EMPLOYMENT TRIBUNALS

Claimant: Ms D Saravanamuttu

Respondent: Newcastle University

RESERVED JUDGMENT

Heard at: Remotely, by Cloud Video Platform ('CVP')

On: 15th, 16th April (reading days), 19th – 23rd, 26th – 29th April; (deliberations on 29th and 30th April and 16th July 2021)

Before: Employment Judge Sweeney

Members: Dorothy Winter and Paul Curtis

Representation:

For the Claimant: In person,
For the Respondent: Claire Milnes, counsel

The unanimous Judgment of the Tribunal is as follows:

1. **The complaints of direct race discrimination are not well founded and are dismissed**.

2. **The complaints of harassment related to race are not well founded and are dismissed**

3. **The complaints of victimisation are not well founded and are dismissed.**

4. **The complaint of unlawful deduction of wages is not well founded and is dismissed**.

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

REASONS

The Claimant's claims

1. By a Claim Form presented on 10 April 2019, the Claimant brought claims of unfair dismissal, breach of contract, unlawful deduction of wages, race discrimination, harassment related to race, victimisation, breach of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, breach of the Employment Relations Act 1999 (Blacklist) Regulations 2010, and a claim for equal pay under the equal pay provisions of the Equality Act 2010.

2. Some of the complaints referred to above were withdrawn. The complaints which were advanced to a full hearing and which remained to be determined were:

   (a) Direct race discrimination,
   (b) Harassment related to race,
   (c) Victimisation
   (d) Unlawful deduction of wages

3. The Claim Form and Response were amended twice. The amended Claim Form ran to 62 pages [**41A – 41JJJ**] of the bundle.

The Hearing

4. The hearing was conducted remotely using Cloud Video Platform (CVP) technology. The Claimant gave evidence on her own behalf. She had intended to call one additional witness, Dr Audrey Verma (Senior Research Associate), but upon the Respondent accepting that it wished to ask no questions and did not challenge the statement, she was stood down and her statement was taken as read and unchallenged.

5. The Respondent called the following witnesses:

   (a) Dr Colin Campbell, (former Director for Strategic Planning)

   (b) David Hill, (Director of Research Strategy and Development)

   (c) Lisa Jane Richards, (Programme Manager)

(d) Zoe Charlton, People Services Adviser (in the Respondent's HR department)

(e) Kathryn Scott, Business Partner (in the Respondent's HR department)

(f) Pete Wheldon, (RES Business Analyst)

(g) Sophie Brettell, (Deputy Director of Operations for the Faculty of Humanities and Social Sciences)

(h) Peter Brazell, (former Head of Strategic Projects and Change)

6. The parties had prepared an extensive bundle of documents consisting of [**1406**] pages, a chronology and a cast list.

7. The first two days (15th and 16th April) were set aside as reading days for the Tribunal. The parties attended at 10am on the third day. Evidence finished at 1.15pm on Wednesday 28th April. The parties made submissions on Thursday 29th April and the Tribunal deliberated on the afternoon of 29th April, all of Friday 30th April and met again to finalise its judgment on 16th July 2021.

The issues

8. A list of issues had been drawn up and agreed between the parties prior to commencement of the hearing. The Tribunal spent some time on the morning of 19th April 2021 discussing and clarifying those issues. The list of issues contained in bold 19 allegations, with many more sub-paragraphs. The Claimant explained that she pursued each and every allegation in the sub-paragraphs as a discrete complaint of discrimination. Her complaints of race discrimination and harassment related to race were advanced specifically on the basis of colour (section 9(1)(a) Equality Act 2010). The list of issues is attached as an appendix to this judgment.

9. The Tribunal asked whether the complaint of discrimination and victimisation relating to dismissal was limited to the complaint that the Respondent had failed to provide the Claimant with three months' notice of termination or whether it was also on the wider basis that the decision not to renew her contract was said to be direct discrimination and/or victimisation. The Claimant confirmed that it was both. Counsel for the Respondent referred the Tribunal back to the case management orders and allegation 17 as set out on **page 76** which suggested that the issue was simply the failure to give notice. This was after the Claimant had been given the opportunity to spell out clearly what the complaints were. Counsel submitted that the Respondent had approached the case in this way. However, recognising that the Claimant was unrepresented and that the complaint should be read as a whole, Ms Millns did not object to the Claimant pursuing her complaint on the wider basis.

10. In addition to complaints of direct discrimination and harassment related to race, the Claimant contended that she had been victimised within the meaning of section 27 Equality Act 2010. She relied on the following alleged protected acts:

    (a) On 17 and 18 March 2017, the Claimant contacted Jenny James to request additional feedback in respect of a Project Manager role and feedback for a Senior Innovation Associate role which she had interviewed for in November 2016 (see paragraph 1.1 of Allegation 1 of the list of issues);

    (b) The Claimant reported to management (David Hill, Helen Cameron, Peter Brazell) an incident which occurred on 18 December 2017 (see paragraph 1.18 of Allegation 9 of the list of issues);

    (c) The Claimant presented a grievance on 17 May 2018 (see the note to Allegation 13 of the list of issues).

11. The complaint of unlawful deduction of wages was initially said to be for a sum of £547.35. It was explained by the Claimant at the outset of the hearing that the complaint had changed to a claim for £1,421.13 as set out in her most recent updated schedule of loss [**pages 1389 – 1392**]. The complaint related to deductions allegedly made in July and August 2018.

Findings of fact

12. The Tribunal heard a considerable amount of evidence. It is not our function to set out every piece of evidence or to make findings on every issue or dispute between the parties. Although they are extensive, our factual findings are limited to those which we have considered to be necessary for the purposes of determining the issues and complaints.

13. The Respondent is a university based in Newcastle upon Tyne. The Claimant is British, of Indian descent. She was employed by the Respondent as a Business Analyst under a fixed term contract from 03 July 2017 with an expiry date of 31 December 2018.

A brief overview of the Claimant's employment and pre-employment history with the Respondent

The Claimant's applications for other roles with the Respondent

14. Prior to commencing her employment in July 2017, the Claimant had applied for a number of other positions with the Respondent. One of the applications was for the role of Senior Innovation Associate - faculty of medical sciences (A51532A) for which she was interviewed on 06 December 2016. Another was for the position of Project Manager FMS (C59547A), for which she was

interviewed on 16 March 2017. Her applications for these positions were unsuccessful.

15. On 07 December 2016 she was notified by Sarah Nolan of the National Innovation Centre for Ageing (**page 157**) that she was unsuccessful in the Senior Innovation Associate application. Ms Nolan had attempted to speak to the Claimant personally by phone but was unable to contact her. The same day the Claimant responded by email saying that '*if any valid feedback underpinning the decision making from the destinate selection process is available, do let me know*.' Later that evening she emailed Lynn McArdle saying she was waiting for relevant feedback. She did not copy Ms Nolan into the email. There was no further follow up or exchange regarding the provision of feedback for that role. The Claimant never in fact received feedback in respect of that application.

16. As regards the Project Manager post, on 18 March 2017, the Claimant emailed Jenny James, in the Respondent's HR department and asked for feedback from Mr Andrew Lambert. She also mentioned that she had not received feedback from a job she had applied for the previous year, namely the Senior Innovation Associate interview. It was by now some three months since December 2018. She did not ask Ms James to arrange for that feedback to be provided. She simply mentioned the fact. The Claimant received verbal feedback from Mr Lambert on the Project Manager interview and subsequently in the form of an email on 22 March 2017 from Ms James (**page 187**). The feedback broadly was that the Claimant did not give examples of approach and experience by following a 'STAR' structure (situation, task, action, result). She did not like the feedback and she emailed Ms James on 22 March 2017 to say that she could '*pick their response to pieces but life is too short'*. She said that she could '*not be held responsible if members of the panel do not write down my responses at all/correctly on the interview question sheets*' and added that she would look to apply for other jobs in the optimism that the experience will be based on honesty, equitability and professionalism [**page 187**]. She made no further reference to the lack of any feedback in respect of the Senior Innovation Associate application.

17. Although unsuccessful for the Project Manager role, the Claimant did indeed apply for another post, that of Business Analyst, to which she was subsequently appointed. On 03 April 2017 she submitted an online application via the Respondent's recruitment web portal (**pages 192-202**).

The role of Business Analyst and 'MyProjects' replacement

18. The Respondent had used 3 IT systems to manage the University's research, all of which had been developed in-house. They were:

    (a) 'MyProject Proposals' (this was used for costing applications for

external funding);

(b) ‘MyProjects’ (a project management tool);

(c) ‘MyImpact’ (this was used to record outputs from research activity)

19. The system known as MyProjects was used for the purposes of managing all of the University’s research and other externally funded projects. However, it was old. Prior to the Claimant’s time with the Respondent, a project initiation document identified the options open to the University, one of which was the replacement of ‘MyProjects’ (**pages 280-291)**. An executive-level decision had been made to purchase a replacement system from an external provider.

20. A project was created in order to assess the requirements of the replacement system. It had been identified that the Respondent would need to recruit a full-time business analyst for a period of 18 months to work on the project. It had also been decided, prior to the commencement of the Claimant’s employment, that the Respondent would also need to replace ‘MyProjects Proposals’.

21. A substantial part of the role of the business analyst – which sat within the core project team - was to work with the “stakeholders” or users of the system to ensure that the replacement system was generally fit for purpose within the University. This involved liaising with, understanding and capturing the needs and requirements of the various system users. It was common ground that the Business Analyst was the interface between the technical team and the system users. Prior to the arrival of the Claimant, Pete Wheldon had those responsibilities. He had been employed by the Respondent since 2007. However, he had a much wider role than that which was subsequently undertaken by the Claimant. It was recognised that he would simply be unable to devote enough time to that element of the project. Therefore, it had been agreed to create a fixed term vacancy and recruit a business analyst which would then sit within Peter Elliott’s team. The initial suggestion to recruit a Business Analyst on a fixed term contract was Mr Wheldon’s. He believed that he would be over-stretched were he to undertake that work on the MyProjects replacement.

22. The position was advertised as fixed-term because the requirement was purely to assist on this particular project. It was a fixed piece of work and recruitment was deemed necessary to relieve the pressure on Mr Wheldon on that project. Approval was given by the sponsor, Richard Dale, to fund the recruitment until the end of 2018.

23. The claimant applied for the position by completing a standard online application form, submitting a CV and sending a covering letter (**pages 192 - 202** of the bundle).

The Claimant's interview for the position of Business Analyst

24. On 25 April 2017, she was interviewed by a panel which consisted of Peter Elliott (head of business process improvement), David Hill (director of research, strategy and development) and Silmara Hodge (NUIT Project Manager). The Claimant was one of three interviewed for the post. The interviewers were, on the Claimant's own admission, polite towards her. They had a fairly equal amount of time to ask her questions and to allow her to answer. Nothing untoward was said during the interview.

25. The Claimant was the first-choice candidate of Mr Elliott and Miss Hodge and the second-choice candidate of Mr Hill. In discussion with his colleagues, Mr Hill acknowledged that the claimant's background seemed to be a better fit than his preferred candidate whose background was in project management. Therefore, he supported the decision of his colleagues and they collectively agreed to appoint the Claimant to the position.

26. Although not his first choice, Mr Hill considered the claimant to have performed reasonably at interview. We reject the Claimant's suggestion that he was noticeably not comfortable with her or that he displayed a hostile demeanour towards her. The claimant gave no reliable evidence as to any inappropriate behaviour by Mr Hill. He was, we find, polite and courteous towards the Claimant. Each interviewer had the same amount of time in order to ask questions of the candidates. The Claimant confirmed in cross-examination that Mr Hill was neither rude nor discourteous. All that the Claimant offered by way of a description of Mr Hill's supposed hostility towards her was that she "felt" that he was hostile towards her, that he was not comfortable with her presence. She relied on what she called, women's intuition that his demeanour 'did not sit right with me'. At no point was she able to articulate how he manifested any hostility.

27. In her witness statement prepared for these proceedings, the Claimant says that she was very aware of his hostility but with no attempt to describe his behaviour. During the hearing, in cross examination, she says she believes that he was against her from the outset because of her colour. These are stark contrasts to what she said in the grievance meeting. In her written grievance the Claimant did not say anything at all about Mr Hill's behaviour at interview. In her interview with Sophie Brettell (**page 871**) she simply described him as having been 'reserved' at interview.

28. The Claimant relies (after she discovered the fact) on the revelation that Mr Hill was not her first choice. That is not uncommon in interview situations. We found Mr Hill to be to be a straightforward and honest witness. We accept his evidence that he had no reason to be hostile towards the Claimant. We find that it was only upon discovering that Mr Hill had not identified her as first choice that the

Claimant changed her description of him as being 'reserved' to being 'hostile'. We find that he was not hostile towards the Clamant at this interview.

29. A day or two after the interview, the Claimant was verbally offered the position of Business Analyst.

The request for referees

30. Following confirmation of the offer of employment, there was an exchange of emails regarding referees and other documentation between the Claimant, HR and Mr Elliott (**pages 207 – 213**). The Respondent asked for a reference from a previous employer, Nexus (**220-222**). The Claimant took issue with this. She felt the request was illogical as Nexus would apparently only be prepared to provide a standard reference from HR and it would not complete the university's reference form. The Claimant wrote to Helen Cameron of HR asking for an explanation (**page 212-213**). Ms Cameron replied (**page 211-212**) explaining that, of the references provided, only one was from a recent line manager covering a very short period of time and that the request for the further reference was standard practice.

31. The Claimant believed the Nexus reference to be unnecessary. However, the Respondent's practice when it comes to references was to require at least one work related reference from a recent employer. When she applied for the post of Business Analyst, she did not indicate on her application form the names of her referees. She maintains that someone added the names of her referees to her online application form after the event. We did not have the original application with which to compare the version of it which is contained in the bundle. However, we accept that she did not add the names when completing the application and that she left blank the section requiring details of referees.

32. We find that the names of the referees which the Claimant provided by email were entered at some point after she submitted her application, most likely by someone in HR, to ensure that the names were captured on one reference document. The information that was added is factually correct. The Claimant has not identified any detriment and we find that she suffered none.

33. There was a delay between being the job offer and the Claimant's start date which was due to the Respondent's desire to ensure that references were in order. The project team were keen and had been waiting for the Claimant to start. On 30 May 2017, Silmara Hodge emailed Peter Elliott (**page 293**) asking '*have you heard anything about our diva"*? Mr Elliott replied '*all good with the references, HR just issuing paperwork…*'.

The Claimant's contract of employment and job description

34. On 01 June 2017 the Respondent wrote to the Claimant setting out the formal offer and terms of employment which was to be on a fixed term basis, starting at spinal column point 28 on Grade F (**page 227-228**). The expiry date of the contract was expressly stated as being 31 December 2018.

35. The main scale points for grade F range from 27 to 36 (27 being the lowest). There are three 'starter' points, namely 27, 28 and 29. The Claimant commenced on the middle point of the two starting points (point 28). The post had been evaluated at Grade F prior to advertising.

36. It was standard practice for new starters to begin on one of the three identified starter points. Although the interview panel retained a discretion, it would only be in exceptional cases that a candidate would commence their employment on a point above any of the three starter points, for example where the candidate was particularly outstanding and would only be inclined to accept employment on a higher starting salary. These circumstances did not apply in the Claimant's case. It is possible for a new starter to commence on the highest of the three starter points but the job applicant would be required to make some case for that. When the Claimant started she did not make a case for starting higher than or on the highest of the three starter points. She simply asked for clarification as to whether it was standard practice to start on a low starting point. Mr Elliott spoke to the Claimant and confirmed that it was.

Claimant's induction

37. The Claimant then started her employment on 03 July 2017. Prior to her commencement, Mr Hill met with Mr Elliott and impressed upon him the need for Mr Wheldon to spend time with the Claimant so that she could obtain an understanding of the Respondent's current systems. Mr Wheldon was regarded as the subject matter expert. As we have found, Mr Wheldon had been instrumental in seeking approval for the recruitment of a Business Analyst to take some of the pressure off him. He wanted the Claimant to succeed. It was in his interests that she did.

38. Mr Wheldon met with the Claimant on her induction. He went about showing her the ropes, so to speak, not only then but in subsequent meetings in the early stages of her employment.

39. As a witness, we considered Mr Wheldon was nervous to begin with. We find that he was angry at the allegations made against him. However, he was honest in his account. We are in no doubt that, over time, during the Claimant's employment, he became frustrated with aspects of her work and her attitude. He eventually came to the view that the Claimant was more of a hindrance than a help to the project and that she was openly resistant to what it was that the University was seeking to achieve. We find that he came to dislike the Claimant – and the Claimant came to dislike him. It was a mutual disrespect.

40. There was a suite of internal training courses available for staff to view and, if appropriate, undertake during their employment. This suite was accessible to the Claimant and it was open to her, as it was to others, to identify any training or development she believed she needed. She also had the opportunity to do so during any of the meetings to discuss her PDR. Ordinarily, a PDR meeting would be the appropriate forum in which to discuss training and development and there is a section on the PDR form specifically for that purpose.

The project team or working group

41. The working or core group consisted of a number of individuals [**page 286]**, They included:

    (a) James Callaghan, Research Enterprise Lead,
    (b) Silmara Hodge, NUIT Project Manager,
    (c) David Hill, Research Office Lead,
    (d) Jonathan Taylor, NUIT Lead
    (e) Dave Anderson, Procurement,
    (f) Peter Elliott, Head of Business Improvements,
    (g) Pete Wheldon, Policy and Information Team,
    (h) Business Analyst – to which role the Claimant was appointed

42. The project sponsor was Richard Dale. The Claimant's position sat within the Strategic Projects and Change Team (at least that was the position from 01 August 2017). Overall management responsibility for the Change Team fell to Dr Colin Campbell, who was at the material time, Director for Strategic Planning. The 'Change Team' was to report to a new Head of Strategic Projects and Change [**page 223**]. That new position was filled by Peter Brazell when he joined the Respondent on 30 October 2017. Prior to Mr Brazell joining, the Claimant reported to Peter Elliott, who left shortly after the Claimant's employment began.

43. Among other things, Mr Hill had oversight of the Respondent's research strategy, external funding applications and contract management, In his role he had worked closely with Mr Elliott undertaking a review of the end to end processes for supporting research funding.

44. The core working group had regular Friday morning meetings to which the Claimant and others were invited. Key stakeholders throughout the university were consulted as and when appropriate (these were users of the IT systems). Other than the Claimant, the other members of the core group had other responsibilities. MyProjects was not the only project on which they worked.

45. Jane Richards was a Programme Manager with the Respondent. She was not part of the core group. She was not involved in the project at all. Around July 2017, she took a long period of leave, about 5 weeks. She was on leave when

the Claimant started her employment. On her return, although she did not work with the Claimant they shared an office but this was for a relatively short period of time as in October 2017, Ms Richards went on secondment to a role in the Faculty and Medical Sciences until the end of April 2018 when she was based in a different part of the university. In the short period of time that they shared an office, they sat opposite each other and during this period, they engaged in polite and friendly conversation and chit-chat. Ms Richards had no involvement in the Claimant's recruitment and did not know what the Claimant's job description involved.

46. Around the time of the departure of Peter Elliott and before the arrival of Peter Brazell, Ms Richards happened to remark that she did not understand what the Claimant's role was. This was simply a statement of fact by her, made at a time when there was some general conversation about who might be the Claimant's line manager, given the departure of Mr Elliott.

47. During her period of secondment Ms Richards had very little contact with Mr Brazell. Very shortly after she returned to the Change Team from secondment she was again seconded to another role in Medical Sciences. Ms Richards had no discussions with anyone about the Claimant in any capacity or on any subject.

48. In an exchange of emails between Mr Hill and Mr Brazell on 05 December 2017 [**pages 501-502**], Mr Hill said to Mr Brazell that he may want to speak to Jane Richards as being someone he believed had heard the Claimant making disparaging remarks about senior management. The email – as with all correspondence – must be looked at in context. The context of that exchange was that it was for the purposes of Mr Brazell gathering information about the Claimant for her performance management. Mr Brazell had been made aware of the Claimant's perceived negativity. He wanted to understand the specifics and asked Mr Hill for information so that he could address matters with the Claimant as part of his performance management responsibilities. As it happens, Mr Hill was wrong about what he had been told, in that Ms Richards had not heard the Claimant make any derogatory remarks. She confirmed this during her evidence. Mr Brazell did not, in any event, speak to Jane Richards about the Claimant.

49. We find that Ms Richards did not influence anyone against the Claimant and nor did she seek to. In fact, we find that Ms Richards liked the Claimant. She tried to include her in conversation and activities. She invited her, along with others, to a Christmas market in Munich. She invited her to a pizza night out. The Claimant dismisses these, saying that she only included her to be seen to include her. However, we find that Ms Richards was genuine in seeking to include the Claimant in social events along with others, but the Claimant declined, which was a matter of personal choice for her.

50. The Claimant also maintained that Ms Richards made negative comments about her alumnus school (computing science) in July and August 2017. As with other allegations, this was devoid of any specificity in the Claimant's witness statement. When cross examining Ms Richards the Claimant put to her that she had referred to the Claimant's personal tutor as a 'golden boy', Ms Richards said that she did not say this, that she could not imagine why she would say it and it is not a phrase she believes she would ever use. This was the only specific thing that was put to Ms Richards. We accept Ms Richard's evidence. We conclude that she did not say anything about a tutor being the 'golden boy'. She was honest and credible in her account.

Mr Brazell's appointment

51. Peter Brazell commenced his employment with the Respondent on 30 October 2017 as Head of Strategic Projects and Change. He was responsible for a number of people with diverse roles, who were working on different projects or pieces of work across the university. One of those was the Claimant. He did not have much involvement in the project on which the Claimant worked. In fact he had very little involvement. That was not because he was not interested but because it was a discrete project with established roles and which required very little day to day involvement from him. The sort of roles he took up on other projects (for example chairing a steering group) were already resourced in respect of the MyProjects work.

52. Mr Brazell met the Claimant on his first day. She mentioned to him that she was employed under a fixed term contract. She mentioned it again shortly after this. We find that the Claimant resented the fact that her employment was for a fixed term. This resentment on her part stayed with her throughout her time with the Respondent.

53. She came to express her unhappiness at her fixed term status when Mr Brazell was asking members of the team for their views on future development. The Claimant said that she saw no point in providing any input given her fixed term status, her point being that she would not be around after expiry of the contract so her views as to future development of the team were to no avail. She displayed a particularly negative attitude in this respect.

54. The Claimant says that she asked Mr Brazell why she was the only fixed term employee. However, we do not accept that she did ask him this. She may have been wondering that in her mind, but she did not ask Mr Brazell that question. She simply expressed her unhappiness about her status. That unhappiness, or negativity, we find is in keeping with our overall impression of the Claimant as being someone who is generally negative in her outlook. We find that she has looked back and convinced herself that she asked this question of Mr Brazell, when she did not. In any event, the answer to the question why she was on a fixed term contract ought to have been obvious to her. Approval had been given

for the funding of a fixed term business analyst to work on a specific project before she had even applied for the role. It was nothing to do with her colour or ethnic background. The Claimant explained to the Tribunal that Mr Brazell did not follow up on her request to be made permanent and swept her request under the carpet. However, she did not request to be made permanent, which she eventually accepted in cross examination, and there was nothing to sweep under the carpet.

Redrafting of 'scenarios'

55. On 08 November 2017 the Claimant attended a user group meeting. She was asked to present some 'scenarios', by which is meant basic scenarios for the purposes of sending them to the potential suppliers of the new system to enable them to demonstrate their product. An email of 08 November 2017 [**page 428**] set out the agreed actions, which included that the Claimant would work on the scenarios, create them and circulate them to the working group. It had been agreed that the scenarios should not be too detailed or specific and that they should be written in everyday, 'lay', language which would then be given to the suppliers for them to interpret the scenarios at a presentation to the university.

56. On 17 November 2017 there was a meeting of members of the core group involving the Claimant, Mr Hill, Mr Wheldon, Mr Taylor and Ms Hodge. The Claimant took the view there needed to be faculty representation, not only at the presentation by the suppliers, but also in the scoring of the suppliers' presentations. This would result in the group being bigger than had been envisaged by all the others. The Claimant expressed her view to the group. Mr Hill did not agree that the faculties should be involved in the scoring exercise. Having expressed his contrary view, the Claimant responded tetchily, '*the faculties are the university David*'. On the face of it, this seems an innocuous remark. However, it was one comment on the path of resistance that the Claimant willingly walked. She made her point firmly, albeit not aggressively.

57. The Tribunal would naturally expect a scoring group to be small so that there can manageable, focussed, critical analysis and discussion of the scoring. In the experience of the lay members in particular, the more you have involved in such an exercise, the more difficult it is to manage. The scoring group must know where it is that the organisation wants to go with the overall project and being aware of the concerns of the various stakeholders is an important part of this. For example, it would be relevant to understand that 20% of the organisation is unhappy with a certain feature or that 10% is unhappy about another feature and so on. However, having consulted and understood the various 'stakeholder' concerns, a business would not ordinarily envisage those stakeholders to be involved in the scoring of presentations. A smaller, focussed group is more efficient. The way in which the others in the core group had intended to proceed was a reasonable and more understandable way of proceeding in the experience of the Tribunal. This sets the context for the

Claimant's allegation that when she was saying that there should be wider representation on the scoring panel that she was ignored and that one or two people raised an eyebrow. However, the Claimant was not ignored. It was simply the case that others disagreed with her and Mr Hill said so. There is nothing to suppose that even if someone raised an eyebrow at her suggestion, that this was anything to do with her race, as opposed to it being because the suggestion went against the grain of what they would normally expect in a scoring exercise.

58. When the Claimant responded to Mr Hill '*the faculties are the university David*' *w*e find that the comment was intended to be dismissive of Mr Hill's position. She believed that the project leaders were purposely keeping stakeholders out of the loop. By saying what she said to Mr Hill, she was implying that if they proceeded as he suggested, he would not be acting in the wider interests of the university. Mr Hill reacted defensively, and we find, equally tetchily, to say that he knew that the faculties were the university, as he had worked there some 20 years and that he understood how it operated. The Claimant recognised at the time that Mr Hill did not appreciate what she said and that she had provoked his tetchy response. It is likely that Mr Wheldon raised an eyebrow at what she had said and at the way she had expressed it. The Claimant recognised there was now some tension in the room as a result of her comment and she tried to ease that tension by using a commonly used idiom, saying '*I am not teaching granny to suck eggs*'. It is important to note at this point that it was the Claimant who used this phrase. She has alleged in these proceedings that the phrase was used by Mr Hill in a subsequent conversation with her and that, by using it and by the emphasis he put on the word 'granny', he was racially harassing her or subjecting her to a detriment, motivated by her colour. We address this further in our findings below.

59. There was a follow up working group meeting on 21 November 2017 at which the scenarios were again discussed. The group felt that there needed to be more detail around the research aspects and the cost element. There was a debate as to whether there should be 5 separate scenarios or one consolidated scenario. Rather than proceed with separate scenarios, it was agreed that there should be one generic project scenario [**page 448-449**], that the Claimant would speak to James Dougall, cost accountant, and that she would produce what has been described as the 'mother of all scenarios'. This was a straightforward meeting at which nothing of any significance happened. Although the Claimant alleges in the very broadest of terms that she was deliberately undermined by Mr Hill, there was no evidence to this effect and to the extent that it is alleged, we find that she was not undermined at this meeting and was not the subject of any kind of poor behaviour by Mr Hill or Mr Wheldon or anyone else.

60. On Thursday, 23 November 2017 at 16:51 [**page 462**] the Claimant circulated by email the revised scenarios document, which she had been tasked with completing.

61. During Mr Hill's evidence the Claimant put to him that he did not know what a scenario should look like and that he did not understand what the document was. We find that Mr Hill knew very well what a scenario should look like, as did Mr Wheldon and the other members of the working group. From the competing descriptions given by the Claimant and by Mr Hill and Mr Wheldon as to what should be contained in a scenario for the purposes of sending to the suppliers for use in their presentation, we are satisfied that the Respondent's witnesses' assessment of the Claimant's document as being 'not fit for purpose' was entirely reasonable. What the Claimant provided was wholly unsuited to what was required for the exercise. She produced a document which was some 22 pages long with 185 steps. Mr Hill and the others had reasonably expected a much shorter, narrative and context-based document. What they got was a step by step prescriptive requirement of the system. It was at a level of granularity suitable for a technical team in developing a system. That was not what was required for the purposes of a supplier presentation as had been discussed and agreed by the group. This ought to have been perfectly clear to the Claimant.

62. The core group had pre-scheduled a meeting for Friday 24 November 2017 to discuss the scenarios, prior to sending them out to the suppliers. As regards this piece of work, time was, therefore, of the essence. The Claimant did not attend that meeting. Had she done so it would have been explained to her that the scenarios would have to be redrafted.

63. In her witness statement the Claimant maintained that she was being set up on 24 November 2017. She says that Mr Wheldon created a different scenario document on 23 November 2017, only a few minutes after she had emailed her version of the generic scenario. The Respondent denied this. We address this dispute below.

64. When Mr Wheldon received the Claimant's document on 23 November 2017, he had a glance over it. Being of considerable experience, he could see immediately that the document was not what was required and not suitable. He emailed Mr Hill on 23 November 2017 at 17:13 (**page 462**). He created a document ('scenarios for suppliers') which can be seen as an attachment to his email on page **466a**.The properties of that document show that it was created at 16:55 on 23 November 2017.

65. We find that, upon seeing the Claimant's unsuitable scenarios document and knowing that it would have to be revised, Mr Wheldon created the document on 23 November 2017 in the knowledge that it would have to be re-worked quickly. He then met with the rest of the core team on the following day, 24 November 2017 where it was agreed that he would re-write the document from scratch, which he did after that meeting. Mr Wheldon normally goes for a run on a Friday lunch-time with a running group and he was unable to do so on this occasion

because he spent his lunch-time on 24 November working on the scenarios. This, and the fact that he had to re-write the scenarios caused him some irritation and he was frustrated with the Claimant.

66. We are satisfied that there was nothing sinister in the creation of the document on 23 November and equally satisfied that the content that went into the document was done on 24 November 2017. The Claimant was not set up.

67. Mr Hill emailed the Claimant on 24 November 2017 to explain that they had looked again at the scenarios and decided to rework the content and he attached the re-worked scenarios which had been done by Pete Wheldon. It was a reasonable email and not in any sense antagonistic [**page 469**]. Had she attended the meeting on 24 November the Claimant would have been involved in the discussion to re-work the scenarios, but she had not been at that meeting. Rather than go with the decision of the working group, the Claimant disagreed, feeling that the reworked scenarios did not reflect the depth and maturity of the solution needed. Mr Anderson replied to her email reasonably and diplomatically making the point that the Claimant's work was still valuable [**page 468-469**]. The Respondent's point was not that there was anything technically wrong with the Claimant's work but that she produced something that was not fit for the purpose intended. The Claimant responded defensively to Mr Anderson on **page 468**.

68. We are satisfied that this whole affair boiled down to a difference in view as to how the scenarios document should look. However, what was becoming increasingly clear to Mr Hill and Mr Wheldon and indeed to Ms Hodge was that they were finding themselves in disagreement with the Claimant on a number of things, which over time they came to see as indicative of a wider negativity from her about the university's approach and its decision-making to replace the system using a third-party purchased system.

Feedback for the Claimant's PDR

69. New to the organisation though he may have been, it was Mr Brazell's responsibility to undertake the Claimant's PDR. On 23 November 2017, in preparation for this, he emailed Mr Hill and Ms Hodge asking for feedback [**pages 465 and 463**]. Mr Hill responded the following day. He said that he considered the situation with the Claimant to be increasingly challenging. He believed the relationship between Ms Hodge and the Claimant to be strained. He was of the view that the Claimant did not listen to advice and was very defensive in her work. He referred to the 'scenarios' drawn up by the Claimant that were considered by the wider team to be not fit for purpose. On 24 November 2017 [**page 463**] Ms Hodge replied to Mr Brazell's request for feedback with what we find to be a balanced and measured response.

70. On 27 November 2017, Mr Brazell emailed everyone in his team to ask them to send a list of key stakeholders on any projects they were involved in [**page 467**]. The purpose was for them to provide constructive feedback on behaviours and competency so that he could use this as part of their PDR. Those emailed were the Claimant, Rebecca Shaw, Hilary Whitaker, Helen Elliott and Tracey Charlton. In her reply the Claimant said '*I would have to think about this as mine is highly politically charged and generally I am stuck in the middle of a piece of work that has been going on for five years*.'

71. This response is in keeping with our overall impression of the Claimant that she saw herself as 'politically' aligned to the stakeholders/users of the system. It is also consistent with the observations and beliefs expressed by members of the core group that the Claimant's attitude towards the project was negative. When asked in cross examination why she responded to Mr Brazell's request in this way, the Claimant said that it was simply because she did not want to identify some stakeholders for the purposes of contributing to her PDR and leave out others for fear of offending those she left out. We reject this evidence as disingenuous. We cannot imagine for one moment that a busy employee of the university would be offended by not being asked to give feedback on the PDR of an employee in a different department. Not only are they unlikely to know who has been asked to contribute to a person's PDR, to be asked to contribute is more likely to be regarded as a chore than a privilege.

72. We are satisfied that, contrary to her evidence, this was not what the Claimant meant in that email. She was, we find, being cagey about identifying stakeholders for the purposes of providing feedback out of a concern that they might reveal to Mr Brazell that she had been negative about the project and negative about some of the professed benefits in replacing the existing system. This is supported by our reading of the Claimant's email of 27 November 2017 to Dr Campbell [**page 471**] where she refers to it not being '*right to end up being the scapegoat for work that is highly politically charged*…' and that it '*would not be fair, given the above to have PDR/outcome that is shaped by some of the stakeholders of this work'*. She referred to her work as a '*poisoned chalice'*. This was, we find, an extremely negative email, evidencing a combative, negative and defensive frame of mind.B

73. The Claimant never did identify any stakeholders who might provide feedback in her PDR exercise, which meant that Mr Brazell only had feedback from a few stakeholders, namely those who worked on the project with the Claimant. And that feedback was far from positive.

74. As stated above, over time, Mr Wheldon – and others, including Mr Hill and Ms Hodge – came to see the Claimant as being difficult and negative. One of the fundamental problems – indeed the fundamental problem which Mr Wheldon, Mr Hill, Ms Hodge and others had with the Claimant was that, from their experience and perception, she identified 'with' the users of the system and

was resistant to the commercial decision which had been taken before she started her employment, that an external off the shelf product was to be purchased.

75. The Claimant said in evidence that she was just doing her job; that she was not taking any sides and that she was not against a commercial off the shelf system from a third party. We, as a tribunal, had to consider and determine whether the Respondent's witnesses genuinely held to this view and even if they did, whether there was any evidence that it was racially motivated. Aside from the evidence of Mr Hill, Mr Wheldon and others, there was a number of pointers within the documents which supported their assessment of the Claimant being resistant as they described. The Claimant created a file and gave it the name '*the perils of ignoring stakeholder views'*. In evidence, the Claimant said this was simply a 'random' meaningless name that she had allocated to the file and that she could have come up with anything. She also said that, in any event, this was not visible to anyone outside the core working group. We reject the Claimant's evidence on this. She was, we find, being untruthful on this matter. It was not simply a 'random' title she gave to the file. The choice of title was deliberate and, we find, it reflected her deeply held view that the project team was ignoring the views of users and was not being open with them. She was, as Mr Wheldon described it, having a 'dig' at the team. Further, the file was stored on the 'test system' which was used for, among other things, training purposes. It could have been seen by other users.

76. There were other pointers from the evidence which supported the Respondent's witnesses' assessments that the Claimant positioned herself 'with' the users and 'against' the project team. She physically sat among the stakeholders and away from the core group at a meeting on 19 December 2017 (which we address below).

77. In her interview with Sophie Brettell [**page 873**] the Claimant said that '*part of her role is to provide independent advice and input to the business case but she hasn't been allowed to*'. This, we find, was a revealing statement. That was emphatically not part of her role, yet it is how she saw it. She perceived herself as being prevented, somehow, by the core team from giving 'independent advice' to the users of the system (i.e. the wider university, or as she had put it to Mr Hill tetchily at the meeting on 17 November, 'the faculties'). The Claimant had a concern about the 'business case' for replacing MyProjects and made her views known to the users. In her witness statement (paragraph 6, page 24) it is clear that her view was that the decision to tender for a third-party solution was not 'set in stone' (paragraph 1 of page 14).

78. We accept Mr Hill's evidence that the decision was very much set in stone. During his cross examination by the Claimant he referred to something that Phil Ramsay said to him, which was that he believed that the Claimant was 'trying

to derail the project', something which he considered to be extremely concerning.

79. We find that the members of the project team did genuinely believe that the Claimant was resistant to the replacement of 'MyProjects' with a third-party off the shelf system. They also genuinely believed that she 'sided' with those users of the system who had expressed to her that the current system did not need replacing, only tailoring or adjusting to their needs. We find that she made her resistance to the project known to users and to the core group. By the time we get to late November 2017, the other core members of the core working party had little confidence in the Claimant and Mr Wheldon, in particular, was frustrated by her.

80. Silmara Hodge was on good terms with another employee, an IT systems analyst called Deepa Sundraiyer. Ms Hodge once mistakenly called the Claimant 'Deepa' rather than 'Diva'. We do not accept the Claimant's evidence in para 1, page 27 of her witness statement that this happened on a number of occasions, that she raised it with Ms Hodge and that Ms Hodge did not apologise. We say more about this in our conclusions (paragraphs 215-217).

81. Before we move on to the events of 18 and 19 December 2017, we must address one matter which is said to have happened on 08 December 2017, to which we have earlier alluded. The Claimant alleges that on this date, during a telephone call with Mr Hill he used the phrase '*I know I am not teaching granny to suck eggs'*. This is the phrase she used in discussion with Mr Hill on 17 November 2017, about which we have made findings. The Claimant contends that in saying this, Mr Hill was engaging in unwanted conduct related to race and/or that he subjected her to a detriment because of race.

82. Mr Hill cannot recall saying this to the Claimant nor indeed does he recall her saying it to him. His position is that if he did say it, he would not have meant it any racist way. We find that both the Claimant and Mr Hill used the phrase. Mr Hill has, we find, simply forgotten that he said this, almost certainly because it was not an issue for him. As the Claimant accepted, the phrase has no racial connotations and is a common idiom, which she herself used in making a point in discussion with Mr Hill. It is likely that, when he used it in making a point to the Clamant, he had in mind that she had used it to him and that he was using the phrase to make a point, rather petulantly – as did the Claimant when she had used it to him. But it was no more than that. We reject the Claimant's evidence that he emphasised the word 'granny' as embellishment and exaggeration by her. She did not say this when interviewed by Ms Brettell on 19 June 2018 [**page 879**].

83. By November 2017 it was clear to Mr Brazell that the project team and in particular, Mr Hill, Ms Hodge and Mr Taylor all had concerns regarding the Claimant's performance and way of working. It was fed back to Mr Brazell that

the Claimant was protective of her work; that she would not share information with the right people; that documents were saved on personal drives or were password protected; that she had a negative attitude.

84. After the scenarios had been re-written by Mr Wheldon on 24 November 2017 and approved by the working group, they were sent to the potential suppliers. The next step was for these suppliers to deliver a presentation to the university. In advance of this, the core team set about exploring with users/stakeholders what questions the suppliers might be asked at the presentations.

December 2017 – the Claimant's PDR

85. There was a number of PDR meetings between the Claimant and Mr Brazell. In preparation for the PDR process, the employee completes a PDR document, which is discussed at PDR meetings. This is a 'live' document in the sense that it can be amended depending on what comes out of discussions between employee and line manager. The various iterations of the Claimant's PDR document were in the bundle: [**pages 494, 666, 738, 791a**]. On 01 December 2017, Mr Brazell held his first formal PDR meeting with the Claimant. He formed the impression that she was negative about her involvement in MyProjects. In light of our findings above, that was a reasonably held impression. They discussed the PDR document and he encouraged the Claimant to focus on things relating to her performance which they could influence. For example, the Claimant placed considerable emphasis on the 'sudden' change of sponsor for the project, the relevance of which Mr Brazell could not see in so far as it related to her work or personal development. We would add that the Tribunal did not see any relevance whatsoever of a change of sponsor to the work that the Claimant did on a day-to-day basis. The Claimant's attempts to explain the relevance when cross examined on this were all at a theoretical or abstract level: that Mr Dale 'might' have adopted a particular view-point, or that he 'might not have' continued with a line of thought, that he 'would have his own vision' in comparison with Mr Callaghan. The Tribunal could readily understand why Mr Brazell struggled to see what relevance this had to the Claimant's work and performance and we find it to be an example of the Claimant's propensity to deflect matters away from her own personal performance on to other supposed and imagined causes of her difficulties.

86. The Claimant has alleged that during the PDR meetings Mr Brazell was uncomfortable with her involvement in the BAME network, a reference to which the Claimant made in section 7 of the PDR document, and that he asked her to remove this reference from the PDR as well as to tone down the narrative [**page 494-498**]. He denied this. As stated above, there was a number of iterations of the PDR document in the bundle and the reference to BAME is in all of them. If he asked her to remove it, she did not. The Claimant was wholly inconsistent in her evidence on this issue. During cross examination, she said that she did not understand at the time why Mr Brazell asked her to do this, which is why she

did not remove the reference. We found this a surprising thing to say given her propensity to attribute racial prejudice to the most improbable of remarks (such as 'long in the tooth' or 'teaching granny to suck eggs'). The Claimant has repeatedly advanced her case before the Tribunal on the basis that she is a 'visible BAME', by which she meant, she is a woman of colour and therefore visible, unlike other employees who may describe themselves as 'BAME'. The reference to her being a BAME employee was a constant in her claim and in her written statement. Her case is that Mr Brazell had an issue with her being a visible BAME employee from day one. Had Mr Brazell asked her to remove the reference to BAME, we are of no doubt that the Claimant would have attributed a discriminatory motivation to this – as opposed to simply not understanding why he should ask her to do this. To say she did not understand it contradicts paragraph 21 of her witness statement (page 51). At a later point in her oral evidence, when answering questions about section 7 on [**page 498**] she referred to Mr Brazell having disparaged the BAME network during the PDR meeting.

87. However, when it came to the Claimant's opportunity to question Mr Brazell on this issue, she put it rather differently to how she described things in oral evidence and written evidence. The Claimant put no higher than that he had asked her what she was planning to do around the BAME Network and that she replied simply that she intended to attend conferences when they occur. That was the extent of what she said was mentioned. When prompted by the tribunal whether she should put more than just this, the Claimant put to Mr Brazell that he asked her to change the content of the 'difficulties' section, section 5 [**page 668] <u>NOT</u>** the reference to BAME. She specifically said it was the 'difficulties' section and not the reference to BAME that he wanted her to change, which was in direct contrast to her oral evidence. However, she did not say what parts of section 5 he asked her to change. As for the reference to BAME, she simply put to him that he was 'uncomfortable' by the reference to her membership of the network. When prompted by the Tribunal that she might want to develop this and describe to him in what way he manifested this discomfort, she did not and moved on.

88. We have looked carefully at the section which the Claimant says Mr Brazell asked her to change. On [**page 668**] bullet point 1 is very broad and general; bullet point 2 is again broad and generalised and on the face of things appears to have liitle relevance to the Claimant's day to day role; bullet point 3 has nothing to do with her role and bullet point 5 is very broad. It is no surprise to the Tribunal that Mr Brazell suggested she be more specific and asked her to rephrase them.

89. Having considered the evidence and the documents carefully, we are entirely satisfied and so find that Mr Brazell was not in the slightest uncomfortable with the Claimant's membership of the BAME network and he did not ask her to or imply that she should remove reference to it either at this meeting or at any

other time. Mr Brazell had a normal discussion with the Claimant about PDR content at this meeting and at subsequent meetings. He wanted her to focus on things they could influence – those are things in section 5 of the PDR form. He did not try to get her to change or tone down the narrative or the content of section 5 because she had referred elsewhere in the PDR to her membership of the BAME network. What she had written was generic. He discussed with her the need to be more specific and asked her to consider rephrasing things so he could understand them and they could try and address them, as opposed to broad, abstract terms such as changing goal posts [**page 667**] and the departure of the sponsor [**page 496**]. He did not think there should be ambiguity or hidden undercurrents.

Replicating scenarios in the Respondent's system

90. Returning to the timeline of events, by now the scenarios, which had been re-written by Mr Wheldon on 24 November 2017, had been sent out to the suppliers. On 08 December 2017, at a working group meeting, Mr Wheldon suggested, and it was agreed by the group, that it would be useful to create the same scenarios on the University's system. Mr Hill gave the Claimant the task of creating the scenario in the test environment of the existing system so that they could demonstrate it at a user group meeting which was scheduled for 19 December 2017 [**page 531**]. He told her that, if she needed assistance, she should speak to Mr Wheldon who would be able to provide her with support.

91. Mr Hill had told the Claimant that the task had to be done in readiness for the meeting on 19 December 2017. We are satisfied – and the Claimant accepted in evidence in any event - that she was given enough time to complete the exercise. However, the Claimant did not think it was necessary to create the scenarios on the test environment and we find that she said as much to Mr Wheldon on 13 December 2017. Mr Wheldon and she discussed what needed to be input into the system in creating the scenarios. Mr Wheldon said that if she had any problems she should let him know. The Claimant told him that she knew what she had to do.

92. On Thursday 14 December 2017 Mr Hill emailed the Claimant and asked how she was '*progressing on working up the scenarios in the MyP test system for the meeting on Tuesday*' [**page 554**]. The Claimant responded the following morning but did not answer the question. Mr Hill sent another email the same afternoon asking how she was getting on with the scenarios and asked if she would have them ready by close of play on Monday 18th December 2017 [**page 553**].

93. Although she suggested otherwise, we find the Claimant had all the system access rights she needed to undertake her work. We reject her evidence on page 35, paragraph 6 of her witness statement that she had to get Scott Bonner to update her access rights on 18 December. The Claimant deflects any

personal responsibility by alleging in no uncertain terms that she was deliberately prevented from having full access to the systems in order to set her up to fail. In fact, the Claimant had full access rights, which was checked and confirmed by Lynn Hedley on 19 December 2017 [**page 570a-570b**]. The Claimant was simply confused and had misunderstood the access rights between the three systems: development system, live system and test system. The work being done by the core team was on the test system (where she had stored the file 'perils of ignoring stakeholders' views'). She had the same access as Mr Wheldon. Contrary to the Claimant's contention, there was no foul play by Mr Wheldon or anyone else. Rather than simply acknowledging that she might have been wrong or did not understand something, the Claimant maintains that she was the victim of a deliberate and concerted attempt to prevent her from doing her work – all motivated by her race/colour. It is not simply that the Claimant cannot prove this assertion, we are entirely satisfied that it was nothing of the sort.

94. When 18th December arrived, Mr Hill had not received anything from the Claimant nor had he been told when he could expect the scenarios to be created in the test environment. Mr Hill asked Mr Wheldon to check with her what was happening. At 10.58 am that morning, Mr Wheldon emailed the Claimant to ask how she was getting on with the scenarios, that he had time after 3pm when he could come and review them [**page 557**]. The Claimant emailed at 11.33 raising an issue with the 'PI' ('Principal Investigator'). Mr Wheldon responded at 11.44 with a suggested solution and asked if she had started the 'Enterprise scenario' yet as it was going to take some time to set up. He explained he was heading to meetings and would not be back at his desk until 3pm. Therefore, by midday, the Claimant had barely, if at all, started on the Enterprise scenario, which we infer from her email at 11.49 am [**page 556**]. The Claimant later emailed Mr Hill and Mr Wheldon at 2.30pm asking for the 'correct access' so that she could remedy a problem she had encountered [**page 561**]. Mr Hill responded to say that he and Mr Wheldon were in a meeting but that he would get Mr Wheldon to go and see her about the matter at 3pm. The Claimant said she would go to Mr Wheldon which she did.

95. When she met with Mr Wheldon, it was clear to him that she had not finished the work – the deadline for which was close of play that day, which we find everyone, including the Claimant, understood to be by 5pm. He believed that quite a bit remained to be done. There was a dispute as to just how much work was yet to be done. Mr Wheldon said in evidence that the Claimant had barely started. The Claimant said that there was about 25% left to do. She told the tribunal that the task was a 2-3 day task. We find that she probably had about 1 day's work to do. In any event, whether it was ½ a day or 1 day, the Claimant had left it very late and she was not going to be able to finish the work by close of play that day. Mr Wheldon was again frustrated. He had already had to re-write the scenarios, missing his running group, which he put down to the

Claimant producing a document which was not fit for purpose. He felt he was in a similar situation where he would be the one expected to complete her work.

96. His frustration grew as he discussed what was required to be done and it got the better of him. The Claimant asked him to show her how to do a part of the task. He did not want to do this, taking the position that she should know and believing that he would end up doing the work himself. It was almost certainly at this point that the discussion deteriorated; they both raised their voices, competing with each other to get their point across. The Claimant was insistent that Mr Wheldon should help her and he was resisting. In the end, he told the Claimant firmly and directly and, we find, in a raised voice '*I am not going to do it for you*'. He was angry and asked her, in an accusatory tone, what she had been doing for the last week. The Claimant decided to end the meeting at this point and she left.

97. The Claimant described Mr Wheldon's behaviour towards her on this occasion as aggressive. We find that he conveyed frustration and anger with the Claimant in the words he used and in the tone of his voice and that his statement '*I am not going to do it for you'* can reasonably be described as aggressive from the Claimant's perspective. The Claimant was for her part direct in the way that she spoke to Mr Wheldon. She too raised her voice on occasion when they both talked over each other. There was a revealing moment in these proceedings when the Claimant was cross-examining Mr Wheldon when they both talked over each other, each raising their voices in competition with the other. On that occasion, the Claimant was putting to Mr Wheldon that she should not be expected to be up to his level of knowledge. Mr Wheldon said that she should have been up to Scott Bonner's level and that she was not doing her job properly. They talked over each other, requiring the Tribunal Judge to ask both to calm things down. The Claimant remarked that this exchange was precisely the sort of behaviour she had experienced on 18 December. That brief exchange during Mr Wheldon's evidence was not something which we would objectively describe as 'aggressive' on the part of either the Claimant or Mr Wheldon. They were both agitated with and hostile towards each other and neither wished to give ground on the points they were making until the Tribunal Judge intervened. It is more likely than not, and we so find, that the manner of their conversation on 18 December, viewed objectively, was similar to that which we saw unfold in front of us and that it was only at the very end that Mr Wheldon's frustration got to a point where his manner in telling the Claimant that he would not do the work for her, asking what had she been doing all week, could be described as 'aggressive'.

98. It was palpably clear to the Tribunal, and we so find, that the Claimant and Mr Wheldon did not see eye to eye on matters. In relation to the piece of work that she had been asked to complete by close of play on 18 December 2018, she had unreasonably left things to the last minute. She did so, we find, because she did not really see much point in the exercise she had been tasked with. It

was not, for her, a priority. Without giving it much thought, she believed that she had time to do the job even though she had left it late. When she started it, she ran into some difficulties. On any analysis, she had left the work very late before alerting anyone to the fact that she still had a significant chunk of work to do. Mr Wheldon – and Mr Hill – unlike the Claimant, did see it as an important piece of work. When he saw that the work was unfinished, and to his understanding, hardly completed, he reacted badly that afternoon. He accepted that he had done so.

99. We must put that reaction into context. He did not shout at the Claimant but he raised his voice, as, we find, did she. Mr Younger heard raised voices on both sides [**page 963**]. Mr Wheldon was, we find, direct and assertive and he was angry but only at the end did his manner manifest as 'aggressive' in the tone of his voice and in what he said. He recognised at the time and in these proceedings that he had let his emotions (his anger) get the better of him. For her part, the Claimant offered no apology for leaving matters very late. She would not accept that she was at any fault. She did not recognise any possible personal failing at all in the matter.

100. Mr Wheldon, recognising that there was friction between them and that he had acted unprofessionally at the time, then stepped back from dealing directly with the Claimant after 18 December. There was, we find, no mutual respect between him and the Claimant by this stage. From that point on, it was arranged that she would liaise with Lynn Hedley and Phil Ramsay, who were members of Mr Wheldon's team.

101. After the meeting, the Claimant emailed Mr Hill to say that she had ended the meeting. Mr Wheldon also emailed Mr Hill (**page 558**) to say that the Claimant had walked out of the meeting and that she did not know how to use the systems. The Claimant went to see Mr Hill. She was upset and told him that Mr Wheldon had been aggressive. She did not ask him to take any action. She did not say or intimate that she believed Mr Wheldon's behaviour was racially motivated. Mr Hill subsequently spoke to Mr Wheldon who said he had been frustrated by the Claimant and that he felt that he was being asked to do her work at a point when it had become very urgent.

102. Mr Brazell came to hear about the incident between the Claimant and Mr Wheldon. He emailed Helen Cameron of HR on 19 December 2017 [**page 573**]. Mr Brazell recognised that the Claimant had her faults. However, he was not prepared to write her off. He spoke to the Claimant and from her account of the incident he took the view that she was not wholly accountable for the situation. He accepted without question what she said about Mr Wheldon's inappropriate behaviour. She told him she was going to speak to HR. She did not ask Mr Brazell to do anything. However, Mr Brazell mentioned it in an email to Helen Cameron [**page 573**] in advance of the Claimant speaking to her. Mr Brazell drew to Ms Cameron's attention that there had been an incident which

he understood the Claimant would tell her about. Because of the incident on 18 December 2017, Mr Brazell held back on performance managing the Claimant (which formed the subject of the email exchanges at **pages [501-507**].

103. When the Claimant spoke to Ms Cameron she did not mention anything about race and did not suggest that she believed Mr Wheldon's behaviour to be racially motivated. She did not ask Ms Cameron to do anything. Ms Cameron understood that no further action was required by her as Mr Brazell and Mr Hill were dealing with the incident: Mr Brazell by holding off on performance management and Mr Hill by speaking to Mr Wheldon.

104. It is a sad feature of this case that the Claimant could not – and still cannot to this day – see where she was being supported. In her witness statement at paragraph 8a, page 37, she says Mr Brazell was not supportive of her. We reject this. Even before this event, Mr Brazell made an effort with the Claimant – as he did with others in the team - from minor things like buying her vegan chocolates and inviting her, along with others, to his birthday party; to significant things like attempting to facilitate a different way of working between her and other members of the core team (which we come to shortly) in order to facilitate better lines of communication for the Claimant. However, the Claimant paints his efforts to include her in things as an attempt to cover his real intent which was to exclude her. In relation to the incident on 18 December, she says that the correspondence in which Mr Brazell is supportive of her was nothing other than a clever ruse in covering his back. When asked in cross examination whether she accepted that the email at **page 573** reads as if he is looking at matters from her position, she said no, that it was insincere and had been crafted that way. We do not accept this. We find that Mr Brazell genuinely wished the Claimant to succeed. That is the thing that the Claimant cannot see because she is blind-sided by a deep-seated conviction that she is the victim of wide-spread racial prejudice, and consciously motivated prejudice at that.

105. Mr Brazell was sincere in what he said in the email at **page 573**. Contrary to the Claimant's allegations he was not carefully crafting anything and he was not covering his back. He had no need to cover his back. Before 18 December 2017 he had been considering holding a performance management meeting with the Claimant because of the concerns that had been fed back to him about her performance. He held off on this based on the description the Claimant gave him of Mr Wheldon's behaviour towards her on 18 December. He wondered whether she was being given a fair opportunity to prove herself and that is what he wanted to give her.

106. The following day, 19 December 2017, was the day on which it had been agreed to meet with the user group to show to discuss the system demonstrations. By that date the Claimant was supposed to have set up the systems in the test environment, which she had failed to do and which had resulted in the difficult meeting with Mr Wheldon the previous day. A room had

been set aside for the discussion with the stakeholders. The Claimant arrived late for the meeting. Mr Hill and Mr Wheldon and others from the wider user group were already there. The members of the core group were sat at the front. The Claimant entered the room and went and sat at the back straight away, among the user-group.

107. The Claimant said that the only reason she sat among the user group was because there was no chair for her at the front. We do not accept this. Although she arrived late, she could quite easily have moved one of the chairs (which were not fixed) to the front, so as to physically position herself alongside the other members of core group. She did not. She chose to sit away from them. We find that she deliberately physically positioned herself among the users for two reasons: one as a demonstration of solidarity with them and two because this was the day after the altercation with Mr Wheldon and she had no desire to be sat near him, given the hostility between them.

108. Mr Hill approached the Claimant and quietly asked if she could present the scenarios. As the Claimant had not input the scenarios into the test environment by the date she had been asked to, she was the only one who could realistically have done this. Even if not expressly spelled out to her we find that it was such a natural expectation, flowing from the task that she had been given to create the scenarios on the test environment, that that she would have presented the scenarios for discussion. Mr Hill and Mr Wheldon believed and expected that she would be doing the presentation. Rather than accept this, the Claimant alleged that Mr Hill put her on the spot deliberately to rile her up. We reject this. Although there was an element of being put on the spot, this was down to the Claimant's own actions. Mr Hill did not deliberately put her on the spot. The Claimant did in fact present the scenarios for discussion, albeit not in a particularly fluid way, no doubt on the basis that she was somewhat flummoxed. After this presentation she went to speak to Helen Cameron of HR.

January 2018

109. Mr Brazell returned after the Christmas break to emails from Ms Hodge raising further concerns about the Claimant. Mr Brazell met with the Claimant on 10 January 2018 and told her that members of the project team had raised concerns about her performance and attitude. He did not want to get into specifics. Instead, he said that he wanted to draw a line in the sand. We find that what he was trying to do was to manage a difficult situation diplomatically, in the Claimant's best interests, without escalating it further by getting into a 'blame' game. He believed that a 'he said/she said' scenario would not be helpful and he was trying to avoid having to put specific complaints to the Claimant, in the hope that she would exercise some self-reflection and work more harmoniously with other members of the team. We accept his evidence that he did not just want to believe the project team's side of events. We are satisfied that he genuinely tried his best to support the Claimant in accordance

with his own management style. He was keen to assist the Claimant and to facilitate clearer and better communications between her and others in the core team even though he was continuing to receive negative feedback regarding the Claimant on matters such as re-naming of folders [**page 583 – 584**] and not permitting access to her work [**page 596]**.

110. Mr Brazell prepared a document for his own purposes, a sort of 'aide-memoire', for the discussion with the Claimant on 10 January 2018 [**page 627-628**]. It reflects what he did in fact discuss with her. It is a measured and considered document. Mr Brazell emailed the Claimant on 11 January 2018 as a follow up to the meeting [**page 631-632**]. Mr Brazell gave sufficient detail of the concerns about the Claimant's performance. What he did give her she said was unsubstantiated. The Claimant responded by inserting her comments into the email. She did not accept any responsibility for any of the issues in the team, neither in that email nor at any other time. Mr Brazell was concerned to read some of the comments and asked if she wanted to raise a formal complaint about any matter [**page 634**]. He asked to meet her to discuss her response.

111. They met on 12 January 2018 as part of the Claimant's ongoing PDR process. Following on from Mr Brazell's email asking whether she wanted to raise a formal complaint, the Claimant confirmed that there was no need for any action. During the meeting, Mr Brazell said something about his stepson. He does not deny this but does not recall what point he was trying to make. We find that it is likely that he was attempting to draw some analogy between managing his stepson in the tidying of his room and managing employees who have fallen out with each other. Mr Brazell came away from this meeting with the impression that the Claimant was not intent on building bridges or forming relationships. By this stage, he considered her to be lacking in self-awareness. Nevertheless, he still wished to give her a chance.

112. Mr Brazell had agreed on 10 January that the Claimant would draw up a document which she could use as a template for requesting work (a 'business analyst work request template'). The purpose was to seek to facilitate clearer communication, given the Claimant's reference to changing goal posts and lack of clarity. We saw this new way of working in action when the Claimant emailed Ms Hodge and Mr Hill and others on 11 January 2018 [**page 642**]. That email received a positive response from Ms Hodge and Mr Hill. As a new way of working it was always likely to experience some teething problems. We saw that in action, too, in the email exchanges at **pages [652-649]**. Mr Brazell was a little concerned that the batting backwards and forwards of various iterations of the template document might lead to more work. In his email to the core team on 15 January 2018 he wrote '*...the new process is there to improve delivery by providing clarity in a collaborative way and I am not sure this current example follows them principles and there is a risk that this could go on to version 7 or 8 and take weeks to agree….I appreciate that is the first trial of this*

form/process and so happy to see how it works and accept that if the 'users' are happy then I will accept as is.'

113. In a further email dated 16 January 2018 [**page 649**] he spelled out, in admirably simple and constructive terms, what it was that he was expecting.

114. The Claimant's relationship with those in the project team did not, however, improve. By February 2018, Mr Hill had told Mr Brazell that he did not want the Claimant on the project any longer. Mr Hill believed her to be counter-productive in that her attitude was negative and she was not on board with the project. He later came to describe her as almost appearing to want to derail the project, a view which had been expressed to him by Phil Ramsay [**page 771**].

115. Mr Brazell met again with the Claimant on 21 February 2018 as part of her PDR. The Claimant mentioned that she had signed up to a mentorship scheme. Mr Brazell asked whether that was as a mentor or mentee, to which the Claimant said she had enrolled as a mentee. Conscious of the situation within the project team, Mr Brazell suggested that the Claimant might want to discuss the challenges she faced on the project with her mentor as well as the feedback he had reported to the Claimant. He suggested this with the Claimant's interests in mind, believing that someone with experience and independence might support the Claimant and offer advice and guidance. He was not dictating she should do this; it was merely a suggestion and, in our judgement, a very sensible one. The Claimant, however, says this was an attempt by Mr Brazell to interfere in the mentoring process. It was nothing of the sort.

116. Along with many others in the university and across the country, the Claimant took strike action on 22 and 23 February 2018. On 23 February, not knowing for sure why the Claimant was absent from work, but assuming that it was to do with the strike action, Mr Brazell texted to make sure that the reason for her absence was nothing more sinister [**page 703**]. He was concerned about the Claimant's welfare. He was doing what the Tribunal would expect any manager in his situation to do, namely checking the position in an, informal and non-confrontational manner. The Claimant does not accept this. She says that by sending the text he engaged in unwanted conduct related to race or subjected her to a detriment because of her race.

117. As we have found, by February 2018, Mr Hill had come to the conclusion that the Claimant was so negative in her attitude towards the replacement of MyProjects that the view that she was 'appearing' to derail seemed to him to be a reasonable one. As a tribunal we are not saying or finding that the Clamant did in fact want to derail the project. However, we are satisfied that she had and displayed a negative attitude towards the idea of externalising the system to Unit 4 or any other of the potential suppliers. There is ample evidence demonstrating this not only from the Respondent's witnesses but also the

Claimant's own communications (for example, **pages 471**, the *perils of ignoring stakeholder views'* file, the 'politically charged' email and our findings of fact set out above). Mr Hill and Mr Wheldon reasonably formed the view that she was not supportive of the project and did not believe it should be replaced by an off the shelf third party produce; that she sided with those users who were sceptical of the decision to replace the system with an off-the-shelf product, that she was critical of the project team and that she did not work harmoniously with her colleagues because of this.

118. Mr Brazell, for his part as the Claimant's line manager, nevertheless wanted to establish whether there was a future for the Claimant in the project. He emailed Mr Hill, Ms Hodge and Mr Taylor to this effect on 21 February 2018, putting forward suggestions as to where he saw her role going forward [**page 705**]. Although he did not want to give up on the Claimant, he was conscious that the sponsor of the project, Mr Dale, might confirm that they no longer needed or wanted her to work on it. Therefore, he wanted to know from HR how that would play out in terms of the Claimant's probation [**page 704**]. In emailing Helen Cameron on 26 February 2018, Mr Brazell wanted to know procedurally what to do in that event. In the same email he asked what he should do in communicating the Claimant's participation in strike action.

119. The Tribunal accepts that once the project had got to the procurement phase, the primary responsibilities and work of the Business Analyst would naturally diminish. The Claimant herself accepted that things were quiet around this time. She was taking understandable advantage of this quiet phase by going on leave. She agreed in evidence that, moving forward to 'implementation', she was not busy day-to-day. Silmara Hodge said to her that she did not have any work for her. However, the Claimant contended during the proceedings that her role from the outset envisaged being part of implementation, by which she meant sorting out the I.T. infrastructure, assisting with the procuring of the product and adapting it to the university's requirements, with a view to customising the fields and functionality to suit needs..

120. In the course of her evidence, the Claimant referred to her job description [**page 237**] and pointed out parts of the job description that referred to the 'implementation' phase of the project. She did so to make the argument that she had always envisaged being involved in the implementation phase. She picked out items 5-13 under 'main duties and responsibilities' in making this case.

121. It is open to debate as to whether it was within the scope of the Claimant's job description that she be involved in the implementation phase of the project. A case could be made for shaping the words of the Claimant's job description around the work involved in the implementation phase and we could well understand the point the Claimant was making. However, it could be said

in the case of many job descriptions that a specific piece of work fell within the literal scope of the words used. Context is everything. What really matters is what those with the knowledge and expertise of the work knew or expected would be required of the business analyst on a day-to-day basis.

122. The Claimant herself emailed Mr Hill on 21 February 2018 [**page 701**] making a case for involvement in the implementation phase, as it would be 'beneficial'. Had she been of the view at the time that the implementation work fell naturally within the scope of the role she had been engaged to do, we have no doubt that the Claimant, being very precise in her use of language, would have pointed this out and would have said so. We find that the Claimant understood that her work was drying up because of the phase the university had reached in the project. It was with this understanding that she applied for an alternative role in April 2018.

123. We accept Mr Hill's evidence at paragraph 44 of his witness statement. However, we also find that the Respondent could and would have utilised her skills in the implementation phase up until the contract expiry date of 31 December 2018, had the Claimant not been regarded as a negative force. Even following awarding the contract, there would have been some requirement to facilitate ongoing user involvement. The likelihood is that, had the Claimant demonstrated positivity and a willingness to work harmoniously, Mr Hill would probably have found some work for her until the contract expiry date of 31 December. However, we accept and find that the main reason for engaging a business analyst had genuinely and significantly diminished by May 2018 and that by then the Claimant was still regarded by those in the core working group as a negative force. Mr Brazell tried to persuade Mr Hill that the Claimant could form part of the implementation team and to reassure him that any performance/behaviour issues were hopefully a thing of the past [**pages 705-706**]. However, neither Mr Hill nor the others had the stomach for this, given their assessment of the Claimant's contribution and Mr Hill was not to be persuaded to find work for her to do which did not require a full time business analyst in in any event.

124. On 18 April 2018, the Claimant applied for an alternative role with the Respondent, that of Research Project Manager (A108452A). As we have found above, she did so in the knowledge that her work on the project was diminishing. On the same day, she emailed Dr Campbell to let him know about this application. In the email she said: '*Nothing may come of it but I have put your name down as the reference point'*. Dr Campbell replied the same day to say that was fine and to thank the Claimant for letting him know. We were not given any information about this role, the person specifications or anything else.

125. The Claimant went on annual leave after she submitted this application. On return, she emailed HR to ask for an update on it. Lisa Farrell responded on 25 May 2018 to say that the 'school' will let her know the outcome of the

application. On 08 June 2018 the Claimant asked whether it would be possible to get some feedback on the application/sift [**page 843**]. On 12 June 2018, Christine Scorer emailed to say that she should have received an email informing her that the application was unsuccessful. The Claimant was not shortlisted. As the Claimant was not interviewed and not offered the position, no attempt was made to contact Dr Campbell for a reference. The Respondent does not request referees to provide references at such an early stage of the process and only takes them up once a candidate is offered a position.

17 May 2018

126. There was a further PDR meeting with Mr Brazell on 17 May 2018. We accept his evidence in paragraphs 40-45 of his witness statement as an accurate description of the meeting and of its tenor. Mr Brazell had intended to tell the Claimant that her role was not required going forward and he was going to end her probation. However, he did not get to tell her this in terms as she called an end to the meeting before it got to that point. However, we are satisfied and so find that the Claimant understood this is what he was going to lead on to.

127. Mr Brazell explained that those in the core working group still had concerns with her performance and, in particular, her negative attitude to the project. As he was giving the Claimant a general overview of the position, she demanded to know what evidence there was for these claims. Mr Brazell had with him a collection of emails which appear in the bundle, some of which have been referred to above, but he was again reluctant to get into a situation of conflict. He told the Claimant that he had what has been referred to in these proceedings as a chronology. The Claimant was insistent and asked for the details and the chronology. He said that he would get to that in due course, but the Claimant became agitated and defensive and demanded to know what evidence there was. Mr Brazell felt that he was being taken off course. He said to the Claimant that she was '*muddying the waters'*. What he meant by this was that she would not allow him to develop the general message he wished to convey. It was a frustrating meeting for both of them. He could see that there was no recognition of any personal responsibility on the Claimant's part. The Claimant, on her part, was insistent on the finer detail, regarding it as unfair not to be given specifics. It turned into an awkward and difficult meeting and we are satisfied that each, at some point, talked over the other. But it was not the case that either Mr Brazell or the Claimant, for that matter, behaved aggressively or inappropriately. Mr Brazell did not say anything inappropriate to the Claimant – nor did she to him. The most that can be said is that both raised their voices somewhat above what would be their normal level but out of a sense of frustration quite some distance from shouting at each other. It need not and should not have been like that, however, each played an equal part in that respect.

128. At the point she left the meeting the Claimant said '*I can see where this is going.'* After she walked out of the meeting, Mr Brazell tried to retrieve the situation and asked whether she wanted to come back and continue the conversation. However, the Claimant emailed HR [**page 786**] to say that she was unable to continue the meeting that day as she was going to take a half day sick leave. She emailed Dr Campbell [**page 801-803]**. She said she did not feel safe being in the room with Mr Brazell due to his aggression. This email contained the first reference to discrimination.

129. We find that the Claimant was under no threat and there was no aggression from Mr Brazell. We are satisfied also that she did not genuinely feel under or perceive any threat from Mr Brazell. She simply did not like and did not agree with what it was he was trying to say to her. She has escalated matters to an unwarranted level.

130. The Claimant never returned to work prior to the termination of her contract.

Submission of grievance

131. That same day the Claimant emailed what was, in effect, the first part of her grievance to Dr Colin Campbell [**page 801-803**]. She subsequently emailed the Registrar, Dr John Hogan on 24 May 2018 with further details of her grievance [**page 809 – 812**]. In those documents (together referred to as the Claimant's grievance) she raises allegations of race discrimination for the first time.

132. Following receipt of the complaint, Zoe Charlton, HR Adviser, wrote to the Claimant on 23 May 2018 to say that it would be handled under the Respondent's Dignity and Respect policy and procedure and identifying Sophie Brettell, Deputy Director of Operations for the Faculty of Humanities and Social Sciences, as the investigating manager. Ms Brettell met with the Claimant on 19 June 2018 following discussion regarding the availability of the Claimant's trade union representative. The Claimant returned the interview notes with tracked amendments on 01 July 2018. Ms Brettell interviewed 15 individuals between 28 June and 30 July 2018.

133. On 16 August the Claimant emailed Zoe Charlton [**page 992-993**] to say that she had received a partial response to a Subject Access Request ('SAR') including some redacted emails which she felt backed up her concerns. In the email she said: '*the information is here if you need it'*. She made no attempt to identify any particular document or to demonstrate in what way any document backed up her concerns. The Claimant had received something in the region of 300 documents. She could have, but did not, forward any email or document in her possession to Ms Charlton, to Ms Brettell or to her trade union representative. Ms Charlton did not ask the Claimant to forward the SAR

documents and her attention was not drawn to any particular document. At the time the Claimant emailed her, she understood Ms Bretell to be preparing the investigation report. The investigation which was undertaken by Ms Brettell is set out in her witness statement and in paragraph 17 of that statement she identifies those she interviewed. We accept her evidence. She was a considered and truthful witness.

134. Ms Brettell concluded that the Claimant's grievance should not be upheld. Nevertheless she made one recommendation. Although she found that by saying that the Claimant was 'muddying the waters' at the meeting on 17 May 2018, Mr Brazell had not intended any racial connotation, Ms Brettell recommended that the university's race equality adviser be consulted on whether they should raise awareness across the university of commonly used phrases that may cause distress, and specifically whether there was an issue with this phrase.

135. Ms Brettell was the sole author of the grievance investigation report. There was a substantial delay between the final interview at the end of July and sending the report to Dr Campbell. The reason for the delay was multifactorial. It was due to Ms Brettell being largely involved with pre-confirmation and clearing which took up the first two weeks of August 2018. She worked on the report during the last two weeks of that month. She was on leave from 03 September to 18 September 2018. She then had some significant personal issues to deal with. Although she was concerned about the length of time involved, the Claimant did not challenge Ms Brettell's evidence as to the reasons for the length of time it took to complete and send the report. All of this resulted in a significant delay in finalising the report which she sent to Zoe Charlton of HR who then forwarded it to Dr Campbell.

136. The Tribunal was, in the circumstances, surprised to read that Ms Brettell had made the recommendation which she made – arising out of the use of the phrase '*muddying the waters'*. However, the report was reasonably thorough. Ms Brettell struck the Tribunal as someone who took considerable care to cover all of the issues during the investigation. She reflected carefully on both her own approach to the investigation (at one point checking herself that she was going off track in asking questions of Jane Richards about Christmas Fairs) and on the information she had gathered for the purposes of compiling her report and in her reasoning. She did her best to investigate a complaint that we find was heavy on expressions of feeling but light on specifics.

137. Dr Campbell's role was to review the report. He accepted Ms Brettell's conclusions and recommendation. He wrote to the Claimant on 19 November 2018 to advise her that he did not uphold her grievance. On 29 November 2018 the Claimant sent her appeal against that decision to Dr Hogan.

Sick pay and authorised paid leave

138. During the period of time starting on 18 May 2018 and ending with the termination of her employment in February 2019, the Claimant was on a mix of sick-leave and authorised paid leave. As to sickness absence, the Claimant was entitled to 8 weeks' full pay followed by 8 weeks' half pay in a rolling 12 month period. At the point she commenced a period of sick-leave on 18 May 2018 the Claimant was entitled to 7.2 weeks' full pay. She reduced to half pay on 07 July 2018.

139. During this period, given that her grievance included complaints against Mr Brazell, Dr Campbell assumed the role of line manager. Shortly before the expiry of her fit note on 15 June 2018, the Claimant said that she was fit to return to work. However, she had also said that she did not wish to work with the team against whom she had complained and wished to work elsewhere. Dr Campbell considered the Claimant's situation. He understood that an occupational health appointment had been arranged but that this had not yet taken place. He understood that the Claimant was seeking to return to work from 18 June but that there was no other role available for her to do elsewhere and he had no time to consider putting anything else in place. Not expecting to receive another fit note, therefore, Dr Campbell decided to keep the Claimant on paid leave until her complaint and probation review were completed. He emailed the Claimant to this effect on 14 June 2018 [**page 847]**. However, payroll proceeded on the basis that the Claimant's occupational sick pay had reduced to half pay.

140. Shortly after receiving this email, the Claimant in fact submitted a further fit note on 15 June 2018 covering the period to 29 June and then another on 29 June covering the period to 13 July 2018. She sent another fit note on 13 July 2018 covering a period of 4 weeks to 10 August. A further fit note was sent on 10 August 2018. The latter note stated that the Claimant was unfit for a period of 4 weeks for work stress but that she should be able to return to amended duties to a different work environment. Further fit notes dated 09 September and 05 October 2018 said the same thing.

141. The first 6 days of July 2018 were paid as sick pay at full rate of pay [**page 1381**]. The Claimant was paid sick pay at the rate of half pay from 07 July to 09 August 2018. Because the Claimant's fit note of 10 August said that she was fit to return to different duties in a different environment and because the Respondent had no other role to give her, the Respondent placed the Claimant back on authorised full paid leave again with effect from 10 August 2018 [**page 1406**]. However, the decision to place her on full paid leave had not been processed by payroll in time for the next pay run (the pay run cut off being around 10th of the month). Ms Charlton emailed on 30 August 2018 confirming that the Claimant would receive an arrears payment in September [**page 988**]. The sum of £1,316.84 [**page 1382]** represents half pay for the whole month of August reflecting the salary at SCP 29 [**page 139**]. The total payment on [**page**

1383] represented payment in arrears to make up the difference between half pay and sick pay from 10 August to 31 August 2018 plus the cost of living pay award from 01 August 2018 plus the pay for September 2018 on SCP 29. The Claimant was paid a sum of £979.54 representing the shortfall in her pay.

142. While on sick leave, the Claimant applied for another position, Turing Liaison and Digital Institute Manager (D125959AO) for which she was not shortlisted.

Vijaya Kotur

143. As alluded to above in relation to the PDR meeting in December 2017, the Claimant had joined the BAME network. On 06 July 2018, Vijaya Kotur texted her a message [**page 942**]. Ms Kotur is a race equality adviser within the Respondent's HR department. It is a friendly message, whereby Ms Kotur inquires of the Claimant's well-being, telling her that the network needs to put some procedures in place for people reporting discrimination especially on race and asked her to keep in touch. It was on its face a friendly and sincere text message. The Claimant does not see it as such and attaches something more sinister to it.

144. The Claimant came to reflect on this contact by Ms Kotur and concluded that she was up to no good; that she was spying on her; that she had obtained her number surreptitiously and mischievously. She exchanged text messages with Ms Kotur on 31 August 2018 and 01 September 2018 to say that she hoped she was not being discussed. The Claimant ended the exchange by suggesting that Ms Kotur was an entrenched part of the problem, posing to her the question whether she is 'knowingly or inadvertently colluding with the perpetrators of the said discrimination' [**page 946-947**]. There was no further contact between them.

Termination of the Claimant's employment

145. On 08 November 2018, the Respondent wrote to the Claimant confirming that her fixed term contract was to expire on 31 December 2018 [**page 1035-1036**]. Although communicated by HR, the decision not to renew the Claimant's contract was formally Dr Campbell's. By this time, he had assumed the role of line manager of the Claimant. It was confirmed to him by Richard Dale, the project sponsor, that there was no funding beyond 31 December 2018. There being no funding available, Dr Campbell adopted the Respondent's standard practice of confirming (or more precisely, having someone in HR confirm) that the fixed term would expire and that this would be treated as a redundancy. In the letter Kathryn Scott, HR Business Partner, explained that the Respondent treated the end of fixed term contracts as redundancy and that she had a right of appeal. The Claimant did not appeal.

146. Although she did not appeal, the Claimant challenged the termination date of her contract, contending that she should be given three months' notice of termination. This was set out in an email from the Claimant's trade union representative, Helen Maitland, on 27 November [**page 1091**]. Ms Maitland requested a period of 3 months' notice from 07 November 2018. In order to support the Claimant's request to search for alternative employment, on 05 December 2018, Ms Scott wrote to say that the period of her employment was extended for those purposes and would now terminate on 07 February 2019 [**page 1094**].

147. In her email of 27 November 2018, Ms Maitland also asked if HR could provide a reference for the purposes of redeployment. Ms Scott discussed this with Ms Maitland and they agreed that Ms Scott would ask Dr Campbell if she could put his name forward as a referee when applying for new roles in the redeployment process. He agreed on 29 November 2018, on the understanding that this would be a factual reference [**page 1087**] and this was proposed by Ms Scott to the Claimant. The Claimant was told that she could also request Mr Brazell for a more detailed reference. The Respondent's practice is to take up references only once a job offer is made.

148. The Claimant's details had been entered on to the Respondent's redeployment database for her to receive notification of any vacancies during what remained of her contract term. She was given access to the university jobs portal. However, she had some difficulty in accessing it and she emailed, requesting some assistance. On 29 November 2018, Kathryn Scott emailed the Claimant, saying among other things: '*with respect to the redeployment site, I have checked with recruitment and understand that you should be able to access the site using Remote Access Software and I have attached guidance from the IT services site to ensure you have the updated information. If you have further problems, I would recommend contacting IT services directly*'. In response a further email from the Claimant, Ms Scott emailed on 03 December 2018, suggesting the best point of contact to be the IT help desk [**page 1089**]. She had previously emailed the Claimant on 29 November 2018 with suggestions [**page 1090**]. Ms Scott was being helpful.

149. On 11 December 2018 the Respondent wrote to the Claimant to say that her appeal against the outcome of the dignity and respect complaint (essentially, her grievance) would be heard on 19 December 2018 by Christine Stafford, Director of Faculty Operations. However, on 13 December 2018 the Claimant objected to Christine Stafford, referring in her email to concerns regarding impartiality and conflict of interest [**page 1114**]. The Respondent agreed to find someone else to chair the appeal, which was rearranged for 14 January 2019, this time to be chaired by Richard Dale, Executive Director of Finance [**page 1117**]. On 08 January 2019, the Claimant informed the Respondent that she would not be attending the appeal, objecting to Mr Dale as chair, citing impartiality and bias. The Respondent found an alternative

person to hear the appeal, Sally Ingram, Director of Student Health and Wellbeing and rescheduled the appeal hearing for 30 January 2019 [**page 1139**]. On 21 January 2019, the Claimant emailed the Respondent to say that she would not be attending the appeal hearing [**page 1138**].

150. During the period November 2018 to February 2019, the Claimant applied for the following roles, among others: Business Development Manager – Internet of Things (C171499A); Project Officer for Academic and Liaison Services (C187999A); Institute of Coding Business Partnership Manager.

151. The Business Development Manager role was one in respect of which she did not meet the essential criteria [**page 1101**]. Following a request by the Claimant [**page 1168-1169**], she was interviewed for the position on 07 January 2019 by Martin Cox and Geraint Lewis but was unsuccessful. She did not meet the person specification [**page 1167**]. No-one was appointed to the role. One of the interviewers, Geraint Lewis, called the Claimant after interview and gave her feedback. There was no challenge by the Claimant in the proceedings to the evidence that she did not meet the person specification.

152. The Claimant was not appointed to the position of Project Officer for Academic and Liaison Services either. She was not interviewed for the position. In her application for the role, which focussed on learning and teaching, she did not identify that she met a number of essential criteria. The criteria were those set out in the email from Elizabeth Oddy dated 04 February 2018 [**page 1160**].

153. She was also unsuccessful in respect of the Institute of Coding Business Partnership Manager application. She was unable to demonstrate that she had experience of working at the interface between industrial and academic institutions in the context of the role applied for, or that she would be a credible representative of the university in external engagements and negotiations. The role required extensive partnership development experience and a good understanding of the industry. The panel considered that her application did not demonstrate these things [**page 1159**]. The Claimant was provided with feedback and responded on 29 January 2019 [**page 1158**] saying that the '*spirit/principles' of the redeployment policy/procedure/flowchart 'seem to have been ignored*'. She did not elaborate in any way on this in her email. When asked by the Tribunal to explain what she meant, the Claimant said that whilst she accepted that she may not have had the relevant skill set for this role and may not have satisfied the essential criteria, nevertheless, as this was a redeployment exercise, she should have been given an opportunity to develop and assimilate into the role so as to meet the essential criteria. The Respondent's redeployment policy and procedure was in the bundle at **pages 130-138**. When taken to it, the Claimant could not point to any provision of it which was breached, maintaining instead that the 'spirit' of the policy was breached, not the actual provisions. We find that the Respondent did not breach the policy in any respect either as regards to any part of it or as to the 'spirit' of

it. In fact, strictly speaking the policy did not apply to the Claimant as she had less than two years' continuous employment [**page 131**, **section 3**]. But that is not to the point. The Respondent afforded the Claimant access to redeployment and did so in accordance with the policy and procedure.

154. The Claimant's employment terminated on 07 February 2019.

155. In late February/early March 2019, the Respondent engaged two external contractors through an agency, namely Dayna Robb and Helen Skedd, as Business Analysts within NUIT for specific projects lasting 3 to 6 months. Those in HR were unaware of these appointments at the time the Claimant was looking for alternative employment options prior to her contract expiring on 07 February 2018. This was work which NUIT procured themselves through an agency, without going through HR. A 'business analyst brief' was drawn up by NUIT on 14 December 2018 [**page 1108-1109**]. The roles required a solid background within a digital team and experience of working on digital projects. Ms Scott only became aware of the roles and of the engagement of Ms Robb and Ms Skedd during the course of this litigation. This was because HR involvement comes through advertised direct employee positions. As agency roles were organised directly by the department, they were not placed on the jobs portal.

Relevant law

Discrimination, victimisation, harassment

156. Section 39(2) Equality Act 2010 provides that an employer ('A') **must not discriminate** against an employee of A's ('B')

(a) as to B's terms of employment,
(b) in the way A affords B access, or by not affording access to, opportunities for promotion, transfer or training or for receiving any other benefit, facility or service,
(c) by dismissing B,
(d) by subjecting B to any other detriment.

157. Section 39(4) provides that A **must not victimise** B and is drafted in the same terms as section 39(4).

158. Section 40(1)(a) EqA 2010 provides that an employer 'A' **must not, in relation to employment by 'A' harass a person**, 'B' who is an employee of A's.

159. The three concepts of discrimination, victimisation and harassment are then defined in other provisions, namely section 13 (direct discrimination), section 26 (harassment) and section 27 (victimisation).

Direct discrimination – section 13 Equality Act 2010

160. Section 13 provides as follows:

> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats, or would treat, others.
> (2) ……
> (3) ……
> (4) ……
> (5) If the protected characteristic is race, less favourable treatment includes segregating B from others

161. To be treated less favourably implies some element of comparison. The complainant must have been treated differently to a comparator or comparators, be they actual or hypothetical, who do not share the relevant protected characteristic. The cases of the complainant and comparator must be such that there must be no material difference between the circumstances relating to each case: section 23 Equality Act 2010.

162. It is for the Claimant to show that the hypothetical comparator would have been treated more favourably. In so doing the Claimant may invite the tribunal to draw inferences from all relevant circumstances and primary facts. However, it is still a matter for the claimant to ensure that the tribunal is given the primary evidence from which the necessary inferences may be drawn. The Tribunal must, however, recognise that it is very unusual to find direct evidence of discrimination. Normally, a case will depend on what inferences it is proper to draw from all the surrounding circumstances.

163. When considering the primary facts from which inferences may be drawn, the Tribunal must consider the totality of the facts and not adopt a fragmented approach which has the effect of 'diminishing any eloquence the cumulative effects of the primary facts' might have on the issue of the prohibited ground: ***Anya v University of Oxford*** [2001] IRLR 377.

164. Unreasonable conduct by the employer is not of itself sufficient to constitute less favourable treatment. However, unreasonable conduct which adversely affects the employee may be evidence of hostility which in turn may justify an inference of discriminatory prejudice.

Harassment – section 26 Equality Act 2010

165. Section 26 provides:

> (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.

166. The unwanted conduct must be related to the protected characteristic. The intention of those engaged in the unwanted conduct is not a determinative factor although it may be part of the overall objective assessment which a tribunal must undertake. It is not enough that the alleged perpetrator has acted or failed to act in the way complained of. There must be something in the conduct of the perpetrator that is related to race. This is wider than the phrase 'because of' used elsewhere in the legislation and requires a broader inquiry, but the necessary relationship between the conduct complained of and the protected characteristic is not established simply by the fact that the Claimant is of a particular race and that the conduct has the proscribed effect.

167. Unwanted conduct is just that: conduct which is not wanted or 'welcomed' or 'invited' by the complainant (see ECHR Code of Practice on Employment, paragraph 7.8). This does not mean that express objection must be made to the conduct before it can be said to be unwanted. The Tribunal must be alive to the very real possibility that a person's circumstances may be such that they feel constrained by certain pressures whether in their personal life or in work which explains a failure to object (expressly or impliedly) to what they now say, in the course of litigation, was objectionable and unwanted conduct. Clearly, conduct by A which is by any standards, or self-evidently, offensive will almost automatically be regarded as unwanted.

168. In **Grant v HM Land Registry** [2011] IRLR 848, CA, it was held by Elias LJ (para 47) that the words 'intimidating, hostile, degrading, humiliating or offensive environment' should not be cheapened as they are an important control to prevent trivial acts causing upset being caught by the concept of harassment.

Victimisation – section 27 Equality Act 2010

169. Section 27 provides:

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

Protected acts

170. When considering whether a complainant has done a protected act, a wide interpretation should be given to the words of section 27(2)(b) and (c). An express reference by a complainant to the Equality act is not required. A complainant may allege that things have been done but not say that those things are contrary to the Equality Act. So long as the context is made clear, this may amount to a protected act: **Durrani v London Borough of Ealing** [2013] UKEAT/0454/2013; **Waters v Metropolitan Police Commissioner** [1997] ICR 1073. There must, then, be something sufficient about the complaint to show that it is a complaint that is, at least potentially, a complaint to which the Act applies. Whether an employee has done a protected act is a question of fact which will vary from case to case, depending on the circumstances and context , which (despite any reference to race) may make it plain that the employee has made a complaint in respect of which he or she can be victimised.

Detriment

171. When considering whether an employee has been subjected to a 'detriment' Tribunals should take their steer from the judgement of the House of Lords in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] I.C.R. 337, where it was held that a detriment exists 'if a reasonable worker would take the view that the treatment was to his detriment'. It was further held in that case that 'an unjustified sense of grievance cannot amount to 'detriment'.

The reason why

172. In complaints of direct discrimination, the less favourable treatment must be 'because' of the protected characteristic. In complaints of victimisation, the detriment must be because of the protected act. It is common to refer to this underlying issue as the “reason why” issue'. Therefore, if there has been less favourable treatment or a detriment, the question for an employment tribunal will be ‘why?’. The perpetrator’s state of mind will normally be critical. In assessing this it is necessary to apply the law as stated in the judgments of the House of Lords in the cases of **Nagarajan v London Regional Transport** [1999] I.C.R 877*;* **Chief Constable of West Yorkshire Police v Khan** [2001] I.C.R. 1065 and of the Supreme Court in **R (on the application of E) v Governing Body of JSF and the Admissions Appeal Panel of JFS and others** [2010] IRLR 136. In cases where the reason for less favourable treatment is not immediately apparent, it is necessary to explore the mental processes, conscious or unconscious, of the alleged discriminator to discover what facts operated on their mind. In considering whether the necessary link has been established, it is enough that the protected characteristic (or the protected act) had a significant influence on the perpetrator’s acts. Therefore, the protected characteristic or protected act need not be the only reason for the treatment provided it is ‘a’ cause. Further, a Respondent will not be able to escape liability by showing an absence of intention to discriminate.

Burden of proof

173. Section 136 Equality Act 2010 provides that:

> (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

174. This lays down a two-stage process for determining whether the burden shifts to the employer. However, it is not obligatory for Employment Tribunals to apply that process. Whether there is a need to resort to the burden of proof provision will vary in every given case. Where there is room for doubt as to the facts necessary to establish discrimination, the burden of proof provision will have a role to play. However, where the tribunal is in a position to make positive findings on the evidence one way or the other, there is little to be gained by otherwise reverting to the provision: **Hewage v Grampian Health Board** [2012] I.C.R. 1054.

175. In cases where the tribunal is not in a position to make positive findings, s136(2) means that if there are facts from which the tribunal could properly conclude, in the absence of any other explanation, that A had treated B less

favourably or had victimised B, it must so conclude unless A satisfies it otherwise. In considering whether it could properly so conclude, the tribunal must consider all the evidence, not just that adduced by the Claimant but also that of the Respondent. That is the first stage, which is often referred to as the 'prima facie' case. The second stage is only reached if there is a prima facie case. At this stage, it is for A to show that it did not breach the statutory provision in question. Therefore, the Tribunal must carefully consider A's explanation for the conduct or treatment in question: **Madarassy v Nomura International plc** [2007] I.C.R. 867, CA; **Igen Ltd v Wong** [2005] I.C.R. 931, CA.

176. If a Tribunal is satisfied that the reason given by the employer for the treatment is genuine and that it does not disclose conscious or unconscious racial discrimination that is the end of the matter.

Unauthorised deduction of wages

177. Section 13 Employment Rights Act 1996 provides:

(1) An employer shall not make a deduction from wages of a worker employed by him unless--

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised--

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

178. Section 23(2) and (4) ERA 1996 sets out the period within which complaints of unlawful deduction of wages must be brought. Time runs from the date of the payment of the wages from which the deduction is alleged to have been made. What is reasonably practicable is a question of fact in every case. The onus of proving that it was not reasonably practicable to present the play in time rests on the claimant. The claimant must show that it was not reasonably practicable to present the claim in time. If she succeeds in doing that, the employment tribunal must consider the time within which the claim was in fact presented to be reasonable. Guidance from the higher courts has been given in a number of cases, notably: **Dedman V British building and engineering Appliances Ltd** [1974] I.C.R. 53, CA and **Wall's Meat Co Ltd v Khan** [1979] I.C.R. 52, CA.

Termination of fixed term contracts

179. If the maximum duration of the contract is fixed at its commencement, the contract will terminate automatically when the date of expiry arrives. As a matter of contract, it expires by effluxion of time and no further notice is required by either party for it to terminate on that expiry date.

Submissions

180. Counsel for the Respondent provided a written skeleton submission and document setting out the legal principle and supplemented this by oral submissions. The Claimant made short oral submissions. We do not propose to set them out as this judgment is already lengthy. However, we have considered those submissions in light of the evidence and the relevant legal principles.

Discussion and conclusions

Protected acts

181. We first of all consider whether the Claimant did a protected act in March 2017 as she contended. We have no hesitation in concluding that she did not. The Claimant simply asked for feedback on a job application. She did not mention anything about race or discrimination or less favourable treatment, nor did she imply anything of the sort. She did not do, and gave no indication that she had done, anything for the purposes of or in connection with the Equality Act.

182. When discussing section 27(2) at the outset of the hearing, the Claimant contended that by questioning the feedback provided by Mr Lambert she was making an implied allegation that Mr Lambert had contravened a provision in the Equality Act (section 13). There is nothing from her email on **page 187** that can reasonably be interpreted as implying an allegation that Mr Lambert and others on the panel had contravened the Equality Act 2010. We reject the

Claimant's argument that it should be taken as a given that because she is a woman of colour and is commenting as she did about the feedback that she is making an allegation of discrimination. She said she 'alluded to equitability' and that her questioning would indicate that the Respondent knew exactly what she was alluding to. We do not accept this. That is simply not enough to render that email an allegation of discrimination. It does not follow from this that the Clamant might reasonably be regarded as raising a complaint of discrimination on grounds of race or colour and there is nothing in the context of the exchanges that might reasonably lead to that conclusion. The Respondent did not regard her as doing so. In our judgement there is nothing in the Claimant's correspondence that constituted a protected act.

183. The second alleged protected act was the reporting to management of Mr Wheldon's conduct on 18 December 2018. We do not accept that the Claimant did a protected act on this occasion either. Again, the Claimant's case was that she complained of Mr Wheldon's conduct and being a woman of colour, it must be <u>assumed</u> that this was an allegation that he had racially discriminated against her.

184. We do not accept this. It is not right that simply because a person is of a particular protected characteristic and they complain about another person's treatment of them that those receiving the complaint must assume, without more, that the complaint is about discrimination. That is certainly not the legal position. Indeed, such an assumption by the person receiving the complaint might itself be argued to be discriminatory.

185. There would have to be something more. That more can, of course, be found in the background and context. However, there is nothing in the background or context and nothing from our findings of fact that leads us to conclude that the Claimant had done a protected act on this occasion. What she did was report to management that Mr Wheldon's behaviour was inappropriate. The context was her failure to do complete a piece of work by a known and stated deadline, which resulted in situation whereby both participants raised concerns about each other.'

186. In any event, we are entirely satisfied that the Claimant was not subjected to any detriment on the ground that she complained of Mr Wheldon's conduct or that she had questioned feedback prior to her starting her employment. We address those matters more specifically later in our conclusions. Therefore, even if she had done a protected act, her complaint of victimisation would fail on that basis.

187. The third protected act is not in dispute. It is accepted that the Claimant did a protected act by submitting her grievance on 17 May 2018 and by further supplementing it with her second document. Although we set out our conclusions on each allegation below, we would say at this juncture that we are

equally satisfied that the Claimant was not subjected to any detriment because she did this protected act.

188. We turn now to our conclusions on each of the allegations set out in the agreed list of issues.

conclusions on each individual allegation

Allegation 1:

The Claimant questioned feedback received via a phone call from Andrew Lambert following an unsuccessful interview for a Project Manager role. ……The Respondent …. Did not provide feedback for the Senior Innovation Associate role.

189. The complaint is that by the provision of 'questionable' feedback and the failure to provide feedback on the senior innovation associate role the Claimant was subjected to a detriment/treated less favourably because of her race - in particular her colour (as is the case, she says with all her complaints of direct discrimination and harassment).

190. The Claimant may well regard the feedback she received from Mr Lambert as 'questionable' but simply saying to the Tribunal that it was questionable (without more) does nothing to advance a complaint of direct discrimination. It is a far cry from raising a prima facie case that those who interviewed her and fed back to her have treated her less favourably because of race. The feedback was, in essence, that she did not demonstrate what she presented by giving examples of her approach. The Tribunal noted that it was a regular feature of the Claimant's evidence that, when asked to provide examples of how she was treated, the Claimant was either unable or unwilling to do so. Throughout the proceedings she made assertions and statements in very broad and generic terms, lacking specificity in the matters about which she complained. We can readily understand the comment in the feedback that she failed to give examples to the interview panel. If the STAR structure is part of the interview process (which it was), the interviewee must ordinarily give examples to support what they are saying. Having looked at the feedback we consider it to have been constructive, namely, to follow that STAR structure. The Claimant's response to it, that '*she cannot be held responsible for failures of the interview*', was, in our judgement, symptomatic of her outlook in general, which was that she was unwilling to accept any failings on her part. In our judgement, based on our findings as a whole and on our observation of the Claimant over the course of the hearing, she lacks insight and demonstrates very little self-awareness.

191. There is not the slightest evidence, or reason to suggest, that similar feedback would not have been given to a white interviewee in similar

circumstances. The Claimant said nothing in her evidence about the feedback other than that she regarded it as 'questionable', without descending into detail or even attempting to say why it was questionable. She has not established a prima facie case that Mr Lambert had treated her less favourably, subjected her to a detriment because of race or engaged in unwanted conduct related to race. We also conclude that the giving of constructive feedback was not a detriment. It is a positive thing to receive constructive feedback. The simple fact of the matter is that this is but one of many examples where, if the Claimant does not like what she reads or hears about her or if she disagrees with an assessment of her, she attributes the motivation of those concerned to racial prejudice.

192. As to the failure to provide feedback in the case of the senior innovation associate application, the Claimant has not established any prima facie case that the failure to give feedback was because of race. The fact that she was provided with feedback in relation to the Project Manager application militates against some wider conspiratorial and sinister reason for not providing her with feedback on the senior innovation associate application. As we have found, Ms Nolan, in this case, attempted to speak to the Claimant personally by phone but was unable to contact her. The same day the Claimant responded by email saying that 'if *any valid feedback underpinning the decision making from the destinate selection process is available, do let me know*.' She subsequently emailed a different person, Lynn McArdle, but did not copy Ms Nolan into the email. There was no further follow up or exchange regarding the provision of feedback. Things can get overlooked, and that is what we conclude happened in this case. These facts are not such that we could conclude, in the absence of any other explanation, that the Respondent had contravened a provision of the Equality Act.

193. We conclude that, even if the Claimant did a protected act (within the meaning of any part of section 27) by raising any concern or expressing any view about her allegedly questionable feedback, she was not subjected to any detriment because she did so.

Allegation 2

On 25 April 2017, during the Claimant's interview for the Business Analyst role, David Hill was noticeably not comfortable with the Claimant's presence and exhibited a hostile demeanour towards the Claimant. The Claimant was not Mr Hill's preferred candidate

194. We have rejected the Claimant's version of events in relation to this allegation. She has not established that Mr Hill was uncomfortable with or hostile towards her. On the contrary, we have made positive findings that he was not.

195. The Claimant did not give even the slightest of example of any behaviour which might be regarded as unfriendly or hostile or which could reasonably be said to have made her feel uneasy. Mr Hill was not sharp with her nor did he stop her from speaking. He did not make any sounds or sighs or indicate hostility by facial expression. The Claimant did not and could not point to anything that he said or did.

196. The Tribunal is aware of the use of body language; that a person's body language may reveal how that person sees others; that people can demonstrate (even unwittingly or unconsciously) their inner thoughts and feelings through their body language without uttering any words. However, at the stage of a final hearing in proceedings for discrimination and harassment, it is insufficient to say, without more, '*it was A's body language*' that the complainant found to be harassing or discriminatory. It had been explained in very careful terms in case management that the Claimant should say what happened, what was said and what was done. In a complaint of harassment, any tribunal must be given to understand what it was about the alleged discriminator's body language that the complainant says had the purpose or effect of creating the proscribed environment in section 26 of the Act. Using the language of the section, 'A' must establish that 'B' engaged in unwanted conduct. If 'A' cannot do that, the complaint will fail.

197. Further, it is not just any unwanted conduct on the part of 'B' that can give rise to a complaint of harassment; the conduct must be such that it has the 'purpose' or the 'effect' of creating the proscribed environment referred to in section 26 of the Act. And must be related to the protected characteristic. A 'feeling' that 'B' does not like 'A', in the absence of any identified conduct by 'B' is not a basis on which 'A' may sustain a complaint of 'harassment' by 'B'. We understand that sometimes there can be a 'feeling in the air'; that people can often pick up signals that they are not liked or welcome. We accept that it can be very difficult to put your finger on exactly what it is that gives rise to these feelings of hostility. Section 26 gives statutory recognition to a complainant's 'perception' in cases of harassment. But in the end, the statutory provision requires there to be unwanted 'conduct' and if the conduct complained of is 'hostility', there has to be some evidential basis for alleging that a person engaged in conduct which they perceived to be 'hostile'. It is not enough to say simply '*I believed you were hostile'*, which was the Claimant's case against Mr Hill at its absolute highest.

198. Although she was reminded of the need to identify and put to Mr Hill the things that he did or said that amounted to the alleged unwanted conduct, she was singularly unable to do so. As stated above, at its highest she simply said in cross-examination of Mr Hill: '*I believed you were hostile'*. To accuse him of being racist at that meeting – which the Claimant does in no uncertain terms - fits with the Claimant's general narrative and way of looking retrospectively at life, something which was palpably clear to the Tribunal from her evidence. Part

of that narrative is that if Mr Hill did not see her as the first choice candidate, that can only be explained by her race/colour, much as – if Mr Lambert gave her 'questionable' feedback, that can only be explained by her race/colour.

199. We were satisfied that Mr Hill did not do anything or say anything at all that warrants the description of him as 'hostile' towards the Claimant during her interview. We conclude that it was only after the Claimant saw that Mr Hill had her down as his second choice that she came to describe him as being 'hostile' towards her. Even if he was more 'reserved' than others on the interview panel (and we are not saying that he was, but this was the Claimant's description of him to Ms Brettell), it is quite a leap to say that his reservation was because he was consciously or unconsciously motivated against the Claimant because of her race.

200. Not only do we conclude that Mr Hill did not engage in unwanted conduct at the interview. Nothing that he did or said was related to race. The Claimant was not subjected to any detriment and was not treated less favourably than a job applicant of a different race. On the contrary, she was offered the job for which she was interviewed.

Allegation 3 (**paras 1.3 and 1.4 of the list of issues; also para 1.5 of the list of issues – which is the same allegation as 'allegation 5, paragraph 1.9 of the list of issues)**)

201. This complaint is about the provision of referees and what was described as 'case management' of the Claimant which commenced, she says, before she started her employment. The Claimant says that she was subjected to a detriment by being made to provide a reference by Nexus; that she had been required to provide two references but that Peter Elliott asked for a reference from Nexus, even though they were only going to provide a standard reference.

202. There was a perfectly good explanation for requiring the Nexus reference as set out by Ms Cameron in the email of 15 May 2017 [**page 211-212]**. The Claimant's email at **page 212** refers to there being 'no logic'. In our judgement, Ms Cameron's response is logical and reasonable as was the request by Mr Elliott. Applying the test in **Shamoon**, no reasonable employee or job applicant would regard herself as having been subjected to a detriment in this regard by being asked to provide a standard reference from a recent employer.

203. We found that the Claimant did not provide the names of the referees on her application form and that these were most likely added afterwards. The Claimant maintained that this was sinister although she was unable to articulate what sinister purpose there might have been for doing so. The appearance of the referees' names on the form is something which the Respondent is unable to explain. However, Ms Millns submitted that if the names were added to the

form after the event this was not something from which, in the absence of an explanation, the Tribunal could conclude the Respondent had contravened a provision of the Equality Act, and that the Claimant suffered no detriment. We agree with Ms Millns. We regard this as an entirely trivial issue. The referee names were factually correct. It makes perfect sense to have the referees put on to a single document, if as is most likely to be the case, that is what was done. The Claimant, we find, has become very suspicious about almost everything that the Respondent has done in its dealings with her, escalating the most minor of issues into complaints. Her approach is that she did not put the referee names on the application form and no-one can explain to her satisfaction why they were added after the event. Therefore, the only explanation is that it was done because of her race – irrespective of whether she was in fact subjected to any detriment. The Claimant suffered no detriment by having all referee names inserted on a single document and she identified none. Again, applying the test in **Shamoon**, no reasonable employee would regard as a detriment the simple fact that someone from HR had entered the names of her referees to her application form. There has been no unfavourable, let alone less favourable, treatment and not the slightest indication that it was in any way whatsoever connected to or related to race.

204. We find these allegations concerning references are further examples of the claimant 'retro-fitting' events to suit her general narrative that she is a victim of wide-spread and institutionalised discrimination. It was perfectly reasonable to expect a work reference. It matters not if the reference was a 'standard' reference - which in the tribunal's experience is the norm today. Although the names of referees were entered on the application form subsequently this could hardly be said to be a detriment, let alone that the motivation for adding them was the Claimant's race, of which there is not the slightest indication.

Allegation 1.9

205. As to paragraph 1.9 of the list of issues and the issue of 'case management', the Tribunal was initially unclear what this complaint was about. However, the Claimant explained that by 'case management' she meant that even prior to her employment starting there was a desire to build a case against her in order to terminate her employment, and that this continued during her employment. She says the desire to remove her from the university was 'triggered' before she started – an odd allegation on the face of things given she had been offered the role of Business Analyst. The Claimant said that Ms Charlton and Ms Cameron (like all others who had any hand in any aspect of managing or administrating aspects of her employment) were personally motivated against her by racial prejudice. We conclude that, as with all other aspects of her time with the Respondent, the Claimant has looked back and, noting that Ms Charlton was involved in some aspects of her employment from an early stage, she has again as part of her general narrative of discrimination and victimisation, reasoned that she (as well as Helen Cameron) was looking

to case manage her out of the business from the very beginning. That is entirely fanciful and not borne out by any evidence. The emails from Ms Charlton regarding pre-employment checks are entirely routine emails and exchanges.

Allegation 4 (**para 1.6, 1.7 and 1.8 of the list of issues**)

This complaint here is that the Respondent offered the Claimant the Business Analyst role on a low salary point and that by doing so it treated her less favourably because of race; that there was an expectation on the Claimant to subsume work that Peter Elliott had undertaken; that the fact that the Claimant was employed on a fixed term contract was swept under the carpet.

206. There is no evidential basis for suggesting that the Claimant should have been started on a higher salary point. Further, she has adduced no evidence of anyone with her experience or background, in circumstances similar to hers, starting at a higher point. During her evidence she was asked whether she had identified any such person and she said that she had not. She has proved no facts from which the Tribunal could conclude, in the absence of an explanation, that she had been treated less favourably because of race. The Claimant refers in paragraph 2, page 11 of her witness statement to a Ms Hilary Whittaker being recruited at a higher point. However, she adduced no evidence of this person's circumstances. The only substantive reference to Ms Whitaker in the bundle was when the Claimant was interviewed by Ms Brettell [**page 874**] where the Claimant says that they do not do the same type of work. The Claimant's case was that she believed her experience warranted a higher salary. Indeed, she felt that the job should have been a Grade G.

207. Although paragraph 1.7 of the list of issues is put forward as a discrete complaint of direct discrimination, it is simply a statement. The grade of business analyst was evaluated and decided on before the Claimant applied for it. The Claimant was recruited in order to relieve the pressure, in particular, on Pete Wheldon, to take on the business analyst work that he had been doing alongside his other work. We conclude that the Claimant has simply seen that he was a Grade G employee and 'felt' that she too should be a Grade G employee. In relation to her starting salary, she had convinced herself (without any reasonable grounds) that she was worthy of a higher starting point and a higher grade. Having convinced herself of this, she has then asked herself: 'what explanation other than race can there be for this'? She has concluded that there can be none.

208. The explanation, however, is that the role was evaluated as Grade F before she started. There is a practice that new starters start on one of the three lowest points unless the candidate makes out a case for starting on a higher point. The Claimant did not make out any such case and she started on the middle of the three lowest points. There is no evidence that anyone else in

similar circumstances to those of the Claimant, started on a higher salary point. She has not established any prima facie complaint.

209. As regards the allegation that her status of being fixed term was 'swept under the carpet' the Claimant explained to the Tribunal that Mr Brazell did not follow up on her request to be made permanent and swept her request under the carpet. This too has not been made out factually. Having reluctantly accepted in cross examination that she did not ask to be made permanent, the Claimant then changed her position, suggesting that it should be taken as a 'given' that she was asking to be made permanent and that by not following this up and changing her status this was due to racial prejudice.

210. Again, this was not untypical of the Claimant's answers. On a number of issues she adopted an approach along the lines of: 'I may not have said that but it is for them to work it out'. This was her approach in relation to the 'questionable feedback' issue – that, being a woman of colour, 'they' should have worked it out that she was complaining that the feedback was negative because of her race. Similarly, she contended that because she was fixed term and mentioned this fact, 'they' should have worked out that she was complaining of being on a fixed term contract and that by not doing something about this, she believed this inaction to be on grounds of racial prejudice. She took the same approach in respect of her grievance interview with Ms Brettell, where she referred to David Hill as 'reserved' during her job interview. When asked by Ms Millns why she did not say to Ms Brettell that he was hostile or was prejudiced against her because or race her answer was that Ms Brettell should have worked it out that she was complaining of racial harassment or discrimination.

211. These were fanciful arguments and we do not accept them. Quite simply, the Claimant did not ask Mr Brazell why she was the only fixed term employee, nor did she ask him to consider making her permanent. She was subjected to no detriment by Mr Brazell or by anyone else in this regard. She was not treated unfavourably or less favourably than others. She did no more than express her unhappiness that she was a fixed term employee – which she resented. However, she did not ask for anything to happen.

Allegation 5

The Claimant was referred to as "our diva" on 30 May 2017 by Silmara Hodge (**para 1.10 list of issues**)

212. The email, which is the subject of this complaint is found at **page 293.** We bear in mind that Ms Hodge was on the interview panel with Mr Hill and that they were both keen for the Claimant to start work. We have found that there was a delay in the Claimant starting because of the need for issues regarding references. Ms Hodge is simply asking Mr Elliott he has heard anything from

the Claimant in context of when was she starting. We do not see anything in the fact that the word 'our' precedes the word 'diva' (as the Claimant suggested). Even if it is a play on her name, there is nothing to suggest that it is racially motivated. This was 30 May 2017. In her evidence, the Claimant would not countenance the possibility that this email could simply be an innocent question or at its highest a playful play on the word 'diva'. The email was not sent to the Claimant. It has no racial connotations and it subjects the Claimant to no detriment or unfavourable treatment.

Allegation 6 (paragraph 1.11)

During July and August 2017 Jane Richards, stated on a number of occasions that she did not understand why the Claimant was hired and made negative comments about the Claimant's former alumnus school

213. Ms Richards was in our judgement a very straightforward witness. This complaint is also entirely baseless. Ms Richards believed she had a good relationship with the Claimant. We were not given any detail of these 'negative' comments in the Claimant's witness statement. It was clear that when she was being questioned by the Claimant Ms Richards did not know what it was that she was supposed to have said until the Claimant suggested she referred to her former tutor as 'golden boy', devoid of any context. As can be seen from our findings, we rejected the allegation that Mrs Richards said anything negative about the computing science school ('including referring to a tutor as golden boy'). Even if she had said this (and it was the only matter put to her), we struggle to see how this can even remotely be said to be a detriment to the Claimant or to be an act of direct discrimination or that it was conduct related to race. When asked under cross examination whether she wished to reflect on her allegation that Ms Richards was racially prejudiced against her, the Claimant said that she had reflected on all these allegations, that she did not make the allegation lightly and that she stood by her suggestion that Ms Richards was racially prejudiced.

214. The Claimant put to Ms Richards that she had intentionally gone to great lengths to influence Mr Brazell against her; that she had set out to disrupt her employment. This complaint was also hopelessly vague. Not only was there not a shred of evidence to support this, the Claimant did not descend into any detail or put anything that Ms Richards was supposed to have done or said. She based this entire allegation around the email from Mr Hill [**page 501-502**] where he said that Mr Brazell might want to speak to Jane Richards who he understood had heard the claimant making disparaging comments about senior management. We rejected the suggestion that Ms Richards 'exercised her influence' – whatever this involved - and conclude she did nothing of the sort.

Allegation 7 (paragraph 1.12)

Silmara Hodge, often referred to the Claimant as “Deepa’

215. Silmara Hodge accepted in the email exchange at **pages 1305-1307** that she had called the Claimant ‘Deepa’. We recognise that Ms Hodge was not present to give evidence. However, we simply do not accept the account given on page 26-27 of the Claimant’s witness statement. In oral evidence the Claimant said that Ms Hodge referred to her as Deepa as late as May 2018. When asked in cross examination why, on page 27 of her witness statement, she did not mention anything beyond ‘early’ 2018, the Claimant replied that ‘May’ was early in the year for her. That was a glib and disingenuous response to a serious point being made about exaggeration. May is 5 months into the year. Given the Claimant’s tendency to exaggerate and, at times to be untruthful, we did not accept her oral evidence that she was referred to as Deepa as many as 4-5 times in the period October to November 2017, twice in January-February and once or twice in May 2018 or that Ms Hodge continued to call her Deepa after she had been asked to stop. We accept Mr Brazell’s evidence in paragraph 48 of his witness statement.

216. In rejecting this, we have also taken account of the fact that the Claimant never mentioned anything about this issue in her grievance or in her grievance interview with Ms Brettell or at any time during her employment. She did not send any email to Ms Hodge or anyone else regarding this – something we would have expected her to do had Ms Hodge consistently and repeatedly used the incorrect name after the Claimant’s express request not to do so. The recurrent theme of the claimant’s evidence was to look back and create a narrative of discrimination by either adding events that did not happen or distorting actual events to suit her narrative of discrimination or by elevating the most trivial of events into acts of racial prejudice. This issue was raised for the first time after proceedings had been commenced. Given the overall unreliability and lack of credibility of so much of the Claimant’s evidence and our assessment of her as having a propensity to reconstruct events to suit her own narrative and given the circumstances time at which this allegation was raised, we were satisfied that the Claimant was exaggerating and not being truthful. We conclude that Silmara Hodge innocently referred to the Claimant as ‘Deepa’ as opposed to ‘Diva’ on an occasion and that it was perfectly clear to the Claimant that it was no more than a slip of the tongue, ‘Deepa’ and ‘Diva’ being phonetically close. We conclude that this is a retaliatory complaint raised by the Claimant after she saw that Ms Hodge described her as ‘aggressive’ in an email of 27 November 2017, a copy of which she obtained following a subject access request in August 2018. We conclude that she has thought back over her time with the university and recollected that Ms Hodge once mistakenly referred to her as ‘Deepa’ and has retrospectively elevated this into a complaint of harassment and/or discrimination.

217. Nevertheless, Ms Hodge did refer to the Claimant as ‘Deepa’ on one occasion. In the course of our deliberations we considered whether that is

unwanted conduct and conclude that it is. No-one welcomes being called by the wrong name, even once and whether or not it is a slip of the tongue. However, to get a person's name wrong on a single occasion is not conduct from which we could conclude, in the absence of an explanation, that the Respondent (in this instance through Ms Hodge) had treated the Claimant less favourably on grounds or race or that it engaged in conduct related to race which had the purpose or effect of creating the proscribed environments set out in section 26 Equality Act 2010. Aside from the fact that the Claimant and Deepa are both BAME employees, there is nothing to suggest that the confusion or mistake in referring to her by the wrong name was related to race at all – as opposed to the similarity of the names. Further, the Claimant did not, in our judgement, in fact feel violated or intimidated by Ms Hodge's slip and is simply seeking to take advantage of the confusion in these proceedings. We are fortified in so concluding by our finding that she never mentioned this issue during her grievance. In any event, in our judgement, it is not reasonable to regard a single mistake as having the effect set out in section 26. As set out in the above section on legal principals, the words in section 26 must not be cheapened.

Allegation 8 (paragraph 1.13)

On 3 July 2017, during the Claimant's induction meeting, Peter Wheldon, was hostile towards the Claimant. During meetings held on 17 November 2017 and 21 November 2017, Peter Wheldon and David Hill ignored the Claimant's input and made eye contact and raised eyebrows at each other whilst the Claimant was talking. On 21 November 2017, the Claimant was subjected to an impromptu review of draft documentation by David Hill who deliberately undermined the Claimant in front of other project stakeholders.

218. We have rejected the allegation that Mr Wheldon was hostile at the induction meeting. He had no reason to be and indeed had every reason to hope that the Claimant would succeed. In the Claimant's grievance email at **802-803** she makes no mention of hostility by Mr Wheldon during the induction. Nor is there any reference to this in the further grievance document at **809 – 811**. The Claimant said nothing in her oral evidence to the Tribunal as to Mr Wheldon's behaviour that might warrant the description of 'hostile'. When cross-examined as to why there is nothing in her grievance about the induction and Mr Wheldon's conduct at that induction, the Claimant said that this was covered by the general phrase 'micro aggressions'. We do not accept this.. She was retrospectively recreating events to suit her narrative. This reference to micro-aggression featured prominently in the Claimant's description of what had happened to her. She referred to page **1208** of the bundle. The Tribunal understands what she means by micro aggressions although we would avoid the use of generic 'labels' such as that. We recognise that an accumulation of events that might individually be regarded as minor or insignificant may amount to conduct which has the purpose or effect of creating the proscribed

environment. But it is not enough to simply say 'I was subjected to micro-aggressions'. There has to be an evidential basis. There was no evidence of any hostility by Mr Wheldon at the induction in the sense that the Claimant could not articulate what it was that he did or said. We conclude that the reason she did not identify any improper or unwanted conduct at the induction to Ms Brettell is that he did not engage in any improper or unwanted conduct. Her answer in cross examination that it was covered under the phrase 'micro aggressions' was an afterthought.

219. As for the complaint regarding 17 November, this was not made out factually. We have found that she was not ignored during the meeting of 17 November, where there was a disagreement as to the make-up of the scoring panel. As regards the complaint that Mr Hill was deliberately undermining the Claimant on the scenarios, we have also rejected this. He and the other members of the core group, following a discussion about the best approach to take, simply decided to change the approach from 5 scenarios to a 'mother of all scenarios'. There was no attempt to undermine the Claimant.

Allegation 8 (paragraph 1.14)

During November 2017 the Claimant was tasked with producing documentation following an agreed process and with agreement from David Hill and other stakeholders. However, by 24 November 2017, Peter Wheldon had produced his own document to replace the Claimant's documentation with David Hill's knowledge.

220. The reason Mr Wheldon re-worked the scenarios was because he genuinely and reasonably believed that the document was not in a form that was suitable for the exercise in hand; it was too long and written as if for a technical specification. We have found that he opened the Claimant's document late in the day, that he could see right away that it was not suitable and he created a document in the expectation that it would have to be redone. There was an urgency to do something. The Claimant suffered no detriment by Mr Wheldon re-working something which she did and the format of which was genuinely and reasonably considered to be unsuitable for the task in hand.

221. We reject the suggestion that the Claimant was 'set up' in any way. The Claimant's reaction to being challenged about her work was to deflect things away from her. She is either unwilling or incapable of accepting any responsibility (even partial) for producing a document which was not what was required in the circumstances. In this instance, as in other instances, she was not willing to give an inch, to consider whether she might have got it wrong. Instead, she advanced fanciful arguments of a racially motivated conspiracy against her and a desire to set her up.

222. Mr Wheldon's actions were not in any way motivated, consciously or unconsciously by race and his actions in re-working the scenario was not related to race.

Allegation 8 (paragraph 1.15)

On 8 December 2017, David Hill stated during a phone conversation "I know I am not teaching Granny to suck eggs" in an unfriendly tone with an emphasis on the word "Granny".

223. The Claimant herself used this phrase so it was somewhat surprising that she alleged Mr Hill's use of it was racially motivated. The phrase has no racial connotations. The Claimant's complaint is that Mr Hill emphasised the word 'granny' which we have rejected. Therefore, she has not established what she complains of. Even if he had emphasised that word, there is still not the slightest indication that this was racially motivated or related to conduct. The Claimant argued that he would not have emphasised the word 'granny' had she been white, but she has no basis for suggesting this. This complaint is but one example of many fanciful attempts by the Claimant to take a straightforward remark – one which she herself utilised - and attempt to elevate it into an act of or indication of racial prejudice.

Allegation 8 (paragraph 1.16)

*On 19 December 2017, David Hill asked the Claimant to formally present material to stakeholders in a meeting without any forewarning or discussion. (**para 1.16 list of issues**)*

224. We conclude that, at its highest, this was no more than a misunderstanding as to what the Claimant understood was expected of her. We have found that Mr Hill and Mr Wheldon understood and believed the Claimant to be leading on the exercise and that she was to lead the discussion on the scenarios at this meeting. The Claimant maintains that Mr Hill would not have asked a white business analyst to have presented the scenarios. In light of our finding that he naturally expected the Claimant to lead on the presentation because she had been tasked with creating the scenarios on the test environment, and in our judgement, that it was perfectly reasonable for him to expect her to do so, the suggestion that he would not have asked a white business analyst to do this is fanciful. In evidence, the Claimant said she 'guesses' Mr Hill would have wanted to get her flustered. We reject that. Mr Hill simply expected the person whose responsibility it was to set up the scenarios on the test environment to lead the discussion on the scenarios – that was the Claimant. That she may have become flustered was, however, down to her own actions and lack of preparedness. Mr Hill was not in any way motivated by the Claimant's race.

Allegation 9

*On 18 December 2017, Peter Wheldon shouted at the Claimant and talked to the Claimant in an aggressive manner in his fully occupied open plan office. (**para 1.17 list of issues**)*

225. In light of our extensive findings on this incident, we conclude that the reason Mr Wheldon behaved as he did was entirely because he genuinely and reasonably believed that the work which the Claimant had been required to do was done, being left extremely late in the day. The Claimant believed Mr Wheldon was not clear in what he wanted her to do and Mr Wheldon believed that she did not know what she was supposed to do, that she should have known and that she was not doing her job properly.

226. We conclude that the exchange had nothing whatsoever to do with the Claimant's race or colour and was entirely related to the lateness of the Claimant in coming to him with incomplete work and work which he felt, rightly or wrongly, was not of the required standard. Mr Wheldon was not motivated by race or colour. He would have reacted in the same way had any analyst, of a different race or colour, presented work to him in the same way. There was nothing overtly discriminatory in anything he said – not only on this occasion but on any other occasion. There was nothing in his language or in the context of the timing of events or the nature of the exercise, from which we could discern any racially motivated instinct. His conduct towards the Claimant was certainly 'unwanted' as was the Claimant's conduct towards him. His conduct created a hostile environment for the Claimant. In our judgement they created a hostile environment for each other. Importantly, however, his conduct was no more 'related to race' than was the Claimant's conduct towards him.

Allegation 9

*The Claimant reported the above incident but it was ignored (**paras1.18 list of issues**)*

227. At the beginning of the hearing, when discussing the issue of 'protected acts' for the purposes of section 27 Equality Act 2010, the Claimant said for the first time that she expressly made Mr Hill aware that she considered Mr Wheldon's behaviour on 18 December to be racist. We have rejected this in our findings. She did not say this to Mr Hill. She did not refer to it in her email to him that day at 15.41. She did not say it in her witness statement. Mr Hill did not ignore the Claimant. He spoke to her courteously and listened to what she had to say. He was not asked to take any action and the Claimant subsequently spoke to Mr Brazell. We are satisfied that the Claimant did not do a protected act when she spoke to Mr Hill, or when she subsequently spoke to Mr Brazell or to HR.

228. When he spoke to the Claimant he suggested that she work with Mr Ramsay and Ms Hedley. He spoke to Mr Wheldon who, recognising he behaved inappropriately, agreed to step back from dealing directly with the Claimant. Mr Hill saw this as a natural conclusion to an unfortunate but not serious confrontation between two employees about a piece of work which should have been completed that day. He dealt with it informally. He did not ignore it. We conclude that it was reasonable for Mr Wheldon and the Claimant to step back from each other – to give them both space. Whether the Claimant agrees with this or not, or whether she feels that she was 'ignored', nothing that Mr Hill did (or failed to do) was because she had complained of discrimination (she had not) or because she had done anything by reference to the Equality Act (expressly or by implication). Nothing he did (or failed to do) was motivated in any way whatsoever by the Claimant's race or colour.

229. Mr Brazelll did not ignore the Claimant's complaint either. As we have found, she told him that she was taking it to HR. She did not ask him to do anything. She did not mention anything about discrimination or racial prejudice. Had she asked Mr Brazell what she should do, he would have told her to speak to HR. Nothing he did (or failed to do) was motivated in any way whatsoever by the Claimant's race or colour.

230. The Claimant refers to her 'complaint' but she did not ask Mr Hill or Mr Brazell to do anything. She simply went to them to tell them from her perspective what had happened between her and Mr Wheldon. To that extent she was, we accept, complaining. Mr Wheldon too did the same when speaking to Mr Hill of his frustrations with the Claimant. To that extent he had 'complained' but neither asked Mr Hill or Mr Brazell to do anything. They each simply gave their account of what had happened. On that basis, Mr Hill's informal management of the situation was, in our judgement, reasonable.

231. If the Claimant had said at any point that she felt Mr Wheldon had a problem with her colour or her race we conclude that Mr Hill and/or Mr Brazell would have escalated this. In our judgement this was an unfortunate falling out over work related issues which spilled over into inappropriate behaviour as a result of emotions running high. It was almost certainly the point at which Mr Wheldon had given up on the Claimant as being someone who could provide an effective contribution to the project. She was not easing his workload as he saw it but potentially adding to it.

232. Having concluded that the Claimant's complaint was not ignored by Mr Hill or Mr Brazell, we next considered whether Helen Cameron of HR had ignored it.

233. We did not see anything from HR coming out of this meeting nor did we see any follow up by the Claimant. This is explained by the fact that Helen Cameron thought things were being managed and were in hand. It is also

explained by the fact that the Claimant did not raise a complaint as such. It is not uncommon for employees to go to HR to get things off their chest or simply to make them aware of things about which they are unhappy. The Claimant was upset and gave her account but did not ask anything in particular to be done, nor did she suggest she wanted to raise a grievance. The Claimant did not ask for anything to be done beyond what Mr Hill had agreed with her would happen; namely for Mr Wheldon to step back, which is precisely what did happen. We conclude that HR did not ignore her complaint because there was no complaint as such. Ms Cameron believed the situation was being managed, which we are satisfied it was. The Claimant has failed to establish that she was ignored. We have considered all of our findings and are confident that neither Mr Brazell or Mr Hill were motivated consciously or unconsciously by race. As regards the suggestion that Ms Cameron ignored the Claimant, in light of our findings of fact that Mr Hill was dealing with matters, we could not conclude, in the absence of any explanation, that she had contravened the Equality Act by not following up on the Claimant's complaint.

Allegation 10

*On 10 January 2018, Peter Brazell called the Claimant into an unscheduled, unaccompanied meeting in which he accused the Claimant of various unsubstantiated wrongdoings in respect of which he was unable to provide clarification (**para 1.19 list of issues**)*

234. The Claimant has failed to establish what she alleges here. It is necessary to put this meeting in context, namely that Mr Brazell's role was to manage the Claimant's PDR in context of receiving negative feedback about the Claimant. He was not accusing her of anything but attempting to explain what feedback he had received. The information he was given by others is that she was not contributing effectively to the project, that she can be difficult and is not on board with the objectives of the team.

235. It is clear from his email of 19 December 2017 [**page 573]** that Mr Brazell had been intending to hold a formal review of the Claimant's performance in December and he said he was not confident she was being treated fairly. following the dispute on 18 December with Mr Wheldon. He had hoped that she could turn things around with the project team. In his note at page **628** – drafted before the meeting of 10 January 2018, he is clearly saying that the Claimant needed to work collaboratively. In our judgement, Mr Brazell was trying to save the Claimant's role on the project.

236. From our findings, we conclude that Mr Brazell was trying to manage a situation which was difficult for both the Claimant and the project team. However, he believed that the Claimant needed to exhibit some self-awareness and willingness to change. He set out his account on 11 January [**page 631**] The Claimant's response inserted into the email was effectively to defend her

position. His email was a constructive email. The Claimant responded with a line by line rebuttal saying, in essence, that the problems had nothing to do with her. There was no recognition of any potential failing on her part.

237. In our judgement, this situation called for some inner reflection by the Claimant along the lines of: '*that is not how I see it but can I look at myself and change anything I do*?' The Claimant's response was in effect: '*what are they saying'* and '*who are they? They are all unsubstantiated*'. It is unfortunate that she could not see that Mr Brazell was trying to steer a course between her and others, with a view to saving her job.

238. We have no doubt that the Claimant will disagree with this assessment by us. She approaches the position form the point of view that if anyone expresses dissatisfaction with her performance or attitude, she is entitled to know chapter and verse what she is said to have done wrong and must be given that information. It may well be that some may agree with her that she should be provided with chapter and verse. However, there are others who will take a different approach; that it is better to give sufficient information to enable the person to understand what the perceived faults are, in the hope that the employee will improve and that to get into a 'he said, she said' exchange would not be constructive. She was, after all, a probationer employee. A manager might ordinarily expect that a probationer employee would want to display a positive attitude and demonstrate a willingness to take on board feedback. Mr Brazell subscribed to the latter approach. He wished to give the Claimant a fair chance to prove herself (which is why he introduced the new way of working) but he did not want to jeopardise already fragile relations by a '*he said, she said'* chapter and verse approach. We are satisfied that, in the circumstances of this case, that it was reasonable for him to conclude that to go the absolute finer detail would have caused more hostility and difficulty. We are satisfied that he genuinely subscribed to that view and this was in no way whatsoever motivated by race.

239. Our rather bleak assessment is that the Claimant would not accept any criticism of herself. This was patently clear to the Tribunal – the most obvious example being her refusal to accept any fault in not even starting the work she had been asked to do by 18 December until extremely late in the day. As we have already referred to, in the course of the proceedings the Claimant said that she had reflected on matters. As she expressed it to the Tribunal, if <u>she</u> accepts someone's explanation for doing something adverse to her then the adverse consequence is <u>not</u> motivated by race. However, if she does <u>not</u> accept the explanation then the <u>only</u> conclusion is that it is done because of her race. What the Claimant lacks is the awareness that people can have a position which may be unacceptable to her but which has nothing to do with race. She has no 'middle' ground. People are either in the right or in the wrong and if they are in the wrong or say something that she does not like, they are racially prejudiced.

240. Mr Brazell's approach to management was, in our judgement collaborative, reasonable and commendable. He was trying to ensure that the Claimant had sufficient information to give her an opportunity to turn things around without inflaming the situation further.

*On 11 January 2018, Peter Brazell sent an email to the Claimant with subject "121 PDR Review notes" which contained fabricated content which directed blame at the Claimant. In a meeting on 12 January 2018 Peter Brazell asked the Claimant to say he was "supportive" of her in an email which was contrary to her beliefs (**para 1.20 list of issues**)*

241. This is much the same point as the allegation in paragraph 1.19 of the issues. The Claimant has not made out this complaint either. We are entirely satisfied that Mr Brazell did not fabricate anything. Nor did he say that he wanted the Claimant to say that he was supportive of her.

*On 16 January 2018 the Claimant received an email from Kerri Booth, asking whether the Claimant had a meeting scheduled for her probation review with Peter Brazell (**para 1.21 of the list of issues**)*

242. This is not an allegation as such. It is just a statement.

Allegation 11 (**para 1.22 -1.27 list of issues**)

243. The Claimant has failed to establish any of the matters complained of in these paragraphs. Allegation 1.22 is unspecific. There was no evidence to support this and the Claimant made no attempt to give the Tribunal any understanding of what 'chit chat' Mr Brazell engaged in from which she was excluded. To the extent that the underlying allegation is that Mr Brazell had difficulties with her as a woman of colour we reject this.

244. As regards allegation 1.23, when we discussed this issue, the Claimant clarified that she was not using the word 'segegrated' in the sense used in the Equality Act. She argued that by 'segregated' she meant that she was excluded from restructuring discussions. However, there were no restructuring discussions and she did not advance any evidence of any such discussions. There were some changes made to some roles and grades within the department but no restructure and there was no discussion involving the team from which she was excluded that she could identify. We have found that Mr Brazell made an effort to include the Claimant generally. When it was put to her that he had bought her vegan chocolates and prosecco, the Claimant dismissed this as him just showing off. We conclude that Mr Brazell was in 'no win' situation in this respect. However, we are entirely satisfied that he did not exclude the Claimant from anything. On the contrary, he tried his best to involve her and to support her.

245. As to allegation 1.24, it is right that Rebecca Shaw and Helen Elliott were upgraded, However, their circumstances were different and not comparable to those of the Claimant. Mr Brazell did not look at their positions and ask himself what could do for them to see if they could be upgraded. He looked to see what they were doing and saw that they were actually doing work above the grade they were engaged on. That was not the case with the Claimant and the Claimant has given no evidence as to their circumstances with which they can be compared to hers. The Claimant says that white employees remain employed on a permanent basis and she does not. However, she was never employed on a permanent basis. At the point her role was advertised it was fixed term. It was project specific. We reject the suggestion that Mr Brazell ignored her point of view. She found that she did not ask Mr Brazell that she should be made permanent and that was not something he could decide on in any event. There was a separate project budget and a different project budget holder, namely Richard Dale.

246. As regards allegation 1.25, whatever was said by Mr Brazell about his stepson had nothing whatsoever to do with race. We conclude that the Claimant is being mischievous in referring to him having said he hated his stepson, to make him look bad in the eyes of the Tribunal. The context in which this was mentioned was that Mr Brazell was trying to convey to the Claimant that he would rather not tell people off - much as he had to tell his stepson off for tidying his room. Whatever the message it had nothing to do with race. It is yet another example of the Claimant seizing on a comment that she disagrees with or does not like and attributing the sole explanation for its use to her race.

247. Allegation 1.26 is a further example of this. Even if Mr Brazell did say that the Claimant was 'long in the tooth' it has not got any racial connotation. We can see that Mr Brazell may well have said that she was long in the tooth – albeit we accept as genuine his evidence that he cannot remember saying it. The Claimant did discuss with Mr Brazell the opinions of younger colleagues being different from hers. It is probably the case that he said this to make the point that she was experienced. The phrase was most likely used in a positive sense (given that he wanted to support the Claimant). Equally, the phrase could be used in a negative context to suggest that a person may not adapt to new ways of working (although we are not saying it was used in that context) but whichever of those two contexts, it had nothing whatsoever to do with race and he was not motivated by racial considerations.

248. In allegation 1.27 the Claimant yet takes another commonly used idiom and seeks to convert it into an allegation of racial prejudice. This is wholly without merit. The Claimant told the Tribunal that it is well known that white supremacists refer to people from India as the 'mud races' and that it is a white supremacist racial slur for non-white people. If this is right, this was news to the Tribunal. It is not something any of us has ever come across or heard before.

When asked where she got this from, the Claimant said that '*it is out there on the internet'*. There was nothing, however, in the bundle to support this. The Claimant had not sought to adduce any evidence of it or to reproduce anything from the internet and we are not prepared to accept or infer that what she said is accurate.

249. Whether or not what she says is factually correct (and we are far from convinced of this) nevertheless, the Claimant maintained that Mr Brazell knew and understood that 'mud' was a reference to people from India and that he consciously intended a racist connotation by using the phrase 'muddying the waters'. She contended that by emphasising the word ''muddying' he was using the phrase deliberately and knowingly as a white supremacist would, to offend her.

250. We reject this complaint as fanciful. Whether the Claimant believes this phrase to have racial connotations or not, it is not reasonable so to conclude. Mr Brazell did not and does not see any racial connotation in the phrase at all. Nor does the Tribunal. We spent some time in deliberations discussing whether the Claimant was being mischievous in alleging that Mr Brazell knowingly used a white supremacist racially offensive slur or whether she genuinely believes this.

251. We conclude it is a bit of both. We have already commented in our findings how the Claimant is blind-sided by a bleak outlook that things which she considers to be adverse to her, the explanation for which she does not accept, are motivated by racial prejudice. We conclude that she genuinely believes Mr Brazell (and indeed all those names mentioned by her at the outset of her cross examination) are racially prejudiced. Therefore, anything Mr Brazell says to her that she does not like and does not accept she attributes as a racially motivated remark. When he told her that she was '*muddying the waters'* she did not agree that she was muddying the waters. Having told herself (so to speak) that she was not muddying the waters she has asked herself why then would he say that she was. She has concluded that it can only be because he is racist. That – sadly – is how the Claimant genuinely sees it. To that extent she is not being mischievous. However, she is, we conclude, being mischievous in her embellishment of the allegation – done to fit with her narrative – where she says that he emphasised the word 'muddying', that he understood the reference to 'mud' to be a reference to a white supremacist slur and that there is evidence 'out there on the internet'. We do not accept her evidence as genuine that references to people from India being known as 'mud races' is 'out there on the internet'. The Claimant presented a lot of documents in these proceedings. Had she seen anything from the internet on this subject we have no doubt she would have sought to include it in the bundle.

252. We must add that we were very surprised to see that there was a recommendation by Ms Brettell coming out of the use of this phrase simply on

the basis that the Claimant said she was 'offended' by it. We remind ourselves of the words of Elias LJ in **HM Land Registry** that the words in section 26(1)(b) should not be cheapened as they operate as a control against trivial acts causing minor upsets being caught by the concept of harassment. We are satisfied that the Claimant may have perceived Mr Brazell and others to be racist, but we are equally satisfied that she did not genuinely feel intimidated or humiliated or that her dignity had been violated by use of the phrase 'muddying the waters'. In our judgement she has elevated a trivial matter into an allegation of harassment and in making a recommendation to investigate the use of common idioms, this in itself, may be seen to give it some form of credence which, in our judgement, it does not warrant. In any event, on a practical level, we cannot think of how one would carry out any kind of investigation across a university into the use of common expressions or idioms, let alone what the purpose of such an inquiry would be. There is, in our judgement, a real danger of creating an issue which does not exist simply because a single person takes a wholly unreasonable stance of saying they are offended by the use of a common expression because they – and they alone – have attributed some hitherto unknown (and unestablished) racist connotation to what are perfectly ordinary and innocent words.

Allegation 12
*Peter Brazell asked the Claimant to change her PDR paperwork five times to tone down the narrative in terms of the issues faced by the Claimant (**para 1.28 list of issues**)*

*Peter Brazell did not offer/advise of any training and development to supplement and support and/or enhance the Claimant's knowledge and skills. Other members of the Change team undertook external training and participated in external and internal networking was not questioned (**para 1.29 list of issues**)*

*In a number of separate one to one meetings on 10 January 2018 and 12 January 2018, Peter Brazell claimed that people had complained about the Claimant but would not provide information about the nature of the complaints (**para 1.30 list of issues**)*

*During November 2017 and December 2017, Peter Brazell sought feedback about the Claimant from a narrow pool of stakeholders without the Claimant's knowledge (**para 1.31 list of issues**)*

*The Claimant was not given the opportunity to nominate reviewers for feedback as others in the Change team had been given by Peter Brazell as per his email request on 27 December 2017 (**para 1.32 list of issues**)*

*Peter Brazell was uncomfortable with the Claimant's involvement in the original BAME network and the inclusion of her involvement in the Claimant's PDR (**para 1.33 list of issues**)*

*On 21 February 2018, Peter Brazell commented on the Claimant enrolling onto the Respondent's Mentorship scheme stating he hoped she "had not enrolled as a mentor" (**para 1.34 list of issues**)*

*On 7 March 2018, Peter Brazell wanted to influence the direction of the mentorship process by telling the Claimant what she should discuss with her assigned mentor, Laura Thompson (**para 1.35 list of issues**)*

*On 23 February 2018, Peter Brazell texted the Claimant stating "Diva, it's Peter from work. Just wanted to check that you are off due to industrial action and nothing more sinister?" (**para 1.36 list of issues**)*

*On 26 February 2018, Peter Brazell emailed HR asking "If the project sponsor determines that they no longer need a role of Business Analyst on the project then how would this play out in terms of Diva's probation?" (**para 1.37 list of issues**)*

*Peter Brazell did not encourage the Claimant to apply for the new Change and Project Manager role which was being advertised. The animosity exhibited towards the Claimant by Peter Brazell was aimed at preventing her from applying for the role (**para 1.38 list of issues**)*

*On 18 April 2018, Peter Brazell stated that he was not responsible for the delivery of the project the Claimant was assigned to and was not interested (**para 1.39 list of issues**)*

*The Claimant applied for an internal Research Project Manager role on 18 April 2018, however, the Claimant was not shortlisted and was not able to obtain feedback. The Claimant asked for feedback on 8 June 2018 but was not able to obtain feedback (**para 1.40 list of issues**)*

*Peter Brazell placed the Claimant under great stress during a PDR and Probation Meeting on 17 May 2018. During the meeting Peter Brazell accused the Claimant of various wrongdoings and became very aggressive (**para 1.41 list of issues**)*

253. We address these in turn.

Allegation 1.28

254. We have found that the Claimant was not asked to change the PDR paperwork or to tone down the narrative nor was any such message conveyed

to her by Mr Brazell. The Claimant eventually said that what Brazell wanted her to tone down was the 'issues' section 5 on page **668** but without descending into any specifics. As we have previously observed, this reluctance or inability to be specific about matters of which she complained was a common thread in these proceedings. Mr Brazell's suggestions were not related to race and he was not consciously or unconsciously motivated by race and the suggestions he made to identify specific things that they could seek to address could only be to the advantage of the Claimant.

Allegation 1.29

255. This complaint is vague and unspecific. There is no evidence at all that Mr Brazell offered training and advice to anyone else and we accept his evidence that he did not. The Claimant has taken an undisputed state of affairs, namely that Mr Brazell did not proactively go to her to identify ways in which she might develop herself; she has then reasoned that he should have done this and because he did not, his failure to do so must be because of her race or colour. She was unable to put to Mr Brazell the names of others that he did proactively develop in this way. The reason she was unable to put any names is that she did not have any evidence that he did this. She had no basis for even suggesting it. In any event, there was a suite of internal training courses she could have undertaken or even identified and spoken to Mr Brazell about, but she did not. Mr Brazell, we accept, did not identify particular courses or training for anyone. He would discuss their needs generally, as he did with the Claimant, and they would identify what courses they felt <u>they</u> needed and he would then support them.

Allegation 1.30

256. We have dealt with this above under 'allegation 10'. Based on our findings and in our judgement, Mr Brazell did provide sufficient information about the nature of the complaints and in any event his failure to give the Claimant as much information as she was insisting on was in no sense whatsoever related to or motivated by racial considerations but was entirely because he did not wish to further inflame matters and he was trying to manage a difficult situation in the hope that the Claimant would show some introspection and that she might turn things around.

Allegation 1.31

257. It is right that Mr Brazell sought feedback from others. However, he also asked the Claimant to identify people who could provide feedback. She declined to do so. In seeking feedback he wanted to know what she did well and what she needed to improve on. He was, in our judgement, doing what we would expect a manager to do. In doing so, he was not motivated by the Claimant's race. His actions were entirely unrelated to race. He was motivated

only by the need to understand the views of those with whom she worked and to assist him and her in the PDR exercise. Insofar as he asked Mr Hill to give examples of what Mr Hill regarded as the Claimant's poor attitude or work, this was in our judgement entirely appropriate as he wished to assure himself that those who expressed concerns about the Claimant's attitude or performance had some basis for doing so.

Allegation 1.32

258. In respect of this allegation, the date 27 December should read 27 November 2017. The Claimant was given the opportunity to nominate reviewers for her PDR as we have set out in our findings. She did not do so, for reasons which she gave on **page 467**. When asked in cross examination how she could advance this complaint when the email request to nominate stakeholders who can provide feedback was clear, the Claimant said that Mr Brazell was at fault because he did not chase her up and thereby deprived her of the opportunity to provide feedback. Once again, this was not untypical of the Claimant's propensity to deflect from here own faults and attribute fault to others. In our judgement, it was not Mr Brazell's responsibility to do this. It was her responsibility. The Claimant's evidence on this point demonstrates vividly her refusal or inability to accept any personal responsibility and her lack of self-awareness. Even if Mr Brazell was at fault (and we emphasise that he was not) for failing to chase the Claimant, his failure to do so was not in any way motivated by race or related to race. We accept his evidence that he did not see it as his responsibility to do so and there was a number of opportunities for the Claimant to raise the issue in discussions during her PDR meetings but she failed to do so.

Allegation 1.33

259. We have addressed this above. Mr Brazell was not uncomfortable with the reference to BAME network and there is no basis for suggesting that he was. He did nothing or said nothing to manifest such an impression.

Allegation 1.34 and 1.35

260. Mr Brazell simply asked for clarity about the Claimant's reference to mentorship. As it so happens, he did not think she was suitable to enrol as a mentor, although he did not express this to her. Even if he had said what the Claimant has taken him to mean (i.e. that she was unsuitable) it would not be inappropriate for him to express this view, given that the Claimant, a probationer was the subject of negative feedback which he was hoping to see her turn around. It was also perfectly reasonable and sensible for Mr Brazell (or any line manager) to say, as he did, that the feedback was the kind of thing she might want to discuss with her mentor – that is a good and safe environment to discuss issues such as those in the email of 11 January 2018. The tribunal

lay members have experience of the benefits of 'triangular' first meetings between manager, mentor and mentee. In context of the discussions Mr Brazell had with the Claimant and the rebuttal he had from her, as an alternative way of exploring these issues, suggesting that she discuss matters with her mentor was sensible and helpful. Consistent with how the Claimant sees life, however, she interprets that helpful suggestion as being sinister. She sees a detriment (an attempt to influence the mentor relationship) where there was none. She cannot see that the suggestion was intended to be and was in fact constructive. We are entirely satisfied that in making his suggestion, Mr Brazell was in no way motivated by racial considerations and that the suggestion was entirely unrelated to race.

Allegation 1.36

261. We have found that Mr Brazell did not know for sure why the Claimant was off work but that he suspected it was because she was on strike. To ensure himself that she was all right he took the simple step of sending her a text. The Claimant again reads as sinister an action which was, in our judgement, perfectly uncontroversial and understandable. Her process of reasoning was, once again, as follows: Mr Brazell should have known that she absent on strike because HR should have told him; therefore, his text was inexplicable other than by reference to her race. When asked what the detriment was, she replied that he was harassing her because of her race; the detriment was the sending of the text. We conclude that Mr Brazell's text was sent to satisfy himself that the reason for the Claimant's absence was, as he believed it to be, the fact that she was on strike and not for some other reason related to her wellbeing. It was, in any event, in no way related to or motivated by race and no reasonable employee would regard it as amounting to a detriment.

Allegation 1.37

262. As we have found, Mr Brazell asked HR for advice on this matter because it was looking very much like the project sponsor would determine that they no longer needed the role of business analyst. He was aware that her employment might have to be terminated. He was asking HR what the process was, should this come about. The Claimant believes that this – and indeed any - email communication between managers or between managers and HR about her is sinister and evidence of racial prejudice. However, it is standard management practice to exchange emails about staff. Mr Brazell's question was one we would expect a manager to ask of HR in those circumstances. There was nothing sinister in it. We are satisfied that it was not part of 'building a case' against the Claimant out of nothing, as the Claimant suggested. In sending this email, Mr Brazell was not motivated by the Claimant's race nor was his conduct in sending the email in any way related to race. He wished only to understand where things stood.

Allegation 1.38

263. Mr Brazell did not exhibit any animosity towards the Claimant. On the contrary we conclude that he was supportive of her. We refer to our findings regarding his supportive email to HR; his attempt to include her by purchasing chocolates and including her by inviting her along with others to his home; his suggestion of creating a template to improve working relationships in the core team; his suggestions to Mr Hill as to where he saw the Claimant's role within the implementation phase. It is right to say that Mr Brazell did not encourage her to apply for the 'Change and Project Manager' job. However, we are satisfied that he did not encourage anyone else either. The Claimant accepted that she would not know if he had or not. There was no reason for him to encourage the Claimant to apply for a role she had not mentioned to him. In any event, although she was aware of the job advert at the time, she did not in fact apply for it. The Claimant's fanciful contention was that the animosity (which did not exist) prevented her from applying from the job. This was in our judgement nonsense. Mr Brazell's supposed animosity did not prevent her from applying for the role of Research Project Manager on 18 April 218. The Claimant did not even attempt to explain how she was prevented from applying for one but not the other and was content to leave it as an allegation of less favourable treatment on grounds of race and harassment related to race without further explanation.

Allegation 1.39

264. We do not accept that Mr Brazell told the Claimant that he was not interested in the project she was working on. He was not responsible for the delivery of the project but that is not to say he was not interested in the Claimant's work. He showed himself to be interested by endeavouring to improve relationships within the core team and by setting out to Mr Hill where he saw the Claimant's role moving forward to implementation of the project. From our findings of fact we are able to conclude that he was interested in the Claimant's work and that he took steps to assist her in her work.

Allegation 1.40

265. All that we know about this issue is that that the Claimant applied for the post and was not shortlisted. There is no evidence of any other candidate, successful or otherwise and no evidence of any non-shortlisted applicant being given feedback. We cannot make any further findings as we do not know if the Claimant met the essential criteria. We know nothing about the post as the Claimant gave no evidence about these things. She does not say in her witness statement that she met the essential criteria – or even what those criteria were. Her email is chasing what has happened and asking whether it is possible to get feedback on the application/sift. It is not, in the Tribunal's experience, universally the case that a person receives feedback on an application – as

opposed to an interview. In any event the evidence was that an email was sent to the Claimant and that she should look in her junk mail. We were not given any further evidence about this from either the Claimant or the Respondent. We were unable to make positive findings and considered the burden of proof provision. However, the Claimant has not proved facts from which we could decide, in the absence of an explanation, that someone had contravened section 13, 26 or 27 of the Equality Act. We have reached this conclusion not just by analysing the facts surrounding this particular application but by considering whether any of our other findings, looked at alongside the facts surrounding this application, were such that we could decide, in the absence of an explanation that the Respondent had contravened a provision of the Equality Act.

Allegation 1.41

266. We do not accept that Mr Brazell was aggressive towards the Claimant. As we have found, this was a difficult meeting. In his evidence, Mr Brazell showed some awareness that he may have gone red in the face during what he regarded as an embarrassing and awkward meeting and he recognised that he and the Claimant talked over each other. He accepted that the meeting deteriorated and he was unused to that situation. The Claimant complains that Mr Brazell was accusing her of wrongdoings. However, in our judgement he was simply trying to explain to her the performance issues that resulted in her probation being unsuccessful. He did not get to the point of telling her that as she cut the meeting short, believing in which direction it was heading. His conduct was, however, in no way motivated by or related to race.

Allegation 13

*On 16 August 2018 the Claimant notified Zoe Charlton that she was in receipt of the Subject Access Request documents should they wish to use them as evidence in the Dignity and Respect investigation but she was ignored (**para 1.42 list of issues**)*

*The Grievance Investigation Report appeared to be the production of at least two to three authors, not factually accurate and reflected a lack of effort from the Respondent to clarify and seek further evidence from the Claimant (**para 1.43 list of issues**)*

*The Grievance Process was discriminatory given the manner in which it was conducted, the findings, the time it took to produce the report and the lack of meaningful recommendations (**para 1.44 list of issues**)*

Allegation 1.42

267. The Claimant criticises Zoe Charlton for not requesting documents which she had obtained under the SAR. However, among the approximately 300 documents received under SAR, it was for the Claimant to identify what it was that she wanted Ms Charlton or Ms Brettell to look at as part of her complaint if there was something there that was of relevance. At no point did she say what email or document she had that was in any way relevant to the Dignity and Respect investigation. Even in these proceedings she did not identify what it was that she wanted or expected HR to look at. Again, the Claimant's reasoning is that because she had told HR she had received documents under a SAR, they should have asked her to send them as part of the investigation and the reason they did not ask for them is, on the Claimant's case, explicable only by reference to her race. However, we are satisfied that the Claimant was not ignored nor was she subjected to any detriment in this respect. The documents were in her possession and if she thought them relevant she should have sent them to Ms Charlton or Ms Brettell. Ms Charlton was not motivated by the Claimant's race in not asking the Claimant to send her documents which she had obtained under SAR. She did not consider that it was for her to do this. As far as Ms Charlton was concerned, Ms Brettell was preparing her investigation report and had the Claimant considered any particular document to be relevant she was able to send it.

Allegation 1.43

268. There is nothing in this allegation. It was not clear to the Tribunal how it was said to be an act of discrimination in any event. However, Ms Brettell compiled the report alone. Even when faced with the evidence of Ms Brettell that she, and she alone, prepared the report, the Claimant was still reluctant to withdraw the allegation, albeit she diluted it to saying that 'it feels like' two or three authors prepared it.

Allegation 1.44

269. This allegation was framed in the broadest of terms. It was never identified by the Claimant in what way the grievance process was said to be 'discriminatory given the manner in which it was conducted'. She simply could not articulate in what respect she was treated less favourably on grounds of race by the process. We are satisfied that Ms Brettell went about the exercise properly and thoroughly and that she was not motivated by racial considerations. We could see nothing wrong with how she conducted the process and nothing was put to her. She interviewed relevant individuals. She ensured that full notes of interviews were taken. She asked the Claimant whether there was anyone else she should interview. Given the difficulties in understanding much of what it was the Claimant was actually complaining of, we conclude that she interviewed those she could reasonably be expected to.

270. The report was thorough and her findings are consistent with those of this Tribunal. The only surprise to us was that she made a recommendation in relation to the use of common phrases. But that was not to the detriment of the Claimant. It did take a long time to complete the investigation and Ms Bretell recognised this and apologised to the Claimant. She had lost a lot of time in August with the admissions and she had a couple of weeks' leave.

271. The Claimant was interviewed on 19 June 2018. She returned her amended notes on 01 July 2018. The last interview took place on 30 July 2018. Ms Brettell also had personal problems which diverted her from the task. She was not challenged on any of this by the Claimant. Having regard to those facts, we could not conclude that in the absence of an explanation that the Claimant had been treated less favourably because of her race or that she was subjected to unwanted conduct related to race. In any event there was no need for us to revert to the burden of proof provision as we accepted Ms Brettell's explanations for the delay and were satisfied that she was not in any way motivated by race.

Allegation 14

*Vijaya Kotur contacted the Claimant whilst on sick leave on her personal mobile on 6 July 2018 and had alluded to the outcome of the Claimant's grievance (**para 1.45 - 1.46 list of issues**)*

272. We reject the suggestion that the text message from Ms Kotur was anything other than a genuine expression of concern about the Claimant's interests. Dr Verma's statement was accepted as it was written and not subjected to any challenge by the Respondent. We have considered her statement in that context but it does not affect our conclusion. As we have held, the Claimant was and is deeply suspicious about all contact from anyone in management or HR and has read into innocent exchanges something deeply sinister. Ms Kotur did not subject the Claimant to any detriment by texting her nor was her conduct in doing so (unwanted as it may have been) related to race. It was about race – in the sense that the context was that of one member of the BAME network contacting another member of the BAME network with a view to checking on her well being and reminding her of the interest the network has in discrimination. Even if it were right to say that this unwanted conduct related to race, its purpose or effect was not, we conclude to violate the Claimant's dignity or to create the proscribed environment referred to in section 26 Equality Act 2010. If the Claimant perceived it to have this effect, we are satisfied, having regard to the context that it was sent by a member of the BAME network and was doing no more than asking after her well-being, that it was not reasonable to consider that it had such an effect. Although we had not heard from Ms Kotur, in light of our findings, the Claimant had not proved facts from which we could decide, in the absence of any other explanation, that Ms Kotur had contravened a provision of the Equality Act.

Allegation 15

*The Claimant was segregated as a result of the imposed paid leave, which spanned from 14 June 2018 to 7 February 2019 (**para 1.47 list of issues**)*

*On 3 June 2018 the Claimant applied for another role (Turing Liaison and Digital Institute Manager) whilst on sick leave but was not shortlisted (**para 1.48 list of issues)***

Allegation 1.47

273. The Claimant was not at work during this period 14 June 2018 to 07 February 2019. She had commenced a period of sick leave on 17 May 2018 and had presented a complicated grievance which was being investigated. In her grievance the Claimant named just about everyone she worked with. She said in evidence that she could not have returned to work in her role. Dr Campbell put her on paid leave for a period at a time when he understood her fit note was to expire. In the circumstances, paid leave was an obvious – and certainly reasonable - course of action to take in our judgement. Dr Campbell was not motivated by the Claimant's race in doing so and his conduct was not related to race. The Claimant was not put to any financial detriment. She was not 'segregated' as a result of it. She had, as we have found, been absent on sick leave since 17 May 2018 and did not want to have anything to do with those against whom she had complained. There was no other work that she could do. The decision to put her on paid leave was not motivated by her race and did not relate to race but was motivated by the need to cater for the fact that the Claimant did not want to work with those named and there was no other work for her to do.

Allegation 1.48

274. All the Tribunal was told about this was that the Claimant applied for the role of Turing Liaison and Digital Institute Manager role but was not shortlisted. The Claimant said nothing other than what is contained in paragraph 1 page 62 of her witness statement. She has proved no facts from which we could conclude, in the absence of an explanation, that the Respondent had treated her less favourably because of race or had harassed or victimised her.

Allegation 16

*The Respondent made unauthorised deductions from wages in July and August 2018 and did not make up the shortfall in September 2018 **(paras 1.48 and 14.1 – 14.2 list of issues)***

275. This complaint is out of time and we do not have jurisdiction to adjudicate upon it. The last of the deductions was said to have been made in August 2018

(the Claimant contended that the arrears payment made to her in September 2018 did not cover the total amount of deductions made in July and August 2018). Time expired 3 months after the 31 August 2018 payment (on 30 November). The Claimant said in her statement at paragraph 10, page 68, that her claim was in time as she had 'presumed' that 'at some point' she would be totally refunded. We do not accept this. We found that the Claimant was told by Ms Charlton that she would receive an arrears payment in her September pay and that is what happened. The Claimant did not challenge or question the amount with HR at that point or at any time after that. Further, her original complaint was that she suffered a deduction of £547.35. This then changed shortly before the hearing to a complaint in respect of £954.15. There was no explanation for the significant difference in the amounts claimed. We conclude that the Claimant was not simply waiting in September 2018 or thereafter in the hope or presumption that the proper amount would be paid to her. If, in September 2018, she believed the arrears payment in September was insufficient to make up for the earlier deductions, we are satisfied that she would have raised this. She could have sent an email querying the amount. In any event, she could have reasonably presented a complaint within the statutory time period of three months, or at least have started the EC process. She has not satisfied us that it was not reasonably practicable for her to have presented her complaint within 3 months of the deduction in August 2018 (or to have commenced ACAS early conciliation). Indeed she did not advance any argument as to why it was not reasonably practicable. The Claimant's entire evidence on this was set out in pages 66 – 68 of her witness statement.

276. Had we not concluded that the complaint was out of time, we would have rejected it in any event. Insofar as the Claimant contends that she suffered an unlawful deduction of wages over and beyond the amounts which were paid in arrears in September 2018, she has not established what was 'properly payable' and in what respect her pay was less than it should have been on any given date.

277. The Claimant was entitled to half pay sick pay at the point when her full pay entitlement ran out. She was not contractually entitled to be paid full pay indefinitely on the back of Dr Campbell's email of 14 June 2018. His email saying that she was to be paid full pay by way of 'paid leave' was conditional upon her being fit to work but unable to do so until completion of the grievance investigation. The Claimant being genuinely unfit to work (as per the fit note) she was entitled to sick pay. That is what she was paid and it eventually reduced to half-pay in accordance with the sickness policy.

278. Although she says in her witness statement that her own calculations show that she was short-changed by £954.15, she was unable to demonstrate this. We accept Zoe Charlton's witness statement of events and the explanation of what the Claimant was paid and the amounts set out in her statement at paragraph 10. When Ms Charlton carefully went through the payslips in

evidence, explaining what the figures meant, the Claimant was asked whether she wished to challenge her on anything she had said. She said that she did not, and merely stated that she had not received any notification of the changes. The position regarding paid leave and sick leave was certainly confusing for the Claimant through no fault of hers. The Respondent did not handle this aspect well and in our judgement HR could and should have been clearer in its lines of communication. The Claimant was told by Dr Campbell that she was to be on paid leave. She then reverted to sick pay after she submitted further fit notes. However, she was not told that she had reverted to sick leave and she should have been. Nevertheless, the Claimant must still establish what was properly payable and in what respect she was paid less than that which was properly payable, something she has failed to do.

279. For completeness, we must consider a further argument raised by the Claimant in relation to the deductions claim. She also argued that by deducting money and by failing to notify her of the reversion to half pay, Dr Campbell treated her less favourably because of race and/or subjected her to unwanted conduct related to race and/or victimised her. Insofar as we have concluded that the situation in June to August was confusing for the Claimant, we are satisfied that the situation was confusing also for Dr Campbell. He had anticipated that the Claimant would be returning to work in June on expiry of her then current fit-note. That is when he notified the Claimant that she would be on paid leave. His failure to notify the Claimant of the subsequent change was not in any way motivated by race nor was it conduct related to race. He was dependent on HR updating him which did not happen. It was, we conclude, a failure of communication by those within the Respondent's HR and payroll department. However, from this we were unable to conclude that the Claimant had been treated less favourably because of race. Indeed, we were satisfied that Dr Campbell was not in any way motivated by race in his dealings with the Claimant or in the decisions he made. He was motivated only by the need to address the situation which confronted him, which was that the Claimant's fit note was to expire and she had said she did not wish to work with the same team on the project. That is why he placed her on paid leave. When she subsequently submitted a fit-note, the failure to notify her that she had reverted to sick pay was, at worst, an administrative error by HR.

Allegation 17

*The Respondent dismissed the Claimant and did so without giving the requisite contractual three months' notice (**para 1.49 list of issues)***

280. The Claimant advanced two arguments here: firstly, that the decision to terminate her contract was an act of direct discrimination and/or victimisation; secondly, that to terminate without the requisite contractual three months' notice was an act of discrimination and/or victimisation.

281. As to the notice point, the Claimant maintained that she was contractually entitled to 3 months' notice of termination. She was not. She was employed on a fixed term contract and she was in effect given notice of termination upon commencement of the contract of employment. Whatever the Claimant's belief, the contractual position was that the Respondent was not required to issue her with notice 3 months prior to the contract expiry date of 31 December 2018. It was not required to give the Claimant any notice beyond that which she already had been given at the outset of the contract. As it happens, the Respondent in any event gave notice. It then extended the contract beyond the contractual expiry date for the purpose of enabling her to search for alternative employment. The Claimant believes she was contractually short-changed, so to speak, but in our judgement, the Respondent was generous to the Claimant by extending the notice for these purposes. The letter of 07 November 2018 [**page 1035**] sent by Ms Scott notified the Claimant that her employment was terminating on 31 December 2018 in accordance with the letter of appointment of 01 June 2017. In sending this letter she was not motivated by the Claimant's race. She was simply acting on the decision by Dr Campbell that the contract was not to be renewed. As per the terms of the contract, the Claimant was not entitled to be given three months' notice from 07 November 2018.

282. That is the contractual position. However, this was a discrimination case, and it is perfectly possible for an employer to treat someone less favourably than another because of a protected characteristic irrespective of the contractual position. For example, if an employer were to give a person employed on a fixed term contract notice of termination but did not in the case of another person of a different protected characteristic, that could arguably amount to less favourable treatment on grounds of the protected characteristic. It would be no answer to say that the contract does not require notice to be given. However, the Claimant was unable to point to any actual comparator in similar or not materially different circumstances. Nor has she established any facts from which we could conclude, in the absence of any explanation, that a hypothetical comparator (a white business analyst engaged on a fixed term contact which was to expire) would have been given notice more generous than that which she had been given. In any event, we were satisfied that the Respondent (more specifically, Dr Campbell and Ms Scott) was motivated only by the terms of the contract in giving a termination date of 31 December 2018.

283. As far as the actual reason for terminating the contract is concerned, we were also satisfied that this was in no way motivated by the Claimant's race nor was it related to race. It was entirely down to the fact that the sponsor did not require the Claimant to continue to work on the project and her perceived attitude and performance on that project by those with whom she worked, and in particular, Mr Hill and Mr Wheldon. The Claimant's colleagues on the core group saw her as a negative influence and making a negative contribution to the project. In those circumstances and given the stage at which the project

had reached (which required less input from a business analyst) the project sponsor was given no justification for retaining the Claimant beyond the expiry date of her contract. Her contract would probably have been terminated earlier than it had been by reason of failing her probationary period, which is what Mr Brazell was leading up to on 17 May 2018. However, the Claimant ended that meeting and would not resume discussions with Mr Brazell. She then began the process of complaining under the grievance procedure which was then the subject of the dignity & respect investigation. If anything, it was by submitting her grievance and going through the investigation and then challenging the requirement for 'notice' that prolonged the Claimant's employment.

Allegation 18

*On 29 November 2018, Kathryn Scott told the Claimant that she would only get a standard reference from HR and not a full reference when submitting redeployment applications (**para 1.50 list of issues)***

*On 3 December 2018, the Claimant received incorrect advice regarding IT support for the redeployment portal from Kathryn Scott (**para 1.51 list of issues)***

*The Claimant was unable to assess the suitability of advertised roles and potentially apply for these roles due to portal access difficulties and the lack of support from HR when requested on 6 December 2018, 7 December 2018 and 11 December 2018 (**para 1.52 list of issues)***

The Claimant had applied by email for a Grade G Business Development Manager role and was interviewed on 7 January 2019, however, the Claimant was blocked by HR from progressing.

*The Claimant was not shortlisted for three further roles (**para 1.54 list of issues)***

*The Respondent recruited at least two white female Business Analysts, namely Dayna Robb and Helen Sked in February 2019 and March 2019 respectively. These roles were not available via the Respondent's redeployment web portal for the Claimant to apply for (**para 1.55 list of issues**)*

Allegation 1.50

284. The Respondent's practice was to provide a standard reference and the Claimant adduced no evidence that anyone else in similar circumstances was provided with a full reference at the stage of submitting an application during a redeployment exercise. There is no evidence of any less favourable treatment and no facts have been proved from which the tribunal could decide, in the

absence of any other explanation, that the Respondent contravened sections 13, 26 or 27 Equality Act. The Claimant was not, in any event, disadvantaged in the application process by being told that she would get a standard reference from HR. References were only provided at the stage of being offered a post, not upon submission of the application. All that the Claimant was required to do at application stage was to identify a named referee. The Claimant could have had no reasonable expectation of a full reference from Dr Campbell and she could have requested a full reference at a later stage from Mr Brazell. Given the negative feedback that had been generated during her employment, a full reference would not have helped her in any event as she well knew.

Allegations 1.51 and1.52

285. The Claimant has not satisfied the Tribunal that she was given incorrect advice by Ms Scott simply because the Claimant had difficulty in accessing the redeployment portal. Ms Scott had just recently joined the Respondent. She was trying to be helpful by sending her information, advising her what to do and giving contact information for the IT department. in the belief that they might be able to help resolve what she believed to be an IT issue. That can hardly be said to be 'incorrect' advice. Ms Scott was providing help and support. Ms Scott was trying to help the Claimant by pointing her in the right direction. She was not in any way motivated by race. Further, the Claimant was not disadvantaged or subjected to any detriment as she was able to submit her application.

Allegation 1.53

286. The Claimant gave no evidence as to what she meant by this allegation of being 'blocked'. We take it to mean that she was prevented from progressing the application Business Development Manager. When asked in cross-examination who blocked her, she said that it was not clear to her. She then surmised that it was probably Helen Cameron's successor. This was Kathryn Scott. The Claimant eventually settled on Kathryn Scott as being responsible for blocking or preventing her progression in the application which she believed was because of her race. However, there was not the slightest bit of evidence for this allegation of Ms Scott, or anyone else 'blocking' her. As we have found, the Claimant was in fact interviewed and was given constructive feedback. She did not meet the requirements relating to university commercial experience, working with researchers and business engagement and that was the reason her application was not advanced beyond interview. On page 79 of her witness statement, the Claimant recognised that elements of the role would have meant a relatively steep learning curve. It had certainly nothing to do with Ms Scott or HR and she has established no facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent contravened sections 13, 26 or 27 Equality Act.

Allegation 1.54

287. This allegation related to the three posts identified in paragraph 6, page 80 of the Claimant's witness statement. During cross examination, she accepted that the feedback in relation to the Faculty of Medical Sciences role was acceptable to her (as indicated in her witness statement) and that she was not therefore saying that she was rejected on grounds of race in respect of this position. She confirmed that the allegation in fact related to the two posts: the Project Officer for Academic and Liaison Services (C187999A) and a post of Institute of Coding Business Partnership Manager. She did not accept the feedback, regarding it as questionable, and because she did not accept it, she inferred that her rejection was because of her race. As regards the Project Officer role, we found that she did not meet the criteria as outlined by Elizabeth Oddy. The Claimant gave no evidence about the criteria and how she says she satisfied them or in what respect the feedback was 'questionable'.

288. As regards the Institute of Coding position, feedback was provided and the Claimant accepted that she did not meet the essential criteria. The Respondent was not obliged to offer a role for which she was not eligible in the hope that she would develop into it and she has not been disadvantaged. There is no evidence of any more favourable treatment being given to anyone in any similar situation and no facts have been proved from which the tribunal could decide, in the absence of any other explanation, that the Respondent contravened sections 13, 26 or 27 Equality Act.

Allegation 1.55

289. The Claimant contended that Kathryn Scott deliberately withheld these positions from the Claimant during the period she was searching for alternative roles. The Claimant had been seeking redeployment as an employee of the Respondent. The agency work which was obtained by Ms Robb and Ms Sked was not on the available jobs portal. Not only was the Claimant unaware of these roles at the time, Ms Scott was not aware of them. There was no evidence that Ms Scott knowingly kept these roles a secret or that she did not put them on the portal so as to prevent the Claimant from applying from them. On the contrary, we are satisfied that she did not know about them and that they were not circulated within HR. The Claimant has adduced no evidence that these positions were available to other employees going through redeployment. There is no evidence of any less favourable treatment and no facts have been proved from which the tribunal could decide, in the absence of any other explanation, that the Respondent contravened sections 13, 26 or 27 Equality Act.

Allegation 19

The Claimant exercised her right of appeal but all of the potential hearing managers were linked to the Claimant's line management hierarchy. Given the

*Claimant's experience with the grievance process, the Claimant asserts that the Respondent would have treated her unfairly in the appeal process (**para 1.56 list of issues)***

290. This complaint is misconceived. The complaint is that, had she appealed whoever heard the appeal would have discriminated against her (whether within the meaning of section 13 or sections 26 or 27). As she did not appeal, the Claimant cannot claim to have been treated less favourably by having her appeal rejected. We would add that we are satisfied that the Claimant has no basis for suggesting that those people identified for the purposes of her appeal 'would have' treated her less favourably because of race and she has no basis for her suggestion that they were or would have been biased or prejudiced or unduly influenced.

Taking the facts as a whole

291. Although we have considered and addressed each allegation in these proceedings we did so recognising that each should be considered along with the others and in light of all of our findings, so as not to lose sight of the fact that discrimination might not be apparent from an examination of a discrete event or events but that it might be revealed from the overall pattern of events or incidents or experiences. Therefore, we have heeded the observation in **Anya v University of Oxford** (see relevant law section above) and considered the totality of the facts. We have analysed our findings very much with that in mind.

292. The Claimant was very strident in her complaints, insisting that some 13 individuals named by her were consciously motivated by racial prejudice and that the university was institutionally racist. Those are strong statements. During her cross examination she was asked on a number of occasions whether, on reflection, she wished to reconsider the strong line she had taken that all those concerned were consciously motivated against her by racial prejudice. She said she stood by all that she said; that she had reflected on matters and did not make the allegations lightly. She added that she had assessed each situation, asking herself '*why am I faced with these difficulties?*' (for example, Kathryn Scott referring her to I.T. for support) and that if she did not accept or understand why they were happening, she concluded that it was without doubt because of her race because it could not be anything else. That is the approach the Claimant has taken in respect of all of the things she complains of in these proceedings.

293. However, there is nothing at all in what we have seen, heard and found, insofar as the Claimant's experiences are concerned, that warrants such strident allegations. Having rejected any conscious discrimination, we considered whether the Claimant had overplayed her hand by advancing her case as one of conscious and wide-spread prejudice on the part of so many

individuals. Therefore, we considered our findings in terms of whether they might give rise to an inference of unconscious motivation on the part of one or more of the individuals. We are aware that unconscious discrimination can and does occur and also that direct discrimination can arise where assumptions are made that a person has characteristics associated with the protected group to which the complainant belongs. But as a tribunal we must ensure that we only draw inferences where it is proper to do so. Care must be taken to evaluate the evidence and not to find discrimination on nothing other than generalised assumptions, impressions or intuition.

294. We have also recognised that unreasonable conduct by the employer which adversely affects the employee may be evidence of hostility which in turn may justify an inference of discriminatory prejudice. The only conduct on our findings that could be said to be unreasonable (to varying degrees) was the conduct of Mr Wheldon on 18 December 2017, the failure by Dr Campbell to tell the Claimant that she had reverted to sick pay (having been placed on paid leave) and the length of time taken by Ms Brettell to conclude her investigation into the Claimant's complaints. We have taken a step back to consider the totality of these findings. However, each event was unrelated to the other and each was explained by the individuals in terms which we have accepted and by reference to the context in which the events happened.

295. Taking these things together and alongside our other findings we do not draw any inference of racial or other prejudice. There is no need to consider the burden of proof provisions in the vast majority of the allegations as we are satisfied that none of the individuals was motivated, consciously or unconsciously by race. To the extent that it was necessary to do so in the instances set out above, the Claimant has not proved facts from which, absent any other explanation, we could conclude that the Respondent had contravened any provision of the Equality Act.

Summary of conclusions

Protected acts and causation

296. The Claimant did a protected act when she submitted her grievance complaint on 17 May 2018 supplemented by her further document to Doctor Hogan on 24 May 2018. Insofar as she complains that she was subjected to any detriment prior to 17 May 2018 these complaints must fail because they pre-date the protected act. As far as the complaints post-dating the submission of the grievance on 17 May 2018 (those from allegation 1.42 onwards in the list of issues) we are satisfied that she was not subjected to any detriment because she had done this protected act or on any other ground. Her complaints of victimisation fail for this reason and are dismissed. We must add that we are satisfied that the Claimant was not subjected to any detriment because of any

of the matters which she alleged to be protected acts (but which we have found not to be).

Harassment related to race

297. None of the unwanted conduct complained of by the Claimant was conduct which related to race. Further, to the extent that the Claimant says that the purpose of any of those alleged to have harassed her was to create a proscribed environment as set out in section 26(1)(b) of the Act we reject this. With one exception, we conclude that the Claimant did not at any time genuinely feel that the conduct complained of (as set out above) had the effect of creating the proscribed environment and to the extent that she did, we conclude it was not reasonable for the conduct to have that effect. The exception is the incident with Mr Wheldon on 18 December 2018. This was the only occasion where the Claimant genuinely felt that Mr Wheldon's unwanted conduct created a hostile environment for her. However, his conduct, while unwanted, was not related to race. Therefore, all of the complaints of harassment fail and are dismissed.

Direct discrimination

298. We are satisfied that the Claimant was not treated less favourably in any respect because of her race and she was not subjected to any detriment. We are also entirely satisfied that none of those alleged to have treated her less favourably was consciously or unconsciously motivated by race. The complaints of direct discrimination fail and are dismissed.

Unlawful deduction of wages

299. The complaint is out of time and must be dismissed. In any event, had the Claimant satisfied us that it was not reasonably practicable to have presented the complaint in time, we would have rejected it on its merits. The Claimant has not been able to establish that she suffered any unauthorised deductions over and above the amounts paid to her by way of arrears in September 2018 and we have concluded that the wages that were paid to her as made up by the additional payments were those that were properly payable.

Employment Judge Sweeney

16 July 2021

APPENDIX

LIST OF ISSUES

The Claimant brings the following discrimination claims:

a) Direct Discrimination (Section 13 Equality Act 2010);

b) Harassment (Section 26 Equality Act 2010); and

c) Victimisation (Section 27 Equality Act 2010).

The Claimant also brings a claim for Unlawful Deduction of Wages (Section 13 Employment Rights Act 1996).

The Claimant has raised numerous factual allegations. The Claimant claims that some of the factual allegations constitute Direct Discrimination, Victimisation and Harassment (or a combination of those claims). There is therefore a considerable overlap in the factual basis of the Claimant's discrimination claims. To assist the Tribunal, each factual allegation is set out below and we have indicated where there is an overlap under the respective headings of claim. The reference to allegation numbers is a reference to the allegation number adopted by the Claimant in the Second Amended Particulars of Claim dated 10 January 2020.

Direct Discrimination: S.13 Equality Act 2010

Allegations

1. The Claimant alleges that the Respondent did the following things which constituted direct race discrimination:

Allegation 1

1.1 The Claimant questioned feedback received via a phone call from Andrew Lambert, following an unsuccessful interview for a Project Manager role. On 17 and 18 March 2017, the Claimant contacted Jenny James to request

additional feedback in respect of that role and feedback for a Senior Innovation Associate role which she also interviewed for in November 2016. The Respondent provided feedback in respect of the Project Manager (FMS) role and did not provide feedback for the Senior Innovation Associate role.

Note – The Claimant also relies on Allegation 1 as a Protected Act in pursuance of the Victimisation claim.

Allegation 2

1.2 On 25 April 2017, during the Claimant's interview for the Business Analyst role, David Hill was noticeably not comfortable with the Claimant's presence and exhibited a hostile demeanour towards the Claimant. The Claimant was not Mr Hill's preferred candidate.

Note – The Claimant also relies on Allegation 2 in respect of the Harassment and Victimisation claims.

Allegation 3

1.3 On 12 May 2017, Peter Elliott called the Claimant and raised issues with two of the three references that the Claimant had provided, claiming that the reference contact emails provided were personal emails. Peter Elliott also wanted to run through the Claimant's employment history.

1.4 On 12 May 2017 Peter Elliott requested an additional reference from the Claimant's previous employer, Nexus.

1.5 On 18 May 2017, following a complaint made by the Claimant in respect of the recruitment process, the Claimant met with Helen Cameron and Peter Elliott to discuss the issues. However, Zoe Charlton initially met the Claimant at reception. Zoe Charlton is primarily involved in "case management". The meeting centred on the references and there was no mention of the Claimant's suitability and experience for the role. In total the Claimant submitted four references, all of which were taken up.

Allegation 4

1.6 The Respondent offered the Claimant the Business Analyst role on a low salary point. The Claimant questioned the low salary point with the Lynne McArdle but was ignored. The matter was discussed with Peter Elliott on 3

July 2017 and he claimed that all staff were recruited on the lowest pay points of a grade.

1.7 On 3 July 2017 the Claimant was told by Peter Elliott that he was leaving and that there was an expectation to subsume work he had undertaken on the projects she was assigned to as well as undertake her own duties, previously the Business Analysis work had been undertaken by three G grade employees, namely Peter Wheldon, Peter Elliott and Silmara Hodge.

1.8 During a one to one meeting on 31 October 2017 and a team meeting on 2 November 2017, the Claimant questioned why she was the only fixed term employee in the team. However, this matter "was swept under the carpet" by the Respondent. As per ET1, a standup session in 2017. Additionally at a Change Team workshop on 7th November, 2017 the matter was discussed. Claimant has no recollection of a team meeting with the Change Team on 2nd November, 2017.

Allegation 5

1.9 The Respondent's HR case management was triggered prior to the Claimant's employment and continued throughout her employment as a result of the matters detailed in Allegations 1,2,3 and 4.

1.10 The Claimant was referred to as "our diva" on 30 May 2017 by Silmara Hodge in an email to Peter Elliott (redacted SAR, confirmed in unredacted SAR).

Note – The Claimant also relies on Allegation 5 in respect of the Harassment and Victimisation claims.

Allegation 6

1.11 During July and August 2017 Jane Richards, stated on a number of occasions that she did not understand why the Claimant was hired and made negative comments about the Claimant's former alumnus school. Jane Richards maintained regular contact with Peter Brazell and exercised her influence where possible.

Note – The Claimant also relies on Allegation 6 in respect of the Harassment claim.

Allegation 7

1.12 Silmara Hodge, often referred to the Claimant as “Deepa”, the name of a BAME Systems Analyst working in the IT department who also had the initials “DS”.

Note – The Claimant also relies on Allegation 7 in respect of the Harassment claim.

Allegation 8

1.13 On 3 July 2017, during the Claimant’s induction meeting, Peter Wheldon, was hostile towards the Claimant. During meetings held on 17 November 2017 and 21 November 2017, Peter Wheldon and David Hill ignored the Claimant’s input and made eye contact and raised eyebrows at each other whilst the Claimant was talking. On 21 November 2017, the Claimant was subjected to an impromptu review of draft documentation by David Hill who deliberately undermined the Claimant in front of other project stakeholders.

1.14 During November 2017 the Claimant was tasked with producing documentation following an agreed process and with agreement from David Hill and other stakeholders. However, by 24 November 2017, Peter Wheldon had produced his own document to replace the Claimant’s documentation with David Hill’s knowledge.

1.15 On 8 December 2017, David Hill stated during a phone conversation “I know I am not teaching Granny to suck eggs” in an unfriendly tone with an emphasis on the word “Granny”. The Claimant had previously used this saying.

1.16 On 19 December 2017, David Hill asked the Claimant to formally present material to stakeholders in a meeting without any forewarning or discussion.

Note – The Claimant also relies on Allegation 8 in respect of the Harassment claim.

Allegation 9

1.17 On 18 December 2017, Peter Wheldon shouted at the Claimant and talked to the Claimant in an aggressive manner in his fully occupied open plan office. The Claimant reported the incident to David Hill, Helen Cameron and Peter Brazell but her complaint was ignored.

1.18 The Claimant reported the incident with Peter Wheldon to David Hill, Helen Cameron and Peter Brazell but her complaint was ignored. Repeated in section 1.7.

Note – The Claimant also relies on Allegation 9 in respect of the Harassment and Victimisation claims. The Claimant alleges her complaint constitutes a Protected Act for the purposes of the Victimisation claim.

Allegation 10

1.19 On 10 January 2018, Peter Brazell called the Claimant into an unscheduled, unaccompanied meeting in which he accused the Claimant of various wrongdoings but was unable to provide clarification. Peter Brazell focussed on the Claimant's "failings" but was unable to substantiate those.

1.20 On 11 January 2018, Peter Brazell sent an email to the Claimant with subject "121 PDR Review notes" which contained fabricated content which directed blame at the Claimant. In a meeting on 12 January 2018 Peter Brazell asked the Claimant to say he was "supportive" of her in an email which was contrary to her beliefs. This is stated in Allegation 10 of the Claimant's Second Amended Particulars of Claim.

1.21 On 16 January 2018 the Claimant received an email from Kerri Booth, asking whether the Claimant had a meeting scheduled for her probation review with Peter Brazell. Peter Brazell had previously sent a meeting request for the probation review dated 7 May 2018.

Note – The Claimant also relies on Allegation 10 in respect of the Harassment and Victimisation claims.

Allegation 11

1.22 Peter Brazell ignored the Claimant by not making eye contact with the Claimant and directed general questions and "chit chat" at the rest of the white female team members.

1.23 The Claimant was segregated from the restructuring discussions involving her immediate team following the arrival of Peter Brazell.

1.24 Two of the team, Rebecca Shaw and Helen Elliott had their pay grade upgraded and backdated from Grade D to E and are currently Grade F, whilst

others had minor changes to their role. All of the white female team members are still employed by the Claimant on a permanent basis whereas the Claimant is not. During one to one meetings, Peter Brazell ignored the Claimant's point of view. Meetings were initially held monthly and then rescheduled fortnightly/weekly. Some of the meetings were not scheduled such as the meeting on 10 January 2018.

1.25 On 12 January 2018, Peter Brazell made a comparison between the Claimant's perceived behaviour and having to "tell off" his stepson about his messy childhood bedroom. This perception manifested in a later conversation on 10 May 2018 when the Claimant asked Peter Brazell about his annual leave. He stated that he spent it with his stepson whom he "hated" and his stepson's girlfriend whom he "hated" even more.

1.26 On 12 January 2018, Peter Brazell stated that the Claimant was "long in the tooth" during a one to one meeting.

1.27 On 17 May 2018, Peter Brazell stated that the Claimant was "muddying the waters" with a smirk.

Note – The Claimant also relies on Allegation 11 in respect of the Harassment and Victimisation claims.

Allegation 12

1.28 Peter Brazell asked the Claimant to change her PDR paperwork five times to tone down the narrative in terms of the issues faced by the Claimant.

1.29 Peter Brazell did not offer/advise of any training and development to supplement and support and/or enhance the Claimant's knowledge and skills. Other members of the Change team undertook external training and participated in external and internal networking was not questioned.

1.30 In a number of separate one to one meetings on 10 January 2018 and 12 January 2018, Peter Brazell claimed that people had complained about the Claimant but would not provide information about the nature of the complaints.

1.31 During November 2017 and December 2017, Peter Brazell sought feedback about the Claimant from a narrow pool of stakeholders without the Claimant's knowledge. Helen Cameron forwarded emails sent to her and Jenny James (Reference Allegations 1 and 3) to Peter Brazell.

1.32 The Claimant was not given the opportunity to nominate reviewers for feedback as others in the Change team had been given by Peter Brazell as per his email request on 27 December 2017.

1.33 Peter Brazell was uncomfortable with the Claimant's involvement in the original BAME network and the inclusion of her involvement in the Claimant's PDR. This resulted in further revision requests of certain sections of the Claimant's PDR.

1.34 On 21 February 2018, Peter Brazell commented on the Claimant enrolling onto the Respondent's Mentorship scheme stating he hoped she "had not enrolled as a mentor".

1.35 On 7 March 2018, Peter Brazell wanted to influence the direction of the mentorship process by telling the Claimant what she should discuss with her assigned mentor, Laura Thompson.

1.36 On 23 February 2018, Peter Brazell texted the Claimant stating "Diva, it's Peter from work. Just wanted to check that you are off due to industrial action and nothing more sinister?". The Claimant's participation in the strike began on 22nd February 2018.

1.37 On 26 February 2018, Peter Brazell emailed HR asking "If the project sponsor determines that they no longer need a role of Business Analyst on the project then how would this play out in terms of Diva's probation?". (redacted SAR, confirmed in unredacted SAR).

1.38 Peter Brazell did not encourage the Claimant to apply for the new Change and Project Manager role which was being advertised. The animosity exhibited towards the Claimant by Peter Brazell was aimed at preventing her from applying for the role.

1.39 On 18 April 2018, Peter Brazell stated that he was not responsible for the delivery of the project the Claimant was assigned to and was not interested.

1.40 The Claimant applied for an internal Research Project Manager role on 18 April 2018, however, the Claimant was not shortlisted and was not able to obtain feedback. The Claimant asked for feedback on 8 June 2018 but was not able to obtain feedback.

1.41 Peter Brazell placed the Claimant under great stress during a PDR and Probation Meeting on 17 May 2018. During the meeting Peter Brazell accused

the Claimant of various wrongdoings and became very aggressive. The Claimant took sick leave.

The then redacted SAR shows collusion between named parties to get rid of the Claimant. This has been confirmed by the un redacted version of the SAR.

Note – The Claimant also relies on the Allegation 12 in respect of the Harassment and Victimisation claims.

Allegation 13

1.42 On 16 August 2018 the Claimant notified Zoe Charlton that she was in receipt of the Subject Access Request documents should they wish to use them as evidence in the Dignity and Respect investigation but she was ignored.

1.43 The Grievance Investigation Report appeared to be the production of at least two to three authors, not factually accurate and reflected a lack of effort from the Respondent to clarify and seek further evidence from the Claimant.

1.44 The Grievance Process was discriminatory given the manner it which it was conducted, the findings, the time it took to produce the report and the lack of meaningful recommendations.

Note – The Claimant also relies on Allegation 13 in respect of the Victimisation claim. The Claimant contends that the Protected Act in this respect is the submission of the grievance.

Allegation 14

1.45 Vijaya Kotur contacted the Claimant whilst on sick leave on her personal mobile on 6 July 2018. The Claimant had not passed on any of her personal details to Vijaya Kotur.

1.46 The Claimant was notified by a colleague that Vijaya Kotur had alluded to the outcome of the Claimant's grievance investigation in a telephone conference with BAME colleagues.

Note – The Claimant also relies on Allegation 14 in respect of the Harassment and Victimisation claims.

Allegation 15

1.47 The Claimant was segregated as a result of the imposed paid leave, which spanned from 14 June 2018 to 7 February 2019. During this time the Claimant had minimal email contact, mostly with the HR Team.

1.48 On 3 June 2018 the Claimant applied for another role (Turing Liaison and Digital Institute Manager) whilst on sick lave but was not shortlisted

Note – The Claimant also relies on Allegation 15 in respect of the Victimisation claim.

Allegation 16 (please see Unlawful Deduction of Wages below)

Allegation 17

1.49 On 8 November 2018, the Claimant was notified of the Respondent's intention to dismiss her from employment without the requisite contractual three months' notice.

Note – The Claimant also relies on the Allegation 17 in respect of the Victimisation claim.

Allegation 18

1.50 On 29 November 2018, Kathryn Scott told the Claimant that she would only get a standard reference from HR and not a full reference when submitting redeployment applications.

1.51 On 3 December 2018, the Claimant received incorrect advice regarding IT support for the redeployment portal from Kathryn Scott.

1.52 The Claimant was unable to assess the suitability of advertised roles and potentially apply for these roles due to portal access difficulties and the lack of support from HR when requested on 6 December 2018, 7 December 2018 and 11 December 2018.

1.53 The Claimant had applied by email for a Grade G Business Development Manager role and was interviewed on 7 January 2019, however, the Claimant was blocked by HR from progressing.

1.54 The Claimant was not shortlisted for three further roles. The Claimant notes that the five month role was well within the Claimant's experience/skill set and the role was later advertised to a wider pool including external candidates.

1.55 The Respondent recruited at least two white female Business Analysts, namely Dayna Robb and Helen Sked in February 2019 and March 2019 respectively. These roles were not available via the Respondent's redeployment web portal for the Claimant to apply for. The Claimant notes that her skillset and experience would have more than adequately matched these roles.

Note – The Claimant also relies on Allegation 18 in respect of the Victimisation claim.

Allegation 19

1.56 The Claimant exercised her right of appeal but all of the potential hearing managers were linked to the Claimant's line management hierarchy. Given the Claimant's experience with the grievance process, the Claimant asserts that the Respondent would have treated her unfairly in the appeal process.

Note – The Claimant also relies on Allegation 19 in respect of the Victimisation claim.

Questions for the Tribunal to consider

2. Are the Claimant's allegations above factually correct?

3. In respect of each of the factual allegations, has the Claimant brought her claim within the time limit set by Section 123(1) of the Equality Act 2010? This gives rise to the following sub-issues:

3.1 what was the date of the act to which the complaint relates?

3.2 Was the act to which the complaint relates an element of conduct extending over a period? If so, when did that period end?

3.3 If not, is it just and equitable for the Employment Tribunal to extend time for the presentation of the complaint pursuant to section 123(1)(b) of the Equality Act 2010?

4. In doing the act complained of, did the Respondent treat the Claimant less favourably than it treated or would treat a white employee whose circumstances were not materially different.

5. If the Respondent treated the Claimant less favourably, was this because of the Claimant's colour, nationality or ethnic or national origins or any other aspect of race as defined by section 9(1) of the Equality Act 2010?

Harassment: S.26 Equality Act 2010

Allegations

6. The Claimant alleges that the Respondent engaged in the following conduct which constituted race related harassment:

6.1 See Allegation 2 above.

6.2 See Allegation 5 above.

6.3 See Allegation 6 above.

6.4 See Allegation 7 above.

6.5 See Allegation 8 above.

6.6 See Allegation 9 above.

6.7 See Allegation 10 above.

6.8 See Allegation 11 above.

6.9 See Allegation 12 above.

6.10 See Allegation 14 above.

Questions for the Tribunal to consider

7. Are the Claimant's allegations above factually correct?

8. In respect of each of the factual allegations at paragraph 6 above, are the Claimant's harassment claims presented in time, namely within a period of 3 months from the conduct alleged?

8.1 If not, do they form part of a course of conduct extending over a period, so as to be presented within that time limit?

8.2 If not, is it just and equitable to extend time?

9. Was the conduct in question related to the Claimant's race?

9.1 Did the conduct in question have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

Victimisation: S.27, Equality Act 2010

The Claimant contends that her actions described in Allegation 1, namely questioning the feedback received following an unsuccessful interview for a Project manager roles constituted a Protected Act within the meaning of 27(2) Equality Act 2010. This is disputed by the Respondent. The Claimant contends that she was subjected to the following detriments because she did that protected act:

9.2 See Allegation 1 above.

9.3 See Allegation 2 above.

9.4 See Allegation 5 above.

The Claimant contends that her actions described in Allegation 9, namely raising a complaint regarding Peter Wheldon's behaviour on 18 December 2017 constituted a Protected Act within the meaning of 27(2) Equality Act 2010. This is disputed by the Respondent. The Claimant contends that she was subjected to the following detriments because she did that Protected Act and/ or the Protected Act set out above:

9.5 See Allegation 10 above.

9.6 See Allegation 11 above.

9.7 See Allegation 12 above.

The Claimant contends that her actions described in Allegation 13, namely raising a grievance constituted a Protected Act within the meaning of 27(2) Equality Act 2010. This is accepted by the Respondent. The Claimant contends that she was subjected to the following detriments because she did that Protected Act:

9.8 See Allegation 13 above.

9.9 See Allegation 14 above.

9.10 See Allegation 15 above.

9.11 See Allegation 17 above.

9.12 See Allegation 18 above.

9.13 See Allegation 19 above.

Questions for the Tribunal to consider

10. Are the Claimant's allegations above factually correct?

11. In respect of each of the factual allegations, are the Claimant's victimisation claims presented in time, namely within a period of 3 months from the conduct alleged?

11.1 If not, do they form part of a course of conduct extending over a period, so as to be presented within that time limit?

11.2 If not, is it just and equitable to extend time?

12. Did the Claimant do a Protected Act, within the meaning of Section 27(2) EqA 2010. The Respondent contends that the only Protected Act was the submission of a grievance on 17 May 2018.

13. Did the Respondent subject the Claimant to a detriment in doing the act(s) complained of?

13.1 Did the Respondent subject the Claimant to the detriment(s) because the Claimant had done a protected act or because the Respondent believed the Claimant had done or may do a protected act?

Unlawful deduction from wages: S.13 Employment Rights Act 1996

Allegations

14. The Claimant alleges that the Respondent made unauthorised deductions from wages, in contravention of s13 of the Employment Rights Act 1996 as follows:

14.1 On 30 July 2018, the Claimant noted that her monthly pay was less that it should be. Pay was also deducted in August 2018. The Claimant was formally advised by postal letter that her full sick pay entitlement would stop in July 2018. Pay was also deducted in August 2018.

14.2 Late payments for most of the deducted salary was administered during September 2018 to February 2019 facilitated by a late payment and by moving the Claimant's pay point from 28 to 29.

14.3 The Claimant received her last payroll payment on 28 February 2019, which included a late payment of some but not all of the remaining or the deducted salary.

14.4 The Claimant is seeking £547.35 in respect of unlawful deduction from wages.

The Claimant was advised she was being placed on paid leave on 14th June 2018.

Following the expiration of the Claimant's fit note, a new fit note was generated.

PLEASE NOTE THAT THE BASIS FOR THE UNLAWFUL DEDUCTIONS HAS CHANGED IN ACCORDANCE WITH INFORMATION RECEIVED. PLEASE REFER TO THE LATEST UPDATED SCHEDULE OF LOSS.

The Claimant sought to clarify the issues with her pay in February 2018 and March 2018.

Questions for the Tribunal to consider

15. Are the Claimant's allegations above factually correct?

15.1 Was the claim brought within the time limit set by section 23(2) of the Employment Rights Act 1996? This gives rise to the following sub-issues:

15.1.1 What was the date of payment of wages from which the deduction was made?

15.1.2 Is the complaint in respect of a series of deductions from wages? If so, what was the date of the last deduction?

15.2 If not, was it reasonably practicable for the complaint to be presented within the time limit set by section 23(2) of the Employment Rights Act 1996?

15.3 If not:

15.3.1 within what further period would it have been reasonable for the complaint to be presented?

15.3.2 was the complaint presented within that further period?

15.4 What was the total amount of wages properly payable to the Claimant in the pay periods in question?

15.5 What was the total amount of wages actually paid to the Claimant in the pay periods in question?

15.6 Was any deficiency in wages attributable to an error by the Respondent, which affected the computation of the gross amount properly payable?

15.7 What is the amount of the deduction made?

15.8 Has the Respondent already paid or repaid any part of the deduction?