



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE K ANDREWS
MEMBERS: Ms N Christofi
Mr W Dixon

BETWEEN:

Ms S Ali Claimant

and

Lifeways Community Care Ltd Respondent

ON: 30 January – 3 February 2023

Appearances:

For the Claimant: In person
For the Respondent: Mr J Scott-Joynt, Counsel

**REASONS FOR THE JUDGMENT
SENT TO THE PARTIES ON 9 FEBRUARY 2023
provided at the request of the claimant**

1. In this matter the claimant complains that she was subjected to race and religious discrimination. The issues arising in those claims were identified at two preliminary hearings and are set out in the appendix to this Judgment.

Preliminary Matters

2. The claimant made a covert recording of her telephone conversation with Mr Armitage, a client of the respondent, that she wished to be allowed into evidence. This was resisted by the representative.
3. Having heard submissions from both parties the Tribunal decided, taking into account the overriding objective and having weighed up the respective balance of prejudice between the claimant and the respondent, to allow the recording into evidence notwithstanding its late disclosure. Consequently we listened to an extract of the recording (minutes 13 to 17) and read the agreed transcript of the whole conversation.

4. A witness order had previously been issued at the request of the claimant for Mr Matthews, her former line manager, to attend this hearing but he did not. This is a criminal offence and Mr Matthews's non-attendance has been referred to the Regional Employment Judge to decide whether to refer the issue to the police. The claimant confirmed that she wished to proceed with the hearing in the absence of Mr Matthews.

Evidence

5. For the respondent we heard from:
 - a. Mr E Mustafa, Head of Financial Operations;
 - b. Ms R Tarry, Group Cash and Credit Manager (previously Assistant Billing Manager); and
 - c. Ms J Wilson, Change Quality Training Manager.
6. We also heard from the claimant. The claimant indicated that she was disappointed that Mr Skip, the respondent's former General Manager, was not present to give evidence. She confirmed, however, that she had not applied for a witness order in respect of Mr Skip and that she had known for some months that he would not be called by the respondent. In the circumstances it was appropriate for the case to continue with the witness evidence available.
7. During the claimant's cross-examination of the respondent's witnesses, it was necessary for me to regularly give her guidance as to the relevance of the validity of the alleged complaints made about her. Unfortunately the claimant did not always take my guidance on board.
8. We had an agreed bundle of documents before us and both parties provided written submissions supplemented orally on the conclusion of the evidence.

Relevant Law

9. Section 13 of the Equality Act 2010 (the 2010 Act) provides that a person discriminates against another if, because of a protected characteristic, he treats that person less favourably than he treats or would treat others. Race (which includes colour, nationality and ethnic or national origins) and religious belief are protected characteristics.
10. To answer whether treatment was "because of" the protected characteristic requires the Tribunal to consider the reason why the claimant was treated as he/she was. The Equality and Human Rights Commission Code of Practice states that whilst the protected characteristic needs to be a cause of the less favourable treatment it does not need to be the only or even the main cause.
11. It is a matter for the Tribunal to determine what amounts to less favourable treatment interpreting it in a common sense way and based on what a reasonable person might find to be detrimental.
12. Section 26 of the 2010 Act provides that A harasses B if A engages in

unwanted conduct related to a relevant protected characteristic and that conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. When deciding whether conduct has had that effect subsection (4) requires us to take into account the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

13. Two authorities give helpful guidance in applying these provisions: *Richmond Pharmacology Ltd v Dhaliwal* (2009 IRLR 336) and *Land Registry v Grant* (2011 IRLR 748) where Elias LJ said:

“Where harassment results from the effect of the conduct, that effect must actually be achieved. However, the question whether conduct has had that adverse effect is an objective one – it must reasonably be considered to have that effect – although the victim's perception of the effect is a relevant factor for the tribunal to consider. In that regard, when assessing the effect of a remark, the context in which it is given is always highly material.

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

14. Section 136 of the 2010 Act sets out the position regarding the burden of proof in a discrimination claim:

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

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

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

15. It is generally recognised however that it is unusual for there to be clear evidence of discrimination and that the Tribunal should expect to consider matters in accordance with these provisions and the guidance set out in *Igen v Wong and others* ([2005] IRLR 258) confirmed by the Court of Appeal in *Madarassy v Nomura International plc* ([2007] IRLR 246). In the latter case it was also confirmed that a simple difference in protected characteristic and a difference in treatment is not enough in itself to shift the burden of proof; something more is needed (although that something more need not be a great deal – *Deman v CEHR* [2010] EWCA Civ 1279). It is important in assessing these matters that the totality of the evidence is considered.

16. Any complaint of discrimination may not be brought after the end of the period of three months starting with the date of the act complained of or such other period as the Tribunal thinks just and equitable (section 123 of the 2010 Act). To facilitate early conciliation by ACAS, that primary time limit may be extended by the period from the day after commencement of the process (day A) and issue of the conciliation certificate (day B).

17. The burden is on the claimant to convince the Tribunal that the discretion should be exercised (*Robertson v Bexley Community Centre* [2003] IRLR 434). In deciding whether to do so, the Tribunal has a very wide discretion and is entitled to consider anything it considers relevant subject to the principle that there are good public policy reasons why time limits appear in our legislation and they should be exercised strictly in employment cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so.
18. The best approach for a Tribunal in considering the exercise of this discretion is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular the length of, and the reasons for, the delay (*Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23).
19. Where there is a series of distinct acts of alleged discrimination the time limit begins to run when each act is completed, whereas if there is conduct extending over a period the time limit begins at the end of that period (section 123(3)(a)). (This is distinct from an act with continuing consequences where time runs from the date of the act as above.) Where an employer operates a discriminatory regime, rule, practice or principle then that will amount to an act extending over a period (*Barclays Bank plc v Kapur* [1991] ICR 208 HL). When deciding if there is such conduct, it is the substance of the complaints in question - as opposed to the existence of a policy or regime - that is relevant and whether they can be said to be part of one continuing act by the employer (*Hendricks v Commissioner of Police for the Metropolis* [2002] EWCA Civ 1686). In considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents (*Aziz v FDA* [2010] EWCA Civ 304, CA).

Findings of Fact

20. We acknowledge the difficulty of determining an allegation that amounts to one person's word against another and particularly so in a case like this where all the witnesses, to some extent, were unreliable and/or there were inconsistencies between their written and oral evidence. We do note the seemingly very genuine and sincere evidence given by the claimant. The respondent has sensibly confirmed that they do not argue that she has attempted to mislead the Tribunal i.e. they are not saying that she is a liar but rather that she is mistaken or misguided.
21. We also acknowledge the challenge faced by someone who has been abused in the way alleged, of proving it in the absence of an admission by the offending party (which is highly unlikely) or other witnesses to the behaviour. In those circumstances we look to any relevant surrounding events or contemporaneous documents as an indicator of which account is more likely to be accurate.
22. With those observations in mind, having assessed all the evidence, both oral and written, and the submissions made by the parties we find on the

balance of probabilities the following to be the relevant factual background to the claims made.

23. January 2019 to March 2020

24. The claimant commenced employment with Michael Page International Recruitment Ltd, an employment agency, as a temporary worker. On 24 January 2019 she was assigned to work for the respondent as a credit controller within their credit team. Her role was to collect overdue invoices from clients of the respondent, known as funders, principally local authorities & NHS functions. She was engaged for an initial agreed weekly number of hours. Those hours were increased by Ms Tarry - in response to the claimant's request as she had some financial pressure - to 37.5 hours per week. She was paid by the hour, working in an open plan office with approximately 30 people in three separate teams. Mr Skip worked on the floor above and Mr Miller, a Regional Business Support manager, in a separate building.
25. Her initial line manager was Mr Matthews although in a later reallocation of responsibilities in March 2020 Ms Tarry assumed responsibility for credit control and Mr Matthews was relocated to the queries team. Coincidentally the claimant and Ms Tarry had worked together for approximately a year at another organisation in approximately 2006/2007. When the claimant left that organisation Ms Tarry had organised a leaving collection for her.
26. The claimant says that when she first started working at the respondent Ms Tarry made two comments which she thinks are significant in explaining what she says later happened and the extent of influence that Ms Tarry had within the respondent. The first alleged comment was that Ms Tarry told the claimant that no one was recruited at the respondent without her agreement. Ms Tarry's evidence, which we accept, was that she had not said this and it was untrue in any event. She confirmed that she was part of the hiring management structure for her team but said that recruitment followed a proper process including interviews and she had no influence in any other teams. In that context we find that Ms Tarry did not make the comment or at least not in the way the claimant remembers.
27. The second alleged comment was that Ms Tarry had told the claimant that she wouldn't 'fuck you over'. Again she denied this and said that she would never have said that. In the absence of relevant context we find that it is possible Ms Tarry said something like this to the claimant but even if she did, we do not find that this indicated that Ms Tarry had significant influence within the respondent's organisation which is large and well-structured with clear lines of responsibility and hierarchy for internal decision making.
28. 6 May 2019 was the first day of Ramadan. The claimant attended work wearing a hijab. She had not worn it at work previously although it was well known that she was a Muslim and she regularly used the respondent's prayer room. A colleague in the billing team who reported to Ms Tarry, Ms Khanom, was also a Muslim and wore a hijab every day with no apparent

adverse comment from colleagues. The claimant says this had inspired her to also wear it during Ramadan.

29. The claimant says that she received a very negative reaction from Ms Tarry, Ms Wilson and another colleague, Ms Keen, to her hijab. Her evidence was that they exchanged looks across the office, displayed shock and worry on their faces 'as if to say not another one' and then turned away. The claimant did not wear a hijab to work again. The evidence of both Ms Tarry and Ms Wilson was that they did not react negatively or at all to the claimant wearing a hijab.
30. In assessing this allegation we have regard to the following relevant surrounding circumstances:
 - a. the lack of negative reaction to Ms Khanom - who was managed by Ms Tarry - wearing the hijab;
 - b. the claimant did not include a reference to this in her written grievance submitted after her termination although it clearly was discussed at her subsequent meeting with Mr Mustafa. He then spoke to Ms Khanom who confirmed that she had had no negative reaction to wearing the hijab;
 - c. the respondent offered a prayer room and Mr Mustafa - a senior manager - is Muslim. Whilst this would not prevent some 'rogue' employees acting in the way the claimant has described they do suggest that it is an environment where such behaviour would not be overlooked by senior management and it would not be impossible for an individual to complain about such treatment; and
 - d. the claimant had not previously worn a hijab and if she did see a reaction from Ms Tarry etc it could have been one of surprise.

Taking all these matters into account and having heard the witnesses' evidence on the issue, we conclude that Ms Tarry, Ms Wilson and Ms Keen did not react negatively to the claimant wearing a hijab on 6 May 2019.

31. The claimant accepts that nothing untoward happened in the rest of May 2019 but says that from June 2019 she started suffering 'micro-aggression' from Ms Tarry, Ms Wilson and Ms Keen. Specifically that they started regularly saying 'fuck off' when she approached them or they passed her workstation or returned a piece of work to her. She said this was often done in a sly, underhand way and under their breath.
32. The claimant referred to a specific occasion in June 2019 when she says Ms Tarry deliberately crossed from her desk in the far corner of the office passed the claimant's desk and started saying 'fuck off' repeatedly.
33. She also referred to a specific complaint about Ms Tarry on an evening in October 2019 when she said Ms Tarry was working at her own desk but then started saying 'fuck off' while she was there, repeated it as she walked across the office, said it louder when she was passing behind the claimant's desk and again when she sat down at Mr Matthews's desk next to the claimant. The claimant says that on this occasion she asked Ms Tarry what the problem was and she replied that she had computer problems. The

claimant says that she did not accept this explanation because there were so many other closer computers Ms Tarry could have used if that was the case. The claimant says she also told Ms Tarry on this occasion that she had been receiving aggressive behaviour but was not allowed to finish what she was saying as Ms Tarry immediately asked her whether it had been Ms Khanom who was the problem and that she would speak to her in the morning. The claimant then saw Ms Tarry speaking to Ms Khanom the next day.

34. Ms Tarry's evidence was that she denied saying 'fuck off' to or about the claimant. She accepted that if she had had issues with her computer it was more than likely she would have said 'for fuck's sake' or similar. Ms Tarry's oral evidence did vary from her written evidence to the extent that in one she said she could not remember an incident in October 2019 and in the other she said that she could. However her evidence was consistent that she did not behave in the way that the claimant alleged. She had no recollection of a conversation where the claimant made complaints about aggressive behaviour and said that there could have been all sorts of reasons why the claimant saw her meeting Ms Khanom, who was in her team.
35. As far as Ms Wilson was concerned, the claimant referred to a specific allegation where she had said good morning to her as she arrived at work and was putting her coat away and Ms Wilson replied by saying 'fuck off' in a singsong, high-pitched voice. Also that there had been an occasion in early 2020 when Ms Wilson had ran from the billing section behind the claimant's desk and said 'fuck off'. She had then gone into the operations office where the claimant heard Ms Tarry ask Ms Wilson 'who was that?' and Ms Wilson said the claimant. Ms Wilson denied this and said that to the contrary she had had a good relationship with the claimant and on several occasions they had walked together to the station after work. The claimant agreed that that had been the case prior to June 2019.
36. The claimant says that she also experienced Mr Skip, with whom she had no other dealings, swearing at her on three occasions between December 2019 and February 2020. She says that on each occasion when she passed or met Mr Skip he told her to 'fuck off' but he was polite to other colleagues.
37. We did not hear from Mr Skip (and he was not interviewed by Mr Mustafa in the subsequent investigation as he had by then left the respondent's employment) but Ms Wilson's evidence was that he was a polite, friendly and professional, interactive person. She said that she had never heard him speak inappropriately and if she had, she would have reported it. Ms Tarry's evidence was that Mr Skip was professional and friendly although she and he had not particularly got on. She also said that, unlike other senior management, she had never heard Mr Skip swear.
38. The final specific allegation regarding swearing is that in February 2020 the claimant had been speaking to a funder on the telephone in Urdu, their shared language, and that when Ms Tarry heard this she deliberately looked towards the claimant and said 'fuck off' but tried to make out that she was

saying this to Mr Harding who was sitting next to the claimant at the time. Ms Tarry denied this allegation and said that she did not recall ever hearing the claimant speak Urdu but she would not have had a problem with her doing so.

39. In assessing these allegations the other relevant evidence we have regard to is:

- a. there are several examples of email correspondence between the claimant and both Ms Tarry and Ms Wilson in 2020 that show a normal, friendly relationship between colleagues of the sort one would not expect to see if there had been a history of offensive behaviour the previous year. The claimant's explanation of this is that she was trying to build relationships and get on with people. We accept that that could be a logical explanation of her writing friendly emails to people who she says had been abusing her, however it seems less likely that those people who had been abusing her would write friendly, pleasant emails in reply;
- b. there were other examples of both Ms Tarry and Ms Wilson having a good relationship with the claimant (Ms Tarry's organisation of a leaving collection in their previous roles and Ms Wilson);
- c. the admission in particular by Ms Tarry that she would have sworn in the office but in response to frustrating events, seems entirely credible. Several of the examples of swearing relied upon by the claimant could easily be the type of swearing to express frustration that is typical in a busy office and would typically be muttered and/or under the breath which is how the claimant described it to be;
- d. the more overt swearing alleged by the claimant, in particular by Ms Wilson at the coat stand and Mr Skip, could not however be explained in that way. In particular with regard to Mr Skip, we do not find the claimant's allegations to be plausible. She had no previous relationship with him. Evidence at this hearing and also in the grievance investigation indicated that he was an entirely professional person. There seems to be absolutely no reason why he would have been swearing at the claimant (it is not alleged that he was involved in the hijab incident) and we are not persuaded by the claimant's argument that Ms Tarry had some sort of influence over him and instigated a conspiracy. We also find that the claimant, alleging in her oral evidence for the first time that Mr Miller had also told her to 'fuck off', undermines the credibility of her allegations. If she is correct then this would include five separate people in three different teams and in three different locations all telling her to fuck off for no apparent reason over a lengthy period of time. This is inherently implausible;
- e. the claimant did not complain about this supposed campaign of swearing at the time she says it happened. For the reasons set out above, this appears to be a respondent that was not inherently Islamophobic or racist. Even if the claimant, perhaps understandably, would not complain the first time somebody swore at her in such a way, it is inherently implausible that she would not

complain if it happened repeatedly, over a long period of time and by a number of people as she alleges;

- f. despite all this alleged behaviour being directed at the claimant - even if at the time she did not believe it to be because of her race or religion - she still very much wanted a permanent job at the respondent as is clear from her email exchanges with Ms Tarry in July 2020. Whilst recognising that economic pressures might force somebody to stay in a job which they are not enjoying because of colleagues' behaviour, the claimant expressed more than once how much she enjoyed the job, was happy working there and wanted to become permanent;
- g. after she had been terminated, the claimant raised a grievance (described below) in which she did make allegations of discrimination, particularly swearing, and being targeted in the way she has described in this hearing.

40. Taking all these matters into account we conclude that it is not more likely than not to be true that the claimant was sworn at on a number of occasions by different people as she has alleged. Overall her account of events is not plausible when considered against the wider factual background.

41. The claimant's bereavement

42. Sadly on 11 April 2020 the claimant's father passed away having contracted Covid 19. As an agency worker she had no entitlement to bereavement leave but nonetheless the respondent granted her four days' paid leave and indicated she could take further unpaid leave up to a total of 2 weeks.

43. On 24 July 2020 the claimant emailed Ms Tarry asking if she could be allowed to log off early that day as it was her father's birthday and she wished to visit his grave before sunset. Ms Tarry replied saying 'absolutely that's fine, I think that is a lovely idea.'

44. On 28 July 2020 the claimant had felt unable to work because of her bereavement. She says that she sent an email to Ms Tarry at 6am that morning stating that she was unable to work for this reason but had then received a telephone call from Ms Tarry at about noon asking her why she had not logged on. When the claimant referred to her email Ms Tarry said she had not received it and asked the claimant to work until 2pm. The claimant said she found it 'baffling' that Ms Tarry was not respecting what she was telling her. There was no copy in the bundle of any email from the claimant at 6am that day but Ms Tarry accepted that she asked the claimant to log on and did email the claimant the following day confirming her hours for the week which included just one hour on that day. In her reply we note that the claimant replied:

'No problem that's fine. Thanks again for your time it was good to chat. Have a good break, take care.'

This email is not indicative that the claimant felt that she had been treated badly by Ms Tarry on the previous day.

45. Ms Tarry also emailed Mr Mustafa regarding the claimant's hours that week in which she recorded that the claimant had contacted her on that day and advised that she felt she needed to take time off as she needed a break and that Ms Tarry had agreed certain hours for that week to assist the claimant and the respondent with regards to workload.
46. The claimant accepted in cross-examination that there had been several occasions when she had asked for time off and Ms Tarry had agreed without any reluctance. She did not accept, however, that this changed what she says she had endured from Ms Tarry.
47. Issues/Complaints from funders
48. The claimant had responsibility for a number of funders. One of those was Northumberland County Council with two other employees. The account was reallocated away from her and the claimant's oral evidence was she was told this at a meeting in March 2020 with Mr Mustafa, Mr Matthews and Mr Miller. Notwithstanding this there was quite a heated exchange of emails between the claimant and Ms Tarry in May 2020 where the claimant objected to the account being taken away from her, said that she had not been informed of this and that it was unfair.
49. The respondent's evidence - both written and oral - was inconsistent and, at times, confusing as to the reason for that removal, the extent of it, when it happened and to whom the account was given. Even the contemporaneous documents were not consistent. We are conscious, however, that these events coincided with the first lockdown due to Covid. Businesses were struggling to deal with very profound and significant changes to their ways of working. We also note that the exchange of emails referred to above in May 2020, did show that at least the core reasons for the account being reallocated were a client request in respect of a reconciliation and for fewer credit controllers to be contacting them.
50. In June 2020 there was an exchange of emails between the claimant and Ms Tarry with regard to another funder, JMA. The claimant brought a complaint by the funder about six months' worth of invoices being received in one go and repeated calls to Ms Tarry's attention. Ms Tarry spoke to the funder and resolved the issue but asked the claimant for further information which she provided. In the final email of that exchange the claimant seemed to acknowledge that she may have overlooked sending invoices to the funder on time and that her focus may have been on other priority accounts.
51. On 29 July 2020 in the email from Ms Tarry to Mr Mustafa referred to above in relation to the hours worked that week, Ms Tarry also referred to discussions that they had had regarding the claimant's request for a pay rise and a permanent job. She added, for his information although she had not mentioned it to the claimant, that complaints had been received in the region about the claimant and there had also been internal complaints from within the department about her.

52. On 31 July 2020 Mr Miller emailed Mr Mustafa, copying Ms Tarry, raising serious concerns about the claimant's handling of accounts for his region. He referred to a complaint from Sunderland CCG regarding her approach and said that he would be taking over all communications with that funder moving forward. He also referred to four other specific issues that he had concerns about that had arisen that week. He said that these were not isolated incidents and referred to his request several months previously that she no longer speak to Northumberland due to a complaint (apparently a reference to the occasion when the account was moved in March 2020). He referred to the tone of voice in her emails and that she was causing him and his team significant extra workload. He requested that she be removed from his ledger and said that she was significantly damaging relationships with funders.

53. Mr Miller emailed Mr Mustafa, copying Ms Tarry, again on 3 August 2020 saying that he had just finished a conversation with the senior commissioning manager for Sunderland and requested that the claimant

'be asked not to under any circumstances whatsoever, contact [them] ever again please.'

He then set out some specific aspects of what he described as an 'extremely worrying complaint' regarding her conduct including members of staff being brought to tears by the claimant.

54. Termination of assignment

55. Following receipt of these emails Ms Tarry spoke to Mr Miller to understand the complaints further and also with Mr Mustafa. She considered that the complaints were well-founded and in discussion with Mr Mustafa it was agreed that the claimant's assignment would be terminated.

56. In a telephone meeting on 4 August 2020 between Ms Tarry and the claimant (Ms Wilson attended as a notetaker), the details of Mr Miller's email were put to the claimant. Ms Tarry informed the claimant that due to the complaint and not having any other work to transfer the claimant to, she would be given two weeks paid notice that she was not required to work.

57. The claimant did not complain about discrimination during this call although her oral evidence varied. At first she quite clearly said that she had raised discrimination during the call with Ms Tarry but when challenged on that statement she confirmed that she had not raised it as she had not realised at the time that she was being discriminated against.

58. Following that termination the claimant emailed her contact at kick Michael Page. She referred to the funders that had complained about her, claiming that she had been rude but that the respondent had refused to provide her with proof of those complaints. She stated that she felt she had been unfairly dismissed and her chances of getting another job had been ruined. She did not refer to any concerns of discrimination.

59. The claimant sought advice from the citizens advice bureau within days of the termination of her employment and was advised about the ACAS early conciliation process which commenced on 1 October 2020.
60. In the meantime on 18 September 2020 the claimant submitted a grievance to the respondent's HR department in respect of direct discrimination. She referred to the complaints made by funders that she had been told about during her meeting with Ms Tarry and that she had requested evidence of the complaints but they had not been provided. She said that she had felt discriminated against 'and a target for quite some time' and referred to members from the billing team including Ms Tarry swearing at her and whispering 'F off'. She also referred to experiencing this abuse from another member of management. She said that she did not raise a grievance at the time because she had no witnesses and that they would have pretended it did not happen. She referred to having endured psychological abuse since June 2019 because of being a minority and the only long-term Muslim temp in the credit control team.
61. Ms Okenla of HR replied to the claimant on 1 October 2020 confirming that given the nature of her grievance they would investigate it even though, as an agency worker, their grievance policy did not apply to her. The principles of the policy however would be used in the investigation.
62. The ACAS conciliation process ended on 21 October 2020 and the claimant submitted her claim to the Tribunal on 23 October 2020.
63. Mr Mustafa was appointed to investigate the grievance and a meeting was conducted via Teams on 8 December 2020 (two earlier dates had been proposed but the claimant was unavailable). The claimant was supported by a member of Tell MAMA, an organisation that supports victims of Islamophobia and anti-Muslim hate. During the meeting the grounds of complaint were discussed which were broadly that there had been separate incidents of discrimination and harassment from Ms Tarry, Ms Keen, Ms Wilson and Mr Skip and secondly that the reason for her termination had been race and religion and that she wished to defend herself against the complaints that had been made which she did not believe to be genuine.
64. Following the meeting Mr Mustafa spoke to Ms Tarry, Ms Keane and Ms Wilson. He also spoke to various other members of staff in the office including Ms Khanom. He confirmed the content of these discussions in emails and conducted all appropriate investigations.
65. Mr Mustafa wrote to the claimant on 22 February 2021, having already spoken to her and informing her of the outcome by telephone, confirming that he was not upholding her complaints. He set out the background, the allegations, and his investigations and findings on each in detail. Ultimately though he concluded that there was no evidence to substantiate her claims of discrimination. As far as the complaints were concerned, his outcome as stated in the letter is confusing. It appears that he has copied into the letter a reply received from somebody else - probably Mr Miller - which suggests that written complaints had been shown to the claimant. If that is what the

letter is conveying, it would be inaccurate as there was no evidence before us first of any written complaints and second them being copied to the claimant.

66. In November 2022 (more than 2 years post termination), the claimant directly approached four of the funders seeking confirmation as to whether complaints had been made against her. The results of her enquiries show that no-one could refer to any formal complaints (and indeed one referred to her as professional and helpful) although a representative of the Sunderland CCG did confirm that she had shared feedback with the respondent regarding a member of the team being upset by the claimant's tone on phone calls and had been in tears at one point. This rings very true with the contents of Mr Miller's email of 3 August 2020.
67. The transcript of the call with Mr Armitage confirms that he did not make a formal complaint but also suggests that he had raised with his manager the claimant chasing for additional information and that that manager may have escalated that to the respondent but he did not know.
68. We find that these enquiries do not support the claimant's argument that the complaints were fabricated. We understand however her confusion arising from the suggestion that she had been given copies of written complaints as she had not.
69. The claimant also draws a comparison between the period of time when she was managed by Mr Matthews, when she said she was working very successfully and praised for her results with no complaints or issues raised against her, to when she was working under Mr Mustafa and Ms Tarry when issues were raised. Ms Tarry's evidence was that in her view if complaints had been raised with Mr Matthews he would not have dealt with them properly. We of course did not have the benefit of Mr Matthew's oral evidence at this hearing despite him being ordered to attend.
70. In November 2020, after the claimant's termination, the respondent had a reorganisation which had at least been anticipated whilst the claimant was still there. We accept Ms Tarry's evidence that as part of that reorganisation some individuals who had been engaged on a temporary basis, although not all, were given permanent contracts although this followed a structured and scored assessment process.

Conclusions

71. Taking into account the impact of the ACAS early conciliation provisions on the primary three month time limit to submit claims of discrimination, any claim presented by the claimant in respect of events prior to 2 July 2020 would be prima facie out of time unless they amounted to conduct extending over a period that ended on or after 2 July 2020.
72. We conclude that the allegation regarding the hijab incident on 6 May 2019 was a discrete act which was followed by a short but nonetheless clear gap until the alleged swearing started in June 2019. The allegations in respect

of the swearing did relate to conduct extending over a period but that ended in February 2020. There was then a further discrete act in March 2020 with regard to the removal of the Northumberland account (which did have continuing consequences). The allegations in relation to 28 July 2020 and the termination of the assignment are discrete acts and in time.

73. Although there clearly was a consistency in the people complained about by the claimant - mainly Ms Tarry and Ms Wilson - they were not the only alleged offenders and there was a variety to the nature of acts allegedly committed against her. For these reasons we do not conclude that there was one course of conduct extending from 6 May 2019 through to the termination of assignment in August 2020. Rather, there was a mixture of discrete acts and extending conduct which, apart from the in time discrete acts, concluded prior to 2 July 2020 and are therefore out of time.
74. Accordingly, we have to consider whether it is just and equitable nonetheless to extend time in the claimant's favour. Even recognising that the claimant is a litigant in person and giving her some leeway in relation to the evidence she submitted in this respect, she failed to give any evidence in support of an extension. She is clearly intelligent and articulate and more than capable of researching and understanding the position regarding her rights to bring a Tribunal claim. We do recognise that she suffered a bereavement in April 2020 but by then time had already expired in relation to the hijab incident and was already running in respect of the swearing and removal of the account. Critically the claimant at no point said or even suggested that she would have submitted a claim earlier had it not been for her bereavement. Instead, her evidence in answer to questions from the Judge as to her intentions and actions regarding commencing Tribunal proceedings were guarded and ultimately inconclusive. We conclude, therefore, that it is not just and equitable to extend the relevant time limits in her favour and the claims predicated on events prior to the claimant's claims prior to 2 July 2020 are out of time and dismissed.
75. We set out below however our conclusions in respect of all the claims not only in case we are wrong about the time point but also out of respect for the claimant's very sincere evidence. We hope that this might make it easier for her to move on from events that have clearly distressed her.
76. As stated above, we have found on the facts that the allegations regarding the hijab and the swearing were not made out. Those allegations of direct discrimination and harassment would therefore fail in any event.
77. Turning to the allegation concerning the removal of the Northumberland County Council account from the claimant in March 2020, it is clear on the facts that the account (or at least some aspects of it) was removed from her. That is the respondent's own evidence although their evidence for the reason for it was inconsistent and, at times, confusing. In those circumstances we again find that the burden passes to the respondent to provide a non-discriminatory reason. As stated the respondent's explanations have been less than optimal however we conclude that there is sufficient contemporaneous documentation - and in particular the email

exchange between the claimant and Ms Tarry in May 2020 - to show that there was a genuine business reason for that decision and it would not amount to direct discrimination or harassment.

78. With regard to the allegation concerning 28 July 2020, the claimant has established that she was asked to log on that day after she had told Ms Tarry that she was not feeling up to it. The burden, we find, passes to the respondent to explain that behaviour but we find that the explanation that Ms Tarry had not received the email or had not seen the email even if it was received in amongst all of her other email correspondence, and simply asked the claimant to logon until 2pm due to business need, was a valid and non-discriminatory explanation. In particular, in coming to this conclusion we note the claimant's own comments in reply to Ms Tarry on that occasion. We would conclude that there was no direct discrimination or harassment on this occasion.
79. As far as the final allegation is concerned, namely that the reason for the termination of the claimant's assignment was direct discrimination, again clearly it was terminated and the question to be answered is why. Whether we pass the burden to the respondent at that stage or take the respondent's explanation into account at the first stage, the end result is the same. We are satisfied that the reason the respondent terminated the claimant's assignment was because of complaints made about her by various funders and, to a lesser extent, by internal colleagues and was not because of her race or religion. In coming to that conclusion we find that the complaints were made (i.e. there was no fabrication by Mr Miller or anyone else). In particular we find the tone of Mr Miller's emails to be compelling and there are also internal email exchanges within the respondent that show concerns had been raised in relation to the claimant's performance. There is no reason to conclude that these had been fabricated either and specifically we do not find that Ms Tarry who, with the greatest of respect to her, was not a very senior person within the organisation, had some sort of disproportionate influence such as to bring a number of people into a campaign against the claimant. Finally, Ms Tarry and Mr Mustafa reacted promptly to Mr Miller's emails when the issue was raised
80. We are not expressing a view, however, on whether the complaints were justified. It was understandably very concerning to the claimant that her assignment was brought to an end, abruptly, based on complaints that had not been set out in writing or with any detailed/corroborated evidence backing them up that she could reply to systematically. It may be that if given that opportunity she could have demonstrated that the complaints were completely groundless. The reality is, however, that the respondent, as long as it was not acting unlawfully, had no obligation to give such details to the claimant as she was an agency worker. It might have been preferable to do so both in terms of general fairness (although we note that the respondent did not in fact have to have a meeting with her at all) and also to avoid the sort of misconstruction of events that the claimant seems to have put on them.

81. Having analysed each of the allegations separately, therefore, we would conclude that the claims fail. We have also endeavoured to stand back and look at the allegations in the round to ensure that there is not an overall picture that is missed when doing a detailed analysis allegation by allegation. In doing that exercise we bear in mind the claimant's concern that she believes that when she was managed by Mr Matthews she was well regarded and successful but that seemed to change when Ms Tarry took over. However we are satisfied that whether looked at individually or in the round the circumstances of the claimant's assignment at the respondent and its termination does not and would not amount to unlawful discrimination.

Employment Judge K Andrews
Date: 21 March 2023

APPENDIX – LIST OF ISSUES FOR LIABILITY

1 Direct discrimination (Equality Act 2010 section 13)

1.1 Did the respondent do the following things:

1.1.1 On 6 May 2019 when the claimant attended the office wearing a hijab, Sophie, Ria and Jade Wilson looked across at the office and displayed shock and worry on their faces, then looked at each other's reactions and turned away both from the claimant and from each other.

1.1.2 From June to October 2019 Sophie, Jade and Ria would, when they passed the area where the claimant was seated, say "F off"

1.1.3 From June to October 2019 Sophie, Jade and Ria Wood, whenever they were getting the claimant back a piece of work or discussing outcomes with her say under their breath "F off"

1.1.4 January 2020 on many occasions Richard Skip would say "F off" to the claimant whenever he saw her. On one occasion he did this in front of Michelle May

1.1.5 February 2020 when the claimant was heard speaking to a funder in her mother tongue Ria said "F off"

1.1.6 In March 2020 the Northumbrian county council account was passed to Neil Harding. The claimant was told this was because the client had complained about her, but the claimant considers this was not the case and she had positive comments from the client. The claimant states that the account was passed to Neil Harding because he is white and/or non-Muslim.

1.1.7 On 28 July 2020 Ria asked the claimant to logon when she had taken the day off in connection with her bereavement.

1.1.8 On 4 August 2020 Ria dismissed the claimant based on what she said were complaints. The claimant states that these complaints were fabricated and the reason for her dismissal was her race and religion.

1.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The claimant says she was treated worse than Neil Harding, Michelle May, Debbie Digan and other non white non-Muslim staff.

1.3 If so, was it because of her race and/or religion

2. Harassment related to race and/or religion (Equality Act 2010 section 26)

2.1 Did the respondent do the following things:

2.1.1 On 6 May 2019 when the claimant attended the office wearing a hijab, Sophie, Ria and Jade Wilson looked across at the office and displayed shock and worry on their faces, then looked at each other's reactions and turned away both from the claimant and from each other.

2.1.2 From June to October 2019 Sophie, Jade and Ria would, when they passed the area where the claimant was seated, say "F off"

2.1.3 From June to October 2019 Sophie, Jade and Ria Wood, whenever they were getting the claimant back a piece of work or discussing outcomes with her say under their breath "F off"

2.1.4 January 2020 on many occasions Richard Skip would say "F off" to the claimant whenever he saw her. On one occasion he did this in front of Michelle May

2.1.5 February 2020 when the claimant was heard speaking to a funder in her mother tongue Ria said "F off"

2.1.6 In March 2020 the Northumbrian county council account was passed to Neil Harding. The claimant was told this was because the client had complained about her, but the claimant considers this was not the case and she had positive comments from the client. The claimant states that the account was passed to Neil Harding because he is white and/or non-Muslim.

2.1.7 On 28 July 2020 Ria asked the claimant to logon when she had taken the day off in connection with her bereavement.

2.2 If so, was that unwanted conduct?

2.3 Did it relate to race and/or religion?

2.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3 Time: whether, by reference to sections 123(1) and 140B of the Equality Act 2010, the Claimant presented her claims/complaints falling before 2 July 2020 within the applicable three month time limit. If not:

3.1 Whether she brought her complaints within such other period as the Tribunal thinks just and equitable; and/or

3.2 Whether, with reference to section 123(3) and (4) of the Equality Act 2010, the conduct extended over a period, the end of the period falling within the applicable time limit.