



EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4103216/2022 Hearing Held at Glasgow on 17, 18, 19, 20 and 21
April 2023**

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**Employment Judge: M A Macleod
Tribunal Member: J Ward
Tribunal Member: J Gallacher**

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Jwan Abdullah

**Claimant
In Person**

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University of Glasgow

**Respondent
Represented by
Ms D Miller
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**The unanimous Judgment of the Employment Tribunal is that the claimant's
30 claims all fail, and are dismissed.**

REASONS

1. The claimant presented a claim to the Employment Tribunal on 13 June
35 2022, in which she complained that she had been subjected to
discrimination on the grounds of pregnancy/maternity, and also on the
basis of religion or belief.

2. The respondent submitted an ET3 in which they resisted all claims made
by the claimant.

ETZ4(WR)

3. A Hearing on the Merits was listed to take place on 17 to 21 April 2023. The claimant appeared on her own behalf, and the respondent was represented by Ms Miller, solicitor.
4. The claimant gave evidence on her own account, and the respondent called the following witnesses:
- Lynn Brown, HR Adviser;
 - Sandy Glassford, Team Leader;
 - Mohammed Mahmoud Alam, Lecturer and Team Leader;
 - Marc Damian Jones, Laboratory Manager; and
 - Dr Ruth Roseanne McLaughlin, Head of Innovation, Engagement and Enterprise Services for the College of Medical, Veterinary and Life Sciences.
5. A joint bundle of productions was produced to the Tribunal at the outset of the Hearing, to which some additions were made by the respondent, without objection by the claimant and with the permission of the Tribunal.
6. At 2.10pm on 18 April 2023, following the conclusion of the claimant's evidence, Ms Miller intimated an application at the bar of the Tribunal for strike out of the majority of the claimant's claim under Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 on the basis that the claims made by the claimant had no reasonable prospect of success. She made a submission in support of that application, to which the claimant, who had had no prior warning that such a draconian order was to be sought by the respondent at that stage in the proceedings, was given time to respond. Despite being urged by the Tribunal to take time overnight to consider her position, and if possible to seek some advice, she insisted that she wished to press ahead and simply answer the respondent's application immediately.
7. Having reflected on the application and the parties' submissions, the Tribunal adjourned the Hearing until 11am on 19 April 2023, whereupon

the Employment Judge issued an Oral Judgment refusing the application. The respondent then called their first witness, Ms Brown.

5 8. Notwithstanding the time taken to hear and consider this application, the Hearing was able to conclude within the allocated time, by 4pm on Friday 21 April 2023.

9. It was agreed by the Tribunal in advance of the Hearing that this should be a Hearing on liability only, and that remedy would be left to a separate Hearing in the event that it is required.

10 10. Based on the evidence led and the information presented, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

11. The claimant, whose date of birth is 12 April 1984, commenced employment with the respondent on 13 January 2021 as a Laboratory Scientist (known as a "lab scientist"). She was based in the Lighthouse Laboratory ("the Lighthouse"), established by the respondent within the campus of the Queen Elizabeth University Hospital in Glasgow.

12. The respondent is the University of Glasgow, which had responsibility for the establishment, maintenance and management of the Lighthouse, and for the recruitment of staff to work therein.

20 13. The Lighthouse was set up by the respondent in order to provide to the UK Government a fast and reliable service for the testing of PCR Covid-19 samples, in early spring 2020, given the incipient advance of the global pandemic. Dr Ruth McLaughlin was responsible for the establishment of the laboratory, and for co-ordinating the urgent drive for recruitment of sufficient staff to engage with the necessary tasks to be carried out. Along side the deployment of staff employed either by the respondent or by NHS Greater Glasgow and Clyde, staff were employed from external advertisement and interview. The claimant was one of those recruited from outwith the respondent's organisation.

14. The claimant is of Kurdish Iraqi nationality, and belongs to, and practises, the Muslim faith. She studied for and secured an MSc in Biology, followed by a PhD in Bioenergy, at the University of Nottingham.
15. Following a successful interview, the claimant was offered appointment as a lab scientist by the respondent by letter dated 5 January 2021 (116). Her initial appointment was for a fixed term until 31 December 2021. She was provided with a written statement of terms and conditions of employment, and directed to the HR pages of the respondent's website to review the information available to new members of staff therein (<http://www.gla.ac.uk/services/humanresources/new/>)
16. In the written particulars of terms and conditions of employment (118ff), the claimant's normal hours of work were defined as *"an average of 35 per week, exclusive of meal breaks, to be worked flexibly to meet the needs of the University. Normally 4 days on, 4 days off shift pattern, covering 10 hour shifts including a one hour unpaid break, your working hours will be between 1pm- 1am."*
17. At paragraph 16 of the terms and conditions of employment the respondent confirmed that their Grievance, Managing and Supporting Performance, Managing Attendance and Disciplinary Policies and Procedures could be found on the HR pages of their website. They were said to be non-contractual, but to be complied with at all times.
18. On 14 January 2021, the respondent wrote to the claimant to confirm an alteration to her shift pattern (153), from 1pm to 1am, to 3am to 3pm. Her shift allowance was also increased from 10% to 20%.
19. The claimant's contract of employment was further extended until 31 March 2021, by letter dated 9 August 2021 (155), and then until 30 September 2022 by letter dated 22 December 2021 (156).

Incident 3 February 2021

20. Very shortly after the claimant commenced employment, she was placed at workstation 1A within the Lighthouse. Each workstation represented a

different room within the building in which the Lighthouse was located, and carried out a different function.

21. Two lab scientists, Kirsty Martin and Saira Ahmad Khan, approached their Team Leader, Sandy Glassford, to say that they had concerns about the manner in which June Sillars, a lab scientist, had spoken to the claimant in a conversation on 3 February 2021 in their workstation. At Mr Glassford's request, they submitted a written statement to him, including the following (160):

"At first the conversation seemed mundane, however, following course the conversation took a more offensive turn from June. She made presumptuous statements that could be taken as offensive by Jwan [the claimant] regarding her childhood upbringing, and assumptions about her religious beliefs in a way that was almost taunting such as about alcohol consumption, beachwear and child rearing cultural restrictions implying Jwan was doing her family a disservice with her choices if she was to move to Qatar which Jwan had mentioned. Jwan gave reasons as to why she would prefer to raise her children in a culture more like her own upbringing due to familiarity, June stated her strong disagreements to Jwan's choices saying something along the lines of why would you choose to move to the UK to then move to a country where you 'have no freedom', stating it as 'losing your liberation'. Following this June discussed her travels around the globe and how she would never move to such a country (presumably in the middle east). June also badgered Jwan regarding alcohol consumption, seeming to make light of her religious beliefs by asking 'not even a glass of wine at night? Not even one glass? What about a rum truffle?' To which Jwan repeatedly said no but was continually questioned. Jwan is a very energetic and enthusiastic individual, yet a change in her demeanour following this interaction was clear to see. Jwan was visibly uncomfortable with the conversation. When June left for her break, we asked Jwan if she was okay and discussed the events that had just occurred at which point Jwan mentioned June had said something the day previous that 'made her feel really sad'. When we asked Jwan to tell us what she had said, she refused multiple times. ..."

22. He also spoke with the claimant, and told her that nobody should have to feel harassed or uncomfortable, and that he would like to do something about it. He suggested that he would like to have a conversation with June Sillars, and report the matter to his line manager so that it could be dealt with in a formal process. The claimant told him that she did not want Ms Sillars to get into trouble. Mr Glassford sought to reassure her and confirm that she was doing a good job. He then emailed Ruth McLaughlin, his line manager, at 1135 on 5 February 2021 (161), attaching the email from Lis Algora Gallardo on behalf of herself and Lukas.
23. Ms Algora Gallardo's email stated that *"Jwan stated to the WS deputy and manager that, while working in the same room, June made numerous questions and remarks about Jwan's culture, religion and country of origin, making her feel uncomfortable and discriminated. June also openly laughed about Jwan's vocabulary which profoundly upset the latter. Furthermore, two operators witnessed the incident and confirmed Jwan's statement."*
24. Mr Glassford forwarded the statement by Ms Khan and Ms Martin to his manager, Ruth McLaughlin, on 5 February 2021 (161). In that email, Mr Glassford described his conversation with the claimant as follows: *"I have not received a written statement from Jwan herself, however she did verbally inform me of what was said. Jwan is worried she will get June into trouble and doesn't want to be a nuisance or make a bad name for herself so soon into her employment. I reminded her that no one should be made to feel uncomfortable and that we and the University will not tolerate discrimination."*
25. On 5 February 2021, the claimant sent an email to Sandy Glassford at 1726, following the end of her shift (163). In it, she said:

"Dear Sandy,

On 3rd February 2021 between 3:30-5:00 AM at workstation 1, a lab scientist her name is June started asking me inappropriate questions regarding my personal life such as

5 'Do you drink alcohol' I said I am not alcoholic. She laughed and said 'you don't even drink a small glass of wine before bed'

Each answer I gave, she laughed and mocked

Do you smoke shisha. I said No. she said but this is your culture why you don't smoke? You are wasting your life and it's fun to try.

10 I put on a thick jumper and it was hot, I was working when I said it's hot. June asked me to take off the jumper and put on the PPE without a jumper

15 Again she asked me to take off the jumper if it's hot and I said no I can't she said don't be worry no one will look at you. I was so imbaresed (sic) when she said that because Theo was standing behind me. She said you can put another PPE to cover your back too. I constantly told her I'm okay but she kept repeating and embarrassing me.

We talked about food. I said my children like finger chips, she laughed at me in front of the team and said you are funny person and this called chips not finger chips.

20 Asked me do you know how to swim and I replied NO. She asked do you wear bikini, I said NO. again she laughed and said what you would you do if you go to a beach? I said nothing

25 During the chat, it was clear that I'm not interested in the chat because it distracted me. But she kept bombarding me with questions. Where are you from, what did you study, what was your work, Have you had arranged marriage, how long it took to get married... etc. As a polite person, I had to answer her questions.

Sahara, a member of the lab scientist team, heard all the chat and decided to share this harassment with the line manager Lukus.

5 *Later, the line manager asked me to work with June doing scanning task. June kept talking with other colleagues, instead of monitoring results on the computer. 10 samples have been scanned when June mentioned we missed a sample and I need to correct the order according to her method of correcting sample orders. I said it is more than a column and the best way is to delete the whole column, to be in the safe said (sic).*

10 *June complained to Lukus stating Jwan is doing racking and scanning at the same time and Jwan is miss-sampled. The sampling task is her duty since the computer is behind me. Instead of doing her job properly, she complained and blamed me while she was talking and not watching the computer*

15 *I have had a bad experience working with June. While I very much appreciate the work, the team I work with and reasonable chat between team members, I cannot focus on work in a noisy environment and I don't tolerate probing questions. During the chat with June, I did not engage in the chat as I was answering her questions. She should have understood I am not comfortable in the situation. I feel there is an element of harassment and inappropriate behaviour and I hope you know that I do not feel comfortable working directly with June, unless her behaviour is*
20 *changed.*

Best regards,

Dr Jwan Abdullah"

26. Mr Glassford acknowledged receipt of the statement (163) at 0451 the following morning, and confirmed that he had forwarded it on to Ruth
25 (McLaughlin). He went on to say that *"I'm deeply sorry that you were made to feel humiliated. The University does not tolerate harassment, and this will be dealt with immediately."*

27. Mr Glassford also forwarded the claimant's statement to Ruth McLaughlin (165) later on 5 February 2021, at 1741.

28. Mr Glassford offered the claimant the opportunity to have a meeting with Ms Sillars so that she could explain to her how she had felt about the conversation, but the claimant did not wish to meet her. The claimant did not mention anything to Mr Glassford about wanting an apology letter from Ms Sillars.
29. At no stage did the claimant wish the matter to be dealt with formally. Mr Glassford informed her that he intended to speak to Ms Sillars, preferably with the claimant present but if not then alone, to reiterate to her that her conduct had been unacceptable. The claimant was content for the matter to be dealt with informally.
30. He then spoke to Ms Sillars and made clear to her that her behaviour had been unacceptable and that she had made the claimant feel very uncomfortable, and discriminated against. She was very upset and said that she did not mean to be like that, but had simply engaged in banter with the claimant. She wanted to apologise personally to the claimant, but the claimant was not willing to meet with her.
31. Mr Glassford asked the claimant if she was happy to work in the same workstation as Ms Sillars, and she confirmed that she did not wish to do so but would prefer to be moved to another workstation. As a result, Mr Glassford moved the claimant to workstation 3, and notified the administrative assistant for the laboratory, Ross McGowan, of the move on 10 February 2021 (167).
32. Ms McLaughlin then emailed the laboratory team on 13 February 2021 (169) to draw everyone's attention to the Dignity at Work Policy and its purpose. She stated: *"I am getting concerned about the number of inappropriate conversations that are taking place within the LLiG. These conversations have been brought to my attention because they are not aligned with the University's values and code of conduct, they are not appropriate within the workplace and are causing offence to others. Harassment and bullying can have a serious detrimental effect on the*

health, confidence, morale and performance of those affected by it, and on the working, learning and living environment. ”

5 33. She went on to request that everyone read the policy and sent an email to their team email inbox confirming that they had done so, to ensure that there was an understanding of the values therein across the department.

10 34. Thereafter, Mr Glassford arranged to meet with Ms Sillars again in April 2021 (171ff). He advised Ms McLaughlin on 30 March 2021 (174) that there were two separate issues he wished to address: firstly, that Ms Sillars had been discussing her sex life with staff members, and secondly, that she had not been adhering to work instructions (Wis). In his email he made reference to his previous conversation with Ms Sillars following the issue raised in relation to the claimant. The claimant was not involved in nor informed about that meeting with Ms Sillars as it was unrelated to the incident involving her.

15 ***Requests for time off***

35. The claimant's shift pattern was from 3am to 3pm (153). This was suitable for her, in order to enable her to collect her young children at the end of the day.

20 36. In July 2021, the claimant moved to the Skerryvore team, under the leadership initially of David Rose, team leader. On 18 August 2021, Mahmood Alam took over leadership of the team from Mr Rose, managing approximately 150 people, including the claimant, on a very busy shift.

25 37. On or around 18 August 2021, the claimant's son, who was 3 at the time, was diagnosed with shingles on 15 August, with the consequence that he was very unwell, especially overnight. The claimant requested time off in order to look after her son, as he only wanted to be with her and she was exhausted. In her conversation with Mr Alam, he suggested that she could come in at 6am rather than 3.30am, to which she said that that was
30 okay. On 18 August, she emailed Mr Alam to request emergency leave

- (214/5) "for only tomorrow" as she was lacking in energy, and to allow her to stay with her son. Mr Alam replied, referring to the conversation which he had had with the claimant, saying *"Hope your son is keeping fine. / thought we agreed for you to start a bit late tomorrow so that you could be with your son. Does that not work for you?"* (214)
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38. The claimant replied (408): *"I'm afraid still 5am is not enough I still needs to leave at 4.30, if I can have half day off I can come as my husband will look after him please."* Mr Alam then responded *"That is fine for me. You can take halfday off. Hope it works for you, if it does not work then please let me know."*
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39. The claimant emailed Mr Alam: *"Halfday is perfect see you then. Thanks ■ a lot."*
40. That concluded the discussion about that request. The claimant subsequently complained that she had not been given emergency leave for longer.
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41. In August or September 2021, the claimant required time off to attend Gartnavel Hospital for an MRI scan. Mr Alam asked her how long she required to be away from the laboratory, and she estimated that it would take 2 hours. He had anticipated that an employee with a medical appointment would book time off for this purpose in advance, but on this occasion the claimant asked him relatively close to the date. He regarded this as a situation where, as happened on other occasions, staff would be away from the laboratory for a period of time for their appointment and return afterwards. The claimant did not complain about being asked to return within 2 hours. As it turned out, she attended the hospital for her scan, and did return within approximately 2 hours. Mr Alam then agreed that the claimant could have a break on her return before resuming her duties, and the claimant took that break as agreed.
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42. On 8 September 2021, the claimant sent a text message to Mr Alam (217) to advise that she had sent in a Covid test the previous day, as she had some symptoms including a runny nose and a sore throat. In
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addition, she said that her son's nursery had reported 2 positive cases. She advised that she was awaiting her test result and would keep him updated.

- 5 43. Mr Alam responded by confirming that *I think you will be fine as long as you are feeling alright. And I understand that you should have double dose of vaccination. There were positive cases in daughter's class as well and we all were fine.*"
- 10 44. The claimant advised that she was feeling better, a little later, with no coughing but still suffering from a runny nose. Mr Alam responded that he did not think that this was a symptom of Covid, and that as long as she was feeling better, she should be fine to attend the laboratory. At this point, Mr Alam understood that the claimant's children were attending school. The claimant's evidence before us was that they were not.
- 15 45. The following morning the claimant texted at 0601 (219) to say: *"Hi, I think it would be better if I wait for the result outside the lab, my colleagues are really concerned and scared to come near me we can not work like this, I should get the result by now or 6:30, can I wait in my car out side until I get the result please???"* Then she texted again: *"I'm outside the lab can we have a chat about it please"*.
- 20 46. Mr Alam accepted before us that he was confused at that time as to whether or not the Government guidance required that someone should self-isolate in the circumstances described by the claimant. He now understands that he was relying upon guidance issued by the UK Government, which suggested that she did not require to self-isolate, rather than the Scottish Government, which required her to do so.
- 25 47. The claimant had attended the laboratory for work at the start of her shift, but at some point she left and went to her car. When he did speak to the claimant, at a point after 7am, he advised her to go home.
- 30 48. The claimant suggested in her claim that she had been in her car for approximately 4 hours waiting for guidance, but Mr Alam was of the view

that it was for much less time than that. In her evidence before us, she maintained that the coming and going over the debate about what she should do took two and a half hours. It was our conclusion that Mr Alam did not tell her to go to her car, but that she had suggested this herself.

5 **Issue with Gentian**

49. On 19 July 2021, Mr Glassford had a meeting with the claimant, together with Gentian Stefa, another lab scientist working at the same workstation, after he had been advised that there was some animosity between the claimant and Gentian. He decided to try to resolve the issue by meeting
10 with them both. The meeting did not go well, and quickly became heated between the two. Both raised their voices in a heated manner, and Mr Glassford was unable to calm them down. As a result, he felt it was best to end the meeting. The issue over which they were in disagreement was the claimant's use of a timestamp. The claimant believed that
15 Mr Glassford was siding with Gentian, and saying that he did not believe her. This was not the case. Mr Glassford tried to reassure the claimant following the meeting that he was not suggesting that he did not believe her, nor that he was taking sides, but he felt that there was no reasoning with her.

20 50. Following the meeting, Mr Glassford asked the claimant to work at workstation 5 for the remainder of the week, until the workstation leads were chosen following the selection process which was then ongoing. He felt that the claimant and Gentian could not work together in the same workstation.

25 51. On 21 July 2021, having had further discussions with the claimant, Mr Glassford emailed Marie Clare Pearse (199):

"Hi Marie Clare,

I had a conversation with Jwan that didn't go as well as it could have.

I'm going to summarise with bullet point (hope you don't mind):

- *Jwan had a disagreement with Gentian Stafa over a month ago which has caused an atmosphere in WS3*
- *On mon 19th Jul, I had a conversation with Jwan and Gentian to resolve the situation, however it did not go well and became slightly heated*
- *I asked Jwan to work at WS5 for the rest of the week (I wanted to wait until I had chosen WS3, 4a and 6a Leads before moving off WS3)*
- *Today, when I told her she didn't get the Lead positions, she took it well. However, she did not react well when I asked her to move to WS5a*
- *I explained she wasn't being punished and that I was moving her according to the business needs*
- *She wanted to stay at WS3 which I'd be happy with if she and Gentian could move on from the disagreement*
- *She has requested to move to Skerryvore which I said I'd try make happen*
- *She also went home upset with about an hour left of her shift*
- *She asked for annual leave tomorrow which I said I couldn't authorise*
- *She said that today will be the last day she can work for Lismore and that she is not well to work.*

Can you advise on next steps? Are we able to give her a move to Skerryvore? Happy to take a call to explain everything in more detail."

52. Mr Glassford took the view that since Gentian was considerably more experienced on that workstation, and was generally regarded as very

reliable there, it was appropriate that the claimant should be asked to move. She was moved to workstation 5 until the end of the week because she was trained in the work carried out there. The claimant reacted strongly when she found out that she was being moved and that Gentian was not. Mr Glassford described her as "obsessed" that he was calling her a liar, and that he had not believed her, which was not correct.

53. The claimant took it upon herself to email the Team Leader for the Skerryvore shift, David Rose, on 21 July 2023 (201):

77n currently working with the Lismore shift, at WS3 I would like to move to your shift please? I've start working at the light house lab from January 2021, I've been trained in most of stations, I have 2 young kids it would be ideal for me to work at the same station as I need to leave the lab by 1:30 or 2 if not WS1b, I could help out other stations as I do now please. "

54. Mr Rose forwarded this email to Mr Glassford in order to ensure that the claimant's line manager talk her through the process.

55. The claimant emailed Mr Glassford on 21 July 2021 to say that she needed a day off on 22 July, and that she had left an hour and 15 minutes earlier that day because she was not feeling well. She asked if this could be added to her annual leave (197). Mr Glassford responded by saying that she should not worry about that day, but that the following day would need to be recorded as a sick day, since sickness superseded annual leave.

56. A similar conversation took place by way of text messages between the claimant and Mr Glassford on 21 and 22 July (184ff). She asked Mr Glassford to move her to the Skerryvore shift as soon as possible, and to move to workstation 1b or 3, if not 4b, which were more convenient for her due to her childcare needs. Mr Glassford said that he would do his best to fast track a move to Skerryvore but that it was not as simple as granting her request when made. She responded that she would have to book a few days off as she could not focus. Mr Glassford advised that he could not authorise annual leave, and that she would require to take sick

leave. He texted her to say *"I have emailed Marie Clare and will try to get you a move to Skerryvore"* (188).

57. Later that afternoon, on 21 July, the claimant texted again: *'Tm not a layer [liar] and unfortunately u believe all of them they all did not like me just because I was more punctual than them and I said that they don't like to give me any responsibility then you and Franchesca decided to give me validation responsibility. I will escalate this issue I feel what happened is unfair by punishing me and move me to another station being different in a good way never been an issue. I'm sorry Sandy after what happened and accusing me as a layer many times I want to escalate this to light house mangers (sic).'*

58. She subsequently requested 1 week's sick leave. Mr Glassford replied that he could not authorise sick leave, and that if she were off for a certain period she should get a sick note from the doctor. He also referred her to the Employee Assistance Programme via PAM Assist.

59. On 27 July 2021, the claimant emailed Marie Clare Pearse (202). In that email she said:

"Nothing has been done Sandy decided to believe the WS3 deputy Gentian, since I start working with him at ws3 he has been rude, disrespectful personally and over works. When he accused me of having trouble with time stamp although he left me alone with 2 trainers and a wave of plates arrived for 1 and half an hour I was under stress trying to load them as soon as possible before plates time out, was only me they all went for pouring room, although I haven't dropped a single sample let alone a place he start screaming at me and asking me to follow SOP, and very rudely, the scanning way haven't been invented by me I told him if you are not happy with the way I work why u not saying the same thing to Charlotte and Antonia and the rest of staff, I told him later the way you talking to me is not your first time, he said go and tell Sandy and Charlotte I only told Charlotte. ..."

60. She went on to complain that Mr Glassford had done nothing to stop Gentian calling her a liar, and that he had "indirectly" called her a liar, causing her to have a major panic attack.

5 61. The claimant was granted her move to Skerryvore, in July or August, and came to work under the team leadership of Mahmoud Alam.

Workstation Lead

62. The claimant made a number of applications to be appointed as Workstation Lead.

10 63. The position of Workstation Lead was one which was open to lab scientists and, on occasion, to sample handlers. The job purpose (350) was to support Covid-19 testing in the laboratory, providing *"detailed technical expertise in the laboratory techniques utilised and ... advice on best operation of technical resources to support the delivery of the diagnostic objectives of the laboratory."* In addition, the postholder would provide technical support services, and be responsible for the effective operation of a designated workstation within the laboratory.

15 64. Essential qualifications were Scottish Credit and Qualification Framework level 7 (Advanced Higher, Scottish Vocational Qualification level 3, Higher National Certificate) or equivalent, and experience of personal development in a similar role. An ordinary degree or Scottish Vocational level 4 were said to be desirable.

20 65. The essential knowledge, skills and experience were:

- *"Detailed technical knowledge and expertise in relevant discipline*
- *Experience working in a lab setting (academic, clinical or*
25 ** industrial)*
- *Molecular biology experience*
- *Tissue culture experience/aseptic technique*

- *Multichannel pipette experience*
- *Strong attention to detail*
- *Ability to work constructively within a team*
- *Well-developed analytical and problem-solving capability, using initiative and judgement to resolve problems independently*
- *Planning, organising and prioritising skills*
- *Detailed knowledge of relevant health and safety policies and procedures relative to the role, and the quality outputs and standards required. ”*

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- 10 66. These were identical to the knowledge, skills and experience listed on the job description for the lab scientist (352).
67. The Workstation Lead position was positioned at the same grade as the lab scientist role. It was not a promoted position, but a position involving a degree of additional responsibility, for which there was a responsibility allowance of £1,337 per annum awarded to the postholder.
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68. The claimant applied for 5 separate Workstation Lead positions, in March, June, July, November 2021 and February 2022. On each occasion she was unsuccessful.
69. The claimant applied for the Workstation Lead of WS3 on 29 November 2021 (372). Each application essentially consisted of the applicant answering two questions: why they were a good fit for the role, and what challenges they would anticipate, and strategies they would use to overcome them. Her application set out a detailed answer to each question. She stressed her research credentials, particularly in light of the fact that she had obtained a PhD.
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70. She was unsuccessful in her application. The successful candidate was a Nigerian colleague named Amani, whose application was produced at 382.

71. The claimant applied for the Workstation Lead of WS4B (387) in February 2022, but was again unsuccessful. The successful candidate (unnamed) submitted an application (391) in which they stressed that they had worked in Taco Bell, in addition to studying for a degree in Biomedical Science at Strathclyde University; and also stated that they had a great depth of organisation and communications skills which had been gained as a team member, as well as gaining managing and training skills.

72. The claimant was upset that she was not appointed to the position of Workstation Lead. On 9 February 2022 she emailed Mr Alam to protest:

"Having an experience, knowledge and academic degree I demand an explanation of why you gave WS4b lead position to agents who have no experience or knowledge or both. You claimed last time that I did not mentioned in my previous application about integration, working calmly... I add all of these points but still you rejected my application, what more / need to do to get the position there's no other excuse to reject my applications? Regarding cross training I've been asking since December to do cross training at ws6 still you are refusing while I see everyone moving around and doing cross training everywhere?"

73. Mr Alam and Ms McLaughlin both gave evidence to the effect that they did not regard a PhD as being relevant to the appointment of a Workstation Lead. They were more concerned about the applicants experience and ability in management, such as the ability to motivate and engage a team at the workstation. Mr Alam applied initially for the Team Lead post, but was unsuccessful, notwithstanding having a PhD, though he did accede to that position on a further application. There was also evidence that an Arabic colleague of the claimant, Mab Habib, was appointed to the position of Workstation Lead, and then Senior Scientist, during this time.

74. The matter was addressed in the claimant's grievance, and Dr McLaughlin found that the process was fair and reasonable.

Altercation with Eugene

75. On 9 December 2021, the laboratory was under very considerable pressure. The workstation lead and two deputies were both off sick, so Mr Alam asked the claimant to run the station for the day, which the claimant agreed to do. The claimant was working with another lab scientist named Eugene. She found him to be uncooperative and obstructive. He then moved to workstation 2 without her knowledge. She understood that he asked them to slow down their processes in order to allow their workstation to keep up with the pace of work, and she told him that he would require to tell Mr Alam about this, but he refused. He spoke to her in a manner which she regarded as offensive, using the “f—” word.
76. Mr Alam observed that they were both speaking very loudly to each other during this exchange, which he regarded as inappropriate. He spoke to Eugene and made clear to him that it was not for him to tell another workstation to slow down their processes, and that he must control his behaviour by not raising his voice. He then spoke to the claimant and advised her that he had dealt with Eugene, and that he would not repeat his behaviour. He also told her that she too must maintain calmness in the workstation by not raising her voice. The claimant said that she was going to report the matter to Human Resources and Mr Alam encouraged her to do that.
77. Mr Alam then spoke to Sue Jenkins in Human Resources, and as a result, asked Yik Min Chin, known as Carl, to take over the workstation for the remainder of the shift. He had no intention of applying for the vacant position of workstation lead, whereas both Eugene and the claimant were keen to do so.
78. He took this decision as he considered that it was necessary to remain neutral and to find the best way of moving forward. The claimant was very unhappy with this decision and regarded it as a punishment. Mr Alam regarded this matter as a simple one, in which he sought to resolve a dispute between two colleagues and ask someone else to look after the

workstation for a short period of time in order to avoid further conflict. He did not consider it a punishment but a pragmatic outcome to reach.

5 79. The issue came to the attention of Marc Jones, who was the Laboratory Scientific Manager, at a higher level than the team leaders and answering to Ruth McLaughlin. He became aware that there had been a dispute between Eugene and the claimant. Eugene spoke directly with him, so he took the opportunity to speak with the claimant, in order to ensure that he had heard her point of view. He met with her informally, in a corridor off one of the fire escapes. He accepted in evidence that this was not ideal, but that the building contained no meeting rooms due to the need to devote as much space to the testing areas in the laboratory. It was in an area which was quiet and not occupied by others at the time.

10 80. The claimant expressed considerable frustration during the course of the conversation with Mr Jones, and gesticulated with her finger towards him and raising her voice. Mr Jones did not shout at her, but did ask her to stop pointing at him. He felt that her hand gestures were inappropriate.

15 81. Mr Jones advised the claimant that he would get back to her. He did not do so. He believes that he overlooked the matter. He did not recall the claimant telling him that she intended to raise the matter in a grievance.

20 **Grievance**

82. On 20 December 2021, the claimant submitted a grievance by way of a Report Support form to the respondent's intranet (229), in which she said "yes" to bullying and discrimination, and added:

"Hi,

25 *I've been working with university of Glasgow for almost 1 years on my first month I've been discriminated and then a few months later I've work process I've been accused lying and on (sic) of my colleagues accused me that I'm working hard Just because I'm trying to impress someone and every single time they do nothing rather than supporting me the mangers*

*(sic) punished me the working environment at uni is just like a Jungle.
Best regards Dr Jwan”*

5 83. On 21 December 2021, Shona Jenkins, of Human Resources, emailed the claimant to advise that she would start making arrangements so that her concerns could be heard under the grievance policy (231). She spoke to the claimant by telephone and sought to clarify the issues which the claimant wished to raise in an email to her dated 22 December 2021 (234), as follows:

10 “ *Concerns over selections procedures and decisions for workstation lead appointments*

- *Feeling discriminated against, on the grounds of race*
- *Not feeling supported when concerns have been raised previously, eg interactions with June and Eugene*
- *Not being recognised for raising issues eg splashing*
- 15 - *Not being recognised for training colleagues on SOPs*
- *Request to move workstation not agreed*
- *Request to change working hours not agreed.”*

84. Ms Jenkins wrote to the claimant on 22 December 2021 by letter (236) to invite her to attend a grievance hearing by Zoom on 6 January 2022.

20 85. The grievance meeting took place on 6 January 2022. Ruth McLaughlin chaired the meeting as the investigating manager, with Shona Jenkins present to provide HR advice. Notes were taken by a note taker (258ff). The claimant attended unaccompanied. The meeting was adjourned and reconvened on 11 January 2022 to allow the discussion to conclude.

25 86. Ms McLaughlin then undertook further investigations and met with Dr Jones, Mr Glassford, Mr Alam and Ms Pearse in order to obtain their

statements. Having done so, she produced a report into the claimant's grievance (292ff). Her conclusion was as follows:

7U *I have not found evidence to support the allegations, I do not uphold JA's grievance, but make the following recommendations to support her longer-term career within LUG, and better working practices.*

- *Job descriptions to be made clearly available on Teams channels, to ensure ready access for those intending to apply for promotion. This would allow candidates to assess their own ability to meet specified criteria for each role more regularly whilst working towards promotion.*
- *I would encourage JA to engage with the Professional Development and Career Planning guidance, undertaking development opportunities that would help both further her leadership and teamworking skills, and demonstrate these in job applications*
- *Feedback to be provided on JA's job applications to date, to inform any future applications*
- *Routes to report inappropriate conduct made clearer via the General Teams channel.*
- *Greater use of the HR folder in Teams, so that guidance and procedure already available on the website can be shared there too, improving accessibility*
- *Improved visibility of the HR team within LUG, both via Teams and in-person visits in due course*
- *The offer of mediation is extended to both JA and Eugene in efforts to improve the working relationship*
- *MA to make a longer-term decision is made (sic) on JA's workstation, if the earlier finish time cannot be accommodated longer term on WS4*

- *Reminder of mechanisms to raise issues shared via Teams and email, with Townhall meetings to be reintroduced to allow improved communication.*
- *Managers reminded of the importance of feeding back on issues raised and acknowledging when individuals raise concerns on working practices. ”*

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10
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87. Ms Jenkins sent the claimant the report by letter dated 4 February 2022 (300). On 7 February 2022, the claimant submitted an appeal against the grievance outcome (301) alleging that she had been discriminated against by the respondent, bullied and offended by colleagues and treated unfairly in the selection processes which she described as corrupt. Lynn Brown, HR Adviser, wrote to her on 15 February 2022 (303) to observe that her appeal was not intended to be a rehearing of the original case, and therefore pointed her to the grounds for appeal set out in section 9.1 of the Grievance Procedure. She asked her to clarify the grounds upon which she wished to submit her appeal.

20
88. The claimant responded by email on 15 February 2022 (305) by identifying her appeal points as:

- *“The outcome and recommendations are unreasonable and significantly out of line with the issue considered*
- *New information is now available which could not have reasonably been provided when the original outcome was communicated*
- *In addition, I’ve been suffering from severe mental health issue since I start working with the university.”*

25
89. An appeal meeting was arranged to take place on 1 March 2022 by letter dated 24 February 2022 (323). In fact, it took place on 23 March 2022. The claimant attended unaccompanied, and the meeting was chaired by Paul Fairie, College Head of Operations and Facilities, assisted by Lynn Brown and a note-taker. The notes were produced at 332ff.

90. Mr Fairie conducted further investigations by speaking to Mr Alam, and then produced a report of his deliberations (340ff). He did not uphold the claimant's appeal, though he acknowledged that neither the claimant nor Mr Alam had communicated as well as they might have done with each other. He did observe that the claimant had not made any unhappiness clear to Mr Alam at the time.

91. Ms Brown wrote to the claimant on 3 May 2022 to confirm the outcome and enclose Mr Fairie's report (343). That concluded the internal grievance process.

10 **Raising Concerns**

92. The claimant considered that there improvements which could be made to the processes being operated in the laboratory, and flaws in those processes and their implementation which should be drawn to the attention of management.

93. She expressed the view that when she raised such concerns, management was very unhappy with her, and that had negative consequences for her..

94. An extract from the Teams chat operated in the team was produced (222ff). On 2 December 2021, the claimant submitted 12 paragraphs, each with a different comment, observation or question. At 1824 that day, Mr Alam responded *"Hi Jwan, Thanks for raising all this (sic) important points. We will look at this and have discussion around these when we return on Monday. Enjoy your days off"* The claimant replied: *"Thanks a lot"*.

95. The claimant then submitted a further 8 paragraphs in which she made more comments or raised questions. Mr Alam replied again: *"Hi Jwan can you please keep everything with you and we can go through each of your point when we come back on shift. Also enjoy some time on off days. We will be busy when we return and it is important that everybody takes some rest before we start on Monday. Have a nice weekend."* The claimant

responded: *"Ok I Just wanted to write everything to you to know what are my questions thanks a lot."*

96. In her evidence, the claimant suggested that these responses were indicative of annoyance on the part of Mr Alam. Mr Alam denied this before us.

Resignation

97. On 23 February 2022, the claimant sent an email to Ms Jenkins in the following terms (322):

"Dear Shona,

Regarding cross-training as I requested since December, Mahmoud still doesn't want to answer or Give me any reason for that.

I would like to inform you that I am resigning from my current job but I will still fight to get my right back and will meet university of Glasgow at the court for me coming to work is like some one pulling my soul out of y body. I can't work like this and I can not push myself more. Currently I am waiting for an appointment regarding appealing but Unfortunately UNISON representative are very busy I don't know when they will be available.

I had a chat with my solicitor and he believes I'm sure I will get my right back at the court

Will keep in touch using my personal email iwan4@outlook.com too please.

Best regards,

Jwan"

98. The claimant's employment ended with effect from 23 March 2022.

Presentation of Claim

99. The claimant presented her claim to the Employment Tribunal on 13 June 2022.

5 100. She contacted ACAS on 18 May 2022 to notify them of her intention to submit a claim to the Employment Tribunal. The Early Conciliation Certificate was issued by ACAS on 7 June 2022 (13).

10 101. This employment represented the claimant's first work in the UK since she graduated, and she said in evidence that she had no information about "rules and regulations". In her employment with the respondent, she felt she had to tolerate a certain amount of difficulty but when she decided that she had reached the point where she wanted to act, she spoke to a number of colleagues who, she knew, had taken the respondent to court (understood in this instance to mean the Employment Tribunal). They told her about ACAS and the need to contact them before
15 presenting a claim to the Tribunal. She thought at the time that she needed to await the final outcome of her grievance before lodging a claim with the Tribunal.

20 102. When she spoke to ACAS on 18 May 2022, the conciliator told her that the first few incidents were time-barred. However, having sought advice from the Strathclyde University Law Clinic shortly before this Hearing, the claimant learned that if there were "serial incidents" that could extend the time limits. She said that when she arrived in the UK she had no knowledge of employment rights, as "there are no employment rights in my country". She was able to find out about the 3 months time limit from
25 reading on the internet. She believes that the respondent exploited her ignorance, and that nobody told her to go to Human Resources, apart from Mr Alam.

30 103. When the appeal was concluded, she said she started looking at the internet to find out about time limits, and tried contacting solicitors; however, she could not afford to pay a solicitor to act on her behalf.

Submissions

104. Ms Miller presented a lengthy written submission on behalf of the respondent, to which she spoke. The claimant responded verbally to the respondent's submission.

5 105. The Tribunal took into account the full submissions of both parties but does not consider it necessary to set them out in any detail at this stage in the Judgment. Reference to submissions will be made below as the Tribunal considers appropriate.

The Relevant Law

10 106. Section 19 of the Equality Act 2010 provides:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

15 *(2) For the purposes of sub-section (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -*

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

20 *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

25 107. Section 23(1) of the 2010 Act provides that *"On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case."*

108. Section 13(1) of the 2010 Act provides:

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

5 109. The Tribunal also had reference to section 26(1) of the 2010 Act:

“A person (A) harasses another (B) if -

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

10 *(b) the conduct has the purpose or effect of-*

(i) violating B’s dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...”

The Issues

15 110. The List of Issues (111) produced by the parties set out the claims which were for determination by the Tribunal. They were largely agreed, though the claimant had sought to add 2 further issues at paragraphs 18 and 19. We deal with all of the proposed Issues in our decision section and therefore it is appropriate to set them out in full at this stage.

20 111. The Issues for determination by the Tribunal are as follows:

Section 19 of the Equality Act 2010 - Indirect Sex Discrimination

1. The claimant claims that the respondent operated the following provisions, criteria or practices (PCPs) and applied those to employees including the claimant:

25 a. refusal of permission to take parental leave, or time off for dependants, or their medical appointments (PCP 1);

b. altering the claimant’s start time (PCP 2) (together, the PCPs).

2. The respondent accepted that PCP 2 exists. Does PCP 1 exist?

3. If admitted, or found to exist, in each case, did the PCP apply equally to female and male applicants?

4. If admitted, or found to exist, in each case, what is the scope of the pool for comparison when considering the question of particular
5 disadvantage?

5. If admitted, or found to exist, in each case, did the PCP put women in the pool at a particular disadvantage when compared to men?

a. If so, what was that disadvantage?

6. If admitted, or found to exist, in each case, did the PCP put the
10 claimant at that disadvantage?

7. If admitted, or found to exist, in each case, has the respondent justified the PCP by showing it to be a proportionate means of achieving a legitimate aim?

8. Has the claimant established that the PCPs were an ongoing state of
15 affairs on 13 June 2022 (when the claimant amended her claim)?

a. If not, are the claimants claims insofar as they relate to the PCPs out of time? (section 120 of Equality Act 2010)

b. If the claimant's claims as they relate to the PCPs are outwith the normal 3 month time limit, is it just and equitable for the
20 Tribunal to exercise its jurisdiction to allow the PCPs to be considered by the Tribunal?

Section 13 of the Equality Act 2010 - Direct Race Discrimination

9. Did the respondent treat the claimant less favourably than it would treat others in not materially different circumstances because of the
25 claimant's race (middle eastern ethnic origin) by subjecting the claimant to the following treatment?

- 5
- a. the alleged refusal to permit the claimant to take time off on 18 August 2021 to attend to her son who was unwell;
- b. the alleged refusal to permit the claimant to take time off in September 2021 for the claimant to attend an MRI scan;
- 10
- c. the discussion on 3 February 2021 with a colleague referred to as 'June' or 'JS', about smoking shisha;
- d. the discussion on 3 February 2021 with a colleague referred to as 'June' or 'JS', about chips;
- e. the discussion on 3 February 2021 with a colleague referred to as 'June' or 'JS', about swimming and wearing a bikini;
- f. Mr Glassford's alleged mishandling of the claimant's complaints about the discussion with JS on 3 February 2021 ;
- g. the respondent's alleged failure to appoint the claimant to Workstation Lead;
- 15
- h. the alleged dispute with a colleague referred to as 'Gentian' or 'GX' in July 2021 (noting that it is unclear what protected characteristic the claimant is relying upon in this complaint);
- i. the alleged instruction by Mr Alam to attend work with Covid-19 symptoms on 9 September 2021 ;
- 20
- j. the discussion with Marc Jones in December 2021 whereby he allegedly shouted at the claimant and asked her not to point at him; and
- k. the respondent's alleged failure to appoint the claimant to Workstation Lead from February 2021 until February 2022.

25 **10. If so, was the alleged less favourable treatment because of the claimant's race?**

11. Are the claimant's direct discrimination claims set out at (a) to (j) above out of time? (section 120 of the Equality Act 2010)

- 5
- a. Were these claims lodged within 3 months of the act of discrimination, or last act of discrimination if there is found to be conduct extending over a period of time?
- b. If not, is it just and equitable for the Tribunal to exercise its discretion to allow the direct race discrimination claims to be considered by the Tribunal?

10

Section 13 of the Equality Act 2010 - Direct Religious Belief Discrimination

12. Did the respondent treat the claimant less favourably than it would treat others in not materially different circumstances because of the claimant's religious beliefs (Muslim) by subjecting the claimant to the following treatment:

- 15
- a. the discussion on 3 February 2021 with a colleague, referred to as 'June' or US', about drinking alcohol;
- b. the discussion on 3 February 2021 with a colleague referred to as 'June' or *JS*, about taking off a jumper;
- 20
- c. the discussion on 3 February 2021 with a colleague referred to as 'June' or US', about arranged marriage; and
- d. the alleged dispute with a colleague referred to as 'Gentian' or 'GX' in July 2021 (noting that it is unclear what protected characteristic the claimant is relying upon in respect of this complaint).

25

13. If so, was the alleged less favourable treatment because of the claimant's religious beliefs?

14. Are the claimant's direct religious belief discrimination claims set out in (a) to (d) above out of time? (section 120 of the Equality Act 2010)

- a. Were these claims lodged within 3 months of the act of discrimination, or last act of discrimination if there is found to be conducting extending over a period of time?
- b. If not, is it just and equitable for the Tribunal to exercise its discretion to allow the claims set out at (a) to (d) above to be considered by the Tribunal?

Section 26 of the Equality Act 2010 - Harassment

15. Did the respondent engage in unwanted conduct related to the claimant's race and/or religious beliefs by subjecting her to:

- a. the alleged conduct at 9(a) to (e), (h), (i) and 12 (a) to (d) above?

16. If so, did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

17. Are the claimant's harassment complaints out of time? (section 120 of the Equality Act 2010)

- a. Were these claims lodged within 3 months of the act of discrimination, or last act of discrimination if there is found to be conduct extending over a period of time?
- b. If not, is it just and equitable for the Tribunal to exercise its discretion to allow the claims set out at (a) to (d) above to be considered by the Tribunal?

Claimant's Supplementary Issues (not agreed by the Respondent)

18. On 3 December 2021, the claimant was allegedly subject to bullying by a colleague, referred to as 'ES', whereby he allegedly used inappropriate language during a dispute with the claimant

19. **These issues and unfairness led to a severe stress and anxiety for the claimant as a result she was admitted to hospital while she was at work diagnosed with a heart problem and needed an urgent operation which was done on 19 January 2023 at the Golden Jubilee Hospital, Glasgow. This can be supported with hospital and medical reports.**

112. We will deal with the issues as set out above, and determine the relevance of issues 18 and 19, which appear to have been drafted by the claimant and therefore adopt a different form to the others, in the decision section which follows.

10 Discussion and Decision

113. We seek to adopt the approach put forward in the List of Issues. It is important for parties, and perhaps more acutely the claimant, to understand that the Tribunal will only address those claims which are properly before us and have been presented by the claimant. The List of Issues does represent a comprehensive categorisation of the claims before us. The claimant appeared to us to struggle with the concept that the Tribunal is restricted in the matters it may address, based on the claims which are made in writing and presented to us, but we cannot and will not explore matters which are outwith the claims made by her.

114. Before addressing the issues, we wish to make some observations on the evidence which we have heard in this case, and on the witnesses. We consider the respondent's witnesses before the claimant for simplicity.

115. Lynn Brown was a straightforward witness whose involvement in this matter was largely administrative rather than managerial, and she did not bear responsibility for many of the decisions which were made affecting the claimant.

116. We found Sandy Glassford to be a calm and honest witness, and in the face of particular allegations made by the claimant, to be unperturbed and ready to respond. His evidence was of assistance to the Tribunal and we were prepared to accept it as truthful.

117. Mahmoud Alam emerged from his evidence as an impressive witness. He was prepared to accept criticism where it was justified, but was able to explain his position clearly and articulately. We found his evidence believable and persuasive.
- 5 118. Marc Jones' involvement in this matter was relatively brief, but his evidence about his encounter with the claimant was helpful and clear. It was put to him by the claimant that at the end of his conversation with her, he had told her that he would get back to her, but had never done so; to which he responded that he regretted that, and apologised.
- 10 119. Ruth McLaughlin was a very impressive witness, in our view. She had an excellent grasp on the issues in which she was involved, and was able to explain her position and actions very well. We found her to be a patently honest witness whose professionalism was very evident from her dealings with the claimant and the way in which she carried such heavy
15 responsibility in the setting up and development of the Lighthouse Laboratory.
120. The claimant was generally a good witness, who was able to answer questions very fully and explain her position to the Tribunal. We did not consider that she was seeking in any way to mislead the Tribunal, but we
20 found that her perspective on the events she was describing had been affected by a degree of anger and distress at what she perceived amounted to unfair and at times discriminatory treatment. To some extent, we considered her distress to be justified - the conversation which took place in February 2021 with Ms Sillars was one which she should not
25 have had to put up with, and it was right that the respondent dealt with it swiftly and decisively. However, it was apparent to us that the claimant had a tendency to dwell on perceived slights and injustices rather than to take a broader perspective, so that the fact that others who witnessed that conversation raised it with management before she did, in order to
30 demonstrate support to her.

121. One example of this perspective can be seen in her interpretation of Mr Alam's comments on the Teams chat in which she raised a number of comments and questions about what she considered to be poor practice or processes. In our view, Mr Alam's comments were plainly supportive and not critical, but the claimant insisted that she could detect a degree of annoyance and anger in them. This was simply not a fair or accurate interpretation of Mr Alam's comments, which clearly, in our view, noted the claimant's observations and sought to ensure that she was able to raise them in the correct place for the benefit of the laboratory as a whole.
122. Our overall conclusion was that while the claimant was not in any way being untruthful in her evidence, we could not entirely rely upon the accuracy of what she was saying. Where her description of an incident was contradicted by another - such as, for example, when she denied that she had engaged in shouting with Eugene or Gentian - we concluded that her evidence was not entirely reliable, and that she was defensive of her own position to the extent that she sought to avoid criticism of her actions at all costs.
123. The claimant is a highly-qualified scientist, of which she is justly proud, but we might observe that that pride perhaps led her to consider her colleagues to have a lower professional standing than hers, which made it impossible for her to understand why another might have been appointed to Workstation Lead ahead of her. In our judgment, this could explain her tendency to return repeatedly to her insistence that others who had worked in a fast-food restaurant or as an air steward could not possibly be seen to be more suitable than her for the position, notwithstanding that the respondent's clear position was that it was more important that an individual have managerial skills and experience, as well as the ability to build a team and communicate effectively with them, than that they were highly qualified as a scientist.
124. We turn then to the Issues.

1. The claimant claims that the respondent operated the following provisions, criteria or practices (PCPs) and applied those to employees including the claimant:

5 a. refusal of permission to take parental leave, or time off for dependants, or their medical appointments (PCP 1);

b. altering the claimant's start time (PCP 2) (together, the PCPs).

2. The respondent accepted that PCP 2 exists. Does PCP 1 exist?

10 3. If admitted, or found to exist, in each case, did the PCP apply equally to female and male applicants?

4. If admitted, or found to exist, in each case, what is the scope of the pool for comparison when considering the question of particular disadvantage?

15 5. If admitted, or found to exist, in each case, did the PCP put women in the pool at a particular disadvantage when compared to men?

a. If so, what was that disadvantage?

6. If admitted, or found to exist, in each case, did the PCP put the claimant at that disadvantage?

20 7. If admitted, or found to exist, in each case, has the respondent justified the PCP by showing it to be a proportionate means of achieving a legitimate aim?

8. Has the claimant established that the PCPs were an ongoing state of affairs on 13 June 2022 (when the claimant amended her claim)?

25 a. If not, are the claimant's claims insofar as they relate to the PCPs out of time? (section 120 of Equality Act 2010)

b. If the claimant's claims as they relate to the PCPs are outwith the normal 3 month time limit, is it just and equitable for the

Tribunal to exercise its jurisdiction to allow the PCPs to be considered by the Tribunal?

125. It is necessary, in the first instance, to determine whether or not the respondent applied the PCPs alleged.
- 5 126. PCP 1 was the refusal of permission to take parental leave, or time off for dependants, or their medical appointments.
127. It is understood that this refers to 2 particular incidents: firstly, the alleged refusal to allow the claimant to take time off to look after her son with shingles; and secondly, the alleged refusal to allow the claimant to take
10 time off to attend an MRI scan.
128. In neither case does the evidence demonstrate that the claimant was refused permission to take time off. With regard to her son's illness, it is plain that there was some discussion between herself and her line manager about how long she would need to be detained at home, but at
15 the end of that discussion, it was clearly agreed by the claimant and her line manager that a half day would suffice. The claimant described the arrangement at the time as being "perfect". We found it unaccountable that the claimant would now seek to argue that she was prevented or prohibited from taking time off.
- 20 129. Further, however, it is not clear to us that this amounts to a PCP. There was no evidence that if there was a refusal to allow her time off, that that refusal formed some kind of policy or practice which the respondent would apply to others. There is no doubt that the respondents have and operate a policy on taking emergency leave. There is nothing to suggest
25 that this policy was not properly applied. The claimant had access to all policies operated by the respondent but for her own reasons did not read them at the time. There was no provision, criterion or practice to the effect that staff would not be permitted time off to look after an ill child; and in any event, as we have found, there was no refusal in this case anyway.

130. The second issue was that the claimant appeared to suggest that the respondent refused her time off to attend an MRI scan at the hospital. That was plainly incorrect. She was permitted to take the time off, though Mr Alam, in a busy laboratory, thought it appropriate to ask her how long she thought she would be. There is no evidence that Mr Alam would have refused her the time off if she had told him that it would be 3 hours. It was simply, in our view, so that he would have an understanding of whether, and if so roughly when, she would return to duty. As it turned out, when she did return, she was advised by Mr Alam to take a break before resuming her work. There is no PCP here alleged. The claimant appears to be arguing that she was, in fact, treated differently to others, which may explain why she makes this claim as a complaint of direct discrimination as well.
131. PCP 2 was the requirement imposed upon the claimant to alter her start time. This formed part of a general change to try and rationalise the different start times in the different workstations, which were interdependent in order to be supplied with a constant flow of work. This took place on Skerryvore shift with effect from 1 September 2021.
132. The respondent accepts that PCP 2 exists as a PCP.
133. In our judgment, it was applied equally to male and female staff. There is no evidence that either male or female personnel were treated differently in the introduction of the start time change.
134. The pool for comparison, in our view, is simply lab scientists employed to work on the same shift at the claimant.
135. We accept that the PCP would affect women more than men, on the basis that as a group, women take a greater share of the burden of childcare than men.
136. It is necessary then to establish whether or not the claimant was personally disadvantaged by the application of the shift change. Her evidence confirmed that she was never personally required to work later

than 2pm on a weekday, and 2.30pm on a Saturday, with the consequence that she was never required to be late to collect her children. As a result, there was no actual disadvantage which accrued to the claimant.

5 137. That being the case, we have concluded that the claimant's claim for indirect discrimination on the grounds of sex must fail. She has not demonstrated that PCP 1 was applied to her, nor that PCP 2, having been applied to her, caused her to sustain any personal disadvantage, far less a substantial disadvantage.

10 138. The remaining issues do not, in our judgment, require to be addressed, following these conclusions.

139. We deal with the time bar points below, taking into account each of the different categories of claim together.

Section 13 of the Equality Act 2010 - Direct Race Discrimination

15 **9. Did the respondent treat the claimant less favourably than it would treat others in not materially different circumstances because of the claimant's race (middle eastern ethnic origin) by subjecting the claimant to the following treatment?**

20 a. the alleged refusal to permit the claimant to take time off on 18 August 2021 to attend to her son who was unwell;

b. the alleged refusal to permit the claimant to take time off in September 2021 for the claimant to attend an MRI scan;

c. the discussion on 3 February 2021 with a colleague referred to as 'June' or 'JS', about smoking shisha;

25 d. the discussion on 3 February 2021 with a colleague referred to as 'June' or 'US', about chips;

e. the discussion on 3 February 2021 with a colleague referred to as 'June' or 'US', about swimming and wearing a bikini;

- f. Mr Glassford's alleged mishandling of the claimant's complaints about the discussion with JS on 3 February 2021 ;
- g. the respondent's alleged failure to appoint the claimant to Workstation Lead;
- 5 h. the alleged dispute with a colleague referred to as 'Gentian' or 'GX' in July 2021 (noting that it is unclear what protected characteristic the claimant is relying upon in this complaint);
- i. the alleged instruction by Mr Alam to attend work with Covid-19 symptoms on 9 September 2021 ;
- 10 j. the discussion with Marc Jones in December 2021 whereby he allegedly shouted at the claimant and asked her not to point at him; and
- k. the respondent's alleged failure to appoint the claimant to Workstation Lead from February 2021 until February 2022.
- 15 **10. If so, was the alleged less favourable treatment because of the claimant's race?**
- 11. Are the claimant's direct discrimination claims set out at (a) to (j) above out of time? (section 120 of the Equality Act 2010)**
- 20 a. Were these claims lodged within 3 months of the act of discrimination, or last act of discrimination if there is found to be conduct extending over a period of time?
- b. If not, is it just and equitable for the Tribunal to exercise its discretion to allow the direct race discrimination claims to be considered by the Tribunal?
- 25 140. It is necessary, in considering the claims made under this heading, to determine whether or not the complaints made by the claimant can be upheld as a matter of fact, based on the evidence heard.

141. As a result, we address each of the complaints in turn.

142. The first allegation is that the respondent refused to permit the claimant to take time off on 18 August 2021 to attend to her son who was unwell.

5 143. It is important to note that the claimant does not complain that the respondent failed to give her "emergency leave" or another particular type of leave, but that the respondent refused to permit her to take time off (however categorised) on 18 August 2021.

10 144. On the evidence, the crucial date was in fact 19 August 2021. The claimant emailed the respondent, including Mr Alam, on 18 August 2021 after the conclusion of her shift that day, at 1548 hours (214) requesting leave to look after her son who was suffering from shingles. There followed an exchange of correspondence (408/9) in which Mr Alam confirmed that the claimant could take a half day off the following day (408), whereupon the claimant replied (409) that "half day is perfect for me".

15

145. We failed to understand what the claimant was complaining about here. She asked for time off on 19 August 2021; she was granted time off. She agreed the length of time off with Mr Alam.

20 146. The claimant has simply failed to prove that the respondent refused to permit her to take time off. Indeed, on her own evidence, they agreed to permit her to take time off. That it may not have been as long as she would have liked, or would like retrospectively, is not the issue. She complained that they did not let her take time off to look after her son, and the evidence plainly shows that they did.

25 147. The next issue related to the claimant's request for time off in September 2021.

30 148. The claimant requested time off to attend an MRI scan. Mr Alam asked her to confirm how long she would be away from the workplace, in order to understand the impact upon the work being carried out. There is no evidence that Mr Alam told the claimant how long he expected her to be

absent; he took his lead from her response that she thought that 2 hours would be sufficient, including travel time. As it turned out, the claimant returned within or just before the expiry of 2 hours. When she returned, Mr Alam permitted her to have a break before resuming work.

5 149. The Tribunal considered this to be a routine interaction between an employee and her manager. Mr Alam is entitled to understand the impact upon his work responsibilities of a lab scientist's absence from the workplace. The request to attend the appointment appears to have been presented by the claimant to Mr Alam relatively close to the date of the
10 appointment, and accordingly it was impossible for cover to be arranged. Since the claimant believed that 2 hours would be sufficient, 2 hours was granted to her. 2 hours was sufficient in the circumstances.

150. There is nothing detrimental to the claimant in the process followed by Mr Alam here. There is no basis for maintaining that he did anything
15 wrong, far less discriminatory. The respondent did not refuse her time to attend the MRI appointment. They allowed her to take that time.

151. The third to sixth issues related to the June Sillars incident.

152. There is no doubt that the claimant was approached by Ms Sillars, who spoke to her in terms which were unwelcome and discriminatory, on 3
20 February 2021. 2 of her colleagues were deeply uncomfortable when they overheard the conversation, and considered it sufficiently serious as to justify reporting the matter to their line manager, Mr Glassford. The claimant herself submitted an email to Mr Glassford subsequently raising her concerns.

25 153. Ms Sillars did press the claimant about whether she smoked shisha, made fun of her for referring to "finger chips" as opposed to "chips" and asked intrusive and embarrassing questions of the claimant about the wearing of a bikini on the beach. As a Muslim, the claimant found this conversation profoundly embarrassing and oppressive.

154. The respondent agreed with the claimant's assessment of the conversation, and Mr Glassford himself was both very unhappy and disapproving of Ms Sillars' actions and anxious to reassure the claimant that she should not have to put up with such conduct. It appears that the claimant is and remains very unhappy about the respondent's actions in response to her complaint about this matter. However, the claimant declined to meet with Ms Sillars and stressed that she did not want to get a colleague into trouble.

155. In that context, it seemed to us that the respondent's actions in reassuring the claimant that they considered her complaint to be entirely justified; in treating it as informal in line with the claimant's own reluctance to confront a colleague about such a difficult matter; in swiftly obtaining written statements from witnesses in order to understand precisely what had taken place; in meeting with Ms Sillars privately and emphasising that her conversation was entirely inappropriate and was not to be repeated; and in agreeing to the claimant's request to be moved to a different workstation in order to avoid having to work again with Ms Sillars; all amounted to an eminently reasonable and proportionate response not only to the claimant's complaint but also to her wish to have the matter dealt with in a moderate and discreet manner. There was nothing in the claimant's reaction to Mr Glassford's actions to suggest to them that she was dissatisfied with the outcome which was reached. The claimant appears to wish to raise this old issue again in order to fortify her claims against the respondent before the Tribunal, but in our judgment, it would be unfair to allow the claimant to characterise the respondent's actions as discriminatory on the grounds of race or religion or belief, or indeed as anything other than supportive, proportionate and consistent with the claimant's wishes.

156. The Tribunal's strong impression was that Mr Glassford understood very readily why the claimant felt uncomfortable and humiliated by this conversation, and would have preferred to have taken more formal action upon the complaint, but was restrained from doing so by the claimant's own wishes. Having been dealt with in a manner consistent with those

wishes, as expressed to Mr Glassford, there was no reason for the respondent to taken any further action.

5 157. We accepted Mr Glassford's evidence that the claimant did not at any stage request an apology letter from Ms Sillars. Mr Glassford said that Ms Sillars was upset that she had caused the claimant distress and wanted to meet with her in order to apologise in person to her. While the claimant had made clear that she did not wish to meet with Ms Sillars, it is inconceivable that Mr Glassford would have failed to obtain an apology letter from Ms Sillars if the claimant had asked for one. The fact that it
10 was not pursued by Mr Glassford is evidence, in our judgment, that the claimant had not requested an apology letter from Ms Sillars.

15 158. Accordingly, in our judgment, there is no basis to suggest that the respondent acted in such a way as to treat the claimant less favourably than they would have treated another employee of a different race, or religious belief. We do not consider any criticism of the respondent's response to this complaint to be justified, nor even fair.

159. The eighth issue relates to the handling of the dispute between the claimant and Gentian.

20 160. It is not entirely clear what the claimant is complaining about in this matter. In her further and better particulars, (42) she sets out her version of events. She alleges that Gentian repeatedly called her a liar and raised his voice to her. This incident took place in July 2021 when Mr Glassford was the claimant's line manager. He sought to calm the claimant down and then to meet with her and Gentian in order to find a resolution of the
25 matter. Since that meeting failed to resolve the dispute, he asked the claimant to move to another workstation temporarily, as it was clear to him that they could not (or would not) work together.

30 161. The claimant expressed very strong negative feelings about the way in which Mr Glassford dealt with this matter. In particular, she persisted in asserting that Mr Glassford had "indirectly" called her a liar. We understood this to mean that since Gentian had called her a liar, the fact

that Mr Glassford had not told her that she was not a liar nor told Gentian to withdraw the allegation meant, in the claimant's view, that he was joining with Gentian in his assertion. We did not find this to be the case at all. However, what we did find convincing was that the claimant became
5 fixated on trying to persuade Mr Glassford that she was in the right and Gentian in the wrong.

162. Mr Glassford's conclusion was that both the claimant and Gentian were at fault for the manner in which they conducted this interaction, and that both acted very unhelpfully in the meeting in which he had tried to resolve
10 matters between them. Given that they both raised their voices in that meeting and sought to inflame the situation, Mr Glassford's reaction was to take them at their word and accept that they could not be allowed to work together at the workstation. Gentian having been based on that workstation for longer than the claimant, Mr Glassford took the view that
15 he should ask the claimant to move. She was unhappy with this proposal, but she did move at his request.

163. Our conclusion about this situation was that there was no clear finding made by Mr Glassford that either the claimant or Gentian were primarily to blame for the relationship breaking down, but that both of them had
20 contributed to this situation and had not improved matters when he had sought to bring them together; and that in any event, there is nothing in the claimant's claim, further and better particulars or evidence which actually states, at any stage, what protected characteristic she relies upon in making this complaint.

25 164. The claimant appears to be suggesting that the respondent treated her less favourably (presumably than some unnamed comparator) because of a protected characteristic, but at no stage does she say what the protected characteristic is. Given that she has made claims relating to sex, race and religion or belief, one would anticipate that she would be
30 able to identify which of these characteristics she believed was the ground upon which the respondent acted.

165. On the face of it, the claimant's complaint here is simply that she felt that Mr Glassford treated her less favourably than Gentian, on the basis that he found that she had lied (which he did not), and that he had asked her to move, and not Gentian. We are unable to identify any discriminatory
5 conduct on the part of Mr Glassford in making this decision. It is possible to identify that the claimant is female, and Gentian is male, but beyond that we simply do not know, from the evidence, what the claimant suggests was the reason for any different treatment between them.

166. As a result, we accept the respondent's submission that the claimant has
10 failed to discharge the burden of proof upon her to show that there was a difference in treatment which created a prima facie finding that the reason for the difference in treatment was race, or sex, or religion or belief. The evidence simply demonstrates that the claimant and Gentian had a disagreement, which continued even though Mr Glassford attempted to
15 resolve it, during which Gentian made some reference to the claimant speaking to him in a manner in which his wife would not speak to him. The claimant did not explain to us why she thought that amounted to discriminatory conduct and in that absence we are unable to conclude that of itself that was a statement which amounted to discrimination on
20 the ground of any particular protected characteristic.

167. In any event, even if the burden of proof had been discharged by the claimant, we would find that the respondent did not act in a discriminatory manner in dealing with the issue. Mr Glassford attempted to find a resolution between two disputing colleagues who were not only refusing
25 to back down from their respective positions, but who were escalating the dispute when he sought to bring a degree of closure to both of them. He did not find that the claimant had lied to Gentian, but treated this as a relationship breakdown rather than a conduct matter and sought to find a solution in that way. He also asked the claimant to move to a different
30 workstation, which she was very reluctant to do, since she drew the inference that she was being punished. We accepted Mr Glassford's evidence that the reason for moving her rather than him was simply down to Gentian's longer experience at the particular workstation involved. He

was seeking to find a solution to a very acute workplace situation, and we do not consider that he took the decision he took on the basis of the claimant's race. There is simply no evidence to support such a claim.

5 168. The ninth issue relates to the alleged instruction by Mr Alam to the claimant to work despite having Covid-19 symptoms in September 2021 .

10 169. There is no doubt that this was a matter which could have been handled more judiciously by Mr Alam. The claimant did attend work in the morning, and during the course of her shift, left the laboratory. As we understood it, the reason why she left was that she had told her colleagues that there had been a positive test at the school where one of her children was in attendance, and that she was suffering from a runny nose, which she attributed to a possible Covid infection. When she left the laboratory, the respondent became somewhat confused as to whether or not, in these circumstances, the claimant required to self-isolate. Mr Alam readily accepted that he became confused between the UK Government
15 guidance and that of the Scottish Government.

170. The claimant alleged that she was forced to wait in her car for 4 hours while the decision was made. She also alleged that she was humiliated and upset by this process.

20 171. The evidence before us gave a rather different picture. The claimant herself decided to wait in her car in the car park, while not in the laboratory, and there is no evidence at all that she was instructed to go to her car or to wait; and further, she gave evidence herself to the effect that she did not have to wait in her car for 4 hours.

25 172. What did happen was that the claimant was not sent home, as she appeared to want to be, until much later in the day, and that there were many discussions going on inside the laboratory as to what she should be told to do. There was a delay in obtaining a result from her Covid-19 test (which may be seen as both unfortunate and ironic given the nature of the work being carried out in the laboratory), but the issue seems to be that
30 the claimant was expected to be at work rather than self-isolating.

173. Mr Alam believed that the claimant could be asked to work when she had not had a positive Covid test; when neither or her children had had a positive Covid test; and when the only symptom she was suffering from on the morning when she attended work was a runny nose, which Mr Alam believed was not a Covid symptom.
174. The claimant was eventually permitted to go home, and indeed once she had initially left the laboratory, she was not required to return that day.
175. In our judgment, this was a matter which could and should have been handled much better by the respondent, especially in light of their knowledge and expertise in Covid-19, being a Covid-19 testing laboratory. While there may be some mitigation in that the guidelines being issued by the UK and Scottish Governments changed frequently at that time, and also different in sometimes subtle ways, the respondent did not cover itself in glory in this issue.
176. However, the claimant has failed to put forward any evidence to the effect that the reason why she was treated in this way was related to her race, or on the grounds of her race. There is no indication that any other individual of a different race would have been treated any differently, and our view was that Mr Alam was not being deliberately difficult here, but simply trying to ensure that he complied with the applicable guidance.
177. It is not clear how the claimant suggests she was being treated less favourably than any other individual on the grounds of race. If it is correct, as we have found, that the respondent's uncertainty and vacillation was brought about by a lack of clarity as to the guidelines and a concern to ensure that a member of staff should be able to continue to work unless they were genuinely a risk, or at risk, due to Covid-19, then that lack of clarity would have applied no matter what race the employee concerned belonged to.
178. In the evidence, the claimant did not assert at any stage that she was treated less favourably in this matter due to her race.

179. Accordingly, there is no basis for any finding of discrimination in this issue.
180. The tenth issue was that Mr Jones shouted at her and asked her twice not to point at him. We heard evidence from both the claimant and Mr Jones. We preferred the evidence of Mr Jones when he insisted that he had not shouted at the claimant. They were meeting in a place which, of necessity, others could pass through at any moment. As to Mr Jones telling the claimant to stop pointing at him, he accepted that he had done so, or may have done so, simply because she was pointing at him in a manner which he did not think was appropriate. On that point, the claimant insisted that she was not pointing, but was gesturing with her hands, as she does when she speaks.
181. We concluded that Mr Jones was telling the truth about this, and that the claimant was pointing at him, in a manner which he found to be rude, so he asked her to stop. We do not find that this is an unusual thing for a manager to do, particularly when trying to calm an employee down when they are agitated, as the claimant was. Mr Jones insisted that he did not, and would not, shout at anyone, and his evidence was accepted by the Tribunal.
182. Again, however, there is nothing in the evidence which would allow us to conclude that Mr Jones acted as he did on the basis of the claimant's race. We cannot find any connection whatever between what Mr Jones did and the claimant's race. There is no basis for this claim, and we do not uphold it.
183. The seventh and eleventh issues related to the respondent's failure to appoint the claimant to be Workstation Lead.
184. The claimant expressed frustration and incomprehension that she was not appointed to the position of Workstation Lead on any of the 5 occasions on which she applied to the respondent.

185. The respondent observed that this was not a promoted position, but one in which the successful candidate would be paid a responsibility supplement but remain on the same grade as lab scientists. They described it as an unofficial position, though the Tribunal did not find that a helpful description; it was a position which attracted a salary supplement, and plainly involved the accretion of additional responsibilities.

186. The claimant's frustration was vividly expressed on a number of occasions in the Hearing before us. Essentially, she complained that as an experienced and highly qualified scientist, with a PhD, she should have been appointed above any of the candidates who were competing with her for the posts. She compared herself to individuals whose experience was in retail, or on board a commercial airliner, and considered it self-evident that she would have been the best person for the job on each occasion.

187. The respondent's position was that the claimant was certainly appointable, and indeed a good candidate, on each occasion, but that there were better candidates whose experience of management, or whose applications, more realistically demonstrated that they would be able to lead a team, and increase its coherence, effectiveness and team spirit.

188. The position was not one in which the scientific or academic qualifications were any different to those for the appointment of a lab scientist. As a result, the respondent considered themselves able to appoint the most suitable candidate from the lab scientists without the need to consider their scientific credentials. Each candidate had experience as a lab scientist, and thus familiarity with the processes being followed. The additional characteristics which the respondent said they were looking for related to the ability to manage people, and find a way to improve how they worked together.

189. The evidence of Mr Glassford, Mr Alam and Ms Brown was consistent in demonstrating that having a PhD was not an advantage to a candidate who wished to move from lab scientist to Workstation Lead. They considered that the claimant's applications focused too greatly upon the technical and process aspects of the workstation, and too little upon the credentials of the claimant in leading and motivating a team of colleagues.
190. There is no basis, in our judgment, for the assertion that the claimant was not appointed to the position of Workstation Lead for a reason relating to her race. The respondent was able to point to a colleague named Mab Habib who had been appointed to the position of Workstation Lead, of Arabic and Muslim ethnicity, and while this is not of itself determinative of the claimant's claim, it did contradict the claimant's own assertion to Mr Alam that no Muslim women had been appointed in this way.
191. Further, the claimant's complaint that her PhD meant that she was better qualified than any of her colleagues was contradicted by Mr Alam's evidence that despite holding a PhD himself he was not appointed initially to the position of Team Leader when he applied. Again, of itself, this is not determinative of the claimant's claim, but it does indicate that a promoted position within the laboratory did not, on every occasion, require a PhD.
192. Our conclusion was that the claimant's applications were considered to be good, if not sufficiently focused upon the management requirements of the position, but that others were able to demonstrate a more team-focused approach. In our judgment, the claimant has not proved that the reason for her non-appointment to the position of Workstation Lead was related to her race.
193. The final, and supplementary, issue on the List of Issues related to the dispute with Eugene. While we accept that this was a matter of importance to the claimant, it should not be included in the List of Issues,

as it does not appear in the claimant's claim nor in the further and better particulars.

5 194. A claimant, whether represented or unrepresented, must give notice of the claims which they wish to make. The fact that the respondent chose, voluntarily, to present evidence on this particular point in order to assist the claimant and the Tribunal does not mean that the Tribunal requires to allow the claim to be expanded, particularly in circumstances where no application to amend the claim has been made.

10 195. The issue with Eugene therefore arises as a matter which is outwith the List of Issues, and beyond the scope of this Hearing, which is only to deal with the claims which have been made in advance of the Hearing.

Section 13 of the Equality Act 2010 - Direct Religious Belief Discrimination

15 **12. Did the respondent treat the claimant less favourably than it would treat others in not materially different circumstances because of the claimant's religious beliefs (Muslim) by subjecting the claimant to the following treatment:**

- 20 a. the discussion on 3 February 2021 with a colleague, referred to as 'June' or US', about drinking alcohol;
- b. the discussion on 3 February 2021 with a colleague referred to as 'June' or 'JS', about taking off a jumper;
- c. the discussion on 3 February 2021 with a colleague referred to as 'June' or US', about arranged marriage; and
- 25 d. the alleged dispute with a colleague referred to as 'Gentian' or 'GX' in July 2021 (noting that it is unclear what protected characteristic the claimant is relying upon in respect of this complaint).

13. If so, was the alleged less favourable treatment because of the claimant's religious beliefs?

14. Are the claimant's direct religious belief discrimination claims set out in (a) to (d) above out of time? (section 120 of the Equality Act 2010)

a. Were these claims lodged within 3 months of the act of discrimination, or last act of discrimination if there is found to be conducting extending over a period of time?

b. If not, is it just and equitable for the Tribunal to exercise its discretion to allow the claims set out at (a) to (d) above to be considered by the Tribunal?

196. Under this heading, the Tribunal requires to consider whether or not the allegations made form the basis of a complaint for discrimination on the grounds of religion or belief. In this case, the claimant relies upon the Muslim religion as her protected characteristic.

197. The claimant is Muslim. With regard to the first three issues under this heading, all related to the conversation with Ms Sillars, we have already found that what Ms Sillars said to her was unquestionably offensive to her as a Muslim, and accepted to be so by the respondent. However, the respondent, as we have found above, dealt with this matter not only in an objective and reasonable manner, they carried out the express wishes of the claimant not to treat the matter formally or to require the two protagonists to meet together to seek to resolve it.

198. Accordingly, we are not of the view that the respondent, who acted appropriately as soon as the matter was reported to them, can be found to have acted unlawfully by way of discrimination on the grounds of religion or belief in this regard.

199. So far as the incident with Gentian was concerned, there was no evidence that the claimant's treatment by the respondent in this regard was in any way related to, or on the grounds of, her religion or belief. This was a breakdown of relationships between two colleagues, and there is nothing upon which the Tribunal could make any finding to the effect that either Gentian or Mr Glassford acted as they did due to her religion or

belief. Mr Glassford plainly demonstrated in his handling of the conversation with Ms Sillars that he was not prepared to tolerate conduct of that nature towards the claimant. In our judgment, his priority was to seek to resolve a dispute between two colleagues working together in the same workstation by asking one of them to move to a different place, and that was what he did. The fact that he asked the claimant to move rather than Gentian related to the latter's experience at the workstation, not the claimant's race. Again, the claimant has failed to prove that there was any such connection.

- 10 200. In these circumstances, there is no basis for the Tribunal to conclude that she was discriminated against in these matters on the grounds of religion or belief.

Section 26 of the Equality Act 2010 - Harassment

- 15 15. Did the respondent engage in unwanted conduct related to the claimant's race and/or religious beliefs by subjecting her to:

a. the alleged conduct at 9(a) to (e), (h), (i) and 12 (a) to (d) above?

16. If so, did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

- 20 17. Are the claimant's harassment complaints out of time? (section 120 of the Equality Act 2010)

a. Were these claims lodged within 3 months of the act of discrimination, or last act of discrimination if there is found to be conduct extending over a period of time?

- 25 b. If not, is it just and equitable for the Tribunal to exercise its discretion to allow the claims set out at (a) to (d) above to be considered by the Tribunal?

201. The respondent's submission asserts that this claim, of harassment under section 26, was never part of the claimant's claim, and has never been

the subject of a formal application to amend the claim. Ms Miller suggested that it came in during a Preliminary Hearing before Employment Judge Whitcombe, in which he "walked" the claimant through her claims, and thereby a harassment claim was introduced.

5 202. We were unsure what to make of this submission. The respondent does
not appear to have challenged the Tribunal's summary of the claims, at
the time, and it is not open to this Tribunal to revoke what may amount to
a case management decision by another Employment Judge. It is plain
that the respondent has been able to prepare itself for and defend such
10 claims, and that they essentially arise out of the same facts as are pled in
the direct discrimination claim. We have made no decision, and are not
asked to make such a decision, as to whether or not the claim should be
augmented by such complaints. The matter which comes before us is
whether or not the complaints under this heading can be proved by the
15 claimant, subject to the issue of time bar. However, that is, to a large
extent, academic at this stage, as the Tribunal has already found that
these claims form part of the claimant's claims. We are of the view that it
is too late for this Tribunal to interfere with the process adopted by
another Employment Judge earlier in the proceedings.

20 203. The first example of conduct of which the claimant complains in this
context is the alleged refusal to allow the claimant to take time off on 18
August 2021 when her son was unwell. We have already found that this
was not an accurate characterisation of what happened on 18 (and 19
August 2021). There was no refusal to permit her to take time off on 19
25 August 2021, and accordingly this complaint cannot be upheld.

204. The second example was the alleged refusal to permit the claimant to
take time off in September 2021 to attend an MRI scan. Once again, the
evidence has made clear that there was no refusal to allow the claimant
to take time off. She was given time off, and was permitted to attend the
30 MRI scan appointment (and did so). This complaint cannot therefore be
upheld.

205. The third example of conduct which the claimant categorises as harassment is contained within paragraphs 9(c) to (e) of the List of Issues, in which reference is made to the actions of Ms Sillars in her conversation with the claimant on 3 February 2021 .
- 5 206. There is no doubt that the conduct of Ms Sillars, for which the respondent accepted vicarious liability, amounted to discriminatory conduct, and it is not disputed by the respondent that the claimant was subjected to harassment on the grounds of religion or belief, in particular, by the conversation which Ms Sillars had with her. In her submissions, Ms Miller, quite properly, states that *'The Respondent has never sought to excuse Ms Sillar's behaviour, and does not do so now. The Respondent accepts that Ms Sillar's behaviour falls within the definition of harassment in the 2010 Act and that they are vicariously liable (subject to issues of time bar below) for the actions of Ms Sillar.'*
- 10
- 15 207. That admission having been made, the only issue in relation to the issues falling under 9(c) to (e) is whether or not they should be excluded on the grounds that they were time barred. We deal with this below.
- 20 208. The fourth matter raised under this heading by the claimant is the dispute with Gentian. Once again, it was our finding that there is no basis upon which it can be said that the action taken by the respondent in relation to this matter was in any way related to the claimant's religion or belief, or her race. She did not prove this in the evidence before us and accordingly we cannot find that she was subjected to harassment on the grounds of race, or religion or belief, on the evidence before us.
- 25 209. The fifth matter under this heading relates to the complaint by the claimant that Mr Alam required her to attend work with Covid-19 symptoms on 9 September 2021. We do not consider that Mr Alam's actions amounted to conduct which had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. He sought to
- 30 manage a situation in which he found himself uncertain as to the correct

course of action to follow. He tried to discuss matters with the claimant in order to find the best way to proceed, but did not require, as the claimant asserted in her claim, that she should go and sit in her car for 4 hours. He agreed that she could leave the laboratory but, in essence, asked her to remain on site and available, which she did. Whether she was suffering from Covid-19 symptoms in the morning is unclear - she had a runny nose, but her sore throat only emerged later - and therefore we have concluded that rather than creating an intimidating or degrading environment for the claimant, Mr Alam sought to navigate a route between the claimant's views, the views of her colleagues (with which she sympathised) and the guidance which was to be followed by the laboratory. While, as we have already found, Mr Alam could have handled the matter before, we do not find that his actions had the purpose - he was acting in good faith throughout - or effect of amounting to harassment of the claimant on the grounds of either race or religion or belief. The connection with either of those protected characteristics has not been established at all by the claimant in relation to this matter.

210. Accordingly, we cannot uphold this complaint.

211. The outstanding question which we require to address, then, is whether or not the claims made by the claimant relating to the actions of MsSillars, for which the respondent was vicariously liable, should be allowed to proceed and be considered at this stage on the basis that they are presented out of time.

212. The incident took place on 3 February 2021. The claimant presented her claim to the Tribunal on 13 June 2022. On presentation, the claim itself was more than 13 months out of time. However, the harassment claim was not included within the claims until the Preliminary Hearing of 22 November 2022 before Employment Judge Whitcombe. No mention was made of harassment in the Tribunal's Judgment of October 2022, on the basis that it had not been raised prior to that. As a result, the introduction of the harassment claims took place approximately 19 months after the date upon which the conversation took place.

213. The issue for determination by the Tribunal at this stage is essentially whether the claim of harassment should be allowed to proceed to a decision on its merits.

5 214. We are acutely conscious that by allowing this matter, as is common practice, to be reserved as a preliminary issue, it might be thought that the Tribunal has removed from the respondent one argument against time bar, namely that they would be prejudiced in being able to present their defence to a stale claim. However, we treat that matter with some caution, acknowledging that the respondent required to present their
10 defence in this Hearing, and sought to assist the claimant and the Tribunal by doing so, while maintaining that the claims of harassment were time barred.

215. We do consider that the harassment claims are a significant addition to the claims made in this case, and that they were presented well out of
15 time. They were, in fact, only included in the claim after her application for amendment had been allowed without reference to harassment.

216. We consider that the harassment claim represents a significant new claim, albeit based on the same facts as those already pled. However, it is more than a re-labelling of the direct discrimination claim. It requires a
20 different approach in defence by the respondent, and is subject to a different legal test.

217. The reason for the presentation of the claim at such a late stage is entirely unclear. The claimant had, by November 2022, already presented an application to amend her claim, which was relatively full in its terms.
25 She had previously had the benefit of legal advice. There is no reason given by the claimant as to why she had not presented such a claim prior to November 2022, and in particular at the point when she was submitting an application to amend. The claimant is an intelligent and resourceful individual, who has access to the internet, and who by the time she
30 introduced this claim was already experienced in dealing with the Tribunal and its processes.

218. In our judgment, the claimant has not presented any evidence on which we could conclude that it would be just and equitable for her claim of harassment to proceed. It may be that she was not aware that such a claim had been classified as being included within her existing claims; the fact that she did not submit an application to amend at any stage to include it suggests that it was not her intention to do so, particularly when she not incorporate it in her previous amendment application.

219. The relative prejudice to the parties must be considered, though in the context which we have already set out, namely that the evidence in the full Hearing has now been heard from both parties. The claimant may well claim (though she has not) that losing the opportunity to present a claim of harassment in relation to the actions of Ms Sillars means that she loses the opportunity to maintain a successful claim, given the terms of the respondent's admission that it amounted to harassment and that they were vicariously liable for it. On the other hand, the respondent argues that the prejudice to them is clear: their witnesses have had to address allegations in relation to matters which took place a considerable time ago; that there has been very considerable delay by the claimant in introducing these claims at such a late stage, with no explanation for the delay given; they have been co-operative throughout; that the claimant has delayed very considerably in acting on information of which she was aware before her employment came to an end, without any good reason being advanced for having done so, especially when the opportunity to amend did arise; and the claimant had access, at times, to the advice of an experienced solicitor, but did not act so as to take matters forward until November 2022.

220. We have concluded that it would not be just and equitable to extend the time within which the claims under section 26 have been presented. They have been lodged very late, without any clear or good reason being advanced by the claimant as to why she could not or did not present such claims at a much earlier stage. The claimant had the opportunity to raise a claim of harassment in her ET1, in her further and better particulars and in her application to amend previously submitted, but failed to do so. It

would, in our judgment, be very unfair and prejudicial to the respondent to allow these claims to be considered and determined by this Tribunal after such lengthy and unexplained delays. The greater prejudice would fall on the respondent if the harassment claims were allowed to proceed to determination, than on the claimant if that were refused by the Tribunal, in our judgment.

221. Accordingly, we have decided that the claims made by the claimant under section 26 of the Equality Act 2010 are time-barred, and that it would not be just and equitable to allow them to proceed to determination at this late stage of the proceedings.

Claimant's Supplementary Issues (not agreed by the Respondent)

18. On 3 December 2021, the claimant was allegedly subject to bullying by a colleague, referred to as 'ES', whereby he allegedly used inappropriate language during a dispute with the claimant

*15 19. These issues and unfairness led to a severe stress and anxiety for the claimant as a result she was admitted to hospital while she was at work diagnosed with a heart problem and needed an urgent operation which was done on 1\$ January 2023 at the Golden Jubilee Hospital, Glasgow. This can be supported with hospital and medical reports.

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20 222. We agree with the respondent's submission that these issues (if they amount to issues) were not included within the pleadings, and since the respondent has not had fair notice of these complaints they do not form part of the claims before us. We understand, of course, that the respondent was able to present information to us on this matter, but that does not mean that the claims were validly before the Tribunal; it simply demonstrates that the respondent, acting cautiously and no doubt upon legal advice, decided to ensure that they produced such evidence as they could in order to ensure that their position was protected.

25 223. Accordingly, we are not prepared to consider these issues as being before the Tribunal at this stage.

Conclusion

224. For the reasons we have set out above, we have been unable to sustain the claimant's claims, and therefore they must fail and be dismissed.

5 225. We recognise that this will come as a disappointment to the claimant, who plainly has a strong belief in the rightness of her position. However, we acknowledge that both parties conducted this Hearing in a helpful and courteous manner, which was of great assistance to the Tribunal. It was obvious to us that the work being carried out at the Lighthouse Laboratory, including the work of the claimant but also of the other
10 witnesses who gave evidence before us, was of great significance at a time of considerable anxiety and distress caused by a global pandemic unprecedented in the lifetimes of all involved. It is work of which they should all be proud.

15 **Employment Judge: M Macleod**
Date of Judgment: 26 May 2023
Entered in register: 06 June 2023
and copied to parties