



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs V Nixon  
**Respondent:** City of Bradford Metropolitan District Council  
Mr S Chapleo  
**Heard by:** CVP                      On: 13, 14, 15 January 2021  
    9, 10, 11 June 2021

**Before:** Employment Judge T R Smith  
**Members** Mr Dowse  
Ms Arshad-Mather

## Representation

Claimant: Mr Shellum (Counsel)  
Respondent: Mr Gallagher (Solicitor)

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V-video. It was not practicable to hold a face-to-face hearing because of the Covid19 pandemic.

# RESERVED JUDGMENT

1. The Claimants complaints of victimisation are not well-founded and are dismissed.
2. The Claimants complaints that she was subjected to a detriment or detriments in contravention to section 47B of the Employment Rights Act 1996 ("ERA96") are not well-founded and are dismissed.

# REASONS

## The issues.

1. The issues were set out in an order of Employment Judge Little dated 05 August 2020 when both parties were legally represented. The issues were further refined, clarified and agreed at the start of the hearing as set out below: –

## Victimisation

2. Was the Claimant's grievance or complaint of 12 September 2019 to Cindy Hunter, service manager, to the effect that social workers managed by the Claimant had suffered racial abuse from a white British manager, a protected act within the meaning of the Equality Act 2010 (EQA 10), section 27(2)(c) or (d)?
3. Was any grievance or complaint raised by the Claimant on 06 October 2019 a further protected act?
4. If so, was the Claimant subjected to a detriment in that references drafted by the Second Respondent dated 08 January 2020 and 10 March were amended from a previous favourable reference by Ms Kate Leahy with the result that she lost her employment with North East Lincolnshire Council and had difficulties securing employment at the same level, because of one or other of the protected acts.
5. The First Respondent expressly conceded that in relation to victimisation it was not relying on the statutory defence under section 109 EQA 10.

## Protected disclosure

6. Were one or both of the two grievances/complaints (12 September 2019 and 06 October 2019) disclosures qualifying for protection within the meaning of section 43B of the Employment Rights Act 1996 (ERA 96) in that in the reasonable belief of the Claimant the disclosure or disclosures were made in the public interest and they tended to show that there had been a breach of a legal obligation by the First Respondent namely to ensure that no unlawful discrimination, contrary to the Equality Act 2010 ("EQA10"), was suffered by its employees or staff.
7. If so, was the Claimant subjected to the following detriments on the grounds that she had made such a disclosure or disclosures
  - the references dated 08 January 2020 and 10 March 2020 being changed.
  - the failure to investigate the allegations which the Claimant had made in her grievance/complaints.
  - the failure to investigate the truth of the allegations made by RH before altering the Claimant's reference.
8. It was conceded by the Respondents that the documents of 12 September 2019 and 06 October 2019 were protected disclosures and the disclosures were made in accordance with section 43C ERA 96.

**Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.**

9. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
10. Did the Respondent or the Claimant unreasonably fail to comply with it and in particular paragraphs 33, 40 and 41 to 45?
11. If so, would it just and equitable to increase or decrease any award payable to the Claimant? If so, by what proportion, up to 25%?

**Bad faith**

12. Were either of the Claimant's disclosures made in bad faith?

**Liability only**

13. Almost the entirety of the first day of the Tribunal hearing was spent on reading, addressing technology issues and determining a lengthy disclosure application by the Claimant. In the circumstances the parties agreed that the Tribunal would simply, at this stage, address liability and if it found, wholly or in part for the Claimant, it would then issue directions to convene a remedy hearing.

**The evidence**

14. The Tribunal had before it a statement from the Claimant, Ms Nixon, and heard evidence from her.
15. The Tribunal had before it statements from Ms Kate Leahy, Mr Ifran Alam and the Second Respondent, Mr Stefan Chapleo. It heard evidence from the authors of those statements.
16. The Tribunal had a primary bundle that numbered 287 pages. This was supplemented by a subsidiary bundle consisting of 37 pages (R2) and the Claimant's reply to a request for further and better particulars dated 18 August 2020, R3. Pursuant to an order for specific disclosure made by the Tribunal on the first day of the hearing a small email chain was produced, which the Tribunal marked R4.
17. On the third day of the Tribunal hearing it became apparent that a document that was potentially relevant had not been disclosed, namely an email from Mr Mark Douglas, Strategic Director of the First Respondent dated 15 October 2019 to a large number of social workers. The Tribunal made an order for specific disclosure for details of what response, if any, Mr Douglas then sent.
18. The Tribunal marked the resultant documents disclosed as R5.
19. It is appropriate to record that the Tribunal were concerned as to aspects of the First Respondent disclosure. By way of illustration there was clear and unchallenged evidence that some members of the social work team had sent emails to Mr Alam. They could not be found or produced. The Tribunal considered Mr Gallagher had done all in his power to emphasise the importance of full disclosure to the First Respondent, but those responsibilities were not fully taken on board by the First Respondent. The First Respondent's attitude to disclosure was, in the Tribunal's judgement, at times dilatory.
20. A reference to a document in the bundle is a reference to the primary bundle, unless the Tribunal indicated to the contrary.

### **Finding of facts**

21. There were numerous evidential disputes between the parties. The Tribunal has not sought to resolve each and every one of those disputes; only those disputes that were relevant to making findings in respect of the issues that it had to determine.

### **The First Respondent's structure and the role of the Claimant**

22. The Claimant is a qualified social worker.

23. She identifies herself as white British.

24. The Claimant secured an engagement with the First Respondent as an agency social worker in April 2019. Her engagement ended on 20 December 2019 following an e-mail from her to the First Respondent (185), dated 02 December 2019.

25. At all material times the Claimant worked via an agency, Pertemps, for the First Respondent. She was not an employee of the First Respondent.

26. She left the First Respondent after being offered a new placement in North-East Lincolnshire commencing 20 December 2019. The remuneration represented a significant increase to that which the Claimant earned with the First Respondent.

27. The social services department of the First Respondent had been in difficulty, having received an adverse OFSTED report in 2018. Amongst the learning points the First Respondent took from that report was the need to improve team and individual performances and to address staff instability and turnover.

28. The Claimant was engaged as a team manager within children's social work.

29. She was assigned to a new service delivery area known as the West service. This was part of the First Respondents plan to seek to improve the service it provided.

30. Originally, for a short period of time, from April until June 2019, the Claimant managed the entire West service.

31. In about June 2019 the West service was then split into two teams, imaginatively named team A and team B.

32. The original manager of team B was Karen Duckworth, who was already employed by the First Respondent, and had other responsibilities. She gradually relinquished her role to Ms Stephanie Honeyman, who was an agency member of staff, and had the job title of team manager.

33. Ms Honeyman came into post in late August/early September 2019. For a period of time both Ms Duckworth and Ms Honeyman were in post at the same time. Ms Honeyman was extremely experienced and had worked at a higher level as a senior manager within another local authority. She now only sought agency work at an operational level.

34. Ms Honeyman had, prior to taking over team B, worked in the First Respondents Keighley team. Other than having a reputation for being occasionally forthright and abrupt there were no concerns as to her behaviour. She was perceived to be performance driven.

35. Ms Leahy as service manager had as part of her portfolio, management responsibility for team A and team B.

36. Ms Leahy, along with others, from October 2019, reported to Mr Chapleo (the Second Respondent"). He was another agency worker, retained as the First Respondents' Interim Head of Service.
37. The Second Respondent in turn reported to the Assistant Director of Children's Services. This was initially Ms Di Drury, who was replaced by Mr Ifan Alam, who came into post in about November 2019.
38. Team A consisted of, Ms Bushra Akbar, Ms Mariam Sawaiz Ms Nahida Jarman, Mr Shoeb Bismallah, Mr Hasan Hussain, Ms Romana Javid, Mr Yayha Mahmood, and for part of the period, Mr Mike Jarman.
39. It is relevant to note that Ms Akbar was one of a number of agency staff in team A.
40. Team B consisted of Ms Razia Yunis, Ms Rebecca Davies, Mr Paul Thomsson, Ms Deana Boyton and Ms Adeline Appleyard.

### **Policies and procedures**

41. Prior to turning to the principal events, it is appropriate for the Tribunal to make a number of observations as regards various policies and procedures of the First Respondent.
42. Firstly, the First Respondents grievance procedure expressly did not apply to agency workers (75). It only applied to those employed directly by the First Respondent. In addition, the policy did not apply to a multiple grievance.
43. Secondly under the First Respondents whistleblowing procedure the First Respondent was under no obligation to investigate an anonymous concern. The decision as to whether or not to investigate, and the extent of any such investigation, was at the First Respondents complete discretion (111).
44. The Tribunal found that if some aspect of an agency workers performance or conduct gave the First Respondent cause for concern, depending upon the gravity, the normal process would be to inform the agency to remove that worker.

### **RH**

45. It is important, in terms of the relevant factual background, to make reference to one aspect of the Claimant's private life.
46. Whilst working for the First Respondent the Claimant was living in accommodation which was also occupied by a male, RH. The property was apparently owned by RH's parents and advertised on Airbnb. RH worked as a call handler for a local police force.
47. The Claimant and RH developed a close personal friendship.
48. The Claimant discussed work matters with RH, although she denied she breached any confidentiality obligations. She accepted in cross examination she discussed named staff with him.
49. That close personal relationship ended acrimoniously in about the middle of November 2019. The Claimant moved out of the property on or about 19 November 2019. She was to resign her engagement some 13 days later.
50. RH apparently reported the Claimant to the police and subsequently the Claimant made a counter allegation, also to the police. The Tribunal had insufficient

evidence to make any judgement as the truth or falsity of the allegations and counter allegations.

**The complaints.**

51. The Claimant relied upon two documents which she contended were disclosures qualifying for protection within the meaning of section 43B ERA96 and also protected acts within the meaning of section 27(2) (c)and (d) of the EQA 10.

**12 September 2019.**

52. The first was dated 12 September 2019, sent at 11.10 (134). It was contained in an email from the Claimant to Ms Cindy Hunter and copied to Ms Leahy.

53. Ms Hunter was, at the relevant time, covering for Ms Leahy who was absent on annual leave. It therefore fell to Ms Hunter to initially address matters.

54. The email contained the following: –

*"I am emailing you in Kate's (Ms Leahy) absence as I believe you are covering. It is a bit of a sensitive issue really, but nevertheless, one that I need to pass on to you.*

*There has been a serious allegation made to me today by a social worker, whereby she feels she is being racially discriminated against by a team manager in the West. The worker explained that it was not just her and the rest of the Muslim/Asian workers in the assessment teams feel the same...."*

55. The reference to the worker was a reference to Ms Akbar. As has been already noted Ms Akbar was also an agency worker

56. The Claimant did not say she had witnessed or seen any of the alleged race discrimination.

57. Ms Akbar then sent an email (136/137) to Ms Hunter, copied to the Claimant, also dated 12 September 2019, at 13.22. The email made clear that Ms Akbar was sending it having discussed matters with the Claimant. She complained of racism by Ms Honeyman, evidenced, she said, by disparate treatment between herself and other Asian workers compared with their white British colleagues. It was alleged Ms Honeyman undermined Asian workers in front of other staff members, employed bullying tactics, and was very rude. Ms Akbar also complained as regards Ms Honeyman's management style.

58. It was not clear to the Tribunal why the Claimant needed to send the email that morning given Ms Akbar seemed to have no difficulty in setting out her concerns that afternoon.

**The investigation into the complaint of 12 September 2019.**

59. Ms Hunter asked the Claimant to obtain details of the concerns of staff via email, and to send those e-mails to her. Whilst unusual this was not unreasonable in the Tribunal's judgement, given the Claimant knew of Ms Akbar's concerns and was in a better position to identify from those discussions who were likely to give relevant evidence.

60. The Tribunal reminded itself that the First Respondent faced a difficult task between balancing the fact enquiries needed to be undertaken to carry out a reasonable investigation, against speaking to every possible person, which could in turn could impact on the reputation of Ms Honeyman, if the allegations proved to be unsubstantiated.

61. Ms Hunter spoke to Ms Duckworth, who was in the process of handing over the management of team B to Ms Honeyman, who relayed information to her from team B.
62. Ms Hunter also carried out some interviews herself.
63. The evidence gathered, together with the initial analysis of Ms Hunter, was before the Tribunal (136 to 151).
64. It is appropriate to briefly summarise the information gathered by Ms Hunter.
65. Mr Mohamed recorded he had seen Ms Honeyman being rude and abrupt with an Asian social worker at a team meeting, in the context that she was enquiring with that member of staff because specified work had not been done.
66. He considered that Ms Honeyman often totally blanked himself and other colleagues from a BME background and he felt that she preferred to speak to white colleagues. He reported that, whilst he was not there, he was told by his colleague, Mr Hussain that Ms Honeyman had behaved in an inappropriate manner to a guest speaker, Ms Fozia Farook.
67. Ms Mariam Sawaiz stated she had not directly experienced any difficulties with Ms Honeyman other than she'd seen Ms Honeyman roll her eyes when talking to Mr Bismallah. (It is appropriate to record that Mr Bismallah was in team A at the time but subsequently moved to team B). She was also aware that Ms Farook considered Ms Honeyman was quite abrupt and rude when she gave a talk to the team.
68. Mr Jarman had no concerns as to the management style of Ms Honeyman and had not seen evidence of racist behaviour.
69. Ms Shahian complained as to how Ms Honeyman addressed her in a team meeting when issues were raised as to her competency. She made no reference to any form of race discrimination and nor did she say she had directly witnessed any.
70. Ms Duckworth confirmed she'd spoken individually to her team (that was the members of team B) save for Deanna Boyton (who was an agency worker and until the week previously in team A managed by the Claimant so would have limited exposure to Ms Honeyman). She had spoken to Ms Yunis, Mr Bismallah, Ms Adeline Appleyard and Ms Rebecca Davies. The consensus was that some people had difficulties adjusting to the different management style of Ms Honeyman and whilst it was considered, at times, Ms Honeyman could be abrupt, they did not think that there was any differentiation based on skin colour and they had not seen or experienced race discrimination. Mr Bismallah did consider Ms Honeyman blanked him but didn't think it was a race issue but linked to their previous knowledge of each other. Ms Duckworth was adamant that she herself had not observed any inappropriate racist behaviour and none of her team had raised such concerns.
71. Ms Hunter spoke directly to the Claimant, Ms Honeyman and Ms Akbar.
72. When the Claimant was interviewed, she accepted she had not witnessed any concerning behaviour although reported Ms Akbar was insistent that she believed Ms Honeyman's behaviour was linked to her race.
73. When Ms Honeyman was interviewed, she explained that she was covering the Claimant's team for a short period of time whilst she was absent on leave. She

stated staff were not used to being challenged and believed Ms Akbar was upset after she refused to sign off an item of work, on quality grounds, and she believed that Ms Akbar struggled with management challenge.

74. She accepted she had challenged three members of the team, including Ms Akbar and Ms Shahian, for not sticking to court deadlines. She denied any racist behaviour.
75. Ms Hunter met Ms Akbar. She had the opportunity to explain her concerns. Ms Akbar indicated that it was only after a discussion with her husband that she considered the way Ms Honeyman allegedly behaved towards her that she considered it could be linked to her race.
76. Mr Jarman was interviewed and had nothing of significance to add to his email.
77. Mr Mohammed was spoken to by telephone (as he was leaving the next day). He maintained that he considered he was ignored by Ms Honeyman and that she preferred to go and talk to white staff.
78. The Claimant accepted in cross examination that Mr Hunter had spoken to all the people she had asked her too.
79. Ms Hunter then recorded her thoughts (151) from the evidence that had been gathered. She concluded that Ms Honeyman had a very direct management style. She noted there were no alleged race issues when she worked in the Keighley team. She considered that the concerns in respect of racist behaviour was based on perceptions and feelings, and whilst not dismissing how uncomfortable people may have felt, there were no allegations of direct or indirect racist comments.
80. The Tribunal should add at this point racism can take place without any form of spoken comment. It can exist in a variety of ways, for example passing over a person of one race in favour of another in terms of promotion when the former is equally or better qualified.
81. She noted she not been able to speak directly to Ms Shahian, Mr Bismallah or Ms Rebecca Davies.
82. Ms Hunter sent the documentation she had received, along with her own notes, and analysis to Ms Leahy, copied, to Ms Drury who at the time was Head of Service (153). The Tribunal found that the work undertaken by Ms Hunter was not a finalised report, as she stated that the documents, she was sending included "*my brief views, and suggested steps re concluding investigations*".
83. Mr Shellum made a number of criticisms of the investigation including the failure of some witnesses to be personally interviewed and the fact that those that were interviewed did not sign the notes. He also queried the lack of HR attendance. Mrs Leahy explained this was an informal investigation because it involved a complaint from agency workers. Although she probably would have interviewed all witnesses, she did not criticise Mrs Hunter who got emails from the witnesses she not interviewed. She explained that the outsourced HR function would not normally provide representation at an informal investigation. Whilst Mrs Leahy accepted, she might have done matters somewhat differently she felt the what needed to be looked at was looked at.
84. Ms Leahy returned from annual leave on 16 September 2019.

85. Ms Leahy spoke to the Claimant, Ms Honeyman and Ms Duckworth. Ms Leahy's decision was that racism wasn't substantiated but it was more a matter of management style. No further action would be taken other than seeking to improve relationships generally. Thus, the Claimant was aware of the outcome of the concern that she raised on behalf of Ms Akbar's behalf on 12 September 2019.

86. Ms Leahy spoke to Ms Akbar for approximately one and half hours to give her feedback and there was a discussion as to the possibility of a restorative meeting with Ms Honeyman, which the latter was prepared to attend. It would appear the meeting with Ms Akbar took place just after Mrs Leahy had briefed the managers.

87. Ms Leahy did not give feedback to all those who are given evidence in the informal investigation. She assumed that any relevant feedback would be given by managers.

88. Probably because she was told by the Claimant that feedback was wanted, on 02 October 2019 Ms Leahy told those present at an impromptu team meeting that no further action would be taken in respect of the complaint of 12 September 2019. Ms Leahy considered that any concerns related to Ms Honeyman's management style and not race. No one demurred.

89. At that stage it is proper to record the First Respondent had no concerns as to the Claimants behaviour and considered it was perfectly proper for her, as a manager, to pass on another member of staff's concerns.

### **06 October 2019**

90. The second disclosure relied upon was dated 06 October 2019 (128). The document is anonymous but was substantially authored by the Claimant. It was addressed to the Respondents Director of Children's Services.

91. The full terms and effect of the document, which is lengthy, must be looked at and the Tribunal did have full regard to the same.

92. For the purpose of this judgement the following extracts are of particular relevance.

93. The document began by the Claimant praising herself: – *"Vera had managed a complex few months, dedicating time and commitment to the West service during its compilation. This, we would like to raise as a compliment, even though, there have been several compliments made to Traci Taylor and Kate Leahy. The support and active guidance have been an immense help..."*

94. This would lead the reader to conclude that the Claimant was not the author.

95. It then went on to record: -

*".... The management style by Stephanie (Ms Honeyman), took a shift from being somewhat discouraging, to being personal. Evidently, Stephanie appeared to pick out individuals to be openly rude and hostile towards. These individuals including myself were ethnic minority groups. Stephanie would walk into the team room and only speak with white British members of the team... over the next few days, the team got together, and all came to the same conclusion the behaviour displayed was of a racist agenda"*

96. Pausing at this juncture the document as read pretended the author to be of an ethnic minority group. The Claimant was not. The Claimant knew from

gathering e-mails for Ms Hunter's investigation and the feedback she had received that "all" the team had not concluded that Mrs Honeyman had a racist agenda. She could not reasonably believe that statement to be true.

97. It pretended that the Claimant had been targeted by Ms Honeyman. She had not and had never made an allegation against Ms Honeyman of any form of race discrimination.
98. The document then, whilst stating the Claimant had acted properly in respect of referring the apparent team grievance, (which in fact was a concern raised by Ms Akbar ) recorded that Ms Leahy had informed the team that there was no racism but a management style issue. The reference to the Claimant acting properly was a further deception so the recipient did not think the Claimant was the author.
99. The document went on:- "*I would've expected suspension of the manager and a thorough and transparent, independent investigation to take place*" It continued "*because of the incompetency in the way this complaint was not investigated, along with the bullying and racism element, staff have been left feeling unable to confidently assert concerns to service managers*"
100. Given the Claimant never raised any concerns with Ms Hunter or Ms Leahy in the above strident terms this would again point away from the Claimant being the author.
101. The document then stated: - "*Due to the unfortunate racism displayed by Stephanie, the team are concerned about the children Bradford given that the majority on our caseloads are of an Asian Heritage. Outcomes for children need to be consistent in regard to decision making and distribution of services. We believe that this prejudice demonstrated will be adversely affecting the outcomes of cases. This we find deplorable. Are members of the White British community receiving a better or more lenient service than members of the Asian community?*"
102. It then stated: - "*Members of staff (both agency and permanent) are reluctant to be on Stephanie's team, knowing no investigation ever took place relating to her behaviour...*"
103. That was untrue as the Claimant knew an investigation took place, she herself contacted some staff via e-mail for Ms Hunter.
104. Towards the end of the document it stated "*To conclude, we would request that Stephanie is removed from the West service as we can no longer endure the bullying and racism being displayed in her attitude and demeanour on a daily basis. Members of staff will not speak up, so this letter is sent collectively from the West service and not an individual*"
105. Not one member of team A or team B saw the letter.
106. Not one member team A or B approved of the letter.
107. A reasonable person reading the letter would assume all members of both team A and team B, which comprised the West service, believed there was serious racism and had seen and approved the letter. That was not the case and the impression given was wholly misleading.

108. The Tribunal observed at this stage that the Claimant had never been criticised for raising the concerns of Ms Akbar in September and indeed had been told by Ms Leahy that she had done the right thing.
109. The Tribunal found the Claimant's evidence as to the misleading nature of the letter to be significantly unconvincing and lacking in credibility. In view of that finding it is appropriate the Tribunal briefly summarises its reasonings for that conclusion.
110. Somewhat bizarrely the Claimant initially suggested in cross examination she was not the author of the letter of 6 October 2019.
111. She then alleged RH had made additions to the document. It is true that RH later told the Respondent that he assisted the Claimant in writing the letter. She was unable to identify what additions, even in general terms, she alleged he had made, which the Tribunal did not find credible.
112. The reason why the Claimant said she asked for RH's involvement was in the Tribunal's judgement unconvincing. The Tribunal did not accept the Claimant's account that she believed RH was some form of whistleblowing expert (she knew he was a civilian police call handler).
113. She said that RH had added to the document to try persuading her to stay in the Bradford area. That creates a significant evidential problem because it was RH who first complained to the Respondent that it was the Claimant who was controlling, which if true, would suggest that he would want her to leave the area.
114. Even if the Tribunal was wrong on its previous finding the Tribunal could see no reason why RH would assert the Claimant was from an ethnic minority in order to persuade her to remain in the Bradford area. Similarly suggesting the letter was from the whole West team would not ensure the Claimant remained in the Bradford area.
115. The Claimant sought to justify her decision by saying she was speaking for the entire team because she said she had seen the emails that have been forwarded to Mrs Hunter from the first investigation. As the Tribunal have already observed all those emails did not allege that Ms Honeyman was engaged in racist behaviour. The Claimant also knew of the result of Ms Hunter's investigation and had not demurred from Ms Leahy's action plan. The Tribunal considered the Claimant's evidence on this point could not be relied upon. The Tribunal formed the view that this was an attempt by the Claimant to now justify her actions.
116. The Tribunal did not find favour in Mr Shellum's submission that in reality the Claimant was simply seeking to support staff. She had no direct or implied authority to write such a letter on behalf of all staff. It contained a substantial number of misleading or untruthful statements. If it was really about supporting staff, there was no good reason for the subterfuge and untruths contained in the letter. In the Tribunal's judgement this was not about supporting staff but about creating trouble for Ms Honeyman.
117. The Tribunal considered that the reality was the Claimant did not enjoy a good relationship with Ms Honeyman and wanted her removed. When Ms Honeyman had arrived in post it had reduced the Claimant's management responsibilities. Ms Leahy, who had relatively close contact with both the

Claimant and Ms Honeyman, considered the Claimant had a “real” problem with Ms Honeyman and there were elements of professional jealousy. They had different ideas of what constituted good practice both professionally and practically.

**The Second Investigation.**

118. The letter of 06 October 2019 was not brought to Ms Leahy attention until she received an email from Mr Douglas the First Respondent’s Strategic Director on 15 October 2019 (154c).
119. Mrs Leahy was very surprised as to the contents of the letter, as from her observations she considered that team dynamics had improved.
120. On the same day Mr Douglas wrote to all staff in the West team with reference to the letter of 06 October 2019 indicating he took the matter very seriously. Staff were not unnaturally puzzled to receive the letter from Mr Douglas. Mr Douglas had concluded on reading the letter that the complaints came from all member of the West team, hence his email (154d).
121. It was only at this point did Ms Leahy consider that the staff were unhappy with the September investigation. Of course, all the staff were not unhappy, as the letter was written not by them but by the Claimant.
122. Ms Leahy waited to see, what if anything, she was expected to do. There was a delay. In the Tribunal’s judgement this may well have been due to the change in senior management within the First Respondent.
123. In November Mr Alam, who was new in post, received several emails from staff in the West team expressing their concerns as to the previous investigation. It is unfortunate that those emails were not disclosed by the First Respondent, apparently on the basis they could not be located.
124. The result was that Mr Alam asked Mrs Leahy to revisit the September investigation and investigate any current concerns.
125. Mr Shellum submitted that the investigation should not have been allocated to Mrs Leahy as she was mentioned in the letter of 06 October 2019.
126. The Tribunal considered Mr Alam provided a cogent reason for his decision. Ms Leahy had to work with her team and maintain relationships with them and it was therefore appropriate that she revisited the September investigation and any subsequent developments. He considered it was important that she retained the confidence of her team. Given the first investigation was informal and had been carried out, not by Mrs Leahy but by Ms Hunter, the Tribunal considered that was an adequate explanation. That is not to say another large employer may have taken a different view. The Tribunal simply considered that Mr Alam’s decision was within the permissible bounds of management discretion. In any event, the allocation of the investigation to Ms Leahy, was not pleaded by the Claimant as a detriment.
127. Ms Leahy revisited the September investigation and looked at any further concerns. She did not go through the letter of 06 October on a line-by-line basis but invited comments as regards Ms Honeyman’s behaviour.
128. As this was, on the face of it, a collective grievance the First Respondent’s grievance policy did not apply.

129. Mr Shellum submitted that this was not an investigation into racism, but the Tribunal did not agree. When the notes of the investigations are examined (below) it is clear that Mrs Leahy was conscious that allegations of racism were in play and did invite comments upon the same. In any event as she was re-investigating the September investigation which itself specifically made reference to race discrimination. In any event the Claimant does not allege, as a detriment, that the investigation was inadequate.
130. She undertook her investigation between 19 to 28 November 2019.
131. On the same day that she started her investigation, 19 November, the Claimant visited Mrs Leahy and told her that one member of staff was going to leave because of the divide created by Ms Honeyman. She also claimed that the member of staff told her that three others were struggling with Ms Honeyman's management style. The Claimant in cross-examination said she had little memory of such a discussion although conceded that some of the elements may have been discussed. The Tribunal considered the discussion did happen, given that Ms Leahy made a contemporaneous note (157) and that note recorded the above. The Tribunal concluded that the Claimant was now seeking to distance herself before the Tribunal from being the instigator of complaints against Ms Honeyman.
132. Ms Leahy interviewed 13 team members and also spoke to Ms Duckworth (who had now left but had experience of working with Ms Honeyman). Relevant notes are to be found in the bundle (157 to 180).
133. It is appropriate to briefly summarise the evidence collated. Simply because a piece of evidence from the investigation has not been mentioned below does not mean the Tribunal did not give it full consideration.
134. In summary Ms Honeyman denied any suggestion of bullying, harassment or racism. She accepted there were issues as regards the duty tray she introduced because the Claimant did not want her team to use it.
135. She accepted that she had high standards on assessments and sent one member of staff's assessments back four times for corrections (this was likely to have been Ms Akbar's).
136. Ms Appleyard was supportive of Ms Honeyman and considered there was some form of vendetta and it was like a "*nursery school*". She considered she received good coaching from Ms Honeyman and had not witnessed any inappropriate behaviour to anybody and nor did she think the team was unsupported. She considered that Ms Honeyman was firm but fair.
137. Ms Akbar said Ms Honeyman was demeaning to Ms Issac in respect of the duty box. She also mentioned another member of the team was on the verge of handing in their notice because they considered they were talked down to Ms Honeyman. She suggested Ms Appleyard had issues with Ms Honeyman (the Tribunal should record that was not what Ms Appleyard said). Ms Akbar considered Ms Honeyman was not be trusted and wanted Ms Leahy's job.
138. Ms Issac considered Ms Honeyman was the same with everybody. She accepted that Ms Honeyman pushed hard on performance but did not consider she treated anybody in the team differently. She denied a suggestion that Ms Honeyman was demeaning to her in respect of the duty box (this no doubt was raised given the allegation Ms Akbar had make when she was interviewed).

139. Ms Boyton indicated she was fed up with what she considered to be “playground” stuff and considered Ms Akbar was at the centre of the allegations, along with the Claimant. She was also critical of Ms Akbar’ professional practice.
140. Ms Boynton liked Ms Honeyman as a manager and considered that the Claimant had a “*massive beef*” with her and there was a lot of tension between the Claimant and Ms Honeyman. She accepted Ms Honeyman could be short and abrupt but not rude or nasty and never witnessed her behaving in such a manner. She witnessed an incident where Ms Honeyman had been critical of Ms Shahian but that related to a court case where appropriate paperwork had not been done. She was not rude or nasty in the way she expressed her concern.
141. Ms Sawais was critical of the way Ms Honeyman spoke to Ms Davies and the need to explain how to carry out assessments which she (Ms Honeyman) considered should have been known to Ms Davies. She considered Ms Honeyman to be abrupt and rude. She made no complaints of racism and explained how much she liked working with the Claimant. She had never experienced racism herself.
142. Ms Davies considered she got on well with Ms Honeyman. She considered Ms Honeyman to be very performance driven. She described Ms Honeyman’s approach as “*fantastic*” and that she was spoke to staff appropriately (which contradicted the assertion of Ms Sawais). She never seen any evidence of racism from Ms Honeyman. Ms Davies was the mother of mixed heritage children and stated she would not condone racism if she saw it. She considered the relationship between Ms Honeyman and the Claimant was not good. Much of what was being raised, in her opinion, was office politics and past matters were constantly being re-raised.
143. Mr Hussain when interviewed referred back to what he considered Ms Honeyman rolling her eyes and looking at a guest speaker, Ms Farooq in what he said was a derogatory way. It was unfortunate that Ms Leahy did not probe what this meant. Whilst he wanted Ms Honeyman to be nicer, overall, he thought she was a good manager and his case discussions with her had been satisfactory. He had not observed any discriminatory behaviour, other than the Ms Farooq incident.
144. Ms Shahian stated that she did not want to be managed by Ms Honeyman if the Claimant left. She considered she been wrongly blamed for not ensuring papers were ready for a court hearing by Ms Honeyman. Ms Shahian did not think Ms Honeyman was approachable or always listened to her. She made no complaints of any form of racist behaviour.
145. Mr Thomasson considered some of the behaviour like being “*at school*”. He considered Ms Honeyman treated everybody the same and that she was supportive. He considered that Ms Aktbar, along with one or two other women were seeking to create unrest. He thought Ms Honeyman was one of the best managers he had ever had.
146. Ms Leahy met the Claimant again on 21 November 2019 (166 to 167). This was as part of her investigation and supervision and having discussed matters with a number of members of the West team. Ms Leahy asked the Claimant whether she required any support in her personal life as she had learnt she

appeared to have a strained relationship with RH. The Claimant denied she required any support.

147. She did not say she had witnessed any racist behaviour by Ms Honeyman. That contradicted what was in her letter of 06 October which referred to Ms Honeyman displaying a racist agenda and acting in a racist manner.
148. Although the notes used slightly less forceful language the Tribunal was satisfied from the evidence it heard that Ms Leahy asked the Claimant whether she had been winding up staff to complain about Ms Honeyman. At this stage Ms Leahy, the Tribunal concluded on the evidence, did not think the Claimant was the author of the letter of 06 October but was somewhat concerned as to what she was being told, which did not accord with her own perception of how the West team was working.
149. The Claimant denied that she encouraged members of her team to make complaints, became upset and the meeting ended.
150. Ms Duckworth when interviewed reported that she had received information, ultimately from RH, that the Claimant was sending texts and phone calls encouraging staff to escalate the situation and to complain about Ms Honeyman. RH had allegedly said that the Claimant had told him she would not let up until Ms Honeyman left.
151. Ms Yunis was critical that her name was apparently being mentioned by other staff as having been poorly treated by Ms Honeyman. She considered the Claimant was behind the unrest, along with Ms Akbar and Ms Sawais, who were seeking to create trouble. All her discussions with Ms Honeyman had been about performance with Ms Honeyman wanting the team to do well. She wished to dissociate herself entirely from any allegations that had been attributed to her by others against Ms Honeyman.
152. Mr Mahmood considered the Claimant was a good manager and although there had been some concerns when Ms Honeyman first started, since September everything had been fine, and he had not observed anything untoward.
153. Mr Bismallah had not experienced any inappropriate behaviour from Ms Honeyman. If he considered there was any discrimination, he would have challenged it. There was nothing for him to challenge. He'd experienced racism before but not from Ms Honeyman. He considered Ms Honeyman could be more approachable.
154. Ms Javid was aware of the tensions but had not witnessed anything untoward.
155. Ms Leahy reported her findings to Mr Alam in two emails, both dated of 28 November 2019 (181 to 184).
156. Ms Leahy frankly accepted that she had reflected upon Ms Hunter's investigation and accepted she could have spoken to two specific people but did not, as she had emails from them. There was third member of staff who she could have spoken too but did not because she understood from Ms Duckworth that the person had no issues as to race.
157. She considered with the first investigation it only needed to be informal given the complaint was from an agency member of staff and came to that conclusion, having received advice from her then Head of Service who in turn had spoken to the First Respondent's HR suppliers.

158. She considered in respect of the second investigation that Ms Honeyman's behaviour was not racially motivated but tied up with her need to challenge staff and drive forward performance. She also had a very different management style to other team managers. She reported that some staff spoke very positively of Ms Honeyman and some did not. She noted that the Claimant had recently asked whether she could become a permanent team manager. She also informed Mr Alam there was some concern now that the Claimant may have possibly been encouraging staff to keep the concerns alive.
159. The second investigation could be criticised. For example, those interviewed could have been asked to sign notes. There may have been merit in interviewing Ms Honeyman last so that every allegation that arose could have been plainly put to her. That said the Tribunal concluded there was a reasonable investigation and Ms Leahy came to a conclusion that was justifiable on the evidence. The Tribunal noted that a number of BME staff were supportive of Ms Honeyman.

#### Subsequent events.

160. Ms Leahy held a team meeting on 02 December. She explained she had completed her investigation and said she understood the team were concerned that the investigation undertaken by Ms Hunter had not been fully explained to them. Ms Leahy was told it that they had understood the outcome. That afternoon both the Claimant and Ms Akbar resigned.
161. The reasons the Claimant gave for her resignation (185) were: – *"recent events within the West service area, has( sic) made me feel quite vulnerable as a team manager and during some difficult times I have not felt adequately supported or listen to and fear that scapegoats can be used as to others advantages(sic) and I am not prepared to run that risk and to have my good reputation tarnished"*
162. In evidence the Claimant said that what she meant by this is that she considered she was being blamed for the complaints made against Ms Honeyman.
163. It would appear they both the Claimant and Ms Akbar joined the same new employer.
164. Just before Ms Akbar left, she saw Mr Alam and explained to him that she was leaving for personal reasons but did not want to be managed by Ms Honeyman. At the time the Claimant had not resigned so it is likely that she knew the Claimant was about to resign to make such a statement which could lead to the inference that both had discussed their future plans. Ms Akbar did say she considered Ms Honeyman was racist and gave one example of a conversation she'd seen at a printer where Ms Honeyman told two members of staff who were talking to get back to work, one of those members of staff was of BME heritage. Mr Alam suggested there were a number of perfectly reasonable innocent explanations, other than racism, to explain the incident.
165. On 06 December 2019 Ms Leahy received information which appear to come from RH, suggesting the Claimant had misused confidential information. Ms Leahy discussed matters with the Second Respondent who considered that as the allegation was potentially serious it would be appropriate to meet RH to obtain further information.

166. On 13 December 2019 Ms Leahy and the Second Respondent met with RH. He alleged the Claimant had manipulated and financially abused him. He said that he had heard the Claimant speaking on the phone and also texting people, because she wanted Ms Honeyman's assignment ended with the First Respondent. She was encouraging others to complain. He said that the Claimant said that Mrs Honeyman was a racist and had to go. He said that the author of the letter of 06 October was the Claimant, although he'd given her some assistance. It was not, from the social workers in the West team. Whilst the Claimant had not discussed with him any specific cases, she did discuss other managers and social workers. RH knew some of the social workers in the West team socially and the Second Respondent considered it inappropriate for the Claimant to share feelings of personal animosity towards a work colleague with RH.
167. RH was considered to be genuine. Clarification on RH's account was sought, although there was limited challenge. The Second Respondent did ask why the RH was coming forward now.
168. The Tribunal found it surprising that the meeting had not, apparently, minuted.
169. Whilst the Second Respondent wanted to progress matters RH indicated he was fearful of reprisals from the Claimant and therefore it was agreed that RH would discuss matters with his parents and then advise the First Respondent whether he was content for the information he supplied to be actioned. RH supplied his consent sometime between 27 December 2019 and 08 January 2020.
170. It was raised in cross examination why the First Respondent did not immediately terminate the Claimant's assignment. It was common ground that it terminated legally on 20 December. Ms Leahy thought that the Claimant had left by 13 December. Her only explanation for the date of 20 December was that perhaps the Claimant was using up TOIL or working from home. The Second Respondent also believed the Claimant's assignment had ended. The Tribunal accepted that evidence, although they were both wrong. One example of why the Tribunal accepted that evidence is the wording in the reference of 08 January 2020 (see later) drafted by the Second Respondent which stated "*since leaving Bradford information has come to light...*" This is consistent with the evidence of both Ms Leahy and the Second Respondent that they believed the Claimants assignment had already ended when they met RH.
171. As a result of the meeting on 13 December the Second Respondent considered that the current reference held by the Claimants agency caused him discomfort and as things had, in his mind, changed the reference should reflect that. He also considered the possibility of making a formal report to the Claimants regulating body.
172. There was a further matter that it is appropriate to mention that occurred at approximately the same time.
173. A number of staff, including agency staff had sought employment at North-East Lincolnshire Council. The posts were advertised, and the pay was attractive. It may well be happenstance that at approximately the same time as the Claimant resigned, others were leaving the First Respondent service to go to North -East Lincolnshire, the new assignment that the Claimant was taking up. The First Respondent considered that the Claimant was seeking to

take staff with her. Given the First Respondent had been criticised as regards staff turnover and a lack of continuity it is unsurprising that the loss of a number of social workers caused the First Respondent concern. Indeed, the Second Respondent spoke to the Claimants agency and asked if they would investigate the situation.

174. Mr Alam was so concerned that he wrote to the Claimants agency on 03 January 2020 (211), copying in the Second Respondent and, with reference to the Claimant leaving, said she had "*also taken around six staff, including a number of permanent social workers from Bradford and create a significant risk for us and children... Stefan (Second Respondent) has all the details and would welcome a conversation with you...*"
175. In fairness to the Claimant, Mr Alam's letter appeared to suggest it was Pertemps that was poaching. He also may be wrong with the figure 6. On 08 January 2020 the agency responded by saying "*I do not believe [Claimant] is solely responsible or able to influence the leavers from Bradford*"
176. The Second Respondent had not seen this when he wrote his reference of 08 January 2020.

### **The References.**

177. The Claimants agency required, for its audit purposes, a reference from Ms Leahy, and one was supplied by her (154) on 9 October 2019.
178. At the time the reference was written she had no concerns whatsoever as to the Claimant's behaviour or conduct and was not aware the Claimant was the author of the document dated 06 October 2019.
179. The reference consisted of a number of boxes, in which a candidate was rated poor, satisfactory, good, very good or excellent in 11 domains. Those domains were attendance, timekeeping, reliability, ability to work on own initiative, ability to work in a team, report writing, assessment skills, ability to manage an appropriate caseload, relationships with other professionals, IT skills and data entry, and management skills.
180. The Claimant was assessed as excellent in all domains save for IT skills in which she was marked as very good. By way of an additional comment Ms Leahy wrote, "*Vera is an excellent assessment team manager and is good at teambuilding and case management and is a positive role model for others*"
181. On any view that was an excellent reference.
182. Following receipt of consent from RH, the Second Respondent decided to contact Pertemps and also to submit a new reference. He considered that it was appropriate to speak to Pertemps as they were the Claimant's employer and in any event the Claimants assignment had ended with the First Respondent.
183. It is important to analyse what the Second Respondent knew when he wrote the reference of 08 January 2020.
184. He knew from Ms Leahy that there had been an informal investigation in September which involved an allegation of racism against Ms Honeyman and the allegations were not substantiated. He had not seen the letter from the Claimant dated 12 September.

185. He did not see any of the paperwork or know the specific details of Ms Leahy investigation following the letter of 06 October, other than he knew she'd reinvestigated the 12 September concern and had looked at any further concerns since its completion and found allegations of racism against Mrs Honeyman unsubstantiated.
186. He was not aware of any emails to Mr Alam from any of the West staff in respect of concerns following the first investigation.
187. He was only aware that the Claimant was the principal author of the 06 October letter on 13 December 2019.
188. On 08 January 2020 the Second Respondent completed a reference for the Claimant that was in an identical format to that of 09 October 2019.
189. At no stage did the Second Respondent directly discuss the references he provided directly with the Claimant.
190. The Second Respondent had only worked for the First Respondent for a total of six months. At best he may have met the Claimant once, briefly, prior to completing the reference. He did not receive any input into the reference from Mrs Leahy. He did not check the reference with any third party who had a better knowledge of the Claimant.
191. The evidence of the Second Respondent remained impressively firm throughout cross examination.
192. He did not change the Claimant's reference because of allegations of abuse by RH against the Claimant. Neither was he in any way influenced by the fact that a number of staff had left.
193. Nor did the Second Respondent rely upon some of the concerns that appeared from the investigation following 06 October grievance that may have corroborated, in part RH's account, because he had not seen that documentation.
194. His sole motivation was that he believed the Claimant, by authoring the complaints of 06 October 2019, in the manner she did, lacked honesty professionalism and integrity as it gave a wholly misleading picture. He put it simply in his evidence, that he thought she was dishonest. The Tribunal accepted, on the evidence, that was a perfectly reasonable conclusion to come to in respect of the letter of 06 October.
195. The Claimant accepted in cross examination that if RH said what was claimed it would give the Second Respondent cause for concern and could reasonably raise the possibility of issues in respect of professional standards, although she said she would have expected a meeting with the Second Respondent before any action was taken in relation to her reference
196. It is true, in a very lengthy cross examination, at one stage the Second Respondent did say that the accusation made by the Claimant of racism in her grievance of 06 October 2019 had some influence on his decision to write a new reference. That extract of evidence, however needed to be looked at in context. The context of the Second Respondent's evidence was that it was the grievance of 06 October 2019 and the deceptions contained therein that led him to change the reference. When he referred to racism it was in the context that the Claimant was seeking to create trouble for Ms Honeyman as immediately thereafter he said his concern was that the Claimant had written

a letter apparently coming from all other social workers which was clearly dishonest.

197. In the Second Respondents reference of 08 January 2020 the Claimant was marked as excellent in only two domains, attendance and timekeeping. She was marked as very good in report writing assessment skills and ability to manage an appropriate case load. She was satisfactory, in relation to ability to work on own initiative. She was now marked poor in respect of reliability, ability to work in a team, and relationships with other professionals, IT skills and data entry and management skills. The following note was appended to the reference "*Since leaving Bradford information has come to light which seriously calls to (sic) question Vera's conduct as a manager. We have concerns about Vera's integrity honesty and professionalism. As such we would not contemplate re-employing her. A referral regarding her conduct will be made to the HCPC.*" (This should be a reference to HCPC)
198. The Second Respondent accepted that he made an error marking down IT skills and remedied this in his third reference.
199. The Second Respondent was not able to explain to the Tribunal's full satisfaction why the grievance of 06 October was relevant to marking the Claimant down on her ability to work on own initiative, report writing and assessment skills. The Tribunal will return to this matter in its conclusion
200. The Tribunal considered the Second Respondent's explanation why he marked down the Claimant on the factor of managing a caseload was justifiable. It had nothing to do with the letter of 06 October but because the Claimant did not carry a caseload but managed others who did and he therefore considered that a rating of "excellent" was inappropriate although he did award her a marking of "very good". The Tribunal concluded he would have done the same for any team manager
201. The Second Respondent accepted he had not made a referral to HCPC despite what his reference said, as subsequently he took advice from HR and considered, having taken that advice, it was not appropriate to make a formal referral given the Claimants agency had been informed of the First Respondents concerns. He understood that his regulator would normally require the result of investigation but here one had not been undertaken. He was unfamiliar with the procedure and in his entire working life and only previously made such one referral. The Tribunal accepted his evidence whilst equally accepting the reference to a professional referral to the Claimant's agency was extremely damaging to her.
202. The Claimant was informed on or about 26 January 2020 that in the light of the revised reference from the Second Respondent her employment had been terminated with her new employer North East Lincolnshire.
203. The Second Respondent provided a further reference for the Claimant dated 10 March 2020. She remained excellent in attendance and timekeeping. Her report writing, assessment skills, ability to manage an appropriate case load, IT and data entry skills were marked as very good. She was assessed as satisfactory in respect of relationships with other professionals and management skills but poor in reliability and ability to work in a team.
204. The reference of 10 March 2020 contained a slightly different comment which read "*Whilst working for Bradford we had no concerns about Vera's practice*

*or management. She managed a busy assessment team and improved practice and... [the reference here is blank]. Since leaving Bradford information has come to light which calls into question Vera's integrity and conduct as a manager. As a result, we would not re-employ her".*

205. No mention was made of a reference to a referral to the Claimants regulator.
206. There were some significant differences in the references compiled by the Second Respondent between 08 January 2020 and 10 March 2020, although the Claimant was no longer working for the First Respondent. The reference of 10 March was a better reference.
207. The Claimant contended that she believed the Second Respondent was motivated by a personal vendetta as he believed the Claimant had influenced social workers to leave. If that is right that cannot have had anything to do with her making a protected act or whistleblowing.
208. The Second Respondent's sought to explain why the Claimant received a better reference was he may not have had his first reference in front of him for consistency. The Tribunal did not accept that evidence and it was a factor the Tribunal took into account in its assessment of overall credibility of the Second Respondent. The Tribunal considered it was more likely that he had toned down the March reference because he was aware that the Claimant solicitors had written to the First Respondent (266) following the drafting of the January reference, inferring the possibility of legal action for negligent misstatement.
209. Given the Tribunal's concern in two aspects as to the Second Respondent's credibility the Tribunal considered it important to explain why it accepted his evidence as his motivation as to why he provided poorer references than had been prepared by Ms Leahy.
210. Firstly, the Second Respondent could have sought to rely upon further information, such as the exit of staff. He did not do so. He did not seek to exaggerate.
211. Secondly the Tribunal regarded his stated concern in respect of the Claimant's grievance 06 October as genuine and substantial. The Tribunal was fully satisfied it was genuine and looked at objectively his concerns as to the Claimants honesty, integrity, and probity were logical conclusions to come to from the information he obtained from RH.
212. Thirdly the Second Respondent was able to accept errors, for example a marking down in respect of IT.
213. Fourthly, of the witnesses the Tribunal heard evidence from, he was the most impressive.

### **Submissions**

214. Both advocates made submissions by means of a written document. The Tribunal means no disrespect to either party by not referring to either document in any detail. Put succinctly there was no dispute as to the applicable law but there was a dispute as to how the facts the Tribunal should find. Where appropriate Tribunal have given reasons for its findings.

### **Discussion and conclusions**

#### **Victimisation**

215. In the Tribunal's judgement the following was the relevant legal context in which to analyse the facts as found.
216. Section 27 EQA10 provides: -
- "(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
- (a) *B does a protected act, or*
- (b) *A believes that B has done, or may do, a protected act.*
- (2) Each of the following is a protected act—*
- (a)....
- (b)....
- (c) doing any other thing for the purposes of or in connection with this Act;*
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.*
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
- (4) This section applies only where the person subjected to a detriment is an individual.*
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."*
217. Although it might appear that post termination discrimination is not covered it is now the settled law that it is, **Rowstock Ltd -v- Jesseymey 2014 ICR 550**. Mr Shellum made specific reference to the same and the Tribunal accepted that submission, which was not disputed by Mr Gallagher.
218. The Claimant relied upon subsections 27 (2) (c) and (d).
219. Section 27 (2)(c) is widely drawn and anything that could be said, in the broad sense, to be done in connection with EQA10 will merit protection even if the person concerned does not focus their minds specifically on any provision of the act, see **Aziz -v- Trinity Street taxis Ltd 1988 ICR 534**
220. Subparagraph(d) does not require specific reference to the EQA10 but the facts alleged, if verified, must be capable of amounting to a breach of EQA 10. As was said in **Beneviste -v-Kingston University EAT 0393/05** it is not sufficient "*merely by making a reference to a criticism, grievance or complaint without suggesting that the criticism, grievance or complaint was in some sense an allegation of discrimination or otherwise a contravention of the legislation*".
221. The Tribunal should record what it considers to be a detriment. Its finding in this regard is equally applicable to the Claimant's complaint in respect of the alleged protected disclosures. A detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to her disadvantage, although the starting point is to examine the situation from the Claimant's point of view, see **Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL**. Thus, the Tribunal must look at the matter from the Claimant's point of view, but then determine whether that perception is

reasonable in all the circumstances. Put differently the test for detriment is whether a reasonable worker would or might take the view that he had been disadvantaged in the circumstances in which she had thereafter to work. An unjustified sense of grievance cannot amount to 'detriment', see **Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285.**

222. Finally, was the detrimental treatment because of the prohibited circumstances? The essential question in determining the reason for the Claimant's treatment is what, consciously or subconsciously, motivated the Respondents to subject the Claimant to the alleged detriment(s). This will require an inquiry into the mental processes of the alleged discriminator and if the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation must succeed. Thus, the Tribunal therefore must identify the real reason or the core reason and motive for the way the alleged discriminator acted. The protected act does not need to be the only reason for the treatment meted out, but it must have a significant influence, see paragraph 9.10 at the EHRC Code.
223. The protected act does not need to be the primary cause of the detriment as long as it is a significant factor see **Pathan -v- South London Islamic centre UKEAT0312/13.**
224. Having set out the above legal framework the Tribunal then applied it to the facts of this case.
225. The Tribunal is satisfied that the email of 12 September 2019 amounts to a protected act within the meaning of section 27 (2) (d).
226. It reached this conclusion on the simple wording of the document and in particular the following: – "*There has been a serious allegation made to me today by a social worker, whereby she feels she is being racially discriminated against by a team manager in the West. The worker explained that it was not just her and the rest of the Muslim/Asian workers in the assessment teams feel the same....*"
227. That is a clear allegation that another person has contravened the EQA 10.
228. The Tribunal is satisfied that the document dated 06 October 2019 also amounted to a protected act within the meaning of section 27 (2) (d). The Tribunal could quote from a number of sections that illustrate its judgement, but one example will suffice: – "*.... The management style by Stephanie (Ms Honeyman), took a shift from being somewhat discouraging, to being personal. Evidently, Stephanie appeared to pick out individuals to be openly rude and hostile towards. These individuals including myself were ethnic minority groups. Stephanie would walk into the team room and only speak with white British members of the team... over the next few days, the team got together, and all came to the same conclusion the behaviour displayed was of a racist agenda*"
229. The Tribunal then considered whether what were asserted to be detriments were detriments in law. In essence it was asserted the detriments were the two references dated 08 January 2020 and 10 March drafted by the Second Respondent.
230. In the context of the Tribunal's findings it determined that the reference of 08 January 2020 was a detriment. A statement that a person will be referred to

their regulator and the poor marking in a number of domains was such that the Claimant lost her assignment with North East Lincolnshire Council. That was capable of amounting to a detriment.

231. The later reference of 10 March 2020 was not a particularly poor reference in terms of the marking. In fact, it was reasonably good. The Tribunal did however find there was a detrimental element in the comments made at the bottom which could impact upon the Claimant obtaining alternative employment and in the marking for the domains of reliability and working in a team. Absent the comments and those two domains the Tribunal would not have regarded it as amounting to a detriment. However, given the way it was drafted the Tribunal concluded that the reference of 10 March 2020 could amount in law to a detriment.
232. Finally, the Tribunal had to consider whether the Claimant was subjected to the detriments because she had done a protected act.
233. The Tribunal in its findings of fact has already set out the state of knowledge of the second respondent.
234. The Tribunal found no cogent evidence whatsoever that the email of 12 September 2019 had any influence whether conscious or subconscious on the references written by the Second Respondent.
235. It found that the reason the Second Respondent amended the references was solely because the Claimant, in the document dated 06 October 2019 had been dishonest and lacked professionalism and integrity. It was not consciously or subconsciously because the Claimant was raising allegations of racism but the manner in which she was doing them when she knew that much of what she was saying was untrue. The Second Respondent genuinely believed the Claimant lacked professionalism and integrity and honesty and that was the reason why he acted as he did.
236. In the circumstances it is not necessary for the tribunal to address Mr Gallagher's submission in respect of bad faith. If, however, it was held elsewhere the tribunal was wrong on its primary facts it would not have upheld the submission of Mr Gallagher. It preferred the submission of Mr Shellum based on **Saad -v- Southampton University Hospitals NHS Trust 2019 ICR 311**. As was noted in **Said**, at its core, bad faith connotes dishonesty. According to RH he had said that the Claimant believed that Ms Honeyman was a racist. While the Tribunal considered this was not the predominant reason for the actions of the Claimant it is satisfied that the Respondents have not surmounted the hurdle of showing that the claimant acted in bad faith as defined in section 27 (3) EQA10.

### **Whistle blowing**

237. Given the generous concession by the First Respondent that the grievances of 12 September and 06 October were protected disclosures, and it is not for the Tribunal to go behind such concessions made by an experienced lawyer, the only issues that arose were ones of detriment and causation.
238. The starting point is under section 48 (2) ERA 96 is that it is "*for the employer to show the ground on which any act or deliberate failure to act was done*".

239. The test for what amounts to a detriment is identical to that in respect of victimisation and thus the tests in **Khan** and **Shamoon** were applied by the tribunal.
240. In a case of detriment the correct test to apply, when looking at causation is whether "*the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle blower*" see **NHS Manchester -v- Fecitt [2012] IRLR 64**
241. Detrimental treatment, post the ending of an assignment is still within scope of section 47B, see **Woodward -v- Abbey National Plc [2006] ICR 1436**
242. This Tribunal has been careful to analyse whether any proven detriment was due to the Claimant having made protected disclosures or whether the detriment was because of the way in which the Claimant made the disclosures. If the latter was in fact the reason for the detriment, then it will not be by reason of having made a protected disclosure see **Panayiotou -v- Kernaghan [2014] IRLR 500**.
243. The Tribunal started by identifying whether what was said to be detriments amounted to detriments in law.
244. Three detriments were relied upon.
245. Firstly, the failure to investigate the concerns set out in the communications of 12 September 2019 and 06 October 2019.
246. Secondly the failure to investigate the truth of the allegations raised by RH on 13 December 2019 before altering the subsequent references.
247. Thirdly the references themselves as drafted by the Second Respondent on 08 January and 10 March 2020.
248. Starting with the first detriment it is important to observe how this was formulated both at the preliminary hearing and agreed before this Tribunal. The detriment was a failure to investigate, not the adequacy of the investigation.
249. The Tribunal found that factually there was no failure by the First Respondent to investigate the grievance or concern of the Claimant dated 12 September 2019 or 06 October 2019 and thus there was no detriment in law.
250. Ms Hunter did investigate, and the Claimant accepted that Ms Hunter had spoken to those that she considered relevant. The result of the informal investigation was fed back to, inter alia, the Claimant. She did not dispute the proposed action plan. There was an adequate investigation. Even if there was not the matter was reinvestigated by Ms Leahy to an adequate standard.
251. Again, with the second grievance or concern dated 06 October 2019 Ms Leahy did investigate that concern. She spoke to all relevant staff and came to a conclusion. She rightly accepted that there were some differences between various witnesses in the evidence but came to a conclusion that she was entitled to come too.
252. Whilst Mr Shellum skilfully exposed how the investigation could have been undertaken in a better manner that did not mean that the concern was not looked at. Indeed, when Ms Leahy reached her conclusion, she did not know that it was actually the Claimant who was the person who principally authored the concern. There was an adequate investigation.

253. The failure to investigate the concerns of RH prior to drafting the reference on 08 January 2020 in the Tribunal's judgement could in law amount to a detriment. It was the information obtained from RH which led to the poor reference of 08 January 2020 and the withdrawal of the Claimant's agency position with north-east Lincolnshire Council.
254. The Tribunal has already found in respect of the references of 08 January and 13 March 2020 that they potentially amounted to detriments and the Tribunal does not repeat its reasoning.
255. The Tribunal now turned to the issue of causation. It has reminded itself of the relatively low bar set out in **Fecitt**.
256. If the Tribunal is wrong in respect of the first detriment the Respondent has established there was no link between any failure to investigate and the protected disclosures.
257. In respect of the second detriment the Second Respondent has shown that the way he acted was not materially influenced by the communication of 06 October 2019. He did not speak to the Claimant because he believed she had left the First Respondent's employment. He did not initially prepare a further reference, having genuine concerns that the reference of Mrs Leahy dated 09 October 2019 remained on the Pertemps file because he wanted authority from RH to take matters forward. Whether he needed authority is a moot point. Certainly, when he changed the reference even on the Claimant's case, she was no longer retained by the First Respondent and he spoke to per attempts to explain why he was submitting the reference of 08 January 2020. Whilst the Tribunal has sympathy for the Claimant given that the reference was damaging it was not because she made a public interest disclosure that led to the change of reference but the way she done it and the untruths she told therein.
258. With the third detriment the Second Respondent has demonstrated for the reasons already given that the protected disclosures did not materially influence the way he acted. The principal reason why he wrote the references of 08 January 2020 and 13 March was because he believed the Claimant was not honest and lacked probity and integrity.
259. On the case as presented the first detriment cannot in law amount to a detriment. The First Respondent has produced evidence to show what it did and why.

### **Bad faith and whistleblowing**

260. Given the Tribunal' primary findings, this issue is redundant.

### **Section 207A**

261. This is a further redundant issue, but the Tribunal have addressed the same.
262. Although identified as an issue, neither party chose to make representations on the point.
263. Section 207A of The Trade Union and Labour Relations (Consolidation) Act 1992 provides: –
  - (1) *This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.*

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employee has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

(4) In subsections (2) and (3), “relevant Code of Practice” means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.”

264. Schedule A2 includes a complainant under section 48 ERA96 (detriment) and under Sections 120 to 127 EQA10 (discrimination in work cases).
265. The Tribunal concluded the section did not apply in this case as the Claimant was not an employee of the First Respondent.
266. The Claimant must be an employee to engage the section.
267. The Tribunal reached this conclusion for two reasons.
268. Firstly, the wording of section 207A (1) itself.
269. Secondly the wording of the Code.
270. This is clear from the introduction which states that the Code “provides basic practical guidance to employers, employees and their representatives...” This is further evident from paragraph 1 which provides “this code is designed to help employers; employees and their representatives deal with disciplinary and grievance situations in the workplace”. The same paragraph at the second bullet point provides “grievances are concerns, problems or complaints that employees raise with their employers”. The emphasis on the fact the person must be an employee in respect of grievances can be found throughout the Code, see for example paragraph 41
271. The word “worker” only appears in respect of the statutory right to be accompanied to a meeting and emphasises that the “worker” must make a reasonable request. If the right of representation applied to a person such as the Claimant given in this part of the Code there is reference to “workers” and

the Claimant may well be a worker she had not triggered the statutory right and any event paragraphs 35 to 39 were not relied upon as being breached by the First Respondent

272. It was not in dispute that the Claimant was an agency worker employed by Pertemps. No evidence was placed before the Tribunal in any way to suggest the Claimant was an employee of the First Respondent.
273. It was not suggested in evidence that the First Respondent's grievance procedure applied to the Claimant, as it specifically excluded agency workers.

**Conclusion.**

274. The Claimants complaints of victimisation and being subjected to a detriment or detriments are dismissed.
275. Whether the Claimant may have a remedy in the civil courts for negligent misstatement in respect of part of the references of 08 January or 10 March 2020 these are not matters that this Tribunal should offer any view upon.

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**Employment Judge T R Smith**

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Date 28 June 2021

RESERVED JUDGMENT & REASONS SENT TO  
THE PARTIES ON

Date: 2 July 2021