



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Y Luwoye

**Respondent:** Saul D Harrison & Sons PLC (t/a Harrison Wipes)

**Heard at:** East London Hearing Centre (in person and by CVP)

**On:** 1, 2, 3 and 4 March and  
16 May 2022 in Chambers

**Before:** Employment Judge Jones

**Members:** Mrs B Saund  
Ms J Land

## Representation

**Claimant:** In person

**Respondent:** Mr T Perry (Counsel)  
Accompanied by Ms Attwood, solicitor and Mr Harrison

# JUDGMENT

***The Claimant's complaint of race discrimination and harassment fail and are dismissed.***

# REASONS

1. This was the Claimant's complaint direct race discrimination and racial harassment. The list of issues was set out in the document on page 217 of the Respondent's bundle of documents.
2. It was confirmed at the start of the hearing that the Claimant's complaint of unfair dismissal had been struck out as the claimant did not have two years continuous employment. The complaints of wrongful dismissal and discrimination on the grounds of religion or belief were struck out by EJ Gardiner following the Claimant's withdrawal of them at the case management hearing on 20 November 2020. She also withdrew her proposed complaints of automatic unfair dismissal and indirect discrimination.
3. There were 2 aspects of her complaint of direct race discrimination that were subject to a deposit order by EJ Russell on 17 May 2021. The Claimant's

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application for a reconsideration of that order failed as did her appeal to the EAT. The Claimant failed to pay the deposit. As a result, these 2 complaints did not form part of the list of issues that we considered.

4. The Tribunal considered the following complaints:
  - 4.1. Direct race discrimination
  - 4.2. Harassment related to race
  - 4.3. The failure to provide a reference related to race
5. We will set out the list of issues in detail when we come to decide them.

## **Evidence**

6. The Tribunal heard live evidence from the claimant on her own behalf. From the Respondent the Tribunal heard live evidence from Mr Stephen Harrison, CEO of the Respondent; Benjamin Naidu, sales director; Stuart Niblock, business adviser to the Respondent; Samantha Finch, HR manager; and Chloe Foley, credit control/sales ledger administrator.
7. The Tribunal had different bundles of documents from both parties and signed witness statements from each witness.
8. The Tribunal made the following findings of fact from the evidence. The Tribunal has only made findings on those facts that relate to the issues that we have to determine.
9. The Tribunal apologises to the parties for the delay in the production of this judgment and reasons. The delay was due to pressure of work on the judge.

## **Findings of fact**

10. The Claimant was employed by the Respondent as a financial accountant. She is black African, of Nigerian descent. The Claimant began her employment on 2 September 2019. She was initially employed on a 3-month fixed term contract. She was then employed on a permanent, full-time basis from 2 December 2019. The Claimant's employment terminated on 29 January 2020.
11. The Respondent is a family business which supplies cleaning products to a variety of industries including hospitality, automotive and aerospace. It is based in Romford, Essex. The Respondent employs approximately 50 people, with around 35 working in the factory and around 15 working in the mainly open plan office. Mr Harrison, the managing director had an office at one end of the office. The rest of the staff sat at desks that were arranged close to each other. At the time of the Claimant's employment, the Respondent employed staff of various ethnic origins and nationalities, including Indian, Romanian, Spanish, Ghanaian, Portuguese, Lithuanian and Nigerian. Mr Naidu is of British-Asian ethnicity and Mr Harrison is Jewish. Mr Harrison's evidence was that although he was not officially his deputy, it was known in the business that whenever he is absent, Mr Naidu would be in charge as Mr Harrison's number 2.

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12. The duties set out in the list on page 264 of the Respondent's hearing bundle were the Claimant's duties when she started at the Respondent as a fixed term employee. That list of duties did not change when the Claimant began her full-time employment. The main objective of the role was stated as *'to act proactively in ensuring compliance with all statutory accounting, corporation tax, income tax and VAT regulations.'* This included the following *Key Responsibility Areas*:
- *'Prepare the monthly financial schedules including Profit & Loss account, Balance Sheet, Cash Flow for all currencies*
  - *Present financial results at Board meeting*
  - *Prepare the monthly payroll in a timely and accurate manner ensuring compliance with all income tax regulations'*
13. These never changed during the Claimant's employment.
14. At the time the Claimant began her employment, the Respondent also employed a Finance Director, Jane Hardman. The Claimant was to report to Ms Hardman, ensuring that the company complied with all the usual day-to-day financial matters such as payroll, VAT, and the preparation of management accounts. The Claimant's job description and title did not change once Ms Hardman left. She continued to be financial accountant and the Respondent did not appoint a new Finance Director.
15. The person who had been in the post of Finance Director before Ms Hardman, Mr Hylton, had done the job for over 20 years. While Jane Hardman was doing the job, it is likely that the Respondent became aware that the work done by the postholder of that job, was more akin to that of a Financial Accountant as opposed to a Finance Director. It is also likely that the business had changed considerably from when Mr Hylton was first appointed. By bringing in the Claimant as a Financial Accountant, and choosing not to replace Ms Hardman when she left, the Respondent was beginning to fine tune roles and responsibilities within the business and only retain the roles that were necessary.
16. It was likely that Mr Hylton had actually been doing lower level work, more suitable to that of a Financial Accountant, while being paid as a Finance Director. He also failed to delegate work to the team or to train them sufficiently to do it. We say this because once Ms Hardman took up the post of Finance Director, it became apparent that this is what had been happening.
17. Ms Hardman had been a Finance Director elsewhere before she came to work for the Respondent. As Finance Director, Ms Hardman was paid at the same level as Mr Hylton had been, which was almost twice the Claimant's salary. The Respondent decided to recruit the Claimant as someone who could do the day-to-day financial accounting tasks, which would leave Ms Hardman as the Finance Director, performing more strategic financial work.
18. Once Ms Hardman had been in post for a while, the Respondent realised that the Financial Accountant could cover all the Respondent's day-to-day needs. The Respondent then had the option to buy-in strategic Finance

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Director level services, when necessary or to engage someone like Ms Westover or go to its accountants.

19. Mr Harrison confirmed in his evidence that this was a time of change for the Respondent as it strove to achieve greater efficiency and improvement in its processes. He acknowledged that the Claimant was being asked to effect changes in the Respondent's processes, on a practical level, in line with the Board's development plans.
20. In addition to Ms Hardman and the Claimant, the Finance team included Carly McKenzie (formerly Holding), office manager, who line managed Chloe Foley, Credit Control/Sales Ledger/Administrator. There were other members of staff who assisted and made up the team but they were junior to Chloe and we did not hear of them. The finance team had to work closely together. While Ms Hardman was in post, the Claimant reported to her. The Respondent had no issue with the Claimant's knowledge and performance of her accounting work. However, from early in her employment there were issues with the way in which the Claimant did her job, including her interactions with the rest of the Finance team.
21. Soon after her appointment, the Respondent became aware, that the Claimant frequently communicated with junior members of staff in a way that could be described as ordering them to do tasks, rather than requesting them. Also, in meetings with junior staff she appeared disinterested and visibly bored, unless she was giving instructions.
22. Before the Claimant was recruited, around 15 August 2019, the Respondent engaged an experienced Financial Consultant, Natasha Westover, to support Ms Hardman and the directors at a strategic level and to consult with them on managing the changes that were going on in the business and in particular, in the finance team. The Claimant was asked to help with that by implementing some changes in the way the accounts were presented and the timing/frequency of reports to the Board. The Respondent expected her as a senior member of staff to be able to manage that process, with support from Ms Westover, in a way that did not cause disruption or conflict within the small finance team.
23. The Board also engaged a non-executive adviser, Stewart Niblock to consult upon broader change management.
24. In her first meeting with the team on 3 September 2019, Ms Foley and Ms McKenzie observed the Claimant to be disengaged as instead of paying attention to what they were telling her about their work, she was staring out of the window, doodling and they noticed that she had turned her body towards the window. They explained to her how they did month-end and Credit Control and other parts of their work but felt that she was not interested in what they were saying and that they were being disrespected. Chloe later noted in a written statement that at one point in the meeting, the Claimant rolled her eyes, which she found to be upsetting. She called it to an end by slamming notebook down and declaring '*meeting over*'. At the time, Ms Foley mentioned this to Mr Naidu.
25. On 12 September 2019, the Claimant attended her first Credit Control

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meeting. Again, the staff experienced her as disengaged. After the meeting, the Claimant sent the team an email instructing them to track bank postings by completing a bank form on a daily basis. There was no discussion with the team about how that task would impact their daily workload, why she needed them to do this – how it fitted in with the wider objectives of the team and – how it would be implemented. She did give them a spreadsheet. In her live evidence, she stated that she supported them by giving them a spreadsheet. A few weeks later, on 30 September, the Claimant informed the team that although they had done the task as instructed, she had decided to move the information from where it was stored. She did not explain why that was necessary but in order to do what she asked, the team was required to delete the work that they had already done and do it all over again.

26. Mr Harrison told us about a meeting with the Claimant and Ms Hardman on 20 September 2019 in which they discussed her management style. In the meeting they discussed examples where they considered that the Claimant had been short in tone and dismissive of Carly, in particular. In the hearing, the Claimant denied that she had spoken to Carly in this way, but we find it likely that she had and that the Respondent spoke to her about it. The Claimant was also told to be aware of the impact on staff of the changes that she was making.
27. We find that as issues with the Claimant's way of managing staff began to appear, Ms Westover was asked to mentor and coach the Claimant in her work. Although the Claimant denied this, it is evidenced by the documents that the Claimant produced in her bundle for the hearing. For example, at pages 56 – 58 the Claimant attached minutes of another meeting she had with Ms Westover, Ms Hardman and Mr Harrison on 2 October 2019. At that meeting, the minutes show that they discussed how the Claimant should conduct her weekly catch-up meetings with Carly, how to conduct the team workshop session and what should be covered in it. It included the statement '*Yemisi is committed to act like she works for everyone and approach every interaction with an attitude to listening*'. It would only be necessary to include this sentence if the Respondent felt that the Claimant had not, up until that date, been approaching every interaction with an attitude of listening. Mr Harrison accepted the Claimant's commitment to listening and to working successfully with the team. He did not consider that any further action was required.
28. Ms Hardman resigned from the Respondent's employment in September 2019. It is likely that the meetings referred to above and below, occurred during her notice period. The Claimant was told that she would now need to report to the Board on financial matters. She indicated that she did not mind reporting directly to the Board rather than to a Finance Director. The expectation was that she would attend Board meetings, present financial information and leave. That is exactly what happened. The Claimant was not told that she would become the Finance Director. She was not invited to become a member of the Board as Ms Hardman had been. Mr Harrison told her that she was not expected to take on the role or the responsibilities of Finance Director when Ms Hardman left but that she would continue as Financial Accountant and report directly to him. The Respondent had to decide that it did not need to employ a Finance Director. It expected Ms

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Westover to continue to provide the Claimant with guidance, support and mentorship, not in relation to how she did the technical aspects of her work but in terms of managing staff. Although the Claimant's evidence was that she had not been told that Ms Westover would mentor her, she did confirm that Ms Westover requested weekly catch-up meetings with her, which she attended. It is likely that those were some of the times when Ms Westover gave her support.

29. We find it likely that Mark Richardson, the Respondent's factory manager, also presented information on his area of the business to the Board and then left the Board meeting. He was also not a Board member.
30. In September the Claimant asked the finance team to save files in the I Drive/Finance where they would download statements from the daily banking and then run a report to ensure that the entries went into the correct ledger. The staff, especially Chloe Foley and Carly McKenzie were struggling to understand what the Claimant wanted them to do and why. It is likely that the Claimant was impatient when explaining this to them and would simply repeat herself when asked questions. This did not aid in their understanding and led to frustration on all sides. Her tone was described as aggressive and that she became louder when the team did not understand her first answer. She did not try to explain in a different way.
31. When the download of the bank statements was completed, they were saved in the I drive in the Finance folder on the Respondent's database system, as the Claimant directed. The Claimant subsequently moved the bank statements, without telling staff that she had done so. This left staff wasting time looking for the files in that directory. The Claimant did not apologise to staff for not informing them of what she had done. The files had to be recreated from scratch.
32. In the meeting on 2 October 2019, Ms Hardman, Ms Westover and Mr Harrison raised concern in a meeting with the Claimant that although she is technically strong, she was not giving staff the context of the new work. She had lots of ideas that she wanted to implement in order to bring about the efficiency and improvement that the Respondent wanted but at the same time, she needed to consider how to make space/capacity in order to achieve it all and to provide context to the team when delegating work.
33. As a follow up to that meeting, Ms Westover wrote an email to the Claimant on the following day, 3 October, in which she reminded the Claimant that in the team workshop sessions, her task will be to conduct training for the team, helping them to understand the bigger picture and to explain why tasks are important. The Claimant was also to fast track her knowledge of how things worked and learn more about the business. The alternate week meetings would be the one-to-one weekly catchup meetings with Carly in which the Claimant would have the opportunity to support Carly and work together on planning finance work for the team. Ms Westover challenged the Claimant to create a monthly calendar for Carly and her work, capturing such information as how long a task takes and then to encourage and support Carly in doing this task with her team.
34. We find it unlikely that the Claimant did all of those things. She did not

consider that it was her responsibility to train anyone.

35. Generally, the Finance team were worried to ask the Claimant questions such as '*what is the purpose*', '*how much detail is required*' or '*what does that look like*' as they felt that she would answer queries in a way that suggested that she felt that she was being personally attacked when they were simply trying to get clarity on the work that they had been asked to do. It is correct that some of the questions that they wanted to ask and the explanations they sought had already been raised with Mr Hylton and Ms Hardman.
36. In an exchange on 8 October, the Claimant told Carly that she was not going to give her extra work as she could not keep with the Claimant's pace. Carly felt insulted by that statement but felt unable to complain at the time.
37. Month-end meetings were in the diary as a fixture, but they did not always happen. The Claimant would not inform the staff of whether the meeting was going ahead, and this would leave them wondering about it. If the Claimant was busy, she would not say anything to the team but would cancel the meeting and not re-schedule it.
38. It is likely that members of the finance team spoke to management about this because in the middle of October, Ms Hardman and Mr Harrison met with the Claimant to discuss the importance of communicating effectively and professionally with colleagues. Concerns had also been expressed by staff that the Claimant had been trying to change processes without first speaking to team members and explaining why she was doing so. The Claimant was often reported as having spoken to colleagues in an impolite, short tone, which at least Carly felt was dismissive of her.
39. As the Claimant was still learning about the business, the Respondent was concerned that she was seeking to make changes when she did not fully understand the current processes and what Mr Harrison referred to in his witness statement as the '*wider picture*'. We find that the Claimant's answer to this in the hearing was that she had been tasked by Mr Harrison with changing the way the bank reconciliations and other tasks were done, so she went ahead and made those changes. The Respondent was also concerned with how the Claimant made those changes and that she was sometimes making changes to processes without first making sure that she understood the existing processes or that the staff understood what she wanted them to do and why. This caused unnecessary friction. The Respondent was also troubled by the fact that the Claimant felt that she did not need to undertake any training of staff or to ensure that they understood why changes were taking place.
40. Notes from meetings that Ms Westover had with the Claimant were in the bundle and they show that she raised with the Claimant in September that the Claimant should think about how she could bring the team along with her and how she can build rapport with the team quickly. Around the same time the Claimant had been asked by Mr Harrison and Mr Naidu to use ordinary language with the team rather than finance language and to be aware of her tone.

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41. Even before the Claimant joined the Respondent, Carly and her direct report, Chloe had raised with Ms Hardman and the business that they wanted to expand their knowledge and understanding of why they were doing certain tasks and how it all fit together. Those were the types of queries that Carly raised with the Claimant. Chloe confirmed in evidence that she had also previously raised these matters with Jane Hardman. Therefore, these queries had not only been directed to the Claimant. The Claimant did not see why she should explain things to the staff or why she was expected to train them or answer their queries, as they pre-dated her arrival in the business. It was likely that she just wanted them to get on with her instructions and not ask questions. She also felt that as Ms Hardman had not taken the time to answer their queries or train them, she did not see why she should have to do so, especially when she was paid less than Ms Hardman. She told us in the hearing that she did not consider that training the team was part of her job. We find that it was appropriate that the Respondent expected her to treat junior colleagues with respect and to develop a positive working relationship with them, where, as the office became busier, they could see themselves working together as a team to produce accounts and to assist Mr Harrison and the Board in running the business.
42. There was a discussion at a meeting between the Claimant, Ms Hardman and Mr Harrison on 15 October 2019 in which continuing concerns were expressed about the Claimant's relationship with the finance team. She was told that she needed to develop that relationship by listening more, being more empathetic and explaining more. She was also to concentrate on the handover plan devised by Ms Hardman. The discussion at this meeting also covered the importance of communicating effectively and professionally with colleagues. Ms Hardman and Mr Harrison were concerned that the Claimant was changing processes without explanation and without giving clear instructions. Her approach so far was creating unnecessary confusion and unhappiness.
43. A few days later, on 17 October, Mr Harrison sent the Claimant an email in which he instructed her to cancel a meeting that she had arranged because *'making changes now is not consistent with this process'*. The Respondent was in the process of implementing a data project related to the cost centres in the Exchequer that Mr Harrison expected would drive the changes that he wanted. But the Respondent decided that she should slow that process down. The Claimant was instructed to spend 100% of her time with Ms Hardman engaged in the handover process and to spend any remaining time with her team.
44. From about 25 October, the Claimant was asked to establish weekly meetings with her team to improve communications and to better identify gaps in the team's knowledge. She would hold a team meeting on one week, to discuss work and then on the second week, she would run workshop in which she could conduct necessary training and support. This was confirmed in an email the Claimant sent to the team on 28 October. In it she confirmed that she had been advised to conduct weekly finance meetings and their purpose.
45. Ms Hardman left the Respondent's business on 31 October 2019. Ms



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Westover fulfilled the core aspects of the Finance Director role on an interim basis after Ms Hardman left. It is likely that the Claimant was told about this. The Claimant was still expected to present management accounts, profit and loss statements and other financial information, as requested, to the Board on a monthly basis. After she provided the information required and discussed relevant issues with the Board, she would leave the meeting in order for the Board to continue their discussions around subjects such as Sales, Marketing and Operational activities. The evidence was that the person who replaced her, Peter Jones, who was also a non-director, attends Board meetings to present information and leaves. Mr Naidu's recollection was that the Claimant only attended three such meetings.

46. During a team meeting on 15 November 2019, in response to questions from the team as to why certain data was required, the Claimant responded aggressively and told Ms Foley that she should leave the meeting if she was bored. She confirmed this in live evidence. This was not appropriate as it made the staff feel uncomfortable and was not the collaborative way that the Respondent expected the Claimant as a senior member of staff to communicate.
47. On 8, 15 and 22 November, Ms Westover and Mr Harrison had conference calls with the Claimant in which they discussed her communication style. The Respondent wanted the Claimant to succeed, which is why Mr Harrison encouraged the Claimant and discussed with her, with Ms Westover's support, the best way for the Claimant to go about making changes and just as importantly, to bring the team along with her.
48. On 10 November, the Respondent's concerns about the Claimant's performance as a manager was captured in an email that Stephen Harrison sent to Stewart Niblock. He stated that he had spent some time over the weekend thinking about what he referred to as '*the Yemisi situation*'. He said:

*'We know that we have an issue with Yemisi that needs to be managed*

- Can she lead the team*
- Can she communicate with/to the team*
- Giving management confidence figures are good, the team is being well managed*

*Ben – an email will follow that Ben sent Yemisi Friday. They met to discuss rebates to ensure we are recording accurately.*

*In short Ben said to me after "I can see why others are frustrated"*

*He felt she did not listen. He is clear that rebates are 95% and not 100% accurate and that Yemisi didn't seem to take on board he could not sign off a rebate that he wasn't sure was right*

*For a year Ben and I have spoken that post Hylton and now post Jane finance will be strengthened*

*This goes to the first point above BUT more importantly give me concern that Yemisi will become an issue to Ben and his good will could in time*

*run thin*

*We are now perhaps further from sorting this out than ever*

- *All of the above gives me concern that we could/will have discontent in Yemisi's team*

*I am aware of some but this could grow*

*I need to act to take/keep control*

.....  
.....  
.....

*This brings me to Natasha and our conversation – you described her as someone who could subject to her time availability come in and get a grip of Yemisi and the team and look to understand what in the very big picture is needed.*

*If not Natasha the we need to look elsewhere – we do need to act*

*I welcome your feedback.'*

49. Mr Niblock responded to ask: *'is it just Yemisi or Carly/Yemisi?'* The Claimant was not included in this correspondence, but it demonstrates the concerns that Mr Harrison had about her abilities at the time. It is likely that the Respondent decided that Ms Westover would support the Claimant to improve her communication within the finance team and with the Respondent.
50. It is likely that this was the reason that from 10 December onwards, Ms Westover increased her commitment to one day per week in the office. This was mainly to provide support to the Claimant and her team. Although the Claimant denied in the hearing that the Respondent wanted her to work on her communication with the team or that there were any issues with her communication with her team, we find that this was an issue for the Respondent and that Ms Westover's main task was to support the Claimant in improving her communication with the team and in managing Carly.
51. On 10 December, Ms Westover had a conversation with Carly, who at that time had been the Respondent's office manager with 12 years' experience in the job. On page 318, Ms Westover noted that Carly complained of the lack of communication from the Claimant, the Claimant's communication style, that she had been given more month-end work to do, that there was a lack of clarity between the Claimant's role and that of the Finance Director and how it would affect her workload. She said that she did not feel listened to or recognised. She broke down in tears while speaking to Ms Westover.
52. On 17 December, three members of the team were out of the office due to sickness and holiday. Carly, the office manager was trying to still get the work covered for the day, which required her to delegate to those members of staff who were in. At the same time, the Claimant kept calling Carly's

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name, making her walk around to her desk to answer questions. As a result, Carly did not get much done and was left feeling overwhelmed -such that she had to leave the office for a short while.

53. A finance team meeting was planned for 19 December 2019. Ms Westover arranged to be at the office to attend the meeting. The Claimant arrived at work and promptly cancelled the meeting, saying that she did not have time for it and that it was not needed. Ms Westover asked the Claimant to rebook the meeting. However, the Claimant only did so once she had clarified with Mr Harrison that she should. The Claimant did not consider anyone else to have authority or that she had to listen to anyone in the business, apart from Mr Harrison. She went to the meeting late. The Claimant only went to the meeting because Mr Harrison asked Ms Westover to go to her desk and ask her to attend. Mr Harrison had to chair the meeting as the Claimant had not been prepared for it. Mr Harrison confirmed in his witness statement that in the meeting the Claimant was uncommunicative and appeared disinterested. During the meeting Ms Westover covered the purpose of finance meetings, which was for the team to understand each other's priorities, identify deadlines and areas where their work overlaps or dovetails. There was a discussion about the bank reconciliation and the Claimant's belief that the team were refusing to complete the tasks that she set for them. Chloe Foley and Carly McKenzie stated that it was not that they were ignoring her requests but as they both had other tasks they needed to complete, they needed to make a plan that would allow them enough time to fit it all into their working day. The Claimant then said that she felt that they were all against her and although she disputes it, we find that she stormed out of the meeting as by then she was upset.
54. The Claimant did not appreciate Ms Westover's support and she said to us in live evidence that Ms Westover was getting in the way of her work.
55. Once the meeting ended, Mr Harrison met with just the Claimant and Ms Westover. The Claimant was still visibly upset. He explained how the team did not understand the context of changes that were being made. He reiterated the importance of her bringing the team along with her on the journey of re-organisation and change. He told her that he understood the work pressures and talked to the Claimant about being receptive to and responding to questions and concerns from staff. He confirmed the need for team meetings as a really important opportunity to provide information in response to questions and to identify training needs. He also reassured the Claimant that both he and Ms Westover were trying to help and be supportive of her.
56. In her ET1 the Claimant stated that at the end of 2019, she discovered discrepancies in the Respondent's figures, and it became clear to her that Ms Foley, Mrs McKenzie and Ms Sawyer did not understand basic accounting but were simply concerned with processing invoices. It is unlikely that the Claimant took the time to support the team with training in the skills that she felt they lacked. She did not provide the team with sufficient training or explanation or point them to where they could get training. Instead, she implemented new process so that she could identify who made errors or uploaded incorrect information.

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57. On return to the office in January, after the Christmas break, the team noticed that the Claimant was very quiet and that she was reluctant to engage in conversation with them. The Claimant cancelled all of the weekly finance meetings as she said that they had to work on the bank reconciliation. This was contrary to the discussion in December and earlier, in which the Respondent was clear that whatever else was going on, the finance meetings should take place, to ensure communication and clarity between everyone. Her evidence was that she decided that she only needed to work with Carly to do the month-end but that went against the discussions that she had with Mr Harrison at the end of 2019.
58. On 10 January, Carly McKenzie and Paula Sawyer, purchase ledger clerk, were in a meeting room together. They discussed their current workloads and agreed an action plan on how they were going to proceed with clearing the old bank reconciliations as the Claimant had asked them to do and everything else. They were also having a catch-up with each other as they had both been stressed out before going on leave at Christmas. It is likely that they were there for some time.
59. The Claimant shouted to Chloe, who was in the office with her, asking what they were doing. She then sat at her desk, clearly unhappy about the meeting. She was noticeably agitated. After about an hour, the Claimant banged on the window of the room in which Carly and Paula were meeting. She asked if Carly had completed her journal as she was waiting for her to finish it. The Claimant then stormed off back to her seat. Carly believed that she had not been given a set deadline to complete this task.
60. When the meeting ended, Ms McKenzie returned to her seat and completed the work. The Claimant sat at her desk, waiting for her to finish, all the while she was huffing and puffing and tutting, which was unsettling for all who could hear her.
61. On the morning of 20 January, the Claimant informed Carly and Paula that she had booked them onto a webinar with the Exchequer, about their mobile expense demo. It was going to be held at 1pm that day. Carly and Paula had not been informed about this beforehand and therefore had not planned their workload around it or even taken their lunch yet. The Claimant told them that they could split watching the demo and do *'half and half'*. She did not explain what she meant by that. It is possible that what she meant was that they could both watch different halves of the demo so that between them, they had the whole knowledge.
62. On 22 January, in a meeting with Mr Naidu, Ms Foley informed him that she found the Claimant to be very challenging and that tensions in the team were all high as they were all stressed and frustrated. It is unlikely that Mr Naidu spoke to Mr Harrison about this before the following events took place.
63. On 24 January, Ms Sawyer went to speak to Mr Naidu to ask him about an expense policy that she and Carly had been speaking to the Claimant about earlier that week. Mr Naidu noted in his record to Mr Niblock on page 286 that Paula was clearly frustrated, and she became upset when she described the interaction that she had with the Claimant. She described

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how whenever she asked the Claimant about the purpose of the project and what needed to be done, the Claimant's immediate response would be to firmly say the word '*management*' as though that was enough. She gave that answer repeatedly, regardless of the question. Paula told Mr Naidu how unhappy she was with the manner in which she had been spoken to.

64. On the morning of 27 January 2020, when Carly and Chloe arrived at work and before they started work, they went into a meeting room together and had a meeting that lasted over an hour. It is likely that they were supporting each other about their interactions with the Claimant. It was not the best use of their time but as they were both upset, no one took up this issue with them. During that meeting, Chloe told Carly that she was considering leaving the job. The Claimant knocked on the door and enquired whether there was anything that she could do to assist. They said that there was nothing. The HR Manager, Samantha Finch, met with them and Ms Sawyer and asked them how they were feeling as she could see that there was tension between them and the Claimant. She asked them how they were and what was going on. During the meeting, they advised that they were not happy with the Claimant's style of management. They stated that they could not go on in this way for much longer. They told her that they were getting upset and feeling like they did not want to come to work due to the way the Claimant was managing and acting towards them. Ms Finch said that she would speak to the Claimant and let her know how they were feeling. Chloe, Carly and Paula went for a walk and then came back to work.
65. Once Chloe and Carly were both back at their desks, they received emails from the Claimant demanding that they divulge what they had discussed in their meeting that morning.
66. The evidence from Ms Foley and Ms Finch at the hearing was that the Claimant behaved differently if Mr Harrison was in a meeting. If he was there, she would be respectful and patient. This would be completely different if he was not there.
67. Samantha Finch spoke to the Claimant. She told the Claimant that Ms Foley and Mrs McKenzie felt frustrated. She informed her that they had told her that they did not feel that they could address the issues directly with her. The Claimant's evidence was that Ms Finch told her that Chloe and Carly felt that they could not cope with how fast she did her work. The Claimant also told Ms Finch that their concerns had nothing to do with her or the job that they had to do for month-end. The Claimant felt that as their queries about tasks and work had been raised prior to her joining the company, she did not need to address them, and they did not concern her.
68. The Claimant then held a general meeting with Paula, Chloe and Carly. The Claimant put various items on the agenda, including the old bank reconciliation, the corporate management travel, master data file and the Exchequer mobile. They discussed the old bank reconciliation. They then discussed the corporate travel issue. The Claimant informed the team that as the management had agreed it, they had to go ahead with it. Chloe remembers that Carly asked a question in this meeting to try to clarify something she was unclear about and the Claimant's response was to roll

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her eyes and say 'Jesus' in a dismissive and belittling way. When Chloe mentioned in the meeting that there seemed to be tension in the team and that they should work together, the Claimant became visibly angry and repeatedly yelled over her 'what do you want me to do?'. They discussed implementing a process called concur, which both the Claimant and Paula had implemented in different organisations. The Claimant was not listening to what Paula was saying about this and began talking down to her, telling her that she had more experience implementing concur than Paula had. This was upsetting to Paula. The meeting did not resolve anything, and the team simply agreed with what the Claimant said but were no clearer about why they were being asked to do certain things and felt no better about their jobs than they did at the start.

69. Later that day, Carly went to see Ben Naidu and told him that Chloe was considering resigning because of the way in which the Claimant was managing them. She also told him about her experiences of working with the Claimant. Mr Naidu told her that he would speak to Ms Westover to get her view as he had not previously been involved with the situation. He reassured her that the Respondent would work to make the situation better.
70. Mr Harrison was away on holiday that week. Mr Naidu decided to do something about the various conversations he had had with staff as he was concerned that the situation may escalate before Mr Harrison's return. Mr Naidu did not officially deputise for Mr Harrison and he had no particular expertise in finance but as he was familiar with the Respondent's clients and knew them well, he tended to look after things while Mr Harrison was away. Staff were more likely to go to Mr Naidu rather Richard Rule, who was Operations Director. We find that this was why Mr Naidu got involved in the Claimant's management, in Mr Harrison's absence.
71. Mr Naidu asked the Claimant for a quick private meeting in order to get an understanding of what was happening, from her perspective. He told her that members of the finance team were very upset and unhappy with the communication within the team and were threatening to leave the business. The Claimant denied that there was an issue with communication in the team. She told him that she did not understand why the team felt the need to have long meetings away from their desk and that she found that unacceptable. He proposed that there should be a meeting with the whole team, once Ms Westover was in, so that they could clear the air and look to get some structure in place. The Claimant wanted to hold the meeting immediately but because he could see that Paula, Chloe and Carly were upset at the time, he suggested that they could hold it later. Mr Naidu then had a conversation with Ms Finch, the HR manager about this and they agreed that a meeting between all those concerned would be a good idea.
72. On 28 January, Natasha Westover met with Mr Naidu. He explained what had happened over the last few days and they agreed that the best next steps would be to put in place the structure of regular finance meetings so that the team could have a chance to get some of their questions answered and work on their communication.
73. Ms Westover asked the Claimant to come into the meeting room. The Claimant declined. She asked to speak to Mr Naidu. Mr Naidu spoke to the

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Claimant on her own and tried to reassure her that the purpose of the meeting was to clear the air so that everyone could move on. He told her that she did not need to answer questions there and then or comment on anything that was brought up. He suggested that she could say that she needed time to digest all the information and would come back and address any issues later. At the same time, he said that she would need to participate in the meeting and not just sit back, so that the team would know that she was keen to listen.

74. Natasha Westover then called a meeting with the Claimant and Carly, Chloe and Paula. Ben Naidu was also present. Ms Westover began the meeting by talking about the relevant and frequency of the finance meetings, and that they were held to allow team members to support each other. Both Ms Westover and Mr Naidu's notes confirm that the Claimant was not engaged in the meeting and was instead looking out of the window, while Ms Westover spoke. She did not even look at Ms Westover when she spoke directly to her. Ms Foley referred directly to the issue of the disconnect between the Claimant and the rest of the team. She highlighted that they did not know what the Claimant did, her deadlines and therefore, how best to support her. Also, that they did not feel comfortable raising questions with the Claimant and their experience was that she was usually dismissive of queries and not willing to help them understand. The Claimant responded that she did not understand Chloe Foley's comment about disconnect. She kept asking her to prove it. When Carly McKenzie tried to join the conversation to help explain, the Claimant held up her hand toward Carly and told her to *'Wait!'* and said, *'I'll deal with you later!'* in a very dismissive fashion. She also raised her voice. When Carly stated that she did not understand the month-end journals the Claimant laughed out loud, sat back and said *'Jesus Christ!'* As the meeting went on it was clear to Mr Naidu that no matter how many times the team members gave clear examples, the Claimant did not understand why they would want to know any of the work she did nor why they needed to know what they were being asked to do. As things were not being resolved, Mr Naidu stopped the meeting and said that this was not how staff members should speak to each other at the Respondent. He stated that some of the Claimant's responses had been unacceptable.
75. After the meeting, Mr Naidu and Ms Westover discussed what had happened. They agreed that the Claimant's communication style and the way she apparently managed the finance team was totally unacceptable. From his interactions with the Claimant, Mr Naidu concluded that she did not understand why communication within the team was important and why she should have to explain things. The Claimant's approach was that if she asked for something to be done, it should simply be done, without any questions.
76. During the day Ms Westover informed Mr Naidu that, due to the level of stress that they were under and their unhappiness, the finance team were on the cusp of walking out. Mr Naidu telephoned Mr Harrison who was still on leave. Mr Harrison had been in contact with the Claimant by email earlier that day, giving her instructions on and discussing work matters. He was not aware of the meetings and the general feeling in the office until Mr Naidu called him and told him what had been happening. They discussed what to

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do and decided that it would be best to ask the Claimant to take three days off as paid leave, pending an investigation into her conduct/management. The Respondent's intention in making this decision was to stabilise the finance team as it would be damaging to the business if they all walked out. The Claimant on her own would not have been able to do all the functions of the finance team and the Respondent did not want them all to walk out.

77. Later that day, Mr Naidu spoke to the Claimant in a room on their own and told her that the team was still unhappy. She continued to deny that there was an issue with communication in the team. She told him that he had misinterpreted what he had seen at the earlier meeting. They both spoke to Mr Harrison on a mobile phone. The Claimant was told that the Respondent had decided that she should have three days paid leave in order to give everyone some space, allow them to take stock of the situation and calm down. The Claimant refused to take the time off. She stated that she did not need time off. She denied that there were any communication issues. She stated that she considered that this was discrimination because the whole finance team were not being sent home. The Claimant pointed at her hand/skin and stated that she did not mean that (i.e. race discrimination) but that she felt that it was discrimination that only she was being sent home. She stated that she did not know what was going to be investigated.
78. The Claimant stated that the only way that she would not come into work was if it was part of disciplinary action and if that was the case, she would need to be given a reason for it. The Claimant felt that Mr Naidu's discussions with her were irrelevant as he did not have responsibility for finance. After a further conversation with Mr Harrison in which it was agreed that they needed to discuss the next step with Ms Westover, Mr Naidu spoke to the Claimant and told her to just focus on her work and avoid communication with the team. He also told her that he would speak to her about all of this on the following day.
79. Ms Finch had been absent on 28 January so Mr Naidu and Ms Westover briefed her about what had happened when she arrived at work on 29 January. It was agreed between them that the next step would be to conduct an investigation into the Claimant's management style and how this had impacted the staff. As the Claimant had refused to leave the office the previous day to allow the investigation to happen it is likely that Mr Naidu and Ms Finch decided that it would be best to give the Claimant a letter to confirm what was happening.
80. Ms Finch wrote a letter to the Claimant on behalf of the Respondent which contained the following:

*'I write to inform you that you have been placed on authorised leave to allow an investigation to take place following allegations of inappropriate management style. As your employer we have the duty to fully investigate this matter.*

*This is not regarded as disciplinary action. It is merely a holding measure pending further investigations where it is undesirable for an individual to remain on duty.*



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*The duration will only be for as long as it takes to complete the investigation. You remain our employee and continue to be bound by your terms and conditions of employment. It may be necessary for me to contact you and/or require you to attend an investigation meeting and you are required to make yourself available during your normal working hours.*

*During this period of leave you must refrain from attending the workplace, whether during or outside of normal working hours, unless it has been specifically requested by the company or otherwise authorised in advance. You are also instructed not to contact or to attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or client of ours. I am duty bound to inform you that a failure to abide by this instruction would be treated as an act of misconduct. However, if there is anyone whom you feel could provide a witness statement which would help in investigating the allegations against you, then please contact me and I will arrange for them to be interviewed.*

*Should the investigation indicate that there is some substance to the allegation(s) you will be required to attend a disciplinary hearing. You will be provided with all relevant documentation prior to the hearing and you will be notified in writing of the time, date and venue.*

*Once our investigations have been completed, we will contact you again to inform you of what action, if any, we will be taking.*

81. The Claimant was called into an office to be given the letter in private. Both Ms Finch and Mr Naidu were being sensitive to her and did not want to do this in the open plan office. They informed the Claimant that she was being placed on paid leave pending a disciplinary investigation into her conduct/management. Ms Finch attempted to give the Claimant the letter but she refused to accept it and threw it back at Ms Finch. The Claimant stated that she did not agree with the letter and refused to leave the office. She then said that she was going to get on with her work, stood up and went back to her desk.
82. Clause 19 of the Claimant's contract of employment with the Respondent stated as follows: -

**'SUSPENSION**  
*The Company may suspend you on full pay pending the outcome of a disciplinary investigation or for health reasons. Whilst on suspension the Company may impose the same conditions as apply to employees on garden leave.'*
83. The Claimant had refused to leave when she was asked the previous day to take three days off as paid leave. She now refused the formal process outlined in the letter. She decided that as Mr Harrison had not asked her to leave in the email correspondence that she had with him about work matters that morning, she was not going to accept it.
84. The Claimant had said that unless she heard it from Mr Harrison she would

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not accept it. Mr Harrison was called. The Claimant then refused several times to come back into the room to speak to Mr Harrison on the phone. She also continued to refuse to leave. The situation was becoming increasingly difficult. She repeatedly told Mr Naidu to go away and stop making a scene.

85. It is likely that Mr Naidu became frustrated by her refusal to leave the office. It is also likely that the conversations between the Claimant and Mr Naidu on 29 January were strained and that the situation was escalating. It was the Claimant's case that Mr Naidu '*pushed and forced her out of the office*'. We find that he did not. The Claimant was asked to leave on 28 January and because she refused to leave voluntarily, Mr Naidu with Mr Harrison's agreement and with the advice of HR, decided that she should be issued with a letter notifying her of the start of disciplinary proceedings, with an investigation. We find that in doing so, he was not trying to embarrass her. His actions were quite the opposite. He tried to give her the letter in a private room so that no one else would know why she was leaving the building. However, she refused to accept the letter and insisted that she was going to continue working at her desk. She then tried to ignore Mr Naidu and told him and Ms Finch that they should go away and leave her alone. It is unlikely that either Mr Naidu or Ms Finch shouted at her but it is likely that they grew increasingly frustrated by her refusal to follow instructions. Mr Naidu was firm in his tone with the Claimant.
86. We find it unlikely that Mr Naidu told the Claimant that he would never report to her. Mr Naidu was more senior than the Claimant so there was no possibility of him reporting to her. We also find that he did not say to her that he would not have liked to have her as his manager if he were in Chloe and Carly's position. That was not part of the Claimant's case until the hearing and it was put to Mr Naidu in cross-examination, which he denied. This was also not in the Claimant's witness statement.
87. As the situation had not resolved and the Claimant continued to refuse to leave the office, Mr Naidu spoke again with Mr Harrison and they agreed that the Claimant's conduct was wholly unacceptable. Mr Harrison made a new decision in the light of the Claimant's conduct that morning. He decided that the Claimant should be dismissed and that if she refused to leave the office voluntarily, the police should be called.
88. This was all confirmed in Mr Harrison's email dated 29 January and sent at 13.23, which stated as follows:

*'I am aware of the issues relating to Yemisi's management style and her communications with the team.*

*We agreed that you should place her on paid leave whilst the business had an opportunity to investigate further, although the issues are well known and have been witnessed by a number of employees.*

*I now understand Yemisi has been informed of this but has returned to her desk and is now refusing to leave the premises.*

*This is unfortunate, but given the number of issues we have had with her*

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*and the impact on staff morale, I think it is best that we part company. We have given Yemisi a number of chances but things are not working out. It is therefore my decision that Yemisi should now be dismissed from her employment. You should ask Yemisi to meet with you in your office or in another discreet location and I authorise you to terminate her employment with immediate effect. Please explain the circumstances as outlined above.*

*Please inform Yemisi that all monies due to her (i.e. her pay in lieu of notice and any accrued but untaken holiday pay) will be sent to her bank account and then ask her to gather her possessions and leave the office. She should not of course take with her any company records or property.*

*We should deal sympathetically with Yemisi but if she should continue to refuse to leave the premises then I authorise you to call the police for assistance. I do hope it does not come to that'*

89. Mr Naidu and Ms Finch still wanted to deal with this in a sensitive manner, and to speak to the Claimant in private, as Mr Harrison instructed. They printed off the above letter to give to the Claimant and as she had refused to leave her desk, they asked all the staff in the open plan office to leave. This included the finance team, staff in customer services, Ms Sawyer and everyone else. The Claimant was adamant that as Mr Harrison was her line manager, she would continue working until he said that she should do otherwise. She did not respect the authority of either Mr Naidu or Ms Finch.
90. They told the Claimant that because of her conduct, she was dismissed with immediate effect. Mr Naidu placed the printed email from Mr Harrison on the Claimant's desk. She refused to even look at it, putting it on another desk. Mr Naidu and Ms Finch repeated that the Claimant was dismissed and that she needed to leave the office. The Claimant continued to refuse to leave, stating that she had done nothing wrong.
91. It was then that Mr Naidu threatened to call the police. As the Claimant continued to refuse to leave the office, Mr Naidu did call the police. He told the police that he had an employee who has been dismissed and was refusing to leave the premises. The police told him that they were busy and that they would be there in an hour. The Claimant said that she would also call the police and Mr Harrison.
92. The Claimant called Mr Harrison and said: *'if you want me to leave your Company, I will leave'*. Mr Harrison confirmed that he did. He said: *'I want you to leave my Company'*. The Claimant accepted that instruction and packed up her things and left the building off her own accord. Mr Naidu confirmed in the hearing that he followed the Claimant down the stairs to make sure that she had gone. When she got home the Claimant called the police and informed them of what had happened. The police told her that it was not a matter for them.
93. Later that day the Claimant emailed Richard Rule, the Operations Director who had not been involved in her work and had not been her line manager, to ask if he would be able to issue her with a reference.

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94. Also, on 29 January, the Claimant emailed Mr Harrison suggesting that she had been asked to leave the business because she had referred to 'Jesus' name' and that she would 'boldly continue to do so'. There was no allegation in the letter of suspension or in the letter instructing Mr Naidu to dismiss the Claimant, of her reference to Jesus as an act of misconduct.
95. On 30 January, the Claimant sent another email to Mr Harrison headed 'what have I done wrong'. In it she stated that she did not know why Ms Westover held so many meetings that week and complained about the cost to the business of her doing so. She referred to a discriminatory attitude that still existed and complained that if she had been Jane Hardman or Hylton, the Respondent's Finance Directors who were no longer employed, she did not think that Ben Naidu or Natasha Westover would have treated them as they treated her. She alleged that the way she was treated was 'not professionally ethical'.
96. By letter dated 3 February the Claimant's dismissal was confirmed. In relation to the reasons for termination of the Claimant's contract of employment, Mr Harrison stated the following:
- 'As for the reasons for termination, these relate to your management style, which a number of employees had found to be abrasive and upsetting. As you know, we have tried to help you to improve and even brought in an external mentor to assist you, but we did not see any change. Several employees claimed that your interactions with them were causing them stress and your management style was having a very negative impact on staff morale. We initially decided that we would investigate more formally before taking action and felt it would be easier to do that if you were to take a paid leave of absence for a few days, your refusal of that suggestion proved to be the final straw and I decided it would be better if we parted company.'*
97. The letter set out the arrangements for the Claimant's final payments. Mr Harrison also responded to the Claimant's email to Mr Rule asking whether he could provide her with a reference as he stated:
- 'We are agreeable to providing you with a standard form reference setting out your job titled and dates of employment. Please let us know where this should be sent.'*
98. On 5 February the Claimant wrote to Mr Harrison to appeal against her dismissal. She stated that her dismissal had been a shock, unexpected and stressful for her. She contended that her dismissal had been wrongfully and unfairly handled. The Claimant was adamant that she had done nothing wrong and set out the events of the 28 and 29 January, from her perspective. In the letter she set out the issues that she believed could be included within the label of her 'managerial skills' as Mr Harrison called it, in the letter of dismissal. The Claimant referred to the queries Ms Sawyer made about her work and stated that she would always avoid questions that she considered to be repetitive and avoided questions that she believed related to tasks that she thought Ms Sawyer could handle herself, 'with little or no assistance'. In saying so we find that this was confirmation that the did not usually respond to queries from staff or requests for help and

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explanation. The Claimant set out a lot of her work in her letter and referred to her professionalism. She also asked for a copy of the Respondent's policies. She did not refer to discrimination in the letter.

99. The Claimant also did not say in this letter that she wanted a reference now.
100. Stewart Niblock, non-executive director was asked to conduct the Claimant's appeal against dismissal. Mr Niblock only attended the Respondent's offices on approximately 2 days a month, on varying days. He also had regular telephone and email contact with the Directors between visits. Prior to conducting the appeal, his interactions with the Claimant were minimal and usually when she attended Board meetings to present financial data. He was also aware that there had been concerns about the Claimant's management style from November 2019, but he had not been involved in anything to do with the Claimant's line management or work.
101. Mr Niblock considered the Claimant's letter of appeal and concluded that she was appealing on three grounds, as follows:
- (a) That her dismissal was wrongful and unfairly handled;*
  - (b) That on 29 January, she argued with Ben Naidu and refused to do what he instructed because she felt that Stephen Harrison could email her and was told only that the proposed investigation concerned her management style;*
  - (c) That (despite claiming to be unaware of the issues underpinning the proposed investigation) she disputed various criticism of her 'managerial skills' and could point to tasks and processes that she had put in place.*
102. The Claimant made no complaint of discrimination in her appeal and did not refer to being asked to leave management meetings or that Mr Naidu shouted at and bullied her or that she had been dismissed without being given a reason why.
103. Mr Niblock discussed the grounds of appeal with Ms Finch, Mr Naidu and Mr Harrison. He also asked that any statements/evidence/complaints about the Claimant's behaviour on the day of her dismissal and in the weeks and months leading up to it to be documented and given to him so that he could consider them as part of the appeal process.
104. Samantha Finch collated statements from many members of staff including Carly Mackenzie, Chloe Foley, Ben Naidu and Natasha Westover. Those were sent to Mr Niblock on 10 February. We had copies of all those statements in the hearing bundle and confirm that they email addresses that they were sent from show them to be statements prepared by the senders in response to Ms Finch's email asking people to write down what they had already told her so that she had it for the record.
105. Ms Finch wrote to the Claimant on 11 February, on behalf of the Respondent, to invite her to an appeal hearing on 19 February. She was informed that she was entitled to bring a trade union representative or a fellow employee with her to the hearing. She was also informed that Mr Niblock would conduct the hearing. The Claimant was advised to bring any

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documents that she would want the Respondent to consider. Lastly, she was informed that the decision of the appeal hearing would be final and that there would be no further right of review. The Claimant was given a contact number for Ms Finch in case she had any queries.

106. On 18 February, the Claimant sent a further written submission to Mr Niblock in support of her appeal. In this document she provided details of her work in the business. Mr Niblock was not aware of this until the following day.
107. The Claimant attended the appeal hearing unaccompanied. Mr Niblock was accompanied by Richard Rule, the Respondent's Operations Director. Mr Niblock informed the Claimant that this was her opportunity to explain her grounds of appeal and to give a full account of everything. He would then go away and consider everything and make a recommendation to Mr Harrison and the Board.
108. The Claimant's live evidence was that she was in a deep depression at the appeal hearing. It is unlikely that Mr Niblock or Mr Rule were aware of that at the time. In his live evidence, Mr Niblock confirmed that there were no complaints about the technical aspects of the Claimant's work or about process or her ability to get the accounts out on time. The issues had been with her management style. There was significant evidence in the statements that showed there to have been issues with her management style. Mr Niblock confirmed that he had not accepted the evidence at face value but had challenged people in the team on their perspective. He confirmed that in the appeal hearing the Claimant stated that Mr Harrison had referred to her as having a '*military*' style of management and that this would not have been suitable in this business. She accepted that her style '*may have been too direct*'. She also confirmed that there had been meetings with Carly and Chloe where she felt that they lacked the knowledge about accounts that they should have had. She accepted that she had cancelled meetings but said that this was to focus on more important priorities. The Claimant also accepted holding her hand up to Carly during the meeting as both Carly and Chloe had been talking over each other and she '*did not know how else she could have done it*'.
109. In the Tribunal hearing, Mr Niblock confirmed that he had recommended Ms Westover to assist the business in making changes to the finance team and to make it more collegiate. He confirmed that as far as he knew, Ms Westover's brief was to help the team work well with the Claimant, to coach and mentor the Claimant in developing her management style and to foster better communications within the team. The Claimant wrote to Mr Niblock on 19 February, after the appeal hearing, to add further points to her appeal.
110. In making his decision on the Claimant's appeal, Mr Niblock considered the events of the 27 – 29 January 2020, as he heard it from Mr Naidu, the Claimant and Ms Finch. He also considered the emails from the finance team and their recounting of the way the Claimant worked with them. He looked not only at the events leading up to her dismissal but also looked at the Claimant's management style in general and her ability to lead the finance team forward.

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111. Mr Niblock produced a report outlining his conclusions on the Claimant's appeal. The report was in the bundle at page 324. The Board considered Mr Niblock's report on 25 February and its conclusions were accepted and approved.
112. Mr Niblock's decision was set out in a letter to the Claimant dated 26 February 2020. He confirmed in the letter that the Claimant's appeal had failed and the decision to dismiss her was confirmed. This was for the following reasons:

*During the hearing it was explained to you that the termination of your contract was regarding your management style and its impact on others rather than your technical ability in the Financial Accountant role. When you and SF (the name was redacted but the first initial was S) discussed your management behaviours specifically in the meetings in the last few days prior to your dismissal, you did not feel that you had behaved inappropriately and explained that hand gestures or talking directly to people were not unusual when you worked in France and Nigeria previously to Harrison Wipes.*

*SF explained the long-term culture and family nature of Harrison Wipes, and you did accept that in hindsight, some of your management style may not have been appropriate in the situations.*

*Taking everything into consideration, we feel that it is clear that you are technically competent in the Financial Accounting role, however, there were legitimate concerns around your management style, people skills from the early days of your employment, and there is evidence to show that you had little empathy for your team and you was mainly process driven. In addition, your communication with the team and with other colleagues at Harrison Wipes, except for Stephen Harrison, could be seen as abrupt, condescending and on occasion abrasive, as could your body language. This had a significant impact on the team to the point where several colleagues felt that they could not continue to work in that environment.*

*There is feedback to show that Harrison Wipes did try to support you with your management style, feedback, support and guidance was provided to you to help overcome these difficulties. These actions were (but not limited to) written and oral feedback from Stephen Harrison and the company employed an external consultant, NW, to coach and support you, and help implement affective team meetings and improve team communication.*

*There is significant evidence that your behaviour and attitude during your last few days at Harrison Wipes employment was completely unacceptable, in particular towards your team, HR, Ben Naidu who were acting under the direct instruction of Stephen Harrison.*

*As a result of this hearing, Mr Niblock felt that your dismissal was the correct decision made and it was in line with company procedure and completely legitimate.*

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113. The letter also informed the Claimant that the decision was final, with no further right of appeal.
114. Although the Claimant alleges discrimination against the Respondent in this litigation, on 28 February 2020 she emailed Mr Harrison to say that she had been '*nervous and destabilised*' at the time of the termination of her contract but that she was *now 'getting on top of it'*. She asked whether he would change his mind as she was still happy to work for his company.
115. The Claimant continued to correspond with Mr Harrison, asking to be given back her job. There were copies of emails dated 13 and 22 July, and 3 August in the Respondents' and the Claimant's bundles.
116. The Claimant submitted that she was unwell after her dismissal and that she was in shock. She also submitted that she took advice from solicitors and that she relied on her solicitor's advice for completion of the ET1 and its submission. She went to see her solicitors in March. We were not provided with the dates on which the Claimant went to see her solicitor or the dates on which she approved the contents of her ET1 or agreed that the claim should now be issued on her behalf. The Claimant relied on her solicitors and was not aware that the claim had been issued outside of the time limit until she attended the preliminary hearing in November.
117. During lockdown she was on medication, possibly for depression from her GP. We say possibly because we did not have documentary evidence of this in the hearing. We had a fit note dated 29 October – 29 November 2020, which referred to '*low mood and under treatment*'. There was also a letter from her GP dated 3 November 2020, which stated that since January 2020, the Claimant lost her job causing her to experience anxiety, low mood and stresses making her feel unwell. The Claimant's GP, Dr Bhat, confirmed that she was being treated by the surgery. The Claimant's live evidence was that she had registered online for therapy but due to the high demand for this service at the time, so was not able to pursue that at the time. She took herbal medicines to support her in coping with her mental health. The Claimant told us that she took a strong dose of Magnesium to support her and that she stopped taking medication for her mental health in November 2021.
118. The Claimant's began the Early Conciliation process on 17 April 2020. The ACAS Certificate was issued on 2 May 2020. The Claimant told us that she understood from her solicitors that the ACAS Certificate had been issued prematurely as they were still in the process of conciliation. The Claimant's first ET1 claim form was presented to the Employment Tribunal on 31 July 2020 by the solicitors whom she first contacted in March 2020. In it the Claimant complained of unfair dismissal, race discrimination, religion and belief discrimination and wrongful dismissal. That claim was against two Respondents but as the Claimant had not obtained an ACAS EC Certificate for the Second Respondent, the claim against him was rejected. The Claimant's new legal representatives applied on 15 November to amend the first claim to include further complaints of wrongful dismissal, automatically unfair dismissal, breach of the ACAS Code, race discrimination, direct/indirect and harassment related to race. At a preliminary hearing on 20 November, EJ Gardiner refused the application to amend the first claim



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and only allowed a further complaint of direct race discrimination in relation to failure to respond to a reference request made on 29 January 2020, to be added to it.

119. The complaint of unfair dismissal was struck out because the Claimant had not been employed by the Respondent for the required period of two years at the time of her dismissal. The complaints of wrongful dismissal and religion and belief discrimination were withdrawn and dismissed by a judgment dated 23 November 2020.
120. The second claim against both Respondents was issued in the Employment Tribunal on 16 November 2020. The contents were materially identical to the first claim and it included a complaint against the Second Respondent that had not been accepted in the first claim. Following a preliminary hearing on 17 May 2021, the second claim was struck out by EJ Russell as it had been issued out of time. This was set out in a judgment dated 8 July 2021. By a separate judgment dated 8 July 2021, EJ Russell ordered the Claimant to pay a deposit of £10 each in respect of two complaints of direct race discrimination: (1) that the Claimant was required to leave management meetings, and (2) dismissal without being given any reason on 29 January 2020. The Claimant's appeal to the EAT against EJ Russell's judgment was dismissed by HHJ Barklem on 23 September 2021. The Claimant failed to pay the deposit and those two allegations were not pursued as allegations of race discrimination in the hearing.
121. On 26 October 2020, the Respondent received a request from Verifile for a reference for the Claimant. The request was for the Respondent to supply information by completing a form giving details of the Claimant's role, employment dates, salary, reason for leaving, whether the Respondent would ever re-employ her and any comments on her performance. Ms Finch responded on 28 October to ask Verifile for signed confirmation from the Claimant that she had authorised them to approach the Respondent for a reference. She also asked who was Verifile's client. The signed authority from the Claimant was sent to the Respondent as an attachment to an email on 2 November. The Respondent supplied a factual reference for the Claimant on the same day, 2 November 2020, which confirmed her job title and her dates of employment. This reference was written in exactly the terms that Mr Harrison promised the Claimant, in the dismissal letter dated 3 February.
122. The Respondent had no other reference requests for the Claimant.

## **Law**

### *Time limits*

123. We find that section 123 (1) (a) and (b) of the Equality Act 2010 states as follows:

'Proceedings on a complaint within section 120 may not be brought after the end of –

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- (a) A 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 things just and equitable.

124. 123 (3) also states that;

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) Failure to do something is to be treated as occurring when the person in question decided on it;

125. The Claimant was dismissed on 3 February 2020. The date of the last act complained of is 29 January 2020. The ACAS Early Conciliation certificate was 2 May 2020. She issued her first ET1 claim form on 31 July 2020. The claim should have been issued on or before 2 June 2020. It is therefore out of time. As the claim is out of time, the Tribunal has to consider whether it would use its discretion to extend time on a just and equitable basis.

126. If the Tribunal uses its discretion to extend time, the Tribunal will have jurisdiction to consider the Claimant's complaints.

127. In considering an application to extend time, the Tribunal has to assess the balance of prejudice between the parties. The claimant bears the burden of persuading the tribunal that it is just and equitable to extend time. There is no presumption that time will be extended. In doing so, the Tribunal will take into account anything which it judges to be relevant, including the strength of the case. This is the exercise of a wide, general discretion, which can include consideration of the time the claimant first became aware of the right to present a claim, where to present it, her health and any other matter going on in her life at the time, that she has told us about. There is no requirement to go through all the matters listed in section 33 of the Limitation Act 1980, provided no significant factor is left out of account. This means that the Tribunal will consider the length of delay, the reason given for it, the effect on the cogency of the evidence, co-operation of the Respondent and the steps taken once the claimant became aware that she had a cause of action.

*Direct race discrimination*

128. The Claimant's complaint was of discrimination because of the protected characteristic of race. The Claimant alleged that the Respondent treated her less favourably than others who did not have that protected characteristic. The Claimant described herself as a black African person of Nigerian origin.

129. A complaint of less favourable treatment on the grounds of race is a complaint of direct race discrimination. Sections 13 of the Equality Act 2010

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(the Act) prohibits direct discrimination. Section 9 of the Act defines race as including colour, nationality, ethnic or national origins. The burden of proving the discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the “shifting burden of proof” seeks to address this. This concept is discussed in a number of cases and is set out in section 136 of the Equality Act which states that *‘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. If A is able to show that it did not contravene the provision then this would not apply.’*

130. There is a substantial volume of case law which seeks to provide guidance on the concept of the “shifting burden of proof” as was set out in the Race Relations Act 1976 which preceded this section. It was dealt with most authoritatively in the case of *Igen v Wong [2005] IRLR* and confirmed in subsequent cases including *Madarassay v Nomura International Plc [2007] IRLR 246*.
131. In the case of *Laing v Manchester City Council [2006] ICR 1519* tribunals were cautioned against taking a mechanistic approach to the proof of discrimination by reference to the Race Relations Act 1976 but which would also apply to the Equality Act, in following the guidance set out above. In essence, the complainant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the complainant. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a complainant has made a prima facie case of discrimination (see also *Madarassay v Nomura International Plc [2007] IRLR 246*).
132. As Elias J stated in *Laing* in some cases it is still appropriate to go right to the heart of the question of whether or not race or ethnic origin was the reason for the treatment.

*“The focus of the tribunal’s analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, ‘there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race’. Whilst ....it will usually be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error in law to fail to do so.”*

133. In a complaint of direct race discrimination the employee can use an actual or hypothetical comparator and in this case the Claimant referred to a hypothetical comparator when she said that it was her belief that if she were

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white, Carly and Chloe would not have complained about her and Mr Naidu and Ms Finch would not have treated her in the way that she was treated. It was her main submission that the Respondent treated her unfairly in comparison to a hypothetical white person and that they did so because of her race and ethnic origin.

134. In every case the tribunal has to determine the reason why the claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport [1999] IRLR 572* “this is the crucial question”. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.
135. In assessing the facts in this case the tribunal is also aware of the comments made in the case of *Bahl v The Law Society [2003] IRLR 640* that simply showing that conduct is unreasonable and unfair would not, by itself, be enough to trigger the reversal of the burden of proof. Unreasonable conduct is not always discriminatory whereas discriminatory conduct is always unreasonable. It was also stated in the case of *Griffiths-Henry v Network Rail Infrastructure Ltd [2006] IRLR 865* that an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He only has to establish that the true reason was not discriminatory. Obviously, if unreasonable conduct occurs alongside other factors which suggest that there is or might be discrimination, then the tribunal should find that the claimant had made a prima facie case and shift the burden on to the Respondent to show that its treatment of the claimant had nothing to do with the claimant’s race and in so doing apply the burden of proof principle as set out above.

*Harassment*

136. The law on harassment is contained in section 27 Equality Act 2010:

“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 purposes or effect of
  - (i) violating B’s dignity, or
  - (j) creating an intimidating, hostile, degrading, humiliating or offensive environment for B”.

A also harasses B if –

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).

137. Section 27(4) states that in deciding whether conduct has the effect referred to in subsection (1)(b) set out above, 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.

138. The Tribunal was aware of the case of *Land Registry v Grant* [2011] EWCA Civ. 769 in which Elias LJ focused on the words “intimidating, hostile, degrading, humiliating or offensive” and observed that:

*“Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caused by the concept of harassment”.*

139. In the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 the EAT stated that the conduct that is treated as violating a complainant’s dignity is not so merely because he thinks it does. It must be conduct which could reasonably be considered as having that effect. The Tribunal is obliged to take the complainant’s perspective into account in making that assessment but must also consider the relevance of the intention of the alleged harasser in determining whether the conduct could reasonably be considered to violate a complainant’s dignity.

140. It is also important where the language used by the alleged harasser is relied upon, to assess the words used in the context in which the use occurred.

141. The Respondents disputed that they had harassed the Claimant at all.

### **Applying law to facts**

142. The Tribunal will now apply the above law to the facts set out above, in relation to the agreed list of issues which were set out at pages 218 – 220 and reproduced in the Respondent’s submissions.

#### *Time*

143. The claim should have been issued before 2 June 2020. It was issued on 31 July 2020, which was 59 days out of time.

#### *Is it just and equitable to extend time in this case?*

144. It is this Tribunal’s judgment that the Claimant was likely to have been shocked by her dismissal on 29 January. She had not expected to be dismissed that day. We will come on to discuss the reason for dismissal and the events leading up to it when we look at the allegations below, but it is clear that the Claimant did not expect to be dismissed and so would have been in shock for some time thereafter. Such shock would have made it difficult for her to immediately seek advice from solicitors.

145. The Claimant sought advice from solicitors in March, but it is likely that her motive for doing so was to somehow get her job back. That is demonstrated by her correspondence with Mr Harrison at the end of January and up to August 2020 when, even after the claim was issued, she was still asking to be reinstated. This is also supported by her contention that the ACAS certificate was issued prematurely as she was still in discussion with the Respondent. The Claimant's sights were set on being reinstated rather than on litigation with the Respondent.
146. The Claimant was suffering from low mood between January to November 2020, which was confirmed by her evidence, the letter from the GP and the fit note. This was during the height of the coronavirus pandemic, when the nation was in the first lockdown and was an unsettling time for everyone. This would have been compounded for the Claimant as she was also unexpectedly unemployed. The Claimant's low mood had not stopped the Claimant from attending her appeal hearing or writing letters to Mr Niblock and Mr Harrison but she was unable to find a new job until November and it is likely to be around that time that she could be considered to have regained her mental stability and ability to function as before.
147. In balancing the prejudice between the parties, the Tribunal considered that the delay of 59 days did not affect the Respondent's ability to defend the proceedings and did not delay the progress of the claim. It is likely, although the Claimant did not accuse her solicitors of negligence, that they were of limited assistance to the Claimant in getting her claim in on time.
148. On the other hand, it is this Tribunal's judgment that the Claimant would be severely disadvantaged if time were not extended to allow us to consider her complaints as she has nowhere else to take them. It is also not clear that the delay was due to her being negligent or ignoring what had happened. She clearly wanted to either be re-instated or to have the Tribunal order her re-instatement or as a last resort, order the Respondent to pay her compensation. She never accepted the situation and it is likely that the delay is due to confusion between her and her legal representatives and her being in a low mood and finding it difficult to motivate herself to issue the claim.
149. In the circumstances, it is the Tribunal's judgment that it is just and equitable to extend time to allow us to consider the complaints in this claim.
150. The allegations that form the list of issues are at pages 219 – 220 in the Respondent's bundle of documents. The allegations of direct race discrimination and harassment are identical, but they will be considered separately as the law is different.

*Direct Race Discrimination*

151. There was a difference between the Claimant's ethnicity and race and the ethnicity and race of Mr Harrison, Mr Naidu, Ms Finch, Ms Mackenzie and Ms Foley. The Claimant was the only black person of Nigerian origin in the office, that we were told about. However, it is not sufficient to rely solely on a difference in race to prove discrimination. There must be something more.

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In this case, there was nothing more than the differences in ethnicity and race.

152. Mr Harrison appointed the Claimant to the post of Financial Accountant. He was aware of her race at the time. The Claimant was not a Director and did not have a seat on the Board as Ms Hardman, the last Finance Director, had before her. As a result, it is our judgment that the decision to ask the Claimant to leave the Board meetings after she presented her accounts and financial information, was not personal to her and was unrelated to her race. It was related to the post that she held within the company.
153. The Respondent's factory manager reported to the Board and then left the meetings, just as the Claimant's replacement who was employed by the Respondent following her dismissal.
154. The Claimant's allegation that the Respondent requiring her to leave management meetings was direct race discrimination was not pursued as an allegation of race discrimination in the hearing as the Claimant did not pay the deposit ordered by EJ Russell. The allegation fails and is dismissed. As it fails, it also does not support her case of race discrimination.
155. It is this Tribunal's judgment that the Claimant was technically able at her job as a Financial Accountant. However, the Claimant struggled with the soft skills required in her job. Those soft skills were to be able to get along with, successfully manage, work with and run a cohesive finance team. The Claimant was told on numerous occasions from September 2019 until her dismissal that the way in which she managed Carly and the finance team was not acceptable to the Respondent.
156. The Respondent held many meetings with the Claimant in September, October and November in which the issues with her management style were discussed. They were not all noted down but it is our judgment that they were discussed with her. Ms Westover increased her time in the office in December in order to provide the Claimant with support. There was documentary evidence for example, in the form of the emails to the Claimant from Ms Westover on 3 October, from Mr Harrison on 17 October, and from the Claimant to the team on 28 October confirming that she had been advised to conduct weekly finance meetings, listen to the team, and develop ways of taking them with her. The Respondent wanted the Claimant to work well with the team. There was no action taken against the Claimant, even after these issues surfaced. The Respondent was prepared to give her the time and support and space so that she could grow into the role and get better at managing Carly and the rest of the team.
157. The Claimant passed her probation, but it is clear from the documents referred to above and the live evidence that the Respondent was not totally happy with everything. Mr Harrison was clear that the Claimant was technically proficient with the accounts and she understood the changes that needed to be made to the way in which some of the accounts were presented and the financial information collated. It is likely that the Respondent considered that she would be able to pick up and improve her management skills as time went on. It is our judgment that the Respondent did more than just hope that she would pick up those skills. Once her

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permanent employment was confirmed - Mr Harrison made arrangements to ensure that she did pick up those skills. He agreed to Ms Westover increasing her time with the Respondent so that she could focus on the finance team. He authorised her to hold regular meetings with the Claimant to support her to achieve the skills necessary to work successfully with the accounts team, and in particular, with Carly and Chloe. Ms Westover discussed with the Claimant the need to have the weekly finance meetings, she talked to her about what she should do at those meetings. As early as 3 October, Ms Westover outlined the content of the weekly meetings and challenged the Claimant to set a monthly calendar for Carly and her work.

158. It is our judgment that the Respondent was clear about the tasks that it wanted the Claimant to perform in addition to the accounting. It was clear to the Claimant that she was required to manage Carly and in turn, the rest of the finance team. It was clear to her that she was required to listen to staff and to be polite to them. This was pointed out to her early in her employment and she agreed that she would listen.
159. The Claimant was spoken to about the way she interacted with staff. The minutes from the meeting on 2 October recorded that she was committed to act like she works for everyone and to approach every interaction with an attitude of listening.
160. The Claimant could have been in no doubt during her employment with the Respondent that her way of managing and speaking to junior staff was not acceptable to the Respondent and that the Respondent wanted her to change how she did so. It would also have been clear to her that even if when she worked in France and Nigeria, her way of interacting with junior staff was acceptable, the Respondent required her to adopt a different approach with Carly and Chloe. The Respondent is entitled to instruct its Financial Accountant in how it wants her to supervise and work with its more junior staff. She was asked on 2 October to work on her listening skills, on 3 October to conduct team meetings, which she subsequently cancelled, to listen to staff and to be aware of the impact on them of her speech and her actions. Her communication style was also discussed with her on 8, 15 and 22 November.
161. Even though in his email of 10 November to Mr Niblock, Mr Harrison expressed doubts as to whether she would be able to lead the finance team and communicate with them effectively, he continued to work with her and support her to do so. No disciplinary action was taken against the Claimant even though the Respondent had serious concerns about her ability to do parts of her job.
162. It is therefore this Tribunal's judgment that at the beginning of 2020, the Claimant would have been aware of the issues with her management style. By then the issues had been discussed with her on many occasions and had been documented in emails to her.
163. It is also our judgment that at the time that Mr Harrison went on leave in January 2020, he had no intention of taking disciplinary action against the Claimant. He was allowing her the time to improve her communication with the junior staff and to put in place, with Ms Westover's assistance, the



strategies that would work to get the team working well together.

164. It is our judgment that the situation changed at the end of January 2020. The events of 24 – 29 January caused Mr Harrison to change his mind about continuing to employ the Claimant.
165. It is our judgment that the reason to terminate the Claimant's employment was because of the Claimant's conduct at the end of January, particularly on 28 and 29 January 2020, together with the complaints that the Respondent already had about how she interacted with and spoke to junior staff in meetings and in the office.
166. The Tribunal's judgment is that there were non-discriminatory reasons for the Respondent's decision to suspend the Claimant on 28 January and when she refused to leave the office and refused to accept the suspension. There were non-discriminatory reasons to change that decision on 29 January and make a new decision to terminate her contract of employment.
167. The Respondent had complaints from Mrs MacKenzie, Ms Foley and Ms Sawyer on 22, 24 and 27 January 2020. Those complaints are set out in the findings above and were made to Ms Finch and Mr Naidu. Mr Naidu told Mr Harrison about some of them. The Respondent made no judgment on those matters but when staff who had been employed for a long time started talking about leaving, the Respondent felt that it should take the complaints seriously and conduct an investigation.
168. When the complaints were made to Mr Naidu on 27 January, he did not automatically agree with them and decide that they were well-founded. Instead, as he did not work with this team, he decided to speak to the Claimant to get her explanation. Although the Claimant denied that there was a communication issue between her and the team, it was still open to the Respondent to take the complaints seriously and investigate them. As the employer, the Respondent has to do all it can to create a safe, harmonious working environment for all its employees, including junior members of staff.
169. Mr Naidu had the authority to take charge of this matter on the Respondent's behalf, while Mr Harrison was away. It is our judgment that he sought expert advice on handling the complaints that were being brought to him in January, by talking to Ms Finch, the Respondent's HR manager and by speaking to Ms Westover, who had been brought in to the business to help the finance team become more cohesive.
170. There is no evidence that the Claimant's race was a factor in the way in which Mr Naidu treated the Claimant. At every step between 22 – 29 January, he spoke to Mr Harrison and sought advice from Ms Finch and Ms Westover. He also discussed the issues with the Claimant before taking any action. Firstly, the Claimant refused to accept the offer of 3 days paid leave so that the Respondent could investigate the complaints from the junior staff. The Claimant refused and went to her desk to continue to work.
171. The Claimant did not have the authority to ignore the instructions from a Director. The Claimant asked for the Respondent to put their instructions

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in writing but when on the following day, she was given a letter of suspension, she refused to take it and refused to leave the office. Even if she did not agree that she had done anything wrong, it is not clear why she resolutely refused to leave the office and accept that the Respondent simply wanted to conduct an investigation into the complaints made by junior staff about how she spoke to and treated them.

172. It is our judgment that the Respondent had every intention of conducting a full investigation into the matters raised by the junior staff and that the Claimant would have been given every opportunity to defend herself against the allegations and explain why she chose to manage Carly and work with Chloe and Paula in the way that she did. The Respondent invested a lot of time between the start of her fixed term appointment and January 2020, in supporting the Claimant to manage the team better improve her relationship with junior staff. It is likely that it would have continued to support her.
173. The situation changed when the Claimant refused to accept the letter of suspension and refused to leave the office.
174. It is this Tribunal's judgment that the Respondent made the decision to terminate the Claimant's employment because she refused to accept the letter of suspension and refused to leave the office when asked to do so on 29 January.
175. The team were threatening to resign. The Respondent took a decision to suspend the Claimant rather than the team. There are no facts from which we could infer that the decision to do so was because of her race or ethnic origin or because she was black. The Tribunal is satisfied that the reason given by the Respondent is a genuine one and did not disclose either conscious or unconscious race discrimination.
176. The Respondent chose to suspend the Claimant and she defied Mr Naidu and Mr Harrison by refusing to leave the office when told that she was suspended. Her suspension was a reasonable management decision in light of the complaints that the Respondent had of the way in which she spoke to members of staff in the days leading up to 27 January. The Claimant admitted in the appeal hearing that she was too direct and that her style of management had been described as militaristic. The Respondent is entitled to decide that it did not want its finance team to be spoken to in such a direct fashion and to be treated as though they are in the military. The Respondent's decision to treat such complaints seriously and to propose to conduct an investigation into whether this was true and how to address it, if it was found to be true, was not in any way related to or because of the Claimant's race or colour or ethnic origin.
177. The Claimant's dismissal was confirmed on appeal by Mr Niblock. By the time of the appeal, the Respondent had conducted the investigation and Ms Finch sent him all the statements that were sent to her by members of staff. They demonstrate that the Claimant's style of management was not suitable to the Respondent. There are no facts from which the Tribunal could infer that the complaints made by Carly, Chloe and Paula were done because of or related to the Claimant's race. It is this Tribunal's judgment that if the Claimant had been white and spoke to the staff in the way that she had and

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acted in the same way in meetings and spoken to staff in a dismissive or aggressive tone, they would have made similar complaints to Mr Harrison and in his absence, to Mr Naidu.

178. In addition to the way she spoke to staff, the Claimant cancelled the finance team meetings. She did not deny this in the hearing or in the appeal against dismissal hearing. It was her belief that those meetings were not necessary. She had been told to conduct regular meetings and even told what to do in those meetings. She chose not to follow that advice and so opportunities to create a more cohesive team were missed.
179. It is our judgment that the Claimant has failed to prove any facts from which the Tribunal could infer that her dismissal was because of her race or her ethnic origin or her colour. The Claimant's employment was terminated because she refused to accept the suspension and refused to follow reasonable management instructions and leave the office. The Claimant was suspended because of escalating complaints from junior staff which the Respondent wanted to investigate and because the Respondent wanted her out of the office while it did so. She refused to accept the Respondent's right to make that decision and insisted on continuing to work. This is what caused the situation to escalate to her dismissal.
180. The Claimant was not dismissed because she used the word '*Jesus*'.
181. Mr Niblock's decision to confirm her dismissal was based on the statements that Ms Finch gathered and sent to him. The Claimant was given every opportunity to put her case at the appeal hearing and to explain what happened, from her perspective. In the appeal meeting she showed some self-reflection as she admitted that she could be too direct in her speech and that she had a militaristic style of management. The Respondent concluded from all the evidence that the Claimant's management style was not what the Respondent wanted from her. Her management behaviours in the last few days of January, including her putting up her hand to Carly to stop her from speaking in a meeting, were not what the Respondent wanted from its Financial Accountant or anyone else.
182. It is our judgment that the Respondent had legitimate concerns about the Claimant's people management skills from the early days of her employment and that those came to a head in the last few days of January. That coupled with the Claimant's refusal to accept her suspension led to the decision to terminate her contract of employment.
183. It is also our judgment that it is unlikely that the Claimant believed that she had been subject to race discrimination at work, which is why she continued to write to the Respondent asking to be reinstated.
184. It is our judgment that the Claimant was told the reason for her dismissal. This was set out in letter of dismissal on 29 January. It was also set out in the letter notifying her of the outcome of the appeal hearing. The Claimant has refused to accept that there was anything wrong with her management style but it is our judgment that she was well aware of the Respondent's opinion of her management style and that this was the reason for her dismissal in addition to her conduct on 29 January 2020.

185. The Claimant did not pursue the allegation that the Respondent had not told her the reason for dismissal. This was the other allegation for which EJ Russell had made a deposit order, which the Claimant did not pay. The allegation is therefore not an allegation of race discrimination that we have to consider.
186. The Claimant has failed to prove any facts from which the Tribunal can infer that she was treated less favourably than a white person would have been in the same position, with the same conduct. She had failed to prove any facts from which the Tribunal can infer that her treatment was because of her race, her ethnic origin or her colour. On 28 January, the Respondent tried to suspend the Claimant and she was eventually dismissed on 29 January, because of her conduct.
187. The complaint of direct race discrimination fails and is dismissed.

Harassment

188. The Claimant was dismissed on 29 January 2020. That was unwanted conduct as she did not want to be dismissed or for her employment to be terminated.
189. It is this Tribunal's judgment that the Respondent did not treat the Claimant in a way that violated her dignity or created a hostile or intimidating environment for her. The Respondent asked her to take 3 days off because of the conflicts in the office, the complaints about how she spoke to and interacted with the finance team and because the Respondent wanted to investigate those allegations.
190. The Respondent's action in meeting with her in a room and discreetly asking her to take the three days off did not violate her dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her.
191. The Respondent then had to take a different decision as the Claimant refused to go home. She then refused the letter of suspension which was given to her discreetly. She refused to speak to Mr Harrison and refused to go into the room to speak to Mr Naidu so that Mr Naidu and Ms Finch had to come out to the main office to speak to her. The decision to clear the team from the office was to give the Claimant some privacy. Mr Naidu and Ms Finch did not conduct themselves in a manner that would violate the Claimant's dignity or to create a hostile, intimidating or humiliating environment for her.
192. It is this Tribunal's judgment that Mr Naidu's act of following the Claimant downstairs or of calling the police when she refused to leave the building after being asked to do so and after being given the letter from Mr Harrison; were not acts of harassment. Mr Naidu had got to a point where the Claimant had left him little choice.
193. The Claimant refused to follow all reasonable management instructions and only left the office when she had a direct conversation with Mr Harrison and only after he told her to leave. She did not accept the letters that she had

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been given and she refused to accept Mr Naidu's authority even though she would have been aware that he was a director in the business.

194. In the circumstances, it is this Tribunal's judgment that the Respondent's actions through Mr Naidu of dismissing the Claimant and of calling the police when she refused to leave the building did not have the purpose of harassment. It was not reasonable for them to have had the effect or violating the Claimant's dignity or creating a hostile environment for her when she chose not to do as she had been requested and leave the office.
195. In the circumstances, it is this Tribunal's judgment that the complaint of harassment fails and is dismissed.
196. The Respondent provided a written reference to the only request it received about the Claimant.
197. The Claimant's email of 29 January was to the Operations Director informing him that she would like a reference. Mr Rule was not the Claimant's line manager and he did not know her work in Finance. Mr Harrison responded on 3 February to confirm that the Respondent would provide the Claimant with a standard form reference. Her request was therefore accepted by the Respondent. She was asked to let the Respondent know where to send it. She did not respond to ask for a reference at that time. It was reasonable for the Respondent to conclude that she would get a prospective employer or agency to write to the Respondent when she needed a reference. That is what happened.
198. The reference request was received in October from an agency. Once the Respondent confirmed that this was a genuine request, it duly provided a written reference for the Claimant, as promised. The Respondent did not refuse to provide the Claimant with a reference.
199. The Claimant did not make it clear that she wanted Mr Rule to provide her with a reference in response to her email on 29 January. Even if that was what she expected, there is no facts from which we can infer that his failure to provide a reference was because of the Claimant's race, ethnic origin or skin colour.
200. The Claimant had no complaint about the reference that the Respondent provided to Verifile and it is our judgment that it was accurate and in keeping with what Mr Harrison promised in his letter of 3 February that the Respondent would do.
201. Any complaint of race discrimination in connection with the reference fails and is dismissed.
202. The Claimant's claims fail and are dismissed.

**Employment Judge Jones  
Date: 13 March 2023**