EMPLOYMENT TRIBUNALS

Claimant: Natalie Matanda

Respondent: Perpetua in Perpetuum Ltd

Heard at: Bury St Edmunds Employment Tribunal (by CVP)

On: 20, 21, 22 March 2023 (3 days), reconvened 17 April 2023
Deliberation day 18 May 2023

Before: Employment Judge Hutchings
Ms Gunnell (Tribunal member)
Mr Vaghela (Tribunal member)

Representation
Claimant: Mr Magennis of Counsel
Respondent: Ms Nicholls of Counsel

RESERVED JUDGMENT

1. The claim of unfair dismissal is not well founded and is dismissed.

2. The respondent has not contravened section 13 of the Equality Act 2010. The claim of direct race discrimination is not upheld.

3. The respondent has not contravened section 26 of the Equality Act 2010. The respondent did not harass the claimant. The claims of race harassment are not upheld.

REASONS

Introduction

1. The claimant, Natalie Matanda, was employed by the respondent, Perpetua in Perpetuum Ltd, as a Part 1 Architectural Assistant from 29 August 2017 until she resigned by letter dated 19 July 2021 giving 4 weeks' notice; her employment ended on 12 August 2021. Early conciliation started on 9 September 2021 and ended on 21 October 2021.

2. The claim form was presented on 19 November 2021. The claimant makes the following complaints:

2.1. Constructive unfair dismissal for breach of the term of trust and confidence implied into her employment contract by law;
2.2. Direct race discrimination; and
2.3. Harassment relating to race.

3. By grounds of response dated 22 December 2021 the respondent denies the claims. The respondent asserts that the claimant resigned as she had secured a new job. The respondent denies that it discriminated against the claimant due to her race, submitting that she was not treated differently to those colleagues the respondent accepts are comparators for the purpose of the discrimination claim. The respondent denies it harassed the claimant due to her race or at all.

Preliminary matters

4. At the start of the hearing on 20 March 2023, we agreed a timetable which was broadly followed, with the subsequent addition of a 4th hearing day:

4.1. Day 1: preliminary matters, Tribunal reading day and claimant's evidence.
4.2. Day 2: evidence from the claimant, Eleanor Davies, and Felicity Matten.
4.3. Day 3: evidence from the respondent's witnesses. At the end of day 4 we had only heard evidence from Chris Senior of the respondent. Therefore, the Tribunal added a 4th day to the hearing.
4.4. Day 4: evidence from Debbie Middleton and Kathryn Pedley of the respondent (am); closing statements (pm).

Procedure, documents, and evidence

5. The claimant was represented by Mr Magennis of Counsel who called sworn evidence from:

5.1. the claimant;
5.2. Eleanor Davies, previously employed by the respondent as a Part 1 Architectural Assistant; and
5.3. Felicity Matten, previously employed by the respondent as an Architectural Assistant and Illustrator.

6. The respondent was represented by Ms Nicholls of Counsel, who called sworn evidence on behalf of the respondent from:

6.1. Chris Senior, director of the respondent;
6.2. Debbie Middleton, office manager of the respondent; and
6.3. Kathryn Pedley, associate partner of the respondent.

7. The hearing was before a full Tribunal. We considered documents from a 613-page joint hearing bundle. Sections of the hearing bundle were not agreed. The Tribunal also considered a cast list and chronology from each of the claimant and respondent as these were not agreed before the hearing.

8. On 21 March 2021, following conclusion of evidence from the claimant and her witnesses, Mr Magennis made an application to admit documents to which the claimant had referred in her cross examination, but which were not included in the hearing bundle nor to which she referred in her witness statement. The documents comprised:

8.1. A 4-page document of personal notes made about workload; and

8.2. 18 pages of documents which had been included at pages 698 to 719 of a

previous version of the bundle, which the respondent had subsequently summarized in the document at page 612 and 613 to reduce the length of the hearing bundle.

9. Ms Nicholls on behalf of the respondent objected to the late admission of the documents as follows:

   9.1. The claims to which they relate (allegation that the claimant was overworked) are out of time.

   9.2. The notebooks have not been disclosed previously, cover a 3-week period and for parity disclosure of all work schedules would be required, including handwritten notes of other employees to give a flavour of the work they were doing at the time the notebooks were written. She submitted that an assessment of being overworked should be a comparison exercise and the respondent should be afforded the opportunity to produce evidence in response.

   9.3. The claimant has not previously raised an issue with pages 612 and 613 (the summary document); if claimant is now saying there are errors in pages 612 and 613 the respondent would need to understand which parts of the document the claimant considered inaccurate.

10. The Tribunal concluded that it was fair and just to admit the 18 pages on the basis that they had been in a previous, longer version of the hearing bundle and that the respondent had had prior sight of them, summarising them into the document at pages 612 and 613.

11. On 22 March 2023 the claimant submitted a 1-page letter, and the respondent submitted the employment contract for Maria Jimenez; neither party objected to the additional evidence, which the Tribunal accepted as relevant to issues in dispute.

12. At the start of the hearing on 22 March 2023, (which was part way through Chris Senior's evidence) Mr Magennis made an application to amend the claim to include an allegation that comparators were given financial support with their studies while the claimant was not. The requested addition was: "Being paid less including receiving less by contribution to Part II Masters studies." Mr Magennis told the Tribunal this was a simple amendment. Applying the Selkent test (case law which guides an Employment Tribunal when deciding whether to allow an amendment to either party's case), we disagreed with Mr Magennis' submission that this amendment was a clarification of issues already specified in the agreed list of issues. Even applying a wide interpretation, we do not consider this amendment part of the issue of whether the claimant was "being paid less than her white colleagues". Payment in wages and financial contribution to studies are distinct and different forms of renumeration. They relate to a different set of facts and time periods. To include this additional claim would require both parties to provide witness evidence about the events relating to financial payments made during the course, relating to events not covered in the witness statements before the Tribunal. We concluded that this would require significant further evidence relating to a different period and a party which is not party to these proceedings (DPA). This would require adjournment of the hearing for a period of time, orders for additional witness statements, after conclusion of the claimant's evidence and part way through the respondent's evidence.

13. We concluded it was not just and equitable to allow the claimant's application to amend her claim after she had concluded her evidence to the Tribunal and Mr Senior was part way through his evidence, on the 3rd day of the hearing. We considered the prejudice to the respondent facing an amendment to the claim at this very late stage is significant. Mr Magennis told the Tribunal the claimant had only become aware of this claim overnight. She has been supported by Eleanor Davies throughout these

proceedings; Ms Davies is a witness for the claimant. It is not feasible that they had no knowledge if each other's study arrangements until the previous evening. There is no explanation before the Tribunal as to why this claim was not included at the outset or a request made to amend the claim at any time since November 2021. Given the exchange of evidence between Eleanor Davies and the claimant the suggestion that the claimant only became aware of this situation overnight is simply not credible. Given the timing and substance of the request it was refused.

14. On 17 April the Tribunal received additional disclosure of employment contracts for Eleanor Davies, NC, KO and SS and a CV for LW, which parties had exchanged during the adjournment. These were accepted as relevant evidence by the Tribunal and added as pages 614-642 of the bundle. Prior to closing statements, the Tribunal received a further 2-page email from the respondent (to which the claimant did not object), to which the respondent referred in closing.

15. We record here concerns raised by Mr Magennis when the Tribunal interrupted his initial questioning of Mr Senior. The opening questions were robust, exploring Mr Senior's understanding of tokenism and his opinion about whether racism was a systemic problem in British society and in the architecture profession specifically. Mr Magennis also asked Mr Senior whether he was aware that the claimant suffered abuse and racism in Zimbabwe. None of these matters were set out in the claim or referred to in Mr Senior's witness statement. Mindful the purpose of cross examination is to confirm / challenge Mr Senior on the evidence in his witness statement, the Tribunal requested that Mr Magennis assist us by referring us to the issues in the agreed list which informed his questions and the facts in Mr Senior's written evidence he was challenging. The Tribunal was concerned by Mr Magennis response to this request for assistance that the case was being considered by "an all-white" Tribunal who were stopping his questioning. For the record, the Tribunal's ethnic composition is not "all-White"; the Tribunal did not prevent Mr Magennis asking the questions he put to Mr Senior, in doing so we requested that he direct us to the issues in the claim and agreed list he was exploring with this questioning to assist our recording of the oral evidence.

16. The Tribunal noted that, while in claims concerning alleged race discrimination robust cross examination is important to test the mindset of the witness, we must also be mindful of the overriding objective of the Employment Tribunal to ensure parties are on an equal footing and that cases are dealt with fairly and justly, in a way proportionate to the complexity and importance of the issues. We gave Mr Magennis leeway in questioning the respondent's witnesses beyond the evidence in their witness statements and the scope of the agreed list of issues, to ensure that their evidence was robustly examined. We also ensured that the Tribunal took regular breaks and accommodated Mr Magennis' requests for additional breaks to consider his line of questioning going forward.

17. The Tribunal heard evidence as to liability only.

Findings of fact

18. The relevant facts are as follows. First, the Tribunal makes a general finding on evidence. In assessing credibility, we have borne in mind the time which has passed (approximately 2 years) since many of the events occurred. We found Mr Senior's evidence considered and factually consistent with the documentary evidence throughout. He was subject to rigorous cross examination and remained clear and transparent in answering questions throughout. As the key decision maker, Mr Senior volunteered and recognised where errors had been made and was open in admitting, looking back, the respondent could have handled some things differently. Ms Pedley's evidence was open and consistent. Ms Middleton's oral evidence was confused in places; where her evidence did not align to the contemporaneous documentary record,

we have relied on the probing questions by the Tribunal and the contemporaneous documents in making our findings on the documents.

19. The claimant's witness statement does not present a chronological record of factual events which are referenced in her claim. It does not address all the issues in the agreed list. The statement contains a considerable amount of opinion and perception; we have borne this in mind when her witness statement conflicts with contemporaneous documents. The claimant was open and clear in answering the questions put to her, which assisted the Tribunal in understanding the basis on which she made her claims.

20. The witness statements of Felicity Matten and Eleanor Davies did not address the agreed list of issues in the claims before this Tribunal. Witness statements are statements of fact of which a witness has direct experience. We found that much of the evidence in their witness statements centred on subjective perception and opinion of events at which they were not present and therefore of which they did not have direct experience. Their interpretation of such events did not align with contemporaneous documentary evidence. For these reasons, where their evidence conflicted with the direct evidence of the respondent's witness who were present at events described, and they not present, we prefer the evidence of the respondent's witnesses.

21. The claimant identified 7 comparators in her claim for race discrimination. We are mindful that Judgments of the Employment Tribunal are public documents and that some of the comparators named are not witnesses in these proceedings. Those identified as comparators who have not provided a witness statement to the Tribunal will be identified by their initials. The claimant identified the following comparators:

    21.1. Eleanor Davies - Part 1 Architectural Assistant;
    21.2. Felicity Matten - Architectural Illustrator & Assistant;
    21.3. SS - Part 1 Architectural Assistant;
    21.4. KO - Part 1 Architectural Assistant;
    21.5. CL- Part 2 Architectural Assistant;
    21.6. MJ - Part 1 Architectural Assistant; and
    21.7. LW - Part 2 Architectural Assistant.

22. Mr Senior told us that a Part 1 Architectural Assistant ('Part 1 AA') is someone who has completed their undergraduate degree. A Part 2 Architectural Assistant ('Part 2 AA') is someone who has completed a full-time Masters course. He explained that, as the Part 1 role requires less experience and fewer qualifications, a Part 1 AA will not be paid in the same as a Part 2 AA. Indeed, in oral evidence the claimant accepted the difference between Part 1 and Part 2 AAs, acknowledging that a Part 1 has completed an undergraduate degree or 3-year University course while a Part 2 AA requires a Masters qualification. Subsequently, she also accepted that it was not correct to compare Part 1 and Part 2 roles.

23. The duties of a Part 1 AA are recorded in the employment contract for this role as: "….to assist the architects/technologists with completing building surveys, undertaking electrical and bathroom layouts and schedules and miscellaneous drafting work, including working on various stages of the RIBA schedule of works. You may be asked to work on presentational work which may include 3D sketch up models."

24. Having considered the job description and entry requirements we find that the role of a Part 1 AA is not the same or similar to that of a Part 2 AA. Indeed, Part 2 is a progression from Part 1, a promotion. Part 1 AAs are more experienced that Part 2's (professionally and academically) as evidenced by the requirement for completion of a Part 1 role and of an Architectural Masters or equivalent before being appointed to a Part 2 role. We find that the role of Part 1 and Part 2 AAs are different and distinct.

For this reason, Part 2s can take on a higher level of practical responsibility in the work they do; accordingly, it follows that they command a higher salary. In making our findings that the role of Part 2 AA is materially different from that of a Part 1 AA due to the different core skillsets, experience and qualification thresholds required, we have taken account of the fact there is some cross over in administrative tasks undertaken by colleagues in these roles, as is commonplace in an office environment.

25. Felicity Matten was employed as an Architectural Illustrator & Assistant We have read her employment contract. It records the duties of an Architectural Illustrator & Assistant as "main duties are to assist the architects/technologists with completing building surveys, undertaking electrical and bathroom layouts, schedules, sketch up models, interior design duties and miscellaneous drafting work, including working on various stages of the RIBA schedule of works. You may be asked to work on presentational work which may include presentation material to help promote the Practice, maintaining the website, architectural illustrations, and other promotional material." This reflects the wording in the contracts of employment of a Part 1 AA. However, there is no requirement for an Assistant Illustrator & Assistant to have the qualifications required to apply for a Part 1 role. We conclude that, while the focus of the illustrator role is artistic, the substance of the role of an Architectural Illustrator & Assistant is similar to that of a Part 1 AA in terms of the day-to-day tasks carried out in these roles, as reflected by the same description of duties in the respective employment contracts.

26. On 22 June 2015 Eleanor Davies was employed by DPA Architects ('DPA') as a Part I AA on a salary of £18,000. At that time Mr Senior was involved in the management of DPA. In 2017 DPA split and Mr Senior set up the respondent. The respondent was a new entity and entirely separate from DPA. As an existing employee of DPA Eleonor Davies was given the choice to leave DPA and to join the respondent or remain with DPA. She decided to move to the respondent with Mr Senior. We have seen a copy of her terms and conditions of employment with the respondent dated 10 April 2017. She was employed from 1 April 2017 as a Part 1 AA. Her salary was £23,500 per annum. This salary predated her move; it was set by DPA and not by the respondent. Mr Senior honoured this salary when she chose to move with him. In June 2017 the respondent increased Eleanor's salary by £500, backdated from 1 April 2017. We have seen a copy of the letter dated 19 June 2017 informing her of this increase; the reason stated was to thank Eleanor for her support through the difficulties of the directors of DPA going different ways.

27. We find that Eleanor Davies was employed on a salary of £23,500 per annum by DPA and not by the respondent; her salary predated the formation of the respondent. Eleanor Davies accepted in oral evidence that her salary was increased in June 2017 by £500 as an acknowledgement of her loyalty to Mr Senior when DPA split and to thank her for her decision to move with him to the new entity; payment was backdated to April 2017 to reflect her start date with the respondent. Another Part 1 AA, NC, also moved with Mr Senior from DPA; NC was also paid £23,500 from 1 April 2017 as a Part 1 AA, the respondent honouring her DPA salary when she agreed to move. NC has since left the respondent.

28. We have seen a copy of SS's contract of employment with the respondent dated 24 October 2019. SS was employed by the respondent on 9 October 2019 as a Part 1 AA. SS's salary was £19,000. We have seen a copy of KO's contract of employment with the respondent dated 24 October 2019. KO was employed by the respondent on 14 October 2019 as a Part 1 AA. KO's salary was £19,000. We have seen a copy of Felicity Matten's contract of employment; her employment with the respondent began on 11 December 2017 and she was paid £19,000 per annum.

29. On 6 July 2017 the respondent advertised the role of Part 1 AA. Mr Senior told us that a Part 1 AA placement is usually a 1-year placement as it is commonplace for Part 1 AAs join an architect's practice as a gap year at the end of the 3rd year in a 4-year

course. The claimant qualified for this role as she was a Part 1 graduate having spent 3 years studying Architecture at Newcastle University.

30. On 4 August 2017 the claimant attended a first interview with Mr Senior. She was told at this interview that the starting salary for a Part 1 AA was around £19,000. By her own admission in evidence to the Tribunal Mr Senior's comment reflected the salary she had seen advertised for the role and this was an amount she was prepared to accept, hence applying for the job. The claimant also accepted that it is commonplace for a Part 1 role to last for a year.

31. On 9 August 2017 Debbie Middleton emailed the claimant inviting her to attend a second interview and informing her she would "be given a small hypothetical task to complete." On 17 August 2017 she attended this interview with Mr Senior and undertook the task using Sketchup software. The claimant says she was the only person to undertake a task during the second interview and she was required to do so because of her race. The respondent says from June 2017 it had introduced a task into the second interview to try and improve its interview process, but this was removed in September 2017 as it was taking up too much management time.

32. During the period June to September 2017 two other candidates were interviewed by the respondent. As this case does not relate to these individuals, we refer to them as candidate A (TO) and candidate B (SP) in this Judgment. They are identified in the documents the Tribunal considered. Both are men of Italian nationality and not the same race as the claimant. Candidate A was interviewed for the position of Project Architect. Candidate B was interviewed for the position of Part 2 AA. We have considered the exchanges of correspondence between these candidates and the respondent. On 16 June 2017 Debbie Middleton emailed the Candidate A to invite him for a "a second interview at our offices next week where you will be given a small hypothetical task to complete." On 16 June 2017 Debbie Middleton also emailed Candidate B to invite him for a "a second interview at our offices next week where you will be given a small hypothetical task to complete." They completed the additional tasks at their second interviews on 20 June 2017 and 21 June 2017 respectively. All the individuals identified as comparators by the claimant were interviewed either before June 2017 or after September 2017. The claimant was the only Part 1 AA interviewed between June and September 2017. We find that all second interviews conducted by the respondent between June and September 2017 included a skills test, in line with the recruitment policy at that time.

33. The claimant was invited to lunch at the respondent's office. Candidates A and B were also invited to stay for lunch after their second-round interviews. This invitation to lunch was extended to candidates who attended the office for interview to give them the opportunity to meet the team if they wished to do so and mix with each other in an informal setting before any final decisions were made by either side. This is a common practice. There is no evidence before the Tribunal that the claimant was singled out for a social test. The lunch invitation was a friendly gesture extended to the claimant, Candidate A and Candidate B.

34. On 18 August 2017 the respondent offered the claimant the role of Part 1 AA. Her terms and conditions of employment record her start date as 29 August 2019 and salary as £19,000, "…..reviewed annually. Any increase will take effect on the 1st April." Neither the claimant nor the other Part 1 AA earning £19,000 had their salary reviewed annually in line with their contracts. While this is a failing on the part of the respondent contractually (and we note breach of contract is not part of the claim), we accept Mr Senior's explanation that it was not conducted as a matter of course for Part 1 AAs as the majority only stayed in the role for 1 year between completion of their undergraduate degree before starting a Masters to enable them to progress to a Part 2 role. Mr Senior told the Tribunal that in 2017 as a new business commercially the respondent could not offer a higher salary to Part 1 new recruits. The higher salaries

of employees (Eleanor Davies and NC) who moved with him from DPA were a legacy salary set by DPA, and not a decision of the respondent but which the respondent honoured when individuals decided to move with him to the new practice.

35. On 24 November 2017 Felicity Matten attended a second interview. She did not have to complete a hypothetical test during her interview. We find that the reason she did not was the decision in September 2017 to scale back the second interview process to save management time involved in setting up skills tests. For this reason, we also find that when SS and KO were interviewed in 2019, they were not asked to complete a hypothetical test at second interview.

36. The claimant complains that she had to work with a slow computer and that KO and SS had better computers than she did. There is no written evidence before the Tribunal that she raised the concerns with her computer about which she now complains with the respondent when these she says they arose. Mr Senior and Ms Middleton both explained to the Tribunal that when the respondent company was set up it had the benefit of legacy computer hardware from DPA at its disposal which was allocated to new employees as they joined. When this hardware was used up the respondent purchased computers when new employees joined. NM joined in August 2017. KO and SS in October 2019. We find the respondent's explanation credible and standard commercial practice. Computers inherited from DPA in April 2017 and computers purchased for employees joining subsequently are likely, as a matter of technological advance, to be of different operating speeds. The claimant's computer operated on Windows 7, as did that of Mr Senior. There is no evidence that employees joining around the time the claimant joined were given computers of a higher specification, or that existing colleagues at that time had the benefit of new computers. In any event, there is no evidence the Tribunal that computers purchase subsequently were comparatively of a higher specification beyond standard technological upgrades. Indeed, we find that the respondent was supportive of the claimant's requests for technology support. In November 2019, in an exchange of emails about software, the respondent agreed to purchase additional equipment, Mr Senior telling the claimant: "In terms of the kit it all looks much the same price wise and I'm happy to purchase whichever you feel is the best product."

37. Regarding the claimant's allegation that she had to produce brochures using her personal Adobe Creative Cloud software in August 2018, mindful that the claimant's contract of employment contains a term that no software should be installed on the respondent's hardware without permission and having seen the respondent's purchase invoice for Adobe Creative Cloud, we prefer Mr Senior's evidence that he was not aware (until these proceedings) that the claimant was using her own software. There is no evidence that the respondent required the claimant to use her own software in carrying out her duties.

38. The claimant complains that she had to work at a higher level than other Part 1 AAs. We have considered the schedule of work allocation prepared by the respondent in an attempt to consolidate weekly schedules of everyone in the office. While it is a blunt tool, compiled due to the volume of weekly schedules, when read alongside Mr Senior and Ms Pedley's evidence of how work was allocated to Part 1 AAs we find that the allocation of work to the claimant reflected that allocated to her peers. The type of work recorded in the claimant's notebooks falls within the definition of duties in the respondent's contract of employment for a Part 1 AA. Indeed, in oral evidence the claimant accepted that preparing marketing materials was something that fell within her duties and that as part of her role on the marketing committee she voluntarily produced additional materials. Based on her contract of employment and the schedule of work allocation to Part 1 AAs, we find the work allocated to the claimant aligned with her role and that work allocated to her contemporaries.

39. In making this finding, we have considered the pages from claimant's manuscript

notebooks recording the work she undertook during her employment with the respondent. They are detailed and represent a record of the varied projects on which she worked. However, they are not timesheets, but a record of projects she was involved in and her to-do lists. They do not record time spent. This record would have been useful in assisting the claimant to produce as record of her work to the University of Nottingham as part of her CPD requirements to progress. The notebooks evidence that the claimant's record keeping was conscientious. However, these personal notebooks do not provide any insight into relative workloads between the claimant and other Part 1 AA, nor do they support her allegation that she was required to work at a higher level than her colleagues. Ms Pedley told us that as junior assistants Part 1's are required to float between projects; the number of projects worked on at any time is not an accurate tool for determining relative workload.

40. There is no contemporaneous evidence before the Tribunal that the claimant was doing work in higher volume or technicality than her peers. The claimant was a conscientious and dedicated worker, as evidenced by her appraisal forms and record keeping. She was valued by her managers, who supported her aspirations. The claimant's appraisal form dated 13 February 2018 records her as exceeding or achieving expectations in all areas. The respondent supported the claimant when she asked to do additional courses. The same form records that: "Natalie is a conscientious and professional team player who is developing a strong skill set to progress in her career (hopefully with PiP). It is hoped that Natalie benefited from the RYLA course and that this will allow her to build on these skills further". The claimant records: "I am very happy in the way I have been given a lot of responsibilities in looking after projects." In this appraisal she asked for more work, noting that her Revit skills were not being fully utilized. In the section "Fail to enjoy" the claimant responds: "Nothing! Enjoying every aspect of my job." The claimant was clearly self-motivated and driven, by her own admission working late at the office to complete tasks and coursework. We have seen correspondence with her managers that she was keen to become involved in the redesign of the company's website to utilize these technical skills. At no time did she raise concerns that she felt she was working on more projects than her peers, or that her projects were more challenging.

41. In October and November 2018, the claimant assisted Ms Pedley on a project titled "Bennell Farm". We have seen notes from the October 2018 meeting where she is allocated some work under the supervision of Ms Pedley. There is no evidence that this allocation was excessive. The notes record the claimant "to assist Kathryn in Electrical and Bathroom layouts…" Her role was to assist, under Ms Pedley's supervision, not to complete this project, as she alleges.

42. On 11 February 2019 Mr Senior wrote an open reference about the claimant, stating: "I have been working closely with Natalie over the past 18 months, and in that time, she has proven that she can produce a variety of documents to a very high standard. She can work independently and is able to multi-task to ensure that all projects are completed in a timely manner. Natalie is a budding designer that has the potential to do very well in her career. Natalie is very conscientious, has a positive attitude to work and is a valuable member of our team. She will be a dedicated student and I recommend her for your course." In oral evidence the claimant accepted Mr Senior was supportive of her and her ambitions and that these are not the words of someone who is disrespectful. She also accepted that there was no evidence before the Tribunal that Mr Senior had ever treated her with anything other than professional courtesy and respect.

43. The claimant alleges that the respondent adopted tokenism in its promotion of her in social media posts. There are several examples of the respondent's social media posts in the evidence before the Tribunal in which the claimant features. In oral evidence she accepted that at no time did she raise concerns about any of these posts, nor ask the respondent not to include her, nor did she use any of the technical facilities to block

the respondent from retweeting her twitter posts, where she actively promoted some of her professional achievements. In September 2018 the respondent retweeted an article the claimant wrote about diversity in the workplace; we find it did so with pride. The claimant did not raise any concerns with this post (or other retweets) and subsequently continued to engage with the respondent in social media promotional activity. We find that the claimant was happy to take part in social diversity events. We prefer Mr Senior's evidence that he was proud of her achievements; indeed, his praise reflected in some of the reposts. These are not the words of someone cynically using a post to self-promote an individual for their ethnicity. Pride in the claimant's achievements is central in this post. Mr Senior was open in accepting that he did not seek the claimant's permission to retweet, telling the Tribunal that he did not think it was necessary as he was praising the claimant for something which was already in the public domain.

44. We have considered the tweet about some work the claimant was doing in Zambia. In May 2019 the respondent hosted a lunch and afternoon workshop of 15 people hosted at the respondent's office; this was at the claimant's request. Those present voluntarily and actively attended. Mr Senior told us for these reasons he did not consider it necessary to ask the consent of anyone featured in tweet as all were aware photographs were being taken. Indeed, the contemporaneous evidence is that the claimant was keen to promote this event. In an email following the event the claimant writes to Mr Senior: "With your permission, would I be able to share the ideas with the charity im [sic] working with?" In June 2019 Mr Senior asks the claimant if she would be interested in doing an article about a trip to Zambia, to which she replies: "Yes, I would be happy to! I think when I come back would be best."

45. We have also considered the tweet relating to international woman's day which focuses on women in architecture. The tweet refers to 6 woman (one a long-standing friend of Mr Senior) and the photo features 4. There is nothing in this tweet that seeks to draw additional attention to, or single out, the claimant.

46. Objectively, there is no evidence before the Tribunal that the respondent posted large numbers of social media posts about the claimant. We have seen several posts, all of which feature other people and the majority are retweets and not direct tweets sourced from the respondent. Objectively, none can be interpreted as singling out or drawing attention to the claimant at all, including to the respondent's benefit. There is no evidence before the Tribunal that the claimant had any concerns about any of these posts when they were linked on social media to the respondent. Objectively, we do not find any evidence of tokenism in the social media posts before the Tribunal.

47. Reviewing the social media evidence our finding is that the respondent was a supportive and professional employer, proud of the claimant's achievements. This is confirmed by other evidence. Her appraisal form. Her record of professional experience completed for her Master's Course at the University of Nottingham in which Ms Pedley described the claimant as: "a reliable, extremely competent and integral part of the team. She is able to adapt to a wide variety of tasks, across the RIBA Work Stages and works effectively both independently and as part of a team."

48. In August 2019 the respondent reviewed a draft agreement governing the claimant's Masters course with the University of Nottingham. The claimant alleges that the respondent doubted the genuineness of this agreement. There is no evidence of Mr Senior raising any doubts about the genuineness of this agreement with either the claimant or the University. Mr Senior did raise queries about the contract; these queries do not doubt the documents authenticity. We prefer Mr Senior's explanation that this was a triparte agreement with which the respondent was unfamiliar and as such he raised queries to understand the implications of the agreement for the respondent's business. The queries raised related to ensuring the respondent understood the provisions put in place by the University (common to all of these types

of contracts). They did not relate to the claimant personally.

49. For the period 23 September 2019 to 19 June 2020 the claimant was on study leave for her Masters qualification and worked 3 days a week. During this time, her salary was pro-rated to £12,106 to reflect the fact she only worked 3 days per week. This adjustment is recorded in an addendum to the claimant's terms & conditions of employment dated 29 August 2017, which the claimant signed. Eleanor Davies' salary was also pro-rata to £19,200; we find that the difference in part time salaries reflects the difference in their respective full-time salaries.

50. On 1 April 2020 all staff accept a 20% pay cut due to Covid-19 restrictions and furlough legislation. This resulted in the claimant's salary falling below the minimum wage; the same situation also applied to SS because of SS being on the same Part 1 salary as the claimant at that time. Once this issue was raised with the respondent it was rectified for all staff whose pro-rata salary with 20% reduction fell below the minimum level. The claimant was not the only employee of the respondent impacted in this way by the furlough scheme.

51. On 28 August 2020 CL was interviewed for the role of Part 2 AA. CL was not required to complete a secondary test. On 29 August 2020 MJ was interviewed for the role of Part 2 AA. MJ was not required to complete a secondary test. In May 2021 LW was employed by the respondent as a Part 2 AA. LW was not required to complete a secondary test. Based on our finding that the respondent ceased secondary tests in September 2017 due to the strain it imposed on managerial time, we find it was for this reason these employees were not required to complete a hypothetical task at second interview. MJ was employed as a Part 1 AA in 2020 on a salary of £21,000; we have not seen a copy of her employment contract confirming this amount but accept it as correct as it is not challenged by the respondent, who explained that the higher salary was to reflect that this offer was made 3 years after that of the respondent. Mr Senior accepted that he did not review any of the Part 1 AAs on £19,000 at this time, explaining this did not happen as a matter of course most Part 1 AAs only stayed in the placement for 1 year before starting their Masters course.

52. On 7 September 2020 the claimant started a career break. While on this break her computer was recycled to another member of staff.

53. On 11 June 2021 the claimant met with Mr Senior and Ms Middleton to discuss her return to work. The claimant alleges that at this meeting Mr Senior told her that to qualify as Part 2 AA she would need to complete another series of tests. We have found Mr Senior to be an open and honest witness; he categorically and repeated denied that he said to the claimant on 11 June, or at any time, that she would have to complete additional testing to be promoted to a Part 2 role. We have found that when the respondent required additional testing there is a written record of the request. There is no written record that Mr Senior required to the claimant to engage in additional testing.

54. In an email dated 11 June 2021 Ms Middleton states: "We will work with you over the next few months to build your skills and capability in order that you can progress to a Part 2 Assistant and once you have received your qualifications and you have demonstrated you are able to fulfil key elements the role of a Part 2 Assistant, we will review your job role and salary accordingly." In oral evidence Ms Middleton explained to us that she was not the decision maker, it was Mr Senior, and that she used a poor choice of words, telling us that the only requirement set by Mr Senior was that an individual could be promoted to Part 2 AA in that role they had the requisite qualifications for this role. The same was communicated to Eleanor Davies. This is not the same as a requirement to sit an additional skills test. Had it been interpreted this way by the claimant, given the words used, clarification would have been required. No clarification was sought; the claimant did not raise queries about any additional skills

test, what it may involve, as it would be reasonable to so when faced with the requirement of testing. This is because there was no additional requirement for either Eleanor Davies or the claimant. This is because there was no additional skills test; it was never suggested by the respondent in the terms now complained about.

55. On 24 June 2021 the claimant and Eleanor Davies wrote to the respondent raising concerns about some contractual terms in their new employment contact. By email dated 6 July 2021 the respondent replied to the claimant, addressing the concerns by providing a revised the contract of employment and confirming the proposed amendments would be incorporated into the claimant's Part 1 and Part 2 employment contracts. In a letter to the claimant on 6 July 2021 Mr Senior wrote: "as soon as you are able to provide your Part II certificates of completion (to be issued July/Aug), you will be promoted to Architectural Assistant Part II and your salary will increase to £25,000 with immediate effect and the job description for Part II will be applicable to your role. All other terms and conditions of your employment will remain unchanged." He also addresses the claimant's request for a higher salary, noting the amount requested is outside the company's pay structure.

56. The evidence before us indicates that Mr Senior and Ms Pedley had every confidence in the claimant's ability to do the role of a Part 2 Architect. Accordingly, we prefer Mr Senior's evidence, as decision maker, confirmed in his letter dated 6 July 2021 that the only requirement for the claimant to progress to a Part 2 role (and a salary of £25,000) was the production of her Masters certificate. We consider this a reasonable request, reflecting industry standard for progression to a Part 2 role.

57. On 13 July 2021 the claimant returned from her career break as a Part 1 AA on a salary of £24,000, which in oral evidence she accepted that Mr Senior had told her was at the top of the new Part 1 range. We have seen her pay slip confirming she was paid this amount from the date she returned. We find that, based on exchanges of emails between the respondent and Eleanor Davies, and the fact that Eleanor Davies had previously had to resit exams that the respondent had concerns about Eleonor Davies' skills. There is no evidence that it had concerns about the claimant's ability to do the role of a Part 2 AA.

58. Further, there was no difference in the way Eleanor Davies and the claimant were treated when they returned from their respective career breaks. Each was told that they would return to the business as Part I AA and on receipt by the respondent of their Masters certificates would be promoted to a Part 2 AA and their salaries increased to £25,000. Indeed, it is the Tribunal's finding that the claimant was treated more favourably; when she raised concerns about the contract, she received a timelier response from the respondent addressing these concerns than the response received by Eleanor Davies.

59. On 15 July 2021 the claimant provided the respondent with a copy of her Masters certificate; her salary was increased to £25,000 and her role as a Part 2 AA confirmed.

60. On 19 July 2021 the claimant resigned following a meeting with Mr Senior and Ms Middleton. At this meeting the possibility of a higher salary was discussed, with Mr Senior confirming that the offer of £25,000 was at the top of the pay scale. Mr Senior and Ms Middleton both told us that at no point during this meeting was the claimant told she would be subjected to further skills test, only that she would have to demonstrate that she could meet the criteria of the Part 2 Job Description should she wish to be promoted. We find that this criterion had already been communicated; the requirement to have completed the Masters course and evidence this with the production of the certificate. In her witness statement the claimant does not provide any facts about this meeting or details of what she was told about the alleged skills test. There are no facts in her witness statement about this meeting. Accordingly, we prefer the respondent's evidence that the possibility of a skills test was not raised at

this meeting.

61. At the end of the meeting the claimant resigned. We have seen a copy of her resignation letter. She confirms she has a new job, noting that her resignation "wasn't an easy decision, because I am grateful for the rewarding employment I've had with PiP Architecture…" and that "I hope that we will continue our relationship as I move forward in my career." Mr Senior told us she was asked if she wanted to work her notice or be on garden leave; the claimant chose to work her 4 weeks' notice. We find that, true to her letter of resignation, which states "During the next four weeks, I am willing to help you in any way to make the transition as smooth as possible" the claimant worked her notice, raising none of the concerns she cites in this claim.

62. Indeed, there is no reference in the letter of resignation, or in any of the emails she sent in June and July 2021 raising concerns about her employment contract, to the issues about which she complains to the Tribunal. The claimant told us this was because the complaints she did raise were made jointly with Eleanor Davies and therefore it was not appropriate to raise them at this time. The respondent dealt with the joint claims with consideration, actioning a timely response addressing them. The employer was attentive and proactive in addressing these claims. In this context we find that there was no reason for her not to have raised them independently. We prefer Mr Senior's evidence, which accords with the claimant's own words in her letter of resignation and her decision not to take garden leave but to work her notice in a professional and dedicated way, that she had enjoyed her employment with the respondent, was sad to leave but was doing so as she had secured an exciting new role.

63. The claimant's employment with the respondent ended on 13 August 2021. On 16 August 2021 she started her new job. At no time during her employment did the claimant raise a grievance, informally or formally, regarding the matters about which she has complained to the Employment Tribunal.

Issues for determination by the Tribunal

64. We set out below the issues for the Tribunal to determine, as agreed by the parties in response to the case management order dated 17 October 2022.

Time limits

1. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
a. Was the claim made to the Tribunal within three months (plus ACAS Early Conciliation extension) of the act or omission to which the complaint relates?
b. If not, was there conduct extending over a period?
c. If so, was the claim made to the Tribunal within three months (plus ACAS Early Conciliation extension) of the end of that period?
d. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
i. Why were the complaints not made to the Tribunal in time?
ii. In any event, is it just and equitable in all of the circumstances to extend time?

Was the unfair dismissal complaint made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:
e. Was the claim made to the Tribunal within three months (plus ACAS Early Conciliation extension) of the effective date of termination?
f. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
g. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Constructive Unfair Dismissal

3. Did the Respondent commit any of the acts or omissions set out at paragraphs 34(a) –34(e) of the Claimant's Particulars of Claim? In particular:
a. Being informed on 19 July 2021 that she would be subject to further skills tests and assessments as described at paragraph 22 of the Grounds of Claim.
b. Being paid less than her white colleagues in equivalent or materially identical positions, who are identified at paragraph 26 of the Grounds of Claim
c. Being expected to perform at a higher standard and/or undertake harder tasks and responsibilities. In particular:
i. Between September 2017 to May 2018, the Claimant was expected to undertake allegedly harder tasks including working on an average of six projects per week, and completing planning applications within one week without any prior experience;
ii. In August 2018, the Claimant was given allegedly harder tasks including (i) creating brochures for the Respondent on her personal Adobe Creative Cloud software, and (ii) producing marketing material ranging from award boards and written materials for magazine publications;
iii. In September 2019, as a Part 1 Architecture Assistant the Claimant was expected to produce 3D detailed drawings in Revit software, which the Claimant alleges was typically a task conducted by more experienced members of the practice, whilst she was undertaking a full-time masters course;
iv. In October and November 2018, the Claimant was expected to complete an allegedly unreasonably extensive and large project (titled "Bennell Farm") without any formal training and with insufficient support, and complete a full award submission on the same date.
v. Between October 2019 and September 2020, the Claimant was expected to fully re-design the company's website, tasks outside her contractual responsibilities, without any prior experience.
d. Being used publicly as a symbol on social media of diversity and inclusion at their workplace while being treated less favourably than other colleagues at work, as described in paragraphs 7 and 9 of the Grounds of Claim
e. Having her skills and experience doubted and distrusted by the Respondent. In particular:
i. On 9 August 2017, the Claimant was subjected to a half-day skills assessment, to which subsequently no other applicant for that role was subjected;
ii. In August 2019, the Respondent doubted the genuineness of a draft agreement with the Claimant and the University of Nottingham;
iii. Between June to July 2021, the Respondent was aware that the Claimant had successfully completed her Masters course, but nevertheless required her to return to work as a Part 1 Architectural Assistant;
iv. On 19 July 2021, the Claimant's skills, capabilities and qualifications for further doubted and/or distrusted by the Respondent, as described in paragraph 22 of the Grounds of Claim.
4. If so, did said acts or omissions constitute a repudiatory breach of contract entitling the Claimant to resign? The 'final straw' relied on by the Claimant is being informed on 19 July 2021 that she would be subjected to further skills tests and assessments.
5. If so, did the Claimant expressly or impliedly affirm the contract since the alleged "final straw"?
6. If not, was the "final straw" an act that, by itself, constituted a repudiatory breach of contract?
7. If not, was the "final straw" part of a course of conduct which, viewed cumulatively, amounted to a repudiatory breach of contract? If it was, no separate consideration of a possible previous affirmation is required.

8. To the extent that it is relevant, did the Claimant expressly or impliedly affirm any breach of contract prior to the "final straw"?
9. In any event, did the Claimant resign wholly, or partly, in response to that alleged breach?
10. Was the Claimant constructively unfairly dismissed as alleged?

Direct race discrimination

11. What acts of alleged less favourable treatment does the Claimant rely on? The acts of less favourable treatment relied on by the Claimant are set out at paragraphs 25(a) – 25(e) of the Claimant's Particulars of Claim. In particular:
a. Being informed on 19 July 2021 that she would be subject to further skills tests and assessments as described at paragraph 22 of the Grounds of Claim;
b. Being paid less than her white colleagues in equivalent or materially identical positions, who are identified at paragraph 26 of the Grounds of Claim.
c. Being expected to perform at a higher standard and/or undertake harder tasks and responsibilities. In particular:
i. The Claimant repeats the allegations at issue 3(c)(i) to (v) (inclusive) above.
d. Being used publicly as a symbol on social media of diversity and inclusion at their workplace while being treated less favourably than other colleagues at work, as described in paragraphs 7 and 9 of the Grounds of Claim.
e. Having her skills and experience doubted and distrusted by the Respondent. In particular:
i. The Claimant repeats the allegations at issue 3(e)(i) to (iv) (inclusive) above.
12. Did such conduct occur?
13. If so, did the Respondent treat the Claimant less favourably than it treated or would have treated an actual comparator? The actual comparators relied on are set out at paragraphs 26(a) – 26(g) of the Claimant's Particulars of Claim. In particular:
a. Eleanor Davies;
b. Felicity Matten;
c. Shazil Saleem;
d. Katey Oven;
e. Carolyn Leadon;
f. Maria Jimenez; and/or
g. Lucas Williams.
14. If not, did the Respondent treat the Claimant less favourably than it treated or would have treated a hypothetical comparator, as described at paragraph 27 of Claimant's Particulars of Claim.
15. Was the reason for such conduct because of the Claimant's race?

Harassment on the grounds of race

16. Did the Respondent engage in any unwanted conduct? The acts of unwanted conduct relied on by the Claimant are set out at paragraphs 31(a) – 31(e) of the Claimant's Particulars of Claim. In particular:
a. Being informed on 19 July 2021 that she would be subject to further skills tests and assessments as described at paragraph 22 of the Grounds of Claim.
b. Being paid less than her white colleagues in equivalent or materially identical positions, who are identified at paragraph 26 of the Grounds of Claim.
c. Being expected to perform at a higher standard and/or undertake harder tasks and responsibilities. In particular:
i. The Claimant repeats the allegations at issue 3(c)(i) to (v) (inclusive) above.
d. Being used publicly as a symbol on social media of diversity and inclusion at their workplace while being treated less favourably than other colleagues at work, as described in paragraphs 7 and 9 of the Grounds of Claim.

e. Having her skills and experience doubted and distrusted by the Respondent. In particular:
i. The Claimant repeats the allegations at issue 3(e)(i) to (iv) inclusive above.
7. If so, did it relate to the protected characteristic of the Claimant's race?
18. Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect), the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
19. Did the Respondent take all reasonable steps to prevent the harassment?

Law

Constructive dismissal

65. Section 95(1)(c) of the Employment Rights Act 1996 (the 'Act') provides that an employee is dismissed by their employer if:

'the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct'.

66. In order to establish constructive dismissal, an employee must show that the employer has committed a breach of contract (express or implied) which causes an employee to resign (*Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27*) and that the breach is sufficiently serious to justify the employee resigning or is the last in the series of incidents which justify their leaving. The breach of contract by the employer must be significant (*Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27*). A breach of the term of trust and confidence implied into all contracts of employment is such a breach.

67. A breach of the implied term of trust and confidence occurs where an employer conducts itself without reasonable and proper cause in a manner calculated, or likely to destroy or seriously damage, the relationship of confidence and trust between employer and employee (*Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84*, *Mahmud v BCCI [1997] IRLR 462*, *Yapp v Foreign and Commonwealth Office [2015] IRLR 112*). A Tribunal must consider:

67.1. Was the conduct likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?
67.2. If so, was there reasonable and proper cause for the conduct?

68. The Tribunal was directed to the case of *RDF Media Group Plc and anor v Clements [2008] IRLR 207, QB* which held that a breach of the implied term of mutual trust and confidence will only occur where there was no "reasonable and proper cause" for the conduct. The burden on showing an absence of reasonable and proper cause lies with the party seeking to rely on such purported absence.

69. A breach of this implied term is likely to be repudiatory. A Tribunal must consider all the circumstances of the case and ask itself, objectively, is the breach alleged likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in their employer *Malik v BCCI [1997] IRLR 462.* There is no breach merely because an employee subjectively feels that there has been a breach. If, viewed objectively, there has been no breach then the claim must fail (*Omilaju v Waltham Forest London Borough* Council [2005] IRLR 35).

70. The Court of Appeal considered the characteristics of a repudiatory breach of contract in the case of *Tullett Prebon plc & ors v BGC Brokers LP & ors* [2011] IRLR 420. Maurice Kay LJ, who delivered the leading judgment, held as follows at paragraphs 19 and 20:

"The question whether or not there has been a repudiatory breach of the duty of trust and confidence is "a question of fact for the tribunal": Woods v WM Car Services (Peterborough) Limited, [1982] ICR 693, at page 698F, per Lord Denning MR, who added:

'The circumstances … are so infinitely various that there can be, and is, no rule of law saying what circumstances justify and what do not' (ibid).

71. The question whether a repudiatory breach of contract has occurred must be judged objectively (*Buckland v Bournemouth University Higher Education Corporation [2010] ICR 908*); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employee reasonably believes there to have been a breach nor that the employer believes it acted reasonably in the circumstances is determinative of this: the test is not one of 'reasonableness' but simply of whether a breach has occurred. When considering the question of constructive dismissal, the focus is on the employers conduct and not the employee's reaction to it.

72. Furthermore, a claimant must show that they resigned in response to this breach and not for some other reason (although the breach need only be a reason and not the reason for the resignation) *Kaur v Leeds Teaching Hospitals NHS Trust* [2019] ICR 1; however, the breach must be a substantial part of the reasons for the dismissal *United First Partners v Carreras* [2018] EWCA Civ 323.

73. It is open to an employer to prove that the employee affirmed the contract despite the breach, perhaps by delay or taking some other step to confirm the contract *Cockram v Air Products plc [2014] ICR 1065, EAT*

74. A claim for in breach of the implied term of trust and confidence may be based on the *'last straw doctrine'* (the name of which is derived from the old saying *"the last straw that broke the camel's back"*). This doctrine provides that a series of acts by the employer can amount cumulatively to a breach of the implied term of trust and confidence even though each act when looked at individually might not have been serious enough to constitute a repudiatory breach of contract. Inherent in the concept of a last straw is that there was one final act which led to the dismissal (*'the last straw'*) and the nature of this was considered in *London Borough of Waltham Forest v Omilaju [2005] IRLR 35* where the Court of Appeal held that the last straw need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of trust and confidence. If the act relied on as the final straw is entirely innocuous however then it is insufficient to activate earlier acts which may have been, or may have contributed, to a repudiatory breach.

75. The breach of contract does not need to be the sole reason for the resignation. It is sufficient for the employee to prove, on the balance of probability, that they resigned in response, at least in part, to a fundamental breach of contract by the employer (*Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859).

76. Of course, where parties are acting reasonably it is less likely that there will have been a breach of contract when judged objectively but this is not necessarily so. If, on an objective approach, there has been no breach by the employer, the employee's claim will fail.

77. This claim identified a grievance procedure as part of the claim for breach of the implied term of trust and confidence. In *Abbey National Plc v Fairbrother [2007] UKEAT/0084/0.* the EAT held that when considering a grievance procedure in the context of constructive dismissal, the standard against which it should be judged was *'the band of reasonable responses'*.

Direct race discrimination in respect of dismissal (Equality Act 2010 section 13)

78. Under section 13, Equality Act 2010, "EqA", direct discrimination is defined:

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

79. The protected characteristics are set out in section 4 EqA and includes race, sex and disability. Direct discrimination occurs where the employer treats the employee less favourably because of a protected characteristic.

80. Section 23 of EqA provides for a comparison by reference to circumstances in a direct discrimination complaint. The Tribunal must consider whether the employee was treated less favourably than they would have been treated if they did not have the protected characteristic. One way of testing whether or not the employer would have treated them better if they did not have the protected characteristic is to imagine a "hypothetical comparator". There is no actual comparator in this case; therefore, the test of hypothetical comparator is applied. The circumstances of a comparator must be the same as those of the claimant, or not materially different: see section 23 of EqA. The circumstances need not be precisely the same, provided they are close enough to enable an effective comparison: *Hewage v Grampian Health Board [2012] UKSC 37.*

81. The important thing to note about comparators (whether actual or hypothetical) is that they are a means to an end. The crucial question in every direct discrimination case is: What is the reason why the claimant was treated as he/she was? Was it because of the protected characteristic? Or was it wholly for other reasons? It is often simpler to go straight to that question without getting bogged down in debates over who the correct hypothetical comparator should be: *Shamoon v. Royal Ulster Constabulary [2003] UKHL 11.*

82. The Tribunal must consider the "mental processes" of the alleged discriminator: *Nagarajan v London Regional Transport* [1999] IRLR 572. The protected characteristic need not be the *only* reason for the less favourable treatment. It may not even be the main reason. Provided that the decision in question was significantly (that is, more than trivially) influenced by the protected characteristic, the treatment will be because of that characteristic and discrimination would be made out.

83. The burden of proof provisions are contained in section 136 of EqA:

    (2) If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.
    (3) But subsection (2) does not apply if A shows that A did not contravene that provision.

84. Section 136 prescribes two stages to the burden of proof: Stage 1 (primary facts) and Stage 2 (employer's explanation). At Stage 1, the burden of proof is on the claimant *Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913* *Royal Mail Group Ltd v Efobi [2021] UKSC 22* Stage 2 considers the employer's explanation. Has the employer proved on the balance of probabilities that the treatment was not for the proscribed reason. In a direct discrimination case, the employer only has to prove that the reason for the treatment was not the forbidden reason. There is no need for the employer to show that they acted fairly or reasonably.

85. The Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142 sets out guidelines on the burden of proof. Therefore, the process a Tribunal must follow is:

    85.1. Establish if there are facts from which a Tribunal can determine that an unlawful act of discrimination has taken place;
    85.2. If the Tribunal concludes that there are, the burden of proof shifts to the respondent to provide a non-discriminatory explanation for the conduct.

Harassment related to race (Equality Act 2010 section 26)

86. Section 26 EqA sets out the legal definition of harassment as follows:

"(1) A person (A) harasses another (B) if— (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of— (i)violating B's dignity, or (ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(2) A also harasses B if— (a) A engages in unwanted conduct of a sexual nature, and (b) the conduct has the purpose or effect referred to in subsection (1)(b).
(3) … (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect."

87. In considering the words "intimidating, hostile, degrading, humiliating or offensive" a Tribunal must be sensitive to the hurt comments may cause but balance so as not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase: *Richmond Pharmacology Ltd v. Dhaliwal* [2009] IRLR 336. Where a claim for harassment is brought on the basis that the unwanted conduct had the *effect* of creating the relevant adverse environment, section 26 has been interpreted as creating a two-step test for determining whether conduct had such an effect; *Pemberton v Inwood* [2018] EWCA Civ 564. The steps are:

    87.1. Did the claimant genuinely perceive the conduct as having that effect?

    87.2. In all the circumstances, was that perception reasonable?

Conclusions of the Tribunal

88. The Tribunal sets out its conclusions by reference to the agreed list of issues for each claim.

Time limits

89. First, we must determine whether the discrimination and harassment complaints were made within the time limit in section 123 of the Equality Act 2010? These complaints date to 2017 (payment) and work undertaken in 2019 and 2020 and so fall outside the initial three-month deadline (plus early conciliation extension). As the claims concern salary payments and workload, both ongoing throughout the claimant's employment, we conclude that there was conduct extending over a period and this period continued until the end of the claimant's employment on 13 August 2021. In reaching this conclusion, regarding workload we are mindful that the claimant identifies specific dates for work she says was at a higher level; applying the dates referenced specifically by the claimant these claims are out of time. However, we consider it just and equitable to consider her concerns about workload in the context of the entirety of the claimant's employment as her claim touches on this in places. As such we conclude that these claims are continuing acts.

90. The claim was presented on 19 November 2021 which, accounting for the continuing conduct was within three months (extended by the early conciliation period between 9

September 2021 and ended on 21 October 2021) of the end of the claimant's employment, we conclude the claims of discrimination and harassment are in time.

91. We conclude that the complaint of unfair dismissal (constructive dismissal) was also made within the time limit in section 111 of the Employment Rights Act 1996 in that it was made to the Tribunal on 19 November 2021 which is within three months (extended by the early conciliation period between 9 September 2021 and ended on 21 October 2021) of the effective date of termination of 13 August 2021.

92. Therefore, we conclude all claims are in time and we consider the substantive merits of the claims below.

Constructive dismissal

93. Next, we address the claim for constructive dismissal. The claimant resigned by letter dated 19 July 2021 giving 4 weeks' notice; her employment ended on 12 August 2021. Based on our findings of fact, first we address whether the respondent did the things alleged by the claimant.

94. We have found that there was no discussion on 19 July 2021 about the claimant being subjected to skills tests and assessments. The claimant does not provide details of this meeting in her witness statement. The allegation is not supported by the claimant's own evidence. In oral evidence she suggested that this discussion may have taken place on 16 July. There is no evidence of a conversation on 16 July. We have found that the only requirement was for the claimant to produce her Masters certificate. There was no discussion on 19 July 2021 or at all on her return from her career break about the claimant being subjected to skills tests and assessments.

95. We have found that the claimant was paid less than Eleanor Davies when the claimant started work with the respondent in August 2017. Eleanor Davies was paid £24,000 as a Part 1 AA from 1 April 2017 and the claimant was paid £19,000 for the same role from 29 August 2017. SS was employed by the respondent on 9 October 2019 as a Part 1 AA on a salary of £19,000. KO was employed by the respondent on 14 October 2019 as a Part 1 AA on a salary of £19,000. Felicity Matten's was employed as an AA and Illustrator on 11 December 2017 on a salary of £19,000.

96. The claimant was not alone in being skills tested or being invited to lunch. Between June and September 2017 2 other interviewees of different race and nationality completed skills tests at their second interviews and were invited to lunch in the office. Anyone interviewed before June or after September 2017 was not subjected to a skills test as this was only the respondent's practice during this time.

97. We have found that the claimant was not expected to perform at a higher standard nor was she required undertake harder tasks and responsibilities. From our analysis of the workflow and work type documents and the claimant's notebook records, we have found there is no evidence dating from September 2017 to May 2018 that the claimant was expected to undertake harder tasks including working on an average of six projects per week and completing planning applications within one week without any prior experience. Indeed, the claimant spoke of her own additional experience when compared to colleagues, was subject to supervision in her tasks, as were all Part 1 AAs. She was enthusiastic and ambitious, with her appraisals recording her request for additional experience and her own evidence confirming that she was keen to become involved in more projects. We have found that this included in August 2018 creating marketing materials for the respondent. She did use her own Adobe Creative Cloud software, but this was not at the request of the respondent, who, we have found, was keen to support her requests for software, Mr Senior telling her to advise on software necessary. The marketing materials she produced and articles she wrote for magazine publications she was happy and self-motivated to do; there is not contemporaneous requests by the respondent requiring her to undertake these tasks

in addition to the normal workload of someone in her role.

98. We conclude the claimant's workload was commensurate with that of her peers and where she did stay late in the office this was her choice and included working on her CPD portfolio in preparation for her Masters course. This included the work she freely undertook in September 2019, as producing 3D detailed drawings. This was not work the respondent dictated she must do, nor was it more than the workload of a Part 1 AA.

99. We have found that in October and November 2018, the claimant assisted Ms Pedley in the "Bennell Farm". She did not, as alleged, complete this project. Her role was supervised by Ms Pedley, who we have found was a supported mentor.

100. We have found that the claimant did contribute to the redesign of the respondent's website and that she was willing and keen to offer her ideas and to be involved. Her job description was wide; we conclude this type of presentational work was covered by her role. There is no evidence that "the claimant was expected to fully re-design the company's website"; this may have been her perception with hindsight, but it is not fact.

101. The respondent did promote the claimant's successes on social media, proudly so. Mr Senior's pride in her successes is evident in the nature of the posts seen by the Tribunal and in his oral evidence. The claimant was not singled out; some of the posts include colleagues. Where the post centres on the claimant it is evident on its face that the retweet was made with pride and not as a tokenistic post. The respondent did not actively promote the claimant; rather it supported her requests and applauded her successes. We conclude that she was not used publicly as a symbol on social media of diversity and inclusion by the respondent.

102. There is no evidence before the Tribunal that the respondent doubted and distrusted the claimant's skills and experience. Quite the reverse, evident in her appraisal form, Mr Senior's reference and Ms Pedley's feedback as her mentor. The skills test she undertook on 9 August 2017 was standard practice for the respondent's recruitment process at that time, completed by all interviewees prior to September 2017 when, we have found, the respondent stopped this practice as it was taking up too much management time.

103. We have found that the respondent did not doubt the genuineness of the University of Nottingham agreement for the claimant's Masters course in August 2019 or at all. It simply raised queries about a triparte contract which contained terms put in place by the University with which the respondent was not familiar.

104. The respondent was aware in July 2021 that the claimant had successfully completed her Masters course, as she told them she had done so. It was explained to her in a letter from Mr Senior dated 6 July 2021 as she would be required her to return to work as a Part 1 AA until the respondent had sight of her Masters certificate, following which she would immediately be transferred to the Part 2 AA role, contract and salary. The respondent took the same approach with Eleanor Davies.

105. There is no evidence that on 19 July 2021, the claimant's skills, capabilities, and qualifications were doubted and/or distrusted by the Respondent, as described in paragraph 22 of the Grounds of Claim, which alleges that it was impossible for the claimant to be hired as a Part 2 AA without her being further tested. The claimant does not address the 19 July meeting in her own witness statement; her claims are not supported by her own evidence. The letter of 6 July 2021 sets out the only required for progression; sight of the Masters certificate.

106. The Tribunal has upheld 2 sets of facts alleged by the claimant. First, we have found that the claimant was paid less than Eleanor Davies when the claimant started work with the respondent in August 2017. The respondent has explained the differential in salary related to Eleanor Davies employment starting at DPA, which was entirely separate to the respondent, and it was this entity that had set the salary. The additional £500 was paid to acknowledge Eleanor's loyalty in moving with Mr Senior when he set up the respondent. The claimant was paid the same amount as Part 1 AAs who started after her.

107. Objectively, based on our findings, there is no evidence that in paying the claimant £19,000 the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. The payment differential at that time related to an employee who was employed in very different circumstances. We conclude in paying the claimant £19,000, which was in line with other Part 1' AAs and only out of line with Eleanor Davies' salary, the respondent had a reasonably and proper course, relating to the legacy employer of Eleanor Davies (DPA) setting this salary. We conclude the respondent did not breach the term of trust and confidence in relation to the claimant's salary.

108. Second, we have found that the respondent was aware in July 2021 that the claimant had successfully completed her Masters course, as she told them she had done so. Objectively, we conclude that the respondent did not breach the implied term of trust and confidence in not promoting her to a Part 2 role based on her verbal confirmation. The respondent required all Part 1 AAs (including Eleanor Davies) to produce written evidence of completion in the form of their Masters certificate before promotion to Part 2. This was politely explained to the claimant in Mr Senior's July 2021 letter. We conclude this request was a reasonable record keeping request, professional standard practice on completion for a professional qualification and was in no way calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

109. As we have found there is no breach of the term of trust and confidence, we do not need to consider whether the claimant resigned in response. However, we note our finding that the claimant started a new job 3 days after leaving the respondent, which she had secured at the time of her resignation and which she was excited about, while at the same time expressing her sadness at leaving the claimant. Nor do we need to consider the other allegations as we have found events did not occur as alleged by the claimant.

110. The claimant was not constructively dismissed by the respondent.

Direct race discrimination (Equality Act 2010 section 13)

111. Our next consideration is whether the claimant was discriminated against by the respondent due to her race.

112. Applying the legal test for comparators, there must be no material difference between their circumstances and the claimant's. The claimant's race is black British and she compares herself with people of White British race. Based on our findings that Part 2 AAs have a different role and of the similarity of the Part 1 AA job description and that of illustrator in the employment contracts, we conclude the following are comparators for determining the claims of direct race discrimination.

112.1. Eleanor Davies - Part 1 Architectural Assistant;
112.2. SS - Part 1 Architectural Assistant;
112.3. KO - Part 1 Architectural Assistant;
112.4. MJ - Part 1 Architectural Assistant;
112.5. Felicity Matten - Architectural Illustrator & Assistant;

113. Next, we consider whether the events the claimant alleges were discriminatory happened to satisfy the first part of the two-stage test and establish if there are facts from which a Tribunal can determine that an unlawful act of discrimination has taken place. In doing so we are mindful that the burden is on the claimant to prove discrimination and of the guidance in *Madarassy v Nomura International plc 2007 ICR 867*, CA that 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.'

114. We have found that some of the acts of less favourable treatment relied on by the Claimant did not take place. For the same reasons stated in our conclusion on the claim of constructive dismissal (where the factual matrix relied on is common to this claim) we have concluded that, as a matter of fact, the claimant:

114.1. Was not informed on 19 July 2021 that she would be subject to further skills tests and assessments;
114.2. Was not expected to perform at a higher standard and/or undertake harder tasks and responsibilities;
114.3. Was not being used publicly as a symbol on social media of diversity and inclusion at their workplace;
114.4. Did not have her skills and experience doubted and distrusted by the Respondent. In particular;
114.5. Was not expected to perform at a higher standard and/or undertake harder tasks and responsibilities;
114.6. Was not expected between September 2017 to May 2018 to undertake allegedly harder tasks including working on an average of six projects per week, and completing planning applications within one week without any prior experience;
114.7. Was not in August 2018 / September 2019, the given allegedly harder tasks including (i) creating brochures for the respondent on her personal Adobe Creative Cloud software / expected to produce 3D detailed drawings in Revit software, and (ii) producing marketing material ranging from award boards and written materials for magazine publications;
114.8. Was not in October and November 2018, was expected to complete the "Bennell Farm") without any formal training and with insufficient support;
114.9. Was not between October 2019 and September 2020 expected to fully re-design the company's website, tasks outside her contractual responsibilities, without any prior experience;
114.10. Was not being used publicly as a symbol on social media of diversity and inclusion by the respondent;
114.11. Did not have her skills and experience doubted and distrusted by the respondent;
114.12. In August 2019, the respondent did not doubt the genuineness of a draft agreement with the claimant and the University of Nottingham; and
114.13. On 19 July 2021, did not have her skills, capabilities and qualifications doubted and/or distrusted by the respondent.

115. Quite simply, our findings are that these events did not happen either at all or in the way alleged by the claimant.

116. The following did occur:

116.1. The claimant was paid less than comparator Eleanor Davies for the same role for the period 29 August 2017 until her return from her career break in June 2021.

116.2. On 9 August 2017 was not subjected to a half-day skills assessment, to which subsequently no other applicant for the role of Part 1 AA was subjected.

116.3. Between June to July 2021, the respondent was aware that the claimant had successfully completed her Masters course, but required her to return to work as a Part 1 AA.

116.4. The claimant had an older computer than some of the other Part 1 AAs.

117. For these events we must consider whether the respondent treated the claimant less favourably than it treated or would have treated a comparator.

118. We conclude that in paying the claimant £19,000 she was not treated less favourably than the following, whom we have concluded are actual comparators: Felicity Madden, SS, KO and LW. They did the same, or in the case of Felicity Madden a similar, role and were paid the same as the claimant. MJ was recruited 3 years after the claimant, by which time the respondent had raised the Part 1 AA salary. It did not given any of the Part 1 AAs who started on a salary of £19,000 a rise.

119. We have concluded she was treated less favourably than her comparator Eleanor Davies who was earning £24,000 in the same role when the claimant was employed on £19,000. We conclude that, under the first stage of the test, these bare facts of a difference in salary amount indicate a possibility of discrimination. Accordingly, under stage 2 of the test, the burden of proof shifts to the respondent to provide a non-discriminatory explanation for the conduct. We conclude it has.

120. Eleanor Davies was paid £23,500 at the legacy firm of architects where she was initially employed in a Part 1 role. She decided to transfer with Mr Senior and she retained this salary and was awarded an additional £500 as a result. Her salary, and that of NC, were higher than the salaries of other Part 1 AAs employed across the period the claimant was employed by the respondent; this is explained by the fact her salary and that of NC were set by DPA and not by the respondent. The claimant's salary was the same as those of her comparators and, as a starting salary for a role all parties agreed it was commonplace to last for a year, was commensurate with Part 1's recruited in the following years, accounting for rises in recruitment salaries. There is no evidence before this Tribunal that the decision to pay her £19,000 related to her race. Any differential was a failing to review salary in line with the contract. Some white Part 1 colleagues were paid the same amount. When she returned from her career break, she was paid the same as Eleanor Davies in a Part 1 role and was offered the same as Eleanor Davies (£25,000) for promotion to a Part 2 role.

121. We have concluded that she was treated less favourably than comparators who did not have to complete a stage 2 interview skills test. Again, there is no evidence the claimant's completion of this test related to her race. She undertook her second interview during a window (February to September 2017) when the respondent had adopted a process of skills testing at stage 2 of its interview process. She was interviewed in April 2017. There were 2 applicants interviewed (for Part 2 roles) in August 2017 who had to complete the skills test. No other Part 1 interviews took place at this time. All interviewees interviewed at stage 2 during this period completed a skills test. Eleanor Davies had already transferred across from the legacy firm, which had employed her. She was not interviewed by the respondent. We are satisfied that the respondent has discharged its burden to explain the bare facts of a differential in recruitment process. There is no race discrimination in the respondent's recruitment of the claimant.

122. There was no social test. Lunch was offered to interviewees as they attended the office for interview. The claimant was not singled out. The other 2 candidates interviewed at this time were invited for lunch.

123. The claimant had an older computer than some of the other Part 1 AAs. She had the same operating system as Mr Senior. Computers were allocated when a new employee joined. She was allocated a DPA legacy computer, joining a few months after the respondent sent up its business, having acquired these computers during the split. When the legacy computers ran out, the respondent had to buy computers for new Part 1 AAs (joining in 2019 and 2020). Again, we conclude that, under stage 2 of the test, the different computers of some Part 1 AAs.

124. In reaching these conclusions we have considered the mental processes of Mr Senior who was responsible for making the decisions about the respondent's recruitment processes, salaries and computers, mindful that the protected characteristic need not be the *only* reason for the less favourable treatment or even be the main reason. We have found Mr Senior's thought processes clear throughout; there is no evidence before this Tribunal that Mr Senior was influenced by anything other than establishing and running his new company and whole heartedly supporting his colleagues and junior recruits. There is no evidence that the claimant's race influenced Mr Senior's thought processes. With the exception of Eleanor Davies, who was recruited by a different firm, he treated Part 1 and Part 2 staff with equality and equity and the contemporaneous documents before this Tribunal evidence his fairness. We conclude that his decisions about interview processes, pay and progression were not in any way influenced by the anyone's race, including that of the claimant.

125. The respondent did not directly discrimination against the claimant due to her race or at all.

Harassment related to race (Equality Act 2010 section 26)

126. The claimant says she was harassed and subjected to unwanted behaviour due to her race. She relies on the same alleged facts and events as for her claims of constructive dismissal and direct race discrimination. For the reasons already stated in our conclusions we set out below which events we have found did not occur at all or in the way alleged by the claimant. We have found that the claimant:

126.1. Was not informed on 19 July 2021 that she would be subject to further skills tests and assessments;
126.2. Was not expected to perform at a higher standard and/or undertake harder tasks and responsibilities;
126.3. Was not being used publicly as a symbol on social media of diversity and inclusion at their workplace;
126.4. Did not have her skills and experience doubted and distrusted by the Respondent. In particular;
126.5. Was not expected to perform at a higher standard and/or undertake harder tasks and responsibilities;
126.6. Was not expected between September 2017 to May 2018 to undertake allegedly harder tasks including working on an average of six projects per week, and completing planning applications within one week without any prior experience;
126.7. Was not in August 2018 / September 2019, given allegedly harder tasks including (i) creating brochures for the respondent on her personal Adobe Creative Cloud software / expected to produce 3D detailed drawings in Revit software, and (ii) producing marketing material ranging from award boards and written materials for magazine publications;
126.8. Was not in October and November 2018, was expected to complete the "Bennell Farm") without any formal training and with insufficient support;

126.9. Was not between October 2019 and September 2020 expected to fully re-design the company's website, tasks outside her contractual responsibilities, without any prior experience;

126.10. Was not being used publicly as a symbol on social media of diversity and inclusion by the respondent;

126.11. Did not have her skills and experience doubted and distrusted by the respondent;

126.12. In August 2019, the respondent did not doubt the genuineness of a draft agreement with the claimant and the University of Nottingham; and

126.13. On 19 July 2021, did not have her skills, capabilities and qualifications doubted and/or distrusted by the respondent.

127. Quite simply, our findings are that these events did not happen either at all or in the way alleged by the claimant.

128. The following did occur:

128.1. The claimant was paid less than comparator Eleanor Davies for the same role for the period 29 August 2017 until her return from her career break in June 2021.

128.2. On 9 August 2017 was not subjected to a half-day skills assessment, to which subsequently no other applicant for the role of Part 1 AA was subjected. was subjected.

128.3. Between June to July 2021, the respondent was aware that the claimant had successfully completed her Masters course, but required her to return to work as a Part 1 Architectural Assistant;

129. For these events we must consider whether the conduct was unwanted. The claimant says it was; however, she did not challenge any of these events at the time, during her employment, when raising complaints in June 2021, in the meeting on 19 July 2021 or in her resignation letter. Quite the reverse; in all the contemporaneous correspondence between the claimant and respondent she is warm, enthusiastic, offering her ideas, putting forward suggestions for opportunities for herself and the business and recording, until she leaves, how much she has enjoyed working for the respondent.

130. We have already set out our conclusions as to why these events did not relate to the claimant's race. Next we must consider whether the salary of £19,000, the skills test and lunch at the second interview stage and the requirement to produce a Masters certificate had the purpose or (taking into account the claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect) effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

131. In considering the words "intimidating, hostile, degrading, humiliating or offensive" we are sensitive to the hurt comments may cause. However, the law requires us to be balanced in reaching our conclusions so as not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.

132. We have accepted the reasons why the respondent paid the claimant £19,000 and requested the certificate. These reasons are clear, well founded in evidence and reasonable in a business context. On the evidence before us we have found that these actions contain no purpose, nor can they reasonably be perceived as having the effect, of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Indeed, based on the evidence of a supportive and constructive relationship between the respondent and the claimant

throughout her employment, we conclude the allegations she now makes do not represent how she felt, nor were they her perception at the time these events occurred or indeed throughout her employment with the respondent. She did not raise any of the issues about which she complains throughout her employment; quote the contrary. All exchanges before the Tribunal between the respondent and claimant during her employment are professional and supportive, including correspondence relating to the concerns she raised in June 2021. In the context of the evidence before us, the claimant's acknowledgement her managers were always supportive and professional during her employment, we have preferred the respondent's recollection that the claimant had a warm, positive, professional relationship with the respondent's witnesses and that she was happy throughout her employment.

133. The evidence before us is that Eleanor Davies and Felicity Madden were not. This is reflected in the opinions they have expressed in their statements. We conclude that in engaging with their concerns and frustrations in their own relationships with the respondent this clouded the claimant's perception of events after she resigned such that she reported them in these claims in a way that does not represent what happened at the time. That is very sad. We conclude that at the time the claimant did not genuinely perceive the conduct as having the effect she now suggests; there is no contemporaneous evidence that she did. We conclude, based on our findings of fact, that the recollection of events she has presented to this Tribunal is misconceived and not representative of events as they happened and throughout her employment. Her employer was always supportive and proud of the claimant and her achievements.

134. The claimant was not subjected to harassment related to race or at all.

135. It is the Judgment of this Tribunal that:

135.1. The claim of unfair dismissal is not well founded and is dismissed.

135.2. The respondent has not contravened section 13 of the Equality Act 2010. The claim of direct race discrimination is not upheld.

135.3. The respondent has not contravened section 26 of the Equality Act 2010. The respondent did not harass the claimant. The claims of race harassment are not upheld.

Employment Judge Hutchings

6 June 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

8 June 2023

GDJ
FOR EMPLOYMENT TRIBUNALS