EMPLOYMENT TRIBUNALS

Claimant: Miss M Puar

Respondent: Duncan Lewis Solicitors Ltd

Heard at: Watford **On:** 21, 22, 23, 24, 25 & 28 February 2022, 1 March 2022, panel only 24 & 25 March 2022

Before: Employment Judge Maxwell
Ms Jaffe
Mrs Hancock

Appearances
For the Claimant: in person
For the Respondent: Mr Issacs, Counsel

RESERVED JUDGMENT

1. The Claimant's claims of direct discrimination are not well-founded and are dismissed.

2. The Claimant's claims of harassment are not well-founded and are dismissed.

3. The Claimant's claims of victimisation are not well-founded and are dismissed.

4. The Claimant's breach of contract claim is not well-founded and is dismissed.

REASONS

Preliminary Applications

5. Whilst the matter had been listed for a 7-day hearing to determine liability and (if appropriate) remedy, on the morning of day-1, there were three substantial preliminary applications, which had to be ruled upon, namely:

   5.1 The Claimant's application for a postponement;

   5.2 The Claimant's application for specific disclosure;

   5.3 The Respondent's application for strike out.

6. These various applications were argued at length (all of day-1) orally and in writing. Before making a ruling, it was necessary for the Tribunal to read and consider a considerable volume of pleadings, Tribunal orders and party correspondence.

Process of Hearing Applications

7. Given it appeared likely we would decide the postponement application before the other two (albeit we heard argument on all of the applications at the same time) we invited the Claimant to address the Tribunal first.

8. At various points during her submissions, the Tribunal asked questions of the Claimant to ensure we understood her points correctly and that she was addressing relevant matters.

9. During the Respondent's submissions, the Claimant raised an objection. She said there had been more she had wished to say but had been prevented from doing so by the Tribunal's interventions. The Tribunal explained the purpose of the interventions and that these were intended to assist her. It was also pointed out that she would have an opportunity to reply to Mr Issacs and could say more at that stage. The Claimant was not, however, satisfied by this course of action, she said that it was unfair because she should have been able to say all that she wished first. In order to address the Claimant's concerns, the Tribunal enquired of Mr Issacs whether he would object to pausing his submissions at the point he had reached, the Tribunal hearing from the Claimant, and then him resuming thereafter. Mr Issacs did not object. The Tribunal decided to proceed in this way and invited the Claimant to make her representations. The Claimant then said she did not want to speak, it was unfair and she was annoyed. The situation at this stage was, therefore, the Claimant said the way the Tribunal had been proceeding was unfair but she did not want to proceed in another way. The Tribunal explained that any issues of fairness should be addressed and remedied insofar as they could be, not merely taken as points of complaint. The Tribunal suggested having an early lunch break, giving the Claimant time to collect her thoughts, hearing from her first when we resumed and then we would revert to Mr Issacs. The Claimant said she was happy to proceed in this way and we did. The Claimant's resumed submissions largely repeated what she had said at the beginning of the day. She was also allowed to reply after Mr Issacs finished and, therefore, had 3 opportunities to develop her arguments.

Procedural History

10. The Claimant's claim was presented on 2 March 2017, following her short period of employment by the Respondent firm of solicitors as a case worker between 3 August and 15 December 2016.

11. On 1 June 2017, there was a case management hearing before EJ Skehan. The Claimant did not attend. At 5.30pm the evening before that hearing, she had emailed the Tribunal to say she would not be attending due to starting a new job. Orders were made requiring the Claimant to provide further particulars of her discrimination claims. The matter was relisted for case management on 21 August 2017. The order was sent on 5 July 2017. Claimant did not comply with the order for further information.

12. On 14 August 2017, EJ Manley made an order that unless the Claimant complied with the order made by EJ Skehan, her claim would be struck out. The Claimant did not comply and her claim was struck out. Confirmation of this was sent to the parties on 18 August 2018. The listed case management hearing was vacated.

13. On 18 August 2017, the Claimant applied to set aside the strike out. The application was heard by EJ Bedeau on 9 February 2018 and he allowed the application. EJ Bedeau also made case management orders, including for the Claimant to provide further information, the disclosure of documents and agreement of a bundle.

14. On 23 February 2018, the Claimant provided substantially amended particulars of claim.

15. On 8 March 2018, the Respondent applied for strike out or reconsideration of the set aside, on the basis the Claimant had not complied with the order for further information. Rather than better particularising her existing claim, it was argued, she had sought to bring additional new complaints.

16. On 11 March 2018, the Claimant provided further information.

17. On 13 March 2018, the Respondent confirmed it still pursued its applications.

18. On 4 April 2018, EJ Bedeau rejected the reconsideration application. The same day the Respondent wrote to say it still pursued strike out.

19. On 2 October 2018, the Respondent sent a copy of its disclosure documents to the Claimant.

20. Following a successful appeal to the EAT, the question of set-aside was remitted back to EJ Bedeau. He again granted set aside. He also set dates for the Claimant to serve an application to amend, in preparation for a further case management hearing.

21. On 10 June 2020, EJ Kurrein made orders for the Claimant to provide a schedule of her discrimination claims and proposed amended further and better particulars.

22. The Claimant subsequently provided two schedules, setting out the discrimination claims she wished to pursue, in the form of a table with headings: date; description; individual; nature of claim and witnesses.

23. At a case management hearing before EJ Ord on 22 January 2021, he made orders: permitting the Claimant to pursue the claims in the schedule, save certain specified matters which were not allowed; giving permission to amend to the extent necessary; and for the Respondent to present an amended response. He also ordered:

    23.1 Disclosure by 12 March 2021;

    23.2 The Respondent to provide a draft index for the hearing bundle by 19 April 2021;

23.3 Within 14 days of receiving the draft index, the Claimant to provide comments identifying any documents she wanted to add and why these were relevant;

23.4 A soft and hard copy hearing bundle to the Claimant by 31 May 2021.

24. On 12 March 2021, the Respondent wrote to the Claimant saying there were no additional documents (save recent party correspondence) beyond those provided to her as disclosure on 2 October 2018. This was a clear indication the Respondent believed it had complied with the duty to disclose all relevant documents in its possession. The email also asked her to say if she wished to be sent a further copy of the Respondent's disclosure, reminded her she must disclose her own documents and prompted her to make any request for additional disclosure from the Respondent.

25. Later on 12 March 2021, the Claimant replied saying she had difficulty finding her payslips and was "trying to obtain the disclosure". We pause to note that the obligation to disclose documents refers to those which are already in the possession of a party. Parties are not required to create a document which does not already exist or obtain documents from third parties.

26. On 22 March 2021, the Respondent asked the Claimant whether she was in a position to disclose her documents and reminded her this should include any mitigation evidence.

27. On 23 March 2021, the Claimant wrote:

> **I am very sorry for the delayed reply, I have been very poorly due to headaches.**
>
> **Can we agree a timetable amongst ourselves and I can inform the tribunal?**

28. The Respondent replied on 31 March 2021:

> **While we are expected to agree a bundle index in advance, given the bundle is more prepared than the Tribunal had been aware at the preliminary hearing, it seems reasonable to suggest that the main focus ought to be on having the bundle ready for the end of May, as per the existing orders. In a sense, we already have a draft bundle. We are prepared to work towards that deadline bearing in mind your below request. However, we would ask that you still allow us reasonable time to add any documents you wish to add or to consider any request you make in respect of further disclosure.**

29. Unsurprisingly, the Respondent anticipated the final hearing bundle would, substantially, comprise that which it had sent to the Claimant as disclosure in October 2018.

30. The Claimant replied in about April 2021:

> **I am sorry I have not replied, I have been signed off sick by my GP since 18th March 2021 and the not fit to work note is still in force til 13th May 2021.**

> **I can allow you time, I still need to apply for medical disclosure, they have told me it will take 30 days to produce this and I will forward to you mitigation disclosure too. The headaches have been affecting my eyesight. I will keep you informed in respect of the fit note.**

31. On 17 June 2021, the Claimant wrote:

> **Could you also let me know the position regarding disclosure and will probably require further disclosure, I have requested this from your client in 2018.**

32. The Claimant's email is somewhat puzzling as the Respondent had made its position on disclosure clear, 3 months previously. It had been waiting on her to provide disclosure and / or make any specific request of it.

33. On 18 June 2021, the Respondent replied:

> **The position regarding disclosure is that we still await any documents you wish to disclose, following your previous request for a postponement of this order. We note that your request from 2018 has been dealt with previously and if you do have any further request, please send this to us now. We have previously provided a complete bundle that we believe to be the full extent of relevant disclosure.**

34. Once again, the Respondent's position of having fulfilled its duty and disclosed all it intended to, was made clear.

35. On 23 June 2021, the Claimant replied:

> **Could you please forward me a copy of the bundle by post, I do not have enough storage space to download it - the court has advised on this too.**
>
> **I will then consider the disclosure.**
>
> **Please confirm which disclosure you would like from me?**

36. From the Claimant's email, it is apparent she had not looked at the disclosure provided to her previously. The order made by EJ Ord was for the Respondent to provide a hard copy of final hearing bundle, after the index for this was agreed. Hard copies of disclosure documents had not been ordered.

37. On 24 June 2018, the Respondent wrote:

> **The documents were sent several months ago, please could you advise why you have not raised this previously?**
>
> **Furthermore, you should be able to view them online, thus do not need to use computer space by downloading them. We will send a copy of the bundle when it has been agreed, which is what the Tribunal has ordered. However, we currently have not received any of your documents or any confirmation whether you wish to provide any documents to be added. Therefore, it would not be a reasonable cost to incur for us to have to post the documents when you have reasonable access to them, nor is it required by the Tribunal.**

> **There are no documents that we would request you provide. However, you are entitled to provide any documents relevant to the issues of the claim that you possess. Please could you confirm as soon as possible whether you wish to provide any?**

38. On 30 June 2018, the Claimant replied:

> **My position is as you know I am of very ill health, my glasses are out of date and I cannot read lengthy documents from a screen without causing strain to my eyes, blurry vision which result in headaches.**
>
> **In respect of the previous receipt of bundles, I have not received any bundles - I am home for the foreseeable future. I would be grateful if you could forward the same to me.**
>
> **I can then assess what documents I would like in the bundle.**

39. No basis was provided for the Respondent having knowledge of the Claimant needing a new pair of glasses and this causing her difficulty reading documents on a screen. Such a concern does not appear to have been ventilated before EJ Ord in January 2021. Furthermore, 3 months had passed since the Respondent confirmed its position on disclosure and it would seem feasible for the Claimant to have obtained a new pair of glasses during that time, if it were necessary.

40. On 1 July 2021, the Respondent asked the Claimant for her postal address, in order to send a physical bundle. The email also pointed out the Claimant was not prevented by this from providing her disclosure.

41. On 14 August 2021, the Claimant wrote:

> **I confirm I have received the bundle but it is less than one lever arch AND contains mainly information from me ie emails, I thought it would contain more relevant documents, I cannot see the court orders in the bundle, the memo to you graphics team member is still attached to the file. Unless you would like the memo returned I intend to discard of the same.**
>
> **[…]**
>
> **I look forward to hearing from you regarding your clients disclosure.**

42. On 18 August 2021, the Respondent replied:

> **As we have requested previously, if there are documents that you believe have not been included that ought to be, please provide us with a specific request for them, naming each individual document or type of document. It is not suitable for you to ask us broadly to refer to the request from 2018, as we understand that this was responded to at the time. If you wish to repeat any of those requests, please include this in your list. We have not considered it necessary to send copies of all the Tribunal orders as you already have copies of these. They will be included in any updated bundle though. However, we can only proceed to work on the bundle itself once you have provided/requested any specific documents.**
>
> **Although we have agreed to several extensions in this regard, we note that we do now need to make progress in preparing this case. Please**

> **therefore provide an indication of when you will be able to comply with the orders for disclosure.**

43. On 23 August 2021, the Claimant wrote:

> **My list for disclosure is with you since 2018 and I have not had a response to it. I have actually sent a lot of documents to your colleague, you may want to check with them, I would like them in the bundle.**
>
> **Your client has not given me a list of documents apart from what is in the bundle that you have sent me, which is not 'disclosure'. In respect to the bundle, I would have thought it'd be easier if I just added to this bundle instead of a brand new bundle but if you wish to send a fresh one to me, then fine.**

44. The Claimant here appears to assert that she had already complied with the order for disclosure, by way of a list sent in 2018. This contradicts her emails over several months, which were to the effect she was attempting to obtain the documents she wished to disclose and needed more time. The Claimant had received the Respondent's disclosure in 2018. The Respondent confirmed in March 2021 that it had nothing further to disclose. This was the first point at which the Claimant asserted the Respondent had not complied by reason of not providing a document list, when copy documents had already been provided both digitally and in hard copy.

45. On 5 October 2021, the Respondent wrote:

> **We have previously responded to your disclosure requests as attached. Having reviewed our file in full, it is evident that you did not provide any further clarification of these requests and it remains our position that this is necessary.**
>
> **It is unclear why you state that the disclosure sent to you does not amount to disclosure as the documents provided are those in the Respondent's possession relevant to the claim, thus are evidently disclosure. Please provide any further documents you wish to rely upon or make a sufficient request for documents as a matter of urgency or we will need to move forward with creating a bundle.**

46. The Respondent misunderstood the Claimant previous email. She was making a distinction between disclosure (as that exercise is carried out in civil court proceedings, which is to say by list of documents) and the subsequent provision of copy documents pursuant to a request. In that context, disclosure is the exchange of lists, not the provision of copies. In the Employment Tribunal, the word disclosure is commonly used to refer to the provision of copy documents. The Respondent also mistook "My list for disclosure" as the Claimant applying to the Respondent for disclosure of additional documents.

47. On 27 November 2021, the Claimant wrote:

> **So you confirm that you do not have a Document List for your client? As I have already stated I have provided you with all the documents which I require to be included in the bundle.**

> **The bundle I have received only includes the basics, I would not consider this a bundle which would help either party, its pretty whimsical.**
>
> **Can you confirm your position in respect of documents? If you could inform me urgently, the trial date is approaching.**

48. The Respondent had made it abundantly clear that the bundle of documents the Claimant had already received, twice, comprised both the documents it intended to disclose and form the hearing bundle, save that it would add any further documents the Claimant identified.

49. The Respondent replied on 2 December 2021:

> **The Respondent's list of documents was sent to you with disclosure in 2018. It was also sent to you again when we posted the bundle earlier this year and is attached again for completeness.**
>
> **The Respondent's disclosure amounts to over 550 pages. This is evidently not a small amount of disclosure, particularly bearing in mind the relatively short period of time to which it relates, and we can confirm that the Respondent has fully complied with the requirements for disclosure. As we have stated on several occasions, if you have any requests for specific documents of which you are aware, please make a request for them. This is now a matter of urgency, given the impending Final Hearing, therefore, please write to us by no later than 9 December 2021 with any such request. After that date, we will proceed to creating a final bundle. We would highlight that we have been making such efforts to progress the matter for many months, but no such request has been forthcoming.**

50. The Respondent had also, repeatedly, invited the Claimant to make any specific disclosure request.

51. On 4 December 2021, the Claimant sent two emails:

> firstly -
>
> **Had I received a list of documents, I would not be requesting the same from you.**
>
> **Can you confirm which documents of mine you have included in the bundle?**
>
> Secondly -
>
> **Furthermore I would like to see all documents from contractual documents to the end.**
>
> **I cannot see any details for the investigation at the appeals stage - ie the WS James Bruce relied upon or any other details confirming I was not discriminated against and his decision to uphold the dismissal.**
>
> **Can you respond to my disclosure list that I have sought from you? Are there any documents that you are prepared to disclose to me?**

52. The Claimant's request for specific disclosure was extraordinarily wide. The formulation "all documents from contractual documents to the end" would appear to capture every letter, email or record that touched upon her employment in any way, from start to finish. It was also remarkably late, given the Respondent had been inviting such a request since at least March 2021.

53. On 3 January 2022, the Claimant applied to the Tribunal for disclosure. She provided a long and detailed list over several pages, variously seeking information, specific documents or broad categories of documents. REJ Foxwell wrote to the parties on 26 January 2022, saying the application had been made too close to the final hearing to be determined in advance of that and would need to be resolved at that hearing.

54. The Claimant not having identified any documents to be added to the hearing bundle, the Respondent prepared this on its own. Her vague reference to having sent documents to the Respondent in 2018, without being able to say what they comprised, or send copies, or send a list, was most unhelpful.

55. On 9 February 2022, the Respondent sent a link to the digital bundle it had prepared for the hearing and invited her to confirm she would be ready to exchange witness statements. On 10 February 2022, the Respondent asked the Claimant to confirm her postal address so a hard copy hearing bundle might be sent. In addition to data protection issues, the case management history included the Claimant saying she had not received correspondence from the Tribunal because of moving home. The Claimant did not reply.

56. The Respondent sent a follow-up:

> **We are becoming increasingly concerned that we have not received any acknowledgement from you regarding our recent emails. It is essential that witness statements are exchanged early next week. If you require a paper copy of the bundle, beforehand, we will need confirmation of your address by no later than 2:30pm. This cannot be arranged over the weekend as nobody will be in our offices.**

57. On 15 February 2022, the Respondent repeated its concern at the lack of a response or engagement. Copies of its witness statements were provided to the Claimant unilaterally, albeit with password protection. It was explained that the password would be provided when the Claimant sent her own statement. The letter also said a strike out application would be made in the event the Claimant did not provider any witness statement.

58. Examination of the Respondent's Workshare internet site confirmed the Claimant made no effort to access or download the hearing bundle.

59. By an email of 17 February 2022, sent at 2.05am, the Claimant applied to postpone the hearing. The representations about her health included:

> **The Claimant makes this request for vacating trial because she has been of very poor health since December 2020 and was forced to take sick leave for 2 months and has only returned to work in October 2021 and that is upon the basis that she work from home and attend the office only when required.**

[…]

The Claimant is still of ill health and could not possibly attend a hearing for longer than one day. The health issues are to the extent, straining of hands when used too much, backaches which result in her unable to get out of bed and effects mobility, walking causes knees and feet to hurt, poor sleeping pattern, unable to concentrate for lengthy periods of times, lethargic.

60. Attached to the Claimant's application were two GP fit notes:

60.1 18 March 2021, she was unfit for work until 14 April 2021 because of stress at work;

60.2 14 April 2021, she was unfit for work until 14 May 2021 because of stress at work.

61. The Respondent replied the same day, at 10.31am, opposing the applications and applying for a strike out:

We note the Claimant's comments regarding her health and accept that she has made reference to it on those emails, but that this is not sufficient to warrant the postponement of the final hearing. The Claimant has at no point provided any specific explanation of her medical issues, nor provided any evidence to support either these comments or her application to vacate based on her not being fit to attend. The two sick notes the Claimant has provided relate to stress at work only and date to March - May 2021. This provides no explanation of the Claimant's current medical status, nor, seemingly of the condition referred to in the Claimant's email of 02:05 on 17 February 2022. We submit that without any clear evidence of a current medical condition, there are no grounds on which the Claimant's application to vacate the hearing should be granted.

We submit that the Claimant has unnecessarily delayed making this application and it should be refused on the grounds that it is not reasonable to make this application effectively two working days before the commencement of a seven day hearing. The Claimant has stated that she has been of poor health since December 2020. The Claimant made no reference to this in the preliminary hearing in January 2021. If the Claimant had a long-term health condition that she believed may affect the timetabling of a hearing and case management orders, this would have been an appropriate juncture to inform the Tribunal of this. Furthermore, the Claimant has made no attempt to raise concerns about the listing of the final hearing commencing on 21 February 2022 until 17 February 2022. The Claimant has been aware of the dates of the final hearing since 16 June 2021. The Claimant wrote to the Tribunal on 12 January 2022 with a specific disclosure application, in which she referenced her ill health, although citing in that correspondence this had only been the case since February 2021, not December 2020. Despite referring to her health, the Claimant did not make any suggestion that she could not prepare for the final hearing or that she would be unable to participate in a final hearing. The Claimant has not raised her application for a postponement after that date until 17 February 2022, seemingly only in response to a potential unless order and application for costs. We submit that the Tribunal should not grant the Claimant's application on

> **the grounds that she has had more than sufficient opportunity to make this application previously but has failed to do so until the Respondent has applied for an unless order and only two working days before the final hearing.**
>
> **We further submit that the Claimant's application should not be granted as it risks an indefinite delay to proceedings. The Claimant has stated that she has long-term health concerns. While this is not accepted in the absence of any supporting evidence, if this is the case, the Claimant has not indicated if and when she will be able to participate in the final hearing. Five years have already passed since the events of this claim, any further delay at all will cause significant risk that a fair hearing cannot take place (as is to be explained fully in following paragraphs).**
>
> **[…]**
>
> **We submit that any postponement would prevent a fair hearing from taking place. The Respondent has already been unable to rely on certain witnesses on health grounds. Three of the Respondent's main witnesses are no longer employed by the Respondent but have kindly agreed to take time to attend the final hearing arranged for 21 February 2022 onwards, taking time off work to do so. There is a significant risk that these arrangements could not be replicated on another occasion and we contend that the need to make witness orders would not be suitable, if indeed the Respondent is able to obtain its witnesses' personal addresses. Furthermore, there have already been significant issues with witnesses' memories of these events as they occurred over five years ago. Any delay at all will significantly exacerbate this. On this basis any postponement would mean that a fair hearing could not take place.**

62. At 13 minutes past midnight on the morning of the hearing, the Claimant sent a 4-page skeleton argument to the Tribunal, in which she renewed her applications for a postponement and disclosure. This document cited tribunal rules and relevant case law. In connection with her health the skeleton said:

> **There is medical history confirming the Claimants ill health since March 2021. The Claimant has now been signed off sick from work due to ill health, she suspects as Chronic Fatigue Syndrome. The medical note attached confirms the Claimants medical health is under investigation, due to a 3rd not fit to work within 12 months. The Claimant is suffering with severe tiredness and struggles to physically get out of bed, hands when typing at length cause them to become stiff, her eyes are effected due to the tired headaches. Due to the backaches she cannot sit for long periods of time and becomes anxious and this is partly due the cause of the sudden realisation that she may never qualify as a solicitor due to her age.**

63. The attachments to her skeleton argument included a new document, namely a fit note of 17 February 2022 providing that she was unfit for work until 26 February 2022 (10 days) by reason of:

> **"tiredness – under investigation".**

64. The Respondent brought hard copies of the hearing bundle and witness statements to the Tribunal for use by the Claimant. She said this was the first

time she had seen them and did not know what they contained. This is the result of her own conduct. She did not engage constructively with the Respondent's many invitations to her to identify the documents she wished to include in this. When the Respondent felt it could wait no longer, it prepared the bundle unilaterally and provided the Claimant with a digital copy on 9 February 2022. The Claimant ignored the digital bundle. On 10 February 2022, the Claimant was asked to confirm her address so a paper copy might be sent and chose not to do so.

Law [preliminary applications]

Postponement

65. Rule 30A of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, provides insofar as material:

> **30A. Postponements**
>
> **(1) An application by a party for the postponement of a hearing shall be presented to the Tribunal and communicated to the other parties as soon as possible after the need for a postponement becomes known.**
>
> **(2) Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where—**
>
> **(a) all other parties consent to the postponement and—**
>
> **(i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or**
>
> **(ii) it is otherwise in accordance with the overriding objective;**
>
> **(b) the application was necessitated by an act or omission of another party or the Tribunal; or**
>
> **(c) there are exceptional circumstances.**
>
> **[…]**
>
> **(4) For the purposes of this rule—**
>
> **(a) references to postponement of a hearing include any adjournment which causes the hearing to be held or continued on a later date;**
>
> **(b) "exceptional circumstances" may include ill health relating to an existing long term health condition or disability.**

66. The exercise of discretion on a postponement application was addressed by the Court of Appeal in **Teinaz v Wandsworth LBC [2002] ICR 1471**, per Peter Gibson LJ:

> **21. A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court and to the other parties. That litigant's right to a fair trial under article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment.**
>
> **22. If there is some evidence that a litigant is unfit to attend, in particular if there is evidence that on medical grounds the litigant has been advised by a qualified person not to attend, but the tribunal or court has doubts as to whether the evidence is genuine or sufficient, the tribunal or court has a discretion whether or not to give a direction such as would enable the doubts to be resolved. Thus, one possibility is to direct that further evidence be provided promptly. Another is that the party seeking the adjournment should be invited to authorise the legal representatives for the other side to have access to the doctor giving the advice in question. The advocates on both sides can do their part in assisting the tribunal faced with such a problem to achieve a just result. I do not say that a tribunal or court necessarily makes any error of law in not taking such steps. All must depend on the particular circumstances of the case. I make these comments in recognition of the fact that applications for an adjournment on the basis of a medical certificate may present difficult problems requiring practical solutions if justice is to be achieved.**

67. Peter Gibson LJ ruled on another appeal in postponement case shortly after **Teinaz**, namely **Sandra Andreou v The Lord Chancellor's Department [2002] EWCA Civ 1192**:

> **41. […] The fact that a person is certified on medical grounds as not fit to attend work does not automatically entail that that person is not fit to attend a Tribunal hearing, though very often that will also be the advice of the medical practitioner. […]**
>
> **Mrs Andreou had been off work for some two years. She had seen Dr Pal on 27th October, that is to say some 10 days before the hearing, which had been fixed for many months to commence on 6th November. Yet, neither she, nor her solicitor when he was instructed to seek an adjournment, had obtained a proper medical certificate addressing the question whether she was fit to attend the Tribunal hearing. There was no evidence, as I have already noted, as to precisely when Dr Pal had referred Mrs Andreou to a consultant psychiatrist. Indeed at the original hearing on 6th November it does not appear that the Tribunal was informed of the reference. That appeared subsequently in the medical report of 8th November and, as I have noted, we do not know when or in what terms the reference was made. The Tribunal, knowing that it was for an applicant for an adjournment to satisfy it that an adjournment was appropriate, could arguably have dismissed Mrs Andreou's application, as the employer had urged, on the basis that she had not discharged the burden on her. But instead the Tribunal adopted the sensible course of giving Mrs Andreou a further limited opportunity of making good the deficiencies in her evidence in support of her application for an adjournment. Further, it helpfully spelt out what information was required. Although the EAT described the timetable as "short", I have to say that in the circumstances the timetable seems to me to have been not**

> **ungenerous to Mrs Andreou. Moreover, the Tribunal was at pains to point out that on 13th November the Tribunal would also consider the employer's application to strike out. Mrs Andreou and her representative could have been in no doubt as to what might happen if the medical report which was to be produced in accordance with the Tribunal's order did not satisfy the Tribunal.**
>
> **[..]**
>
> **46. The Tribunal in deciding whether to refuse an adjournment had to balance a number of factors. They included not merely fairness to [the Claimant] (of course, an extremely important matter made more so by the incorporation into our law of the European Convention on Human Rights , having regard to the terms of Article 6): they had to include fairness to the respondent. All accusations of racial discrimination are serious. They are serious for the victim. They are serious for those accused of those allegations, who must take very seriously what is alleged against them. It is rightly considered that complaints such as this must be investigated, and disputes determined, promptly; hence the short limitation period allowed. This case concerned events which took place very many years ago, well outside the normal three months limitation period. The Tribunal also had to take into account the fact that other litigants are waiting to have their cases heard. It is notorious how heavily burdened employment tribunals are these days. Fairness to other litigants may require that indulgences given to those who have had the opportunity to justify an adjournment but have not taken that opportunity adequately are not extended. It was a matter of particular concern that no indication was given in the evidence of [the Claimant] either as to when the medical evidence which she required from the consultant would be available, nor as to when it might be that this case could come on for trial. Viewing the case in the round and considering all the circumstances referred to by the Tribunal, I cannot see how it could be said that in refusing the application the Tribunal was perverse or otherwise plainly wrong in refusing a further adjournment.**

68. The exercise of discretion on such an application does, of course require fairness to both parties; see **O'Cathail v Transport for London [2013] I.C.R. 614 CA**, Per Mummery LJ:

> **45. Overall fairness to both parties is always the overriding objective. The assessment of fairness must be made in the round. It is not necessarily pre-determined by the situation of one of the parties, such as the potentially absent claimant who is denied an adjournment.**

69. There is no requirement to adjourn merely in the hope that a health issue will improve: **Riley v Crown Prosecution Service [2013] EWCA Civ 951**, per Longmore LJ:

> **27. It is important to remember that the overriding objective in ordinary civil cases (and employment cases are in this respect ordinary civil cases) is to deal with cases justly and expeditiously without unreasonable expense. Article 6 of the ECHR emphasises that every litigant is entitled to "a fair trial within a reasonable time". That is an entitlement of both parties to litigation. It is also an entitlement of other litigants that they should not be compelled to wait for justice more than a reasonable time. Judge Hall-Smith correctly found assistance in remarks of Peter Gibson**

LJ in Andreou v The Lord Chancellors Department which are as relevant today as they were 11 years ago:—

> **"The Tribunal in deciding whether to refuse an adjournment had to balance a number of factors. They included not merely fairness to Mrs Andreou (of course an extremely important matter made more so by the incorporation into our law of the European Convention on Human Rights , having regard to the terms of Article 6): they had to include fairness to the respondent. All accusations of racial discrimination are serious. They are serious for the victim. They are serious for those accused of those allegations, who must take very seriously what is alleged against them. It is rightly considered that a complaint such as this must be investigated, and disputes determined, promptly; hence the short limitation period allowed. This case concerned events which took place very many years ago, well outside the normal three months limitation period. The Tribunal also had to take into account the fact that other litigants are waiting to have their cases heard. It is notorious how heavily burdened Employment Tribunals are these days."**

28. It would, in my judgment, be wrong to expect Tribunals to adjourn heavy cases, which are fixed for a substantial amount of court time many months before they are due to start, merely in the hope that a claimant's medical condition will improve. If doctors cannot give any realistic prognosis of sufficient improvement within a reasonable time and the case itself deals with matters that are already in the distant past, striking out must be an option available to a Tribunal.

70. The presidential guidance on postponement applications includes:

> **1. When a party or witness is unable for medical reasons to attend a hearing. All medical certificates and supporting medical evidence should be provided in addition to an explanation of the nature of the health condition concerned. Where medical evidence is supplied it should include a statement from the medical practitioner that in their opinion the applicant is unfit to attend the hearing, the prognosis of the condition and an indication of when that state of affairs may cease.**

Strike Out

71. So far as material, rule 37 provides:

> **37. Striking out**
>
> **(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—**
>
> > **(a) that it is scandalous or vexatious or has no reasonable prospect of success;**
> >
> > **(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;**

> **(c) for non-compliance with any of these Rules or with an order of the Tribunal;**
>
> **(d) that it has not been actively pursued;**
>
> **(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).**
>
> **(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.**

72. The need for caution when considering whether to strike out, especially in discrimination or whistleblowing cases, was emphasised in **Abertawe Bro Morgannwg University Health Board v Ferguson [2013] ICR 1108 EAT**, per Langstaff P:

> **33. We would add this final note. Applications for strike-out may in a proper case succeed. In a proper case they may save time, expense and anxiety. But in a case which is always likely to be heavily fact sensitive, such as one involving discrimination or the closely allied ground of public interest disclosure, the circumstances in which it will be possible to strike out a claim are likely to be rare. In general it is better to proceed to determine a case on the evidence in light of all the facts. At the conclusion of the evidence gathering it is likely to be much clearer whether there is truly a point of law in issue or not.**

73. Default with respect to Tribunal orders will not automatically result in a strike out and the Tribunal must consider whether there may still be a fair trial; see **De Keyser Ltd v Wilson [2001] UKEAT/1438/00**, per Lindsay P:

> **24.. As for matters not taken into account which should have been, the Tribunal nowhere in the course of their exercising their discretion asked themselves whether a fair trial of the issues was still possible. In a case usefully drawn to our attention by both sides' Counsel, namely Arrow Nominees Inc -v- Blackledge [2000] 2 BCLC 167 the Court of Appeal had before it a case where the Judge below had more than once declined to strike out the proceedings on the basis that whilst one party had, in the course of discovery, disclosed forged documents and had lied about the forgeries during the trial, a fair trial was, in his view, still possible. We pause to reflect on the magnitude of the abuse there in comparison with Mr Pollard's and De Keyser's. Whilst in other respects the context of the Arrow Nominees case is very different, there are passages in the judgment in the Court of Appeal of relevance. Thus at page 184 there is a citation from Millett J.'s judgment in Logicrose -v- Southend United Football Club Ltd (1988) The Times 5th March 1998 as follows:—**
>
> > **"But I do not think that it would be right to drive a litigant from the judgment seat without a determination of the issues as a punishment for his conduct however deplorable, unless there was a real risk that that conduct would render the further conduct of proceedings unsatisfactory. The Court must always guard itself against the temptation of allowing its indignation to lead to a miscarriage of justice."**

74. The question of whether there can be a fair trial may fall to be considered within the current window; see the decision of the EAT in **Emuemukoro v Croma Vigilant (Scotland) Ltd [2021] EA-2020-000006-JOJ**, per Choudhury P:

> **18. In my judgment, Ms Hunt's submissions are to be preferred. There is nothing in any of the authorities providing support for Mr Kohanzad's proposition that the question of whether a fair trial is possible is to be determined in absolute terms; that is to say by considering whether a fair trial is possible at all and not just by considering, where an application is made at the outset of a trial, whether a fair trial is possible within the allocated trial window. Where an application to strike-out is considered on the first day of trial, it is clearly a highly relevant consideration as to whether a fair trial is possible within that trial window. In my judgment, where a party's unreasonable conduct has resulted in a fair trial not being possible within that window, the power to strike-out is triggered. Whether or not the power ought to be exercised would depend on whether or not it is proportionate to do so.**
>
> **19. I do not accept Mr Kohanzad's proposition that the power can only be triggered where a D fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.**
>
> **[…]**
>
> **21. In this case, the Tribunal was entitled, in my judgment, to accept the parties' joint position that a fair trial was not possible at any point in the five-day trial window. That was sufficient to trigger the power to strike-out. Whether or not the power is exercised will depend on the proportionality of taking that step. […]**

75. In **Bolch v Chipman UKEAT/1149** Burton P offered guidance as to the questions which must be answered on an application for strike out under the predecessor to rule 37(1)(b):

> **(1) There must be a conclusion by the Tribunal not simply that a party has behaved unreasonably but that the proceedings have been conducted by or on his behalf unreasonably.**
>
> **[…]**

(2) Assuming there be a finding that the proceedings have been conducted scandalously, unreasonably or vexatiously, that is not the final question so far as leading on to an order that the Notice of Appearance must be struck out.

The helpful and influential decision of the Employment Appeal Tribunal, per Lindsay P, in De Keyser Ltd v Wilson [2001] IRLR 324 is directly in point. De Keyser makes it plain that there can be circumstances in which a finding can lead straight to a debarring order. Such an example, and we note paragraph 25 of Lindsay P's judgment, is "wilful, deliberate or contumelious disobedience" of the Order of a court.

But in ordinary circumstances it is plain from Lindsay P's judgment that what is required before there can be a strike out of a Notice of Appearance or indeed an Originating Application is a conclusion as to whether a fair trial is or is not still possible.

[…]

(3) Once there has been a conclusion, if there has been, that the proceedings have been conducted in breach of Rule 15 (2) (d), and that a fair trial is not possible, there still remains the question as to what remedy the tribunal considers appropriate, which is proportionate to its conclusion. It is also possible, of course, that there can be a remedy, even in the absence of a conclusion that a fair trial is no longer possible, which amounts to some kind of punishment, but which, if it does not drive the defendant from the judgment seat (in the words of Millett J) may still be an appropriate penalty to impose, provided that it does not lead to a debarring from the case in its entirety, but some lesser penalty

(4) But even if the question of a fair trial is found against such a party, the question still arises as to consequence. That is clear because the remedy, under Rule 15 (2) (d), is or can be the striking out of the Notice of Appearance. The effect of a Notice of Appearance being struck out is of course that there is no Notice of Appearance served.

76. Presidential Guidance has also been given in this regard:

8. Under rule 37 the Tribunal may strike out all or part of a claim or response on a number of grounds at any stage of the proceedings, either on its own initiative, or on the application of a party. These include that it is scandalous or vexatious or has no reasonable prospect of success, or the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious.

9. Non-compliance with the rules or orders of the Tribunal is also a ground for striking out, as is the fact that the claim or response is not being actively pursued.

10. The fact that it is no longer possible to have a fair hearing is also ground for striking out. In some cases the progress of the claim to hearing is delayed over a lengthy period. Ill health may be a reason why this happens. This means that the evidence becomes more distant from the events in the case. Eventually a point may be reached where a fair hearing is no longer possible.

> **11. Before a strike out on any of these grounds a party will be given a reasonable opportunity to make representations in writing or request a hearing. The Tribunal does not use these powers lightly. It will often hold a preliminary hearing before taking this action.**
>
> **12. In exercising these powers the Tribunal follows the overriding objective in seeking to deal with cases justly and expeditiously and in proportion to the matters in dispute. In some cases parties apply for strike out of their opponent at every perceived breach of the rules. This is not a satisfactory method of managing a case. Such applications are rarely successful. The outcome is often further orders by the Tribunal to ensure the case is ready for the hearing.**
>
> **13. It follows that before a claim or response is struck out you will receive a notice explaining what is being considered and what you should do. If you oppose the proposed action you should write explaining why and seeking a hearing if you require**

Disclosure

77. In addition to relevance and necessity, the timing of a disclosure application may be relevant to whether this is granted or not; see **Jones v Standard Life Employee Services Ltd UKEATS/0023/13/BI**, per Langstaff P:

> **14. I make these observations. First, the overriding objective makes it clear that dealing with a case justly includes so far as practicable ensuring that it is dealt with expeditiously. It does not help the hearing expeditiously and fairly of the case if in context applications are made late. Secondly, there must be no general view that applications can be made at any time up until ten days before a hearing; that is only to encourage last-minute applications, "last-minute" being viewed, as it necessarily must be, in context. This does not exclude applications that may have to be made as a matter of urgency because of a sudden appreciation of events or a sudden turn of events, but that is not this case. In this case, the relationship between the Claimant and his line manager had been central throughout. If necessary to support his case beyond his own testimony there seems to be no sensible reason why the documents might not have been required earlier. I acknowledge that Mr Eadie in his letter told the Judge that there had been a request made of the Respondent at an earlier stage, but it seems to me the Judge was entitled to take account of the fact that a late application for documents might adversely affect the hearing and it was a proper basis for him to consider as one of the factors relating to the decision being made.**
>
> **15. In respect of documentation, it is unlikely ever to be the sole factor in a case. This brings me to the second matter upon which the Judge relied, that of relevance. Here, I have little doubt that if Mr Eadie had in his letter identified a specific chain of correspondence about a specific time with a specific focus that was identified in correspondence, the application would have been a very different one for the Judge to consider. I observe that that possibility remains open, an application of that targeted sort not having been made previously and this application having been rejected in part because of the unspecific width of the request. A Tribunal would not then be in a position when it could simply refer back to Judge Macleod's decision and say that the matter had been already and conclusively decided. But, looking at the decision that the Judge made, the conclusion**

> **was that relevance had not been clearly demonstrated to him. That, in my view, was a permissible conclusion.**
>
> **[…]**
>
> **21. Accordingly, as it seems to me, each of the factors specifically relied upon by Mr Eadie is not a factor that the Judge was required by law to take into account in exercising his discretion. I return to the question of relevancy. He did not say in terms that the trawl of documentation by email from Ms Redmond throughout the entirety of her line management of him was too wide. But without it being specific and targeted, it would be difficult to reach any conclusion other than that the relevance was so general as to make it unnecessary for the resolution of this hearing that it should all be disclosed. As I have said, that does not in my view preclude an application that is specific and is made at a later stage to this Tribunal, if necessary pending a hearing, but it is not a reason for rejecting this Judge's exercise of his discretion on the material before him in the light of the law as I have set it out.**

Conclusion [preliminary applications]

Postponement

78. The Claimant applied for a postponement on 17 February 2022 and this was refused. The Claimant renewed her application in the early hours of the morning on which the hearing was due to start. The principal ground of her application is ill health, although she does to a lesser extent rely upon her position with respect to procedural issues, namely: the Respondent had not complied with its disclosure obligation; the documents she wished to rely upon were not in the bundle; and this prevented her from preparing a witness statement.

79. As far as ill health is concerned, we are not satisfied the Claimant is for this reason unable to attend and participate in the final hearing of her claim which is listed from 21 February to 1 March 2022.

80. The medical evidence provided does not substantiate the symptoms set out in her skeleton argument.

81. The Claimant has provided two fit notes from 2021, which show that she was unfit because of stress at work from 18 March to 13 May 2021. This does not evidence an ongoing or underlying health problem. On the contrary, it suggests a temporary reaction to events in her then current employment. The latest fit note is dated 17 February 2022, which is the same day on which, at 10.31am, the Respondent sent an email opposing her postponement request and pointing out that it was not supported by the medical evidence she had previously sent. The inference we draw from the sequence of events is that the Claimant consulted her GP with a view to obtaining evidence to support her postponement application.

82. The recent fit note gives a new diagnosis of tiredness. This is remarkably vague. It is also different from the health issue diagnosed by her GP in 2021. The fit note does not say the Claimant is unfit to attend a Tribunal hearing. The fit note is for a much shorter period than those issued previously and will expire at the end of the current trial window.

83. In the Claimant's skeleton argument, she refers to suffering with "severe tiredness". The fit note does not say that her tiredness is "severe". As far as the various other symptoms listed in her skeleton argument are concerned, there is no medical evidence whatsoever to support these.

84. Although in making our assessment we were primarily guided by the medical evidence (or absence thereof) the Claimant's behaviour did not suggest she was unable to participate effectively in the hearing. We noted that whilst the fit note records a diagnosis of tiredness, during the first day of the hearing she was alert, attentive and engaged. Indeed, on more than one occasion, the Claimant had to be reminded not to interrupt Mr Issacs because he said just something with which she disagreed, or indeed not to speak over the judge for the same reason.

85. As set out above, we heard from the Claimant again after lunch on day-1. When Mr Issacs resumed, the Claimant did not interrupt him and it appeared she had taken on board the Tribunal's guidance to the effect she should make a note when she disagreed with what he said and refer to this when it was her turn (in reply). The Claimant addressed us three times. She spoke to her skeleton argument (prepared and submitted late at night, during the period covered by her fit note) at length and developed her points orally.

86. At a relatively late stage in proceedings (circa 3.40pm) after extensive argument, the Judge canvassed with Mr Issacs a possible alternative to strike out, namely the Claimant adopting her amended particulars of claim and two schedules in lieu of a witness statement. When the Judge reverted to the Claimant for her comments, he began to explain this proposal more fully, in case she had not understood what was being suggested as a possibility. It quickly became apparent this explanation was unnecessary, as the Claimant had immediately taken the point and its consequences. She said that as far as she was concerned the proposal was "fine". We took that, however, to be in the alternative and her primary position was still that the hearing should be postponed.

87. As far as the Claimant's other ground for a postponement is concerned, which was procedural default on the Respondent's part, rendering a fair trial not possible, our conclusion, for reasons we will set out below, is that the lack of preparedness is the result of the Claimant failing to comply with the Tribunal's orders (which she cannot rely upon to support a postponement) and that a fair trial is still possible in the current window.

88. The Claimant's grounds for a postponement are not substantiated. The case is already very old, with allegations concerning a period more than 5 years ago. Whilst some of the complaints relate to documented matters, such as her dismissal, others involve alleged oral discriminatory comments. The Respondent's witnesses will, therefore, be required to rely upon their recollection of what they did or did not say, going back many years, with no contemporaneous record to support them. If the case were now to be postponed, it could not be re-listed before late 2023. At that point, the disputed events would have occurred more than 7 years previously. The Respondent's witnesses would be greatly prejudiced. To the extent the Claimant is less prepared than she should be if the case goes ahead in the current window, she is responsible for that state of affairs.

89. There are no exceptional circumstances, within rule 30A(2)(c).

90. The balance of prejudice and interests of justice weigh heavily in favour of refusing the Claimant's postponement application.

Strike Out

91. We are satisfied:

    91.1 the manner in which the proceedings have been conducted the Claimant has been unreasonable;

    91.2 she has not complied with the Tribunal order made by EJ Ord on 22 January 2021:

      91.2.1 to provide list and copy documents by 12 March 2021;

      91.2.2 within 14 days of receiving the draft index to identify any documents which are not in the index which she wishes to have added to the bundle;

      91.2.3 to provide her witness statement by 2 July 2021;

    91.3 she has not actively pursued her claim.

92. In March 2021, the Respondent complied with its obligation to provide disclosure. At that point, the Respondent confirmed that it had nothing further to disclose, beyond that which it had already provided to her in October 2018. The Respondent did, however, offer to provide a further copy of this if the Claimant required it. The Respondent's "position" on disclosure was clear from that point.

93. The Claimant's position on her own disclosure was vague, difficult to understand and inconsistent. To begin with, in March 2021, the Claimant took no issue with the Respondent having satisfied its obligations in this regard, but explained that she needed more time, seemingly in order to obtain the mitigation evidence she wanted to rely upon. She apologised to the Respondent for the delay caused. Then on 17 June 2021, which is to say 3 months after the Respondent had made its position on disclosure clear, the Claimant wrote asking the Respondent to let her know its "position" on disclosure. This was an unreasonable way for the Claimant to conduct the proceedings.

94. At the same time, the Claimant also made a vague reference to having requested additional disclosure in 2018. She did not, however, identify any documents she required, whether by repeating the content of the earlier request, forwarding a copy of the original request, or otherwise. Nor did she offer to provide this again. The Claimant has considerable experience of litigation, in the Civil Courts through her work and in the Employment Tribunal through her various claims. The way in which she was conducting the proceedings was unreasonable.

95. On 18 June 2021, the Respondent confirmed that it had dealt with the Claimant's 2018 disclosure request. If the Claimant was dissatisfied with the Respondent's response in 2018, then it was open to her to press the matter and apply to the

Tribunal for an order then. Simply to ignore the point for 3 years was unreasonable. Proceeding, after 3 years, as though this were then a good reason for her not to comply with her own obligations to make disclosure, agree a bundle and provide a witness statement, was unreasonable.

96. On 23 June 2021, the Claimant requested a hard copy disclosure bundle. Her assertion that EJ Ord had ordered it was wrong (he directed this for the final hearing bundle only). Her delay before making this request was unexplained. The Claimant had not considered the Respondent's disclosure at all in the time since it was provided to her. This was unreasonable. This did not justify her own failure to make disclosure, agree a bundle and provide a witness statement. Her conduct of the proceedings was unreasonable.

97. The Claimant's explanation that she could not read the bundle on screen because her glasses were out of date was unreasonable. 3 months is plenty of time to acquire a new pair of glasses, if this was necessary. Furthermore, she could simply have requested a paper copy in March 2021.

98. When the Claimant wrote in August 2021, criticising the disclosure bundle, and saying she waited to hear from the Respondent about disclosure was unreasonable. The Respondent had confirmed its position on disclosure in March 2021. When in June 2021, the Claimant referred back to a disclosure request she made in 2018, the Respondent replied to say she had its answer at the time. She had no good reason to wait for the Respondent on disclosure. It had already told her its position. If she was dissatisfied in 2018, she could have applied to the Tribunal. If she was dissatisfied in March 2021, she could have applied to the Tribunal. If she was dissatisfied in June 2021, she could have applied to the Tribunal. What she could not, reasonably, do was attempt to use this as a justification for not confirming her own position on disclosure, or to not agree a bundle, or to not be ready to provide a witness statement. The date for all of these steps to be taken was overdue.

99. The Claimant did confirm her position on her disclosure on 23 August 2021 (like the Respondent and despite recent indications to the contrary, now saying she had nothing beyond what was provided in 2018). This was a reasonable step for her to take. Her point "Your client has not given me a list of documents apart from what is in the bundle that you have sent me, which is not 'disclosure'" was unreasonable. The Respondent's obligation was to provide to the Claimant a list and copy of the documents in its possession, which were relevant to the issues in the case. The Respondent had repeatedly confirmed its position, namely that it had done this. The Claimant had been sent the documents previously. If she believed the disclosure was insufficient, then she ought to have applied to the Tribunal. Using this as an excuse not to send the respondent a list, identifying the additional documents she wanted added to this for the trial bundle, was unreasonable.

100. The Respondent wrote again on 5 October 2021, emphasising the urgency of the need to finalise a hearing bundle. Given a 7-day hearing due to start in February 2022, the position was now urgent. Despite this, the Claimant did not reply until 27 November 2021, almost two months later. This delay was unreasonable. The Claimant criticised the bundle and asked, yet again, for the Respondent to confirm its position. The Respondent had already done this,

repeatedly. Corresponding in this way was a waste of time, at a point when there was no time to lose.

101. The Respondent confirmed its position, again, on 2 December 2021. On 4 December 2021, the Claimant made an extraordinarily broad disclosure request. At this late stage, simply to request, in effect every document that touched upon her employment at all, was excessive and unreasonable.

102. The Claimant applied to the Tribunal for disclosure on 3 January 2022. Had this been limited and narrow, it might have been appropriate. In the vast form adopted, it was far too broad, far too late and would seem likely, if granted, to de-rail the current hearing. This was unreasonable.

103. Having received no meaningful cooperation from the Claimant, the Respondent prepared the bundle by itself and sent this to her digitally on 9 February and offered it in paper form on 10 February 2022. The Claimant ignored both the digital copy and offer of a paper one. This was unreasonable.

104. The Respondent provided its witness statements to the Claimant, albeit with password protection. The Claimant did not provide her statement to the Respondent. The Claimant says she could not prepare a witness statement because the bundle had not been finalised. The bundle was finalised and provided to her. She had been sent most of the documents more than 3 years previously. The Claimant should have prepared her own witness statement. The purpose of her witness statement would have been to set out her recollection of events and why she believed she had been discriminated against, harassed and victimised. She did not need a hearing bundle to do that. If she wanted to insert page numbers, this administrative task could easily have been accomplished once she received the final bundle. To the extent that she wished to comment on the content of documents, she could do this orally or in written submissions, this is not something that had to be in a witness statement.

105. The Claimant did not cooperate with the Respondent, She did not adopt a clear and consistent position with respect to her own disclosure. The Claimant repeatedly asked the Respondent to confirm its position on disclosure when it had already done so. The Claimant did not identify the documents she wished to be added to the bundle the Respondent had prepared. Having not cooperated with the agreement of a hearing bundle, the Claimant used this as a reason not to provide a witness statement. This was in breach of the Tribunal orders and amounted to unreasonable conduct.

106. The Claimant's approach to the proceedings between March 2021 and February 2022, evidences a failure actively to pursue her claims. The Claimant's conduct is consistent with a wish to keep the proceedings alive but not reach a final hearing, either at all or within a reasonable period.

107. Accordingly, we are satisfied of the matters within rule 37(1)(b), (c) and (d). On this basis the Tribunal may strike out the Claimant's claim. The next relevant question, is whether a fair trial is still possible. We believe such a trial can take place, but only just. The current trial window represents the last chance saloon for the Claimant's claim

108. Until 16 February 2022, the Respondent was still pressing the Claimant for her witness statement. When she did not provide this, unsurprisingly, the Respondent decided to seek a strike out. The Respondent argues that because the Claimant has not provided a witness statement, a trial cannot take place in the current window. Furthermore, if the trial is postponed, then given the case is unlikely to be re-listed until late 2023, at that stage it will no longer be possible to hold a fair trial because of the passage of time.

109. We agree with that last point. By late 2023, it will be 7 years since the events about which the Claimant complains. It is unrealistic and unfair to expect witnesses to be able to recall events and speak from their memory, after such a long time. The danger is that witnesses who are supported by contemporaneous documents, will be able to do little more than tell the tribunal what the documents say. Their independent recollection will be exceedingly limited. There are also, however, numerous allegations where there is no contemporaneous documentary evidence. When the witnesses to these allegations are asked questions about what was said and done, or not said and done, on particular days, 7 years ago, that may have seemed wholly unremarkable to them at the time, they will have nothing to support their recollection. This will place them in an invidious position. We are also mindful that several of the witnesses are no longer employed by the Respondent. Whilst their participation has been obtained voluntarily for this hearing, there is no certainty that will be true at the end of 2023. The point may be reached when they do not want to keep being brought back to their experiences with the Claimant in 2016. Witness orders might be sought in such circumstances, although that mechanism does not put the Respondent in as good a position as where attendance is voluntary. There is also risk with respect to the Claimant's health. Whilst we were not satisfied on this occasion that her ill health justified a postponement, we do not know what the position might be in late 2023. The proximity between the Claimant contacting her GP and the beginning of this trial window is difficult to ignore. The Claimant has other claims before the Tribunal and an accumulation of ongoing proceedings is unlikely to make a lengthy hearing seem to her a more manageable prospect.

110. Whilst we do not think there can be a fair trial outside of the current window, we do believe that can still be achieved within in it. During the course of argument, the Judge invited the parties to comment on the possibility of the Claimant's amended particulars of claim and schedule of allegations, standing in lieu of a witness statement. These are documents the Respondent has already seen and will not take it by surprise. Indeed, the Respondent's witness statements must have been, largely, prepared in response to these documents. Mr Issacs said that was not a suitable course of action in a case such as this, where the Claimant makes serious allegations of dishonesty and discrimination, against professional people. He also drew our attention to deficiencies in the pleadings, where vague language is used and the substance of the alleged detriment is unclear. He said that he would have to challenge the Claimant on those allegations and this risked new information coming out, which would take the Respondent by surprise and he would have no instructions. He then contrasted that position with one where the Claimant had set out her position fully in a witness statement. He also made the fair point that, especially in a harassment claim, separately from whether a thing was said or not, the context matters.

111. We have carefully considered the Claimant's most recently amended particulars of claim document, along with her two schedules of allegations. There is a substantial, although not complete, overlap between the documents. The amended particulars of claim include a lengthy and detailed factual narrative, of the sort that might often be found in a witness statement. It also expressly incorporates and adopts contemporaneous documents and prior statements of case. This is in many respects a comprehensive account. The Respondent prepared its witness evidence on the basis of this pleaded case. One solution to the vague allegations in the pleaded case would have been to seek further particulars. The Respondent chose not to do that. There was then always the possibility the Claimant might say more later and then further instructions would need to be sought from the Respondent's witnesses. If the Claimant had produced a witness statement that contained a more detailed account of particular allegations, the Respondent's witnesses could have been asked for their comments in advance of the hearing. If the Claimant produced a witness statement that was no more comprehensive than her pleadings, then no further instructions could have been taken before the hearing. In either event, there would always have been the possibility of the Claimant saying more at the hearing itself, in the course of cross-examination, in which case instructions would have to be taken at that point. In any of those eventualities, the witnesses would be asked for their recollection of the new detail, at a point 5 years after the event. We think that any prejudice to the Respondent from the Claimant relying upon her amended particulars of claim and schedules in lieu of a witness statement will be limited and can be minimised by allowing the Respondent a short adjournment during the hearing to take instructions if this is required. Furthermore, to the extent, if at all, a wholly new and detailed account of one or more allegations emerges for the very first time in cross-examination, the Respondent will be able to make points on credibility in that regard.

112. Mr Issacs also relied upon various matters suggesting the Claimant had not made full disclosure with respect to mitigation. He said this was not merely a remedy matter but went to credibility and, therefore, was material to liability. We think this point might have been stronger if the Respondent had applied for specific disclosure of such documents and the Claimant not complied. He can in any event put to her in cross-examination, briefly, any facts which are said to show she has failed to disclose all of the relevant documents in her possession.

113. Whist the Claimant might have been better served by a witness statement prepared for the purpose, the absence of that is a situation of her own making and does not lead to the conclusion that a fair trial cannot be had. To the extent she did not look at the bundle until the start of the hearing and / or did not prepare in other respects, the same is true.

114. For these reasons we are satisfied a fair hearing can take place in the current window and it would not be proportionate to strike out the claim.

Disclosure

115. We refuse the Claimant's disclosure request.

116. The claim has been extensively case managed over a period of nearly 5 years. The Respondent provided its main disclosure in October 2018. The Claimant

had ample opportunity to apply to the Tribunal for specific disclosure, without leaving this to the month before the trial window, long after the point when not only should disclosure have been complete but also a bundle ought to have been agreed and witness statements exchanged. Her application was far too late.

117. The disclosure application is vast, running over several pages, in some respects seeking information rather than documents, and where documents are sought, in some instances by reference to very broad categories rather than an individual letter or email.

118. The Claimant's position that she needed all of this to prepare her witness statement, in substance even if not her intention, seeks to turn back the procedural clock, giving her an opportunity to find her case by trawling through new disclosure, rather than setting out her existing complaints.

119. With respect to documents connected with the Claimant's dismissal, the Respondent says it has made a proportionate search and disclosed the product of that. No proper basis has been advanced upon which the Tribunal should seek to go behind that.

120. The Respondent said any disclosure sought with respect to the conduct or performance of other employees must be irrelevant because the Claimant relies upon a hypothetical comparator. We think that proposition overstates the position, somewhat. Evidence of how a non-statutory real comparator was treated may inform findings about how a hypothetical comparator would have been treated. Had a limited application been made at an earlier point in time, relating to specific identified events, then an order may have been appropriate. At this point, given a sprawling application, it is excessive and disproportionate.

121. The Respondent has already provided some of the documents the Claimant sought, only she was unaware of this because she chose to ignore the hearing bundle until the hearing began.

122. With very considerable judicial resources and party expense, a long list of alleged acts of discrimination, harassment and victimisation has been prepared by the Claimant. She must know why she believes all of these allegations are proper for her to make and she should not need to go hunting for that now in disclosure, 5 years on from the events in question. Even if some of the documents sought are relevant, we are not satisfied they are necessary.

123. Any significant new disclosure would necessitate a substantial further search, the taking of further instructions from the Respondent's witnesses and prevent a trial taking place in the current window. The Claimant recognises this, as it was part of what she relied upon for needing a postponement. This current window is, realistically, the last chance for a fair hearing.

124. The interests of justice would not be served by making an order for further disclosure.

Substantive Hearing

Claims

125. The Claimant brings claims of:

125.1 Direct discrimination [race and religion or belief];

125.2 Harassment [race and religion or belief];

125.3 Victimisation;

125.4 Wrongful dismissal.

126. The Claimant has prepared two schedules setting out the matters that she relies upon as detriments for her EqA claims.

127. The wrongful dismissal claim is based upon the proposition the Claimant was by the time of dismissal entitled to one month's notice, rather than the one week she was given.

Documents & Evidence

128. We were provided with a hearing bundle prepared by the Respondent, running to page 735. Although some late disclosure was provided to the Claimant by the Respondent, the product of a further search having been prompted by her recent application, neither party applied to add this to the hearing bundle.

129. We received witness statements and heard oral evidence from:

129.1 Ms Manjeet Paur, the Claimant (her amended particulars of claim and two schedules of discriminatory acts serving as her witness statement);

129.2 Mrs Mubashra Khan, at material times a solicitor employed by the Respondent;

129.3 Ms Fara Khan, at material times a trainee solicitor employed by the Respondent;

129.4 Mrs Karina Parmar, a solicitor and director of the Respondent;

129.5 Mr Jasbir Raindi, at material times a solicitor and director of the Respondent;

129.6 Mr Jason Bruce, a solicitor and director of the Respondent.

130. We were also provided with:

130.1 The Claimant's skeleton argument;

130.2 The Respondent's opening note and closing submissions.

Timetabling

131. Notice was sent to the parties on 16 June 2021, listing the case for a 7-day hearing to include liability and remedy if appropriate (i.e. if the claim succeeded). Neither party objected to this listing or said that more time was required. Realistically and working backwards, if judgment and remedy were dealt with on day-7, then day-6 would have been required for Tribunal deliberation. This meant that the Tribunal's initial reading, witness evidence and closing submissions would take place over the first 5 days.

132. In the event, day-1 was required for the various contested applications, day-2 for tribunal to make its decision on the applications and then to undertake its (substantive as opposed to procedural) pre-reading. On day-3, having informed the parties of its decision on the applications, a timetable was discussed and agreed. The Tribunal had done its pre-reading, the remainder of 5 days was available for evidence and submissions. The Tribunal's decision on liability would be reserved and a remedy hearing listed subsequently, if necessary.

133. Because the Claimant was representing herself, it was appropriate to apportion time for the evidence of the Respondent's various witnesses (primarily cross examination of them) as not to do so risked too much time being spent on one or more of the earlier witnesses, with little or no time then being left for questions of those who gave evidence later in the hearing.

134. Having heard from the Claimant with her estimates, the Tribunal was concerned at the amount of time she wished to spend with Mrs Parmar and Mr Raindi, given they were not accused of discrimination. Also, the Claimant wished for the longest time with Mr Bruce, notwithstanding he was the alleged perpetrator for one complaint only, namely victimisation in rejecting her appeal, which engaged fairly narrow factual and legal issues. The Tribunal reminded the Claimant she did not have an unfair dismissal claim. The Claimant was, however, adamant she needed the time indicated with Mrs Parmar and Mr Raindi, and whilst she accepted there was only a victimisation claim relating to Mr Bruce, she said she had to go through a lot of material to establish her position on this.

135. The Tribunal explained it would be necessary to stick to the timetable, as to do otherwise would mean the hearing not being completed within the time available, which neither party wished to see and would not have been in the interests of justice, especially give the age of this case. It was also made plain that the time allocations would incorporate Tribunal questions and re-examination also.

136. The initial timetable agreed was:

    136.1 Claimant - 1 day and 3 hours (8 hours);

    136.2 Mubashra Khan – 2 hours;

    136.3 Farah Khan – 2 hours;

    136.4 Krina Parma – 2 hours;

    136.5 Jasbir Raindi – 2 hours;

136.6 Jason Bruce – 4 hours;.

137. The Claimant later decided she wished to have more time with Mubashra Kahn and so it was agreed the timetable would be varied to:

137.1 Claimant - 1 day and 3 hours (8 hours);

137.2 Mubashra Khan – 3 hours;

137.3 Farah Khan – 2 hours;

137.4 Krina Parma – 2 hours;

137.5 Jasbir Raindi – 1 hour 30 minutes;

137.6 Jason Bruce – 3 hours 30 minutes.

138. During the hearing, the judge frequently remined the Claimant of the time, to assist her in keeping track of this. It was suggested that she should ask her best questions early, rather than saving these for the end. With respect to each of the Respondent's witnesses, the Claimant wished to continue asking questions even after the allocated time had expired. A modest overrun was allowed but it did then become necessary to halt her cross-examination. On each occasion she was remined about time more than once before the guillotine came down.

139. The importance of addressing the issues was emphasised to the Claimant, repeatedly, and it was suggested she should focus on the schedules containing her discrimination allegations. Despite this, much of her time in cross-examination was spent on general questions seeking to establish that her experience and abilities went unrecognised.

Evidence in Chief and Cross-examination of the Claimant

140. When the Claimant was about to begin giving evidence, she indicated that she wished to take with her to the witness table: her own copy of the hearing bundle; notes she had made in connection with this matter; a note pad. The Tribunal indicated that she could not take these with her and should instead use the bundles (unmarked) already on the witness table.

141. At the end of her cross-examination, the Judge asked the Claimant whether there was anything more she wished to say about the matters she had been questioned on. In reply, the Claimant said there had been things but she had forgotten these because she had not been able to take notes.

142. At the beginning of day-3, the Judge asked the Claimant whether she had thought of anything overnight that she would like to say to add to her evidence, before we began to hear from the Respondent's witnesses and she said there was not.

143. We were quite satisfied the Claimant had a very full opportunity to answer the questions she was asked in cross-examination. Frequently, her responses went well beyond (or did not address at all) the specific question asked. Rather, she would often say what she wanted to, in the general area of the question. This

was not a case where the Claimant's evidence was constrained by cross-examination and she was thereby prevented from saying more on any of topics covered.

Cross-Examination by the Claimant

144. It was frequently necessary for the Judge to intervene during the Claimant's cross-examination of the Respondent's witnesses. These interventions were intended to be helpful to both parties and the reasons for them explained at the time, which included:

144.1 The Claimant made a statement rather than asked a question;

144.2 The Claimant gave a long and detailed narrative, which although it may have included a question somewhere in the middle or at the end, was nonetheless difficult to follow;

144.3 The Claimant's question was based upon a contentious factual proposition the witness had not been asked to agree and once the Tribunal invited their comment, which was a denial, the remainder of the question could not sensibly be answered;

144.4 The Claimant asked witnesses to accept her account with respect to events they did not witness and could not comment on;

144.5 The Claimant began her question by inaccurately summarising the prior evidence of that witness;

144.6 The Claimant spoke over witnesses when they were answering her question;

144.7 The Claimant accused witnesses of not answering her questions, or being long-winded, when they were giving answers which did respond to that which they had been asked, albeit in a way the Claimant disagreed with;

144.8 The Claimant asked questions that were not relevant to the issues the Tribunal had to decide, namely the matters set out as discrimination or victimisation in her two schedules.

145. Fairness to both parties required clear questions be asked, relevant to the issues, which the witness was in a position to answer, since otherwise it was unfair to the witness and did not advance the cause of the questioner.

Claimant's Participation, Generally

146. Notwithstanding the Claimant referred to suffering with tiredness, this was not evident in her participation during the hearing. The Claimant was vigorous in her oral argument and questions of witnesses. She paid close attention and was quick to intervene when she disagreed with what others were saying. The Claimant was exceedingly confident and certain. The Claimant on some days said she was happy to sit late to finish the evidence of a witness but the Tribunal could not accommodate this because of practical constraints. The Claimant was anxious the hearing not continue past 1 March 2022, as she had to go back to

work then. The Tribunal explained the parties would not be required to attend after that point and its decision would be reserved.

147. It was necessary for the Tribunal to remind the Claimant, repeatedly, of the ground rules for this hearing, in particular:

147.1 she should not interrupt Mr Issacs because she disagreed with what he was saying, rather she should make a note and refer to this when it was her turn to speak;

147.2 she should not interrupt witnesses when they were answering questions because she disagreed with what they were saying;

147.3 she should not speak over the Judge because she disagreed with what he was saying or a ruling which the Tribunal had been made previously.

148. When it was drawn to the Claimant's attention that she was not following these ground rules, rather than recognising this, she would seek to justify her intervention by explaining why she disagreed with what the other person had been saying when she interrupted them. More than once the Claimant said she did not mean to "cause offence". No offence had been caused, the problem was nothing to do with personal feelings, rather it was that her failure to abide by the rules disrupted and delayed the proceedings.

149. When the Claimant was being cross-examined, Counsel for the Respondent, Mr Issacs, referred to the two schedules containing her allegations of discrimination, harassment and victimisation. She removed these pages from the hearing bundle. The Tribunal suggested she should not do this, as loose pages were apt to be lost and / or become difficult to find. When the Claimant persisted in removing these pages, the Tribunal provided a treasury tag so that the loose pages could at least be kept in the correct order. Later in the proceedings, when the Claimant was cross-examining the Respondent's witnesses on her schedules, a point was reached when she had difficulty locating the relevant pages in the bundle. The Claimant said this was because her vision had become blurred. The Tribunal at this stage noticed that, despite the advice previously given, the Claimant had removed the schedules from her own copy of the bundle and the individual pages were scattered all over the desk in front of her. The Tribunal pointed out that the disorganisation of her papers appeared to be the problem and suggested she reorganise these and put them back in the bundle. Once she had found the page, she was able to read its content and then put her question.

150. On one occasion when the Tribunal had to intervene in the Claimant's cross-examination, explaining that she had given a long narrative which was difficult to follow and did not include a question, the Claimant said she had started to suffer with a headache at lunchtime and this is why her questions had become less clear in the afternoon. The Tribunal reminded the Claimant there had been the same difficulty with her questions in the morning also. Regular breaks were taken.

151. The Claimant also spoke about her health difficulties in the course of making her closing submissions. She said she had not been able to prepare as she would

have wished and had issues in her personal life to contend with. Despite this she spoke energetically and at length, going past the 45 minutes we had asked the parties to confine themselves to. She went through the discrimination schedule and beyond. The Claimant had and took the opportunity to make the points she wished, very fully.

152. The availability of the Respondent's witnesses was limited, in particular as a result of other commitments, such as urgent court hearings for their clients or their own childcare commitments. As set out above, the commencement of the witness evidence was delayed from that which would originally have been anticipated, by the need for the lengthy preliminary applications to be determined. In some instances, this necessitated halting the cross-examination of a witness at the end of a day, then starting with another witness the next day, only to return to the Claimant's cross examination of the original witness at a later point. The Claimant was very accommodating and flexible in this regard, raising no objection. We were grateful for her assistance and cooperation. When witnesses were resumed in this way, the Judge began by reading from his own note of the last few questions and answers we had heard from that witness, so as orientate the Claimant and assist with her finding the correct point in her own notes. We were struck by the competence with which the Claimant was able to pick up her thread from where she left off following the interposing of a witness. This is consistent with our observations of her ability to conduct the proceedings as noted above.

Facts

Witness Evidence

153. We frequently found it difficult to understand and attach weight to the Claimant's evidence. Her responses in cross examination and when the tribunal made enquiries of her often failed to address the question asked. On several occasions, the tribunal pointed out the need to focus on the specific question, rather than merely saying what she wished to, in general terms. We were satisfied the Claimant did understand the direction given but did not always follow it. By way of example, the claimant was referred to various emails in which her managers raised concerns with her about matters of conduct or performance. She was asked whether she agreed the correspondence contained criticism of her. Rather than accepting it did or volunteering a different way in which the text could be read, she insisted on seeking to explain and justify the conduct or behaviour referred to. The tribunal clarified with the Claimant that she understood the difference between the fact of a criticism being made on the one hand and on the other, whether the criticism was justified, which she said she did. Despite there being no lack of understanding on her part, the Claimant continued to avoid providing a direct answer when the question invited her to acknowledge that her managers had made her aware of their concerns. At other times the Claimant's oral evidence was difficult to follow or capture because she would begin talking about one thing and then without completing her sentence, move on to something else. Convoluted answers were frequent when the Claimant was taken to a document that was inconsistent with her case or she was faced with a factual proposition it was difficult, reasonably, to disagree with. We concluded this pattern was not a random one but rather

indicative of a tendency toward obfuscation. Essentially, she refused to acknowledge the evidence which was inconsistent with her position.

154. We were satisfied that all of the Respondent's witnesses were doing their best to give an honest recollection of events, albeit they frequently found this difficult because so much time had passed and especially where they did not have notes or some other contemporaneous document to refer to. The Claimant suggested this was suspicious and it was very convenient (i.e. for the Respondent) they were able to recall some things and not others. We did not find there was anything suspicious in the way the evidence came out, on the contrary these difficulties were entirely predictable, given the passage of time and the fact that the Claimant was now pursuing a whole raft of discrimination allegations, which she did not raise at the time. Mubashra Khan became upset whilst giving her evidence and being taken back to what we accept was a difficult time, earlier in her career, when she was working with the Claimant. The Claimant accused her of shedding 'crocodile tears'. We did not agree. We were quite satisfied Mrs Khan's distress was genuine. She also answered the questions asked of her in a direct and straight-froward way. We were satisfied by the evidence Farah Khan gave. Despite hostile questioning from the Claimant, in both content and tone, she remained calm and gave factual answers which addressed what she had been asked. She often gave full reasoned answers, which the Claimant disagreed with, rather than a simple 'yes' or 'no'. This did not mean, as the Claimant frequently suggested, that Ms Khan was not responding to the question. Mr Bruce's was careful, considered and comprehensive in answering the Claimant's questions about the appeal process, frequently referring her to passages from his lengthy written decision, which dealt with these matters. Notably, the Claimant did not put the central proposition to him, namely that he turned down her appeal because in one paragraph of her lengthy grounds of appeal she made an allegation of race discrimination. This despite the Tribunal reminding the Claimant that her complaint against Mr Bruce was victimisation, urging her to make sure she asked her most important questions (somewhat unhelpfully, the Claimant said all her questions were equally important) and allowing her to continue beyond 3 ½ hours in cross-examination (when that time should have included Tribunal questions and re-examination).

155. The Claimant made no allegations of discrimination against Mrs Parmar or Mr Raindi. Nonetheless, there was still a great deal of hostility in the Claimant's questions of them. We were satisfied their answers were on point and it was apparent they were seeking to assist the Tribunal. Only Mrs Parmar and Mr Bruce were still employed by the Respondent, the other witnesses had to make arrangements with their current employers to attend this hearing and give evidence, which necessitated fitting it around other commitments they had.

Background

156. The Claimant obtained her LLB in 2007 and passed the Legal Practice Course (the Solicitors' academic qualification) in 2009. She did not, however, obtain a training contract. She has worked in law firms for a number of years as a paralegal or case worker.

157. The Respondent is a large regional law firm, with several offices.

158. On 19 July 2016, the Claimant applied for the position of Criminal Trainee Solicitor with the Respondent. Her covering letter referred to applying for family law injunctions in forced marriage cases, divorce and private children's proceedings. She set out more than 3 years of experience of county court advocacy "on a daily basis" in landlord and tenant cases. She explained that she wished to become a solicitor advocate.

159. The Claimant was interviewed by Krina Parmar, a Director of the Respondent, on whom she created a very good impression. She was offered employment, not in crime but rather in the family and childcare team and on the basis:

    159.1 She would be taken on as a case worker, initially;

    159.2 Her employment would be subject to a 3-month probationary period;

    159.3 If she passed her probation, then she would be offered a solicitor's training contract.

160. The agreed contractual terms included::

> **Unless it is otherwise stated in your Offer Letter, the first six months of your employment will be treated as a probation period ("the Probation Period"). After successful completion of your probation you will be formally notified and your employment shall continue unless it is terminated earlier (by either party) in accordance with the terms of this agreement The Company reserves the right to extend your probation period as deemed reasonably necessary**

161. The above term was amended by the Claimant's offer letter, to the extent that in her case the probation period was reduced to 3 months, which reflected the good impression she had created in Mrs Parmar.

<u>Employment</u>

162. The Claimant joined the Respondent on 4 August 2016. She underwent an induction, along with other new starters. In the family and childcare department, she was working alongside Farah Khan. Ms Khan had been a case worker with the Respondent since March 2015 and in September 2016 she became a trainee solicitor. Also in September 2016, Mubashra Khan joined the Respondent's family and childcare team. Mrs Khan was a qualified solicitor and joined in that capacity. She became the Claimant's supervisor. Within the same department were David Cooper, a senior solicitor, and Sophie Rayment, another case worker. Mr Cooper supervised Ms Rayment. Working in the same area of law, but at different regional offices much of the time, were Mrs Parmar and Jasbir Raindi, both being directors.

163. The distinction between qualified and unqualified staff is a most important one in this professional context, which is a factor that did not much feature in the Claimant's thinking. A solicitor, pursuant to their professional obligations, is directly responsible for the conduct of their client's case. Whilst caseworkers, or trainees may carry out work, this must be done under the supervision of the solicitor. A caseworker or trainee cannot conduct litigation in their own right. Any steps taken, including any missteps or negligence, will be treated as done by the

supervising solicitor. As several of the Respondent's witnesses told the Tribunal, it was their practicing certificate which was at stake if things went wrong. It is, therefore, entirely understandable that solicitors would want to approve the work done on their cases and ensure this met the necessary standard, which it is their individual responsibility to determine.

164. In August 2016, Farah Khan realised that a case which had recently been allocated to the Claimant was a matter she had previously been working on. Furthermore, this was a highly complex child sexual abuse case with 12 different parties to it. Ms Khan spoke to Mrs Parmar about it, suggesting the case be reallocated back to her. Mrs Parmar acted on this and switched the case back to Ms Khan.

165. From September 2016, work was allocated to the Claimant primarily by Mubashra Khan, who became her supervisor then. From time to time other solicitors, such as Mrs Parmar, Mr Cooper or Mr Raindi might also ask the Claimant to do work for them. Farah Khan had no authority to allocate work to Claimant or anyone else, rather she too would be allocated work by Mubashra Khan, or other solicitors in the department.

166. The Claimant had a good opinion of herself and a low opinion of many others she worked with at the Respondent, especially Farah Khan. The Claimant's evidence and many of the contemporaneous documents show what she thought about colleagues. The same was also reflected in many of her contributions during this hearing. By way of example, one question asked in cross-examination of Ms Khan included the proposition that the Claimant was "more skilled, more qualified, more experienced, sharper and more intelligent than you". The Claimant made disparaging comments about all of the Respondent's witnesses and some others she had worked with in the firm's family and childcare department.

167. Whilst the Claimant had some prior experience of private family matters, she had little or none with respect to public childcare. Public childcare work is very different from private cases. This will frequently involve children being removed from their parents as a result of concerns about the adequacy of care, or even abuse. Applications and court hearings often take place at speed, with great urgency. The approach of the Respondent to allocating the Claimant work was a gradual one, starting her with the simpler tasks to see how she got on with these, before entrusting her with more difficult work. Although this was undoubtedly a reasonable approach, the Claimant rejected it. In her view she was very experienced in the law and her lack of experience in public childcare did not matter.

168. On 7 September 2016, Mrs Parmar invited the Claimant to a first probation review meeting. The Claimant's email in reply included:

> **I'm a competitive person and I liked to be challenged and thrown into the deep end which I am not. I'm having work taken away from me because I'm told I'm inexperienced which I find unacceptable. With all due respect it's hardly rocket science that I can't do any of the work for childcare. With a bit of assistance I'll be able to handle it and quickly work independently.**
>
> **[…]**

> **The way I am working at the moment is at the level of a work experience student and I have much more than that to offer.**
>
> **I have amazing skills and can really work well for you i know about good client care and building a trusting relationship with clients bringing further referrals that way. I want to utilise my skills and develop more.**
>
> **I need to exceed my targets and aim for 200% to be able to achieve beyond that, be it in probation or thereafter.**
>
> **I met the new solicitor today and she seems really helpful and I'm sure she'll help in increasing my workload whilst I don't mind having an administrator role I would like more responsibility too. I'm happy to put the extra time in.**

169. We pause to note the new solicitor referred to here is Mubashra Khan and it is, therefore, apparent that the Claimant's concerns about work allocation predated Mrs Khan becoming her supervisor.

170. Mrs Parmar replied to the Claimant on 19 September 2016 in the following terms:

> **As you are aware when you started with the firm the solicitor had not yet started. She has now started and has a full caseload of ten care cases. She has been advised that she needs to share the same between yourself and Farah, which she has agreed to do. You will now be assisting her with the same. I am hopeful that this will have a positive impact on your training and your work load.**
>
> **Although I appreciate you may have done some work in family before, you are at this stage not qualified staff and are therefore required to be supervised as are other staff closely. This is not only to protect the firm but also to ensure that you receive the best training possible. When you came to the firm I was not exactly sure of the knowledge and experience that you had in family and for that reason was restricting the form of work that I was giving you.**
>
> **Furthermore I was not based in the office and was therefore not able to supervise you in the manner I would have liked to.**
>
> **Although I appreciate the advice that you are required to provide is not "rocket science" in your view, I will not be doing anything to put the company at risk and therefore will make an assessment myself and now with the new solicitor to establish whether you are competent to undertake the work required. It is then up to us whether we allow you to undertake any such work. Although I will take your comments on board, I will not be dictated as to how to allocate work.**
>
> **I have to ensure on behalf of the firm that you are qualified to undertake the work being asked. I am all for throwing someone in the deep end, however my main priority is to protect the firm from any claims being made against us.**
>
> **I am happy to note the positive comments that have been made by clients.**

> **Going forward the new solicitor will be able to keep a closer eye on this as she is based in the office and will oh able to allocate work to you in accordance with your competence.**
>
> **I have other caseworkers in a similar situation to you, who have been meeting their targets so there is no reason for you to not to meet the same in the way that you are working. As I have said if you need any work please contact Jas and myself**

171. It is quite clear from this email that Mrs Parmar did not think the Claimant's representations had been appropriate. She told us (and we think this is in any event apparent from what she wrote) that the Claimant's reference to the work not being "rocket science" was dismissive. She also did not appreciate being "dictated to" on the allocation of work. The Claimant's was asked about this early email in the course of cross-examination. She denied the message included any explanation of why work was being allocated to her as it was. This answer was difficult to understand. The email gives a clear and reasoned explanation for work allocation. The Tribunal intervened to clarify the Claimant understood the difference between being given an explanation and whether she agreed with that and she said she did. This was one of many instances in which the Claimant's evidence was contradicted by documentary evidence put in front of her and yet she would not recognise that.

172. In the period prior to Mubashra Kahn joining, Mrs Parmar determined the allocation of work to the Claimant in the way she described in this email. Mr Issacs asked the Claimant to confirm she was not accusing Mrs Parmar of discrimination. The Claimant said "she's Indian, Hindu, why would I? She's British Indian, born and bred here".

173. The first probation review took place on 3 October 2016. In relation to personal qualities / skills, Mrs Parmar awarded mainly 4s (requires improvement). Mrs Parmar's comments on the probation form included:

> **Ability to carry out instructions**
>
> **KNP makes clear to Manjeet, she was not happy about tone of email and will not be dictated to in relation to work**
>
> **Understands job description (tasks, responsibilities, role within team)**
>
> **Same as above – she will have to undertake all tasks allocated to her**
>
> **[…]**
>
> **Positive Attitude / Client Service skills**
>
> **Needs to speak to and communicate in a better manner**
>
> **[…]**
>
> **Communication and interpersonal skills (with clients / 3rd parties & colleagues)**
>
> **Dis re emails + tone and how come across**

174. The Claimant was asked to agree that Mrs Parmar had explained she was not happy with the Claimant's communication and how she interacted with others. The Claimant denied this, saying "she never said anything to me about talking to anyone". The Claimant said that Mrs Parma looked down on her, as she was a director and the Claimant was only a case worker. The Claimant's evidence on this was wholly unrealistic. It is quite clear Mrs Parmar had originally formed a very good impression of the Claimant, recommending her recruitment to the firm in glowing terms. Thereafter, Mrs Parmar had become concerned about the Claimant's communication style and her objections to doing the work she was given. Mrs Parmar told her about these concerns at the probation review.

175. Work continued to be allocated to the Claimant. Email traffic between Mrs Parmar and Mubashra Khan includes various cases the Claimant was tasked with doing work on. The Claimant did not dispute the genuineness of those emails or deny having been asked to take steps in the matters referred to.

176. In October 2016, there was another occasion on which a case Farah Khan had been working on was passed to the Claimant. This happened because Mubashra Khan was on annual leave and Mr Raindi was covering her cases. As before, Ms Khan contacted Mr Raindi and explained it was a case she had been working on.

177. On 11 October 2016, Mrs Parmar asked the Claimant to carry out an urgent task. This instruction was not acted for two weeks and only then as a result of Mrs Parmar chasing. Inconsistently, the Claimant complained of having a lack of work to do and at much the same time, being too busy to complete urgent tasks. We find that despite Mrs Parmar's explanation, the Claimant was choosing not to do certain kinds of work, especially that which was not billable.

178. Also on 11 October 2016, the Claimant sent a witness statement she had drafted to the client. The following day, Mrs Parmar asked the Claimant whether she had asked anyone (i.e. a solicitor) to look at this before it went out. The Claimant said she had not but would have sought approval from her or Mr Cooper before lodging it with the court. Mrs Parmar responded in the following terms:

> **Hi Manjeet nothing should go out without a solicitor approving including all emails, letters etc . I have informed you of this before**
>
> **That statement needs amending and re drafting. Please see the precedent that Sabrina sends and re draft the statement**
>
> **Please ensure the sentences flow properly as they do not at the moment, please also ensure you do not use abrevation for words such as nfa**
>
> **Please also ensure proper grammar is uses so please do not use don't and won't it should be do not and would not**
>
> **Please send me the re drafted statement to approve before it goes anywhere**

179. This exchange captures more than one ongoing issue. The Claimant thought about the cases as her own, rather than being the solicitor's. The need for approval by a solicitor appeared to her a technicality rather than an important

matter of substance. There was also a problem with the quality of her written work, with respect to formatting, spelling, grammar and content. In her evidence at the Tribunal the Claimant dismissed this as merely being told to not to use "won't" instead of "would not" and "don't" instead of "do not". The Claimant took the Respondent's witnesses to typos in their own witness statements, such as where a word was missing, to support the proposition that everyone makes minor mistakes from time to time. This is, however, to sidestep the concerns raised with her on this occasion and many others. The faults with her written work were many and various, including the substantive content. Furthermore, it was the solicitor who was professionally responsible for what went out (whether to the client or the court) and they had to approve it. The individual solicitor was entitled to be satisfied with respect to both content and style.

180. On 14 October 2016, the Claimant asked Mrs Parmar for confirmation of who her supervisor was. This enquiry should not have been necessary, as the position was clear. Mubashra Khan was supervising. The reply was an email to the department explaining the reporting lines. The Claimant worked under Mrs Khan. For certain limited purposes connected with the Legal Aid Agency, David Cooper (a panel solicitor) would review her work. Mrs Parmar and Mr Raindi would consider performance and conduct probation reviews.

181. On 18 October 2016, Mr Raindi wrote to the Claimant in connection with a client care letter she had drafted. He had made tracked changes and asked her to pay careful attention to formatting, spelling and grammar. He also said he was "concerned by the Parental Responsibility issue, this has been commented on, please clarify", which was a matter of substantive content.

182. On 19 October 2016, Mrs Parmar amended a statement the Claimant had prepared saying:

> **Hi please find attached my amended version. That was much better manjeet. Please be conscious when drafting statements not to use abbreviations such as didn't, wouldn't etc as this is not very professional. Please also ensure that slang language is not used such as "split up" better work would be separation Please also ensure that there is some chronological order to the statement and that you mention specifically at least three key incidents**

183. Mrs Parmar's email included positive words along with guidance on drafting.

184. The Claimant's position is that no concerns were raised with her about her performance or conduct during probation. This is not true. Mrs Parmar and Mr Raindi raised her communication style and quality of work on a number of occasions.

185. On 26 October 2016, Farah Khan sent an email to the Claimant about a new client, saying she did not have capacity to take the matter on and asking if the Claimant could help. The email included a brief outline of the case. The email was copied to Mubashra Kahn and it would, of course, have been her decision whether to allocate this to the Claimant or not. The Claimant immediately refused to do the work. The email exchange between the Claimant and Mrs Khan included:

C

Sorry if you don't mind, I do not want this case. I've got lots of cases I'm waiting to open and work on.

Considering she doesn't have the capacity to take this matter on, considering I have no work and I'm not barred from working on those cases, which I believe are under you.

It would be your case please deal with it as you see fit.

MK

You told me yesterday that you need more work could you please take on the case.

C

I don't want to waste my time with preparing seeing clients and nothing comes of il. It affects my chargeables, Ill be doing all the preparation which is non chargeable work

My chargeables are already low for this month. Three days I've more or less had nothing to do. I think you should give it to Farah, it was her client not mine and she should take it.

I recall the stink that was caused when David wasn't given any work so why is it different for me. I think you're taking sides and I'm not happy with that.

It'll be the same with […] don't know what she wants and I don't want to waste my time dealing with a case which wont go anywhere

Il don't have capacity to deal with the preliminaries.

Sorry.

MK

I am not taking anyone's side. You told me you do not have any work and I am now giving you work I am not sure what you expect me to do. This is a new matter and you will be able to charge for the work that you undertake so I am not sure what you mean.

C

Yes I do need the work. Why do I have to start on new matters.

I've got 10 cases waiting to start. It is a waste of my time. Jas has already said for me to limit my time for client whom haven't paid or aren't with a certificate. Sorry I am not doing it.

I went to Oxford to pick up two matters on a case and ppi cant be asked to attend that case or see to it, sol for people.

I am not doing the odd jobs any more. Filing, calling clients etc, going to doctors to collect papers. It affects my chargeables. It Is her case and she can do it.

You can give her the […] case too. jt wont affect her she can work the extra hours.

C

I think you should consider giving her lives cases to me. I see that as fair considering she doesn't have sole conduct of the case.

Its more than fair. She didn't even want to give me the work this morning. I didn't get to his age in life with learning a thing or two about people and the work environment.

C

[…]

I'm just going to raise my concerns with Krina and Jas because its completely unfair, that I get the odd jobs and everyone else gets the bulk of the cases.

186. The Claimant in this exchange repeated her contradictory approach, of complaining she should be allocated more work and at the same time refusing work, saying she already had lots of cases. She then proceeded to tell her supervisor how work should be allocated. This was done against a backdrop of Mrs Parmar having explained how work would be allocated, confirmed that Mubashra Khan was the Claimant's supervisor, reminded her to be mindful of her communication and scoring her as requiring improvement in this.

187. In terms of allocating work to the Claimant or Farah Khan, the Claimant expected an equal division of all cases, in particular those which were up and running where the work would be billable. Mubashra Khan's approach to allocation, that of Mrs Parmar and the Respondent more generally, was not one of numerical equality, rather it was to allocate work on the basis of competence, capacity and continuity. The more difficult work would be given to the more experienced and most competent case workers. Capacity was important where urgent applications were being made, with potentially life-changing consequences for clients and their children. Continuity was also relevant. If a case worker had been on a case for some time, was familiar with it and / or had prior contact with the client, this would be a good reason to keep that same person on it.

188. On 26 October 2016, the Claimant spoke with Mubashra Khan about work allocation. This followed what became a familiar pattern. The Claimant would say she wanted more work, by which she meant more cases of the sort Farah Khan was working on. Mrs Khan would reiterate the general approach to work allocation. During this particular conversation, Mubashra Khan suggested the Claimant was less willing to put in the "leg work" than Farah Khan. Having become exasperated by the Claimant's approach to all of this, Mrs Khan halted their conversation abruptly because the Claimant was not listening to her. There was, however, no pointing of keys in the Claimant's face. We noted the

Claimant's recollection of this has evolved, from the appeal stage where she said, for the first time, that Mrs Khan had pointed fingers in the Claimant's face, to the schedule where this became pointing keys in the Claimant's face. For the sake of completeness, we do not find there was finger pointing either. The Claimant sent an email to Mrs Khan immediately following this discussion, in which she set out various complaints and referred to "leg work" several times. Any reference to finger or key pointing is notable by its absence. The Claimant would have complained about this at the time if it had occurred.

189. In an email that day, the Claimant complained about work allocation to Mrs Parmar:

> **In regards to your attendance tomorrow and the issues to raise in the office they are as follows I should be given a fair opportunity to earn my chargeables. I'm having work taken away from me or not being given it. I have asked several times for work.**
>
> **[…]**
>
> **I'm sorry I do not accept that I lack the sufficient experience for the work given to me because I'm not advocating nor preparing particulars of the case. I believe I'm being judged on the standard of the team and I believe I have better skills that I have not been allowed to utilise.**

190. On 27 October 2016, Mubashra Kahn emailed Mrs Parmar and Mr Raindi, asking to speak with them about the Claimant. When they met that morning, Mrs Khan raised her concerns about the Claimant's attitude and quality of work.

191. The same day, Mrs Khan attempted to allocate work to the Claimant. In response to the first task set, the Claimant replied she would "try to do it before 31st". She went on to suggest it should be allocated to Ms Rayment instead. Mrs Khan then attempted to allocate another task to the Claimant, who responded:

> **Is the cost extension chargeable work?**
>
> **I haven't worked on this case so I no nothing about it.**

192. Whilst they were in the office on 27 October 2016, Mrs Parmar and Mr Raindi also met with the Claimant. Surprisingly (as the position had been explained several times) the Claimant said she did not know who was allocating her work. She was reminded, again, that it was up to Mubashra Khan to decide how the work was allocated. The Claimant said she had no work for the previous two days, which position is difficult to reconcile with her replies to Mrs Khan that day. Mr Raindi told the Claimant the tone of her recent emails was inappropriate and her communication should be more professional. He went on to say that even at director level there was a need to carry out non-chargeable work. The Claimant said she didn't mind doing non-chargeable work and the notes of this meeting include "I have never questioned MK". This last point is not true, the Claimant repeatedly challenged and questioned Mrs Khan. We accept the Respondent's note of this meeting fairly reflects what was said.

> **Jasbir Raindi explained to MP the different levels of staff, that caseworker are set tasks by the Solicitors they work under, the Solicitors are monitored by supervisors, the supervisors monitored by the directors,**

directors by the board and ultimately we are answerable to Shany. It is our (Jasbir Raindi and KP) job to ensure everyone in our teams meet/exceed their targets, this will help the fee earners when is comes to progression, salary increases etc.

MP:

• I am happy to undertake work for MK

• I am not being given work to do

KP explained that demanding types of work was not appropriate and telling MK what she should or shouldn't be given to do as work.

MP:

• I will do all tasks set by KP

• MK is not splitting the work equally amongst F and me

• The emails I send come across differently to how I am in person

KP: with the email issue I have told you already about the content and how they come across. You need to communicate with professionals carefully to not affect professional relationships. You need to re-think emails before they are sent, we are trying to support you but you need to understand that previously whilst you were given more flexibility DL has very tight regulation and you need to undertake tasks set to your level of competence.

MP:

• The work should therefore be split equally by DL

• Well MK needs to be a more competent supervisor KP: you are still a caseworker, the Solicitor has responsibility for all work you undertake then the Directors.

[…]

KP: it is up to MK how work is allocated and she shouldn't have to explain herself

MP:

• I agree MK does not need to explain herself Jasblr Raindi: no respect is shown by MK for her position as supervisor to MP

MP:

• MK has not supervising skills

Jasbir Raindi paused MP at this point and asked her to reflect on the comment she had Just made and how that would be perceived in the same manner that her emails may not be perceived as she wished. Jasbir Raindi asked MP to express herself carefully as a lawyer would and bear in mind how such comments can be taken the wrong way.

KP: we will review the situation in 2 weeks, MP will need to do as she is asked

[…]

193. We did not accept the Claimant's note of this meeting (prepared much later in connection with her appeal against dismissal) as a reliable guide to the discussion, save to the extent that it is consistent with the Respondent's note. Given this was not contemporaneous and the Claimant prepared it from memory, we think it most unlikely she could, reliably, prepare something akin to a transcript.

194. In the morning on 1 November 2016, Mubashra Khan asked the Claimant to complete to a particular task in relation to a legal aid application. The Claimant said she was busy and suggested Mrs Khan ask someone else. This is another example of the Claimant refusing work because it was not to her liking, whilst complaining more generally that she did not have enough. Mrs Khan was frustrated and irritated by this response and the exchange became somewhat heated. In the course of this the Claimant said to Mrs Khan she would "leave the firm because of you".

195. On 2 November 2016, Mubashra Khan wrote to Mr Raindi, twice:

Further to my meeting with yourself and Jas last week. I am not at happy as the way Manjeet speaks to me she is extremely rude and It is Impossible to actually have a conversation with her. Ozma from the Milton Keynes office was here yesterday and she also witnessed her awful attitude towards me, which is not nice and is creating a nasty working environment for me. She is very unprofessional and to be honest with you both I have tried working with her and I cannot put up with her 'attitude' towards me. She Is making me feel extremely uneasy a feeling I have never had in my working life to date and I should not have to be putting up with such behaviour.

[…]

Thank you for gelling back to me. She is now very careful In what she put's in her emails and Is more vocal now. It is so difficult to engage with her and It has got to the point I really do not want to speak to her, as she will just cause an argument in the presence of the entire office, which is not very nice. We all are busy and I just don't need this additional stress from her. No doubt Ozma will fill you in.

196. On 4 November 2016, Mr Raindi spoke with Ozma Hussain. She had recently visited the office where the Claimant was based and told him she felt there was a lot of tension. His notes of this (which accurately reflect what she said) were:

[…]

• On 01.11.16 when OH spent the whole day in Luton and noted Mubashra Khan ("MK") being asked by MP to check a letter or email

• MK asked for some time before she would be able to consider the document(s), MP asked several times again before asking MK why MK was not checking the letter

• This left an uncomfortable atmosphere in the office

• MP accused MK of losing her temper, MP responded by saying 'I'll leave the firm because of you" directed to MK, MP then made a telephone call to someone else

• Farah Khan and Sophie Rayment told OH separately that MP creates a negative environment for everyone at the office as she is argumentative with David Cooper & MK, that MP lashes out at them

• OH felt there was a bad atmosphere at the Luton office caused by MP, that MP is a loud mouth and the tension is caused by her.

197. On 7 November 2016, Mrs Parmar spoke, separately, with Mr Cooper and Ms Rayment. Her notes of this (which accurately reflect what was said) were:

[DC]

• KNP raised with DC the issue of Manjeet and asked him if there was any feedback that he would like to give in relation to the issue as she had been made aware that he also had some trouble with her

• He stated that she was a trouble causer and was a real problem in the office

• He said that she had fallen out with Yvonne, Hannah and also Arouj and spoke to them in a manner that was not appropriate in front of the whole office

• DC stated that she had started arguments with him as well on several occasions in front of the office and was very aggressive to him

• In relation to work - DC stated that he had given her some things to do, however she needed a lot of guidance and her drafting was not of a very good quality

• He stated that he had heard her on the phone a few times and her telephone manner was not very good or the way that she spoke to clients

• He said that she was creating a negative impact in the office

• He states that MK has been left upset on several occasions in relation to the way

in which Manjeet has spoken to her

[SR]

• Whilst undertaking the probation review with Sophie, she stated that there were a number of issues that she wanted to raise with KNP in relation to Manjeet

• She stated that she is creating a really bad atmosphere in the office

• She said that she had been rude and aggressive to DC on several occasions and had made him feel really upset and would often tease him about issues

• She showed no respect towards him at all ♦ She stated she felt uncomfortable the way in which she would speak to MK in front of the office and again had no respect for her

• She would moan to herself and FK that they were getting all the good work and she was left with nothing

198. The Claimant's second probation review with Mrs Parmar also took place on 7 November 2016. Scores of 4 were given for client skills. The comments included timescales not being met and incorrect explanation of a process being given to a client. The Claimant also got mainly 4s for personal qualities / skills:

Ability to carry out instructions

Need to work on time limits> she also needs to learne to take on board the advioce that is given and not to continue challenging it at every aspect

Understands job description (tasks, responsibilities, role within team)

KNP stated that she still failes to undertake tasks that are given to her and keeps asking for work which is not simple consideration and letters. KNP makes clear that we will allocate her what work she is competent to undertake in our view and she cannot dictate what work she wants and what she does not

[…]

Positive Attitude/Client service skills

KNP discussed with her the indcidents that had happened with others in this office and she would hope that her conduct would improve and she would show senior sol some respect

[…]

Communication &Interpersonal Skills (with clients/3rd parties & colleagues)

KNP and Jas had a detailed meeting with Manjeet in relation to this issue and it appears that little improvident has been made to date. KNp stated that she should speak to someone in the way that she would like to be spoken to. this was a real area of concern for knp

199. The probation review also included comments on the poor quality of the Claimant's written work and telephone manner with clients.

200. After the Claimant's meeting, Mubashra Khan asked the Claimant about her training contract. Mrs Khan also had her own probation review the same day. During her meeting, Mrs Khan spoke of the difficult working relationship she had with the Claimant.

201. In order to address the ongoing problem and whilst she was still at this office, Mrs Parmar convened an immediate meeting with both the Claimant and Mubashra Khan. Mrs Parmar explained there needed to be no negative

atmosphere and the Claimant had to be able to work for her supervising solicitor. The Claimant apologised and said it was nothing personal it was just she was concerned about the allocation of work. Mrs Parmar reminded the Claimant to be careful about how she treated Mrs Khan, who was a more senior member of staff.

202. On 17 November 2016, Mrs Parmar wrote to the Claimant. She began by commenting positively on the joint meeting on 7 November 2016. She then summarised areas for improvement which had been discussed:

> **KNP stated that MP needed to ensure that matters were done in the correct time frame. KNP provided you of examples of how this could be done**
>
> **• Clients were provided accurate information , as were Jas and I so that we could properly advise you ♦ When dealing with agencies we needed to make sure that we provided extra client care and that there were no complaints**
>
> **• Undertake all work that is given to you regardless of what it is**
>
> **• Communicate with others in a professional manner**
>
> **• Be cautious of the use of emails and how they be come across to others - KNP gave you examples of you could rephrase things to be more approachable**
>
> **• Improve on drafting and making yourself more familiar with the law and red book**
>
> **• Undertake ex part advocacy**
>
> **• The atmosphere in the office**
>
> **[…]**
>
> **As I advised you by email yesterday I will be completing your next review as soon as I return from leave**

203. The Claimant could not, in light of all that had happened, believe that she had passed her probation, merely because 3 months had now elapsed. Multiple concerns had been raised with her and the email of 17 November 2016 told her there would be a further probation review. Necessarily, a decision would be made when that next review took place. Furthermore, the Claimant's written contract provided she would be formally notified on the successful completion of her probation and that had not happened. Her evidence as the Tribunal was, after some equivocation, that she was not sure whether she had passed her probation. We find at the time she knew she had not done so.

204. On 22 November 2016, Mubashra Khan instructed the Claimant to prepare a costs schedule. Having prepared a draft of this document and in the absence of Mrs Khan, the Claimant sent a copy of this to Mr Raindi and asked him to check it. He sent it back with some tracked changes and indicated adjustments

required. Mr Raindi had not done any work on the case and was unfamiliar with it. Necessarily, his comments were of a general nature.

205. Early on 25 November 2016, Mubashra Khan, asked the Claimant to make some further amendments to the costs schedule. This was her case and she knew the detail. The Claimant refused saying it had already been approved by Mr Raindi. Mrs Khan said she would contact Mr Raindi. The exchange became heated and voices were raised. This was a clear example of the Claimant refusing to follow Mrs Khan's reasonable instructions. She sought to use Mr Raindi's comments on an earlier draft as a justification for this.

206. There was then protracted email traffic and an argument in person. The email exchange, with Mrs Khan, Mr Raindi and the Claimant, included:

> **MK to JR 09.50**
>
> **I hope you're well and sorry for sending you this email as I am just furious at the moment!**
>
> **I understand that Manjeet liaised with you regarding a schedule of costs yesterday.**
>
> **I have told her to make the attached amendments but she is refusing to do so as you have approved it and she has just had an argument. To be honest I have tried very hard working with her and I am sorry but I cannot work with her. I have just about had enough of her attitude!**
>
> **In relation to the schedule of costs we first need to send the same to the Respondent to approve and if not we will need to send it the Court for a detailed assessment. We need to justify our costs and as the schedule stands t does not and I am not content sending it to the Court or the Respondent.**
>
> **JR to MK 09.52**
>
> **I did approve the schedule but obviously it needs the Solicitor's input too as I have not worked on the file I shall direct her to make the amendments and remind her to follow your instructions as I can only give objective guidance**
>
> **JR to C 09.58**
>
> **1. Make the adjustments as sought by Mubashra this morning by 12pm, once done Mubashra will approve before giving further direction about where to send the document and what to do;**
>
> **2. I gave you objective guidance in respect of costs schedules on the basis your supervisor and lead Solicitor were not available;**
>
> **3. I have not worked on this file, as such the lead Solicitor always has final say about such items and what needs to be done such as amendments etc.**
>
> **C to JR 11.23**

Mubashra said to change it, I simply said that Jas has approved it and this is his precedent.

JR to C 11.44

It is not my precedent, it was guidance on the basis your Solicitor and supervisor were not available. Precedents must be tailored to client's needs, I do not know the file.

Make the changes Mubashra has asked for, I want to see these by 12pm as per my earlier email to you timed today at 09:58am.

C to JR 11.46

I'm sorry but that is an unreasonable demand, it 11.44am, I did what I can without the solicitor present and I am being penalised for that.

Mubashra wasn't here so what could 1 do? It's a large file and will take me best part of the day at least.

You said it was good to go so I took it as good to go as a director.

207. During that morning whilst the Claimant was refusing to amend the schedule, tension in the office built up. At one stage a client meeting was due to take place. The Claimant appeared to believe this was her client and she was getting ready to attend the conference. Mrs Khan told the Claimant, Farah Khan would go to see this client as she had worked on the case previously. The Claimant disagreed with the instruction and there was another heated argument. During this exchange, Mrs Khan lost her temper momentarily and told the Claimant to "shut the fuck up". Immediately thereafter, Mrs Khan realised that she should not have said what she did and contacted Mr Raindi by phone. He made a note of their conversation, which we accept accurately reflects what was said:

She had to leave the office as she was very upset

She had been wound up all morning by manjeet and had told her to shut the fuck up before mubashra walked out

There was a dispute over the drafting of a schedule that I had approved for manjeet but mubashra had asked her to adjust it, manjeet had refused saying that as I had approved it the document did not need changing

Mubashra was told by me to take as much time as she needed for her lunch and a break right now to settle as she was quite upset when speaking to me

Mubashra told me she cannot work with Manjeet anymore that she would seek a transfer to another office or would even consider leaving the firm due to the distress being caused to her by manjeet

I recapped what I had said in-emails about the issue

I told mubashra to finish the day off and I would ensure work is done, that mubashra should issue tasks as usual to manjeet and if she refused to not argue with her but let me know and I would step in, I told her this to reduce risk of further conflict in the office between them

Mubashra told me she would try, I suggested she apologise for telling manjeet to shut up but mubashra told me she would not

208. The email traffic continued:

C to JR 11.56

I have just had Mubashra to tell me to 'shut the fuck up'

Jas I'm sorry I don't know what is going on but she has been shouting at me since this morning over this schedule I was quite happy to do it as she wanted, I just didn't want to challenge you or question you over it so she started shouting at me in front of the whole office. And she wouldn't let me go see a client, she wanted Farah to go down.

Jas I don't know what to do. How can I resolve this.

Jas I'm sorry but I really don't know what to do about this.

JR to C 12.00

Manjeet you have been told by me twice now to make the amendments, they are not cumbersome and could have been done by now.

I said it was good to go yes but I am not the Solicitor on the case I do not know the finer points, Mubashra Is entitled to ask for adjustments to be made as she sees fit.

Now, for the third time:

• Make the amendments as sought In response to the points in your email:

• This is not an unreasonable request

• You are not being penalised

• You are being asked to make adjustments as your Solicitor has asked you as your Solicitor's caseworker

• I asked for the changes to be made at 9:58am, at 11:23am I see your email about this-almost 1 % hours later

• If it will take more time take the remainder of the day if need be but complete the task as set today if not by 12pm

JR to C 12.07

Manjeet, please complete the task as set, myself and Krina will address this issue, I will speak with Krina upon her return from leave about this otherwise if you want to take any other action please consider the HR policies.

Mubashra wishes for certain caseworkers to undertake certain tasks that is her prerogative.

I cannot comment any further about anything else at the moment.

C to JR 12.11

Of course I will do it just needed more time.

C to JR 12.11

I have contacted HR but I don't know how I'm expected to work like this.

I don't know what is up with her this morning. Other members of the office had commented this morning that the why is she shouting at me & the way she was shouting at me was well out of order.

In regards to her prerogative as I said I'm happy to complete the schedule I worked the entire case.

209. Given everything that had happened, including the Claimant's complaint about Mrs Khan having sworn at her, Mr Raindi decided to put in place holding measures. Discussions between the two protagonists were to be about work matters only. The Claimant would have to undertake any work allocated, without challenge or question. Mrs Khan was to provide a list of tasks and deadlines for him to monitor. Any dispute should be raised to Mr Cooper and then Mr Raindi.

210. Mubshra Khan replied with a list of tasks and times.

211. The Claimant emailed Mr Raindi saying that she did not understand why her work was being monitored and making other complaints. She also said she would assume that she could "swear back" at Mubashra Khan, who had a "large ego". She made various points to the effect that Mrs Khan was given higher priority because she was a solicitor and the Claimant had minimal rights because she was a "caseworker".

212. Whilst the Claimant, at times, seemed very focused on status, there was no evidence to support a finding that the Respondent held caseworkers in low regard. We also note this case theory (to which she returned at the Tribunal on several occasions) about the reason for her treatment is inconsistent with the Claimant's discrimination claims.

213. Mr Raindi replied to the Claimant pointing out the measures he had put in place were an attempt to avoid further issues arising.

214. Later on 25 November 2016, Ms Rayment sent an email to Mr Raindi with her recollection of events that day, set out at great length. Farah Khan also wrote to Mr Raindi, albeit more briefly.

215. By an email of 26 November 2016, the Claimant complained she was a victim of bullying and Mubashra Khan had shouted at her. She said she was concerned "that rather than address my complaint each time, I am penalised and monitored instead". As far as her earlier complaints were concerned, these focused on work allocation and the Respondent told her, repeatedly, that she had to do the work allocated to her by her supervisor and could not dictate to the Respondent in that regard. Her concerns were, therefore, addressed and she was given a clear response, albeit one she disagreed with. The kind of close monitoring Mr Raindi introduced on this occasion was a one-off, although the more general

ongoing assessment of her work was an integral part of her being in a probationary period.

216. On 28 November 2016, Mubashra Khan wrote to Mrs Parmar, copied to Mr Raindi, to say she could no longer work with the Claimant:

> **My working relationship with Manjeet has broken down and I refuse to work with her anymore. I feel I have placed my practising certificate at risk long enough whilst working with her and I feel I can no longer take the risk. I have worked very hard to be in the position I am and I will am not witling to take anymore risks, I fear if she continues the way she Is going She will probably place the company at risk one day. Manjeet does not listen to what she is being told to do and becomes argumentative and challenging. I have trained up Many paralegals and have never in my professional or in fact my personal life come across anyone like her. I no longer have the strength to put up with her volatile behaviour She does not have any respect for her seniors nor her colleagues in fact. I am really shocked by her behaviour and she behaves more like a 'naughty school child'. I now understand completely why she has nol yet been able to obtain a training contract as no firm is probably wiling to lake any risks by employing her. She was rude and argumentative towards David a few days before she was rude to me.**
>
> **I walked out of the office on Friday with the intention of not returning as I have just about had enough of her behaviour and it is now beginning to upset me. As a matter of courtesy I contacted Jas to tell him what had happened and Jas told me to take as long as I want out of the office but do return back to the office until your arrival. I respected what Jas had said to me and as much as I did not want to return I did what Jas said and await your response. Please let me know asap what you decide as I have Court hearings coming up and if you would like me to stay I need to start preparing for the same. I have one of Sarah Patel's hearings on Thursday which I will need to start preparing for immediately.**
>
> **However, If both you and Jas decide that you would like Manjeet to remain working with me then I will have no choice but to resign as my sanity is more important than working with her. Due to her behaviour I dislike coming into the Luton office and no one should be expected to feet this way.**
>
> **I do accept I should not have 'sworn' at her but she was continuously winding me up all day and on top of trying to concentrate on casework and with her in the background I told her on numerous occasions to be quiet but she would not listen and then she got the reaction she was seeking. I asked David to please intervene but she was not listening to anyone.**
>
> **I have tried very hard to work with her but she just makes it impossible and I really am not sure why she has this 'attitude' towards me. I regret to say the quality of her work is not up to a standard as it should be, (an example being the statement I forwarded to you) which I then had to take twice as long as amending. I now know for myself why Tariq refused to give her any challenging work as she is highly incompetent The only positive I will say she has is marketing but she has been employed as a caseworker not a marketer I will continue to work with her only up until close of business on Monday and Hook forward to hearing from you.**

> **Whatever you and Jas decide I will completely respect your decision and I would like to say it has been a real pleasure working with you both. You have been a real support for me since being at DL and I have enjoyed working with you both and I am grateful for sharing your knowledge with me when I have approached you for guidance.**

217. Further to the breakdown in working relations between the Claimant and Mubashra Khan, on 28 November 2016 Mr Raindi changed the reporting line so the Claimant would now be working under Mr Cooper and a new solicitor, who was starting the following week. In reply the Claimant asked for some of the cases she had been working on to "carry on over to David". This was, in substance, a request that some of Mrs Khan's cases be transferred from her to Mr Cooper. Mr Raindi's reply included "files will remain with their respective solicitors". The Claimant did not accept this. She wrote:

> **Thanks for the clarity but I'd still rather take some of my cases. I don't think David has much work and these cases are cases I have picked up myself.**

218. Mr Raindi reiterated his decision:

> **The files stay with their Solicitors, they will not be transferred by me to David or any other person.**

219. On 2 December 2016, Mr Raindi wrote to the Claimant about some drafting she had done, saying "I have just amended the doc heavily so please carefully consider the changes made for future similar tasks."

220. On 6 December 2016, Mrs Parmar wrote to the Claimant, saying she had not been in a position to discuss her recent problems any sooner due to being on annual leave and would do so in their upcoming probation review meeting. Mrs Parmar also proposed a mediation between the Claimant and Mubashra Khan.

221. On 8 December 2016, the Claimant wrote to Mrs Parmar making various complaints about her treatment by Mubashra Khan, including being called a "bitch". She referred to Farah Khan and Ms Rayment "smirking" and said they were all "colluding against [her]". Work allocation was also raised.

222. The Claimant's third probation review meeting took place on 8 December 2016. Mrs Parmar conducted this, with Mr Cooper in attendance to take notes, which we find accurately reflect the discussion. The Claimant said she had been bullied by Mubashra Khan for some time. Mrs Parmar asked why she had not mentioned this before and the Claimant said "for the sake of my probation". The Claimant also said that Mrs Khan had allocated "no" work to her. They discussed the costs schedule issue, involving Mr Raindi, and Mrs Khan swearing at the Claimant. Mr Parmar asked the Claimant why she kept on "challenging and challenging and challenging". The Claimant said this was because Mr Raindi had approved the costs. Mrs Parmar referred to the Claimant asking Mrs Khan to allocate work to Ms Rayment rather than her, which she said was an example of the Claimant not wanting work. The Claimant denied this saying "No, I haven't said no I won't do it". Mrs Parmar asked the Claimant how she knew people had been badmouthing her in the office (which she had recently complained about). The Claimant replied "Other people. I'm not saying who. I don't think they'd want

me to say." She said that Farah Khan and Ms Rayment had been "bitching about me" and she overheard Ms Khan referring to her as "a bitch".

223. The probation review was then paused. Following a short break, Mubashra Khan was invited to join the meeting, which became a mediation session. This was done in an attempt to address the Claimant's complaints about Mrs Khan and also those being made in the opposite direction.

224. The Claimant said she wanted to know why Farah Khan was being treated differently. Mrs Khan explained various factors which influenced work allocation. Tasks the Claimant been allocated were discussed, as was the quality of her work. At one point Mrs Parmar asked the Claimant to stop making "gestures". There was a discussion about the costs schedule and this included Mrs Khan saying "I accept I swore. I should not have sworn at her." The Claimant did not agree that she had been rude. Mrs Khan said she was being undermined. The need for the Claimant to accept her supervisor's instructions was raised. The Claimant's response to this point was to complain about Mrs Khan. The Claimant asked how long the meeting would last, as she had work to do. There was then an exchange in the following terms:

> **MP then asked: "When did you asked me if I need assistance because I'm working out of hours?"**
>
> **MK: If you needed help why did you not ask me for assistance?**
>
> **MP: I don't think this is an effective meeting.**
>
> **KP: This has gone on for ever. You can't work with each other.**
>
> **MK: Absolutely.**
>
> **MP: I don't see why I should work with someone who is rude to me.**
>
> **MK: I don't appreciate being called a ?? liar/bully.**

225. The mediation stopped at this point. Following a short break, Mrs Parmar and Mr Cooper met with the Claimant again to continue the probation review. There was a discussion about various cases and tasks worked on by the Claimant. Mrs Parmar raised examples of the Claimant inappropriately challenging the solicitors allocating work to her. Mrs Parmar said she didn't think there had been any improvement in the Claimant's ability to follow instructions. Mrs Parmar moved onto interpersonal skills more generally, suggesting the Claimant should speak to others as she would wish to be spoken to. The Claimant said that people were "slagging [her] off" and Mrs Khan told her to "shut the fuck up". Mrs Parmar drew the meeting to a close. She said she could not recommend the Claimant for a training contract.

226. The Claimant's probation review scores were almost exclusively 4s. The comments recorded multiple failings and a failure to improve. With respect to the chargeable hours (the subject of the Claimant's constant complaints) she received a 3 (satisfactory) as she had done previously.

227. By a letter of 8 December 2016, the Claimant was given one week's notice of termination, based on her performance and conduct during the probationary period. At the Tribunal, the Claimant said no-one told her what the performance and conduct issues were. We do not agree. Whilst the termination letter did not set this out, concerns had repeatedly been drawn to her attention. That she did not agree with what was said against her does not mean she did not know what that was.

228. The Claimant appealed against her dismissal, with detailed grounds over 6 pages, in a document dated 14 December 2016. This included her account of the history and various complaints of unfair treatment. At one point she alleged the Respondent's approach was to treat her as a "slave". Numbered point 6 on page 3 provided:

> **The Employee further believes her mistreatment at the hands of her supervisor Mubashra Khan are discriminatory related, of race and religion. The Employee is known as a practicing Sikh.**

229. No basis for any treatment being because of race or religion was provided and her document immediately returned to more general complaints, including about Mrs Parmar.

230. Jason Bruce, the Respondent's Practice Manager, was tasked with determining the Claimant's appeal. In correspondence the Claimant made various further complaints, including of dishonesty, along with intimating an intention to pursue tribunal proceedings and report matters to the SRA.

231. The appeal hearing took place on 26 January 2017. Mr Bruce was accompanied by a notetaker and we find the notes accurately reflect and record what was said. The hearing last circa 5 ½ hours. The Claimant was permitted to argue her case, exhaustively. Mr Bruce asked her many questions, to better understand her argument. The Claimant said she had no complaint about the way the hearing was conducted and "liked" Mr Bruce. She changed her mind, however, when she received his decision.

232. Mr Bruce asked the Claimant whether there were ever any meetings or emails raising her conduct, which elicited "not that I remember". There was an extensive discussion around work allocation, the Claimant said she expected this to be fair. When Mr Bruce referred to correspondence from Mrs Parmar explaining the way in which cases would be allocated, the Claimant said there had been no investigation into the removal of cases from her. She expected work to be allocated "equally". Asked about comments in the probation reviews on her ability to follow instructions, the Claimant said she did not remember Mrs Parmar saying this.

233. Mr Bruce referred to Mrs Parmar saying the Claimant had no respect for her supervisor and the Claimant said this was because she said Mubashra Khan had no supervising skills. She also told Mr Bruce that Mrs Khan's "knowledge is questionable".

234. Mr Bruce referred to the list of improvements required of the Claimant in Mrs Parmar's email of 17 November 2016. She denied Mrs Parmar had said these

things to her. Mr Bruce pointed out they were in the email. As he started to work through the list, the Claimant repeated they had not been discussed and that she was annoyed by this email. Mr Bruce asked why she had not raised this. The Claimant said because Mrs Parmar was her director.

235. Much of the correspondence was explored during the meeting. When it was put that she had not completed the costs schedule, the Claimant said "We were arguing until 2pm. I was upset, she was upset." The Claimant accused Mubashra Khan of lying, when she said the Claimant refused to complete this work.

236. Mr Bruce asked the Claimant whether in light of the emails and notes of meetings they had gone through, referring to different concerns, she thought these were matters of conduct. The Claimant's reply was:

> **No. KP or Jas did not raise issues with me. KP did not raise any issue with me reg[arding] anyone having issues with me.**
>
> **Clients love me.**
>
> **[The]Employer is put to proof regarding issues of conduct.**
>
> **I want a definition of what conduct means.**
>
> **It was not defined to me.**

237. Mr Bruce asked the Claimant to explain why she was saying her treatment was race and religious discrimination. She responded by saying that she was of "Indian heritage" before going on to describe various others, including Mubashra Khan and Farah Khan as "Pakistani Muslim". Asked if she believed this was why she was not getting work, she said "Yes, because I am Indian". Asked why she had not raised a complaint, the Claimant said "because I did not want to raise or cause any difficulties" and if she had the firm would "sack me, like it happened now." The Claimant also said she was a practicing Sikh. Mr Bruce asked how she believed this impacted on her treatment. The Claimant responded they were "narrow minded", there were "historical issues" between India and Pakistan and there was no other Sikh in the office, other than Mr Raindi. Her allegation was based on a difference in race and religion and her dissatisfaction over work allocation.

238. The Claimant referred to Mubashra Khan as being "a psycho". Asked about her professional relationship with Mr Cooper, the Claimant said "I love him" and he would "tell me off about lots of things". Asked whether a view could be taken of the Claimant's drafting skills from the mistakes made, she said mistakes had been used against her, under the influence of Mubashra Khan.

239. The Claimant wanted to send Mr Bruce further information and he agreed to receive this. Mr Bruce adjourned the appeal.

240. The Claimant having spoken positively of her relationship with Mr Cooper, Mr Bruce approached him and asked for comments. The Claimant says this was a cynical exercise, as Mr Bruce already knew from other documents that Mr Cooper had negative views about her. We do not agree. The enquiry made by

Mr Bruce was part of him exploring this matter comprehensively. Mr Cooper's comments were balanced, including some positives. He did, however, say much which tended to support the reasons for which she had been dismissed.

241. Mr Bruce made detailed notes with respect to the Claimant's appeal points. He extensively annotated the contemporaneous documents relevant to the Claimant's appeal. He received and considered documents the Claimant produced for the appeal, including her 7-page commentary on the meeting of 27 October 2016, 4-page commentary on various emails and 22-page witness statement. He also went back though the notes of the appeal hearing. All of these documents include handwritten points in the margins, reflecting Mr Bruce's work on and thoughts about this material as he went through it. We are satisfied that he was exceedingly careful and thorough in his approach to deciding the Claimant's appeal.

242. By a letter of 9 February 2017, Mr Bruce dismissed the appeal. Attached to this was his report, running to 26 pages. The report set out in considerable detail the material which had been taken into account, the findings he had made and reasoned conclusion with respect to the Claimant's grounds of appeal. The decision was extensively (93 footnotes) cross-referenced to the documentary evidence. His reasons for dismissing the appeal included:

> **I am satisfied that there is sufficient evidence to show that concerns in relation to MP's conduct had been raised with MP previously. She was advised by email as to what these concerns were, how she could redress them and when such concerns would be reviewed. If KP, as Director, was of the view that these concerns still remained at the point of the final probation review then she was reasonable to make the decision that she did. It certainly was not, as the grounds suggest, an ambush of concerns now being relied in for termination which had never been raised and understood previously.**
>
> **I have already found that MP's conduct towards her supervisor has been poor on a number of occasions as shown above. I am of the view that when considered cumulatively a decision to terminate her contract on conduct was a reasonable response to take.**
>
> **[…]**
>
> **I am of the view that MP's financial chargeable hours performance was measured in the exactly the same manner as all other Duncan Lewis fee earners in accordance with the company's Performance Management Policy and Key Performance Indicators which are introduced to all staff during induction.**
>
> **MP's financial chargeable hours performance at the juncture of termination was relatively poor.**
>
> **Months 1-3 (until end October 2016) MP was receiving a rebate on her chargeable hours to take into account that she was new to the company. Nevertheless, inclusive of these rebates, by the end of November 2016, her FYD hours were 35% of desired target.**
>
> **[…]**

I find that she was treated equally in terms of work being allocated to her in accordance with capacity and her supervisor's views as to her competence on matters. If and where she was not allocated work which was subsequently allocated to others, I find that this was a decision based on competency and capacity.

In relation to her treatment at hands of her supervisor, she refers heavily to the incident of 25th November 2016 but I have already found that I am of the view that MP's conduct during the 25th November 2016 incident was appalling. I am of the view that the matter had been handled fairly. I note that MK regretted this swearing and was later rebuked for this by her Director during her own probation review.

[…]

Having considered all relevant evidence in this entire matter very closely, I cannot find any evidence, express or implicit, that MP , or any of her peers, were treated differently on account of their race, religion or any other characteristic. If and where there were any instances where FK and SR were treated differently in terms of how work was allocated to them I find that this was on the sole basis of their capacity, competency and experience in such matters dependent on the individual circumstances of each and every new client or case referral dependent on what needed to be done. I am of the view that this finding is evidenced throughout this investigation. I do not find that they were being treated differently for reasons of race or religion.

Law

Direct Discrimination

243. In the employment field and so far as material, section 39 of **the Equality Act 2010** ("EqA") provides:

> **(2) 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 B 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.**

244. As to the meaning of any other detriment, the employee must establish that by reason of the act or acts complained of a reasonable worker might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment for these purposes; see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL**.

245. EqA section 13(1) provides:

> **(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.**

246. The Tribunal must consider whether:

246.1 the claimant received less favourable treatment;

246.2 if so, whether that was because of a protected characteristic.

247. The question of whether there was less favourable treatment is answered by comparing the way in which the claimant was treated with the way in which others have been treated, or would have been treated. This exercise may involve looking at the treatment of a real comparator, or how a hypothetical comparator is likely to have been treated. In making this comparison we must be sure to compare like with like and particular to apply EqA section 23(1), which provides:

> **(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.**

248. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless by of assistance since it may help to inform a finding of how a hypothetical comparator would have been treated.

249. As to whether any less favourable treatment was because of the claimant's protected characteristic:

249.1 direct evidence of discrimination is rare and it will frequently be necessary for employment tribunals to draw inferences from the primary facts;

249.2 if we are satisfied that the claimant's protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason;

250. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case it may be sufficient to answer the "reason why" question - why did the claimant receive the treatment complained of.

251. The burden of proof is addressed in EqA section 136, which so far as material provides:

> **(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 occurred.**

252. When considering whether the claimant has satisfied the initial burden of proving facts from which a Tribunal might find discrimination, the Tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent; **see Laing v Manchester City Council [2006] IRLR 748 EAT**.

253. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden; see **Madarassy v Nomura [2007] IRLR 246 CA**.

254. The burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see **Martin v Devonshires Solicitors [2011] IRLR 352 EAT**, per Underhill P:

> **39. This submission betrays a misconception which has become all too common about the role of the burden of proof provisions in discrimination cases. Those provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination generally, that is, facts about the respondent's motivation (in the sense defined above) because of the notorious difficulty of knowing what goes on inside someone else's head "the devil himself knoweth not the mind of man" (per Brian CJ, YB 17 Ed IV f.1, pl. 2). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law […]**

Harassment

255. Insofar as material, EqA 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.**

256. Whilst the unwanted conduct need not be done 'on the grounds of' or 'because of", in the sense of being causally linked to, a protected characteristic in order to

amount to harassment, the need for that conduct be 'related to' the protected characteristic does require a "connection or association" with that; see **Regina (Equal Opportunities Commission) v Secretary of State for Trade and Industry [2007] ICR 1234 QBD**. Notwithstanding it was decided under the prior legislation including the formulation "on the grounds of", the observations made by by the EAT in **Nazir v Asim [2010] ICR 1225** may still be of some relevance:

> **69 We wish to emphasise this last question. The provisions to which we have referred find their place in legislation concerned with equality. It is not the purpose of such legislation to address all forms of bullying or anti-social behaviour in the workplace. The legislation therefore does not prohibit all harassment, still less every argument or dispute in the workplace; it is concerned only with harassment which is related to a characteristic protected by equality law—such as a person's race and gender.**

257. The EAT further considered the relevant causal test in Bakkali v Greater Manchester Buses (South) Ltd t/a Stage Coach Manchester: UKEAT/0176/17/RN; per Slade J:

> **31. […] Conduct can be "related to" a relevant characteristic even if it is not "because of" that characteristic. It is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a claimant. However, "related to" such a characteristic includes a wider category of conduct. A decision on whether conduct is related to such a characteristic requires a broader enquiry. In my judgment the change in the statutory ingredients of harassment requires a more intense focus on the context of the offending words or behaviour. […] "the mental processes" of the alleged harasser will be relevant to the question of whether the conduct complained of was related to a protected characteristic of the Claimant […] However such evidence from the alleged perpetrator is not essential to the determination of the issue. A tribunal will determine the complaint on the material before it including evidence of the context in which the conduct complained of took place.**

258. In relation to the proscribed effect, although C's perception must be taken into account, the test is not a subjective one satisfied merely because C thinks it is. The ET must reach a conclusion that the found conduct reasonably brought about the effect; see **Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT**.

259. Guidance on the threshold for conduct satisfying the statutory definition was given by the EAT in **Betsi Cadwaladr University Health Board v Hughes [2014] 2 WLUK 991**; per Langstaff P:

> **10. Next, it was pointed out by Elias LJ in the case of Grant v HM Land Registry [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:**
>
> > **"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."**

> **11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:**
>
> > **"..not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."**
>
> **12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.**

Victimisation

260. So far as material, EqA section 27 provides:

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

Conclusion

261. We will consider the Claimant's EqA claims in chronological order (in so far as this can be discerned).

262. The earliest matter about which the Claimant now complains is alleged discrimination by Farah Khan. It is noteworthy, however, that the Claimant's original claim comprised only complaints of discrimination against Mubashra

Khan. The decision to pursue Ms Khan, notwithstanding that was done with considerable vigour and animosity during this hearing, appears to have been an afterthought.

Schedule 2, Allegation 1 - Aug 2016 [direct discrimination by FK]

> **Farah Khan said she had a conversation with KP last night that 'because you are not experienced enough that you shouldn't work on any of the cases and the Baker files is a big case, you won't know what to do'. And confirmed again a few days later and she maliciously took the Claimants caseload away.**

263. The case in question was initially allocated to the Claimant by Mrs Parmar. It was a highly complex child sexual abuse matter, with 12 different parties. Farah Khan had worked on it previously and spoke to Mrs Parmar, suggesting it should be reallocated. Mrs Parmar acted on this and the case went back to Ms Khan. The actions of Ms Khan in this regard had nothing whatsoever to do with the Claimant's race or religion, they were based solely on complexity of the case and Ms Khan's prior knowledge of it. Furthermore, the decision to reallocate was made by Mrs Parmar and not Ms Khan.

264. The alleged less favourable treatment did not occur and the claim fails.

265. For the sake of completeness, however, we found that that the actions taken by Ms Khan in this matter had nothing whatsoever to do with race or religion.

Schedule 2, Allegation 2 - Aug 2016 [direct discrimination by FK]

> **FK told the Claimant that Peter Wusu is not a director, later the Claimant learnt from FK that he was.**

266. We are satisfied that Farah Khan did not say that Mr Wusu was not a director. This alleged less favourable treatment did not occur. The Claimant referred to this allegation in her appeal statement:

> **The following day Farah informed me that Peter Wusu was not a director but he has been working at DL for around 14 years and he is close with the board and I should be careful around him to look as though I am doing work.**
>
> **I later am told by her he is a director and she denied the above conversation, I thought it was very malicious of her to tell me that he wasn't a director.**

267. The Claimant's allegation is bizarre. Her suggestion appeared to be that by downplaying Mr Wusu's status, she was being encouraged to misbehave in front of him. This is, however, inconsistent with the express warning she alleged within her account of this at the appeal stage. There is no reason whatsoever for Ms Khan to have misstated the position of Mr Wusu and we do find she said any of what is alleged.

268. The alleged less favourable treatment did not occur and the claim fails.

Schedule 1, Allegation 1 - 07.09.16 [direct discrimination by MK]

MK shunned an elderly male of Sikh attire, wearing a turban and a beard

269. The Claimant's evidence about this was vague and unsatisfactory. She made no complaint when it is alleged to have occurred. Mubashra Khan has no recollection and denies she would do such a thing. No reason for this behaviour has been advanced, save the Claimant asserts that Mrs Khan is, generally, hostile to Indian Sikhs. We are not satisfied Mrs Khan has such general hostility or that there was any shunning.

270. The alleged less favourable treatment did not occur and the claim fails.

Schedule 1, Allegation 2 – 09.09.16 [direct discrimination & harassment by MK]

Comment 'All Indian women marry white men'.

271. The Claimant's case is that Mubashra Khan said this to the Claimant, referring to Mrs Parmar. Mrs Khan denied the comment, saying she had no interest in Mrs Parmar's domestic circumstances. We also noted that in the course of cross-examination, the Claimant was inconsistent about the date when this is alleged to have happened. She made no complaint about it at the time. Furthermore, to the extent that any witness before us had a tendency to pigeon-hole people by reference to their protected characteristics and make generalised assertions, it was the Claimant. We prefer Mrs Khan's evidence.

272. The alleged unwanted conduct or less favourable treatment did not occur and the claim fails.

Schedule 2, Allegation 4 – throughout [harassment by FK]

FK shared her caseload not with the Claimant but SR.

273. The Claimant's complaint about this is contrary to the evidence. It also reflects her refusal to accept the repeated and clear explanations given at the time about work allocation. Firstly, Ms Khan had no authority and did not in practice, allocate work. Such decisions were made by the solicitor who was responsible for the case. Secondly, work allocation was not based on numerical equality, rather the Respondent deliberately allocated less demanding cases to the Claimant to begin with and then, if she had dealt with that satisfactorily, the Respondent's intention was to provide her with more challenging work. There were occasions on which Ms Rayment did work on the same cases as Ms Khan but this was at the direction of Mrs Parmar or another solicitor and not because Ms Khan decided it should be so. We accepted the evidence of the Respondent's witnesses about the way in which work was allocated and reasons for this.

274. The alleged unwanted conduct did not occur and the claim fails.

275. For the sake of completeness, however, we found that that the allocation of work had nothing whatsoever to do with race or religion; it was not related to those protected characteristics.

Schedule 2, Allegation 5 - Oct 2016 [direct discrimination by FK]

> **Whilst MK was on annual leave JR emailed the Claimant to work on tasks for case of MM, upon enquiring with FK, she said the task and case was for her. JR was informed the Claimant is not working on this case.**

276. This case is one that Farah Khan had been working on under the supervision of Mubashra Khan. When Mrs Khan was on holiday and Mr Raindi covering, he asked the Claimant to do some work on it. Ms Khan contacted Mr Raindi thinking a mistake had been made, as he did not know she was already familiar with the case.

277. The treatment alleged – or at least something very similar to it – did occur. There was, however, nothing to suggest any connection with race or religion. Further and separately, we were satisfied by the evidence of Ms Khan and the reasons she acted as she did had nothing whatsoever to do with race or religion. The claim fails.

Schedule 2, Allegation 6 – Oct 2016 [direct discrimination by FK]

> **Before MK was on annual leave the case of [name] was allocated to the Claimant but upon issue, FK started the case and shared the case working with SR.**

278. This is another instance where Farah Khan had been working on a matter previously and sought to do so again. Whilst Ms Rayment may have worked on it too, this would have been at the direction of her supervising solicitor and not Ms Khan.

279. Given the Ms Khan did not "share" any work with Ms Rayment, the alleged less favourable treatment did not occur and the claim fails.

280. For the sake of completeness, however, we found that that the actions taken by Ms Khan on this case had nothing whatsoever to do with race or religion.

281. Schedule 1, Allegation 4 - Oct 2016 [direct discrimination & harassment by MK]

> **To client 'So why didn't you marry an apni?'**

282. We were told these words would be understood as "why didn't you marry one of us?" There was no complaint from the Claimant about this at the time. Mrs Khan struck the Tribunal as thoughtful and professional in her approach. We think it unlikely she would have made this comment at all, let alone to a client, who may easily have been offended by it. We have no hesitation in rejecting the Claimant's evidence about this as implausible. The remark was not made.

283. The alleged unwanted conduct or less favourable treatment did not occur and the claim fails.

Schedule 1, Allegation 6 – October 2016 [direct discrimination & harassment by MK]

> **Made a comment about a Bangladeshi client, her mother in law slapped her 'obviously she wasn't Pakistani and she didn't approve of her'.**

284. No context whatsoever was provided for this allegation until the Claimant gave evidence. The Claimant said she overheard Mubashra Khan talking about a case. When asked whether it appeared the alleged words, if said at all, would have amounted to Mrs Khan commenting on the motivation of a third party, she disagreed, saying that Mrs Khan was expressing approval for what happened and aiming her remarks at the Claimant.

285. Mrs Khan denied making the comment. The Claimant did not complain about it at the time. There is no documentary evidence to corroborate anything such as this having been said. We think it unlikely Mrs Khan would have said this, especially if as is now alleged, it was a malicious comment aimed at the Claimant.

286. The alleged unwanted conduct or less favourable treatment did not occur and the claim fails.

Schedule 1, Allegation 7 – Oct 2016 [direct discrimination & harassment by MK]

> **Mubashra Khan took annual leave for approximately 10 days and left the Claimant without any work.**

287. We do not accept there was any time when the Claimant was left without work. Mubashra Khan allocated cases to the Claimant when she was at work (i.e. not on leave). During October, when Mrs Khan was on leave, Mrs Parmar sent work through. We have already made findings about the way in which work was allocated generally and this applied in October as at other times. The Claimant switched between saying she had too little work, when she believed there was an attractive case that might be allocated, to saying she had too much work already, when she was being asked to do something she did not wish to. The Claimant wanted the cases Ms Khan was working on, those that were already up and running, on which all or most work done would be billable. The Claimant did not want to do unbillable work, notwithstanding it was expected of all fee-earners. If the Claimant had required work she could have approached one of the directors. In cross-examination when this point was put, the Claimant answered that a competent director would know what work had been allocated (i.e. it ought not to be necessary for her to ask) and she had decided to spend 2 days “tidying up her desk”. She also said she had been put off from asking by Mrs Parmar’s email; we do not accept that. More likely, the Claimant had enough work already and / or feared that if she asked for more, that which came forth would not be to her liking. The Respondent’s diary system included new cases coming into the firm on a daily basis that all needed an initial follow-up, which the Claimant could have done. Such new cases were not, however, attractive to her, as there would be much unbillable preliminary work.

288. The alleged unwanted conduct or less favourable treatment did not occur and the claim fails.

Schedule 1, Allegation 8 – Oct 2016 [direct discrimination & harassment by MK]

> **Upon her return she left the Claimant without work for a further 3 days.**

289. Whilst it does not appear that Mubashra Khan allocated any new case to the Claimant during the 3 days following her return from annual leave, this period

was no different from any other and work was allocated or not on the usual basis. Furthermore, as we have found, the Claimant always had work. Whether she wanted to do such work was another matter.

290. The alleged unwanted conduct or less favourable treatment did not occur and the claim fails.

291. For the sake of completeness, however, we found that that the actions taken by Mrs Khan in allocating work or not at this time, had nothing whatsoever to do with race or religion; it was not because of or related to those protected characteristics.

Schedule 1, Allegation 5 - Aug to Nov 2016 [direct discrimination & harassment by MK]

> **She allocated the Claimants work to Farah Khan & Sophie Raymont – She set the Claimant 4 tasks**

292. We do not accept the Claimant was only given 4 tasks by Mubashra Khan during the entire period. She was given far more work than this.

293. The alleged treatment or unwanted conduct was not done and the claim fails.

294. We note in the Claimant's particulars of claim there is a complaint that Mubashra Khan gave her 4 tasks on one day, with a view to setting her up to fail (i.e. too much work). As part of the extensive case management of the Claimant's claims she was required to provide information in the form of a schedule. The 4 tasks in one day, set up to fail complaint, was not included in either of her two schedules. As a result, Mrs Khan has not addressed this in her witness statement. Nor did the Claimant put such a case in cross-examination. On the contrary, the challenge put to Mrs Khan was that she had "only" given 4 cases to the Claimant. The complaint appears to have morphed from 4 tasks in 1 day being too much, to 4 cases in total being allocated throughout her employment, which was too little. It may be that the Claimant was set 4 tasks on one day, we are not in a position to say one way or the other. We are, however, satisfied there was no occasion when Mrs Khan directed the Claimant to complete any task with a view to setting her up to fail. Nor was the allocation of work at all because of or related to race or religion.

Schedule 1, Allegation 9 – 26.10.16 [direct discrimination & harassment by MK]

> **The Claimant held a meeting with Mubashra Khan about the lack of work pointing her keys in the Claimants face she told her to 'put the leg work into picking up cases like Farah Khan has'.**

295. As set out above, we found the key pointing did not occur. The leg work comment – or something similar – was said and to that extent only the alleged treatment or unwanted conduct did occur.

296. The leg work comment had nothing whatsoever with race or religion. Mrs Khan said this because she was exasperated by the Claimant's attitude and did think her work ethic poor in comparison to that of Ms Khan. It was not said because of race or religion nor did it relate to race or religion. Accordingly, the claim fails.

Schedule 1, Allegation 3 – 27.10.16 [direct discrimination & harassment by MK]

'I don't want to work for them 3 In…idiots'

297. The Claimant's evidence was that she heard part of a word "In…". The inference she invited is that the full word was "Indian". Mubashra Khan denied having ever said this.

298. This is a vague allegation. There was no contemporaneous complaint. There is nothing to corroborate the Claimant's evidence. She is not even certain what she heard. Having listened to the way in which Mubashra Khan and the Claimant express themselves, we do not think these words sound much like a formulation Mrs Khan would use. We prefer the evidence of Mrs Khan. We think it most unlikely that she would make a remark of the sort which is alleged.

299. The alleged unwanted conduct or less favourable treatment did not occur and the claim fails.

Schedule 1, Allegation 10 – 27.10.16 [direct discrimination & harassment by MK]

Email 07.30hrs to Jasbir Raindi and Krina Parmar, she wanted to raise concerns about the Claimant and specifically requests the Claimant be removed as her caseworker

300. The email in question did not say Mubashara Khan wished to raise concerns about the Claimant and nor did it request she be removed as her case worker.

301. The alleged less favourable treatment or unwanted conduct was not done and the claim fails.

302. For the sake of completeness, whilst this email was sent by Mrs Khan with the intention of raising her concerns about the Claimant, this had nothing whatsoever to do with race or religion; it was not because of or related to those protected characteristics. Mrs Khan was genuinely and reasonably, concerned about the Claimant's attitude toward her and the work she was being asked to do.

Schedule 1, Allegation 11 – 27.10.16 [direct discrimination & harassment by MK]

Meeting with Krina Parmar & Jasbir Raindi, she made a false complaint to them about the Claimant, resulting in Krina Parmar and Jasbir Raindi chastising the Claimant and Krina Parmar telling her, 'Get back up stairs and mend the relationship she had ruined'

303. This is an allegation of discrimination or harassment by Mubashra Khan. It was not alleged that Mrs Parmar or Mr Raindi did anything discriminatory. Whilst this allegation refers to the Claimant's account of the meeting she had with the two directors, that is put forward as the consequence of the earlier discrimination by Mrs Khan, which is said to be the making by her of a "false complaint".

304. Mrs Khan did not make a "false complaint", she made a genuine complaint about the Claimant, in that she raised concerns she believed to be true. The alleged unwanted conduct or treatment was not done. Accordingly, the claim fails.

305. Both contemporaneously and during the Tribunal hearing the Claimant, at times, seemed to struggle with the idea that anyone could hold a lesser opinion of her than she did herself. We are quite satisfied that Mrs Khan was genuinely and reasonably, concerned by the way the Claimant was conducting herself at work. Finding this a very difficult situation to manage, she wished to speak to her own seniors about it. That which Mrs Khan told her managers had nothing whatsoever to do with race or religion; it was not because of or related to those protected characteristics.

Schedule 1, Allegation 12 - 01.11.16 [direct discrimination & harassment by MK]

Mubashra Khan referred to the Claimant as a 'bitch'

306. Mubashra Khan denied saying this and Farah Khan, who was alleged to have been present, also said it did not happen. On one occasion when Mrs Khan did swear, she recognised this was not appropriate and reported the matter to her superiors. Whilst the Claimant frequently demonstrated a tendency to use loose or excessive language there was little evidence Mrs Khan doing so, save on the one occasion referred to. We prefer the evidence of the Respondent's witnesses.

307. The alleged treatment or unwanted conduct was not done and the claim fails.

308. For the sake of completeness, whilst Mrs Khan's view of the Claimant and comments about her became more negative over time, this had nothing whatsoever to do with race or religion; it was not because of or related to those protected characteristics. Rather, it was because of the latter's obstructive and uncooperative behaviour.

309. Schedule 2, Allegation 8 - Nov 2016 [harassment by FK]

FK, MK were talking about the Claimant in the canteen, MK refers to her as a bitch, with SR returning to the table

310. There is no complaint against Farah Khan. Being present when a discriminatory act is done, without more, does not make a person the perpetrator of it. In any event we have found it was not done. This claim fails.

Schedule 1, Allegation 13 - 01.11.16 [direct discrimination & harassment by MK]

Mubashra Khan attempted to throw legal aid papers in the Claimants face, the Claimant said to her, 'I will leave this job because of you'

311. This is another allegation which appears to have evolved over time. In her appeal statement the Claimant said "she attempted to throw papers towards me", whereas now it is said the attempt was to throw papers in her face. We pause to note that this tendency for the Claimant's recollection of the incidents she is complaining about to vary over time does not give us confidence in her as an accurate historian. We find this attempted throwing of papers in her face did not occur.

312. The alleged treatment or unwanted conduct was not done and the claim fails.

Schedule 1, Allegation 14 - 02.11.16 [direct discrimination & harassment by MK]

> **Email 10.31hrs to Jasbir Raindi and Krina Parmar, 'Further to my meeting with yourself and Jas last week. I am not at all happy as the way Manjeet speaks to me she is extremely rude and it is impossible to actually have a conversation with her. Ozma from the Milton Keynes office was here yesterday and she also witnessed her awful attitude towards me, which is not nice and is creating a nasty working environment for me. She is very unprofessional and to be honest with you both I have tried working with her and I cannot put up with her 'attitude' towards me. She is making me feel extremely uneasy a feeling I have never had in my working life to date and I should not have to putting up with such behaviour'**

313. This email was sent. The treatment or unwanted conduct occurred. This was not, however, related to or because of race or religion. Mubashra Khan wrote in these terms because they genuinely reflected how she felt about working with the Claimant. This did not, at all, stem from race or religion; it was not because of or related to those protected characteristics. Rather, it was the product of the Claimant's workplace behaviours. Accordingly, the claim fails.

Schedule 1, Allegation 15 – 02.11.16 [direct discrimination & harassment by MK]

> **Email 12.46 hrs to Jasbir Raindi 'She is now very careful in what she puts in her emails and is more vocal now. It is so difficult to engage with her and has got to the point where I really do not want to speak to her, as she will just cause an argument in the presence of the entire office, which is not very nice. We all are busy and I just don't need this additional stress from her. No doubt Ozma will fill you in. Thank you for your help, I appreciate it'.**

314. This email was sent. The treatment or unwanted conduct occurred. This was not, however, related to or because of race or religion. Once again, Mubashra Khan wrote in these terms because they genuinely reflected how she felt about working with the Claimant. This did not, at all, stem from race or religion; it was not because of or related to those protected characteristics. Rather, it was the product of the Claimant's workplace behaviours. Accordingly, the claim fails.

Schedule 2, Allegation 7 - Nov 2016 [harassment by FK & SR]

> **With the support of SR FK spread false and malicious rumours about the Claimant as per the statement of OH.**

315. This allegation refers to the note that Mr Raindi made of a discussion with Ozma Hussain. The suggestion is that Farah Khan and Ms Rayment spread false and malicious rumours about the Claimant, which Ms Hussain has then repeated to Mr Raindi.

316. Mr Raindi's note could not be clearer. It plainly captures Ms Hussain's observations of her day working in this office. We are reinforced in this by noting that where Ms Hussain did repeat what others had said, she made this clear and Mr Randi recorded it. In cross-examination, it was put to the Claimant that the most natural reading of this note was that it genuinely reflected Ms Hussain's own view. The Claimant did not agree. Once again the Claimant would not accept that others may have a different view of her to that which she holds.

317. Furthermore, there is no evidence of Ms Khan or Ms Rayment spreading "false or malicious rumours". What happened was that a very considerable number of the Claimant's colleagues, had concerns about her conduct and found her difficult to work with. To the extent they expressed that concern, this genuinely reflected how they felt about the situation.

318. The alleged treatment or unwanted conduct did not occur and the claim fails.

319. For the sake of completeness, there is nothing to suggest that in Ms Khan or Ms Rayment expressing their concerns about the Claimant, this had anything whatsoever to do with race or religion; it was not related to those protected characteristics.

Schedule 1, Allegation 17 – 07.11.16 [direct discrimination & harassment by MK]

> **Upon the Claimants return to the office after her probation review, MK asked the Claimant, 'So what's happening with your training contract?'**

320. We think this was said. Although Mubashra Khan did not recall it, she said it would be a normal question to ask. To that extent, the unwanted conduct or treatment alleged was done.

321. The question was asked in order to find out whether the Claimant was being offered a training contract. In cross-examination, Mrs Khan said she hoped the Claimant got a contract with the firm. We think that hope was of the sort that involves not wishing ill upon others, even those you find difficult or objectionable. We do not think Mrs Khan wanted to continue working with the Claimant herself. None of this, however, had anything whatsoever to do with race or religion; it was not because of or related to those protected characteristics. Rather, it was the product of the Claimant's workplace behaviours. The question was not asked because of race or religion, to any extent at all. Accordingly, the claim fails.

Schedule 1, Allegation 18 – 07.11.16 [direct discrimination & harassment by MK]

> **David Cooper and Sophie Raymont gave false statements against the Claimant as follow on from 27.10.16 meeting with MK (point 11 above).**

322. During the hearing the Judge attempted to clarify with the Claimant how this amounted to discrimination or harassment by Mubashra Khan. Although the response to that enquiry was unclear, we have approached this complaint on the basis the Claimant is alleging that in some way Mrs Khan caused these two others to give false statements.

323. There is nothing to suggest that either Mr Cooper or Ms Rayment said what they did to Mrs Parmar because Mrs Khan had influenced them. Mrs Parmar's note, as with that made by Mr Raindi previously, plainly captures the personal observations of these two individuals. They are reporting what they have seen and what they think.

324. The alleged treatment or unwanted conduct was not done and the claim fails.

Schedule 1, Allegation 19 – 17.11.16 [direct discrimination & harassment by MK]

> **Email from MK to KP 'Since our meeting when you were last attended the Luton office Manjeet has been fine but I am slightly concerned this may just be artificial until she obtains her training contract! We will wait and see.'**

325. This email was sent. The treatment or unwanted conduct occurred. This was not, however, related to or because of race or religion. Once again, Mubashra Khan wrote in these terms because they genuinely reflected how she felt about working with the Claimant. This did not, at all, stem from race or religion; it was not because of or related to those protected characteristics. Rather it was the product of the Claimant's workplace behaviours. Accordingly, the claim fails.

Schedule 1, Allegation 20 – 25.11.16 [direct discrimination & harassment by MK]

> **Approximately 8.40hrs, over a costs schedule, MK would not allow the Claimant to contact the Director regarding a schedule of costs approved by him and instead shouts at her.**

326. Whilst Mubashra Khan told the Claimant she would contact Mr Raindi, she did not stop the Claimant from doing this herself (which she did). This conversation became heated with raised voices on both sides. To this extent only was any part of the alleged treatment or unwanted conduct done.

327. As set out above, the Claimant refused to follow Mrs Khan's reasonable instructions on the schedule and sought to use Mr Raindi's comments on an earlier draft as a justification for this. Unsurprisingly, Mrs Khan found the Claimant's obstructive behaviour very frustrating. Mrs Khan's reaction generally and any point at which she raised her voice had nothing whatsoever to do with race or religion; it was not because of or related to those protected characteristics. Accordingly, the claim fails.

Schedule 1, Allegation 21 – 25.11.16

> **09.50hrs MK emails Jasbir Raindi ''I have just told her to make the attached amendments but she is refusing to do so as you have approved it and she has just had an argument. To be honest I have tried working very hard with her and am sorry but I cannot work with her. I have just about had enough of her attitude!'**

328. The Claimant has not stated whether this is direct discrimination or harassment. We have assumed it is pursued as both.

329. This email was sent. The treatment or unwanted conduct occurred. This was not, however, related to or because of race or religion. Once again, Mubashra Khan wrote in these terms because they genuinely reflected how she felt about working with the Claimant. This did not, at all, stem from race or religion; it was not because of or related to those protected characteristics. Rather, it was the product of the Claimant's workplace behaviours. Accordingly, the claim fails.

Schedule 1, Allegation 22 – 25.11.16 [direct discrimination & harassment by MK]

> **MK would not allow the Claimant to meet with her client and asked Farah Khan to go instead**

330. Mubashra Khan directed Farah Khan to attend this client rather than the Claimant. The alleged treatment or unwanted conduct was done.

331. This happened because it was a case that Ms Khan had been working on previously and Mrs Khan thought it would be better in terms of continuity, which rationale she explained to the Claimant at the time. This had nothing whatsoever to do with race of religion; it was not because of or related to those protected characteristics. Accordingly, the claim fails.

Schedule 2, Allegation 9 – 25.11.16 [harassment by FK]

> **When MK had bullied, shouted at the Claimant. Arouje Khan and Marina Khan both were not impressed and said, 'I am sorry but the way she just spoke to Manjeet, is well out of order'. MK, 'Yeah why is she shouting?' FK laughed and said, ''Oh she's just deciding on who to take downstairs**

332. This is a complaint about Farah Khan laughing. Ms Khan denied having laughed. We found Ms Khan's evidence about this persuasive. She described the atmosphere in the office as being very uncomfortable and not at all conducive to laughter. This strikes us as an entirely realistic characterisation. We don't think anyone in the office that day found this situation to be humorous.

333. The alleged treatment or unwanted conduct was not done, this claim fails.

Schedule 1, Allegation 23 – 25.11.16 [direct discrimination & harassment by MK]

> **MK to the Claimant 'Manjeet shut the Fuck up'**

334. This was said.

335. The reason it was said is that Mubashra Khan had reached the point where should no longer cope with the Claimant's obstructive and confrontational behaviour. In a momentary lapse, Mrs Khan lashed out. This had nothing whatsoever to do with race or religion; it was not because of or related to those protected characteristics. The claim fails.

Schedule 1, Allegation 24 – 25.11.16 [direct discrimination & harassment by MK]

> **Tel Note by Jasbir Raindi from a phone call with MK She cannot work with the Claimant anymore; she will seek a transfer or consider leaving and she will not apologise to the Claimant. He decided to monitor the Claimants work**

336. This is a complaint about what Mubashra Khan told Mr Raindi. The remainder of her text is the consequence, there was no allegation of discrimination against Mr Raindi for having taken these steps.

337. Mrs Khan told Mr Raindi what he recorded. The alleged treatment or unwanted conduct was done. This was not, however, related to or because of race or

religion. Mrs Khan spoke in these terms because they genuinely reflected how she felt about working with the Claimant. This did not, at all, stem from race or religion; it was not because of or related to those protected characteristics. Rather, it was the product of the Claimant's workplace behaviours. Accordingly, the claim fails.

Schedule 2, Allegation 10 - 25.11.16 [harassment by FK]

FK provided her employers with a false statements as a witness to an incident where it would be foreseeable to cause a job loss to the Claimant

338. This a reference to the email Farah Khan sent on 25 November 2016. The email was sent. It was not, however, foreseeable that the Claimant would be dismissed as a result of this one email in and of itself.

339. To the extent the email was sent, the alleged treatment or unwanted conduct was done.

340. The reason this email was sent is that it genuinely reflected Ms Khan's views of the day in question and the Claimant more generally. This view was informed by the Claimant's workplace behaviours. The sending and content of this email had nothing whatsoever to do with race or religion; it was not related to those protected characteristics. Accordingly, the claim fails.

Schedule 2, Allegation 11 - 25.11.16 [harassment by FK]

FK guided SR to provide a false statement to the Respondent against the Claimant, knowing it would cause a detriment to the Claimant of a job loss.

341. There is no evidence whatsoever to suggest Ms Rayment was guided to write her email of this date. The email is quite plainly a first person account of what she saw and thought. The Claimant's allegation is pure conjecture, stemming from her inability to accept that anyone might think of her that which Ms Rayment wrote.

342. The alleged treatment or unwanted conduct was not done and the claim fails.

Schedule 1, Allegation 26 – 25.11.16 & 26.11.16 [victimisation by MK]

The Claimant raised a grievance with HR and her Directors.

343. The Claimant did not raise a formal grievance. The Respondent sought to address her informal complaints about Mubashra Khan with various holding measures and then by way of a mediation on 8 December 2016, when Mrs Parmar returned from leave. In any event, this is an allegation of victimisation by Mrs Khan, yet the detriment relied upon is said to be the action of the Claimant (i.e. raising a grievance). Her own act cannot be a detriment done to her by Mrs Khan. The claim fails.

Schedule 1, Allegation 25 – 08.12.16 16 [direct discrimination & harassment by MK]

The Claimant gave her version of the event to KP, whom did not inform her of the evidence against her. The entire mediation session prior to the Claimants dismissal, when asked by the KP why MK swore at the Claimant, 'She responded, 'Because she was aggressive towards me'.

344. This is an allegation against Mubashra Khan. The complaint is that during the mediation session on 8 December 2016, Mrs Khan accused the Claimant of being aggressive.

345. Mrs Khan did say the Claimant was aggressive. She confirms this in her witness statement. The alleged treatment or unwanted conduct was done.

346. Mrs Khan said this because it genuinely reflected her view of how the Claimant behaved. We are not surprised by this characterisation, which is consistent with the Claimant's approach, as described by Mrs Khan and other witnesses. Mrs Khan's comments had nothing whatsoever to do with race or religion; it was not because of or related to those protected characteristics. Accordingly, the claim fails.

Schedule 1, Allegation 27 – 08.12.16 [victimisation by MK]

The dismissal of the Claimant.

347. This is an allegation of victimisation by Mubashra Khan. This claim fails for a number of reasons:

347.1 Mrs Khan did not dismiss the Claimant, rather she was dismissed by the Respondent;

347.1.1 the Claimant was given a week's notice by the Respondent's letter of 8 December 2016, sent by Mr Gupta, the CEO, pursuant to the recommendation of Mrs Parmar;

347.2 furthermore, the protected act the Claimant relies upon was the allegation of discrimination in her grounds of appeal, dated 14 December 2016;

347.2.1 the Claimant cannot have been dismissed because of a protected act she had not yet done.

348. For the sake of completeness, Mrs Parmar's recommendation was based upon her view of the Claimant's conduct and performance during her probation and had nothing whatsoever to do any protected act.

Schedule 1, Allegation 28 – 26.02.17 [victimisation by JB]

Appeal Decision.

349. The Claimant's appeal was dismissed. The treatment or unwanted conduct was done.

350. The reason for this had nothing whatsoever to do with the Claimant having, in one short paragraph on page 3 of her 6-page grounds of appeal, accused Mubashra Khan of discrimination. Mr Bruce was exceedingly thorough and fair in his approach to this appeal. He gave the Claimant a very full opportunity to argue her case. He dismissed the appeal because he believed the original decision was properly made and there were no grounds overturn it. His decision was not to any extent at all because of a protected act. Accordingly, this claim fails.

Limitation

351. In the event that we had found for the Claimant, or were minded to subject to any jurisdictional bar, then it would have been necessary to consider the time issues: whether there was a continuing act and the claim was brought in-time following the end of that; or whether it was just and equitable to extend time for what were otherwise out of time complaints. Given none of the discrimination claims have merit, we do not need to address limitation.

Wrongful Dismissal

352. The Claimant was entitled to 1 week's notice of dismissal. Her contractual entitlement was 1 week during her probation and 1 month "after successful completion of the probation period". The Claimant did not successfully complete her probation period. A probationary period is not successfully passed merely by the elapse of time. She was repeatedly told of her failings at and following probation reviews. She was invited to a final probation meeting, at which her poor conduct was discussed and Mrs Parmar told her she would not be recommended for a training contract. The Claimant was never (per clause 2.2) formally notified of successfully completing her probation period. On the contrary, she was given notice in writing.

353. On this basis, the Claimant remained entitled to notice of 1 week only, which she was given. The breach of contract claim fails.

EJ Maxwell

Date: 10 May 2022

Sent to the parties on:

12 May 2022

For the Tribunal Office: