



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Mangwanya

**Respondent:** National Association of Citizens Advice Bureaux

**Heard:** Leeds On: 15,16,18, 21, 22, 23, 24, 25 November 2021 and  
7,8,9,10,14,15,16,17,18 November 2022.

**Deliberations:** 26 January and 21 February 2023.

The hearing was an attended Hearing in person although one member of the Tribunal panel appeared by CVP video link during the first part of the hearing. The second part of the hearing was an attended hearing although some of the respondent's witnesses and others observed by CVP and one of the members attended by CVP in part having tested positive for Covid 19.

**Before:** Employment Judge Shepherd

**Members:** Mr Q Shah  
Mr K Smith

**Appearances:**

**For the claimant:** In person and then Mr. Mutebuka, the claimant's son.  
represented the claimant from around 9 November 2022.

**For the respondent:** Ms Churchhouse.

## RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claims of direct race discrimination are not well-founded and are dismissed.
2. The claims of harassment related to race are not well-founded and are dismissed.
3. The claims of direct discrimination or harassment related to religion or belief are not well-founded and are dismissed.

4. The claims of failure to make reasonable adjustments are not well-founded and are dismissed.

5. The claims of discrimination arising from disability are not well-founded and are dismissed.

6. The claims of victimisation are not well-founded and are dismissed.

## **REASONS**

1. The claimant represented herself in the first part of the hearing. Mr Mutebuka, the claimant's son, represented her in the resumed hearing after he had given evidence. The respondent was represented by Ms Churchhouse.

2. This hearing has been subject to extremely lengthy and unusual delays. This was as a result of Covid 19 issues, restrictions in respect of witnesses giving evidence from outside the jurisdiction and the availability of parties and representatives. The deliberations were also substantially delayed as a result of the very serious illness of one of the Tribunal panel.

3. The hearing was very difficult for all parties. The claimant represented herself in the first part and struggled. Her son represented her in the resumed hearing. He is a solicitor with over 20 years' experience. He has an immigration practice, but he appeared to have difficulty understanding and adapting to the Employment Tribunal practice and procedure. He was not present for most of the first part of the hearing in November 2021. In the second part of the hearing in November 2022, Mr Mutebuka was persistently late for the start of the hearing, arriving 30 to 40 minutes after the time listed for the hearing to commence on most mornings. He said this was because of a medical condition. He was asked to provide medical evidence and agreed to do so but has not done so to date.

4. He appeared to have difficulty asking relevant questions and cross-examination was very slow and he had problems locating documents. He accused counsel for the respondent of being arrogant and demeaning on a number of occasions when she acted in a relatively innocuous manner.

5. The parties had been ordered to agree and provide a strict timetable for the second part of the hearing. However, Mr Mutebuka failed to accord with this timetable and it was necessary to inform him of this on numerous occasions. When the Employment Judge attempted to move matters forward, assist with appropriate questions, and manage the hearing Mr Mutebuka made lengthy speeches about bias, bullying and diversity which were not relevant and caused further delay.

6. In the record of a Preliminary Hearing before Employment Judge Bright on 24 May 2021 it was recorded that:

“The particulars of claim attached to Miss Mangwanya’s claim form are lengthy (around 27,000 words, 121 paragraphs over 37 pages) and extremely detailed. It is not clear which details constitute allegations and which are merely background information. At the preliminary hearing I explained that the Tribunal will need to understand which parts of the particulars of claim describe acts or omissions by the respondent that Miss Mangwanya is complaining about, and which parts are merely background. We discussed some of the paragraphs, with reference to the Schedule to the Particulars of Claim which was attached to the respondent’s Grounds of Resistance. Mr Seath explained that this Schedule was an attempt by the respondent to identify the parts of the particulars of claim which constituted allegations. He confirmed that it was intended to help the Tribunal and Miss Mangwanya and may contain errors or be incomplete. It was intended to be a starting point.”

7. It was concluded that the claimant’s pleaded complaints were in fact:

7.1 Direct race discrimination (section 13 EqA 2010)

7.2 Harassment related to race (section 26 EqA)

7.3 Harassment related to religion/belief (section 26 EqA)

7.4 Failure to make reasonable adjustments (Sections 20 and 21 EqA).

7.5 Discrimination arising from disability (section 15 EqA) and

7.6 Victimisation (section 27 EqA)

8. A schedule of allegations was provided which sets out 126 allegations. In the claimant’s witness statement, which was 58 pages long and included 213 paragraphs, there were further allegations which were not included in the schedule of allegations. The claimant said that these were background information, and the substance of her allegations were contained within the schedule.

9. The resumed hearing, which commenced on 7 November 2022, was severely delayed as a result of Covid issues and the availability of all the parties and their representatives to attend for a further continuous period of eight days. The Tribunal panel undertook another reading day prior to the parties attending.

10. The Tribunal heard evidence from:

Grace Mangwanya, the claimant;  
Tanaka Dungare, the claimant’s son;

Brighton Mutebuka, the claimant's son;  
Ella Blockley, Senior Service support Officer;  
Jo-Anne Orsler, Service Support Manager;  
Liddy Swales, Senior Service Support Officer;  
Allison Dunstan, Operations Officer;  
Hannah Stobart, Service Support Assistant;  
Lee Brooks, Senior Operations Manager;  
Lara Stanley, Campaigns and Public Affairs manager.

Nick Keech, Office Administrator, Facilities Team had left the respondent's employment before the resumed hearing. He had been available at the first part of the hearing. The respondent did not call him to give evidence at the Tribunal hearing and relied upon his written witness statement. Evidence by written witness statement carries substantially less weight than evidence given in person where that evidence can be challenged, and the witness's demeanour considered.

11. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 1980. The Tribunal considered those documents to which it was referred by parties.

### **Background/outline findings of fact**

12. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

13. The claimant was employed as a Support Assistant in the respondent's Service Management and Improvement team on a 12 month fixed term contract. She was employed from 9 September 2019 to 2 September 2020. The claimant's role was funded by the Scams Action Project which was launched in 2019 and offered support to those who felt vulnerable to online scams.

14. The claimant was recruited to support the SCAMS project. The claimant said that the role of Support Assistant was created so that black and ethnic minority employees could be employed on a lower salary.

15. The Support Assistant (SA) Role had not existed within the team previously and was created to deal with two new advisory services, Windrush action and Scams Action. The claimant's role was within the Scams Action service. Both these Support Assistant roles were created at a lower level to the Service Support Assistant role. The role of Support Assistant was to process referrals and forward them on to the client's local Citizen's Advice Bureau. Ella Blockley was the Line manager of both the SSAs and SAs and stated that she and the rest of the management tried to separate out clearly the difference in roles and duties

between the Support Assistant role as they did not want the Support Assistants picking up tasks which they were not paid to do.

16. The uncontested evidence of Jo-Anne Orsler was that the role of Support Assistant was paid around £1,800 less than the Service Support Assistant (SSA) role as it was less autonomous. It was not advertised with any specific type of candidate in mind and could equally be filled by white candidates. Shortlisting is blind and the names are only revealed after the shortlist is submitted to the People Team.

17. On 29 October 2019 the claimant accepted an offer to act up as a Service Support Assistant. On an 0.3 of a full-time equivalent salary and then from 2 December 2020 full-time.

18. The SSA role covers more complex matters and there is a small difference in pay. One of the SSAs handed in his notice and the respondent advertised two SSA roles in early December 2019. Ella Blockley discussed with both the claimant and Sophie De Marcos whether they wanted to apply for the roles.

19. On 5 December 2019 the claimant confirmed that she would not apply for the SSA role.

20. The claimant reverted to her SA roll on 1 February 2020.

21. Maytal Blockley and Paul Carnforth were appointed as SSAs in February 2020.

22. On 25 February 2020 Jo Orsler informed the claimant that her probation period would be extended. The reasons were set out in the letter which was with regard to the claimant's performance and conduct falling short of the required standards in respect of communication, processes and procedures and workload management. Jo Orsler gave evidence that the respondent could extend the probation period by three months but, as there was not much that the claimant needed to improve on, she only extended claimant's probation period by one month.

23. Liddy Swales took over as the claimant's' line manager in March 2020.

24. On 26 March 2020 the claimant completed her probation period.

25. The claimant worked from home as a result of the Coronavirus pandemic lockdown from 16 March 2020.

26. On 11 June 2020 the claimant sent an email to Liddy Swales in which she said she wanted to make Liddy Swales aware of some of the things that made her "really sad":

"In April 2020, though I can't remember the exact date, Jo came wearing a black African wig and glasses as a joke. I asked her if she was intimidating me, but she did not answer.

I dismissed it as a joke and this is why I did not really say anything. Today Sophie mentioned that she knows Didier Drogba because he is from Ivory Coast and was a friend of her last boyfriend was from Ivory Coast.

Jo then said "Sophie I did not know that you were sort of the dark horse person", meaning she had a black boyfriend. Sophie avoided answering this then Paul said "let us start". I am now very sure that she is not aware that it offends others.

Can we genuinely talk humans, as a black person some of the things she says are painful in our culture.

On 25th February, 2020 she said to me after my Talent talk with her which was really stressful because I ended up crying so bad. She later came to the desk sitting and asked if I was okay. I mentioned that I was okay and she then responded using an English term which she later explained as meaning "lying" because she thought that was what I was saying when I said I was okay.

I would really want to discuss this with her and you being present so that she knows that this really hurts. She might not be aware that it is hurtful but it is. I do not expect her to love me but I expect her to respect me. I like her as a human being and as my manager but I think it will not be good if I keep quiet and let this fester inside my heart. I will end up not enjoying coming to the Fun Thursdays

Can we talk you and I for a way forward talking to Jo, if you are afraid since you are still in probation tell me. All I want is for her to know that this is not right and she should watch how she talks to other people. I can't even mention a lot more examples, on the 16/01/2020 she also said to be just go and be sick or take sick leave or something.

I hope she will not take this as an attack and become nasty towards me."

27. In August 2020 a review of the Scams Action Project took place and the project's budget holder, the Scams Project Manager, Jon Walters, decided that it was no longer appropriate to fund a full-time role to manage the referrals. The funding was reduced to cover only a 0.4 full-time equivalent role. The claimant's role was fully funded by the Scams Action Project. It was decided by Lee Brooks, Senior Operations Manager, that the Scams work could be absorbed into the rest of the Service Support team as part of their daily work. The claimant was informed on 12 August 2020 by Liddy Swales that her contract would not be extended or renewed.

"Your fixed term contract is coming to an end on 02/09/20. We will not be extending your contract and I wanted to be able to tell you this face-to-face (albeit virtually) so I could explain the reasons – this is why I tried to schedule a call with you, which you said you were not well enough to do. However, since the end of your contract is getting closer we felt it was

important to let you know as soon as possible, which is why I'm now letting you know via email.

We have made the decision not to extend the Scams Action Support contract due to the current number of Scams required. As you are aware, the number of referrals has been less than originally forecast at the beginning of the Scams project. This meant that we were able to allocate other tasks from within the Service Support Team to your role.

However we have now reviewed the Scams tasks and the amount of time it takes to complete them – based on this, the Scams Action project is only willing to fund 0.4 of a full-time role (2 days) to cover the tasks. Currently your role is funded by the Scams Action project, so this is a large reduction. We've made the decision to consolidate these 2 days of work into the existing Service Support team. A decision has been made because this gives us more cover for the tasks..."

28. On 16 August 2020 the claimant submitted a grievance in which she raised the following allegations:

"a) My contract has not been renewed (email sent 12/08/2020) – if I had been given the chance to apply for the position taken by (Paul and Maytal), which I was acting for before Jo "demanded" that I stepped down from (on 16/01/2020) during my TT with her, I could have been in a position to apply for promotion., since he only worked for 5 months and were promoted.

b) micromanaging me every now and then from the 16/06/2020 the 15/07/20 was discrimination, harassment and bullying as this led to me being told I had too much stress and I needed to take sick leave when this was caused by the just mentioned attitude towards me after registration of my "complaint" through Liddy.

b) I did not get an adjustable desk and screen monitor on time – race and disability discrimination – this was delivered on 02/06/2020 with inadequate materials for me to be able to set it up and do my work. We were able to temporarily set it up on 22/06/20 and the supplier finally sent a text accepting fault to fix the desk on 02/07/20 after I had sent emails to Nick Keech about this several times.

d) Jo failed me my probation for no apparent reason. I say so because all the things she mentioned on this particular day she never said during talent talks with me during the catch ups (December TT and on 16/01/20 – race discrimination (25/02/20).

f) On 25/02/2020 Jo told me not to go to the SM&I Away get together time at restaurant whilst she invited Paul and Maytal – discrimination.

g) I do believe that my recruitment as an SA and then upskilling me on 3 tasks on 01/11/19; acting on SSA position from 02/12/19 and being down skilled on 01/02/20 to make way for Paul and Maytal was fair – it was discriminatory.

h) I also believe that the way Jo demanded that I stepped down on the 16/01/20 during my talent talk was both a harassment, bullying and discriminatory act.

i) not introducing the team leaders on the mailbox side caused me some confusion which in turn caused bad relationships. Paul and Maytal were introduced officially in the workplace using emails and all the mailbox team vowed to support them – this was discriminatory as well (02/12/20).

These are the main complaints I have towards CA and I would be kindly waiting to hear from you.”

29. Lara Stanley, Campaigns and Public Affairs Manager was appointed to hear the claimant’s grievance. The claimant declined to meet Lara Stanley and asked that the questions be provided to her and answered by email.

30. Lara Stanley interviewed a number of employees. The claimant submitted a large amount of documents.

31. On 13 November 2020 Lara Stanley provided her investigation report to the claimant together with the grievance outcome letter. She upheld two points of the claimant’s grievance with regard to the handling of the claimant probation and informal grievance but, found there was no evidence of discrimination. The rest of the claimant’s allegations were not upheld and that, even in respect of the allegations that were partially upheld, there was no evidence of discrimination, harassment or victimisation.

32. The respondent said that Liddy Swales offered to help the claimant to look for other roles within the respondent.

33. On 28 October 2020 the claimant notified ACAS and the ACAS Early Conciliation certificate was issued on 23 November 2020.

34. On 15 December 2020 the claimant presented a claim to the Employment Tribunal. She claims of unfair dismissal, race and disability discrimination..

35. On 23 March 2021 the claim of unfair dismissal was dismissed as the claimant had less than two years’ service.

## **The law**

### **Direct discrimination**

36. Section 13 of the Equality Act 2010 provides;



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

37. In **Islington Borough Council v Ladele** [2009] ICR 387 Mr. Justice Elias explained the essence of direct discrimination as follows:

“The concept of direct discrimination is fundamentally a simple one. The claimant suffers some form of detriment (using that term very broadly) and the reason for that detriment or treatment is the prohibited ground. There is implicit in that analysis the fact that someone in a similar position to whom that ground did not apply (the comparator) would not have suffered the detriment. By establishing that the reason for the detrimental treatment is the prohibited reason, the claimant necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic.”

38. In **Glasgow City Council v Zafar** [1998 ] ICR Lord Browne-Wilkinson stated

“Those who discriminate on the grounds of race or gender do not in general advertise their prejudices: indeed they may not even be aware of them”

39. It is sufficient for a claimant to establish direct discrimination if he or she can satisfy the Tribunal that the prohibited characteristic was one of the reasons for the treatment in question. It need not be the sole or even the main reason for that treatment; it is sufficient that it had a significant influence on the outcome, see Lord Nicholls in **Nagarajan v London Regional Transport** [1999] IRLA 572 in paragraph 17:

“ I turn to the question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn. Conduct of this nature by an employer, when the inference is legitimately drawn, falls squarely within the language of section 1(1)(a). The employer treated the complainant less favourably on racial grounds. Such conduct also falls within the purpose of the legislation. Members of racial groups need protection from conduct driven by unrecognised prejudice as much as from conscious and deliberate discrimination. Balcombe L.J. averred to an instance of this in *West Midlands Passenger Transport Executive v. Singh* [1988] I.R.L.R. 186, 188. He said that a high rate of failure to achieve promotion by members of a particular racial group may indicate that 'the real reason for

refusal is a conscious or unconscious racial attitude which involves stereotyped assumptions' about members of the group.”

40. Where an actual comparator is relied upon by the claimant to show that the claimant has suffered less favourable treatment it is necessary to compare like with like. Section 23(1) of the Act provides: “there must be no material difference between the circumstances in relation to each case.” That does not mean to say that the comparison must be exactly the same, there can be a comparison where there are differences. The evidential value of the comparator is weakened the greater the differences, see **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 and **Carter v Ashan** [2008] ICR 1054. The Supreme Court in **Hewage v Grampian Health Board** [2012] ICR 1054 confirmed that a Tribunal had not erred in relying on non-exact comparators in a finding of discrimination.

41. Evidence of direct discrimination is rare and the Tribunal often has to infer discrimination from the material facts that it finds applying the burden of proof provisions in section 136 of the Equality Act as interpreted by **Igen Ltd v Wong** [2005] ICR 931 and subsequent judgments. In **Ladele** Mr. Justice Elias, in the EAT said:

“The first stage places a burden on the claimant to establish a prima facie case of the discrimination: where the applicant has proved fact from which inferences could be drawn that the employer treated the applicant less favourably [on a prohibited ground] then the burden moves to employer... then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If he fails to establish that, the Tribunal must find that there is discrimination.”

42. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy v Namora International PLC** [2007] ICR 867 the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: “They are not, without more, sufficient material from which a Tribunal ‘could conclude’ that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

43. A claimant cannot rely on unreasonable treatment by the employer as that does not infer that there has been unlawful direct discrimination; see **Glasgow City Council v Zafar** [1998] ICR 120. Unreasonable treatment of itself does not

shift the burden of proof. It may in certain circumstances be evidence of discrimination so as to engage stage 2 of the burden of proof provisions and required the employer to provide an explanation. If no such explanation is provided there can be an inference of discrimination **Bahl v Law Society** [2004] IRLR 799.

44. In the case of **Qureshi v Victoria University of Manchester and another** [2001] ICR 863 Mummery J said:

“There is a tendency, however, where many evidentiary incidents or items are introduced, to be carried away by them and to treat each of the allegations, incidents or items as if they were themselves the subject of a complaint. In the present case it was necessary for the Tribunal to find the primary facts about those allegations. It was not, however, necessary for the Tribunal to ask itself, in relation to each such incident or item, whether it was itself explicable on "racial grounds" or on other grounds. That is a misapprehension about the nature and purpose of evidentiary facts. The function of the Tribunal is to find the primary facts from which they will be asked to draw inferences and then for the Tribunal to look at the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the acts or decisions complained of in the originating applications were on "racial grounds". The fragmented approach adopted by the Tribunal in this case would inevitably have the effect of diminishing any eloquence that the cumulative effect of the primary facts might have on the issue of racial grounds. The process of inference is itself a matter of applying common sense and judgment to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not. The assessment of the parties and their witnesses when they give evidence also form an important part of the process of inference. The Tribunal may find that the force of the primary facts is insufficient to justify an inference of racial grounds. It may find that any inference that it might have made is negated by a satisfactory explanation from the respondent of non-racial grounds of action or decision.”

45. Since the House of Lords' Judgment in **Shamoon v Chief Constable Royal Ulster Constabulary** [2003] IRLR 285 the Tribunal should approach the question of whether there is direct discrimination by asking the single question of the reason why. That case has been expanded on by **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, **Ladele, Amnesty International v Ahmed** [2009] IRLR 884, **Aylott v Stockton on Tees Borough Council** [2010] IRLR 994, **Martin v Devonshires Solicitors** [2011] ICR 352, **JP Morgan Europe Limited v Cheeidan** [2011] EWCA Civ 648, and **Cordell v Foreign and Commonwealth Office** [2012] ICR 280.

46. For a finding of direct discrimination it is not necessary for the discriminator to be consciously motivated in treating the complainant less favourably. It is sufficient if it can be inferred from the evidence that a significant cause of the discriminator to act in the way he has acted is because of the persons protected characteristic. As Lord Nicholls said in **Nagarajan v London Transport**,

“Thus, in every case, it is necessary to enquire why the complainant received less favourable treatment. This is the crucial question. Was it on the grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question, will call for some consideration of the mental process of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision.”

47. Therefore, in most cases the question to be asked by the Tribunal requires some consideration of the mental process of the discriminator. Once established that the reason for the act of the discriminator was on a prohibited ground the explanation for the discriminator doing that act is irrelevant. Liability has then been established.

48. In the case of **Qureshi v Victoria University of Manchester** Mummery J said, with regard to race discrimination:

“As frequently observed in race discrimination cases, the applicant is often faced with the difficulty of discharging the burden of proof in the absence of direct evidence on the issue of racial grounds for the alleged discriminatory actions and decisions. The Applicant faces special difficulties in a case of alleged institutional discrimination which, if it exists, may be inadvertent and unintentional. The Tribunal .... must also consider what inferences may be drawn from all the primary facts. Those primary facts may include not only the acts which form the subject matter of the complaint but also other acts alleged by the applicant to constitute evidence pointing to a racial ground for the alleged discriminatory act or decision. It is this aspect of the evidence in race relations cases that seems to cause the greatest difficulties. Circumstantial evidence presents a serious practical problem for the Tribunal of fact. How can it be kept within reasonable limits?”

49. The Tribunal has considered the case of London Borough of **Ealing v Rihal [2004] EWCA Civ 623** in which Lord Justice Keane in the Court of Appeal stated at paragraph 38:

“The Tribunal's reference to Mr Foxall being an "honest and honourable man" (paragraph 48) is not inconsistent with him being unwittingly influenced by racial considerations. As Neill LJ said in *King –v- Great Britain China Centre* at page 528:

"Few employers will be prepared to admit such discrimination *even to themselves*. In some cases discrimination will not be ill-intentional but merely based on an assumption that "he or she would not have fitted in"." (my emphasis)

Nor is Ealing assisted by the fact that the Tribunal accepted as genuine and true Mr Foxall's explanation of what he was seeking to do in the scoring. That was simply the Tribunal accepting that Mr Foxall was

honestly describing what he was trying to do in that exercise. As it said a little later, he gave this evidence with great conviction *on his own part*. That in no way leads to a conclusion that he was not influenced by racial considerations, albeit without appreciating it. “

## Victimisation

50. Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act -

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

51. In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan** [2001] IRLR 830:-

“The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so”.

52. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

53. To get protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made

in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says “Detriment does not ... include conduct which amounts to harassment”. The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 is applicable.

54. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi** EAT0269/09. Once the tribunal has been able to identify the existence of the protected act and the detriment the tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent’s state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572, **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, and **St Helen’s Metropolitan Borough Council v Derbyshire** [2007] IRLR 540. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others** [2010] IRLR 136. In **Martin v Devonshires Solicitors** EAT0086/10 the EAT said that:

“There would in principle be cases where an employer had dismissed an employee in response to a protected act but could say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable.”

55. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan**. In **Owen and Briggs v James** [1982] IRLR 502 Knox J said:-

“Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination.”

56. In **O’ Donoghue v Redcar and Cleveland Borough Council** [2001] IRLR 615 the Court of Appeal said that, if there was more than one motive, it is

sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

## Burden of Proof

57. Section 136 of the Equality Act 2010 states:

“(1) This Section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But sub-section (2) does not apply if (A) shows that (A) did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to –  
(a) an Employment Tribunal.”

58. Guidance has been given to Tribunals in a number of cases. **In Igen v Wong [2005] IRLR 258** (a sex discrimination case decided under the old law but which will apply to the Equality Act) and approved again in **Madarassy v Normura International plc [2007] EWCA 33**.

59. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of Madarassy the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: “They are not, without more, sufficient material from which a tribunal ‘could conclude’ that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

60. In the case of **Pnaiser v NHS England [2016] IRLR 170**, EAT, Simler P said that whilst Tribunals might find it helpful to go through the two stages suggested in **Igen v Wong**, it is not necessarily an error of law not to do so and in many cases moving to the second stage is sensible. She warned against falling into the trap of substituting 'motive' for causation in deciding whether the

burden of proof has shifted. In that case the Tribunal had erred in effectively requiring the claimant to show that the only inference which could be drawn from the primary facts was a discriminatory one. This was too high a hurdle and in fact a claimant is only required to demonstrate a prima facie case that the putative discriminator has consciously or unconsciously taken into account, in that case, something arising from disability, in order for the burden to shift.

61. In **Griffiths-Henry v Network Rail Infrastructure Ltd [2006] IRLR 865**, EAT It was said that in order for the burden of proof to shift, the claimant is not required to provide any positive evidence that the difference in treatment was based on race.

62. In Harvey on Industrial Relations and Employment law it is stated

“ If unreasonable conduct therefore occurs alongside other indications (such as under-representation of women in the workplace, or failure on the part of the respondent to comply with internal rules or procedures designed to ensure non-discriminatory conduct) that there is or might be discrimination on a prohibited ground, then a Tribunal may find that enough has been done to shift the burden onto the respondent to show that its treatment of the claimant had nothing to do with the prohibited ground. Similarly – once the burden of proof has shifted, as Girvan LJ explained in **Rice v McEvoy [2011] NICA 9**, [2011] EqLR 771 – while the test is not to ask what a reasonable employer would have done, action which is wholly unreasonable may assist in drawing inferences that the employer's purported explanation for his/her actions was not the true explanation.

63. HHJ Peter Clark in **The Home Office (UK Visas & Immigration) v Kuranchie UKEAT/0202/16** (19 January 2017, unreported) confirmed that 'statistical' evidence that may tend to show a discernible pattern of treatment by the employer to the claimant's racial group could lead a Tribunal to infer unlawful discrimination. He gave an example of a race discrimination case in which racial statistics were held to be a relevant consideration, that of **Rihal v London Borough of Ealing [2004] EWCA Civ 623, [2004] IRLR 642**. The presence of such evidence can amount to the 'something more' than the difference in protected characteristic and treatment as Mummery LJ described was needed in **Madarassy v Nomura** so as to shift the burden of proof.”

### Time limits

64. Section 123 of the Equality Act 2010 states:

(1) ...Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.



...

- (3) For the purposes of this section—
- (a) conduct extending over a period is to be treated as done at the end of the period;
  - (b) a failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
- (a) when P does an act inconsistent with doing it, or
  - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

65. The Court of Appeal made it clear in **Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686**, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what she has to prove, in order to establish 'an act extending over a period', is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an "ongoing situation or continuing state of affairs" as oppose to "a succession of unconnected or isolated specific acts". It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

66. The Tribunal has discretion to extend time if it is just and equitable to do so, the onus is on the claimant to convince the tribunal that it should do so, and *'the exercise of discretion is the exception rather than the rule'* (**Robertson v Bexley Community Centre [2003] EWCA Civ 576** per Auld LJ at para 25).

67. The Tribunal's discretion to extend time under the 'just and equitable' formula is similar to that given to the civil courts by section 33 of the Limitation Act 1980 for extending time in personal injury cases (**British Coal Corp v Keeble, [1997] IRLR 336**). Under section 33, a court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular:

1. The length of and reasons for the delay;
2. The extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time; the conduct of the respondent after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant;

3. The duration of any disability of the claimant arising after the date of the accrual of the cause of action;
4. The extent to which the claimant acted promptly and reasonably once he knew of his potential cause of action. Using internal proceedings is not in itself an excuse for not issuing within time see Robinson v The Post Office but is a relevant factor.
5. The steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

## Disability

68. Section 6 of the Equality Act 2010 states:

- (1) A person (P) has a disability if—
  - (a) P has a physical or mental impairment, an
  - (b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Schedule 1 provides :

Long-term effects

2. (1) The effect of an impairment is long-term if—
  - (a) It has lasted for at least 12 months,
  - (b) It is likely to last for at least 12 months, or
  - (c) it is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

Section 212 provides that substantial” means more than minor or trivial.

## Direct discrimination

69. Section 13 of the Equality Act 2010 states:

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

### **Discrimination arising from Disability**

70. Section 15 of the Equality Act 2010 states:

“(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arises in consequences of B’s disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Sub-Section (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

71. Under section 15 there is no requirement for a claimant to identify a comparator. The question is whether there has been unfavourable treatment: the placing of a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person; see Langstaff J in **Trustees of Swansea University Pension & Assurance Scheme & Anor v Williams** *UKEAT/0415/14* at paragraph 28. As the EAT continued in that case (see paragraph 29 of the Judgment), the determination of what is unfavourable will generally be a matter for the Employment Tribunal.

72. The starting point for a Tribunal in a section 15 claim has been said to require it to first identify the individuals said to be responsible and ask whether the matter complained of was motivated by a consequence of the Claimant’s disability; see **IPC Media Ltd v Millar 2013 IRLR 707**: was it because of such a consequence?

73. The statute provides that there will be no discrimination where a respondent shows the treatment in question is a proportionate means of achieving a legitimate aim or that it did not know or could not reasonably have known the Claimant had that disability.

### **Failure to make reasonable adjustments**

74. Section 20(3) of the Equality act 2010 provides:

“...where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, [there is a requirement] to take such steps as it is reasonable to have to take to avoid the disadvantage.”

75. Section 212(1) provides that “Substantial” is defined at to mean “more than minor or trivial”.

76. Whilst there is no definition of ‘provision, criterion or practice’ found in the legislation, and it is left to the judgment of individual Tribunals to see whether conduct fits this description, not every act complained of is capable of amounting to a PCP. In **Ishola v Transport for London [2020] IRLR 368** Simler LJ stated:

"In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

In context and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that 'practice' here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one.”

77. In **Environment Agency v Rowan [2008] IRLR 20**, the EAT provided guidance on how an Employment Tribunal should approach a reasonable adjustments claim The Tribunal must identify:

“(a) the provision, criterion or practice applied by or on behalf of an employer, or;  
(b) the physical feature of premises occupied by the employer;  
(c) the identity of non-disabled comparators (where appropriate); and  
(d) the nature and extent of the substantial disadvantage suffered by the claimant.”

78. In **Bank of Scotland v Ashton [2011] ICR 632**, Langstaff J held:

“The Act demands an intense focus by an Employment Tribunal on the words of the statute. The focus is on what those words require. What must be avoided by a tribunal is a general discourse as to the way in which an employer has treated an employee generally or (save except in certain specific circumstances) as to the thought processes which that employer has gone through.”

79. In **Chief Constable of Lincolnshire Police v Weaver KEAT/0622/07/DM**, the EAT held that a Tribunal must also take into account wider implication of any proposed adjustment, not just focus on the claimant’s position. This may include operational objectives of the employer, which may include the effect on other workers.

80. Schedule 8 of the Equality Act 2010 provides that an employer is not under a duty to make reasonable adjustments unless it knows or ought to know the employee has a disability and is likely to be placed at the substantial disadvantage in question.

81. The required knowledge, whether actual or constructive, is of the facts constituting the employee’s disability as identified in section 1(1). Those facts can be regarded as having three elements to them, namely (a) a physical or mental impairment, which has (b) a substantial and long-term adverse effect on (c) his ability to carry out normal day-to-day activities; and whether those elements are satisfied in any case depends also on the clarification as to their sense provided by Schedule 1. The employer does not need to also know that, as a matter of law, the consequence of such facts is that the employee is a disabled person as defined in section 1(2) **Gallop v Newport City Council [2014] IRLR 211**.

## Harassment

82. Section 26 of the Equality Act 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.

83. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. Was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

84. In the case of **Grant v HM Land Registry [2011] IRLR 748** the Court of Appeal said that:

"Tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

85. In the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT stated:

"We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

## Submissions

86. The parties applied to provide written submissions and the Tribunal acceded to this request.

87. One member of the Employment Tribunal panel was very seriously ill and this led to delay in commencing deliberations. The parties were informed of the situation. Unfortunately, this caused yet another substantial delay in this case.

88. The claimant was allowed an extension of time to provide submissions. The claimant did not provide submissions in the further time allowed but made an application for the Employment Judge to be recused from the case. The claimant was informed that the application for recusal would be heard by the full Employment Tribunal panel and that, if that application was refused, then the Tribunal would go on to commence its deliberations and the claimant was told that if she wished to make any submissions she should do so before the date when the deliberations were due to commence.

89. Ms Churchhouse, on behalf of the respondent, provided a skeleton argument, a respondent's chronology which set out dates in respect of limitation, the claimant claims in respect of reasonable adjustments relating to the provision of an adjustable desk and "desktop add-on" and the incident of 30 April 2020 referred to as "the wig and Diamante glasses incident". Ms Churchhouse also provided the respondent's analysis of the claimant's case.

## **Conclusions**

### **90. Allegations**

The schedule of allegations includes a number of comments by the parties. These have been left in the allegations set out below and taken into account by the Tribunal as appropriate

The Tribunal has considered each of the allegations made by the claimant as follows:

#### **Direct race discrimination**

##### **1. 19.07.19**

Respondent didn't make provision for reasonable adjustments that they had noted upon recruiting C because of her race as C had been recruited using the "disability guaranteed interview" as per R's advert, "We welcome applications from disabled and Black, Asian and Minority Ethnic people, as they are currently under represented in our workforce"

91. Although this refers to reasonable adjustments, it appears to be a claim of direct race discrimination. It is labelled as such in the schedule that was agreed by the claimant.

92. This allegation is not clear. Ella Blockley was not aware of the content of the starter's form filled in by the claimant. The Tribunal did not hear evidence from Nick Keetch. It does appear that the claimant completed the form and this did not make it to the claimant's Line Manager.

93. The respondent submitted that the Final Consent Form provided by the claimant was a forged document for two reasons. There was a different text in one part of the form which was at odds with the text placed below which referred to spinal disc and sciatica problem. It was stated that, in the alternative, it was a document given to a third-party Health Management Ltd (albeit that is at odds with the document at page 316) and nor does it refer to the need for an adjustable desk.

94. There was no evidence that the treatment of the claimant was on grounds of race.

##### **2. 02.08.19**

Respondent refused to make reasonable adjustments that they were supposed to make because of race through misuse of the occupational health report that was done by the O.H.A.

95. The Occupational Health Assessment dated 7 August 2019 made no reference to a disability or the need for an adjustable desk. It was stated:

“we discussed the information that she had included on her health questionnaire as well as the details of past jobs and her current activities outside work. it does not appear that she has any ongoing medical conditions which would have practical implications for her employment.

Advice on fitness for work

Based on the information available, I do consider this lady to be medically in a position to undertake this role.

Response to questions not already addressed

There do not at this time appear to be any indications for specific job adjustments or additional risk management measures to be put into place. And, with regard to the outlook I am optimistic in terms of her ability to render reliable service and attendance.”

96. Once again, this is a claim of direct race discrimination. There was no evidence that this was on grounds of race.

3. 09.09.19

Contract mentioned that Manager (Ella) would support C with advice on workplace adjustments but she did not write to HR about C's need for an adjustable desk

Ella agreed to C taking breaks but she did not relax Service Level Agreements so as to take into account these breaks.

97. Ella Blockley gave clear and credible evidence. The Service Level Agreements were targets set across the whole team and adjustments could be made for an individual if they were not keeping up and the rest of the work would then be taken up by other members of the team. Ella Blockley gave evidence that the claimant showed no indication that she was doing anything other than performing in accordance with SLAs.

98. Ella Blockley was not aware that the claimant was disabled although she had given an indication that she was struggling with her back. The claimant did not ask or inform Ella Blockley that she needed an adjustable desk. This only occurred once the claimant was working from



home during the lockdown.

4. 18.09.19

There were several disabled white colleagues who had adjustable desks, whereas C was told by Nick Keech that they could not buy C an adjustable desk as these were expensive costing around £1,000.00. Instead, C was told she could use one of her white colleagues' desks when they were on annual leave or sick leave but they were always there most of the times

99. None of the staff had their own adjustable desks. They merely used those available on an ad hoc basis and the claimant was welcome to do the same. The appropriate comparator would be a disabled white employee. There were a number of adjustable desks. There was a 'hot desk' policy and any employee could request to use an adjustable desk. There was no evidence that there was any less favourable treatment on grounds of race.

5. 23.09.19

Jo sent chats, as well as Ella in person, to put pressure on C to send 121 emails within an hour to clients, but when Paul & Maytal started they were never pressured like that they took their time to work on these emails

100. The claimant was not required to deal with 121 emails within an hour – she forwarded them to the appropriate case handler and this would take minimal time. There was no evidence that the actions were taken because of the claimant's race and it was not put to the relevant witnesses that it was because of the claimant race. There was no evidence that there was any less favourable treatment on grounds of race.

6. 24.10.19

C was offered an exciting development, i.e. uplift of salary to have extra tasks added as per training schedule on 24.10.19, i.e. SST Mailbox, LiveEngage, Partner Portal, Weekly Consumer dashboard, 2nd day 25.10.19 – IPOS, Purchase orders – SM & I & P & Q, Recharge calculator, IPOS desk notes & Internal Recharge desk notes. R&S were to train C as she was off on 24.10.19 but both mentioned that they had not learnt much to be able to train C and as a result C had to train herself on both Recharge tasks and mailbox because Jo had set the training programme knowing C was on leave on 24.10.19.

101. There was no evidence that this was on grounds of race.

25.10.19

On 25.10.19, C was not given enough training for all the given tasks and had to self train on some of the tasks e.g. Recharge tasks (Training email above, & various chats Sept-Oct 19 etc

102. There was no evidence that that this was anything other than the normal vicissitudes of working in a busy organization.

103. There was no evidence that this was less favourable treatment on the grounds of race

7. 12.11.19

During C's October 2019 TT form meeting on 12.11.19 Ella wrote a note which stated that C's learning style was kinaesthetic to assist other staff members to train C to do more tasks in order for C to settle into the role, but unfortunately Jo deleted it without even telling C why she had deleted it.

104. There was no evidence that this was less favourable treatment on the grounds of race.

8. 21.11.19@15.04pm

C was treated less favourable as a black person by Jo when she temporarily offered C to act as an SSA from the (02.12.19 to the 31.03.20) and then cut off C's acting period to (31.01.20) by forcing her to step down yet C had worked hard to keep the department viable when the department was short staffed yet behind the back Jo was preparing to replace C with a white SSA, Maytal.

105. The claimant had been temporarily appointed as an SSA and she later stepped down. There was a discussion about her well-being and JoAnne Orsler gave clear evidence that this was because of the claimant's issues with Allison Dunstan. The claimant made the choice to step down. There was no evidence that there was any less favourable treatment on grounds of race.

9. 25.11.19

C received a vague response on (25.11.19 @ 09:18am & 03.12.19@ 09:55am) for an email she sent to Ella on (25.11.19 @ 8:45am). Ella mentioned that HR had stated that C's probation would be done in a "doable way" and that the probation period would not be extended, then C was referred to a copy of Ron's 2019 task specialism document and appointed yet the probation

was extended for one month for no apparent reason

106. The claimant's probation was extended by one month. Reasons were given for that extension which included the claimant's communication, her following of processes and workload management. There was no evidence of this was on grounds of race.

10. 02.12.19

Neither C nor Sophie was introduced to the Team Leaders responsible for managing the different LCAs where all queries were coming from into the mailbox that C was now in charge of and Allison was not supportive as she was the one who was like the "mailbox trainer" whilst Maytal was introduced.

107. The evidence was that claimant was not introduced personally to Team Leaders because many were at other locations. Allison Dunstan was based in Cornwall. The allegation relates to the claimant and Sophie who is of mixed race. The introduction also applied to Ron Lodge who was also a new appointment and is white. There was no evidence that there was any less favourable treatment on grounds of race.

C did not receive any formal useful training on the Consumer Mailbox compared to Maytal who received training from C and others.

SLAs for complaints in the mailbox were 5 working days but Alli was piling pressure on C to work on these within minutes of getting into the mailbox (SLAs agreement for all consumer tasks).

108. The claimant did not receive different training because of race. Jo-Anne gave credible and unchallenged evidence that there may have been different training for Maytal as, by the time Maytal joined the team there were more experienced people to train her. The claimant and Sophie had been in post for a while and there was also Paul.

11. 05.12.19

Jo deliberately misled C during a telephone conversation on 05.12.19 by advising C that she should not apply for the SSA position being interviewed for in January 2020, on the basis that the position C was acting in would be advertised in April 2020 and she could apply for it then.

109. There was discussion about the nine-month fixed term contract. The claimant made the decision not to apply for it because there was a

prospect that some other employees would not return to their substantive posts and there was likely to be a permanent position coming up. There was no evidence that this alleged conduct was on grounds of race.

12. 10.12.19

Jo piled pressure on C to complete tasks quickly despite the team being understaffed as C had a disability which caused her to work excessive hours.

On November 2019 Talent Talk meeting on 10.12.19, Jo (i) did nothing when C complained of excess work; (ii) concluded that working excessive hours was C's choice and not due to there being too much work for C and (iii) told C that it was not a failure to admit that she could not do something or was struggling despite her knowing that she had failed to train C (on 25.10.19), as well as Sophie and Ron effectively from (24.10.19 -25.10.19) for all the tasks highlighted in paragraph 11.

110. Jo Orsler gave clear evidence that at no point was there an expectation that the claimant had to work beyond her contracted hours and it was explained to the claimant that this was an expectation that she placed upon herself and it had not been necessary.

There was no evidence that the alleged conduct was on grounds of the claimant's race.

13. 13.12.19

Alli (on 13.12.19) was not following SLA guidance, and was deleting and correcting emails C would have worked on without communicating this to C, e.g. Cardiff query

111. Jo Orsler said that Alison Dunstan had been working on the mailbox for over 10 years and she knew the work inside out. She was trying to help but she was told not pick up the emails.

There was no evidence that the alleged conduct was on grounds of the claimant's race.

14. 13.12.19

Jo pretended to try and solve the Alli bullying scenarios by sending a vague email which worsened the problem for C despite having promised to talk to Allison's Manager and she did nothing further after things got worse except to mention that C is confident in challenging this behaviour only involving her where necessary which was not true.

112. There was no evidence that any conduct by Allison Dunstan or Jo

Orsler was on grounds of race.

15. 08.01.20

Alli had a tendency of deleting response emails from C to clients (evidenced by emails between Jo & C. i.e. a response email to a Fair Trading Officer in Essex this would have created problems for C if the Officer had ended up not receiving the email and complained.

113. There was no evidence that any conduct by Allison Dunstan or Jo Orsler was on grounds of race.

16. 14.01.20

Jo recruited Maytal in January 2020 to replace C despite having promised C that she was going to recruit only one SSA that would be working with C in January 2020 and would advertise the position C was acting in, in April 2020. Maytal had only been recruited for 2 months (i.e. 04.02.20 – 31.03.20) but instead Jo appointed her to take the role that C was acting in which C was told she would be able to apply for in April 2020.

114. This was not covered in the claimant's witness statement. Liddy Swales' evidence was that she made the claimant aware of vacancies to which the claimant was suited but she did not apply for them. There was no evidence that the alleged conduct was less favourable treatment on the grounds of the claimant's race.

17. 16.01.20

Jo accused C of having failed to follow process on C's probation list, for an invoice where the desk notes had not been written correctly prior to C's recruitment and this meant that the process that the department had been following was wrong. Jo only amended the desk notes after Finance had advised her of the correct process because C had highlighted the error to both Trupti.

115. It was not put to Jo Orsler that this was conduct on grounds of the claimant's race. The claimant does not refer to this conduct being on the grounds of race.

18. 16.01.20

Jo's stated concerns during a TT Form meeting with C (on 16.01.20) was on task prioritisation, task management and C's excessive hours, yet as C's direct manager she never addressed how these raised issues could be resolved as this was the purpose of having TT meetings instead of continuously repeating the same

issues during each month's TT.

116. This is a complaint about issues at work. There was no evidence that it was on grounds of race.

19. 16.01.20

Jo forced C to cancel the volunteering offer to be on the planning group for the Away Day which C had taken up on (29.10.19) when Jo had asked her on through an email.

Jo forced C to step down as an SSA from 31.01.20 & wanted to lure her to accept to step down by comparing the 2 contracts i.e. SA contract for 2 years and SSA contract for 9 months as she wanted C to step down and for Maytal to take over (Ella's blood sister). Jo also mentioned that her reason for forcing C to step down was because Alli was causing C a lot of stress yet she did not even get in touch with HR about it

Jo demanded that C should no longer volunteer to chair SST meetings or any other work

Jo forcefully asked C to take over reporting of the Information Management Scams Dashboard from her as Jo was the one doing the report since 16.07.19 when the project commence

117. There was discussion about the nine-month fixed term contract and it was the claimant's decision not to apply as a permanent contract was likely to come about when others may not have returned to their substantive post. The claimant does not refer to this conduct being on grounds of race and it was not put to Jo Orsler that it was on grounds of race

20 17.01.20

C's 3 months' induction form which was supposed to have been checked through and signed was not until 17.01.20 when Jo asked C to sign off 4 months 6 days later

R wrote C's job title on that Induction Form as SSA not SA yet this did not portray the contract job title that C was given on 19.08.19.

118. These allegations were not covered in the claimant's witness statement and there was no evidence to show that this was on grounds of race

21 21.01.20

Jo booked a 6months probation TT review appointment with C for the (25.02.20 between 1pm & 2pm) even though she knew that there was not going to be enough time to go through the review professionally

119. The claimant does not refer to this conduct as being on the grounds of race. She refers to it as being a “witch hunt session”. She does refer to her view that it would not have been done like that for Paul or Maytal but there was no evidence to this effect and there was no evidence to show that this was on grounds of race

22. 28.01.20

C sent Jo a chat letting her know that she had too many tasks (i.e. mailbox, inbound mail, consumer tasks, purchase orders and MAT stats) as C had not managed to push through the tasks on 27.01.20 because she was assisting Sophie with the mailbox task, but Jo responded on 29.01.20 @ 08:34am and refused to take away any of the tasks to give to Sophie, who herself was complaining of less work.

120. The claimant does not refer to this conduct being on the grounds of race and there was no evidence to show that this was on grounds of race..

23. 29.01.20

C was paid less than Paul and Maytal for doing the same work as them (even though she had stepped down from the SSA role, she was still doing the same work) Jo sent email responding to C’s email on (29.01.20 @ 08.18am & 29.01.20 @ 10.12am) the same date C had sent request asking her.

121. Paul and Maytal were SSAs. The work overlapped. The claimant voluntarily stepped down from an SSA role. Once again the claimant does not refer to this being on the grounds of race.

24. 31.01.20

C had to request for a day off to go for a GP appointment whilst others were allowed to go without taking a day off.

122. There was no evidence of comparators being treated differently. There was no evidence of less favourable treatment on grounds of race.

25. 04.02.20

Jo failed C her probation because she had trained Maytal using LiveEngage Training software that had wrongly been installed by IT (04.02.20 @ 9.00 am) but C did not know that this was wrong

software, yet Paul failed to train C on Google analytics & jumped a step but Paul passed his probation and also got promoted despite his mistake same as C's.

123. This was not reason for the extension of the claimant's probation Jo Orsler gave clear evidence that the decision to extend the claimant's probation period was made because there were issues including communication issues. The respondent's policy was that Jo Orsler could have extended the probation by three months but her view was that the claimant was not doing badly and all that was required was an additional month. There was no credible evidence that this was on grounds of race

Jo Orsler introduced Maytal to the whole of SM & I department and (i.e. team leaders and other managers) and Allison responded by saying "Welcome Maytal, shout if you need any support with anything" but yet she was terrorising C when C was on the mailbox for no reason and never welcomed C like that.

124. Ella Blockley sent an email to the Leeds Team introducing the claimant, Sophie and Ron Lodge, a white colleague who had also started with the respondent. Allison Dunstan worked from her home in Cornwall and Ella Blockley did not include her in that welcome email because initially the claimant did not provide support to the entire Consumer Team. When Paul and Maytal joined the team Jo Orsler had become responsible for their line management and introduced them to the team. There was no evidence that there was any treatment on grounds of race

07.02.20

On 25.02.20 Jo failed me my probation but on (07.02.20 @ 15:55hrs) she had sent an email to C saying that C had "done a great job" in doing the Recharge tasks, yet she refused to take this off from C's probation list

125. The claimant's probation was extended by one month. Probation could be extended by three months but Jo Orsler said that there was not much that the claimant needed to improve upon and, for the most part, she did do a great job. There were reasons provided to the claimant for extending her probation period. There was no evidence that this was on grounds of the claimant's race.

26 13.02.20

On 13.02.20 C requested Jo if she could join the EDI project that Lee Brooks had advertised for a volunteer for, but Jo blocked it by saying (though she later accepted on 25.02.21) she wanted the others to get a chance in case they also wanted to apply for the opportunity yet this had been advertised through work personal emails for everyone to see.



Jo wanted C to wait until 25.02.20 probation date when the advert was closing on 21.02.20.

126. The respondent submitted that the claimant did not refer to this conduct being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

27. 17.02.20

On 17.02.20 Jo had not given C any work and C had to request for work from Paul.

Jo never responded to the email C had sent her @ 08.01am on the day but C was waiting for her to respond and say take work from so and so.

127. The claimant did not refer to this allegation as being on grounds of race. Also, it was not included in the claimant's witness statement. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

28. 17.02.20

On 17.02.20 @ 08:05 am, Jo responded to a request from Paul on the day but did not respond to C's; C had asked Jo for a few hours off work to take her son for his driving test.

128. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

29. 18.02.20

On 18.02.20 @ 08:14am – 08:56am, Jo was rude to C through WhatsApp texts, and then through phone where she rang and was shouting at C whilst C's son was there

129. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

30. 20.02.20

On 20.02.20 & 21.02.20, Jo sent a chat accusing C of having shared confidential information and that C had not followed the desk notes properly whilst working on the expenses ticket (on fresh service) assuming Paul knew how to work on it better than C and she later discovered that the desk notes had not been clearly written.

130. The claimant did not refer to this allegation is being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

Jo had no knowledge that Google Analytics was a monthly and not a weekly task, and on (25.02.20 @ 11.50am & 25.02.20 @ 12:41pm) after C had tried to explain this to her, she refused to accept it and recorded it as a lack of communication skills on C's 25.02.20 TT form.

131. The claimant did not refer to this allegation ai being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

31. 25.02.20

On (25.02.20 between 13.00hours & 14.00hrs), Jo's handling of C's probation meeting that day was unprofessional, very distressful and very demeaning, e.g. "you poor little thing, why are you crying, did you think that I was going to dismiss you"?

Jo never opened her laptop on the 25.02.20 and she was doing this from her head i.e. asking C to rate herself using the SA Job description C used to apply for the position in July 2019, and as recorded on paragraph 1, yet C had already filled in her TT form in advance and sent to her with ratings already added in on (21.01.20).

Failing C her probation highlighting untrue reasons for failure really pained C and the way she did it caused C an insurmountable distress and almost caused C a mental breakdown.

Jo did not pass C her probation and mentioned on the 10.12.19 TT meeting form that C's probation was only going to be based on the SA tasks yet the communication problem, Jo raised at the probation meeting emanated from the issue with Alli (which related to an SSA task). On 04.12.19 @ 17.18pm, Jo sent an email saying "I have added a duty mailbox goal but it is very light touch" yet that is the same problem where communication problem with Alli became an issue on C's TT list of failures. **[R's Comment:** This is not agreed. It does not feature in the original Claim form. **C's response:** Even if it is not there it was mentioned. C rejects this in total and will leave it there.]

132. There was no evidence that any of this alleged treatment was on grounds of the claimant's race. It was not put to the relevant witnesses during the Tribunal hearing.

32. 25.02.20

Hannah Stobart sent an email on 19.02.20 inviting everyone in the SM & I department to an Away Day Social evening on 25.02.20, but Jo rudely stopped C from attending that event for food and drinks but invited Paul and Maytal instead.

133. Jo Orsler's evidence was the claimant was very upset following her probation review meeting and that she may have said something along the lines that the claimant had an upsetting day and she should not feel that she needed to go to the social evening. The claimant had been invited before Paul and Maytal had joined the team. The claimant did not refer to this allegation as being on grounds of race.

The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

33. 25.02.20

Jo's downgrading of 8 tasks that used to be done by SSOs to SSA tasks in end of December 2019 just after C had been temporarily appointed as an SSA was less favourable to C as Jo gave C more work from those tasks as well as extending C's probation period using the same changed tasks

Jo's acceptance of Paul and Maytal's decision (on 25.02.20) that all should share all tasks equally including C when Jo knew that C was an SA was less favourable treatment to C.

134. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

34. 26.02.20

C was offered the SA role by R because of her race, as previously only the position of SSA existed for white colleagues and all tasks were SSA grade tasks, i.e. prior to Sophie being recruited in July and C in September 2019 as SAs respectively

135. The SA role had been created due to funding received for the Scams and Windrush projects. Both these Support Assistant roles were created at a lower level to the Service Support Assistant role. The role of Support Assistant was to process referrals and forward them on to the client's local Citizen's Advice Bureau.

136. The role of Support Assistant was paid around £1,800 less than the Service Support Assistant role as it was less autonomous. The Tribunal accepts the clear and credible evidence of Jo Orsler that It was not advertised with any specific type of candidate in mind and could equally be filled by white candidates. Shortlisting is blind and the names were only revealed after the shortlist was submitted to the People Team.

137. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

C received less favourable treatment from Jo as Jo was continuously ignoring the fact that C needed reasonable adjustments i.e. an adjustable desk and relaxing of SLAs but Jo was pretending that she did not know that C was disabled and yet on ( J chatted with C on 20.01.20 about her backache pain & on away day 26.02.21, 28.01.20 email approving Disability workshop), she hired a taxi for C on coming back and she said she was hiring a taxi for C because she had a backache & leg problem.

C encountered a lot of pain some nights and used to take double dose painkillers because of this equal sharing of tasks with same SLAs with C who had a disability. C talked to Jo about this on a call on 27.02.21 @ 16:28 pm, but Jo ignored C's plea. [ **Claimant's comments:** Please kindly check lines 15/16 paragraph 41 about pain killers and lines 18 & 19 of paragraph 48 about painkillers. C has added 2 dates for more clarification. **R's response:** This food and addition is still not agreed. There is no reference to you speaking to Jo on 27 February 2020 about your disability and Jo ignoring your plea. ]

138. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

35. 28.02.20

Jo asked C to fill in a DSE form for the problem she had with her eyes on 28.02.20 and when the form came C could not find the part for an adjustable desk as the form had been deliberately altered and the question vague.

On (25.02.20 @ 15.01pm & 28.02.20 @ 16.02pm), Jo extended C's probation period by one month and then asked her to learn

new tasks she had not learnt for the previous 5+ months within the one month extension period, i.e. Scams Dashboard, Kcom, Data Erasures and Google Analytics and this was less favourable treatment to C.

139. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

36. 28.02.20@17.30pm

Jo rescheduled tasks such that Paul and Maytal would not do Dashboard plus consumer tasks on the same day and she allocated these to a different person, but C once requested Jo to take off some of the consumer tasks from her whilst she was on mailbox and Jo refused.

140. The respondent's submissions are that this was not covered in claimant's witness statement. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

37. 03.03.20

On 03.03.20, Jo asked C to carry on managing workload management within her working hours & yet she knew that this was not possible for C as reasonable adjustments, i.e. (SLAs being relaxed and adjustable desk had not been provided).

C sent a chat to Jo for help with tasks on 03.03.20 @ 8:32am, but Jo refused to redistribute tasks after C had informed her that she had been locked out of the Kcom log and she insisted that C should complete the tasks through chat, but C ended up working extra hours.

141. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of claimant's race.

38. 04.03.20

Jo allocated too many tasks to C whilst Maytal had nothing to do, except one recharge task training in the afternoon yet Maytal could have done scams referrals and follow ups as C had already trained Maytal on the 2 tasks, asking C to prioritise.

Jo allocated Scams for C & Windrush for Sophie for the whole

day on the 18.03.20 whilst Paul and Maytal were not allocated tasks and were left open for the On-line Big Conference and could do what work they wanted for the day.

Jo sent a chat on 16.03.20 telling C she would have a TT probation review on 18.03.20 and C missed her appointment with the communications manager on that day because of the time Jo took during the Talent Talk (18.03.20 from 9.00am to 10.30am) as C wanted to look for a job in this department later.

On 18.03.20, C had registered her frustration and because of this, Jo went on Workplace Facebook to acknowledge that C had worked very hard during the time when the department was short staffed, but this was a cover up because she failed C's probation, did not recommend a salary increase for her despite this acknowledgement and almost caused her mental breakdown through emotional distress on 25.02.20 during her TT meeting.

142. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

39. 18.03.20

Despite Liddy requesting that C & colleagues use their own second screens if they could as work was difficult without 2<sup>nd</sup> screens, Lara Stanley concluded as part of response to C's complaint, that a second screen was not necessary. Lara's refusal to accept that there was need for 2 screens to C was a less favourable treatment.

143. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

Nick Keech (on 19.03.20) mentioned that he had no time to look for screen software for C and would do it when he gets time but he never did this till C's contract was terminated on 02.09.20. **[C's comment:** C added back for more clarification on the fact that C's contract was terminated as she was not even offered the 2 days per week and other staff i.e. Nyomi first as temporary staff and later Alex, Stephanie and Francisca were employed as SSAs. **R's response:** This wording is not agreed. The contract terminated because it expired due to being a fixed term contract, it was not terminated by Citizens Advice. We therefore propose to remove "was". This is a reasonable request.]

144. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

40. 24.03.20

Jo passed C her probation on 24.03.20 and sent a letter to HR on 31.03.20 which she never copied to C and C had to write to HR to request a copy that only came on **14.04.20** which was an unfavourable treatment to C.

145. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

41. 25.03.20

Jo treated C unfavourably when (a) she did not ring Dell about C's desk adjuster when they rang her after the payment was blocked, (b) she did not ring C to apologise and explain, (c) she had already mentioned that buying C a fit for purpose electric adjustable desk was expensive, (d) she knew that C had stayed for a long time without any reasonable adjustment and was in pain, (e) quickly sorted all the white staff's needs before C's, i.e. Paul, Maytal & Liddy's reasonable adjustment requirements without delay compared to C (f) C's desk adjuster was only delivered on 13.05.20 after C had kept on sending chats and email to Liddy (chat 27.03.20)e **[R's comment regarding point (d): This is not agreed. We do not see any reference to this in paragraph 60. C's response: She knew and C will not delete it, sorry.]**

146. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

42. 01.04.20

Jo agreed that if C & colleagues all sent their home working furniture lists (C sent her list on 01.04.20) she would buy that from her CA card and she only bought for Maytal and Paul and left C's list out and was only ordered on 08.04.20, P & M's WFH arrived on (03.04.20 & 05.03.20) respectively.

Maytal got her furniture on 03.04.20 and Paul on 05.04.20. C's monitor was only delivered on 20.04.20 after C had sent a lot of follow up emails and Google chats to Liddy but Paul & Maytal never sent follow up emails to Liddy or Jo at all, their furniture was urgently delivered without any fault or delay

Jo lied about her CA card being declined for all of C's items she had ordered.

147. The credit card was declined by reason of suspicious activity and the credit limit had been exceeded. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

43. 30.04.20

C filled in a survey in April 2020 where she mentioned that equality within the department was still a problem and the feedback C got from Lee Brooks was that she was a detractor (survey acknowledgement comments email).

148. This is not an allegation of race discrimination. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

44. 06.05.20

Maytal sent an email with an SST workload document that she wanted all to fill in which Jo had asked Maytal to work on, C later on discovered that most of the tasks which C was doing and labelled as for SA were now on Service Support Officer level, and a few were now left on SSA grade and the SA grade had nothing, even the project tasks (Scams & Windrush) were under SSA. This was unfavourable treatment to C.

149. This was not put to the relevant witnesses. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

C was treated unfavourably by Jo when by 30.06.20 P & M had passed their probation but before completing the following tasks: Google Analytics, Kcom and Scams Dashboard, Consumer Team minutes, GC Energy trends; Chat & messaging, Internal Recharges between themselves but failed C her probation on 25.02.20 and asked her to do 3 tasks Google Analytics, Kcom and Scams Dashboard that had been left, within one month of C's extended probation period.

150. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

45. 14.05.20



On 14.05.20, C followed finance desk notes that had been corrected by Paul and sent an invoice to Jo which Jo returned. Jo did not send an email through Fresh Service portal for C to know that the invoice had been returned and not processed for payment by Jo as was the process, and this was setting up C for failure.

151. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

46 28.05.20

Liddy had intentionally written a lie in C's May 2020 TT (28.05.20 @ 17:30 hrs; @ 12:02pm) that C was still not confident to complete the whole of the scams dashboard which was not true, C asked her to write the truth and take off the lies to which she agreed and changed the negative comments.

152. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

47 01.06.20– 06.06.20

Jo & Liddy were deleting desk notes as well as changing formulas and source sheets whilst C was working on the Recharge tasks and Scams dashboard, as a result C had to stop over 20 times to ask Liddy about these deliberate wrong changes and Liddy accepted that the changes were because changing source sheet. This caused C to have a serious headache as C had to keep stopping and asking Liddy each time this happened.

153. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

48 10.06.20

C was treated less favourably by Jo when Jo demanded that C steps down, because if C had been appointed to the SSA position she was supposed to act in from **(02.12.19 – 31.03.20)** **but was also cut short to end on (31.01.20,)** she could have then been in a position to apply for the 3 Operation Officers' posts like Paul & Maytal did.

154. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct

being on grounds of the claimant's race.

C was less favourably treated by Jo when she recruited Maytal and made C to relinquish her acting position thereby putting Maytal at an advantage to accelerated promotion as Operation Officer at the expense of C's denied promotion as SSA though C had contributed to Maytal's training and this showed how Respondent's policies are biased towards white people over black people and no one was bothered about it, not even HR because the HR Business Partner HR did not do anything about all this, yet they have sight of all employees' completed TT forms. R does not agree with the wording in green, "because the HR Business Partner HR did not do anything about all of this, yet they have sight of all employees' completed TT forms. – **R's comments:** The wording is not agreed. We propose the wording added to reflect what you wrote at para 75, "and no one was bothered about it not even HR" **C's response:** C rejects this suggestion. Do not delete. Evidence shows that this is true.

155. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being on grounds of the claimant's race.

### **Discrimination arising from disability**

#### **Equality Act 2010 – section 15**

49 10.12.19

Jo placed C at a disadvantage when during the TT meeting with C (on **10.12.19**) Jo concluded by recording in C's November 2019 TT that C was working excessive hours as if C wanted to work these excessive hours, citing that C was struggling and failing to admit that she was struggling to do the assigned tasks within the SLAs yet these excessive working hours were arising from C's disability.

156. Ms Churchhouse submitted that it was not put that working excessive hours was as a result of her disability. There was no evidence to this effect and it was not established that the claimant was working excessive hours as a result of the claimant's disability.

50 16.01.20

Jo placed C at a disadvantage when during the TT meeting with C on (16.01.20) concluded by recording in her TT that, "she should not feel that she should work beyond her contracted hours", citing lack of time management and prioritisation skills, putting it across as if it was C's choice to work extra hours, yet this was arising from C's disability.

157. The respondent submits that it was not put that working excessive hours was a result of the claimant's disability. There was no evidence to this effect and it was not established that the claimant was working excessive hours as a result of something arising from disability.

51 25.02.20

Jo wrote several times on Claimant's TTs notes (i.e. 10.12.19, 16.01.20, 25.02.20, & 03.03.20) about working excessive hours, and if Claimant had not worked excessive hours she could have lost her job, yet Jo could not pick up that the reason the Claimant was working excessive hours was arising from her disability.

158. The respondent submits that it was not put that working excessive hours was a result of the claimant's disability. There was no evidence to this effect and it was not established that the claimant was working excessive hours as a result of something arising from disability.

03.03.20

Jo placed C at a disadvantage when on **(27.02.20)** whilst on a call with C despite C highlighting to Jo that she was wrong in failing C's probation, C also highlighted to Jo that the reason why she kept on working extra hours was because of C's disability. [**'s comments:** Please kindly read lines 17 & 18 of paragraph 50 where disability was mentioned and this was on a call and this is in paragraph 50 that it was on a call. The other paragraphs have been added to show how Jo failed C her probation. **R's response:** There is no mention at paragraph 50 of you mentioning to Jo on 27 February that you had a disability. This allegation is not agreed. **C's response:** C will not remove this as it is there on paragraph 50. Sorry].

On **03.03.20** during C's TT Google chat, Jo placed C at a disadvantage when she was trying to cover up for the things C had confronted her with on (chat on 27.02.20 @ 16:48pm) by mentioning that C should continue working within her working hours, manage her workload and take 30 minute breaks yet again this was because of C's disability that she was working excessive hours and could not take those breaks.

159. The respondent submitted that it was not put that working excessive hours was a result of the claimant's disability. There was no evidence to this effect and it was not established that the claimant was working excessive hours as a result of something arising from disability.

52 14.07.20

C was put at a disadvantage when Liddy totally ignored the fact that C was already working excessive hours and this was arising from her disability and instead she increased tasks instead of reducing them.

160. This appears to a repetition of allegations 49 – 51 The respondent submitted that it was not put that working excessive hours was a result of the claimant's disability. There was no evidence to this effect and it was not established that the claimant was working excessive hours as a result of something arising from disability.

### **Harassment related to race**

53 23.09.19

On 23.09.19 @ 12:17 pm, Jo sent chats, as well as Ella in person, to put pressure on C to send 121 debt and general emails within an hour.

161. The claimant was not required to deal with these emails. She would pass them on in batches to staff who were going to deal with the actual issues raised by the clients. The claimant did not refer to this allegation as being related to her race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

54 02.12.19

C started working with Alli who introduced her own SLAs which required emails to be responded to within minutes of coming into the mailbox and this caused the working environment to be a hostile one for C.

162. The claimant did not refer to this allegation as being related to her race. The Tribunal heard no evidence that this allegation was in respect of conduct being related to the claimant's race.

55 12.12.19

On 12.12.19 @ 11:30am, Alli was working on same queries C was working on, she deleted the work C had done without communicating with C leaving C feeling humiliated and this created a very hostile and intimidating working environment.

Jo did nothing about Allison's disruptive tendencies of deleting and pulling out emails from the SST label without communicating with C after she had promised to pursue the matter.

163. The claimant did not refer to this allegation as being related to her race.

The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

56 17.12.19

On 17.12.20 around 3pm, Ella came to C & Sophie and warned them about Jo's work ethics with "people like us" but this left C intimidated to the point where she felt like not coming back to work the following day.

164. The claimant did not refer to this allegation as being related to her race. It was not covered in the claimant's witness statement. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

57 08.01.20

Alli deleted a response email to a Fair Trading Officer in Essex C had sent so as to frustrate C.

165. The claimant did not refer to this allegation as being related to her race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

58 16.01.20

Jo accused C of having failed to follow process for an invoice where the desk notes were wrong and despite C chatting with Jo on where Jo accepted and corrected desk notes, Jo still added this as a failure to follow process on the probation list on 28.02.21.

166. The claimant did not refer to this allegation as being related to her race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

59. 16.01.20

Jo demanded in a bullying manner that C steps down as a Service Support Assistant from 31.01.20 to make way for Maytal (Ella's blood sister) to takeover on 03.02.20.

C on the same day i.e. 16.01.20 was also told to cancel the Away Day volunteering offer which C had taken up through Jo's request, check paragraph 12.

167. The claimant did not refer to this allegation as being related to race. Jo Orsler gave clear evidence that the claimant indicated that she would not be

able to participate in the planning of the Away Day. The claimant sent an email thanking Jo Orsler for giving her the opportunity. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

60. 16.01.20

C was told to no longer volunteer to chair SST meetings or any other work .C was told bluntly by Jo on 16.01.20 to takeover working on the Information Management Scams Dashboard and was not given any choice or chance to ask questions.

Jo changed her facial expression and said to C "just go off sick or something" and she wanted C's stepping down email by her desk after she came back from her leave on 28.01.20.

168. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

61 28.01.20

C requested Jo if she could go to a Disability Workshop Group to London on (email dated 23.01.20) but Jo asked C to cancel that workshop trip to London for a Disability group which was to be held on 10.03.20 well before corona virus restrictions.

C sent Jo an email letting her know that she had too many tasks than others (Sophie was also not happy that she had nothing to do) but Jo responded on 29.01.20 through chat and refused to take away any of the tasks.

169. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

62 05.02.20

When C sent Jo an email requesting for handover of the Scams Dashboard as per conversation during C's TT on the 16.01.20, Jo made C feel very intimidated by the way she responded (email @09.20am on 05.02.20), "I am not yet in a position to handover the Scams Dashboard, as soon as I am, you can be sure I will".

170.. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

63. 13.02.20

C requested Jo (on 13.02.20 @ 09.58am) if she could join the EDI project and Jo declined vaguely though C had forgotten about what Jo had said on 16.01.20 during TT meeting, i.e. that she should not volunteer to do anything anymore from that day.

Jo used the excuse that she needed time to send this to the others and C should wait till her 6 months probation TT meeting on (25.02.20), but C reminded Jo that this was advertised on general email proof that all had seen it and also that the close off of the advert was on 21.02.20.

171. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

64 17.02.20

Jo did not give C any work on this day but despite C have sent her an email to let her know, she did not respond to that email and C had to request Paul for work.

C sent email to about this and Jo never responded to the email C had sent her on 17.01.20 @08.01am.

172. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being related to the claimant's race.

65 17.02.20

Jo falsely accused C on 18.02.20 (through text on C's personal mobile) of having changed the Rota to take tasks without her because she knew that she had purposely not given C any tasks on 17.02.20, yet C had not done so. R's does not agree with the wording in green. **R's comment:** This is not agreed, the wording is not reflected in the claim for paragraphs 40 or 41. **C's response on 2 November:** C will not take this away. This is true as evidence is there.

173. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

18.02.20

Jo had only allocated one task to C during the afternoon on that particular day i.e. 18.02.20 hence why C decided to request for a few hours off work to take her son for his driving test. R does not agree with wording in green. **R's response:** This wording is not agreed. The ET1 says that this was why you decided not to go to work and to send Jo text messages from home. In any event this wording is not necessary as it does not relate to the alleged act or omission. **C's response:** C rejects your suggestion and will not change anything here. This is all true and C mentioned this to Jo on the phone. Sorry.

Jo responded to a request from Paul on the day (17.02.20) but did not respond to C's message where C had asked her for a few hours off work to take her son for his driving test.

Jo was rude to C through texts and also through phone where she rang and was shouting at C whilst C's son was there.

174. There was an exchange with regard to the claimant taking time off for her son's driving test as his instructor was no longer available to take him. The claimant did not relate this to race. it appeared to be a misunderstanding and the claimant felt Jo Orsler was being unreasonable. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

66. 20.02.20

Jo assumed that C made a mistake in respect of expenses tickets on the Respondent's new Fresh service system. However it transpired that the desk notes were wrong.

175. The claimant did not refer to this allegation as being on grounds of race. The Tribunal heard no evidence that this allegation was in respect of conduct being related to the claimant's race.

67. 25.02.20

Jo had no knowledge that Google analytics was a monthly and not weekly task, when C tried to explain this to her she refused to accept it and recorded this as a lack of communication skills on her TT.

176. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.



68 25.02.20

Jo's asked C whether she would be able to handle her for one more month (on 25.02.20 @1.35pm verbal) and this was an insult to C because Jo enjoyed the fact that she had failed C her probation period.

177. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

69 25.02.20

Jo pretended to find out if C was okay when she really didn't care and then told C that the word she had used meant C might be lying by saying she is okay when she was not (verbal on 25.02.20).

178. This was an attempt to humorously assist the claimant when she was asked if she was OK.. Jo Osler said to her you're not telling porkies are you? She explained to the claimant that porky pies was rhyming slang for lies. It was her way of ensuring the claimant was fine in a light-hearted way. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

70 28.02.20

Jo asked C to fill in DSE form which had been deliberately altered to make it vague and C missed another opportunity to have an adjustable desk purchased for her (DSE filled in on 10.03.20).

179. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

71 04.03.20

C sent a Google chat to Jo letting her know that she had too many tasks whilst Paul, Maytal and Sophie had one or two each and Jo refused to redistribute the tasks when she knew C was on leave the following day though she had mentioned that she would look at it on 05.03.20@08:11am.

180. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct

related to the claimant's race.

72. 24.03.20

Jo passed C her probation on 24.03.20 and sent a letter to HR on 31.03.20 which she didn't copy C into by living the (To field empty) and copying HR only. C had to write to HR to ask why they had not sent C her probation confirmation letter and they forwarded her the undated letter and unaddressed emails dated (Jo 31.03.20 @ 08.52am, C 14.04.20 & 16.04.20, HR 15.04.20@ 16.22pm & C on 16.04.20@15.26pm).

181. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

73 06.05.20

Jo harassed C about email invite cancellations several times, though C had deleted these and accepted the mistake she kept sending some more emails about this.

182. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

74 21.05.20

Adviceline (Hannah Stobart) through Liddy & Jo asked her staff to send new task tickets directly to the SST mailbox when C was on duty that had no desk notes as a set up for failure whilst this was not happening to (P & M).

183. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

75 02.06.20

On 02.06.20, Alli was harassing C through Sophie for a task that had an SLA of 5 working days when C was busy with other urgent tasks with closer SLAs (google chat dated 02.06.20).

184. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct

related to the claimant's race.

76 09.06.20

On 09.06.20, Jo was making an issue about calendar bookings that C had already deleted and Liddy was now covering up (chat 09.06.20@14:39pm) for Jo to frustrate C.

185. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

77. 12.06.20

On 12.06.20, C was challenged by Jo within 5 minutes of processing a Windrush follow up, about not sending a reminder to an LCA, but Jo back tracked when she realised that Ray (white) had asked C not to send the reminder to the LCA.

186. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

78 25.06.20

Jo was trying to intimidate C by sending a catch up calendar booking (for 02.07.20) that included C, Liddy, Jo, Tom Ballard, Jackie Allen & Lee Brooks so that C can succumb to whatever they were suggesting for C to do through Liddy Swales, as Liddy was pressurising C to accept her suggestions to stop C from progressing with her informal complaint against Jo.

187. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

79. 29.06.20

C received another email from Liddy (on 29.06.20 @ 17:01) trying to still force her way with regards to mediating and offering an appointment at 3.30pm on 30.06.20 during C's TT appointment.

188. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct

related to the claimant's race.

80. 01.07.20 – 03.07.20

Jon had advised Liddy that the deadline for scams dashboard had changed a couple of weeks before but Liddy only advised C on 01.07.20 which was a set up for failure which later on occurred because Liddy later on mentioned that C had failed to complete the dashboard because of her high stress level .

Liddy & Jo changed desk notes or formulas over 40 times over this period wanting to portray that C was not competent enough to follow processes and C would then look like a fool and contract will be ended. As a result of the changes, recharge tasks that used to take between 1-2 hours now took C days which ended up affecting C mentally and physically.

189. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

81. 06.07.20

On 06.07.20 @ 14:45pm, Liddy sent an advert for jobs to replace P & M after C had already mentioned to Liddy in a meeting that she was not interested in applying for the position because of what she had gone through and ended up not being appointed as an SSA, but Liddy still sent the advert through which to C meant Liddy was now focused on frustrating and harassing C with the advert.

On 07.07.20 @ 16:25pm on a Google chat and email C had an exchange with Liddy because she accused C of being negative and causing others to be affected by C's entries in C's 30.06.20 TT form where C had reported all the tickets that were being sent to her without desk notes yet this was affecting C more than all as she was now being targeted with all sorts of harassments.

190. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

82. 08.07.20

Liddy & Jo increased their pressure on C for July monthly tasks through deleting, changing formulas and skipping desk notes for

the Recharge tasks and Scams Dashboard again like they did end of June 2020.

191. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

83. 08.07.20

Liddy accused C of making mistakes on entering formulas on the dashboard yet it was her who was changing formulas whilst C was working on the dashboard to confuse C so that she could find fault and record in C's TT but C caught her 3 times between (13:43& 14:45pm on 08/07/20) and she pretended as if she had not done so but it was too late as C had taken screen shots.

Liddy was going into the chat room and mocking C between 01.07.20 – 09.07.20 after she had changed desk notes and then asking C what it is that she was not understanding to frustrate C and this left C feeling sick.

192. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

84. 18.08.20

Jo & Liddy deleted and amended some parts of C's September 2019 to March 2020 TT form 18.08.20

193. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

85. 18.09.20

Lara Stanley (i) changed Business Partners from Revinder Uppal to Panos Boumpolis without explaining why, (ii) wanted responses from C at her own demanded time without taking C's disability into account, and had promised to keep C updated if timelines changed but never did.

194. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

86. 13.11.20

Lara dismissed almost all of the allegations C had sent as a grievance, but never responded to the grievance after 05.10.20, she ignored C yet she had been harassing C and pushing her to complete her 81 questions within a short space of time and only responded on 13.11.20 through Acas.

195. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

87. 30.11.20

Jill from Respondent's IT department rang (@ 14:07 & 14:14pm) and harassed C about equipment which had been collected already on 19.10.20 by Nick Keech's contact.

196. The claimant did not refer to this allegation as being related to race. The Tribunal heard no evidence that this allegation was in respect of conduct related to the claimant's race.

## Victimisation

88. 12.12.19

Jo knew the reason why Alli was causing C "stress" (Jo's emails 13.12.19 & 28.01.20 plus chats & call 13.12.19@12:03 hours) but never seriously addressed this yet Jo had promised to pursue the matter with Allison's Manager and HR but never did this until C's contract was terminated.

Jo blocked C to apply for the SSA position because of the allegations C had raised about Allison.

197. The allegations against Alison Dunstan were not said to be on the grounds of race or disability. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

89. 29.01.20

Jo reduced C's salary back to the substantive SA salary and did not allow C to be paid for 0.3 FTE duties as SSA, despite her doing the same tasks that Paul and Maytal were doing, as per emails dated (22.01.20; 23.01.20; 28.01.20) after Jo had forced C to step down as per emails dated.

198. It was not put to the witnesses that this was done because the claimant

had made a protected act. It was not established that it was done for this reason.

90. 27.02.20

On 27.02.20 @ 16:28pm through chat and call, Jo tried to justify her reasons for failing C her probation even when C had proved her wrong by giving her specified reasons she still failed C.

199. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

91. 04.03.20

On 04.03.20, Jo deliberately gave C too many tasks whilst others had one or two each but during C's telephone conversation (chat on **05.03.20**) with Jo, she refused to redistribute the tasks.

18.03.20

On 18.03.20 @ 09.30am, C's appointment with Communications Manager was blocked by Jo by extending C's TT meeting by 30 minutes on 18.03.20, when she knew that C had an appointment with this manager as C had mentioned this to Jo.

Each time C tried to have an appointment with someone from other departments C would never be able to speak to them because Jo did not want C to do that.

Liddy deleted the request that C had recorded in her June 2020 TT form.

Liddy booked C for an appointment with the family support team when she well knew that C was on sick leave on 10.07.21.

Jo decided to go on social media (Facebook-Workplace 18.03.20 @ 12.30) to thank C for the hard work she had done "during the time the department was short staffed", yet: (a) Jo had continuously criticised C for working excessive hours, (10.12.19 TT form, 16.01.20 TT form, 25.02.20 TT form and 03.03.20 TT form, 27.02.20 call), (b) demoted her to SA by forcing her to relinquish her acting position (c) did not even want to let her have the (0.3FTE) uplift she had given her on 29.10.19, (d) left the issue with Allison unresolved, (e) let C keep on doing SSA tasks, yet she knew in her mind that C had really worked hard for the department despite having a disability that was troubling her (Facebook Workplace screenshots, email dated 28.01.20).[ **R's comment**: It is not clear

what the act or omission is here therefore at the moment the Respondent cannot accept or reject this. Previously the allegation was that this was a cover up for what was being said in TT meetings. Is this correct? **C's response on version sent on 2 November:** Not exactly but C will leave it there.]

200. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

92. 30.04.20

C mentioned in a survey that equality was a problem within her department and instead of this being looked into C was called a detractor by Lee Brooks.

201. This may be a mention of what could be an alleged protected act. However, this was an anonymous survey. The survey then categorises staff as 'promoters', 'passives', or 'detractors'. There is no allegation of less favourable treatment. The comments and scores remained completely anonymous. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

93. 07.05.20 –30.05.20

Jo requested C to work on a Scams evaluation analysis report to find out why Scams were not coming in on (07.05.20 – 15.06.20 emails & report between Jo, Kristina, Liddy & Jon Walters), and C believes that it was not a coincident that her contract was terminated using the same analysis, i.e. that Scams were no longer coming in through despite Kristina and Jon Walters having mentioned that we would do another report in December 2020. This was victimisation in that it was used to justify Claimant's contract termination on 12.08.20.[ **R's comment:** It is not clear what the act or omission is here. This is not accepted at the moment. **C's comment on version 2 November:** It is clear and C will leave it here.]

On **14.05.20**, Paul deleted an MCT ticket that was in C's Fresh Service portal without speaking to C to find out whether this had been resolved and if C had not discovered that this had been deleted she is the one that was going to end up being in trouble.

When C made a mistake it was added on her TT or on fresh service portal or published all over but when Jo, Liddy or Paul made mistakes they were justified as small mistakes, e.g. the above one.



C ended up losing confidence at times because of the double standards that were being applied.

C recorded on her May & June 2020 TT form & Objective & Development TT form, that she wanted to move to another department after she had seen that the team relationship was not working and Liddy deleted this from C's TT form.

Liddy lied that C was finding it hard to complete the scams dashboard as per email dated (C 29.05.20 @ 12:02pm & L 29.05.20 @ 12:26pm for May 2020 TT form) but C reminded her that in March 2020, (April 2020 TT form) C had taken 45 minutes to almost complete the whole dashboard and Liddy had commended C to Jo about the speed and accuracy of the March 2020 scams dashboard that had been done by C.

202. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

94. 01.06.20 – 10.06.20

Since Jo's attempt on 25.02.25 to dismiss C from her job, Jo, was still looking for ways to smartly dismiss C because C had now approached both the BAME & Disability Reps as follows:

(1) Liddy deliberately lied to set C up for dismissal - May TT form email, 28.05.20 @ 17:30pm & 29.05.20 @ 12:26pm.

(2) Liddy & Jo deliberately tampered with formulas and desk notes (chats dated 01.06.20-09.06.20) for scams dashboard.

(3) On 04.06.20 Jo had done a hurtful thing by coming in wearing an African hair wig and glasses like C was wearing and everyone laughed to upset C.

(4) Jo was looking for small issues that could accumulate so as to dismiss C i.e. calendar meeting problem

(5) LCA follow up issue with Windrush & Ray

(6) Liddy sent an SSA role on (10.06.20) for P & M's position/s so as to pretend that C was given a chance to apply yet wanting to set a trap for C for failure by introducing new work where there would be no training like what had previously happened during her term of contract.

**[R's Position regarding (6):** Based on para 75 this should refer to the Operations Officer role, not the SSA role. Also, both allegation (1) and (6) are acts by Liddy alone. There is no indication in the ET1 (as far as we can see) of Jo instructing Liddy to do these things. Therefore these are not agreed. **Claimant's response:** It is correct as it is please leave it and do not touch or delete or suggest].

203. It was not put to the witnesses that any of these allegations were done because the claimant had made a protected act. It was not established that they were done for this reason.

204. With regard to allegation 94(3), the wig and glasses issue. These are set out as an act of victimisation. No protected act was identified. Jo Orsler referred to a messy hippy style wig. Liddy Swales said she remembered Jo Orsler wearing a dark wig and glasses. During her evidence to the Tribunal Liddy Swales, under cross-examination said that it was reasonable for the claimant to take offence and, in and in answers to questions from the Tribunal, she said that she did not think it was reasonable but she did not think it was unreasonable.

205. In her email to Liddy Swales dated 11 June 2020 the claimant referred to it happening in April 2020 but she could not remember the exact date. She says "I dismissed it as a joke and this is why I did not really say anything." She then refers to the "dark horse" reference.

206. Jo Orsler wore the wig for a short time at the start of the weekly online quiz "to show her funny side". It was not alleged she did this because of a protected act.

207. It was alleged to be an act of victimisation but it was not put to the witnesses that it was done because of a protected act and it cannot be a claim of victimisation.

208. Ms Churchhouse for the respondent indicated that it was not pleaded as an allegation of harassment and would require an application to amend which is not appropriate at this stage following the conclusion of the evidence and submissions

209. Even if it had been brought as an allegation of harassment, there was no intent on the part of Jo Orsler to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The Tribunal accepts that it was meant to be light-hearted and entertaining. The wearing of the wig and the Diamante glasses took place on one occasion during a video quiz. The claimant said that this was a joke and she dismissed it as a joke at the time. This allegation was not mentioned in the claimant's grievance of 16 August 2020.

210. It did not have the proscribed effect on the claimant, she said in the email that she dismissed it as a joke.

211. It was only the remark about the "dark horse" made to Sophie that caused the claimant to raise it around two months later. This remark was addressed to one of the claimant's colleagues who raised no objection at the time.

212. The claimant misunderstood the reference to a dark horse which refers to someone who has kept their talents hidden (a horseracing metaphor). This was not raised as a specific allegation but it would not be harassment as it did not have the purpose or effect of violating the claimant's dignity or creating an

intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

95. 11.06.20 @ 16:00pm, 19.06.20 @ 14:19pm, 24.06.20 @09:12am, 24.06.20 & 25.06.20 @ 9:45am,& 10:08am, 29.06.20 @ 17.01pm, 30.06.20 @ 09:01am, 30.06.20 @ 3.30pm, 30.06.20 TT time.

Despite C advising Liddy that this was still an informal complaint, she approached HR about C's informal complaint trying to make it formal which was not what both the Grievance and Dignity at Work policies were advising.

HR wrongly advised Liddy to respond in writing mentioning this as a formal complaint when C wanted to handle this as an informal complaint first before jumping to a formal complaint and this triggered the whole situation in the wrong way.

Liddy was now putting too much pressure on C through Google chats and emails expecting C to succumb to her "offer" to mediate between Jo & C.

Liddy was advised by People's Team to respond to each of C's complaints in writing and yet C's plan was to have an informal discussion as per Dignity at Work Policy and this triggered the whole situation in a wrong way.

213. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

96. 19.06.20

When C had mentioned to Liddy that she wanted the BAME Vice Chairperson (Rosemary Maxwell and Ian Bullock) Disability Group Chairman to mediate instead of her, she kept on ignoring this and sending chats and phoning C to still accept her to mediate.

214. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

97. 23.06.20

Liddy & Jo gave Adviceline (Hannah) the green light to directly send (tickets) through fresh service when C was on duty on the SST mailbox for work that C had not been trained on and where there were either no desk notes or insufficiently written desk notes to frustrate C.

215. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

98. 24.06.20

Chat room created by Liddy was used to frustrate C, whenever she reported something in the chat room (Jo, Liddy, & Paul) would gang up and portray a picture of C having confusion when C was not confused.

216. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

99. 24.06.20

Liddy advised IT department (Paul Kendrick) that SST Department (meaning C) were going to manually work on 272 tasks that Paul Kendrick refused to do manually and that C had not been trained on without even consulting C when C had other tasks allocated to her from SST to frustrate C.

217. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

100. 25.06.20

Jo sent C a catch up invite diarised for the 02.07.20 where she included Herself (Jo Orsler), Liddy Swales, Lee Brooks, Tom Ballard and Jacqueline Allen, which was a way of trying to intimidate C from proceeding with her plans to get Rosemary Maxwell and Ian Bullock to mediate her grievance and make her yield to Liddy's.

218. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

101. 30.06.20

Liddy was frustrating C by allowing tasks without desk notes in C's SST mailbox when she was on duty from Adviceline, deleting desk notes, formulas and source sheets for scams dashboard & recharge tasks, and mocking C in the Google chat room all because she was not happy with C for refusing her to mediate between C

and Jo (call on 19.06.20) which was really unfair as C ended up sick and lost her job.

Jo informed Liddy to send an email (**dated 30.06.20@09:01am** to C to let her know that none of the incidents Jo had done to C (raised on 11.06.20) were intended to offend or upset C, yet she intensified her attacks on C by influencing Liddy to keep acting unfairly. [**R's comment:** The tribunal requires you to list allegations, not the various emails and documents which support the allegations. It is not helpful to simply refer to "paragraphs above". Please list the specific acts or omissions which you consider as being "attacks on C". **C's response:** Rephrased the rest remains as it is. This is an allegation. Thanks.]

On (**30.06.20 @ 03.30 during June TT discussion**) Liddy sent an email pushing for C to accept an appointment to discuss this (issue C had raised on 11.06.20) with Jo. Liddy was trying to also justify Jo's behaviour and this frustrated C further as this was only a small portion of what Jo had done to C.

219. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

#### 102. 01.07.20

Liddy deliberately delayed informing C before 1 July 2020 that the deadline for the Scams Dashboard had been changed, and now had a shorter SLA from 15 each month to the 8th July 2020 despite Jon Walters having advised her (Liddy) of this "couple of weeks ago" as per Jon's own words from the (chat 02.07.20). Liddy only informed C on 01.07.20 in the middle of the Recharge task desk notes disaster.

Jo & Liddy were changing desk notes and figures for the Recharge calculations task to frustrate C (chat 03.07.20 @ 10:20am) and to embarrass C on fresh service by telling her that she had made a mistake on the desk notes and that C should then apologise to Jon Walters & Jo Orsler to whom C had already sent emails with wrong figures because of the wrong desk notes that Liddy had inserted.

220. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

#### 103. 07.07.20

L returned C's June TT Form dated 30.06.20 (on 08.07.20) full of negative comments where Liddy had written about "C's adjustable desk, and accusations of causing negative effect on others

because of C's negativity, just because C had decided to come out openly on what they were doing to her.

Liddy & Jo agreed with Adviceline to give SST department tasks, but these were supposed to come with correct desk notes enough to do the tasks without a problem, but C got a lot of Adviceline tickets that were coming in without full and correct desk notes i.e. new tasks that C had not been trained on were now being sent direct to SST mailbox whenever C was on duty but then ignoring her when she was stuck (email to Hannah).

221. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

104. 01.07.20-03.07.20

C's LiveEngage account that she had recently used and had been working well with every time, was locked (on 02.07.20) without notice to frustrate C. It was later re-opened by Jo Thompson on the same day after C had rung her and Jo Thompson mentioned that it had been closed completely.

222. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

105. 08.07.20

Liddy went into the chat room and started asking C what it is that she did not understand about the dashboard in a sort of a mocking way for everyone, i.e. including Jo to see so as to frustrate C because of the issues she had raised.

223. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

106. 08.07.20

Claimant suffered serious headaches, feeling sick, having stress because of what Liddy and Jo were doing with desk notes, i.e. desk notes being changed or deleted and formulas as well as source sheets being played around with to frustrate C (chats between 01.06.20-09.07.20). **[R's position:** The allegation about pulling and

deleting desk notes and formulas has already been included. This is repetition / expansion about the effects of those acts. We do not agree to its inclusion. **C's response on 2 November:** Emphasis on the damage caused which is still causing C serious health problems.]

224. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

107. 09.07.20

Liddy mocked C in the Google chat (chats dated 08.07.20) room wanting to prove that she had not changed any desk notes & it was C's stress level that was now making her not to see the desk notes properly, yet Liddy had changed desk notes for (IPOS-invoices) from where they used to be tagged on the task planner without letting C know.

The organised mediation by Jess Fox that was arranged after Ian had informed Jess Fox was done without C's knowledge and acceptance.

Respondent pretended as if they were solving the problem Jo had created through fair means of mediation (outside mediator), yet it was a strategy to push C out of her job since this was now combined with Liddy forcing C to go on sick leave by mentioning that C's stress was now causing her not to be able to do her work

Liddy and Ian both mentioned that mediation was going to be done when C was well yet a letter of termination was sent by Liddy through before the mediation was done and C was never allowed to recover and go back to work for mediation as promised

Liddy through Google chats and email demanded that C take sick leave because C now had a high stress level preventing her from working, yet C had worked on 24 tough fresh service desk tickets and completed them.

Liddy was trying to look for fault to find reason to terminate C's contract because of the ongoing informal complaint that had now escalated from what Liddy had called "Response to complaint raised 11.06.20" where she wanted to mediate with push from Jo.

225. It was not put to the witnesses that these alleged actions were done because the claimant had made a protected act. It was not established that they were done for this reason.

108. 09.07.20@ 15.41pm

Liddy accused C of failing to meet the SLAs and mentioned that it was because C had a very high stress level yet C was not well (email dated 16.07.20 - para 90, 09.07.20). **R's comment:** There is no reference at para 90 to Liddy "accusing" C of failing to meet the SLAs. **C's response:** This is different and leave it as it is.

Claimant tried to buddy or be placed with both Communication and Family support but nothing materialised as the appointments were fake i.e. Liddy purposely booked a meeting between the family support manager (Abigail Reynolds's chat & calendar) @ 3.30pm on 14.07.20 and C to discuss mentoring when Liddy knew that C was on sick leave on 14.07.20.

226. It was not put to the witnesses that these alleged actions were done because the claimant had made a protected act. It was not established that they were done for this reason.

109. 14.07.20

Liddy sent C the August 2020 task planner with increased monthly tasks on top of the daily and weekly tasks without relaxing the SLAs but restricting them further because of increasing C's monthly tasks. Liddy later re-distributed these amongst Liddy, Maytal, Sophie & (Nyomi who had temporarily replaced C); after C had taken sick leave. Liddy had mentioned to C that the tasks were achievable.

Liddy refused to relax the SLAs for all the tasks she had given C as this was part of the strategy to victimise C.

C had highlighted to Liddy working extra hours was arising from her disability but instead of Liddy listening to this she increased C's tasks for August 2020. [**C's comment:** please note that C is allowed to combine paragraphs and make a summary allegation. **R's response:** While you can combine paragraphs the meaning cannot be changed. Para 50 does not relate to this conversation. Para 91 states, *realistic and achievable because the SLAs had not been extended to allow for my disabilities*". That is not the same. This is not agreed. **C's response:** Please note that your suggestion is rejected by C. Kindly leave it as it is.]

227. It was not put to the witnesses that these alleged actions were done because the claimant had made a protected act. It was not established that they were done for this reason.

110. 15.07.20



Liddy said August 2020 tasks were achievable without relaxing service level agreements which was impossible as can be seen from the above allegation on (91).

Liddy promised C that she would give her feedback for the promised meeting between Liddy, Lee Brooks and HR to discuss all the contents of the emails sent to her (on 14.07.20 & 15.07.20) but she did not give C the feedback.

Claimant was victimised by having her contract terminated without there being any open discussions where C was invited because Respondent had looked at C's email (dated 14.07.20 @ 16:55pm) where she stated that Respondent was making her do duties for SSA without paying her yet she was demoted to SA and had been told that she would only be doing Scams only but ended up note even offering her the 2 days for Scams referral. **[R's response:** This allegation is not agreed. Please confirm the relevant paragraph which references this allegation? In particular, the fact there were no "open discussions where C was invited" **C's comment:** Allegation rephrased and cannot be delete as there is evidence.]

Kcom daily was a new task C had not been trained on that C was now being asked to do within SLAs so that they would then set her up for failure and say, "C can't follow desk notes".

Respondent never waited for C to get better so that mediation could be done as per Ian Bullock's email dated (21.07.20 @ 15:44pm) where he promised that Jess Fox had arranged this to help Jo and Claimant to address the issues we had and yet Jess Fox a Senior Business Partner did nothing in terms of making sure that something she had wasted effort and time arranging was done as per Ian's email (responding to C's email dated 16.07.20 paragraph 93). Wording in green not agreed by R. **[ R's response:** This wording is not agreed. There is no mention at paragraph 93 of the allegation that Jess Fox did nothing. **C's response:** Kindly read paragraph 93 lines 7, 8 & 9. In C's email to Ian on 16.07.20 C asked this question to which Ian responded by mentioning what C has directed you to. Wording "strategic" doesn't matter but this is what was done after Ian had mentioned that the focus of the mediation was definitely not to look at ways to let C go from CA and yet nothing materialised from such a time wasting mediation arranged by Jess Fox a Senior Business Partner.]

Instead C was sent an email and letter of termination of her contract whilst she was still on sick leave, which shows that arranging a mediation was a cover up for a dismissal by terminating contract whilst C was still on sick leave, because C had raised issues with HR and Lee Brooks about disability and not being paid as others because she was working as an SSA.

228. It was not put to the witnesses that these alleged actions were done because the claimant had made a protected act. It was not established that they were done for this reason.

111. 16.07.20

Jess Fox contacted outside mediator without consulting C, this was a decision she made when Ian approached her on 08.07.20 with evidence of what Liddy was doing but she never consulted C to find out whether C was happy with that decision since this was still on the informal level where C was supposed to be choosing how she wanted to deal with the complaint.

C did not get any support from Respondent as per Ian Bullock's promise whilst on sick leave, waiting for mediation as per Ian's wording in his email responding to one of the questions C had asked i.e. whether this mediation was a way of getting rid of C from CA, Ian said "C should not worry but aim at getting well. This is the way that had been sought by Jess Fox to help Jo & C, and that the organisation had a duty and legal obligation towards C and they had agreed to a mediator to help resolve these issues and get a better working relation" and instead of this support C got a chat, email and letter of ending contract from Liddy.

229. It was not put to the witnesses that these alleged actions were done because the claimant had made a protected act. It was not established that they were done for this reason.

112. 30.07.20

C's position was replaced by Nyomi temporary worker was recruited to replace C but C was never informed of that decision. C only saw it through the SST meeting minutes dated 18.08.20 where Liddy said the following, "C was no longer returning from her sick leave and C's contract will not be renewed because C is sick".

230. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

113. 10.08.20

Liddy recorded on form that C was suffering from Anxiety/Stress/Depression/Other Psychological illnesses yet C's sick note clearly stated that she had "work related stress" caused by what Jo and Liddy had done to C (sick note).

C was not given the chance to have mediation, instead she was dismissed from employment, i.e. C's contract was terminated unfairly and she was victimised.

231. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

114. 12.08.20

C was not offered the 2 days per week work for the scams project work, despite the fact that C was not confined to project work only, she was doing all tasks for SSAs including the scams project work.

232. It was not put to the witnesses that this was done because the claimant had made a protected act. It was not established that it was done for this reason.

115. 13.08.20

C was shocked, very sick and spent days not being able to sleep or eat because of the Respondent's email dated (10.08.20) with attached letter of contract termination dated 12.08.20 as she was off sick with work related stress, she did not expect the contract to be terminated as per Ian Bullock's advice that R was a Disability Confident Employer and was not a cruel employer who would fire her when she was off sick.

Lara Stanley (i) did not follow the process she had submitted to C; (ii) did not take into account C's disability when she was looking at deadlines; (iii) she herself ignored the deadline and never responded to C after she had submitted her response on 05.10.2020 and at all after that, yet C had no job or income because of what R had done to C (all emails with dates and documents already listed above).

C was victimised for raising a grievance and the grievance process was not done well as C only received response after she had contacted Acas. Lara had completely ignored her despite 2 emails being sent to her requesting for decision. The findings of the Respondent not upholding the grievance in itself is an act of victimisation and very degrading.

C was victimised by Lara when C submitted a huge document (on

05.10.20 @ 09.20am) for raising a grievance and yet the grievance process was not handled professionally (response was given only after approaching Acas on 13.11.20) and yet the content of the response was shocking showing that Claimant was not being taken seriously and that in itself is an act of victimisation and very degrading when you look at how R's staff behaved towards C.

233. It was not put to the witnesses that these alleged actions were done because the claimant had made a protected act. It was not established that they were done for this reason.

116. 18.08.20

Respondent victimised C out of her job and gave reasons for terminating her contract as having allocated other tasks within the Service and that the project was willing to only pay for 2 days, but this was not true as R employed Nyomi to replace C on mid-August 2020 and moved her to another (FTE) position on 20.08.20. They employed 3 more employees i.e. one to replace C, and two to replace Paul and Maytal (Alex, Stephanie and Francisca), yet a lame excuse was given not to take C back after making her sick and destroying her life.

Jo & Liddy went into C's October 2019 – March 2020 TT and deleted and amended C's TT information about her performance during the mentioned period and well before C was dismissed.

Respondent used the Union as a weapon to play delaying tactics, unfair practices and false hope as C was advised by Ian Bullock that she should rest and not worry about being dismissed for being on sick leave, because Respondent was a Disability Confident Employer and there was no way they could dismiss her for raising a grievance.

234. The respondent's case is that the funding for a full-time role had been removed. The evidence of Lee Brooks, Senior Operations Manager, was clear and credible. Jon Walters, who was the budget holder for the Scams Project assessed the budget and decided to cut the funding for the SA role from a full-time role to 0.4. This was because there were significantly fewer referrals than had been anticipated in relation to scams. It was more financially effective for the scams work to be redistributed.

235. The decision to remove the role was not because of any protected act. The employment of Nyomi Ross was to provide temporary cover.

### **Failure to make reasonable adjustments – Equality Act 2010 – sections 20 and 21**

236. It was submitted by Ms Churchhouse that documents within the bundle, including the final consent form and new starter checklist, were forgeries because

of variations in the text of the document. There were significant differences in the text which provided sufficient doubt on the balance of probabilities. The Tribunal is satisfied that these documents were fabricated.

237. The Occupational Health assessment for the claimant dated 7 August 2019 stated:

“We discussed the information which she had included on her health questionnaire, as well as the details of past jobs and her current activities outside work. It does not appear that she has any ongoing medical conditions which would have practical implications for her employment...

There do not at this time appear to be any indications for specific job adjustments or additional risk management measures to be put into place. And, with regard to the outlook I am optimistic in terms of her ability to render reliable service and attendance.”

238. The Tribunal accepts that the respondent did not have actual or constructive knowledge that the claimant was disabled by virtue of her back condition until 13 May 2020 when the claimant mentioned her health issues to Liddy Swales.

117. 09.09.19

Contract mentioned that Manager (Ella) would support C with advice on workplace adjustments but this was not done when C requested Ella for an adjustable desk and therefore it put C at a disadvantage on 09.09.19.

239. The respondent was not aware that the claimant was likely to be placed at a substantial disadvantage until 20 May 2020 when she sent an email to Nick Keech stating that she needed an adjustable desk as a result of a long-term back injury.

- (i) Ella did not relax Service Level Agreement (PCP) when C requested for breaks on 09.09.19 though she accepted that she could take breaks, these could not be implemented because of unrelaxed SLAs for C to be able to stretch her back and leg as and when she needed to

240. The Service Level Agreements were team targets and could be adjusted when one member of the team needed extra time and the tasks will be covered by other members of the team. The claimant has not established that she was placed at a substantial disadvantage.

118. 18.09.19

Nick Keech mentioned that the adjustable desks were expensive for him to buy C one (£1,000.00), but that C could

use other white work colleague's adjustable desks when they were off or on sick leave and this put C at a as the white colleagues were almost always there at their desks, despite C at times having made the effort to look for the desks and he also mentioned that the desks were getting busier.

241. The adjustable desks were available to all employees if they were booked. The respondent operated a "hot desk" policy. It was not established that the claimant was placed at a substantial disadvantage.

119. 23.09.19

Jo through chats was busy putting pressure on C for tasks to be completed within SLAs despite knowing that C was disabled and needed breaks but did not relax the service level agreements to relieve pressure from C thereby putting C at a substantial disadvantage.

242. The Service Level Agreements were team targets and could be adjusted when one member of the team needed extra time and the tasks will be covered by other members of the team. The claimant has not established that she was placed at a substantial disadvantage.

C sent Nick a reminder (email dated 30.09.19@ 15.57pm) to ask whether he had got any feedback from HR as per his response on the 18.09.19 when C requested for the adjustable desk. R's comment: This inclusion is not agreed. It was not included in the ET1. This appears to be background. C's comment: It does not matter the email is there confirming. Do not delete.

Nick again responded by mentioning that he would schedule the electric desks as it was getting busy but did not contact HR or Ella to discuss way forward and this further put C at a disadvantage because of pain which meant working extra hours to meet the SLAs. [ **R's response**: This inclusion is not agreed. It was not included in the ET1. However R accepts the main allegation here is failure to provide C with an adjustable desk. **C's response**: When C mentions an email in the particulars and adds it to the schedule of allegations you complain. When C adds an email that is there as evidence you complain. Please note that this will not be taken off and R can talk about this in court. Sorry. **R's response**: Please note we have not complained. We have advised that the Schedule of Allegations is meant to only list the allegations, rather than the evidence you will be referring to.]

243. The respondent was not aware that the claimant was likely to be placed at

a substantial disadvantage until 20 May 2020 when she said that she needed an adjustable desk as a result of a long-term back injury.

120. 16.01.20

C suffered from a disability requiring breaks and suffered substantial disadvantage due to the amount of work C had to do yet Jo mentioned that C needed to focus on her workload management so she does not feel she needed to work beyond her contracted hours, but forgetting that she had not relaxed the SLAs that were causing her to work excessive hours.

244. The respondent was not aware that the claimant was likely to be placed at a substantial disadvantage until 20 May 2020 when she said that she needed an adjustable desk as a result of a long-term back injury. The Service Level Agreements were team targets and could be adjusted when one member of the team needed extra time and then the tasks would be covered by other members of the team. The claimant has not established that she was placed at a substantial disadvantage.

121. 26.02.20

Jo did not change SLAs for C and as a result C worked excessive hours which caused C a lot of pain and suffering. The SLAs were the same for Maytal who was not disabled as they were for C and this put C at a substantial disadvantage.

245. The claimant has not established that she was placed at a substantial disadvantage in this respect. The respondent was not aware that the claimant was likely to be placed at a substantial disadvantage until 20 May 2020. As set out above, the Service Level Agreements were team targets and could be adjusted when one member of the team needed extra time and then the tasks would be covered by other members of the team.

122. 27.04.20

C was further disadvantaged after having submitted her request to Liddy & Jo on 01.04.20 for the desk converter, it was only delivered on 13.05.20, after having waited for one month 13 days C saw that the converter (which would have delivered same functions as electronic adjustable desk) was not fit for purpose and returned it through Liddy.

The C was sent a DSE form which was again deliberately amended so that the part for requesting the adjustable desk was not there. If C had not added on this part for herself it would have meant that there was not going to be an adjustable

desk ordered ever and this further put C at a substantial disadvantage.

Nick did not wish to provide the Claimant with an adjustable desk and was trying to avoid purchasing C's adjustable desk under the false pretence of corona virus. C sent over 15 emails to Nick Keech pushing for the adjustable desk to be purchased therefore putting C at a disadvantage.

The delay to purchase an adjustable desk by Nick Keech, caused Claimant to have more pain and she had to take pain killers to numb her pain in order for her to be able to work some days and this was a disadvantage caused by Respondent who is a Disability Confident Employer

246. The respondent did not have knowledge or constructive knowledge of the claimant's disability until 13 May 2020. The claimant had been shown where the adjustable desks were and how to reserve one.

247. Once the claimant made the respondent aware of that she was likely to be placed at a substantial disadvantage because of her disability on 20 May 2020, a desk adjuster was provided when this was found to be unsuitable the respondent took steps to obtain an adjustable desk and this was provided by Dell.

123. 02.06.20

C was further disadvantaged when the desk that was delivered was faulty after waiting for a long time for it.

Nick Keech referred C to the supplier to sort out the problem with the faulty desk with the supplier for herself which put C at a further disadvantage, as she expected Nick to quickly sort this problem out as the administrator responsible for such things as he was the one who had ordered from these suppliers and knew them [ **R's response:** This is not in paragraph 61. **C's comment:** Please kindly note that this allegation was there last time as it is and C has not changed anything. This allegation will remain as it is. Sorry]

248. It was reasonable to refer the matter to Dell and was not a failure to make reasonable adjustments by the respondent.

124. 13.11.20

C was disadvantaged from the start of her employment (09.09.19) by not being given support, i.e. reasonable adjustments as Lara Stanley mentioned that this was because of the health report produced by the OHA which mentioned that "C did not have any



ongoing medical conditions which would have practical implications for her employment”

249. The respondent was not aware that the claimant was likely to be placed at a substantial disadvantage until 20 May 2020. Following that time there was no failure to make reasonable adjustments.

### **Religion or belief discrimination**

125. 15.07.20& June 2020 TT form

Liddy was putting pressure on C to go get help for work related stress from Whitehall and LifeWorks despite C having told her on 30.06.20 during TT meeting when this was the 3<sup>rd</sup> time of her asking C to go to the same organisation, yet C had advised Liddy that she was a Christian and was going to seek help from a Christian Pastor.

126. 26.09.20

Lara pressurised C twice to go and get help for work related stress from Whitehall and LifeWorks despite C having told her that she is a Christian and also knowing very well that she was no longer employed by the respondent.

Respondent realised that what their employees had done to purposely cause C to be sick by how they treated C then tried to cover up as if they cared by forcing her to go to Lifeworks.

250. No questions were put to the respondent’s witnesses with regard to the claims of religion or belief discrimination. There was no credible evidence of discrimination by reason of religion or belief.

251. The Tribunal is satisfied that the respondent’s managers were merely attempting to assist the claimant and refer her to a counselling organisation to assist with her work-related stress.

### **Jurisdiction – Time limits**

252. As the claimant notified ACAS on 28 October 2020, the allegations prior to 29 July 2020 were out of time. The Tribunal is satisfied that they were not conduct extending over a period. They were not shown to a continuing act.

253 the claimant has not advanced any basis on which an extension of time on just and equitable grounds should be made. The acts were not shown to be part of a continuing course of conduct.

254. It is notable that the claimant was employed by the respondent for less than one year and she was working from home for a considerable amount of

that time from 18 March 2020 until 16 July 2020 when she went off sick prior to the end of her employment in September 2020.

255. The claimant's case was very difficult to follow. The evidence she gave was often incoherent. She failed to answer questions put to her in cross-examination on numerous occasions and resorted to taking an exceptional length of time finding documents which did not assist her and she then tended to mutter and state that the respondent is a racist organisation.

256. In the cross-examination of the respondent's witnesses by the claimant, and then when her son represented her, was chaotic. There was very little questioning about the issues identified and whenever the Tribunal sought to assist with questions the claimant and her son would make speeches about racism in general and would accuse the respondent's representative of being arrogant and demeaning. The claimant's approach was to attack the respondent and its witnesses but not to go through the issues or put the allegations in any clear form.

257. This has been an extraordinarily lengthy and wearing case for all those involved. The Tribunal has sympathy for everyone in the case, particularly those employees of the respondent who have been subject to unfounded serious allegations of discrimination.

258. The claimant provided a litany of allegations. Most of these are in relation to direct discrimination. The Tribunal has given careful consideration to every allegation made by the claimant. It is clear that the claimant views every difficulty, or perceived difficulty, she faced during her employment with the respondent through the lens of discrimination whether race, disability or religion or belief.

259. The totality of all the allegations appear to be the claimant setting out the difficulties which she perceives within her period of work with the respondent.

260. The claimant had difficulties and faced challenges during her fixed term employment with the respondent. She has a suspicion that there may be a discriminatory reason behind these difficulties but a suspicion is not sufficient. The Court of Appeal in the case of *Madarassy v Namora* made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a Tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

261. The Tribunal finds that the claimant has not established that 'something more'. In the House of Lords case of *Glasgow City Council v Zafar* it was held that unreasonable treatment of itself does not shift the burden of proof.

262. The Tribunal has considered all the allegations made by the claimant and has considered the evidence in this regard. The Tribunal has also considered the totality of the facts in order to consider whether it was established that the acts or decisions were sufficient to infer that they were on discriminatory

grounds. The Tribunal is not satisfied that the cumulative facts were sufficient to establish an inference of discrimination.

263. The vast majority of the evidence given by the claimant and the questions asked by, and on behalf of her, were in relation to perceived unfairness or unreasonableness. There was nothing heard or seen by the Tribunal that could lead the Tribunal to conclude that the claimant had established facts from which inferences could be drawn that the employer treated the claimant less favourably by reason of race, disability or religion or belief.

264. The unanimous judgment of the Tribunal is that the claims of direct race discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment related to race, victimisation and direct religion or belief discrimination are not well-founded and are dismissed in their entirety.

**Employment Judge Shepherd**

22 February 2023