EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT	**V**	**RESPONDENT**
Mrs J Pearson		**John Bodley-Scott Architects**

Heard at: London South Employment Tribunal **On:** 24, 25 and 26 August 2020 In chambers on 18 December 2020

Before: Employment Judge Hyams-Parish
Members: Mr P Adkins and Ms D Mitchell

Representation:
For the Claimant: In person
For the Respondent: Ms E Walker (Counsel)

RESERVED JUDGMENT

1. **The claims of direct race discrimination fail and are dismissed.**

2. **The claims of racial harassment fail and are dismissed.**

3. **The claim of victimisation fails and is dismissed.**

REASONS

Claims and legal issues

1. By a claim form presented to the Tribunal on 9 November 2017, the

Claimant brings the following claims of race discrimination against the Respondent pursuant to the Equality Act 2010 ("EQA"):

(a) Direct discrimination (s.13)
(b) Harrassment (s.26)
(c) Victimisation (s.27)

2. A lot of time was spent, before the hearing started, identifying the specific allegations against the Respondent which formed the basis of the above claims. Following discussion with the parties, particularly the Claimant, the following schedule of allegations was agreed:

ALLEGATION
1. Exclusion from training, project tasks and development
(a) The Respondent invited other students to site visits but did not invite the Claimant, instead giving excuses to her, such as lack of clothing, in circumstances where others were taken in their normal work clothes.
(b) The Respondent only invited the Claimant to attend site meetings on three occasions, and then on two of these, withdrew the invitation.
(c) The Claimant was not invited to attend a CPD seminar organised by the Respondent on 6 March 2017.
(d) Mr Bodley-Scott ("JBS") said that the Claimant was there "*to do all the boring drawings that no one wanted to do rather than the fun stuff in architecture*".
(e) JBS confined the Claimant to a technician role and nothing else. He referred to her as a secretary/assistant and was not interested in any other skills she had.
(f) JBS told the Claimant that because the Claimant had raised her grievances, he was not going to help her career advancement unless she withdrew them.
(g) JBS told the Claimant not to turn up for a pre-contract meeting he had invited her to.
2. Verbally abusive and racist remarks
(a) JBS told the Claimant that she could easily pull out a knife and 'stab' him.

(b) JBS referred to the Claimant as delusional, mentally unstable[1] and incapable of having a rational conversation. He likened the Claimant to Donald Trump.

(c) JBS told the Claimant in front of other staff to "*shut up and get on with the job*" and asked the Claimant to "*come back when you have calmed down and are ready to obey instructions*".

(d) The Claimant's screensaver was changed to an image of a metal encased head with chains around it.

(e) On or around June 2016 the Claimant received an email from JBS which contained the phrase "*looks like you do not belong here, go home*".

(f) In May 2017, JBS attempted to force the Claimant to check the bins for a sketch that was missing from the office. He also alleged that the Claimant may have taken and hidden it to present her own ideas, and insisted that if it was not in the bins, she should bring it back to the office because it was his property.

(g) During a session with one of the students and Ms Ana Riola in June 2017, JBS told them that the Claimant had spent all her practicing years as an Architect doodling and communicating to clients in Nursery school terms by applying colouring.

(h) JBS said to the Claimant "*I will not work with someone who begs me for money, are you bankrupt?"* This was his response to the Claimant's request for payment at the end of the month.

3. Using a foreign language in the office

From around January 2017, JBS spoke Spanish extensively during the working day with the Claimant's colleague, Anna Riola ("AR")[2].

4. Selectively issuing warnings

(a) In July 2017 the Claimant was issued with a warning by JBS about being late on two occasions. Other colleagues arrived late but did not receive warnings.

(b) The Claimant received a further letter from JBS on 11 July 2017 about lateness in which JBS stated that he suspected the Claimant was looking for another job.

[1] I have inserted these two words here rather than have them as a separate allegation.
[2] The Claimant alleges this to have been 80-90% of the time.

5. Refusing to accept boundaries

(a) JBS contacted the Claimant outside of work hours in connection with work matters, for example, on 29th July 2017.

(b) In July 2016, JBS made an unannounced visit to the Claimant's home outside normal work hours.

(c) JBS insisted on being provided with a landline contact for the Claimant, which she no longer had. He falsely accused her of not willing to provide it to him.

6. Termination of employment

Dismissing the Claimant.

7. Not offered a workplace pension until after dismissal

The Claimant was not signed up for a workplace pension for the duration of her service until after she had been served with a dismissal notice.

3. All of the above allegations are claimed as breaches of s.13 and s.26 EQA. The dismissal is also alleged to be a breach of s.27 EQA.

4. Although the Claimant had originally claimed unfair dismissal, this was subsequently withdrawn because the Claimant did not have the requisite two years' service.

<u>**Practical and preliminary matters**</u>

5. This hearing was conducted using the HMCTS video platform called CVP. The Claimant currently lives in Uganda with her family, from where she participated in this hearing. The Claimant had warned the Tribunal at a previous case management hearing that the WIFI signal was not always reliable and she was unsure whether the WIFI signal would be strong enough at the hearing. This prediction proved correct, as on the first day, the quality of the Claimant's sound and picture was very poor; the Tribunal could hardly hear her and the image kept disappearing.

6. The Respondent invited the Tribunal to strike out the claim on the grounds that as the Claimant chose not to attend the UK for the hearing, there could not be a fair hearing by video, given the difficulties faced on the first day. The Tribunal decided to postpone any determination of that application until the second day of the hearing. In the meantime, the Claimant said that she would find another location to conduct the hearing, in the hope that the WIFI signal would be better.

7. On the second day of the hearing, the Claimant joined from a different location which had a better WIFI signal. The Tribunal felt that the picture and sound quality was good enough to proceed with the hearing. Whilst there were a couple of times when the Claimant had to log out and come back in again, the hearing proceeded without too much difficulty. The Tribunal was satisfied that each party was able to present their case and challenge each other's case.

8. The Tribunal was referred throughout the hearing to documents in a bundle extending to 527 pages. References to numbers in square brackets in this judgment are to pages in the hearing bundle.

9. The Tribunal heard evidence from the Claimant and JBS, the principal/owner of the Respondent. Both had provided witness statements. The Claimant's witness statement was lengthy and detailed.

10. As the hearing time was reduced from three to two days, there was no time to hear oral submissions and therefore it was agreed that the parties would send in their written submissions. These submissions were considered carefully by the Tribunal during their deliberations and before reaching their decision.

11. The Tribunal apologises to the parties that it has taken longer than anticipated to provide this written decision. Unfortunately the Tribunal was not able to meet in Chambers on the date that was scheduled shortly after the hearing, and did not meet until December 2020. This decision has therefore been produced as soon after that meeting as possible.

<u>Background findings of fact</u>

12. The following findings of fact were reached on the balance of probabilities, having considered all of the evidence given by witnesses during the hearing, together with documents referred to by them. The Tribunal has only made those findings of fact that are necessary to determine the claims. It has not been necessary to determine every fact in dispute where it is not relevant to the issues between the parties.

13. The Respondent is a firm of architects that JBS set up in 2007. The firm is based in the South-East of London and carries out work on a wide variety of design projects. It is a small practice, which whilst historically had employed up to six employees, at the date of this hearing had no employees.

14. The Claimant is a forty three year old Ugandan Architect with over eighteen years' experience working in the field of Architecture in various capacities, six of which were spent working in the United Kingdom.

15. In 2012, the Claimant moved to the UK with her husband (a British citizen) and her two children (also British citizens). The Claimant said that she wanted to give her children a better start in life. She also said that she wanted to gain international experience and work towards registration to practice independently as an architect in the UK.

16. Very sadly, early in the same year, the Claimant lost her husband to lung cancer, leaving her as the sole bread winner for her family, in a new country.

17. In the absence of a permanent job in an Architect's practice, the Claimant opted to continue taking on Ugandan based projects and began working as a freelancer in the UK. She also enrolled for a Diploma course in Interior Design, with the Interior Design Institute in London, which she completed in October 2013.

18. It is during her search for freelance roles in November 2014, that the Claimant came across the Respondent on the internet. She contacted JBS to enquire about the possibility of work, and she was invited for an interview. JBS was impressed by the Claimant who he found personable and capable at her job.

19. The Claimant first began to work for the Respondent as a self-employed freelancer in October 2014. That arrangement ceased in March 2015 but began again in February 2016.

20. The Claimant was later offered employment with the Respondent which commenced on 1 October 2016. Whilst there was some disagreement between the parties about when the employment started precisely, the Tribunal reached the above conclusion having looked at the contracts of employment in the bundle. Had the Claimant's employment started before 1 October 2016 then the Tribunal concluded that there would most likely have been a contract issued as that appeared to be the standard practice of the Respondent.

21. The Respondent had a Disciplinary and Grievance procedure [102-104] as well as an Equal Opportunities Policy [100]. In evidence JBS said whilst there was only a small team at the Respondent he had employed individuals from a variety of different backgrounds and adopted a zero-tolerance approach to discrimination of any form.

22. In her evidence, the Claimant said during the period between January 2016 to May 2016, JBS had on a few occasions been verbally abusive, making disrespectful remarks, reluctantly settled payments for work done and was not open to her contributions to project work. In her witness statement she also stated "*While working with and for Mr Scott, in the period running from January 2016 to August 2017, I experienced harassment, discrimination and eventually got dismissed on the basis of false accusations from Mr*

Scott".

23. In terms of documentary evidence, the first sign of problems between the parties was in February 2017 when JBS wrote to the Claimant by letter dated 1 February 2017 [214] as follows [sic]:

> ***RE: Unacceptable Behaviour in the Workplace***
>
> ***I am writing to confirm that today I gave you a verbal warning in the office for unacceptable behaviour in the workplace. You used the "F" word three times during our discussion and you accused me of "snooping around your private life" which is not true.***
>
> ***I also confirm that I offered you the opportunity to discuss our disagreement with a third party such as an HR Consultant recommended by the RIBA but you declined.***
>
> ***I hope that you are able to improve your standard of behaviour in the office so that you can continue to work here. If there is a repeat episode of unacceptable behaviour in the workplace I will have no other option but to take the matter further and issue you with a written warning.***

24. There is also a file note in the bundle headed "Misconduct" [215] which said as follows [sic]:

> ***1. Joanita Pearson was asked to prepare an electrical layout for 78 Campshill Road but refused claiming that as she wasn't an electrical engineer it was not her job to do it.***
>
> ***2. I explained to Joanita that it is the job of an architect to coordinate the electrical installation so that the sockets, fused spurs, lights, cooker points etc are positioned correctly in the space to suit the design and function of the kitchen.***
>
> ***3. I also explained to Joanita that as the project was a small domestic project an electrical engineer had not been appointed but the electrician would be responsible for designing the cable routes, the size of the fuse board, the specification of the cables, the size of fuses required etc.***
>
> ***4. I asked Joanita a second time to prepare an electrical layout for 78 Campshill Road and she refused.***
>
> ***5. I instructed Joanita to prepare an electrical layout and she replied that I was not instructing her but bullying her into doing work that she didn't want to do.***
>
> ***6. I left the office shortly after our discussion to attend a meeting with a client and on my return Joanita had prepared an electrical layout for 78 Campshill Road.***

25. There is a further file note dated 7 March 2017 which said as follows [219] [sic]:-

1. On the morning of Tuesday 7 March 2017 I handed Joanita a letter from Bromley Building Control and asked her to deal with the queries and reply to the letter. I added that the queries could be dealt with the following week.

2. Joanita accused me of "dumping" work on her in front of two other members of staff.

3. I explained that as Joanita had less than one week's work on her desk it was reasonable to give her additional tasks so that she maintains a full workload. I also explained that Joanita could prioritise her tasks and work through them one at a time and that there was no hurry to deal with the letter.

4. Joanita raised her voice at me and reiterated her accusation that I was dumping work on her and added that I was using her as the "office dumping ground" in front of two other members of staff. Joanita asked me why the other two members of staff couldn't take on her workload.

5. I explained again to Joanita that in my opinion she had less than one week's work to do and I listed the projects she was working on as follows:

KelseyWay - Half a day to amend the plans and prepare coloured diagrams.

Waldegrave Road - One day to complete the drawings for the planning application.

Lennard Road - Half a day to prepare a design option in plan.

Kingswood Ave - One day to reply to Bromley Building Control and amend drawings.

6. I explained to Joanita that one member of staff was a student on her second day of a one month work experience placement and had a full workload of approximately one month working on a new project.

I explained that the other member of staff had been employed primarily to prepare 3D visuals using Sketchup and was occupied on two projects - Kelsey Way and Lennard Road.

7. Joanita accused me in front of the two other members of staff of having a low workload and that I was giving her all my tasks. Joanita asked me why I hadn't completed Coniston Road as it had been "sitting on my desk for weeks". I explained that Coniston Road was being dealt with and that I had a full workload managing all the projects in the practice. I added that I had recently reduced Joanita's workload by taking over Campshill Road from her, which she had previously dealt with.

8. Joanita said in front of the other two members of staff that she was doing all the work in the office and that she was being underpaid.

> ***9. I reiterated to Joanita that she was currently working on four projects and that her tasks in hand amounted to less than one week's work. I added she was not doing all the work in the office.***
>
> ***10. I offered to reduce Joanita's workload by giving her one task at a time if she was unable to cope with the workload.***
>
> ***11. Joanita accused me in front of two other members of staff of "twisting" the issue to make her look inadequate. Joanita added that she always worked very hard in the office.***
>
> ***12. I explained that her accusation was untrue and I wanted Joanita to feel comfortable with her workload. I agreed that she worked hard and added that Joanita is a valued member of staff.***

26. On 9 March 2017, the Claimant was given a verbal warning. It was confirmed by letter which said [sic]:

> ***I am writing to confirm that today I gave you a verbal warning during our meeting in the office for unacceptable behaviour in the workplace. You raised your voice and used the "F" word several times during our meeting, which is unacceptable behaviour.***
>
> ***At the beginning of our meeting we discussed our conversation that took place in the office on Tuesday 7 March 2017. I explained that your behaviour during our conversation on 7 March was also unacceptable behaviour because it concerned your personal grievances about your working conditions and pay in front of other members of staff. A record of our conversation is recorded on the attached File Note dated 7 March 2017.***
>
> ***During our meeting I handed you a copy of the practice's Equal Opportunities Policy and a copy of our Disciplinary and Grievance Procedure so that you can establish whether or not you have been fairly treated (copies attached). I confirm that you screwed up the copy of our Equal Opportunities Policy and threw it across the room.***
>
> ***I also advised you during our meeting that a wilful refusal to obey a reasonable management instruction is an example of Gross Misconduct listed in the practice's Disciplinary and Grievance Procedure. I referred you to our discussion held in the office on 27 February 2017 when you refused to carry out a reasonable management instruction from me. A copy of our discussion is recorded on the attached File Note dated 27 February 2017. I pointed out to you that had you not eventually carried out my instruction your action would have constituted an offence of Gross Misconduct.***
>
> ***At the end of our meeting you accused me of sending you a racist email. I asked you to send me a copy of the alleged email or print out a copy to show me but you declined. As this is a very serious allegation indeed I have reported your allegation to the National Fraud and Cyercrime Reporting Centre because I believe that somebody else has sent you the racist email by hacking into my email account. I have also reported your allegation to the practice's internet provider so that they can also investigate the matter. I assure you that I have not sent you a racist email and would never do so. All emails that I***

have ever sent to you are work related and if you ever receive a racist email from my email account again I would appreciate it if you could tell me immediately so that I can report it to the police.

I hope that you are able to improve your standard of behaviour in the office so that you can continue to work here. You are a valued member of staff and I appreciate the good work you are doing. I have decided not to escalate the matter by issuing a Formal Written Warning because I believe that we can resolve our differences and continue a professional working relationship. I would like to invite you to attend a meeting with an external HR Consultant so that any grievances you may have can be heard by an independent party. I encourage you to bring either a colleague, trade union representative or friend to the meeting to support you. I will arrange some potential dates for the meeting.

27. On 21 March 2017, the Claimant wrote to JBS [221] in response to the verbal warning. It is a lengthy and detailed letter running to 10 pages. In it she made the following complaints:

(a) The Claimant accepted using the “F” word but said it was not directed at JBS but was an expression of her thoughts about statements made by JBS which the Claimant found baseless and deceptive.

(b) The Claimant alleged that JBS turned up at her house unannounced.

(c) JBS persistently expressed his opinion about the Claimant’s friendships and relationships outside the workplace.

(d) JBS constantly brought up the Claimant's financial situation alleging that she was in debt or bankrupt.

(e) JBS asked intrusive questions about the Claimant's personal and family life.

(f) JBS belittled her career and her prospects of success.

(g) JBS sent the Claimant a link to his dropbox which indicated that it was a link to a timesheet. When the Claimant clicked on the link, it read “*Looks like you do not belong here, go home*”.

(h) JBS changed the screen saver on the Claimant's computer and replaced it with a head covered in metal with chains, which the Claimant found disturbing.

(i) The Claimant frequently found herself reacting in defence to unpleasant remarks from JBS. Those remarks were made with the intention of being belittling and degrading, and were deliberately intended to be unpleasant. These comments included: "*Shut up and get on with your job, you are disturbing other staff*” and “*You are like*

Donald Trump; Ignorant and not capable of having a rational conversation"

(j) JBS frequently asked the Claimant to leave if she couldn't take it.

(k) JBS threatened to call the police, called the Claimant mentally unstable and wrongly accused her of being aggressive when her intention was to stand up against the frequent verbal abuse directed at her.

(l) JBS deliberately excluded her

28. On 24 March 2017, JBS wrote to the Claimant [231] acknowledging her letter and said that in view of the volume and nature of the complaints, it would be dealt with under the Respondent's formal grievance procedure. With the letter, JBS sent the Claimant a copy of the ACAS code of Practice on Disciplinary and Grievance Procedures.

29. The Claimant sought advice from the Royal Institute of British Architects on how to respond to the Claimant's grievance and they advised JBS to seek HR advice and support. JBS therefore instructed an external HR Consultant, Georgina Raeburn, on 24 March 2017 to investigate the Claimant's grievance.

30. Ms Raeburn met with the Claimant on 20 April 2017 as part of the process of investigating the grievance. Both before and at that meeting, the Claimant expressed her disappointment that JBS had not dealt with the grievance himself.

31. As part of the investigation, Ms Raeburn also interviewed JBS, AR and Val Fothergill ("VF").

32. On 4 May 2017, Ms Raeburn wrote to the Claimant with her findings [250] which can be summarised as follows:

(a) JBS denied using the "F word" as alleged by the Claimant. AR and VF also denied ever hearing JBS use the word. However AR reported hearing the Claimant use the F word on many occasions, including one occasion on 31 January 2017 when the Claimant disagreed with JBS. AR said when JBS left the office on that occasion, the Claimant used the F word saying "F*** him" as the Claimant talked to herself for several hours.

(b) JBS admitted dropping some keys off at the Claimant's house on one occasion which he recalled the Claimant being grateful for. JBS accepted that he could have texted first and said he would not do it

again. JBS denied saying that the Claimant watched too much television and that she should learn a language or go for a walk.

(c) JBS refuted the allegation that he had expressed opinions about the Claimant's private friendships and relationships. He accepted that he did speak to the Claimant about trying to form a rapport or professional relationship with other members of staff, which JBS recalls the Claimant describing them as "*shit that you get off the street*". In Ms Raeburn's interview with AR and VF, neither of them recall JBS expressing any opinion about the Claimant's friendships and said that the Claimant was not willing to interact with others in the office.

(d) In the context of the Claimant demanding payment for one invoice when JBS was out of the office, JBS offered to assist the Claimant if she was having financial difficulty.

(e) JBS alleged that the Claimant had taken conversations about schooling out of context and denied advising the Claimant on what she needed to do regarding her family. Ms Raeburn referred to a specific example in her letter of a complaint made by the Claimant about JBS during the grievance interviews. The Claimant had apparently been unhappy that JBS had told a client that the Claimant was from Uganda, alleging that it was wrong for JBS to be discussing the Claimant's private life to a client. In her interview with JBS, Ms Raeburn reported that he had referred to the Claimant being from Uganda in direct response to a question by the mother of a client regarding equivalance of qualifications between the UK and Uganda.

(f) Regarding he email link to the message "*Looks like you don't belong here, go home*" JBS denied sending it and reported it to the National Fraud Office and Cybercrime Reporting Centre as soon as he was informed about it by the Claimant.

(g) JBS denied making any of the derogatory comments alleged and when interviewed, AR could support none of the allegations.

(h) JBS denied ever threatening the Claimant's job security. Neither AR or VF could support this allegation or substantiate any of the claims. JBS admitted advising the Claimant that if she continued to display aggressive behavior by banging her fist, shouting and swearing, he would call the police. He did not recall suggesting that the Claimant speak to her GP about her mental health.

(i) There was no evidence to support the allegations that JBS continually undermined the Claimant's efforts.

(j) JBS denied that the Claimant was excluded.

33. Ms Raeburn concluded that the grievance should not be upheld. In her letter [255] she gave the reasons why, as follows [sic]:

> ***Having given full consideration to your complaint, my investigation and findings, I have decided not to uphold your grievance for the following reasons:***
>
> ***It is clear that you hold a belief based on the perception that John has gossiped about you, snooped on you and taken an unacceptable level of interest in your private life. You gave examples of dropping keys off and telling a client you are from Uganda. I have found no evidence of any unacceptable behaviour on John's part and neither Ana nor Val have overheard any gossiping about you or your private life or recommendations about how you live your life.***
>
> ***You also perceive John's treatment of your work and your involvement at work as undermining, discriminatory and excluding. John values your work and input very highly and appreciates the skills you bring to the Company. The fact that he relies on your skillset and productivity demonstrates how much he values you. I can understand that the oversight regarding the CPD seminar caused you to feel excluded, but I do believe that this was a genuine oversight, as he did ask that you stay for the seminar and he subsequently gave you the notes when you declined the invitation to attend.***
>
> ***I do believe that you hold a genuine belief that you have suffered ill-treatment, however, having spoken to Ana and Val, and John himself at length, regarding the various incidents that have occurred, plus in the absence of any evidence to support your accusations, I cannot uphold your grievance. The element of your complaint where John likened you to Donald Trump and called you ignorant, in response to the approach you take in an argument, could have been handled in a more constructive way, and I understand that he did apologise for this and he has given assurances he will not use unhelpful language in the future.***
>
> ***The witnesses, Ana and Val, did not support your version of events when recalling various arguments in the office. In fact, both Ana and Val conveyed that of the incidents that they did recall, the unacceptable behavior was demonstrated by you and directed at John.***
>
> ***It is not possible to mandate how you feel about other people in the office especially if you continue to feel that "relationships are not worth forming" as you state in your grievance letter. However, at best, not interacting with others does not foster good team work and it does affect productivity through poor communication and, at worst, it can create an unpleasant working atmosphere for all present.***
>
> ***I am particularly mindful and concerned that the working relationship between yourself and John has broken down to such an extent that the atmosphere in the office ranges from uncomfortable to 'horrible', as described by Ana, which makes the workplace unpleasant for everyone. John has received a complaint from the estate agents***

> ***below regarding your use of foul language and you have admitted that you have had outbursts in the office as you are a demonstrative person.***

34. Under the heading “Recommendations” Ms Raeburn said that JBS wished to continue working with the Claimant notwithstanding what had happened but that either there would need to be space between the Claimant and JBS and she would need to work from home; or the Claimant would need to change her behaviour in the office. The Claimant was given a right of appeal against the grievance, provided that she do so within 7 days of receipt of the letter.

35. Following receipt of the letter, JBS wrote to the Claimant asking to meet with her to discuss the recommendations. The Claimant wrote to JBS stating that whilst she was agreeable to doing so, she wanted Ms Raeburn at the meeting. In response to this, JBS wrote to the Claimant by email dated 11 May 2017 stating [sic]:

> ***I am disappointed that you have requested not to attend a meeting with me to discuss Georgina Raeburn's letter containing the outcome of the grievance you raised on 21 March 2017 because it was on Georgina's recommendation that I suggested we meet to discuss where we go from here in terms of the future.***
>
> ***I would like to take this opportunity to ask you to reconsider your decision not to attend a meeting with me so that we can go ahead with our meeting scheduled for next Monday 15 May 2017 at 2pm. As there will be no other members of staff in the office that day I think it would be a good opportunity to discuss the contents of Georgina's letter in private and hopefully make a decision about how we work together in the future. In my opinion, a follow up meeting with Georgina after we have met rather than before would be much more beneficial for us both.***
>
> ***Please can you reconsider your decision and meet me to discuss the contents of Georgina's letter next Monday 15 May at 2pm?***

36. The appeal was not pursued because the Claimant did not appeal against the outcome within the permitted time frame. Ms Raeburn’s involvement in the process had therefore ended.

37. On 10 July 2017, the Claimant and JBS met to discuss the outcome of the grievance. JBS was unhappy with the Claimant’s conduct during that meeting, which resulted in him writing to her on 11 July 2017. That letter contained the following [sic]:

> ***I am writing to confirm that yesterday during our meeting in the office to discuss the outcome of your grievance you raised your voice at me and used the "F" word several times during our meeting. As I have previously written to you and given you a verbal warning about the use of foul language and raising your voice at me in the office, please take this letter as a final written warning. As previously stated, this***

type of behaviour is unacceptable in the workplace and I regret to inform you that any future behaviour of this kind will result in a dismissal procedure where you will be invited to a disciplinary meeting so that a fair decision can be made.

During our meeting yesterday you also accused me of being racist; you said to me "you don't like black people". I find this type of remark very offensive. I explained to you that I have always been anti-racist and I have employed two architectural staff from ethnic minorities in the past. I have had good working relationships with both of them and remain on good terms. I wouldn't hesitate to reemploy either of them if the opportunity arose.

…….

During our meeting yesterday I offered you the opportunity to follow a process of mediation where a neutral third party would help us to resolve our dispute but you declined and said that you would prefer to take the matter to an employment tribunal. I am disappointed that you have declined my offer of mediation but if you change your mind please let me know as soon as possible so that I can contact a suitable organization….

38. On 17 July 2017, the Claimant and JBS met again to discuss the way forward. That resulted in JBS writing to the Claimant in the following terms [sic]:

Further to your letter dated 17 July 2017 and our meeting of the same date, please accept my apology for the following things I have said to you or done whilst you have been working for the practice.

1. I apologise for threatening to call the police and telling you to shut up in June 2016 whilst we were both arguing in an aggressive manner about an architectural matter in the office. I should have asked you to leave the office and go home temporarily in order to calm the situation down. I had no intention of reporting a crime and threatening your security. My intention was to obtain some assistance in escorting you from the office as there was a student on a work experience placement from school and I felt uncomfortable about exposing her to such a vigorous disagreement on a professional matter so early in her career.

2. I apologise for dropping off a set of keys at your house unannounced in June 2016. I genuinely believed that you and other members of staff would have been locked out of the office the following day had I not given you a set of keys. With the benefit of hindsight I should have phoned or texted you beforehand to let you know I was coming with the keys.

3. I apologise if my comment about your reluctance to form friendships with other members of staff was interpreted as a comment about not forming friendships in your private life. I hope that in future you will feel able to accept an invitation to an office social event but I would entirely understand and accept without comment if you were to decline such an invitation.

4. I apologise for asking you if you were bankrupt in April 2016 when I had commented on the text messages you sent me and phone calls you made to me whilst I was on a day's leave in Whitstable. On reflection, asking me if I would pay your invoice immediately was reasonable given that you had not received any payments for a month and your landlord was putting you under pressure to pay rent.

5. I apologise for comparing your approach to disagreements with me about architectural issues to the Radio 4 article on Donald Trump's style of dealing with opinions that differ from his own. Although Trump has been described as aggressive, abusive, unable to accept alternative points of view and unable to hold reasonable debates, I appreciate your strong opinions and points of view and will endeavour to consider them in the future whenever we have differences of opinion.

6. I apologise for saying that employing you creates a financial loss to the practice because I have to re-do your drawing tasks. I have only had to make minor amendments such as typos and discrepancies that are commonly made on the computer and in no way diminish the high standard of design work you produce. At the time I made the comment about financial loss, the practice was facing cash-flow problems due to delayed payment of invoices and it was unreasonable of me to apportion some of the blame onto your work.

7. I apologise if my enthusiasm for speaking Spanish with Ana in the office has meant that you feel excluded from discussions. I have no intention of creating a divide or undermining teamwork. I have discussed the matter with Ana and we have agreed to speak Spanish in the morning but on work related topics only and to speak English all the time in the afternoon. I am enthusiastic about learning languages and keen to practise with native speakers but I am aware of the impact that this may have on others in such a small office. If the above arrangement continues to undermine teamwork and makes you feel excluded please let me know and I will insist that Ana and I only converse in English.

8. I apologise for not inviting you to a CPD seminar held in the office on 6 March 2017. In future, I will make sure you are given plenty of notice when a lunchtime seminar is organised and I will ensure you are invited and informed of other people attending from outside of the practice.

I accept your decision to decline mediation in order to resolve our disagreements and to bring the grievance process to a close. I hope that we are able to resolve the matter by talking through the problems we have encountered and agreeing on a way forward without involving a third party. In order to close out the grievance process, I am in the process of commenting on your notes from the meeting held with Georgina Raeburn on 17 May 2017 and I will endeavour to send them to you in due course.

I accept your proposal to work remotely from home for a six month period in order to help resolve the grievances you have raised but I hope that this period can be shortened if you feel you are able to return to working in the office.

> ***During this temporary period, reporting to the office at 9.30am on Mondays would be very helpful as you have suggested, along with carrying out measured surveys with me and other members of staff.***
>
> ***Thank you for offering to work in the office whilst I am on holiday for 10 days from 27 July 2017.***
>
> ***I have considered your request for an increase to your salary and I hope that an increase from £14.40 an hour to £18.00 per hour helps to cover the cost of your living expenses. The salary increase will come into effect from 1 August 2017.***
>
> ***As agreed, the office hours in your contract of employment will be amended to a flexible arrangement of a minimum of 20 hours per week and a maximum of 40 hours per week to suit workload demands in the office and to suit your childcare commitments.***
>
> ***I hope that all of the above goes towards resolving the grievances you have raised and contributes towards an improvement in your working conditions. I also hope that you are able to commit to working for the practice long term and if there is any way I can help you to register as a UK architect by gaining exemption from the RIBA exams please don't hesitate to ask.***

39. During a meeting between the Claimant and JBS on 14 August 2017 to review projects and resolve IT compatibility issues, JBS alleged that the Claimant repeated the accusation that JBS had sent her an email with a link to a racist remark. In addition to the racist remark the Claimant said that the link had caused her computer at home to be corrupted and allowed other people to snoop on her private life. This resulted in JBS sending the Claimant the following letter on 15 August 2017 [sic]:

> ***During our meeting yesterday on 14 August 2017 you raised your voice at me and repeated your accusation that I had on a previous occasion sent you a racist email. You added to your accusation that my alleged email had also corrupted your computer and allowed others to snoop on your private life.***
>
> ***As I have previously written to you about raising your voice at me and accusing me of sending you a racist email (see my letter dated 9 March 2017) and written to you about your accusation that I snooped around your private life (see my letter dated 1 February 2017) and considering that your behaviour yesterday is both unacceptable conduct and gross misconduct, as described by Georgina Raeburn in the outcome of the Grievance Procedure dated 4 May 2017, I have no option but to take formal disciplinary action.***
>
> ***I invite you to attend a disciplinary meeting and I will contact you soon with some dates so that the meeting can be held at a time to suit us both. As there is no one in the practice to chair the disciplinary meeting, I will also invite an HR Consultant to chair the meeting. The disciplinary meeting will follow the ACAS Code of Practice [copy attached). You have a statutory right to be accompanied at the meeting either by a fellow worker or trade union representative. In the***

light of the above. I think it best that you do not attend the re-contract meeting at 25 Durban Road tomorrow 16 August 2017; please continue to work on 1 Kechill Gardens remotely from home.

40. JBS engaged external HR consultant Kate Marks who wrote to the Claimant by letter dated 23 August 2017 inviting the Claimant to a disciplinary hearing on 29 August 2017. The letter stated that the reasons for the hearing were as set out in JBS' letter of 15 August 2017 and said that a possible outcome was dismissal.

41. As a result of the disciplinary hearing on 29 August 2017 the Claimant was dismissed by letter dated 31 August 2017 which said [sic]:

> ***I am writing to confirm the outcome of the disciplinary meeting held on Tuesday 29 August at 11.00am.***
>
> ***You were given the opportunity to attend with a companion but declined. I chaired the meeting and Nicola Raithby attended as note taker.***
>
> ***The hearing had been arranged to give you the opportunity to provide a satisfactory explanation for the following allegations relating to a meeting held between you and John Bodley Scott on 14 August 2017:***
>
> - ***You raised your voice to Mr Bodley Scott;***
> - ***You demonstrated anger towards him such that it amounted to insubordination;***
> - ***You failed to follow a reasonable management instruction;***
> - ***You made malicious accusations towards Mr Bodley Scott.***
>
> ***At the hearing, you explained that your usual manner of speaking was forthright and audible. You do not believe this to be raising your voice, but could understand how that might be interpreted by others. You refute the allegation of demonstrating anger. You explained that you were unable to comply with Mr Bodley Scott's request that you use the same CAD software, prepare the same quality of pdf files or use the jbsarchitect.co.uk email address whilst working from home because your previous laptop had been corrupted when you had clicked on a link within an email from Mr Bodley Scott and you had subsequently had to replace your home laptop and software. Costs prohibited you purchasing similar software to that used in the office. This is also why you will not click on a link to access your JBS emails from home. This latter point relates to your previous accusations that Mr Bodley Scott had sent you an email with a link to a racist remark.***
>
> ***This has arisen against the background of a formal grievance raised by you earlier this year, which was independently investigated and the findings reported upon. Your grievance was not upheld. You chose not to appeal the findings within the required timeframe albeit you state that you had requested a meeting with the HR consultant concerned and Mr Bodley Scott to put forward your concerns with regard to the grievance process and findings. Nevertheless, you failed to lodge an appeal in the formal manner required by the grievance process.***

Amongst the recommendations of the grievance investigation were that you might work from home for a period of time to minimise the likelihood of misunderstandings in communication between you and Mr Bodley Scott, and certain requirements of your behaviour at work including, amongst other things, that you do not raise your voice, or make unsubstantiated claims or malicious statements.

Despite this, Mr Bodley Scott wrote to you on 11 July 2017 issuing you with a final written warning for raising your voice and swearing at him in a meeting.

It is clear that Mr Bodley Scott remains uncomfortable with your tone and manner of communicating with him. He also feels that, by continuing to refer to the email with a link to a racist remark and corruption of your laptop because you clicked on a link in an email that appeared to be sent by him, this amounts to continuing to make malicious accusations.

It is also apparent that you continue to feel disappointed in the grievance investigation outcome and harbour ongoing dissatisfaction with your working relationship with Mr Bodley Scott.

Mr Bodley Scott runs a small business. This needs to be efficient and smoothly run in order to maximise the limited resources available and remain viable. Despite this, the investigation into the current allegations has illustrated the time, effort and resources that have been committed to resolving these matters over a period of several months. However, it seems to be the case that it is unlikely that a resolution will easily be reached.

I am aware that mediation has been discussed in the past, but, at the time, was not considered an option. I am of the view that mediation would be unlikely to succeed in any event.

Given the breakdown in the working relationship between you and Mr Bodley Scott, your continued belief that you have been ill-treated, and that you have already been issued with a final written warning, it seems that there is little option but to end your working relationship. Therefore, the decision has been made that your employment with John Bodley Scott Architects should be terminated.

Please therefore take this as notice that your employment will be terminated with one month's notice as of the date of this letter. Your last working day will therefore be Friday 29 September 2017.

You will receive your final salary on Friday 29 September. This will include pay to that date and also any accrued but untaken holiday entitlement. In the event that you have taken more holiday entitlement than you have accrued, the equivalent deduction will be made from your final salary.

You have the right of appeal against your dismissal. If you wish to exercise this right, you should do so by writing to John Bodley Scott in the first instance, within five working days, stating the grounds for your appeal.

42. The Claimant appealed against her dismissal. The appeal hearing was conducted by external HR consultant Nirveen Chotai on 19 September 2017. By letter dated 25 September 2017, the Claimant was informed that the appeal was unsuccessful.

Law

(a) Direct race discrimination

43. The EQA sets out provisions prohibiting direct discrimination. Section 13 EQA states:

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

44. The focus in direct discrimination cases must always be on the primary question "*Why did the Respondent treat the Claimant in this way?"* Put another way, *"What was the Respondent's conscious or subconscious reason for treating the Claimant less favourably?"*

45. The provisions relating to the burden of proof are set out at Section 136(2) and (3) of EQA which state:

> ***(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.***
>
> ***(3) But subsection (2) does not apply if A shows that A did not contravene the provision.***

46. It is for the Claimant to prove facts from which the Tribunal could conclude, in the absence of any evidence from the Respondent, that the Respondent committed an act of discrimination. Only if that burden is discharged would it then be for the Respondent to prove that the reason it dismissed the Claimant was not because of a protected characteristic. Therefore, it is clear that the burden of proof shifts onto the Respondent only if the Claimant satisfies the Tribunal that there is a 'prima facie' case of discrimination. This will usually be based upon inferences of discrimination drawn from the primary facts and circumstances found by the Tribunal to have been proved on the balance of probabilities. Such inferences are crucial in discrimination cases given the unlikelihood of there being direct, overt and decisive evidence that a Claimant has been treated less favourably because of a protected characteristic.

47. When looking at whether the burden shifts, something more than less favourable treatment than a comparator is required. The test is whether the Tribunal "*could conclude*", not whether it is "*possible to conclude*". In

Madarassy v Nomura International plc 2007 ICR 867, CA it was said that the bare facts of a difference in treatment only indicates 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. However, 'the "more" that is needed to create a claim requiring an answer need not be a great deal. In some instances, it can be furnished by non-responses, an evasive or untruthful answer to questions, failing to follow procedures etc. Importantly, it is also clear from case law that the fact that an employee may have been subjected to unreasonable treatment is not necessarily, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift.

48. Notwithstanding what is said above, in ***Laing v Manchester City Council and anor 2006 ICR 1519, EAT***, the point was made that '*it might be sensible for a tribunal to go straight to the second stage… where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question where there is such a comparator — whether there is a prima facie case — is in practice often inextricably linked to the issue of what is the explanation for the treatment*'.

(b) Harassment

49. Harassment is defined under s.26 EQA as follows:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect"

50. Unwanted conduct means "*conduct which is unwanted by person B*"; ***Thomas Sanderson Blinds Ltd v English UKEAT/0317/10/JOJ*** at [28]. Consequently, this requirement is a subjective one which depends on the state of mind of the Claimant.

51. The final element to consider is whether the purpose or effect of the conduct was to violate the Claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

52. The purpose requirement is a subjective one with respect to the harasser. With respect to the effects requirement however, the Court of Appeal in ***Pemberton v Inwood [2018] I.C.R. 1291*** held at [88]

> ***In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the prescribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b).***

53. This test is therefore a mixed subjective and objective one, with it being necessary to consider both elements.

54. Whether or not the conduct is related to the characteristic in question is a matter for the tribunal, making findings of fact and drawing on all the evidence before it; ***Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor EAT 0039/19***. The fact that the complainant considers that the conduct related to a particular characteristic is not necessarily determinative, nor is a finding about the motivation of the alleged harasser. Nevertheless, in any given case there must still be some feature or features of the factual matrix identified by the tribunal which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged in the claim.

(c) Victimisation

55. Section 27 of EQA provides as follows:

> ***(1) A person (A) victimises another person (B) if A subjects B to a detriment because—***
>
> ***(a) B does a protected act, or***
>
> ***(b) A believes that B has done, or may do, a protected act.***
>
> ***(2) Each of the following is a protected act—***
>
> ***(a) bringing proceedings under this Act;***
>
> ***(b) giving evidence or information in connection with proceedings under this Act;***

> ***(c) doing any other thing for the purposes of or in connection with this Act;***
>
> ***(d) making an allegation (whether or not express) that A or another person has contravened this Act.***
>
> ***(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.***

56. The test to be applied here is threefold:

    - Did the Claimant do a protected act?
    - Did the Respondent subject the Claimant to a detriment?
    - If so, was the Claimant subjected to that detriment because he had done a protected act, or because the employer believed that he had done, or might do, a protected act?

57. The most important decision to be made by the Tribunal is the "*reason why*" the Respondent dismissed the Claimant. Was it because of the complaint alleged to be a protected act – or was it something different? Even if the reason for the dismissal is related to the protected act, it may still be quite separable from the complaint alleged to be a protected act.

58. A person claiming victimisation need not show that less favourable treatment was meted out solely by reason of the protected act. As Lord Nicholls said in ***Nagarajan v London Regional Transport 1999 ICR 877, HL****,* if protected acts have a "*significant influence"* on the employer's decision making, discrimination will be made out. For an influence to be 'significant' it does not have to be of great importance. Lord Nicholls went on to say that a 'significant influence' is "*an influence which is more than trivial. We find it hard to believe that the principle of equal treatment would be breached by the merely trivial*".

59. Whilst the same burden of proof applies in such cases, namely that the Claimant must prove sufficient facts from which the Tribunal could conclude, in the absence of hearing from the Respondent, that the Claimant has suffered an act of discrimination, it is also perfectly acceptable to go straight to the "*reason why*" because that is the central question that the Tribunal needs to answer.

Analysis, conclusions and associated findings of fact

(1) Exclusion from project tasks, training and development

(a) Not inviting the Claimant out on site

60. This allegation relates to an occasion where JBS commented that the Claimant was not appropriately dressed to go on site and offered her a pair of boots to wear. Whilst the Claimant asserted that JBS did not do this with others, the Tribunal did not hear sufficient or any evidence of the circumstances of the approach taken with other employees from which it could conclude that there had been less favourable treatment. The Tribunal could find nothing which suggested that the approach taken with the Claimant was even remotely related to race. Neither was it behaviour which the Tribunal considered fell within the definition of harassment.

(b) Only inviting the Claimant out to site on three occasions and then withdrawing one of the invitations

61. The Tribunal was not satisfied that the Claimant was treated less favourably, or that such treatment was because of race. For the same reasons, the Tribunal could not conclude that the Respondent behaved towards the Claimant in a way that was related to race and which had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

(c) Not being invited to the seminar on 6 March 2017

62. The Tribunal finds as fact that this was an innocent oversight on the part of JBS. When it became clear that the Claimant had not been invited, JBS informed her that she was welcome to attend the event, but she declined. He subsequently offered her the notes.

63. There was nothing from which the Tribunal could conclude that the Claimant had suffered less favourable treatment or that such actions were because of race. For the same reasons, the Tribunal could not conclude that the Respondent behaved towards the Claimant in a way that was related to race and which had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

(d) The Claimant was there to do all the boring drawings that no one wanted to do rather than the 'fun stuff' in architecture

64. The Tribunal found it difficult to understand what this allegation was about. In any event, the Tribunal did not hear evidence from which it could conclude what was exactly meant by "fun" or "boring". Neither could it conclude, on the evidence, that the Claimant had suffered less favourable treatment because of race. For the same reasons, the Tribunal could not conclude that the Respondent behaved towards the Claimant in a way that was related to race and which had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

(e) JBS confined the Claimant to a technician role and nothing else. He referred to her as a secretary/assistant and was not interested in any other skills she had

65. Again, the Tribunal was not satisfied that this was factually correct. In fact, the Tribunal concluded the opposite, namely that JBS was very interested, and welcomed, the contributions which the Claimant could make to the practice. That is why he recruited her in the first place, and why he retained her for as long as he did, notwithstanding the problems between them. This is evident from the apology, which the Tribunal considered genuinely reflected the thoughts and feelings of JBS at the time. At the same time, JBS gave the Claimant a pay rise and expressed the hope that she had a long term future with the practice. The Tribunal did not consider these were the words of someone who did not value the Claimant's skills and contributions. The Tribunal was not satisfied that the Claimant was less favourably treated because of race or that she had been subject to racial harassment.

(f) Mr Scott told the Claimant that because the Claimant had raised grievances, he was not going to help her career advancement unless she withdrew them

66. The Tribunal did not hear evidence on this point and JBS was not cross examined about it. In any event, the Tribunal concluded that this was not the view of JBS and neither did he express that view to the Claimant. In fact, the Tribunal concluded that JBS used the grievance process to try to resolve the problems the Claimant felt she had working for the Respondent. The Tribunal did not get any sense at all that JBS was intent on penalising the Claimant in this way because she raised the grievance. For these reasons, the Tribunal was not satisfied that the Claimant was less favourably treated because of race or that she had been subject to racial harassment.

(g) JBS told the Claimant not to turn up for a pre-contract meeting he had invited her to

67. The Tribunal concluded that this was the pre-contract meeting at 25 Durban Road on 16 August 2017. By this stage, the Claimant had been informed that she would need to attend a disciplinary hearing related to her conduct at the meeting on 14 August 2017. JBS said in his letter dated 15 August 2017 "*I think it best that you do not attend the pre-contract meeting at 25 Durban Road tomorrow 16 August 2017; please continue to work on 1 Kechill Gardens remotely from home*". The Tribunal concluded that JBS would have taken the same action against a hypothetical comparator. He withdrew the invite not because of the Claimant's race but because the Claimant was to be subject to disciplinary proceedings. JBS did not treat the Claimant less favourably because of race. Neither did JBS behave

towards the Claimant in a way that was related to race and which had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

(2) Verbally abusive and racist remarks

(a) JBS told the Claimant that she could easily pull out a knife and 'stab' him.

68. JBS said this incident occurred in July 2016 and stood out in his memory because the Claimant was, in his words, "*incredibly aggressive towards me*". At the time JBS had offered a student from a local secondary school the opportunity to undertake two weeks' work experience. At a time when the student was present in the office, the Claimant was verbally abusive towards JBS. JBS asked the Claimant to go home and calm down, but she refused to leave. JBS then informed the Claimant that, if she did not calm down, he would have no option but to call the police. He did not think that it would have been appropriate for him to have attempted to physically remove the Claimant from the office. JBS said that he did not make the comment lightly and probably would not have called the police, but the Claimant's behaviour was so erratic that he had real concerns about what was unfolding in front of the student, in circumstances where there were many sharp tools and materials in the vicinity. JBS said that he simply did not know what was going to happen. However JBS completely denied saying to the Claimant that he thought she would pull a knife and stab him.

69. The Claimant said in cross examination that this incident occurred in 2017. In her original pleadings [24], the Claimant did not say when the incident occurred. She said as follows [sic]:

> ***Mr. Scott on one occasion while I verbally protested against the disrespect I felt from his remarks, he advised that he did not feel safe in his office with just myself and him. He said he felt I could easily pull out a knife and stub him. This remark made me extremely angry causing me to raise my voice at Mr. Scott and warn him against any further such prejudiced remarks. He, on that occasion threatened to call the police to remove me from the premises if I didn't keep my voice down, because neighbors may hear me, which he later deceitfully claimed in his letter to me of 21/07/17 that it was because he was concerned about me, raising my voice in front of a student. There was no one with us in the office on that occassion. This qualifies for racial stereotyping based on his assumption that because I am black, I am capable of stubbing him.***

70. In further particulars provided at the request of an Employment Judge at a previous case management hearing, the Claimant said that this incident occurred in May 2017. In a schedule of allegations prepared for these Tribunal proceedings, she referred to the incident occurring in April 2017.

71. In her witness statement, the Claimant said very little about the incident itself apart from the following at paragraph 43 [sic]:

> ***A case in point is when he followed me to the streets persistently saying he is doing me a favour employing me. This is after he had said he feared for his life because I could pull out a knife and stub him since it was just the two of us in the office. I asked him to leave me alone when he followed me out, as I left for the school run, but he persisted and as we walked past the real estate agent at the front end of the building near the exit, I told him he should tell me to "F" off if he felt threatened to that extent, and if he saw to use for my input to the Practice. Mr. Scott refers to this one-off incident when he talks to Georgina at the grievance hearing investigation, but omits the part where he followed me while tauntng me with words into the street as I went to my car. He twists the incident to imply I had an unexplained outburst in the office, which is located at the back of the building, causing the people in the Real Estate agent office at the street front, to complain…***

72. Further on in her witness statement, the Claimant said the following, which clearly indicates the incident must have occurred in 2016 [sic]:

> ***As a tradition, Mr. Scott holds Christmas lunches attended by the Practice staff both temporary and permanent and Mr. Robert Fish, an Architect on the ground floor in the same building. He invited me to join him and Mr. Fish and Val for December 2016 Christmas lunch set for 14th December 2016. I declined the invite citing the incident where he had verbally harassed me and labelled me violent by expressing his fears of me pulling a knife.***

73. The Tribunal preferred the evidence of JBS on this issue and accepts as fact his account of the incident. It was a more detailed and credible version of events, in contrast to the Claimant's, which the Tribunal found to be vague, inconsistent and contradictory. The Tribunal noted that the Claimant did not mention this incident in her March 2017 grievance; neither did she mention it in her letter dated 15 June 2017, which she wrote in response to the grievance outcome. The Tribunal concluded that her attempt to convince the Tribunal that the incident took place in April or May 2017, after the March 2017 grievance, was an attempt to make her evidence more consistent (or rather, less inconsistent) with the documentary evidence.

74. The Tribunal concludes that the Claimant was not less favourably treated because of race. Even if the incident had the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, it was not conduct related to race and the Tribunal concluded that it was not reasonable for the conduct to have had the effect alleged by the Claimant in circumstances where it was she who was the aggressor.

(b) JBS referred to the Claimant as delusional, mentally unstable and incapable of having a rational conversation. He likened the Claimant to

Donald Trump.

75. In his evidence to the Tribunal, JBS accepted that he drew a parallel between the Claimant and Donald Trump when discussing architectural designs. He referred to a '*spirited*' debate about different architectural styles and said that the Claimant was very dismissive about his point of view. JBS said he had no problem with that per se, although he said the Claimant would often "*overstep the mark in this regard*". JBS said he made a comment about the Claimant having a similar style to Donald Trump when it came to dealing with opinions that she did not agree with. He compared it to something he had heard on Radio 4 about Donald Trump's style of dealing with opinions that differ from his own. JBS said he was comparing styles and did not liken the Claimant to Donald Trump. JBS did not intend it to be taken particularly seriously, and when he learned that the Claimant had been upset by it, he apologised. JBS denied ever calling the Claimant delusional and mentally unstable.

76. The Claimant did not include reference to the Donald Trump comparison in her witness statement and JBS was not questioned about the incident during cross examination.

77. The Tribunal accepts as fact the account provided by JBS. The Tribunal does not accept that the Claimant was treated less favourably or that such treatment was because of race. Neither does the Tribunal believe, that whatever JBS said, it was related to race and therefore was an act of harassment within the meaning of s.26 EQA.

78. Turning to the allegation that JBS had referred to the Claimant as delusional and mentally unstable, the Claimant said the following in her witness statement [sic]:

> ***It is also on 07/03/17, that Mr. Scott handed me the Equal opportunities policy and not the Disciplinary and grievance procedure as he states. Before he handed it to me, he said I was delusional, mentally unstable and needed to get a mental health assessment. Because of his disrespectful remarks and disregard of the concerns raised, I told him the equal opportunities policy on paper was pointless, if he could not get himself to follow and implement it. I squashed it and aiming for the recycle bin, threw it across the table between us. I was visibly upset.***

79. In her claim form she said [sic]:

> ***You threatened my freedom and the livelihood of my children, by threatening to call the police, calling me mentally unstable and wrongly accusing me of being aggressive when I have stood against any rather frequent verbal abuse you have directed at me.***

80. In the further particulars provided by the Claimant, she said JBS referred to

her as "*delusional and incapable of having a rational conversation*" in the context of the Donald Trump discussion. She later said "*The respondent went ahead to add he was happy to provide a referral to the Claimant's GP for he believed the Claimant was highly stressed and mentally unstable*".

81. JBS denied ever calling the Claimant delusional or mentally unstable but said that he once advised the Claimant to speak to her GP if she was suffering from stress.

82. Having considered all of the evidence, the Tribunal could not be clear exactly what incident the Claimant was referring to or the context to the alleged comment. The Tribunal was therefore not satisfied that JBS made the alleged comments about the Claimant being mentally unstable or delusional as alleged. Further, the Tribunal could not conclude that there was less favourable treatment because of race or that JBS behaved in such a way that was related to race or was intended, or could reasonable be considered, as falling within the definition of harassment.

(c) JBS told the Claimant in front of other staff to "shut up and get on with the job" and asked the Claimant to "come back when you have calmed down and are ready to obey instructions".

83. The only reference in the Claimant's witness statement to being told to "*shut up*" was where she stated "*On many occasions he warned me against talking back, and said he preferred if I just shut up and did my job, like all the assistants he had previously employed*". In his witness statement at paragraph 61, JBS said the following:

> ***I admit that I told the Claimant to "shut up" because she was shouting and swearing at me in an aggressive manner in front of others in the office. I regret saying such a phrase to a member of staff. I deny, however, that I told the Claimant to shut up and get on with the job when she asked for missing information in January 2018 or January 2017 and I never threatened to call the police to remove her from the building (she is referring to a previous incident). I told the claimant to "shut up" because the Claimant was shouting and swearing at me in the office as it was upsetting for me and other members of staff. The Claimant's shouting and swearing was preventing Ana from working as they sat next to each other. I doubt if Ana understood what the argument was about as her knowledge of English was limited at the time. Ana did not smile during the whole incident. Ana appeared to be disturbed by the Claimant's shouting but was unable to follow the meaning of some of the language being used.***

84. The Tribunal concluded that the relationship between the Claimant and JBS was one where the Claimant often shouted at JBS and frequently used the 'F word". At times, JBS raised his voice in response and the Tribunal accepts that he told the Claimant to shut up in the circumstances described in his witness statement. However, the Tribunal was not satisfied that this represented less favourable treatment because of race. Neither was it

unwanted conduct related to race.

(d) The Claimant's screensaver was changed to an image of a metal encased head with chains around it.

85. The Tribunal noted that despite the apparent seriousness of this allegation, it was not referred to in the Claimant's twenty six page witness statement. In the particulars to the claim form, the Claimant wrote [sic]:

> ***In the past, while it was just Mr Scott and I working in the office, my computer screen saver was changed to a an offensive image of a metal encased head with chains around it……. Two days later the screen saver image on my computer had been changed as described, and when I asked Mr. Scott if he had done it, he denied having done it and also confirmed that no one else had access to my computer.***

86. It was put to JBS by the Claimant in cross examination that when she discovered the screen saver in June or July 2016 she reported it to him and asked him if he had done it, which JBS denied. The Claimant did not take any screenshot or photograph of the screensaver. The Tribunal was given little detail of the screensaver to enable it to form any assessment of whether it was 'disturbing', as the Claimant described.

87. The Tribunal concluded that had the Claimant been so offended by it or genuinely thought JBS was responsible for it, she would have pursued it with JBS, particularly as she alleges this happened two days after the incident referred to at paragraph 88 onwards below. The Claimant could produce no evidence of the screensaver or that JBS had put it on her screen. The Tribunal was not satisfied that this incident happened as the Claimant described. Neither could it be satisfied, on the evidence, that she suffered less favourable treatment because of race or that she had been subject to harassment.

(e) On or around June 2016 the Claimant received an email from JBS which contained the phrase "looks like you do not belong here, go home".

88. The most detailed account of this incident was given in the Claimant's written grievance dated 21 March 2017 [224] in which she wrote [sic]:

> ***In July 2016 at the end of the month I sent you a text requesting my timesheet in order to invoice you; I was still working as self-employed at the time. You emailed me a link to your Drop box with a message see link to time sheet. I did click on the link which instead read "Looks like you do not belong here, go home". There was no time sheet. I sent another text asking you to resend as I had not received it. I made it appoint not to talk about the message in the Link. You sent another email this time with a link to a time sheet that had all the hours deleted. Lucky I had printed a hard copy while in your office, which I then decided to retype and send to you for payment. I advised that the Timesheet you had sent me was blank, but I had managed to type***

> ***one out and needed you to confirm the hours with the one you had before payment. The following day in the office you went ahead to ask me in office what I saw when I opened the link in your first email. I told you of the message, to which you responded "Oh my God!" and left it at that. This showed you intentionally sent this message and were checking to make sure I received it, as I had said nothing about it the day before.***

89. The only part of the Claimant's witness statement that dealt directly with this allegation was paragraph 20, where she said:

> ***20. Racially inclined communications from Mr. Scott were; - "Looks like you do not belong here, go home" - email link in response to an email I sent asking him to forward my time sheet. Mr. Scott denied any knowledge of it and further details are [221-222 items 1 and 2].***

90. In his witness statement, JBS said the following:

> ***I did not send the Claimant this link. I have absolutely no knowledge of what this refers to. When I asked the Claimant about this email, she informed me that she did not retain a copy of it. Whilst I am hesitant to say that the Claimant never received this email at all, I can say with total certainty that I never sent it to her. During these Tribunal proceedings, the Claimant has disclosed vast amounts of emails about work that she carried out for me. This shows that the Claimant keeps a record of emails that she believes to be significant. I am therefore surprised that she opted to discard an email where I was allegedly outwardly racist towards her.***

91. JBS said that the first time the Claimant brought up the subject of the email was on 9 March 2017, which is the meeting where she was given a verbal warning. In the letter which JBS sent to the Claimant following that meeting, JBS wrote:

> ***At the end of our meeting you accused me of sending you a racist email. I asked you to send me a copy of the alleged email or print out a copy to show me but you declined. As this is a very serious allegation indeed I have reported your allegation to the National Fraud and Cybercrime Reporting Centre because I believe that somebody else has sent you the racist email by hacking into my email account. I have also reported your allegation to the practice's internet provider so that they can also investigate the matter. I assure you that I have not sent you a racist email and would never do so. All emails that I have ever sent to you are work related and if you ever receive a racist email from my email account again I would appreciate it if you could tell me immediately so that I can report it to the police.***

92. The Tribunal noted one sentence in the Claimant's grievance, referring to the allegations (d) and (e) above, which appear to support the evidence of JBS that they were indeed raised for the first time in March 2017:

> ***The above accounts are given to directly respond to your verbal warnings and letters of 01.02.2017 and 09.03.2017.***

93. The Tribunal was shown evidence that at 15.44 on 9 March 2017, JBS reported the matter to the Respondent's internet service providers. He then reported the matter to the police on 18 April 2017.

94. Despite the incident occurring in July 2016 according to the Claimant, she waited until 18 April 2017 to contact the police. She was asked by the police to confirm the report in writing, which she did in the evening of the same day. In that written account, she provided slightly different details about the incident, claiming to have received the link to her mobile telephone and not by email [sic]:

> ***…I have looked through my inbox over period when this happened and can only find the email that followed after I made a second request to John after he sent the dropbox link. It is very likely that he sent the link as an SMS to my iphone which I had with EE mobile at the time. I have since changed service providers but kept my mobile number and do not use the iphone since July 2016. I believe It is one avenue you can explore for messages to my number from John for 30th June 2016 to 1st July 2016….***

95. Due to the period of time that had passed, most importantly the fact that the email had not been retained, no further action could be taken by the internet service provider or the police.

96. The only evidence of this incident was what the Tribunal was told in evidence by JBS and the Claimant. No documentary proof of the incident was retained by the Claimant. The Tribunal considered the inconsistencies in the accounts given by the Claimant. It also noted that the Claimant had chosen to do nothing about it until such time that she was placed under the pressure of a verbal warning on 9 March 2017. The Tribunal considered it unlikely that JBS should go to such lengths to report the incident to the police if he was responsible for it. The Tribunal thought it odd and suspicious that the Claimant should wait until the day that JBS reported the matter to the police, to report the matter herself to the police. The letter from JBS to the Claimant on 9 March 2017, in which he referred to the incident, appears to be supportive of JBS's account that the first he heard of it was on 9 March 2017, and not on the day of the incident as the Claimant alleges.

97. Having considered all of the evidence, the Tribunal preferred the evidence of JBS that he did not even know about the incident until 9 March 2017 and was not responsible for sending the Claimant any link whatsoever. The Tribunal has serious doubts about the truthfulness of the Claimant's evidence in relation to this incident. It is therefore not satisfied, on the evidence, that a link of the type described by the Claimant was received by her or that it displayed the message to which the Claimant referred. Even if she did receive it, the Tribunal is satisfied that the Claimant must have suspected, if not known, that JBS' account had been hacked or that it was

spam. If she did not know or suspect it at the time, then the Tribunal is satisfied that she certainly did know the the account must have been hacked by the time JBS reported it to the police. Importantly, the Tribunal did not believe the account given by the Claimant or consider it credible. The Tribunal is therefore satisfied that when the Claimant later raised this allegation, including on 14 August 2017, she did so not genuinely believing that JBS was responsible for it.

98. For the above reasons, the Tribunal was not satisfied that the Claimant had been subject to direct discrimination or racial harassment.

(f) In May 2017, JBS attempted to force the Claimant to check the bins for a sketch that was missing from the office.

99. The Tribunal finds that a sketch went missing and JBS looked for it. The Tribunal preferred the evidence of JBS that he did not ask the Claimant to look through the bins. However, even if he did, there is no evidence from which the Tribunal could properly conclude that it was less favourable treatment because of race, or that the incident was related to race or otherwise fell within the definition of harassment under the EQA.

(g) JBS told them that the Claimant had spent all her practicing years as an Architect doodling and communicating to clients in Nursery school terms by applying colouring

100. The Tribunal accepts the evidence of JBS on this matter. JBS told the Tribunal that this was a reference to him saying to the Claimant that often it helped to explain new ideas to clients and building contractors if simplistic sketches and diagrams, similar to methods used by primary school teachers teaching children, was used. The Tribunal concludes that the Claimant has taken this out of context and that it was not an act of direct race discrimination or harassment.

(h) JBS said to the Claimant "I will not work with someone who begs me for money, are you bankrupt?" This was his response to the Claimant's request for payment at the end of the month.

101. JBS said in evidence that this was a comment he made in jest after the Claimant repeatedly asked him to pay her invoice early during a period when he was on leave. At the time, the Claimant was working as a sub-contractor on a freelance basis. JBS said he made the comment in a light-hearted way and thought that it was clear that he did not genuinely believe that the Claimant was bankrupt.

102. The Tribunal accepted the evidence of JBS on this issue. On any basis, however, the Tribunal was not satisfied that there was any evidence from which it could conclude that the comment was made because of race or that

it was a comment in anyway related to race. For these reasons the Tribunal concluded that the claims of direct race discrimination and harassment were not well founded.

(3) Using a foreign language

103. JBS said in evidence that he thought that it would be helpful to translate certain phrases into Spanish for AR given that he spoke the language reasonably well and enjoyed practising it. The Tribunal accepts the evidence of JBS that he spoke in Spanish to Ana 50% of the time, particularly when he needed to give her an instruction relating to a project because his knowledge of Spanish included technical architectural terms. The Tribunal accepts that he did not do this intending to exclude the Claimant and neither did he do it because of her race. The Tribunal is not satisfied that this conduct was related to race and therefore cannot be considered to be harassment. These claims therefore fail.

(4) Selectively issuing warnings

(a) In July 2017 the Claimant was issued with a warning by JBS about being late on two occasions. Other colleagues arrived late but did not receive warnings.

104. The Tribunal could not find any supporting evidence that the Claimant had been issued with a warning about being late. The most it could find was an email from JBS impressing upon the Claimant the importance of attending work on time and offering to move her start time to a later, hopefully more convenient, time of 9.30am. There was no evidence of less favourable treatment from which the Tribunal could conclude that there had been direct discrimination. It is correct that AR did start later but that is because she had agreed a later start time with JBS, an offer he also made to the Claimant. The Tribunal could not conclude that there was anything in what JBS said or did that was related to race and therefore the Tribunal concluded that the claim of harassment was also not well founded.

(b) The Claimant received a further letter from JBS on 11 July 2017 about lateness in which JBS stated that he suspected the Claimant was looking for another job.

105. In this warning letter dated 11 July 2017, JBS wrote:

> ***….I have assumed that the reason you have been taking time off recently without giving me adequate notice is that you are considering alternative employment elsewhere and have been attending interviews. If you need to attend interviews I would be happy to allow you time off and I would be pleased to write you a reference to support your applications….***

106. The Tribunal finds that the letter was not about lateness. It is correct that JBS suspected that the Claimant may have been searching for another job. However, it was not clear to the Tribunal what the detriment was that the Claimant was alleging which arose from this. In any event there was nothing from which the Tribunal could conclude that anything JBS did or said in this regard was because of race or related to race. The claims of direct discrimination and harassment are therefore not well founded.

(5) Refusing to accept boundaries

(a) JBS contacted the Claimant outside of work hours in connection with work matters, for example, on 29th July 2017

107. The Tribunal finds that on occasions JBS did contact the Claimant outside work hours in connection with work matters. The Tribunal does not find as fact that this was a regular occurrence.

(b) In July 2016, JBS made an unannounced visit to the Claimant's home outside normal work hours

108. The Tribunal finds as fact that JBS attended the Claimant's home on one occasion to drop off some keys, in circumstances where he was concerned that the Claimant and others would not be able to gain entry to the office the following day and in the genuine belief that the Claimant did not have her own set of keys. The Claimant's concern about this appeared to be that JBS did not give advance warning. JBS apologised for doing so in his written apology [286].

(c) JBS insisted on being provided with a landline contact for the Claimant, which she no longer had. He falsely accused her of not willing to provide it to him

109. The Tribunal accepts that at the meeting on 14 August 2017 JBS advised the Claimant that he had been unable to contact her on her landline or mobile number and that he asked the Claimant if her landline number was still current. The Claimant informed JBS that she was not prepared to give JBS her new landline number, which JBS accepted. The Tribunal does not accept the Claimant's assertion that JBS said that he would treat that refusal as insubordination.

110. The Tribunal concluded that the allegations relating to boundaries were somewhat trivial and that there was no factual or legal basis for concluding that the actions of JBS were because of the Claimant's race or remotely related to race. In those circumstances, the Tribunal concluded that the claims of direct race discrimination and harassment must fail.

(6) Termination of employment

111. The Tribunal concludes that this was not an act of victimisation within the meaning of s.27 EQA. This is because, for the reasons given at paragraphs 88-97 above, the Tribunal finds as fact that the Claimant made the allegation in bad faith, knowing it to be false. As such, the allegation cannot, by virtue of s.27(3) EQA, be a protected act.

112. The Tribunal finds as fact that the primary reason for the dismissal was that the relationship between JBS and the Claimant had completely broken down. The Claimant continued to conduct herself with JBS (by continually raising her voice and using the "F" word) in a manner which JBS found unacceptable. She also continued to make malicious allegations against JBS which had been the subject of a grievance conducted by an independent third party, which resulted in JBS issuing a written apology for those matters for which he considered himself responsible. The Tribunal was not satisfied that the Claimant was dismissed because of her race. Neither was it satisfied that this was an act of harassment in the circumstances as the act of dismissal (being the unwanted conduct) was not related to race and a reasonable person would not have been so affected in the circumstances of this case. The Tribunal notes that even as late as July 2017, in an apology written to the Claimant, JBS expressed what the Tribunal considered to be a genuine desire for the Claimant to remain employed and to be part of the firm's future. However, by 14 August 2017, due to the Claimant's unacceptable behaviour, the situation had become intolerable and JBS had no choice but to start disciplinary proceedings which eventually resulted in the Claimant's dismissal. The Tribunal noted that the disciplinary and appeal hearings were conducted by separate independent HR consultants who made decisions which JBS then adopted.

(7) Not offering a pension until after a dismissal

113. The Tribunal finds that JBS wrote to the Claimant about a pension because it coincided with statutory obligations to auto enrol employees in a pension scheme. In evidence JBS said in relation to this allegation:

> ***The only reason that the Claimant's pension arrangements changed in August 2017 were due to changes in the law that meant that changes to the Claimant's pension scheme took effect from 1 August 2017. This was communicated to the Claimant on 4 September 2017 [328] and these changes were discussed further after the conclusion of the Claimant's employment.***
>
> ***I can confirm that the Claimant's race had no bearing on the way in which her pension was paid.***

114. The Tribunal accepts the evidence of JBS and that there was a perfectly innocent explanation for this which was not related to or because of the

Claimant's race. The claims of direct race discrimination and harassment therefore fail.

115. For the above reasons, all of the Claimant's claims fail and are dismissed.

Employment Judge Hyams-Parish
30 December 2020

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