



EMPLOYMENT TRIBUNALS

Claimant
Miss P Vernon

Respondent
Achieving For Children

Heard at: Reading by CVP

On: 20 to 24 June 2022

Before: Employment Judge Hawksworth
Mrs S Hockey
Mr DE Palmer

Appearances

For the Claimant: in person
For the Respondent: Mr C Adjei (counsel)

JUDGMENT

The unanimous judgment of the tribunal is that the claimant's complaints of direct race discrimination and harassment related to race fail and are dismissed.

REASONS

Claim, hearings and evidence

1. The respondent provides the health visiting service for the Royal Borough of Windsor and Maidenhead. The claimant worked for the respondent as a student health visitor from 28 January 2019 until her dismissal on 17 September 2019.
2. The claim form was presented on 3 January 2020 after Acas early conciliation from 12 November 2019 to 4 December 2019. The claimant claimed race discrimination and harassment.
3. The respondent presented its response on 29 April 2020. The respondent defended the claim. The respondent said that the pleading of the claim was unclear.
4. There were three preliminary hearings for case management. The claimant provided further information about her claim on 12 March 2021.
5. The final hearing took place by video (CVP) over five days from 20 June to 24 June 2022.
6. There was an agreed bundle of 973 pages. Page references in these reasons are references to that bundle. The respondent prepared a chronology to which the claimant added some entries. This was a helpful

document as it enabled the tribunal to understand which facts were agreed by both parties.

7. We heard evidence from the claimant on 20 and 21 June 2022. On 21, 22 and 23 June we heard evidence from the respondent's witnesses Mrs Sandher, Mrs McDonnell, Ms Ferguson and Mr McDaniel. The claimant's witness Mr Nolan was interposed on 23 June 2022 to fit in with his availability. All the witnesses had exchanged witness statements.
8. The claimant also served a witness statement for Mr Adebowale but he was not able to attend. We told the parties that we would consider how much weight should be attached to Mr Adebowale's statement given that he had not attended to be questioned. We did not rely on Mr Adebowale's statement as his evidence about the respondent's treatment of the claimant was in very general terms and had not been tested by questioning.
9. Both parties made closing comments after the witness evidence.
10. We gave judgment and reasons at the hearing on 24 June 2022. We explained our findings of fact, a summary of the law and the conclusions we had reached. The respondent's counsel Mr Adjei requested written reasons at the end of the hearing.

The Issues

11. The issues were identified at a preliminary hearing on 10 May 2021. The list of issues was at pages 124 to 128 of the bundle. The claimant complains of direct race discrimination and in the alternative harassment related to race in respect of 25 alleged acts of less favourable treatment/unwanted conduct. These acts are described as issues (a) to (y). A copy of the list of issues is attached as an appendix.
12. At the same preliminary hearing the claimant withdrew a complaint of victimisation.
13. The claimant's application to amend her claim to add two further allegations was refused by Employment Judge Mason at a preliminary hearing on 5 April 2022.

The facts

14. This section sets out our findings of fact. We make these findings on what is called the balance of probabilities, that means we decide what we think is most likely to have happened, based on the evidence we heard and the documents that we read.
15. The claimant started her employment with the respondent on 28 January 2019. She was a student health visitor. When she began her employment with the respondent the claimant was a qualified nurse with experience in various nursing departments including acute care support, prison nursing, working with looked after children and specialist community health nursing in schools.

16. The student health visitor programme has a one-year training period which is made up of two days a week in practice with the respondent and two days a week at Buckinghamshire New University, plus one day a week study time. There were two other student health visitors who started at the same time as the claimant.
17. The claimant is black British. The two other student health visitors who joined the respondent at the same time as the claimant are white. The respondent accepted that black and minority ethnic staff are under-represented at the respondent compared with the backgrounds of the clients it works with it. The respondent said, and we accept, that work is ongoing to address this. The respondent's witnesses all accepted when asked about this by the claimant that they were aware of ongoing dialogue and research about black and minority ethnic nurses in clinical settings in general being held to higher standards than their white colleagues.
18. Student health visitors work with a community practice tutor. The claimant's community practice tutor was Mrs Sandher; she was on the panel which interviewed the claimant. At the time the claimant joined the respondent, both the claimant and Mrs Sandher were based at Maidenhead.
19. The claimant's first review took place with Mrs Sandher, a month after the claimant joined the respondent. The report is at pages 425 to 427. In that review the claimant's work objectives, conduct and development were assessed as partially meeting the standard required. It was recorded that the claimant showed little participation in the clinical setting. Her practice was inconsistent. It was said that she was not adhering to good hand hygiene as she had long nails with varnish. Mrs Sandher was concerned about the claimant's lack of engagement and that she did not seem to understand or follow discussions that they were having about her performance. She did not seem willing to take on feedback to make improvements. The note of the meeting also recorded that Mrs Sandher had allowed the claimant to change start and finish times to avoid heavy traffic as she had a long commute.
20. About a month later, on 29 March 2019 Mrs Sandher and the claimant went to a new birth home visit together. The interaction they had after they returned to the office is issue (a). There was a dispute about what happened. The claimant says that while she was completing her notes of the visit Mrs Sandher criticised the length of time she was taking, raised her voice and encroached on her personal space. The claimant says Mrs Sandher then then asked her to stay past her contracted time while she waited to have her notes checked which Mrs Sandher then failed to do. Mrs Sandher does not remember this happening and says that it would be completely out of character for her to behave towards another professional in an aggressive way.
21. We find that it is likely that there was a discussion about note taking between the claimant and Mrs Sandher after the visit but that this was part of normal supervision discussions. We accept Mrs Sandher's account that it is unlikely that she raised her voice or encroached on the claimant's personal space and that this behaviour would have been out of character for Mrs Sandher. We find that it is likely that the concerns Mrs Sandher was

beginning to raise about the claimant's performance as a student health visitor were seen by the claimant as unjustified, because of her previous experience as a nurse. We find that the claimant's perception about this impacted the way she viewed or looked back on the interactions between Mrs Sandher and herself, leading her to see unjustified and unfair treatment when Mrs Sandher was attempting to provide guidance and advice in her role as CPT. We also find that it is unlikely that Mrs Sandher required the claimant to wait past her finish time on this day as she had only a few weeks before agreed to allow a change of hours to enable the claimant to avoid heavy traffic.

22. The claimant's three month probation review took place on 1 April 2019. The claimant's university tutor (also known as her link tutor) attended with the claimant and Mrs Sandher. Her performance was assessed as having deteriorated as she was now not meeting standards in relation to work related objectives and development. She had inconsistent practice and was not meeting expectations. The record of the month three review is at page 448.
23. The claimant said that in this meeting Mrs Sandher made a comment to the university tutor about the claimant's personal circumstances, namely that she lived alone and had no children. This is issue (b). We find that it is likely that such a comment was made. We think it is more likely that it was made as part of an informal discussion or chat, rather than as part of the review itself.
24. Another supervision meeting took place on 9 April 2019 between the claimant and Mrs Sandher. The claimant said this happened on 9 May but we find, based on Mrs Sandher's record of meetings which is at page 470, that it was more likely to have been 9 April 2019. The claimant says that comments Mrs Sandher made at this meeting were discriminatory (these comments are issue (c)). In relation to these comments we find as follows.
 - 24.1 First, we find that Mrs Sandher asked the claimant about a change to a client's service level agreement. This was because she had been asked to do so by another health visitor who was concerned about the claimant's actions in respect of this client.
 - 24.2 Secondly, we find that at the time of the meeting Mrs Sandher had received a copy of a document called the claimant's reflection document. Mrs Sandher was given a hard copy of this document by the claimant. We find that Mrs Sandher did not lie about this document. The reflection document is also the context for issue (g). The claimant says Mrs Sandher did not read the document. We find that Mrs Sandher did read the document and that she provided the claimant with verbal feedback on it.
 - 24.3 The third comment arising from the meeting on 9 April concerns feedback provided about the claimant by another health visitor who attended a home visit with her. We find that that health visitor provided written feedback to Mrs Sandher about the claimant which was negative. The claimant said that she was given verbal feedback by that health visitor that her interactions were fine. We find that Mrs

Sandher did not, as the claimant suggested, refuse to include the verbal feedback. Rather, she said that as it had only been provided verbally, it was up to the claimant to include it in her e-portfolio if she wanted to.

- 24.4 The fourth point of issue (c) is the suggestion that Mrs Sandher said that the claimant had taken the idea for a reflection task from a colleague. We think it is unlikely that this was said. It seems inherently unlikely to us that there would be any problem with the claimant adopting a proposed reflection task that had been suggested by a health visitor who had accompanied her to a visit and who was therefore assisting with her training.
- 24.5 Fifthly, in relation to public health days, we find that Mrs Sandher provided support to the claimant to develop public health days. Whilst it was ultimately the responsibility of the student to arrange these days, there were email communications between Mrs Sandher and the claimant regarding public health days. The claimant had completed 10 public health placements during the period she was working with Mrs Sandher (page 972).
25. On 17 May 2019 there was a home visit which Mrs Sandher and the claimant attended. Mrs Sandher's conduct after the home visit is issue (e). We find that Mrs Sandher was critical of the claimant during the client visit for not following up on cues from the client as she should have done. We find that Mrs Sandher intervened to fill the gaps and ensure proper service to the client. We find that it is likely that the discussion with the claimant about this continued in the car on the way back to the office but that it is unlikely that Mrs Sandher shouted and waved her hands at the claimant. We do not find that the claimant was criticised for arranging a follow-up visit. We think it is more likely that there was a discussion about best practice in terms of dealing with issues at the time of the first visit.
26. On the same day, 17 May, there was a meeting between the claimant, Mrs Sandher and the university tutor. On this day an action plan was put in place for the claimant, this is issue (f). The action plan was discussed at the meeting with the claimant because the plan was intended to clarify the aspects of her performance which she had to improve. She was not asked to sign or agree the action plan, but she did not object to it. We find that Mrs Sandher had not given the claimant any warning that an action plan would be implemented ahead of the meeting (this is issue (d)). However, the claimant was aware of areas of concern in general, and we find that it was not unreasonable not to give her advance warning that an action plan would be issued at the meeting. The action plan was a supportive measure to be discussed with the claimant at the meeting. The record of the meeting (page 461) shows that the claimant was not meeting standards and needed further development in terms of work-related objectives, especially health promotion information and advice. Her practice remained inconsistent.
27. The claimant said that putting her on an action plan was unwarranted and that the template suggested that only scores of zero should warrant an action plan. She said that as she had scored above zero an action plan was not warranted. We do not agree that the action plan template said this. We

accept Mr McDaniel's explanation that a score of zero meant that there was an obligation for an action plan but that an action plan could be used for other scores as well if the CPT felt it was helpful.

28. In the claimant's case there were safety issues such as recommending inappropriate treatment and poor advice around passive smoking. Mrs Sandher was concerned that the claimant was not responsive to feedback; her delay in actioning the instruction not to have long nails with polish is an example of this. In the circumstances, we find that implementing an action plan so that the claimant was clear about what was expected was entirely reasonable.
29. The student health visitors who started at the same time as the claimant were not put on action plans. We find that this was because there were no significant concerns about their performance and progress with training. One of the students initially lacked confidence but this was no more than normal, and she showed continuous progression and gained confidence in practice. Mrs McDonnell's student health visitor at the time of the hearing before us, who is white, was put on an action plan.
30. On 24 May 2019 the claimant says she was told by a colleague that Mrs Sandher had commented to that colleague that the claimant was too quiet at work. This is issue (h). Mrs Sandher said she did not make a comment of this nature to this colleague. We did not hear any evidence from her or have any statement from her. We accept Mrs Sandher's evidence on this point because it is direct evidence of the conversation rather than evidence passed through another person.
31. On 4 June 2019, Mrs Sandher and the claimant attended another home visit together. The claimant said that Mrs Sandher was critical of her in this meeting. This is issue (i). We find that this is likely to be an example of an instance when Mrs Sandher, as the claimant's CPT, was providing guidance during a visit or interjecting if she felt necessary. This was part of her role as CPT for a student health visitor who was not meeting the standards for independent visiting. We do not think it is likely that Mrs Sandher spoke sarcastically to the claimant in front of a client.
32. On the following day, 5 June 2019, the claimant attended a home visit with another health visitor. This was the context in which issue (j) arose. The claimant went into the client's home on her own because she arrived before the health visitor. Student health visitors were not supposed to attend client visits on their own. The health visitor told Mrs Sandher about this. Mrs Sandher spoke to the claimant, and said she should not have gone to the visit on her own and that the claimant should not be too confident. This was a reasonable approach to take in light of Mrs Sandher's concerns and the concerns raised by the other health visitor
33. On the same day, 5 June, there was another review meeting held by Mrs Sandher with the claimant and her university tutor. Mrs Sandher had asked her colleague, Jo McDonnell, another CPT, to attend. The university tutor took a note of the meeting (page 702). At this meeting it was decided that the claimant should remain on the action plan (this is issue (k)). The university tutor's note records that the decision to continue with the action

plan was made because little progress had been made by the claimant in the identified areas. The claimant said that during this meeting Mrs Sandher said the claimant was better off sticking as a staff nurse (this is issue (l)). We accept Mrs Sandher's evidence that what she actually said was that there were staff development roles for qualified nurses within health visiting teams within the NHS although not within the respondent.

34. After this meeting the claimant spoke to her university tutor and asked to change CPT. The university tutor spoke to Mrs Sandher and Mrs McDonnell about this.
35. On 17 June 2019, having not heard anything about her request to change tutors, the claimant emailed Mrs Sandher and repeated the request for a new CPT (page 710). The claimant and the other student health visitors were on annual leave at this time and were due to return for the start of the second semester on 11 July. Mrs Sandher replied to the claimant within a couple of hours of her email to reassure her that her request was being dealt with and that every effort was being made to accommodate it. She proposed that any changes be discussed on 1 July when the second semester 2 and the student health visitors would have returned to work.
36. The claimant's email was copied to her university tutor. The tutor emailed the claimant to say that she was surprised by the tone of the claimant's email (page 473).
37. The following day, 18 June, the claimant was told that her community practice tutor would change to Mrs McDonnell. The time taken to make this change between the request being made on 5 June and the decision being made on 18 June is issue (m). It was nine working days. In order to arrange this change, the respondent had to swap another student health visitor from Mrs McDonnell's supervision to Mrs Sandher's supervision, to make a place for the claimant to be supervised by Mrs McDonnell. This had to be done as all CPTs worked on a one-to-one supervision basis. The change of CPT for the claimant, and the related change for the other student health visitor meant that the other student health visitor had to change her base from Windsor to Maidenhead. It took time to talk to the other student health visitor about this, and to make these arrangements. We find that nine days was not an unreasonable period of time to action the claimant's request.
38. On 1 July 2019 there was another supervision meeting. This was conducted by Mrs McDonnell who was the claimant's new CPT from this date. The notes of this meeting are on page 485. It was decided that the claimant would remain on an action plan (this is issue (n)). We find that the concerns about the claimant's performance remained at this time. Changing CPT would not be a reason in itself to cease an action plan. In those circumstances it was reasonable for Mrs McDonnell to decide that the action plan should be maintained.
39. In a meeting between Mrs McDonnell and the claimant on 9 July, Mrs McDonnell asked the claimant whether she had ever been assessed for dyslexia. This is issue (o). We find that Mrs McDonnell asked specifically about dyslexia, and not that she asked the claimant the more general

question of 'whether she had a learning difficulty'. We find that the reason Mrs McDonnell asked the claimant whether she had ever been assessed for dyslexia was because Mrs McDonnell had observed errors in the claimant's written documents. Mrs McDonnell was aware that if the claimant had been assessed as having dyslexia, there would have been assistance available for the claimant with her university work and IT. Mrs McDonnell explained this clearly in her evidence to us and we accept that evidence.

40. On 16 July 2019 another supervision meeting took place between Mrs McDonnell and the claimant. Comments said to have been made by Mrs McDonnell at that meeting are issue (p). We find that it is likely that Mrs McDonnell asked the claimant about her reasons for applying to become a health visitor and her understanding of the health visitor role. We find that she did not do so to belittle the claimant but as part of a developmental discussion to encourage the claimant to reflect. We also find that Mrs McDonnell told the claimant that she had only two weeks left and that by this she was referring to the fact that the claimant's six month probation period would come to an end in two weeks. In referring to the approaching end of the probation period, Mrs McDonnell was encouraging the claimant to improve her performance in the time remaining. She was not suggesting that the claimant would be dismissed in two weeks' time.
41. At a meeting on 22 July 2019 between the claimant and Mrs McDonnell (page 536), Mrs McDonnell said that there had been three instances where information given by the claimant to clients had been unsafe, and that he claimant continued to make errors plotting weights against the centiles.
42. There was another tripartite meeting on 30 July 2019 with Mrs McDonnell, the claimant and the university tutor. The Health Visitor Manager attended at the end of the meeting. This was the month five review meeting and is the context for issue (q) (page 519). At the meeting the claimant was told that a recommendation would be made that she should not continue with the course as she was not ready to work independently. The claimant asked at this meeting, and again in August, if she could work extra shifts to catch up. Mrs McDonnell said that would not possible. She said this because the respondent provided a Monday to Friday service and so the claimant could not work extra shifts at weekends. That left only the study day on which extra shifts could be worked. The university tutor advised that working on a study day would put too much pressure on academic work.
43. Issue (r) concerns a report by Mrs McDonnell to HR, said to have been made on 12 August 2019. We are not entirely clear what the complaint is in relation to this issue. The claimant says that Mrs McDonnell said she would report to HR about some negative feedback she had received about the claimant from a health visitor. The claimant said that Mrs McDonnell told her that HR would want to speak to the claimant, to management, and to the university tutor about this.
44. The discussion that this relates to happened in a one to one meeting on 12 August 2019. Mrs McDonnell was compiling a management report to HR with her recommendation that the claimant should not continue with the course which she had discussed with the claimant on 30 July. She was preparing that report using information up to 29 July which was the end of

the claimant's six month probation period. We find that it is likely that when explaining the process to the claimant Mrs McDonnell said that on receipt of the report, HR would convene a meeting which should be attended by the claimant, management and the university tutor. We find that it is likely that she said that the report would include the feedback she had received. We do not find that Mrs McDonnell's manner was menacing or that she encroached on the claimant's personal space in this meeting.

45. The claimant says that on 13 August Mrs McDonnell ignored her when she arrived at work and gave contradictory instructions on the day (issue (s)). We find that arrangements for home visits often changed at the last minute. Arrangements for the visit on this day were unclear because there was a question about whether the client had moved out of the respondent's area. We find that it is likely that while trying to sort this out Mrs McDonnell may not have had enough time to greet the claimant on her arrival, and that the instructions to the claimant may have changed.
46. We find that on the same day, Mrs McDonnell told the claimant that she was quiet and that she was resilient, (issue (t)). We make this finding because Mrs McDonnell did find the claimant very quiet. Mrs McDonnell also felt that the claimant did not engage with or question feedback or constructive criticism. She described the claimant as resilient as she continued to score herself highly in self-assessments and did not respond to negative feedback, often replying by saying, "That's your opinion".
47. On 14 August 2019 Mrs McDonnell sent her management report to HR (page 531). The report made a formal recommendation that the claimant's appointment should not be confirmed. It included a detailed background of the claimant's performance and CPTs' concerns about her performance which included concerns about safety. Mrs McDonnell recorded that on three occasions the claimant had given inaccurate advice about the prescribing of medicines which was outside her professional scope of practice and competence for her level of training. She had been provided with feedback and support, and expectations clearly explained. There was a concern that the claimant had not appreciated the seriousness of the issues being raised or that she lacked insight into her learning needs. She tended to give much higher scores of her own performance than her CPTs did. The report enclosed the claimant's action plan and the written feedback as appendices.
48. The claimant said that the day before Mrs McDonnell sent the report she had decided not to send her action plan to HR because she had only received one negative feedback about the claimant. This is issue (u). We do not find that this happened as alleged. It does not seem to us to be plausible that Mrs McDonnell would have said on the day before she sent the report, which included the action plan, that she had decided not to send it. Mrs McDonnell did in fact send the report.
49. On 20 August 2019 Mrs McDonnell and the claimant attended a health visit together. Mrs McDonnell observed the claimant conducting an assessment. Mrs McDonnell became concerned that the client did not appear comfortable or relaxed and she contacted the client after the visit. She did this because she wanted to obtain feedback, and she also wanted to ensure

that the client was ok. It was Mrs McDonnell's responsibility to ensure that the client was safe and listened to. The client told Mrs McDonnell that she was not happy with the visit and asked that for the claimant not to return.

50. Linda Ferguson, the Director of Children's Social Care, was appointed to conduct the claimant's probationary review. She wrote to the claimant on 22 August 2019 to invite her to the review meeting. She sent the claimant a copy of the formal management report (page 541).
51. On 9 September 2019 the claimant was in touch with her union about lodging a grievance. The union told her that she would have to send a grievance to the employer, not to the union. Confirmation of that discussion is in a note and an email (pages 697 and 699). The claimant did not send any written grievance to the respondent at that stage.
52. On 10 September 2019 the claimant and Mrs McDonnell had a one to one meeting. The claimant says that on this date Mrs McDonnell told her she had no concerns about her, and recorded negative and inaccurate comments on the claimant's action plan (issue (w)). We do not find that Mrs McDonnell told the claimant she had no concerns about her, because this is inherently unlikely given the history of concerns being raised and recorded. It is also not consistent with the note of the meeting which records that Mrs McDonnell felt that some leaning gaps had improved but there were still significant and documented concerns with the claimant's performance and progress, including a failure to identify a major risk factor. Mrs McDonnell's concerns were also reflected in feedback she had received from others. We find that the discussions were on the lines set out in the note.
53. The probation review meeting took place on 17 September 2019 (page 592). This forms the context to issues (y). At the meeting Ms Ferguson allowed the claimant to be accompanied by her friend Trevor Nolan. Mr Nolan was not there as a union representative and did not work for the respondent, so there was no obligation on the respondent to allow him to attend. At the start of the meeting Ms Ferguson reminded everyone that Mr Nolan was present in a supportive capacity only and that he would not be allowed to speak on behalf of the claimant or answer questions on her behalf. Mr Nolan communicated with the claimant during the meeting by passing notes to her.
54. At the start of the meeting Mrs McDonnell made a statement summarising the management report. The claimant said that Mrs McDonnell focussed on negative feedback obtained during the period she was working with Mrs Sandher, and that Mrs McDonnell omitted positive evidence from July onwards (issue (x)). We find that Mrs McDonnell only submitted evidence up to 29 July 2019. She did so because she was advised by HR that the evidence should only cover the six months' probation period, and this had ended on 29 July. Mrs McDonnell also told the panel that the claimant had not obtained her prescribing or leadership modules. The claimant went on to explain that since the end of her probationary period she had now passed those modules.
55. The claimant was given the opportunity to respond to Mrs McDonnell's statement and to make a statement herself. During the meeting she said

that she changed CPT because of bad behaviour towards her. We have not found any bad behaviours by Mrs Sandher towards the claimant Ms Ferguson asked the claimant whether the claimant wanted to explain further what she meant but the claimant declined.

56. After a break, Ms Ferguson said that she had sufficient information to come to a decision. She decided that the claimant's employment would be terminated with immediate effect and she would be paid a month's pay in lieu of notice.
57. The claimant's employment with the respondent therefore terminated on 17 September 2019.
58. Ms Ferguson wrote to the claimant on 19 September to confirm the outcome of the probationary review (page 601). Ms Ferguson explained that the claimant's perception of her progress and practice was very different to her management's view. She said that the role of health visitor was paramount in ensuring correct information and advice is given to parents and families. She said there was no room for error and accuracy was key. She said she was concerned these were still areas of development for the claimant and that management and her university tutor were not confident in her ability as a safe autonomous practitioner. Ms Ferguson recognised that progress had been made but said she had decided that she could not confirm that the claimant had successfully passed her probationary period in the role of student health visitor.
59. The claimant appealed that decision in a letter of 24 September 2019 (page 605). She gave five grounds for her appeal. Ground two was that she had submitted a grievance to her union representative on the basis of bullying and harassment which amounted to race discrimination. She said that she had been treated differently to her peers from non-ethnic backgrounds. This was the first time the claimant had raised a grievance or complaint of race discrimination or harassment with the respondent.
60. Kevin McDaniel, the Director of Children's Services, was appointed to hear the claimant's appeal. On 9 October 2019 the claimant sent him further evidence in support of her appeal, including an incident log of alleged bullying (pages 655 and 689-696).
61. The appeal meeting itself took place on 17 October 2019. The claimant was again accompanied by Mr Nolan as a supporter or companion. The notes of the meeting start on page 659.
62. Mr Daniel explained that although the claimant had not submitted a grievance, he wanted the concerns she had raised in ground two of her appeal to be looked into and so further enquiries would be conducted before he made his decision. He asked Ms Ferguson and the Human Resources Business Partner to look into the claimant's concerns that she had raised in ground two of her appeal, and they did so and reported back to Mr McDaniel.
63. Mr McDaniel gave the claimant the opportunity to explain the grounds for her appeal. He allowed time in the appeal for the feedback on the claimant's performance and progress after 29 July to be discussed.

64. On 31 October 2019 Mr McDaniel sent the claimant a detailed appeal outcome letter (page 678). It concluded that the claimant's appeal was not upheld. Mr McDaniel had taken into account the feedback on performance and progress after 29 July, even though it related to a time after the probationary period. Ms Ferguson had investigated the claimant's concerns and found no evidence of the claimant being subjected to behaviour that would lead to her feeling marginalised, degraded, humiliated or bullied. Mr McDaniel considered the claimant's appeal points in full but decided that the decision to dismiss should be upheld. He attached significant weight to the important factor that the CPT is ultimately accountable to the Nursing and Midwifery Council as a professional expert in their field and is required to be confident in a student health visitor's practical skills and ability to work as an autonomous safe practitioner, in order to confirm that they can progress to the next semester of the course. He acknowledged that the claimant had made progress since the original submission of the paperwork, and that one to one meetings had continued up to and including the date of termination. However, he felt that there was still a clear view that the progress the claimant had made was not significant enough to warrant a change of the original decision. The submission of the further documents had not changed the view that dismissal was the only appropriate outcome.
65. The claimant commenced early conciliation with Acas on 12 November 2019 and presented her claim form on 3 January 2020.
66. There were two allegations in the claimant's witness statement which referred to race. They were not part of the issues that the claimant identified for the tribunal to consider and they were not put to the respondent's witnesses. We have considered this evidence as it may be relevant to the drawing of inferences of discrimination, and these are our findings on those two points.
67. First, in paragraph 30 of the claimant's statement, the claimant said that when discussing a birthmark which is prevalent in BAME communities, Mrs Sandher pointed to the claimant's arm and made a circling motion with her finger saying, "People of your colour". Mrs Sandher does not recall having a conversation with the claimant about this type of birthmark. Mrs McDonnell recalls discussing this type of birthmark with the claimant. She does not accept that she pointed to the claimant's arm or said, 'People of your colour'. Mrs McDonnell says that she raised the issue with the claimant because during a visit to a child who had this type of birthmark, the claimant had not made reference to the birthmark. Mrs McDonnell wanted to let the claimant know that these birthmarks should be documented, because it was important to differentiate between birthmarks and bruises. We find that the discussion took place as described by Mrs McDonnell. We find it is more likely that Mrs McDonnell was the person that the claimant had this conversation with. We prefer her evidence on this point because there was clear clinical reason to raise this issue with the claimant and because the claimant's recall of this discussion appears to be poor as she thought it was with a different CPT.
68. The second instance referencing race in the claimant's witness statement is in paragraph 69. Again, this was not one of the issues for decision and was not put to the respondent's witnesses. The claimant says that after a

meeting Mrs McDonnell told her to work with the only other black member of staff and said she would, 'Get on well with her'. We accept the evidence in Mrs McDonnell's statement that this conversation took place towards the end of the day when Mrs McDonnell was leaving, and that Mrs McDonnell told the claimant that she should speak to this member of staff if she had any problems. Mrs McDonnell did not comment on whether the claimant would get on with that member of staff. She suggested that the claimant should speak to that member of staff not because she is black but because she worked later than the other health visitors and so would be available if the claimant needed help. We accept Mrs McDonnell's evidence on this because the conversation as she describes it seems plausible.

The law

Direct discrimination because of race

69. Race is a protected characteristic under sections 4 and 9 of the Equality Act 2010.

70. Section 13(1) of the Equality Act provides:

"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."

Harassment

71. Under section 26 of the Equality Act, 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.*

72. Because of the focus on the effect of the conduct (as an alternative to considering its purpose), intent to harass is not a required element in a complaints of harassment.

73. In deciding whether conduct has the effect referred to, the tribunal must take 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.*"

Burden of proof

74. Sub-sections 136(2) and (3) of the Equality Act provide for a reverse or shifting burden of proof:

"(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) This does not apply if A shows that A did not contravene the provision."

75. This means that if there are facts from which the tribunal could properly and fairly conclude that a difference in treatment was because of the protected characteristic, or that there was unwanted treatment related to the protected characteristic, the burden of proof shifts to the respondent.
76. Where the burden shifts, the respondent must prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

Summary

77. At the hearing, we gave a summary of the legal principles we have to apply when we are considering whether treatment amounts to direct race discrimination or harassment, as follows.
78. For complaints of direct race discrimination contrary to section 13 of the Equality Act, we have to consider whether someone has been less favourably treated because of race.
79. The idea of less favourable treatment has a comparison built in. We are required to consider whether someone else was treated better than the claimant. That person is called a comparator. They can be a real comparator or a hypothetical comparator who would have been treated better in the same or similar (that is not materially different) circumstances. The claimant relies as comparators on the two other student health visitors who began their training at the same time as her.
80. Where there is a difference in treatment between the claimant and a comparator, we consider the reason why the claimant was treated differently and whether it was because of race. The Equality Act recognises that it is difficult for someone to prove discrimination, and so there is a shifting burden of proof to address this. The shifting burden of proof means that if the claimant has shown evidence from which we could conclude that there was direct discrimination (or harassment), the burden of proof shifts to the respondent to satisfy us that there has been no discrimination (or harassment).
81. The test for harassment related to race in an employment context is set out in section 26 of the Equality Act. We have to consider whether the treatment the claimant complains of was unwanted conduct related to race and whether the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
82. All of these elements have to be present for a harassment complaint to succeed. Unwanted conduct which violates dignity but is not related to race will not amount to unlawful harassment related to race. Unwanted conduct which is related to race but does not violate dignity or create the required

negative environment will also not amount to unlawful harassment related to race.

Conclusions

83. With those legal tests in mind we have considered each of issues (a) to (y) as we have found them to have occurred in our findings of fact, and we have considered whether they meet the legal tests for direct race discrimination or harassment related to race.
84. Issue (a) (comments made on 29 March 2019): We have not found that this occurred as alleged by the claimant. We found that this was a normal supervision discussion. It was not less favourable treatment than any other student health visitor and was not because of race. It was not, as a normal supervision discussion, unwanted conduct and it was not related in any way to race.
85. Issue (b) (the comment made by Mrs Sandher on 1 April during a general discussion in a meeting with the claimant and her university tutor where Mrs Sandher made reference to the fact that the claimant has no children and lives alone): We find that this was part of a general discussion, we do not find that it amounted to less favourable treatment than another student health visitor. It was not related to race or because of race.
86. Issue (c) (the supervision meeting on 9 May): We have found that some of this occurred as alleged, namely there was a discussion about a change of service level agreement but we have found that the reason for the discussion was because a concern had been raised by another health visitor. It was not because of or related to race. None of the other complaints in issue (c) have been found by us to have occurred.
87. Issue (d) (the failure to give the claimant advance warning that an action plan would be implemented on 17 May): We do not consider that to be unreasonable in circumstances where the claimant was aware of the concerns about performance. The action plan was a supportive mechanism intended to address them. But, in any event, the decision not to tell her in advance was not because of or related to race.
88. Issue (e) (criticism of the claimant at a home visit on 17 May). We have not found that this happened as alleged. We have found that it was a normal supervision discussion which did not amount to less favourable treatment because of race or unwanted conduct related to race.
89. Issue (f) (the placing of the claimant on an action plan). We have found that this was not unwarranted as there were performance reasons for the action plan. The placing of the claimant on an action plan was not less favourable treatment compared to the other student health visitors because their performance was different to the claimant's. If there had been similar concerns about their performance, an action plan would have been implemented as occurred with Mrs McDonnell's current student.
90. Issue (g) (the alleged failure to mark the claimant's reflection document or to offer any explanation for that failure). We have not found that this occurred

as alleged. We have found that Mrs Sandher read the claimant's reflection document and provided verbal feedback.

91. Issue (h) (an allegation about a comment made to another health visitor): we have found that this did not occur.
92. Issue (i) (comment on 4 June by Mrs Sandher during a home visit): We have not found that this occurred as alleged. We have found that Mrs Sandher intervened during a home visit when she was present as the claimant's supervisor and that the intervention was appropriate.
93. Issue (j) (the criticism of the claimant by Mrs Sandher on 5 June for entering a client's home alone): We have found that Mrs Sandher criticised the claimant for this and that she said the claimant was too confident. The reason why this happened was because the claimant had gone into a client's home on her own when she was required to attend home visits with a supervisor. This was for the safety of the student and the client. Raising this with the claimant was part of normal feedback from a tutor to a student. We had no evidence of any other student being treated differently in the same circumstances. It was not less favourable treatment or unwanted conduct and was not because of or related to race.
94. Issue (k) (meeting on 5 June at which it was decided that the claimant would remain on an action plan): The reason why this happened was because the claimant was not progressing in her practice such that the concerns raised in the action plan had been met. The ongoing issues that had been raised with the claimant by her CPT were carefully documented. In the circumstances it was appropriate for the respondent to decide that the claimant should remain on an action plan. This was not less favourable treatment and was not because of race or related to race.
95. Issue (l) (Mrs Sandher commenting that the claimant was better off sticking as a staff nurse): We have not found that issue (l) occurred as alleged. The comments made by Mrs Sandher about staff development roles for qualified nurses was an appropriate and potentially helpful point to raise with the claimant. This was not less favourable treatment or unwanted conduct and was not because of or related to race.
96. Issue (m) (the delay in arranging a change of practice tutor): We have not found there to have been any delay, given the absence on annual leave and the arrangement for swapping another student health visitor's CPT. The change was put in place as quickly as possible in the circumstances.
97. Issue (n) (decision to retain the claimant on an action plan after change of CPT): Again, the reason why this happened was because the concerns raised in the action plan had not been addressed. A change of CPT would not in itself affect that. In the circumstances, it was appropriate for respondent to decide that the claimant should remain on the action plan. This was not less favourable treatment and was not because of race or related to race.
98. Issue (o) (the reference by Mrs McDonnell to a learning difficulty): We have found that Mrs McDonnell asked the claimant whether she had been assessed for dyslexia. This did not amount to less favourable treatment. It

was an attempt to investigate whether there were circumstances which meant that the claimant would be able to access more support or assistance to help her with her training. Mrs McDonnell had reason to raise it because of observations she had made of errors in the claimant's written documents. This was not because of or related to race in any way.

99. Issue (p) (meeting on 16 July 2019 between the claimant and Mrs McDonnell): The allegations were that Mrs McDonnell asked questions about why the claimant wanted to be a health visitor and what she understood about the role. The facts as we have found them on this issue are suggestive of a supportive development discussion between a tutor and a student. We do not find that the comments were in any way because of or related to race. We have found that the reference by Mrs McDonnell to 'two weeks remaining' was to the approaching end of the probation period. That that was factually accurate and a relevant point to highlight to the claimant in this context.
100. Issue (q) (meeting on 30 July at which it was decided that it would be recommended that the claimant should not continue with her course): We have found that the reason why the CPT made this decision was because of well documented problems the claimant had been experiencing with progressing and performing as the training required. The decision was supported by the claimant's university tutor. The other student health visitors were permitted to continue and complete their course but their circumstances were not the same as the claimant's, because they did not have the same concerns around their performance. The decision to recommend that the claimant should not be allowed to continue with her course was not because of or related to race.
101. Issue (r) (Mrs McDonnell reporting to HR): We had difficulty understanding this issue. It was appropriate for Mrs McDonnell to tell the claimant that HR would be speaking to her management and her university tutor in the context of the probation review. We have not found that she did so in a menacing or encroaching manner. We have found that she restricted the feedback she provided to feedback received before 29 July but the reason she did this was because this date was the end of the probation period, and she was advised to do so by HR. This was not because of or related to race.
102. Issues (s) and (t) (matters on 13 August): We have found that the discussions which formed the context of these complaints were part of the normal interactions and conversations between a tutor and a student and were not in any way because of or related to race.
103. We have not found issue (u) to have occurred at all.
104. Issue (v) (Mrs McDonnell seeking feedback from a client): We have found that this did take place and that the reason it took place was because Mrs McDonnell's observations of the visit led her to consider that it was appropriate for her to contact the client. It was not because of race or for a reason related to race.
105. Issue (v) also includes, as does issue (q), the allegation that it was direct race discrimination or race related harassment not to allow the claimant to do extra shifts. We have found the reason that the claimant was not allowed

to do extra shifts was because there was no time to do them. The service was not open at weekends and the university tutor had advised against doing extra shifts on the study day. This was not because of or related to race.

106. Issue (w) (comments recorded on the claimant's action plan on 10 September): We have found that Mrs McDonnell did not say she had no concerns about the claimant, and we have found that the negative comments recorded accurately reflected the feedback which was provided. It was appropriate for Mrs McDonnell to record this feedback as part of the action plan, as the purpose of the plan was to tell the client how she needed to improve. It was not because of race or related to race.
107. Issue (x) (evidence made by Mrs McDonnell to the panel on 17 September at the probationary review): We have found the reason that Mrs McDonnell restricted evidence to the period up to 29 July was, as we have said, because Mrs McDonnell was advised by HR to limit feedback to the probationary period. It was not because of race or related to race. We note also that Mr McDaniel took the later evidence into account at the appeal stage.
108. Issue (y) (termination of the claimant's employment): We have found that the reason the claimant's employment was terminated was because she did not meet the standards required for a student health visitor to pass their probation. The concerns that were raised about the claimant's performance arose early in her training and were communicated to her clearly and recorded carefully. She was provided with support and training to help her meet the standards. She did not at any stage dispute the concerns which were put to her about her performance. It was clearly explained to us, and we accept, that the health visitor role is an important one for parents and families and that the respondent needs to be very confident that its health visitors can operate safely. This was at the forefront of Ms Ferguson's and Mr McDaniel's minds when they made their decisions. The termination of the claimant's employment was for these reasons and not because of race or related to race.
109. We have found it possible to make positive findings of fact as to the reasons why the treatment occurred, but we have considered the shifting burden of proof in any event. As we have explained, the shifting burden of proof means that where a claimant has proved evidence from which we could conclude that there was direct race discrimination or racial harassment, the burden shifts to the respondent to satisfy us of an absence of discrimination.
110. To shift the burden, the claimant must show more than a difference in race and a difference in treatment. In this case, the claimant has not shown something more than that from which we could make a finding of discrimination. If we had found that the burden had shifted, we would have accepted that the respondent had non-discriminatory reasons for the actions that it took as we have explained.
111. Having considered each of the claimant's 25 allegations individually, we step back and consider the claim as a whole. The need to focus on a number of individual incidents as we have had to do in this case can risk

leading to a failure to see the claim in the round, or a failure to see the big picture. We need to be careful of treating individual incidents in isolation from one another and missing the big picture, because that big picture may shed light on individual complaints. So, to avoid this problem, we have stepped back and considered the full picture. In doing so we have also thought about the elements of the claimant's case which could have led us to conclude that there was direct race discrimination or race related harassment. We have in mind that discrimination can be conscious or unconscious and that employers are unlikely to admit, even to themselves, that they have discriminated.

112. There were two incidents in the claimant's statement in which she said race was directly referenced or involved. Although these were not listed as part of the issues for us to determine, or referred to during the hearing, we made findings of fact on these. The first was a discussion about a birthmark. We have found that this was a discussion about birthmarks particularly prevalent in BAME communities and about the steps that need to be taken in light of the risk of birthmarks being mistaken for bruises. It was not a reference to the claimant's race. The second incident occurred towards the end of a working day when Mrs McDonnell told the claimant she could seek help from another health visitor who was black. That happened because that member of staff worked later than other health visitors. It was not related to the claimant's or the other health visitor's race or because of their race.
113. We have also taken into account that the respondent accepted that black and minority ethnic staff are under-represented in terms of the clients it works with, and that work is ongoing to address this. The respondent's witnesses all accepted that there is a wider dialogue and research about black and minority ethnic nurses being held to higher standards than their white colleagues. We certainly have these background factors in mind. Our focus though is on what happened in the claimant's case and whether what we have found to have happened amounted to direct race discrimination or harassment by reference to the relevant legal tests. There was no evidence in this case from which we could have concluded that the claimant was held to higher standards than her white colleagues. When the claimant raised an allegations of race discrimination with the respondent, the respondent investigated them, even though they were not put as a formal grievance.
114. Stepping back, it is clear to us that the treatment which the claimant complains about happened because her performance in her role as a student health visitor did not meet the required standards. As we have said, concerns about performance were carefully documented and discussed with the claimant. She was provided with support and training to try and achieve the standards required. She did make some progress and the respondent recognised this, but ultimately the respondent concluded that her progress was not sufficient to enable her to continue.
115. We appreciate that it must have been a very difficult experience for the claimant, as a qualified and experienced nurse, to hear this and we think that this may have impacted on her relationships with, and her perceptions of her CPTs and the way she dealt with their concerns. However, despite the skills and experience she had acquired in her previous roles, the

claimant was not able to meet the standards needed to continue with her training as a health visitor.

116. Having stepped back and carefully considered these factors and the claimant's claim in the round, we have concluded that the allegations of unlawful treatment are not made out.

Employment Judge Hawksworth

Date: 25 August 2022

Sent to the parties on: 8/9/2022

N Gotecha

For the Tribunal Office

Appendix – list of issues identified at the hearing on 10 May 2021

- (1) The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

Time limits / limitation issues

- (i) Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a "*just and equitable*" basis; when the treatment complained about occurred; etc.
- (ii) The claimant's complaint is in time by reference to the date of termination of her employment (17 September 2019) but given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 13 August 2019 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it.

EQA, section 13: direct discrimination because of race

- (iii) Has the respondent subjected the claimant to the following treatment:
- a. On 29 March 2019, Rabinder Sandher (1) criticised the length of time that the claimant was taking to record notes, raising her voice and encroaching on the claimant's personal space and (2) required the claimant to wait until after the claimant's contracted finish time whilst she checked the notes but then failed to do so.
 - b. On 1 April 2019 during a meeting with the claimant and her Course Tutor, Rabinder Sandher breached GDPR by making reference to the fact that the claimant had no children and lived alone.
 - c. During a supervision meeting on 9 May 2019, Rabinder Sandher (1) accused the claimant of changing a service level agreement on a document, (2) lied about whether she had received a "reflection document" from the claimant, (3) refused to allow the claimant to provide positive feedback from another Health Visitor, (4) incorrectly suggested that the claimant had taken the idea for a proposed "reflection task" from a colleague and (5) said that she would consider how to support the claimant to develop a public health day but failed to do so.
 - d. On 16 May 2019, Rabinder Sandher failed to tell the claimant that a proposed meeting on 17 May 2019 would result in the issue of an action plan.

- e. During a home visit on 17 May 2019, Rabinder Sandher loudly criticised the claimant in front of the client. During the journey back to the office she shouted at the claimant and waved her hands at her. She later criticised the claimant for arranging a follow up visit at the client's home.
- f. During a meeting on 17 May 2019, between the claimant, her Course Tutor and Rabinder Sandher, the claimant was assessed by the respondent as not meeting the required standards and placed on an action plan. The claimant contends that this was unwarranted and that she had received no advance warning that this was contemplated.
- g. On 23 May 2019, Rabinder Sandher confirmed that she had not marked the claimant's reflection document and failed to offer any explanation for this failure
- h. On 24 May 2019, Rabinder Sandher informed a locum health visitor, that the claimant was "too quiet whilst at work" which the claimant believes indicates that she was being penalised for not conforming to a stereotype.
- i. On 4 June 2019, Rabinder Sandher criticised the claimant in front of the client during a home visit, asking "if she was going to assess the baby" when the claimant was already engaged in doing so.
- j. On 5 June 2019, Rabinder Sandher criticised the claimant for entering a client's home alone. She later stated that the claimant came across as "too confident".
- k. On 5 June 2019, Rabinder Sandher, the Course Tutor and Jo McDonnell held a further meeting with the claimant and decided that the claimant should remain on the action plan. The claimant contends that this was not justified.
- l. During that meeting Rabinder Sandher commented that the claimant was "better off sticking as a staff nurse".
- m. The respondent failed to arrange a change of Practice Tutor until 18 June 2019, despite the claimant requesting this on 5, 14 and 17 June 2019.
- n. On 1 July 2019, Jo McDonnell informed the claimant that she had decided to keep her on an action plan. The claimant contends that this was unjustified.
- o. On 9 July 2019, Jo McDonnell asked the claimant, loudly and in front of other staff, whether she had a learning difficulty.
- p. On 16 July 2019, Jo McDonnell (1) asked the claimant "belittling questions" such as "why do you think you are going to make it as a health visitor?" and "why did you apply to be a health visitor?" (2) stated that the claimant did not understand the role of a health visitor but failed to explain her statement and (3) asked the claimant where she intended to go with the course given that she only had two weeks' left.
- q. On 30 July 2019, during a meeting with the claimant and her Course Tutor, Jo McDonnell (1) stated that the claimant should not continue with the course as she was not ready to work independently and (2) refused to allow the claimant to work extra shifts.

- r. On 12 August 2019, (1) Jo McDonnell said that she would be reporting to HR that she had received negative feedback from Cate Ingram about the claimant although the claimant disputed that the feedback was negative (2) Jo McDonnell's manner was menacing and she encroached on the claimant's personal space and (3) she said that HR would want to speak to the claimant and to management and the University Tutor.
 - s. On 13 August 2019, Jo McDonnell (1) ignored the claimant when she arrived and (2) gave the claimant contradictory instructions about whether to call a client.
 - t. On 13 August 2019, Jo McDonnell stated that the claimant was resilient to everything that was going on and commented that the claimant was quiet
 - u. On 13 August 2019, Jo McDonnell decided not to send the claimant's action plan to HR, the claimant believes this was because she had only obtained one negative feedback form about the claimant.
 - v. On 20 August 2019, Jo McDonnell (1) sought additional feedback about the claimant from a client despite having observed the claimant conducting the assessment (2) refused to allow the claimant to complete extra shifts.
 - w. On 10 September 2019, despite informing the claimant that she had no concerns about her, Jo McDonnell recorded comments on the claimant's action plan which were negative and did not accurately reflect the feedback which had been provided.
 - x. On 17 September 2019, Jo McDonnell submitted evidence to the panel which focussed on negative feedback obtained during the period of the claimant's supervision by Rabinder Sandher and did not include more positive evidence which had been gained in period July 2019 onwards. Jo McDonnell also wrongly informed the panel that the claimant had not obtained her prescribing or leadership modules.
 - y. On 17 September 2019, the respondent terminated the claimant's employment.
- (iv) Was that treatment "*less favourable treatment*", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on the following comparators:
- a. The respondent's other two student health visitors; and/or
 - b. hypothetical comparators.
- (v) If so, was this because of the claimant's race and/or because of the protected characteristic of race more generally?

EQA, section 26: harassment related to race

- (vi) Did the respondent engage in conduct as follows:

- a. The claimant relies on the treatment set out at (iii) (a) to (y) above as harassing conduct.
- (vii) If so was that conduct unwanted?
- (viii) If so, did it relate to the protected characteristic of race?
- (ix) Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Remedy

- (x) If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and that have not already been mentioned include:
 - a. if it is possible that the claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?