



EMPLOYMENT TRIBUNALS

Claimant

Ms M Robinson

v

Respondents

- 1. Mr Michael Harris**
- 2. Lisa Weston**
- 3. 10 King's Bench Walk
Chambers**
- 4. Mr Steve Clarke**
- 5. Mr Lee Williams**

Heard at: Central London Employment Tribunal (by CVP)

On: 16 - 19 January 2023

Before: Employment Judge Brown

Members: Mr N Brockman
Mr S Hearn

Appearances:

For the Claimant: In person
For the Respondents: Ms P Leonard, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

- 1. The Respondents did not subject the Claimant to race discrimination or race harassment.**
- 2. The Respondents did not victimize the Claimant.**
- 3. The Claimants' claims fail and are dismissed.**

REASONS

Preliminary

1. By a first claim, number 2207251/2020, presented on 21 November 2020 the Claimant, a barrister at 10 Kings Bench Walk Chambers, brought the following complaints:
 - 1.1. Against 10 Kings Bench Walk (“10KBW”): direct race discrimination that:
 - 1.1.1. On/after 15 April 2020: 10KBW ignored/did not take Claimant’s complaint seriously;
 - 1.1.2. On/after 30 April 2020: 10KBW ignored/did not take Claimant’s complaint seriously;
 - 1.1.3. After 11 August 2020: Chambers required the Claimant to attend Chambers in person to collect the complaint outcome;
 - 1.1.4. On unspecified dates: Chambers supported R1, R3 and R4’s version of events.
 - 1.2. Against individual Respondents: acts of direct race discrimination and race harassment:
 - 1.2.1. Against Mr Harris, two allegations (i) sending an email of 3 July 20 and (ii) failing to hold a meeting to resolve issues
 - 1.2.2. Against Mr Williams, two allegations regarding his alleged conduct on 14 April 2020 and 8 April 2020
 - 1.2.3. Against Mr Clarke, one allegation in relation to his alleged conduct on 27 May 2020
2. The Claimant relies on being black in her race discrimination and harassment complaints. She compares herself with white comparators, James Bogle, Nicholas O’Brien and Alistair Panton.
3. By a second claim, number 2203836/2022, presented on 10 June 2022, the Claimant brought a complaint of victimisation. The Claimant confirmed at this hearing that the only protected act on which she relied was the first claim, 2207251/2020. The detriment was “not being properly referred for work while still being charged Chambers rent”. The ACAS Notification was received on 10 May 2022 and Certificate was issued on the same date.
4. EJ Tinnion set out the issues in the first claim at a preliminary hearing on 11 March 2022 as follows:

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No.	Discriminator	Less favourable treatment	Comparator(s)
1	10KBW	<u>Date:</u> on/after 15 April 2020 <u>Claimant conduct:</u> made complaint against Messrs. William, Clark <u>Treatment:</u> 10KBW ignored/did not take Claimant's complaint seriously	James Vogel Nicholas O'Brien Alistair Panton
2	10KBW	<u>Date:</u> on/after 30 April 2020 <u>Claimant conduct:</u> made complaint via WhatsApp to Ms. Western and Mr. Harris against William, Clark <u>Treatment:</u> 10KBW ignored/did not take Claimant's complaint seriously	James Vogel Nicholas O'Brien Alistair Panton
3	10KBW	<u>Date:</u> after 11 August 2020 <u>Claimant conduct:</u> C submitted complaint via email re: conduct of Messrs. Harris, Williams, Clarke <u>Treatment:</u> 10KBW required Claimant to attend chambers in person to collect complaint outcome from her chambers ductet – when she asked for outcome to be sent to her via email (during Covid-19 lockdown), request denied	James Vogel Nicholas O'Brien Alistair Panton
4	10KBW	<u>Date:</u> not specified <u>Claimant conduct:</u> C submitted complaint via email re: conduct of Messrs. Harris, Williams, Clarke <u>Treatment:</u> 10JBW supported what Messrs. Harris, Williams, Clarke said about alleged £360 payment to Claimant without checking the facts	James Vogel Nicholas O'Brien Alistair Panton

Second, a claim against 2nd Respondent Mr. Harris that an email he sent the Claimant on 3 July 2020 was:

- a. an act of direct race discrimination/less favourable treatment under ss.13 and 47(2)(e) EqA 2010 – the Claimant relies on James Vogel, Nicholas O'Brien and Alistair Panton as comparators;
- b. an act of harassment under s.26(1)(a)-(b)(i)-(ii) and 47(3)(a) EqA (the Claimant relies on purpose as well as effect)

Third, a claim against 2nd Respondent Mr. Harris that he was aware of a recommendation Chambers Equality Officer Nicholas O'Brien made in July 2020 to hold a meeting to resolve matters regarding the alleged £360 overpayment attended by the Claimant and Mr. Harris, which Mr. Harris chose not to do, which she contends was:

- a. an act of direct race discrimination/less favourable treatment under ss.13, and 47(2)(e) EqA – the Claimant relies on James Vogel, Nicholas O'Brien and Alistair Panton as comparators;
- b. an act of harassment under s.26(1)(a)-(b)(i)-(ii) and 47(3)(a) EqA (the Claimant relies on purpose as well as effect)

Fourth, a claim against 3rd Respondent Mr. Williams in relation to his conduct as a barristers' clerk on 14 April 2020 when (she says) he asked the Claimant to cover the hearing on 15 April 2020 and, after she declined, made further attempts to urge her to take the case, which she alleges was:

- a. an act of direct race discrimination/less favourable treatment under ss.13, 47(2)(e) and 47(8) EqA 2010 – the Claimant relies on James Vogel, Nicholas O'Brien and Alistair Panton as comparators;
- b. an act of harassment under s.26(1)(a)-(b)(i)-(ii), 47(3)(a) and 47(8) EqA (the Claimant relies on purpose as well as effect)

Fifth, a claim against 3rd Respondent Mr. Williams in relation to his conduct as a barristers' clerk on 8 April 2020 when (she says) he asked her three times (via email and phone calls) to cover a direct access case hearing (date of hearing not pleaded in ET1) after she had returned the brief on ethical/professional grounds, which she alleges was:

- a. an act of direct race discrimination/less favourable treatment under ss.13, 47(2)(e) and 47(8) EqA 2010 – the Claimant relies on James Vogel, Nicholas O'Brien and Alistair Panton as comparators;
- b. an act of harassment under s.26(1)(a)-(b)(i)-(ii), 47(3)(a) and 47(8) EqA (the Claimant relies on purpose as well as effect)

Sixth, a claim against 4th Respondent Mr. Clarke in relation to his conduct as a barristers' clerk on 27 May 2020 when (she says) she telephoned him to discuss remittances and he shouted at her that she owed Chambers money. The Claimant alleges this to be:

- a. an act of direct race discrimination/less favourable treatment under ss.13, 47(2)(e) and 47(8) EqA 2010 – the Claimant relies on James Vogel, Nicholas O'Brien and Alistair Panton as comparators;
- b. an act of harassment under s.26(1)(a)-(b)(i)-(ii), 47(3)(a) and 47(8) EqA (the Claimant relies on purpose as well as effect)

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4. The correct name of one of the Claimant's comparators was James Bogle, not James Vogel.
5. At this Final Hearing, the Tribunal heard evidence from the Claimant, It heard evidence from Michael Harris, the First Respondent, a barrister at 10 KBW and former Head of Chambers; Lisa Weston, the Second Respondent, a barrister at 10 KBW and current Head of Chambers there; Brooke Stokes, Civil and Family clerk at 10 KBW; Steve Clarke, the Fourth Respondent and former fees clerk at 10 KBW; and Lee Williams, the Fifth Respondent and former clerk at 10 KBW.
6. There was a Bundle of documents. The Claimant had originally exhibited a large number of documents to her witness statement, rather than referring to pages in an agreed Bundle. On the first morning of the hearing, the Tribunal ordered the parties to prepare a Bundle containing all relevant documents. This was eventually done that afternoon. The Claimant then provided a witness statement with references to page numbers in the Bundle, not separate exhibits.
7. The Tribunal timetabled the case at the outset. The Claimant and Ms Leonard, Counsel for the Respondents, were asked how long they would take in cross examination of the witnesses and a timetable was devised on the basis of their estimates. Ms Leonard completed her cross examination of the Claimant within the time she gave. The Claimant did not complete her cross examination of any of the Respondent's witnesses in the time she had estimated. The Tribunal nevertheless allowed her to ask all her questions, giving her additional time to do so. It also ensured that the individual witnesses were asked questions about each of the complaints which the Claimant maintained against them. The Tribunal directed the Claimant to the list of issues as set out by EJ Tinnion and to her victimisation allegations in the second claim. It encouraged her to ask questions relevant to those matters. Where the Claimant did not do so, the Tribunal asked the individual witnesses about the allegations made against them.
8. Both parties made submissions. The Respondents made both written and oral submissions.

Relevant Facts

9. The Claimant is a barrister of 22 years call.
10. Following a period away from practice, she was interviewed, in February 2020, for a tenancy at 10 King's Bench Walk Chambers ("10 KBW"), the Third Respondent.
11. By an email of 18 February 2020, Michael Harris, then Head of Chambers at 10 KBW, offered the Claimant a tenancy, p323. In his offer, Mr Harris asked the Claimant when she would like to start and said, "I have copied in our senior clerk, Lee Williams, so the clerks room can prepare for your arrival." The Claimant replied, accepting the offer of tenancy and saying that she would like to start on Monday 2 March 2020.
12. On 27 February 2020, before the Claimant had started in Chambers, a Charity called Dads Unlimited sent Licensed Access instructions to Lee Williams, senior clerk, saying, "Counsel is required to attend FHDRA hearing (child arrangement matter) on 15/04/2020 at Canterbury Magistrates Court at 10 am to represent our client - the

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applicant [DC]... Relevant document will follow in due course. Please forward the fee note of counsel fees to us which we will send to the client for prompt payment.” P414. Mr Williams replied on 28 February 2020 saying, “ I would have Michele Robinson for the 15th April.” P414.

13. On 6 March 2020 10 KBW paid £760 into the Claimant’s bank account.
14. There was a dispute between the parties as to what this payment was for.
15. The Third Respondent uses a diary and fee system called LEX.
16. A payment summary generated on 26 October 2022 by LEX for the Claimant, for the period 1 January 2020 to 30 September 2022, showed a payment for £360 from Dads Unlimited in the case of DC, received on 5 March 2020 and receipted that day. The LEX payment summary also showed a payment of £400 from a Company MRKS, received on 5 March 2020 and also receipted that day, p55.
17. The only other payments shown by LEX as received for the Claimant in March 2020 were for £500 each on 11 March 2020 and 16 March 2020. Both those payments were therefore received after 10 KBW paid £760 into the Claimant’s bank account on 6 March 2020.
18. There was a Fee Note dated 5 March 2020 in the Bundle at p53 for the Claimant, showing payment received on 5 March 2020 in the sum of £400 from MRKS Solicitors in relation to “11/03/2020 Brief on Hearing.” The Court was “IAC Hatton Cross”.
19. Another Fee Note for the Claimant, dated 5 March 2020, p52, showed payment received on 5 March 2020 in the sum of £360 from Dads Unlimited. The Court was “Canterbury Magistrates Court”.
20. The Claimant told the Tribunal that she believed that the £760 payment had been made in respect of an appeal hearing she attended in March 2020. She did not give the Tribunal any details of the case, nor did she show when that £760 payment was made to Chambers by the client in that alleged appeal case.
21. The Respondents witnesses’ told the Tribunal that the £760 payment was a combined payment of the £400 and £360 payments made on 5 March 2020.
22. The Tribunal accepted the Respondents’ evidence – the 2 payments of £760 total were clearly evidenced by receipts and LEX records. There were no other payments received for the Claimant which could have been paid to her on 6 March 2020. It therefore found that 10 KBW paid the Claimant £360 as part of £760 total, on 6 March 2020, which sum had been received from Dads Unlimited on 5 March 2020 in respect of a hearing at Canterbury Magistrates Court on 15 April 2020.
23. Mr Williams told the Tribunal that he showed the Claimant how to use her diary on the day she started work at Chambers, 2 March 2020. He said that the booking for Dads Unlimited for the hearing at Canterbury Magistrates Court on 15 April 2020 would have been visible. He told the Tribunal that her diary is now blank for 15 April because the booking was removed once she rejected it.

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24. The Claimant told the Tribunal that the Dads Unlimited booking for 15 April 2020 was not entered in her diary.
25. Whether or not Mr Williams had entered the booking in her diary, the Tribunal found, on the basis of the email exchange between Mr Williams and Dads Unlimited on 27 – 28 February 2020 and the payment received from Dads Unlimited for attendance on 15 April 2020, that Mr Williams and Dads Unlimited had agreed that the Claimant would be engaged as Counsel to attend the hearing for DC on 15 April and the Claimant was paid in advance of the hearing, with payment made to her on 6 March 2020.
26. Barristers must comply with direct and licensed access rules which are published on the Bar Standards Board website. There are published guidance notes in relation to these rules on the Bar Council website, pp328-330.
27. On the 6 April 2020 Lee Williams sent the Claimant licensed access instructions from Dads Unlimited, which included CCTV footage, p214-215, for a conference on 9 April 2020. He did not mention that the instructions were from licensed access clients.
28. On 6 April the Claimant sent email messages to Mr Williams asking him to call her, pp 211, 235.
29. On 8 April 2020 at 18.43 she emailed Mr Williams, saying that she was returning the brief to Chambers because she was unable to play the CCTV files on her MAC laptop and was therefore “not fully briefed on the matter”, p251. She said that she would not be able to advise the client in conference.
30. The Claimant told the Tribunal that she believed that she would have had to change the CCTV footage to view the evidence from the client. She told the Tribunal that that would amount to management of a client’s affairs, which she is prohibited from doing. She told the Tribunal that she believed that she would have been in breach of her obligations and the code of conduct for barristers, if she had undertaken the licensed access instructions.
31. The Claimant emailed Lee Williams again on 9 April 2020, pp 252-253, setting out her reasons for returning the Dads Unlimited Licensed Access conference instructions to him. She said, “In our telephone conversation on 8 April 2020 you said Anna Rogers from the company called Dads Unlimited is representing the client/ professional client. Upon reading the emails between you and Anna Rogers over the past 4 months, it appears that Anna Rogers is in fact from the company Dads Unlimited and providing the client with legal representation. However, BSB have verbally confirmed that Dads Unlimited is not a BSB authorised body/entity /professional client ... It is clear from the information above that the case is a public access matter although that was not made clear to me when I was given the brief on 6 April. As an accredited public access barrister, I am under a duty to initially assess whether or not the case is suitable for public access, and to provide the client with a client care letter explaining the limited advice/representation I can provide and that I am not authorised to conduct litigation as a public access barrister. In light of difficulties I experienced in managing the evidence that is, the cctv that was sent directly to me from the client, was not in a playable or viewable format, and my view was that the case was unsuitable for public access because of case management issues, Dads Unlimited are not an entity

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authorised by BSB to supply legal services (Section 3.E BSB Handbook) and I therefore took the decision to return the brief to Chambers in accordance with BSB Handbook Rule gC70.1.”

32. The Claimant told the Tribunal that Lee Williams “began badgering” her by phone on 8 April 2020 around 7pm to change her mind about not undertaking the licensed access work she had returned to him earlier that evening. She produced a telephone record of a 3 minute call from Lee Williams at 19.43 on 8 April 2020, p 307. She told the Tribunal that, “ Mr Williams continued to badger me at home and emailed me in the evening around 8pm on 8 April 2020 to change my mind about taking on the licensed access instructions (p 304).”
33. The email at p304 from Mr Williams, sent on 8 April 2020 at 20.08 said, “Michele Sorry to trouble you again Please see the email below Can you please let me know what you want to do Speak tomorrow Lee.”
34. The Claimant cross examined Mr Williams about his conduct towards her on 8 April 2020. She contended that he had badgered her inappropriately and should have accepted her decision to return the brief. He said, “My understanding was that you were having problems downloading the video format. I was trying to enable you to help a vulnerable client who had gone to Dads Unlimited. ... You were having problems with the video – we were trying to sort it out. ... I don’t accept it was managing or conducting litigation - you were just asked to download and view videos for the conference. ... The client had been asking whether conference would happen – I was trying to do the best for everyone.”
35. The Claimant put to Mr Williams that he had badgered her because she is black. Mr Williams responded in evidence, “Not at all. There was a client who needed representation at a conference the next day.” He told the ET that he was supposed to finish work at 6pm himself, but was still working at 8pm to resolve the issue.
36. On the 14 April 2020 Lee Williams emailed the Claimant, forwarding the instructions from Dads Unlimited originally sent on 27 February 2020 for a hearing in the case of DC at Canterbury Magistrates Court on 15 April, along with the client’s position statement p 239. Mr Williams said, “Dear Michele Please find the position statement Please can you confirm that you are happy to cover this hearing tomorrow ??” p239.
37. The Claimant told the Tribunal that Mr Williams did not mention that these instructions were Licensed Access instructions. However, the Tribunal noted that the original instructions forwarded to the Claimant said that they attached “DU licensed access.” P240. The Tribunal concluded that the instructions sent did record that they were licensed access instructions.
38. The Claimant replied on 14 April 2020, asking whether the case was a public access or licensed case, p153. Mr Williams replied, saying that he had sent he had her a copy of the Dads Unlimited license the previous week for licensed access work, p153.
39. The Claimant replied further saying that she would not accept the case because she believed that Dads Unlimited had failed to comply with the terms of the licensed access client rules and regulations from the Bar Standards Board, p152.

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40. Lee Williams replied in turn saying, "Thank you for confirming your position. you were paid on the 5th March for tomorrows hearing , Please can you refund £360 to chambers account." He provided payment details for the Chambers' bank account. P152.
41. The Tribunal accepted the Respondents' evidence, which the Claimant did not challenge, that another barrister from 10 KBW, Ms. Abru Basharat, accepted the instructions and appeared for DC on 15 April 2020 for an agreed hearing fee of £240.
42. The Claimant did not tell the Tribunal that Mr Williams made any other attempts to persuade her to undertake the hearing for DC on 15 April, other than saying that he asked her to return the payment for it.
43. On all the evidence, the Tribunal decided that Mr Williams did not badger the Claimant on 8 April. It found Mr Williams to be an entirely credible witness, giving straightforward and logical evidence. It accepted his evidence that he contacted the Claimant to try to assist her to read the CCTV evidence, in the interests of both the client and the Claimant. The Tribunal noted that the Claimant returned the brief by email at 18.43 on the day before the conference was due to take place. Of necessity, if Mr Williams was to try to resolve issues before the conference, he would have to have done so after 18.43 that day. The Tribunal found that it would be natural for a clerk of Chambers, which provides a service to clients, to attempt to resolve issues, to ensure that the service can be provided and not cancelled at the last minute.
44. Regarding the 14 April exchange between the Claimant and Mr Williams, the Tribunal found that Mr Williams did nothing more, following the Claimant's refusal of the brief, than ask her to return the money she had been paid for it.
45. The Tribunal noted that the terms of the emails Mr Williams sent the Claimant, concerning both the briefs which she declined, were polite and professional.
46. The Claimant did not return the £360 payment as requested by Mr Williams.
47. On 14 April 2020 the Claimant spoke to Lisa Weston, a member of Chambers, to discuss Mr Williams' conduct in relation to the two licensed access instructions from Dads Unlimited. Ms Weston added the Claimant to the Civil Team WhatsApp group and the Claimant sent a message to the group, saying that a client had not complied with the rules for public/licensed client work, by not saying that the case was public access, p 458-459.
48. On 24 April 2020 the Claimant emailed Ms Weston, saying that she had had lengthy conversations with Michael Harris, Head of Chambers, and Ms Weston, about needing to return two direct access/licensed access instructions to Chambers. She said that Mr Harris had, "assured me that he will investigate my concerns." P305.
49. The Claimant confirmed to the Tribunal, during the hearing, that she was not alleging that Ms Weston failed to investigate this as a complaint.
50. On 29 April 2020 Lee Williams emailed the Claimant, p246, asking her to refund the £360 to the Chambers account before the end of the month, as it would reflect on the

month's accounts. The Tribunal considered that the tone of this email was professional and explained why the payment was needed.

51. On 30 April 2020 the Claimant sent Michael Harris, Head of Chambers, a text message, asking him to call her to discuss clerking issues, p 472. He agreed, asking when was convenient. When they spoke, Mr Harris told the Claimant that he would speak to Mr Williams about the matters she raised.
52. Mr Harris was cross examined about what he did in response to the Claimant's concerns. He told the Tribunal he looked into the Claimant's concerns about licensed access work and told Lee Williams that Chambers could only accept instructions from the person authorised to give such instructions. He also told the Tribunal that, on the matter of the Claimant being asked to repay £360, "The clerks were trying to get her to pay. She had to pay them back. The situation was clear – the funds had gone to her and she needed to repay. We were having phone calls and emails in which I was reiterating the position of chambers which culminated in the email I sent on 3 July. ... I was hoping that the matter would quietly sort itself out. With covid there was a lot going in just trying to keep Chambers going. I would have behaved the same way in respect of any member of Chambers."
53. There was no evidence about how Mr Harris dealt with other informal concerns raised by other members of Chambers.
54. The Tribunal accepted Mr Harris' evidence that he discussed the Claimant's concerns with Mr Williams and investigated the other matters. It accepted his evidence that he told Mr Williams that licensed access instructions needed to come only from the licensed access authorised person. It accepted his evidence that he came to the view that the Claimant had been paid £360 for work she had not done and that she needed to repay it.
55. On 27 May 2020 the Claimant telephoned the Clerks room at 10 KBW, to ask about payments for work she had undertaken. Steven Clarke, who was responsible for collecting fees, discussed with her the remittances for work she had done. The discussion was initially amicable.
56. During the conversation, Mr Clarke raised the matter of the £360 which Mr Williams had asked the Claimant to repay. There was a dispute of fact about what was said in the telephone call.
57. The Claimant told the Tribunal that Mr Clarke "began raising his voice and shouting" that she owed money to 10KBW and needed to pay this back. She told the Tribunal, "He said that I had already been told by Mr Williams that I needed to pay back money to chambers. I responded by saying that I did not appreciate him raising his voice at me and I told him that the issue about alleged advance payment of money was being dealt with by Mr Michael Harris, Head of Chambers."
58. Mr Clarke told the Tribunal that he mentioned the fee which the Claimant had been paid for the Dads Unlimited hearing, because had been asked by Ms Basharat, Counsel who had attended the hearing, where her payment was. He told the Tribunal that when explained this to the Claimant, she said, "I'm not paying the money back" and that Mr Clarke could "take the money from the Aged Debt that chambers owe her."

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Mr Clarke said that he had tried to explain that payments did not work in that way and that the Claimant shouted over him saying, "I'm not paying the money back."

59. The Tribunal preferred Mr Clarke's evidence. He recalled the conversation, and how it developed, in greater detail. He gave dispassionate evidence to the Tribunal. The Tribunal accepted that he raised the matter because he had been asked by Ms Basharat for payment. It accepted his evidence that he tried to explain the matter but, that the Claimant shouted over him. The Tribunal noted that Mr Clarke was dealing with an administrative process, redirecting payment from one member of Chambers to another, in which he had no personal interest. It considered that he was unlikely to have been upset or agitated about this task.
60. Mr Clarke sent an email on 27 May 2020, attaching a detailed fee note, showing that Mr Williams had asked the Claimant to return the £360, p 325, 335-336.
61. The Claimant told the Tribunal that the Respondents had produced fee notes which had been created long after the event, p52 and 53. She accepted that the fee note at p335 had been sent to her by Mr Clarke on 27 May 2020 – it was dated 27 May 2020. The detailed fee note set out that payment had been made by Dads Unlimited on 5 March 2020 and that Mr Williams had asked the Claimant to repay the money on 15 April 2020. That fee note bore an historic logo for 10 KBW.
62. The fee notes at p52 and 53 bore the current 10 KBW chambers logo. The Claimant contended that this proved that they were not generated in March 2020. Ms Weston told the Tribunal that fee notes, when reprinted at a later date, will be printed with whatever logo applies at that later date. She pointed out that the fee notes at p52 and p53 recorded that they had previously been rendered – meaning printed out – on much earlier dates. For example, the MRKS fee note had previously been printed on 11 March 2020, 27 May 2020 and 18 November 2022.
63. The Tribunal found that the Respondents had not fabricated any of the fee notes. The fee notes did record transactions accurately, including the dates when payments were made. It was abundantly clear from other records, including bank accounts and Lex, that 10 KBW paid £360 to the Claimant in the Dads Unlimited "DC" case on 6 March 2020, after Chambers had received the payment itself from Dads Unlimited on 5 March 2020, as recorded in the relevant fee note.
64. On 19 June 2020 the Claimant emailed Michael Harris about a number of matters. She said that she had not attended court in the DC matter on 15 April and said, "However, the 'fee' agreed between Lee and the client was merely £360 for counsel 10 years plus. I endeavoured to amicably rectify this state of affairs with Steve in Clerks room, but he remonstrated with me insisting that I return £360 to 10 KBW Chambers bank account, in accordance with 'a note' on the remittance." She asked for Mr Harris' prompt attention to the matter.
65. On 25 June 2020 the Claimant emailed Nicholas O'Brien, 10 KBW's Equality and Diversity Officer, asking to discuss the clerks' administration of her practice, which she said might conflict with Chambers' policy on equality and diversity, p340.
66. Mr O'Brien emailed the Claimant on 1 July, following a conversation with her, summarising what he understood were her concerns, p338. He said, amongst other

things, “You are concerned about a sum of money which most recently Steve asked you for, supposedly an advance payment, but which does not appear to have been paid to you in the first place, or is not properly identifiable. You were unhappy that Steve took it upon himself to speak to you about it, and about the manner in which he did so. It seemed to me that this was not a matter he should have raised with you, it being essentially a matter between you and chambers. We agreed that once you had provided me with some brief notes by email (to make sure I had my facts straight) I would be happy to raise it with the Head of Chambers.” The Claimant replied on 1 July 2020, p337, giving him further details.

67. On 6 July 2020 Mr O’Brien emailed the Claimant saying that he had spoken to Michael Harris, p342. Mr O’Brien said, amongst other things, “1. Mike told me that he had instructed Lee a couple of months ago that Chambers could not take instructions from anyone other than the duly nominated liaison contact. 2. My advice to Mike was that members of staff should not have communications with member of Chambers regarding financial issues between Chambers and the member concerned, or involve themselves in such issues, and that he should issue an instruction to that effect to the clerks and ensure that all members of Chambers were also aware of it. He said that he would consider these points, and in particular they would be discussed at the next management meeting, scheduled for this Thursday. 3. As regards the dispute repayment claim, after discussion we agreed that Chambers should not press the claim with you further for the time being, pending attempts to resolve the matter amicably to everyone's satisfaction, for example by means of a meeting.”

68. In the meantime, on 3 July 2020, Mr Harris had emailed the Claimant, responding to her email of 19 June 2020, p311. In his email, he politely enquired about the Claimant’s wellbeing and said,

“ ... 3. (i) As regards the request for returning fees to Chambers, I am aware of the detailed explanations you have previously given for deciding you were unable to accept the brief in [DC]'s case.

(ii) However, Chambers records show that you received payment of £360 as a brief fee in [DC's] case. The payment of £360 was made to your bank account on 6 March 2020 along with another payment of £400 in a case called Moussen. (Thus a combined payment of £760 should appear in your bank account)

(iii) Following you returning the brief in [DC]'s case there is no agreement with the client, lay or professional, for you to retain any of the £360 paid to you.

(iv) In the event Abru Basharat represented DC at the hearing in question for the brief fee of £240. Hence the requirement that you pay £240 of the client's money received by you to Abru. I know that Abru is upset that you are not passing on the money owed to her. Please pay this amount asap. If financial difficulties prevent this, please inform me immediately

(v) That leaves of the £360 amount, the remaining £120 which is owed to the client. Your refusal to pay this sum exposed you to a strong complaint being made against you to the legal ombudsman or BSB. Further, because you were not repaying this amount, Dads Unlimited were threatening to end working with any other barrister at 10 KBW. In the circumstances, Chambers made the practical decision to pay the sum

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of £120 out of Chamber's funds on your behalf. Accordingly, you now owe Chambers £120. If you are unable to pay this sum to Chambers, please inform me immediately.”

69. Mr Harris told the Tribunal Ms Basharat had undertaken the Canterbury Magistrates Court hearing for the lower fee of £240, so £120 was due to be returned to the client DC. He gave evidence that, when the Claimant refused to repay the balance of £120, Dads Unlimited threatened to stop sending any work to 10 KBW. He said that, to avoid this, 10 KBW had paid £120 from Chamber's funds to Dads Unlimited for DC. The Tribunal accepted his evidence. There was no evidence to contradict it.
70. Furthermore, Mr Harris told the Tribunal that he had mentioned, in the email, that the Claimant refusal to return fees when she had not undertaken the work risked the lay or professional client making a formal complaint against her, “This to me did not seem in her interest at all. In such circumstances, I would have written a similar email to any member of Chambers.” The Tribunal considered that Mr Harris, as Head of Chambers, would indeed have been likely to caution any member of Chambers about keeping money to which they were not entitled.
71. The Claimant contended that Mr Harris had accused the Claimant of theft in his 3 July email. The Tribunal found that Mr Harris did not use such words. He described what had, in fact, occurred.
72. On 6 July 2020 the Claimant informed Ms Weston that she wished to make a formal complaint of race and sex discrimination, p306. She said, “I now feel that I am being treated less favourably on the grounds of my race and gender as no formal investigation was conducted into my complaint. I received an email dated Friday 3 July from Head of Chambers accusing me of deliberately withholding Chambers money and upsetting another member of Chambers. This dispute over alleged payment of fees was formally raised as a complaint by me in April 2020 but has not been properly investigated by Chambers.”
73. This was the first occasion on which the Claimant described her concerns as amounting to a “formal complaint.”
74. Ms Weston confirmed receipt of the Claimant’s complaint on 6 July 2020 and sent her a copy of the Chambers internal complaints and grievance procedure, p43.
75. The Claimant cross examined Mr Harris about his failure to hold a meeting to resolve the matter of the £360, despite Mr O’Brien recommending one in his email of 6 July 2020. Mr Harris told the Tribunal that Ms Weston had informed him of the Claimant’s 6 July 2020 formal complaint, including a complaint against him. He told the Tribunal that he considered that, as the Claimant’s complaint was to be investigated by an independent panel, it was not appropriate for him to be involved further in investigating the matters.
76. On 8 and 9 July 2020 Ms Weston updated the Claimant regarding the investigation of her complaint, p41, 47. On 9 July 2020 Ms Weston said that she had appointed a 3 person investigation panel, who would contact the Claimant within 14 days.
77. The Claimant submitted a full grievance on 29 July 2020, p95. She complained of race harassment by Lee Williams on 14 April 2020 and 29 April 2020, saying that he had

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asked her to refund money to Chambers. She complained of race harassment by Steve Clarke on 27 May 2020, saying that he had been rude to her by raising his voice and insisting she pay back money. She said that Mr Harris had subjected her to race harassment by his email of 3 July. She said that his email had created a hostile, unfriendly and degrading environment for her.

78. The investigatory panel consisted of Alastair Panton, Sara Anzani, and Rehana Popal. On 4 August 2020 Alastair Panton emailed the Claimant, setting out the panel's proposed procedure for handling the complaint. He said that the complaints against Lee Williams and Michael Harris seemed to be directed solely to the written correspondence. As that correspondence was unambiguous, he said that the panel considered there was no need for any evidence from either of those 2 people. With regard to the complaint against Mr Clarke, the panel proposed to obtain evidence in reply from him as the complaint was about the tone of the telephone conversation, p100. The Claimant agreed with this procedure by email of 5 August, p100.
79. Mr Panton sent the Claimant Mr Clarke's response to her grievance on 6 August 2020, p155. Mr Clarke had said, "I then mentioned the case of DC for Dads Unlimited. I had very little knowledge of this matter as Lee was dealing with it. All I knew was that Michele was paid to attend, she couldn't attend and Lee then asked Abru to attend. Now I have Abru asking me about her money and for me to chase the solicitors – I was aware that the money was with Michele. When I asked about the repayment the whole conversation changed, Michele got very annoyed and insisted that she has never been asked to pay back this money by Lee ... I was very surprised to be accused of raising my voice as, from memory, there was only one person raising their voice during this conversation and it was not me."
80. The panel produced an 11 page investigation outcome report, in sections including, "The Detail of the Complaints", "The Chronology as to the disputed case of DC".
81. As to the case of DC, at [26] the panel said that it was impermissible for a barrister to retain money for a case they did not conduct. As to whether the Claimant was told to repay the money in the correct manner, the panel concluded at [31] and [32], "[31] Therefore, whilst there might be differing views as to how Chambers should handle such matters in the future, it is perfectly clear that the practice in the past has been that barristers are asked to pay back money by one of the clerks. This has happened in the past not only to the panel members but also to Nick O'Brien. No offence has ever previously been taken as this is a purely administrative matter. [32]. Therefore, with that in mind, if one looks at the emails that were sent by Lee Williams ... they are unremarkable. They are perfectly polite and are seeking the return of the £360 purely as a matter of administration. Lee Williams even says on 29 April 2020 "I would like to try to get this done before the end of the month as it will reflect on this month's accounts." It is perfectly clear to us that Lee Williams is asking for the money back in exactly the same administrative way that every other barrister in the past has been asked for money back."
82. Regarding the Claimant's complaint about Mr Clarke, the panel concluded at [40] and [41], "[40] Having considered the issue, we consider that it is an impossible task for a complaints panel to determine the tone of voice of a telephone call that was not recorded. The only way that could be determined with any degree of accuracy is after a trial ... We can simply make no finding one way or the other as to what tone of voice

either of the parties used. [41]. What we can say is that having read the complaint of Ms Robinson carefully, again there is no complaint about a single word that was used by Steve Clarke. The complaint is only about the tone. We therefore reject the idea that Steve Clarke asking for the return of the money from Ms Robinson was in any way different from the past practice of Chambers which is that it is the clerks who ask for the return of overpaid fees. Again, we see absolutely nothing sexist or racist in Steve Clarke asking for the return of the fees. It is exactly the same as has happened to members of the complaints panel themselves and has also happened with Nick O'Brien. It is a perfectly standard administrative procedure."

83. With regard to the Claimant's complaint about Mr Harris' email, the panel found, at [33], "Ms Robinson had not done the case and so must return the money"... "Michael Harris was not actually requesting that Ms Robinson pay the money direct to Abru Basharat. He was requesting that the money be paid back to Chambers from whence it would be paid to Abru Basharat. Again, we cannot see that this is now controversial." ... "If Ms Robinson does not refund the money to Chambers then Abru Basharat cannot be paid for the case. Again, by this stage Ms Robinson should have known perfectly well that she had been paid in advance for the case." ... "If a barrister retains money for a case that he/she did not do then we cannot see any possible defence if a complaint was raised by the client either to the legal ombudsman or to the BSB. Michael Harris was merely warning of this obvious risk. Again, we cannot see anything controversial in this."... "The organisation Dads Unlimited had apparently threatened that unless a refund was given for work that was not done then they would end working with any other barrister at 10 KBW. We see absolutely no reason why Michael Harris should not have informed Ms Robinson of this."
84. At [34] the panel decided, "As far as we can see Michael Harris was simply setting out the facts of the situation. He was in no way hostile or unfriendly or creating a degrading environment. He starts his email by saying "I hope you are keeping well". He then sets out in 2 separate places that if Ms Robinson has financial difficulties which means she is unable to repay the £360 then she should inform him immediately. He is therefore in our view going out of his way to be understanding of the situation."
85. On 17 August 2020 Mr Panton emailed the Claimant, informing her that the panel had made its written decision. He said, "To try to maintain confidentiality, we do not send out decisions electronically but put them in the pigeon-holes of the complainant, the persons complained of, and a member of the management committee (in this case Lisa Weston). As Nick O'Brien has been cited in the evidence set out in your email, we will also provide him with a copy of the decision. In these difficult times, if anyone wants a hardcopy posted to them, let me know the address and I will send it to them." P116.
86. The Claimant told the Tribunal that she shared a home post box and it was therefore inappropriate for confidential items to be sent to her by post. There was no evidence that Mr Panton was aware of the communal nature of her home post arrangements.
87. On 18 August 2020 the Claimant replied, saying that the requirement to collect the decision from Chambers was insensitive and unreasonable, p115. Mr Panton replied further, proposing that the report could be sent to all recipients by PDF email, p114. The Claimant agreed to this proposal, p112.

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88. The Claimant told the Tribunal that she had not been provided with work by Chambers since presenting her first claim in November 2020.
89. She is charged Chambers rent, consisting of a fixed monthly rental payment, plus commission on fees. This appeared to be a standard Chambers rent arrangement and the Claimant did not suggest that her fixed rent or commission percentage were higher than those charged to other members of chambers. She is still a full member of 10KBW.
90. Mr Williams had been made redundant by 10 KBW in September 2020. Mr Clarke was a fees clerk and did not allocate work. He has also left 10 KBW.
91. Brooke Stokes gave evidence to the Tribunal. She has been the only clerk to 10KBW since April 2022. She told the Tribunal that, when she joined Chambers in November 2021, she became clerk to the immigration and family team, working under Anthony Cooke, who clerked the civil team. She told the Tribunal that Mr Cooke gave her a summary of the members' personalities and preferences for work; .he told her that the Claimant practised mainly in crime and family law, but that he found it difficult to get hold of the Claimant on her mobile or by email. Ms Stokes told the Tribunal that, when Mr Cooke left Chambers on 6 April 2022, she was the only clerk left and that she contacted all members of chambers to develop her relationship with them. She told the Tribunal that she tried to contact the Claimant by telephone and left a voicemail, but never heard back.
92. Ms Stokes told the Tribunal, "Over the course of the next couple of months, I attempted to call Michele multiple times in hope to have a conversation to discuss her practice and how I can work with her to increase her workflow as I noticed she had not done any work for 10 KBW since my joining. Unfortunately, [the Claimant] did not answer so I left a voicemail. I never received a response from [the Claimant]."
93. From documents in the Bundle, the Claimant was offered a 2 day hearing on 7 August 2020, but the Claimant declined to undertake the hearing, "due to a personal family commitment," p84. The clerk replied, "I will see what I can do with alternative counsel as this starts tomorrow. In future, can you diarize any commitments you have or days you need kept free?" On 13 August 2020 the Claimant declined to give advice on instructions originally sent to her in May 2020, after the solicitor chased the advice, p93. The Claimant said that she was professionally embarrassed.
94. The Claimant was offered a 4 day hearing in Liverpool in April 2022 but she declined it, p229.
95. The Claimant had joined 10 KBW after a period away from the Bar. Mr Harris and Mr Williams both told the Tribunal, and the Claimant did not dispute, that she did not bring any work with her; she had no solicitor following.
96. The Claimant put to Ms Weston that Ms Weston was partly responsible for the Claimant not being offered work, because the Claimant had brought a claim against Chambers. Ms Weston responded, "Absolutely not - quite the contrary. We look at every member who isn't working regularly. I have regular discussions with the clerks to see who is not working; that is partly pastoral and partly to make sure that members are contributing to the costs of chambers, including the costs of clerks. There is no

point in having members who are not working. I made contact with you in May 2021. Brooke has attempted to find work for you. That is what we do. It is in everyone's interests. We wondered where you are – you are not in touch and not working. You have turned down work on many occasions. ... I also go out and get work. We actively market ourselves. The work I produce is my own. I am not going to give you mine. We work collectively to market the brand, it is the same for everyone. ...You have requested long periods for holidays and illness. You have not made yourself available for work.”

97. The Tribunal accepted Ms Weston's evidence that barristers are responsible for generating their own work and are expectedly actively to market themselves. Barristers are self-employed. There was no evidence that the Claimant did undertake any marketing. Ms Weston gave credible evidence about Chambers' efforts to find work for the Claimant and the fact that the Claimant was not available for work.
98. There was no evidence of work which was sent to Chambers for the Claimant, but not given to her. There was no evidence of Chambers work which was suitable for the Claimant, but was not allocated to her. The Claimant did not tell the Tribunal that she contacted the clerks and asked for work to be allocated to her. She simply told the Tribunal that she looked in her diary and there was no work.
99. There was substantial evidence that the Claimant declined work that was offered to her. There was also evidence that she made herself unavailable, referring to family commitments.
100. In her witness statement, the Claimant appeared to link the failure to give her work to her having returned the Dads Unlimited licensed access briefs. She said, “I was a new member of chambers but within one month I was not receiving affluent briefs like before. For example, the two Licensed Access instructions that I declined to accept, on the basis that I was complying with the Code of Conduct rules by the Bar Council in relation to barristers and Licensed Access instructions. Each time I declined or returned the brief under Licensed Access I faced a detriment by chambers or [was] treated less favourably than Mr Panton, Mr O'Brien.”
101. The Claimant did not say that Mr Panton and O'Brien had turned down licensed access cases. The Claimant therefore appeared to be saying that she had not been given work after April 2020 because she, unlike others, had turned down licensed access work in April 2020.
102. The Claimant referred to the profiles of Mr Panton, p396, Mr Bogle, p399 and Mr O'Brien, p425. Mr O'Brien's practice areas were, “Civil, Immigration, Property, Employment”, p425. Mr Panton's areas of practice were Civil, Disciplinary & Regulatory, Property, Commercial, p396. Mr Bogle's were Arbitration, Civil, Disciplinary & Regulatory, Property, Commercial, Mediation Advocacy and Public Law, p399. Given that the Claimant's practice appeared to be mainly criminal and family law, the Tribunal concluded that it was unlikely that they would have been given work which was suitable for the Claimant, instead of the Claimant.

Relevant Law

Direct Race Discrimination

103. By s39(2) *Equality Act 2010*, an employer must not discriminate against an employee by dismissing him.

104. Direct discrimination is defined in s13(1) *EqA 2010*:

“(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.”

105. Race is a protected characteristic, s4 *EqA 2010*.

106. In case of direct discrimination, on the comparison made between the employee and others, “there must be no material difference relating to each case,” s23 *EqA 2010*.

Victimisation

107. By 27 *EqA 2010*,

“(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.”

108. There is no requirement for comparison in the same or not materially different circumstances in the victimization provisions of the *EqA 2010*.

Causation

109. The test for causation in the discrimination legislation is a narrow one. The ET must establish whether or not the alleged discriminator’s reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase “by reason that” requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?.” Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].

110. If the Tribunal is satisfied that the protected characteristic/act is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, per Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. “Significant” means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

Detriment

111. In order for a disadvantage to qualify as a “detriment”, it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been

disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to “detriment”. However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC* [2003] UKHL 11.

Harassment

112. s26 EqA 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.”

113. In *Land Registry v Grant* [2011] IRLR 748 at [47] Elias LJ said that words of the statutory definition of harassment, “.. are an important control to prevent trivial acts causing minor upsets being caught by the definition of harassment.” In *GMBU v Henderson* [2015] 451 at [99], Simler J said, “..although isolated acts may be regarded as harassment, they must reach a degree of seriousness before doing so.”

114. In *Richmond Pharmacology Ltd v Dhaliwal* [2009] IRLR 336, the EAT commented that “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. Whilst it is very important that employers and tribunals are sensitive to the hurt that can be caused by offensive comments or conduct (which are related to protected characteristics), “.. it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase paragraph [22].”

Burden of Proof

115. The shifting burden of proof applies to claims under the *Equality Act 2010*, s136 EqA 2010.

116. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.

117. In *Madarassy v Nomura International plc*. Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865, and confirmed that the burden of proof does not simply shift where M proves a difference in race and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para [56 – 58] Mummery LJ.

Discussion and Decision

118. The Tribunal took into account all its findings of fact, and the relevant law, when reaching its decision. It considered the discrimination, harassment and victimisation complaints together, before coming to its conclusions. For clarity, however, it has stated its conclusion on individual allegations separately.
119. *Direct race discrimination complaints against 10 KBW. Comparators for each: comparators, James Bogle, Nicholas O'Brien and Alistair Panton.*
- a. *Date: on/after 15 April 2020. Claimant conduct: made complaint against Messrs. William, Clark. Less favourable treatment: 10KBW ignored/did not take Claimant's complaint seriously.*
 - b. *Date: on/after 30 April 2020. Claimant conduct: made complaint via WhatsApp to Ms. Western and Mr. Harris against William, Clark. Less favourable treatment: 10KBW ignored/did not take Claimant's complaint seriously*
 - c. *Date: after 11 August 2020. Claimant conduct: Claimant submitted complaint via email re: conduct of Messrs. Harris, Williams, Clarke. Less favourable treatment: 10KBW required Claimant to attend chambers in person to collect complaint outcome from her chambers ducket – when she asked for outcome to be sent to her via email (during Covid-19 lockdown), request denied*
 - d. *Date: not specified. Claimant conduct: C submitted complaint via email re: conduct of Messrs. Harris, Williams, Clarke. Less favourable treatment: 10KBW supported what Messrs. Harris, Williams, Clarke said about alleged £360 payment to Claimant without checking the facts.*
120. *Allegations a and b.* On the facts, Mr Harris did not ignore or fail to take seriously the Claimant's concerns which she raised with him in April 2020. He discussed the Claimant's concerns with Mr Williams. He gave instructions to Mr Williams that licensed access instructions needed to come only from the licensed access authorised person. On his investigations, he came to the view that the Claimant had been paid £360 for work she had not done and that she needed to repay it. Mr Harris therefore did not agree with the Claimant's view of the matter. That was not ignoring her concerns, or failing to take her seriously.
121. By his own admission, Mr Harris, "was hoping that the matter would quietly sort itself out." The Tribunal accepted his evidence - it was understandable that he would feel that way, given that, as he said, he was busy just trying to keep Chambers going during covid in 2020.
122. The Tribunal accepted Mr Harris' evidence that he "would have behaved the same way in respect of any member of Chambers." The Claimant did not make a formal complaint until July 2020. There was no evidence that Mr Harris treated informal complaints from white members of Chambers differently. There was no evidence that the actual comparators had ever made complaints at all. The Tribunal considered that

it would be natural to seek to resolve informal complaints in precisely the way Mr Harris did – informally, by discussion.

123. Further, Mr Harris did respond to the Claimant's email dated 19 June 2020, when she complained about Mr Clarke. He did so by his detailed email of 3 July 2020, just 2 weeks later. On the facts, he did not ignore or fail to take her concerns seriously.
124. There was no evidence he would have responded to an email from a white member of Chambers more promptly. The Tribunal has set out its findings on the content of Mr Harris' 3 July 2020 email more fully below. The Tribunal was satisfied that Mr Harris' handling of the Claimant's informal complaints was not because of race.
125. *Allegation c. Sending the Grievance Outcome* On the facts, the panel treated the Claimant in the same way as it treated all interested parties, including Nick O'Brien, an actual comparator who was white: that is, by proposing to put the written decision in their pigeon-holes, p116. When the Claimant complained, the panel immediately accommodated her and proposed to send the decision by pdf to all interested parties at the same time.
126. There was no evidence that the panel did, or would, send its outcome decision by different means to a white comparator.
127. There was no less favourable treatment of the Claimant in this regard. She was treated in the same way as white comparators at all times.
128. *Allegation d.* The Tribunal concluded that the panel's written decision was carefully considered, comprehensive, meticulously reasoned, fair and logical. It gave reasons for all its conclusions.
129. The Tribunal considered that the panel's conclusion that the Claimant must repay the £360 was the only sensible conclusion available to it. The Claimant had been paid for work she had not done and was clearly not entitled to retain the money. Further, the panel had its own experience of being asked, by the clerks, to repay money they had been paid incorrectly. In those circumstances, the panel's conclusions that Mr Williams and Mr Clarke did not discriminate against the Claimant, by asking her to repay money to which she was not entitled, was unimpeachable.
130. There was no evidence that the panel would have come to any different conclusions if the complainant had been white. The Tribunal was satisfied that the panel's conclusions were not because of race.
131. *Direct race discrimination (comparators: James Bogle, Nicholas O'Brien and Alistair Panton) and race harassment complaints against the Second Respondent, Mr Harris, that he*
 - a. *Sent the Claimant an email on 3 July 2020*
 - b. *Was aware of a recommendation Chambers Equality Officer Nicholas O'Brien made in July 2020 to hold a meeting to resolve matters regarding the alleged £360 overpayment attended by the Claimant and Mr. Harris, which Mr. Harris chose not to do.*

132. *Allegation a: the email.* The Tribunal accepted Mr Harris's evidence that he would have written to any member of Chambers, in the same circumstances, in the way he did on 3 July 2020. The Tribunal considered that the email was measured and balanced, in that it enquired after the Claimant's wellbeing and also invited the Claimant to tell Mr Harris if financial difficulties were preventing her returning the money. The email was also direct and set out the facts as known to Mr Harris in plain terms. The Tribunal viewed that as entirely appropriate; the Claimant had failed to repay the money for some months, informal discussions had not persuaded her to do so, and there inevitably came a time when direct language was needed to impel the Claimant to return the brief fee. Warning the Claimant about regulatory consequences was also appropriate: the Tribunal accepted that there was a risk of a regulatory complaint being made against a barrister who retained money to which they were not entitled. The Tribunal considered that Mr Harris was entirely right, as Head of Chambers, to caution a member about risks to which they might be exposing themselves.
133. The email was appropriate to the facts of the matter at the time. Mr Harris would not have treated a white comparator differently. The email was nothing to do with race. It was not a detriment in that its terms were proportionate and appropriate to the matter. Likewise, it did not have the purpose or effect of creating the prohibited environment for the purposes of a harassment complaint.
134. *Allegation b: failure to hold a meeting.* The Tribunal accepted Mr Harris' evidence that Ms Weston had informed him of the Claimant's 6 July 2020 formal complaint, including a complaint against him, so he considered that, as the Claimant's complaint was to be investigated by an independent panel, it was not appropriate for him to be involved further in investigating the matters.
135. On the facts, on the same day as Mr O'Brien proposed a meeting about the £360 payment, the Claimant made a formal complaint which included complaints about Mr Harris. It was a logical response for Mr Harris to decide that the matters should now be handled by someone independent.
136. The Tribunal found that Mr Harris would not have held that meeting irrespective of the race of the person who made the formal complaint. His decision was not related to race at all. Mr Harris did not subject the Claimant to race discrimination or harassment.
137. *Direct race discrimination (comparators: James Bogle, Nicholas O'Brien and Alistair Panton) and race harassment complaint against the Third Respondent, Mr Williams,*
- a. *in relation to his conduct as a barristers' clerk on 14 April 2020 when he asked the Claimant to cover the hearing on 15 April 2020 and, after she declined, made further attempts to urge her to take the case;*
 - b. *in relation to his conduct as a barristers' clerk on 8 April 2020 when he asked her three times (via email and phone calls) to cover a direct access case hearing after she had returned the brief on ethical/professional grounds,*

138. *Allegation a.* On the facts, Mr Williams did nothing to “urge” the Claimant to take the hearing on 15 April 2020 when she declined it, other than asking for her to return the brief fee. The Tribunal was satisfied that his request was nothing to do with race; the Claimant had received the brief fee, but was not going to do the work and Mr Williams needed to ensure the brief fee was available for another barrister to undertake the work. On the evidence, clerks asked other members of chambers, including the white comparators Alistair Panton and Nicholas O’Brien, to return money to which they were not entitled. Such a request could not be a detriment: it put the Claimant to no disadvantage. Rather, it was intended to ensure that the client and/or barrister who did undertake the work were not disadvantaged by losing money. For the same reason, the request could not amount to harassment, *Land Registry v Grant* [2011] IRLR 748 and *GMBU v Henderson* [2015] 451 applied.

139. *Allegation b.* Mr Williams may have telephoned the Claimant 3 times. However, the Tribunal has decided that Mr Williams did not badger the Claimant on 8 April. He contacted the Claimant to try to assist her to read the CCTV evidence, in the interests of both the client and the Claimant. It should have been obvious to the Claimant that, because she returned the brief by email at 18.43 on the day before the conference, Mr Williams would also have to contact her in the evening if he was to try to resolve any issues before the conference. It should also have been obvious to the Claimant that it would be natural for a clerk of Chambers, which provides a service to clients, to attempt to resolve issues, to ensure that the service can be provided and not cancelled.

140. The Tribunal was satisfied that Mr Williams’ actions were nothing to do with race – and that they did not have the purpose of creating the statutorily prohibited environment. In all the circumstances, including the Claimant’s perception and whether it was reasonable for Mr Williams’ conduct to have the effect in s26 EqA, the Tribunal considered that his conduct did not have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. As stated, he did not badger her. It ought to have been clear to the Claimant that Mr Williams was attempting to facilitate the conference taking place, so that the Claimant had paid work and Chambers provided a service to clients. It should have been obvious to her that he did not intend to cause offence, *Dhaliwal* applied.

141. Mr Williams did not subject the Claimant to race discrimination or race harassment.

142. *Direct race discrimination (comparators: James Bogle, Nicholas O’Brien and Alistair Panton) and race harassment complaint against the 4th Respondent Mr. Clarke in relation to his conduct as a barristers’ clerk on 27 May 2020 when (she says) she telephoned him to discuss remittances and he shouted at her that she owed Chambers money.*

143. This allegation failed on the facts: Mr Clarke did not shout at the Claimant; she shouted at him. The Tribunal repeats its findings that clerks asked barristers, whatever their race, to return money to which they were not entitled. Mr Clarke did not subject the Claimant to race discrimination or race harassment.

Victimisation “not being properly referred for work while still being charged Chambers rent”.

144. The Claimant is a member of Chambers and is charged a fixed monthly rental sum plus commission on fees. This appeared to be a standard arrangement for all members of Chambers. The Claimant's complaint was that she was not being given work. The Tribunal considered whether the Claimant had shown facts from which the Tribunal could conclude that the reason she had not been given work by 10KBW after November 2020 was because she had done a protected act by presenting her first claim.
145. The Tribunal considered that she had not. On the Claimant's own evidence, "within one month" of joining Chambers she was not receiving briefs like before. Therefore, she says that from April 2020, she was not being given work as before. That predated her protected act by months. The Claimant did not give evidence of a change in work given to her after November 2020. The Claimant contended that the failure to give her work was because she had declined two Licensed Access instructions. She has not brought a protected disclosure detriment claim in that regard.
146. Furthermore, there was no evidence of any work being withheld from the Claimant: the Claimant gave no evidence of work which was sent to Chambers for her, but not given to her. There was no evidence of Chambers work which was suitable for the Claimant, but was not allocated to her. The colleagues she gave evidence about worked in different areas and the Tribunal could not infer that they were given work, which was suitable for the Claimant, in preference to her. The Claimant did not tell the Tribunal that she contacted the clerks and asked for work to be allocated to her. There was substantial evidence that the Claimant declined work that was offered to her. There was also evidence that she made herself unavailable, referring to family commitments. Ms Stokes and Ms Weston both told the Tribunal that the Claimant did not respond when contacted.
147. On the facts, the Claimant was not in touch with Chambers and was not seeking to work. There was no work which should have been allocated to the Claimant but was not. Those are not facts from which the Tribunal could conclude that work was withheld from her because of a protected act.
148. In addition, Ms Weston was a credible witness. The Tribunal accepted her denial that work had been withheld from the Claimant. It accepted her evidence that, on the contrary, the Claimant had not made herself available for work.
149. The victimisation claim fails. All the Claimant's claims fail.

Employment Judge **Brown**

Date: 19 January 2023

SENT to the PARTIES ON

19/01/2023

FOR THE TRIBUNAL OFFICE