ms Jenny Boyns, a white South African. Ms Moore told the tribunal that she could tell by the claimant's tone that she was surprised by the change and how it might impact on her childcare arrangements. The formal resignation of the advisor was not received until 17 September 2018, the day the claimant was due to start work.

40. Ms Moore's evidence was contradicted by the claimant who said that she was not told about the reallocation of the two schools until the first day she was engaged in her contractual duties. We accept her evidence on this issue for principally two reasons. Firstly, she had not signed the contract of employment until 19 September 2018. Secondly, in the email sent to her by Ms Moore dated 29 August 2018, Ms Moore referred to having had a discussion with the claimant on that day. She then discussed the claimant's induction training from Monday 17 September 2018. She stated that the course was usually five days but as the claimant would be on annual leave from 21 to 25 September, she agreed with the Learning and Development Team, that the claimant would attend Day 5 at a later date. It meant that the claimant would be on training from 17 to Thursday 20 September. Her first day in the office would be on Tuesday 25 September 2018. (192)

41. Had there been a discussion with the claimant about being allocated two additional schools, it would have been stated in the email referred to above.

42. We, therefore, find that she was told when she attended the respondent's office at Southgate on Tuesday 25 September. This was where Ms Moore and Ms Aliberti-Burling worked. The claimant's office was in Willesden. Ms Moore did not conduct the induction, that was done by the trainer, Mr Robert Lees. From the timetable she gave the claimant in her email of 29 August 2018, the first occasion the claimant would have attended the office would

have been on Tuesday 25 September. It was on that occasion that Ms Moore told her about the allocation of two additional schools. Ms Moore had proposed the meeting on 25 September, in her email to the claimant dated 14 September 2018. (194)

43. We also find that although the claimant was allocated two additional schools, it did not result in additional hours worked. She was required to still work 40 hours a week. In her evidence to the tribunal, she said: "I am not saying I was working more than my contractual hours. I was spread thinly." We accept Ms Moore's evidence that they agreed a reduced presence at the schools and that the claimant did not have to work longer hours.

44. The claimant's case is that she was put at a particular disadvantage as a mother due to the amount of travel time it required for her to visit her son in Berkshire after work as the schools were further out than some more local ones.

45. We find that Ms Moore did not discuss the option of the claimant working either 20 or 25 hours a week. That discussion was between her and Mr Nick Morgan, Regional Director, and was not relayed back to the claimant. Mr Morgan, in evidence, could not recall whether he had a discussion on specific part-time hours but said it would have been a reasonable discussion to have had.

Performance Analysis Review

46. Every month the claimant was the subject of a Performance Analysis Review, 'PAR'. On 11 October 2018, she had her first PAR covering her first six weeks of work. Her overall performance score was "Good". As there was no performance yet to review, the beginning of the PAR form was left blank. It was noted that she had completed all her training and was settling in the role. (216-217)

47. During this meeting the claimant mentioned her interests in the Enterprise Coordinator role which she had heard about from Ms Mariam Ezzat, Implementation and Project Manager. The contract was due to go live on 15 October 2018 and recruitment for the role was in progress. The claimant was new in her substantive role and it was explained to her by Ms Moore that she, Ms Moore, was not involved in recruitment for the post. She suggested to the claimant that she should speak to Ms Aliberti-Burling, Operations Manager for the contract. Ms Aliberti-Burling also features as another perpetrator of alleged discriminatory treatment of the claimant.

48. The claimant did speak to Ms Aliberti-Burling about the new London Enterprise Advisor Network 'LEAN' contract which was the newly awarded London Youth contract. The LEAN contract works with mainstream schools, Colleges and Pupil Referral Units across central, south and west London. The network is designed to help students build the skills and experience they needed in the world of work, enabling them to lead successful futures. It does this by connecting business volunteers called Enterprise Advisors to

Schools, Colleges and Pupil Referral Units, to help generate careers education and career pathways for young people.

49. The claimant was interested in the Enterprise Coordinator role on the LEAN contract and was informed by Ms Aliberti-Burling on what the new role would entail and the core outcomes of the contract. Following on from their conversation the claimant emailed Ms Aliberti-Burling expressing an interest in the position and asked to be sent more details about the contract. (215)

50. On 19 October 2018, Ms Aliberti-Burling received a further email from the claimant asking if the Enterprise Coordinator position based in Willesden, would be available when the Young Careers contract comes to end in March 2019. She also enquired if a Careers Adviser applied for a role on the LEAN contract, whether it would pose a risk to the Young Careers contract. Ms Aliberti-Burling spoke to her following her email and explained that she could not release her from her role on the Young Careers contract as she had not built up enough experience and as she was new to the role, she needed to gain the experience and fulfil the requirements of her current role before moving over. She was advised to apply for the LEAN role in April 2019 when the headcount for the programme would increase and the experience, she would gain from the Young Careers programme would put her in a good position for the new role.

51. In her evidence to us the claimant said she had pressed a button on her computer requesting information about the Enterprise Coordinator role, by mistake, an error she said. We had formed the view that she had withdrawn that allegation of discriminatory treatment but later she told the tribunal that was not the case. She alleges race and sex discrimination as an Asian male work colleague called Sundeep Patel, moved on to another contract in the same month. This left her friend, Ms Kalejaiye, a black female, doing the work of two people as she had worked with Mr Patel. She also relies on the treatment of Ms Adedamola Adenuga, Business Manager, based at the Willesden office, as well as Mr Will Hall.

52. It is clear from the claimant's email to Ms Aliberti-Burling dated 19 October 2018, she did not intend to apply for the position but was seeking further information.

53. On 7 November 2018, she emailed Mr Chauhan in which she wrote the following:

> "Thank you once again for our meeting yesterday, it was great to meet you in person. I look forward to seeing how we can work to improve the company's turnover going forward.
>
> As discussed, I do have an interest in working on the LEAN contract or any similar contract which we may win in the near future which involves impacting the lives of young people.
>
> I have attached an updated copy of my CV for your reference. "

54. We were not taken to any documents showing the claimant applied for a particular position on or around 7 November 2018. From the email sent to Mr Chauhan, she was informing him that she was still interested in a LEAN contract "in the near future". Further, we were not taken to any positions in November 2018 which she applied for. (231)

55. Around 26 October 2018, she moved her son to a nursery closer to her home in West London.

PAR November 2018

56. Ms Moore met with the claimant on 6 November 2018 for her PAR review. Overall, the claimant performed well although Ms Moore commented that there were a few compliance errors with some of the claimant's referrals regarding dates and signatures of both students and her which were identified and discussed. She stated that the claimant must ensure that she was vigilant in document compliance before submitting them for claim acceptance. She also noted that there was quite a rush at the end of the half-term week to ensure that all referrals were put onto the system in time for claim. Moving forward, the claimant was advised to keep on top of her weekly administrative work and make effective use of and management of her time. As a result, there were several incomplete actions which were going to be carried forward to the next period. Ms Moore then wrote: "Overall, Sonia has had a good first period of delivery".

57. We find that this was a balanced view of the claimant's performance by Ms Moore during which she was anxious to identify potential weak spots and advise the claimant on how those can be overcome. (227-229)

58. The following day Ms Moore emailed the claimant the PAR attachment for her to read and to let Ms Moore know whether she had missed anything or whether somethings were unclear. (232)

59. On 7 November 2018, Ms Moore emailed Ms Aliberti-Burling stating the following:

> "During Sonia's PAR yesterday, we discussed her recent change in circumstances regarding her childcare arrangements. In line with her revised arrangements, she had enquired about/requested a change in her working hours to allow her to drop her son off at nursery in the morning and pick him up at the end of the day without incurring penalty fines for lateness. In order to ensure that she is also not late for work she would need to change her working hours to 8.30 to 16.00 hours thus working a 35-hour week.
>
> I cannot foresee this change in hours impacting negatively on her performance at all.
>
> Please let me know if this will be possible as Sonia would like this to take immediate effect."
>
> (230)

60. It is abundantly clear to this tribunal that Ms Moore was keen to support the claimant's reduction in hours as it would not impact negatively on her performance.

61. On 7 November 2018, Ms Aliberti-Burling emailed Mr Nick Morgan, Regional Director and Mr Liam Taylor, Human Resources Business Manager, in relation to the claimant's proposed change of hours request. She wrote:

> "Please see below email from Cheryl – In principle I am in favour of the proposal, otherwise she will not be able to complete her 40 hours per week. With the adjusted hours Sonia is proposing, these do not pose any risk operationally, as they fit in the school times. Let me know your thoughts, if I can go ahead completing her change form?" (238)

62. On 12 November 2018, Mr Morgan replied to Ms Alberti-Burling stating that he was happy with the arrangement and that the claimant should be aware that the change would not be reviewed again for at least another 12 months in accordance with the respondent's policy. (237)

63. Ms Nicola Farmer, HR Services Manager, adjusted the claimant's hours, her salary as well as her holiday entitlement. These had to be reduced in line with the claimant's proposed request for reduced hours. The information was conveyed to Ms Moore who wrote to the claimant on 13 November 2018, stating that her hours were approved in principle, but before she submitted the change authorisation form, she wanted her to be aware of the effects of the changes. She stated that the proposed hours would result in her working 32.5 hours a week, 6.5 hours per day excluding one hour for lunch, and that the flexi-time scheme only applied to those working the core business hours between 9am and 4.30pm.

64. The pro-rata salary would be £21,125 gross per annum and that her pro-rata holiday entitlement ending 16 September 2019, would be 168 hours. She invited the claimant to confirm whether she agreed with the changes. (247)

65. The claimant replied the following day to Ms Moore, in which she wrote:

> "Thank you for your email and effort in trying to make my reduced hours happen.
>
> Unfortunately, having taken a look at the adjustments, particularly the change to my pay, it will be unfeasible to take such a huge hit to my salary. To be honest it does seem much less than I had anticipated but I appreciate the breakdown has taken into account my unpaid lunch etc. With this in mind I had a discussion with my husband and although he will be coming from the City without a car we feel it would be a better option for him to collect our son after nursery, as under his employer's flexi scheme he is permitted to leave work at 4pm which gives him 30 minutes more than me to reach the nursery for 5.30pm.
>
> With this in mind, I have chosen to keep my hours the same and remain on my current contract, as per the initial agreement.

Warmest regards."

(246-247)

66. In relation to the claimant's request for reduced hours, she alleges in paragraph 17, of the list of issues, that it was victimisation. She relies on her request for flexible working week commencing 5 November 2018, as a protected act. She asserted that Ms Moore and Ms Alberti-Burling heavily scrutinised her more than her other work colleagues who had not made such a request.

67. We find that from 7 to 12 November 2018, her request was supported and approved. She had a very fair and balanced PAR, and on 7 November 2018, Ms Moore supported her request for reduced hours. She was also supported by Ms Aliberti-Burling, her request was also approved by Mr Morgan. Thereafter, she was informed about the potential consequences following approval of her request in relation to pay and holiday entitlements by Ms Moore. Having considered the matter, she explained that it was possible for her husband to pick up their son. Accordingly, she withdrew her request for purely financial reasons. We could not find, nor do we make any findings of fact that Ms Moore and Ms Aliberti-Burling heavily scrutinised her more so than her work colleagues.

<u>Being micromanaged on 9 November 2018</u>

68. The claimant said that on 9 November 2018 she was being micromanaged by Ms Moore and by Ms Aliberti-Burling more than her work colleagues, as they wanted to know about her every movement that day. Her duty included visiting schools within a cluster. She covered the Barnet and Enfield areas. These are schools in which the head teachers expressed an interest in their students gaining work experience. The claimant would do a presentation to the students; meet them individually; record their top work experience preferences; and would complete referral forms and forward those to Skills Training UK's sub-contractors, one of which was 5e whose contact was Ms Maria Verde.

69. The claimant's case is that on Friday 9 November 2018, Ms Moore and Ms Aliberti-Burling made numerous calls regarding her whereabouts. She asserted that they were attempting to micro-manage her, and that this amounted to direct sex discrimination; harassment related to sex and/or race and victimisation.

70. Leaving the last school for the day, the claimant would travel to her office in Willesden as she would have in her possession referral forms which should be locked in a safe at the office.

71. On Friday 9 November, Ms Moore had a conversation with the claimant's school contact who was requesting a change in working arrangements for the following Monday 12 November. She needed to discuss the request with the claimant before confirming the arrangements with the school. She

informed the school contact that she would try to get a decision to her before the end of the working day which was normally 4.30 pm on a Friday. She had earlier spoken to the claimant at 15:07 and they discussed the number of Youth Talent Referrals the claimant had collected. The claimant explained that she had left the school and was travelling back to the Willesden office to avoid traffic. We find that the journey would normally take about 30 minutes but could take up to an hour in heavy traffic.

72. At 16:02, Ms Moore emailed the claimant requesting that she communicate with one of her school contacts as well as herself to arrange an important meeting in Ms Moore's absence. As it was nearly the end of the school day and this school contact was very difficult to get hold of, knowing that the claimant might not be able to access her emails, Ms Moore tried to contact her on both her personal mobile phone and work mobile and left voice messages asking her to call her as soon as she had the opportunity to do so.

73. As Ms Moore had not received any email correspondence from the claimant on that day, and with the knowledge that she was busy meeting with students and completing referrals, she left a voice message on the claimant's phone to inform her why she was calling and requested that she should call her back at her earliest convenience.

74. We further find that it was usual practice for Ms Moore to provide an update to Ms Aliberti-Burling, her line manager, at the end of the week on how the week went with her team. Between 16:02 and 16:25 on 9 November, Ms Moore spoke to Ms Aliberti-Burling in Ms Aliberti-Burling's office. She explained that she was struggling trying to get hold of the claimant and her work colleagues, Ms Boyns, at various points throughout the day, which had been stressful. She eventually managed to get hold of Ms Boyns on the telephone at the end of the school day, but she still needed to speak to the claimant urgently to confirm the change of plan for the following Monday. She was asked by Ms Aliberti-Burling if she knew where the claimant would be, and she told her that she had left the London Academy school just before 3pm and was going to the Willesden branch. Ms Aliberti-Burling then asked Ms Moore whether she had spoken to any of the managers in Willesden to see if she was there, to which Ms Moore replied that she had not. She explained that she had tried to contact the claimant's work extension without success. At that point Ms Aliberti-Burling offered to call the Willesden office as one of her direct reports worked there, namely Ms Adenuga, Branch Manager. Ms Adenuga informed Ms Aliberti-Burling that she had not seen the claimant that day and could not confirm that she had been in the office. At that point Ms Aliberti-Burling told Ms Moore to go home, but as she was on her way out of the office Ms Aliberti-Burling informed her that she had just been told by Ms Adenuga that the claimant had just arrived at the Willesden office. As Ms Moore had logged off, she informed Ms Aliberti-Burling that she would pick up the issues on Monday and left the office.

75. The account given thus far by Ms Moore was corroborated by Ms Aliberti-Burling in evidence who said that she would check on work colleagues at different times as they worked remotely as they travel between sites during the day. It was also normal to check on staff from a well-being perspective.

76. At or around 16:45, the claimant returned Ms Moore's call. Ms Moore explained that the reason why she called her was to discuss a change in her working pattern the following Monday and to confirm a meeting between her and the other school contact. As the school day was over, she was told by Ms Moore not to worry and that they would discuss an alternative plan on Monday. The claimant informed Ms Moore that she was just leaving the Willesden office and that she had stored all the Youth Talent Referral Forms in a secure cabinet. At that point the claimant then said that she wanted to let Ms Moore know that as she was worried that she would be late collecting her son from nursery, so she left the school, went to collect him, and decided to bring him to the office with her to file the Referral Forms. She asked Ms Moore whether that was acceptable. Ms Moore expressed some surprise at hearing the account and explained that it was not usually permitted and asked the claimant why she did not feel that she could speak to her about it before making the decision. The claimant explained that she panicked and just wanted to get to the nursery as soon as possible. Ms Moore's response was that as they were discussing the situation after the event, there was little that could be done but it would be a good idea for them to discuss a better solution for collecting her son after work on Monday.

77. The conversation then continued with the claimant asking if there was a problem. Ms Moore replied that there was no problem and asked why the claimant had asked the question. The claimant replied that she was getting the impression that her work ethic was being questioned and did not feel that her sacrifices and efforts were being valued. She followed this by telling Ms Moore that if she had a problem, she would rather Ms Moore was upfront and told her there and then. Ms Moore replied by saying that if she, Ms Moore, had concerns about the claimant's work ethic, she would let her know. She reminded the claimant of the positive performance review three days earlier. The claimant then replied by saying; "So can you tell me why other managers are getting phone calls about me and asking about my whereabouts?" It was at that point Ms Moore sensed that the claimant was being annoyed and confrontational. She explained that Ms Adenuga was called to enquire if she, that is the claimant, was in the Willesden office or had been in the office because Ms Moore had been unable to contact her. The claimant was not satisfied with the answer by Ms Moore and said that Ms Moore did not appreciate her struggles with childcare. Ms Moore explained that was not the case and felt that she had been quite supportive of her arrangements with childcare since starting work. She also mentioned that she had written a good PAR review and was unable to understand why the claimant felt that way.

78. According to Ms Moore the claimant continued to berate her, repeating that she did not need to be micromanaged; she was an honest and hard worker

who had held much more high-profile positions; and there was no need for Ms Moore to call other managers to check up on her. Ms Moore explained that it was Ms Aliberti-Burling who made the phone call to the Willesden office as it concerned her that Ms Moore, did not know where she was. At that point the claimant said that Ms Moore was not painting her in a positive light to Ms Aliberti-Burling and asked why Ms Moore felt the need to discuss her whereabouts with any other manager, and that it was Ms Moore's prerogative if she felt the need to use her manager as a sounding board for issues within her team but did not think it right that she was informing Ms Aliberti-Burling of these issues. She said that she would need to have a discussion with Ms Aliberti-Burling which Ms Moore agreed and encouraged.

79. Ms Moore said that on three occasions during the discussion she tried to bring the conversation to a close suggesting it would be better to have the discussion in person the following Monday, but the claimant refused. The claimant told her that she did not see the need to have any further conversations on the matter. She "Had bigger fish to fry than to be concerned about issues or disputes between co-workers." She appeared to be dismissive and demeaning in her behaviour, completely disregarding Ms Moore's attempts to end the conversation and remedy the situation. Eventually, Ms Moore suggested that the claimant should speak directly to Ms Aliberti-Burling as the conversation was going nowhere and they mutually agreed to end the call.

80. After the discussion, Ms Moore rang Ms Aliberti-Burling and explained the conversation she had with the claimant who would be contacting her the following Monday. Ms Moore expressed the wish to be part of that conversation but was of the view that the claimant would not want her to be involved.

81. On Monday 12 November 2018, the claimant met with Ms Aliberti-Burling who informed her that her conversation with Ms Moore the previous Friday had affected Ms Moore. Ms Aliberti-Burling explained that it was her duty to have regard to the welfare of her Ms Moore. She explained to the claimant that the point of her call to the Willesden office was to find out where the claimant was from a wellbeing perspective. At the end of their conversation Ms Aliberti-Burling was of the view that the claimant was satisfied and that there was nothing outstanding to discuss.

82. After speaking to the claimant, Ms Aliberti-Burling spoke to Ms Moore telling her that she had explained to the claimant how Ms Moore felt during the conversation on 9 November. Ms Aliberti-Burling also said that the claimant wanted to apologise to her. Ms Moore then emailed Ms Aliberti-Burling following their conversation on 12 November 2018 at 12:14pm. Ms Aliberti-Burling also informed Ms Moore that the claimant's proposed change of hours had been approved and forwarded to her a copy of the email that she had received from Mr Morgan. (237-239)

83. We find, contrary to the claimant's denial, that she told Ms Aliberti-Burling that she would apologise to Ms Moore. We make that finding because as

referred to above, Ms Aliberti-Burling relayed to Ms Moore that the claimant agreed to apologise to her.

84. In Ms Moore's email of 12 November 2018, she wrote to Ms Aliberti-Burling expressing how she felt during the conversation with the claimant on Friday. She was concerned about the claimant's behaviour and attitude and wanted those to be addressed. She requested a meeting between the three of them to discuss the claimant's inappropriate behaviour and was of the view that it was important to have a third-party present. Ms Moore then wrote:

> "If this is not feasible, please suggest an alternative approach, as I do not want the first interaction that I have with her to either ignore the behaviour or avoid/gloss over a discussion of it."

85. Ms Moore also wrote that she wanted to ascertain from the claimant the previously agreed adjusted hours would still work for her as it came to the fore on Friday 9 November that the claimant was concerned about being late to pick up her son due to the traffic. She concluded:

> "Please confirm if this is something that you would like to discuss with her, rather than me, although I do not want to give the impression that I am avoiding contact or discussion of the matter."

(236)

86. The tribunal finds that the approach taken by Ms Moore on first considering the claimant's behaviour towards her and in relation to her approved adjusted hours, was to adopt a practical approach by ensuring that any proposed changes to her hours satisfied her requirements, in particular, her childcare concerns. We find that Ms Moore's approach was to, firstly, remind the claimant that she, the claimant, was her direct report and that her behaviour on 9 November was unacceptable. Secondly, to take into account the claimant's genuine concerns about her childcare responsibilities by looking carefully again at the adjusted hours. We could not fault Ms Moore's approach as a responsible and professional line manager.

87. On 13 November 2018, the claimant called into Ms Moore's office after her school day. She acknowledged the telephone conversation they had on 9 November but there was no apology. It was agreed that it was not the type of conversation she should have with her line manager and had there been a more open line of communication between them around the circumstances which gave rise to the disagreement, the incident could have been avoided. It was clear to Ms Moore that there had been a communication breakdown and misunderstanding and suggested to the claimant that they both be as upfront and transparent with each other as possible to avoid any further misunderstandings. She made it clear to the claimant that if she was experiencing any issues or concerns regarding her son at his nursery, it would be helpful to speak to her in order that a plan could be agreed. The claimant raised no objections to that suggestion. Ms Moore then informed the claimant that her change of hours had been approved and that she had

sent her an email on the changes and the text on pay and annual leave entitlements. (244-245)

88. As already stated, the claimant did not accept the reduced hours as her husband was able to collect their son from nursery.

89. The claimant claims that on the grounds of race and/or sex discrimination, week commencing 12 November 2018, Mr Chauhan's colleague, Ms Joanne Senturk, contacted Mr Liam Taylor, Human Resources Business Manager, who worked alongside Ms Aliberti-Burling and under Mr Richard Lacey, Head of Human Resources, to discuss securing an interview during the recruitment process. They were informed that claimant would not be interviewed and provided with no further information. The claimant stated that she holds Ms Aliberti-Burling, Mr Stacey, and Senior Managers in Human Resources responsible for behaving in a discriminatory way by not allowing her to be interviewed.

90. On 7 November 2018, as already referred to, the claimant wrote to Mr Chauhan expressing an interest again in the LEAN contract or a similar contract. She submitted her updated CV. There was no evidence called by the claimant in support of her assertion that instructions were given that she would not be interviewed. Mr Chauhan and Ms Senturk were not called to give oral evidence. The allegation when put to Mr Taylor, Mr Stacey, and Ms Aliberti-Burling, was denied. They were not aware of such instructions having been given. The claimant was not privy to the alleged conversation or conversations among the senior managers denying her an interview. Further, we were not taken to any documents evidencing a vacancy to which the claimant made a formal application.

91. On 22 November 2018, the claimant applied for a place on the Higher-Level Apprenticeships Training. She sent her application to Ms Moore, who forwarded on to Ms Charlotte Bennett who was involved int the Level 3 Apprenticeship training. (259-260).

92. Ms Moore supported the claimant's application and reminded her that studying for the apprenticeship had to be done outside her working hours. (259)

93. On 5 December 2018, the claimant was emailed by Ms Monique Debono, Head of Curriculum and Learning and Development, informing her that she had been unsuccessful in her application. She stated that due to the phenomenal demand there were not enough places for all those who applied. She further stated that she would be happy to receive a further application from her for the next "Cohort of apprenticeships which is likely to be advertised in the summer of 2019." (264)

94. Although the claimant alleges that she had been micromanaged by Ms Moore and by Ms Aliberti-Burling, it is clear from the way in which Ms Moore approached the claimant's application to join the apprenticeship programme, that she was supportive of the claimant. There was no evidence of being

micro-manged and this was clearly amplified by the way in which Ms Moore and Ms Aliberti-Burling dealt with her request for adjusted hours.

95. The claimant claims that in respect of her interests in the LEAN contract or another contract, she had been racially discriminated and discriminated because of sex. She cited Mr Sundeep Patel, Asian male, who was allegedly permitted to move into a new role on the LEAN contract leaving his black female colleague, Ms Kalejaiye, to carry out the role of two people. The claimant would assist Ms Kalejaiye in carrying out work following the departure of Mr Patel.

96. We find that Mr Patel applied for the Senior Enterprise Co-ordinator role under the LEAN contract and was interviewed by Ms Aliberti-Burling and one other person. At the time, the Careers Engagement Management role was due to come to an end. It was decided that Ms Kalejaiye would be able to take on Mr Patel's reduced amount of work. The Senior Enterprise Co-Ordinator role had with it line management responsibilities unlike the Enterprise Co-ordinator post. Their circumstances were different as the claimant is not comparing Mr Patel as having applied for the Enterprise Co-ordinator post.

97. The claimant also referred to another person, Mr Will Hall, a white male, who was also managing a contract due to come to an end in March 2019 and who worked with Ms Adenuga. He was the Senior Business Manager on the NEET contract. The acronym refers to Not in Employment, Education or Training. He did not work on the Youth Careers contract. He was not required to be assessed at the Assessment Centre as he was taking a horizontal move and not applying for an upward, hierarchical position. He applied for the Senior Enterprise Co-ordinator role which had line managerial responsibilities.

98. Ms Aliberti-Burling reviewed Mr Hall's responsibilities in the job that he was leaving and agreed with Ms Adenuga that she would take on his responsibilities. The claimant said that Ms Adenuga, at the time, was pregnant.

99. The claimant's relies on Mr Patel and Mr Hall as comparators, but they are not. She did not apply for the post of Senior Enterprise Co-ordinator.

100. She also referred to Ms Samantha Lord, a white female, and how she had allegedly been treated. She joined the respondent the same time as the claimant and had six months experience in the Welfare to Work sector and, according to the claimant, no experience on education contracts and that her previous work experience was that of a bar tender. This, the claimant stated, contradicted Ms Aliberti-Burling's suggestion to her that she should have more education experience before applying for the Enterprise Co-Ordinator post in March/April 2019.

101. In evidence Ms Aliberti-Burling said that Ms Lord was on the Central London NEET contract which was different from the contract the claimant was

working on, Youth Careers. Ms Lord was part of the second wave of restructuring in February 2019. There was to be four contracts affected, including the NEET contract, which had been taken over by different providers. It was unclear whether the Transfer of Undertakings Protection of Employment Regulations 2006, would apply. Potentially the jobs of all of those working under the four contracts were at risk of redundancy. Due to the uncertainty, Ms Lord applied for the Enterprise Co-ordinator role on 6 March 2019 for which Ms Aliberti-Burling was the hiring manager. Ms Lord attended the Assessment Centre on 1 April 2019 and was interviewed and assessed by Mr Andrew Moffatt, an external assessor, who oversaw the delivery of the contract, and by Mr Will Hall, Senior Enterprise Co-ordinator on the LEAN contract. Ms Aliberti-Burling was not involved nor was Ms Moore. Ms Lord had passed and was offered the position after it had been approved by Mr Nick Morgan, Regional Director. (490A)

102. The claimant had also applied for the position but withdrew her application on 13 March 2019. She asserted that Ms Lord was interviewed by her manager, Mr Hall, but we find that Ms Lord went through a process which another person was involved in interviewing and assessing her, namely a Mr Moffatt. Further, the claimant stated that Ms Lord had been provided with the answers to the questions she was going to be asked during the assessment process by someone who was leaving the contract. There was no evidence produced by the claimant to corroborate this claim. We do not accept that was the case. The process involving competency-based questions required careful and relevant answers by the candidates. The process was over three days with about six candidates. The best performing candidate was going to the offered to position.

103. Ms Lord is not an appropriate comparator as the claimant withdrew her application.

104. On 6 December 2018, the claimant emailed Ms Moore copying Ms Jenny Boyns, stating that she was concerned following a conversation she had with the contact at 5e, Maria Verde, as Ms Verde had not found a single placement for the Nightingale Academy's students for14 to 25 January 2019. Ms Verde had been working on one-week placements mainly with banks which had been unsuccessful. She stated that there seemed to be a sense of "no hope" of finding students decent placements for January as Ms Verde expressed it was a difficult period for employers taking on students after Christmas and was hinting that the respondent should change dates of the placements. The claimant then wrote: "I feel we need a real strong contingency plan with this provider as she has been suggesting we put them all in retail so they can gain customer service skills."

105. The claimant then continued by stating that Ms Verde had suggested that she would respond to her by the end of the following week to which the claimant replied that it was too late as the schools would be breaking for holidays and that she would be on annual leave the following week, leaving her little time to address any issues. She was not confident that Ms Verde

would be in a position the following Monday or Tuesday to provide anything "substantial". She went on:

> "Jenny I am copying you into this email as I know you are in contact with Skills Training, and was hoping you could discuss my concerns with them."

(265)

106. Her concerns were relayed to Mr Terrence Howard, ESF Product Specialist, Skills Training UK, by Ms Boyns in an email dated 6 December 2018, in which she wrote that the claimant was very concerned about the timeframe left for the students to gain work experience in their placements. At the time, she stated, 5e had not managed to secure a single work placement for any of the Nightingale Academy's students. She asked Mr Howard to follow it up with Ms Verde as soon as possible to find out what was happening with work experience placements and to update the claimant and Ms Moore. (266)

107. Ms Moore emailed the claimant on 10 December 2018, following her contact with Ms Verde, who told her that many employers were no longer willing to provide placements for two weeks. She suggested to Ms Verde that if that was the case then Ms Verde should try to have a different student for the second week. (269)

108. The claimant emailed Ms Moore on 10 December, stating the following:

> "I have put together a list of the types of placements my Nightingale students are looking for – there are only 4 out of 20 looking for a banking related placement. When I had spoken to Maria, she expressed a concern that most of my students are looking for a placement in a bank.
>
> Warmest regards."

(270)

109. We find that the claimant in sending the email to Ms Moore, was looking to Ms Moore for support and assistance in moving the issue of placements forward.

110. On 10 December 2018 at 16:31, the claimant emailed Ms Moore and Mr Howard expressing her concerns about 5e. She cites this email as a qualifying and protected disclosure, and it is produced in full below.

> "Hi Sheryl/Terry,
>
> As discussed, I have been very concerned about the ability of 5e to fulfil their obligations towards our students from a number of telephone conversations I recently had with Maria
>
> I first spoke with Maria on, Thursday 6th December, when she expressed that she had not managed to find any placements for our 20 Nightingale students due out from 14th-25th January 2019. Initially, she complained that most of our students

had requested to work in banks which she expressed was impossible to find at such 'short notice' (and most of her efforts were focussed on looking for banking positions). However, when I checked, only 4 of the 20 students were looking for banking or finance related placements. However, I encouraged Maria to look at alternative organisations like accountancy firms, which she said they have loads of contact with.

Secondly, I was very concerned when Maria said she was only looking for one week placements, as she did not know any employers who were willing to take students on for two weeks. Again we have had numerous conversations with Maria informing her of the need to find two week placements for Nightingale students, so if this was an issue, my concern is around the lack of communication she had with us and simply expecting that the one week placement would be suitable. This scenario would of course put a lot of pressure on the relationship with our schools if their requirements had not been fulfilled and an unsuitable amount of notification was given to rectify the situation.

Thirdly, Maria complained about the dates the students were going out and asked me who had made that decision, she expressed January is a really bad time for employers to take students after returning from the Christmas holidays. These dates were given to Maria at least two months ago, so if there were any concerns about the Christmas break causing an issue, again communication is what we would ask for, instead of leaving it to the last minute, namely one week before the schools take their Christmas holiday. Furthermore, it was clear that if I had not chased maria up for feedback it would have taken longer for these issues to brought to my attention as she expressed plans to get back to me on, Friday 14th December.

Fourthly, Maria tried to convince me to permit all our students to be placed in retail as they would be learning customer service skills. As mentioned to Maria, a lot of work goes into conducting one to one interviews with our students and aspiring them to aim higher and achieve their ambitions. The application referral forms we complete together asks leading questions about potential placements available to our students. We ask them to specify their placements interests based on the information provided, of course we also explain that they may not find their dream placement, but at least an effort would have been made to find something similar. To inform our students they would all being placed in retail would most definitely have negative repercussions on our relationship with the schools we have Service Level Agreements with.

I spoke to Maria again today to find out how she was progressing, the feedback was not dissimilar to our phone call on Thursday last week, only she had managed to find one placement in an accountancy firm in Barnet. When I asked Maria if she had conducted a search of how long it would take our students seeking placements in finance to travel to Barnet from Edmonton, she said that was not her job and that her job is only to find students placements. Maria proceeded to say that as the students would be on holiday (which these students would not be as their placements fall during term time) they can afford to travel. From a Safeguarding perspective, alarm bells are ringing in my head with reference to this statement as there seemed to be absolutely no concern for the welfare of our 14 year old students who are not accompanied by adults to their placements. When I checked the journey myself, for the 3 out of 4 students seeking finance related placements, it would take over one hour to get to. For the other one student it would take roughly 43 mins. When I asked whether there were any accountancy firms more local to Edmonton Maria said they could not

find any who were willing to take students. However, after speaking to the Careers Head at Nightingale Academy about the possibility of a student travelling 43 mins to their placement, I was informed that the school have loads of accountancy firms in the area who always take their students and that they found it very strange that a provider would be unable to find available firms in Edmonton. Furthermore, the teacher informed me that if the provider could not place the students then they would send them to the firms they have established relationships with.

After looking through my caseload today to confirm how many students were looking for banking positions, I counted just 4 out of 20 and relayed this back to Maria as that area seemed to be her main focus. Maria then mentioned a fifth student who she had down as looking for a banking position, when I checked her paperwork this student had requested a position in Acting or the creative industry and her second option was law. When I highlighted this, Maria's response was that it would be impossible to find this student something in Creative Arts so the next option would be finance. When I confirmed that her second option was law, not finance, Maria said law and finance are the same thing as lawyers often work with accountants and finding a placement in law would be impossible.

To be completely honest, the tone of my conversation with Maria has been utterly surprising from the onset and I have struggled to ascertain how we could be confident that our students would be appropriately Safeguarded and how their interests would be prioritised. Having worked in a similar position before myself it feels as though the appropriate level of care and attention to detail has failed to be employed when looking for opportunities for our students. Maria also mentioned she works on other projects and this particular task of placing Nightingale students has not been her focus and will not be until this week, which I feel is cutting it fine with the Christmas break (and her lack of optimism of finding suitable placements), then my annual leave next week, which leaves it only a week in the new year before the students are due out. Bearing in mind, I have to conduct a second stage meeting with each student and complete a further layer of paperwork to their placement start date.

A huge amount of work has gone into the referral process with all my schools thus far and it feels that a provider like 5e can cause my hard work and the hard work of others to be completely wasted, which I believe we can prevent if we act fast now to salvage our reputation with the schools and more importantly, the experience of our students in the workplace.

Warmest regards

Sonia" (271-272)

111. On 11 December 2018, Ms Moore emailed Mr Howard, ESF Product Specialist, Skills Training UK, referring to their telephone conversation the previous day and that she wanted to highlight the concerns the respondent was currently experiencing with the provider 5e. She stated that she had a telephone conversation with Ms Verde on 5 November regarding work experience placements for the students of Nightingale Academy as well as St Ignatius College, Kingsmede School, Chase Community School, London Academy, and Aylward Academy. Ms Moore stressed to Ms Verde the need to have placements covering a two-week period. Ms Verde had informed Ms Moore that she would be on annual leave from 7 to 26

November 2018. Ms Moore was disappointed to learn that as of the previous week, no progress had been made on the placements. The claimant had frequent communication with Ms Verde over the previous few days and highlighted several issues. These were set out in Ms Moore's email to Mr Howard. Ms Moore then wrote:

> "There seems a general sense of nonchalance regarding these referrals, of which we have spent a great amount of time and effort obtaining and delivering a high quality service to.
>
> With our reputation at risk, I hope that this information will be reviewed and considered carefully with regards to the remaining placements for the students on the careers clusters. As discussed yesterday, I appreciate that the referrals from Nightingale Academy will be reallocated to KBM with immediate effect. However, I would like some assurance that the appropriate steps have been made to ensure that the safeguarding and welfare of our students are being considered and employed for all remaining students due out on placement in February and March. If this is not possible, can you please reallocate our referrals to another provider? Last year, we had particular success with both KBM and EM Skills."

(274-275)

112. It is clear that Ms Moore was prepared and did escalate the concerns raised by the claimant and set those out in some detail in her email.

113. Again, on 11 December, at 17:36, Mr Howard emailed Ms Moore regarding their phone call the previous day. He wrote that he would try to transfer all learners over but that there was no guarantee that all would be sent to KBM.

114. When Ms Moore was giving evidence before us, she took issue with the word "try" used by Mr Howard. She understood that Mr Howard was going to transfer all learners over to KBM and not that he would try to transfer them to another provider. She conveyed to him her understanding, but he wrote in his email to her that there was a "slight misunderstanding". He then gave a list of those students who would be transferred to KBM. He further stated that Ms Moore's earlier email would be forwarded to 5e in order to obtain feedback from that provider (278-279)

115. Ms Moore responded the same day at 17:52 thanking him and acknowledging that there had been "some misunderstanding which was unfortunate given the significance of this issue." From the list he provided she saw only 17 students listed. That the claimant had informed her that the remaining 3 students from Nightingale Academy were still pending and if there were no issues, could their referrals be allocated to KBM (278).

116. The claimant was on sick leave from 13 December and returned on 17 December for one day before going on annual leave from 18 December to 8 January 2019.

117. A Return to Work form was completed by Ms Moore. On it she confirms the dates of the claimant's sickness absence and the date of the interview being

17 December 2018. She records that the claimant was suffering from gastric problems, was feeling nauseous and physically run down. She wondered whether she had caught something at school.

118. Ms Moore then wrote on the form:

> "Sonia was off sick on the first instance due to clod/Flu like symptoms. Having rested over the weekend she returned to work on the Monday and got stuck into the work that she had to do. Sonia was aware of the workload that she had and didn't want to fall behind. Sonia began to feel similar symptoms during the week which led to a second spell of sickness. This spell however, did not feel like the flu. Rather, Sonia feel gastric upset. Having discussed the sickness with Sonia, we feel that following a very busy for Sonia, she probably felt a bit burnt out/run down and the moment she had to rest felt ill."

119. Various positive comments were made by Ms Moore about the claimant's work and performance (299-303).

120. On Monday 17 December, at 1:17pm, Ms Verde emailed Mr Howard regarding placements for students at the Nightingale Academy. She had secured placements at various establishments, including a company called Cruise Hill Reptile Limited. The placements at that company, of which there were 2, were booked from 14 to 25 January 2019. (284-285)

121. The claimant had earlier expressed to Mr Howard that none of the Nightingale students should be placed in Barnet and to keep their placements within the local area unless they expressly stated that they would like to travel further afield with their parent's consent. (286)

122. At 16:18 on 17 December 2018, the claimant having been told of the placements, emailed Ms Verde thanking her for the information but having regard to the distances the students would be required to travel to their placements, she felt that the Cruise Hill Reptile placements was too far for the students, who would also be travelling for two weeks during the winter months. In respect of the placements, of which she listed 5, she gave the travel times from their homes to their placements. In respect of the 2 Cruise Hill Reptile placements, the travel from home to the company's site, in one case, was 58 minutes and in the other, 1 hour 11 minutes. She copied in Mr Howard and Ms Moore (292).

123. Mr Howard's response at 5.30pm on the same day, was to suggest that it was best to have a discussion on possible alternatives or requirements and to liaise with the placements to ensure that the students were allowed to leave "before the start of rush hour to accommodate for lengthy travel". He had checked with Ms Verde and the travel to Crews Hill Reptiles was 35-39 minutes. (293)

124. While the claimant was on annual leave, Ms Moore addressed her concerns about the distances the students had to travel to Cruise Hill Reptiles. She emailed Mr Howard and Ms Verde as well as the claimant. She thanked Ms Verde for sending the information about the placements and then wrote:

> "I have just reviewed the referral forms for the students of the Cruise Hill Reptiles placements. …….. has stipulated that he would get to the placement by bus/car as his parents will drop him. I am happy to speak with his mum to confirm this, but on this basis, I do not see an issue with this placement for this particular student, as a car journey will take 12 to 28 minutes.
>
> …… dad is happy for …….. to go to Cruise Hill Reptiles if she is happy to make this journey. He has stipulated however, that he would prefer for her not to travel that distance in the dark, so would appreciate if she would be permitted to leave the placement early enough so that this is not an issue. We do however need to discuss this with …….. .
>
> I have attempted to make contact with both students and parents this morning and will try again at the end of the school day. I hopefully be able to come back to you by the end of the day with confirmation for both of these placements.
>
> Sonia is now on annual leave until 8 January, so if there are any further confirmation/issues with placements for the students of Nightingale Academy, please contact me directly. To save any issues in the future, if there are any placements that are deemed unsuitable, I will ask my team to discuss this with me first."

(308-309)

125. The claimant alleges that the last sentence in Ms Moore's email shows that there was an intention to ostracise her as she wrote that any issues in the future, she would ask her team to discuss them with her first. We bear in mind that that sentence is in the context of the claimant being on annual leave until 8 January 2019 and that there needed to be a point of contact to achieve continuity. We also have regard to the fact that Ms Moore had copied in the claimant to show transparency. In stating that she would ask her team to discuss issues with her first, she was not excluding the claimant from that process.

Performance Analysis Review/ Probation Review December 2018

126. On 17 December 2018, the claimant had a Performance Analysis and Review (PAR) as well as a Co-Member Probation Review, with Ms Moore. Ms Moore's PAR line manager's comments, were, in our view, well balanced. She thanked the claimant for her hard work with schools and in collecting the majority Parental Consent Forms. She also contributed to the successful submission of the claims. She wrote: "Well done and thank you for your hard work Sonia!"

127. Ms Moore then went on to write that the claimant's hard work did come at a cost to the Teacher Referral Forms and STEM Focus Groups due to unforeseen sickness absences as well an unplanned annual leave. The claimant would have to pick these two matters up early in the following term. She also thanked her for her contribution to two successful networking meetings which took place on 22 and 28 November 2018, with all school

contacts in attendance. She also ensured that all her schools had a service level agreement review completed. Ms Moore then wrote:

> "Whilst it wasn't discussed during the PAR, at the meeting of the period, Sonia and I had an unfortunate exchange over the phone regarding her perceptions of and ill feelings towards being micromanaged. The issues were discussed individually with Danielle, as per Sonia's request and since then Sonia and I have had a better working relationship. I therefore believe that these issues have been resolved."

(296-297)

128. In the Co-Member Probation Review, in relation to the discussion between Ms Moore and the claimant on 9 November 2018 which the claimant alleged that she was being micromanaged, this was referred to by Ms Moore in the review. She wrote:

> "Sonia and I also had an unfortunate exchange in early P5 in which her levels of professionalism was compromised. The issue that gave rise to this exchange involves Sonia's struggle with her childcare arrangements, at a time where we were pending authorisation of her change in hours. The misunderstanding and communication issues have since been resolved however and we now have a better working relationship."

129. The claimant asserts that the words "compromised her professionalism", were discriminatory because of sex and was a negative comment by Ms Moore. Ms Moore said in evidence that given the time constraints the PAR Review had to be pre-populated or prepared in advance. During the meeting with the claimant, they discussed overall feedback and reviewed the actions from the previous PAR. The PAR discussion followed the Probation Review. The issue of 9 November was not raised again. When writing up the PAR after meeting with the claimant, she felt it was necessary to include the line manager's comments in relation to the conversation on 9 November 2018. She further wrote in the PAR that the conversations they had were not discussed with the claimant but it had been resolved. Both the PAR and Probational Review were emailed to the claimant on 21 December 2018, while she was on annual leave. They needed to be uploaded before the end of the period and were sent to her for reference only.

130. We find that Ms Moore should have discussed the issue of the claimant's professionalism with her rather than inserting the comment in the Probation Review. However, had a male person with childcare responsibilities conducted himself in a similar way on 9 November 2018, it is difficult to see how Ms Moore could avoid a reference to that person's professionalism being compromised. It was the tone and manner in which the claimant spoke to her, as her line manager, that gave rise to the issue of her professionalism being compromised.

131. We find that the respondent's policy does not allow for the person conducting the review to pre-populate the form. The line manager would meet with the employee to discuss their performance and at that stage the

forms would be completed in the presence of the employee and then sent to the employee for their comments. This was the case October and November 2018. (304)

132. We accept Ms Moore's evidence that as the claimant was due to go on annual leave returning on 8 January 2019, there was some urgency in completing and uploading the documents on the respondent's system.

133. "Compromise her professionalism" was a fair comment to make on the claimant's conduct towards Ms Moore, on 9 November 2018 and was not included to discriminate her because of sex and/or race or to harass her related to either sex or race.

134. Contrary to what the claimant had suggested the comment was not an allegation of misconduct and Ms Moore did not view it that way.

135. By 7 January 2019, it was Ms Moore's view that the issues in relation to the two student placements at Cruise Hill Reptiles in respect of travel and work times were resolved. (318-320)

136. On 8 January 2019, the claimant's first day back at work, she emailed Ms Verde giving her consent to the confirmation of the two student placements at Cruise Hill Reptiles. (321)

137. The claimant also emailed Ms Verde providing the rest of the names and placements of the students including the two Cruise Hill Reptiles placements. (322)

138. There was some concern expressed about Cruise Hill Reptiles placements as the company could not be contacted because they did not have a landline and the owner used his mobile phone. It was important to clarify the placements due to start on Monday 14 January 2019. Ms Moore decided on 11 January to drive to the store and to call the claimant from there to provide her with further information to be conveyed to the students. (336)

139. On 11 January 2019, the claimant sent an email to Ms Moore complaining about the conduct and attitude of Ms Verde.

> "Hi Sheryl.
>
> I wanted to give my brief account of what happened today:
>
> I called Maria this afternoon at 14:02 to request more details for one of the placements she had sourced. As the students were becoming anxious because they were unsure of what to wear and what their responsibilities would be etc. Maria seemed to be annoyed by my request and said the full details were in the email she had sent out. At this point I informed her that the details I was requesting were not present in the email. Maria said she could send the details across at some point in the day, at which I said my students leave at 3:15pm so would need it before this time. One of my students in question had to pick his

> younger brother up from school so would be unable to wait behind. Maria was raising her voice and her tone was quite rude, so I said to her there was no need to be rude, to which she responded even more rudely and called me 'love'. This term I appreciate can be a form of endearment or can be used aggressively. In this case it was the latter, as Nicola was sitting about 7 metres away from me and could hear Maria's voice, as did another teacher who was present. I said to Maria, I am not her love as I found her tone of voice aggressive and offensive, at this point Maria said she is not dealing with me anymore and hung up the phone. When she hung up, Nicola instructed me to log that call straight away and to inform Sheryl. She said she could hear her from where she was sitting and the other teacher agreed. She said you was not even rude.
>
> This is not the first time I have encountered a lack of professionalism and rudeness from Maria and have documented incidences in the past. However, I felt there was an improvement when we returned from the Christmas break. I find it very disconcerting that the our students could potentially suffer due to the nonchalant sense I get from this provider. Having left our student placement confirmations so 'late in the day' is concerning. Unfortunately, there has been issues with receiving the full information from 5e as Maria was unaware we do not have the same access as them to Solutions 9. I flagged this issue with Terry on, Wednesday 9 January, and he kindly agreed to send me the information as Maria felt it maybe an onerous task, given her workload, to send me the full placement details for each student. Unfortunately, I was trying to contact Terry today but had forgotten he doesn't work on Fridays and Maria has been having problems receiving my emails.
>
> I am happy to continue working with Maria for the purpose of hoping our students would receive an excellent experience for the services we provide. However, I realise this could only happen if their systems and approach improves as a company.
>
> Warmest regard" (341)

140. The claimant alleges that having set out her concerns in the above email, she was ignored, suffered the detriment of being unsupported, victimised and given an initial "satisfactory" score on 15 January 2019.

141. We have already referred to the fact that Ms Moore, in order to assist the claimant and to facilitate student placements, visited Cruise Hill Reptiles. It is difficult to see upon what basis the claimant felt unsupported. What is also interesting is that the claimant alleges that Ms Verde had demonstrated a lack of professionalism and was aggressive and offensive during their conversation, yet when Ms Moore criticised the claimant for her tone and manner during their conversation on 9 November 2018, and of having "compromised her professionalism", the claimant accused her of discriminatory conduct.

142. On 13 January 2019, Ms Noelle Doona, Head Teacher, Hendon School, emailed Ms Moore and the claimant. She wrote:

> "As you know I wanted to withdraw at the end of the summer term but after discussions decided to see what would happen last term.

> I am really disappointed and feel as a school we are being penalised for not signing up to Youth Talent this term after the serious safeguarding issues last year. I wasn't confident that this time would be any better and many of the students are very negative about their experiences so as a school we made the decision not to proceed.
>
> I appreciate with Danny leaving and the recruitment/DBS process that needed to be undertaken, we spend over four months without an advisor in school. Sonia has spent 4 days at Hendon, 2 day working in the office/other schools, one day annual leave and one day where I was off site at a funeral, she was going to work in the office but in her email she was ill, these things happen as well as I know but I feel we haven't had equitable access to support compared with some of the other schools, who are sending students out.
>
> However if the advisors are being pulled into Youth Talent and with the end of the programme (beginning or end of March, don't remember?). I don't feel we can really move forward with the key things we would have liked to have been completed:
>
> 1. Opportunities Handbook, Sonia has said that this is not really how employers want to engage and hadn't been able to get the information. Sonia has discussed producing a list of what individual schools had done, so that discussion /ideas could come from this, not sure where we are with this.
>
> 2. Apprenticeship plan to help support students with preparing of apprenticeships an potentially bringing in speakers.
>
> I think it's time to call it a day. We only have 1 more speaker coming in, so this is easy to manage and of course I will honour hosting the meeting. If you want to send in the paperwork after the meeting, I will complete and send it back. I am at a meeting in a few weeks with Sunny about the CEC.
>
> Thanks for everything"

(343)

143. The following day, Ms Moore emailed Ms Doona inviting her to give her a call to discuss the content of her email and a way forward. (344)

144. In response to the claimant's email to Cruise Reptiles on 14 January about whether the two placements attended on that day, the owner responded the following day saying that they did attend but were scared of snakes and that they were using the garden centre toilets. They had 30 minutes lunch break the previous day. (350-351).

145. On 15 January 2019, Ms Moore replied to Ms Doona's email. She stated that she tried unsuccessfully to speak to her by phone, and wrote:

> "In order to continue to support the team now that Farah has gone, Sonia will have to take over the support of an additional 20 students from Saint Ignatius College. Her time in the schools that have either completed work experience (ie Nightingale Academy students are on placement this week and next), or not

> participated with the Youth Talent Referrals (Alec Reed Academy and the Totteridge Academy) will be significantly reduced. We will however, be maintaining light touches in all of our schools regardless.
>
> Sonia is very keen however to continue to support Hendon School with the Apprenticeship Club, as she assumed she would do this term. I appreciate the communication issues that you raised last term and I have discussed with Sonia the need to keep you informed each week of her whereabouts on Hendon's designated school days and the progress of the work she is completing. If you would be happy for Sonia to continue to work with you, we would be open to suggestions of the frequency that you might like her in the school. We are prepared for this to continue on a weekly basis if that suits.
>
> I acknowledge that there has been a few unfortunate situations with Hendon School since the beginning of the Young Careers and we would like to do what we can to ensure that we end on a positive note.
>
> We would appreciate the opportunity for Sonia to continue to work with you and look forward to your response."

(355)

146. There was no evidence produced that Ms Doona was negative to Ms Moore's suggestions.

Sexual assault at Cruise Hill Reptiles 24 January 2019

147. On 24 January 2019, at 13.07, the claimant was in the company of Ms Doona when she became aware of an incident of sexual assault involving a placement, a young female student at Cruise Hill Reptiles. She emailed Mr Tom Millar, Director, at 16.49, informing him about it and that the student from Nightingale School, "was badly shaken and completely distraught". She stated that she had concerns about the provider, 5e. She, the claimant, was "utterly devastated that this has happened despite the alarm bells which were raised". She believed that it could have been avoided as she raised her concerns with Ms Moore in an earlier email sent 10 December 2018, which she forwarded to him. (394-396)

148. At 2:41pm on 24 January 2019, Ms Karen Foster, the respondent's safeguarding lead, sent an email to Mr Morgan, Ms Murrell, and Mr Millar. She also copied in Ms Aliberti-Burling. It was in connection with the work experience safeguarding incident. She stated that she had spoken to Ms Aliberti-Burling about the incident and that she and Ms Moore confirmed that the student in question had returned to school and was being met by her father and the police. The school had been informed that the police, social care, and the school's Designated Safeguarding Lead, all met with the student and a statement had been obtained. The person was advised to contact Ms Foster directly. This was to discuss whether or not there should be a referral to the Local Authority Designated Officer (LADO). Ms Foster confirmed that Ms Aliberti-Burling had obtained a health and safety risk assessment which was completed by the employer in question and that they had serious concerns about the supervision of the student. Ms Foster also

set out points to be actioned by Ms Aliberti-Burling, one of which was to have an investigative meeting between her, Ms Foster, and Ms Moore to look at the processes the respondent went through and the processes followed by cluster staff who validated that all the necessary safeguarding checks had taken place prior to the student attending placement. Ms Foster also wrote that she had suggested to Ms Aliberti-Burling that there should be some communication with the parents of the other student on the placement from that school to let them know that there had been an incident which was being investigated. (393)

149. At 16:49 on the same day, the claimant emailed Mr Millar stating the following:

> "Hi Tom,
>
> I hope this email finds you well.
>
> Firstly, my apologies that I am contacting you in such dreadful circumstances.
>
> Unfortunately, today one of my students was sexually assaulted at her work placement; I took the call from her at 13:07 this afternoon. She was badly shaken and completely distraught by the incident. The police are involved and are dealing with the situation at the student's school, Nightingale Academy.
>
> It is unfortunate that the provider which organised the work experience was one I had huge concerns about and on a number of occasions, raised these concerns with my management but ultimately was informed that we need to keep the relationship happy because we are nearing the end of our contract. I am utterly devastated that this has happened despite the alarm bells which were raised as I wholeheartedly believe this could have been prevented on my watch.
>
> Below is an email I had sent to my manager raising my initial concerns in December before our students were sent out on Monday 14 January.
>
> I send this email to hopefully highlight our need as an organisation to vigorously consider the type of providers we do business with and the impact it could have on the services we provide, or hope to provide and also on our reputation.
>
> Warmest regards" (394)

150. Ms Foster emailed the claimant the following day, 25 January, at 3:17pm, copying Ms Aliberti Burling and Mr Liam Taylor, thanking her for her call on that day. She stated that she would be having further conversations with her and others regarding the incident. She then wrote:

> "I will be in touch with you in due course to discuss the details of the incident which were disclosed to you by the young person, and also to arrange a time for me to meet with you as part of my investigation into the management of all parties involved.
>
> Take care, and speak to you soon." (397)

151. On the same day, at 7:51 in the morning, Mr Tom Millar, Director, emailed the claimant thanking her for her email which he proposed to share with Ms Aliberti- Burling and Ms Foster, who were conducting a review along the lines the claimant had recommended. He stated that her own work experience placement brokerage with the respondent had given her an extra insight into the process and requirements and that she had spotted the problem earlier than anyone else. He further wrote that the incident was "clearly terrible" but thankfully the young person was now safe, that the police were involved and that several safeguarding protections had been put in place. (398)

152. Ms Foster did not prepare her report until 13 March 2019, sending it to Mr Millar. She wrote that Ms Moore had visited the student in the week of the incident and confirmed what the claimant told Mr Moore. The claimant had referred the matter to Ms Foster on 25 January 2019 and believed that her initial concerns were not dealt with properly by Ms Moore or escalated in line with the respondent's safeguarding processes as she viewed the matter as a safeguarding concern. Ms Foster's finding in relation to this allegation by the claimant that she had highlighted these concerns to Ms Moore on 15 January 2019, which were not dealt with from a safeguarding perspective, was that Ms Moore had confirmed in her account on 31 January 2019, that she was made aware of the concern relating to the lack of toilet facilities on 15 January 2019 and had visited the student on 16 January 2019 who confirmed the lack of toilet facilities.

153. The matter which Ms Foster investigated was whether the information provided by the claimant on 15 January would have led the respondent asking 5e to remove the student from the placement due to there being a safeguarding risk that had not been mitigated. She met with Ms Moore on 8 February, who said that she visited the student on 16 January and had already arranged to meet with her at school to give her some Travelcards as travel costs was a concern highlighted by her parents and by the claimant. While at the school Ms Moore asked the student about the toilet facilities and she said that the student told her that she was unable to use them on the first day as she did not know where they were. However, this had been rectified as the employer had told her that the toilet facilities were in the shop next door and that this was where all staff at the shop went. The student did not appear to be concerned about this and said that she was enjoying her placement. Ms Moore said that she did not speak to the employer, Cruise Hill Reptiles, about the concerns expressed in relation to toilet facilities as the student did not feel that she was at risk. She acknowledged that she should have spoken to 5e to confirm whether they were content with the arrangements.

154. With regard to escalating the matter internally, Ms Moore said that in hindsight she should have also mentioned it to her manager, Ms Aliberti-Burling for her to advise on whether any further action was needed.

155. In relation to whether there was a deemed potential safeguarding risk, Ms Moore said that at the time that the claimant reported to her, she, the

claimant, did not say that she believed it was a safeguarding concern or that the claimant was at risk. Further, when she spoke to the student, she did not feel that there were any safeguarding concerns as the student said that she was happy with the placement and was not concerned about having to use alternative toilet facilities.

156. In Ms Foster's findings and conclusions, she held that Ms Moore did not wilfully neglect to escalate the issue. At the time there were almost 100 young people out on, or about to go on, placements and the priorities for the team were to ensure that everything was in place to allow this to happen as seamlessly as possible.

157. Ms Foster then wrote:

> "5e are the provider responsible for ensuring that all employers sourced by themselves are appropriate, and that the relevant checks are done prior to any young person starting their placement. This takes the form of a risk assessment document which should be completed by a member of 5e staff.
>
> Having reviewed the risk assessment completed for this employer, no reference has been made to state that employees (and therefore the work experience placements) have to use toilet facilities in an alternative venue – this should have been noted on the form. As 5e are not part of Reed's supply chain, this is not information that we would be made aware of as a matter of course.
>
> As Reed have no direct responsibility regarding how 5e vet and check their employers, I am unable to verify whether they had been made aware of the lack of onsite toilet facilities by the employer and whether this would have impacted on them using this employer; fundamentally they are responsible for assuring themselves that the placements were where young people would be sent as sound.
>
> Without STUK carrying out their own internal investigation I am unable to conclude whether the passing on of this information to 5e would have resulted in the placement not taking place. However, it is now clear to SM that any information provided to her that identifies potentially that an employer is not adhering to basic induction processes, should be reported to the provider, as it is their responsibility to address them with the provider in line with their risk assessment process. SM also knows that internal management also need to be kept in the loop so that additional support can be given as and when necessary."

158. In relation to Ms Foster's recommendations, she stated:

> "5.1 Based on the investigations and my findings, I consider that the matter is closed, and no further action needs to be taken with regards to SM's actions.
>
> Advice has been provided by KF with regards to what to do going forward if situations arise involving an employer, which SM understands and agrees with." (487-490)

159. On 25 January 2019, before she was due to start work, the claimant called Ms Moore to inform her that she had hot water boiler problems and was unable to attend work as she was waiting for an engineer. She would,

however, be able to work from home and attend the meeting she had been invited to in the afternoon provided her hot water boiler issues were rectified.

160. In the afternoon Ms Moore emailed the claimant to ask her to complete a safeguarding alert notification form in accordance with the respondent's safeguarding procedure. (399)

161. The claimant called Ms Moore and explained that she had attempted to make her way to the office to attend the meeting but became very upset on the train and had to terminate her journey. She was asked where she was, to which the claimant explained that she was on the train on her way home. She was asked whether she wanted Ms Moore to stay on the phone until she arrived home. She replied saying that she would be okay, and that it was not necessary. Ms Moore then suggested that she should give her call when she arrived home. Later in the afternoon, upon arrival at her home, she called Ms Moore and enquired whether her pay would be affected if she did not return to work. She was advised that as she was still on six months' probation, she would not be entitled to company sick pay. The claimant queried this as the reason she was unable to go into work was due to the effects of the sexual assault incident on her. Ms Moore undertook to contact human resources to clarify the issue and would revert to her. She emailed Mr Taylor later in the afternoon seeking clarification of the claimant's position in relation to sick pay. (408)

162. On Monday 28 January 2019, the claimant called Ms Moore at 08:54 to inform her that she was not going to be in work and would be contacting her doctor to arrange an appointment. She explained that she had not been sleeping well, nor coping since the sexual assault incident.

163. On 29 January 2019, she called Ms Moore in the morning to inform her that she would attempt to make it into the office but could not confirm what time she would be there as she was still not feeling well. She said that she had a doctor's appointment and would try to make it to her Willesden office. She was instructed by Ms Moore to let her know when she would be able to attend. The claimant arrived at work at 10:23 in the morning and left at 03:20 in the afternoon to attend a doctor's appointment. (445)

164. At 09:03 in the morning Ms Moore emailed the claimant's school contact to inform her that she was ill and would not be attending school that day but would be able to respond to queries by email. (415)

165. On 30 January the claimant called in sick. The following day she called Ms Moore at 09:20 in the morning to inform her that she would attempt to make it into work but was unable to confirm what time she would be in. Ms Moore instructed her to let her know when she did feel well enough to attend during the day. She was asked whether she had been in contact with the student from Nightingale Academy or her father, to which the claimant replied that she had been and was in regular communication with them. Ms Moore explained that as the incident was now under police investigation, the

respondent should not be communicating with the victims and asked that the claimant should no longer contact them until the respondent had further instructions. According to Ms Moore, the claimant was angry at this point and spoke to her very harshly and directly. The claimant was concerned that the respondent had not been in contact with the victim or her father and was disgusted that Ms Moore was making such a request of her. Ms Moore tried to explain that she was not aware of the communication between either the victim, the school, or the police. The matter was out of her hands and was being dealt with by the safeguarding officer. She was letting the claimant know what information was passed on to her. The claimant then said that she was embarrassed to be part of the organisation and felt that it was trying to shirk responsibility for the awful incident she felt could have been avoided. The conversation ended as the claimant was unhappy speaking to Ms Moore.

166. In evidence Ms Moore said that it was not her intention to exclude the claimant from the investigation into the alleged sexual assault because she had made alleged protected disclosures, as the claimant claimed. Rather, the alleged sexual assault referred to took place at a work experience placement that the respondent neither arranged nor managed. It did not carry out any investigation into the alleged assault itself and any investigation was dealt with by the police. The respondent did, however, carry out its own enquiries to check that its contractual requirements and internal processes had been followed and concluded that they had been. It did not require the claimant's input nor Ms Moore's into those enquiries as the respondent had no first-hand information to give about the alleged assault.

167. Ms Moore then called Ms Aliberti-Burling to inform her of the conversation she had with the claimant and that she felt that the relationship had broken down significantly. She did not feel that she was in a position to continue to line manage the claimant. Ms Aliberti-Burling agreed to take over that responsibility and would inform the claimant of her decision. There was no further interaction between Ms Moore and the claimant.

168. On 5 February 2019, Ms Moore forwarded the claimant's annual leave request to Ms Aliberti-Burling and to Mr Taylor. As Ms Moore was no longer the claimant's line manager, Ms Aliberti-Burling responded and notified Ms Moore that the claimant's leave on Monday 11 February 2019 had been approved. (455-457)

169. The claimant alleged that she had been viewed by Ms Moore and by Ms Aliberti-Burling as a troublemaker. They both denied this and stated that the claimant was acting professionally in raising issues to do with the placements and the sexual assault incident. From our findings of fact, it appeared to us that these two managers had been actively involved in assisting the claimant in the course of her work and personally. There was no evidence that they saw her as a troublemaker.

170. In relation to Ms Aliberti-Burling's operational area of responsibility, she was the safeguarding lead, but Ms Foster was the respondent's safeguarding lead.

171. The claimant wanted to submit evidence to external bodies to assist with criminal investigations into the sexual assault and sought advice from Mr Taylor. He replied on 11 February 2019, referring to the Co-Member Handbook which states that staff were "instructed to seek approval from a Board director prior to contact with or disclosure of information to the Police etc." She was advised to refer anyone who should contact her to Mr Millar. Mr Taylor also told her that he was leaving the respondent on 12 February 2019. (466)

172. On 4 February 2019, she emailed Mr Taylor in reply to his question about what she was seeking as an outcome of her grievance. She replied that she would be meeting with her lawyer for advice and would respond by 11 February. She would like the respondent to accept liability. In response to his request that any new evidence should be sent to him, she stated that she provided email correspondence and "Companies House status print out for Crews Hill Reptiles, which potentially supports my claim of negligence." (453)

173. The correspondence referred to was not from the claimant but between Ms Moore and Ms Verdi confirming that a particular school was happy for students to attend a work placement without employee liability insurance.

Return to work form

174. During the second week in February 2019, the claimant returned to work. We find that as a matter of procedure she was required to complete a sickness absence form. A Return to Work form is only available to managers once the sickness absence form is submitted and approved. This procedure is contained in the respondent's Co-Member Handbook, paragraph 13.12. (537D)

175. The claimant told the tribunal that, at the time, she was not in a fit state to complete the form as she had returned from sick leave. We have some difficulty in understanding her because, on 31 January 2019, while on sick leave, she lodged a very detailed grievance covering 28 pages in which she produced screenshots, emails, and commentaries on events from 11 July 2018 to January 2019. (416-444)

176. A Return to Work form was, accordingly, not completed by Ms Aliberti-Burling. Although the claimant alleges that she was told by Ms Aliberti-Burling that she would have to return to the schools following the sexual assault, Ms Aliberti-Burling believed that what she may have said was that the claimant would be expected to continue her job role and return to her schools to manage her workload. This would have had the effect on the claimant of having to return to her schools. However, she based herself at the Willesden office following the sexual assault. Ms Aliberti-Burling and Human Resources later agreed that she should continue to carry out her work from the office rather than attend her schools.

The claimant's grievance on 31 January 2019

177. It is very difficult to reconcile the comparatively short period of the claimant's employment by 31 January 2019, four months, with such a lengthy grievance. It was submitted after she had been told that she would be dismissed on grounds of redundancy. Her grievance was initially considered by Mr Taylor who spoke to her. She asked that her grievance be dealt with in writing. It was sent to Mr Dan Addison, Senior Operations Manager, who was invited to hear it.

178. In addition to the grievance, Mr Addison was sent additional documents by the claimant on 4 February 2019. He told the tribunal that as the grievance was lengthy, he found it difficult to extrapolate the main points. He narrowed the grievance down to: issues with her managers, Ms Moore, and Ms Aliberti-Burling; the application process in relation to the new LEAN contract; and issues surrounding the safeguarding incident. He was able to investigate the managerial and procedural points raised by her. He obtained from human resources her Probation Review and PAR documents.

179. The safeguarding issue required more investigation as he had not worked on the Youth Careers Contract. He spoke to Ms Foster and to Ms Aliberti-Burling for an understanding of the process involved; the respondent's contractual obligations and how its role fitted in to the wider ESFA contract.

180. He was satisfied that it was the provider's responsibility, 5e, to undertake all checks on the businesses used within the contract to ensure they were suitable, and the facilities were adequate. He found that no-one in the respondent could have foreseen or prevented the events in January 2019, therefore, he did not uphold that aspect of the grievance. He also did not uphold the grievance in respect of the concerns raised in relation to Ms Moore and Ms Aliberti-Burling.

181. He emailed the claimant his outcome on 8 February 2019.

182. In relation to the allegation that her movements were being scrutinised on 9 November 2018, by her line managers, she stated that she felt "micromanaged, "checked-up on", "victimised", "bullied", "harassed" and "undervalued", Mr Addison wrote:

> "Having reviewed all of the examples within your document and taking on board your anecdotal feedback from previous co-members, there is nothing that suggests to me that this could be construed as bullying, harassment or victimisation. The question of micromanagement is one of subjectivity and in itself is a legitimate management approach in certain circumstances.
>
> It is also important for me to say that it is not unreasonable for a line manager, or their senior, to want to establish the whereabouts of a co-member – especially one who works remotely – when they have been unable to make contact with that individual throughout the course of the day. Given that you were a relatively new member of the team it is perfectly valid for manager to monitor your whereabouts

> and activities, not only from a performance management perspective but also from a duty of care.
>
> In regards to your concerns about your PAR and probation review, the interpretation of both of these documents is subjective and, again, I cannot see anything to support your allegation of bullying, victimisation or harassment. It is key to note that both a PAR and probation review should be a two-way process and in any situation there could be degrees of disagreement between a line manager and an employee. In this instance it is clear that you each have different viewpoints but, again, this does not indicate to me an agenda to undermine or discredit your character.
>
> It follows, therefore, that I do not uphold this part of your grievance complaint."

183. With regard to the application of the LEAN contract won by the respondent, Mr Addison wrote that the claimant was specifically recruited to work on the Careers Clusters Contract until the end of its delivery. She had been in the role for a matter of weeks and it meant that "a transfer to the LEAN contract was not an opportunity that could not be considered for you at this time". Although there is a double negative, it was taken to mean that it was not in the interests of the respondent's business to entertain an application from the claimant at that time. Mr Addison further stated that it was clear that Ms Aliberti-Burling would have supported her application to transfer to the LEAN contract once she had "gained further experience and once the Careers Clusters Contract could operate with a lower headcount".

184. In terms of the recent decision to terminate her employment while on probation, Mr Addison wrote that this was the result of an unsuccessful round of bidding on a number of contracts in London. It was unreasonable for the claimant to suggest that the respondent knew that her Careers Clusters role would no longer be required when it decided not to allow her to transfer to the LEAN contract. The selection criteria applied to reduce the headcount on the Careers Clusters Contract was based on length of service only. He further stated that the significant reduction in headcount across all London contracts was unexpected and that her role was only one of many affected. He, therefore, did not uphold that part of her grievance complaint.

185. In relation to her safeguarding concerns, he was satisfied that no-one within the respondent could have foreseen or prevented the events alleged to have taken place on 24 January 2019.

186. Her other concerns were not upheld. (462-465)

187. The claimant appealed on 8 February 2019, against the grievance outcome and submitted her detailed grounds. One of the matters raised was the respondent allegedly experienced a safeguarding concern the previous year. She wrote, "…when the same provider in question 5e, sent their student to a placement where they were made to clean toilets, thus handling dangerous chemicals." At the time the claimant did not invoke the whistle-blowing policy. (467-477, 471)

188. Her appeal was dealt with by Mr Nick Morgan, Regional Director, on 22 February 2019. The claimant attended. Ms Lavania Martin of Human Resources, was also present and took notes. The claimant was asked to go through her grounds of appeal and what specifically she did not agree with in the grievance outcome. She did not bring any new information to put before Mr Morgan.

189. The main points of her appeal were: her relationship with Ms Moore and Ms Aliberti-Burling; the fact that she felt she was not given an opportunity for promotion due to her gender and race; that the respondent was liable for the safeguarding incident in January 2019; she felt that the comments in her PAR were unfair; and that sections of the PAR were pre-populated before the meeting. During the meeting human resources confirmed that pre-populating comments did not constitute a policy breach. It was, however, not best practice as it did not encourage engagement in the process. Mr Morgan recommended that Ms Moore and Ms Aliberti-Burling should refrain from pre-populating those documents.

190. The claimant again went over the incidents on 9 November 2018, involving Ms Aliberti-Burling calling the Willesden office enquiring into her whereabouts. She asserted that it amounted to micromanagement. She was asked whether it was reasonable for a manager to know her team members' whereabouts if she expected them to be in a certain place at a certain time and they were not there. The claimant felt very emotional and took the view that she had been treated unfairly. Mr Morgan felt that it was not unreasonable behaviour as Ms Moore needed to confirm details to the school by the end of the day and it was normal practice for managers to check with their staff from a wellbeing perspective when there were urgent matters. This was even more important as staff worked remotely, either in schools or in different offices.

191. The claimant felt that she had not been given opportunity for promotion due to her gender and race but was unable to provide to Mr Morgan evidence in support of this claim. She felt that an Asian man got the role of Senior Enterprise Co-ordinator but he had not applied for it. It was explained that the two candidates who got the role were offered them as they had more experience in the business and their current roles at the time could be absorbed by other team members who remained on the contract. This was not the same in her case. The reason why she was not being released from her role and advised to wait until April 2019, was because she had only been employed for a month as a Careers Adviser on the Careers Contract. There was the need for that role to be fulfilled to efficiently deliver on it. It was a business decision applicable to anyone in that situation.

192. In relation to the safeguarding incident, Mr Morgan came to a similar conclusion to that of Mr Addison, namely that the respondent did not source the roles under the contract, as it was down to the provider, 5e, to ensure that all relevant checks had been carried out.

193. On 20 January 2019, Mr Morgan emailed his outcome decision to the claimant. He concluded that the grievance and the grievance appeal were fully and thoroughly investigated. The claimant's grounds were not upheld. (482-483)

194. She made a lot of criticisms of the respondent's lack of diversity at senior management level of black Caribbean and black African staff. We find that Mr Nii Thompson, a black African-Caribbean person, who initially joined the respondent in 2015 as a supply chain manager, returned and was re-employed in 2019 as a Programme Director for the West Midlands. In 2021 he was successfully promoted to Regional Director for London. The claimant alleged that this evidence had been manufactured, but we are satisfied that the Mr Thompson does exist and occupies a very senior position.

195. We further find that it was only after the claimant had been told that her employment was due to terminate on 22 February 2019 on pay in lieu of notice, did she raise for the first time in her grievance matters pertaining to her employment alleging sex and race discrimination and public interest disclosures.

The termination of the claimant's employment

196. On or around 20 December 2018, Mr Morgan met with Mr Richard Stacey, Head of Human Resources, to outline the need to make reductions in headcount across the London operational teams as several contracts were due to come to an end in 2019, including the Young Careers Contract.

197. The practice of the respondent is to first identify those "Co-member", or staff, who are at risk and this included those with less than two years' service.

198. On or around 14 January 2019, twelve staff members were identified as being affected and at risk of termination because they had been working for the respondent for less than 2 years. This included the claimant.

199. Mr Stacey was responsible for drafting redundancy plans which were finalised on 22 January 2019 and sent to the Board of Directors for approval and were approved on that day. The claimant was the only one on the Young Careers Contract who had less than two years' service with the respondent. The other eleven affected employees worked on other contracts. All were not invited to any consultation meetings due to their length of service. (371-385)

200. Apart from the claimant, of the eleven who were made redundant, two were Black-Caribbean; one Asian-Indian; one Asian-Bangladeshi; four Black-African; two White European; and one undisclosed. In relation to gender, there were eight females and four males in this group of affected employees.(376-378)

201. The claimant failed to attend her individual meeting with Ms Aliberti-Burling on 25 January 2019, to discuss the reasons for the termination of her employment because she had called in sick. Mr Taylor, therefore, communicated that decision to her on 28 January 2019, and advised her that the termination was with notice. On the same day, he sent the termination letter that was prepared by Mr Stacey. Mr Stacey wrote:

> "**Termination of employment**
>
> This letter is to confirm what has already been verbally communicated to you today by Liam Taylor, HR Business Partner. Unfortunately we will be terminating your employment as Careers Guidance Adviser due to the Young Careers programme ceasing delivery in March 2019.
>
> Notice of termination runs from today with your notice period of 7 weeks 4 days ending Friday, 22 March 2019. You will continue to be paid up to and including Friday, 22 march 2019 and any accrued holiday not taken will also be paid to you up to and including this date.
>
> If you wish to discuss any aspect of this letter, please do not hesitate to contact me."
>
> (409)

202. We find that the decision to dismiss the claimant and the other eleven, was taken by Human Resources and Operations, subsequently approved by the Board. It was not taken by Mr Taylor and he was not aware of the claimant's alleged public interest disclosure to Ms Moore on 10 December 2018 except those alleged to have taken place on 31 January 2019, the grievance, and on 4 February 2019, the additional documents in support of the grievance. He left the respondent on 12 February 2019, before the claimant lodged her grievance appeal.

203. We find that the decision to dismiss by reason of redundancy, affected a racially diverse group of employees and both sexes though a higher number of women.

204. Mr Stacey only became aware of the claimant's alleged protected disclosure email dated 10 December 2018 from the claimant to Ms Moore, on 31 January 2019 when he was forwarded her grievance which made reference to the email. (271-272)

205. The claimant alleged that she was discouraged from applying for a promotion for the Enterprise Co-ordinator role under the LEAN contract, in February 2019, by Ms Aliberti-Burling who allegedly said to her "Who told you there was a vacancy". This was allegedly said at a meeting during which the claimant submitted her curriculum vitae for the position. Ms Aliberti-Burling could not recall making the comment but do recall having two separate meetings with the claimant to discuss the requirements of the role. The vacancy, we find, was not a secret as it would have been posted on the respondent's intranet and it was widely known. We have already made

reference to the circumstances pertaining to Ms Samantha Lord's application for the post on 6 March 2019 and it was dealt by an independent assessor. She was on the central London NEET contract and not the Young Careers contract, therefore, not an appropriate comparator.

206. It would seem to this tribunal that if the claimant was discouraged from applying, it is at odds with Ms Aliberti-Burling having two meetings with her to discuss the requirements of the role. The meetings were to assist her rather than to discourage her. As we have stated earlier in this judgment, the claimant withdrew her application. We do not accept Ms Aliberti-Burling made the comment the claimant attributes to her.

207. Ms Aliberti-Burling did invite the claimant in an email dated 23 February 2019, to a meeting on 25 February, to discuss the restructure as she was instructed to do by Human Resources at a time when she was sick leave. This had nothing to do with any alleged public interest disclosures but was to inform her that the decision was taken to terminate her employment.

208. We find that the claimant's last day of employment was on 22 March 2019, as contended by the respondent.

Submissions

209. We heard detailed submissions by the claimant and by Mr Kirk, counsel on behalf of the respondent. Their submissions were in writing and they spoke to them during their address to us. We do not propose to repeat their submissions herein, having regard to Rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended. We have also taken into account the authorities they have referred us to.

The law

210. In relation to public interest disclosure, we have taken into account sections 103A and 47B Employment Rights Act 1996 on dismissal and detriment.

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

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

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

213. Section 43B defines what is a qualifying disclosure. It provides,

> "(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following --

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."

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

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

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

216. In the case of Fecitt and Others and Public Concern at Work-v-NHS Manchester [2011] EWCA Civ 1190, the Court of Appeal held that the causal link between the protected disclosure and suffering a detriment under section 47B, is whether the protected disclosure "materially influenced", in the sense of being more than a trivial influence, the employer's treatment of the whistleblower.

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

215. Section 103A ERA provides that,

> "An employee who is dismissed shall be regarded for the purposes of the Part as unfairly dismissed if the reason or principal reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

216. It is for the employer to prove the reason for the dismissal. Where the employee lacks the relevant qualifying period of service the burden will be on the employee to prove the reason for the dismissal was the making of a protected disclosure, Kuzel v Roche Products Ltd [2008] ICR 799.

217. A claim under section 47B must be presented within three months beginning with the date of the act or the failure to act, section 48(3).

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

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

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

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

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

221. If a detriment claim is well-founded the tribunal can make a declaration to that effect and award compensation, section 49(1) Employment Rights Act 1996. The claimant is under a duty to mitigate, section 49(4), and the tribunal can consider whether the claimant either caused or contributed to the act complained of, section 49(5). Compensation is assessed on the same basis as a discrimination claim and can include an injury to feelings award, Virgo Fidelis Senior School v Boyle [200] IRLR 268.

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

> "(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

223. The protected characteristics are set out in section 4 EqA and includes race and sex.

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

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

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

> "(1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred."
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

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

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

228. The Court held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status, for example, sex and a difference in treatment. Those bare facts only indicated a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

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

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

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

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

233. The tribunal could pass the first stage of the burden of proof and go straight to the reason for the treatment. If, from the evidence, it is patently clear that the reason for the treatment is non-discriminatory, it may not be necessary

to consider whether the claimant has established a prima facie case, particularly where he or she relies on a hypothetical comparator. This approach may apply in a case where the employer had repeatedly warned the claimant about drinking and dismissed him for doing so. It would be difficult for the claimant to assert that his dismissal was because of his protected characteristic, such as race, age, or sex. This was approved by Lord Nicholls in Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, judgment of the House of Lords.

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

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

236. Sections 9 and 11 EqA defines the protected characteristics of race and sex.

237. Harassment is defined in section 26 EqA as;

> "26 Harassment
>
> (1) A person (A) harasses another (B) if-
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of-
> (i) violating B's dignity, or
> (ii) creating and intimidating, hostile, degrading, humiliating or offensive environment for B"

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

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

(1) the respondent had engaged in unwanted conduct;

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

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

(4) a respondent might be liable on the basis that the effect of his conduct had produced the proscribed consequences even if that was

not his purpose, however, the respondent should not be held liable merely because his conduct had the effect of producing a proscribed consequence, unless it was also reasonable, adopting an objective test, for that consequence to have occurred; and

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

240. As regards victimisation, section 27 EqA states;

> "27 Victimisation
>
> (1) A person (A) victimises another person (B) if A subjects B to a detriment because-
>
> (a) B does a protected act, or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act-
>
> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;
>
> (d) making an allegation (whether or not express) that A or another person has contravened this Act."

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

Conclusions

242. The claimant's claims are automatic unfair dismissal for making a public interest disclosure; public interest disclosure detriments; direct discrimination because of sex; direct discrimination because of race; harassment related to sex; harassment related to race; and victimisation.

243. In relation to the public interest disclosure claims, she relies on the qualifying disclosure of health and safety of any individual, has been, is being, or likely to be endangered, s.43B(d) Employment Rights Act 1996.

We now consider those matters in the list of issues which is at the end of this judgment attached as an appendix.

244. Her claimed qualifying disclosures are set out in paragraph 3 of the list of issues. In relation to paragraph 3(i), we have been referred to the claimant's email to Ms Moore dated 10 December 2018 in which she raised concerns about 5e. The matters raised were the delay in finding appropriate placements for the students and the conduct and attitude of Ms Verde. This was not disclosure of information which showed that the health and safety of individuals had been, was being, or likely to be, endangered. Reference to the students' travel not being accompanied by adults to their placements, as being a safeguarding concern, the claimant did not provide further details of the threat to the placements' health and safety. 14 year old students can travel to places on their own. We were not taken to any known or perceived risks to the students on their travels to and from their placements. Applying Cavendish and Eiger Securities, we conclude that the claimant's concerns about travel does not satisfy the requirements of disclosing facts from which an employer is likely to take the view that necessary action is required. Her concerns do not reach to level of being a qualifying disclosure.

245. The same applies in relation to placements not matching students' referral forms or the schools' requirements for two week placements in line with the service level agreement. This does not raise any discernible health and safety issues and does not disclose information that the students' health and safety were endangered, section 43B(1)(d).

246. A "nonchalant approach" to finding placements on time amounts to nothing more than the claimant raising a concern about the dilatory and carefree way Ms Verde conducted herself. It does not satisfy the requirements of s.43B(1)(d).

247. The respondent conceded that the claimant's formal grievance sent to Mr Millar and Mr Taylor on 31 January 2019, can amount to a qualifying disclosure because it mentions that one of the claimant's students had been sexually assaulted at her work placement which was a matter tending to show that health and safety had been endangered, paragraph 3(ii). It is also that a criminal offence had been committed, section 43B(1)(a), though this was not the claimant's pleaded case. She reasonable held the belief that it was in the public interest that a child from a school had been sexually assaulted while on a work placement. We concur with this view that the information in the grievance satisfies the requirements of a qualifying disclosure, and as it was disclosed to Mr Millar and to Mr Taylor, it became a protected disclosure, s.43C.

248. In relation to 5e not carrying out adequate health and safety checks on Cruise Hill Reptiles as there were no operating phone communication system, no toilet facilities, this did not show that health and safety was endangered. Contact could still be made using the owner's mobile phone number and there were still toilet facilities at another shop the Cruise Hill staff were able to use and this satisfied the concerns of the student. It was

not a disclosure of facts tending to show a breach or possible breach of the health and safety provision in s.43B(1)(d). This was not a qualifying disclosure.

249. The claimant further alleges that she had made a qualifying disclosure, in that, Ms Moore had permitted Skills Training UK on 17 December 2018 to give a false placement travel distance of 35-39 minutes for a student in question without challenging its validity. This was done after the claimant had complained about the distance and safety concerns and informing all parties of the placement arrangements. It is not clear what the health and safety concerns were in this context. The claimant could not have had a reasonable belief that Ms Moore permitted Skills Training UK to give a false placement travel distance. There was no evidence that that was the case and there were no grounds upon which the claimant could have held such a belief. Skills Training UK is completely independent of the respondent and Mr Howard clearly stated on 17 December 2018, in his response to the claimant's concerns about the distances the placements would have to travel, that the travel distance to Crews Hill Reptiles was checked by him and was between 35-39 minutes. If the concerns amounted to a breach of a legal obligation, they were not disclosures of information which tended to show that the breach had occurred. Further, it was not a disclosure that the students' health and safety was endangered. This was no more than the claimant raising concerns about the lack of professionalism on the part of Skills Training UK.

250. In paragraph 3(iii), the claimant stated that she sent further material to Mr Liam Taylor on 4 February 2019 which was email correspondence and Companies House status print-out for Cruise Hill Reptiles, which potentially supports her claim of negligence. The correspondence was not from the claimant but rather between Ms Moore and Ms Verdi which confirmed that a particular school was happy for students to attend a work placement without employee liability insurance. We find that this do not satisfy the qualifying requirements of facts of wrongdoing from the claimant. Further, the information does not show that health and safety was likely to be, was being or had been endangered. The absence of insurance cover does not, by itself, create a risk to health and safety. The Companies House document is simply a print-out of the relevant information held for the employer company and does not amount to a qualifying disclosure as it provided no information relevant to any health and safety issue.

251. The grievance appeal the respondent has conceded, is capable of amounting to a protected disclosure as it contained the statement: "The same providing question 5e, sent their student to a placement where they were made to clean toilets, thus handling dangerous chemicals." This was said to have occurred the previous year and at the time the claimant did not invoke the whistle-blowing policy. This is a qualifying disclosure as it disclosed facts which in the claimant reasonably believed was in the public interest, that student placements were working with hazardous chemicals, which would give rise to health and safety likely to be endangered and breach of a legal obligation, paragraph 3(vi).

252. The claimant's concerns about failure to confirm placements' details in time and raising her concerns with Ms Moore in her email dated 11 January 2019, we find, contains no information tending to show health and safety was being, or likely to be, or was endangered. It was an email complaining about the conduct of Ms Verde. It was nothing more than a dispute between her and Ms Verde with little or no wider public interest. It was, therefore, not a qualifying disclosure, paragraph 3(v).

253. In relation to the claimant's email to Mr Millar dated 24 January 2019, it is a qualifying disclosure because it contained information that a student had suffered a sexual assault, and this shows that health and safety had been endangered and/or a criminal offence had been committed. It became a protected disclosure when received by Mr Millar, paragraph 3(vi).

254. The claimant stated that she had reported her safeguarding concerns to Ms Foster over the phone as the respondent's safeguarding lead on 25 January 2019. It was unclear to the tribunal what was disclosed to Mr Foster by the claimant that amounted to a qualifying disclosure. It is not referred to in the claimant's witness statement. If it was, a discussion about the location of toilet facilities, they were made available for staff to use not on the Cruise Hill Reptile site. We are not satisfied that there was any risk of endangerment to health and safety. Further, it is unclear how this was a reasonable belief in the public interest. Accordingly, this was not a qualifying disclosure, paragraph 3(vii).

Automatic unfair dismissal

255. As the claimant had less than two years' service with the respondent, she must show that the reason or principal reason for her dismissal was that she made the protected disclosures as we have found. The earliest protected disclosure was her grievance on 31 January 2019. However, on or around 20 December 2018, Mr Morgan and Stacey had a meeting to outline the need to make reductions in headcount across the London operational teams because several contracts, including the Young Careers Contract, were due to come to an end in 2019. The respondent's policy is to first identify those staff, who were at risk and this included those with less than two years' service.

256. On or around 14 January 2019, twelve staff members were identified as being affected and at risk of termination because they had been working for the respondent for less than 2 years. This included the claimant. The redundancy plans were finalised on 22 January 2019 and sent to the Board of Directors who approved them on the same day. This was before the claimant's grievance on 31 January 2019.

257. We are satisfied that the decision to dismiss the claimant and the eleven others, was because of redundancy and the fact that they all had under two years' service.

258. Even if there were earlier protected disclosures, we would still conclude that the genuine and principal reason for her dismissal was redundancy. It would not make business sense to have targeted the claimant and eleven others for dismissal because she made protected disclosures. Her unfair dismissal claim under section 103A Employment Rights Act is not well-founded and is dismissed. The effective date of termination was 22 March 2019.

Public interest disclosure detriments

259. The alleged detriments relied on in paragraphs 8(i), (ii), and (iv), were before the first protected disclosure as we have found that was made on 24 January 2019 and cannot constitute, in law, detriments.

260. Even if we are wrong about the protected disclosures and assuming the first was on 10 December 2018, for all the reasons given in Mr Kirk's submissions we would adopt them.

261. We would further add that the claimant was not ostracised and deemed a troublemaker. There was no evidence we found in support of that assertion. Her concerns about Crews Hill Reptiles and the distances the students had to travel were taken on board by Ms Moore who made available travel cards and spoke to the parents. She ensured that the students did not have to travel in rush hour traffic. The parents' views were also taken into account. Another provider took over some of 5e's work. The claimant was not considered a threat to the contract as she continued to work on it until her dismissal.

262. She further alleges that she was discouraged from applying for promotion by Ms Aliberti-Burling, following the decision to restructure, paragraph 8(iii). Ms Aliberti-Burling do not recall saying to the claimant, "Who told you there was a vacancy?", as the claimant alleged. We found that there was no discouragement of the claimant by Ms Aliberti-Burling from applying for promotion, quite the contrary, she had two meetings with the claimant to inform her of the requirements of the role which was to the claimant's benefit. It was the claimant who decided to withdraw her claim. We do not find that there is a causal connection between the grievance or any of the protected disclosures as found and the claimant's decision not to continue with her application.

263. The claimant was invited on 23 January 2019, to a meeting scheduled to take place on 25 January but was on sick leave. This was to inform her of the decision to terminate her employment and the reasons for it, namely restructuring and that she had less than two years' continuous service with the respondent. As there was no response, Mr Taylor rang to inform her. This had nothing to do with any protected disclosures but to the discussions which started in December 2018 leading to the restructure plans being approved by the Board of Directors on 22 January 20219. This was before the first protected disclosure as found by us, but in any event is unrelated to Mr Taylor's conversation with the claimant. She had to be informed of the

decision to terminate her employment whether on sick leave or not, paragraph 8(v).

264. She was not invited to collective consultation because, like the other eleven affected employees, she did not have two years' continuous service with the respondent, paragraph 8(vi).

265. She was not excluded from the safeguarding investigation because of any protected disclosures. The concerns were about 5e and not the respondent in relation to the sexual assault. This was made clear by Ms Foster, Ms Moore, and Ms Aliberti-Burling. The claimant did not have first hand evidence about how the female student was assaulted. The investigation was whether the respondent's procedures were followed, and they were. She was advised by Mr Taylor, in his email to her on 11 February 2019, that any disclosure of information to third parties must be with the prior approval of a Board member in accordance with the Co-Member Handbook. The claimant was not involved in the investigation, not because of any protected disclosures but she did not have relevant information to offer in relation to what Ms Foster was investigating, paragraph 8(vii).

266. In paragraph 8(viii), the claimant was not given a return to work interview by Ms Aliberti-Burling following her period of sick leave as she did not complete the sickness absence form. Ms Aliberti-Burling did say to her that she would have to work with her schools, but this was not an order as the claimant, following the sexual assault incident which seriously affected her, was allowed to work at the Willesden office. We were not satisfied that Ms Aliberti-Burling's comment that the claimant would need to work with her schools, was not materially influenced by any of the protected disclosures we have found. In any event there was no detriment as the claimant worked from the Willesden office.

267. Having heard the evidence, made findings of fact, we conclude that the grievance and appeal were fully investigated with the claimant being given the opportunity to put her case. Her grievance was very lengthy, 28 pages which was only raised after she had been told that her employment would end in March 2019. The written outcomes clearly set out Mr Addison's and Mr Morgan's findings. They did not support the claimant. There was no evidence in support of her contention that the conduct of the grievance, the grievance appeal, and outcomes were materially influenced by her protected disclosures. We adopt Mr Kirk's submissions, paragraph 8(ix).

268. In paragraph 8(x), she referred to suffering psychiatric injury and injury to feelings which negatively affected her marriage, relationships, work life, social life, and hobbies. This is more relevant to issues relating to remedy. In any event, for the reasons given above, we do not conclude that these alleged detriments were materially influenced by our findings on protected disclosures.

Direct discrimination because of sex/and or race

269. It is for the claimant to establish less favourable treatment than a comparator, whether actual or hypothetical, Madarassy.

270. She asserted that on 16 July 2018, she was denied flexible working as she wanted reduced hours to accommodate her childcare responsibilities. She wanted to work 33 hours a week. The post she applied for required the successful person to work full-time hours, 40 hours a week. She had not made a formal flexible working request as she had not been working for the respondent at the time her request was made. This, however, did not prevent the respondent from considering it. Ms Aliberti-Burling had to take into account the contract the claimant would be working on, the Young Careers Contract, which was due to come to an end in March 2019. The respondent genuinely needed someone to meet the contract deliverables. The was a new role for the claimant and she had to be tried and tested in it. We conclude that there was a strong business case for requiring someone to work 40 hours a week in that role until they could demonstrate that the work could be done on reduced hours.

271. By the time the claimant put in another request, it was clear that she was performing to an acceptable level and her work could be done in 35 hours, which was agreed to. Ms Moore and Ms Aliberti-Burling supported her request. She did not take up the offer because her husband could collect her son and the pro-rata reduction in pay and benefits was more than what the claimant had envisaged. We did not make findings that the respondent's managers were frustrated or annoyed with her childcare arrangements because there was no evidence in support of that assertion.

272. Had it been a white male in similar circumstances as the claimant's, there is no reason to believe that the respondent would have acted any differently. They needed someone who would be able to work 40 hours a week as they would be new in the post. Only when they were able to prove themselves and was capable of meeting the requirements of the post on fewer than 40 hours a week, would there be sufficient evidence available to its managers to consider a reasonable reduction.

273. The claimant had not established less favourable treatment and even if she was able to do so, the business case for requiring her to work 40 hours a week, was unrelated to either her sex or race, paragraph 14(i).

274. In paragraph 14(ii), the claimant's case is that she was discriminated because on 25 September 2018, Ms Moore allocated her two additional schools notwithstanding her childcare concerns. As we have found another work colleague had said to Ms Moore in July 2018, that she intended to leave her employment with the respondent and had in fact left on 17 September 2018. Her work with four schools, was divided between the claimant and Ms Boyns, another employee, who were given two each. We found that the work involved never intended to add to the claimant's and her colleague's hours, and we were satisfied that the work was done within the

40 hours. Indeed, the claimant said in evidence, "I am not saying I was working more than my contractual hours. I was spread thinly." Had it been a white male Careers Guidance Adviser who was due to start work in September 2018, we are satisfied that they would not have been treated differently and would have been allocated to additional schools. We made no findings of fact upon which we could decide that there was less favourable treatment because of either sex or race.

275. In relation to paragraphs 14(iii), the claimant being asked about her whereabouts on 9 November 2018; 8(iv), Ms Aliberti-Burling informed the claimant on 15 October 2018, that she would not be permitted to leave her role for a possible Enterprise Co-ordinator position; 8(v), that Ms Moore made a negative comment in the claimant's Probation Review on 17 December 2018, that she had "compromised her professionalism"; 14(vi), Ms Moore gave her a "Satisfactory" mark in her PAR on 15 January 2019; 14(ix), not being included in collective redundancy consultation; 14(x), Ms Aliberti-Burling not giving a Return to Work interview; 14(xi), week commencing 12 November 2018, being informed that she could not be interviewed; and 14(xii), Mrs Aliberti-Burling's dismissive attitude towards the claimant's application for the position for the Enterprise Co-ordinator position in February 2019, we have already made findings in respect of these matters and they do not support the claimant's case of discriminatory behaviour because of either sex or race. The decisions taken and the conduct complained of, were unrelated to the claimant's protected characteristics.

276. Paragraphs 14(vii) and 14(viii), were withdrawn by the claimant on 27 January 2021 at 1.31pm during the hearing.

Harassment related to race and/or sex

277. The claimant relies on paragraphs 14(iii), being questioned about her whereabouts on 9 November 2018; 14(v), the statement by Ms Moore, "compromised her professionalism" in the Probation Review on 17 December 2012; and 14(vi), Ms Moore's "satisfactory" mark in the PAR on 15 January 2019. We have already considered these acts relied upon by the claimant and concluded that they were not discriminatory behaviour because of sex or race. We also do not conclude that taken either separately or together, they amount to unwanted conduct with the purpose or effect of creating an intimidating, hostile, humiliating or offensive environment for the claimant. There were particular reasons for the behaviour which were unrelated to either race or sex.

Victimisation

278. From the list of issues, the claimant put her case in the following:

> "Week commencing, 5/11/18, the Claimant put in another request, to Sheryl and Danielle, for flexible working arrangements by email - s27(2)(c) Equality Act 2010 (EA), as she missed her son and the arrangement was not working out. During this time, she felt heavily scrutinised and more than other colleagues who had not made the request. The Claimant reasonably

believes that the Respondent, Sheryl and Danielle, believed she would complain about the discriminatory treatment in the workplace i.e. the initial refusal of flexible working, as another female Asian employee, employed on the same contract, called Farah, was permitted to have reduced working hours for childcare arrangements - s27(2)(d)."

279. The claimant did submit a flexible working request in November 2018 which was supported by Ms Moore and Ms Aliberti-Burling. There was no evidence provided that they believed that the claimant would complain about discriminatory treatment in the workplace. The claim of victimisation does not require the tribunal to consider less favourable treatment and a comparator. It is whether the protected act significantly influenced the detriment suffered Nagarajan.

280. There is no provision in the Equality Act 2010 referring to a flexible working request. Those provisions are in section 80F Employment Rights Act 1996 and the Flexible Working Regulations 2014, "2014 Regulations".

281. Section 27(2), Equality Act 2010, refers to a claimant doing something by reference to the Equality Act. Regulations 3 and 4 of 2014 Regulations, gives an employee who has worked 26 weeks, the right to make a flexible working request and the form that request should take.

282. As the claimant did not make a claim under the 2014 Regulations and as section 27 Equality Act does not cover flexible working requests, the claimant's victimisation claim is misconceived.

283. Even if she is entitled to bring a victimisation claim as set out above because of her alleged protected act of making a flexible working request, her reliance on paragraphs 14(iii) to (vi), as detriments, is without merit. For the reasons already given, the decisions and behaviours referred to were unrelated to the alleged protected act.

Out of time

284. In relation to the out of time argument, we conclude that the acts relied upon by the claimant refers the Young Careers Contract, Ms Moore, Ms Aliberti Burling, Mr Taylor, Ms Foster, Mr Addison, and Mr Morgan. They form a course of conduct extending over a period ending with the claimant's effective date of termination, section 123 Equality Act. Her claim form was presented on 24 April 2019 bringing the last act, the dismissal, in time an extending time to cover the earlier acts relied on by the claimant.

285. It follows from our conclusions that all of the claimant's claims are not well-founded and are dismissed. The provisional remedy hearing listed on 17 June 2021, is now vacated.

…….
Employment Judge Bedeau

7 June 2021
Date: ……..

Sent to the parties on: .08/06/2021....

.....
For the Tribunal Office

Appendix

IN THE EMPLOYMENT TRIBUNALS (WATFORD)

BETWEEN

MRS SONIA OMOJOLA

Claimant

-and-

REED IN PARTNERSHIP LIMITED

Respondent

AGREED LIST OF ISSUES

By way of an ET1 Claim Form and Grounds of Claim lodged on 16 May 2019, the Claimant brings claims of unfair dismissal (including automatic-whistleblowing), whistleblowing detriments, direct discrimination on grounds of sex and/or race, harassment on grounds of sex and/or race and victimisation. The Respondent has filed an ET3 and Grounds of Resistance resisting all claims but requires further and better particulars from the Claimant in order to fully understand the case it has to meet. ***The Claimant is kindly requested to provide the further and better particulars requested and set out herein in bold italics under each head of claim.***

AUTOMATIC UNFAIR DISMISSAL/WHISTLEBLOWING:

Section 103A Employment Rights Act 1996 ('ERA')/ Public Information Disclosure Act 1998

1. It is agreed that the Claimant was dismissed by the Respondent by notice. Notice was given on 28.01.19 and the effective date of termination was 08.03.19 (according to the Claimant) and 22.03.19 (according to the Respondent).

2. Did the Claimant make a qualifying disclosure in accordance with section 43B ERA 1996? The Claimant submits that she reasonably believed "that the health and safety of any individual has been, is being or is likely to be endangered:" section 43B(d) ERA 1996.

3. The Claimant relies on the following qualifying disclosures:

(i) The Claimant's raising concerns about the practices of the Respondent's provider, 5E, via an email to Sheryl Moore on 10.12.18 i.e.:

1) Travel distance being too long (raising concerns as a mother, around the safety and safeguarding of 14-year-old students travelling long distance in the dark winter months, a concern which was also later raised by the disabled, single parent father, of the student who was sexually assaulted after she was practically forced to attend such a placement)

2) Placements which were not matching student referral forms or the school's requirement for two week placements, as per the Service Level Agreement (highlighting a lack of compliance to the contract and care for student choice, which the Claimant also discerned revealed a lack of professionalism and felt this would pose a future risk to the wellbeing of the students and the contractual relationship they had with the schools)

3) A nonchalant approach to finding placements on time (not providing enough time to quality assure placements prior to commencing i.e. employer calls, confirming details, safeguarding checks, placement confirmation meetings with the students and time to deal with any last-minute issues which would crop up)

(ii) Then on 31.01.19 in a formal grievance sent to Tom Millar and Liam Taylor by email, the following protected disclosures were made:

1) The provider did not carry out adequate H&S checks on Crews Hill Reptiles. There was no operating phone communication system, which Sheryl was aware of prior to sending students, and there were no toilet facilities.

2) What the Claimant experienced to be the poor management (and breach of contractual obligations) of the Young Careers contract, by Sheryl Moore permitting the provider, Skills Training UK, on 17/12/18, to give a false placement travel distance, of 35-39mins, for the student in question without challenging its validity. After the Claimant had already complained about distance and safety concerns and informing all parties to the placement arrangement, including Sheryl, that it would take 1 hour and 11 mins for that particular student, which required a bus, underground train and a rail train to reach her placement.

(iii) On, 4/02/19, additional documents were sent by email to Liam Taylor to support the grievance (and the same documents were also copied and pasted into the grievance appeal sent to Lavanya Martin on 14/02/19), highlighting:

1) As a manager of the contract, Sheryl permitted students to attend placements without employers having Employee Liability Insurance – a breach of the contractual requirement.

2) The Claimant also revealed that Crews Hill Reptiles, was a dissolved company on Companies House, but appeared to be still operating under the same company name.

(iv) During Grievance Appeal sent by email to, Lavanya Martin (HR Adviser) on, 14/02/19, and hearing in person on, 22/02/19 with Nick Morgan (Regional Director) and Lavanya Martin, the Claimant highlighted:

1) The general disregard for safeguarding, Sheryl, Danielle and the providers had on the contract. She questioned Reed in Partnership's stance (in their initial response to her grievance) that, due to the nature of the contract, they "relied wholly upon the ESFA's assurances that all necessary and satisfactory risk assessments would be in place for the students," inferring that these areas on the contract were not at all their responsibility. Although their policy states, 'safeguarding is everyone's responsibility' and that they check the safeguarding policy of those they do business with. Therefore, the Claimant stated that EVERYONE has a duty of care to ring the alarm bells and ensure safeguarding concerns adequately handled concerning children, which RinP also trained her on during the induction.

2) The Claimant also referred to placement issues with, 5E, in 2017 where a student, felt mistreated by being coerced to clean toilets on his placement, causing serious safeguarding concerns with Hendon School and ultimately leading them to withdraw from the work experience element of the contract. She questioned why the Safeguarding Lead, Karen Foster, was not informed of this incident. This also led to a breakdown in trust, which the Claimant inherited when she started working at the school.

3) The Claimant also raised the concern as to whether the ESFA were aware of issues from the previous year experienced from the provider, 5E, and whether the practices of the provider then were sufficiently investigated. The Claimant also raised the concern as to why the Respondent continued working with the provider given the numerous issues, they experienced in 2017.

4) The Claimant discussed how she felt the contract had been governed by financial greed over a concern for the welfare of the students. She discussed that throughout her time on the contract many references were made to the contract being the 'money-making' contract for Reed in Partnership, that it was the most profitable in the organisation, and how she felt this caused them to refrain from any risk to jeopardise this, to the detriment of students' safety.

(v) The Claimant experienced shockingly rude and aggressive behaviour on the phone from Maria Verde, on, 11/01/19, and was concerned at the impact this level of nonchalant attitude towards the placements would have on her students and believed they would suffer due to their unprofessional behaviour.

With the provider, also failing to confirm placement details in time, she believed, this would compromise time to quality assure. The Claimant made her concerns known to Sheryl by email, on 11/01/19, which was ignored, and for which she suffered the detriment of being, unsupported, victimised and given an initial 'Satisfactory' score on, 15/01/19, for three months of high performance in her quarterly performance analysis review.

(vi) The Claimant forwarded by email her health and safety concerns raised on 10.12.18 to Sheryl, to the Director, Tom Millar on 24/01/19:

1) Here she informed the Director that she had previously raised the 'alarm bell' about the provider to her management but was informed, that she would need to keep the relationship happy because they were nearing the end of the contract.

Tom Millar's response by email on 25/01/19 admitted, "…your own personal experience of work experience placement brokerage with REED-NCFE gives you extra insight into the process and requirements and by the looks of it you had spotted the problem earlier than anyone else."

(vii) The Claimant reported her safeguarding concerns with the Respondent's Safeguarding Lead, Karen Foster, on 25/01/19, over the phone, who revealed to the Claimant that she had only seen 5E's Health & Safety (and safeguarding) document *after* the sexual assault had occurred. Confirming their disregard for safeguarding when working with external organisations.

4. Did the Claimant make those disclosures to her employer or other responsible person (section 43C)?

5. Did the Claimant reasonably believe that those disclosures were made in the public interest (section 43B)?

6. Was the reason or principal reason for the Claimant's dismissal due to her disclosure(s) contrary to section 103A ERA 1996?

Detriment-short of dismissal: Section 47B ERA 1996

7. Did the Respondent subject the Claimant to a detriment(s) short of dismissal as a result of making one of the above protected disclosures?

8. The Claimant relies on the following detrimental act(s). The relevant pages of the Claimant's Summary of Case document are set out for ease of reference:

(i) Sheryl Moore giving the Claimant a "Satisfactory" mark on her Performance Analysis Review on 15.01.19 for three months of high performance. The Claimant felt offended and intimidated by this approach. She felt it was not only an abuse of power, because the company practice and instructions were for managers to discuss performance with their staff prior to scoring this document but was shocked that Sheryl had failed to properly

investigate a reported incident which she relied upon to score the document. The Claimant had complained, by email, to Sheryl about the rude aggression and unprofessionalism of, Maria Verde, on 11/01/19. The Claimant had made further protected disclosures in this email that she feared the students could suffer due the nonchalant attitude of this provider and raised her concerns that the placement confirmation details were left to the last minute. This she understood from her prior experience of organising work placements, would have an impact on quality assurance (pages 8-9).

This score, was complained about during the Claimant's grievance and grievance appeal, which Directors Nick Morgan and Dan Addison from their internal investigations, accepted happened, but failed to sufficiently address and said the score was subjective. The Claimant, given the circumstances of victimisation from Maria Verde, felt offended, unsupported, discouraged and shaken that, she had to convince Sheryl to increase her performance score. This, she only did because of the witness (which the Court can order to testify), Ms. Nicola Hunt (Nightingale Academy Schoolteacher present when the Claimant made the call to Maria), the Claimant requested to call upon. Any positive marks Sheryl made thereafter, was disingenuous and not a reflection of her actual intent to create an intimidating, hostile, degrading, humiliating and offensive environment for the Claimant.

The Claimant holds Sheryl Moore responsible for this unfavourable treatment. She also holds Nick Morgan and Dan Addison responsible for failing to properly investigate her complaint;

(ii) **Being "ostracized in the workplace and deemed a troublemaker" (pages 5-8);** The Claimant avers that her safeguarding claims raised on, 10/12/18, were not sufficiently investigated but believes she was being ostracised and deemed a 'troublemaker', and a threat to the contract, by Sheryl and Danielle. This was due to the previous complaint made to Sheryl on, 09/11/18 over the phone and to Danielle in person, on 12/11/18, around tabs kept on her due to her request for flexible working arrangements. This being, also because there were serious safeguarding issues with the same provider the year before in 2017, which led Hendon School to withdraw from the work experience element of the contract. Therefore, an extremely greater degree of scrutiny should had been employed but was absent.

Sheryl Moore informed the Claimant, during a conference call, with the team (including co-worker Jenny Boynes, which the Court can order to be a witness), in December 2018, that they needed to keep parties to the contract happy until end of March 2019 (so they could meet their claim points with the ESFA). This was the instruction of Danielle

Aliberti. This was despite previous safeguarding concerns they had knowledge of. Therefore, the Claimant was deemed a threat to these highly favourable financial claim points (at the expense of the children's' safety) by raising her concerns. This was of particular importance to Danielle Aliberti, as Operations Manager, who said her main focus was on the figures during the meeting she held with the Claimant on, 12/11/2018. The Claimant holds Sheryl Moore and Danielle Aliberti responsible for this unfavourable treatment.

Being "ostracized in the workplace and deemed a troublemaker" by the providers, Sheryl and Danielle. During the Claimant's annual leave in, December 2018, there were emails going back and forth overriding the Claimant's decision not to accept the Crews Hill placement due to the travelling distance. Then in an email during this time, on 18/12/18, to Maria Verde, Sheryl made reference to the Claimant by saying, 'to save any issues in the future if there are any placements deemed unsuitable' she would ask her team to discuss this with her first. However, Sheryl was fully aware of the numerous problems being experienced with this provider and was copied into the correspondence to Maria rejecting the said placement. The Claimant has reason to believe that she was deemed a trouble- maker, whilst Sheryl was trying to keep the relationship 'happy', under the auspices of Danielle Aliberti. When the Claimant was later struggling to get through to the provider 5e by email, on 11/01/19, Sheryl Moore made the comment that they might have blocked her emails. The Claimant holds Sheryl Moore and Danielle Aliberti responsible for this unfavourable treatment;

(iii) **Being "discouraged to apply for promotion"** by Danielle Aliberti. During the restructuring, in February 2019, Lavanya Martin (HR Advisor) informed the Claimant that Danielle was recruiting again for the Enterprise Co-ordinator position. The Claimant submitted her CV and shortly after, in February, enquired with Danielle over the phone, about the position (for the third time); Danielle's response was, "Who told you there was a vacancy?" She sounded extremely uncomfortable and defensive that the Claimant was enquiring and was not at all welcoming of her application. Therefore, the Claimant was forced to leave the organisation and work somewhere else, because she believed that, due to Danielle's attitude and company's discriminatory culture, that the decision, upon interview, would be unfavourable (page 6). The Claimant holds Danielle Aliberti responsible for this unfavourable treatment;

(iv) The Claimant received an email on 23.01.19 inviting her to a meeting on 25.01.19 to discuss the future of London Operations (page 9-10),

(v) The Claimant subsequently received notice from Liam Taylor over the phone whilst off sick due to the sexual assault, on 28.01.19, that her contract would be terminated (page

10). She holds, Sheryl Moore, Danielle Aliberti, Richard Stacey as well as Reed in Partnership Limited responsible for these unfavourable acts.

(vi) The Claimant was not invited to collective consultation during the restructuring, despite *others with the same length of service* as her in the organisation being invited which further made her feel marginalised and unsupported due to the sex and race discriminations experienced and protected disclosures made, as well as being excluded from 'ring-fenced' opportunities within the organisation (page 10), which others with the same length of service were privy to. She holds, Sheryl Moore, Danielle Aliberti, Richard Stacey as well as Reed in Partnership Limited responsible for these unfavourable acts;

(vii) Excluded from the investigations (as per safeguarding and company policy) into the safeguarding issues raised around the sexual assault, despite being the main employee dealing with the victim and having received first-hand information concerning the incident from the victim herself by taking the phone call immediately after the assault happened, and having spoken to the victim's father.

Although, prior to the Protected Disclosures, Karen Foster (Safeguarding Lead) had sent an email to the Claimant on 25/01/19 requesting such a meeting to take place *'as part of internal investigations'*. The Claimant felt further marginalised by this as she had insight, and that the victim of the assault (and her disabled father who felt the placement organisers had been negligent) would never receive proper justice. This had a huge impact on the Claimant's mental health and caused her to feel depressed and anxious (page 10-12). The Claimant was informed that RinP staff could not have any contact with the victim or her family, not even to see how she was coping. This was particularly difficult for the Claimant as the victim's father informed her that his daughter began to self-harm because of the sexual assault.

The Claimant holds, Sheryl Moore, Danielle Aliberti, Karen Foster, including the senior leadership i.e. Donna Murrell (Director) who lead on the investigation, Nick Morgan, Dan Addison, as well as Reed in Partnership Limited, responsible for this unfavourable treatment;

(viii) Was not given a Return to Work interview by Danielle Aliberti following a period of sickness which the company were informed was directly related to the sexual assault, which further made the Claimant feel marginalised and unsupported during a very difficult time. Instead, this put her at a particular disadvantage by being pressurised in, February 2019, by Danielle Aliberti over the phone, into returning to the schools, which she feared would further affect her mental health (page 11). The Claimant holds Danielle Aliberti responsible for this unfavourable treatment;

(ix) Complaints in Claimant's grievance was not fully addressed by Dan Addison on 8/02/19 and Nick Morgan on 27/02/19, which therefore, failed to address the real reason for her dismissal during a time when protected disclosures were made and several discriminatory acts were experienced. Just as an example and this is not exhaustive, Nick Morgan did not address the fact that Sheryl Moore permitted students to attend placements without Employee Liability Insurance, as per Reed in Partnership Ltd's contractual obligation. Neither did Dan Addison address the fact that Sheryl Moore failed to address the Claimant's concerns and protected disclosures made by email on, 11/01/19 about Maria Verde from 5e, but instead victimised her by marking her down, giving her a 'Satisfactory' score. This placed the Claimant at a disadvantage of receiving a fair and thorough grievance hearing, as significant issues were 'swept under the carpet' and ignored. The Claimant holds Nick Morgan, Dan Addison, Donna Murrell, as well as Reed in Partnership responsible for this unfavourable treatment;

(x) Psychiatric injury and injury to feelings, some of which discussed above, which negatively affected the Claimant's marriage, relationships, work life, social life and hobbies (page 10). The Claimant holds all the above mentioned perpetrators responsible.

The Respondent avers that detriments (ii) and (iii) as set out at page 4 of the Claimant's Summary of Claim are vague and insufficiently particularised. The Claimant is requested to set out the following in respect of each: (see pages 5-8)

(a) A more precise description of the things said or done which are said to amount to a detriment;
(b) The identity of the person responsible for the detriment;
(c) The date of the detriment; and
(d) How that detriment is said to have put the Claimant at a disadvantage.

9. Was all or any part of the Claimant's complaint of detriment short of dismissal presented outside the three-month time limit within section 48(3)(a) ERA 1996?

10. If not, was it reasonably practicable for the complaint to have been presented before the end of three months within the meaning of section 48(3)(b) ERA 1996?

11. If not, was the complaint submitted within such further period as the Tribunal considers reasonable under section 48(3)(b) ERA 1996?

~~**'ORDINARY' UNFAIR DISMISSAL:**~~

~~12. For the avoidance of doubt, the Claimant has no right to claim "ordinarily unfair dismissal" pursuant to section 98 ERA 1996 since she did not have sufficient qualifying service (she was employed by the Respondent for approximately 6 months).~~

DIRECT DISCRIMINATION, HARASSMENT AND VICTIMISATION

Direct Discrimination s.13 of the Equality Act 2010 ("EA 2010")

13. The Claimant is a woman and describes her race as black.

14. Was the Claimant treated less favourably because of sex and/or race? The Claimant will rely on the following acts of less favourable treatment and on the following grounds (page numbers of the Summary of Claim document have been provided for ease of reference):

(i) On grounds of sex and/or race, being denied flexible working on 16.07.18 (page 1). ***The Claimant is asked to clarify who she says was responsible for this alleged act of less favourable treatment?***

On 18/07/18 Sheryl Moore (Business Manager) said to Miren Chauhan (Reed Specialist Recruitment Resourcer or RPO Resourcer), via email, that following a discussion with her Operations Manager (being Danielle Aliberti) the position was that the Claimant would need to work the full 40 hours a week to meet the business requirements of the role.

Later, on the same day, Miren Chauhan, emailed the Claimant and said the 40 hours a week was Reed policy.

The Claimant believes that Danielle Aliberti was responsible for this discriminatory treatment as Sheryl stated the decision was made following her discussion with her Operations Manager, although the Claimant cannot not rule out that it may have been a joint decision. Nonetheless, she ultimately, holds Reed in Partnership Ltd liable for this act of direct sex discrimination. At no point prior to the offer of employment or immediately thereafter (prior to the Claimant making a second request for flexible working in November 2018), was the Claimant offered an opportunity of part-time work. The Court can order Miren Chauhan to be a witness to answer to his email correspondence during this period with Liam Taylor, Sheryl Moore and the Claimant;

(ii) On grounds of sex, Sheryl Moore assigned the Claimant an additional two schools on 25.09.18, despite earlier discussions about childcare and the need for flexibility (page 1). Whether or not this request was required of other employees, the Claimant believes this

put her at a particular disadvantage as a mother due to the amount of travel time it required for her to visit her son in Berkshire after work as these schools were further out than some more local ones. The Claimant holds Sheryl Moore and Danielle Aliberti responsible for this discriminatory treatment;

(iii) On grounds of sex, Danielle Alberti enquired into the Claimant's whereabouts (due to the Claimant's flexible working request) on 09.11.18. Despite Sheryl and the Claimant having spoken several times that day and the Claimant having informed Sheryl of her plans at 15:07 to go back to the Willesden office to drop her files off (page 1-2). Sheryl had copied the Claimant into an email at 16:01 where she was discussing her availability for a meeting with a teacher, to be held on either 28th or 29th November 2018 (19-20 days later) and no imminent response was requested. There was certainly, also, no mention of arrangements for the following Monday documented by email or over the phone; neither was this mentioned to the Claimant during the grievance hearing or written responses. The Claimant avers this is an attempt to cover the true motivations of direct sex discrimination and victimisation and holds Danielle Aliberti and Sheryl Moore responsible for these discriminatory acts;

(iv) On grounds of sex and/or race, Danielle Aliberti informed the Claimant on 15.10.18 that she would not permit her to leave her role in order to take an Enterprise Coordinator role and that she should gain the additional education experience the contract required (page 3). This was despite permitting a male Asian colleague, called Sunny, to move onto this contract the same month, *which left a black female colleague Lillian unduly stressed*, because she was doing the job of two people. The Claimant had to occasionally help her with some of her tasks, because she had been forced to do the job of two people and was stressed and overworked.

Danielle then later permitted a white male colleague, called Will, who was managing a contract also due to end in March 2019, to leave and join LEAN, *which left a black female colleague, Adedamola Adenuga, who was pregnant, and going through considerable pregnancy sickness, left to manage both her own contract and Will's*. It was clear that these were moves of protection and discrimination, as Danielle was aware of the upcoming redundancies but yet the Claimant reasonably believes she contributed to blocking her from being merely interviewed in, November 2018, when the question was raised by Miren Chauhan and Joanne Senturk, with the possibility to start her at a later date on LEAN, *after her contract also would come to an end*.

When the role later became available during restructuring, Danielle offered the job to a young white female colleague, Sammy, who was also very close to Will and worked directly under him, and had joined the same day as the Claimant. Sammy had only six months experience in the Welfare to Work sector and no experience on education

contracts, and whose previous role was a bartender, *which contradicted Danielle's instructions for the Claimant to gain more education experience in Secondary Schools. This came as a shock to many more experienced black colleagues who deemed this discriminatory.* By the time of the application process, the Claimant had six years of experience in Welfare to Work and working on Education contracts combined but was discouraged to apply~~. Danielle also denied the position to a black external candidate who had five years of experience in education. It was also made known to the Claimant that the Reed employee who actively sat in the EC role but was leaving was asked by management to give Sammy his presentation notes so she could pass the interview.~~

The Claimant holds Danielle Aliberti, Sheryl Moore's influence and Reed in Partnership responsible for these discriminatory acts;

(v) On grounds of sex, Sheryl Moore made a negative comment in the Claimant's Probation Review on 17.12.18 that she had "compromised her professionalism" by expressing her feelings (page 4). The Claimant holds Sheryl Moore responsible for this discriminatory act;

(vi) On grounds of sex, Sheryl Moore gave the Claimant a 'Satisfactory' mark on her Quarterly Performance Analysis Review on 15.01.19 for three months of high performance. The Claimant holds Sheryl Moore responsible for this discriminatory act;

(vii) On grounds of sex and race, the Claimant received an email on 23.01.19 inviting her to a meeting on 25.01.19 to discuss the future of London Operations. ***The Claimant is asked to clarify who she says was responsible for this alleged act of less favourable treatment?*** (see page 10)

During the initial stage of her grievance meeting with Liam Taylor on 01/02/19, Liam had advised the Claimant that the decision to terminate her contract was a group one and that he too had been affected by redundancy. Therefore, the Claimant has reason to believe that Danielle (being the Operations Manager of the contract) had been consulted during this period and had a significant influence in the decision; she was the person who was scheduled to chair the meeting where the Claimant would be informed of the decision to terminate her contract.

The Claimant holds that the campaign of discriminatory behaviour from Danielle, (alongside the campaign of discriminatory behaviour from Sheryl) responsible for her dismissal. However, HR decision makers, namely Richard Stacey, would also be responsible for the inequitable and discriminatory manner in which the redundancies were orchestrated.

Danielle Aliberti, is considered, by RinP employees, to be a person with high influence in the organisation and had managed to recruit her mother alongside several other members of her family into the business. Such acts of nepotism, the Claimant is informed, has meant that none of these family members have been affected by any redundancies and all of whom, were promoted with ease within the organisation. Danielle too, having little experience, was given a senior position, which many staff questioned, due to her little experience. It has been known, for many years that, white echelons, who receive considerable protection, have consistently sat at senior management within Reed in Partnership Ltd.

~~It is widely known amongst RinP colleagues that, Tony Azubike, one of the only black, Senior Operation Managers, who was a man of excellent standing and loved by many black employees and white, but during redundancies, was the only manager at his level affected. It is for the reasons above, that not one black person has ever been known to sit on their Board of Directors, despite the disproportionate number of competent black individuals recruited, who have considerable talent to progress but struggle to do so. Furthermore, only a limited number of black people have ever made it to management and only one or two at senior operational manager level. Tony Azubike being one, who was once Nick Morgan's manager, but Nick managed to make it to Director level and Tony was made redundant.~~

~~Whilst the Claimant was working for Reed in Partnership, between 2011 – 2013, she applied for a manager's position which she didn't get, but a *white young graduate* who had only been with the organisation for a few months was offered a more senior position. Furthermore, the Claimant had not witnessed one black graduate student who had ever been selected for their graduate scheme during the two years of her employment, yet those who were selected were white or nonblack and of a particular class. *This is the culture and the Claimant's experience as well as other black employees, which puts black people at a disadvantage and she believes Reed in Partnership should answer for. They can do this by providing and publicising internal statistics relating to race equality for opportunities and progression into management and senior management over the last decade in proportion to the black staff they have recruited. Also, the racial makeup of its board members during this time and students on its graduate scheme*. This would confirm the Claimant's *allegations*;~~

(viii) On grounds of sex and race, the Claimant received notice from Liam Taylor (although the letter was written by Richard Stacey) on 28.01.19 that her contract would be terminated. The Claimant holds, Danielle Aliberti, Sheryl Moore, Richard Stacey and Reed in Partnership Limited responsible for this act of discrimination;

(ix) On the grounds of sex and race, the Claimant was not included in the organisation's collective redundancy consultation despite others who served the same length of service being invited (page 10). The Claimant holds Danielle Aliberti, Richard Stacey and Reed in Partnership Limited responsible for this act of discrimination;

(x) On the grounds of sex and race, Danielle did not give the Claimant a Return to Work interview following a period of sickness as per company policy despite knowing she had been off sick and was not doing very well following the sexual assault (page 11). The Claimant holds Danielle Aliberti responsible for this act of discrimination.

(xi) On the grounds of race and/or sex - W/C 12/11/18, Miren's colleague, Joanne Senturk, contacted the HR Business Manager, Liam Taylor, (who worked alongside Danielle in the recruitment process and under Richard Stacey, Head of HR) to discuss securing an interview. However, they were informed she could not be interviewed and were provided no further information. The Claimant holds Danielle Aliberti, the decision makers in HR, namely, Richard Stacey and Reed in Partnership responsible for this discriminatory act;

(xii) On grounds of sex and race, Danielle's dismissive attitude towards the Claimant's application for the EC role in Feb 2019 (page 6). The Claimant holds Danielle Aliberti responsible for this act of discrimination;

Harassment s.26 EA 2010

15. Did the Respondent subject the Claimant to unwanted treatment which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her (section 26(1) EA 2010) with regard to the acts set out at paragraphs 14(iii), (v), or (vi) above only?

16. Did that unwanted treatment relate to the Claimant's race and/or her sex?

Victimisation s.27 EA 2010

17. Did the Claimant make a protected act under? ***The Claimant has not yet identified a protected act and so her claim cannot at present proceed. The Claimant is kindly requested to identify a proper protected act for the purposes of section 27 by providing the following information:***
    (a) A description of the complaint said to be the protected act(s) relied upon;
    (b) Who was the protected act(s) made to?
    (c) When was the protected act(s) done?

(d) ***Which of the categories set out in paragraph 27(2)(a)-(d) does the Claimant rely upon?***

The Claimant relies on 27(2)(c) & (d) – (see page 2)

Week commencing, 5/11/18, the Claimant put in another request, to Sheryl and Danielle, for flexible working arrangements by email - s27(2)(c) Equality Act 2010 (EA), as she missed her son and the arrangement was not working out. During this time, she felt heavily scrutinised and more than other colleagues who had not made the request. The Claimant reasonably believes that the Respondent, Sheryl and Danielle, believed she would complain about the discriminatory treatment in the workplace i.e. the initial refusal of flexible working, as another female Asian employee, employed on the same contract, called Farah, was permitted to have reduced working hours for childcare arrangements - s27(2)(d).

18. Did the Respondent subject the Claimant to a detriment because she had done one of the protected acts set out above? The Claimant will rely on the acts set out at paragraphs 14(ii), (iii), (iv), (v) and (vi) above only.

Jurisdiction

19. Were any of the Claimant's claims presented outside the three-month time limit under section 123 EA 2010.

20. If so, is it just and equitable to extend time?